



# Conservation Options

A GUIDE FOR MAINE LANDOWNERS





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## ACKNOWLEDGMENTS

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For information, contact:  
Maine Coast Heritage Trust  
1 Bowdoin Mill Island, Suite 201  
Topsham, ME 04086

[mcht.org](http://mcht.org)

Sixth Edition  
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*The Landowner's Options*)

This is the sixth edition of a guidebook first published as *The Landowner's 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). Past editions drew on the national version of *Conservation Options: A Landowner's Guide*, produced by the Land Trust Alliance in 1993. Materials were also 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. Writing credit for the 1994 edition goes to Marina Schaufler, and all editions have benefited from significant input from many past and present MCHT staff.

In this update, we endeavor to reflect the nuances of conservation as it is currently practiced in Maine and to capture changes to law and policy that have transpired over the past 25 years. Where possible, professionals with expertise in specific areas were consulted. While this publication seeks to provide accurate, authoritative information, Maine Coast Heritage Trust does not render legal or financial advice. Since the tax examples in this book are simplified sample calculations based on laws that can change quickly, they should not be relied upon to calculate your benefits. Please consult a tax advisor to determine potential outcomes for your situation.

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“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 ...”

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- E.B. WHITE, 1942

## PREFACE

There is strong 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, such as: clean water, wildlife habitat, scenic beauty, outdoor recreation, economic livelihood, and community enrichment.

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

Residents and visitors to the state benefit from a venerable legacy of land conservation initiatives. Generations ago, visionary and persistent individuals created Baxter State Park and Acadia National Park. Many landowners since then have acted as well:

over the past 50 years, individual, family, and corporate landowners — working with public and private conservation groups — have permanently conserved more than 3 million acres in Maine.

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. All of them share an abiding concern and love for the land.

This guide 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. 🌍

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

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 its special natural resources be lost to development? Are there certain uses of the property happening now, such as farming or sustainable forestry, that you want to secure into the future?

One answer should become clear: if you care about your land and want to pass it on to future generations, you need to plan carefully today. There are a variety of tools that can be used, and there are many conservation partners ready to help you realize your goals. Working out the solution that is the best fit for you will take time, but it will be time well spent.

This guide explains some of the available techniques and can help you evaluate which method or combination of conservation *options* are best for your family (see sidebar). Begin by clarifying the following:

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

The conservation method you choose will depend not only on your vision for the land but on its notable features. If your land provides rare wildlife habitat, for example, you may want to consider a highly protective *conservation plan*; whereas on a working farm or forest, 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.

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 the Glossary on page 35 (Appendix D).



Dodge Point, Newcastle A local land trust or a statewide conservation organization can help you review options and locate the resources needed to protect your land for future generations.

## Customizing Your Conservation Strategy

Each conservation strategy is tailored to the landowner's needs and their property's special features, drawing on one or more techniques from the following chapters. For example, a *conservation easement* can be used in combination with a *bargain sale* (at a price below *fair market value*) or a land donation. Combining techniques makes transactions more complex, requiring the skills of experienced advisors.

## Professional Guidance

As you plan for your property's future, you may want to consult an attorney and a nonprofit *land trust* (for a current listing, visit [mltn.org](http://mltn.org) or email [mltn@mcht.org](mailto:mltn@mcht.org)). Depending on your particular situation, you may require the services of an appraiser, surveyor, *land use planner*, or accountant. Appendix A provides advice on working with these professionals. 📍

A *conservation easement* is a voluntary, legally binding agreement between a landowner and a *land trust*, state agency, or other qualified entity, through which certain rights to the property are permanently transferred. Most often, these agreements prohibit future development or types of development, but easements can also be designed to protect specific values, such as: ecological, recreational, scenic, or historic. The landowner retains ownership of the land and all rights not transferred through the easement, such as the rights to live on the property and manage it as productive forest or farmland.

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POTENTIAL BENEFITS THAT CONSERVATION EASEMENTS OFFER LANDOWNERS

- Easements provide permanent protection of significant features, with restrictions applying to the current and all future landowners. A *land trust* or government agency monitors and ensures the restrictions are followed over time.
- The land stays privately owned. Landowners retain *title* to their property and may continue to live on it, sell it, or pass it on to heirs, knowing that the conservation entity (known as the holder) will be monitoring and upholding the restrictions designed to shape the future uses of the property.
- Donated *conservation easements* can provide a charitable income tax deduction.
- *Conservation easements* can reduce property tax burden by eliminating unwanted but highly valuable development potential or through assuring public access to part or all of a property.
- *Conservation easements*, and the planning and *assessment* process to design and tailor them, can articulate landowner objectives and help minimize family conflicts when lands pass to the next generation.

## How Conservation Easements Work

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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. In granting a *conservation easement*, you voluntarily limit or relinquish some of your rights on that land. As part of the process, you identify an entity as the *easement holder*. It is the holder’s job to monitor and enforce the limitations and restrictions you have identified in the easement. 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 while meeting your land use goals.



Mount Desert Island, Bernard sunrise Conservation easements enable landowners to permanently protect their cherished properties while still retaining ownership.

*Conservation easements* can be on land with or without buildings and on properties large or small. Most *conservation easements* prohibit subdivision of the property, though a landowner can often choose to leave some land out of an easement for non-conservation uses. A small percentage of easements guarantee access rights to the public for outdoor recreation. Some easements focus on maintaining working landscapes such as farmlands or working forests while including details that define those uses and best practices. Easements that allow for future buildings or structures often limit their scale and location. 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 an easement that specifies no future alteration of the land's natural 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 access to special places over time (e.g., hiking, clamming or berry-picking).

The *easement holder* assumes permanent responsibility for enforcing the easement's terms. This *stewardship* involves an annual inspection of the property and ongoing contact with the landowner. Most *land trusts* hold special insurance policies for easements, and if an easement is violated, the holder takes action to have the violation corrected (including legal measures, although these are rarely required). The responsibility of upholding easements is work and time that the holder commits to in perpetuity. This *stewardship* commitment requires continuous funding over time, which is why some *holders* will raise funds to support *stewardship* and will often ask a landowner or easement grantor to consider helping with that cost through a *stewardship* donation.

