

Appendix D - Open Space and Recreation

Summary of Additional Tax Benefits, Funding and Easements

The numerous income and estate tax benefits have helped to convince many landowners to sell or donate their land or development rights. Both Congress and the New Hampshire state legislature make frequent changes to tax laws that affect the donation or sale of land, and therefore landowners should consult with an attorney or tax advisor before taking action on their property.

Any land donated for charitable purposes (i.e. without requirement, stipulation, or payment of goods or services) may qualify for an income tax deduction from the IRS. These charitable gifts may be made during the donor's lifetime or at his or her death and must be made to an IRS-qualified entity, such as a government agency or a tax-exempt land trust organization. Land donated becomes removed from estate taxes, thus releasing the burden to heirs. Conservation easements also reduce the amount of estate taxes as they reduce the assessed value of the land. If the value of the donated property or property rights exceed \$5,000, the landowner must obtain a "qualified appraisal" by a "qualified appraiser," the details of which can be explained by an attorney or tax advisor.

Income Tax

Income tax deductions for gifts of appreciated property (including most gifts of land and easements) can qualify for up to 30 percent of one's adjusted gross income (AGI). If the value of the gift is more than 30 percent of one's AGI, the value can be carried for up to five additional years, with a 30 percent deduction each year until the total value of the gift or six years have passed. If a landowner claims the property's basis—the original purchase price or value of the property at the time of inheritance—rather than fair market value, the landowner can claim up to 50 percent of his or her AGI each year for up to six years (in the same manner as with the 30 percent deduction). For a conservation easement, the easement value is adjusted in proportion to the property's basis. The 50 percent option is preferable for recently purchased or inherited property, property that has not significantly appreciated since time of acquisition, or anticipation of not living long enough to take advantage of the five-year carry forward period.

Bargain sale of property also holds tax advantages, as the amount of discount below the full value can qualify for IRS income tax deductions. With the addition of real estate broker commissions, real estate transfer tax, and capital gains tax paid through the full value sale, the bargain sale can be nearly as financially valuable to the landowner while passing significant savings to the municipality.

Other costs relevant to conservation easements can also be tax deductible. For example, cash or securities used to endow stewardship of easements are considered charitable donations. Also, legal and appraisal fees can qualify as miscellaneous deductions if they can alone or in combination with other fees make up at least two percent of one's AGI.

Estate Tax

Estate taxes are based upon the economic value of a property. Conservation easements have reduced assessed value (due to their lack of development potential), which results in significant decreases in estate taxes. This can be an important consideration for landowners wishing to conserve their land, as heirs often sell and subdivide land to pay for estate taxes. Estate tax rates are extremely high, in some cases reaching nearly 50 percent, and estate tax laws are frequently under review and revision. Landowners who anticipate their estates will be subject to estate taxes should consult a professional to determine their options.

The Taxpayers Relief Act of 1997 stipulates that up to 40 percent of the value of a conservation easement (up to \$500,000) may be excluded from the gross estate, following certain qualifications. This thereby reduces the amount of the estate tax. The Act also allows the estate of the landowner to grant an easement after the death of the landowner. Under the federal estate and gift tax, an individual can give up to \$11,000 tax-free annually to any number of individuals. With this arrangement, a landowner can reduce the value of his or her land with a conservation easement and then donate it to children in undivided interests over a period of years. Landowners should also be aware that any land donated to charity is exempt from federal estate taxes.

Current Use

Land under current use pays taxes at a lower rate than land not in current use. Rates for current use are set by the NH Department of Revenue Administration Current Use Board. While conservation easements can reduce the total property value and therefore reduce property taxes, most landowners already have the land under current use and are not paying property taxes on it. For land not already in the current use program or less than 10 acres in size, the landowner can apply to the municipality for a Conservation Restriction assessment. This would allow an easement on this land to be assessed at values similar to current use assessments.

Further Implementation Strategies, Programs, and funding Sources

The following are additional implementation tools to assist in crafting land protection:

Agricultural District Laws -- Agricultural district laws allow farmers to form special areas where commercial agriculture is encouraged and protected. Programs are authorized by state legislatures and implemented at the local level. Common benefits of enrollment in a district include automatic eligibility for differential assessment, protection from eminent domain and municipal annexation, enhanced right-to-farm protection, exemption from special local tax assessments and eligibility for state PACE programs.

