

CONSERVATION OPTIONS

A Landowner's Guide to Conserving Your Land for Future Generations

9TH EDITION



Executive Editor
SYLVIA BATES
Land Trust Alliance

Managing Editor
MARY BURKE
Land Trust Alliance

The Land Trust Alliance's mission is to save the places people need and love by strengthening land conservation across America.

Founded in 1982, the Alliance represents about 1,000 member land trusts supported by more than five million people nationwide. The Alliance is based in Washington, DC, and operates several regional offices. More information about the Alliance is available at www.landtrustalliance.org.

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For information, write the Land Trust Alliance, 1250 H Street, NW, Suite 600, Washington DC 20005 (202-638-4725, www.lta.org).

Edited by Sylvia Bates, Mary Burke.

Designed by Peter Holm.

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Why You Need to Make Plans for Your Land Now

1

You 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 conserve it, your beautiful land may be lost—to a strip mall, shopping center or a subdivision of McMansions.

Why? Federal estate taxes are one reason. The top federal estate tax rate is 40 percent. However, there is an exclusion from the tax of \$11.2 million, which can be doubled for a married couple (provided both file an estate tax return). Even though the exclusion is generous, it may still not cover the value of your land, especially if it has high development value. More important, at the beginning of 2018, several states and the District of Columbia impose some form of tax triggered by death (Connecticut, the District of Columbia, Hawaii, Illinois, Maine, Massachusetts, Minnesota, New York, Oregon, Rhode Island, Vermont and Washington State impose estate taxes; Iowa, Kentucky, Nebraska and Pennsylvania impose inheritance taxes; and Maryland imposes both an estate tax and an inheritance tax). These taxes are unaffected by the generous federal exclusion. Failure to be realistic about the value of your land may subject your estate to a substantial tax, which typically is due within nine months after your death. That tax 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 anymore.”

Chapter One

Three generations of the Hutchinson family gather in front of the historic cabin and original Hutchinson homestead in Colorado. The 650-acre ranch is permanently conserved and the family can continue to own and work the land thanks to a bargain sale of a conservation easement.



PHOTO: DARCY KIEFEL, COURTESY OF THE TRUST FOR PUBLIC LAND.

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

Thousands of Landowners, Millions of Acres

The land conservation methods described in this book have been used by thousands of landowners to conserve more than 56 million acres across the nation—an area about the size of the state of Idaho. They have conserved 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.

Most conserved 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 conserved depended on the wishes of the landowner and the characteristics of the land.

The people who conserved 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 Conservation 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 book can result in substantial estate tax reductions—ensuring your property's conservation 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 conserve your property a reality.

Land trusts—private conservation organizations described later in this book—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 book and put them to work for your land, your family and your community.

2 Getting Started

Decisions to conserve 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 (see chapter 3). Leases, management agreements and mutual covenants (see chapter 4) offer limited protection while retaining ownership.
- Do you want to continue living on the land? Donations or sales of conservation easements and land donations with reserved life estates (see chapter 5) will allow you to continue living on the land while conserving it permanently.
- 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 (see 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 conservation tool depends in part on the nature of the



PHOTO: BENITA KELLER, COURTESY OF JEFFERSON COUNTY FARMLAND PROTECTION BOARD.

land. A very restrictive technique might be appropriate for a delicate and rare animal habitat, but restrictions that allow traditional uses to continue might be appropriate for a farm or forest.

- Does the entire parcel need to be conserved to maintain the property's natural or scenic values? The conservation techniques described in this book can often be applied to just a portion of the property or combined in a variety of ways (see chapter 7). Also, conservation easements can allow some development, while still conserving the conservation values of the property.

Your personal and financial situation:

- Might you need to solve future estate tax problems or 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

The Hockman family conserved 284 acres of orchard in Jefferson County, West Virginia, in honor of their mother, "a true preservationist at heart."

techniques that involve donation of land or an easement during the donor's lifetime can also 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 (see chapter 6) provide cash. You can also place a conservation easement on the land and sell the land subject to the easement. In some cases, portions of a property with little conservation value can be sold for appropriate development while still achieving the overall conservation goals (see 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 can often 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 book will acquaint you with some of the ways you can conserve 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 conservation 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

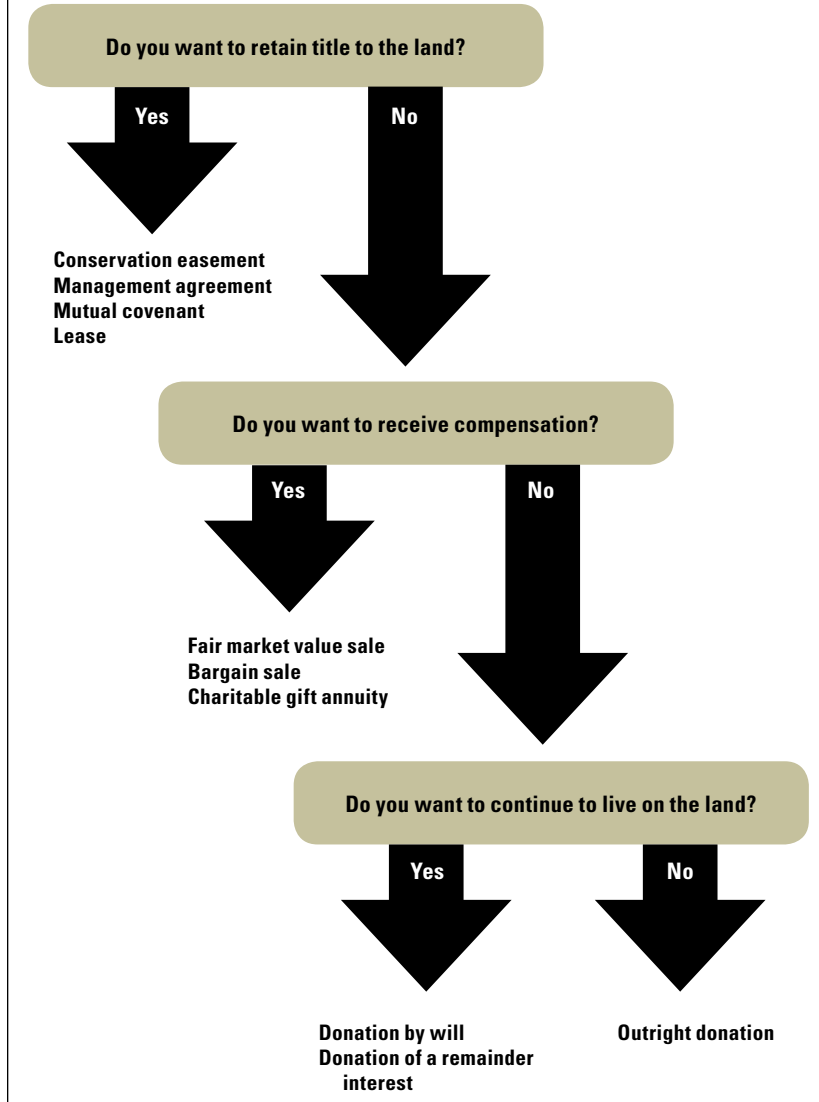
| Land Conservation Option | Description | Results | Income Tax Deduction?* | Estate Tax Reduction?* |
|---|---|---|------------------------|------------------------|
| Conservation easement (chapter 3) | Legal agreement between a landowner and a land trust or government agency permanently limiting a property's uses. | Land's conservation values conserved by organization. Owner continues to own, use and live on land. | Yes | Yes |
| Outright land donation (chapter 5) | Land is donated to land trust or agency. | Land trust owns and conserves land.† | Yes | Yes |
| 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. | Land trust owns and conserves land.† Income tax deductions spread over several years. | Yes | Yes |
| Donation of land by will (chapter 5) | Land is donated to land trust or agency at death. | Land trust owns and conserves land.† | No | Yes |
| Donation of remainder interest in land with reserved life estate (chapter 5) †† | Land is donated to land trust, but owner (or others designated) continues to live there, usually until death. | Land trust owns and conserves land.† | Yes | Yes |
| Bargain sale of land (chapter 6) | Land is sold to land trust or agency for a price below fair market value. | Land trust owns and conserves land.† | Yes | Yes |
| 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. | Development postponed. | No | No |
| Mutual covenants (chapter 4) | A group of landowners agree to restrictions on their land use. May not involve a conservation group. | Can be nullified by subsequent agreement of owners. | No | No |
| * In most cases. The amounts of income tax and estate tax reduction depend on a number of factors. | | | | |
| † For property best kept in private ownership, the land trust may place a conservation easement on the property to conserve it and sell it to an appropriate buyer. For non-conservation property donated to generate income for 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. | | | | |
| †† Remainder interest only generates a charitable deduction if the property is a farm or personal residence; it does not apply to other real property. | | | | |

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 (www.lta.org).

