

SHAPING THE FUTURE OF YOUR COMMUNITY

CHAPTER 5

Land Protection

Massachusetts is blessed with a rich and varied landscape. Our coastal regions, central uplands, hills, and river valleys provide clean water, productive farmland, scenic vistas, and an impressive diversity of wildlife. Your involvement can make a real difference in protecting these values and shaping the future of your community.



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At this moment, roughly half of Massachusetts –some three million acres– is privately owned, unprotected wildlife habitat, primarily woodlands and wetlands. The decisions we make in the next twenty years about this land will have a profound and long-lasting effect on the kind of communities our children and grandchildren will inherit, on the patterns that growth will take in our communities, and on the wildlife that share this landscape with us.



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The Commonwealth also benefits from a strong tradition of land protection. Massachusetts is where the first land trusts were established, including Mass Audubon in 1896; where the first conservation land was dedicated; and where more land trusts exist than any other state in the country.

Across Massachusetts there are state and local agencies and many nonprofit organizations working to permanently protect land using a wide variety of techniques. In many cases, collaborative land protection partnerships between agencies and nonprofits are helping to secure funds to protect important lands. In many cases, protection through direct measures–acquisition of land or rights–is much more feasible than landowners and other stakeholders realize.

The most critical factor is having the right information when important decisions about land are made. The purpose of this section is to provide information about these land protection techniques, describe sources of funding for land protection, and provide guidance about where to begin in seeking to protect important lands.

Land Protection Techniques

There are a wide variety of ways to protect land. Some key questions to consider in selecting the right technique are the following:

Land Protection Goals	Possible Tools
Fee Ownership: Is it desirable to have the land owned by a municipality or nonprofit organization (for example when public access is the goal)?	Purchase or gift of land; bequest
Restricted Uses: Can the land remain in private hands and be subjected to permanent restrictions that prevent or limit future development?	Conservation restriction; agricultural preservation restriction
Landowner Finances: Does the landowner need to be compensated for the land? Might they consider a gift or a sale for less than the full fair market value?	Purchase, bargain sale
Partial Protection: Is a portion of the land suitable for development?	Limited development; conservation buyer

The answers to these questions will guide your choices and help you determine which is the most productive route for you to explore. Several of the most common options are described in this chapter, but there are additional variations and hybrids that can be developed to help you meet your specific conservation objectives, particularly for large properties.

Gifts of Land

An outright gift of property for conservation is often the simplest and best way to protect it. A gift of land can ensure that the property will remain undeveloped and in conservation use while relieving the owner of the responsibilities of ownership and management, including property taxes.

Landowners can donate property to either a nonprofit land conservation organization (often called a *land trust*) or a public conservation agency, such as a city or town conservation commission, or state agency. The process of making a gift is fairly straightforward once agreement has been reached with the recipient.

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A deed needs to be drawn up, and the recipient will investigate the title and the condition of the land. A survey may be necessary if one hasn't already been done.

Donors of land can claim the value of a properly made gift as a charitable contribution on their federal income tax return. The IRS has certain limitations on how much of a deduction a taxpayer can claim in any given year, but unused portions of the gift can be carried forward for up to five additional years. An appraisal will generally be required to document the value of the gift.

For more information see:

Mass Audubon Land Protection

<http://www.massaudubon.org/get-involved/conserve-land>

Massachusetts Land Trust Coalition

<http://www.massland.org/>

Gifts of Conservation Restrictions and Agricultural Preservation Restrictions



Landowners who want to keep their land (and someday leave it to their children or sell it), but want to know that, regardless of ownership, the land will stay open and undeveloped, may be willing to place a permanent conservation restriction on their land. A conservation restriction is a voluntary legal agreement between a landowner and a conservation organization (either a land trust or public conservation agency) that forever limits development of a property, and gives to the conservation organization the

responsibility to enforce and defend the terms of the agreement.

Conservation restrictions are placed on record at the local registry of deeds and bind all future owners of the land. The land itself remains in private hands and on the tax rolls (with reduced assessments), and can be given, sold or left to anyone the owner chooses, but future owners will be bound by the terms of the agreement. The public has no right of access to the property unless the owner specifically grants it.

Conservation restrictions have become very popular tools for land conservation in recent years. For the owner who wishes to keep land in the family but ensure its preservation, a conservation restriction is the perfect tool. Conservation restrictions can be tailored to reflect the particular qualities of the land and the specific objectives of the landowner and recipient organization. For example, they may allow continued farming or forestry and may also allow a small amount of development – such as an additional house.



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Agricultural preservation restrictions (APRs) are similar tools, designed specifically to protect farmland and encourage its continued agricultural use. APRs can be donated or may be purchased by the Department of Agricultural Resources, often in partnership with municipalities.