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 be best owned and managed by a public agency or private *land trust*.



Woodward Point, Brunswick Long-term care for easement properties involves a partnership between the landowner and volunteers or staff from the land trust holding the easement.

Maine has over 80 *land trusts* that provide countless benefits to communities in every corner of the state. Continually evolving, these charitable organizations meet the needs of Maine people in many ways: by providing places to get outdoors, economic opportunities, locally grown food, clean water, protected wildlife habitat, and educational offerings for people of all ages. In short, Maine *land trusts* make the state a better place to live, work, and raise a family.

### **Working with willing landowners to conserve land for the public**

*Land trusts* are conservation organizations that achieve their missions by working with willing property owners, including those who want to know that the family land they have come to love is responsibly managed forever. In exchange, *land trusts* oversee the properties in their care according to the highest standards and in furtherance of public values such as water quality, sustainable forests, healthy ecosystems, productive farmlands, and welcoming nature trails.

### **Serving their communities in a variety of ways**

Beyond acquiring and managing conserved areas, *land trusts* do so much more. For example, many offer environmental education programs in coordination with local schools; some act as a convener to bring together community partners to accomplish restoration projects; and others hold workshops and forums for information on subjects like climate change. These roles and initiatives shift over time, adapting to public needs and evolving issues.

While working on unique missions for their specific service areas, Maine's *land trusts* also collaborate, share ideas, and promote best practices through the Maine *Land Trust* Network. And often, *land trusts* partner on projects of mutual interest within a region or state.

### **Board-led, independent, private charitable corporation**

*Land trusts*, like most nonprofits, are led by a board of directors — community leaders who set the volunteer organization's direction. Some have staff who implement the day-to-day activities, while others accomplish their work through the dedication of volunteers. Most *land trusts* have active members who clear trails, raise funds, and perform community outreach.

*Land trusts* receive funding from a variety of sources including charitable donations from individuals, families, and local businesses. Many also apply for grants from private foundations. Some receive support from public grant programs such as Land for Maine's Future, a state-funded bond program that helps conserve Maine land.

## Donating Easements

Placing a *conservation easement* on your property often reduces its resale value, but some of that loss can be offset through tax benefits. Landowners may donate their *conservation easement* to a nonprofit *land trust* or government agency. The donation may qualify as a tax-deductible gift of a “Qualified Conservation Contribution” form of Noncash Charitable Contribution 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

The first step in determining a potential income tax deduction is to complete a real estate *appraisal* that compares the market value of land before and after the easement — the difference is the value of the easement donation. Gifts worth more than \$5,000, including easements, must be substantiated by a qualified *appraisal*, obtained by the landowner, to be eligible for a tax deduction.

Assume, for example, that owners of a coastal property that is 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 would then 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.

### Estate Tax

High *estate taxes* can prevent a family from passing land on to the next generation. When landowners leave land to their family, heirs may find that the property has appreciated so much since its purchase that it must be sold to cover *estate tax* payments. Reducing *estate taxes* by restricting future development can be particularly beneficial for landowners with sizeable estates and substantial real estate holdings.

Federal *estate tax* law in 2020 exempts the first \$11,580,000 worth of combined gross assets and prior taxable gifts per individual (this figure changes frequently). The federal *estate tax* — levied at rates between 18 and 40 percent — is imposed 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.



**Rocky Lake Preserve, Whiting** Sound conservation planning can reduce taxes, helping to keep land in family ownership over the generations.

## 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 a *conservation easement* can reduce this value. Property tax *assessments* should reflect the land's reduced market value under easement. It is up to the landowner to inform the town when a *conservation easement* has been granted over a property, and you may wish to provide evidence of reduced value. Alternately, you can apply for acceptance into one of the Current Use Property Tax classifications such as the state's Farm and Open Space Tax Law or the Tree Growth Tax Law. Both are designed to provide a reduced standardized property tax for undeveloped productive lands (see Chapter 7).

## Costs to a Landowner

The *land trust* or government entity will usually try to minimize costs to a landowner who is generously donating a *conservation easement*. However, there will still be some costs. The landowner must pay for a real estate *appraisal* by an independent, *qualified appraiser* to determine the value of the gift for tax purposes. In addition, it is strongly suggested that the landowner have an attorney represent their interests, and that a financial advisor be consulted if the gift has significant value. Occasionally, survey work will be necessary, which can also add cost.

In some cases, the holder requests or requires the landowner to make a financial contribution. This is to help offset the real costs of monitoring and upholding the restrictions over time. Such contributions, whether one time or over time, are generally tax deductible.



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 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," explained 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

## Bradley Pond Farm Preserve, Topsham

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

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*.

Eventually, the Calls sold their property to new owners who shared their commitment to sustain its beauty and ecological health, a tradition which has continued through to the current owners. Having an easement in place helped to reassure the Calls that the land they had cared for much of their lives would remain protected in perpetuity. "You may own the land," Florence Call reflected, "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."

## Donating an Easement by Will

A *conservation easement* can be granted in your will or even at the direction of your beneficiaries, if they all 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, it is best to draft the easement terms during your lifetime, 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 consider 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 instruct your *executor* to complete the easement in the event of your death. Your will can be amended later if circumstances change, or if you decide to grant the easement during your lifetime. In the interim, you will have protected the land and possibly lowered *estate taxes*.

## Selling Easements

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 may trigger a *capital gains* tax. It can also require more time to complete the transaction, given the fundraising needs of the purchasing organization or agency. 🌱

For 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," explained 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."



Tide Mill Organic Farm, Edmunds  
Punkin, part of the Bell family, has a Swedish Red father resulting in her unique markings.

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* (now Downeast Coastal Conservancy) 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. Tide Mill Farm's superlative scenic, ecological, and recreational values were borne out when the project scored near the top of LMF's statewide rankings.

LMF purchased 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, shorebirds, seals, and nesting pairs of American bald eagles. Under the easement terms, 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.