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.

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.



Because land conservation is a technical and constantly 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.

Using This Book

The tax examples in this book are simplified and generally address only federal, rather than state and local, tax considerations. They are based on tax laws as they stand in 2018. 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 book does not cover state and local government conservation programs. Some states, for example, lower property taxes on land dedicated to forestry or agriculture, while 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.

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 conserves 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 conserve 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 benefits and, in many cases, property tax benefits.
- It is flexible and can be written to meet the particular needs of the landowner while conserving the property's resources.
- It is permanent, remaining in force when the land changes hands. A land trust or government agency ensures that 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,

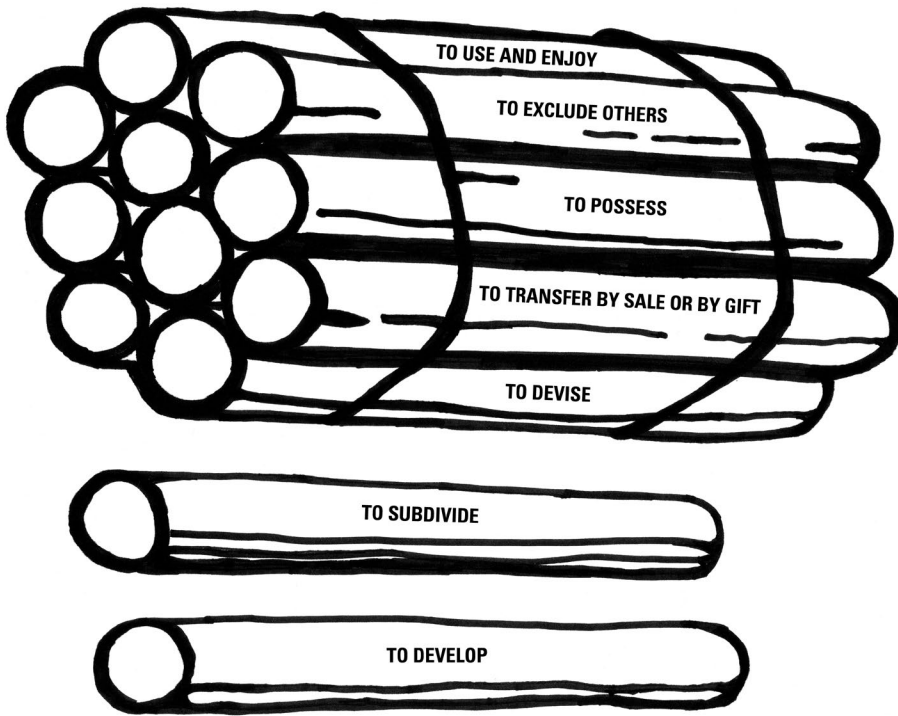


Figure 3-1: Property ownership as a bundle of sticks.

grow crops and 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 conserve a wide variety of land, including farms, forests, historic areas, ranches, wildlife habitats and scenic views.

They may be called agricultural preservation easements, conservation restrictions, historic preservation easements, scenic easements or forever wild easements, depending on the resources they conserve.

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.

The Problem

Forty years ago, when a couple bought their farm, it was surrounded by other farms. Now, houses are rapidly replacing the open fields. A developer offers the couple more than \$4 million, but they want to stay on the land and continue farming, as does their son. When the couple spoke with their attorney about passing the farm on to their son, they were told that although there would be no federal estate tax, due to the \$11.2 million exclusion from tax allowed in 2018, state estate tax on the farm would be nearly \$500,000, an amount the son could probably only raise by selling at least part of the property.

The Solution

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

Easements Are Flexible

The landowner and prospective easement holder—a land trust or government agency—tailor the easement terms to conserve 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 conserved by an easement that allows one or more future home sites 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 conserved 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 property, leaving the option of development open for the remaining part. The easement 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 conservation methods (see, for example, chapter 7).

PHOTO: TINA LARKIN, COURTESY OF THE TAOS LAND TRUST, AN ACCREDITED LAND TRUST.



Land Trusts Work with Landowners to Meet the Easement’s Goals

The land trust (or government agency) receiving the easement takes on the permanent responsibility and legal right to ensure the terms of the easement are being met. As such, its personnel will visit the easement property every year to ensure the easement’s terms are upheld and to talk to the landowner about future plans for the property 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.)

Crestina Trujillo Armstrong (with her brother) resisted the pleas of developers and donated a conservation easement on 37 irrigated acres of her family’s 50-acre ranch in Taos County, NM.

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. Such postmortem easements can be an extremely important tool for avoiding estate tax in certain circumstances. For complete information on all aspects of this Internal Revenue Code section, landowners should consult a qualified tax advisor.

Donating a Conservation Easement

One of the most common ways 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. The easement 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 forestland), 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 a historically important land area or certified historic structure

In essence, the income tax deduction is reserved for the preservation 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.



PHOTO: COURTESY OF LAND TRUST OF VIRGINIA, AN ACCREDITED LAND TRUST.

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 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 an easement on the property to the local land trust. The easement precludes further development. The fair market value of the land with the easement's restrictions in place is \$200,000. The value of the donation is considered to be \$300,000 ($\$500,000 - \$200,000 = \$300,000$). (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 percent to more than 90 percent of a property's fair market value. In general, the highest easement values arise from very restrictive

Dot Shetterly donated a conservation easement on her 37-acre property in northern Virginia. Key to retaining the scenic beauty of her community, the easement permanently protects the farm's beautiful, rolling land, which is very visible from a Virginia Scenic Byway.



PHOTO: COURTESY OF GALLATIN VALLEY LAND TRUST, AN ACCREDITED LAND TRUST.

Gertrude Baker conserved nearly 200 acres in the heart of the Greater Yellowstone Ecosystem. Since her visionary contribution, an additional 5,000 acres and five miles of trails have been conserved.

conservation easements on tracts of developable land in areas where development pressures are intense. An easement on an undevelopable wetland or on a remote farm or an easement 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—40 percent since 2013—is based on this fair market value at the date of the owner's death, 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.

“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 took a serious interest in the welfare of the wildlife on her 181-acre Montana property. She diligently provided seed for birds, dug out noxious weeds and kept a five-acre meadow open for forage and as a “nursery” for newborn elk, deer and moose.

In her 80s, 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 so wouldn’t assure its preservation.

Then someone told her about the Gallatin Valley Land Trust. The land 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 in 1990. The easement allows selective logging to promote forest health but forbids subdivision. She also donated money to the land trust to help meet its ongoing stewardship expenses. Baker, who has since passed, had the assurance that her land would continue to provide a home for wildlife.

Since her death, the land trust has worked tirelessly to make sure Baker’s vision for her land stands the test of time. Successive owners have shared her dedication and worked with the land trust to strengthen the easement document and create public trail access through the property to connect people to public lands. Visitors and locals alike can now share Baker’s passion and love for this land and its wildlife as they hike along the Chestnut Mountain Trail.

The easement property has also become a critical and catalyzing piece in a larger landscape conservation project. Baker’s land is located on Bozeman Pass, an important wildlife connectivity corridor linking species such as grizzly bear, mountain lion, wolverine, bighorn sheep, golden eagle and lynx from the Gallatin Range north to the Bridger and Bangtail Ranges. Since 1990, the land trust has worked with an additional 12 landowners in the Bozeman Pass and Bridger Canyon connectivity corridor to conserve 4,168 acres of private land from future development. Baker has indeed left a legacy in the Gallatin Valley. Her conservation easement has and will continue to provide a safe home for her resident moose and many other wildlife for the public to enjoy far into the future.