As with gifts of land, donors of conservation restrictions are eligible to claim a charitable contribution on their federal income tax return. The amount of the gift is determined by professional appraisal, and is generally the amount by which the conservation restriction has lowered the value of the property. Donors may realize significant estate and property tax savings as well.

For more information about conservation restrictions, see the EOEEA Division of Conservation Service's website <http://www.mass.gov/eea/grants-and-tech-assistance/grants-and-loans/dcs/>

For more information about agricultural preservation restrictions, visit the website of the Massachusetts Department of Agricultural Resources <http://www.mass.gov/eea/agencies/agr/land-use/agricultural-preservation-restriction-program-apr.html>.

Sales and Bargain Sales

Many landowners cannot afford to make gifts of land and conservation restrictions, but would nonetheless like to see their property permanently preserved. Though funds for purchases are limited, many conservation agencies and land trusts do have some funds for conservation purchases, depending on the situation (see below for more information about funding). Either the land or a conservation restriction (or both) may be purchased.

Many landowners will find it advantageous to consider taking advantage of tax provisions that allow for a bargain or charitable sale of their property for conservation. A sale for less than the property's full fair market value (essentially part sale, part donation) provides the landowner with some cash while making the purchase more affordable for the conservation organization. Bargain sales are particularly attractive for landowners that have highly appreciated property that they have owned for a long time as they provide an opportunity for a charitable deduction that can offset large capital gains. Landowners are often surprised to find that a bargain sale can be surprisingly competitive with a market sale in terms of the net result to their bottom line.

Estate Planning and Bequests

Some landowners want to keep their land for their lifetimes but are willing to consider options for conservation after their death. In these cases, a gift of land or conservation restriction *by will* is a possible option. Land and conservation restriction gifts by will can also be smart tax planning; though they don't provide an income tax deduction, they do remove the value of the property from a landowner's taxable estate. New tax provisions now provide even greater estate tax benefits for gifts of conservation restrictions – and

allow these gifts to be made during a landowner's lifetime, by will, or by heirs for a short period of time after a landowner's death.

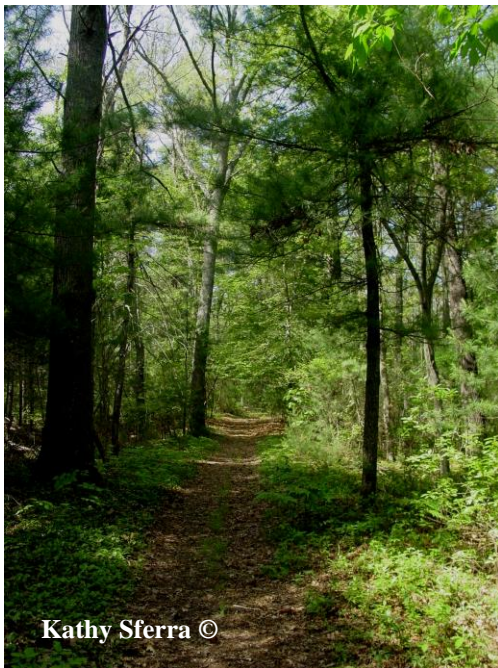
In some cases, landowners choose to make a gift of land now, but reserve the right to use the property during their lifetime – what is known as a *reserved life estate*. In such instances, the landowner continues to live on or use the property while the title transfers to a conservation organization or agency.

Conservation Buyers and Limited Development

If a landowner needs to sell at a price higher than a conservation organization or agency can afford, another option is for both parties to look for a *conservation buyer*. These are private individuals who are seeking an opportunity to purchase a special piece of land and also willing to agree to subject the property to a permanent conservation restriction, limiting future development.

A similar approach is to consider a *limited development* project, which provides for the development of the least environmentally sensitive portions of the property in order to generate the funding that will enable the landowner to conserve the remainder for little or no cost. So for example, a few frontage lots or a small subdivision might be developed on the front of a property to enable conservation of the backland.

Regulatory Tools to Protect Open Space



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Across the Commonwealth, municipalities and other government agencies are working creatively in partnership with developers to set aside important open space areas through the regulatory process.

Open Space Residential Design (OSRD) and Transfer of Development Rights (TDRs) are tools that can be implemented through zoning to set aside for conservation critical natural habitats and buffer zones, while allowing for subdivision development in designated areas. In this way, communities can meet their housing needs while conserving habitats that would be destroyed by a conventional subdivision.

These tools work best when a community identifies an area that they are seeking to preserve (for example, a river corridor) by using this tool. For more information on OSRD, refer to section 4 and visit the OSRD website http://www.mass.gov/envir/smart_growth_toolkit/pages/mod-osrd.html. For more information on TDRs visit the planners' website at: <http://www.plannersweb.com>.

