

# Conserving Your Land

Options for New Hampshire Landowners



NEW HAMPSHIRE  
LAND TRUST COALITION



# Conserving Your Land

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At 10,330 acres, the Vickie Bunnell Preserve in Columbia and Stratford is one of New Hampshire's largest nature preserves.

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# Preface

Conserving your land is a major decision with potential impacts upon family relationships and finances. Although finances are always involved and must be seriously considered, they are rarely the primary factor in the decision to conserve land. Conservation is an act of the heart and soul, an expression of values, and a commitment to the future.

As conservation easement donors, we have some suggestions for you. Thoughtful discussion should precede any decision. For many donors, it takes considerable time, perhaps many years, to get comfortable with the idea and commitment. These deliberations are a healthy part of the process and lead to a sound decision. Conserving land is, after all, permanent.

Sometimes a conservation project falls apart because of a division within a family or because the financial burden becomes too much of a challenge.

We can't emphasize enough the importance of having all the principal family members involved in the decision so that they can accept the challenges along the way and embrace the outcome. Even if elders decide to do what they want regardless of what the heirs may think, their decision is best out in the open.

Whether you or your family make a donation, sale or bargain sale of conservation land, you will be giving away some ability to control what you can do with your property. Hopefully, this is offset by the sense of something gained: peace of mind, a gift to children and future generations, and a sense of helping to save our planet and all its creatures. These motivations are truly personal and should be kept in mind from beginning to end.

For us, the joy and satisfaction from conserving our land persists. We are very pleased with our decision. The process still gives us a sense of fulfillment. We can each say, "I am still on the land regularly and it fills my soul."

Ken and Ilene Stern  
Easement Donors



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Photo credit: Ken Hamilton

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This document is housed on the web ([www.nhltc.org](http://www.nhltc.org)) to allow for regular updates and for users to download the most current version. All clickable hyperlinks in the text are shown in bold italics. In addition, the website includes a separate, more detailed section covering Tax Benefits.



# Acknowledgments

Originally written in 2004, the book *Conserving Your Land* has withstood the test of time and remains a popular guide for landowners, conservation commissions, citizens, and others interested in learning about land conservation options and techniques. With frequent changes in income tax incentives for land conservation over the years, we recognized the need to update the publication and keep it current. The first full update of *Conserving Your Land* was completed in 2019, thirteen years after it was first published.

In 2017, the *Conserving Your Land* Workgroup, representing six New Hampshire land trusts, and the University of New Hampshire (UNH) Cooperative Extension came together to work on revising and updating the publication. They are the co-authors of the 2019 publication.

Prior to publication, the document was sent to a group of land conservation professionals and nonprofessionals for review. We would like to acknowledge the valuable input and feedback these individuals contributed to the book. They helped to improve and hone the document, guiding us to the finish line.

We sincerely thank them for their insights. The review panel included:

Phil Auger, Southeast Land Trust of New Hampshire

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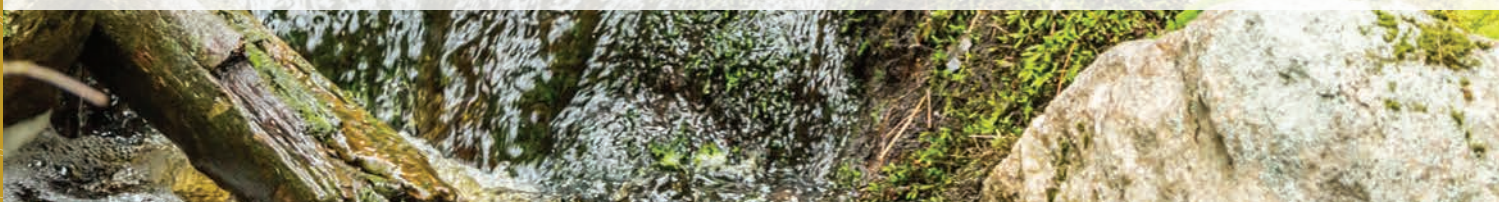
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**Stonehouse Forest (1,500 acres), Barrington, NH, protected in 2018. Easement held by NH Fish and Game and town of Barrington. Owned by Southeast Land Trust.**

**PHOTO CREDIT: JERRY MONKMAN/ECOPHOTOGRAPHY**





# Conserving Your Land

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# Introduction

Welcome! Thank you for giving consideration to conserving your land. This booklet guides you through the process and provides you with information helpful for your decision-making.

## Why Conserve Land?

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

New Hampshire's conserved lands support our economy through agriculture, forestry, and tourism. They protect wildlife and habitats and provide recreational opportunities and aesthetic pleasure. They maintain clean water, clean air, and a healthy environment, and sustain and stabilize our communities. Yet recent decades have seen the effects of pressure to develop more land to meet the needs of a growing population.

According to the 2014 report *Land Conservation in New Hampshire: A Snapshot of Progress and Opportunities*,<sup>1</sup> only 14% of the state's groundwater resources are currently

protected, only 12% of the best agricultural soils are protected, and only 28% of large forest lands in the range of 5,000-10,000 acres, which are important ecological linkages, are protected.

Changes in land use will have a significant impact on forests, farmland, drinking water, wildlife habitats, and other resources over the next century. Together with projected impacts of climate change, this underscores the importance of acting now to conserve our most valued open lands and natural resources.

Land conservation offers landowners the opportunity to have an enduring impact on New Hampshire's natural landscape, one that can benefit all of us, our children and our communities, and bring us all closer to the land. Success rests with the actions of individual landowners like you.

Landowners who conserve their land come from all walks of life and income levels, and their motivations vary. You may wish to see your well-managed farm or forest continue to be well managed in the future. You may hope to preserve a special natural area or high-quality wildlife habitat. Perhaps you value a scenic view or well-used trail and wish to make sure that these features will always be available for future enjoyment.

Many techniques exist for conserving land, and each option can be tailored to your specific circumstances and the nature of your land. Some may offer tax advantages. Some may

**Land trusts** are charitable organizations that work with landowners to help them conserve their land. Land trusts work cooperatively with landowners to complete real estate transactions, and typically acquire land and/or conservation easements, either by gift (donation) or purchase.

help you keep cherished land within your family's ownership. By investing your time and attention now, you will have the satisfaction of knowing that the land you treasure is protected for future generations.

## Getting Started

The first step in exploring your options for conserving your land is to connect with a land trust, a nonprofit organization dedicated to conserving land. Land trust staff will help guide you through the process of protecting your land. There are over 40 land trusts throughout New Hampshire, ranging from small, local, all-volunteer groups, to regional land trusts and national organizations that have a local presence in the state. You can find a list of New Hampshire's land trusts on the NH Land Trust Coalition website, [www.NHLTC.org](http://www.NHLTC.org). Click "Find a Land Trust."

For example, many towns, as well as federal and state agencies help landowners conserve their land. Also, land trusts often work together with towns, the state, or the federal government to complete a project. Some land trusts go by other names, such as "conservation trust," "conservancy," or "watershed association." For simplicity, the term "land trust" is used in this document to refer to all the possible types of groups you can work with. It's up to you to choose which organization is the best fit for you.

## About This Document

This guide helps you determine the conservation options that are right for you and your land. It provides details on possible tax benefits and describes what to expect after you've conserved your land. Once you've read the guide, we strongly recommend you connect with your **local, regional, or statewide land trust**<sup>2</sup> for further details. Below is an outline of the handbook sections.

### 1. Steps Towards Permanent Conservation

Walk through the process from start to finish. Included in this guide is a list of thoughtful questions to help you determine which options are the best fit for you.



Cranberry Meadow Pond, Peterborough NH.  
Photo credit: Katrina Farmer

### 2. Land Conservation Methods

Delve into the details of the various land conservation tools available to you. From selling or donating your land outright, to conservation easements and other approaches, you'll learn about the various techniques, how they work, and how they can be combined to accomplish your objectives.

### 3. Tax Benefits

Learn about the possible tax benefits that may be available to you when you conserve your land. A more detailed version of the Tax Benefits section is available on the **Conserving Your Land**<sup>3</sup> web page, for sharing with your own accountant and attorney as you weigh your options.

### 4. Stewardship

Learn how land owned by a land trust or protected by a conservation easement stays protected over time. Conserving your land is just the beginning of the protection process. "Stewardship" refers to the long-term care and monitoring of conservation land and ensures that conservation benefits continue into the future.

### 5. Landowner Stories

Learn how other landowners have protected their land.

## Glossary

The glossary provides a quick reference to definitions of terms used in the text.

#### ENDNOTES

1. <https://forestsociety.org/advocacy-issue/nh-land-conservation-report>
2. <https://nhlhc.org>
3. <https://nhlhc.org>



# 1 Steps Towards Permanent Conservation

## A. Starting the Journey

Conserving your land can be an exciting and rewarding experience that pays dividends long into the future. At the outset, the variety of land conservation options may seem daunting. Depending on your goals and the complexity of your land conservation project, the resulting process may take several months or may require one or more years. This section can be useful as a starting point to gather information, ask important questions, consider options, and begin discussions among family members.

### Initial Questions to Consider:

#### 1. What do you love about your land, and what significant or unique conservation features does it contain?

Does it have special wildlife habitat, scenic views, cultural or historic features? Are surface or groundwater resources present, perhaps providing a source of clean drinking water? Does your land produce farm or forest products? Does your community enjoy access to trails or other features on your property? If so, would you like this to continue? How do these qualities relate to surrounding land and to your community? Land trusts can help you assess your land's conservation features and suggest sources for additional information and assistance.

#### 2. How do you envision your land being used 50 years from now?

What activities would you like to see occurring on your land, and by whom? Land conservation methods can be tailored to the conservation features of the property and the specific vision of the landowner. For example, working farms and actively managed forests call for land conservation methods that allow landowners to retain flexibility for managing their property. On the other hand, properties with unusual plant or animal species, or habitats, may benefit from more restrictive methods that limit certain agricultural or forestry practices. While you may choose to mow a field, future landowners may allow it to grow back into forest. An experienced land trust can help you explore your goals to determine the best method to protect your property and its unique attributes. For more specific information, see *Section 2 - Land Conservation Methods*.

#### 3. Do you or your family wish to continue owning the land?

Conservation easements place permanent restrictions on your land while allowing for your continued private ownership. You're free to convey your easement-restricted land to anyone, at any time, and at any price, knowing that all future owners must still abide by the restrictions you created. You can keep the land within your family, or as you wish. You may also choose to exclude a certain portion of the property

A **conservation easement** is a permanent, legally binding agreement between a landowner and a land trust (or government agency) that permanently restricts use of the land to protect its significant natural features. It's authorized in New Hampshire by state law RSA 477:45-47.



**Land conservation is a family affair. In 2016, the Harvey family of Epping conserved their 1,100 acres of farmland, forest, and wetlands with a conservation easement with Southeast Land Trust.**

**PHOTO CREDIT: JERRY MONKMAN/ECOPHOTOGRAPHY**

from the conservation area for specific family purposes like a future home site. On the other hand, you might wish to shed the ongoing responsibilities and costs of owning significant conservation acreage. In this case, you might wish to donate or sell your entire property to a land trust, or perhaps arrange a gift of your property while retaining continued use rights for the remainder of your life. To explore the full range of options, see *Section 2 – Land Conservation Methods*.

#### **4. What are your financial needs, expectations, and/or objectives?**

The donation of land or a conservation easement may provide substantial savings in income and estate and/or property taxes. Sometimes you can time your tax-saving transaction to coincide with other tax-generating activities, such as the sale of other appreciated assets, to maximize your tax benefits. Depending

on your circumstances, your conservation transaction may generate tax savings that you can enjoy over many subsequent years.

If you cannot afford to make a full donation of your land or conservation easement, you may be able to receive direct financial compensation in the form of a sale to a land trust. The land trust will evaluate your property, determine how it fits with their conservation goals and objectives, and assess their ability to raise private and public funds for the acquisition. Funds for land conservation are limited and highly competitive, and it takes a lot of time and effort for the land trust to raise funds for any given project.

