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Did you know that, without proper planning, estate taxes could virtually force your heirs to sell the land they inherit?

Did you know that you can protect your land's future while continuing to own it, live on it, or farm it?

Did you know that there are a variety of ways to donate land that fit individual families' financial needs as well as their conservation goals?

*Conservation Options: A Landowner's Guide* provides straightforward information about the ways you can protect your land and about the tax benefits that can result—whether you want to pass land along to your children or donate it for the use of all.

The Land Trust Alliance is the national organization of land trusts, working to ensure that land trusts have the information, skills, and resources they need to save land through voluntary land conservation.



Land Trust Alliance • Washington, DC

# Conservation Options A Landowner's Guide



# Conservation Options

## A Landowner's Guide



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## Chapter 1



# Why You Need to Make Plans for Your Land Now

**Y**ou and your family have kept your land open and free from development for many years—perhaps for many generations. It has provided tranquility, scenes of beauty, maybe even your living. You would like it to remain as it is.

But a time comes when you have to face some hard questions: “What will happen to my land in the future? Can my children afford to keep it? Will future owners care about it the way I do?” The reality is that unless you take positive action to protect it, your beautiful land may be lost—to strip development, a shopping center, or thoughtless subdivision.

Why? Federal estate taxes are one reason. Through 2009 your heirs may need to pay as much as 49% of the land’s current fair market value in federal estate taxes, usually due within nine months after your death. That could amount to thousands or even millions of dollars.

Another reason is that future owners may not care for the land the way you do, and may succumb to the rising pressures to sell undeveloped property. As Will Rogers said, “Land—they ain’t making it any more.”

But there’s good news: You have it within your power to permanently keep your land the way it is. This booklet explains how you can protect your land in a way that makes good financial sense for you and your family.



## **Thousands of landowners, millions of acres**

The land protection methods described in this booklet have been used by thousands of landowners to protect millions of acres across the nation. They have protected ranches, lake and ocean shorelines, wetlands, forests, scenic views, farms, animal and plant habitats, river corridors, watersheds, historic estates, and trail corridors—land of every size and type that has conservation, historic, scenic, or other value as open space.

Many of these protected lands have remained in private ownership, continuing as working farms, forests, and ranches. Some have become public parks or nature preserves. In each case, the way in which the land was protected depended on the wishes of the landowner or on the characteristics of the land.

The people who protected these properties shared a desire to keep the land's special qualities intact for their children and for future generations. (Or as one rancher put it, having devoted his life to his ranch, he didn't want "someone else to screw it up with development.")

## **Financial and tax incentives help make protection possible**

Landowners are helped in achieving their conservation goals by a variety of financial options and tax incentives. Some of the techniques described in this booklet can result in substantial estate tax reductions—ensuring your property's protection and helping to keep it in the family. Some produce income or property tax reductions. Others provide income from a sale or guarantee you income for the rest of your life. These incentives can help make your dream to protect your property a reality.

Land trusts—conservation organizations described later in this booklet—can help you find the right solution, one that fits the needs of your family and your financial situation, while conserving your land in the most appropriate way.

## **You can decide the future**

Land conservation is truly an area where individuals can make a difference—in fact, where individuals are critical. What America will look like a hundred years from now is being decided day-by-day, parcel-by-parcel, by landowners like you. Take the time to consider the ideas in this booklet, and put them to work for your land, your family, and your community.

## Chapter 2



# Getting Started

**D**ecisions to protect land require careful consideration of the special features of your property, your land conservation goals, your financial situation, and your family's needs and wishes.

## Assessing Your Situation

In examining the alternatives, it can be helpful to consider these questions:

### **The land's ownership:**

- *Do you want to continue owning the land and pass it on to someone in your family?* Conservation easements allow you to place permanent restrictions on the land while keeping the land in private ownership (Chapter 3). Leases, management agreements, and mutual covenants (Chapter 4) offer limited protection while retaining ownership.
- *Do you want to continue living on the land?* Donations or sales of conservation easements, land donations with reserved life estates (Chapter 5), and land donations by will (Chapter 5) allow you to continue living on the land while giving it permanent protection.
- *Are you interested in donating your land to a charitable organization?* Donations of land can be structured in a variety of ways, each having different tax consequences (Chapter 5).

### **The land's qualities:**

- *What is it about the land that is important to you? What are its special natural or historic features?* The appropriate protection tool depends in part on the nature of the land. A very restrictive protection technique might be appropriate for a delicate and rare animal habitat, but restrictions allowing traditional uses to continue might be appropriate for a farm or forest.
- *Does the entire parcel need to be protected to maintain the property's natural or scenic values?* The conservation techniques described in this booklet can often be applied to just a portion of the property, or combined in a variety of ways (Chapter 7). Also, conservation easements can allow some development.

### **Your personal and financial situation:**

- *Might you need to solve future estate tax problems? Present income tax or property tax concerns?* Conservation easements allow the landowner to retain title to the land while still reducing future estate taxes on it (often significantly). Donating or selling the land removes its value from the overall estate, and thus also reduces estate taxes. All the techniques that involve donation of land or an easement during the donor's lifetime can provide income tax and, in some locations, property tax relief to varying degrees.
- *Do you need to receive some cash for the land?* Bargain sales (Chapter 6) provide cash. You can also place a conservation easement on the land and sell it. In some cases portions of a property with little conservation value can be sold for appropriate development while still achieving the overall conservation goals (Chapter 7). And some kinds of donations provide a life income.
- *Do you need to have the future option to build additional houses on the property, or to sell building lots?* If building sites can be located so that they do not damage the property's conservation values, you may be able to achieve your conservation goals while reserving future lots, in case your children would like to live on the land or you find you need to sell a building lot for income. Conservation easements often can be structured to allow some development.

- *How much of the value of your land is due to appreciation during your ownership (and to what degree are you interested in reducing capital gains liabilities)?* If the land you own has appreciated a great deal and you are contemplating selling it at fair market value, capital gains tax can reduce your profits considerably. Donating the land or selling the land in a bargain sale may be an attractive alternative.

## Who Can Help?

### Land trusts

This booklet will acquaint you with some of the ways you can protect your land. A good next step might be to talk with a land trust. These nonprofit organizations (described more fully in Chapter 9) can be excellent sources of information. A land trust can also become your land-saving partner by, for example, serving as a recipient of a conservation easement or land donation. (Many of the protection activities described here are also undertaken by some government resource agencies, such as recreation, park, or wildlife agencies, conservation commissions, or open space districts. You can work directly with these government bodies, or you can ask a land trust to help you work with them.)

If you don't know of a land trust working in your area, the Land Trust Alliance can help you locate one and can provide additional information.

### Professionals

The techniques described here are sometimes complex, and all have long-range implications. You should make decisions affecting the ownership and use of your property only after consulting your own legal and financial advisors.

Because land conservation is a technical and quickly evolving area of the law, and because your decisions can have significant consequences, it's important to seek out advisors who are experienced in this field. Land trusts can put you in touch with specialists such as attorneys, tax accountants, appraisers, land-use planners, and surveyors with appropriate experience.

**Summary of Conservation Options**

<b>Land protection option</b>	<b>Description</b>
Conservation easement (Chapter 3)	Legal agreement between a landowner and a land trust or government agency permanently limiting a property's uses.
Outright land donation (Chapter 5)	Land is donated to land trust or agency.
Donation of undivided partial interests (Chapter 5)	Interests in land are donated to land trust or agency over several years, until organization has full ownership.
Donation of land by will (Chapter 5)	Land is donated to land trust or agency at death.
Donation of remainder interest in land with reserved life estate (Chapter 5)	Land is donated to land trust, but owner (or others designated) continue to live there, usually until death.
Bargain sale of land (Chapter 6)	Land is sold to land trust or agency for a price below fair market value.
Lease (Chapter 4)	Land is leased for a specified number of years to a land trust or individual, with restrictions placed on how it can be used.
Mutual covenant (Chapter 4)	A group of landowners agree to restrictions on their land use. May not involve a conservation group.

\* In most cases. The amounts of income tax and estate tax reduction depend on a number of factors.

<b>Results</b>	<b>Income tax deduction?*</b>	<b>Estate tax reduction?*</b>
Land's conservation values protected by organization. Owner continues to own, use, live on land.	Yes	Yes
Land trust owns and protects land.**	Yes	Yes
Land trust owns and protects land.** Income tax deductions spread over several years.	Yes	Yes
Land trust owns and protects land.**	No	Yes
Land trust owns and protects land.**	Yes	Yes
Land trust owns and protects land.**	Yes	Yes
Development postponed.	No	No
Can be nullified by subsequent agreement of owners.	No	No

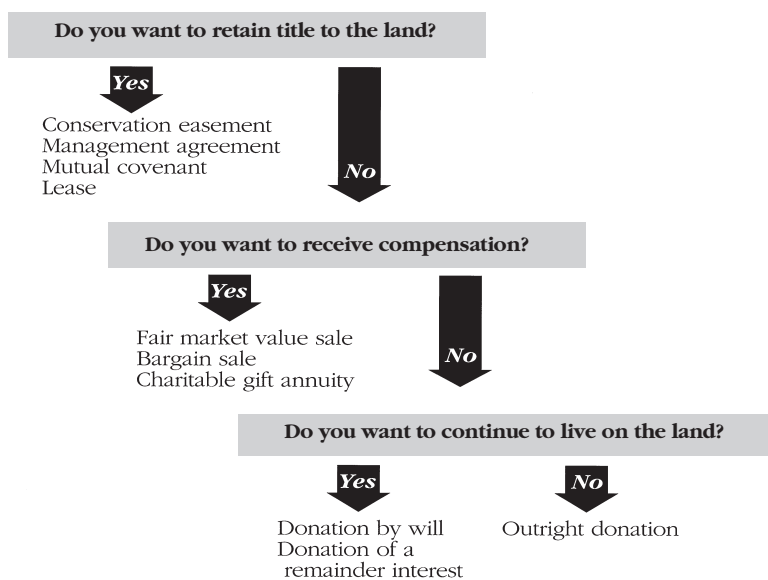
\*\* For property best kept in private ownership, the land trust may place a conservation easement on the property to protect it, and sell it to an appropriate buyer. For nonconservation property donated to generate income to the land trust, the land trust will sell the property. Cash from the sale in either case will be used to support the land trust's conservation programs.

