

CONSERVATION OPTIONS

A Guide for Maine Landowners



Maine Coast Heritage Trust

in cooperation with



LAND TRUST ALLIANCE

ACKNOWLEDGMENTS



*Dedicated to those who have made
a gift to the future
by protecting their land in perpetuity*

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Design: Ethos Marketing and Design

Printing: Penmor Lithographers

This is the fifth edition of a guidebook first published as *The Landowners Options* in 1977, which was written by Janet Milne and co-sponsored by the State's Critical Areas Program, the Maine Chapter of The Nature Conservancy (TNC), and Maine Coast Heritage Trust (MCHT). This volume draws on the national version of *Conservation Options: A Landowner's Guide*, produced by the Land Trust Alliance in 1993. Materials also were adapted from *Preserving Family Lands on Deer Isle*, a handbook by Island Heritage Trust written by Leslie Jones and edited by Stephanie Mackay Levy. We acknowledge the contributions of Stephen J. Small, Esq., as well, whose *Preserving Family Lands* series is a valuable resource.

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First Printing 1994

Second Printing 2003

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Fifth Edition (previously appeared as *The Landowner's Options*)

Library of Congress Control Number: 2002116993

ISBN 0-9640820-1-2

While this publication seeks to provide accurate, authoritative information, Maine Coast Heritage Trust does not render legal or financial advice. Tax examples in this book are simplified sample calculations that should not be relied upon to calculate your benefits. Please consult a tax advisor to determine potential outcomes for your particular situation. Tax information in this guide is current as of February 2003.



COVER: 30% Post-Consumer Waste

TEXT: 50% Total Recovered Fiber, 20% Post-Consumer Waste

cover photo: Chris Hamilton

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PREFACE



“The earth is common ground and... gradually the idea is taking form that the land must be held in safekeeping, that one generation is to some extent responsible to the next...”

E.B. White, 1942

There is growing support in Maine for a land ethic that recognizes the worth of our “common ground.” Maine is blessed with an extraordinary landscape whose value cannot be measured solely in economic terms. The state’s unique quality of life depends on the wealth of benefits that natural lands provide: wildlife habitat; scenic beauty; outdoor recreation; and community enrichment.

With more than 90 percent of its land in private ownership, the fate of Maine’s “common ground” rests with landowners who voluntarily safeguard valuable natural lands for future generations.

Residents and visitors to the state benefit from a venerable legacy of land conservation initiatives. Generations ago, visionary and persistent individuals worked to create Baxter State Park and Acadia National Park. Many landowners since then have taken action as well: over the past 35 years, individual, family and corporate landowners—working with public and private conservation groups—have permanently conserved more than 1.5 million acres in Maine.

These landowners choose conservation for a variety of reasons. Some want to share the beautiful places they have enjoyed. Some fear that estate taxes may prevent them from keeping land in their family. Some seek relief from rising property taxes. All of them share an abiding concern and love for the land.

This book explains how to protect your land in ways that can make good financial sense. Many conservation methods offer tax advantages, helping to reduce estate, income and property taxes.

As a landowner, you are faced with a rare opportunity to decide the fate of a cherished place. This choice carries with it both privilege and responsibility. What becomes of Maine, in the years ahead, depends on the choices that landowners make today.

GETTING STARTED

As you look to the future, questions may arise concerning the fate of your property. What will happen to the land? Will your heirs be able to maintain it? Will it remain undeveloped? Will others be able to share in its beauty?

One answer should become clear: if you care about your land and want to pass it on to the next generation, you need to protect it.

This book will help you determine which method or combination of conservation techniques is best suited to your situation. Begin by clarifying the following:

- your land conservation goals;
- your family's needs and wishes;
- your property's special features; and
- your financial situation.

Which conservation method you choose will depend not only on your vision for the land but on its notable features. If your land provides rare habitat, for example, you may want to consider a highly protective conservation plan; whereas on a working farm, forest or homestead, you may want to encourage traditional uses. There are numerous publications and governmental studies that can help you to identify your land's specific natural and cultural values: consult with a conservation organization for help locating appropriate resources (Appendix E contains a list of relevant organizations and agencies).



Carefully reviewing your family's desires and circumstances will help you to select the most appropriate means of conservation.

A conservation strategy tailored to the landowners' needs and their property's special features may draw on one or more techniques from the following chapters. For example, a conservation easement can be used to complement a bargain sale (at a price below fair market value) or a land donation. Combining techniques provides greater flexibility but may make transactions more complex, requiring the skills of experienced advisors. Depending on your particular situation, you may need the services of an appraiser, surveyor, land use planner or accountant. Appendix A provides advice on working with these professionals.

As you plan for your property's future, you will want to consult an attorney and a nonprofit land trust (for a current listing, visit www.mltn.org or call 207-729-7366). A local land trust or statewide conservation organization such as Maine Coast Heritage Trust can help you review options and locate the resources needed to protect your land.

As you read through the following chapters, you will notice that some words appear in italics. These terms, some of which may not be familiar, are defined in a Glossary (Appendix G).

SELLING AN EASEMENT

The conservation easement is a legal document that guides future land uses as ownership changes, protecting a property's key features by limiting the type and scope of development that can take place. Easement lands remain in private hands and on local tax rolls while providing such *public benefits* as open space, scenic vistas and wildlife habitat. Easements allow landowners to help preserve important aspects of their community and contribute to the region's quality of life. Particularly in areas facing rapid development, easements can complement local zoning by ensuring appropriate growth and protection of sensitive areas.

HOW EASEMENTS WORK

When you own land, you hold many rights associated with it (such as the right to harvest timber, build structures, extract minerals or farm—subject to zoning and other laws). By placing an easement on your land, you voluntarily limit or relinquish some of those rights. The prospective *easement holder* (generally a nonprofit *land trust* or government agency) works with you to tailor an easement that protects the land's natural and cultural values and meets your land use goals.

Most easements limit the number and location of future structures and the types of land uses that can take place. Those that allow for future building often dictate that structures be set back from shorelines and be limited in size and visibility. The restrictive *covenants* in an easement protect the land's important natural resources. Sensitive wildlife habitat or an old growth forest, for example, might merit a *forever wild* easement that specifies no future alteration of the land's natural

Potential Benefits that Easements Offer Landowners

- Easements provide permanent protection, applying to all future landowners. A land trust or government agency upholds the restrictions over time.
- Landowners retain *title* to their property and may continue to live on it, sell it, or pass it on to heirs, knowing that it always will remain protected.
- Easements can aid in estate planning, reducing *estate taxes* that could force the sale of family lands. Donated easements also can provide a charitable income tax deduction.
- Easements can reduce property tax by eliminating unwanted but highly valuable development potential.
- Easements can minimize family conflicts when lands pass to the next generation.



Conservation easements enable landowners to permanently protect their cherished properties while retaining ownership.

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resources. Farmland or woodlots might have less restrictive covenants that prevent subdivision, limit construction and specify that agriculture or forestry be done in a sustainable manner. Some easements ensure traditional public uses (e.g., hiking, clamming or berry-picking), depending on landowner preference.

If you choose to allow for some development, you can either place an easement on your entire property and limit development to a *building envelope* (or homestead area), or you can simply place the easement on the undeveloped portions—leaving out that envelope around existing or planned dwellings. While the latter approach is simpler, it is not always advisable. To effectively protect the conservation values of your entire property, it may be necessary to place restrictions on the built portions (and clearly define and mark the parameters of your building envelope).

The easement holder assumes permanent responsibility for enforcing the easement's terms. One local land trust director, Lucy McCarthy of Vinalhaven, describes the holder's role as one of "a partner and trusted advisor, helping landowners protect a valued resource." This *stewardship* involves an annual inspection of the property and



Long-term care for easement properties involve a partnership between the landowner and volunteers or staff from the land trust holding the easement.

ongoing contact with the landowners. The easement holder is available to discuss any major planned changes and to help answer questions about resource protection. If an easement is violated, the holder takes action to have the violation corrected (including legal measures although these are rarely required). Even routine stewardship can be expensive. Therefore, the land trust must raise funds to support stewardship, and generally requests a stewardship contribution from the easement donor. In McCarthy's words, it's important "for the community to see that we have sufficient resources to stand by our protected properties, upholding the landowner's wishes in perpetuity. It sends a strong signal to other landowners that they can make gifts to us in trust."

While the easement is a popular and versatile conservation tool, it may not be the best choice for all landowners. Some lands lack sufficient conservation significance to merit protection with an easement. Other lands, such as those that receive extensive public use, might best be owned and managed by a public agency or private land trust.

TAX BENEFITS OF DONATING EASEMENTS

Placing an easement on your property typically reduces its resale value, but that can be offset partially by tax benefits. Most landowners donate their conservation easement to a nonprofit land trust or government agency. The donation may qualify as a tax-deductible gift if the easement meets requirements of the federal tax code and provides significant public benefits. The potential tax advantages fall into three categories: income, estate and property (see chapters 6 and 7 for further tax discussions).

Income Tax

An *appraisal* that compares the market value of land with and without the easement reveals the value of an easement donation. Gifts of property worth more than \$5,000, including easements, must be substantiated by a qualified appraisal to be eligible for a tax deduction.

Assume, for example, that owners of a coastal property worth \$500,000 unrestricted place an easement on their land that precludes further development. A *qualified appraiser* might then determine that the land's *fair market value*, without its development potential, is \$200,000. The *charitable gift* of an easement then would be valued at \$300,000. (Chapter 6 describes limits on how much a taxpayer can deduct.)

Nearly all conservation easements reduce property values, but no rule of thumb governs what the diminution in value will be. Reductions range from less than 10 percent to more than 90 percent of a property's fair market value. In general, the reduction tends to be greatest where a highly restrictive easement is placed on prime development land in an area experiencing rapid growth.

Donating a Conservation Easement

Forty-five years ago, Frederick and Florence Call went in search of the perfect place to farm. After driving roughly 30,000 miles, they settled on Bradley Pond Farm in Topsham, a 163-acre expanse of meadows and forests along the Cathance River, which flows into Merrymeeting Bay.

Over time, the Calls became concerned that high property taxes would force the sale of their treasured farm. After reviewing their options with Maine Coast Heritage Trust and the local Brunswick-Topsham Land Trust (BTLT), they decided that

donating an easement would allow them to conserve the land while continuing to farm it. "You have to make a choice in life," says Florence Call, "either for the big bucks or for something you believe in."

The Calls donated a conservation easement to BTLT that permits additional buildings only within a 5-acre farmstead. The remaining land will stay undeveloped, available for farming and timber management. While easements do not necessarily guarantee public access, the Calls wanted the public

to enjoy their land—a tradition begun years ago when hundreds of area Girl Scouts camped at the farm. BTLT created a trail system for hiking and skiing that it manages as the long-term easement holder.

The Calls recently sold their property to new owners who share their commitment to sustain its beauty and ecological health. Having an easement in place helps to reassure the Calls that the land they have cared for much of their lives will remain protected in perpetuity. "You may own the land," Florence Call says, "but you don't really. You're stewards of it. I really believe you ought to leave it in better shape than you found it."



By donating an easement, the previous owners of Bradley Pond Farm ensured that their land always will remain available for farming and timber management.

Estate Tax

High estate taxes can prevent a family from passing property on to the next generation. When individuals leave land to their family, heirs may find that the property has appreciated so much since its purchase that the estate or family must sell the land to cover estate tax payments.