For more specific details on financial incentives and questions, see *Section 3 – Tax Benefits*.



## B. The Conservation Process

In New Hampshire, we're fortunate to have a strong land conservation community committed to helping you achieve your conservation goals. When you're ready to get started, you can anticipate a process that generally includes the following steps, though not necessarily in the exact sequence presented:

### 1. Contact a Land Trust to Explore Your Options

An experienced land trust will help you begin the conservation process by offering guidance, talking with public agencies or other conservation organizations if necessary, searching for funding sources if needed, and ultimately providing you with the confidence and information you need to take the next step. Many of New Hampshire's land trusts are accredited by the ***The Land Trust Accreditation Commission***,<sup>1</sup> which indicates they meet the highest national standards for excellence and conservation permanence. While not every land trust chooses accreditation, it is important for you as the landowner to feel confident that your land trust (or other conservation partner) is prepared to manage your land or conservation easement, both now and into the future.

Discuss with the land trust your objectives, and the specific range of options that may work for your unique property and situation. This discussion may consider current and future land uses, potential tax implications (if they are important to you), and your family's expected long-term involvement in the land. This step may assist you with making additional connections with tax advisors, attorneys, and other land trusts that can help you realize your conservation goals.

### 2. Discuss Your Objectives with Your Family and Trusted Advisors

Land is often the most treasured of family possessions, as well as an important financial asset. Share this publication with your family members and include them as you explore conservation options. Usually, the earlier people are involved in decision-making, the more interest and commitment they feel. Whether family members agree or disagree with your conservation goals, it's best to have these discussions early so plans can be developed accordingly.

### 3. Confirm the Primary Conservation Partner to Work with You

In most cases, a land trust can provide the necessary expertise and capacity to



Kerri Scruton feeds calves at Scruton Dairy in Farmington, NH conserved in 2019. Photo credit: Jerry Monkman/Ecophotography

accomplish your conservation goals. In deciding which group to work with, you should be confident that the land trust you select has the capacity to undertake the scope and scale of your project, both in the acquisition and stewardship of your land or conservation easement. Some projects, especially those involving substantial fundraising and multiple funders, will require your primary conservation partner to coordinate a complex array of activities involving other conservation partners including, but not limited to, federal agencies like the Natural Resources Conservation Service, state entities like the Land and Community Heritage Investment Program (LCHIP), or local groups such as municipal conservation commissions. If a project appears to be beyond the capacity of the land trust you're meeting with, they may suggest another land trust for a better fit.

#### 4. Agree on a Land Conservation Plan

Your land trust will propose a plan for your review that spells out the end results and how you can get there. Knowing what to expect will help you and your family plan for the financial and conservation outcomes of your project. As you begin working with the land trust, you will decide on the preferred conservation method (See Section 2 - *Land Conservation Methods*) as well as the specific land area to be conserved. The land trust will then outline next steps and a timeline for your work together. To avoid surprises or pitfalls along the way, you want to understand and agree on responsibilities for tasks and expenses (see #5 below). You may wish to contact other landowners who have completed land conservation projects with the organization, to get a better feel for the real-life details of the process. Don't hesitate to seek information and ask questions—conservation groups and many landowners who have conserved their land are eager to help landowners like you explore your conservation options.

#### 5. Identify Potential Expenses

The land trust identifies the types and ranges of potential expenses for your project. You can expect to cover your own attorney fees as well as any other professional guidance needed, such as land use planning or tax advice. Every land trust handles the costs to complete a conservation project differently, and approaches may vary depending on the specific project. Transactional expenses such as title searches, environmental hazard assessments, boundary surveys, and appraisals may add to the overall costs. Staffed land trusts may require funds to help cover staff time while managing your land conservation project. You may also be asked to consider a financial contribution to support the land trust's long-term management of the land or conservation easement (see *Section 4 - Stewardship*). In particular, the survey plan and long-term management expenses can run into the tens of thousands of dollars. However, your contribution to these expenses may not be a requirement for the land trust to work with you. In fact, some land trusts may be able to fundraise to cover these expenses, especially for properties with important conservation features. Keep in mind that some of your contributions towards expenses may provide you with tax or other financial benefits in return (see *Section 3 - Tax Benefits*).

#### 6. Implementing the Plan

Once you've chosen the right land trust for your situation, and both parties have agreed to a basic conservation plan, it's time to implement the plan. While every project is unique, there are several steps that usually occur before your conservation outcome can be realized. Similar to many real estate transactions, following is a list of the most common steps:

**APPRAISAL** An appraisal may be needed to determine the fair market value of the



land or conservation easement. This may be necessary for several reasons and may occur at different steps in the conservation process. For example, if the land trust is purchasing your land or conservation easement, they will get an appraisal early in the process to assist all parties in reaching an agreement on a purchase price. Sometimes, a specific funding source like a federal agency may require an appraisal as part of their review process. Finally, if you intend to claim tax benefits for any donation related to your conservation project, you must also obtain an IRS-qualified appraisal (see *Section 3 – Tax Benefits*).

#### **PURCHASE AND SALE OR PLEDGE AGREEMENT**

To enable the land trust to devote significant time to your project, landowners are often asked to sign a formal agreement which stipulates general roles, responsibilities, timeline, and other terms required to produce your conservation outcome. When a sale is anticipated, the land trust will want to sign a Purchase and Sale Agreement with you, establishing a legally binding contract defining such key items as sale price, and activities to be undertaken



**Celebrating the opening of new trails at Mast Road Natural Area, a 525-acre property conserved in 2011 and now owned by Southeast Land Trust of NH.**

**Photo credit: Jerry Monkman/EcoPhotography**

prior to exchanging a deed for money. These agreements usually include basic property information, as well as any legal terms necessary to establish each party's commitments moving forward. When you plan to donate land or a conservation easement, some land trusts will seek to sign a Charitable Pledge Agreement with you. This document may identify, among other things, an initial financial contribution to assist the land trust with tasks that must be completed prior to a deed being signed.

**TITLE RESEARCH** The land trust orders a review of the ownership records, or "title," for your property, at the county Registry of Deeds. This is to ensure that you are, indeed, the full and complete owner of your land—that other parties don't hold rights, such as rights-of-way or restrictions, to your land that could nullify your conservation goals.

**ENVIRONMENTAL ASSESSMENT** The land trust will conduct a review of environmental records detailing any known hazardous and solid waste on the property or in the immediate vicinity. At a minimum, the land trust will ask to walk your property to ensure no obvious signs of environmental hazards are present.

**SURVEY** A survey of the perimeter of your land or conservation easement is an important tool for ensuring effective ongoing management and protection of the land. The land trust determines whether survey work is needed, based on the condition of the boundaries, the legal description in the deed, any existing surveys, and the details of your conservation plan. If hiring a surveyor is necessary, the land trust will assist with this process and ensure the finished product meets the specific needs of the conservation project.

**FUNDRAISING** The land trust will likely need to raise some funds to complete a project with you, even if you're making a full gift of land or conservation easement. At the least, the land trust will have direct costs

for legal and title work, recording fees, and possibly staff time. If the land trust is making a purchase from you, it will likely have to raise much larger sums to cover the purchase cost, appraisals, and fundraising expenses. The long-term management of the conservation easement or land also requires a stewardship fund to support the land trust's work into the future. This fundraising step is critical to project success and may add months or even years to the conservation process. Remember, land trusts rarely have an open pot of money to draw from and must solicit each donation and/or grant separately for each project.

**MORTGAGE** If there's a mortgage (including home equity loan) on the land you plan to conserve, you'll need to obtain a written letter of subordination from your lender. Without this step, a foreclosure in the future could potentially extinguish the easement. If a subordination is unattainable, your lender may be willing to offer you a "partial release" of the easement area from the mortgage, likely leaving your house and other non-easement area to serve as collateral. Any partial release or subordination of a mortgage would be recorded at the county Registry of Deeds in association with your easement. Talk to your loan officer early in the process, and coordinate your efforts with the land trust, which may be willing and able to help you provide information to your lender.

## 7. Review the Proposed Legal Documents

The land trust and its legal counsel usually drafts the legal document or deed to finalize the conservation outcome. You're strongly advised to review this with your own attorney or advisor, as with any real estate transaction.

## 8. Close the Transaction

Similar to other real estate transactions, conservation projects conclude with final signing and delivery of the deed for your land or conservation easement, sometimes referred to as the "closing." The land trust



Working up next year's firewood on the Howe-Thorne easement (Five Rivers Conservation Trust) in Gilmanton NH. Photo credit: Sarah Thorne

organizes this process, which may either be done in person or through the mail. Ultimately, the final deed is recorded at the county Registry of Deeds. If this transaction includes payment for services or purchase of the land or conservation easement, this is when the money changes hands. With the recording of the deed, your land now enters the next phase of what it means to be truly conserved. If your transaction gives rise to any income tax benefits, the months following your closing is the time to gather documents for IRS review (see *Section 3 - Tax Benefits*).

## 9. Stewardship

Closing your conservation transaction is a major accomplishment. However, it is never the end of "protecting" your land. The land trust now regularly monitors the land or easement property so that its conservation features will be maintained in perpetuity (See *Section 4 - Stewardship*).

### ENDNOTES

1. <http://www.landtrustaccreditation.org>



## 2 Land Conservation Methods

This section explains the techniques to help guide you in your decision-making process. There are several land conservation techniques you may consider in finding the best fit for your land, your family, your financial circumstances, and the interests and capacity of your land trust partner. Sometimes, a combination of methods may be used.

Conveying the fee interest or conveying a conservation easement are the two most commonly used land protection techniques. When you transfer full ownership of your land, you transfer all of the rights and responsibilities associated with it. This full interest in land is sometimes called “fee simple,” “fee title,” “fee interest,” or just “fee.” You provide permanent protection, and you no longer own the land. Through conveyance of a conservation easement to a land trust, you provide permanent protection for your land, and you retain ownership.

In concert with the land trust with which you choose to work, you’ll decide which technique is best for your land and your situation. This section focuses on the variations and advantages of these two techniques. Other less common and usually less permanent techniques are discussed later in the section.

### A. Conveyance of Fee Ownership

Conveying your land to a land trust transfers the ownership, management, and financial responsibilities for your property. If you want to protect your land but no longer want to own it, this is your best option. In working with a land trust, you’ll learn why the property is important to them and can expect to hear how they’ll use and manage the property once in their ownership.

#### 1. Fee Ownership May be Donated or Sold

It may be possible to donate or sell fee ownership of your property to a land trust.

The land trust will assess your property to ensure that its characteristics and the features you wish to protect are consistent with the land trust’s conservation goals and objectives. They evaluate their long-term interest in the land as a permanent ownership, and their capacity to accept it. If you wish to sell to the land trust, they must also evaluate their ability to raise funds for a purchase. This process can take some time, as the land trust needs to plan around grant-cycle timing and the juggling of other projects they may be working on.

If you’re not able to make a full gift of your land to the land trust, but also do not need to receive the full value for your sale of the property, you may choose to set a sale price that’s less than the full appraised value of your land. This is called a “bargain sale.” This type of transaction may generate income tax benefits for the portion of value that you donate, as a charitable deduction, in addition to the cash from the sale. Selling at a discounted price also makes the project more feasible for the land trust, which will have to raise funds to complete the project.

#### 2. Advantages to The Landowner

Conveying full fee ownership to a land trust offers long-term protection for the land while relieving you of all responsibilities of ownership, including property taxes and management. The land trust to which you transfer the property manages the property for its particular conservation features. It may be managed for wildlife habitat, for public recreational use, if desired, or for other special conservation features, as appropriate. Through the protection of your property, you leave a lasting legacy of conservation and gain peace of mind that your good stewardship of the land will continue.