## Using This Booklet

The tax examples in this booklet are simplified and generally address only federal, rather than state and local, tax considerations. They are based on tax laws as they stand in early 2003. The examples are provided to show generally how the tax benefits work, not to guide you in calculating your own benefits. Your personal tax outcome in any particular situation will depend on factors such as the value of your donation, your income, the extent of your other deductions, the availability of state and local tax deductions, currently unknown future adjustments in federal exemption allowances, and so on. You should consult a tax advisor who can review your personal situation and make the calculations for you.

This booklet does not cover state and local government conservation programs. Some states, for example, lower property taxes on land dedicated to forestry or agriculture, some purchase conservation easements. A land trust or natural resource agency in your community or state can tell you about any programs that might apply to your situation.

**This chart will serve as a good starting place in your thinking about the many options available for protecting land. But you will want to read further—aspects of your own personal situation or the use of strategies that combine protection techniques can lead to conservation solutions not evident here.**



## Chapter 3



# Conservation Easements

**A** conservation easement can make a critical difference in a family's ability to pass land from one generation to the next. This flexible tool protects land while leaving it in private ownership.

### **The advantages of a conservation easement**

A conservation easement (called a “conservation restriction” in some states) is a legal agreement between a landowner and a qualified conservation organization or government agency that permanently limits a property's uses in order to protect its conservation values. A conservation easement offers several advantages:

- It leaves the property in the ownership of the landowner, who may continue to live on it, sell it, or pass it on to heirs.
- It can significantly lower estate taxes—sometimes making the difference between heirs being able to keep land in the family and their needing to sell it. In addition, an easement can provide the landowner with income tax and, in many cases, property tax benefits.
- It is flexible, and can be written to meet the particular needs of the landowner while protecting the property's resources.
- It is permanent, remaining in force when the land changes hands. A land trust or government agency ensures the restrictions are followed.



## How conservation easements work

When you own land, you also “own” many rights associated with it. They might include rights to harvest timber, build structures, grow crops, and

**The problem:** Forty years ago, when a couple bought their farm, it had been surrounded by other farms. Now, houses were rapidly replacing the open fields. The couple had been offered over a million dollars by a developer, but wanted to stay and continue farming, as did their son. When the couple spoke with their attorney about passing the farm on to their son, they were told that the estate tax would be hundreds of thousands of dollars, an amount the son could probably only raise by selling at least part of the property.

**The solution:** The couple placed a conservation easement on their farm that allowed them and future owners to continue farming operations. The easement also allowed one additional residence to be built, an option that could allow flexibility in their son's financial planning. But because the easement prohibited any further development, the fair market value of the farm—and eventual estate tax—were greatly reduced.

so on (subject to zoning and other restrictions). When you donate or sell a conservation easement to a land trust or government agency, you permanently give up some of those rights. For example, you might give up the right to build additional residences, while retaining the right to grow crops. Future owners will also be bound by the easement's terms.

Conservation easements can be used to protect a wide variety of land, including farms, forests, historic areas, ranches, wildlife habitats, and scenic views. They may be called

agricultural preservation easements, historic preservation easements, scenic easements, or forever wild easements, depending on the resources they protect.

Conservation easements are written up in a detailed legal agreement that outlines the rights and restrictions on the landowner's uses of the property and the responsibilities of the landowner and the land trust or government agency that holds the easement.

## **Easements are flexible**

The landowner and prospective easement holder—a land trust or government agency—tailor the easement terms to protect the land's conservation values, and meet the financial and personal needs of the landowner. Thus each easement is a unique document. Generally, limitations are made on the number and location of structures and the types of land use activities that can take place.

A land trust cannot accept an easement that does not meet its conservation standards, but these standards are met in different ways on different properties. For example, a scenic estate on the fringe of a fast-developing area might be protected by an easement that allows one or more future homesites on land that's not visible from the highway. For a property containing habitat for a rare wildlife species, an easement might prohibit development of any kind. A farm might be protected by an easement that allows continued farming and the building of some additional structures for agricultural purposes.

A conservation easement can serve as a flexible tool in a family's financial planning. The easement may apply to just a portion of the entire property, leaving the option of development open for the remaining part as long as the development wouldn't harm the natural or historic resources of the property. It may allow some building within the area under easement, if that is compatible with the easement's conservation objectives. A conservation easement can also be combined with other protection methods (see, for example, Chapter 7).

## **Easements are enforced by the land trust**

The land trust or government agency receiving the easement takes on the permanent responsibility and legal right to enforce the terms of the easement. It will monitor the easement by inspecting the land regularly (yearly in most cases) and talking to the landowner about future plans in order to avoid conflict with the easement. If a future owner or someone else violates the easement—for example, by erecting a building the easement doesn't allow—the land trust will take action to have the violation corrected, including going to court if necessary. (These permanent responsibilities result in perpetual cost to the land trust. It may request a donation from the easement donor to help pay for future stewardship expenses. See Chapter 9.)

## Donating a Conservation Easement

By far the most common way of conveying a conservation easement is by donating it outright to a land trust or government agency.

### Qualifying for a federal income tax deduction

The donation of a conservation easement that meets certain requirements of the tax code can qualify as a tax-deductible gift. These requirements include a provision that the easement must be donated in perpetuity; “term” easements, which are put in place for a set number of years, do not qualify. It must be donated to a qualified charitable organization, such as a land trust or government agency, that has the commitment and resources to enforce the easement. And it must be donated exclusively for conservation purposes, defined in the tax code as accomplishing at least one of the following:

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

In essence, the income tax deduction is reserved for the protection of conservation resources that truly provide significant public benefit. However, an easement does not have to cover all of the property, preclude all use or development, or allow public access in order to qualify for a charitable deduction.

### The size of the income tax deduction

For income tax purposes, the value of the easement is the difference between the value of the land with the easement and its

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*“How could I ever face my resident moose when I depart this world if I hadn’t done everything I could to safeguard my land for the wildlife?”*



Gertrude Baker takes a serious interest in the welfare of the wildlife on her 181-acre Montana property. She diligently provides seed for birds, digs out noxious weeds, and keeps a five-acre meadow open for forage and as a “nursery” for newborn deer and moose (one of which returns periodically from its travels and peers in her window).

In her eighties, Baker became concerned for the fate of her land and wildlife. The property’s location—close to I-90 and only eight miles from Bozeman—made it a prime candidate for subdivision. Her relatives lived out of state and weren’t interested in owning the property. She considered donating the land to a university, but was concerned that doing that wouldn’t assure its preservation.

Then someone told her about the Gallatin Valley Land Trust. The trust’s executive director put her in touch with timber and wildlife experts and worked with her to design a conservation easement that would preserve her land as she wanted.

Baker donated an easement to the land trust allowing selective forest logging but forbidding subdivision. She also donated money to the land trust to help meet its monitoring expenses. Baker now has the assurance that her land will continue to provide a home for wildlife. “How could I ever face my resident moose when I depart this world,” she says, “if I hadn’t done everything I could to safeguard my land for the wildlife?”

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value without the easement. (This is determined by an appraisal. See Chapter 8.) For example, suppose an unrestricted property is worth \$500,000 on the open market to a developer, who would subdivide it and build several houses. The landowner donates to the local land trust an easement on the land that precludes further development. The fair market value of the land without its development potential drops to \$200,000. The value of the donation is considered to be \$300,000. (There are limitations on how much a taxpayer can deduct. See Chapter 8.)

Although virtually all conservation easements result in some reduction in value, there is no rule of thumb for determining how much that will be. Easement values have ranged from less than 10% to more than 90% of a property's fair market value. In general, the highest easement values arise from very restrictive conservation easements on tracts of developable open space in areas where development pressures are intense. An easement over an undevelopable wetland, or on a remote farm, or that allows subdivision and development, will have a lower value.

### **Conservation easements can significantly reduce estate tax**

It's a fact of modern life that simply passing land on from one generation to the next may prove impossible for some families. A landowner dies, leaving land to her children. The children find that the land has appreciated dramatically since it was purchased. Because of its development potential, the land's fair market value is in the millions of dollars. The federal estate tax—levied at rates through 2009 as high as 49%—is based on this fair market value, not on the land's original purchase price or on its current use. Selling all or part of the land for development often is the only way to pay the estate tax.

A conservation easement can change this scenario. If the landowner places an easement on the land restricting future development, its fair market value will, in most cases, be reduced. When she dies, estate taxes—based on the value of the land with its development potential restricted—will be reduced.

An easement's effect on estate taxes is generally more important to landowners with sizeable estates and substantial real estate holdings than to those with more modest estates, since tax laws generally have the effect of exempting in 2003 the first \$1 million worth of assets from estate taxes (increasing to \$3,500,000 in 2009,

depending on the year of death. See Appendix A). However, keep in mind that today’s real estate market can easily push a property’s value well above that level without the landowner realizing it.

- **IRC Section 2031 (c)**

The Taxpayer Relief Act, passed in 1997, added Section 2031 (c), which provides an additional exclusion of up to \$500,000 from estate tax for land subject to a qualifying conservation easement. It also provides the opportunity for a qualified conservation easement to be donated by the heirs after the death of a decedent but before the estate return is filed. For complete information on all aspects of this Internal Revenue Code section, landowners should consult a qualified tax advisor.

### Conservation easements can reduce property tax

Placing an easement on your property may also result in property tax savings in some states. The tax assessment on an ease-

#### Conservation Easements and Estate Taxes

A landowner purchased property in the 1960s that has appreciated considerably, and now has a fair market value of \$1,250,000. If he places a conservation easement on the property during his life or in his will that reduces the property’s value to \$750,000, the reduction in estate taxes could be substantial. Assuming that he has \$250,000 in taxable assets in addition to the property, that no marital deduction is available, and that the unified transfer tax credit (see Chapter 8) has not been exhausted, the effect of the easement on estate taxes for a decedent dying in 2003 would be as follows:

	Without easement donation	With easement donation
Value of land	\$1,250,000	\$750,000
Other taxable assets	250,000	250,000
Total taxable estate	\$1,500,000	\$1,000,000
Total federal and state estate tax*	\$210,000	\$0

\*State taxes vary from state to state. In many states, the state estate tax is equal to the maximum federal estate tax credit for state death taxes. The example above is based on this assumption.

ment-restricted property logically should reflect the land's lowered value after imposition of the easement. However, local assessment practices vary; a reduction may not be available. Also, assessors may not be familiar with conservation easements; you may have to apply for a reduction in the assessment. In a few states and localities, laws specifically provide property tax relief for conservation easement-encumbered property.

