

Your Land

Options for New Hampshire Landowners



by Brenda Lind
Center for Land Conservation Assistance
Revised 2005

Conserving Your Land
Options for New Hampshire
Landowners

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Commissions

Deborah Stanley, executive director,
Ausbon Sargent Land Preservation Trust

Layout and Design

Leeann Doherty

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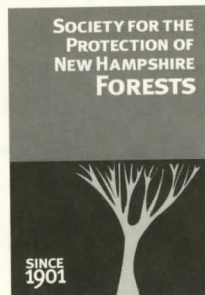
Options for New Hampshire Landowners

by Brenda Lind

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CENTER FOR LAND
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The Center for Land Conservation Assistance (CLCA) provides support for organizations and individuals seeking to conserve land in New Hampshire, with special focus on land trusts. CLCA envisions a New Hampshire where each community has access to a well-functioning regional land trust to assist with local land conservation projects and where each land protection project is accomplished and permanently maintained following the best standards. CLCA was created in 2001 and is hosted by the Society for the Protection of New Hampshire Forests.

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Chapter One

Introduction: Why Conserve Land?

The people of New Hampshire enjoy a landscape shaped by a century of conservation action. In a patchwork of conserved lands large and small, from the White Mountain National Forest to backyard woods, wetlands and fields, the state's landscapes demonstrate the foresight of conservation-minded individuals. Landowners, private conservation organizations and publicly supported conservation programs have established a tradition of permanently conserving our state's treasured natural lands.

These landscapes provide more than just a backdrop for life in New Hampshire. They support the rural economy through agriculture and forestry, manufacturing, and tourism. They provide recreational opportunities and aesthetic pleasure. They maintain clean water, clean air and a healthy environment. They sustain and stabilize our communities. Yet recent decades have seen the effects of relentless pressure to develop more land to meet the needs of a growing population. Overall, the state is converting 13,000 acres of open space per year to roads, houses, businesses and commercial development. This change underscores the urgency of acting now to conserve our most valued open lands.

Success rests with the actions of individual landowners. Since 1901 (founding date of the Society for the Protection of New Hampshire Forests, the state's first land conservation organization), private landowners in New



Photo: Society for the Protection of New Hampshire Forests Archives

"May it always remain as it is today, free and wild and beautiful, the unspoiled heritage of the past, a haven of refuge for those who seek its peace in years to come."

— from a plaque on Mount Monadnock, a mountain protected by growing conservation ownerships since 1884

Hampshire have worked with land trusts, other conservation groups and government agencies to conserve more than 1.3 million acres. These landowners come from all walks of life and income levels, and their motivations vary. Some wish to see their well-managed farm or forestland continue to be so managed in the future. Some wish to preserve a special natural area or land which serves as excellent wildlife habitat. Some value a scenic view or well-used footpath and wish to make sure that these features will always be available for public enjoyment. Some seek relief from estate taxes, which they fear will prevent their children from inheriting and keeping cherished family lands. All share deep appreciation for the land and a desire to see it conserved.

ABOUT THIS GUIDE

The purpose of this guide is to assist you and other landowners in understanding options for land conservation. It describes voluntary techniques that have helped many landowners achieve their conservation goals. This guide also introduces tax and estate planning implications of land conservation; some strategies offer estate and income tax advantages that make the choice to conserve land even more attractive. This information can help you consider how and when to conserve your land and prepare for discussions with your family, financial advisors and conservation groups about the choices involved.

This guide can help you get started. You do not need to have all the details worked out before you contact a land conservation group. Conservation groups — including statewide, regional and local land trusts; other private land conservation entities; and certain local, county, state and federal agencies — work with landowners to identify key lands and explore various strategies for conserving them. These organizations can help landowners consider the options for conservation and have programs to care for the conserved land permanently. This guide introduces the steps involved in working with a conservation group and highlights areas in which you may need additional professional expertise. A glossary at the end of the appendices contains some definitions to help you understand the special land conservation terms used in this book.

Land conservation can involve complex legal and financial decisions, but the decision to conserve land comes from the heart — from the desire to see a well-loved landscape endure. Over the past century, many landowners have chosen to conserve some of New Hampshire's most treasured landscapes. The choices you and other landowners make today can build upon this invaluable legacy of conserved land for the benefit of us all, now and in the future.

Chapter Two

Getting Started

As you consider your land's future, several questions may come to mind. What will happen when it passes to another owner? Do you have children or other relatives who will want to own and maintain the land, and will they be able to do so? Will future owners appreciate and enjoy the land as you have? Will it be converted to other uses? If it is developed, will its special features be respected?

If you care about your land and want to see its special character enjoyed by future generations, you can take steps now to conserve it. Unless you take positive action to conserve your land, it will be vulnerable to eventual development or subdivision.

To begin, you will need to consider five basic issues that shape land conservation planning:

- ⊙ the special features and conservation values of your property
- ⊙ your goals for the property and its conservation
- ⊙ your financial circumstances
- ⊙ the wishes of your family
- ⊙ collaboration with a conservation group to help you achieve your conservation goals

The following questions may help you identify the key issues of your particular situation. Later chapters provide more specific details about the methods, tax advantages, and process of conserving land.



Photo: Tim Gaudreau

"Here is why we chose to protect our land: Although not large in area, this farm has been, for more than a century, a place of open fields along a major road in our small town. From the road, the passerby can see Pitcher Mountain, watch deer browse (and sometimes bear lumbering and moose standing) and turkeys scuttle. Hawks soar above. Some summers, the bobolink nests. Along Meeting House Brook below the fields and in the mixed forest, beaver keep shifting their dams and frogs call loudly in the early summer. Those fields and those woods must remain as a sanctuary for a variety of wildlife and for nurturing the human spirit."

— Ann and Roger Sweet,
landowners and conservation
easement donors

CONSERVATION VALUES

☉ *What are the special features of your property?*

Does it have special wildlife habitat, scenic views or historic features? Are surface or groundwater resources or a water supply area present? Does it produce crops or forest products? Does your community enjoy access to trails or other features on your property? If so, would you like this to continue? How do these qualities relate to the surrounding land and to your community? The conservation values of a property include its special natural and cultural qualities, such as wildlife habitat, scenic views, public trails, productive agriculture and forestry, unusual natural features, unusual species and other qualities worthy of protection. Land trusts and other conservation groups can help you assess your land's conservation values and suggest sources for additional information and assistance.

☉ *What conservation method will best suit your property's special qualities?*

Land conservation methods can be tailored to the conservation values of the property and the needs of the landowner. For example, working farms and actively managed forests call for land conservation methods that allow landowners to retain flexibility for managing their property. On the other hand, properties with rare, threatened or endangered species may benefit from conservation methods that include specific care for particular habitats. An experienced land conservation organization can help match methods to your property's special resources and your objectives.

OWNERSHIP GOALS

☉ *Do you want to continue owning the land and possibly pass it on to a family member? Do you wish to conserve certain features of the land, knowing that you may sell it in the future?*

Conservation easements place permanent restrictions on the land while allowing it to remain in private ownership. (See Conservation easements, p. 17.) By limiting development, conservation easements can help families protect the long-term integrity of a family-owned property. Deed restrictions and mutual covenants offer more limited protection, but they still may be useful for certain situations. (See Deed restrictions, p. 26, and mutual covenants, p. 28.)

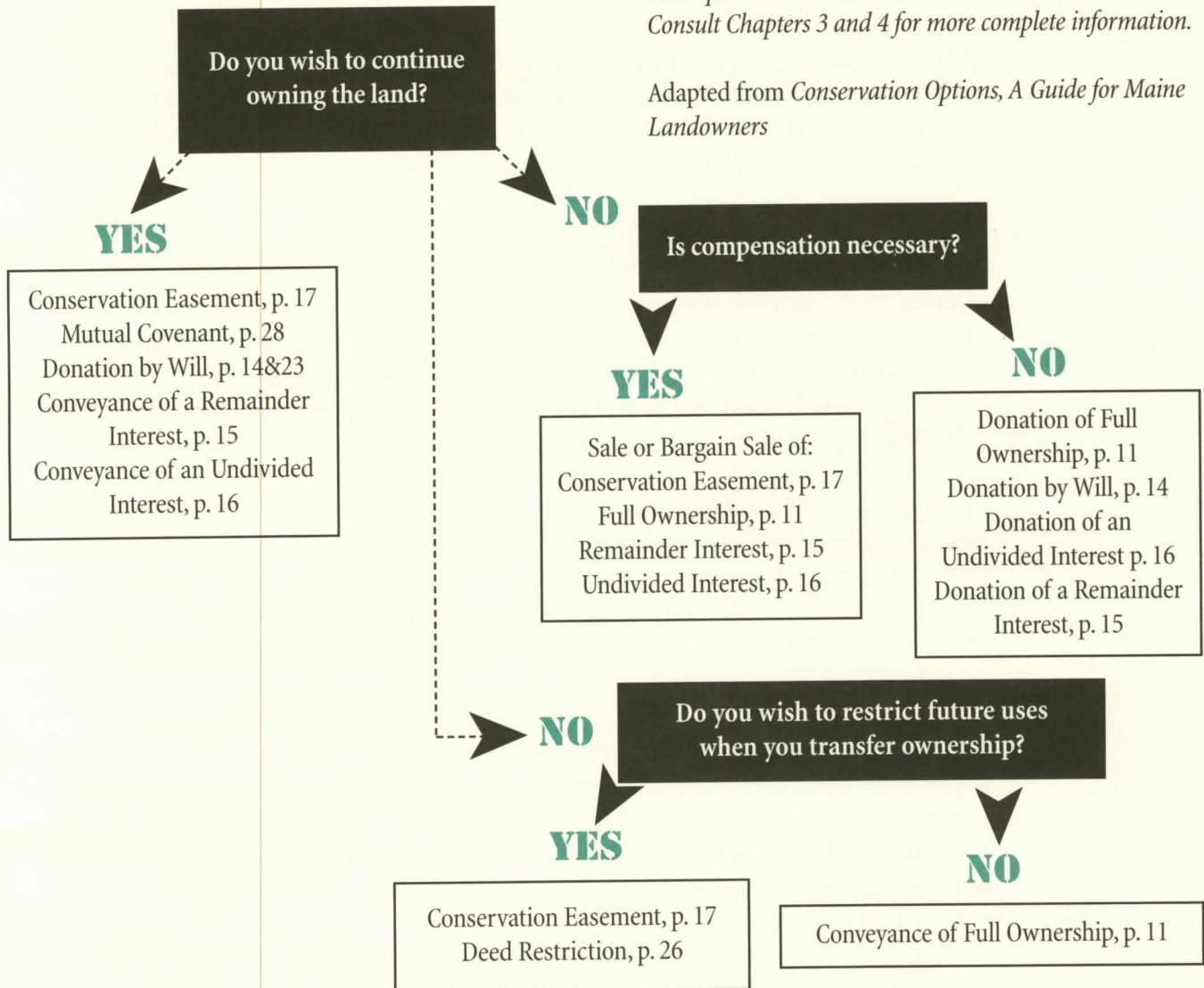
☉ *Do you want to continue living on the land?*

Conservation easements, conveyance of land with reserved life estate, [continued on page 6]

Options for Protecting Land

A combination of options may be used to meet your goals for your land. Of course, there are other ways to answer these questions in addition to those shown on this chart. Consult Chapters 3 and 4 for more complete information.

Adapted from Conservation Options, A Guide for Maine Landowners



and land donations by will provide permanent protection while allowing you to continue to live on the land. (See Conservation easements, p. 17; Conveyance of remainder interest with reserved life estate, p. 15; and Conveyance of property by will, p. 14.)

☉ *Do you want to convey your property to a charitable organization or governmental entity?*

Land donations or partial donations can be structured in several ways to meet both landowner and conservation group objectives. They may provide tax benefits or income to you as a donating landowner. (See Chapter 4, Tax Advantages, pp. 31–46.)

FINANCIAL AND TAX CONSIDERATIONS

☉ *Could you benefit from an income tax deduction?*

Donations and bargain sales of land or conservation easements may provide substantial income tax savings to the landowner in the year of the gift and for as many as five years thereafter. Planned giving techniques may further extend tax advantages in certain situations. (See Chapter 4, Tax Advantages, and pp. 31–46; and Federal income tax deductions, pp. 32–39.)

☉ *Are you concerned about estate taxes?*

Federal estate taxes imposed at the landowner's death may force the sale of property that a landowner and his or her family would prefer to keep in the family for the use and enjoyment of future generations. A conservation easement, donated during your lifetime, by your will, or by your estate executor may result in substantial estate tax savings, thus enabling your heirs to retain ownership of your property. A gift of full ownership of land also may reduce estate taxes. (See Estate taxes, pp. 39–44.)

☉ *Do you need to receive payment for the land?*

A landowner who wishes to conserve property and needs to receive payment has several options. In some cases, a landowner can sell land or a conservation easement to a conservation organization, often at a discounted price. Funds for such purchases are limited and the process is competitive. A landowner willing to donate land or a conservation easement may be able to receive funds to help cover costs of the transaction.

Alternatively, a landowner may donate or sell a conservation easement to a conservation group, then sell the property restricted by the conservation easement to a private party.

Another approach is to identify portions of a property that could be developed without affecting the conservation values of the remainder. Portions with little conservation importance may be sold for appropriate development, and the remainder conserved.

© *Has the property appreciated greatly in value during your ownership?*

If so, sale of the property or a conservation easement may trigger a sizeable capital gains tax. You can minimize or eliminate the capital gains tax by donating a conservation easement prior to the sale of land or by selling the land or conservation easement at a reduced price to a conservation group. (See Sample tax advantages of a bargain sale of a property, pp. 36–37.)

Donation of land or conservation easements may also help offset capital gains taxes resulting from the sale of other appreciated assets, such as securities, homes, or non-conservation real estate.

[continued on page 8]

Case Study:

Donating land for conservation

Ausbon Sargent, New London

In his boyhood, Ausbon W. Sargent enjoyed the town green on Main Street as the center of New London community life. But in 1985, when Sargent was 94 years old, the three-acre town green parcel was offered for sale by its owner, Colby-Sawyer College. Land prices had soared during a building boom, and he feared the property would go the way of the mini-mall. So Sargent, a retired maintenance worker with no inherited wealth, took his life savings and bought the parcel for \$150,000. Sargent immediately gave the land to the Town of New London on the condition that it remain forever undeveloped.

“I don’t care one cent about any fanfare,” Sargent told a reporter at the time. “The main thing is to keep it the way it was.”

Sargent lived to see his life and his values honored in 1987 by a fledgling non-profit group that honors his

name, the Ausbon Sargent Land Preservation Trust. The town green is now known as “Sargent Common.” The only structure permitted on it is the bandstand, where the community enjoys weekly band concerts in the summer.

— Ausbon Sargent Land Preservation Trust



Photo: Ausbon Sargent Land Preservation Trust

Ausbon Sargent, 1985

© *If you wish to retain ownership, will you want to be able to build a house or other structure on the property?*

If one or more building sites can be located where they do not damage the property's conservation values, you may be able to retain this option while achieving your conservation goals. Conservation easements, for example, can be structured to allow limited development in defined areas.