A group of hikers enjoys winter trails on conserved land in northern New Hampshire. Photo credit: Emma Tutein

If you make a full donation or bargain sale of your property to a land trust, the conveyance may provide you with federal income and estate tax benefits. In some cases, a bargain sale may yield the same financial result for you as selling at full value because of the tax advantages (See *Section 3 - Tax Benefits*).

Some land trusts might offer you the opportunity to suggest a permanent name for the land you're transferring to the land trust. Perhaps you'd welcome this as a chance to memorialize your history of ownership and management, or maybe honor a loved one. If this interests you, talk to your land trust about this opportunity.

### 3. Alternative Arrangements for Gifts of Land

The intent of a conveyance of fee ownership to a land trust is usually permanent, irrevocable protection of the land. Alternatively, you may wish to donate property with the understanding that the land trust will restrict it with a conservation easement and then sell it to another party. Such arrangements might even include

accommodation for a future house. The land trust can then use the sale proceeds to conserve other land or to support long-term stewardship of the land trust's conservation properties.

Alternatively, you may have a property without conservation significance (e.g., a house lot in town) that you wish to donate as an asset, and as a charitable gift, to a land trust. The land trust can then sell the property and use the proceeds to do other conservation work. Donations of this type are sometimes called "trade lands" and may also confer tax benefits to the donor.

## B. Conservation Easements

If you wish to provide permanent protection for your land and retain ownership and control, a conservation easement may be for you. A conservation easement is a permanent, legally binding agreement between a landowner and a land trust that restricts use of the land to protect its significant natural features. It is authorized in New Hampshire by state law **RSA 477:45-47.**<sup>1</sup>



## 1. How Conservation Easements Work

When you own land, you hold many rights associated with it, such as cutting timber, growing crops, building a home, subdividing it, and extracting minerals—subject to zoning and other laws. By placing a conservation easement on your land, you voluntarily agree to give up some of those rights. Activities prohibited by conservation easements usually include intensive uses of the land such as subdivision and residential development, commercial activities (except forestry and agriculture), mining, disturbance of wetlands, and disposal of manmade and hazardous materials. The land trust that holds the conservation easement works with you to tailor an easement that protects the land's conservation features and meets your land protection goals.

Once you place a conservation easement on your land, you continue to own your land, and your use of the land must be in accordance with the restrictions you have placed on it through your easement. You may convey the land to a new owner at

any time and at any price. Conservation easements stay with the land forever, restricting uses and activities on the property for all future owners. When a land trust accepts a conservation easement, it cannot exercise the development rights that you have given up. Instead, the land trust takes on the permanent responsibility and legal obligation to ensure that the easement terms are upheld.

Conservation easements in New Hampshire typically allow you to continue to use the land for agriculture, forestry, wildlife habitat management, outdoor recreation, and education. You may use the land for other uses, so long as the activity is compatible with the purposes of the conservation easement and not specifically prohibited by the easement terms. You continue to be responsible for paying the property taxes.

## 2. A Conservation Easement May Be Donated or Sold

Conservation easements are often donated to a land trust, but if the landowner prefers not to or is unable to donate the full value of the easement, a land trust



Dick Foss with 50 cords of firewood that he produced solo in 2006 from the land he later donated to the Forest Society - the 196-acre Foss Family Forest in Gilmanton. Photo credit: Forest Society

may be able to purchase the easement. Land trusts must raise the funds to make such a purchase and therefore typically buy easements only on properties with exceptional conservation features. Funding is limited and highly competitive, and the land trust must devote substantial effort to any fundraising campaign. Many landowners who sell conservation easements do so at a price that is less than the full value of the easement, a “bargain sale,” for which there may be income tax advantages. The larger the discount on price the landowner is willing to offer, the more feasible the project becomes for the purchasing land trust.

### 3. Advantages to The Landowner

A conservation easement may give you the peace of mind that the natural resources on your property are permanently protected, while allowing you to continue to enjoy the benefits of property ownership. Usually, conservation easement terms permit you to continue to generate income from forestry and agriculture. These conservation easements have provisions requiring generally accepted best management practices for forestry and agriculture, and this helps ensure that future landowners continue good stewardship of the property.

A conservation easement removes financial value from your land by eliminating its development potential. By lowering the market value of your land, a conservation easement may make it easier for you to pass land on to the next generation of family members, who may have widely varying interests and objectives. Family discussion at the time the conservation easement is negotiated may help your family make decisions about the land in ways that are agreeable to both you and your heirs.

Finally, creating a conservation easement may help you achieve certain financial objectives, whether through receipt of tax savings and/or cash in a possible sale (see *Section 3 – Tax Benefits*).

### 4. Crafting Your Conservation Easement

You and the land trust that holds the conservation easement need to discuss and agree to the particular details of your conservation easement. The land trust starts the process by proposing in broad terms a set of proposed restrictions appropriate to your land and objectives. Then, once you’ve agreed on the concepts, the land trust drafts a conservation easement with more detailed terms and provisions for your review. The land trust begins its drafting from a template containing the basic restrictions and framework used by that particular land trust and reflecting the organization’s goals and criteria. During negotiations, you and the land trust tailor the easement terms to address your goals and the specific features of your land. For example, if you want a future residence somewhere on the property, you may work with the land trust to identify an area to exclude from the conservation easement for this purpose. Conservation easement terms may also be customized to protect any special features your property may have, such as rare species, a beloved hiking trail, or scenic views.

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

- The preservation of land for outdoor recreation or education by the public.
- The protection of habitat for fish, wildlife, or plants.
- The preservation of open space: a) for the scenic enjoyment by the public; or b) pursuant to a clearly defined federal, state, or local conservation policy and providing significant public benefit.



- The preservation of an historically important land area or a certified historic structure.

Most land trusts include specific IRS conservation purposes relevant to the property in each conservation easement, whether or not a tax deduction is planned. Conservation easement donors who are seeking a charitable deduction should check with their own attorney to ensure that the easement terms meet IRS requirements.

## 5. Public Access in Conservations Easements

The decision to grant the right of the public to access or use your land is made jointly by you and the land trust when the conservation easement is drafted. Guaranteeing public use of your easement land often adds to its conservation value and community benefit. It is also required by some public funding sources when used to purchase the easement.

Public access comes in many forms and can be tailored to your specific objectives. You may ensure access over the entire easement property or only parts of the property. You may want to continue a tradition of public use on your land by ensuring permanent access to the public for specific transitory uses, such as hiking, skiing, or snowmobiling. Finally, should you wish to retain full discretion over allowing or prohibiting various types of public uses, your easement need not guarantee public access at all.

A trail easement is an example of ensuring public access on only a portion of your easement property. For example, if you have a property with a well-loved trail, you can guarantee public enjoyment of the trail

forever by granting access to just the trail corridor for hiking (or mountain biking, snowmobiling, skiing, etc.). Trail easements may be stand-alone agreements or may be embedded within a conservation easement as a specific “public access” provision. Provisions may allow the land trust, or qualified user group, the ability to properly and adequately manage the trail.

While conservation easements do not automatically give the public any rights to enter or use your land, you have the option of guaranteeing these public rights through the easement should you want to do so.

## 6. Executory Interest

Some conservation easements designate a second conservation group as a backup easement holder, an arrangement known as an “executory interest” (also known as Third Party Right of Enforcement). If the primary easement holder fails to uphold the terms of the conservation easement, or even dissolves as a nonprofit organization, the executory interest holder has legal authority to uphold, enforce, or even take over responsibility for the easement according to the easement terms. An executory interest holder can be designated if the landowner and/or primary easement holder seeks additional security that the conservation easement is cared for over time. Some public funding programs require that they hold an executory interest as a condition of their funding. Like the primary easement holder, an executory interest holder must be part of conservation easement negotiations and sign the final easement. Adding an executory interest to your easement may extend the process and expense of setting up the easement.

Granting a conservation easement does not automatically give the public any guaranteed rights to enter or use the protected property.



Phoebe's Nable, Moose Mountain Reservation (2,475 acres) in Middleton/Brookfield. Protected by the Society for the Protection of NH Forests and Moose Mountain Regional Greenways. Photo credit: Emily Lord

## 7. Amendments to Conservation Easements

Although conservation easements are set up as permanent, there are very limited circumstances under which the landowner and easement holder can amend the terms of an easement. An amendment might, for example, correct some clerical error in the easement, add land that you acquired later, or make an easement provision more restrictive. The process is complicated, and in New Hampshire, must be done in conjunction with the NH Attorney General's Office. A publication is available online: ***"Amending or Terminating Conservation Easements: Conforming to State Charitable Trust Requirements. Guidelines for New Hampshire Easement Holders."***<sup>2</sup> Any amendment to conservation easement terms must clearly serve the public interest and either have a neutral or preferably positive effect on the conservation features protected by the easement. When you create a conservation easement, you should assume that the document you sign is permanent and will not be amended later.

## 8. Eminent Domain, Also Known As "Condemnation"

Conservation easements are permanent, but there are some rare exceptions. Government and certain private entities they regulate (e.g., a gas transmission company) can condemn and acquire land by eminent domain if it needs the land for a legitimate public purpose, such as a road or gas pipeline. The land may be taken against the wishes of both the landowner and the easement-holding land trust. The condemning entity must financially compensate the landowner and the land trust for the value of their respective interests in the property that is condemned. The conservation easement spells out the process for dividing the condemnation payment ("award") between the landowner and easement holder.

## C. Timing of Conveyance

The following variations on conveyance of fee ownership or a conservation easement to a land trust offer additional options and different income tax advantages (See *Section 3 – Tax Benefits*).



### 1. Immediate Conveyance

Conveying the fee or a conservation easement in the present to the land trust, either by donation or sale, is typical of most conservation transactions. With a full donation or bargain sale, tax benefits may be available beginning in the year the bargain sale or donation is made.

### 2. Conveyance in Stages

You can convey land or conservation easements in separate parcels over a period of years. Doing this as a donation may enable you to take greater advantage of the income tax deductions by extending your charitable deductions over more than the usual time period allowed by a single gift.

### 3. Conveyance By Will, Also Known As “By Devise”

Setting up the donation of land or a conservation easement to a land trust through your will is another option. You enjoy ownership during your lifetime, while ensuring the conservation of the property thereafter, and you can alter the provisions in your will at any time if your needs change.

You do not receive income tax benefits by setting up a devise. However, the conveyance removes the property, or in the case of an easement, a portion of the land's value, from your taxable assets for federal estate tax purposes. Before writing a devise of land or easement into your will, you should check with the intended land trust recipient to ensure the organization is willing and able to accept the property, especially if you want to put in place specific restrictions on the future use of your land.

### 4. “Post-mortem” Conservation Easement

The executor of a landowner's estate may donate a conservation easement even if the landowner's will doesn't direct the executor to do so. Several conditions must be met, including approval by all the heirs and inclusion of specific wording in the conservation easement. The executor can make the gift up until the due date of the estate tax (usually nine months after death). This option may allow the heirs and estate to reduce or even eliminate federal estate taxes, to the extent they may apply. This option may also be helpful



Conserved lands can be working lands. Here a winter timber harvest takes place on the Collidge Beede Forest in Sandwich. Photo credit: Pete Helm

when a landowner who has started the conservation easement donation process dies before completing the gift.

## D. Other Conservation Techniques

### 1. Remainder Interest Gift with Reserved Life Estate, Also Called “Life Tenancy”

You can donate your personal residence or farm to a land trust now while retaining use of the property for the rest of your lifetime. Typically, you would continue to have privacy (without public use) and would continue to cover the costs for property taxes, maintenance, and insurance. You can name others besides yourself, such as your spouse, who can continue to enjoy the land and live in your home during your and their lifetimes. Those with continuing-use rights are called “life tenants” and hold what is called a “life estate.” The portion of the ownership in the property given to the land trust is called a “remainder interest.” This gift may entitle the donor to claim an income tax deduction for the charitable gift of the property. When the life tenants die or release their interests, the land trust assumes full ownership of the property. The land trust may decide to keep the undeveloped land as a conservation area, or may choose to sell some or all of the property (perhaps subject to a conservation easement). The sale proceeds can result in a legacy gift for the land trust and enable more land conservation. For details about the tax advantages, see *Section 3-D – Tax Benefits*.

