



## What We'll Cover

- Deed Restrictions
- Mutual Covenants
- Donations of Land
  - Outright Gift
  - Remainder Interest with Reserved Life Estate
  - By Will
- Bargain Sale
- Conservation Easements
- Combining Tools



## **Deed Restrictions**

- **Restrictions placed within a deed that control the use of the property. Restrictions travel with the deed, and cannot generally be removed by new owners.**
- **Relatively Inexpensive**
- **May be the best or only choice**
- **Only previous owners, abutters and named entities may enforce**
- **Unreliable long term track record**

## **Mutual Covenants**

- **Restrictions agreed upon by two or more landowners**
- **Often placed on properties to protect important scenic values of shared ownership (Chicorua Lake)**
- **May or may not be recorded**
- **Often strengthens the basic deed restriction option**

## **Give It Away**

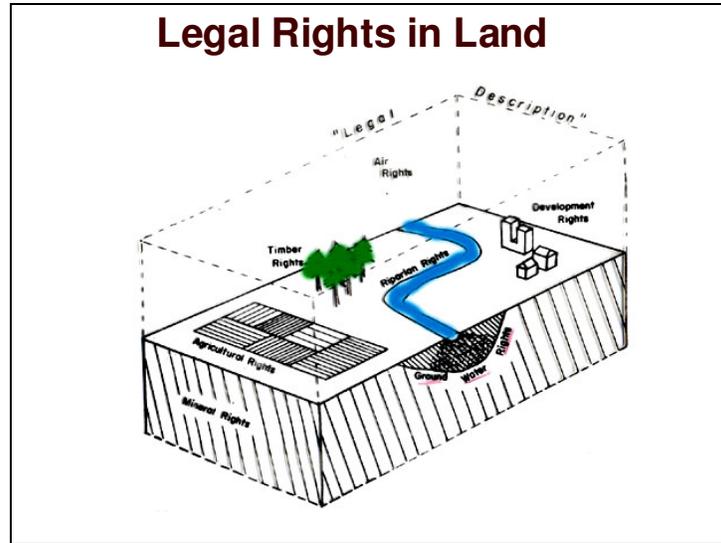
- **Outright Donation – potential maximum income tax benefits and estate value reduction while assuring continued long term stewardship**
- **Choose who will receive the gift wisely!**
- **If perpetual conservation is a primary goal consider a conservation easement or deed restriction to a separate organization before gifting**
- **Donation of Remainder Interest with a Reserved Life Estate - gift made now but landowner continues to use and manage the land for lifetime**
- **Donation by Will – possible highest appreciated land value but risky**

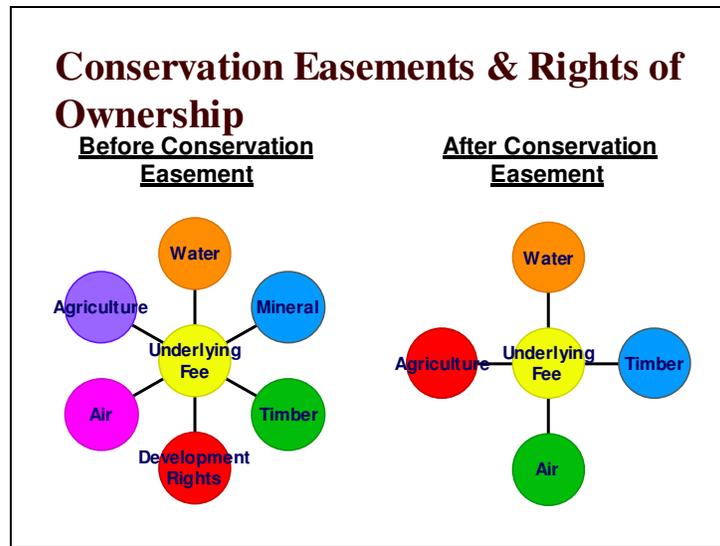
## **Sell It**

- Qualified Appraisal must be used to establish value
- Conservation Funds are scarce
- Bargain sale – selling for less can make financial sense
- If perpetual conservation is a primary goal consider a conservation easement or deed restriction to a separate organization before the sale
- Consider combining a conservation easement with the sale

## **Conservation Easement Definition**

**Voluntary legal agreement between a landowner and “easement holder” that permanently limits certain property uses in order to protect conservation values**





## **Easement Holders**

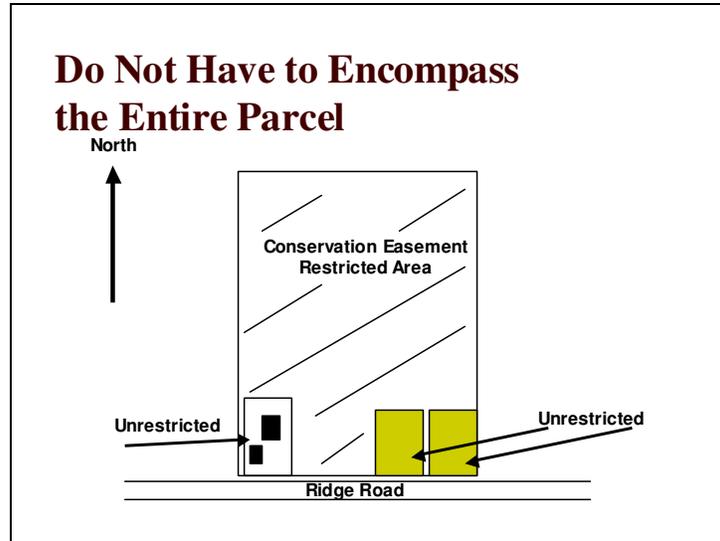
- **Land Trusts – Green Mountain Conservation Group, Moose Mtn. Regional Greenways, Lakes Region Conservation Trust, SPNHF, TNC**
- **Government Entity – Towns, State or Federal Agencies**