YOUR FAMILY AND YOUR LAND

© *Is your land important to members of your family? What are the wishes of your family, especially those who depend on you?*

For many landowners, land ownership is interwoven with family ties and financial security. Exploring your family members' thoughts about the future of your land can open discussion about land conservation. The information in this guide can help you and your family understand the various options. Including your family members early in the process usually helps to shape the best conservation plan for your individual circumstances.

CONSERVATION GROUPS

© *How can conservation groups assist you in conserving your property? What groups are available? What are their interests and capabilities?*

A land trust or other conservation group can help you explore conservation options. If you choose to permanently conserve your land, a conservation group will be needed to hold the land or conservation easement and assure its permanent protection.

In New Hampshire, conservation groups include statewide, regional and local land trusts, as well as some municipal conservation



Photo: Upper Valley Land Trust

Grant Brook, Lyme

[continued on page 10]

Case Study:

Collaboration among land trust, landowner and community

Grant property, Lyme

Clyde Grant was a farmer, church deacon and elementary school custodian in Lyme, NH. His land — 192 acres — had been in his family for generations. When he died, his property was left in undivided interests to his widow and two nieces. Clyde's widow wanted to provide permanent protection for the rolling fields that formed a highly visible scenic gateway to the community. But the executor needed to realize cash value by selling the property for its fair market value.

For several years the Upper Valley Land Trust (UVLT) had been working with Lyme residents to protect the stream corridor of Grant Brook, one piece at a time. The brook flows over ledges and through forests east of Lyme, skirts the center of the village, continues through agricultural and logging land, passes through Clyde Grant's farmland and eventually joins the Connecticut River. As the executor began to plan for the disposition of the property, UVLT joined community conservation leaders and abutters

to shape a conservation strategy.

The value of the whole property was appraised at \$318,225. UVLT paid \$20,000 to the owners for an option agreement that secured the property for 9 months while money was raised for the purchase. In consultation with several abutters, UVLT prepared a subdivision plan dividing the property into six parcels of unequal size ranging from 2.1 acres to 96.5 acres. The plan was based on the use and topography of the property and followed existing boundaries such as streams and stonewalls. Conservation easements on five lots prohibited development, but allowed logging, mowing fields and agriculture. The easement on the sixth lot allowed the same activities and also included a designated house site in the woods above a hayfield. Abutters agreed to buy the conserved parcels at their restricted values. UVLT needed to raise money to cover the value of the easements and pay for subdivision and conveyance costs.

The option was extended by three

months, at which time UVLT bought the entire property for a bargain sale price of \$310,000, with the sellers donating \$10,000 in value. UVLT spent approximately \$20,000 in legal and surveying fees. The abutters paid a total of about \$150,000 to purchase the restricted parcels from UVLT. The balance was contributed by local foundations, the Lyme Conservation Commission, the Partnership Program of the Connecticut River Joint Commissions and individual donors, including some of the abutters who contributed toward overall project costs and gave conservation easements on their own lands as well.

The entire project took about three years from start to finish. By working with UVLT when selling the property, the landowner was able to realize cash value from the land and assure conservation of its most important natural features. In the end, all parties' interests were honored and the people of Lyme will benefit forever.

— Upper Valley Land Trust

commissions, county, state and federal agencies, and national conservation organizations. All have defined organizational missions, such as wildlife habitat protection, farmland preservation or open space conservation. Some focus on defined geographic areas, such as certain towns or watershed areas. Some deal with particular public or private funding sources for land conservation. Some, but not all, accept and hold land or conservation easements. Their different goals and capabilities direct their particular conservation goals, methods and priorities. (See Appendix A, Land Conservation Resource Organizations, pp. 51–58.)

Land trusts specialize in land conservation. Most accept and hold land and conservation easements for permanent conservation. In addition, land trusts stand ready to help landowners review their options, offer technical assistance and locate the professional guidance and other resources needed to develop and carry out land conservation goals. Land trusts also work with other conservation groups and programs. They can help match landowners with the best conservation partner for their property.

FIRST STEPS

When seeking a conservation group with which to work, you can begin by contacting a land trust in your region, your local conservation commission, a friend or neighbor who has worked with a conservation organization or the Center for Land Conservation Assistance. If land near your property has been protected, contact the group that protects it. There may be several choices. Selecting the best group to work with will depend on the conservation values of your property, your goals and the organizational mission of the conservation group. (See Chapter 5, The Process, What to Expect, pp. 47–50, for further information about selecting an organization and the land conservation process.)

While a land trust or other conservation group can work with you to conserve your land, remember that it does not represent your legal or financial interests. You are strongly urged to consult your own attorney about real estate transactions, wills and trusts. In addition, you may seek the services of a land conservation consultant, appraiser, surveyor, tax professional or financial or land use planner. A land trust may be able to recommend professionals who have experience in conservation work in your area.

Chapter Three

Land Conservation Methods

There is no one best way to conserve land — you can choose among several land conservation tools to find the best fit for your land and circumstances. Sometimes, a combination of methods may be used.

The land conservation tools described in this chapter include all those that are commonly used in New Hampshire. Methods to permanently conserve land include conveyance of full ownership or a conservation easement to a conservation group. Deed restrictions can permanently protect land as well, if held by a conservation group. Less binding techniques include mutual covenants, current use tax assessment, options and rights of first refusal. How each technique works, as well as its potential advantages and tax implications, is described below.

CONVEYANCE OF FULL OWNERSHIP (“FEE SIMPLE” OR “FEE INTEREST” CONVEYANCE)

Giving or selling full ownership of land to a conservation group is the simplest method of protecting land. Full title, ownership, and management responsibility are transferred from the landowner to the conservation group.



Photo: Pat Spitalniak

“This region yields the most joyous feelings of any place we have ever lived or visited, which includes every U.S. state and over 30 countries. We both grew up in the country as 4-H kids, only to see the gorgeous farmlands and pastoral views we loved become shopping malls and wall-to-wall housing. Once we acquired our land in Greenfield we were always determined to preserve it for future generations: if we don’t, then who will?”

— Jeff and Sara Timmons,
landowners and conservation
easement donors, Greenfield

Advantages to the landowner

This method offers long-term protection for the land while relieving the landowner of all responsibilities of ownership, including property taxes and management. It permits the conservation group to manage the property for public use, wildlife habitat or other special conservation values, as appropriate. The landowner earns peace of mind that his or her good stewardship of the land will be perpetuated.

If the property is either donated or sold at a reduced price (i.e., a “bargain sale”) to a qualified conservation group, the conveyance may provide federal income and estate tax benefits for the donating landowner. Capital gains taxes that would result from selling the property may be reduced or eliminated, which is particularly important for highly appreciated property. (See Chapter 4, Tax Advantages, pp. 31–46.)

Usually the intent of a conveyance of full ownership is permanent, irrevocable protection of the land. In some cases, however, landowners donate full ownership of property to a conservation group with the understanding that the group may sell it to raise money for the organization, or that the group may restrict its use with a deed restriction or other land conservation tool and convey it to a third party. Donations of this type may also confer tax benefits to the donor.

Example: Values in a bargain sale

Appraised value of property:	\$100,000
Bargain sale price:	– \$80,000
Donated portion:	\$20,000 (amount of potential income tax deduction)



and the bargain sale price may be treated as a charitable contribution and may therefore provide an income tax deduction. Tax benefits to the owner may make the sale nearly as financially attractive as selling at full fair market value. (See Sample tax advantages of a bargain sale of property, pp. 36–37.)

Full ownership may be donated or sold

Often, conservation groups receive full ownership of property as a gift. For property with exceptional conservation importance, conservation groups sometimes raise money to purchase the land. Because availability of funds is limited and the process is highly competitive, landowners who wish to sell their property usually sell at a price lower than its appraised full fair market value, a “bargain sale.” The difference between the full value

For income tax deduction purposes, the landowner must obtain an appraisal following IRS standards to determine the value of property donated or sold at a bargain sale price.

Timing of conveyance may be tailored to the landowner's situation

The following alternatives offer advantages for different situations. (See Chapter 4, Tax Advantages, pp. 31–46.)

[continued on page 14]

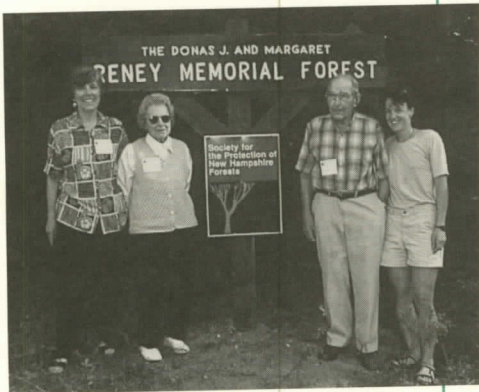


Photo: Society for the Protection of New Hampshire Forests

Everett “Mike” Reney (second from right) with his sister, Lena Cote (second from left), her daughter, Linda Morrill (left) and Reney’s granddaughter, Tara McIntire.

Case Study:

Bargain sale to a land trust

Reney property, Grantham

The Reney family has long roots in the town of Grantham. The family ancestors owned many tracts of land and established a successful business, the Reney and Cote Sawmill, that continues to thrive today. Over the years, one particular parcel, about 430 acres on a prominent hillside overlooking the village, was passed down through the family and eventually was owned in undivided interests by a couple dozen family members.

A few years ago, Everett Reney, then in his 80s, and his sister Lena Cote decided to try to consolidate ownership back into their own hands. It took some time, but they did it. Then they decided to ensure that the land would remain undeveloped forever by selling the land, in a bargain sale, to the Society for the Protection of New Hampshire Forests (SPNHF), a statewide land trust.

After careful consideration, they agreed to sell the land to SPNHF for \$150,000. The appraised value was approximately \$350,000.

To meet this opportunity, SPNHF collaborated with local community leaders in a highly successful fundraising effort. In a little less than 6 months, the campaign raised more than \$150,000 toward the purchase price, transaction costs and long-term stewardship of the property. More than 500 individuals and businesses contributed, including the local banks and realtors, as well as the conservation commission and the local snowmobile club. When the Reney Forest became a permanent reservation of SPNHF in December 2002, Everett Reney and Lena Cote achieved their long-held wish to see their family land remain forever a forest.

— Paul Doscher, Society for the Protection of New Hampshire Forests

Case Study:

Sale to a town

Nassikas property, Dunbarton

The 690-acre Nassikas property had been in family ownership since 1908, when its miles of old stone walls marked the boundaries of a colonial era farm. Nicholas John Nassikas, who emigrated from northern Greece as a child around 1900, brought hundreds of sheep and goats by train from Texas in 1915 and herded them on horseback from Manchester to Dunbarton. He became a renowned international cheese maker, with plants in New Hampshire and Vermont. His Nassikas Ice Cream Co. (“Nico”) was purchased by Hood in the early 1900s. Goat wool was used to make blankets in Dunbarton.

Though the open farmland was long gone by the year 2000, Dunbarton residents appreciated the Nassikas property for its extensive forest, wildlife habitat, and proximity to town-owned conservation land surrounding Kimball Pond. The town contacted the Nassikas family, which was committed to seeing the property

conserved. The family envisioned a town forest which the community and visitors could enjoy and which would protect the serenity of Kimball Pond and its surrounding woodlands.

The Nassikas family was willing to work with the Trust for Public Land, the State of New Hampshire, and the Town of Dunbarton’s Conservation Commission and Selectmen to keep the property off the private market until funds were raised to purchase it. By combining state and federal grants, foundation grants, and private donations, the Town of Dunbarton succeeded in purchasing the property for conservation. Through a complex real estate transaction involving the sale and subsequent dissolution of a family corporation, this special place was permanently conserved.

— Trust for Public Land
and the Town of Dunbarton

[continued from page 13]

⊙ **Immediate conveyance.** You may choose to convey the property all at one time to the recipient organization. The property is appraised as of the date of the gift. Any charitable donation value and income tax advantages are available immediately.

⊙ **Conveyance of property by will (also known as “by devise”).** You may continue to enjoy the benefits of full ownership during your lifetime, while ensuring the conservation of the property thereafter. Donating property by will allows you to change your mind, as the decision is reversible as long as you live. You receive no income tax benefits from a gift by devise. However, the conveyance removes the property from your taxable estate and may reduce estate taxes. Before writing a devise of property into your will, you should check with the intended recipient to be sure the organization is willing and able to accept the property, especially if you wish to impose restrictions on your gift.

© Conveyance of remainder interest with reserved life estate (also called “life tenancy”).

With this land conservation tool, you can convey your property to a conservation group now but continue to use it for your lifetime or the lifetimes of you, your spouse, and/or other designated persons. For income tax purposes, the value of the “remainder” (your donation) is the difference between the value of your lifetime use and residency of the property and the appraised current fair market value. The remainder value, and hence your tax deduction, is determined using IRS actuarial tables, which take into account interest rates at the time of the gift, the life expectancies of those who have a reserved life interest in the property and other factors.

A charitable deduction is available only for the gift of a remainder interest in a personal residence (including a vacation home) and land or a farm. The income tax advantages are less than with an immediate full

[continued on page 16]

Case Study:

A gift of land by will

Merrill property, Hancock

Through a generous gift of land made in her will, Mary Merrill of Hancock, NH ensured that the Town of Hancock would complete permanent protection of land around Juggernaut Pond, the town’s public water supply.

In the 1950s, the town protected two of the three tracts of land that surround Juggernaut Pond. When the third parcel later became available, Mary Merrill purchased it. Meanwhile, the Merrill family collaborated with the Harris Center for Conservation Education, a regional conservation organization, over the course of 15 years to conduct wildlife research and educational events on other nearby land they owned. Over the years, the Merrills protected several parcels with conservation easements. When she passed away in 1999, Mary Merrill donated, through her will, full ownership of the

268-acre Juggernaut Pond parcel to the Harris Center for permanent conservation. Meade Cadot, executive director of the Harris Center, observes that these successes grew out of the longterm relationship built between the Merrills and the Harris Center, based on their shared commitment to see the land’s exceptional wildlife habitat and other natural features conserved for the future.

— Harris Center for Conservation Education



*Photo: Harris Center for Conservation Education
Juggernaut Pond, Hancock*

Case Study:

Donating a remainder interest with reserved life estate

Hughes property, Weare

For M.E. Hughes, purchasing a farm in a rural setting in Weare in 1960 was a dream come true. She was raised in Jamaica Plains, MA, where she had worked in a veterinary hospital. She loved animals and longed to own a farm where she could raise her own. But making ends meet on her farm over the decades was difficult; she sold off much of her original purchase but retained 42 acres of open fields and forests. Still, paying escalating property taxes with the proceeds of farming remained a problem.

She had long been a member of the Piscataquog Watershed Association (PWA), a regional conservation organization. She spent many hours with a PWA board member devising options that would allow her to secure her home, pay taxes and guarantee permanent conservation of the land. She had family, but they had no

connection with the land. In their hands, the land would be developed.

She decided to donate the 42 acres, including her house, to the PWA, retaining life estate in the property for herself. The PWA agreed to permanently protect the land with a conservation easement when the organization receives ownership, after which it can sell the home and protected property. In addition, PWA agreed to pay a portion of the annual property tax bills prior to receiving ownership. This arrangement has allowed M. E. Hughes to remain on the farm for the rest of her life, enjoy peace of mind that it will never be developed and make a gift to the PWA that may, in the future, allow the organization to raise funds to purchase other important conservation lands.