### 2. Deed Restriction

A landowner may place restrictions into a property deed when conveying land to another party to limit uses of the property. Deed restrictions can limit or prohibit future uses of the property, whether for conservation purposes or not. Deed restrictions may be enforceable by a) the landowner who created them, b) his or her heirs, or c) other named parties. Unlike conservation easements, deed restrictions are not monitored and enforced by an

independent land trust and do not refer specifically to the state’s enabling statute for conservation easements. Therefore, enforcement over time becomes practically and legally problematic. They lack the permanence that a conservation easement affords. Although deed restrictions may be appropriate in limited circumstances, such as for a small property without sufficient conservation importance to justify a conservation easement, they can be forgotten over time and possibly undone. Also, there are no income tax deduction benefits associated with deed restrictions. Thus, deed restrictions are generally not considered a favorable option when a conservation easement is available to a landowner who wants lasting protection.

### 3. Mutual Covenant

A mutual covenant is a specialized form of a deed restriction. Neighboring landowners may want to protect a view they share or other special feature of their neighborhood by exchanging mutual restrictions on each other’s separately owned properties. Each landowner’s covenant can be enforced by the other landowners, their successors in ownership, and in some cases a landowners’ association—but only if they choose to enforce. Developers sometimes use mutual covenants to protect conservation features and aesthetic qualities of lots in a subdivision. There may not be any permanent enforcing agency established by the covenant unlike a conservation easement. Covenants do not qualify for an income tax deduction. They are not a permanent means of conservation since mutual covenants can be nullified by subsequent agreements of all owners or by the landowners’ failure to enforce them.

### 4. Option to Purchase

You may want to sell your land or a conservation easement to a land trust, but the land trust may not be able to purchase the property immediately. To give the land trust time to raise money, you can



Current Use is a favorable property tax program that encourages landowners to keep land undeveloped, but it does not permanently restrict use of the land or protect it from future development.

enter into an Option Agreement with the land trust to sell the land or conservation easement. Under an option, you and the buyer/land trust agree on a specific sale price and terms, and the buyer is given a specific amount of time in which it may exercise its exclusive right to purchase the land or conservation easement. Until the option expires, you cannot sell the land or conservation easement to another buyer. This technique gives the land trust the confidence that you will sell to them once the land trust is in a position to purchase, and it gives the land trust time to raise funds for the purchase.

## 5. Right of First Refusal

You may grant a right of first refusal to a land trust that might wish to purchase your land at some point in the future. This technique gives the land trust the



One in a herd of cows on the 15-acre conservation easement donated to the Forest Society by Mary Jane Morse Greenwood, abutting the 457-acre Morse Preserve.  
Photo Credit: Forest Society

opportunity to purchase the property at its appraised value when you are ready to sell or to match any legitimate offer that you might receive from another potential purchaser of your property, in which case you must then sell to the land trust. It's useful if you're not yet ready to sell or if the land trust doesn't currently have the funds to purchase. As with an Option Agreement, there is often an expiration date for the right of first refusal.

## E. Property Tax Programs

### 1. NH Current Use Assessment Program

Current Use Assessment, authorized by **NH RSA 79-A**,<sup>3</sup> is a property tax program that provides an opportunity for owners of undeveloped land to lower their property taxes. Current Use does not provide permanent protection. Under this program, parcels of field, farm, forest and wetland of 10 acres or more, and smaller parcels meeting certain other criteria, may qualify for reduced property tax assessment based on preset, per-acre values reflecting the "current" undeveloped uses of the land. This favorable property tax program encourages landowners to keep land undeveloped, but it does not permanently restrict use of the land or protect it from future development.

Landowners apply for Current Use Assessment through their local selectmen or tax assessor. Once enrolled in Current Use, a property remains in Current Use through any changes in ownership until the parcel no longer qualifies for Current Use Assessment because it is either developed (change in land use, adding structures) or



A fort built by children on the Allen Family Forest, which is used as an outdoor laboratory and classroom by the Marlborough School. Photo credit: Emily Hague

no longer meets the minimum acreage. When a land use change occurs, the current landowner pays a “land use change tax” equal to 10 percent of the fair market value of that portion of the property on which the use has changed. Property in Current Use may be developed at any time (triggering the land use change tax and removal from the Current Use program), after which there are no restrictions on land use.

While the Current Use program offers landowners a financial incentive to keep land undeveloped, it only establishes temporary protection for the land, and it does not offer income tax or estate tax advantages to the landowner.

## 2. NH Conservation Restriction Assessment Program

The Conservation Restriction Assessment program is a parallel program to Current

Use. Authorized by **NH RSA 79-B**,<sup>4</sup> this program requires municipal officials to assess your qualifying, easement-protected land at reduced values based on the specific restrictions of the easement and guided by the same per-acre values as used for Current Use. This alternative program can provide an important additional tax incentive for landowners to conserve small but significant conservation tracts, for example, a small parcel with extensive undeveloped shoreline. You can get an application, instructions, and rules for this program from the NH Department of Revenue Administration (including online).

### ENDNOTES

1. <http://gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XLVIII-477.htm>
2. <https://www.doj.nh.gov/charitable-trusts/documents/conservation-easements-guidelines.pdf>
3. <http://gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-V-79-A.htm>
4. <http://gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-V-79-B.htm>



# Land Conservation Options and

	LAND PROTECTION OPTIONS	DESCRIPTION	RESULTS	
FULL DONATION OF ...	Land	Donation of land	Land trust owns and manages the land.	
	Conservation easement	Donation of a conservation easement	You retain ownership of the property but agree to certain restrictions, such as giving up the right to develop parts of the land.	
	Land by will	Donation of land at the time of your death	The executor of your estate works with the land trust to convey the land to the land trust.	
	Conservation easement by will	Donation of a conservation easement at the time of your death	The executor of your estate works with the land trust to convey the conservation easement to the land trust.	
	Remainder interest in land with reserved life estate	Donation of your personal residence or farm now while retaining lifetime use rights for yourself and possibly others.	You continue to live on your land and cover the costs of property taxes, maintenance and insurance. The land trust assumes full ownership at the time of your death or release of interests by those with use rights.	
BARGAIN SALE OF...	Land	Sale of land for a price less than appraised value	You may claim a charitable contribution for an amount equal to the difference between the appraised value and the sale price.	
	Conservation easement	Sale of a conservation easement for a price less than appraised value.	You may claim a charitable contribution for an amount equal to the difference between the appraised value and the sale price.	
FULL VALUE SALE OF ...	Land	Sale of land for appraised value.	You receive payment for the appraised value of the land.	
	Conservation easement	Sale of a conservation easement for appraised value.	You receive payment for the appraised value of the conservation easement while continuing to own and use the land under the terms of the easement.	

\* Property tax reductions would be available through the Conservation Restriction Assessment Program. See page 19 for more information.

# Potential Financial Implications

FEDERAL INCOME TAX DEDUCTION AVAILABLE?	FEDERAL ESTATE TAX REDUCTION AVAILABLE?	PROPERTY TAX REDUCTION AVAILABLE?	CASH PAYMENT TO LANDOWNER	
Yes	Yes	Yes, you no longer have to pay property taxes.	No	FULL DONATION OF ...
Yes	Yes	Yes, but only if you are not already enrolled in Current Use.*	No	
No	Yes	Yes, you no longer have to pay property taxes.	No	
No	Yes	Yes, but only if you are not already enrolled in Current Use.*	No	
Yes	Yes	No	No	
Yes	Yes	Yes, you no longer have to pay property taxes.	Yes	BARGAIN SALE OF...
Yes	Yes	Yes, but only if you are not already enrolled in Current Use.*	Yes	
No	No	Yes, you no longer have to pay property taxes.	Yes	FULL VALUE SALE OF ...
No	Yes	Yes, but only if you are not already enrolled in Current Use.*	Yes	



# 3 Tax Benefits

Tax benefits can be a helpful incentive for landowners to conserve their land. This section helps you to understand the tax benefits that may apply to your situation.

Since this topic is complex, the authors have prepared a separate, more detailed “Comprehensive Version” of this section, which you may find helpful and which is available online at [www.nhltc.org](http://www.nhltc.org). The Comprehensive Version has more in-depth explanations, additional examples, and specific website links to relevant laws, rules, and regulations. You may want to share the Comprehensive Version with your legal and financial advisors.

**Please note:**

- Tax benefits change over time and are case-dependent, so the information presented here and in the Comprehensive Version may not be current or apply to your situation.
- Land trusts can provide you with helpful information, but they cannot give you legal, financial, or tax advice.
- Other than municipal property taxes,

which are addressed in Section 2 – Land Conservation Methods, the only tax benefits currently associated with permanent land conservation in New Hampshire are at the federal level; there are none at the state level.

- There are many ways to enjoy additional tax benefits by meshing conservation options with various types of “planned gifts,” which are only cursorily addressed here.
- It’s important that you consult qualified advisors (e.g., attorney, accountant, financial advisor) to help you evaluate your options and associated tax implications.

## A. Federal Income Tax

When you give land, a conservation easement, or some other real estate interest (e.g., right-of-way for a hiking trail) to a land trust, you may be able to claim a deduction on your federal income tax return for your charitable contribution. (For purposes of simplicity, we’ll refer to “land or conservation easement” as a shorthand reference to any type of real estate interest.) To claim such a deduction, there are

### From the Land Trust’s Perspective

The land trust has a strong interest in ensuring that every project in which it participates adheres to high legal and ethical standards. Accreditation standards and best practices put forth by the national **Land Trust Alliance**, the Charitable Trusts Unit of the NH Attorney General’s Office, and the IRS govern charitable giving protocols and standards. The land trust must also abide by its own policies and procedures. This is why the land trust and you should understand clearly and early on in a project whether you intend to claim certain tax benefits, the steps involved, and what each of you expects of the other.



Sheldon and Penelope Pennoyer on their Blanchard Hill Farm in Greenfield, NH. They donated an easement to conserve their 112-acre property. Photo credit: Brittany Ballantyne

certain IRS requirements and/or other issues you need to consider, as described below.

### 1. Full vs. Partial Gift

When you make a full gift of your land or conservation easement, generally the amount you can claim as a charitable deduction is the appraised fair market value of your land or easement at the time of your contribution. A full gift maximizes your tax benefits, plus you'll make the project easier and faster to complete for both the land trust and you.

If you "bargain sell" your land or conservation easement (see Section 2A, "Fee Ownership May Be Donated or Sold") at a price less than its full value, you may be able to claim a deduction for the donated portion of the land or the easement value. A bargain sale might yield the same net financial result for you as selling to someone else at full value through a real estate

broker. One of the several reasons for this is that your deduction for the gift component may help offset the capital gains tax you'll owe to the IRS for your sale of land or easement on property that has appreciated in value. If you were to sell your land or easement at its full appraised value, there would be no gift involved and so no income tax deduction.

### 2. Deductibility Requirements for Gift of Land or Conservation Easement

**A. TRUE DONATION.** For the IRS to recognize your donation as a charitable gift for income tax purposes, your gift must reflect "donative intent" without the prospect of receiving something in return. Your donation must also be "complete" and "irrevocable." For example, if your "gift" of land or easement is a condition of local subdivision approval, it's not deductible due to your receipt of a "quid pro quo."



**B. QUALIFIED RECIPIENT.** You must donate your land or conservation easement to an entity defined by the IRS as a “qualified organization.” This could include a nonprofit land trust or a unit of government (e.g., some federal agencies, the State of New Hampshire, or municipal conservation commissions).

**C. APPRAISAL.** For your donation of land or conservation easement for which you claim a deduction of more than \$5,000, the IRS requires that you obtain—and pay for—a “qualified appraisal” prepared by a “qualified appraiser” to establish the value of your land or conservation easement contribution. The IRS lays out specific standards for what it means by “qualified.” Not all appraisers have the training or experience to appraise conservation lands or easements. Note also that a letter from a real estate broker providing an “opinion of value” won’t qualify.