Donating land to a *land trust* or government entity is a very generous conservation gift to the community and helps keep a special place intact and publicly accessible. By donating land for conservation, you can ensure that future generations are able to enjoy a place you have cherished. This option is especially appropriate for lands 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;
- wish to take action to offset the development and change they see around them;
- own property they no longer wish to use;
- own highly appreciated property, the sale of which would result in a high *capital gains tax*;
- own substantial real estate holdings and wish to reduce property or *estate tax* burdens;
- recognize that greater expertise is needed to protect and manage the land; or
- do not have heirs willing or able to protect the land’s conservation values.

Outright donations of conservation land offer several advantages. They are relatively simple transactions that provide maximum income and *estate tax* benefits (while avoiding *capital gains tax*), and they transfer ownership and management responsibilities to a nonprofit organization or government entity. Most important, they can ensure the land’s *public benefits* are permanently conserved.



**Kittredge Brook, Mount Desert Island** Donating land is an excellent option for landowners who want to preserve the scenic and ecological qualities of their land for future generations.

Property not suited to long-term conservation ownership may still be donated to a *land trust* or governmental entity for resale. If the donor is willing, the organization can resell the property (protected by an easement, if warranted) and use the proceeds to benefit its conservation programs (see Donating Properties to Generate Conservation Funds on page 15). This is referred to as a “tradeland” transaction.

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

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## DONATING LAND



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

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, grew up there, when life was very different. “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. A well-respected civic leader, Roby Littlefield had served as a state legislator and publisher of the town’s newspaper.

He also led a community effort to purchase shorefront land in 1923, creating Ogunquit Public Beach. “My uncle wanted to keep the land as it is,” said Joseph.

When Roby Littlefield passed on in 1988, just shy of his hundredth birthday, his nephew decided to preserve Beach Plum Farm as a treasured community resource. He donated the property to Great Works Regional Land Trust (GWRLT). The farm offers a quiet haven for people and wildlife, the barns were renovated and now house the land trust office and a small museum, and many area families enjoy the property’s community gardens. “By preserving an important piece of the town’s past, the Littlefields made a meaningful gift to their community’s future.

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## Tax Implications

Donating, rather than selling, your land may come with tax benefits and other savings that minimize the financial sacrifice. For example, if the value of your land has appreciated greatly since you acquired it, selling the property could result in a high *capital gains* tax. Your profit might be further reduced by a realtor’s commission.

At the same time, 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*. (Annual limitations are 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 an emergency sale by your estate just to pay *estate taxes*.

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 may be deductible.

## Donating a Remainder Interest

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Landowners who choose to determine the future of their property can donate what is called a *Remainder Interest*. Donations of farms, residences, and land important for conservation can be structured to allow you and other named persons (called *life tenants*) to continue enjoying the land during your and their lifetime. Under such an arrangement (called a gift of a *remainder interest* in a residence or farm or a *conservation remainder*, subject to a *reserved life estate*), you assume full responsibility for taxes and maintenance during your lifetime. 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 with or without conservation value. These latter can be retained by the charity or be sold to fund land protection work. A *remainder interest* can also be granted after a term of years, rather than a lifetime.

A gift of a *remainder interest* in a farm, residence, or conservation-restricted property is generally eligible for the charitable income tax deduction when made during the donor's lifetime. This *charitable gift* 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 the age or combined ages of the *life tenants*, per 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 current gift deduction. A gift of a *remainder interest* takes the land out of the estate and thus may reduce *estate tax* obligations.

If you plan to donate a *remainder interest* in land that is important for conservation but is not a residence or farm property, you can secure the deduction for a *conservation remainder*, and secure the land's future by donating a *conservation easement* before or simultaneous with donating the *remainder interest*. These gifts can be made to different qualified *donees*, but this is not required under Maine law to make the easement perpetual. Either way, the income tax deduction will be roughly equivalent, depending on the restrictions. A *remainder interest* in a property can also be granted to a *land trust* as a tradeland for resale with a *conservation easement* on part or all of it if appropriate. Resulting income can then help further the organization's work. The gift of a home or farm property for this purpose is a very valuable gift to conservation work.



**Diana and Tom Oliphant at Blue Horizons on Mount Desert Island** 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.

Maine is famous for its shorefront “camps,” modest cabins that draw together extended family. Many of these properties harken back to an earlier era and hold family memories going back generations. Diana Oliphant and her husband, Tom, owned “Blue Horizons,” a shorefront property on Mount Desert Island. She recalls that her grandparents first purchased the land in 1925. From a larger summer place in Bar Harbor, the family would come out to the “beach cottage” at Northwest Cove to swim and have tea in the gazebo.

In the early 1970s, Diana’s family placed the property under a *conservation easement*, held by Acadia National Park, that limits future development. In 2007, Tom and Diana Oliphant took an additional step to protect the property they love — donating a *remainder interest* in it to Maine Coast Heritage Trust. They retained the right to use the property for their lifetimes or earlier if they decided to let go, at which time it would transfer to MCHT and become a community preserve. In 2010, the Oliphants realized that they could no longer maintain the property and released their life estate to MCHT. Since then, MCHT has used the cabins for summer staff housing, helping

us to continue being able to employ young people for trail building and maintenance statewide, and letting us meet a challenging need for summer staff housing in this area. The property’s trails and shoreline are a preserve, enjoyed for walks by neighbors, community members, and visitors.

“All of us at the Trust feel honored and touched by the magnitude of this gift,” notes Ciona Ulbrich, MCHT Project Manager. “We are grateful that the Oliphants entrusted us with the care of this land that was so much a part of their family for four generations.”

“After much discussion with our children,” Diana says, “we thought it would be best to give the property back to the people of Mount Desert Island and of Maine.” This decision followed years of consideration, during which Tom and Diana watched as development pressures everywhere increased. “It felt like the right thing to do — making sure that this little piece of Maine’s coast would not change. We wanted to offer a place where local people could go to enjoy the water.” Now, both residents and visitors can visit Blue Horizons throughout the year, walk the beach, and admire its unusual rock-strewn shoreline.

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## 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*). Leaving land in your will to a conservation entity can be a very meaningful legacy.