— Piscataquog Watershed Association

[continued from page 15]

donation but greater than with a gift by will.

🌀 **Conveyance of undivided interest in stages.** Using this technique, you can donate percentages of your property ownership (fractions of ownership of the whole property, not separate parcels) to a conservation group over a period of years until full ownership is conveyed. This method may enable you to take greater advantage of the tax deductions by extending your charitable deductions over more than the usual six-year period. However, the recipient organization may be concerned about responsibility for and management of the property during co-



Photo: Piscataquog Watershed Association

M.E. Hughes

ownership. You may be asked to sign a legally binding agreement committing you to donate any remaining undivided interests by a specific date or at death. As with any planned giving technique, professional tax advice and full discussion with the recipient organization are essential.

⑥ **Conveyance of physically divided parcels in stages.** If you own large and valuable property you may wish to convey the land in separate parcels over a period of years. This method may enable you to take greater advantage of the tax deductions by extending your charitable deductions over more than the usual six-year period. As with conveyance of undivided interests, this method can increase tax benefits in certain situations. You should seek professional tax advice.

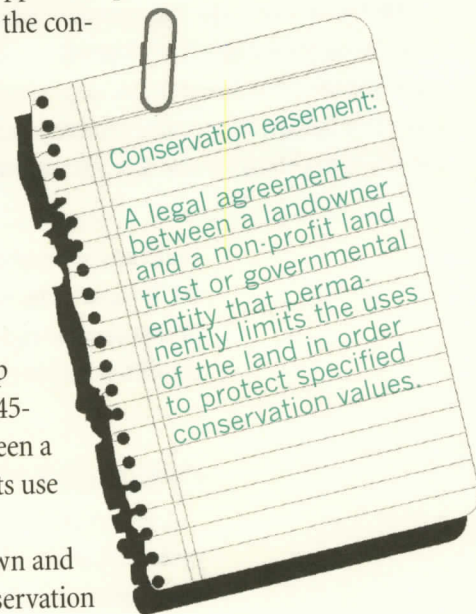
Supporting future management of land conveyed for conservation

It takes money and people to manage a conserved property. Land trusts and other conservation groups commonly establish permanent funds or endowments to defray costs of managing conservation property. One possible source of support for such a fund or endowment is the property owner. You may be asked to consider donating money to a fund that will help to support the permanent conservation of property you plan to donate. Such a gift helps ensure that the conservation group can fulfill your expectations for perpetual sound management of your land. Your gift to such an endowment or fund may also be a valid income tax deduction. For the conservation group, building a fund for property management is a matter of good policy and a financial necessity. It demonstrates that the group is seriously committed to the long-term stewardship of your property.

CONSERVATION EASEMENTS

If you wish to provide permanent protection for your land and retain ownership and control, a conservation easement may be for you. Authorized by NH RSA 477:45-47, a conservation easement deed is a permanent, legally binding agreement between a landowner and a qualified conservation organization or public agency that restricts use of the land to protect its significant natural features.

When your land is protected with a conservation easement, you continue to own and manage the land, doing so in accordance with the specific restrictions of the conservation

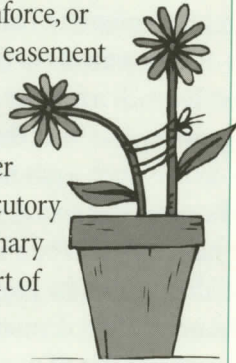


easement. You may sell or convey the land to a new owner at any time and at any price. Conservation easements stay with the land forever, restricting the property for all future owners as well. Conservation easements provide authority for the easement holder — the conservation group that receives the conservation easement deed — to enforce the easement, thereby ensuring that the landowner will comply with its restrictions.

Typically, conservation easements in New Hampshire allow the landowner to continue to use the

Executory interest:

Some conservation easements designate a second conservation group as a backup easement holder, an arrangement known as an “executory interest.” If the primary easement holder fails to uphold the easement, the executory interest holder has legal authority to uphold, enforce, or take over responsibility for the easement according to the easement terms. An executory interest holder can be designated if the landowner and/or primary easement holder seek additional security that the easement will be cared for over time. Some public funding programs require specific executory interest provisions in easement acquisitions. Like the primary easement holder, an executory interest holder must be part of easement negotiations and sign the easement.



land for agriculture, forestry, non-commercial outdoor recreation, wildlife habitat management and all other uses that are compatible with the conservation goals for the property and not specifically prohibited by the easement. The landowner is also still responsible for paying the property taxes. Activities prohibited by conservation easements usually include subdivision and development, commercial and industrial activities (except forestry and agriculture), mining, disturbance of wetlands and disposal of hazardous materials.

Often, easements reserve specific additional rights for the landowner. For example, the landowner may retain the right to

build and maintain certain roads or structures, such as a sugarhouse or barn, that serve uses allowed by the easement, or to post the property against trespass or other defined uses. The easement also grants specific rights to the easement holder, including the right to enter the property to monitor its condition and to enforce the easement, in court if necessary, to ensure that its terms are upheld.

Advantages to the landowner

Conservation easements give landowners peace of mind that their property will be permanently protected, while allowing them to continue to enjoy the benefits of property ownership. Usually, easement terms permit landowners to continue to generate income from [continued on page 20]

Case Study:

A conservation easement with public access and trails

Jones Farm Conservation Area, Gilmanton

Gilmanton area residents have long enjoyed spectacular views across the Jones Farm to Loon Pond and beyond. In the Jones family for over a century, the farm was active until the mid 1970s. The Jones maintained a dairy herd, raised chickens and produced crops. Prior to selling milk commercially to large dairy operations, they sold milk and butter to the summer residents of Loon Pond and sold butter, eggs and potatoes to a local store. In more recent decades, owner Ralph Jones kept the fields maintained up to the stone walls and the Loon Pond shoreline. Cattle grazed in the pasture until about 1990, and the hayfield above the pond had been kept in production through 2002.

But as the century drew to a close, the Jones family no longer wished to manage and own the farm. In 1999, in response to concern that the property

would be developed, the Gilmanton Land Trust, Loon Pond Owners Association, Gardner Cove Conservation Association, Loon Lake Beach Club and Gilmanton Conservation Commission launched the “Save the Jones Farm” campaign to protect the exceptional conservation values of the property. More than 200 donors contributed \$245,000, enabling the Gilmanton Land Trust to purchase a conservation easement on the farm. At the same time, a buyer was found to purchase the land subject to the easement, keeping the land in private ownership.

The conservation easement permanently protects the farm’s views, prime agricultural land, undeveloped shoreline, wetlands, forests and wildlife habitat from development. Like most conservation easements that are purchased (rather than donated), the easement also guaran-

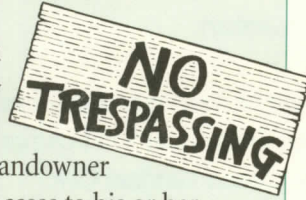
tees opportunities for the public to visit the property. Except for an area around the private residence, the land is open to the public for low-impact pedestrian uses such as hiking, skiing and watching wildlife. The easement also allows the easement holder, Gilmanton Land Trust, to construct and maintain footpaths, signs and a parking area for the public on part of the property. The property owner continues to use the land for agriculture, forestry, recreation and other uses that do not conflict with the property’s conservation values.

This extraordinary land protection project grew from the combined efforts of many community members who cared about the land. Now, the property’s fields, woodlands, shoreline and trails will be there for all to enjoy forever.

— Gilmanton Land Trust

Public access in conservation easements

Conservation easements do not automatically give the public any rights to enter or use protected property. The decision to allow or not allow public access is made by the landowner and easement recipient during negotiation of easement terms. A landowner who wishes to retain full discretion over allowing or prohibiting public access may do so by conveying an easement that does not guarantee public access. On the other hand, a landowner who wishes to permanently guarantee public access to his or her property – for uses such as walking, skiing, fishing and hunting, for example – may do so by conveying an easement that specifically grants permanent public access for such uses. It is also possible to limit the guaranteed public access to certain areas, times and activities. Guaranteed public access is often required when public money is used to purchase a conservation easement.



Trail easements

There are a variety of techniques available to designate trails and ensure public access to them, ranging from verbal agreements or written leases with landowners to official trail designation by municipalities. Where trail protection dovetails with land conservation goals, a conservation easement can protect both the trail and its natural surroundings. Specific easement terms can detail trail location and intended use and provide for trail construction and ongoing maintenance by the easement holder or some other designated party.

[continued from page 18]

forestry and agriculture. Easement provisions requiring best management practices for forestry and agriculture help ensure that future landowners will continue good stewardship of the property.

Conservation easements are flexible and are individually designed to the particular needs of the landowner and the property's special conservation values, within guidelines established by the conservation group that will hold the easement [and Internal Revenue Service (IRS) requirements, if a charitable deduction is sought]. For example, easement terms may restrict all activities that would change the natural condition of a property. If the property includes a home, or if a landowner anticipates future construction needs, part of the property can be excluded from the easement area or the easement terms may allow development under specified conditions.

If a landowner anticipates that the property will be passed to heirs, a conservation easement can reduce the potential for future disagreements by lowering the financial value of the land and limiting options for its use. Family discussion at the time the easement is negotiated can help a family make decisions about the land in ways that are agreeable to both the owner and the heirs.

Conservation easements can help keep land in the family by reducing estate taxes. To the extent that a conservation easement reduces a property's fair market value, it may also reduce a landowner's taxable estate. This may help heirs avoid being forced to sell the property in order to pay estate taxes. (See *Estate Taxes*, pp. 39–44.) Finally, donating a conservation easement may allow a landowner to realize significant financial benefits from federal income tax deductions (See *Federal Income Tax Deductions*, pp. 32–39.)

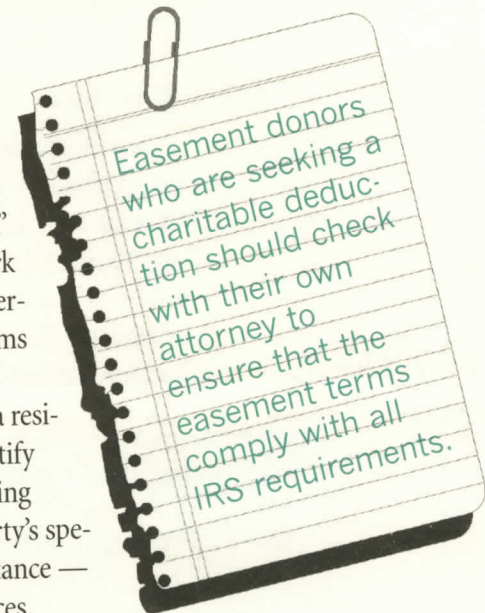
Easement terms are negotiated

The particular details of each conservation easement are negotiated and agreed to by the landowner and the conservation group that will hold the easement. Usually, negotiations begin based on the conservation group's "generic" (also called "template," or "model") easement document, which contains the basic restrictions and framework common to all conservation easements. This document also reflects the group's conservation goals and criteria for easements. During negotiations, particular easement terms are tailored to address the landowner's needs and the property's special resources.

For example, sometimes a landowner may wish to retain an opportunity to add a residence or other building. The easement holder and landowner work together to identify appropriate locations and/or easement language to accommodate anticipated building plans while meeting overall easement goals. Easement terms that conserve a property's special features — managed forests, rare species, surface water or scenic views, for instance — may be modified or added to guide or limit activities that could harm those resources.

Most conservation easements are designed to meet the requirements of the Internal Revenue Code [Section 170(h)], which establishes criteria that donated easements must satisfy in order to qualify as charitable contributions for income tax deductions. A qualified conservation easement must be granted in perpetuity exclusively for one or more conservation purposes, defined by the IRS as:

1. The preservation of land areas for outdoor recreation by, or the education of, the general public.
2. The preservation of a relatively natural habitat for fish, wildlife, plants, or similar ecosystems.
3. The preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public, or pursuant to a clearly delineated federal, state, or local conservation policy, and will yield a significant public benefit.
4. The preservation of a historically important land area or a certified historic structure.



Most easement holders include specific IRS conservation purposes relevant to the property in each easement, regardless of whether or not a tax deduction is planned. Easement donors who are seeking a charitable deduction should check with their own attorney to ensure that the easement terms meet the IRS conservation purpose requirement and other IRS requirements. Further, as with all real estate conveyances, landowners should seek review and advice from their own attorney regarding the overall transaction before the conservation easement is signed.

How is the value of a conservation easement determined?

If a federal income tax deduction is desired, IRS regulations require the landowner to obtain an appraisal of the conservation easement by a qualified professional appraiser. This is how the appraisal works: First, the appraiser establishes the value of the land as if it were sold without any easement, the “before value.” Next, the appraiser determines the value of the land as if it were sold with the easement in place (the “after value”) and could be used only for the purposes allowed by the easement (for example, agriculture and forestry and not development or other uses prohibited by the easement). The value of the conservation easement is the difference

between the “before value” and the “after value.” Easement value can range from 0 percent to nearly 100 percent of the before value, depending on the property’s location, development potential and specific easement terms.

If the landowner or landowner’s family retains unrestricted property near the conservation easement property, the IRS requires that the appraisal consider “enhancement value.” Enhancement value arises from the increased value that nearby properties may enjoy due to their proximity to permanently conserved property.

For example, if a landowner grants a conservation easement on property adjoining his residence, the appraiser would be required to evaluate any increase in the residence’s value resulting from the easement. The appraised value of the conservation easement would then be reduced by the amount of the residence’s increased value, if any.

Example: Value of a conservation easement

Appraised full
fair market value
of land (“before value”): \$160,000

Appraised value of
land as restricted by
conservation easement
 (“after value”): – \$60,000

Value of conser-
vation easement: \$100,000

A conservation easement may be donated or sold

Usually conservation easements are donated to a conservation group, but if the landowner is unwilling or unable to donate the full value of the easement, a conservation group may purchase the conservation easement. Money to purchase conservation easements is limited and competition for it can be intense. Many landowners who sell conservation easements do so at less than the full value of the easement — a “bargain sale” — and may be able to realize tax benefits from the donated portion of easement value. (See Sample tax advantages of a bargain sale of property, pp. 36–37.)

Conveyance may be timed to benefit the landowner's circumstances

The following alternatives for timing an easement conveyance offer different advantages to the landowner. (Also see Chapter 4, Tax Advantages, pp. 31–46.)

③ **Immediate.** Donated and purchased easements are most often conveyed to a conservation group in the present. If you choose to do so, any income tax benefits available from your charitable donation are available to you immediately. The conveyance may reduce your future estate taxes. You also have the personal pleasure of knowing that protection of your property has been accomplished during your lifetime.

③ **Gift of conservation easement by will (also known as “by devise”).** You may donate a conservation easement to be conveyed after your death through your will. You should work with the intended easement recipient in advance to create an easement that meets both your needs and theirs. As with conveyance of full ownership by will, donating an easement by will allows you to change your mind (the decision is reversible during your lifetime). You will receive no income tax benefits from an easement gift by will, but this strategy may reduce future estate taxes, benefiting your heirs.