MGL Chapter 41, Section 81U of the Subdivision Control law permits a planning board to require a modest area of parkland to be set aside within subdivisions for a three-year period before it can be developed. This may give communities time to secure the funds to buy the land and protect it.

In addition, communities are increasingly entering negotiation with developers to set aside critical lands through the development process. While state law limits the ability of local boards to require the protection of land during development review, such preservation measures are often offered by developers in exchange for waivers or other reduced regulatory requirements.

Chapter 61 Programs – A Temporary Land Protection Measure

Under the state’s “Chapter 61” laws, landowners can voluntarily agree to keep land in forestry, agriculture, or open space and recreational use for a specified period of time in exchange for a reduction in local property taxes.

By obtaining property tax relief, landowners are often able to continue to hold and use land for these purposes. In exchange, municipalities receive a right of first refusal to purchase the land at fair-market value if it is converted to another use during the enrollment period.

The municipality may act on the right of first refusal itself, or assign it to a nonprofit land conservation organization such as a land trust. This provides a mechanism for communities to protect these lands if they choose. The requirements for each of the programs (Chapter 61 for forestry lands, Chapter 61A for agricultural lands, and Chapter 61B for open space and recreation lands) vary, but include minimum acreage requirements (generally 5 to 10 acres), specified property tax savings, and other provisions.



While many thousands of acres are enrolled in these programs, including many of the largest farmlands and privately owned timberlands in the state, only a small percentage of landowners who are eligible to participate in Chapter 61 programs are currently enrolled. Landowners who are interested in enrolling in the program can learn more through their municipal assessor’s office. Municipalities interested in enrolling additional land in the programs may want to consider educational workshops for landowners or providing assistance with enrollment.

Citizens in municipalities with important lands enrolled in Chapter 61 programs should consider working proactively with local boards to determine the best way to protect these lands for open space and municipal purposes should the landowners wish to convert them to another use. Because the Chapter 61 right of first refusal time frame is rather short, it is prudent for municipal conservation commissions and open space committees to ensure

that the landowner is aware of the local interest in protecting the land. Since it is much more difficult to acquire a property once contract terms are set and the deadline is approaching, it is always preferable to encourage landowners to approach the town, or a local land trust, prior to entering into a contract to sell the land.

For more information on Chapter 61 and other forestry programs, see <http://www.masswoods.net/>.

Securing Needed Funds for Land Protection

Citizens seeking to preserve land in their communities must often wrestle with one of the greatest challenges of land conservation—identifying funding sources to buy the land or to buy a conservation restriction from the landowner. Available funds are limited—and the needs are great. Increasingly, given rising land values, successful land protection projects are completed using a variety of funding sources. The principal sources of funding for land conservation are described below.

Case Study in Local Action Bone Hill Farm, Barnstable

In August 2003, neighbors of Bone Hill Farm were disappointed to learn that a key parcel of land at the gateway to Mass Audubon's Long Pasture Wildlife Sanctuary was slated for residential development. The resulting two large homes would have destroyed the open meadow forever. This possibility catalyzed creation of the Committee to Preserve Northside Open Space, a group of local residents who rallied to oppose the development plans and advocate for a partnership with Mass Audubon and the Barnstable Land Trust to purchase the meadow.

As a result, the development plans were withdrawn and the owners graciously agreed to work cooperatively with Mass Audubon and the neighborhood to provide an opportunity for the land to be permanently protected for conservation purposes. The land was generously offered at a bargain sale price in recognition of the importance of this project. Still, more than \$700,000 needed to be raised.



Over the course of the next two years, the committee waged a fundraising campaign that resulted in more than 500 separate donations toward the effort. Sources of funds included an appropriation from the town's land bank (similar to Community Preservation Act funds), private foundations, local businesses, and generous individuals, some of whom made several gifts during the campaign. Today, the land is permanently protected—the result of this creative partnership among three organizations and the town—and a tribute to the power of local action to shape neighborhoods and communities.

Many other communities have banded together with similarly positive results when citizens were concerned about the future of treasured parcels of lands. You can do it too!

Municipal Funding

Funding can be provided through funds that the community has on hand or funds that are borrowed for the purchase. Potential sources include municipal conservation funds (controlled by the city or town's conservation commission), Community Preservation Act funds, or funds that are appropriated at town meeting or city council from free cash, a reserve fund, or other municipal sources. In some cases, a Proposition 2½ override may be needed to enable the purchase. A few communities have developed innovative funding programs for open space protection. For example, in the spring of 2000, the town of Ipswich authorized a \$10 million Open Space Bond for the protection of land for open space, water supply protection, and recreation.