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.

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## 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 death 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 Chatfield’s legacy of careful *stewardship*.

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



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## Donating Properties 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, but this is done only when both landowner and land trust agree prior to the gift that this is a good use of the property. If the property has conservation merit, the organization can place an easement on it before reselling it. This approach may protect the land, if warranted, but keeps 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 your intentions for whether the organization protects the land, resells the land, or retains it as a preserve.

Land must have significant scenic, ecological, or cultural value to be appropriate for conservation. Properties that do not meet these criteria — for example, a commercial building, a residence without significant *open space*, or a building lot — can still 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*). 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.

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*.

## Donating Undivided Interests in Land

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To take full advantage of the charitable deduction from a large gift of land, 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 the year of the gift and in the carry-forward period for the remainder of the gifts. 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 its entirety. Undivided interests can become a liability because the organization might end up sharing *title* with incompatible owners or face partition. Therefore, the organization may ask for an enforceable pledge agreement that commits you to 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

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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 they are included here because they provide income and tax benefits for the donor and a financial boost to the receiving organization.

### 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 not more than two designated beneficiaries, including the donor. 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* on the property, before granting the land itself, in return for the *charitable gift annuity*. Or you can grant unrestricted land to an organization that will set up a gift *annuity* and may place the land under easement before selling it. In either case, the organization may keep the land, or sell it to generate the income needed for *annuity* payments. Any surplus proceeds, after the *annuity* obligation expires, support the organization's conservation work.

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

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

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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)

Jamies Pond, Manchester

## 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 the property to the CRT. 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 CRT 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 after 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. 🌐

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### 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 must sign a deed to release their rights.

Land is often a valuable asset, and compensation for its conservation may be important to the owner. Funding for conservation is limited, but some funding is available for land purchases, and occasionally *land trusts* or government agencies have funds to purchase properties for long-term conservation. Several techniques help them to stretch conservation dollars while providing some compensation for landowners. When considering a sale for conservation, it is important to obtain the advice of a financial advisor, if possible, to help determine the option that is the best fit.

### Fair Market Value Sale

Selling land at *fair market value* to a conservation organization or agency is a possibility, but generally takes a significant investment of time and energy by the organization to secure the funding to pay for its acquisition and *stewardship*. Purchases at *fair market value*, when possible, are generally reserved for exceptional properties that face an imminent threat. However, conservation organizations will sometimes buy at *fair market value* when a seller is willing to allow them time to raise funds to make a purchase more feasible.

In nearly all purchases of land for conservation, the price that the organization or agency can pay, or *fair market value*, needs to be supported by an independent, licensed real estate appraiser. This helps to ensure the integrity of the transaction for donors and funders, and for the organization or agency itself. For some funding sources, specific types of *appraisals* are required, increasing the time and cost needed for that step.

Often, landowners come to realize that a sale at *fair market value* may not even be desirable. *Capital gains* taxes and selling costs (such as a realtor's commission) can substantially reduce profits, particularly for landowners in higher tax brackets or for those selling highly appreciated property. In those cases, a *bargain sale* may provide sellers with a better approach.

### Bargain Sale

A *bargain sale*, where property is conveyed at less than its *fair market value*, can help increase the chance that a conservation organization or government agency can purchase the land. It is also a great way for the landowner to contribute to the project's success. The landowner and purchasing organization negotiate a mutually agreeable price below the *fair market value*. 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 *bargain sale* price is considered a tax-deductible charitable donation. For any gift of property valued at over \$5,000, the *fair market value* must be substantiated by a *qualified appraisal* commissioned by the landowner, to receive a tax deduction.



**Hills Island, Upper Frenchman Bay** By offering to sell to MCHT at a bargain price, Gale McCullough and Stu Gillam helped protect additional properties and fuel a collaborative effort among three land trusts that conserved the area around the island and a tidal estuary.

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## OFFERING A BARGAIN SALE

35 years ago, Gale McCullough and Stu Gillam were in search of waterfront land near Mount Desert Island to build an off-grid house. They came across an ad in Down East Magazine for property on a tidal estuary in upper Frenchman Bay which included 8-acre Hills Island and a long narrow strip on the mainland surrounded by mudflats. They walked the land and found a beautiful and quiet spot teeming with wildlife — including a seal haul-out ledge just south of Hills Island that would allow Gale to continue her project of observing and documenting the behavior of harbor seals that she had been diligently doing for the past eight years in southern Maine.

Gale and Stu packed up their belongings and moved into a small cabin on Hills Island while they built their new home on the mainland. For a year and a half, including two winters, they would travel back and forth from the island in a big red canoe. “It was a bit of a learning curve figuring out the timing of the tides to avoid the strong currents under the old railway bridge or getting stuck in the shallow mudflats,” Gale said. That final winter, they had a particularly harrowing experience with the canoe getting trapped in sea ice, so they decided that it was time to move into the partially completed house on the mainland.

After years of enjoying their island retreat, they realized that they were making it out to the cabin infrequently and it was time to find new stewards for the island. They approached Maine Coast Heritage Trust to see if they would be interested in purchasing the island as a preserve and further protect the bald eagles that had taken up residence there. At the time, MCHT was trying to purchase two saltmarsh properties that were about to go on the market. While Gale and Stu couldn’t make an outright donation of the island, they wanted to make sure that the Trust had enough funds to conserve all three pieces of the landscape. A *bargain sale* helped them get the financial return that they needed for their retirement and gave MCHT a head start in the fundraising to protect all three parcels. Their donation also helped leverage a federal migratory bird habitat grant that helped the Trust buy all three properties.

“After knowing the island intimately for so long, we enjoy being able to walk down to the shore, look out towards Hills Island and the estuary to see the seals, eagles, and other wildlife that share this special spot,” Gale noted.

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## HOW A BARGAIN SALE AFFECTS FEDERAL INCOME TAX

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 1990 for \$200,000 (the *basis*). By 2020, the farm’s *fair market value* had increased to \$1,000,000. If they decide to sell their farm to a *land trust* for a price of \$300,000, they can count as a charitable donation the difference between the property’s *fair market value* and the sale price (\$1,000,000 – \$300,000 = \$700,000).