If a land trust intends to buy your land or conservation easement, it will likely get an appraisal done for its own purposes before it completes its purchase from you. However, if the land trust’s purchase also involves a partial donation from you (i.e., bargain sale) for which you’d like to claim a deduction, you’ll have to purchase your own separate qualified appraisal for IRS purposes. You can hire the same appraiser the land trust used, but only if agreed to by all parties.

You must get your IRS-qualified appraisal done within a certain timeframe. The document itself can be prepared after you make your gift of land or easement, but the “valuation” date needs to be retroactive to the date of your gift. You can also get your appraisal done before you make your gift, but you then need to complete your donation within 60 days after the valuation date to prevent your appraisal from becoming outdated.

**D. WRITTEN ACKNOWLEDGMENT OF GIFT.** To claim a deduction for your land or easement gift, the IRS requires you to have a written

acknowledgment of your donation from the gift recipient. This typically would take the form of a letter and won’t contain a monetary value for your gift, as this is your responsibility to obtain (through the appraisal process). You can expect to receive an official acknowledgment letter from the land trust after you’ve made your gift.

**E. IRS FORM 8283, “NONCASH CHARITABLE CONTRIBUTIONS.”** To claim a charitable deduction for your land or conservation easement donation, you must file IRS Form 8283 “Noncash Charitable Contributions” with your income tax return for the year of your gift. This form asks for detailed information about your land or conservation easement donation, and for gifts for which you’re claiming a deduction of more than \$5,000. The form must be signed by both the appraiser and the recipient land trust. In some cases, you must attach additional information and/or materials. You and/or your accountant should start completing this form well before your tax filing deadline, given the supporting documentation required, the logistics of getting signatures, and the likelihood that the land trust wants to review the form, attachments and appraisal before signing the form.

### 3. Additional Issues Specific to a Gift of Land

If you donate land (vs. a conservation easement) and want to claim a charitable income tax deduction for it, your gift is subject to certain additional IRS rules, as follows:

**A. 30% OF ADJUSTED GROSS INCOME, 5-YR. CARRYOVER.** The IRS limits your charitable deduction for any one tax year based on a certain percentage of your Adjusted Gross Income (AGI). Generally, for your donation of land, the maximum deduction amount that you can claim for the year of your gift is 30% of your AGI. If your deduction amount exceeds that limit, you’re allowed to carry forward and claim the excess amount of the deduction for up to five subsequent years, the so-called “carryover period.” You can

continue claiming a deduction each year until either you've claimed the total amount of your deduction, or you've run through all five carryover years. Any portion of the deduction remaining unclaimed after the sixth year (year of your donation plus five carryover years) is forfeited—it's a "use it or lose it" arrangement. See Example 1.

**B. 50% OF ADJUSTED GROSS INCOME**

**ELECTION.** As an alternative to the 30% of AGI annual deduction limit, the IRS may allow you to elect 50% of AGI as your

limit. The tradeoff, however, is that your deduction amount is the value of your basis in the donated land, not its current value. "Basis" is the cost of the property at the time you bought it, or the value of the property when you inherited it. If you received the property as a gift other than through inheritance, you assume the basis of the prior owner. Basis can be increased ("adjusted") for additional capital improvements you make on or to your property.

**Example 1**

Shows how the deduction for a bargain sale of land is spread over multiple years.

**ASSUME:**

- Landowner Jill bargain sells 95 acres to Land Trust for \$340,000.
- Qualified appraisal shows fair market value of land at \$400,000.
- Charitable contribution of land is \$60,000 (\$400,000-\$340,000).
- Jill's Adjusted Gross Income (AGI) is \$60,000.
- Jill's income tax bracket is 22%.
- IRS annual income tax deduction limit is 30% of AGI with 5-yr. carryover period.

YEAR #	DEDUCTION AVAILABLE	DEDUCTION CLAIMED	CARRYOVER
1 (yr. of gift)	\$60,000	\$18,000 (30% × \$60,000 AGI)	\$60,000 – \$18,000 = \$42,000
2 (1st carryover yr.)	\$42,000	\$18,000 (30% × \$60,000 AGI)	\$42,000 – \$18,000 = \$24,000
3 (2nd carryover yr.)	\$24,000	\$18,000 (30% × \$60,000 AGI)	\$24,000 – \$18,000 = \$6,000
4 (3rd carryover yr.)	\$6,000	\$6,000	\$6,000 – \$6,000 = 0
5	\$0		

Total income tax deductions claimed = \$60,000

Income tax savings = 22% tax bracket × \$60,000 deductions = \$13,200

**RESULT:** Jill claims federal income tax deductions totaling \$60,000 for the charitable gift part of her bargain sale of land. She claims a deduction of \$18,000 for the year of her gift and for each of the following two carryover years, and then a deduction for the final \$6,000 in her third carryover year, saving a total of \$13,200 in taxes. This is on top of the \$340,000 in cash that Jill receives from the Land Trust for the sale portion of the project.



**C. DATE OF GIFT.** For tax purposes, the official date of gift for donated land is the date on which you “deliver” your signed deed to the land trust. (Note the different rule for conservation easements, below.) Your attorney can help you understand how this relates to your particular situation.

#### 4. Additional Requirements and Issues Specific to a Gift of Conservation Easement.

If you donate a conservation easement and want to claim a charitable income tax deduction for it, your gift must meet certain IRS requirements regarding the type of real estate and the qualifications of the recipient, and your easement deed must contain specific IRS provisions. Your easement must be perpetual and created for at least one of the four purposes described in Sect. 2.B.4. “Crafting Your Conservation Easement,” above.

**A. APPRAISAL.** There’s no “rule of thumb” for estimating the value of your conservation easement. To establish its fair market value, the IRS generally requires your appraiser

to use the so-called “Before and After Method.” Specifically, the appraiser first determines the value of your property before you convey the easement. Then, the appraiser establishes what would be the value of your property after the easement’s restrictions are in place. The appraiser then subtracts the “after value” from the “before value” to produce the fair market value of the conservation easement.

**B. NEARBY PROPERTY OWNED BY YOU OR “RELATED PERSONS.”** If you, “family members,” or other “related persons” (terms defined by the IRS) with certain types of relationships to you (e.g., involvement in a revocable trust or Limited Liability Company) own property adjacent to or in the vicinity of your proposed conservation easement land, the appraisal gets more complicated. The appraiser may need to include in the “before” and “after” analyses the larger area involved and/or evaluate the possible enhancement that your easement might have on the value of these other properties. For example, your conservation easement might increase the



Southeast Land Trust of NH employee Dani Almeida and landowner Ed Duston walk the Duston property in Hampstead, NH. Photo credi: Jerry Monkman/EcoPhotography

value of your adjacent home, or perhaps the residence of another family member having views across your easement area. This may mean that the appraiser has to do a detailed appraisal of your home or that of relatives, including an interior inspection, photos, and so forth. The complexity of the “before and after” methodology, especially when other properties and residences are involved, helps explain why the cost of a qualified appraisal for an easement can be much higher than an appraisal just for land. It also highlights the importance of disclosing early in the process to your appraiser and the land trust any other properties in the area whose ownership may be related to you and which may need to be included in the appraisal. To see how

any enhancement that your easement might give to “family members” and/or “related persons” affects the deductibility of your gift. For examples, please see the Comprehensive Version of this section, available online at [www.nhltc.org](http://www.nhltc.org).

**C. 50% OF ADJUSTED GROSS INCOME, 15-YEAR CARRYOVER.** For the gift of a qualified conservation easement, the annual limit of what you can claim as a deduction is 50% of your AGI with a carryover period of 15 years (vs. 30% of AGI with a five-year carryover for the gift of land). See Example 2. If you’re a “qualified farmer” as defined by the IRS, the annual limit of your deduction increases to 100% of your AGI.

## Example 2

Shows how the deduction for a donated conservation easement is spread over multiple years.

**ASSUME:**

- Landowner Jill donates conservation easement (CE) on 95 acres to Land Trust.
- Qualified appraisal shows availability of \$245,000 income tax deduction for CE gift.
- Jill’s Adjusted Gross Income (AGI) is \$60,000.
- Jill’s income tax bracket is 22%.
- IRS annual income tax deduction limit is 50% of AGI with 15-yr. carryover period.

YEAR #	DEDUCTION AVAILABLE	DEDUCTION CLAIMED	CARRYOVER
1 (yr. of gift)	\$245,000	\$30,000 (50% × \$60,000 AGI)	\$245,000 – \$30,000 = \$215,000
2	\$215,000	\$30,000 (50% × \$60,000 AGI)	\$215,000 – \$30,000 = \$185,000
3	\$185,000	\$30,000 (50% × \$60,000 AGI)	\$185,000 – \$30,000 = \$155,000
Years 4-8	Similar to annual calculations above		
9	\$5,000	\$5,000	0

Total Income Tax Deductions Claimed = \$245,000

Income Tax Savings = 22% tax bracket × \$245,000 deductions = \$53,900

**RESULT:** Jill claims federal income tax deductions totaling \$245,000 for her charitable CE contribution. Her deductions are spread over nine years, using eight carryover years, and she saves \$53,900 in taxes.



**D. MORTGAGE.** If there's a mortgage on the land you plan to protect with a conservation easement, the IRS requires you either to remove the mortgage entirely from the proposed easement area or else to obtain a written subordination from your lender, as explained in Section 1.B.6., "Implementation." Without doing this, the easement wouldn't be considered perpetual, and no deduction would be allowed.

**E. DATE OF GIFT.** According to IRS rules, the official date of gift for a conservation easement is the date when the easement deed is recorded at the county Registry of Deeds. If, for example, you choose to make your easement gift by mail, or bad weather delays the land trust's travel to the Registry, the recording date may be later than the date(s) on which you and the land trust sign the easement deed. If you plan to make an easement gift in late December and want to ensure that your official gift date remains within the same year for tax purposes, coordinate closely with the land trust to ensure the recording of your easement before the new year.

## 5. Other Income Tax Considerations

### A. GIFT DURING LIFETIME VS. AFTER DEATH.

You must make your donation during your lifetime to realize possible income tax

benefits. If, instead, you set up a land or conservation easement gift to be made upon your death, perhaps via provisions in your will or a revocable trust, there won't be any income tax deduction. However, there may be estate tax savings (see "Federal Estate Tax" on next page).

### B. GIFTS BY REVOCABLE TRUSTS, PARTNERSHIPS, LIMITED LIABILITY COMPANY, ETC.

If the land or conservation easement is donated by an entity such as a revocable trust, partnership, or limited liability company rather than by an individual, the availability of a tax deduction is more uncertain. Consult your legal or financial advisor early in the process.