## **Donating a Conservation Easement by Will**

A conservation easement can also be donated by will. You won't receive the income tax and property tax benefits that you might have if you had donated the easement during your lifetime, but estate taxes will be reduced just as they would with a lifetime donation.

Like an easement donated during life, an easement to be donated by will should be negotiated between you and the conservation organization to which you plan to donate it. This not only helps assure that the easement is crafted in such a way that it will achieve what you want it to, but it avoids placing the organization in a position of receiving or having to refuse an easement that does not meet its conservation objectives or that it can't adequately monitor. The organization would be under no obligation to accept the easement and take on the responsibility of monitoring it.

In fact, because a gift of an easement can take some time to negotiate, you may want to add a codicil to your will stating your intention to grant the easement. In the event of your death before its completion, the executor is instructed to complete the easement. In a lifetime gift or a gift by will it is always advisable to attach as complete an easement document to the will as is available, granting the executor discretion to make usual and customary modification required by the donee.

### **A protection tool for the family that can't decide**

Writing a conservation easement into a will can also serve as a good interim measure. If there are family conflicts about what should be done with the land, if your own financial situation changes, or if you simply decide at some later point that you would like to give the land greater or less protection (even to



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*“People give easements because they want to. Underlying the estate planning and income tax benefits is the desire to conserve your land.”*



Louise and David Maybank had felt that their 14-acre tract on Wadmalaw Island, South Carolina, deserved better than to be cut into building lots. With its high bluff, ancient oaks and pines, and 1910 farmhouse, their property, “High Point,” was not only a peaceful retreat for its owners, but a scenic treat for passing boaters. The couple began to investigate protecting it with a conservation easement.

The Maybanks discussed the idea with their three sons—a step that “resolves a lot of issues within the family while the owner is still alive,” Louise Maybank said. They supported the concept, but to give themselves or future owners some flexibility, the Maybanks reserved the right to construct a guest house at the back of the property.

It took about a year to place the conservation easement on the property. The Maybanks met with the Lowcountry Open Land Trust, which would hold the easement. They obtained an appraisal and brought in a lawyer to draw up the easement document. The process of granting an easement “does require an owner to spend some money,” Maybank said.

The Maybanks gained some income tax benefits, although those were simply an “added plus,” Maybank said. “I’m convinced that people give easements because they want to. Underlying the estate planning and income tax benefits is the desire to conserve your land.”

The Maybanks’ easement donation has had the added benefit of spurring other landowners to do the same. Since their easement was put in place, five more landowners on the island have donated easements.

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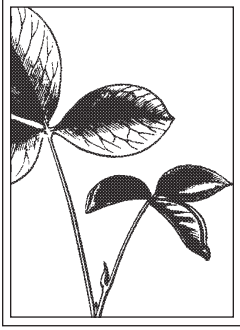


eliminate the easement bequest), you can amend your will. On the other hand, in the event something happens to you, you will have at least protected the land and lowered estate taxes on it.

## **Selling a Conservation Easement**

Although by far the most common way to convey easements is through donation, some nonprofit organizations and government agencies purchase easements. This is most common for easements protecting farmland, often through a government “purchase of development rights” (PDR) program. Conservation easements are also sometimes purchased in a bargain sale (that is, sale at less than fair market value. See Chapter 6) or given in return for a charitable gift annuity (in which the landowner transfers the easement to the land trust, and the land trust agrees to make regular, fixed payments over several years. See Chapter 5). Selling a conservation easement at full value rules out a charitable deduction, and usually triggers a capital gains tax.

## Chapter 4



# Leases, Management Agreements, and Mutual Covenants

**A**s explained in the previous chapter, conservation easements provide an excellent means for a landowner to retain ownership while ensuring his land's permanent protection by a land trust or government agency. There are several other land preservation methods that also allow the landowner to retain ownership and that protect the property, though in a much more limited way.

### Leasing Property

Land can be protected temporarily by leasing it to a land trust or government agency or, in the case of agricultural land, to an individual who will maintain its productivity.

Leasing land to a land trust experienced in managing the type of land in question assures that its conservation values will be well cared for during the term of the lease. This method temporarily frees you from most management responsibilities, and allows you to develop a relationship with the land trust that could help you decide whether you want to work with it on more permanent protection methods.

You can specify in a lease what rights you retain, what the lessee may or may not do on the land, what happens in the event that the lessee fails to abide by the lease's terms, the length of time

the lease will be in effect, and the amount of rent (if any) to be paid.

Landowners frequently require nominal payment for the leased land. However, there is no tax deduction for the money that is foregone by leasing at less than the market rate.

## Management Agreements

You can gain a land trust's or government agency's help in protecting your property through a management agreement. Under this approach, you and the land trust work together to develop a plan for taking care of the land's features. For example, management agreements have been used to manage plant or wildlife habitat (including fishing streams) or to protect a watershed.

Generally, the land trust provides technical advice and some assistance, and the landowner carries out the plan. The agreement is in force for a set time period (usually a year or more), is renewable, and can be cancelled by either party with appropriate notice. In most cases, no payments are involved.

## Mutual Covenants

If several landowners are concerned about protecting the open space they collectively own or a view they all share, they can exchange mutual covenants to protect these features. Mutual covenants can be appropriate where the protected conservation values are important to a handful of owners but not of sufficient benefit to the general public to warrant a conservation easement.

Each landowner's covenant is enforceable by each of the other landowners and their heirs and successors; however there is no guarantee that they will enforce it. There are no tax deductions for mutual covenants, and they may not be permanent, since they can be nullified by subsequent agreement of all owners.

Essentially, the differences between a mutual covenant and a conservation easement are that the easement is permanent, benefits the general public, and often provides tax advantages, while the mutual covenant primarily benefits adjacent property owners, is not necessarily permanent, and does not provide tax advantages.

## Chapter 5



# Donating Land

Land donated to a land trust or government agency for conservation is truly one of the finest legacies a person can leave to future generations. Communities across the country are enjoying nature preserves, recreation areas, and other open space today because of the foresight and generosity of landowners who have made gifts of their land.

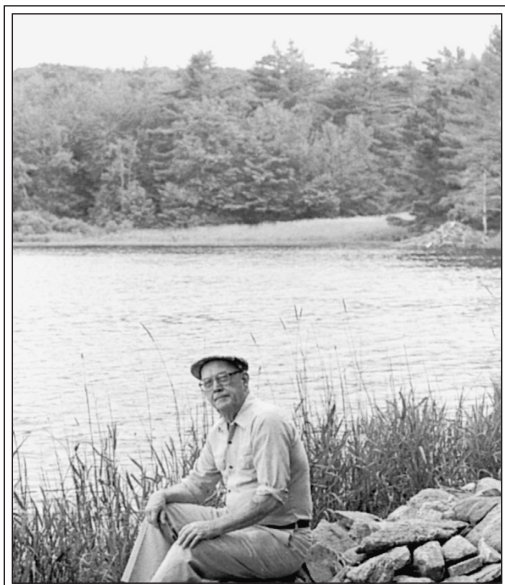
Donating land is often especially attractive to landowners

- whose land has significant conservation values and who do not have heirs, or whose heirs cannot or will not protect it;
- who own property (such as a vacation retreat) that they no longer use;
- who own highly appreciated property, the sale of which would result in large capital gains taxes;
- who have substantial real estate holdings and wish to reduce estate tax burdens;
- or who would like to be relieved of the responsibility of managing and caring for land that they otherwise treasure.

An outright donation of land has several benefits. It is a relatively simple transaction. It releases you from the responsibility of managing the land. It provides substantial income tax deductions and estate tax benefits (while avoiding any capital gains taxes that would result from selling the property). Most important, if the land

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*"It makes you feel good when someone comes in here and walks the trails."*



**"It makes you feel good when someone comes in here and walks the trails and says, 'It's good to have something this close to home,'"** says Philip Heald, Jr., of Wilton, New Hampshire.

The place the public is hiking and enjoying is Heald's former family orchard and farm—almost 500 acres of quietly scenic hills, ponds, and woodlands that Heald and his wife, along with his sister and brother, donated to the Society for the Protection of New Hampshire Forests.

The couple, who are childless and in their seventies, worried that if they left the property to nieces and nephews—who live at a distance—"chances are, it would end up being sold" for development. Although Heald says, "I don't consider myself a wealthy man," the couple settled on a donation because—as long as they had enough resources to continue to live comfortably—assuring the land's long-term protection meant more to them than deriving income from its sale.

In meetings with the society, Heald asked that the land be put into the society's permanent holdings. Heald also wanted to see some ponds managed in a natural state and to allow public use of the property. Heald wanted to continue to own the portion of the property containing his residence; that parcel will be turned over to the society after the deaths of both Heald and his wife.

The society was able to accommodate most of his wishes. To complete the donation, the Healds obtained land and timber appraisals for tax purposes and met with their accountant.

By making the donation during their lifetimes, the Healds realized income and property tax savings. "I wouldn't say the tax benefits were a great factor, but being a Yankee, I took advantage of them," Heald says.

He often stops by to meet visiting school groups and give apples to the kids. After one trip, "one of the children wrote a thank-you letter saying he enjoyed the field trip, but liked the apples best."

is donated because of its conservation value, it will be permanently protected.

(Land that has little conservation value or does not need to be owned by a conservation agency in order to be protected can also be donated to a land trust, with the understanding that it will be sold, with development restrictions if appropriate, to help support the land trust's conservation programs. This is discussed later in this chapter.)

**The problem:** A couple in their seventies owned a five-acre lakeshore property. Its marshes were home to waterfowl, beaver, and other wildlife. A path meandering from the road to the lake's rocky shore had long been enjoyed by the community. The couple summered in a cabin there for 30 years, but since retiring to Florida, their visits had become infrequent. They decided they would rather not continue their responsibility for caring for the property—or paying taxes on it—but they didn't want to see it fall into the hands of someone who wouldn't appreciate its simple beauty as they did.