Community Preservation Act

The Community Preservation Act is a state law that can be adopted locally. It is a tremendously effective tool to protect open space, promote affordable housing, and preserve historic resources at the local level.

Municipalities that adopt the act place a 1 to 3 percent surcharge on local property taxes, with exemptions available for the first \$100,000 of property value and low-income and elderly residents. The state supplements these local funds with matching funds. The town's residents then decide how these funds are spent to promote community preservation priorities.

The legislative body (town meeting or council) determines how the money will be spent. The only stipulation is that at least 10 percent of spending each year must be set aside for housing, 10 percent for historic preservation and 10 percent for open space. The remaining 70 percent can be spent on any of those needs or on recreational needs as well. Community Preservation Act money can be reserved for future use. All funds are spent locally.

For more information, see visit the Community Preservation Coalition's website <http://www.communitypreservation.org/>.

State and Federal Land Acquisition Programs and Funding

State and Federal funds are sometimes available to protect important lands. Such funding can come from a variety of potential sources. The EOEEA Division of Conservation Services administers programs that provide direct matching grants to communities for land conservation projects, parks, and recreational facilities. The grants are competitive and available only to communities with approved Open Space and Recreation Plans. The project must be approved by town meeting or city council and the land must be open for public use and enjoyment. For more information on these and other programs, visit the website of the Division of Conservation Services <http://www.mass.gov/eea/grants-and-tech-assistance/grants-and-loans/dcs/>.

Various other state or federal funds are available to protect important lands. In addition to the DCS municipal grants program, state conservation agencies sometimes acquire environmentally significant land and conservation restrictions for state ownership. Land conservation programs exist within the Department of Conservation and Recreation (DCR) <http://www.mass.gov/eea/agencies/dcr/> and the Division of Fisheries and Wildlife (DFW) <http://www.mass.gov/eea/agencies/dfg/dfw/> within the Department of Fish and Game.

Other sources of state funding include the Agricultural Preservation Restriction (APR) program <http://www.mass.gov/eea/agencies/agr/land-use/agricultural-preservation-restriction-program-apr.html> within the Department of Agricultural Resources <http://www.mass.gov/eea/agencies/agr/> for agricultural land. For appropriate land protection projects, funds are sometimes available from DCR's greenways and trails program <http://www.mass.gov/eea/agencies/dcr/services-and-assistance/grants-and-technical-assistance/greenways-and-trails-program.html>, from the water resource grant program <http://www.mass.gov/eea/agencies/massdep/water/grants/> within the Department of Environmental Protection (DEP), through the Massachusetts Highway Department <http://www.massdot.state.ma.us/highway/Main.aspx>, and from the federal Forest Legacy Program <https://www.fs.fed.us/spf/coop/programs/loa/flp.shtml>.

Partnerships With Nonprofit Land Conservation Organizations

Partnerships are becoming increasingly common as a means to protect open space and conservation land. In Massachusetts, there is a wealth of state, regional, and local land conservation organizations, known as land trusts. A list of these organizations by region is available on the website of the Massachusetts Land Trust Coalition <http://www.massland.org/member-list>.

Such organizations can assist with projects in a variety of ways, including providing technical assistance—or advice—to citizens interested in conserving land, developing grant applications for foundations, and assisting with private fundraising. In some cases, they may be willing to acquire a piece of land directly using funds that are on hand or raised for the project. Each organization has a specific mission and specific land conservation priorities and will typically evaluate proposed projects to see if they are a good fit for the organization and whether the needed funds can be raised. More information about the work of land trusts is also available through the Land Trust Alliance <http://www.landtrustalliance.org>.

Private Funds

Private funds are key to completion of many land conservation projects. Conservation-minded individuals often step forward to donate funds to nonprofit organizations to conserve land or buy available parcels and keep them off the market to allow time for fundraising. Most often these individuals are from the community where the land protection project is located—and often they live in the neighborhood where the land is protected.

Useful Links

Mass Audubon's Land Protection Department

<http://www.massaudubon.org/get-involved/conserves-land>

Massachusetts Land Trust Coalition

www.massland.org

EOEEA Division of Conservation Services

<http://www.mass.gov/eea/grants-and-tech-assistance/grants-and-loans/dcs/>

Massachusetts Department of Agricultural Resources Agricultural Restriction Program

<http://www.mass.gov/eea/agencies/agr/land-use/agricultural-preservation-restriction-program-apr.html>

OSRD and Planners Web

http://www.mass.gov/envir/smart_growth_toolkit/pages/mod-osrd.html

Mass Woods Forestry Programs

<http://www.masswoods.net>

Community Preservation Coalition

<http://www.communitypreservation.org>

Land Trust Alliance

<http://www.landtrustalliance.org>