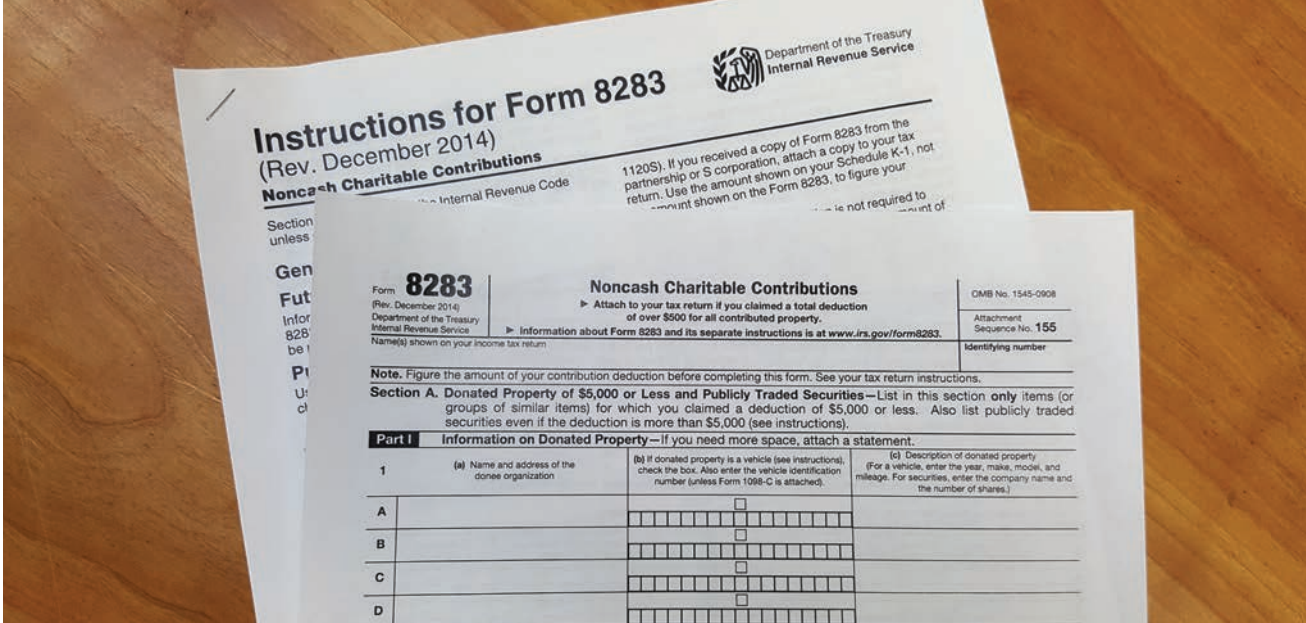
### C. DONATING LAND OR CONSERVATION EASEMENT HELD FOR LESS THAN ONE YEAR.

If you want to donate your land or conservation easement to an eligible land trust within one year after you acquire the land, special rules apply for determining the amount of your deduction. Generally, you must limit the amount of your deduction to your basis in the land or conservation easement, not its current fair market value. Consult your tax advisor for more details.

**D. DEDUCTIBILITY OF EXPENSES.** Generally, expenses you incur in donating land or a conservation easement are not tax deductible, although these rules change



George Bates along the Cold River in Sandwich, half a mile of which he and his wife, Nancy, conserved by donating a 68-acre conservation easement to the Forest Society in 2017. Photo credit: Forest Society



frequently, and there may be other tax benefits associated with such expenses. If you make a cash donation to the land trust to support long-term stewardship costs associated with your land or easement gift (see *Section 4 - Stewardship*), you can generally treat this as a deductible charitable contribution as long as you aren't required to make this gift.

**E. GIFT OF REMAINDER INTEREST WITH RESERVED LIFETIME USE RIGHTS.** Donation of a remainder interest in your personal residence or farm, as explained in Section 2.D, enables you to continue to live on or otherwise use your property and may give you a federal income tax deduction. For the potential tax benefits, including possible federal estate tax savings as follows, please see the Comprehensive Version of this section, and discuss with your advisors.

**B. Federal Estate Tax**

The IRS taxes your overall collection of assets upon your death (your so-called "estate"). However, the current exemption amount—now over \$11 million for an individual—means that the estates of only the wealthiest individuals are subject to this tax. If you anticipate the estate tax applying to you, there are conservation-oriented actions you can take to lessen or avoid this tax. For example, if you donate

land to a land trust or set up provisions for this to occur upon your death, you may reduce the value of your taxable assets for estate tax purposes. Similarly, if you convey a conservation easement on your land, either while you're living or to take effect upon your death, the IRS values your land for estate tax purposes in its restricted, reduced-value condition. The IRS may also give you an additional exclusion from your taxable estate of up to 40% of the restricted value of your easement-encumbered land under certain conditions. These same exclusions from the estate tax also apply to the donation of a "post-mortem" conservation easement by the executor of your estate, as explained previously in Section 2.



A 300 year old black gum on the Mulligan Forest. Photo Credit: Forest Society





# 4 Stewardship

## A. Ensuring Proper Care of Your Land Forever

It is important to celebrate completing your land protection project, but signing the paperwork and cutting the ribbon is only the start of the land protection story. Long-term protection for the land now owned by the land trust, or land over which you have conveyed a conservation easement, comes from the land trust having an effective stewardship program in place and the long-term commitment and financial resources to back it up.

Conserving your land symbolizes a major commitment to conservation. Whether you do it through a donation, bargain sale, or a full-value sale, your willingness to conserve your property represents significant dedication to future generations of people, trees, and wildlife. As your conservation partner, the land trust is making a major commitment too. The land trust is accepting the legal and “on-the-ground” responsibility to ensure the property is well managed and cared for—forever.

So, what does “legal responsibility” mean? It is a promise the land trust makes to ensure the conservation values are not degraded over



**A broken crosscut saw provides a novel boundary marker.**  
Photo credit: Forest Society

time, no matter who may own the property. It is a promise by the land trust that is not taken lightly. Stewardship is the overarching term used to describe this work. Stewardship for a conservation easement is different than stewardship of a property that the land trust owns,

but both have the common goal of caring for the land for the benefit of future generations.

### Stewarding Conservation Easement Land

Land trusts are required to undertake several stewardship tasks on easement-restricted property with some regularity. Remember that conservation easement land will be owned and managed by many different landowners over the long term, so consistent contact and communication with the landowner is essential. At the outset and over time, the land trust commits to undertake the following activities:

1. Develop a report on the condition of the property, a “baseline documentation report.” This report is prepared before the land transaction is completed.
2. Conduct and document annual visits to the property as part of its easement monitoring responsibilities.
3. Meet with and maintain communications with you and all successor landowners.
4. Review periodic landowner notifications to conduct activities on the conserved land.
5. Act as a source of information for you and future owners to help with management of the land.
6. Enforce, if necessary, the terms of the conservation easement to which you and future owners and the land trust have committed. This includes working as your ally on a resolution if another person or entity violates the terms of your conservation easement.

With a conservation easement, you, as landowner, have an important role. The landowner-land trust partnership works best if you communicate with the land trust before undertaking any major land management activities, building any allowed structures, or selling your land. The land trust can often help you contact professionals who can assist you

in managing your land. It is good to keep the lines of communication open between you and the land trust.

### Stewarding Fee-Owned Land

When the land trust is the owner of the land, stewardship activities may undertake any of the following activities:

1. Conduct and document regular visits to the property.
2. Develop management plans for timber harvesting, trails, and public access.
3. Conduct land management activities, such as creating wildlife openings and invasive species removal.
4. Mark boundaries and create and post signs, maps, and website information.
5. Install and maintain public recreational improvements, such as parking areas, trails, and kiosks; perform trash cleanup; and manage pet access.
6. Pay annual property taxes and liability insurance.
7. Provide periodic workshops to educate the general public about wildlife, land management, and property maintenance.
8. Enforce the property rights of the organization as owners of the property (for example, against timber trespass or abutter encroachment) and to protect the conservation resources on the property.

Whether the land is conserved through a conservation easement or land trust ownership, the necessity of conducting these stewardship activities adds a cost to the overall operations of the land trust long into the future. As the land trust increases the number of conserved properties for which it is responsible, it must monitor, enforce, and manage more and more property.

## B. Funding Stewardship of Conservation Land

National land trust standards and practices require land trusts to plan for the future stewardship needs of the organization and the



Old gun barrel used as a boundary marker.  
Photo credit: Forest Society

conserved land. Landowners that conserve their property, even if donated, are often asked to contribute funds to a permanent stewardship fund sometimes referred to as a “monitoring fund” or “stewardship endowment fund.” These are common financial arrangements where land trusts generally use only earned interest for annual stewardship needs. In some instances, the land trust may be able to raise the necessary funds from other sources. A firm commitment by the land trust to add money to a permanent fund is critical to properly care for the land over time. Each land trust may manage these funds a bit differently, but the goal of “caring for the land” is the same.

When you are donating an easement or your land, it is in everyone’s best interest to provide sufficient financial backing to ensure that both your goals and expectations and the land trust’s promises and obligations are met over time.



# 5 Landowner Stories

Learn from other landowners and land trusts that have conserved land. These narratives tell the story of land conservation through the experience of others and help to illustrate use of different land conservation techniques.

## DONATING LAND FOR CONSERVATION

### Sargent Common | Ausbon Sargent, New London, NH



Ausbon Sargent  
(photographer not known)

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

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

Sargent lived to see his life and his values honored in 1987 by a fledgling nonprofit group that honors his name, the Ausbon Sargent Land Preservation Trust (ASLPT). The town green is now known as “Sargent Common.” The only structure permitted on it is the bandstand, where the community enjoys weekly band concerts in the summer.



ASLPT holds an “Ausbon Sargent Day” for grades K-5 every five years on Sargent Common when they celebrate milestone anniversaries. Photo Credit: ASLPT

## BARGAIN SALE OF CONSERVATION EASEMENT WITH PUBLIC ACCESS, TRAIL IMPROVEMENT RIGHTS, AND MULTIPLE PARTNERS

### Conserving the Largest Unprotected Property in Southeast New Hampshire | Mulligan Forest, Nottingham, NH

The Fernald family acquired the first part of their 2,028-acre Mulligan Forest back in 1896. Over the ensuing century, the family made many additions, resulting in Mulligan Forest becoming the largest unprotected property remaining in the intensively developed Seacoast Region of the state.



**Mulligan Pond. Photo credit: Forest Society**

diverse and sometimes conflicting interests. Following extensive discussions within the family and with the Forest Society, the Fernald's agreed to sell a conservation easement at a price of \$1.25 million, generously discounted from the easement's full appraised value of \$1.7 million. They knew the project had to be affordable for the Forest Society to succeed. As an extra benefit, they also knew that their \$475K charitable contribution of easement value could provide a federal income tax deduction that would help offset the capital gains tax they expected on the sale portion of the project. Rick, Deb, and Jim came to realize that if they didn't act while they still had control and a unified vision for the land, the opportunity to protect Mulligan Forest might never come again.

The property had additional outstanding conservation features. At the time, Mulligan fed wood to the adjacent Fernald Lumber Company, a sawmill and retail lumber outlet owned and run by Jim and Linda Fernald, and the town's largest employer. Mulligan also had a large stand of ancient black gum trees, 350 acres of wetlands and ponds, rare animal species, linkages to abutting conservation lands, an aquifer protecting public drinking water supplies, scenic road and river frontage, and historical features. Seven miles of trails and woods roads provided great opportunities for pedestrian recreation including hunting and fishing—all within a 45-minute drive of Manchester, Concord, and Portsmouth. The easement's terms would guarantee pedestrian public access and give the Forest Society the right to construct and maintain related improvements, including a parking lot, kiosk, and more trails. The easement would also reserve to the Fernald's the right to extract and sell groundwater, but only for a public drinking water supply. The Forest Society initiated a full-scale, two-year-long fundraising campaign, with key local assistance from the Nottingham Conservation Commission and land trust partner Bear-Paw



**Mulligan Forest. Photo credit: Forest Society**



Regional Greenways. Major grants came from public and private funders, including the NH Land and Community Heritage Investment Program (LCHIP). Local residents provided critical support individually and via their passage of an \$850K bond at Nottingham's 2006 Town Meeting. Their overwhelming 96% approval set a precedent statewide for municipal votes for large land conservation funding proposals. The Mulligan Forest ballot item also helped generate the highest town meeting turnout in Nottingham's history.



Mulligan Forest field trip. Photo credit: Forest Society

Some nine years later and amidst much celebration, the easement was signed in November 2007 by all parties, including LCHIP and the Town of Nottingham as the holders of executory "backup" interests in the easement.