**The solution:** The couple donated the land to a land trust, along with funds to help the trust maintain it. The land trust established a nature preserve in the couple's name.

### **Donation (and charitable deduction) vs. sale (and capital gains tax)**

Donating land is a very generous act. But, especially if the land has appreciated a great deal since you acquired it, it may not be as large a financial sacrifice as one would expect. If you donate your land to a charitable organization or government agency, you can claim an income tax deduction equal to the land's current fair market value (within limitations allowed by the tax code. See Chapter 8). If you sell the land, you may incur capital gains tax on the appreciation. Your profit may be further reduced by a realtor's commission (usually 6–10%) and expenses resulting from the time delay in finding a buyer.

Donating the land will also remove its value from your estate, reducing future estate taxes. And, of course, you won't have to pay property taxes on it anymore.

## Working with the conservation organization

It is important to get the approval of the intended recipient before making a land donation. Although usually the land trust will welcome your donation, in some cases it will be unable to accept it—perhaps because it is not the type of land the land trust specializes in or because its location, size, or other factors would cause a strain on the land trust's management resources. The land trust might be able to suggest another donee or a different protection technique.

It is typical for a land trust to request a financial contribution toward future management costs (see Chapter 9), to enable it to

### Donation compared to sale

A married couple is considering whether to sell their \$270,000 property, which they bought in the 1960s for \$25,000, to a local developer or to donate it to a land trust. While donating the land would be a very generous thing to do, would it cost them \$270,000? Not nearly.

To keep it simple, assume that their income is \$150,000, that the property is not their principal residence, that they are filing jointly, that they have no other deductions, and that these conditions will remain the same for the next five years.

Donating the land would result in a \$270,000 tax deduction, which the couple can use over six years (see explanation of the 30% limitation, Chapter 8). Their federal tax bill for each of the next six years would be as follows: (State tax will vary from state to state and is not computed here.)

Federal tax in 2003: \$20,494

Decreasing annually until 2008 to: \$18,371

Their total federal tax due over six years would be \$115,982.

On the other hand, if they sell the land, they would be subject to \$245,000 in capital gains. Their federal tax bill for the year the property is sold and over the next five years would be as follows, (assuming the same scheduled decline in tax rates as above):

	<u>year 1</u>	<u>total years 2–6</u>
Federal tax	\$88,000	\$144,600

Their total tax due over six years would be \$232,600.

In addition, if there is a 10% broker's commission on selling the land, the "cost" of donating the \$270,000 property, compared to selling it, not including state tax savings, would be only \$126,382.

Selling price	\$270,000
Tax benefit of donation vs. sale	–116,618
Broker's commission	<u>–27,000</u>
	\$126,382

fulfill its perpetual obligation to care for the land. Although this may seem an odd request to make of a donor who has already made a generous gift of property, it demonstrates that the land trust takes seriously its stewardship responsibilities.

### **Providing an extra measure of protection**

Most donors of land understandably wish to have a say in how the land trust will use or manage the land in the future. One way to do this is to state your wishes in a letter to the land trust. The land trust will do its best to accommodate your desires, but will retain the flexibility to make management decisions as circumstances change.

An alternative is to donate a conservation easement (Chapter 3) on the property to one organization, then donate the land to another. This is more complicated and costly, but provides an extra guarantee about the land's future management.

### **Donating land to be resold with a conservation easement**

In some cases, ownership by the land trust may not be the best long-term protection strategy for your property. If private ownership is most appropriate for the property (for example, if it is a ranch or woodlot), the land trust may accept the land, place restrictions on it in the form of a conservation easement, and resell it. The land is then protected by the easement, the land trust's management costs are reduced, and the land trust can use the proceeds from the sale for future conservation work.

Before the land is deeded to the land trust, you and the organization should have a common understanding of whether the land trust plans to hold on to the land.

### **Donating land that doesn't have conservation value**

Land must have significant conservation value to be appropriate for preservation. But property without conservation value—for example, a commercial building, a house, or a building lot—can also be donated to a land trust (or to any charitable organization that will accept it). The land trust can sell or trade the property to help fund its conservation work. The donor can take a charitable deduction for full fair market value (unless he is a dealer of the type of land given, in which case the deduction is limited), and avoid the capital gains taxes that could have resulted from selling the land.



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*"We and our kids have enjoyed it; why can't others continue to enjoy it in the future?"*



Most of the marshes near Maxine and John Ham's farm in Buchanan County, Iowa, have been drained and turned into croplands. But Maxine says that she and her husband "hated to see that happen" to the marsh located in one corner of their farm—one of the few remaining glacial "potholes" in the state.

The marsh is a haven for migrating waterfowl in spring and fall; as autumn approaches it turns into a rustle of wild rice. When the Hams' seven children were young, they played there, "catching frogs and finding things for school," and paddling around in the old weathered rowboat, Maxine Ham recalls.

"We didn't want all that to be lost," she says. So, in the early 1980s, the couple protected their marsh by donating it to the Iowa Natural Heritage Foundation with a reserved life estate.

The reserved life estate provision allows the Hams, who are now in their seventies, and their children to continue using and enjoying the 10-acre marsh during the Hams' lifetimes. "We like to go down and see what's on the pond," explains Ham. At their deaths, the foundation will take over ownership of the marsh.

Ham said that her children raised no objection to the donation. "They said, 'You worked for the farm, you should do with it what you like,'" she recalls. The donation was accomplished quite easily. After several conversations with the foundation, it was basically a question of "filing papers at the courthouse."

When friends and neighbors learned of the donation, they "said it was really great, although some people said we must be really rich to do it," she recalls. "But that doesn't have anything to do with it. Our thought was, 'We and our kids have enjoyed it, why can't others continue to enjoy it in the future?'"

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## Donating a Remainder Interest

You can donate land but continue to live on it by donating a remainder interest in the property and retaining a reserved life estate. The way this works is that you donate the property during your lifetime, but reserve the right for yourself and any other named persons to continue to live on and use the property during their lifetimes (called a “reserved life estate”). You have donated to the land trust a “remainder interest” in the property. When you or those you’ve specified die or release their life interests, the land trust will have full title and control over the property.

This approach offers a number of advantages. With a reserved life estate, you can continue to enjoy your land, but—because the deed is transferred during your lifetime— you gain assurance that the organization of your choice has accepted your land for protection. Finally, a gift of a remainder interest may entitle you to an income tax deduction when the gift is made.

**The problem:** A woman in her late sixties owned 10 scenic acres of rolling hills at the entrance to town. A land trust had expressed interest in the property and, having no heirs, she liked the idea of donating it to the organization for protection. But she didn’t want to donate it outright—she wasn’t ready for a nursing home. If she donated the land in her will, she would forego the income tax deduction a gift during life would provide.

**The solution:** She donated a remainder interest in the property to a land trust. She received an income tax deduction for a charitable contribution, and continued to live on the land until her death. When she died, the land trust took ownership of the property.

These transactions have the disadvantages of being relatively complex, potentially resulting in some estate tax liability if the life tenant is someone other than the donor and, for reasons described later, yielding a quite small tax deduction if the life tenant is young. However, if donating a remainder interest meets your goals of continued use and ultimate preservation of the land, it may be right for you.

## Qualifying for a tax deduction

There are two ways in which the donation of a remainder interest can qualify for a federal income tax deduction. First, the donation of a personal residence, vacation home, or farm, without restrictions on future use of the property, to any charitable organization can qualify for a deduction. This, however, provides no assurance that the property will be protected.

The second way in which a remainder interest donation can qualify for a charitable deduction is if it is given for conservation purposes to a qualified organization. The definitions of "conservation purposes" and "qualified conservation organization" are the same in the case of this type of remainder interest donation as in the case of a conservation easement donation (see page 12).

## The size of the income tax deduction

The deduction for donation of a remainder interest is determined by reducing the fair market value of the donated property by the value of the reserved life interest of the landowner or his designees, based on IRS actuarial tables. The more life tenants there are, and the younger they are, the lower the value of the remainder interest and, hence, the lower the income tax deduction.

### Tax Deductions for Remainder Interests

If a single donor age 80 gave a remainder interest in her \$200,000 home to a land trust, reserving the right to use the property for her lifetime, her federal tax charitable deduction would be \$149,274 (75% of the value of the property, from current IRS actuarial tables using the IRS discount rate in effect for May 2003). Here are examples of how the deduction would be valued under other circumstances:

<u>Life estates are reserved for</u>	<u>Charitable deduction</u>
Donor and spouse (both 80)	\$132,580 (66%)
Donor (65)	\$110,926 (55%)
Donor and spouse (both 65)	\$90,176 (45%)

## **Combining donation of a remainder interest with donation of a conservation easement**

If a remainder interest is to be donated for conservation purposes, one way to increase the level of protection accorded the land and increase the potential tax deduction is first to donate a conservation easement on the land to one organization, then donate the remainder interest to another. You would be entitled to two income tax deductions: one for the donation of the conservation easement, and another for the donation of the remainder interest in the restricted land.

## **Donating Undivided Partial Interests**

A variation on a simple donation of land is the donation of undivided partial interests in the land. In order to increase the charitable deduction resulting from a land donation, landowners sometimes divide a single large donation into several smaller donations by donating a series of fractional interests in the whole property—undivided partial interests, as they are called—over several years. By donating undivided partial interests, you can tailor the size and number of the charitable deductions to the amounts you can use in succeeding years.

This is a complex calculation, because the tax code limits the amount you can deduct in a single year, but also allows you to carry forward excess value of a deduction for up to five years (see Chapter 8). Also, the value of the donated partial interest is generally less than the corresponding percentage of the ownership transferred. For instance, if you donate a half interest in a property, the value of the interest will be less than 50% of the value of the entire property because the donee has limited use and control of the property. A new or updated appraisal is required with each donation.

Until the full ownership of the land has been transferred, you and the land trust will be co-owners of the property. In many cases, the land trust will ask you to sign an enforceable pledge agreement to donate any remaining undivided interest by a specific date or at death, whichever comes first. You may also be expected to pay property taxes and carrying costs until the land trust receives full ownership.

## Donating Land by Will

Some landowners prefer to continue to own and control their land during their lifetimes, transferring the land to a land trust or government agency by will at the time of their death. This kind of donation is called a donation by will or by devise.

