

# Conserving Land for Future Generations

## What Landowners Can Do



**Gifts in Fee Simple** -- Most of the land protected by conservation groups has been acquired through outright gifts of the land by generous and willing donors. The donor may make specific stipulations as to the use of the land such as "forever wild" or passive recreational use only. Donors are entitled to an income tax deduction of the value of the property. The deduction is allowed to be up to 30% of the donor's taxable income each year for a period of five years, up to the value of the donation. In addition, both property taxes and estate taxes on the land are eliminated.

**Gift of a Remainder Interest** -- A landowner can give away property to a conservation organization but retain the right to live on it. At the death of the landowner, the full ownership of the land transfers to the conservation organization. A gift of a remainder interest will include mutually agreeable conditions concerning the maintenance and management of the land during the landowner's lifetime. The donor of a remainder interest can generally claim a related income tax deduction and potentially high real estate taxes are eliminated.

**Bequests** -- A landowner can convey land to an organization such as a land trust in their will. A deduction from the value of one's taxable estate is allowed for land bequeathed for public purposes.

**Bargain Sale** -- Under this method, the landowner sells the property to a charitable organization for less than fair market value. Bargain sales may be a good choice for landowners who wish to preserve their land but need income from the sale. The seller is eligible for income tax deductions, with an overall result that can be comparable to a sale at market value.

**Conservation Restriction / Easement** -- A conservation restriction (CR), or easement, is a legal agreement between a landowner and another entity in which the owner agrees to restrict the use of the land. Activities such as farming, forest management, recreation and other land uses that the property owner wishes to pursue are often allowed. Common restrictions include prohibitions on development activity or disruption of vegetation. The land owner continues to own the property, but if the land is sold, the new owners must comply with provisions of the conservation restriction. CRs can be donated or sold. CRs are typically held by 1) governmental agencies (Agricultural Preservation Restriction [APR] & Forest Legacy Programs are examples), 2) land trusts, environmental organizations or other nonprofit entities, and 3) municipalities (the Conservation Commission is often involved). The APR program is highly competitive, with preference given to working farms with highly productive agricultural soils.

**Mass. Chapter 61 Tax Program** – To encourage property owners to maintain their land as open space, the State of Mass. has enacted a tax abatement program. Chapters 61, 61A and 61B of the Mass. General Laws provide a means to assess open land at a fraction of its fair market value. The owners make a commitment to maintain the undeveloped condition of the land for a set period of time. If the landowner decides to sell the land for development within that time, all back taxes must be paid to the town. In addition, the sale is delayed for 120 days, during which the town in which the land is located is given the right of first refusal to purchase the land for fair market value. This allows towns to acquire land that they have identified as being significant for its ecological, scenic or cultural qualities. The table below summarizes the program.

Purpose	Program	Eligibility	Tax Assessment
Timber production	Chapter 61	Min. 10 acres	5% fair market value
Agriculture	Chapter 61A	Min. 5 acres, min. annual gross sales \$500	"Agricultural" assessment, commercial rate
Recreation	Chapter 61B	Min 5 acres	Min. 25% fair market value, commercial rate

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## What Towns Can Do



*Conserving undeveloped land for its ecological, recreational, agricultural or scenic values requires vision. It also requires a working partnership between the town, conservation organizations, landowners and developers. Municipalities have several options at their disposal to help maintain the rural and scenic character of their town and minimize the impacts of development.*

**Open Space Residential Design (OSRD)** – A form of flexible residential subdivision design that concentrates development in specific sections of the site while steering it away from sensitive environments and scenic areas. Conservation restrictions are typically placed on the sensitive and scenic areas. In return for the conservation protections, communities offer provisions for density bonuses and flexibility regarding setback and lot size requirements. In this way, development is concentrated to smaller areas of a site than what would generally occur under conventional subdivision practices.

**Upland Protections** – To protect the scenic and natural qualities of ridgelines and hillsides, towns can create upland protection zones or enact the Scenic Mountain Act. Although both strategies enable Berkshire towns to delineate specific elevations above which development is strictly controlled, the enactment of the two are slightly different.

Upland zoning is accepted in the typical zoning amendment process, requiring the delineation of the zone, creation of a bylaw, and its acceptance by 2/3 majority vote at town meeting. The Attorney General must approve the bylaw, and the planning board or ZBA is typically the permitting authority.

In the Scenic Mountain Act, the town must enable the Act with a 2/3 vote at town meeting, and then delineate the zone by a 2/3 vote of the Select Board. Here, the Dept. of Conservation and Recreation, rather than the Attorney General, must approve the delineation and the regulations, and the Conservation Commission is the permitting authority.

**Transfer of Development Rights (TDR)** – An innovative way to direct growth away from lands that should be preserved toward areas well suited to higher density development. The approach begins with planning processes that will identify specific preservation areas as "sending areas" and specific development districts as "receiving areas". Developers can purchase the development rights of properties in the sending area, and apply those extra rights to develop in a receiving area. Typically, during the exchange of rights, a conservation restriction is placed on the sending properties, while a density increase or bonus is extended to the receiving properties. In this way, important open space properties are conserved, while at the same time a developer is able to increase the residential or commercial use in another part of the town.

**Community Preservation Act (CPA)** – So, where does a community get funding to purchase conservation restrictions or acquire property that is deemed significant to the town's character? One new option for collecting conservation funds is the CPA. The CPA allows a town to impose a tax surcharge of up to 3% on real estate tax revenues to fund projects in three core community areas: 1) acquisition and preservation of open space, 2) creation and support of affordable housing, and 3) acquisition and preservation of historic buildings and landscapes. The funds are dedicated for use in the core areas, and cannot be absorbed into other town accounts. The state will match the local funds collected, and at this time it is matching the funds dollar for dollar. Exemptions to the surcharge can be given to low / moderate income residents and for the first \$100,000 assessed value of properties. See the accompanying handout on the CPA for detailed figures specific to [Becket](#).