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 the landowner 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. This is because the 2018 estate tax provisions exclude the first \$11.2 million in value of a decedent’s estate. For a married couple, the exclusion amounts to \$22.4 million.

Even though the estate tax exclusion is significant, land with high development value can often exceed it. Furthermore, as noted on page 1, several states and the District of Columbia impose estate or inheritance taxes (or both) that, in some cases, allow no exclusion from tax and may run as high as 20 percent (see chapter 8). It is important to be knowledgeable about the value of your land and the laws of your state.



PHOTO: COURTESY OF WYOMING STOCK GROWERS LAND TRUST, AN ACCREDITED LAND TRUST.

Sixth-generation rancher Ogden Driskill and his family conserved almost 8,000 acres of prime ranchland adjacent to Devils Tower National Monument with the Wyoming Stock Growers Land Trust. Future visitors to this magnificent landscape will continue to appreciate a vista unmarred by development.

Conservation Easements Can Reduce Property Tax

Placing an easement on your property may also result in real property tax savings in some states. The tax assessment on an easement-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 property subject to a conservation easement.

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 donated by will should be negotiated between you and the conservation organization. Doing so not only helps assure that the easement is crafted in such a way that it will achieve what you want it to, but

CONSERVATION EASEMENTS AND ESTATE TAXES

A landowner purchased property in the 1960s that has appreciated considerably and now has a fair market value of \$23,000,000. If he places a conservation easement on the property during his lifetime or in his will, it will reduce the property’s value to \$12,000,000. The resulting reduction in estate taxes could be substantial.

Assuming that he has \$500,000 in taxable assets in addition to the property, that no marital deduction is available and that the unified exclusion (see chapter 8) has not been used, the effect of the easement on estate taxes for someone dying in 2016 would be as follows:

| | Without easement donation | With easement donation |
|---|---------------------------|------------------------|
| Value of land | \$23,000,000 | \$12,000,000 |
| Other taxable assets | \$500,000 | \$500,000 |
| Exclusion allowed from federal gross estate | (\$11,200,000) | (\$11,200,000) |
| 2031(c) exclusion | <u>0</u> | <u>(\$500,000)</u> |
| Total taxable estate | \$12,300,000 | \$800,000 |
| Applicable federal rate | <u>40%</u> | <u>40%</u> |
| Total federal and state estate tax* | \$4,920,000 | \$320,000 |

*State taxes vary from state to state, and several states and the District of Columbia have a form of estate tax. This example assumes no state estate tax, but you need to consult your own state law (see chapter 8).

it also 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. An organization is under no obligation to accept an easement and take on the responsibility of its stewardship.

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 changes required by the donee. It is also important to authorize your executor to make a stewardship contribution to the organization identified to accept the easement.

A Conservation Tool for the Family Who 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 eliminate the easement

“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 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, called High Point, was not only a peaceful retreat for its owners but a scenic treat for passing boaters. The couple began to investigate conserving 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 says. They supported the concept, but to give themselves or future owners some flexibility, the Maybanks reserved the right to construct a guesthouse at the back of the property.

It took about a year to place the conservation easement on the property.

The Maybanks met with the accredited 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 says.

The Maybanks gained some income tax benefits, although those were simply an “added plus,” Maybank says. “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, an additional 57 properties (6,606 acres) have been preserved for future generations.

bequest), you can amend your will. On the other hand, in the event something happens to you, you will have at least conserved the land and lowered estate taxes on it. Furthermore, the will imposes no restriction on your use of the land nor your ability to sell it or otherwise convey it before your death (of course, if you sell or convey the land, your original intention to donate an easement in your will is no longer possible).

Selling a Conservation Easement

Although the most common way to convey easements is through donation, some nonprofit organizations and government agencies purchase easements. This is most common for easements conserving farmland, often through a government purchase of development rights (PDR) program. Conservation easements are also sometimes purchased in a bargain sale (that is, a 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.

Leases, Management Agreements and Mutual Covenants

4

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

Leasing Property

Land can be conserved 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 conservation 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.



PHOTO: COURTESY OF LOWCOUNTRY OPEN LAND TRUST, AN ACCREDITED LAND TRUST.

High Point with its sister protected properties contribute to this unparalleled scenic view. Since Louise and David Maybank contributed their easement, an additional 6,606 acres have been conserved by their neighbors in Wadmalaw Island, SC.

Management Agreements

You can gain a land trust's or government agency's help in conserving 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 conserve 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 conserving the open space they collectively own or a view they all share, they can exchange mutual covenants to conserve 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.

Conservation Easement Escrows

One reason why mutual conservation covenants are not deductible is because they are contracts between private parties requiring the conveyance of easements. The private contractual obligation to convey the easement precludes the "donative intent" necessary to claim a charitable deduction. However, in some circumstances, conservation is best accomplished by a mutual agreement between several neighboring landowners and a land trust or government agency.

For example, assume that a significant Civil War battle occurred on land that now comprises four adjoining but separately owned farms. A local land trust wants to conserve the battlefield as a whole. It approaches one owner, but she is reluctant to contribute a conservation easement unless her neighbors who own the rest of the battlefield agree to do likewise. As it turns out, all four landowners are willing to contribute conservation easements, but only if their neighbors do the same.

The historic trust negotiates the terms of the four conservation easements but agrees that it will hold each easement in escrow until all four easements have been received. The trust also agrees that if, for some reason, all of the easements are not conveyed to

the trust within two years, they will return the easements that they hold to the landowners that granted them and terminate the escrow.

Because the agreements ran from the landowners to a qualified charity rather than to each other, the agreements do not preclude donative intent. Therefore, each landowner can claim a charitable deduction for the contribution of the easement on their farm, but not until the escrow “closes” and all four easements are put to record. If the easements are returned to the landowners, no one will be entitled to a deduction.

The public purpose for such an arrangement is the significantly increased public benefit resulting from conserving the entire battlefield and the fact that conservation of the battlefield was dependent on the joint agreement of all owners.

Donating Land **5**

Donating land 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
- Who would like to be relieved of the responsibility of managing and caring for land that they otherwise treasure

The Problem

A couple in their 70s owns a five-acre lakeshore property. Its marshes are 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 has summered in a cabin there for 30 years, but since retiring to Florida, their visits have become infrequent. After much discussion, they decide to relinquish the responsibility for caring for the property—and paying taxes on it. But they don'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 donates the land to a land trust, along with funds to help the organization maintain it. The land trust establishes a nature preserve in the couple's name. Because the couple wants to ensure the permanent conservation of the land and recognizes that, although the land trust is sincere in its commitment to that protection, future governing boards could have different plans, they grant a conservation easement over the land to another land trust prior to making their donation of the land itself. While many charitable organizations might have rejected this type of permanently restricted conveyance, in this case the recipient of the land runs a summer school for biology students—a perfect use for the land even though its future development is restricted.

“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,’” Philip Heald Jr., of Wilton, New Hampshire, would often remark.

The place the public is enjoying is Heald’s former family orchard and farm—1,000 acres of scenic hills, ponds and woodlands that Heald and his wife, along with his sister and brother, donated in two separate gifts to the Society for the Protection of New Hampshire Forests.

The couple, who were childless and in their 70s, worried that if they left the property to nieces and nephews—who lived at a distance—“chances are, it would end up being sold” for development. Although Heald didn’t consider himself 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 several 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 would 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 first 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 noted at the time.

Before he and his wife passed away, Heald would often stop 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.”

In keeping with their spirit of generosity and love of the land, the Healds’ wills included a gift of 439 additional acres they had retained for their own use and as an “insurance policy” in case of unexpected expenses. The Heald Reservation continues to be a special place to enjoy nature in southern New Hampshire.

An outright donation of land is a relatively simple transaction with several benefits. It releases you from the responsibility of managing the land, while providing 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 is donated because of its conservation value, it will be permanently conserved.

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. See page 30 for more details.

Donation (and Charitable Deduction) versus 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

PHOTO: COURTESY OF THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS, AN ACCREDITED LAND TRUST.