Before writing the devise into your will, you should make sure the chosen recipient is willing and able to receive the gift. Because organizations' priorities and objectives sometimes change over time, it can be a good idea to name an alternate recipient (whose agreement also should be secured) in the event that the land trust of your choice is unable to accept the gift after your death. If you want to be sure the property is managed or used in a particular way, you could specify in the will that if the primary recipient fails to use the land as specified, the property transfers to another named organization.

**The problem:** A widower was becoming increasingly worried about what would happen after his death to the mountain property he had spent his life on. Neither of his two children, who had moved out of the area, had much interest in inheriting it. They felt they would be unable to pay the estate taxes on it or to take proper care of it.

**The solution:** The man spoke with a land trust, which was very interested in the property because of its value as wild-life habitat. After considering the various land donation options, he decided to donate the property to the land trust in his will. It was relatively simple to arrange and allowed him to continue to live there.

Placing the donation in your will rather than donating the land during your lifetime means that you receive no income tax benefits from your gift and you will continue to be liable for property taxes. However, removing the value of the property from your estate could significantly reduce estate taxes.

## Donations that Establish a Life Income

There are several types of charitable donations for which the donor may receive regular income payments for a period of years or for the rest of her life (and receive an income tax deduction as well). These "life income gifts" may have significant advantages

for someone who is donating highly appreciated property, including land, and who would like to supplement her income, perhaps for retirement. There are a variety of life income gift options but, depending on state laws, two in particular may work well for donations of land.

### **Charitable gift annuity**

A charitable gift annuity is a contract in which the donor agrees to transfer certain property to a charity, and the charity agrees to make regular annuity payments to one or two beneficiaries for life. The annuity payments are a set amount, often ranging from 6.5% to 10% of the value of the contributed property, depending on your age and interest rates.

Your gift of land or other property qualifies for a charitable income tax deduction at the time of the gift; the amount of the deduction is based on the value of the land donated less the expected value of the annuity payments, determined from IRS actuarial tables. (As with remainder interest donations, the deduction is larger if the annuitants are older.)

You also avoid much of the capital gains tax that could have resulted from a fair market value sale of appreciated property. The capital gains tax that is owed can be spread over the term of the donor's actuarial life expectancy.

Charitable gift annuities are not, in and of themselves, a land protection tool, but the financial and tax incentives they provide can help make land protection feasible. The most common way to protect land through a gift annuity is to combine it with a conservation easement. You can first donate or sell a conservation easement on the land to one land trust, then grant the land to a second land trust in return for the gift annuity (this can all be done with the same land trust if care is taken to avoid merger issues). Or you can grant unrestricted land to the land trust that will set up the gift annuity, and the land trust itself can sell the land subject to a conservation easement that it establishes. In either case, the land trust generally will sell the easement-protected property to generate the proceeds needed to make the annuity payments. When the annuity obligation terminates, any surplus proceeds will support its conservation programs.

In some states, regulations make charitable gift annuities as described here impractical or impossible for land trusts.

## Charitable remainder unitrust

Like the charitable gift annuity, the donation technique known as the “charitable remainder unitrust” is not really a means in itself of conserving land. However, it can be combined with a conservation easement to achieve conservation goals and can play a useful role in a family’s overall financial planning.

With a charitable remainder unitrust, you do not donate the land (or other property) directly to the conservation organization; rather, you place it in a trust with a stipulation that funds in the trust will go to the organization or organizations at the end of a fixed term or upon the death of the beneficiary or beneficiaries. The trustee sells the land and invests the net proceeds from the sale. One or more beneficiaries receive payments based on a fixed percentage (at least 5%) of the asset value each year for the designated period. The trustee then turns the remaining funds in the trust over to the named organization(s) for use in its programs.

If the trust is to be funded with land that has conservation value, you can donate or sell a conservation easement on the property before it is put into the charitable remainder trust. The easement is likely to reduce the value of the property and hence the resulting payments to beneficiaries, but it will protect the land.

Unlike the charitable gift annuity, which is limited to two beneficiaries, the charitable remainder unitrust allows an unlimited number of income beneficiaries (although a greater number of beneficiaries will result in a lower charitable deduction). The payments are based on a percentage of the trust principal, so they grow or shrink as the principal grows or shrinks. If the trustee invests wisely, a charitable remainder trust can provide a better hedge against inflation than a charitable gift annuity, in which the annuity payments never vary.

Usually, the trust will be set up with an “income-only” provision. This means that the trustee is obligated to make payments to the income beneficiaries only when the trust has received some income; that is, after the land is sold and the proceeds are reinvested. The trustee has a fiduciary obligation to maximize the income and cannot rent the property below market rates or to beneficiaries in lieu of income payments.

The charitable remainder unitrust offers many advantages to the donor of highly appreciated property. The gift qualifies for a charitable income tax deduction in the year the land is put in the

trust (based on the value of the asset less the expected value of the payments). And because the trustee's sale of the land does not incur capital gains tax, the overall financial return may be higher than for a traditional sale, and thus more of the land's value is invested, generating more income for the beneficiaries. And the entire asset is removed from the estate for estate tax purposes.

Finally, you have the satisfaction of knowing that the funds remaining in the trust after the beneficiaries' lifetimes will enhance the conservation organization's ability to do its work.

Because of the administrative expense of establishing and managing a charitable remainder trust, the initial gift must be quite large—\$50,000 or \$100,000. Most charitable remainder trusts are administered by a bank, community foundation or other financial institution, although there is no prohibition against an individual, even the donor, assuming the role of trustee.



## Chapter 6



# Selling Land

**L**and trusts and government agencies are sometimes willing, though often not able, to buy conservation land. There are ways to close the gap between the funds the land trust or agency has available and the price you'd like to receive.

## Fair Market Value Sale

**S**elling your land at fair market value to a land trust may seem an obvious way to protect it. But land trusts usually have very limited funds for land purchases—as nonprofits, they can rarely afford to pay for a property what a developer would pay. They generally reserve fair market value purchases, when they can make them at all, for highly significant parcels under imminent threat of development.

A fair market value sale is often not as advantageous for the landowner as it might seem. Capital gains taxes on the property's appreciated value along with selling costs such as the realtor's commission can substantially reduce the profits from a fair market sale, particularly for landowners in higher tax brackets who are disposing of highly appreciated property (see page 24).

## Bargain Sale

One alternative to a fair market value sale is a bargain sale, in which the land is sold at less than its fair market value. A bargain

sale combines the income-producing benefit of a sale with the tax-reducing benefit of a donation. It can also avoid the expenses of a sale on the open market. The difference between the land's appraised fair market value and its sale price is considered a charitable donation to the land trust, and can be claimed as an income tax deduction.

In cases where paying the fair market value of the property would not be possible, a bargain sale may bring the price down to one the land trust can afford. Some government agencies also purchase land through bargain sales.

A gift to a land trust of land subject to a mortgage is also considered to be a bargain sale. It is treated, for income tax purposes, as though the amount owed on the mortgage were paid by the land trust to the landowner.

For any bargain sale, the donor's intent to contribute the fair market value of the donated property in excess of the sales proceeds should be put in writing. For example, a clause could be included in the purchase and sale agreement recognizing that the value of the property is substantially higher than the sale price and expressing the seller's intent to make a charitable contribution to the buyer, or a letter could be sent to the donee prior to closing the transaction expressing the donor's intent.

As for any gift of property greater than \$5,000, the value of the asset must be substantiated by a qualified appraisal in order to receive the deduction (see Chapter 8).

**The problem:** When a woman took a job in another state, she and her husband decided to sell the scenic ranch they had owned since the fifties. They hoped to sell it to a local land trust rather than to a developer (both had expressed interest in the property), but the land trust couldn't come close to matching the developer's offer. And although the couple wanted to see the land preserved, they couldn't afford to donate it.

**The solution:** The couple agreed to sell their land to the land trust through a "bargain sale," in which the property was sold for less than its fair market value. The income from the sale combined with tax advantages that result from a bargain sale provided the financial benefits the couple needed, and the land came under the protection of the land trust.

**How a Bargain Sale Affects Federal Income Tax**

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

For example, say a couple purchased a farm in 1950 for \$20,000 (the "basis"). By 2003, the fair market value of the farm had increased to \$100,000. They sell the farm to a land trust for \$30,000.

The charitable donation is considered to be the difference between the fair market value of the land and the sale price (\$100,000 minus \$30,000, or \$70,000).

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

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

or

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

In this case,

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

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

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

**Installment Sale**

In an installment sale, the seller agrees to accept a series of payments over time rather than a lump sum. Installment sales generally give the landowner the advantage of spreading income over a number of years. (However, special income tax rules apply to installment sales of property that will affect the final financial outcome.) They give the land trust the advantage of making land acquisitions with much smaller initial outlays and of giving them time to raise the funds needed for the balance.

Another way to stagger the income and payments is to physically divide the property so that the land is purchased in stages until the entire property is transferred.

## Option to Purchase

Sometimes a landowner is interested in selling his land to a land trust, but the organization does not have the funds to buy it immediately. He might then give or sell the land trust an option to buy the property. Under an option, the landowner and land trust contractually agree on a sale price, and the land trust is given a specified amount of time to exercise the option. However, the land trust is not obligated to purchase the land.

During the option period, the land cannot be sold to any other buyer. This gives the land trust time to raise the necessary purchase funds. It also enhances the land trust's fundraising; people may be more interested in donating when they know that the money is going to protect a specific piece of land at a specific cost.

## Right of First Refusal

If you are not ready to commit to selling your land, you might still grant a "right of first refusal" to a land trust. This gives the land trust the opportunity to match any bona fide offer you receive. As with an option, a right of first refusal does not obligate the land trust to purchase the land.

## Sales of Other Property Interests

When land trusts pay for property, it is usually to buy the entire property outright, as discussed in this chapter. However, on occasion a land trust or government agency may purchase—through a fair market sale or a bargain sale—partial interests in property such as conservation easements and remainder interests. Many of the tax consequences described in this chapter for sale of entire properties apply as well to sales of partial interests.

