



Selecting a Conservation Strategy

Land Trusts offer a variety of private, non regulatory strategies that permanently protect important land resources. Our solutions are creative and flexible – let us work with you to meet your land conservation goals.

Landowner Needs

Because land trust solutions are voluntary, selecting the best conservation strategy starts with understanding landowner needs and goals:

- Why should the property be conserved?
- Will all of the land be conserved or part of it? Why?
- Does the landowner need to be paid for the conservation agreement or will there be a donation?
- Is the land for sale or does the landowner intend to sell it? Will the land remain in private ownership or would ownership by a conservation organization, the town, or a public agency be appropriate?
- Could the landowner benefit from tax incentives for conservation and/or charitable giving?
- Does the landowner desire to conserve the land now or would a bequest or phased gift be preferable?
- Are there family issues or estate planning considerations that should be addressed?

Conservation Easements

Conservation easements are commonly used by the Upper Valley Land Trust because they are powerful, permanent, and can be tailored to meet varying goals and situations. Conservation easements may be used in combination with the other land protection tools described below. For instance,

landowners may donate or sell conservation easements, or convey a easements through bequests. A landowner may convey a conservation easement to one conservation group, but give the land outright to another charity or sell it on the open market.

A conservation easement allows a landowner to continue to own and enjoy the property but places restrictions on its use. A conservation easement is permanent and binds all present and future owners of the eased land. It is recorded like any other title interest and goes with the land whether it is transferred by sale, by gift, or bequest. A conservation easement may be placed on some or all of a property.

The restrictions in a conservation easement are tailored to suit a particular property and situation. Generally, the restrictions are designed to preserve the land's natural, scenic, historic, or open space characteristics. Conserved land may be used for farming and forestry and landowners can continue their stewardship practices. Monitoring and enforcement of the restrictions are the responsibility of the conservation agency holding the easement.

Depending on a landowner's financial situation, there may be income and estate tax incentives associated with conveyance of a conservation easement.

For more detailed information about conservation easements, see UVLT's *"Tax Incentives for Land Conservation," "Conservation Easements: Frequently Asked Questions,"* and *"Donating a Conservation Easement."*

Donating a Conservation Easement by Bequest

A conservation easement can be conveyed by bequest. There can be significant estate tax

benefits to conserving land during the landowner's lifetime or through a will, and these benefits may enable heirs to own and maintain the property.

A conservation easement to be donated by bequest can be negotiated in advance. This helps assure that the easement is crafted in such a way that it will achieve the landowner's goals *and* it avoids placing the recipient in a position of 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 a bequeathed easement and take on the responsibility of monitoring it.) In addition, the land trust may ask the landowner to provide for a stewardship endowment associated with the easement.

A landowner can write a codicil to a will stating the intention to grant an easement and instructing executor to complete the easement. It is include as much guidance as possible for the executor but provide discretion to make usual and customary modifications that may be required by the recipient organization.

For landowners who face financial uncertainties or family circumstances that make it difficult to give an easement during life, writing a conservation easement into a will can be an excellent alternative.

Donation of Land

Outright Donation

A donation of land is simple. The landowner conveys full title and ownership of the land and is eligible for tax benefits in the form of income tax deductions, a reduced taxable estate, and relief from property taxes. A donation of land offers maximum tax advantages because the value of the charitable gift is the full fair market value of the property.

However, a gift of land does not ensure its permanent conservation or that the agency will continue to own the property. Depending on the recipient's strategic priorities, the

property may be sold – and unless it is protected by a conservation easement, the landowner's conservation expectations may be unfulfilled.

Some landowners intend that their property be conserved and resold – this can protect the land and provide financial support for the charity's mission. Landowners may convey a conservation easement to one conservation group, but give the land outright to another charity.

Landowners who expect an agency to own the property in the long term should inquire about how it will be managed and how the agency will cover the carrying costs of ownership. Some agencies will require an endowment if long term ownership is expected.

Landowners who intend to make a gift subject to conditions limiting the agency's future use or conveyance of the property should obtain financial advice to ensure that this is done in a manner that does not reduce the financial value of your gift.

Donation by Devise and Donation with Reserved Life Estate

A landowner may wish to donate land but not give up the use of it immediately. In this case two options are available: donation by devise or donation with reserved life estate.