③ **Conveyance of separate easements over time.** If you own large and valuable property you may convey conservation easements on separate portions over a period of years. This technique

Example: Values in a bargain sale of a conservation easement

Appraised value of conservation easement:	\$100,000
Sale price of conservation easement:	— \$65,000
Donated portion: (amount of potential income tax deduction)	<u>\$35,000</u>

may allow you to maximize income tax benefits on the donated easement value by extending charitable deductions beyond the usual six-year period. As with any planned giving technique, professional tax advice and full discussion with the recipient organization are essential.

© **Gift of conservation easement following the landowner's death ("post mortem").**

Conservation easements may be placed on property by the executor of a landowner's estate up until the due date of the estate tax (usually nine months after death). This allows the heirs and estate to realize tax benefits of the gift. Several conditions must be met, including approval by all the heirs. This option is used when the impact of estate taxes may result in the forced sale of property that the family wants to keep, when a conservation easement donation begun by a landowner remains unfinished at the time of the landowner's death or when it suits the estate or heirs for other reasons.

When conveyance is completed

A conservation easement creates a long-term partnership between the landowner and easement holder. The easement holder periodically monitors the property by visiting the land to observe its condition. The easement holder also reviews easement terms and the landowner's plans for management with the landowner. By keeping in touch with the landowner over time, especially if the property changes hands, the easement holder can answer questions and solve minor easement problems before serious problems result. Should it become necessary, the easement holder is obligated to enforce the easement and require correction of easement violations, and may take legal action to do so.

To prepare for long-term expenses of easement stewardship, including both periodic monitoring of the property and potential costs of enforcement and legal defense, most easement holders maintain a dedicated easement stewardship fund. Conservation groups seek support for this fund from landowners and other sources to ensure that there will be adequate money to care for the easement properly. A donation to such a fund may qualify as an income tax deduction for the donor. This fund helps the conservation group carry out the expectations of the easement donor, in perpetuity. For the easement holder, financial preparation is a necessity, and seeking financial support is an important step toward ensuring that the easement endures.

[continued on page 26]

Case Study:

Protecting a neighborhood with conservation easement donations

Keeping Greenfield Green

An exciting conservation project in Greenfield, NH began in 1999 when a few neighbors began discussing ways to “Keep the Green in Greenfield.” The group took hikes together, pored over maps, studied natural resource surveys, met with land trust professionals and held potluck dinners to discuss options. In June 2000, seven families signed a letter expressing their intent to protect 1,000 acres of land. They challenged other neighbors to match this with an additional 1,000 acres. The group grew.

In 2001, two families, the Timmons and the Pennoyers, led the way by protecting their lands with conservation easements. Jeff and Sara Timmons’ 416-acre Woodland Hill Farm is a patchwork of working and natural forests, open fields, rich wetlands, winding woods roads, spectacular views of nearby highlands and

valleys, and historic cellar holes and stone walls. Sheldon and Penelope Pennoyer’s Blanchard Hill Farm, connected to Woodland Hill Farm by a trail network of old woods roads used by townspeople for walking and skiing, contains 112 acres of fields and forest. Each family negotiated easement terms with the Monadnock Conservancy, a regional land trust, which agreed to accept and hold the conservation easements.

“We want the land to be as it is for many generations to come, and we want others to enjoy the beauty as well,” the Pennoyers say. “We have found that farming is a wonderful environment to bond a family together in this fast-paced society.”

“We have high hopes that our collective vision of ‘Keeping the Green in Greenfield’ will continue to be embraced by many others in town,” Jeff



Photo: Gil Bliss for the Union Leader

Left to right: Sara and Jeff Timmons; Pere, Chase, Penelope and Sheldon Pennoyer

and Sara Timmons explain. “As awareness spreads about the very significant extent of easement protected land here, Greenfield will become an even more precious gem of the Monadnock Region.”

With their donation of conservation easements on 528 contiguous acres, the Timmons and Pennoyer families created the largest private conservation action in Greenfield’s history. With protection of these two core properties complete, other neighboring landowners are now working with the Monadnock Conservancy to expand these protected lands.

—Monadnock Conservancy

DEED RESTRICTIONS

A landowner may place restrictions into a property deed when he or she transfers the land in order to limit the use of the property, often to benefit other adjacent land retained by the landowner. Deed restrictions can limit or prohibit future non-conservation uses of the property, such as construction of new buildings. This technique can offer a streamlined alternative to conservation easements, providing some protection to a property that may not have conservation values sufficient to justify the long-term commitment of a conservation easement holder. Deed restrictions have both advantages and disadvantages:

- ④ Often, deed restrictions are shorter and simpler than conservation easements. They may be placed on property without the assistance of a conservation organization.
- ④ Deed restrictions may be enforced only by the owner of the adjacent unrestricted land that benefits from the restriction or by the landowner and heirs of the landowner who created the restrictions. Unlike conservation easements, they are not monitored and enforced by an independent conservation group. Therefore, they lack the permanence that a conservation easement affords (except in the case of restrictions placed on land by a conservation group, discussed below).
- ④ The value of a deed restriction does not qualify as a charitable deduction for income tax purposes. Deed restrictions can reduce the value of a property, and if a landowner donates land with deed restrictions for conservation, the owner's charitable income tax deduction may be limited to the property's fair market value with the deed restrictions in place. A deed restriction may reduce the value of the property for estate tax purposes as well.
- ④ Deed restrictions may be forgotten over time.

Deed restrictions are most commonly used in the following circumstances:

Landowners sometimes use deed restrictions to protect, for example, a view from their retained land when they sell a portion of their property. Such restrictions might prohibit development and certain other uses on a visually important part of the transferred property, allowing the landowner

who created the deed restrictions to retain some control over what happens to it.

A landowner may place deed restrictions on a property before donating it for conservation to a municipality or conservation group, to provide extra assurance that the land will remain in conservation use. Such restrictions may be much like those contained in conservation easements. This approach may be useful when the land is not suitable for a conservation easement or the donor does not anticipate taking an income tax deduction for the donation due to the low value of the property or the donor's individual financial circumstances.

Conservation groups sometimes place deed restrictions on land that is donated to them for that purpose and then resell the land. The restrictions protect the land's important conservation values. The conservation group has authority to monitor and enforce the deed restrictions over time. Unlike an individual landowner, the conservation

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Case Study:

Deed restriction held by a conservation group

Stratford

An anonymous landowner of 50 acres in Stratford, NH, contacted The Nature Conservancy (TNC) about opportunities to use his land to further TNC's conservation programs. TNC staff evaluated the property and determined that, while the property was not appropriate for long-term ownership and management by TNC, it did have conservation values that could be sufficiently protected through deed restrictions. The landowner donated the property to TNC, agreeing that it would not be held as a TNC Preserve, but instead would be enrolled in a specific real estate program that would market the property as a residential house lot with protective restrictions.

When TNC later sold the land, it placed restrictions in the deed that allowed one house to be built, prohibited subdivision and gravel and mineral extraction and required

certain practices for good forestry. TNC will continue to work with the new and future owners to make sure the restrictions are respected.

By donating the property in this way, the landowner fulfilled his key objectives. He made a significant financial gift that supported TNC's broader biodiversity conservation efforts, and he ensured a level of protection of his land that he would not have been able to achieve had he sold the land on the open market.

— The Nature Conservancy



Photo: The Nature Conservancy

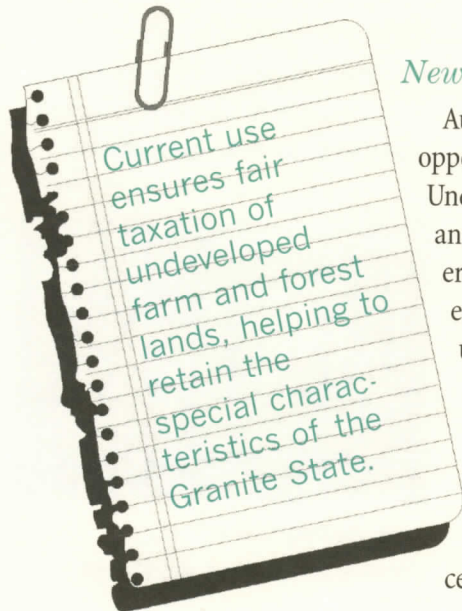
Deed-restricted land in Stratford

group can commit to keeping track of the deed restrictions over the long term. For this reason, a deed restriction placed on land by a conservation group is considered to be as permanent as a conservation easement.

OTHER LAND CONSERVATION TECHNIQUES

Mutual covenants

A mutual covenant is a specialized form of deed restriction. Neighboring landowners may protect a view they share or another special feature of their neighborhood by exchanging mutual covenants. Each landowner's covenant, which is a form of deed restriction, can be enforced by the other landowners, their successors in ownership, and in some cases a landowner association — but only if they choose to. There may not be any enforcing agency established by the covenant as there is with a conservation easement. Covenants offer no income tax deduction. They are not a permanent means of conservation since mutual covenants can be nullified by subsequent agreements of all owners or by the landowners' failure to enforce the covenants. Developers sometimes use mutual covenants to protect conservation values and aesthetic qualities of lots in a subdivision.



New Hampshire Current Use Assessment Program

Authorized by NH RSA 79-A, this property tax assessment program provides an opportunity for owners of certain undeveloped land to pay lower property taxes. Under this program, parcels of field, farm, forest and wetland of 10 acres or more, and smaller parcels meeting certain other criteria, may qualify for reduced property tax assessment. This favorable property tax treatment encourages landowners to keep undeveloped land undeveloped but does not permanently restrict use of the land.

Landowners apply for current use assessment through their local selectmen or tax assessor. Once enrolled in current use, a property remains in current use through any changes in ownership until the parcel no longer qualifies for current use assessment, because it is either developed or no longer meets the minimum acreage. The landowner pays a land use change tax equal to 10 percent of the fair market value at the time the land use change occurs. Property in

current use may be developed at any time (triggering withdrawal from the current use program and payment of the penalty), after which there are no restrictions on land use.

While the current use program offers landowners financial incentive to keep land undeveloped, it establishes only temporary protection for the land, and it offers no income or estate tax advantages to the landowner. (See Property tax, p. 46.)

Option to purchase

Perhaps you would like to sell your land or a conservation easement to a conservation group, but it cannot purchase the property immediately. To give the conservation group time to raise money, you can sell or donate an option to purchase to the group. Under an option, you and the buyer agree on a specific sale price and terms, and the buyer is given a specific amount of time in which it may exercise its exclusive right to purchase the land or conserva-

[continued on page 30]

Case Study:

Mutual covenants

Protecting a farming neighborhood in Weare

In 1979 the owner of one of the larger properties on Poor Farm Road in Weare decided to sell the farm and move away. The neighbors, concerned about the potential for subdivision and development of the 160-acre farm, got together with the farm owner and discussed their concerns. The eventual outcome of the numerous discussions among the half dozen families was a set of mutual deed covenants that all the owners placed on their land simultaneously. In all, about 250 contiguous acres were placed under the covenants.

The goals of the covenants were to prevent the neighborhood from being carved into small house lots and to limit some of the uses of the land. At the time, the town of Weare had minimal subdivision regulations and no zoning. The mutual covenants agreed to by the group of neighbors limited subdivision of their land to lots no smaller than 10 acres and restricted

the recreational use of snowmobiles and ATVs. They also encouraged organic farming (two of the owners were organic farmers and the others supported organic farming) by restricting the use of synthetic fertilizers, pesticides and herbicides.

Shortly after the execution of the covenants, the owner of the 160 acre farm subdivided his land into about 5 parcels and these were sold. A new home was eventually built on each of the five parcels. One 40-acre tract was further subdivided into two lots. In every case, the covenants required that all the other covenant holders be notified before the land was placed on the open market. In this way, if one of the other residents on the road wanted to acquire more land, they would get the first opportunity. In subsequent years, that provision has enabled a couple of the neighbors to

[continued on page 30]

Mutual covenants [continued]

buy land adjoining their own parcels.

Covenants like these can only be enforced by the other covenant holders. At one point, an interim owner of one parcel attempted to divide a parcel into smaller than 10 acre lots. The other holders notified the interim owner that they would enforce the covenant provision in court if necessary. As a result, the interim owner abandoned the plan. In another case, an owner of one parcel decided to use his land for a significant commercial purpose, and the other covenant holders persuaded him to scale back the use to an acceptable level.

These covenants will expire after 25 years, in the year 2005. The next challenge for the neighbors on Poor Farm Road is to get together and decide whether to extend the existing covenants, let them expire or replace them with new covenants. Some are even contemplating permanent conservation easements.

The covenants have enabled the landowners to work together toward conserving the open space characteristics of their properties and

neighborhood. The covenants also appear to have encouraged more stability in land ownership than has been common in the rest of the town. Further, the covenants have apparently attracted new owners who share at least some of the interests in agriculture and forestry that the original covenant creators had. In this way, whether intentional or not, the covenants have helped create a close knit neighborhood of friendly families.

— Paul Doscher, mutual covenant landowner

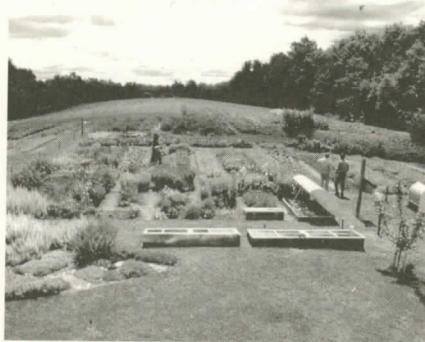


Photo: Paul Doscher

Windcrest Farm Organic Garden, Poor Farm Road, Weare

[continued from page 29]

tion easement. While the option is in place, you cannot sell to another buyer. After the option expires, you have no further obligation to sell the land or easement to the conservation group.

Right of first refusal

You may grant a right of first refusal to a conservation group that wishes to purchase your land. This technique allows you to give the conservation organization a future opportunity to purchase your property. It is useful if you are not yet ready to sell or if the conservation group does not currently have the funds to purchase. Under a right of first refusal, the conservation group has a specified period of time in which to match any bona fide offer that you receive from another potential purchaser. Before you accept an offer for the land, you are obligated to allow the conservation group to purchase the land for that amount.

Chapter **F**our

Tax Advantages

Income and estate tax advantages have encouraged many landowners to pursue land conservation options. This chapter sketches the basic tax principles affecting conservation gifts and offers some examples. Both Congress and the state legislature are constantly considering and making both fundamental changes and minor adjustments to tax laws. Examples in the text represent types of situations but may not reflect current tax rates and incentives. See your tax advisor for current information. The publications listed in Appendix B may also be helpful to you.