*“He had been watching the way San Jose was growing, and was afraid that development would come and completely change the forest.”*



In the 30 years Carleton and Esther Byrne had owned their property in the mountains above Monterey Bay, California had changed dramatically. Carleton Byrne, said his son, “Had been watching the way San Jose was growing, and was afraid that development would come and completely change the forest.”

The Byrnes didn’t want to see that kind of change to their 320 acres of redwood forests and open meadows. And, although their son shared their affection for the land, he didn’t intend to live on the property and would find managing it after they were gone difficult.

A bargain sale to the Land Trust of Santa Cruz County was the perfect solution. The financial and tax benefits of the sale fit the family’s long-term financial plans, and the land came under the protection of the land trust. The trust implemented an environmentally sensitive management plan for harvesting timber, which helped pay for the property. The land now is crossed with hiking trails and is used for research by environmental studies students from the nearby university.

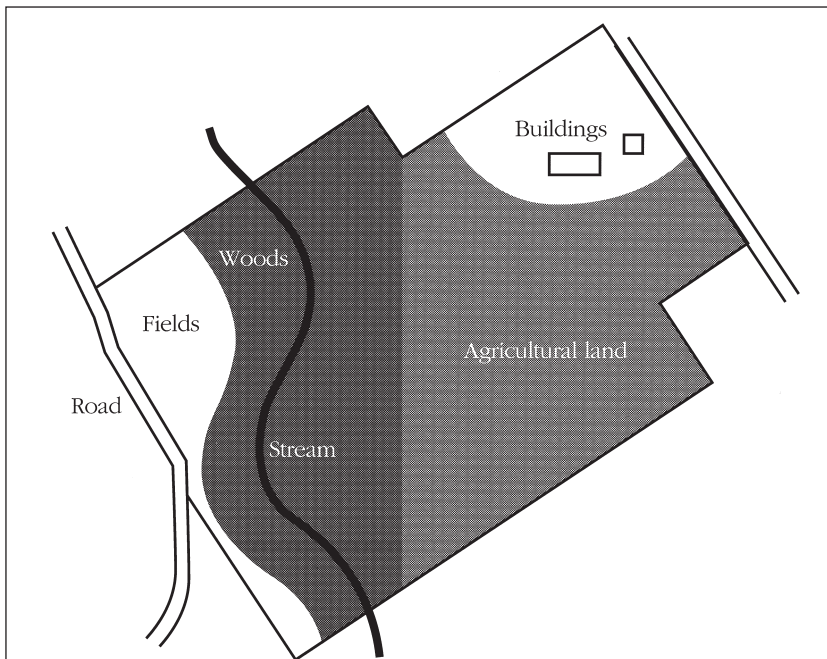
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## Chapter 7



# Combining Preservation Tools

**F**or some properties, a single preservation technique may not be as effective in meeting your financial and conservation goals as a combination of land protection strategies. A limited amount of development may also be a necessary and appropriate part of the protection scheme. This can work where the configuration of the property allows viable building sites that



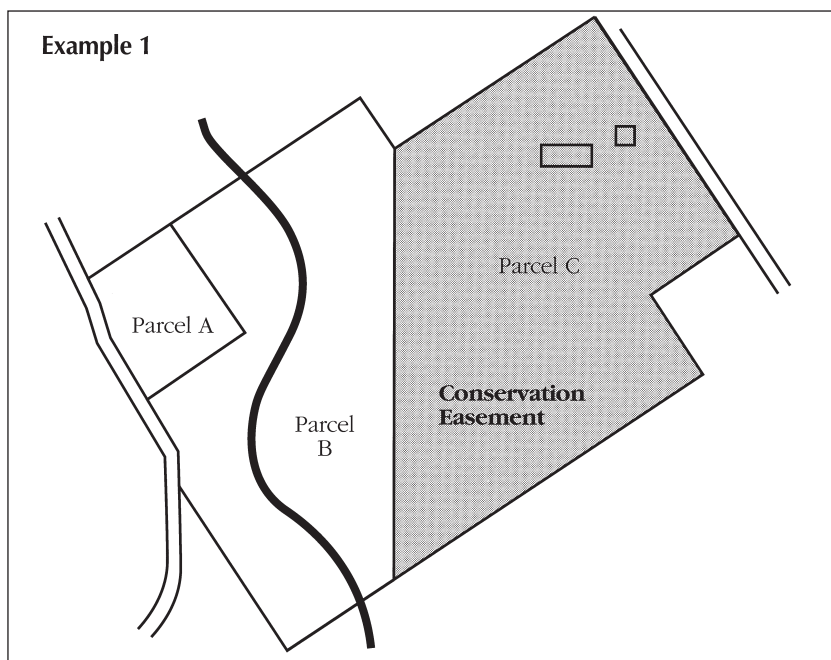
preserve the natural resources, and where there are well-defined boundaries between the conservation land and the land that can be compatibly developed.

Take, for example, a large property in an area under development pressure. The property includes prime farmland and a wooded, underdeveloped stream corridor through which a path runs that traditionally has been used by the public. The landowner—a farmer—wants to pass the land along to his son, but the land has become so valuable that estate taxes may force his son to sell the property. The farmer would like to see the stream protected, and could use some immediate cash.

There are several ways in which the farmer might achieve his objectives (subject to local zoning laws and to the land trust's agreement that the arrangements achieve its conservation goals). In the three examples here, he retains ownership of at least the residential area and agricultural land, generates cash, and conserves the farmland and stream corridor.

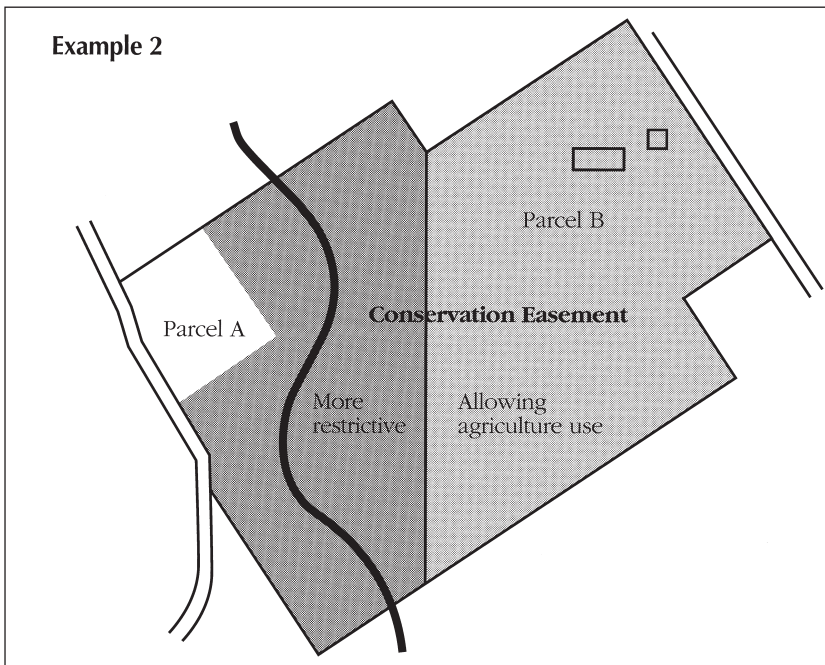
### **In Example 1:**

1. The landowner divides the property into Parcels A, B, and C.
2. The landowner sells Parcel A unrestricted as a house lot.





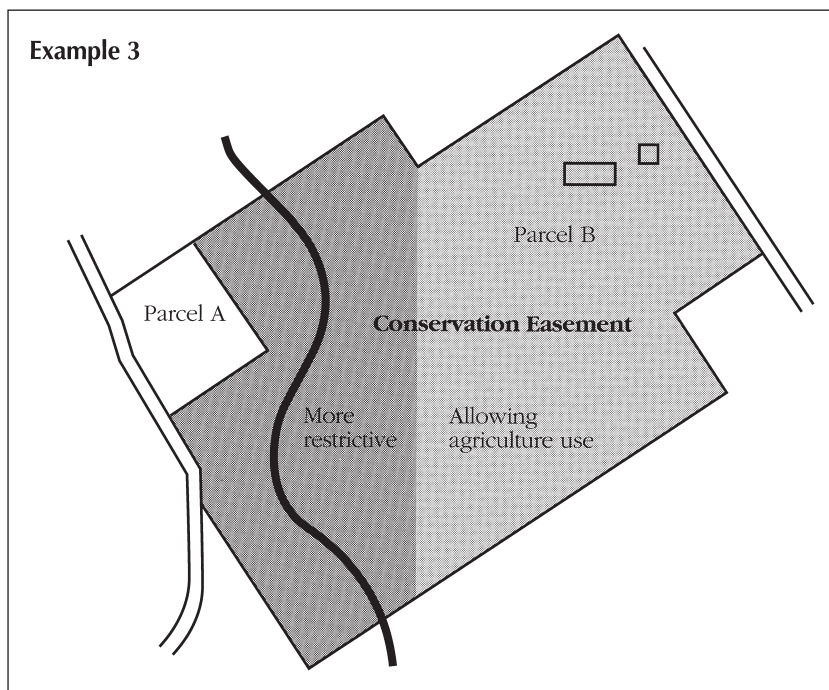
3. The landowner donates Parcel B to the land trust, which is interested in preserving the stream's excellent water quality and the public's continued use of the footpath.
4. The landowner donates a conservation easement over Parcel C to the land trust, and continues to live and farm there. The agricultural land is preserved, and the fair market value of the property is lowered, so future estate taxes are less.



**In Example 2:**

1. The landowner donates a conservation easement on the stream corridor and on the area he currently farms. The easement is quite restrictive in the fragile stream area, but allows farming activities in the rest of the area.
2. The landowner divides the property into two parcels. Parcel A includes the stream area, which is not protected by the easement.
3. The landowner sells Parcel A, which can be developed in the area not covered by the easement.





**In Example 3:**

1. The landowner donates a conservation easement on the stream corridor and on the area he currently farms. The easement is restrictive in the stream area, but allows farming activities in the rest of the area.
2. The landowner divides the property into two parcels, retaining the stream area.
3. The landowner sells Parcel A unrestricted as a house lot.

In each scenario, the landowner receives immediate income from the sale of one parcel and continues to own and farm the land, future estate taxes are reduced, and the agricultural land and stream corridor are protected. The choice the landowner makes might depend on how much cash he would like to receive, his personal feelings about the disposition of the stream area, and his current and future tax situations.