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 applied to the sale price minus a “sale portion” of the *basis*, determined as follows:

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

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

In this case,  $(\$300,000 / \$1,000,000) \times \$200,000 = \$60,000$

The sale portion of the *basis*, \$60,000, is subtracted from the \$300,000 sale price to yield a capital gain of \$240,000.

As a result of the *bargain sale*, the landowners will receive a deduction for a charitable donation of \$700,000 and will owe *capital gains* tax on \$240,000.

## Installment Sale

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In an installment sale, the seller agrees to accept a series of payments over time rather than one lump sum. Installment sales can benefit landowners by spreading income and taxable gains over several years, although special income tax rules apply. Installment sales can sometimes be helpful to the purchasing organization by providing additional time to raise the needed funds. A potentially 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 16), the *land trust* may want an agreement to confirm that it has the right to acquire the whole parcel.

## Option To Purchase

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In some cases, a conservation organization or agency is unsure if it is able to secure funding for an acquisition. In those cases, a landowner may be asked to consider offering a purchase *option* agreement to buy the property. This is a document that gives the Buyer an amount of time within which the Buyer has the right but not the obligation to commit to buying the land at an agreed upon price. With an *option* agreement, a landowner has determined for themselves as well as for the organization or agency, the price and timeframe within which a conservation acquisition might or might not be possible. Being under *option* on a property is very helpful for the conservation organization or agency, giving them time to pursue grant and donor funding for a possible transaction with a clear price and timeframe, but without an obligation to purchase should the funding not be found. If the organization or entity becomes confident enough of the funding, it exercises the *option* and purchases the property. Options can be sold for a nominal amount or a higher negotiated amount based on holding costs and lost opportunity, and this cost is generally applied to the purchase price. If the Buyer fails to purchase, however, the Seller keeps the Option Price.

Sabbathday Lake Shaker  
Village, New Gloucester



## Right of First Refusal

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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 could grant a *right of first refusal* or right of first offer. The first technique allows the organization to match any bona fide offer you receive. The second technique is based on a price formula. As with a purchase *option* agreement, a *right of first refusal* does not obligate the organization to purchase the land.

## Sale of Other Property Interests

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In some instances, a conservation organization or government agency may purchase *conservation easements* or *remainder interests* — either at *fair market value* or through a *bargain sale*. Bargain sales of such *partial interests* in land qualify for most of the tax benefits that result from *bargain sales* of *conservation easements* or *fee* property (see the section Selling Easements, page 10). 🗺️

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## COMBINING CONSERVATION TECHNIQUES

Connected to the mainland by a causeway, Clark is one of Maine's most accessible islands and has long been used and loved by locals, thanks to the previous owners' generous practice of permitting public use. Late in 2020, Maine Coast Heritage Trust completed the conservation of 120 acres on Clark Island in St. George, but preservation of this unique property took place over several years and happened in multiple stages.

The Nickerson family originally purchased this land because they loved its beauty and resource values. In fact, they donated one of the first *conservation easements* to the State of Maine back in the 1970s to protect the southern end of the island. Over multiple generations of ownership, they have enhanced habitat values through thoughtful management, created miles of trails, and welcomed public use.

"In 2017, the family offered to sell 120 acres of Clark Island to Maine Coast Heritage Trust at a significant *bargain sale*," explains Betsy Ham, Director of Land Protection. "This generous offer created an affordable opportunity to conserve a uniquely accessible island and guarantee the public continued access, from its causeway to its popular main quarry." The sale also allowed the siblings to retain several acres on the southwest corner of the island where they have a home and endow long-term property maintenance and tax needs through a family trust.

Greg and Lauren Soutiea, who bought the nearby Craignair Inn & Restaurant in 2018, witness daily the importance of Clark Island. The inn and restaurant are adjacent to the causeway that leads to the island. Parking for preserve visitors is currently available only at the nearby Craignair Inn, which has established eight designated spaces in their newly renovated parking lot.

"I see how special the place is to the local community," Greg said. He added that every day, including in the winter, people walk out onto the island. The conservation of Clark Island will continue to allow locals and visitors an opportunity to experience the wonders of Clark Island. Lauren and Greg plan to operate a small concession stand during the summer, offering refreshments for visitors.

Of the \$4.8 million in project costs, \$1 million was received through a Coastal Wetlands Grant from the U.S. Fish and Wildlife Service, and \$20,000 was granted from the Maine Outdoor Heritage Fund, a program of the Maine Department of Inland Fisheries and Wildlife, with the remainder raised through private donations.



**Clark Island, St. George** By combining conservation techniques, owners were able to ensure permanent public access to the island while continuing to enjoy use of their cherished seasonal retreat.

## Leasing Property

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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 as owner, permitted land uses for the tenant, 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. Leases can be written for a range of land uses but are most often for agricultural uses, such as haying, pasturing, horticulture, growing crops, or other farm uses. The leased land may qualify for current use property tax benefits, to help lower the landowner's costs of owning and maintaining the land and ensure its continued productivity. Sometimes the land trust leases and manages the land; other times the owner permits the land trust to sublet to an individual or entity, such as a farmer. That relationship means that the conservation organization takes over the burden of the lease from the landowner and oversees finding lessees, creating the lease agreement, and handling any details. In those cases, the organization is generally well connected among farmers, and thus is able to find new lessees and deal with issues that may arise. Leases can also help increase the land area available to farmers without the added costs of land ownership, increasing their productivity. This tool can shape a great working relationship among landowners, conservation organizations, and farmers.

## Deed Restrictions

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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 have fewer legal protections and are less likely to be monitored and enforced over time. Occasionally, it makes sense for a conservation organization or agency to hold *deed restrictions* on land adjacent to conservation land that it owns.

Landowners can impose permanent *deed restrictions* on their land when they deed it to others, but only to benefit adjacent or nearby land they own. 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 owners of the *benefited parcel* may not be committed or able to enforce the provisions over time. 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, under the doctrine of merger.