The federal estate tax—levied at rates between 45 and 50 percent—is based on land’s fair market value. If your land has significant development potential that you never intend to use, removing that value from the land before it passes to family could help minimize the tax burden for your heirs. Reducing estate taxes



Sound conservation planning can reduce taxes, helping to keep land in family ownership over the generations.

by restricting future development can be particularly beneficial for landowners with sizeable estates and substantial real estate holdings because federal law currently exempts the first \$1 million worth of assets per individual (and this figure is slated to rise gradually to \$3.5 million by 2009).

Property Tax

Placing an easement on your land may result in property tax savings. The property tax *assessment* must be based on the land’s fair market value and an easement will almost always reduce this value. Taxes should reflect the land’s reduced market value under easement. You should inform the town when you place an easement, and you may wish to provide evidence of reduced value. Alternately, you can apply for tax classification in the State’s farm, *open space* or tree growth tax programs which are designed to provide a reduced standardized property tax for undeveloped lands (see chapter 7).

DONATING AN EASEMENT BY WILL

A conservation easement can be granted in your will (or even at the direction of your heirs, if they consent). With this option, you won’t receive income or property tax benefits, but the estate tax benefits can be even more significant.

If you intend to donate an easement by will, you need—during your lifetime—to draft the easement terms in collaboration with the intended holder. This advanced planning ensures that the easement meets your conservation goals and the holder’s objectives. Since monitoring easements entails significant costs, the proposed holder may encourage you to make a monetary bequest to help cover the property’s long-term stewardship.

Because an easement gift can take time to plan, you may want to amend your will right away, stating your specific intentions for the land and instructing your executor to complete the easement in the event of your death. Your will can be amended later if family or financial circumstances

Selling a Conservation Easement

For eight generations, the Bell family has lived and worked on Tide Mill Farm, an active saltwater farm of 1,500 acres in Whiting. The Bells wanted to keep working their land and have their children do the same. Like so many Maine families, though, they were land-rich and cash-poor. "Allowing for traditional use of the land and for the family heritage to remain intact made it hard to survive financially," explains Terry Bell. "But we realized that to hand our children the legacy of this place as we know it has a real value beyond any amount of money."

As much as they wanted to protect their long-time homestead, the Bells could

not afford to donate a conservation easement. After meeting with Quoddy Regional Land Trust (QRLT) and Maine Coast Heritage Trust, they realized there might be an opportunity for selling an easement. The land trusts proposed the project to Land for Maine's Future (LMF), a state program

established in 1987 and funded by two public land acquisition bonds totaling \$85 million.

"Competition for LMF funding was fierce," recalls QRLT executive director Alan Brooks. "Our faith in Tide Mill Farm's superlative scenic, ecological and

recreational values was borne out when the project scored near the top of LMF's statewide rankings."

The LMF Board voted to purchase a conservation easement on Tide Mill Farm that protects its scenic shorefront vistas, diverse wildlife habitat and traditional public access. The fields, woodlands and tidal flats offer critical habitat for black bear, moose, deer, shore-



Quoddy Times

Through the State purchase of an easement on Tide Mill Farm, community members can now enjoy activities there like hiking, picnicking and educational programs.

birds, seals and two nesting pairs of American bald eagles. Under the terms of the easement, visitors can hike, picnic, ski and hunt on portions of the property that do not intrude on the farmstead where the Bell family continues to maintain their working farm and woodlot.

change, or if you decide to grant the easement during your lifetime. In the interim, though, you will have protected the land and taken action to lower estate taxes.

SELLING AN EASEMENT

While most easements are granted as gifts, government agencies and nonprofit organizations occasionally do purchase conservation easements. Acquisition funds are limited, though, so most of these purchases are below fair market value (see the *bargain sale* section in chapter 4). Less commonly, an easement is exchanged for a *charitable gift annuity*, through which a land trust makes regular, fixed payments to a landowner over time. Selling a conservation easement at full value rules out a charitable deduction and usually triggers a *capital gains* tax. It can also require more time to complete the transaction, given the fundraising needs of the purchasing organization or agency.

DONATING LAND

By donating land for conservation, you can help to ensure that future generations will enjoy a place you have cherished. It's especially appropriate for a conservation organization to own land with recreational potential or fragile habitat.

Donating land may be attractive to landowners who:

- treasure their property and want to see it preserved for the common good;
- own property they no longer wish to use;
- own highly appreciated property, the sale of which would prompt a high capital gains tax;
- own substantial real estate holdings and wish to reduce property and estate tax burdens;
- recognize that greater expertise is needed to protect and manage the land; or
- have no heirs willing or able to protect the land's conservation values.

Outright donations of conservation land offer several advantages. They are simple transactions that provide maximum income and estate tax benefits (while avoiding capital gains tax), and they transfer ownership and management responsibilities to a non-profit organization or government entity. Most important, they ensure the land's permanent protection.

Property not suited to long-term conservation ownership may still be donated to a land trust. If the donor is willing, the organization can then resell the property (protected by an easement, if warranted) and use the proceeds to benefit its conservation programs (see "Donating a Property to Generate Conservation Funds").

Land donations for permanent conservation ownership can accomplish many different objectives but must always offer a genuine public benefit. Not all proposed donations meet this test. The value of property gifts over \$5,000 must be substantiated by a qualified appraisal to be eligible for a charitable gift deduction on income taxes.

TAX IMPLICATIONS

By donating land, you can make a generous gift without necessarily making a large financial sacrifice. If your land has appreciated greatly since you acquired it, you could incur a high capital gains tax. Your profit might be further reduced by a realtor's commission.



Donating land is an excellent option for landowners who want the public to enjoy the scenic and ecological qualities of their land.

CHRIS HAMILTON

Donating Land

Like many beach towns, Ogunquit has changed markedly over the last half-century—becoming part of a bustling, sprawling commercial zone that stretches from Kittery to Portland. Joseph Littlefield, a long-time Ogunquit resident, recalls that village life today is “nothing like it was. When I was a kid, I’d go down to the beach every day, dig clams from the river, and steam them for dinner. You had the beach to yourself back then.”

Littlefield inherited a prominent farm in Ogunquit village that his uncle, Roby Littlefield, had farmed for more than 60 years. The 22-acre property, Beach Plum Farm, offers the last remaining ocean vistas from Route One in town. “My uncle wanted to keep the land as it is,” Joseph says. A well-respected civic leader, Roby



A generous land donation secured the future of Ogunquit’s Beach Plum Farm, a rare green oasis in the midst of spreading development.

Littlefield had served as a state legislator and publisher of the town’s newspaper. He also had led a community effort to purchase shorefront land in 1923, creating Ogunquit Public Beach.

When Roby Littlefield passed on in 1988, just shy of his hundredth birthday, his nephew decided to preserve Beach Plum Farm as a treasured commu-

nity resource. He donated the property to Great Works Regional Land Trust (GWRLT). The farm offers a quiet haven for people and wildlife: a local farmer still works its fields and many area families enjoy the property’s community gardens. “By preserving an important piece of the town’s past,” GWRLT’s Tin Smith says, “the Littlefields made a meaningful gift to the community’s future.”

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Donating land to a charitable organization or government agency entitles you to claim an income tax deduction equal to the land’s current fair market value (within tax code limitations, as noted in chapter 6). A land donation eliminates your property tax burden and removes the property value from your estate, reducing the risk that high estate taxes could force a sale by your heirs.

Before making their gift, donors should discuss with the recipient organization how their land will be managed. Most land trusts will do their best to accommodate the donor’s wishes (while retaining the right to make management decisions as circumstances change). To provide an extra guarantee that the land will be cared for according to your wishes, you can donate a conservation easement on the property to one organization, then donate the land to another (both gifts are considered deductible).

Before accepting any donated easement or property, a land trust must consider the long-term ownership and management costs and may ask for a stewardship contribution. The property may have fields to be mown, trails to be built, or other ongoing maintenance and insurance burdens. Many tax-exempt conservation organizations choose to make annual payments to the town in lieu of taxes, which adds to management costs.

DONATING A REMAINDER INTEREST

Donations of farms, residences or conserved lands can be structured so as to allow you and other named persons (called *life tenants*) to continue enjoying the land during your and their

lifetimes. Under such an arrangement (called a gift of a *remainder interest* subject to a reserved life estate), you assume full responsibility for taxes and maintenance during your life. Then when the life tenants die or release their life interests, the land trust assumes full title to the property. This technique is appropriate both for land that you want to see protected and for farms and residences without conservation value (that could be sold to fund land protection work).

A gift of a remainder interest in a farm, residence or conservation-restricted property generally is eligible for the charitable gift income tax deduction. This deduction is determined by subtracting the value of the landowner's reserved life interest from the fair market value of the donated property, based on Internal Revenue Service (IRS) actuarial tables. The more life tenants there are, and the younger they are, the lower the value of the remainder interest donated (and, hence, the smaller the deduction).

If you plan to donate a remainder interest for conservation purposes, you can assure the land's protection by donating a conservation easement on the land to one organization before donating the remainder interest to a second. An alternative would be to make the gift subject to conservation restrictions that require the remainder *donee* to transfer or impose a conservation easement when

Donating a Remainder Interest

Joy MacDonald and Bob Strain wanted to protect the wild character of their 16-acre seasonal residence on Swans Island. Joy purchased the property more than 50 years ago from a man who made it clear that he was selling it only because he trusted her to take care of it. "I've always felt very lucky to be here," she reflects, "and wanted to ensure that it wasn't destroyed and that people could walk across the land year-round to enjoy sunset views by the water."

MacDonald and Strain decided to combine two conservation techniques, giving Maine Coast Heritage Trust both a conservation easement and a gift of a remainder interest in their

personal residence. The easement precludes further development (beyond the small existing cottage) and guarantees continued traditional use of the beach and shorefront. The reserved life estate

enables MacDonald and Strain to enjoy the property throughout their lives while providing for MCHT

to assume *fee* title thereafter. The easement will be transferred to Acadia National Park before MCHT takes fee title, and the Trust can decide then whether to convert the property into a preserve or sell it to fund other conservation work. Either way, the land will remain protected.

Combining techniques enabled MacDonald and Strain to qualify for two charitable gift deductions (one for the easement gift and one based on the present value of full but deferred ownership under the restricted remainder interest) in two separate tax years. More valuable

still is the assurance that their cherished property will be well cared for through the ages: "this will be our legacy," Bob Strain observes. "People will come by and it will be unchanged."



CLONIA UEBRICH

Through the gift of a remainder interest, landowners can enjoy their property while knowing that their land will go to a land conservation organization and support its work.

Donating Land by Will

For half a century, Albert H. Chatfield, Jr. and his wife Marion lived and worked at Aldermere Farm, a 136-acre collage of fields and woods bordering Penobscot Bay. In 1953, the Chatfields acquired several Belted Galloway cattle from Scotland, establishing what is now the oldest continuously operated "Beltie" herd in the United States. Their farm, with its open vistas and handsome cows, soon became a scenic landmark in midcoast Maine. Nano Chatfield describes her grandfather Albert as "a man ahead of his time, a real visionary who acted as a landscape architect."

Albert and Marion Chatfield were among the first landowners in Maine to grant conservation easements that prevented future subdivision or development of their property. Maine Coast Heritage Trust helped to facilitate three easements on their farm in the 1970s and 1980s, working with the easement

holder—the Maine Department of Inland Fisheries and Wildlife. Through that process, Mr. Chatfield gained a better understanding of the Trust's mission and work.