There are other variations on what the landowner could do. For example, he might make a bargain sale to the land trust of the

stream area, or leave it to the land trust in his will. The easement over the agricultural land might be written in such a way as to allow his son or another future owner to build one or more additional houses on the property. He might donate the conservation easement over the stream corridor to one land trust, then donate the land to another organization.

These are complex transactions with long-range financial implications. They entail expenses for the landowner and require the skills of an experienced land planner, financial advisor, and attorney. Many land trusts can suggest experts or help devise a plan, as well as participate in the transaction as buyer or donation recipient. (If you have difficulty finding experts in your area, the Land Trust Alliance can put you in touch with advisors across the country.)

But developing such a protection plan can prove well worth the effort, providing a unique solution that achieves a unique set of financial and conservation goals.

## Chapter 8



# Federal Tax Considerations: A Summary

**T**he desire to protect your land is the primary reason for donating property or a conservation easement to a land trust or government agency. However, it is frequently the tax incentives that make it possible to give generously and accomplish significant protection. Many of these tax incentives are useful to those of moderate as well as substantial means.

Tax discussions throughout this booklet focus on federal tax law as it stands in 2003. Your state and local taxes will also often be affected by the transactions described.

The examples here are presented to give you a basic understanding of the federal tax deductions resulting from land and conservation easement donations. Your own tax result will depend on the value of your gift, your personal financial situation, and other factors.

You *must* consult your own attorney or accountant.

### **What is a charitable gift?**

The first step in figuring your potential tax deduction is to determine whether your donation is a charitable gift in the eyes of the IRS.

The gift must be a true gift for which no benefit is anticipated in exchange. For example, a conservation easement given to a land trust by a developer in exchange for government approval of a subdivision may not be a gift. In addition, a gift generally must

be complete and irrevocable, without strings or contingencies. For example, a condition that a property or easement will revert to the donor if the land trust does not meet certain performance standards could make the donation non-deductible. The IRS also generally requires that the donor must give up her entire interest in the property (exceptions are conservation easements, remainder interests, and undivided interests). Thus, for example, a landowner generally may not take a deduction for a property donated to the land trust where the landowner retains the right to use the property.

Determining what is a charitable gift is usually straightforward. But you should have your attorney review the gift's terms and advise you as to its deductibility, especially if you suspect it might be questionable.

### **Substantiating the value of gifts**

In order to take a tax deduction for gifts worth more than \$5,000, including land or conservation easements, the landowner must obtain a "qualified appraisal" by a "qualified appraiser" (cash and publicly traded securities are exceptions). The tax code outlines specific information that must be included in an appraisal.

Generally, a qualified appraiser is one who holds himself out to the public as an appraiser, who is qualified to make appraisals of the type in question, and whose relationship to the taxpayer and donee would not cause a reasonable person to question the appraiser's independence. You should seek an appraiser with experience appraising land and improvements of the type to be appraised. A land trust may be able to provide a list of appraisers but cannot provide the appraisal. Obtaining the appraisal is a necessary expense if you are seeking a charitable tax deduction for your easement donation.

The appraisal cannot be completed earlier than 60 days before the date of the gift and must state the fair market value of the gift as of the date of the contribution. A summary of the appraisal (IRS Form 8283), signed by the land trust and the appraiser, must be attached to the income tax return.

## Federal income tax deductions

**30% limitation.** The tax law places limitations on the maximum annual charitable deduction a donor may take. Generally, for a gift of long-term capital-gain property—which includes most gifts of appreciated land or conservation easements—the amount you can deduct in one year is limited to 30% of your adjusted gross income. If the value of your gift exceeds 30%, you can carry forward the excess for up to five additional years, applied each year up to the 30% limit. Any remaining portion of the deduction cannot be used.

### Effect of 30% Limitation

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

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

	<u>Easement deduction</u>
Year 1	\$15,000
Year 2	15,000
Year 3	15,000
Year 4	15,000
Year 5	15,000
Year 6	5,000

Note that, if the landowner's easement value had exceeded \$90,000, he would never have been able to "use up" the entire deduction.

**The 50% (step-down) election.** In some cases, a taxpayer might want to take advantage of another option. The taxpayer can elect to claim a deduction only for the property's basis (usually the price originally paid for it or its value when inherited, rather than its current fair market value), and in so doing can deduct an amount up to 50% of his or her adjusted gross income per year. Again, this may be carried forward five additional years.

**The 30% Limitation Versus the 50% Limitation**

A couple donates property with an appraised value of \$200,000 that they bought several years ago for \$175,000. Their combined adjusted gross income is \$100,000, they have combined personal exemptions of \$6,100 (assume no change over six years) and they have \$10,000 in itemized deductions (or are eligible for a standard deduction of \$7,950 increasing to \$9,000 in 2008). Their financial outcome, over six years, of choosing the 30% or 50% limitation could be as follows:

	<u>50% limitation</u>	<u>30% limitation</u>
Value of gift	\$175,000	\$200,000
<i>Years 1 – 5</i>		
Adjusted gross income	100,000	100,000
Deductions and personal exemptions	-16,100	-16,100
Charitable deduction	<u>-50,000</u>	<u>-30,000</u>
Taxable income	33,900	53,900
<i>Tax in 2003</i>		
	4,485	8,259
2004	4,485	8,195
2005	4,485	7,793
2006	8,815	7,565
2007	14,895	7,485
<i>Year 6</i>		
Adjusted gross income	100,000	100,000
Deductions and personal exemptions	-16,100	-16,100
Charitable deduction	<u>-0</u>	<u>-30,000</u>
Taxable income	83,900	53,900
<i>Tax in 2008</i>		
	14,595	7,395
Total taxes with gift	51,760	46,682
Total taxes without gift	92,502	92,502
Total tax savings (vs. no gift)	40,742	45,820

In most cases where property is highly appreciated in value, it will likely be more advantageous for the taxpayer to choose the 30% option. However, a seriously ill person, a person who is expecting a large drop in income, or a person donating property that has appreciated very little might want to make the 50% election.

*“When I was a kid, I used to come around here and fish for smelt and bass; it was a favorite site of mine, and really for everyone in the area.”*



On a clear day, you can stand on top of the knoll, look out across Lake Michigan and see four lighthouses. But that's not all that makes this three-acre lakefront property so special for Michigander Bill Perry. A creek runs along one edge of it. *“When I was a kid, I used to come around here and fish for smelt and bass; it was a favorite site of mine, and really for everyone in the area,”* he says.

To preserve this special place, Perry and his family donated a conservation easement on the property to the Little Traverse Conservancy in 1989. The easement prevents development and also allows limited public access with the Perrys' permission. *“There are so few stretches of unfenced beach these days,”* Perry says, explaining that he wanted to offer area residents a place where they could continue to enjoy the view, fish, or *“dip their feet into the water.”*

The Perrys received a charitable income tax deduction for the easement. As a result, says Perry, who is a retired school teacher, *“we were able to do something we believe in without sacrificing too much financially.”*

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**Other deductions.** Some of the costs incurred in making a charitable deduction are themselves deductible. Legal and appraisal fees are generally deductible (although they are not *charitable* deductions) to the extent that, in combination with various other miscellaneous deductions, they exceed 2% of your adjusted gross income. In addition, any cash or securities given to endow management of the property or administration of the easement are deductible as charitable contributions.

### **Federal estate and gift taxes**

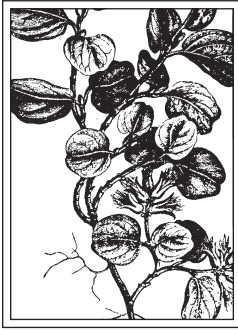
With a few exceptions, upon a landowner's death, the fair market value of her land—not the amount originally paid for it or its current-use value—becomes part of her taxable estate.

Generally, an individual can give up to \$1 million to \$3.5 million (depending on the year of death) during her lifetime or at death that is exempt from federal gift or estate tax, as a result of the “unified credit effective exemption amount.” (Gifts or bequests to spouses or charities are unlimited.) In addition, under current law, one can give \$11,000 a year to each of any number of individuals (or \$22,000 if spouses join in the gift) without a gift or estate tax liability. The federal estate or gift tax is levied on the non-exempt amount, and through 2009 is usually between 45% to 49% (depending on year of death). Estate tax is generally due within nine months of the date of death.

As discussed in Chapter 3, placing a conservation easement on land during the landowner's lifetime or donating it by will lowers the value of the estate. In addition, recent changes to federal tax law provide substantial additional deductions for some easement donors and, in some cases, may allow the donation of a conservation easement by the heirs of an estate to qualify for these same benefits. Although there are limits on the amount of the deduction that can be used to reduce income taxes, there are no such limits for estate tax purposes. Therefore, the tax savings can be quite substantial.



## Chapter 9



# Working with Land Trusts

**A** land trust can offer invaluable assistance in your effort to protect your land. The hallmark of land trusts is that they listen to landowners and help them devise the best way to keep their land open.

An experienced, responsible land trust will have the expertise and commitment to provide sound information and assurance of long-term land protection. The staff or board will work closely and confidentially with the landowner as he is making decisions for his land, and will be there to ensure the land is protected long after the project is completed.

### What is a land trust?

A land trust is a private, nonprofit organization—it is usually not a “trust” in the legal sense, nor is it the protected land itself. Land trusts protect land directly, usually by accepting donations of land or easements, or by buying land. Most serve a community, region, or state, although a few work nationally. The board of directors and staff members you will work with from your local land trust may well be your neighbors.

Land trusts’ accomplishments have been impressive—there are now over 1,200 land trusts (some of which are called conservancies, foundations, or associations) at work throughout the country. They have helped protect more than 6 million acres in the United States.

## How a land trust can help you

Land trusts can help you in a number of ways:

- They listen to your goals for your land and help match these with protection opportunities.
- They often can provide referrals to attorneys, appraisers, accountants, and land planners familiar with conservation strategies.
- They can generally serve as recipients and stewards of conservation easements and lands.

In addition, most land trusts are “public charities” as defined by the federal tax code, and donations of land, qualified conservation easements, or cash and securities to them are tax deductible.