Phil Heald and his family conserved more than 1,000 acres in southern New Hampshire. The forests, fields, orchards and ponds include five miles of trails and fishing opportunities for their community.

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 to 10 percent) and expenses resulting from the time delay in finding a buyer.

For donations of conservation easements, and certain donations of land, made January 1, 2006, and later, an enhanced federal charitable deduction may be allowed provided that certain requirements are met (see chapter 8).

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 a 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 conservation technique.

It is typical for a land trust to request a financial contribution toward future management costs (see chapter 9) to enable it to 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 its stewardship responsibilities seriously.

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 (see chapter 3) on the property to one organization, and then donate the land to

DONATION COMPARED TO SALE

A married couple bought a property in the 1960s for \$25,000. They are considering whether to sell it (now worth \$360,000) 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 \$360,000? No.

Assume (i) that the couple's adjusted gross income is \$200,000 and that, after taking into account various deductions and exemptions, their taxable income is \$150,000, (ii) that the property is not their principal residence, and (iii) that they are filing jointly and that these conditions will remain the same for the next five years.

If the couple neither sold nor donated the property, their annual income tax (based on 2018 rates) would be \$32,547 over a six-year period. This amounts to \$195,282 in total federal income tax.

If the couple donated the property, they would be entitled to a \$360,000 income tax deduction (assuming that a qualified appraisal supports that value), which they can use against 30 percent of their "contribution base" (essentially, adjusted gross income) annually up to six years (or until the deduction is used up, whichever is first). Were they to do so, their annual income tax at the 2018 tax rate would be \$18,147 for six years. Over the total six years in which they can use the deduction, this

amounts to \$108,882 in income tax. The donation, therefore, saves the couple \$86,400 in income taxes.

If the couple sold the property and paid a 10 percent real estate commission, the taxable gain on the sale, taking into consideration the couple's \$25,000 basis in the property, would be \$299,000 ($\$360,000 - [0.10 \times \$360,000] - \$25,000$). The current capital gains rate for the couple (because they are in the 22 percent tax bracket) is 15 percent. In the year of the sale, the couple would therefore owe \$44,850 in addition to their regular income tax of \$32,547 for a total of \$77,397. Assuming, after the year of sale, the couple's taxable income reverts to \$150,000, their annual tax would revert to \$32,547. Their total tax for the entire six-year period would be \$240,132, which is \$131,250 ($\$240,132 - \$108,882 = \$131,250$) more than had they donated the land.

Thus, the net benefit of selling the land over contributing it would be \$192,750 ($\$360,000 - \$36,000 - \$131,250 = \$192,750$). This example does not consider any state income tax savings that would result from the contribution, nor does it consider income that the couple might have earned from investing the net proceeds of the land sale or the costs of making the gift (legal and appraisal fees).

another. This is more complicated and costly but provides an extra guarantee about the land's future management. This approach is described in the example on page 25.

Donating Land to Be Resold with a Conservation Easement

In some cases, ownership by the land trust may not be the best long-term conservation 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 conserved 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 and, if not, what terms might be contained in a conservation easement to conserve the land in the future.

“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, had been drained and turned into cropland. But the Ham family hated to see that happen to the marsh located in one corner of their farm—one of Iowa’s remaining glacial “potholes.”

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. The couple took action to protect this beloved spot—and their vision for their land is now a reality that continues beyond their lifetimes.

Thirty years ago, the Hams donated the 10-acre marsh to the Iowa Natural Heritage Foundation with a reserved life estate. This provision allowed the Hams and their children and grandchildren to continue using and enjoying the marsh in privacy during the Hams’ lifetimes. After

20 years of enjoyment, when their health was declining, the Hams relinquished the lifetime-use provision—and their daughter helped them arrange a bargain sale so that the 44 acres around the marsh could remain united with the marsh to create an even better wildlife habitat. (This action also simplified their estate plans.) Today, a decade later, Ham Marsh is a treasured place where anyone can explore nature—and it always will be.

Maxine once expressed the family’s enduring motivation and satisfaction very well, in words that still resonate for many landowners: “We didn’t want all that to be lost. We’ve liked to go down and see what’s on the pond. Our children said, ‘You worked for the farm, you should do with it what you like.’ Friends and neighbors said it was really great, although some people said we must be really rich to do it. 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?’”

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 they are 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.

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



PHOTO: JERRY JOST, COURTESY OF KANSAS LAND TRUST, AN ACCREDITED LAND TRUST.

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 not damage the property), but—because the deed is transferred during your lifetime—you gain assurance that the organization of your choice has accepted your land for conservation. Finally, a gift of a remainder interest may entitle you to an income tax deduction when the gift is made.

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 quite a 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.

A mama buffalo on the Red Buffalo Ranch, a popular tourist destination in southern Kansas. Journalist Bill Kurtis sold an easement on his ranch to the Kansas Land Trust, ensuring the buffalo will always have a home.

The Problem

A woman in her late 60s owns 10 scenic acres of rolling hills at the entrance to town. A land trust expresses interest in the property and, having no heirs, she likes the idea of donating it to the organization for conservation. But she doesn't want to donate it outright because she still wants to live in her home. If she donates the land in her will, she will forego the income tax deduction a gift during her lifetime would provide.

The Solution

She donates a remainder interest in the property to the land trust. She receives an income tax deduction for a charitable contribution (the amount of which is a function of the value of the land and the donor's age when the gift is made, described below) and continues to live on the land until her death. When she dies, the land trust takes ownership of the entire property.

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 conserved.

The second way in which a remainder interest donation can qualify for a charitable deduction is if the land 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 14).

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.

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 on the land and increase the potential tax deduction is to first donate a conservation easement to one organization, and 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 property.

TAX DEDUCTIONS FOR REMAINDER INTERESTS

A potential donor (single, age 80) has a property that includes a house. The property is valued at \$200,000. If she contributes a remainder interest in her property to a land trust, reserving the right to use the property for her lifetime, she would be eligible for a federal charitable tax

deduction of \$155,440 (about 78 percent of the value of the property). Here are examples of how the deduction would be valued under other circumstances based on a similar valuation and IRS useful life assumptions. Note that the percentages listed are approximate.

| Life estates are reserved for | Charitable deduction |
|--------------------------------|----------------------|
| Donor and spouse (both age 80) | \$140,400 (70%) |
| Donor (age 65) | \$117,000 (59%) |
| Donor and spouse (both age 65) | \$97,500 (49%) |

Donating Undivided Partial Interests

A variation on a simple donation of land is the donation of an undivided partial interest. In order to increase the amount of a charitable deduction resulting from a land donation that can be used (given the annual limitation on charitable deductions discussed in chapter 8), 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 a certain number of 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 percent of the value of the entire property because the land trust 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. These are complex transactions, and



PHOTO: ARCHIE BONYUN; COURTESY OF KENNEBEC ESTUARY LAND TRUST, AN ACCREDITED LAND TRUST.

In 1979, Eugenia and Bill Bonyun donated a conservation easement on Westport Island (ME), and their heirs completed the island's preservation by donating the land to Kennebec Estuary Land Trust in 2002. Today visitors to the Bonyun Preserve enjoy beautiful views of the Sasanoa River and woods while listening to the songbirds and perhaps catching a glimpse of a fox.

you should discuss the complete legal and tax implications with your attorney and tax advisor.

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 may 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 is becoming increasingly worried about what would happen after his death to the mountain property he has spent his life on. Neither of his two children, who have moved out of the area, have much interest in inheriting it. They feel they would be unable to pay the estate taxes on it or to take proper care of it.

The Solution

The man speaks with a land trust, which is very interested in the property because of its value as wildlife habitat. After considering the various land donation options, he decides to donate the property to the land trust in his will. It is relatively simple to arrange and allows 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 donors may receive regular income payments for a period of years or for the rest of their lives (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 their 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 5.3 percent to 9 percent of the value of the contributed property, depending on your age and interest rates and the terms offered by the charity, which can vary surprisingly.