Buffers -- Planning Boards are advised to consider a buffering requirement on uses adjacent to a farm when reviewing plans for subdivisions.

Circuit Breaker Tax Relief Credits -- Circuit breaker tax programs offer tax credits to offset farmers' property tax bills. Like differential assessment laws, circuit breaker tax relief credits reduce the amount farmers are required to pay in taxes.

Cooperative Purchases with Conservation Groups -- Various local, regional, and national land trusts and conservation groups can provide a tremendous amount of assistance to landowners wishing to keep their property undeveloped. Once land is accepted by a trust, stewardship of the property tends to be excellent. The Trust for Public Land (TPL), a national land trust, is able to move quickly with willing landowners, and can provide the necessary legal assistance to complete the transaction. TPL is particularly helpful with larger more expensive pieces of property that are threatened with development.

Current Use Program -- The Current Use Program is voluntary for landowners, but it is required under state statute for municipalities. Land under the New Hampshire's Current Use Program is based upon the value of the land as it is being used now (usually farmland, forest, and wetlands) as opposed to its potential use that would result in the property being taxed at a significantly higher rate.

Density Bonuses -- Developers are allowed some reduction in regulations, such as approval for a limited number of additional units (higher densities) on a site with reduced road width or set back requirements, in exchange for providing something else that the community desires, such as open space.

Designating Forests -- A town or the state, through the Department of Resources and Economic Development (DRED), can purchase, manage and improve forestlands. The forest designation can encourage landowners to donate their forestland because the donation can be accompanied by conditions restricting its use. The town also benefits from the forest designation. It can receive money from the state in lieu of taxes it would have gotten if the land were privately owned.

Designating Scenic Roads -- The Planning Board, Conservation Commission, or Historical Commission can request that a particular road be designated as "scenic." The entire road does not have to be designated as scenic; portions of road are acceptable. Voters can decide at a town meeting whether to officially approve the road(s). Prior to acceptance of a road as "scenic", abutters must be contacted and informed of the designation. Once the road is officially designated as "scenic" any repair, maintenance, reconstruction, or paving work done to that road cannot involve the removal of trees or any portion of a stone wall except with the written permission of the town Planning Board after a public hearing is held.

Impact Fees -- Towns that have capital improvements programs are allowed to charge developers impact fees to help cover the costs of the development on specific municipal facilities and increased infrastructure to support new development areas. While the statute specifies that the fees cannot be used for public open space, fees can be used to direct new development to desired areas.

Management Agreements -- Management agreements can be made with willing landowners through verbal, written or contract agreements to help protect natural resources.

On-Farm Retail Sales -- Flexibility in site plan review regulations can be used to exempt farm stands from inappropriate commercial regulation, or allow a community to develop a tiered approach to the regulating of farm stands. Communities are encouraged to exempt seasonal farm stands from municipal regulations other than proof of safe site access. Year-round operations warrant review by the local authorities to address the safe operation of the site. However, the review should be modified to provide for reduced standards from those applied to commercial and industrial uses.

Overlay Districts -- Overlay districts can be used by communities to apply special regulations to a number of resources with definable site-specific characterization that can be delineated on a map. There are several types of overlay districts, such as drinking water, wetlands, steep slopes, mountain, agricultural, village, historic, species of concern, and scenic overlay districts.

Performance and Design Standards -- Performance and Design Standards can include aesthetic and natural characteristics based land use regulations, and flexible zoning.

Purchase of Development Rights or Transfer of Development Rights (PDR or TDR) -- The purchase of development rights is essentially the purchase of a conservation easement. Instead of donating easements, farmers can sell them to the state, concurrently placing permanent agricultural preservation restrictions on their farms. Similarly, a community or local group may purchase development rights on farmland or other land. Instead of a tax deduction for the gift of an easement, the landowner receives cash for the value of the easement. Transfer of development rights operates under the same theory as a purchase program. This program transfers development from one area to another, and preserves open space in the sending area. Development rights are transferred from conservation land, such as farmland, to land slated for development. A developer purchases development rights from the owner of land in a conservation zone in order to accrue development “points”. He or she can apply points toward development of property in a zone where development is encouraged, and develop that land at a greater density than would otherwise be permitted.