## DONATION OF CONSERVATION EASEMENTS

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### A Landowner's Perspective | Harding Land, Jackson, NH



Harding Easement. Photo credit: Lucy Gatchell

Sometimes a piece of land is more than it appears to be. Perhaps it provides food for moose and bear, river access for beavers, otters, and mink, or safe nesting for meadowlarks and bluebirds. Maybe it is part of a wildlife corridor or offers views of unspoiled mountains. When we bought our land in 1974, we were just beginning to see what treats our land held. To this day, we continue to learn from and about the land, now with the help of the Upper Saco Valley Land Trust (USVLT)

We always had dreams for permanent conservation of our land, but also many questions: Was our parcel too small for

conservation? Would the conservation easement process be too expensive for us to consider? How restrictive would the easement's wording be? What if we wanted to cut some trees, or set up a farm stand? Would the change affect our property taxes? Would there be sufficient value in the easement parcel to allow us to deduct the expenses in our income taxes? Could we complete the process within one tax year? Would we want to guarantee public access on the ski trail that crosses the "Woodchuck Fields"? Fortunately, we were advised and guided by many people throughout the conservation community. They helped us understand the process that initially seemed so complex.

The costs of setting up the easement exceeded our expectations, and we spent some nervous moments wondering if our effort would result in out-of-pocket costs that would be too high. However, when our hefty appraisal arrived, we realized that the value of the easement was sufficient to permit us to claim a tax deduction that would cover the expenses of setting up our easement. We had completed our hands-on training and found that we could accomplish our dream!

As we reflect on the process, it thrills us that we accomplished two things at once: We preserved a piece of land that is precious to us, with its views and river frontage, and we supported a local cause in whose mission we strongly believe. Now, nearly two decades later, we look forward to our annual “monitoring visit.” We cherish the connections we’ve made through USVLT, seeking their guidance on various programs and grants that help with the ongoing stewardship of the land.

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## Neighbors Working Together to Protect a Local Landscape | “Keeping the Green” in Greenfield, NH

An exciting conservation project in Greenfield, NH, began in 1999 when a few neighbors began discussing ways to “Keep the Green in Greenfield.” The group took hikes together, pored over maps, studied natural resource surveys, met with land trust professionals and held potluck dinners to discuss options.



The Timmons (left) and Pennoyers (right), neighbors who both conserved their land in 2001. Photo credit: Gil Bliss



Jeff and Sara Timmons at their home in Greenfield. Photo credit: Pat Spitalniak

In June 2000, seven families signed a letter expressing their intent to protect 1,000 acres of land. They challenged other neighbors to match this with an additional 1,000 acres. The group grew. In 2001, two families, the Timmons and the Pennoyers, led the way by donating conservation easements on their properties. The Timmons’ 416-acre Woodland Hill Farm is a patchwork of working and natural forests, open fields, rich wetlands, winding woods roads, spectacular views of nearby highlands and valleys, and historic cellar holes and stone walls. The Pennoyer’s Blanchard Hill Farm, connected to Woodland Hill Farm by a trail network of old woods roads used by townspeople for walking and skiing, contains 112 acres of fields and forest.

Each family negotiated easement terms with the Monadnock Conservancy, a regional land trust, which agreed to accept and hold the conservation easements. ***“We want the land to be as it is for many generations to come, and we want others to enjoy the beauty as well,”***

the Pennoyers said. ***“We have found that farming is a wonderful environment to bond a family together in this fast-paced society.”***

***“We have high hopes that our collective vision of ‘Keeping the Green in Greenfield’ will continue to be embraced by many others in town,”*** Jeff and Sara Timmons explained. “As awareness spreads about the very significant extent of easement-protected land here, Greenfield will become an even more precious gem of the Monadnock Region,”

Between 2003 and 2012, five more families donated conservation easements. This initiative has protected a total of 2,044 acres.



## DONATION AND SALE OF MULTIPLE EASEMENTS

### Preserving a Family Legacy Through Easements Over Time | Courser Family Lands, Warner and Webster, NH

By the 1930s, Fred Courser, Sr., owned several thousand acres in central New Hampshire, initially bought and managed by his father, Thomas Jefferson Courser, whose ancestors had moved to West Boscawen before the American Revolution. Fred Sr. raised cattle and sheep, cut timber, and bought and sold land as opportunities arose. Fred Jr. would come to avoid lawyers and banks after losing much of the family inheritance to the embezzlement of his father's estate. As his children grew and worked on the farm, participated in 4-H and Future Farmers of America, they grew to love the land and the stories the work evoked. By the 1960s, there were over 5,000 acres remaining in family ownership over a 10-square mile area. Two of Fred Jr.'s sons gradually took over the day-to-day management of the farm. Eventually, the siblings became concerned about plans to ensure the land would remain in family ownership over the long term, and the family began the process of putting the land into a family trust.



**Courser Farm lands. Photo credit: Eric Aldrich**

The Nature Conservancy became aware of some rare and endangered wildlife habitat on the property and approached the family in 1994, asking Fred if he might be interested in a conservation easement. At that time, the answer was “no.” Fast forward to 2004 and the settling of Fred and Margaret's estate. Their four children inherited the land, along with a significant estate tax liability. They called The Nature Conservancy to see if that conservation easement was still a possibility. Through donation of a post-mortem easement on a portion of the property, the estate tax was largely offset. This started a years-long process to place conservation easements on different parts of the property over time. While the first easement served the purpose of offsetting that estate tax, the children continued the process to put much of the remaining land under easement. “We were the generation to make these decisions,” Rebecca Courser emphasizes, “before it passed on to the next generation.”



**Courser Farm lands. Photo credit: Eric Aldrich**

The Nature Conservancy worked in partnership with the regional land trust, Ausbon Sargent Land Preservation Trust, as the local easement holder, to place conservation easements in four phases on over 1,400 acres of the Courser family lands. Together, the groups raised funds for easement purchase from a variety of public and private sources. In the end, over six years, seven separate tracts were protected. Easements were carefully tailored to the characteristics of each tract. Some were working forest or farmland easements. Others were aimed at protecting wetlands, ponds

and streams, and important wildlife habitat. Over 300 acres of additional contiguous and adjacent land owned by others was protected, adding to the conservation impact of this project. The Nature Conservancy's science-based conservation plan guided the project, and they provided technical assistance and administrative support, retaining an executory interest in the easements.

Today, some of the Courser siblings continue to live on the land or nearby and use the land as a working farm and habitat protection area. The family trust uses the income from the easement sales and timber management to cover the taxes and land management costs. Maple syrup and farming products are sold by the family-operated Courser Farm. *"My brothers and I have a deep sense of history with the land and many memories from growing up here,"* says Rebecca, *"and we wanted to leave a legacy to our children like the one that had been left to us."*

## CONSERVATION EASEMENT DONATION AND SUBSEQUENT SALE

### Sustaining a Community Supported Agriculture (CSA) Operation | Tracie's Community Farm, Fitzwilliam, NH



Crops growing at Tracie's Community Farm.  
Photo credit: Emily Hague

When David Green and Matt Buonomano purchased this 33-acre property, they always hoped to see a CSA (community supported agriculture) operation established on the property's nearly 15 acres of prime farm soil. They just never imagined it would happen so quickly.

Meanwhile, Tracie (Smith) Loock had been farming on her father's land in Sullivan for nine years, searching every year for her own farm and knowing that she couldn't be in that spot much longer.

"That spring my father told me this would be the last year I could farm on his land. The farm wasn't his dream, and he didn't like the traffic," recalled Tracie. "But I hadn't found any suitable land that was affordable with the modest farm income I was making."

#### A COMMON OBSTACLE

It's often hard for young farmers to find land that is still undeveloped, has rich agricultural soils, and enough acreage to offer a place to live and to raise crops. Too often such tracts are in demand and priced high due to also being desirable building lots. By eliminating the potential for non-agricultural development, a conservation easement can effectively reduce land value to within the reach of an aspiring farmer. And that's what David and Matt were able to do for Tracie with help from the Monadnock Conservancy. They donated a conservation easement on their land and then sold the land to Tracie.

*"After 10 years, I finally found my own land. It is beyond my wildest dreams. The property has great soil, and the community is awesome,"* Tracie remarked. That fall she moved her established



Working at Tracie's Community Farm.  
Photo credit: Bronson Shonk



business—greenhouses, equipment, supplies, perennial plants, and compost—tilled up the land, cut trees and milled them to build a barn, and put a trailer on-site as her home. Come spring, she continued the CSA, even expanding her operation by taking on new members.

### THE FUTURE OF FARMING

With affordable prime agricultural land, a great crew and a supportive community hungry for nutritious, fresh, quality local food, Tracie's Community Farm thrives. As the seasons progress, crops change, ensuring an ever-changing palette from lettuce in the spring to onions in early fall.

## PURCHASE OF CONSERVATION EASEMENT AND FEE BY TWO DIFFERENT CONSERVATION GROUPS

### Partnership Between Town and Land Trust to Conserve Land Near a School | Allen Family Forest, Marlborough, NH

There was a chance that a beautiful forest could have been lost. Home to multiple generations in Marlborough, the land had been in the Allen family for 125 years. The woods, all 23 acres of them, with a babbling brook and a hill covered in large red oak and white pine trees, were a big part of John Allen's "happy days" of childhood. *"These woods have always been my sanctuary,"* he said, *"I want others to have a special place like I did."* Over the years, the forest inspired many others, including the kids at the adjacent school who use it throughout the year.



John Allen leads visitors through his property.  
Photo credit: Emily Hague



A fort built by kids on the Allen Family Farm.  
Photo credit: Emily Hague

Teachers at the Marlborough School had been actively using the property as an outdoor laboratory and classroom while the cross-country team ran on the trails. The afterschool program took the children out each week to collect large sticks and build tree forts.

### KIDS NEED NATURE

When their mom left for a nursing home, John Allen and his sister Laurie realized that they needed to sell the land to help pay for her care. But they wanted to make sure that the land, along a rail trail and the waters of Trestle Brook, was conserved for kids and families—so it could still be the outdoor playground and place of joy and exploration that it had been for the Allens.

"There is much more to life than being a couch potato, playing video games, or messaging each other on Facebook," said John. "It would be better to get our kids out into the woods, like my sister and I did, and give them an opportunity to reflect and have an original thought."

John and Laurie knew, as did the people of Marlborough, that once this land was gone, it would be gone for good, and children for generations to come would have lost a very special place. So, thanks to a broad community partnership and the support of hundreds of people, the Monadnock Conservancy was able to assist the Allen family to conserve their land. As a result, the Monadnock Conservancy and the Town of Marlborough worked together to purchase the property. The Town now owns the land, subject to a conservation easement held by the Conservancy. Each partner paid the value for their respective interests. The land is used for a community conservation area and outdoor classroom.

*“John and Laurie want all of us—starting with the children—to value this place, appreciate its natural resources, and not take it all for granted,”* reflected the principal of Marlborough School. *“Kids need nature in their lives. This gift gives us so many opportunities to be outside; to use the trails, explore the woods, and do science projects out there. John and Laurie conserving the land is a lesson in itself for the students.”*

## SALE OF AGRICULTURAL CONSERVATION EASEMENT AND TRANSFER OF LAND TO THE NEXT GENERATION

### Historic Family Farm Provides Pick-Your-Own Smorgasbord | Monahan Farm, East Kingston

In the summer, there’s nothing better than a trip to the local pick-your-own farm, where you can literally hand pick your favorite fruits. The Monahan Farm has been an active part of the East Kingston community since the 1700s. Located at the intersection of Routes 107 and 108 in East Kingston (locally known as Monahan Corner), this scenic farm has weathered countless changes and agricultural evolutions over the centuries.

Once a dairy farm, three generations now share in this family tradition by growing some of the best fruits and vegetables around. In addition to pick-your-own, the family sells their produce at a small farm stand on-site. Over a typical growing season, this 28-acre farm welcomes nearly 10,000 visitors to the farm. If you stopped by the farm recently, you probably met Natalie (Monahan) Walker. She has worked the land and sold vegetables and fruit at the farm her entire life. Her son Jeff now manages the farm, while her daughter-in-law, Christine, and two grandsons, Kevin and Brian, help in the field and at the store. Over the course of the growing season, the family offers all varieties of fresh produce, including strawberries, blueberries, raspberries, blackberries, peaches, apples, tomatoes, melons, and many kinds of root vegetables and pumpkins.