## **Easement Holder Responsibilities**

- Baseline Documentation**
- Easement Monitoring - Annual Visits**
- Enforcement**
- New Landowner Contact**
- Contingency Plans/Back-ups**

### **Baseline Documentation**

- **IRS audits of conservation related tax deductions are more routine than in the past**
- **Appraisals are being carefully reviewed by the IRS; also tend to request baseline documentation**
- **Missing or poorly done baseline documentation may have serious negative tax consequences (and penalties)**



## **Conservation Easement Features**

- development rights are in reality extinguished**
- privately-owned land restricted by a conservation easement remains in private ownership**
- can be used on publicly-owned lands**
- CE's typically encourage continued farm and forest management**

### **Conservation Easement Features**

- **executory interest (backup) easement holder arrangements**
- **have held up very well through court testing**
- **may be gifted or sold at full value or at bargain**
- **may provide income tax and estate planning benefits**

## **Value Must be Determined by Qualified Appraisals**

- **Absolutely essential for determining values**
  - Grant source requirements
  - LTA Standards and Practices
  - IRS rules and potential audits
- **Appraiser lists are kept by land trusts**
- **Conservation Easement appraisals are really two appraisals in one**
  - “before” Fair Market Value
  - “after” Restricted Value

### **“Old” Conservation Gifting Income Tax Deduction Rules**

- Full appraised value was deductible**
- Deduction limited to 30% of Adjusted Gross Income (AGI) for each tax year**
- 6 years to deduct the full appraised value, the year of the gift and a 5 year carry forward period**

### **“NEW” Conservation Gifting Income Tax Deduction Rules**

- **Full appraised value is deductible**
- **Deduction limited to 50% of Adjusted Gross Income (AGI) for each tax year**
- **16 years to deduct the full appraised value, the year of the gift and a 15 year carry forward period!!**
- **Farmers, ranchers and others who earn 50% or more of income from agriculture or timber have lifetime carry forward and can deduct up to 100% of AGI**

**Example of Old Rules**  
assumptions - \$60,000/yr income  
\$100,000 gift

Year	Deduction	Remainder	Tax Savings
1	\$18,000	\$82,000	\$4,500
2	\$18,000	\$64,000	\$4,500
3	\$18,000	\$46,000	\$4,500
4	\$18,000	\$28,000	\$4,500
5	\$18,000	\$10,000	\$4,500
6	\$10,000	0	\$2,500
<b>Total</b>	<b>\$100,000</b>		<b>\$25,000</b>

Source: "Conserving Your Land", Brenda Lind, CLCA 2005

**Example of New Rules**  
 assumptions - \$60,000/yr income  
 \$400,000 gift

Year	Deduction	Remainder	Tax Savings
1	\$30,000	\$370,000	\$7,500
2	\$30,000	\$340,000	\$15,000
3	\$30,000	\$310,000	\$22,500
4	\$30,000	\$280,000	\$30,500
5	\$30,000	\$250,000	\$37,500
6	\$30,000	\$220,000	\$45,000
<b>6yr Total</b>	<b>\$180,000</b>		<b>\$45,000</b>

Source: "Conserving Your Land", Brenda Lind, CLCA 2005

**Example of New Rules** (cont'd)  
assumptions - \$60,000/yr income  
\$400,000 gift

Year	Deduction	Remainder	Tax Savings
7	\$30,000	\$190,000	\$52,500
8	\$30,000	\$160,000	\$60,000
9	\$30,000	\$130,000	\$67,500
10	\$30,000	\$100,000	\$75,000
11	\$30,000	\$70,000	\$82,500
12	\$30,000	\$40,000	\$90,000
13	\$30,000	\$10,000	\$92,500
14	\$10,000	0	
<b>14yr Total</b>	<b>\$400,000</b>		<b>\$92,500</b>

## **Costs Potential Land Conservation**

- ❑ **Survey - may or may not be necessary**
- ❑ **Appraisal - required for income tax purposes or negotiated sales; landowners making full gifts of development rights must pay for the appraisal**
- ❑ **Legal Fees**
- ❑ **Title Search**
- ❑ **Land Trust Agent Fees - land trusts may charge for staff time or contracted services**
- ❑ **Stewardship Fund Contribution - most land trusts request contributions to these funds**

## **Financial Help/ Funding Sources**

- **Communities - more than \$140 million in the last 6 years appropriated by NH communities toward land conservation**
- **State Programs - Land and Community Heritage Investment Program (LCHIP), Water Supply Land Grant Program**
- **Federal Sources – Farm and Ranchland Protection Program, Land and Water Conservation Fund, Forest Legacy**
- **Private Funds - grants and private fund raising initiatives**
- *Note: fund providers usually expect something in return for their investment (public access, hunting and fishing etc.)*