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 conservation tool, but the financial and tax incentives they provide can help make land conservation feasible. The most common way to conserve 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, and 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. A merger occurs when one organization owns both a conservation easement and the land subject to the conservation easement. In some states, such a merger of title eliminates the restrictions imposed by the easement. 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

A charitable remainder trust is another kind of life income gift. One common example is the charitable remainder unitrust, which, like the charitable gift annuity, 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 (perhaps a spouse or your children). 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 percent) 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 unitrust. The easement is likely to reduce the value of the property and hence the resulting payments to beneficiaries, but it will conserve 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 unitrust 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 donor’s 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. For more information on other kinds of charitable remainder trusts, consult with your attorney or financial advisor.

6 Selling Land

Land 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

Selling your land at fair market value to a land trust may seem an obvious way to conserve 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 the example on page 29).

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.

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 1950s. 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 wants to see the land preserved, they can't afford to donate it.

The Solution

The couple agrees to sell their land to the land trust through a "bargain sale," in which the property is sold for less than its fair market value. The income from the sale combined with tax advantages that result from a bargain sale provides the financial benefits the couple needs, and the land comes under the protection of the land trust.

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 land trust 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).

How a Bargain Sale Affects Federal Income Tax

Tax law treats a bargain sale as being in part a taxable sale and in part a charitable donation, provided that the parties to the transaction clearly state their intent that it be treated as a partial charitable contribution. 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 2018, the fair market value of the farm had increased to \$500,000. They sell the farm to a land trust for \$200,000.

The charitable donation is considered to be the difference between the fair market value of the land and the sale price (\$500,000 – \$200,000 = \$300,000).

The capital gain is a bit more complicated. Whereas in a regular

“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, says 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 is now crossed with hiking trails and is used for research by environmental studies students from the nearby university.

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 that portion of the land’s basis equal to the ratio of the value of the land to the sale price. Here is the math:

$$\mathbf{\$200,000 \text{ (sales price)} / \$500,000 \text{ (land value)} = 0.40}$$

$$\mathbf{\$20,000 \text{ (basis)} \times 0.40 = \$8,000 \text{ (proportion of basis applicable to sale)}}$$

$$\mathbf{\$200,000 - \$8,000 = \$192,000 \text{ (taxable gain on sale)}}$$

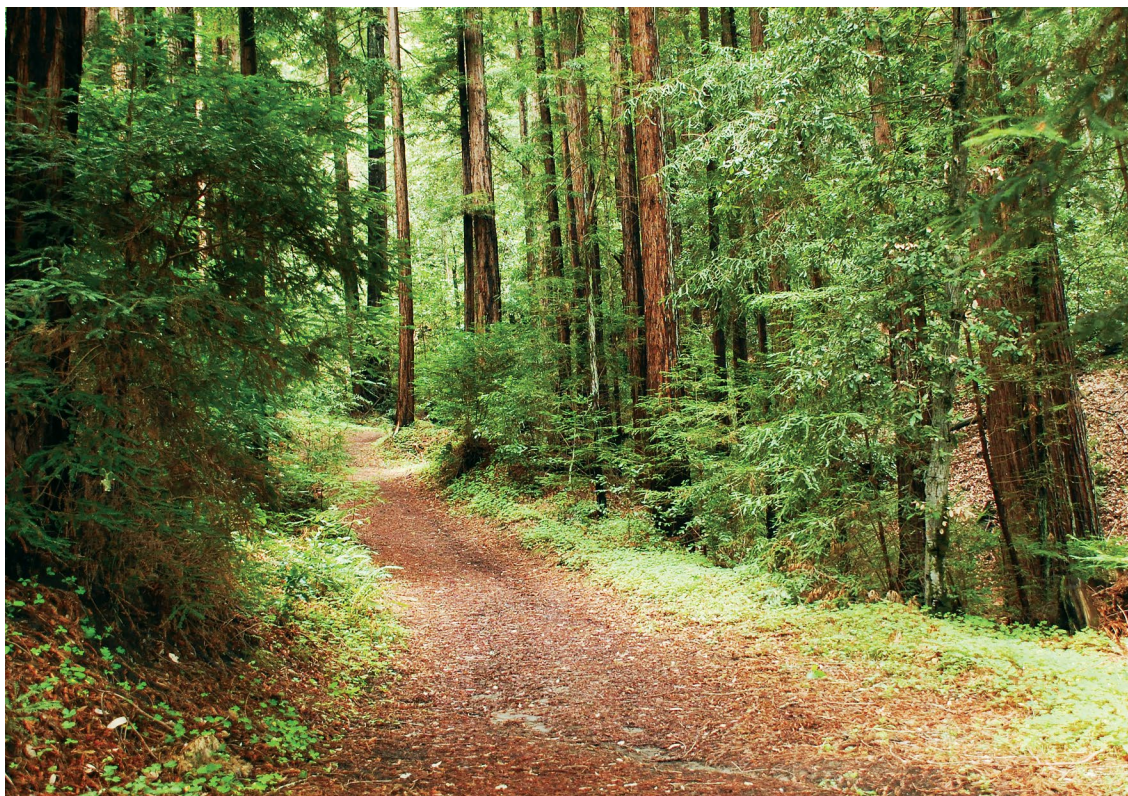
As a result of the bargain sale, the landowners will owe tax on a capital gain of \$192,000 but also will receive a \$300,000 deduction for a charitable donation.

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.

PHOTO: COURTESY OF LAND TRUST OF SANTA CRUZ COUNTY, AN ACCREDITED LAND TRUST.



Option to Purchase

Sometimes a landowner is interested in selling their land to a land trust, but the organization does not have the funds to buy it immediately. The landowner 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; although the landowner must sell if the land trust “exercises” the option.

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 conserve a specific piece of land at a specific cost. For tax purposes, the sale does not occur until the option is exercised and the sale closes. In that case, any money paid for the option is considered part of the purchase price of the land and is treated as capital gain. However, if the land trust pays for the option but does not exercise the option, the price paid for the option is treated as

The 400-acre Byrne-Milliron Forest has 10 miles of roads and trails open to the public. Carleton and Esther Byrne worked with the Land Trust of Santa Cruz County on a bargain sale that met the family’s long-term financial plans and preserved a significant redwood forest for community members to enjoy.

ordinary income. In either case, no tax is due until the option is exercised or terminates.

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 is a contractual agreement that 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, but it does obligate the owner to offer the land to the land trust before selling to a third party. Any payment for the right of first refusal is treated similarly to the payment for an option.

Sales of Other Property Interests

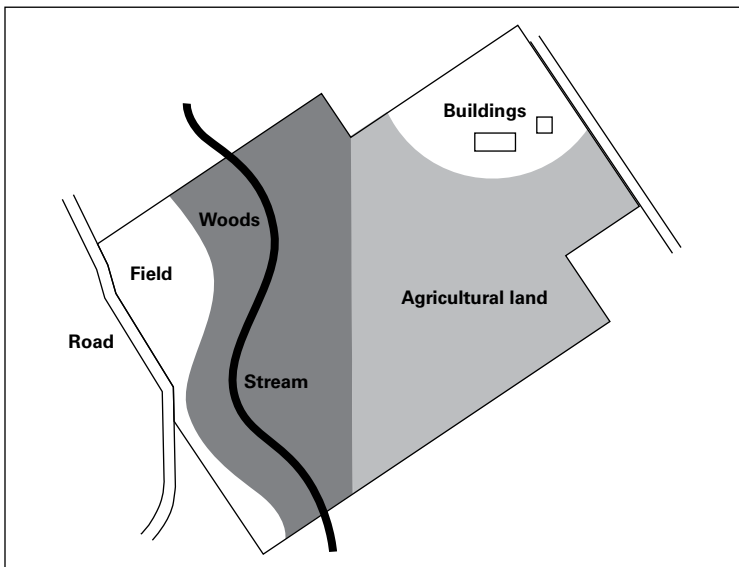
When land trusts pay for property, it is usually to buy the entire property outright, as discussed in this chapter. However, on occasion a land trust or government agency may purchase—through a fair market sale or a bargain sale—partial interests in property, such as conservation easements or remainder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