Following Mrs. Chatfield's demise in 1993, Mr. Chatfield asked MCHT to consider taking ownership of the property upon his death. He committed to provide a generous endowment to help the Trust manage the farm over time. After careful deliberation, MCHT indicated its willingness to accept this generous gift and great responsibility.

On June 14, 1999, at the age of 99, Mr. Chatfield passed away at his Rockport home. In his will he devised Aldermere Farm to MCHT with the existing conservation easements and additional restrictions for its future

use. The Trust now owns and operates Aldermere Farm, maintaining the Chatfields' legacy of careful stewardship.



Using three consecutive conservation easements and a donation, Albert and Marion Chatfield protected their spectacular saltwater farm in Rockport.

©SARA GRAY

they take title (called a *conservation remainder*). Either way, the income tax deduction will be roughly equivalent, depending on the restrictions.

DONATING LAND BY WILL

Some landowners prefer to continue holding land during their lifetimes, transferring it to a land trust or government agency by will (commonly referred to as a *bequest* but more correctly termed a *devise* or a donation by devise).

Before writing a devise into your will, make sure the chosen recipient is willing and able to receive the gift. Because organizational priorities and objectives can change, it's best to name an alternate recipient qualified to accept charitable gifts (whose agreement should also be secured) in case the primary organization cannot accept the gift at your death. Your will can also specify conditions that would prompt the land's transfer to another qualified charity should the primary recipient fail to use the land as specified.

Inquire about the organization's monetary needs for owning and maintaining the property: in addition to the gift of title, you may want to consider a cash contribution to help assure the property's long-term stewardship.

With a donation by will, there are no income tax benefits and you are responsible for property taxes during your lifetime, but the land will not be taxed as part of your estate.

DONATING A PROPERTY TO GENERATE CONSERVATION FUNDS

You can help generate needed funds for conservation work by donating a property that a land trust or other qualified charitable organization can resell. If the property has conservation merit, the organization can place an easement on it before reselling it. This approach protects the land, keeping it in private ownership and on tax rolls, while allowing the land trust to use proceeds from the sale for further conservation. Before the deed is transferred, clearly establish whether the organization intends to protect and resell the land or retain it. Tax regulations require that you deed the land unrestricted, however, if you are to enjoy income tax benefits for the land's full unrestricted value.

Land must have significant scenic, ecological or cultural value to be appropriate for conservation. Properties that do not meet this criteria—for example, a commercial building, a residence without significant open space, or a building lot—still can be donated to a land trust that would then sell or trade the property to help fund its conservation work. The donor may take a charitable deduction for the property's full fair market value (as determined by a qualified appraisal).

DONATING UNDIVIDED INTERESTS

To take full advantage of the charitable deduction from a large gift, you may choose to divide a single donation into several smaller ones—donating a series of fractional portions (called *undivided interests*) over several years. This method permits landowners to tailor the size and number of charitable deductions to amounts that they can use in succeeding years. Each subsequent donation, though, requires an updated appraisal, and the calculations involved can become complex due to tax code limits (see chapter 6). In addition, fractional interests are often worth less than their proportional share since they are less marketable by themselves.

The donee organization, being a co-owner with others, cannot protect the land until owning it in entirety. Undivided interests can become a liability for the organization if the land transfers unexpectedly and the donee must share title with potentially incompatible owners or face partition. Therefore, the organization may ask for an enforceable pledge agreement that commits you to

IMPORTANT NOTE

Gifts of conservation easements, gifts of lands, charitable gift annuities, charitable remainder trusts and many other techniques described in this book are irrevocable. Please consult with a financial advisor and an attorney to make sure that you are choosing the right course.

It may be helpful to build consensus among family members early in your conservation planning process (see Appendix B for further guidance). Within Maine, whenever a landowner donates land or sells it to a charity for a bargain price, everyone who owns a deeded interest in the land (including spouses, even if they are not named on the deed) must sign a deed to release their rights.

donate any remaining undivided interest by a specific date or at death. Until the donee receives full ownership, you are expected to pay property taxes and keep the property maintained and insured. An alternative to giving undivided interests is to divide the land itself and make sequential gifts of full ownership in portions of the land. This approach has drawbacks but can be worthwhile with large properties, parts of which could stand alone as a preserve.

DONATIONS THAT ESTABLISH A LIFE INCOME

Some charitable donations provide donors with regular income payments for several years or for life, as well as offering a one-time income tax deduction. These “life income gifts” are ideal for those who donate highly appreciated property (such as land), and who want to supplement their income. Among various life income gifts, two work particularly well for donations of residential or commercial property. The charitable gift annuity and *charitable remainder trust* are not land protection tools in themselves, but are included here because they provide income and tax benefits for the donor and a financial boost to the receiving organization.

Example of a Charitable Gift Annuity

A land trust supporter in her mid-seventies wants to help a community campaign to buy a meadow where local residents enjoy walking and picnicking. She would like to donate a small rental property, worth \$76,000, but she still needs the income it provides. The property pays an annual net return of \$2,800 (a 3.7 percent return on investment).

The donor and land trust decide to use a charitable gift annuity. The supporter donates her property to the land trust; in return, the trust pays her \$5,320 per year for life and sells the property to help fund that commitment. The donor pays no capital gains tax when the property sells. In addition, the donor receives a tax



Charitable gift annuities can increase retirement income while making a significant contribution to land conservation work.

deduction equal to 59.2 percent of the property’s value (or \$45,450).

Gift	\$76,000
Federal Income Tax Savings (approximate)	\$12,559
Annual Income (89% increase)	\$5,320

This technique allows the donor to boost her annual income and receive more than \$12,000 in annual tax savings (which if not fully used can be carried forward for up to five years). With the rental property proceeds, the land trust is better able to acquire a valued community resource.

(Adapted from Vermont Land Trust’s *Planned Giving Workbook*)

Charitable Gift Annuity

A charitable gift annuity is part gift and part *annuity* contract. It is the simplest life income gift available. Using a short contract, the donor agrees to transfer property to a nonprofit organization, and the charity agrees to make regular annuity payments to the donor or a designated *beneficiary* for life. The payments are fixed over the life of the annuity, usually ranging from 6.5 to 8.5 percent of the property's value. Gift annuities can be funded with an asset worth \$5,000 or more.

Generally, the annuity is funded by selling the donated land (after placing conservation restrictions on it, if warranted). Land trusts can acquire important conservation land in this manner: the annuity becomes a form of installment purchase with the donor entitled to a charitable income tax deduction (based on the donated land's value less the expected value of the annuity payments, determined from IRS actuarial tables). The capital gains tax is lower than in a fair market value sale and can be spread over the term of the donor's actuarial life expectancy.

You can donate a conservation easement to one land trust while granting the land itself to a second organization (in return for a charitable gift annuity). Or you can grant unrestricted land to an organization that will set up a gift annuity and place the land under easement before selling it. In either case, the organization may sell the easement-protected property to generate the income needed for annuity payments. Any surplus proceeds, after the annuity obligation expires, support the organization's conservation work.

Charitable Remainder Trust

The charitable remainder trust (CRT), while not in itself a land protection tool, can be combined with a conservation easement to preserve land and provide lifetime financial benefits for the donor. The CRT is most advantageous for those who hold highly appreciated property that they no longer wish to own. It allows the donor to convert a low-yielding asset into an income-generating asset while benefiting a charity (such as a land trust) and avoiding a capital gains tax on the sale. The landowner establishes a CRT and then gives her property to it. The CRT then sells the property and invests the proceeds to fund guaranteed annual income payments for a set period of years or for the lifetime of the landowner and named beneficiaries. At the end of that term, the Trust pays out the remaining invested funds to the charity.

With a CRT, the donor/landowner gets both guaranteed income and a current income tax deduction for the eventual gift to the charity (based on the asset's value less the expected value of annual income payments). Net income for the landowner and any named beneficiaries may actually be greater than from a private sale since the capital gains tax is avoided. Unlike the charitable gift annuity which is limited to two beneficiaries, the CRT permits any number of beneficiaries (although greater numbers of beneficiaries result in a lower charitable deduction).

CRTs can provide important financial support for nonprofit organizations, enhancing their work beyond the beneficiaries' lifetimes. They can also be used in conjunction with conservation easements if the easement is completed before the property is given to the CRT (which is not permitted to donate an easement or land because it would lower payments to beneficiaries). If a land trust would like to own the property as a preserve but cannot pay its full value, the landowner can donate a partial interest in the property to the land trust prior to establishing the CRT, and then the CRT can offer the remaining partial interest for sale. The land trust is the most likely buyer,

but it is critical that the sale not be arranged before the CRT is set up. Proceeds from the sale of the remaining partial interest will fund the CRT, and the land trust can own the land for a bargain price.

The initial gift for a CRT must be quite large (more than \$50,000) due to administrative costs. Most trusts are administered by a financial institution, although they may be managed by an individual (even the donor). The advice of a tax attorney or financial planner is essential when considering these kinds of gifts, given their complexity.

CHAPTER 4

SELLING LAND

Maine land trusts and government agencies have limited funds for land purchases, but occasionally they acquire properties for long-term conservation. Several techniques help them to stretch conservation dollars while providing some compensation for landowners.

FAIR MARKET VALUE SALE

Selling land at fair market value to a conservation organization may seem to landowners like an ideal solution, but nonprofit groups rarely can afford such acquisitions. Purchases at fair market value are generally reserved for exceptional parcels that face an imminent threat of inappropriate development.

Many landowners come to realize that a sale at fair market value may not even be desirable. Capital gains taxes and selling costs (such as the realtor's commission) substantially reduce profits, particularly for landowners in higher tax brackets or for those selling highly appreciated property. Bargain sales typically net less money but can minimize taxes and secure the land's future.

Offering a Bargain Sale

The Ernst Martin family spent three decades enjoying the wild beauty of their land along Lubec's rugged coast. During summer months, they camped on the undeveloped 154-acre expanse of dense woods and heath. "From the outset, I wanted to keep it as wild as it could be," the late Ernst Martin once observed. "And I hope that others who come along will do just the same thing."

Martin approached Maine Coast Heritage Trust to see if it would purchase his land, but the Trust could not pay the market rate. A bargain sale provided Martin and MCHT with a win-win solution. Martin offered the land to the Trust at a price it could afford—less than half the appraised value. He, in turn, realized some financial gain, appreciable tax benefits, and the satisfaction of knowing that his half-mile of bold shorefront will remain open for people to enjoy.

"The land is now in good hands," Martin noted at the time of the sale. "I myself am not going to last forever, and there's a lot you can't take with you. I could have sold it to others, but I wouldn't have known what had happened to it then. The way the world is moving, I wanted the assurance that it would stay wild."



CAROLINE PRYOR

By offering his property to Maine Coast Heritage Trust at a rate well below the market value, Ernst Martin ensured that his shorefront lands would be preserved for future generations to enjoy.

How a Bargain Sale Affects Federal Income Tax



CHRIS HAMILTON

Bargain sales, such as the one that protected this island, involve complex tax issues that may benefit from the guidance of a skilled accountant.

The tax law treats a bargain sale as being part taxable sale and part charitable donation. The sale is subject to capital gains tax while the charitable donation results in an income tax deduction.