The presence of *deed restrictions* may lower the price if land is sold and may 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 *deed restriction* as a charitable deduction for income tax purposes, even if granted to a charity, though legally binding restrictions are taken into account when valuing the land for *estate tax* purposes.

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## 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 income tax benefits and are not a permanent means of conservation since they can be nullified by subsequent agreements of all owners or by failure to enforce.

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## Management Agreements

A *management agreement* enables a *land trust* or government agency to help take 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 made, 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 28). 🌐

Tax incentives help many landowners take advantage of conservation opportunities. This chapter offers examples of income and *estate tax* reductions from donating land or granting *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 October 2020. 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. Review the proposed gift with an experienced attorney or accountant to determine whether it meets IRS requirements.

A deductible charitable donation can only be made 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 *conservation easement appraisals*. A conservation organization can refer you to experienced appraisers but cannot provide the *appraisal*. The *appraisal* cost is a necessary expense if you want to pursue a charitable income tax deduction.

**Old Point, Lamoine** Landowners whose gifts meet federal tax guidelines can enjoy significant tax benefits by donating land and easements.



## 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), 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.

#### EFFECT OF THE 30 PERCENT ELECTION

A couple donates a conservation property valued at \$80,000 to a *land trust*. Their *adjusted gross income* in the year of the gift is \$50,000. Assuming that this is their only gift, and their income remains constant, they could use the charitable deduction resulting from the donation as follows:

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

	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 had been worth more than \$90,000, they would not have been able to use up the entire deduction. To spread the deduction out over a longer time period, they 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.

### The 50 percent Election

Another approach involves only claiming as a deduction 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.

In 2015, Congress enacted "enhanced incentives" for qualified *conservation easement* donations. These enhanced tax incentives raise the income tax deduction a donor can take for the easement from 30% of their *adjusted gross income* in any year to 50%; extend the carry-forward period from 5 to 15 years; and allow qualifying farmers and ranchers and forest landowners to deduct up to 100% of their income each year, with no limit on carrying forward. The advice of a qualified tax advisor is essential to determine how these enhanced incentives may benefit you.

#### Example:

Under the previous law, a landowner with an *AGI* of \$50,000 a year who donated a *conservation easement* valued at \$500,000 could take a \$15,000 deduction for the year of the donation (30% of *AGI*) and an additional five years — a total of \$90,000 in tax deductions. The enhanced incentives allow that same landowner to deduct \$25,000 for the year of the donation (50% of *AGI*) and then for an additional 15 years — a total of \$400,000 in deductions. If the landowner qualifies as a farmer or a rancher, he or she could deduct up to 100% of the *AGI* per year — and pay no federal income tax for ten years.

## State and Federal Estate and Gift Taxes

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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. In 2020, the value of assets that can be transferred free of any federal *estate tax* (beyond gifts made to spouses or charities, which are not taxed) is \$11,580,000. Between 2021 and 2025, this basic exclusion figure is scheduled to increase based on inflation. The 2020 *estate tax* rate is 40% for all non-excluded assets. The taxes are due within nine months of the death.

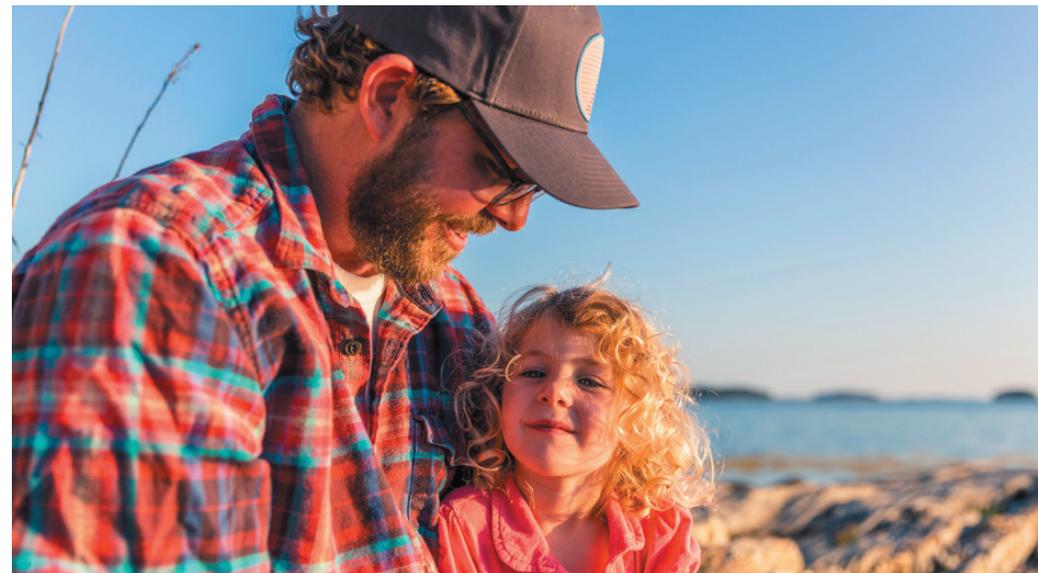
Maine levies an *estate tax* on land located within its borders, regardless of where the owner lived. The federal *estate tax* return grants credit for the full amount of *estate tax* paid to Maine, so the combined tax does not exceed the amount that would be owed in federal tax if Maine had no separate *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.

## More Ways to Reduce Estate Taxes Through Conservation

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The Taxpayer's Relief Act of 1997 created a new federal *estate tax* program, Internal Revenue Code Section 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 or her demise, the *executor*, or the



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

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.

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 — 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 making a gift through your estate can benefit conservation and reduce inheritance taxes, there is no substitute for good estate planning. A lifetime gift may be 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 can also be thwarted by disagreement among heirs or by limits that state probate law places on an *executor's* power.

## Property Taxes

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Property taxes represent a substantial portion of town budgets and are largely how Maine municipalities pay for their roads, schools, fire protection, and other public services. These costs generally rise over time, but often other sources of funding do not. Many landowners in Maine, particularly those near or on 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 that shift 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 coastal open lands are getting closed off or developed, transforming the character of some of Maine's treasured access points and natural landscapes.