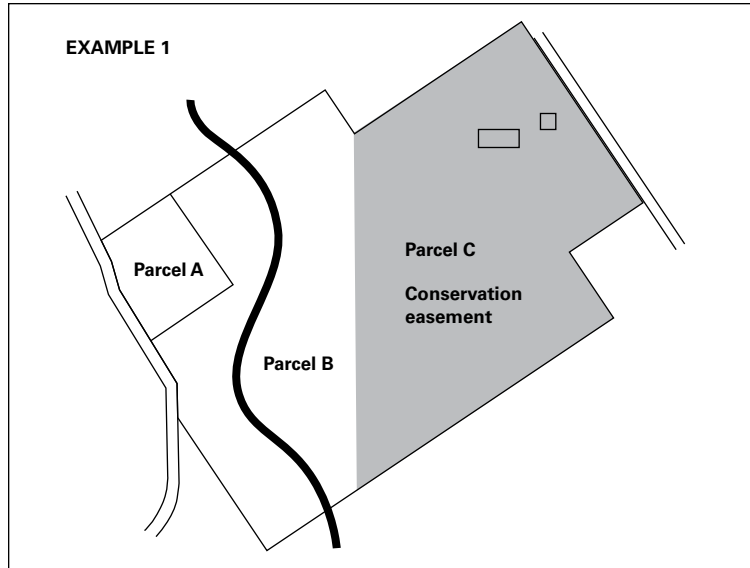
Combining Preservation Tools

7

For some properties, a single preservation technique may not be as effective in meeting your financial and conservation goals as a combination of land conservation strategies. A limited amount of development may also be a necessary and appropriate part of the conservation plan. 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 had been used by the public. The landowner—a farmer—wants to pass the land along to his daughter, but the land has become so valuable that estate taxes may force his daughter to sell the property. The farmer would like to see the stream conserved and could use some immediate cash.

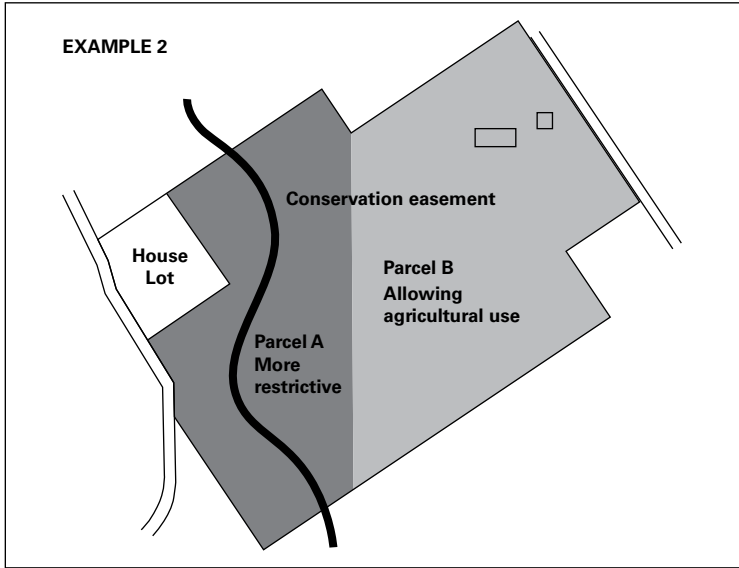




There are several ways in which the farmer might achieve his objectives (subject to local zoning laws and to the land trust's agreement that the arrangements achieve its conservation goals). In the three examples here, the landowner retains ownership of at least the residential area and agricultural 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 a footpath that runs along the stream.
4. The landowner donates a conservation easement on 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 may be lowered or possibly avoided entirely.

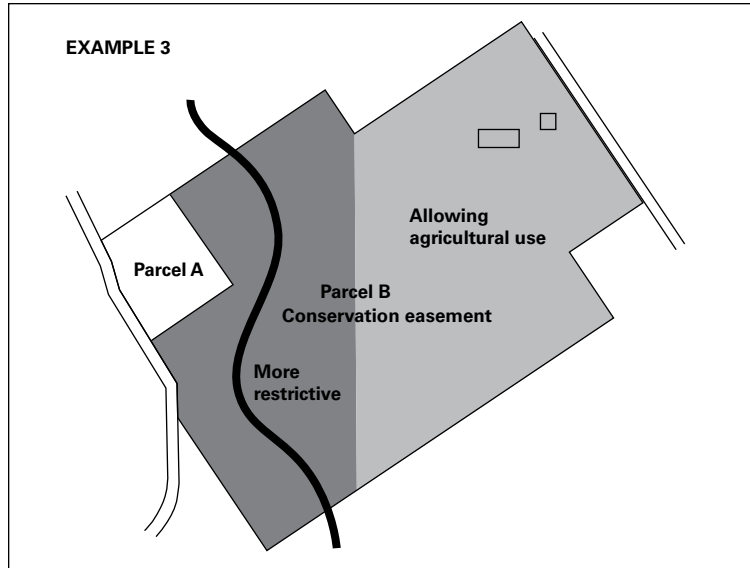


In Example 2:

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 and also a house lot, 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 only 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 conserved. 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 on the agricultural land might be written in such a way as to allow his daughter or another future owner to build one or more additional houses on the property. He might donate the conservation easement on the stream corridor to one land trust, and 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 conservation plan can prove well worth the effort, providing a solution that achieves a unique set of financial and conservation goals.

Federal Tax Considerations:

A Summary

The desire to conserve your land should be 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 conservation. Many of these tax incentives are useful to those of moderate, as well as substantial, means.

Tax discussions throughout this book focus on federal tax law as it stands in 2018. As anyone who has observed Congress is aware, federal tax law is in a constant state of flux, so it is important to get up-to-date information as you plan any conservation transaction that depends on tax law.

Your state and local taxes will also often be affected by the transactions described in this book.

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, which means that it is not a requirement of any kind of contractual obligation with another party and for which no economic benefit is anticipated in exchange (anticipating tax benefits is acceptable). 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 (including receipt of anticipated tax benefits). 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 nondeductible. The IRS also generally requires that the donor must give up their 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, unless the contribution is of a conservation easement that meets the requirements of the tax code.

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. The tax law pertaining to conservation easements is highly detailed, and the IRS has been exacting in its requirement for compliance, so it is important to obtain tax advice from a lawyer or accountant who is well versed and experienced in this special area of the tax code.

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 meets the specific detailed requirements set forth in Section 1.170A-13(c)(5) of the Treasury Regulations. Federal regulations require that you use an appraiser with education and experience appraising land and improvements of the type to be appraised and who is experienced with conservation easement appraisals. 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 cost of the appraisal itself is deductible).

PHOTO: COURTESY OF THE COLORADO CATTLEMEN'S AGRICULTURAL LAND TRUST, AN ACCREDITED LAND TRUST.



The appraisal cannot be completed more than 60 days before the date of the gift or later than the date of the return claiming the deduction (including extensions). Section 1.170A-13(c)(3) of the Treasury Regulations contains detailed, extensive and specific requirements for a qualified appraisal. A summary of the appraisal (IRS Form 8283), signed by the land trust and the appraiser, must be attached to the income tax return. In addition, a statement responding to specific questions posed by the Instructions to Form 8283 regarding the donation must accompany the form, along with a copy of the complete appraisal for donations of property valued at \$500,000 or more. The Regulations require, in the case of donations of property valued at more than \$500,000, that the appraisal is attached to every return on which the deduction for

Junior Gallegos and his wife Florian donated an easement on their 4,800 acre ranch in Piedra Valley, CO. The federal and state tax benefits from the donation enabled the Gallegos family to pay off \$2 million in inheritance taxes and keep their land in their family.

EFFECT OF 50 PERCENT LIMITATION

A landowner donates a conservation easement valued at \$300,000 to a land trust. His adjusted gross income in the year of the gift and the next 11 years is \$50,000. Assuming that his income remains constant (and that he has no other charitable contributions), he could use the charitable deduction resulting from the easement as follows:

50% of \$50,000 = \$25,000

Easement deduction

| | |
|---------|----------|
| Year 1 | \$25,000 |
| Year 2 | \$25,000 |
| Year 3 | \$25,000 |
| Year 4 | \$25,000 |
| Year 5 | \$25,000 |
| Year 6 | \$25,000 |
| Year 7 | \$25,000 |
| Year 8 | \$25,000 |
| Year 9 | \$25,000 |
| Year 10 | \$25,000 |
| Year 11 | \$25,000 |
| Year 12 | \$25,000 |

Note that, if the landowner's easement value had exceeded \$400,000, he would never have been able to "use up" the entire deduction.

that donation is claimed, include any years in which the deduction is carried forward.