Suppose a couple purchased a farm in 1950 for \$20,000 (the basis). By 2003, the farm's fair market value had increased to \$100,000. If they decide to sell their farm to a land trust for a price of \$30,000, they can count as a charitable donation the difference between the property's fair market value and the sale price (\$100,000 - \$30,000, or \$70,000).

The capital gain portion is more complicated. Whereas in a fair market value sale the capital gain is the sale price minus the basis, in a bargain sale the capital gain is the sale price minus a "sale portion" of the basis, determined as follows:

$$\frac{\text{sale price}}{\text{value of land}} = \frac{\text{sale portion of basis}}{\text{basis}}$$

OR

$$(\text{sale price} / \text{value}) \times \text{basis} = \text{sale portion of basis}$$

In this case,

$$(\$30,000 / \$100,000) \times \$20,000 = \$6,000$$

The sale portion of the basis, \$6,000, is subtracted from the \$30,000 sale price to yield a capital gain of \$24,000.

As a result of the bargain sale, the landowners will receive a deduction for a charitable donation of \$70,000 and will owe capital gains tax on \$24,000.

BARGAIN SALE

A bargain sale, where property is conveyed at less than its fair market value, increases the chance that a conservation organization or government agency can purchase it. The landowner and purchasing organization negotiate a mutually agreeable price. While a bargain sale may produce a smaller financial return than a sale at fair market value, the loss can be somewhat offset by tax savings. The difference between the land's appraised market value and its sale price is considered a tax-deductible charitable donation. For any gift of property over \$5,000, the gift's value must be substantiated by a qualified appraisal to receive a tax deduction.

INSTALLMENT SALE

In an installment sale, the seller agrees to accept a series of payments over time rather than in one lump sum. Installment sales benefit landowners by spreading income and taxable gains over several years, although special income tax rules apply. Installment sales benefit the purchasing organization by providing additional time to raise the needed funds. A less complicated installment sale can be done by dividing the land and selling parcels in stages until the entire property is transferred. As with gifts of undivided interests (see page 11), the land trust may want an option agreement to confirm that it can acquire the whole parcel.

OPTION TO PURCHASE

If a conservation organization does not have funds for an immediate purchase, a landowner may choose to give or sell an option to buy the property. Under an option, both parties agree on a sale price and the buyers are given a specified amount of time in which to determine whether or not to exercise the option.

The land cannot be sold to other buyers during the option period, giving the conservation group or agency time to raise the necessary purchase funds.

Combining Conservation Techniques

At the heart of Cobscook Bay lies Race Point, a rugged 100-acre peninsula that affords critical habitat for seabirds, particularly black duck, teal and goldeneyes. Ed Hawes and Becky Koulouris, who have spent many summers on the point, wanted to protect the peninsula and enjoy use of their cabins, while generating some financial return to provide for retirement.

"This land has been used by wildlife for thousands of years, and by farmers and foresters for centuries," says Hawes.

"We wanted to make sure these historic uses would continue forever and the land would never be developed."

Working with staff of The Nature Conservancy, Hawes and Koulouris crafted an unusual plan for conserving their property. They retained ownership of 48 acres, including the cabin site and about half the peninsula, donating an easement that retired future development rights to the Quoddy Regional Land Trust. The outer 53 acres, which includes more than 8,000 shorefront feet,



By combining conservation techniques, owners of a Cobscook Bay peninsula were able to help create a permanent wildlife preserve while continuing to enjoy use of their cherished seasonal retreat.

were transferred at a bargain sale price to the Maine Department of Inland Fisheries & Wildlife (IF&W).

Funding for the purchase came through a federal grant awarded to IF&W under the North American Wetlands Conservation Act. Such grants are rare, according to Ken Elowe, Director of Resource Management at IF&W: "The high rating that this project received nationally confirms just how

unique and important this coastal ecosystem is to fish and wildlife resources."

Combining a bargain sale and conservation easement allowed the landowners to realize their conservation goals and meet their financial needs. "As our discussions proceeded, it became clear that we couldn't achieve our shared conservation goals without combining techniques," explains Tom Rumpf, Director of Land Protection

at The Nature Conservancy. "Complex projects like this require creativity and perseverance, but the rewards are worth the extra effort."

RIGHT OF FIRST REFUSAL

If you are not ready to sell your land but would like to give a conservation organization the first opportunity to buy it in the future, you can grant a *right of first refusal*. This technique allows the organization to match any *bona fide* offer you receive. As with an option, a right of first refusal does not obligate the organization to purchase the land.

SALE OF OTHER PROPERTY INTERESTS

In some instances, a conservation organization or government agency may purchase conservation easements and remainder interests – either at fair market value or through a bargain sale. Bargain sales of *partial interests* qualify for most of the tax benefits that result from other sales (see the section on selling easements, page 6).

OTHER TECHNIQUES

CONSERVATION BUYERS

One way that land trusts stretch their limited resources to protect key tracts is by enlisting the help of private *conservation buyers*. This approach matches individuals or groups of individuals who value natural lands with significant places that require protection. The conservation buyer agrees to purchase and permanently protect threatened land, working in partnership with a conservation organization. In some instances, the buyer may purchase a property that a land trust recently acquired and placed under a conservation easement.

Becoming a Conservation Buyer

When Orton P. (O.P.) Jackson learned that 64 acres of wild shoreline on Great Cranberry Island was about to go up for sale, he contacted Maine Coast Heritage Trust. Jackson wanted this spectacular frontage along Western Way preserved and was willing to help make that happen. Fortunately, the sellers wanted to see their land cared for by a conscientious land steward. After strategizing with



David MacDonald

Conservation buyers can aid land trusts by moving quickly to acquire valuable parcels (like this Western Way shoreline on Great Cranberry Island) and provide for their long-term protection.

Trust staff, Jackson made the sellers an attractive offer, quickly put the property under contract, and pledged to MCHT that he would donate an easement prohibiting future development and allowing continued public use.

David MacDonald, MCHT's Director of Land Protection, recalls it as "a model project where everything goes as planned. When valuable natural lands are unexpectedly threatened by sale," he continues, "it's essential to have parties who can move quickly. Generous and dedicated individuals like O.P. Jackson provide a tremendous service to land trusts by securing important properties for long-term conservation."

From Jackson's perspective, "MCHT made it easy. Even with a complicated negotiation, it only required my talking with staff and writing a couple of checks." His decision to become a conservation buyer grew from time spent outdoors, the inspiration of nature writers, and the legacy left by far-sighted conservationists in the past. "I'm so grateful to them," Jackson says, "and want to follow their example in a small way. Having a sensitivity to the land and capital in the bank made it a very simple choice for me." Jackson hopes that others will realize how gratifying it is to be a conservation buyer: "It's wonderful to go out on land you've protected, knowing that it will always remain wild."

Transactions involving conservation buyers can be beneficial for all concerned: the sellers obtain a fair price for their land, the realtors receive their commissions, and the buyers gain tax advantages (from the easement gift), a beautiful property, and the satisfaction of knowing that they've helped to save an important natural setting. In each case, the land trust provides support and technical guidance in facilitating the property's long-term protection. The trust works cooperatively with real estate brokers but does not act as a broker or accept commissions.

Some conservation buyers choose not to retain the property they help to protect. These *conservation investors* can help land trusts by moving quickly to acquire a threatened property and then allowing the trust the time needed to raise funds for a subsequent land trust purchase (see the sidebar on "Investing in Conservation").

LEASING PROPERTY

By leasing land to a land trust or government agency experienced in land management, you can reduce your management responsibilities and cultivate a working partnership (which could lead to collaboration on more permanent protection). A lease should specify the rights you retain, permitted land uses, the time period the lease covers, and what happens if lease terms are broken. Recognizing the significant cost of the holder's management responsibilities, landowners often choose to lease their land for only a token fee. Land leases are not deductible as charitable gifts, however, regardless of their market value.

Investing in Conservation

Opportunities to protect prize natural lands are often "limited time offers." When the Noyes family approached Maine Coast Heritage Trust in 1996 to discuss the planned sale of their 2,400 acres in Franklin, there was little time to act. Neither MCHT nor the State (which holds nearly 15,000 acres of the surrounding land) had the liquid assets to purchase the property. The landowners wanted to see the land preserved but couldn't wait indefinitely: if conservation groups couldn't act, it would likely be sold for residential development and gravel extraction.

The property included Fiery Mountain and the entirety of Little Pond—a wild gem no one wanted to lose. "All small, wild ponds are wonderful," observes Steve Spencer, Outdoor Recreation Specialist with the Maine Bureau of Parks and Lands (BP&L), "but Little Pond is more wonderful than others."

MCHT sought help from Lyme Timber Company, a limited partnership that specializes in conservation-minded investments. Lyme agreed to step in and purchase the property in order to give the State more time to locate funds for acquiring land on Fiery Mountain, a boat launch site, and two conservation easements covering a large portion of the property. Lyme also granted MCHT and the BP&L a two-year, no-cost option to purchase 882 acres surrounding Little Pond.

"Lyme Timber played a critical intermediary role by giving us time to fundraise," notes MCHT's Director of Land Protection, David MacDonald. "They helped us to preserve the most significant lands for conservation and outdoor recreation." "We were able to recoup our investment," explains Peter Stein of Lyme Timber, "while contributing to a significant expansion of one of the State's most impressive landholdings."

DEED RESTRICTIONS

Restrictive covenants guiding the future use of a property may be placed in any deed when the land is transferred. These restrictions are much like those contained in conservation easements although they tend to be less permanent.

Landowners can impose deed restrictions on their land when they deed it to others, but only to benefit land they retain. Neighboring landowners can also exchange mutual restrictions to benefit one another's land (see section below on "mutual covenants"), or one owner can receive compensation from a neighbor in return for restrictions benefiting that neighbor's land. Deed restrictions may involve provisions such as setback requirements, rights to unobstructed views, or limits on building or subdivision. Courts will uphold deed restrictions and mutual covenants as long as there is a *benefited parcel*, the restrictions are reasonable, and they accomplish a socially or legally acceptable goal. However, these methods are not as reliable as conservation easements in providing permanent land protection because future owners may not be committed or able to enforce the provisions over time. Future owners of the restricted parcel and the benefited parcel can even agree to terminate the restrictions. Moreover, the restrictions will automatically disappear if one landowner acquires both parcels.

The presence of deed restrictions may lower the price if land is sold, or decrease the value of a gift donated to a charitable organization or agency. However, the IRS does not allow one to claim the loss in value resulting from a private deed restriction as a charitable deduction.

MUTUAL COVENANTS

Landowners may protect neighboring land or a view they share by exchanging mutual covenants. Each landowner's covenant, which is a form of deed restriction, can be enforced by the other landowners, but only if they choose to do so. Covenants offer no tax deductions and are not a permanent means of conservation since they can be nullified by subsequent agreements of all owners or by failure to enforce.

MANAGEMENT AGREEMENTS

A management agreement enables a land trust or government agency to help plan for the care of your land's resources. Management agreements are often used to protect plant and wildlife habitats or keep scenic fields open. The land trust or public agency generally provides technical advice and assistance while the landowner carries out the plan. The agreement is made for a set time period but is renewable and can be canceled by either party with appropriate notice. Payments are rarely involved, but in some instances owners who enter into resource management agreements with government agencies may become eligible for tax breaks, low-cost loans or reimbursement programs (see current use tax programs, page 25).