A gift of land through a will is a donation by devise. The landowner has full use and control over the land while he/she is alive and it is transferred to the charity upon the landowner's death. In this case, there is no income tax deduction, but the estate is reduced and heirs may benefit from reduced inheritance taxes.

Landowners who intend to use their wills to convey land should discuss these plans with the recipient agency. The organization should understand the landowner's objectives and be prepared to accept the gift. If the executor will be negotiating the terms of an easement and making arrangements for the long term

stewardship of the property, the landowner's wishes should be clearly spelled out.

A reserved life estate transfers ownership of the land to a conservation agency now. The landowner may use all or part of the donated land during his/her lifetime or the lifetime of designated immediate family members. The amount of the donation for tax purposes is based on the fair market value of the property less the estimated value of the life interest in the property according to Internal Revenue Service tables based on the donor's age and life expectancy. The tax advantages are less than with an outright donation but greater than with a donation by devise.

Sale of Land or Sale of a Conservation Easement

Some landowners desire to sell their property, and may prefer to sell to a conservation agency for a number of reasons -- desire that the land be used by the public or by a certain group, a feeling that a conservation agency is best able to manage or protect it. In considering a sale, landowners have the option of selling at fair market value, at a bargain sale, or installments.

Similarly, landowners may choose to sell conservation easements at fair market value or less using the techniques described below. In this way some of the value of real estate assets may be realized (providing funds for retirement or reinvestment) while ownership of the home and land is retained.

Sale at Fair Market Value

In this case the sales price is based on the full fair market price of your land as determined by a qualified appraisal following required guidelines for government agencies. Keep in mind that many conservation agencies have limited funds available for purchasing land and must set priorities for land acquisition. If the land has appreciated since it was purchased there may be income tax on the capital gain which can significantly affect net profit from the sale.

Bargain Sale

In a bargain sale the land is sold to a conservation agency at less than the fair market value. The difference between the selling price and the appraised fair market value is considered a donation. The landowner may claim a charitable income tax deduction based on the difference between the full price and the bargain price.

For example, if land with a fair market value of \$35,000, is sold to a conservation agency for \$20,000, the landowner would receive \$20,000 in cash and claim a charitable gift of \$15,000 for the donated land value. Also, because of selling at less than fair market value there would be a smaller capital gain to be taxed. Landowners should consult a tax advisor to understand the tax planning considerations of their particular circumstances.

Installment Sale

In an installment sale a portion of your land is sold with a commitment to sell the remainder to the buyer in successive years thereafter. The income from the sale is spread over several years, thereby helping to reduce the capital gains tax.

Sale with Reserved Life Estate

A landowner may sell property to a conservation agency and retain the right of lifetime tenancy. The capital gains tax will vary depending on whether the sale is at fair market value, at bargain sale, or installments.

Right of First Refusal

This agreement does not obligate the conservation agency to purchase your land and it does not set a price for it. However, it does guarantee the agency the opportunity to purchase your land -- this can be helpful if the agency needs time to raise funds for the purchase. A right of first refusal may be conveyed without compensation or may be purchased. If another party offers to buy the land, the landowner must allow the conservation agency the chance to match the offered price.

Private Agreements and Covenants

There are many types of formal and informal agreements which landowners may make without involving a land trust or public agency. These range from verbal commitments between neighbors, to deed restrictions, to mutual covenants among the members of a homeowners association.

In general, these types of agreements provide relatively little security that the land will be conserved in perpetuity because the effectiveness of the restrictions depends entirely upon the interests of the private parties. No independent group has been granted an obligation to monitor and enforce the terms of the agreement. In addition, even when one party chooses to uphold covenant

provisions a judge may determine that the specific requirements are frivolous or insignificant. There are no income tax or estate planning advantages for landowners who arrange private covenants.

The advantage of deed restrictions and covenants is that they are relatively inexpensive to execute. In general there is no need for resource inventories, stewardship endowments, or appraisals. Landowners work directly with their own attorneys to arrange the agreements. This option may be appropriate for landowners who are most concerned about how their properties will be used in the relatively short term and who are comfortable relying upon neighborly relations to accomplish conservation objectives.