## Standard Taxation of Conservation Easement Land

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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 by the town's *assessment* ratio (the state-determined percentage of market value at which the town assesses all lands) which generally falls between 70 and 110 percent. If a *conservation easement* reduces the land's *fair market value*, the town assessor is legally required to consider that reduction in assessing property tax. However, that determination can be complicated. 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, and uses standard assessing values for differing types of land). It's important for both the landowner and the assessor to recognize that each easement affects land values differently, depending on its highest and best economic use and on how the land is restricted.

## Current Use Tax Programs

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Maine has several programs that reduce taxes for undeveloped lands based on their current use. 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. In 2006, Maine enacted a Working Waterfront current use tax law focused on coastal lands used for commercial fishing. These programs make it easier for owners of undeveloped land to

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## OPEN SPACE TAX RATES

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

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A. Ordinary <i>open space</i>	20% reduction
B. Permanently protected <i>open space</i>	30% reduction
C. <i>Forever wild open space</i>	20% reduction
D. Public access land qualifies for an additional	25% reduction
E. Managed forest	10% reduction (cannot be combined with C)

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### Two limitations apply to these percent reductions:

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

achieve a more advantageous tax *assessment*. Under the Tree Growth and Farmland Programs, undeveloped land is assessed depending on its productive value, without regard to shore frontage or development potential. Taxes on Tree Growth land are based on very low per-acre land values, set annually by the state. On the other hand, the Farmland section of the Farm and Open Space Law requires assessors to establish a 100 percent valuation per acre for farmland that is based upon the value of the land used for agricultural or horticultural purposes without considering non-agricultural market value and development potential. The Open Space portion of the Farm and Open Space Law provides two options. Most municipal assessors apply statutorily defined percent reductions to the regular unrestricted assessed value, reducing the tax but accounting for shoreland and other development value. These statutorily defined 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. The Working Waterfront Program reduces property tax valuation on eligible land (not buildings or structures) by 10-50 percent depending on the degree to which the property is used for commercial fishing and whether the land is permanently protected.

Each program has specific eligibility guidelines. 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 municipal assessor or Maine Revenue Services Property Tax Division, PO Box 9106, Augusta, ME 04332-9106 (207-624-5600) or [www.state.me.us/revenue/propertytax](http://www.state.me.us/revenue/propertytax). Additional information on the Tree Growth Tax Program is available from the Maine Forest Service (207-287-2791 or [www.maineforestservice.org](http://www.maineforestservice.org)).

## Short-Term Property Tax Relief for Landowners

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There are several other short-term tax relief programs available in Maine. You may be eligible for the Elderly Property Tax Deferral Program, Homestead Exemption, a property tax fairness credit, a Veterans tax exemption, or a municipal poverty abatement program. For further information, contact your local assessor or Maine Revenue Services.

## The Next Step

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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, though; you have begun an important process. There are plenty of experienced people who can help answer your questions (see Appendix A).

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 designed 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. 🌿



As you plan for the future of your land, you may need to consult professionals such as attorneys, accountants, appraisers, surveyors, and *land use planners*. The expertise of these professionals can supplement the assistance you receive from members of government agencies, a local or statewide *land trust*, or the staff of Maine Coast Heritage Trust.

It is best to work with professionals experienced in land conservation issues — people who can help incorporate your *conservation plans* into overall life planning. MCHT or your local *land trust* can help identify experienced attorneys, appraisers, and financial and land planners.

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 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.

However, if you are 60 years of age or older, you may be required to retain a lawyer with regard to the transfer of real estate. Under Maine law, any transfer of real estate for less than *fair market value* by an elderly dependent person to a person with whom the elderly person has a confidential or fiduciary relationship, will be presumed to be the result of undue influence unless the elderly dependent person was represented by independent counsel. When this law is successfully invoked, the transfer of property will be voided. See 22 M.R.S. §§ 1021 – 1025.

### 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 donations of land 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.

It is best to work with 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. They may help you to clarify goals and weigh the financial implications of different approaches, but they 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 just a 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-step *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 they understand 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? Have they 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 the *appraisal* report, to submit for the *land trust's* signature and then 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 conservation professional, who works with you to determine the property's inherent values and to find the best means for preserving them. If you need the added skills of a land planner, members of your *land trust* can help you locate one with conservation expertise.

### 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. 🗺️

The process of conserving land often depends upon family members developing a shared vision for land. With a common vision, the conservation process proceeds quickly. In the absence of consensus, the process may bog down. This appendix offers resources 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.

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.



Rumford Whitecap Mountain Preserve

## Laying the Groundwork for Agreement

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. ↻

The subject of MaineCare 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. MaineCare refers to Maine's Medicaid program, a joint federal and state partnership which provides coverage for health care costs for low-income individuals, but importantly, also provides assistance for long-term care costs to persons who are over 64 years of age or who are disabled, and who meet financial and medical eligibility requirements. As the cost of nursing home, assisted living, and in-home care can rapidly exhaust one's assets, landowners who do not have the resources to privately pay for a potential long-term care need should understand the impact of transferring their land on future MaineCare eligibility.

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. However, not all income and assets are counted toward eligibility limits. *Real property* that is exempt includes

the primary residence and the surrounding lot area; all contiguous lots to the primary residence; all property and equipment used to produce goods or services for home consumption, such as garden plots, wood lots and livestock; and property used to produce income. In contrast, *real property* that is countable includes family camps which are not income producing (or sufficiently income producing) and life estates on property that is not a primary residence. It is also important to note that even if property is not countable for purposes of MaineCare eligibility, the State of Maine will seek recovery against any property owned by the MaineCare recipient at his or her death if the MaineCare recipient was not survived by a spouse or a disabled child.

The other significant MaineCare rule that impacts persons hoping to preserve their land is the penalty for transfers of assets. Any gifts or transfers of assets for less than *fair market value* made within 5 years of a MaineCare application for nursing home, assisted living, in-home care, and certain other "waiver" programs, will cause a period of ineligibility for MaineCare that is related to the amount of the gift. This penalty period starts only when an applicant applies for MaineCare and meets all other MaineCare medical and financial eligibility requirements. Gifts to spouses and disabled children are exempt from the transfer penalty. Accordingly, landowners seeking to give away their property or otherwise protect their property need to keep in mind that such a transfer will cause ineligibility for MaineCare for a period of time.