REGISTER OF CRITICAL AREAS

The State's *Register of Critical Areas* is a record of significant botanical, zoological, ecological, geological and scenic natural areas. It contains more than 600 areas, both publicly and privately owned, whose landowners have expressed a willingness to have their sites recognized for voluntary conservation. While registration is not tax-deductible and the Register is not a permanent means of protection, many landowners actively support conservation of these areas. First established in 1974, the Register is administered through the Maine Natural Areas Program (see Appendix D).

INCOME AND ESTATE TAXES

Tax incentives help many landowners take advantage of conservation opportunities. This chapter offers examples of income and estate tax reductions from donating land or conservation easements. The tax effects of your conservation plan will depend on the gift's value, your financial circumstances, and other factors, so consult with an experienced attorney and accountant.

Tax discussions in this chapter reflect federal and Maine tax law as of February 2003. Since changing political winds invariably reshape tax systems, you should seek the most current information from reliable advisors.

CHARITABLE CONTRIBUTIONS

To qualify for a tax deduction, your donation must be considered a charitable gift by the Internal Revenue Service (IRS). Review the proposed gift with an experienced attorney or accountant to determine whether it meets IRS requirements.

A deductible charitable donation can be made only to an IRS-qualified, tax-exempt organization. It must be considered a true gift motivated by charitable intent and not granted to get something in return. For example, a conservation easement donated by a developer in exchange for government approval of a subdivision is not considered a gift.

A gift must also be complete and irrevocable, without strings or contingencies. If donors specify that land will revert to their family if mismanaged, their donation is not deductible. However, they can name alternate charitable gift recipients.

For a gift of land to be deductible, the owner must transfer his or her entire interest in the land (with special exceptions for conservation easements, remainder interests and undivided partial interests). Rent-free leases, for example, are not deductible. A landowner who donates property but retains a private right to use it will lose the income tax deduction for that gift and the land trust receiving the gift may not qualify for property tax exemption.

For tax deductions on gifts worth more than \$5,000 (other than cash and publicly traded securities), landowners must substantiate the value with a "qualified appraisal" by a "qualified appraiser." (These terms are defined by the IRS; check with your attorney or accountant for details.) If you plan to give a conservation easement, consult with a professional appraiser who has direct experience with charitable easement gifts. A conservation organization can refer you to experienced appraisers



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Landowners whose gifts meet federal tax guidelines can enjoy significant tax benefits by donating land and easements.

Effect of the 30-percent Election

A landowner donates a conservation easement valued at \$80,000 to a land trust. His adjusted gross income in the year of the gift is \$50,000. Assuming that this is his only gift and his income remains constant, he could use the charitable deduction resulting from the easement as follows:

30 percent of \$50,000 = \$15,000

Easement Deduction:	Year 1	\$15,000
	Year 2	\$15,000
	Year 3	\$15,000
	Year 4	\$15,000
	Year 5	\$15,000
	Year 6	\$ 5,000

Note that if the landowner's gift was worth more than \$90,000, he would not have been able to use up the entire deduction. To spread the deduction out over a longer time period, he might choose to grant an easement on part of the land initially, while making a legally binding pledge to protect the remaining land in stages.

but cannot provide the appraisal. The appraisal cost is a necessary expense if you want to pursue a charitable tax deduction.

FEDERAL INCOME TAX DEDUCTIONS

The 30-percent Limitation

Federal income tax law limits the maximum annual charitable deduction that a donor can take. For combined gifts of appreciated property (which include most gifts of land and conservation easements), the amount you can deduct in one year is generally limited to 30 percent of your *adjusted gross income* (AGI). If your gift's value exceeds that level, you may carry forward the excess for up to five years (applying the 30 percent limit each year). Any portion of the deduction that remains after the sixth year cannot be used.

The 50-percent Election

Another approach involves claiming as a deduction only the appreciated property's basis (usually the original purchase price or its value when inherited, rather than the current fair

market value). An annual deduction of up to 50 percent of adjusted gross income is allowed, with any excess carried forward at 50 percent of AGI for five additional years.

Where property has appreciated greatly, the 30 percent option may be more advantageous. The 50 percent election is most appropriate for taxpayers whose property has appreciated little, who anticipate a large drop in income, who recently purchased or inherited land, or who do not expect to live to take advantage of the full five-year carry-forward period.

Some of the costs incurred in making a charitable deduction are themselves deductible. Legal and appraisal fees can generally be deducted (as costs of securing a tax deduction, not as charitable donations) if, in combination with other permitted deductions, they exceed 2 percent of your adjusted gross income. Any cash or securities given to endow stewardship of a conserved property are deductible as charitable contributions.

STATE AND FEDERAL ESTATE AND GIFT TAXES

State and federal estate and gift taxes, based on a property's fair market value at the time of the landowner's death, are levied on amounts above specified exemptions and exclusions for gifts to spouses and charities. The taxes run upwards of 35 percent and are due within nine months of the death. Maine levies an estate tax on land located within its borders, regardless of where the owner lived. The federal estate tax return grants credit for the full amount of estate tax paid to Maine, so the combined tax does not exceed the amount that would be owed in federal tax if

Maine had no separate estate tax. If your legal residence is outside Maine, check on your state's estate or inheritance tax rules.

As Chapter 2 demonstrates, placing a conservation easement (either during your lifetime or by will) lowers your land's value in your estate. Income deductions are limited, but no such restrictions apply to estate tax savings so they can be even more advantageous for donors. Further information on estate tax savings can be found in Stephen Small's book series on *Preserving Family Lands* (see Appendix F).

Under the Tax Reconciliation Act of 2001, the value of assets that can be transferred free of any estate tax (beyond gifts made to spouses or charities, which are not taxed) will increase from \$1 million in 2002, to \$1.5 million in 2004, to \$2 million in 2006, and to \$3.5 million in 2009.

The highest rate of estate and "generation-skipping transfer" tax under the new act will be 50 percent, applied to estates valued at over \$2.5 million. This rate will decrease by one percentage point each year until 2007 when it reaches 45 percent, where it will stay until 2009. All of these new estate tax provisions will be repealed on January 1, 2010—resurrecting the previous system—unless Congress acts to



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Through careful estate planning, landowners can minimize taxes and ensure that heirs can continue to enjoy their family's land.

The 30-percent Limitation versus the 50-percent Limitation

A couple donates property with an appraised value of \$200,000 that they bought three years ago for \$175,000. Their combined adjusted gross income is \$70,000 and they have deductions and personal exemptions of \$8,500.

	50% Limitation	30% Limitation
Value of gift	\$175,000 (basis)	\$200,000
Years 1-5		
Adjusted gross income	70,000	70,000
Charitable deduction (50% or 30% of income)	-35,000	-21,000
Other itemized deductions	-8,500	-8,500
Taxable income	26,500	40,500
Tax payable (from IRS tables)	3,975	7,473
Annual Tax savings (versus no gift)	9,378	5,880
Year 6		
Adjusted gross income	70,000	70,000
Deductions and personal exemptions	-8,500	-8,500
Charitable deduction	0	21,000
Taxable income	61,500	40,000
Tax payable	13,353	7,473
Tax savings (versus no gift)	0	5,880
Six-year Tax Savings	46,890	35,280

The 50-percent election provides more tax savings in this case because their basis in the property (\$175,000) is close to the current appraised value and they could use the higher annual deduction that results from the 50-percent option. If their income were to decline over the six years, though, the results would differ.



Conservation easement land that is used for farming or forestry may be entitled to further tax reductions under Maine's Tree Growth, Farm and Open Space Tax Laws.

extend the new plan or institutes another plan.

The new tax act uncouples the gift tax from the estate tax. The gift tax exemption is now \$1 million and will remain at that level indefinitely. There is no limit, as before, on gifts made to spouses or charities. In addition, lifetime gifts of up to \$11,000 a year can be given to any number of individuals (\$22,000 if spouses give jointly) without gift or estate tax liability. The top gift tax rate on taxable gifts more than \$2.5 million, now 50 percent, will decline at the same rate as the estate tax

diminution through 2009. By 2010, the highest gift tax rate will be equivalent to the highest income tax rate (currently planned to be 35 percent).

MORE WAYS TO REDUCE ESTATE TAXES THROUGH CONSERVATION

The Taxpayer's Relief Act of 1997 created a new estate tax program, Internal Revenue Code—2031(c), to help families keep protected land. If a person dies owning land that has been in the family at least three years and is subject to a qualified conservation easement (placed by the owner prior to his demise, his executor or heirs), up to 40 percent of the restricted land's value can be excluded from estate tax. There are complex rules to follow and exclusions to calculate, and the election will reduce the property's basis when heirs take title, but savings from this exclusion can be significant (up to \$500,000).

The tax benefits are available even when land is held by a partnership, corporation or trust, provided that the deceased person owned at least 30 percent of the entity. Commercial farming and forestry are allowed, but the exclusion is not available if significant commercial recreational activity occurs on the land. The 40 percent reduction applies only to undeveloped conserved land, not to areas that retain development rights. If the property is subject to a mortgage, only the net equity in the land (not counting the value of the structures) is eligible for tax benefits under IRC 2031(c).

Another part of Section 2031(c), known as a *post-mortem* election, permits heirs to donate or amend a conservation easement on the land they inherit in order to qualify for or increase benefits available under the 2031(c) election.

To secure benefits under these provisions, an easement must be placed on the land before estate taxes are filed (generally within nine months of the landowner's death). The time for amending an existing qualified easement is two years, providing that a binding pledge to do so is signed by the heirs within nine months of death.

While *post-mortem* provisions can benefit conservation and reduce inheritance taxes, they are no substitute for good estate planning. A lifetime gift is the most advantageous since it can provide substantial income tax benefits that are not available if the easement is granted by will or *post-mortem*. *Post-mortem* donations also can be thwarted by disagreement among heirs or by limits that state probate law places on an executor's power.

PROPERTY TAXES

Many landowners in Maine, particularly those near the coast and lakes, have witnessed dramatic increases in property taxes. Rising demand for waterfront land drives up selling prices, which in turn leads to increased property valuations and shifts the tax burden to shorefront owners. Some families and long-time owners, confronted with tax bills based on the land's speculative value for development, are forced to sell. Consequently many treasured open lands are getting developed, transforming the character of some of Maine's most treasured scenic and natural landscapes.

STANDARD TAXATION OF EASEMENT LAND

In Maine, property taxes are based on the property's *just value* (defined as fair market value: the price a willing buyer would pay to acquire the land for its highest legal economic use). This value is adjusted downward by the town's assessment ratio (the state-determined percentage below market value at which the town assesses all lands) which generally falls between 70 and 100 percent. If a conservation easement reduces the land's resale value, the town assessor is legally required to recognize that reduction in assessing property tax. However, that determination can be difficult. To assist your assessor, provide a copy of your easement document and other information that may affect valuation before April 1 of the tax year (when valuations are set). It may help to provide the assessor with the "after value" from the qualified appraisal made for IRS purposes or with written opinions of estimated market price from realtors (although the assessor is not bound by these figures). It's important for both the landowner and the assessor to recognize that each easement affects land values differently, depending on its economic *highest and best use* and on how the land is restricted.