## The importance of contributing to land trusts’ stewardship funds

Protecting property, especially through a charitable gift, is a major commitment for any landowner. Accepting a conservation easement or conservation property is a major commitment for the land trust as well. The land trust assumes the legal responsibility of permanently protecting the property’s conservation resources.

Landowners who donate land or easements are commonly asked to help ensure that the land trust can indeed protect the property forever by contributing to a permanent stewardship fund (sometimes called a management, monitoring, or legal enforcement fund). If a contribution is not possible at the time of the gift, the landowner may be asked to pledge the contribution over several years, or the land trust may forego it.

## Get independent advice

A land trust can provide an array of information and assistance, but there are a number of things it cannot do. A land trust cannot provide legal or financial advice, or guarantee that a particular conservation plan is best for your personal and financial circumstances. It cannot state unequivocally that a particular conservation easement will qualify for a tax deduction or say how much the deduction will be. You must get your own independent advice, from knowledgeable attorneys and financial advisors and, of course, you are responsible for the final decision.

## **Each land trust is different**

While many land trusts employ all of the protection techniques described here, some work only with selected protection tools or certain types of land. If a land trust is not able to protect your land or use the protection tool you have in mind, it may help you find another technique or direct you to another conservation organization or agency.

Some land trusts, especially those operating regionally or statewide, have highly experienced staff representing various types of professional expertise. They may provide consulting services such as designing a master plan for protection of your property or providing initial drafts of conservation easements. Other land trusts are operated entirely by volunteers—who may have less time or resources, but are knowledgeable about and committed to land protection and have access to experienced professionals.

Many land trusts have adopted the Land Trust Standards and Practice, published by the Land Trust Alliance. The Standards and Practices guide land trusts in operating legally and ethically and in conducting sound land transaction and stewardship programs. Land trusts' adherence to Standards and Practices provides you further assurance of the soundness of their operations. To be a member of the Land Trust Alliance, a land trust must have already adopted the Standards and Practices.

Land trusts can serve as invaluable partners in protecting your land. The millions of acres they have helped save have been protected by working closely and confidentially with each landowner. The volunteers and professionals who run land trusts share your concern for land and stand ready to help.

# Glossary

**adjusted gross income (AGI)**—For income tax purposes, gross income minus certain deductions and expenses.

**appraisal**—An estimated value set on property by a qualified appraiser.

**assessment**—The valuation of property for property tax purposes in order to apportion a tax on it, according to its value or in relation to the benefit received from it.

**bargain sale**—The sale of property to a charitable and tax-exempt organization for less than its fair market value.

**basis**—The cost of property at the time of acquisition, or value when inherited, plus the cost of certain permanent capital improvements.

**capital gain**—Profit from the sale of property in excess of its basis.

**conservation easement**—A legal agreement between a landowner and a conservation organization or government agency that permanently limits a property's uses in order to protect the property's conservation values. Called a "conservation restriction" in some states; also may be called an agricultural preservation easement, historic preservation easement, scenic easement, or forever wild easement, etc., depending on the resources it protects.

**covenant (or restriction)**—A written promise contained in a contract, lease, deed, or other form of agreement.

**devise**—(v) To give or transmit real estate by will. (n) A gift of real estate by will.

**donee**—One who receives a donation.

**donor**—One who makes a donation.

**easement**—A right that one has in or over the land of another.

**estate**—The property and possessions of a deceased person.

**estate tax**—Tax on certain assets that have been transferred from a deceased person to his or her heirs. Also called death tax or inheritance tax.

**fair market value**—The price that a willing buyer would pay a willing seller, neither being under any compulsion to buy or sell and both having full knowledge of relevant facts surrounding the transactions.

**fee simple interest**—Absolute ownership of property. (Ownership of “less than fee simple interest” in property is ownership of fewer than the total possible rights one may have in land. When a landowner grants a conservation easement to a land trust, the land trust owns less than fee simple interest.)

**interest in property**—A right or share in the ownership of property.

**land trust**—Nonprofit organization that protects land directly, usually by helping landowners establish a conservation easement, accepting donations of property and easements, or buying land.

**lessee**—One to whom a lease is granted; a tenant holding property by lease.

**lessor**—One who grants a lease.

**life estate**—(See reserved life estate.)

**(in) perpetuity**—Forever.

**real property or realty**—Land and generally permanent improvements erected on it or growing on it.

**remainder interest**—An interest in property which does not become possession of the property until the completion of a prior interest; for example, where a grantor deeds property to an organization subject to a “reserved life estate,” the organization has a remainder interest which will become possessory when the life tenant (usually grantor) dies.

**reserved life estate**—The right retained by the owner or other named individuals to live on or use property.

**title**—The right to or ownership of land.

# Resources

## **Publications available from the Land Trust Alliance**

Visit, call, write or e-mail: Land Trust Alliance, 1660 L Street, NW, Suite 1100, Washington, DC 20036; 202-638-4725; [www.lta.org](http://www.lta.org); [info@lta.org](mailto:info@lta.org).

***The Conservation Easement Handbook, 2nd Edition***—Newly revised and expanded in 2005, and essential for all those who work with easements. This volume includes information on IRS criteria for tax-deductible gifts, negotiation and acquisition, baseline data, monitoring and enforcement, back-up guarantees, and model conservation and historic easements. Includes CD-ROM with a wide selection of sample easements, policies, checklists and other documents.

***The Federal Tax Law of Conservation Easements***—Authoritative legal volume interprets the IRS regulations on gifts of conservation easements and discusses related income and estate tax considerations.

***The Standards and Practices Guidebook, An Operating Manual for Land Trusts***—First published in 1993 and totally revised and updated in 2006, this complete guide provides practical information on every aspect of land trust operations. A wide variety of sample documents offer policies, forms and checklists.

***Appraising Easements***—Primarily for appraisers, this authoritative handbook describes what should be contained in an easement appraisal report and general principles of easement evaluation.

***Preserving Family Lands, Books I, II and III***—Written by Stephen J. Small, one of the nation's foremost authorities on legal and financial aspects of conservation options. Clear explanations of tax strategies for families who want to conserve their land.

***Making the Case for Land Conservation: Fifteen Years of Cost of Community Services Studies***—More than 80 Cost of Community Services studies conducted by American Farmland Trust show that privately owned farms, forest and ranchland generate more in local revenues than they require in services. This book can also help you decide whether a similar study would be useful to your community.

***Working Forest Conservation Easements***—Designed to help individuals and organizations craft conservation easements to protect the many values of working forestland. The book presents sample easement language from a variety of organizations.

***Working Ranchland Conservation Easements***—Provides land trusts and land conservationists sound ideas to incorporate into their efforts to protect ranchlands from inappropriate development. The 54-page report summarizes the experiences and viewpoints of organizations that have been among the most successful at protecting both open land and working ranches.

***Your Land is Your Legacy, Guide to Planning for the Future of Your Farm***—Helps families understand the importance of estate planning for working farms and ranches and how to take the next step in ensuring your lands will always be open space. Written by Jeremiah P. Cosgrove and Julia Freedgood of American Farmland Trust, the booklet, updated to include the newest tax laws, gives case studies to help families learn the techniques for keeping their lands in the family and in production.

***Exchange***—The Alliance's quarterly journal. The nation's leading periodical written by and for land conservationists, is a 40-page magazine offering up-to-date stories on the latest issues, innovations and trends in land conservation.

***Standards and Practices Curriculum***—Land trusts now — for the first time ever — will have access to a consistent, authoritative curriculum that explains how to implement the *Land Trust Standards and Practices*. This curriculum was designed to be easily accessible, interactive, and tailored to the unique needs of land trusts. It can provide you with the tools you need to prepare your organization for accreditation; improve your individual skills; and build your organization to its full potential. Check [www.lta.org/publications](http://www.lta.org/publications) for the current list of available courses.

**Internet:**

***LTAnet (www.LTAnet.org)***—LTAnet is an online service that puts comprehensive information about land conservation and organizational management at your fingertips. This searchable library contains Alliance publications, sample documents, presentations from our annual Rally, and other technical materials, which land trust professionals need to keep current in their profession. The service, along with other membership benefits, is available free to all Alliance member land trusts and partners. General information about the Land Trust Alliance, land trusts and land conservation is available free to the public at [www.lta.org](http://www.lta.org).

## APPENDIX A

### Estate and Gift Tax Tables

#### Credit and rate changes for gift and estate tax, 2003-2011

YEAR	ESTATE TAX CREDIT	MAXIMUM ESTATE TAX RATE	GIFT TAX CREDIT	MAXIMUM GIFT TAX RATE
2003	\$1,000,000	49%	\$1,000,000	49%
2004	\$1,500,000	48%	\$1,000,000	48%
2005	\$1,500,000	47%	\$1,000,000	47%
2006	\$2,000,000	46%	\$1,000,000	46%
2007	\$2,000,000	45%	\$1,000,000	45%
2008	\$2,000,000	45%	\$1,000,000	45%
2009	\$3,500,000	45%	\$1,000,000	45%
2010	NA	0	\$1,000,000	35% (projected)
2011	\$1,000,000	55%	\$1,000,000	55%



# Be part of the solution

The Land Trust Alliance is a network of people. Together, we represent a growing national community with tremendous potential to protect natural places all over the United States. But our success depends on you.

**By becoming an individual member of the Land Trust Alliance, you'll be part of:**

- *Strengthening a champion for your local community at the national level.* The Land Trust Alliance harnesses many diverse interests and serves as your national voice with policymakers in Washington, D.C. We work to increase federal funding for local land protection and to change the federal tax code, so that more landowners can afford to choose conservation over development.
- *Creating a network of people trained to save land in the places you call home.* Given the increasingly sophisticated and technical nature of land conservation, the Alliance provides professional practitioners and volunteers in your community with the state-of-the-art tools, information and education needed to acquire and care for critical lands.
- *Ensuring lands protected today stay protected for your community's future.* To make certain that your children and grandchildren enjoy the benefits of land saved during your lifetime, the Land Trust Alliance invests in creating enduring nonprofit institutions and legal systems that can be counted on through the generations.
- *Deepening public commitment to conservation in your hometown and across the country.* The Land Trust Alliance works with the national media and hundreds of local organizations in every state to leverage communications that get more people involved in land conservation.



Land Trust Alliance

Together, conserving the places you love

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