The rules governing MaineCare coverage for long-term care costs are complex. It is best to consult with an attorney before taking any steps to transfer or restrict property. Please be aware that MaineCare rules are subject to change, and that the information outlined above is accurate only as of December 2020. 🌐

Thanks to Paul Lavin, for his extensive contributions to the original Appendix, and to Jennifer L. Frank, Nelson-Reade Law Office, P.C, for 2020 updates.



The Basin, Vinalhaven

**A*****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.

**B*****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.

***benefitted 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.

**C*****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 their 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 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.

**D*****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.

**E*****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.

**F*****fair market value***

the price that a willing buyer would pay a willing seller, neither being under any compulsion to buy or sell, with 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; 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 could be put (a determination made in calculating value).

**J*****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”).

**L*****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.

**M*****management agreement***

a written contract, generally between a landowner and an 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.

## O

***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 or formula.

## P

***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 IRS code restrictions.

***public benefit(s)***

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

## Q

***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.

## R

***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 the 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).

## S

***stewardship***

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

## T

***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.

## U

***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.



# CREDITS

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*Puelle Design  
Portland, Maine*



# MAINE LAND TRUSTS

## *Androscoggin County*

Androscoggin Land Trust  
Royal River Conservation Trust

## *Aroostook County*

Woodie Wheaton Land Trust

## *Cumberland County*

Brunswick-Topsham Land Trust  
Cape Elizabeth Land Trust  
Chebeague & Cumberland Land Trust  
Falmouth Land Trust  
Freeport Conservation Trust  
Great Diamond Island Land Preserve  
Harpwell Heritage Land Trust  
Loon Echo Land Trust  
Oceanside Conservation Trust of Casco Bay  
Peaks Island Land Preserve  
Presumpscot Regional Land Trust  
Royal River Conservation Trust  
Scarborough Land Trust  
South Portland Land Trust

## *Franklin County*

7 Lakes Alliance  
Androscoggin Land Trust  
Foothills Land Conservancy  
Maine Appalachian Trail Land Trust  
Rangeley Lakes Heritage Trust

## *Hancock County*

Blue Hill Heritage Trust  
Crabtree Neck Land Trust  
Frenchman Bay Conservancy  
Great Pond Mountain Conservation Trust  
Island Heritage Trust

## *Kennebec County*

7 Lakes Alliance  
Kennebec Land Trust  
Midcoast Conservancy  
Sebasticook Regional Land Trust

## *Knox County*

Coastal Mountains Land Trust  
Georges River Land Trust  
Maine Island Trail Association  
Midcoast Conservancy  
Monhegan Associates  
North Haven Conservation Partners  
Southern Maine Wetlands Conservancy  
Vinalhaven Land Trust

## *Lincoln County*

Boothbay Region Land Trust  
Coastal Rivers Conservation Trust  
Kennebec Estuary Land Trust  
Midcoast Conservancy

## *Oxford County*

Androscoggin Land Trust  
Greater Lovell Land Trust  
Loon Echo Land Trust  
Mahoosuc Land Trust  
Maine Appalachian Trail Land Trust  
Rangeley Lakes Heritage Trust  
Upper Saco Valley Land Trust  
Western Foothills Land Trust

## *Penobscot County*

Bangor Land Trust  
Brewer Land Trust  
Holden Land Trust  
Landmark Heritage Trust  
Orono Land Trust  
Sebasticook Regional Land Trust

## *Piscataquis County*

Friends of Wilson Pond Area, Inc.  
Maine Appalachian Trail Land Trust  
Sebasticook Regional Land Trust

## *Sagadahoc County*

Androscoggin Land Trust  
Brunswick-Topsham Land Trust  
Friends of Merrymeeting Bay  
Kennebec Estuary Land Trust  
Phippsburg Land Trust

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7 Lakes Alliance  
Maine Appalachian Trail Land Trust  
Pierce Pond Watershed Trust  
Sebasticook Regional Land Trust  
Somerset Woods Trustees

## *Waldo County*

Islesboro Islands Trust  
Midcoast Conservancy  
Sebasticook Regional Land Trust

## *Washington County*

Downeast Coastal Conservancy  
Downeast Lakes Land Trust  
Downeast Salmon Federation  
Pleasant River Wildlife Foundation  
Woodie Wheaton Land Trust

## *York County*

Arundel Conservation Trust  
Biddeford Pool Land Trust  
Francis Small Heritage Trust, Inc.  
Great Works Regional Land Trust  
Kennebunk Land Trust  
Kennebunkport Conservation Trust  
Kittery Land Trust  
Saco Valley Land Trust  
Sanford-Springvale Mousam Way Land Trust  
Three Rivers Land Trust  
Waterboro Land Trust  
York Land Trust, Inc.

## *Statewide Land Trusts*

Forest Society of Maine  
Maine Audubon  
Maine Coast Heritage Trust  
Maine Farmland Trust  
Maine Woodland Owners  
New England Forestry Foundation, Inc.  
Northeast Wilderness Trust  
The Conservation Fund  
The Nature Conservancy in Maine  
The Trust for Public Land



Maine is fortunate to host over 80 local land trusts, with conservation experience to help you consider the options laid out in this guide. We are pleased to work with these organizations as co-members in the Maine Land Trust Network. Visit us at [mltn.org](http://mltn.org).



# What will happen to your land in the future?

This guidebook outlines the many options available, and Maine is fortunate to have a broad network of land conservation organizations ready to help you understand these options and find the best one for you.

Over the years, about 4.3 million acres of land in Maine have been conserved for various uses including recreation, commercial forestry, wildlife habitat, and working waterfront. Using the methods described in this book, Maine landowners have conserved over 2,685,000 of those acres in partnership with land trusts. Visit [mltn.org](http://mltn.org) for a list of Maine land trusts and information about how they benefit the communities in which they work.