The tax implications of your conservation gift will depend on the timing and the value of the gift, your financial circumstances, tax laws and rates at the time of your gift and other factors. **You should consult with an experienced attorney and/or qualified tax advisor before giving, or making bargain sales of, any real estate interest. Be aware also that the IRS issued a formal Notice in 2004 that it intends to increase the scrutiny of charitable deductions for conservation easement transactions, and that in the spring of 2005 Congress is considering significant changes further limiting the availability of these deductions.**

BASICS OF CHARITABLE CONTRIBUTIONS

When a gift of land or interest in land meets IRS criteria for deductibility, donors are permitted to claim a charitable deduction for federal income tax



Photo: Seacoast Land Trust

“My brother and I grew up in the larger woods of which our eight acres are a part. Some of our earliest childhood memories are of playing in these woods and following trails marked by our Uncle Danny, a disabled WWI veteran. In our adolescent years, we spent many a warm summer night camping in these woods watching the stars, telling ghost stories and listening to the earliest rock and roll on our transistor radios. With at least a portion preserved in perpetuity, we will always have a place to return to in order to recall our youth and feel rejuvenated.”

— Gerald Moody, donor of land and conservation easement (with brother Charles Moody), Rye

purposes. Charitable gifts of property made during the donor's lifetime (or at death) also remove the donated property from the donor's estate, thereby reducing his or her federal estate tax liability. Certain conservation easement donations made during life or at death can also qualify for a special tax exclusion to further reduce estate tax liability.

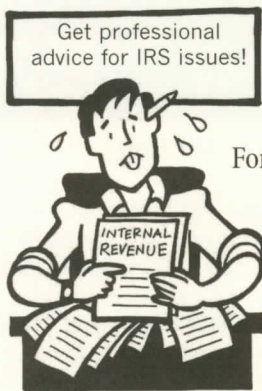
To qualify for an income tax deduction, the donation must be considered a charitable gift by the IRS. It must be considered a "true gift" motivated by charitable intent and not granted as a requirement for getting something in return. For example, a conservation easement donated by a developer as a condition of government approval of a subdivision is not considered a true gift and will not qualify for a tax deduction. A gift must also be complete and irrevocable. For example, if a donor specifies that land given to a land trust will revert to the family if mismanaged, that donation is not deductible.

A deductible charitable donation can only be made to an IRS-qualified entity, such as a government agency (federal, state, county, or local) or a land trust or other organization that has been determined to be tax-exempt under Section 501(c)(3) of the Internal Revenue Code.

The gift of a partial interest in land (a conservation easement, remainder interest, or undivided interest) is not deductible as a charitable gift unless it meets specific IRS criteria.

For example, in the case of a conservation easement, the donor must grant the easement to a government agency or private tax-exempt organization that is dedicated to, and has the capability to provide, long term stewardship of the land. (See Conservation easements, pp. 17–25, for further IRS requirements.)

For tax deductions on property gifts worth more than \$5,000, landowners must obtain a "qualified appraisal" by a "qualified appraiser." These terms are rigorously defined by the IRS; check with your attorney or tax advisor for details.



FEDERAL INCOME TAX DEDUCTIONS

Certain charitable gifts may be deductible from your federal income taxes. Donations of land or interest in land may fall within this category. There is more than one way to take this kind of deduction. At the time of this writing, such deductions can be taken by following either the 30 percent limitation or the 50 percent election. Check with a qualified tax advisor to determine what options are available currently and which will be most beneficial in your situation.

The 30 percent limitation

The IRS limits the maximum annual charitable contribution deduction a donor can take compared to income. Generally, for a gift of appreciated property (which includes most gifts of land and conservation easements), the amount you can deduct in one year is limited to 30 percent of your Adjusted Gross Income (AGI).

However, if the value of your gift is more than 30 percent of your AGI, you are allowed to carry forward the excess for up to five additional years, taking 30 percent of your AGI as a deduction each year, until either you have deducted the total value of the gift or six years have passed. Any remaining portion of the contribution after the sixth year cannot be claimed as an income tax deduction. (See Income tax advantages: Planned giving and land conservation, p. 39.)

30 percent limitation: Sample income tax advantages of a conservation easement gift

A landowner donates a conservation easement appraised at \$100,000 to a land trust. Her Adjusted Gross Income (AGI) is \$60,000, placing her in the 25 percent tax bracket. Assuming that her income and tax bracket remains constant, she could use the charitable deduction resulting from the easement as follows:

30 percent of \$60,000 AGI = \$18,000 maximum deduction allowed for each of 6 years

25 percent of \$18,000 = \$4,500 annual tax savings

<u>Year</u>	<u>Easement Deduction</u>	<u>Tax Savings</u>
1	\$18,000	\$4,500
2	\$18,000	\$4,500
3	\$18,000	\$4,500
4	\$18,000	\$4,500
5	\$18,000	\$4,500
6	\$10,000	\$2,500
Total:	\$100,000	\$25,000

Therefore, the landowner's financial cost for donating the conservation easement is not \$100,000 (the appraised easement value), but \$75,000 (the \$100,000 value of the easement minus the \$25,000 in tax savings due to the six years of charitable deductions).

CAUTION!
Tax rates and regulations change frequently. Seek current information from a qualified tax advisor.

[continued on page 34]

The 50 percent election

The 50 percent election is an alternative to the 30 percent limitation. If you claim only the property's basis (usually the original purchase price or its value when inherited, rather than the current fair market value) as your deduction, you are allowed to take an annual deduction of up to 50 percent of your AGI, with any excess carried forward for an additional five years.

If you use the 50 percent election to claim a deduction for a conservation easement donation,

CAUTION!
Tax rates and regulations change frequently. Seek current information from a qualified tax advisor.

50 percent election: Sample income tax advantages of a conservation easement gift

A landowner donates a conservation easement appraised at \$100,000 to a land trust. The basis of the donated easement is calculated to be \$75,000. His adjusted gross income (AGI) is \$60,000, placing him in the 25 percent tax bracket. Under the 50 percent election, assuming that his income and tax bracket remain constant, he could use the charitable deduction resulting from the easement donation as follows:

50 percent of \$60,000 AGI = \$30,000 maximum deduction allowed for each of up to 6 years
25 percent of \$30,000 = \$7,500 annual tax savings

<u>Year</u>	<u>Easement Deduction</u>	<u>Tax Savings</u>
1	\$30,000	\$7,500
2	\$30,000	\$7,500
3	\$15,000	\$3,750
4	\$0	\$0
5	\$0	\$0
6	\$0	\$0
Total:	\$75,000	\$18,750

Therefore, the landowner's financial cost for donating the conservation easement is not \$100,000 (the appraised easement value), but \$81,250 (the \$100,000 appraised value of the easement minus the \$18,750 in tax savings due to the three years of charitable deductions).

NOTE: Compared to the 30 percent limitation example on page 33, the landowner receives less value in total tax savings (\$18,750 versus \$25,000), but is able to realize the total tax savings in three years instead of six.

the easement value to be claimed as a deduction must be adjusted in proportion to the property's basis. For example, say you purchased a property five years ago for \$120,000. Today it is appraised at \$160,000. You decide to donate a conservation easement. The value of the easement is appraised at \$100,000. The basis of the easement for tax purposes is calculated as follows:

$$\begin{aligned} \$120,000 \text{ (basis of land)} \div \$160,000 \text{ (appraised value of land)} &= .75 \text{ (ratio of basis to appraised value)} \\ .75 \text{ ratio} \times \$100,000 \text{ (appraised value of conservation easement)} &= \$75,000 \text{ (basis of donated easement)} \end{aligned}$$

Therefore, your maximum deduction for the easement donation under the 50 percent election would be limited to \$75,000.

Should you use the 30 percent limitation or the 50 percent election?

The decision between these two options depends on your income, your anticipated financial circumstances and the amount your property has appreciated since you acquired it.

The 30 percent limitation may be more advantageous if:

- ⊙ The property has appreciated substantially in value since you acquired it, and
- ⊙ Your income is large enough that you can deduct the full value of the donation within the six year period.

The 50 percent election may be advantageous in the following situations:

- ⊙ The property has not appreciated significantly since you acquired it.
- ⊙ You have recently purchased or inherited the property.
- ⊙ You anticipate a large drop in income in the near future, or you expect a large increase in income for the year in which you make the gift.
- ⊙ You do not expect to live long enough to take full advantage of the five-year carry forward period.

The one year holding rule

If you have owned your land for less than one year at the time you convey a conservation easement on the property, the tax law requires that you elect the 50 percent rule and limit the gift to the basis, rather than the fair market value. As a result, many landowners who recently acquired conservation property wait a year after purchase before donating an easement.

Sample tax advantages of a bargain sale of property

In many instances, selling land or a conservation easement at less than full market value (a bargain sale) to a conservation group can be nearly as financially attractive as a full value sale to a private buyer. The charitable donation portion of the sale may offset capital gains tax and lead to an income tax deduction, other costs may be reduced or eliminated, and the seller has the added peace of mind that the property will be protected.

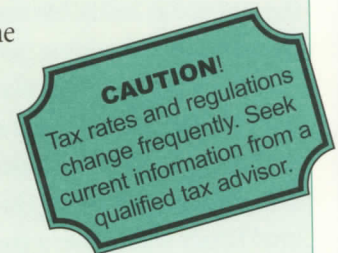
Consider a landowner who sells a parcel appraised at \$100,000 to a municipality for conservation. If the sale price is \$85,000, the value of the gift is \$15,000. Assume that she purchased the property 20 years ago for \$40,000 (the basis), that she is in the 28 percent income tax bracket, that the capital gains tax rate is 15 percent, and that she has sufficient income to realize the full value of her \$15,000 deduction.

	<i>Sale to a private buyer at full value, via a broker</i>	<i>Bargain sale to the municipality without broker</i>
Sale price	\$100,000	\$85,000
Income tax savings ¹	\$ 0	+\$ 4,200
Capital gains tax ²	– \$ 9,000	– \$ 7,650
8% real estate broker commission	– \$ 8,000	\$ 0
Real estate transfer tax ³	– \$ 750	\$ 0
NET value to seller:	\$ 82,250	\$81,550

Deductibility of costs

Some of the costs incurred in making a charitable contribution are themselves deductible. Cash or securities given to endow stewardship of a conserved property generally are considered charitable contributions and are deductible. Legal and appraisal fees related to the transaction generally can be deducted (as a miscellaneous deduction, not a charitable donation) if, in combination with other miscellaneous deductions, they exceed 2 percent [continued on page 38]

After taxes and fees, the net difference between the two sales is only \$700 — not \$15,000, the difference in initial sale prices — making the bargain sale an attractive alternative for a landowner who would like to see the land conserved.



¹ Income tax savings: 28 percent of \$15,000 donation = \$4,200

² Capital gains tax: Capital gain = sale price – basis. For a bargain sale, the basis must be adjusted in proportion to the bargain sale price. In this case:

$$\begin{aligned} \$85,000 \text{ (bargain sale price)} \div \$100,000 \text{ (full sale price)} &= .85 \text{ (ratio of bargain to full sale price)} \\ .85 \text{ ratio} \times \$40,000 \text{ (basis)} &= \$34,000 \text{ adjusted basis} \end{aligned}$$

For the private sale, capital gain is \$60,000 (i.e., the \$100,000 sale price minus the \$40,000 basis). The capital gains tax is 15 percent of \$60,000 = \$9,000.

For the bargain sale, capital gain is \$51,000 (i.e., the \$85,000 bargain sale price minus the \$34,000 adjusted basis). The capital gains tax is 15 percent of \$51,000 = \$7,650.

³ Real estate transfer tax: The New Hampshire real estate transfer tax rate is 1.5 percent, split evenly between buyer and seller. Therefore, in the private sale, seller pays 0.75 percent of \$100,000 = \$750. In the sale to the municipality, however, the seller pays no real estate transfer tax because the sale of real estate interests to certain governmental entities is exempt from the real estate transfer tax. (Sales to private organizations, such as land trusts, are not exempt from the transfer tax.)

Case Study:

Spreading out a gift over time

Heald property, Wilton

Simpson C. Heald began purchasing parcels of land in Wilton toward the end of the 1800s; his son Philip C. Heald continued adding parcels to the family property and planted numerous orchards. A century later, the third generation of Healds in Wilton are transforming this treasured family legacy into a large area of permanently conserved fields, woodlands, wetlands and orchards by conveying land to the Society for the Protection of New Hampshire Forests (SPNHF) one parcel at a time. By choosing to spread these land gifts out over many years, the Heald family has been able to: 1) strategically plan the donations so as to complete construction of trail segments on parcels before conveying them, ensuring the continuity of an established trail network; 2) watch how SPNHF manages the properties after they are conveyed and gain confidence in the organization's work; 3) coordinate the land

donations with timber harvests performed under a long-term forest management plan;

4) spread immediate tax advantages of the gifts out over a period of years and; 5) allow collaboration among siblings to convey parcels with different ownership combinations according to the needs of the individuals and family.

Collectively, the Healds have now donated a total of 975 acres in nine separate gifts over a 15-year period, creating the permanent SPNHF reservation known as the Heald Tract.

— Society for the Protection of New Hampshire Forests

[continued from page 37]

of your Adjusted Gross Income. Expenses related to the transaction, such as survey costs, may also be used to adjust the basis of the property for tax purposes. As with any tax matter, it is important to consult with a professional advisor.



Photo: Society for the Protection of New Hampshire Forests Archives

Phil Heald, grandson of Simpson C. Heald, on some of his donated land in Wilton

Income tax advantages: planned giving and land conservation

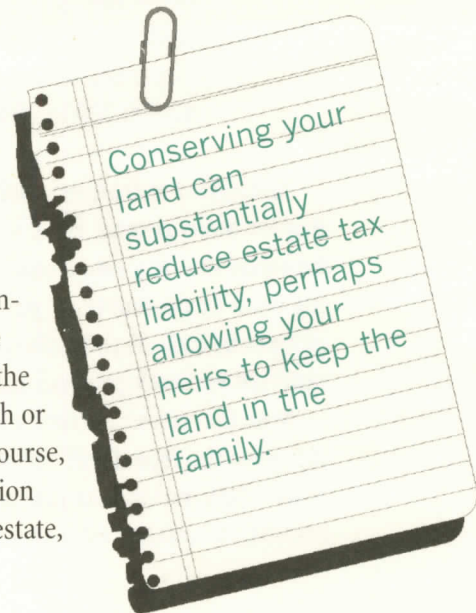
By making a tax-deductible gift of land for conservation, donors may be able to realize immediate income tax benefits. In some cases, planned giving techniques can increase these benefits. Below are two common techniques that accomplish land conservation and maximize a donor's income tax deductions (Also see Estate tax advantages: Planned giving and land conservation, p. 42.)

⊙ **Timing the gift based on unrelated financial circumstances.** Landowners who wish to make a one-time deductible land conservation gift (such as donation of land, conservation easement, or remainder interest with reserved life estate) can arrange the donation to occur in the same tax year as an anticipated major jump in taxable income or capital gains from an unrelated source, thereby maximizing income tax deductions.

⊙ **Spreading out a gift over time.** Landowners of large or valuable property can convey a gift in stages over multiple years, thereby extending the period of time during which the deductions may be claimed beyond the six-year period allowed for a single gift.

ESTATE TAXES

Land is often a major and highly valued portion of a landowner's estate, especially in this time of considerably appreciated property values in many parts of New Hampshire. All too often, heirs have to subdivide and sell off beloved family lands to developers in order to pay estate taxes. This outcome can often be avoided with careful planning. Because the estate tax is based upon the economic value of the property, and because land conservation techniques usually reduce the market value of the land, a gift to conserve land (either prior to death or through a will) can substantially reduce estate tax liability. And, of course, permanent land conservation can ensure that the owner's conservation wishes are respected by his or her family, other beneficiaries of the estate, and the future owners.