Federal Income Tax Deductions

50 Percent Limitation/Fifteen-Year Carryforward

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—property held by the donor for more than one year—the amount you can deduct in one year is limited to 30 percent of your "contribution base," which is, essentially, adjusted gross income. If the value of your gift exceeds 30 percent, you can carry forward the excess for up to five additional years, applied each year up to the 30 percent limit. Any remaining portion of the deduction is lost.

However, for "qualified conservation contributions" as defined in Internal Revenue Code section 170(h)(1), including conserva-

THE BUSINESS OF FARMING

Kathy and Wint operate a large farm in the Tidewater region of Virginia. The farm has been in Wint's family for five generations. Kathy and Wint are very successful and earn about \$1 million annually from their farming operations. In 2013, they contributed a conservation easement over the entire 1,500-acre farm and were able to claim an income tax deduction of \$8 million. Under Virginia law, they were entitled to a credit against Virginia income tax in the amount of 40 percent of the value of the easement or \$3.2 million. They sold the state tax credits in 2014 and netted \$2.7 million from the sale, all of which was subject to income tax at ordinary rates.

However, because more than 50 percent of Kathy and Wint's income in 2013 (in fact, all of their income) was from the "business of farming," they were able to claim their \$8 million deduction against 100 percent of their income. Thus, they paid no income tax on their \$1 million

of income in 2013, no income tax on their \$3.7 million income in 2014 (which included the proceeds from the state tax credit sale) and no income tax in 2015, 2016 or 2017. In 2018 there was \$300,000 of their deduction remaining which they used against their 2018 income.

Note that if Kathy and Wint had sold their tax credits in 2013 they would not have qualified for the 100 percent write-off because less than 50 percent of their income would have been from the business of farming—income from the sale of tax credits is not income from farming. Furthermore, if Kathy and Wint had bargain-sold their conservation easement, the income from the bargain sale wouldn't qualify as income from the business of farming either so it would be important for them to avoid receiving more from such a sale than they received from the business of farming if they wanted to retain their right to the 100 percent write-off.

tion easements, the law allows donors to claim their deductions against 50 percent of their contribution base and carry the unused portion forward for 15 years. This provision of the law was first put in place in 2006 on a temporary basis. However, Congress made the provision permanent beginning in 2016.

100 Percent Write-Off for Farmers and Ranchers

In 2016, Congress also made permanent the 100 percent write-off of easement deductions for farmers and ranchers. Under this provision, if more than 50 percent of an easement donor's income is from the business of farming in the year of the easement contribution, the donor may use the easement deduction against 100 percent of income, rather than the 50 percent write-off allowed to other easement donors. Unused portions of a farmer's or rancher's easement deduction may be carried forward for 15 years.

For purposes of the 100 percent write-off, the term *business of farming* is defined as cultivating soil, raising or harvesting any agricultural or horticultural commodity (including livestock) on a farm and forestry (the definition found in the tax code is much more detailed and should be consulted directly).

Treatment of Easement Contributions by S Corporations

Another important feature of the 2016 tax law is a provision allowing the pass through of the gain portion of “qualified conservation contribution” deductions to S corporation shareholders, regardless of their basis in their shares.

Prior to enactment of this provision, shareholders in S corporations (which pass charitable deductions through to shareholders) could not deduct more for the contribution of a conservation easement than their basis in their shares.

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 percent of your adjusted gross income and provided that they are incurred for the purpose of complying with federal tax requirements. 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 the land at the date of the landowner’s death—not the amount originally paid for it or its current-use value—becomes part of the taxable estate.

As of 2018, federal tax law allows a decedent’s estate to exclude up to \$11.2 million in estate assets from the estate tax. This exclusion is available for both spouses, so that a married couple may exclude up to \$22.4 million from their estate for estate tax purposes (provided that each spouse files an estate tax return—regardless of whether tax is due; the first decedent’s executor must make a special election for the estate tax exclusion available to that estate to pass to the survivor).



PHOTO: TODD PARKER, COURTESY OF LITTLE TRAVERSE CONSERVANCY.

Thanks to the Perry family
this beautiful North Michigan
shoreline will be protected
forever from development.

“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. 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 schoolteacher, “We were able to do something we believe in without sacrificing too much financially.”

This exclusion also applies to gifts made during a person’s lifetime, so that there is no gift tax on the first \$11.2 million in otherwise taxable gifts. However, there is only one exclusion per person, so the amount applied to gifts reduces the amount of the exclusion available for estate assets.

For estates or gifts in excess of the exclusion amount, the tax rate is 40 percent. Thus, the estate of a single person worth \$12 million would owe \$320,000 in estate taxes ($\$12,000,000 - \$11,200,000 \times 0.40 = \$320,000$).

In addition to the \$11.2 million exclusion, federal tax law allows each individual an annual gift tax exclusion in 2018 in the amount of \$15,000 (adjusted annually for inflation). This amount is doubled for a gift made jointly by a married couple. The exclusion amount applies per donee. Thus, for example, a married couple with four children could give each of their children \$30,000 per year gift-tax-free; a total of \$120,000 annually ($\$30,000 \times 4 = \$120,000$).

The estate tax return (Form 706) and tax are payable within nine months of a decedent’s death, although extensions (provided that most of the tax is paid with the request for extension) are available. If more than 35 percent of the value of a decedent’s estate is made up of the assets of a small business, family farm or ranch, federal law allows part of the estate tax attributable to those assets to be paid in installments.

State Estate and Inheritance Tax

Although, due to the size of the exclusion, most landowners will not have to worry about the federal estate tax, as of the beginning of 2016, several states plus the District of Columbia impose an estate or inheritance tax. In the past, state estate taxes were of little concern because there was a federal estate tax deduction for the amount of state estate tax or inheritance tax (a tax imposed on the heirs of a decedent instead of the estate of the decedent). Thus the total amount of state and federal estate tax due on any given estate was rarely more than the federal tax. However, with the federal deduction no longer relevant for most estates, state estate or inheritance taxes have become a concern.

Jurisdictions that, as of the beginning of 2018, impose an estate tax are Connecticut, the District of Columbia, Hawaii, Illinois, Maine, Massachusetts, Minnesota, New York, Oregon, Rhode Island, Vermont and Washington State. Iowa, Kentucky, Nebraska and Pennsylvania impose inheritance taxes, and Maryland imposes both an estate tax and an inheritance tax.

It is important to understand the difference between an estate tax and an inheritance tax. An estate tax is imposed on a decedent's estate and is based on the adjusted gross value of that estate. An inheritance tax is imposed upon the value of property passing from a decedent to another person or entity ("beneficiaries"). The states that impose an inheritance tax typically exempt certain classes of beneficiaries, such as members of the decedent's immediate family, entirely from tax. Therefore, generalized statements about exemptions from inheritance taxes cannot be made. You should check with professionals knowledgeable about your state's tax laws.

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

STATE VERSUS FEDERAL ESTATE TAX EXAMPLE

| | | | |
|--------------|---|-------------|--|
| \$4,000,000 | Ranch value at date of surviving spouse's death | \$1,000,000 | State tax exclusion |
| \$11,200,000 | Federal exclusion | \$3,000,000 | State taxable estate (\$4,000,000 – \$1,000,000) |
| \$0 | Federal taxable estate | \$330,000 | State estate tax (\$3,000,000 x approximately 11%) |
| \$0 | Federal estate 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.

Working with Land Trusts 9

A land trust can offer invaluable assistance in your effort to conserve 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. Keep in mind, however, that consulting with a land trust cannot be a substitute for obtaining professional tax and planning advice.

An experienced, responsible land trust will have the expertise and commitment to provide sound information and assurance of long-term land conservation. The staff or board will work closely and confidentially with the landowner as they are making decisions for the land and will be there to ensure the land is conserved 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 conserved land itself. Land trusts conserve 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 may well be your neighbors.