CURRENT USE TAX PROGRAMS

Maine has several programs that reduce taxes for undeveloped lands based on their *current use classification*. The Tree Growth Tax Law and the Farm and Open Space Tax Law were established in the early 1970s to prevent property taxes from forcing productive farms, woodlands and significant open space into tax delinquency or conversion to development. These programs make it easier for owners of easement-restricted properties to achieve a more predictable tax assessment. Under the tree growth and farmland programs, land is assessed depending on its productive value, without regard to shorefrontage or development potential. Taxes are imposed

Open Space Tax Rates

The regular assessed value of a parcel is reduced as follows:

- | | |
|---|-------------------------------|
| A. Ordinary open space | 20% reduction |
| B. Permanently protected open space (an easement or preserve that allows forestry, farming) | 50% reduction |
| C. Forever wild open space (protected by easement or preserve) | 70% reduction |
| D. Public access land qualifies for an additional | 25% reduction over A, B, or C |

Two limitations apply to these percent reductions:

- (1) the resulting valuation cannot be higher than just value; and
- (2) the value of forested open space cannot be reduced to less than the tree growth per-acre rate.

based on very low land values, ranging from about \$35 per acre for hardwood forest to about \$500 per acre for productive cropland. The open space program, on the other hand, applies percent reductions to the assessed value, reducing the tax but accounting for shoreland and other development value. Tax reductions range from 20 percent for land not under conservation easement to 95 percent for land under a forever wild easement that guarantees public access for traditional recreation.

Each program has specific eligibility guidelines and only tracts that are undeveloped qualify (portions containing buildings or docks are taxed at the standard level). Some landowners use these programs as a “trial form” of permanent protection, knowing that land can be withdrawn from the program, subject to a penalty, or transferred into another current use program (if eligible) without penalty.

For further information or application materials, contact your assessor or Maine Revenue Services, 24 State House Station, Augusta, ME 04333-0024 (207-287-2011 or www.state.me.us/revenue/propertytax). Additional information on Tree Growth is available from the Maine Forest Service (1-800-367-0223 or www.maineforestservice.org) or from MCHT (request Technical Bulletin #104, “Property Taxation of Conservation Land”).

SHORT-TERM PROPERTY TAX RELIEF FOR LANDOWNERS

There are several other short-term tax relief programs available in Maine. You may be eligible for the Elderly Property Tax Deferral Program, the Circuit Breaker Program, a veterans tax program, the homestead exemption, or a municipal poverty abatement. For further information, contact your local assessor or Maine Revenue Services (see address above).

THE NEXT STEP

By this point, you may have more questions than answers. In the early stages of conservation planning, the range of choices can seem daunting. Don’t be deterred, you have begun an important process and there are plenty of experienced people who can help answer your questions (see Appendices A and E).

Before contacting a paid professional such as an attorney or appraiser, take time to consider what you want to protect. Thorough planning will minimize costs, ensure that your project is completed in a timely manner, and provide the results that you want. Most *conservation plans* can be drafted at minimal cost by working with a land trust, either a local group or a statewide organization such as Maine Coast Heritage Trust.

If you are committed to conserving your land, begin the process today. Do not jeopardize your land through inaction. By investing time now, you will gain the security of knowing that the land you treasure is protected forever.



CHRIS HAMILTON

PROFESSIONAL GUIDANCE

As you plan for your land's future, you may need to consult professionals whose expertise complements the skills of your local land trust members. MCHT or your local land trust can provide lists of attorneys, appraisers, and planners experienced in land conservation work.

The nature and structure of your particular conservation project will determine the degree to which advisors need to be involved. Some projects require their participation throughout the process; other projects may need only a quick review by advisors as you near completion.

Attorneys

Attorneys can offer valuable input on how best to structure a conservation gift or sale. Some prefer to be involved in all aspects of planning, while others are comfortable reviewing the final drafts of documents that land trust officials have prepared in consultation with the landowners. If you pursue an easement, your attorney will need to be involved in at least two stages of conservation planning: preparing the legal description of your property and reviewing easement language. By working with experienced land trust officials and getting family consensus on major decisions early in the planning process, you can minimize attorneys' fees.

Accountants

Consult with your accountant or other tax advisor early in the process to determine the best timing for your conservation project in terms of tax planning. Conservation easements, bargain sales and land donations may qualify as charitable gifts if you meet certain IRS criteria.

Appraisers

If you plan to pursue a federal income tax deduction for an easement or land gift valued at more than \$5,000, a qualified appraisal is necessary to document the gift's value. The IRS has established regulations that govern charitable gift appraisals; you and your attorney should be familiar with these requirements before contracting with an appraiser.

Find an appraiser who has prepared conservation easement appraisals before or who routinely does undeveloped land appraisals (not just residential or commercial building appraisals). Ideally, an appraiser will have direct experience documenting gift values for IRS review. View the appraiser as an objective analyst, not as an advocate. He may help you to clarify goals and weigh the financial implications of different approaches, but he should never be asked to work toward a given value.

You may request an informal estimate of value early in the process, before the appraiser has done market research or established the property's development potential. While early estimates can be helpful, they are based on limited information and may change with new market information or as project details become clear. The more information you can provide to appraisers up front, the more quickly and effectively they can do their work. Plan on providing information such as the property deed, property survey (if available), information on existing restrictions or current use classification, draft or final language for the conservation easement (or other conservation plan), the property as shown on the town tax assessor's map, a copy of the town assessor's

property card, current zoning or subdivision regulations, sales data on properties you think are comparable, soil maps, and timber maps or inventories.

If you are considering a conservation easement on any part of your land, the appraiser's report must note the value of your entire property unencumbered by any easement (the "before" value) and its value subject to the easement restrictions (the "after" value). These two appraisals can cost several thousand dollars depending on the appraiser, the complexity of the project, and the accessibility of information.

Make sure you get your money's worth: prior to hiring an appraiser, satisfy yourself that he understands the task at hand. When the draft or final appraiser's report is submitted, see if it makes sense. Has the appraiser become familiar with the property? Has he clearly demonstrated its most profitable, likely and legal development potential and the value foregone under the terms of the restrictions? Does the report meet IRS standards and include supporting documentation with comparable sales?

Discuss these findings with the appraiser, your attorney and other knowledgeable individuals (such as members of your local land trust). Most appraisers will be glad to talk over their findings and correct any inaccuracies. Once you are satisfied, ask your appraiser for a signed IRS Form 8283, along with appraisal report, to file with your taxes.

Land Planners

The services of a land planner may be helpful in more complex conservation projects (particularly if you are contemplating additional house sites). An experienced land planner can help identify suitable areas for building and those that are not appropriate due to soils, slopes, wetlands or ecological features. The land planner's role can complement that of a land trust, which works with you to determine the property's inherent values and to find the best means for preserving them.

Surveyors

A conservation plan may require a boundary survey or a survey of a building or homestead area within an easement parcel. Land trusts, land planners and attorneys can help determine the appropriate level of surveying needed and can assist you in finding competent surveyors.



RICH KNOX

REACHING FAMILY CONSENSUS ON CONSERVATION PROJECTS

The process of conserving land often depends upon family members developing a shared vision for their land. With a common vision, the conservation process proceeds quickly. In the absence of consensus, the process may bog down. This appendix offers guidance for families that encompass a wide range of perspectives and needs.

There are several common “traps” that can waylay families in their efforts to reach agreement.

Hares and Tortoises

Family members who want the land protected may forge ahead with plans before discussing their vision with others. This strategy may seem efficient at first, but those left out of the loop may later question the conservation plans.

Which Part of the Elephant

Family members may view a property—and its future—from markedly different angles. Like the proverbial blind men, each of whom touches a different part of an elephant but cannot envision the whole, people may see only a single use for the land. One might see it as a wildlife sanctuary, another as an investment to help pay future college expenses.

Flying Solo

A family may undertake a project with great enthusiasm but inadequate information. If they neglect to get advice concerning conservation methods or financial planning, they may learn about unforeseen tax and legal issues late in the process and be bounced back to square one.

LAYING THE GROUNDWORK FOR AGREEMENT

These and other pitfalls can be avoided if family members are sensitive to the decision-making process. The following ideas may help family members reach consensus. More ideas for reaching agreement are contained in MCHT’s Technical Bulletin #114 (free upon request).

Successful conservation planning hinges on good communication. Early in the process, talk with other family members individually about their interest in the property. Try not to react to their views; keep asking questions. Remember that you can acknowledge their views without agreeing with them. Talking with individuals early on will give you a sense of how much common ground there is and how much time and work may be needed to reach consensus.

After individual meetings, you may want to hold one (or more) family meetings to discuss the property’s future. Plan to distribute an agenda beforehand. Having a written agenda may seem formal for a family gathering, but it will help everyone stay focused. In setting up the agenda, put easier topics first. If people can agree on those items, they will feel more confident as they begin discussing more complex issues.

Choose a time and place where your family can concentrate on the task (just before the annual picnic might not be the best time). You may want to consider inviting someone well-versed in the methods of land conservation. Often a land trust member can outline options for protection and help answer questions.

MAINECARE

The subject of MaineCare (formerly known as Medicaid) may seem out of place in a conservation handbook, but it is an important consideration for older and disabled landowners of moderate means who are contemplating their land's future. To be eligible for any MaineCare benefit, applicants must meet limits for income and assets that are typically quite low but vary depending on the type of care requested. *Not all income and assets are counted toward eligibility limits, though.* It is best to discuss your particular situation with someone knowledgeable about



CHRIS HAMILTON

MaineCare to learn more about the applicable rules governing excluded income and assets.

Your home and the surrounding lot are not counted as assets to qualify for most MaineCare benefits. Other examples of excluded *real property* are lands that produce goods or services for home consumption or those that generate income (such as a farm, wood lot or rental camp). *Other lands may not be excluded and may have to be transferred or sold to be eligible for MaineCare.*

The rules governing MaineCare coverage for nursing homes costs are complex: it's best to consult with an attorney before taking any steps to transfer or restrict property. If you are in a nursing home and apply for MaineCare coverage, your primary residence is excluded even if you aren't able to return home from the nursing home (as long as you declare your intent to return home). If your spouse remains in your home, there are special rules to protect his or her income and property (including the home).

Property may be transferred or restricted by a conservation easement, without loss or delay in MaineCare benefits, if done at least 36 months before application is made for nursing home coverage (60 months is required if assets are transferred to a non-charitable trust). If you transfer assets for less than fair market value within 36 months of applying for MaineCare, you could become temporarily ineligible for nursing home MaineCare. However, some transfers are exempt (such as those to a spouse) and others may not result in a penalty (depending on the value of the asset, even if given away within the 36-month period).

"Transfer of assets" rules apply only to nursing home MaineCare and the MaineCare elderly and disabled "waiver" program. They do not apply to other types of MaineCare. If you receive Supplemental Security Income (SSI), however, transferring assets may affect your SSI benefit.

Please be aware that MaineCare rules are subject to change, and that the information outlined above is accurate only as of February 2003. It's advisable to consult with an elder law attorney in planning for MaineCare coverage. If your income is low, you may call Pine Tree Legal Assistance (www.ptla.org, 1-207-774-8211); if you are 60 or over or have Medicare because you're disabled, contact Maine's Legal Services for the Elderly (www.mainelse.org, 1-800-750-5353).

Thanks to Paul Lavin, Director of Maine's Legal Services for the Elderly, for his extensive contributions to this Appendix.

SITING NEW CONSTRUCTION

When you draft a conservation plan or easement that allows for future building construction, consider the following questions in planning the location and appearance of new structures.

Does your proposed site conform to local and state zoning regulations? Learn about these ordinances early in your site selection process and inform your local code enforcement officer about your building plans. Ordinances can affect many aspects of site design (such as driveway configuration) as well as actual building construction.