Federal estate tax

The federal estate and gift tax is imposed on the transfer of assets during life (gift tax) and at death (estate tax). The estate tax is imposed on the value of all assets owned at death. Included in the “gross taxable estate” is the value of all assets that the decedent owns or has an interest in, including all real estate, stocks and bonds, cash and bank accounts, personal property, life insurance proceeds and other assets. In recent years, Congress has taken steps to reduce the estate tax liability for many estates by increasing the amount of property that can be transferred tax-free. But for many land owners, the estate tax remains a concern.

There are a number of exceptions that may reduce the federal estate tax:

- ③ You may transfer an unlimited amount of property to your spouse without estate tax (the “marital deduction”). Estate tax may still be due upon the death of the second spouse to die.
- ③ You may give an unlimited amount to a charity without estate tax (the “charitable deduction”).
- ③ As of January 2004, the estate tax exclusion exempts the first \$1,500,000 of assets from estate tax, for 2004 and for 2005. The exclusion amount is scheduled to increase to \$2,000,000 in 2006 for the following three years.

The ability to transfer a substantial amount of property tax free eliminates the estate tax problem for many people. But if your estate exceeds the exemption amount, your estate may be taxable. Be aware that any estate value exceeding the exempt amount is taxed at extremely high rates, ranging from 41 percent to 47 percent in 2005. The top tax rate is due to decrease to a maximum of 45 percent in 2007. If you anticipate that your estate may be subject to estate tax, it is especially important that you seek professional advice from an estate planner or tax attorney.

Note that under current law, the estate tax is scheduled to be repealed in calendar year 2010. However, the repeal will last only one year, after which time the exemption amount is lowered to \$1,000,000, and the tax rate returns to higher levels. Tax experts consider it likely that Congress will continue to modify estate tax law, so check with your tax advisor as you develop your plans.

[continued on page 42]

Federal estate tax advantages of conservation gifts

Suppose a landowner with a total estate valued at \$2,000,000 wishes to pass land appraised at \$700,000 on to his children. Because the value of the estate exceeds the current exclusion, the owner is concerned about estate tax. To address his conservation goals and his tax problem, he donates an easement appraised at \$400,000 to a land trust. If the landowner dies in 2005, and the \$1,500,000 exclusion is applied to his estate, the effect of the easement is:

	<i>Without Conservation Easement</i>	<i>With Conservation Easement</i>
Total estate value	\$2,000,000	\$1,600,000
2005 Exclusion	\$1,500,000	\$1,500,000
Estate Tax	\$225,000	\$45,000

Estate tax savings due to the conservation easement are \$180,000 (\$225,000 – \$45,000). In addition, the conservation easement donation may qualify for the Internal Revenue Code Section 2031(c) estate tax exclusion of up to 40 percent of the restricted land value. Assuming the maximum reduction of 40 percent, the estate value would be further reduced:

\$700,000	unrestricted land value
- \$400,000	conservation easement value
\$300,000	value of restricted land
40 percent of \$300,000 = \$120,000	the additional reduction in estate value allowed by IRC Section 2031(c)
\$1,600,000	value of estate with conservation easement in place
- \$ 120,000	additional reduction
\$1,480,000	value of estate with conservation easement and additional 40 percent reduction applied

CAUTION!
Tax rates and regulations change frequently. Seek current information from a qualified tax advisor.

The value of the estate with the conservation easement in place is now below the \$1,500,000 exclusion, resulting in an estate tax of \$0. The conservation easement gift has saved the family the full \$225,000 estate tax that would have been due on the \$2,000,000 estate. Further, if the landowner donated the conservation easement during his lifetime, he may have benefited from income tax deductions arising from the charitable gift of a conservation easement valued at \$400,000, increasing overall tax savings dramatically.

Case Study:

Donating a conservation easement in two stages

Dr. Lincoln Gordon, New London

As owner of 40 acres in New London fronting on both Lake Sunapee and Otter Pond, Dr. Lincoln Gordon knew his property's importance for protecting the shoreline, wildlife habitat and scenery.

He contacted the Ausbon Sargent Land Preservation Trust (ASLPT), initially intending to donate ownership of a portion of his land. He had two important objectives: 1) to permanently protect the property and 2) to reduce the value of his estate. However, he soon found out that he did not have to give away his property to protect it. Instead, he worked with ASLPT to convey a conservation easement that protected 35 acres, including 700 feet of Lake Sunapee shoreline. The remaining five acres, including his house, remain unrestricted.

Dr. Gordon and ASLPT worked out a two-step process to protect the

35 acres. Two conservation easements were prepared, each covering a portion of the 35 acres. Dr. Gordon donated the first, which covered 14.8 acres, in 1989, then donated the second on 20.6 acres in 1995. The two-step transaction provided full protection of the property and allowed the landowner to take full advantage of federal income tax deductions arising from the charitable gift of the conservation easements. In addition, the conservation easements reduced the value of Dr. Gordon's estate, thereby diminishing the potential estate tax problems that his heirs could some day encounter.

— Ausbon Sargent Land
Preservation Trust

[continued from page 40]

Estate taxes: Planned giving and land conservation

A variety of land conservation tools can both achieve your conservation goals and reduce tax liability for your estate, benefiting your heirs. In some cases, these tools also can produce an immediate income tax deduction and allow you to use the land for the rest of your life. Following are several common estate planning techniques that accomplish conservation purposes.



Photo: Ausbon Sargent Land Preservation Trust

Dr. Lincoln Gordon

☉ **Gift of land or conservation easement to a conservation group.** If you donate land to a conservation group, its value is removed from your estate, potentially reducing estate tax liability.

If you convey a conservation easement to a conservation group, the economic value of your land may be reduced by the easement restrictions. The land is appraised at its value as restricted by the terms of the easement. The value of the easement is thereby removed from the estate, potentially reducing estate tax liability.

Further, the 1997 Taxpayer Relief Act provides additional estate tax reductions for land protected by qualifying conservation easements. Up to 40 percent of the value of the restricted land (to a maximum of \$500,000) may be excluded from the gross estate. To qualify, (1) property must have been owned by the decedent or the decedent's family for the previous three years and (2) the decedent or a member of the decedent's family must have granted the easement. The conservation easement must also meet special qualifying rules. The rules for the additional exclusion are complex and conservation easement donors should consult an estate tax attorney for details.

The 1997 Taxpayer Relief Act also permits the executor of a landowner's estate to grant an easement after the death of the landowner and still qualify the estate for the estate tax advantages of an easement granted during the landowner's lifetime. The "post mortem" conservation easement can be conveyed with the consent of the heirs and granted by the executors of the estate before the due date for filing the federal estate tax return (usually nine months after date of death). The land that is then subject to the easement is valued as if the landowner had restricted the property.

☉ **Gift of remainder interest with reserved life estate.** For farms or properties that include a residence, this technique may reduce the value of the donor's estate and thus decrease estate taxes, as well as provide immediate income tax benefits for the donor. (See Conveyance of remainder interest with reserved life estate, p. TK.)

☉ **Establishment of a charitable remainder trust.** When combined with a conservation easement, a charitable remainder trust can protect land, benefit a conservation organization, generate a charitable income tax deduction, avoid capital gains taxes from the sale of land, reduce estate value and establish lifetime income for the donor. In brief, the technique typically works as follows: (1) The charitable remainder trust is established by the donor, (2) the donor gives a conservation easement on the property to the recipient conservation organization or agency,

"In our experience, the gift of conservation land has been a unifying force among family members who make donations of undeveloped property to the Trust. A conservation project can be the occasion for development of family consensus around a property that had become a matter for debate and concern. With the guidance of qualified tax advisors, a conservation gift or bargain sale can result in significant financial benefits to landowners. The business of land conservation involves creating strong partnerships with families who have stewarded their land for generations."

— Thomas S. Curren, President,
Lakes Region Conservation Trust

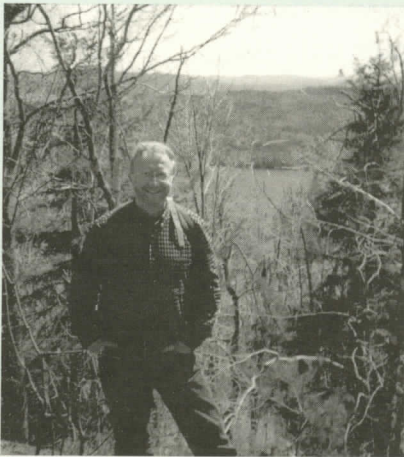


Photo: Lakes Region Conservation Trust

Tom Curren

(3) the donor then gives the restricted property to the charitable remainder trust, (4) the charitable remainder trust sells the restricted property and invests the proceeds to provide income to one or more designated beneficiaries (often the donor or donor's family members) for a fixed term or the beneficiary's lifetime and (5) after the designated term, the trustee of the charitable remainder trust turns over any remaining funds in the trust to the designated conservation organization.

With this technique, the advice of an attorney experienced in planned giving techniques is essential. Note that the conservation easement is essential to ensure a conservation outcome for the land; merely giving real estate to the charitable remainder trust does not ensure that the land will be conserved.

New Hampshire legacy and succession tax

As of January 1, 2003, the New Hampshire Legacy and Succession Tax has been repealed. Previously, this tax had imposed a state inheritance tax (tax on heirs) on certain transfers at death.

FACILITATING TRANSFER OF FAMILY LAND USING THE FEDERAL GIFT TAX EXCLUSION

Under the federal estate and gift tax, an individual can give up to \$11,000 to any number of individuals (\$22,000 if spouses give jointly) each year tax-free. In the context of estate planning and land conservation, this exclusion provides a means for a landowner to reduce estate value by giving away land value during his or her lifetime. For example, a landowner wishing to convey family land to the children (and remove it from the estate, where it may be subject to estate tax) may choose to convey it to the children in undivided interests over a period of years, in annual portions the value of which do not exceed the annual gift tax exclusion.

Conservation easements may facilitate [\[continued on page 46\]](#)

Case Study:

A landowner's perspective

Sam and Betsey Harding, Jackson, conservation easement donors

Sometimes a piece of land is more than it appears to be. Perhaps it provides food for moose and bears, river access for beavers, otters, and mink, or safe nesting for meadowlarks and bluebirds. Maybe it is part of a wildlife corridor or offers views of unspoiled mountains. When we bought our land in 1974, we were just beginning to see what treats our land held. Now we continue to learn from and about the land, partly through the eyes of our son Dexter, who shares it with us.

When the Upper Saco Valley Land Trust (USVLT) was in its beginning stages, we discussed our land with founding board member Dave Thurlow. We had dreams for permanent conservation of our land but many questions: Was our parcel too small to attract the USVLT? Would the conservation easement process be too expensive for us to consider? How restrictive would the easement's wording be? What if we wanted to cut some

trees or set up a farmstand? Would the change affect our property taxes? How could we prove that the piece of land that carried the value was, in fact, developable? Would there be sufficient value in the easement parcel to allow us to deduct the expenses in our income taxes? Could we complete the process within one tax year? With Dave's help, we met with professionals well informed about land trusts and conservation easements and started finding some answers. We were advised and guided by people genuinely concerned about conservation and preservation. They helped us understand the process that initially seemed so complex.

The costs of setting up the easement exceeded our expectations and we spent some nervous moments wondering if our effort would result in "out-of-pocket" costs that would be too high. However, when our 133-page appraisal arrived, we realized

that the value of the easement was sufficient to permit us to claim a tax deduction that would cover the expenses of setting up our easement. We had completed our hands-on training and found that we could accomplish our dream!

Now as we reflect on the process, it thrills us that we accomplished two things at once: We preserved a piece of land that is precious to us, with its views and river frontage, and we supported a local cause in whose mission we strongly believe.

— Sam and Betsey Harding



Photo: Sam and Betsey Harding

Harding easement

transfer of family land to the next generation by reducing land value. To illustrate: for highly valuable land, transferring the land in annual increments of \$11,000 may take so many years as to be impractical. However, by first restricting the property with a conservation easement, the landowner may reduce the land value, then transfer it tax-free in undivided interests (sized so as not to exceed the annual gift tax exclusion) in a fewer number of years.

PROPERTY TAX



Photo: Geoff Jones

Pickerel Cove, Stoddard, purchased by the Society for the Protection of New Hampshire Forests with donations from concerned neighbors

Conservation easements can reduce property value, which, in turn, may reduce property tax assessment. In actual practice, however, many landowners who wish to place their land under easement have already enrolled the land in the Current Use Assessment Program, which provides reduced assessments of properties based on their values while they are being used for forestry, agriculture and open space. (See New Hampshire Current Use Assessment Program, p. 28.) Typically, assessment rates will not drop further when a conservation easement is placed on property already enrolled in current use.

If land placed under easement is not already in the current use program, or if the land is less than 10 acres and is therefore ineligible for current use, the landowner may wish to apply to the municipality for a Conservation Restriction Assessment. This program, authorized by NH RSA 79-B, requires the municipal officials to assess land protected by conservation easements at values based upon the land's permanent restrictions, at values similar to current use assessment. To apply, the landowner completes a "Conservation Restriction Assessment Application" and submits it to the municipality, in a process similar to application for current use assessment.

Chapter Five

The Process: What to Expect

At this point, you may have more questions than answers! In the early stages of planning to conserve your land, the variety of options may seem daunting. Be assured that many other landowners who ultimately achieved their conservation goals have shared your concerns and apprehensions. There are a number of experienced people who can help answer your questions.

After reviewing this publication, you may find it helpful to contact the Center for Land Conservation Assistance, a land trust active in your region or other conservation group to help you get started and connect you with people who can assist you. (See Appendix A, pp. 51–58.)

For some landowners, making the decision to protect land takes place over a period of years. This time can be used to gather information, consider options and begin discussion among family members. Once you are ready to contact a land conservation group that can help you develop the details, you can anticipate a process that generally includes the steps listed below (but not necessarily in the sequence presented). Depending on the complexity of your land conservation project and your goals, the process may take only a few weeks or may be completed over one or more years.

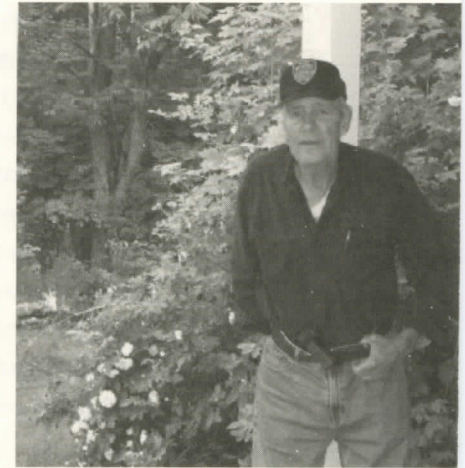


Photo: Brenda Lind

"I've spent the best years of my life out here and I just want to leave it like it is."

— Alex Noftsgger, conservation easement donor, New Boston

1. Discuss your plans with your family and others who depend on you. Land is often the most treasured of family possessions, as well as an important financial asset. Include family members early as you explore options. Usually, the earlier people are involved in decision-making, the more commitment they feel.