Land trusts’ accomplishments have been impressive—there are now more than 1,500 land trusts (some of which are called conservancies, foundations or associations) at work throughout the country. They have helped conserve more than 56 million acres in the United States, an area about the size of the state of Idaho.

Each Land Trust Is Different

While many land trusts employ all of the conservation techniques described here, some work only with selected conservation tools or certain types of land. If a land trust is not able to conserve your land

LAND TRUST ACCREDITATION: EXCELLENCE IN CONSERVATION

Land trusts that have chosen to publicly demonstrate their commitment to excellence in land conservation may also be accredited by the Land Trust Accreditation Commission. Accreditation is a mark of distinction in land conservation. Accredited land trusts have been found by the Commission, after a rigorous review of

land trust programs and practices, to meet the highest professional standards and are engaged in the long-term conservation of the land in the public interest. To find an accredited land trust, go to www.landtrustaccreditation.org/land-trust-locator.

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

Many land trusts have adopted the *Land Trust Standards and Practices*, published by the Land Trust Alliance. Crafted by the land trust community, *Land Trust Standards and Practices* are the legal and ethical guidelines for running a land trust, including how to conduct sound land transactions and operate stewardship programs (how land trusts care for their properties or easements). Land trusts' adherence to *Land Trust 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 *Land Trust Standards and Practices*.

Land trusts can serve as invaluable partners in conserving your land. Land trusts have worked closely and confidentially with landowners to conserve millions of acres across the country. The volunteers and professionals who run land trusts share your concern for land and stand ready to help.

How a Land Trust Can Help You

Land trusts can help you in a number of ways:

- They will listen to your goals for your land and help match these with conservation opportunities.

PHOTO: RUSTY PAINTER, COURTESY OF CONSERVATION TRUST FOR NORTH CAROLINA, AN ACCREDITED LAND TRUST.



- They often can provide referrals to attorneys, appraisers, accountants and land planners familiar with conservation strategies.
- They can serve as recipients of conservation easements and lands that they promise to conserve forever.

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

Conserving 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 conserving the property’s conservation resources.

This 8th generation future farmer can be assured his family’s North Carolina farm will never be developed thanks to a donated conservation easement.

TERRAFIRMA: INSURANCE FOR LAND CONSERVATION

In 2013, land trusts across the country came together to form an insurance company to insure its members against the legal costs of defending conservation. Community gardens, urban parks, forests, farms, ballfields, swimming holes, trails, shorelines, nature preserves and open space all over the country now have

a conservation safety net, and land trusts can keep the promise of permanence for their communities. Available to members of the Land Trust Alliance, Terrafirma is an important tool in ensuring land conserved today will be conserved tomorrow. For more information on Terrafirma, go to www.terrafirma.org.

It is important to keep in mind that, while a conservation easement may have substantial value, because it is not a saleable asset, it typically represents a liability for a land trust. The same is true for conservation land that must be protected rather than sold.

Landowners who donate land or easements are commonly asked to help ensure that the land trust can indeed conserve 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 and raise the necessary funds from other sources. Even where such contributions are required by the land trust, the federal tax court has ruled that such payments may be deductible if made in association with the contribution of land or a conservation easement.

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.

Glossary

Adjusted gross income (AGI): For income tax purposes, gross income minus certain deductions and expenses (the amount shown on lines 37 and 38 of Form 1040).

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 an easement or interest in land to a qualified organization (that is, a land trust or public agency) for an amount less than the appraised fair market value, provided that the difference between the fair market value of the property transferred and what is paid for the property is expressly intended by the parties as a charitable donation to the qualified organization.

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 conserve 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*, and so on, depending on the resources it conserves.

Conservation easement monitoring or annual visit: The land trust's ongoing inspection of land to determine compliance with the easement, to visit with the landowner and to document the organization's findings. Monitoring ensures the conservation of the land's conservation values over time.

Conservation purposes: One of the four conservation purposes set forth in §170(h) of the Internal Revenue Code, as further defined in §1.170A-14(d) of the Treasury Regulations.

1. The preservation of land areas for outdoor recreation by, or the education of, the general public;
2. The protection of a relatively natural habitat of fish, wild-life, or plants, or similar ecosystem;
3. The preservation of open space (including farmland and forest land) where such preservation is:
 - a. for the scenic enjoyment of the general public; or
 - b. pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and
 - c. will yield a significant public benefit; or
4. The preservation of an historically important land area or a certified historic structure.

Conservation values: The key values on a site that are the focus of conservation efforts. Important conservation values are determined during property evaluation and project planning.

Contribution base: The amount of income against which a taxpayer may claim a charitable deduction, being adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172 of the Internal Revenue Code).

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. The donor is the deviser, and the recipient is the devisee.

Donee: One who receives a donation.

Donor: One who makes a donation.

Estate: The property and possessions of a deceased person.

Estate tax: Tax on the value of a decedent's estate.

Fair market value: The price that a willing buyer would pay a willing seller, neither being under any compulsion to buy, sell or transfer property or the right to use property, and both having reasonable knowledge of relevant facts surrounding the transactions.

Fee simple interest: Absolute ownership of property, including all mineral rights, water rights, timber rights, development rights and so on. (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.)

Inheritance tax: Tax on the value of property passing from a decedent's estate to individuals or entities ("beneficiaries").

Interest in property: A right or share in the ownership of property.

Land trust: Nonprofit organization that conserves 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.

Option: A purchase-and-sale agreement under which the owner of the land gives the other party, in exchange for some form of consideration, the *right* (but not the *obligation*) to buy the land within a certain period of time.

(In) perpetuity: In the case of a conservation easement, irrevocable and binding on all future owners of the land subject to the easement.

Real property or realty: Land and generally permanent improvements erected on it or growing on it.

Remainder interest: An interest in property, the enjoyment of which is deferred 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 that will become possessory when the life tenant (usually the grantor) dies.

Reserved life estate: An interest in real property that is limited in duration to the lifetime of its owner or some other designated person or persons.

Right of first refusal: The right to purchase property on the same terms and conditions of an offer to purchase the property made by a third party.

Stewardship:

1. Those steps necessary to uphold a conservation easement in perpetuity, including the creation of a baseline documentation report (the condition of the property when the easement was recorded), annual visits to the property (also known as *easement monitoring*), maintaining landowner relations, including those with successor generation landowners, addressing amendments (changes to the easement's terms) and enforcing the terms of easements; or,
2. Those steps necessary to undertake the many responsibilities of managing a property owned outright by the land trust forever.

Stewardship contribution: The amount of money that a land trust needs to cover its expenses for managing the conservation easement. The stewardship contribution may be requested or required of the landowner or may be raised from other sources.

Stewardship fund: A separate, dedicated fund established by a land trust to provide financial resources for stewardship costs.

Title: (1) The right to or ownership of land. (2) The evidence of ownership of land.

Resources

Find a Land Trust: <http://findalandtrust.org>. An online tool that identifies land trusts operating in your state or region. The tool includes contact information and basic information about the land trust, including date founded, number of staff and supporters, conservation priorities and acres conserved.

Publications

Available from the Land Trust Alliance (www.lta.org/publications).

The Conservation Easement Handbook. The best publication available on all aspects of conservation easements. Includes IRS criteria for tax-deductible easement gifts, tax benefits, model conservation easement language and guidelines for land trusts establishing or running easement programs.

The Dirt: www.lta.org/blog. A blog that allows readers to discuss issues related to land trusts and land conservation. It features voices and perspectives from inside and outside the Land Trust Alliance.

Land Trust Standards and Practices. Booklet listing the standards and practices a land trust should follow in order to operate responsibly and ethically.

Saving Land. The Land Trust 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.

A Tax Guide to Conservation Easements 2nd ed. by Timothy Lindstrom, a nationally recognized legal expert on the tax law of conservation transactions. Published by Island Press in 2008 with a 2016 revision published by the Land Trust Alliance. A

Resources

detailed explanation of the federal tax law applicable to conservation easements replete with examples intended to make the arcane law of taxation accessible to professionals and nonprofessionals alike.