Does your building site respect the constraints imposed by the land's topography? Is the land in a wetland or on steep slopes prone to erosion? Will extensive cut-and-fill work be needed to make this location viable? As pressures on the land increase, people gravitate toward sites that were previously considered "unbuildable." These settings can prove costly—both to the individual homeowner and to the local ecosystem.

Can you site your new building near existing residences or close to a public roadway? By locating new construction near existing infrastructure, you can reduce potential disruption to wildlife. Wildlife may suffer whenever development intrudes on significant habitat – such as riparian zones, wetlands, and edge communities (where two habitats meet). A growing number of builders and real estate developers are coming to recognize the economic, ecological and community value of clustered housing – which concentrates residences in one portion of the property to allow more open space for wildlife and recreational use. Building close to existing infrastructure also reduces construction costs and minimizes soil disturbance – so there is less chance for erosion and the spread of invasive species.

Will the construction work or finished building diminish water quality? The health of lakes, streams, rivers and coastal waters depends on having a vegetative buffer along the shoreline that holds soil in place and helps to trap sediment or pollutants. During construction, try to preserve vegetation along shorelines and around the building site. Make sure to use “best practices” for stormwater management (keeping stock piles of dirt covered, using silt fences to minimize runoff, spreading mulch on open ground, and reseeding bare ground promptly). You can improve water



quality by keeping drives and parking areas narrow and using porous paving materials. Landscaping with native plants, rather than lawn, eliminates the need for irrigation and chemical treatments.

How will this new building affect views from public vantage points such as roadways, hiking trails and water bodies? It's tempting to focus solely on the views from inside your home, without considering how your building may appear to others. In designing new construction, site buildings in locations that will not be prominently visible. Consider incorporating measures to help your house or outbuilding blend into the site: choose natural wood siding and/or dark exterior colors; maintain well-vegetated areas between the building and public vantage points; select an architectural form that fits with the contours of the land and vernacular styles; and avoid expanses of glass or reflective material.



How much space do I really need? Through careful planning you can use space efficiently and keep down the overall building footprint and height – minimizing costs as well as visual and ecological impacts. Smaller homes consume less resources in construction and require less energy to maintain.

Further Reading

Architect Sarah Susanka has written a series of books—*The Not So Big House* (1998), *Creating the Not So Big House* (2000), and *Not So Big Solutions for Your Home* (2002, all from Taunton Press)—that provide valuable design guidance for minimizing the size of new construction and siting it in ways that fit the land. *The Distinctive Home: A Vision of Timeless Design*, by Jeremiah Eck (Taunton Press, 2003), also offers some guidance on site planning and design issues. The classic *A Pattern Language* (Oxford University Press, 1977), by Christopher Alexander, Sara Ishikawa and Murray Silverstein, describes progressive ways of thinking about architecture, building and planning. Architects and developers may find useful guidance and case studies in the text *Green Development: Integrating Ecology and Real Estate*, by Alex Wilson et al. (John Wiley & Sons, 1998).

The website www.buildinggreen.com provides many resources on general design strategies, siting and land use issues in environmental construction. Many good pointers, for example, are included in the article “Building Green on a Budget,” from the May 1999 edition (vol. 8, no. 5) of their newsletter *Environmental Building News* (http://www.buildinggreen.com/features/lc/low_cost.html).

Material in this appendix was adapted with permission from an article written by Noorjahan Parwana and published in the newsletter of the Montana Land Reliance.

LAND CONSERVATION ORGANIZATIONS AND AGENCIES

MAINE'S LOCAL AND REGIONAL LAND TRUSTS

Local and regional land trusts play an essential role in Maine's conservation community. Trusts own land, hold and monitor conservation easements, help landowners develop conservation plans, educate people about the values of open space, and raise funds to purchase threatened properties. The total acreage held by land trusts nationwide (not counting lands transferred to state or federal agencies) now exceeds one million acres. Most of Maine's local land trusts are staffed by volunteers, although a growing number have paid staff.



The Maine Land Trust Network is a communications and coordination service provided by Maine Coast Heritage Trust to land conservation organizations throughout the state. To locate a local land trust or for further information, visit www.mltm.org or call 207-729-7366.

AGENCIES



Acadia National Park
P.O. Box 177
Bar Harbor, ME 04609
207-288-3338
acadia_information@nps.gov
www.nps.gov/acad

In addition to its lands on Mount Desert Island, Schoodic Peninsula and Isle au Haut, Acadia National Park is authorized to hold conservation easements on island properties from the main ship channel in Penobscot Bay to the Hancock/Washington county line and Schoodic Peninsula on the mainland. Acadia currently holds 175 easements protecting more than 11,000 acres of island property.

**Department of Conservation
Bureau of Parks and Lands (BP&L)**
286 Water Street, Key Bank Plaza
Augusta, ME 04333
207-287-3821
www.state.me.us/doc/parks



BP&L acquires interests in land for public parks, historic sites, boat-launching areas and trails. In some instances, it accepts donations of land and conservation easements that would protect important new parks or enhance the setting of its existing holdings.

Land for Maine's Future Program (LMF)
State Planning Office
State House Station 38
Augusta, ME 04333-0038
207-287-1487
www.state.me.us/spo/lmf



The LMF Program funds the acquisition and long-term conservation of natural lands for the enjoyment of present and future generations.

Since 1987, the Program has protected more than 100,000 acres, including mountain summits, farmland, riverfront, lakes, ponds, prime wildlife habitat, coastal islands and beaches. Anyone may submit a proposal for consideration: contact the Program for more information.

Maine Department of Inland Fisheries & Wildlife (IF&W)

State House Station 41
Augusta, ME 04333-0041
207-287-8000
www.mefishwildlife.com



The Department is concerned with the protection of important habitats of fish and wildlife species. IF&W holds easements on private lands and owns wildlife management areas, including coastal islands.

Maine Natural Areas Program

State House Station 93
Augusta, ME 04333-0093
207-287-8044
e-mail: maine.nap@state.me.us
www.state.me.us/doc/nrimc/mnap/home.htm

The Maine Natural Areas Program provides comprehensive information on the State's important natural features. In collaboration with public and private landowners, it inventories lands that support rare and endangered plants and animals, rare natural communities, and outstanding examples of representative natural communities. It maintains an extensive database of these features and shares information with landowners, state agencies, conservation groups and towns.

U.S. Fish and Wildlife Service (USFWS)

Gulf of Maine Program
4R Fundy Road
Falmouth, ME 04105
207-781-8364
e-mail: fw5es_gomp@fws.gov
<http://gulfofmaine.fws.gov>



The USFWS works to protect and restore federally threatened and endangered species, migratory birds and searun fish. In Maine, the USFWS manages six National Wildlife Refuges and two National Fish Hatcheries. Its Gulf of

Maine Program works in partnership with other federal and state agencies, land trusts and conservation groups on private, state and federal lands to protect and restore high-value coastal wetlands, nesting islands, rivers and Northern Forest lands in the Gulf of Maine watershed.

NONPROFIT CONSERVATION ORGANIZATIONS

Forest Society of Maine (FSM)

115 Franklin Street
P.O. Box 775
Bangor, ME 04402
207-945-9200



The FSM, a statewide land trust, safeguards the ecological, recreational, and economic values of Maine's forestlands—particularly the unique character of Maine's North Woods. Using conservation easements as a primary tool and strategic acquisitions as appropriate, FSM seeks to maintain traditional forest uses and sustain their economic contributions while preserving ecological and recreational values and important natural areas.

Land Trust Alliance (LTA)

1331 H St. NW, Suite 400
Washington, DC 20005-4734
202-638-4725
e-mail: lta@lta.org
www.lta.org



The national LTA promotes voluntary land conservation and strengthens the land trust movement by providing the leadership, information and resources that land trusts need to conserve land for the benefit of communities and natural systems.

Maine Audubon

20 Gilsland Farm Road
Falmouth, ME 04105
207-781-2330
info@maineaudubon.org
www.maineaudubon.org



Maine Audubon acquires sanctuary properties to be used as environmental education sites and to provide the public with opportunities to enjoy and connect with the natural world.

Maine Coast Heritage Trust (MCHT)

1 Main Street, Suite 201
Topsham, ME 04086
207-729-7366

Mount Desert Island Field Office:
P.O. Box 669
Somesville, ME 04660
207-244-5100

info@mcht.org
www.mcht.org



Maine Coast Heritage Trust

MCHT protects coastal and other lands of scenic, ecological, recreational and cultural significance. The Trust provides free conservation services to landowners, government agencies, local land trusts and communities statewide.

New England Forestry Foundation (NEFF)

P.O. Box 1099
Groton, MA 01450-3099
978-448-8380

neff@neforestry.org
www.neforestry.org



**New England
Forestry Foundation**

NEFF promotes and demonstrates responsible management of working forests for the benefit of landowners and the public. It works with private landowners to achieve conservation goals through acquisition of fee interests and conservation easements.

Small Woodland Owners Association of Maine (SWOAM)

P.O. Box 836
Augusta, ME 04332
207-626-0005

1-877-467-9626
e-mail: info@swoam.com
www: swoam.com



SWOAM supports and promotes long-term stewardship of Maine's small woodlands, and assists in conserving productive forestlands through a land trust program.

The Conservation Fund (TCF)

1800 North Kent Street, Suite 1120
Arlington, VA 22209
703-525-6300

postmaster@conservationfund.org
www.conservationfund.org

TCF works in partnership with **THE CONSERVATION FUND** nonprofit organizations, public agencies and the private sector to conserve the country's outdoor heritage. In Maine, TCF has completed projects in several counties.

The Nature Conservancy (TNC) — Maine Chapter

Fort Andross
14 Maine Street, Suite 401
Brunswick, ME 04011
207-729-5181

e-mail: naturemaine@tnc.org
<http://nature.org/wherewework/northamerica/states/maine/>



Saving the Last Great Places

TNC acquires land and easements by purchase and donation to protect rare and threatened species and to preserve natural diversity. Maine Chapter staff consult with landowners on the preservation of unique natural areas.

The Trust for Public Land (TPL)

Maine Field Office
377 Fore Street, 3rd Floor
Portland, ME 04101
207-772-7424
www.tpl.org



TPL facilitates the protection of open space areas in urban and rural settings for public use. It often temporarily secures threatened properties and works with local, state, and federal partners to obtain funds for permanent protection and to bring land into permanent conservation ownership.

FURTHER READING

BOOKS

Appraising Easements; Guidelines for Valuation of Historic Preservation and Land Conservation Easements. Washington, DC: Land Trust Alliance and the National Trust for Historic Preservation, 1999 (Third Edition). First published in 1984, this essential handbook outlines the general principles of easement valuation. Sections provide information on “before” and “after” valuations, appraisal reports, IRS regulations and typical easement provisions.

The Conservation Easement Handbook: Managing Land Conservation and Historic Preservation Easement Programs. Janet Diehl and Thomas S. Barrett. Washington, DC: Trust for Public Land and Land Trust Alliance, 1988. This 270-page guidebook offers a comprehensive introduction to all aspects of the easement process. Chapters provide details on tax benefits, baseline data, monitoring and enforcement, and model easements.

The Conservation Easement Handbook, Third Edition. Elizabeth K. Byers. Washington, DC: Land Trust Alliance, 2004. This comprehensive revision of the 1988 edition covers advances and lessons learned from conservation easement programs nationwide. In a chapter entitled “Conservation Easement Drafting Guidelines & Commentary,” MCHT staff attorney Karin Marchetti Ponte explains how to design a comprehensive easement template and draft land use provisions tailored to a particular property.