Whether family members agree or disagree with your conservation goals, it's best to know this early so plans can be developed accordingly. Doing so will help protect the integrity of your conserved land over time, by reducing the potential for future challenges to your conservation outcome from family members.

2. Select a land conservation partner. An experienced land trust can help you begin the selection process by offering guidance, networking with public agencies and funding sources and working with you to find the best option and long-term partner organization for your land. Regional and statewide land trusts and the Center for Land Conservation Assistance are good starting points in your search (see Conservation Groups, p. 8, and Appendix A, pp. 51–58.)

Potential long-term land conservation partners include land trusts, municipalities, federal, state and county agencies and other conservation organizations. You may wish to talk with more than one group. As you make your choice among these groups, consider their individual priorities and missions, as well as their track record for taking care of land. Look for a group that provides a good match with the type of land you own and your own goals. You want to find a partner that is knowledgeable about land conservation options, can understand your wishes, and can stick with you through the process.

3. Explore options. With your partner organization and advisors, discuss the range of options that may work for your property and goals. This discussion should take into account tax considerations, if they are important to you, and your family's involvement in the future of the land.

4. Identify potential costs. Your land conservation partner can give you ranges and types of costs based on experience. Typically, landowner costs include landowner's attorney fees and costs of any other professional guidance that you may need, such as land planning or tax advice. If you plan to claim income tax deductions for a charitable gift, you will need to obtain an IRS-qualified appraisal. In some cases, you may need a property boundary survey. Some land trusts charge a fee to help pay for staff time preparing the land conservation project. Many land trusts ask landowners to con-

sider making an additional financial contribution to support the organization's long-term stewardship of their land.

However, your ability to contribute to the stewardship fund and pay the transaction costs may not be a requirement for a conservation group to work with you. Many conservation groups have a variety of strategies and sources from which to seek needed funds, especially for properties with high conservation value.

5. Keep family members informed as you explore your options. The process of conserving land often depends upon family members reaching consensus, without which the process may bog down. Share this publication with your family members. Your land conservation partner may be willing to meet with your family to discuss questions and concerns.

6. Obtain independent professional advice as needed. As you develop your plans, you may need the assistance of your own tax advisors, land use planners and other experts. Remember that the conservation group you work with, however helpful and like-minded, is primarily obligated to meet its own goals, not yours.

7. Agree on a plan for land conservation in collaboration with your conservation partner. If your plan involves a conservation easement, usually your conservation partner will prepare a draft conservation easement document. In other cases, either you and your lawyer or your conservation partner will draft legal documents that articulate the agreement you have reached.

8. Provide additional information as needed to your conservation partner. Your partner may gather supporting information about your land, such as photographs and maps, to document its conservation values and other features. Formal, documented review of the property for hazardous material contamination is required by most conservation organizations. Your conservation partner may also seek property title information at its own expense.

9. Obtain a property survey, if needed. Your land conservation partner can help you determine whether any additional boundary survey work is needed, based on the condition of the boundaries, the legal description in the deed, any existing property survey and the details of your conservation plan.

10. *Review the transaction* with your own attorney. You may wish to consult with your attorney at several stages as you develop your land conservation plan, or you may wait until final legal documents are prepared. Either way, you are strongly advised to seek independent legal counsel, as with any transaction involving real estate.

11. *Close the transaction.* With your signature on the final documents, your land is conserved.

12. *Obtain a property appraisal*, if needed for income tax purposes. According to IRS rules for charitable donations, the appraisal must be dated no earlier than 60 days before the closing, nor any later than your tax filing date for the year in which you make your gift. It is advisable to wait until after the closing to have the appraisal completed, to ensure that the appraiser is working with final documents and to stay within the IRS timeframe. However, if the potential value of tax savings is important to your decision about if and when to make a gift of property or a conservation easement, you may choose to obtain an appraisal earlier in the process. Your conservation partner can help you find an appraiser with appropriate experience.

Knowing what to expect will help you and your family plan for the financial and conservation results of your project. As you begin working with your land conservation partner, you may wish to outline steps and a timeline for your work together. You might also ask to contact other landowners who have completed land conservation projects with the organization, to get a better feel for the real-life details of the process. Don't hesitate to seek information and ask questions — conservation groups and many landowners who have conserved their land are eager to help landowners like you explore conservation options!

Land conservation techniques offer landowners the opportunity to make an enduring contribution to New Hampshire's natural landscape, one that can benefit all of us and our communities. Many options for conserving land exist and can be tailored to your particular circumstances and the qualities of your land. Some options may offer tax advantages to you. Some may help keep cherished family land in family ownership. If you are committed to conserving your land, we urge you to begin the process today! By investing your time and attention now, you will have the security of knowing that land you treasure will be there for future generations.

Appendix A

Land Conservation Resource Organizations

I. Land Trusts and Other Private Non-Profit Land Conservation Organizations

The following private, non-profit organizations have programs to help landowners conserve land. Many own and manage land and conservation easements for permanent conservation. Many also work cooperatively with municipalities in their service area on land protection projects of mutual interest. You may contact these organizations to obtain further information about land conservation options. (The names of contact individuals will, of course, change over time.)

The type of coverage area for each organization is noted in parentheses. Local organizations cover only one or two municipalities or water resources; regional organizations cover multiple municipalities.

American Farmland Trust
(national)
New England Field Office
1 Short Street, Suite 2
Northampton, MA 01060-3952
(413) 586-9330
ccoffin@farmland.org
<http://www.farmland.org>

Amherst Land Trust
(local)
George Bower, President
PO Box 753
Amherst, NH 03031
(603) 673-4454
Bower1@compuserve.com

Ammonoosuc Conservation Trust
(regional)
Rebecca Brown, President
80 Old Post Road
Sugar Hill, NH 03585
(603) 823-8119
info@aconservationtrust.org

Appalachian Trail Conf. Land Trust
(regional)
Rima Nickell, Land Trust Coordinator
for Vermont/New Hampshire
PO Box 312
Lyme, NH 03768-0312
(603) 795-4935
rimanickell@aol.com
www.appalachiantrail.org/protect/tatl

Archaeological Conservancy
Mark Michael, Director
5301 Central Avenue NE, Suite 902
Albuquerque, NM 87108-1517
(505) 266-1540
tacinfo@nm.net
www.americanarcheology.com

Audubon Society of NH
(statewide)
Joanna Magoon, Land Protection
Coordinator
3 Silk Farm Road
Concord, NH 03301-8200
(603) 224-9909, x. 340
jmagoon@nhaudubon.org
www.nhaudubon.org

Ausbon Sargent Land Preservation Trust
(regional)
Deborah Stanley, Executive Director
PO Box 2040
New London, NH 03257
(603) 526-6555
aslpt@tds.net
www.ausbonsargent.org

Bear-Paw Regional Greenways
(regional)
Dan Kern, Executive Director
PO Box 19
Deerfield, NH 03037
(603) 463-9400
info@bear-paw.org
www.bearpaw.org

Bedford Land Trust
(local)
Jeanene Procopis, Chairman
PO Box 10315
Bedford, NH 03110-0315
(603) 472-5950
bedfordlandtrust@hotmail.com

Bow Open Spaces
(local)
Robert Dawkins, Treasurer
41 South Bow Road
Bow, NH 03304
(603) 225-3678
radnhcpa@comcast.net

Chocorua Lake Conservation Foundation
(local)
Cornelia Lanou, President
90 Keene Street
Providence, RI 02906
(401) 331-9222

Dan Hole Pond Watershed Trust
(local)
Bob Pratt, President
PO Box 8
Center Ossipee, NH 03814
(603) 539-2073
alixandbob.pratt@erols.com

Five Rivers Conservation Trust
(regional)
Laura Scott, Director
54 Portsmouth Street
Concord, NH 03301
(603) 225-7225
director@5rct.org

Fracestown Land Conservation Inc.
(local)
Greg Neilley, Chair
169 Old County Road South
Fracestown, NH 03043
neilley@starband.net

Gilmanton Land Trust
(local)
Gary Ambelas, Chair
PO Box 561
Gilmanton, NH 03237
(603) 364-2828
arc1@worldpath.net

Great Bay Stewards
(regional)
89 Depot Road
Stratham, NH 03885
(603) 778-0015
gbnem@greatbay.org

Green Mountain Conservation Group
(regional)
Blair Folts, Executive Director
PO Box 95
So. Effingham, NH 03882
(603) 539-1859
www.gmcg.org

Hanover Conservation Council
(local)
Molly Donovan, Executive Director
PO Box 516
Hanover, NH 03755
(603) 643-3433
HCC@valley.net

Harris Center for Conservation Education
(regional)
Meade Cadot, Director
83 King's Highway
Hancock, NH 03449
(603) 525-3394
H_Cadot@antiochne.edu
www.harriscenter.org

Howfirma Trust
(local)
James VanBokkelen
45 Hilldale
South Hampton, NH 03827
(603) 394-7832
jbvb@ttlc.net

Lakes Region Conservation Trust
(regional)
Tom Curren, Executive Director
PO Box 1097
Meredith, NH 03253
(603) 279-3246
lrct@metrocast.net
www.lrct.org

Lyme Hill & Valley Association
(local)
Freda Swan
133 Breck Hill Road
Lyme, NH 03768
(603) 353-9834

Marlborough-Roxbury Land Assoc.
(local)
John Lecraw, President
50 Clapp Pond Road
Marlborough, NH 03455
(603) 876-4503
johnlecraw@hotmail.com

Monadnock Conservancy
(regional)
Richard Ober, Executive Director
PO Box 337
Keene, NH 03431-0337
(603) 357-0600
RichardOber@MonadnockConservancy.org
www.monadnockconservancy.org

Moose Mountains Regional
Greenways
(regional)
Joyce Elkouarti, Executive Director
PO Box 191
Union, NH 03887
(603) 473-2535
joyce@ttlc.net

Nashua River Watershed Association
(regional)
Al Futterman, Land Programs
Director
592 Main Street
Groton, MA 01450
(978) 448-0299
alfutterman@nashuariverwatershed.org
www.nashuariverwatershed.org

New England Forestry Foundation
(statewide)
Whitney Beals, Associate Director
of Land Protection
PO Box 1346
Littleton, MA 01460
(978) 952-6856, x 110
wbeals@newenglandforestry.org
www.newenglandforestry.org

New England Wildflower Society
(statewide)
Ann Moore, NH State Chair
8 Boulders Cove
North Hampton, NH 03862
(603) 964-1982
anmoo@earthlink.net
www.newfs.org

New Hampshire Preservation
Alliance
(statewide)
Jennifer Goodman, Executive
Director
PO Box 268
Concord, NH 03302-0268
(603) 224-2281
jg@nhpreservation.org
www.mv.com/ipusers/nhpreservation

Nichols-Smith Conservation Land
Trust
(local)
Gerald Coffey, President
PO Box 266
Hollis, NH 03049
(603) 465-6144
gcoffey@net1plus.com

Nissitissit River Land Trust
(local)
Peter Smith, President
40 Nartoff Road
Hollis, NH 03049
(603) 882-1431

Piscataquog Watershed Association
(regional)
Margaret Watkins, Executive Director
5A Mill St.
New Boston, NH 03070
(603) 487-3331
mwatkins@pwa.mv.com
www.pwa-nh.org

Rockingham Land Trust
(regional)
Brian Hart, Executive Director
7 Center Street
Exeter, NH 03833
(603) 778-6088
bhart@rockinghamlandtrust.org
www.rockinghamlandtrust.org

Roland Park Land Trust
(local)
Christopher Mabley, President
PO Box 92
Center Ossipee, NH 03814

Sanbornton Agriculture
and Land Trust
Fran Belcher, President
PO Box 202
Sanbornton, NH 03269
franbelcher@metrocast.net

Seacoast Land Trust
(regional)
Danna Truslow, Executive Director
PO Box 4183
Portsmouth, NH 03802-4183
(603) 433-0963
info@seacoastlandtrust.org
www.seacoastlandtrust.org

Silver Lake Land Trust
(local)
William Walker, Chairman
PO Box 222
Harrisville, NH 03450
(603) 827-3731

Society for the Protection of NH
Forests
(statewide)
Paul Doscher, Sr. Dir. of Land Prot.
54 Portsmouth Street
Concord, NH 03301
(603) 224-9945
pdoscher@forestsociety.org
www.forestsociety.org

Souhegan Valley Land Trust
(local)
Andy Roeper, President
PO Box 417
Milford, NH 03055
(603) 654-9831

Squam Lakes Association
(regional)
Christopher Devine, Executive Dir.
PO Box 204
Holderness, NH 03245
(603) 968-7336
info@squamlakes.org

Squam Lakes Conservation Society
(regional)
Roger LaRochelle, Executive Director
PO Box 696
Holderness, NH 03245-0696
(603) 968-7900
roger@squamlakes.org
www.squamlakes.org

Strafford Rivers Conservancy
(regional)
Anna Boudreau, Executive Director
PO Box 623
Dover, NH 03820
(603) 557-7561
annab@ttlc.net

The Nature Conservancy-NH Chapter
(national)
Mark Zankel, Dir. of Cons. Programs
22 Bridge Street, 4th Floor
Concord, NH 03301
(603) 224-5853 x 19
mzankel@tnc.org
www.nature.org

Trust for Public Land
(national)
Julie Iffland, Senior Project Manager,
New England Field Office
3 Shipman Place
Montpelier, VT 05602
(802) 223-1373 x 12
julie.iffland@tpl.org
www.tpl.org

Turkey River Basin Trust
(local)
Mary Louise Hancock, Chairwoman
33 Washington Street
Concord, NH 03301
(603) 225-9721
MLHDeerisland@aol.com

Upper Saco Valley Land Trust
(regional)
Tom Henderson, President
PO Box 424
North Conway, NH 03860
(603) 356-9683
usvlt@ncia.net

Upper Valley Land Trust
(regional)
Jeanie McIntyre, Executive Dir.
19 Buck Road
Hanover, NH 03755
(603) 643-6626
info@uvlt.org
www.uvlt.org

Wildlife Land Trust
(national)
Robert W. Koons, Executive Director
4 Professional Drive, Suite 112
Gaithersburg, MD 20879
(301) 258-3036
rkoons@hsus.org
www.wlt.org

Yggdrasil Land Foundation
(national)
W2493 County Road ES
East Troy, WI 53120
(262) 642-2651
info@ylandtrust.org
www.ylandtrust.org

II. Public Agencies that Conserve Land

The following governmental agencies have programs to acquire, or to assist other organizations in acquiring, land and conservation easements for permanent conservation. Some administer specific funding sources that are available for land conservation. You may contact these agencies to obtain further information about their programs and priorities.

County Conservation Districts

New Hampshire has ten Conservation Districts that are organized on the county level to assist landowners in sustaining the productivity of their land. As part of their work to protect land, some of the Districts accept and monitor conservation easements. For more information, contact your county office.