In 2014, Natalie and her two sisters approached the Southeast Land Trust of NH (SELT) to discuss the long-term future of the farm. Earlier in life, their parents had entrusted ownership to them. Likewise, they were committed to passing the land on to the next generation of Monahan



Jeff and Christine Walker at their farm stand in East Kingston. Photo Credit: SELT Staff



farmers. Natalie's son Jeff was the obvious recipient because he was already running the farm, but the sisters needed a fair way to split this communal asset. After some careful thought and planning, the family agreed to sell an agricultural conservation easement to SELT. At closing, they directed the proceeds from that easement to the non-farming sisters and transferred the conserved land to Natalie's son Jeff. SELT partnered with the US Department of Agriculture's Natural Resources Conservation Service, New Hampshire's Land and Community Heritage Investment Program (LCHIP), and the Town of East Kingston Conservation Commission, successfully completing the easement purchase in December 2016. Thanks to much hard work, family spirit, and a strong relationship with their local land trust, Monahan Farm continues to thrive under its newest generation of owners.



An aerial view of Monahan Farm.  
Photo Credit: Exeter Environmental

## CONSERVATION EASEMENT PURCHASE AND LAND DONATION

### With Deep Roots, Comes a Deep Commitment | Langley & Kennard Forest, Lee, NH

It's clear from talking with Ron Kennard that he has an encyclopedic memory and a drive to keep his family history alive. His family first arrived at Strawberry Banke in the 1660s and have lived in southeastern New Hampshire and southern Maine ever since. He continues to live in the original Langley homestead in Lee, built in the early 1700s, and purchased by his father in 1948, who was just the second owner outside of the Langley family. The Langley cemetery still sits on high ground behind the barn, a quiet reminder of generations past. The Town of Lee has changed significantly in Ron's 70 years, having grown from a population of about 900 people when Ron was born in 1950 to nearly 5,000 people in 2018.

Nestled inside a boundary of historic stonewalls, Ron's 40 acres of old field, forest, and wetlands along the state-designated Oyster River contain a multitude of environmental benefits. Much of



Ron Kennard worked with Southeast Land Trust of NH to conserve his 40 acre property in Lee.  
Photo credit: Jerry Monkman/EcoPhotography

this land has been identified by the NH Fish and Game Department as the highest ranked habitat in the state, providing critical resources for a diversity of wildlife and aquatic species. However, its location behind the Lee Traffic Circle was often a target for residential and commercial development. Subdivisions and strip malls are the last thing Ron and his family wish to see on this special place. According to Ron, ***"I have no interest in making a profit for the sale of this land. In fact, I would be insulted if it were developed."***

At the end of the day, Ron simply wanted to know that his land would continue to be open for people and wildlife to enjoy peacefully. For years, Ron worked to find the right opportunity to conserve his land and consulted with a variety of organizations including the Lee Conservation Commission. Then, in 2015, Ron reached out to the Southeast Land Trust of NH (SELT) who helped him devise a successful plan. Later that year, Ron agreed to sell a Wetlands Reserve Easement to the Natural Resources Conservation Service. When this easement closed in 2018, Ron then donated the property to the Southeast Land Trust of NH who agreed to own and care for the land subject to the restrictions of the easement.

Ron's many years of stewardship have left an indelible mark on the land. With the property now under SELT's careful stewardship, he hopes the local community continues to enjoy the property as much as he does. As with other SELT-owned reservations, the Langley & Kennard Forest is managed to provide high quality wildlife habitat, productive forest, and offers a loop trail accessible by foot to the general public.



Photo credit: Shauna Sousa



# Glossary

The following terms are described primarily in the context of land conservation, with acknowledgment that some terms have additional meanings when viewed in a broader context.

**Appraisal.** A report, prepared by an independent appraiser, documenting the estimated fair market value of your property or conservation easement, usually based on sales of comparable properties. A “qualified appraisal” meets specific IRS requirements and is required when claiming an income tax deduction for your gift of land, buildings, or conservation easement.

**Bargain sale.** Sale of a property or a conservation easement at a price that is less than its full fair market value.

**Baseline documentation report.** A report, prepared by the land trust, consisting of text, maps, and photos describing the condition of your property when you complete a conservation easement.

**Basis (or cost basis).** The cost of a property at the time you bought it, or the value of the property when you inherited it. When you receive property by gift other than by inheritance, you assume the basis of the prior owner. Basis can be increased (“adjusted”) for additional capital improvements you make on or to your property.

**Charitable contribution.** Your gift of money, property, or a conservation easement to a nonprofit, tax-exempt organization such as a land trust, or to a government entity.

**Charitable deduction.** The amount of a charitable contribution that you can claim as a reduction to your taxable assets as declared on your tax return. This most commonly applies to federal income taxes but can also refer to federal estate taxes.

**Closing.** Your final signing and delivery of the deed for property or conservation easement to another party, the transfer of funds for any

sale, and the recording of the deed at the county Registry of Deeds.

**Conservation easement.** A legally binding agreement between a landowner and a land trust or governmental agency (“easement holder”) permanently restricting uses of the land to protect significant conservation features. This usually takes the legal form of a Conservation Easement Deed recorded at the county Registry of Deeds.

**Conservation features.** Special natural and cultural attributes of your property, such as wildlife habitat, scenic views, public trails, undeveloped shoreline, productive soils for agriculture and forestry, unusual plant or animal species, important drinking water sources, and other qualities worthy of protection. Also sometimes referred to as “conservation values.”

**Conservation group.** A nonprofit organization or governmental agency whose mission includes land conservation.

**Conveyance.** Your transfer of land or a conservation easement to another person or entity.

**Current Use Assessment.** A New Hampshire property tax program that lowers property taxes on undeveloped land in exchange for your agreement not to develop your land while enrolled in the program. Generally, 10 acres or more are needed to qualify. You can still use your land for agriculture, forestry, or outdoor recreation. Land enrolled in the Current Use program is not permanently protected.

**Deed restrictions.** Restrictions which limit or prohibit future uses of your property, whether for conservation purposes or not, and which you place in the same deed transferring ownership of your property. Usually enforceable by the landowner who created them, sometimes his or her heirs, and possibly other named parties. Deed restrictions lack the permanence of a conservation easement.



Ermine on Devan Preserve Marlborough NH. Photo credit: Emily Hague

**Devise.** To give land or a conservation easement by the terms of your will.

**Easement monitoring.** The easement holder visits your land, usually annually, to ensure (or monitor) that the terms of the easement are being upheld.

**Environmental hazard assessment (also “environmental site assessment”).** An investigation into the possible presence of hazardous or solid waste on or near your property. This includes reviewing public environmental records and a site inspection and is completed prior to closing.

**Estate tax.** A federal tax on the value of assets which you own and are transferring to others at the time of your death. The State of New Hampshire has no estate tax.

**Executory interest (also known as “Third Party Right of Enforcement”).** A second or backup interest in a conservation easement, held by a conservation group separate from the primary conservation easement holder. This backup organization can take certain actions to enforce the terms of the easement in the event that the primary conservation group fails to carry out its stewardship responsibilities.

**Fair market value.** The amount that a willing buyer would pay a willing seller, neither being obligated to buy or sell and both being fully informed about the relevant facts. For land and conservation easements, this is typically established by the appraisal process.

**Fee simple (also sometimes called “fee interest,” “fee title,” or “fee”).** The complete, outright ownership of land, with all the usual rights associated with ownership.

**Form 8283.** The IRS form titled “Noncash Charitable Contributions” that you must file with your federal income tax return to claim a charitable deduction for your donation of land or a conservation easement.

**In perpetuity.** Forever.

**Land conservation.** A general term for protecting undeveloped property from residential and commercial development and from other uses that could damage the property’s conservation features.

**Land trust.** A nonprofit, tax-exempt organization that works with landowners to help them conserve their land and is qualified to hold conservation easements.



**Life estate (also called “life tenancy”).**

A right you can retain when you transfer ownership of your property (see Remainder interest) enabling you (and possibly others you name) to continue using the property for the rest of your lifetime(s). Most commonly done for a personal residence or farm.

**Mutual covenants (also known as “restrictive covenants”).** Legally binding restrictions on the use of property often applied to multiple lots in a subdivision and typically enforceable by abutters, the other landowners in a subdivision, and/or a landowner’s association. These restrictions are written into deeds or separate agreements recorded at the county Registry of Deeds. Like deed restrictions, mutual covenants lack the permanence of a conservation easement.

**Option to purchase (or “Option agreement”).**

A right you can convey to a land trust enabling it to acquire your property or a conservation easement at a specific price and within a specific timeframe. The land trust, as the “option holder,” usually pays you an “option

fee” or “consideration” to acquire this legally binding agreement.

**Public access.** The ability of members of the public to access or enter your land or a portion of it, for specific purposes or activities such as walking, snowshoeing, skiing, hunting, or bird watching.

**Purchase and sale agreement.** A contract signed by you, as the seller, and a buyer, such as a land trust, obligating you to sell and the buyer to purchase your land, buildings, or conservation easement at a specific price and within a specific period of time. This agreement prohibits you from conveying your property to another party during this time period. It defines key items such as the sale price, deposit amount, and activities to be undertaken prior to the exchange of a deed and money at the closing.

**Real estate.** Land and buildings, including any associated natural features (e.g., trees, stones, etc.) and manmade features (e.g., fences, wells, etc.), and any and all legal rights



The Stone Farm in Dunbarton includes 237 acres of farmland, fields, and forest. Conserved in 2017 by Five Rivers Conservation Trust. Photo credit: Ken Stern, Five Rivers Conservation Trust



associated with them. Real estate can also include partial interests transferable to others, such as a conservation easement, a right-of-way, timber and mineral extraction rights, and a fractional ownership interest in property.

**Remainder interest.** The portion of the ownership interest in property given to another party when you elect to give away property, but continue to live on and/or use the property for the rest of your life (see Life Estate).

**Right of first refusal.** A legal document by which you grant a right to another party to purchase your property or conservation easement at some point in the future. Depending on the specific terms, a land trust holding such an interest may be entitled to match any legitimate purchase offer you receive from another prospective buyer, in which case you must then sell to the land trust. The land trust may also have a right to buy your property at its appraised value whenever you are ready to sell.

**Stewardship.** The long-term care and oversight of land or a conservation easement ensuring that conservation features remain protected into the future. For land, stewardship can include active management for forestry or agriculture, and noncommercial outdoor recreation. For a conservation easement, this can include easement monitoring, maintaining communications with the landowner, and taking enforcement action if a violation occurs.

**Stewardship fund.** A fund established by a land trust to cover the future costs of stewardship activities. This could be an endowment fund, providing regular income and preserving the principal, or it may be fully spendable. Land trusts often set up separate, more specialized types of stewardship funds for monitoring and/or legal defense.

**Trade lands (also known as “asset lands”).** Property you convey to a land trust with the expectation that the land trust might sell it and use the proceeds to do other conservation work. If the property doesn't have conservation features, the land trust might sell it without any new restrictions



Photo credit: Jerry Monkman/Ecophotography

protecting the land. If the property does have conservation features, the land trust might set up a conservation easement prior to the sale.

**Trail easement.** Rights you can grant to a land trust or trail group allowing them to construct, maintain, and/or oversee public use of a trail on your land. You can convey these rights as part of a conservation easement deed or in a separate, stand-alone deed sometimes also called a “right-of-way.”

**Transaction expenses.** Expenses that you and/or the land trust may have to pay for a boundary survey, appraisal, legal services, transfer tax, or other activities involved in transferring property or a conservation easement to a land trust.





Photo credit: Jerry Monkman/Ecophotography



# Notes





Ashland, New Hampshire. Photo credit: Ken Hamilton

“My brothers and I have a deep sense of history with the land and many memories from growing up here. We wanted to leave a legacy to our children like the one that had been left to us.”

COURSER FAMILY LANDS, 1,400+ ACRES IN WARNER AND WEBSTER, NH.