Doing Deals: A Guide to Buying Land for Conservation. The Trust for Public Land. Washington, DC: Land Trust Alliance, 1995. For those interested in purchasing properties for long-term conservation, this book provides information on negotiating with landowners, getting surveys and appraisals, and working with government agencies.

The Federal Tax Law of Conservation Easements (Updated with Supplement). Stephen J. Small. Washington, DC: Land Trust Alliance, 1995. This authoritative volume offers legal details on conservation easements for attorneys, easement donors and appraisers. It includes discussion of the IRS final regulations on easement gifts as well as related income and estate tax considerations. It also covers historic preservation easements and donations of remainder interests for conservation purposes. This edition includes a supplement with cases from 1988-1995.

Third Supplement to The Federal Tax Law of Conservation Easements. Stephen J. Small. Washington, DC: Land Trust Alliance, 2002. This supplement to Small’s introductory volume on conservation-related tax laws interprets important Tax Court cases and IRS rulings since 1996.

The Great Remembering. Peter Forbes. San Francisco, CA: The Trust for Public Land, 2002. Author Peter Forbes, a long-time staff member of The Trust for Public Land, explores the meaning of land in our culture and calls on conservationists to begin rebuilding the relationships between land and people.

Model Conservation Easement and Historic Preservation Easement, 1996: Revised Easements and Commentary from the Conservation Easement Handbook. Thomas S. Barrett and Stefan Nagel. Washington, D.C: Land Trust Alliance, 1996. This 120-page update of the model easements and commentary incorporates evolving tax practice and stewardship concerns in historic preservation and conservation easement programs.

Our Land, Ourselves: Readings on People and Place. Peter Forbes. San Francisco, CA: The Trust for Public Land, 1999. This anthology includes diverse readings on such themes as the protection of wilderness, the nature of home, the purpose of work, and the meaning of community.

Passing It On: The Inheritance and Use of Summer Houses. Judith Huggins Balfe. Montclair, NJ: Pocomo Press, 1999. If you share a property with extended family, you may find valuable insights about how to handle its shared management and the transfer between generations in this guidebook by a sociology professor.

Preserving Family Lands: Book I. Stephen J. Small. Boston, MA: Landowner Planning Center, 1998 (Revised Third Edition). Written in clear, informal language, this handbook provides a basic introduction to the estate tax consequences of different conservation options.

Preserving Family Lands: Book II. Stephen J. Small. Boston, MA: Landowner Planning Center, 1997. This sequel provides concrete examples of basic estate and gift tax rules, charitable remainder trusts and other topics.

Preserving Family Lands: Book III. Stephen J. Small. Boston, MA: Landowner Planning Center, 2002. The newest book in this series contains a comprehensive checklist for conservation easement projects designed to increase understanding of tax-related issues, title issues and tax incentives contained in Section 2031 (c), added to the tax code in 1997.

Saving Maine: An Album of Conservation Success Stories. Bill Silliker, Jr. Rockport, ME: Downeast, 2002. Nature photographer Bill Silliker, Jr., shares inspirational tales of exemplary land conservation projects, inviting citizens to protect the wild landscapes that define Maine.

To Save a River. Scott Dickerson and Dennis Shultz. Camden: Coastal Mountains Land Trust/ Aperture Foundation, 2002. This beautifully illustrated narrative tells the story of a remarkable conservation success in midcoast Maine, where a coalition of 26 groups has protected more than 80 percent of the shoreline along the Ducktrap River.

FLYERS

Conservation Easements: An Introduction for Maine Landowners. Marina Schauffler. Topsham, ME: Maine Coast Heritage Trust, 2002. For landowners considering conservation easements, this 20-page flyer provides an introductory overview. Available for free upon request from MCHT and from many local land trusts.

Technical Bulletins from Maine Coast Heritage Trust. MCHT lands and legal staff. Topsham and Mount Desert Island, ME: Maine Coast Heritage Trust, 1990-2002. Maine Coast Heritage Trust offers landowners free Technical Bulletins on a wide variety of topics – such as steps involved in completing easements; property taxation of conservation easement land; and tax and appraisal considerations regarding charitable conservation gifts. MCHT also provides lists of real estate appraisers, land use planners and attorneys in Maine who have experience completing conservation easements. Contact either office of the Trust for a current list of the Technical Bulletins available.

VIDEOCASSETTES

Land Trusts in America: Guardians of the Future. Produced by Land Trust Alliance, Washington, DC. This 14-minute video, which features people who have saved their land, is educational as well as inspirational.

For the Common Good: Preserving Private Lands with Conservation Easements. Produced by Land Trust Alliance, Washington, DC. This award-winning video explains the workings and public benefits of conservation easements through three case studies.

APPENDIX G

GLOSSARY

actuarial tables - life expectancy information based on statistics.

adjusted gross income (AGI) - an individual taxpayer's income after deducting exempt income and certain allowed reductions. Itemized deductions, the standard deduction or personal exemptions further reduce AGI, resulting in "taxable income."

annuity - a fixed annual payment based on an investment and the duration of payments.

appraisal - the estimated value of property as determined by an appraiser, based on sales of comparable property or income potential.

assessment - municipal valuation of property for tax purposes.

bargain sale - sale of property or easement to a tax-exempt organization for less than the fair market value.

baseline data - information and documentation showing the condition of land at the time an easement gift is made.

basis - the cost of property when acquired (or value when inherited), plus the cost of certain permanent improvements.

beneficiary - the person designated to receive the proceeds from a will, trust, or insurance policy.

benefited parcel - land that receives benefits from restrictions placed on adjoining or nearby property.

bequest - a gift by will of money or personal property.

building envelope (or homestead area) - a designated portion of a larger property, identified in a conservation easement or plan, within which future construction is permitted. The building envelope or homestead area can be included within the terms of an easement or can be left out – exempt from the easement's terms.

capital gains - profit from the sale of property in excess of the basis.

charitable gift (also charitable donation, charitable contribution) - a gift to a tax-exempt entity that meets certain IRS standards.

charitable gift annuity - a contract by which a donor sells his property to a charity in return for regular annuity payments to one or two beneficiaries for life.

charitable remainder trust - a trust fund invested to provide lifetime income to the donor and beneficiaries and a gift of the remaining principal to charity upon its expiration.

conservation buyer - an individual or group of individuals who work in partnership with a land trust to acquire land for permanent protection (either holding that land privately with conservation restrictions or transferring it to a land trust or government agency).

conservation easement - a legal agreement between a landowner and a conservation organization or agency, that permanently limits uses of the property to protect its significant natural features.

conservation investor - an individual or group of individuals who help to fund the acquisition of conservation land, without becoming long-term owners.

conservation plan - a document outlining the goals, methods and strategy for preserving a property.

conservation remainder - a right of deferred or future ownership of land subject to perpetual conservation restrictions that is delayed until after the death of the original owner or other named “life tenants.”

covenant (or restriction) - a written commitment contained in a contract, lease, deed, or other form of agreement.

current use classification - a property tax category that recognizes the economic benefits of working landscapes and open space areas, and grants them a reduced tax rate.

deed restriction - restrictive covenants, placed within a deed, that guide future uses of the property.

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

donee - one who receives a donation.

easement holder - a nonprofit organization or government agency that assumes long-term responsibility for monitoring a conservation easement and enforcing its terms.

estate tax - a tax imposed on assets transferred from a deceased person to his or her heirs.

executor (or personal representative) - a person named to carry out the provisions of a will.

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 (fee interest, fee-simple interest) - technically, all the legal rights in property; informally, ownership of land. “Less than fee interest” entails holding fewer rights, such as a lease, option, easement, mortgage, or life interest.

forever wild - a term that describes restrictions on land intended to keep the natural resources substantially unaltered. The Open Space Tax Law defines forever wild as allowing only minor changes to prevent the spread of fire and plant disease and to accommodate low-impact outdoor recreation, nature observation and study, and pursuits such as hunting, fishing and harvesting shellfish.

highest and best use - the most profitable likely and legal use to which a parcel of land is likely to be put (a determination made in calculating value).

just value - the required property tax assessment standard, based on the likely sale price of a property, reduced by the average percent below full fair market value at which the town assesses property (the state-determined “town assessment ratio”).

land trust - a publicly supported nonprofit organization that helps landowners voluntarily conserve their properties.

land use planner - a professional offering conservation and development planning services.

life tenants - persons with the legal right to possess real estate only for the remainder of their lifetimes.

management agreement - a written contract, generally between a landowner and organization or agency, committing one or both parties to certain responsibilities in caring for a property.

mutual covenants - written commitments regarding land use contained in a deed or other form of agreement and exchanged among neighboring landowners.

open space - an undeveloped tract of land that provides scenic, ecological and/or recreational values. Also, a current use property tax classification.

option (to purchase) - a time-limited right to acquire a property at a set price.

partial interest - a deeded undivided percent in the ownership of land.

post-mortem election - a tax law provision that allows heirs to make a charitable donation of certain rights in land that they inherit, subject to Internal Revenue Code restrictions.

public benefit(s) - the values (scenic, recreational, ecological, cultural, historic or spiritual) that people derive from a protected property.

qualified appraiser - an IRS term for an appraiser who does appraisals for charitable deductions and who has not been listed as disqualified by the IRS.

real property (real estate or realty) - land and the buildings or other permanent improvements associated with it.

Register of Critical Areas - a State list documenting sites of significance to Maine's natural heritage whose landowners have agreed to pursue voluntary land conservation.

remainder interest - a "future interest" in property that is realized only after termination of a prior interest; for example, when an organization receives deed to a property subject to a "reserved life estate," the organization holds a remainder interest. Possession of the property will not occur until the end of a specified term of years or at the life tenant's death.

reserved life estate - a right retained as part of a transfer of land where the owner or other individuals possess the property during their lifetime.

right of first refusal - a binding commitment by a landowner not to sell property without first offering it to a specified individual or organization at the same terms the owner would be willing to accept from another purchaser (usually excluding family members).

stewardship - long-term responsibility for the care and management of land or conservation easements.

title - ownership of land, usually documented at the County Registry of Deeds.

trustee - a person responsible for the proper and faithful administration of a fund or asset solely for the benefit of identified beneficiaries.

undivided interest - partial ownership of an entire undivided property (as opposed to ownership of a part of the land), owned jointly by two or more other parties.



*“Each generation has its own rendezvous with the land,
for despite our fee titles and claims of ownership,
we are all brief tenants on this planet.
By choice or by default, we will carve a land legacy
for our heirs.”*

Stewart L. Udall
The Quiet Crisis



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WHAT WILL HAPPEN TO YOUR LAND IN THE FUTURE?

If you would like to conserve a treasured property, there are many techniques from which to choose. A conservation easement, for example, allows you to guide future land uses while retaining ownership. By donating land to a conservation organization in your will, you can enjoy the property throughout your life while providing for its long-term stewardship. Selling your property at a reduced price to a land trust provides income and ensures the parcel's permanent protection. Land conservation often makes good financial sense since many methods offer tax incentives.

Using the techniques described in this book, individuals, families and corporations in Maine have conserved more than 1.5 million acres of land with immeasurable ecological, scenic and recreational value. Learn how you can help add to this ongoing legacy.



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