Belknap County Conservation District

719 Main Street
Laconia, NH 03246-2772
(603) 527-5880
<http://belknapccd.org/>

Carroll County Conservation District

The Grindle Center
73 Main Street, PO Box 533
Conway, NH 03818-0522
(603) 447-2771
www.nhacd.org/carroll.htm

Cheshire County Conservation District

11 Industrial Park Drive
Walpole, NH 03608
(603) 352-4550
www.cheshireccd.org

Coos County Conservation District

4 Mayberry Lane
Lancaster, NH 03584-3616
(603) 788-4651, 788-3818
www.nhacd.org/coos.htm

Grafton County Conservation District

250 Swiftwater Road, Rm. 6
Woodsville, NH 03785-0229
(603) 747-2001 or 747-2067
www.nhacd.org/grafton.htm

Hillsborough County Conservation District

Chappell Professional Center
486 Rt. 13 South
Milford, NH 03055-3442
(603) 673-2409, ext. 4
www.hillsboroughccd.org

Merrimack County Conservation District

The Concord Center, Rm. 221
10 Ferry St., Box 312
Concord, NH 03301-5081
(603) 223-6023
www.merrimackccd.org

Rockingham County Conservation District

110 North Road
Brentwood, NH 03833-6614
(603) 679-2790
www.rockinghamccd.org

Strafford County Conservation District

259 County Farm Road, Unit 3
Dover, NH 03820-6015
(603) 749-3037
www.nhacd.org/strafford.htm

Sullivan County Conservation District

24 Main St.
Newport, NH 03773-1500
(603) 863-4297
www.nhacd.org/sullivan.htm

New Hampshire Department of Agriculture, Markets & Food

The New Hampshire Department of Agriculture administers the state agricultural land development rights purchase program, which conserves important farmlands with conservation easements.

NH Department of Agriculture

PO Box 2042
Concord, NH 03302
(603) 271-3551
www.agriculture.nh.gov

New Hampshire Department of Environmental Services (DES) Water Supply Land Grant Program

The NH DES Water Supply Land Grant Program makes grants to municipal or non-profit water suppliers for the purchase of land or conservation easements within source water protection areas for existing or planned public drinking water sources. The Society for the Protection of New Hampshire Forests, under contract with DES, provides informational assistance to interested applicants and landowners.

NH DES Water Supply Land Grant
Program
Sarah Pillsbury, Drinking Water
Source Protection Program Manager
PO Box 95
6 Hazen Dr.
Concord, NH 03302-0095
(603) 271-0688
spillsbury@des.state.nh.us
www.des.state.nh.us

New Hampshire Department of Resources and Economic Development

Two divisions within the Department of Resources and Economic Development (DRED) acquire land. The Division of Forests and Lands protects, improves and develops New Hampshire's forest resources and increases awareness of the contributions that forests make to the quality of life in New Hampshire. The Division of Parks and Recreation

protects and preserves unusual scenic, scientific, historic, recreational and natural areas of the state and makes these areas accessible to the public for recreational, educational, scientific and other uses.

NH Department of Resources and
Economic Development
172 Pembroke Road
PO Box 1856
Concord, NH 03302-1856
(603) 271-2411
www.dred.state.nh.us

New Hampshire Fish and Game Department

NH Fish and Game has programs to conserve and provide public access to areas of special value to fish and wildlife.

NH Fish and Game Department
2 Hazen Drive
Concord, NH 03301
(603) 271-3511
www.wildlife.state.nh.us

New Hampshire Land and Community Heritage Investment Program (LCHIP)

This program was formed by the New Hampshire state legislature under RSA Section 227-M to "...conserve and preserve this state's most important natural, cultural, and historical resources...." LCHIP provides grants to municipalities and nonprofit land conservation organizations to purchase land, historic resources and conservation easements.

NH Land & Community Heritage
Investment Program
10 Dixon Avenue
Concord, NH 03301
(603) 224-4113
www.lchip.org

III. Information and Assistance

The following organizations provide information and assistance on a wide variety of topics related to land conservation. These organizations may provide information that will help you in your conservation planning or steer you to other organizations that can do so.

Center for Land Conservation Assistance

The Center for Land Conservation Assistance (CLCA) provides support and assistance to land trusts, conservation commissions and others seeking to conserve undeveloped land in New Hampshire through direct assistance, coordination, education, access to training and funding opportunities and referrals.

Center for Land Conservation

**54 Portsmouth St.
Concord, NH 03301
(603) 224-9945
thowe@forestsociety.org**

Land Trust Alliance

The Land Trust Alliance (LTA) is a national non-profit organization that serves as the professional association for all the land trusts in the country. LTA promotes voluntary land conservation and strengthens the land trust movement by providing the leadership, information, skills and resources land trusts need to conserve land for the benefit of communities and natural systems. Numerous LTA publications provide information for landowners who wish to conserve land.

Land Trust Alliance

1331 H Street NW, Suite 400
Washington, DC 20005-4734
(202) 638-4730
lta@lta.org; www.lta.org

LTA Northeast Program

110 Spring Street
Saratoga Springs, NY 12866-3302
(518) 587-0774
northeast@lta.org

New Hampshire Association of Conservation Commissions

The New Hampshire Association of Conservation Commissions (NHACC), founded in 1970, is a private, non-profit association of municipal conservation commissions. Its purpose is to foster conservation and appropriate use of New Hampshire's natural resources by providing assistance to conservation commissions, facilitating communication and cooperation among commissions and helping to create a climate in which commissions can be successful.

NH Association of Conservation Commissions

54 Portsmouth Street
Concord, NH 03301
(603) 224-7867
marge@nhacc.org; www.nhacc.org

New Hampshire Coalition for Sustaining Agriculture

The New Hampshire Coalition for Sustaining Agriculture is an informal network of organizations and individuals that works to enhance the social, economic and environmental sustainability of agriculture in New Hampshire. It brings together members of the farm community and the non-farming public with agricultural and community development professionals to implement a shared vision: agriculture is a valued and vital part of New Hampshire's economy, environment and communities.

NH Coalition for Sustaining Agriculture

113 North Road
Brentwood, NH 03833-6623
(603) 679-5616
Nada.Haddad@unh.edu

University of New Hampshire Cooperative Extension

UNH Cooperative Extension (UNH CE) provides New Hampshire citizens with research-based education and information, enhancing their ability to make informed decisions. Agricultural and forestry extension agents provide

property management information and assistance to landowners, and may help landowners explore land conservation options. UNH CE maintains staff in each of New Hampshire's ten counties, as well as several specialists based at the UNH campus in Durham. Your local UNH CE office can direct you to programs that may assist you.

UNH Cooperative Extension County Offices

Belknap County Office
36 County Drive
Laconia, NH 03246-2900
(603) 527-5475
www.ceinfo.unh.edu/counties/belknap/Belkhome2.htm

Carroll County Office
75 Main St., PO Box 860
Ctr. Ossipee, NH 03814-0860
(603) 539-3331
www.ceinfo.unh.edu/counties/carroll/Carlhome2.htm

Cheshire County Office
800 Park Avenue
Keene, NH 03431-1513
(603) 352-4550
www.ceinfo.unh.edu/counties/cheshire/Cheshome2.htm#AD_Off

Coos County Office
629A Main St.
Lancaster, NH 03584-9612
(603) 788-4961
www.ceinfo.unh.edu/counties/coos/Cooshome2.htm#AD_Off

Grafton County Office
3785 DCH, Box 8
No. Haverhill, NH 03774-9708
(603) 787-6944
www.ceinfo.unh.edu/counties/grafton/Grafhome2.htm#AD_Off

Hillsborough County–Milford Office
468 Route 13 South
Milford, NH 03055
(603) 673-2510
www.ceinfo.unh.edu/counties/hillsborough/hillhome2.htm#AD_Off

Hillsborough County–Goffstown Office
329 Mast Road, Unit 3
Goffstown, NH 03045-2418
(603) 621-1478
www.ceinfo.unh.edu/counties/hillsborough/hillhome2.htm#AD_Off

Merrimack County Office
315 Daniel Webster Hwy.
Boscawen, NH 03303
(603) 225-5505 or 603-796-2151
www.ceinfo.unh.edu/counties/merrimack/merrhome2.htm#AD_Off

Rockingham County Office
113 North Road
Brentwood, NH 03833-6623
(603) 679-5616
www.ceinfo.unh.edu/counties/rockingham/rockhome2.htm#AD_Off

Strafford County Office
259 County Farm Road, Unit 5
Dover, NH 03820-6015
(603) 749-4445
www.ceinfo.unh.edu/counties/strafford/strfhome2.htm#AD_Off

Sullivan County Office
24 Main Street
Newport, NH 03773
(603) 863-9200
www.ceinfo.unh.edu/counties/sullivan/sullhome2.htm#AD_Off

UNH Cooperative Extension Community Conservation Assistance Program (CCAP)

UNH Cooperative Extension assists a limited number of New Hampshire communities and private conservation groups with land and water conservation planning projects through CCAP.

Amanda Stone, Community Conservation Coordinator
UNH Cooperative Extension
36 County Drive
Laconia, NH 03246-2900
(603) 364-5324
amanda.stone@unh.edu
www.ceinfo.unh.edu/common/documents/CCAPhome.htm

Appendix B

Bibliography for the Landowner

Deans, Karen (ed). *Conservation Options, A Landowner's Guide*. 2003 6th edition. Available from the Land Trust Alliance, 1331 H Street, NW, Suite 400, Washington, DC 20005-4734; phone (202) 638-4725; www.lta.org.

Lorraine, Annette. *Conserving the Family Farm*. The New Hampshire Coalition for Sustaining Agriculture and UNH Cooperative Extension. 2002. Available from UNH Cooperative Extension Publication Center, 131 Main Street, 16 Nesmith Hall, University of New Hampshire, Durham, NH 03824.

Small, Stephen J. *Preserving Family Lands: A Landowner's Introduction to Tax Issues and Other Considerations*. Landowner Planning Center, Boston, MA, 1998, 3rd edition. Available from the Land Trust Alliance, above.

Small, Stephen J. *Preserving Family Lands: Book II More Planning Strategies for the Future*. Landowner Planning Center, Boston, MA. 1997. Available from the Land Trust Alliance, above.

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Appendix

Glossary

Appraisal – The estimated value of property as determined by an appraiser, based on sales of comparable property or income potential.

Bargain sale – Sale of land or interest in land to a tax-exempt organization at a price less than the full fair market value.

Basis (sometimes referred to as “tax basis” or “cost basis”) – Cost of property at time of acquisition (or value when inherited) plus the cost of certain permanent improvements.

Charitable contribution (gift, donation) – A gift of money or property to an IRS-qualified charitable organization or government entity.

Charitable remainder trust – A trust that provides for a specified distribution to one or more beneficiaries, at least one of which is not a charity, for life or for a term of years, with an irrevocable remainder interest to be held for the benefit of, or paid over to, an IRS-qualified charitable organization.

Conservation easement – A legal agreement between a landowner and a non-profit land trust or governmental agency that permanently limits the uses of the land in order to protect specified conservation values.

Conservation easement holder – A non-profit organization or government agency that accepts a conservation easement and assumes the long-term legal responsibility for monitoring and enforcing its terms.

Conservation easement stewardship – Activities carried out by a conservation easement holder to ensure that the conservation easement provisions are upheld over time. Conservation easement stewardship includes monitoring easement property and enforcing easement terms.

Conservation easement stewardship fund – A dedicated fund managed to support conservation easement stewardship activities. Usually this type of fund is created and managed by an entity that holds conservation easements to ensure that adequate money will be avail-

able to take care of its easements over time.

Conservation groups – As used in the text of this publication, conservation groups are non-profit organizations and governmental agencies whose missions include land conservation. Such conservation groups include state, regional and local land trusts, as well as municipal conservation commissions, some county, state and federal agencies and national conservation organizations.

Conservation values – Special natural and cultural qualities of a property, such as wildlife habitat, scenic views, public trails, productive agriculture and forestry, unusual natural features, unusual species and other qualities that are worthy of protection.

Conveyance – The transfer of property or an interest in property from the owner to another person or entity.

Current use assessment – The monetary value of property enrolled in the Current Use Assessment Program, as determined by municipi-

pal officials using state guidelines for current use property values. Current use assessment values are usually much lower than full assessed values, resulting in a lower tax bill to the landowner.

Deed restrictions – Covenants placed within a deed that limit certain future uses of a property.

Devise – (v) to give or transmit real estate by will; (n) a gift of real estate by will.

Estate tax – A tax on the value of all assets owned at death. Estate tax is paid by the estate of the deceased person before assets are transferred to the heirs.

Executory interest – A second or “backup” interest in a conservation easement, held by a conservation group that is separate from the primary conservation easement holder.

Fair market value – The price that a willing buyer would pay a willing seller, neither being under any compulsion to buy or sell and both being fully informed about relevant facts.

Fee simple interest (fee interest) – All the legal rights in property. To own land in “fee simple” means to have complete ownership of the land, with all the usual rights associated with ownership.

Generic (model, template) easement – A standard conservation

easement form developed by a conservation group and used as a starting point when preparing new conservation easements.

In perpetuity – Forever.

Land conservation – The process (or result of) protecting undeveloped property from residential, commercial and industrial development and other uses that could damage the property’s conservation values.

Land trusts – Non-governmental, not-for-profit organizations involved in conserving land for its natural, recreational, scenic, historical and productive values. Land trusts work with landowners who are interested in protecting open space and use a variety of methods to permanently conserve land, including purchasing or accepting donations of land or conservation easements.

Life interest (life estate, life tenancy) – see Reserved life estate below

Mutual covenants – Written commitments exchanged among neighboring landowners in deeds or separate agreements.

Option to purchase – A right, for a stated period of time, to acquire a specific property at a specific price.

Public access – An opportunity and/or location for members of the public to enter a property.

Remainder interest – The interest conveyed to a charitable or governmental organization by a donor who conveys property to the organization, but retains the right (for himself or other person(s) to live on or use the property for his lifetime or for a stated number of years. (The interest that is being retained by the donor is the “reserved life estate.”)

Reserved life estate – A right retained as part of a transfer of land whereby the owner or other individuals retain possession of the property during their lifetime. (See also Remainder interest, above.)

Right of first refusal – Agreement by an owner to offer a property to a specified individual or organization, usually at the same price and terms as those in a future bona fide offer to purchase received by the owner.

Trail easement – An interest in land conveyed by a landowner to a conservation or trail group for the purpose of allowing the group to construct, maintain and/or oversee public use of a trail.

Transaction costs – Expenses arising from surveys, property appraisals, legal fees and other activities involved in transferring land or interests in land for conservation.

Undivided interest – A fraction of the fee interest in an entire property, where two or more owners share ownership of it.

NOTES

About the Author

Brenda Lind is a land protection specialist at the Society for the Protection of New Hampshire Forests. She has participated in land conservation in New Hampshire since 1987, including work for the Trust for NH Lands, Piscataquog Watershed Association, Monadnock Conservancy, the New Boston Conservation Commission, and the Center for Land Conservation Assistance. She has authored several publications on land conservation topics for the Land Trust Alliance, including *The Conservation Easement Stewardship Guide* (1991); *Working Forest Conservation Easements, a process guide for land trusts, landowners, and public agencies* (2001); *Working Ranchland Conservation Easements, Results for the Working Ranchland Conservation Easement Learning Circle* (2002); and *Protecting Surface Water Quality with Conservation Easements* (2004). She lives in New Boston, NH.