Purchase of Land -- A voluntary method that a town can use to preserve open space. Land can be acquired through donation or purchase with or without various restrictions including deed restrictions, conservation easements, or for tax benefit to the donor. Although purchasing property is an obvious method that a town can use to preserve open space, this method can often times be cost prohibitive to a community. However, there are a variety of methods that a town can use to appropriate funds to purchase land for conservation purposes. A town can appropriate money through a Conservation Fund. These funds can be utilized after a vote of the town legislative body. The town can use Capital Reserve Funds as long as they are specified for a particular purpose such as

purchasing land or an easement. Dollars have been raised through managing town property in some communities, usually through timber harvesting. Surplus Funds from previous years can be used after a town meeting vote. If a proposal passes town meeting by a two-thirds vote, the town can borrow money through a municipal bond. A property that the town acquires through a tax lien could be used for conservation purposes. If the town decides to sell the particular property, a conservation easement or deed restriction could be placed on the property. Finally, land use change tax can be used for conservation purposes when a property is withdrawn from the Current Use Program.

Right-Of-First-Refusal -- A right acquired or donated to the town, where the town would have the first option to purchase a piece of property when an owner decides to sell. The town would not be obligated to purchase the property, but would have a limited amount of time to decide if there was interest in purchasing the land.

Tax Abatement -- Tax abatement is the exemption or deferment of taxes under certain conditions, either for a specified period, or until the conditions are no longer met. Taxes can be abated in New Hampshire for providing shade trees adjacent to highways and for not cutting timber. Any person can apply to the selectmen to have their taxes abated if they plant and protect shade trees along a highway adjoining their land. A person who owns and cuts woodlands as a business has to file a notice of intent to cut with the proper assessing officials in the town where such cutting is to take place. This notice includes, among other things, the persons name, residence, and an estimate of the amount and species to be cut. This procedure enables tax officials to tax an owner for the wood that is cut.

Tax Deduction -- The federal government provides some incentives to encourage people to donate land or conservation restriction on their land to the public either during their lifetime or in their wills. A person can deduct, on their federal income tax return, the amount of the value of the property or conservation restriction donated, subject to a ceiling on the allowance for charitable gifts in any one-year period.

Urban Growth Districts -- An urban growth district allows a community to define one or more areas where growth and development will be concentrated. Typically, this includes downtown areas and perhaps existing areas with higher concentrations of development. Open space can be conserved outside the urban growth by concentrating desired growth inside the urban growth district.

State and Federal Grant Programs

There are numerous State and Federal grant programs available that can be used to promote open space protection. The status of grant programs is subject to change. However, the following include some current programs that could be used by the Town to further the open space plan goal, objectives and recommendations.

Community Conservation Assistance Program – is administered through the UNH Cooperative Extension. Assistance for project guidance and training for community projects through municipalities and non-profit conservation groups. Contact Amanda Stone at (603) 364-5324.

Community Foundation Grant Program -- The Greater Piscataqua Community Foundation provides funding to non-profit and public agencies in the fields of environment, arts and humanities, education, and health and social and community services. Contact www.nhcf.org or (603) 430-9182.

Conservation License Plate Grant Program -- NH State Conservation Committee. To promote natural resource related programs throughout NH. Conservation districts, Cooperative Extension, conservation commissions, schools, groups, and other non-profits can apply for funding. Contact (603) 679-2790 or www.mooseplate.com.

Fisheries Habitat Conservation Program -- NH Fish and Game Department. To conserve fisheries habitat through a watershed approach. Landowners wishing to protect/enhance fisheries habitat can apply for funding. Contact Scott Decker, (603) 271-2744 or sdecker@wildlife.state.nh.us.

Forest Legacy Program --. Provides up to 75 percent of the purchase price for development rights to forestlands from willing sellers. Streamside land is among program priorities. Rights are held by the state in perpetuity, while the landowner retains all other rights, including the right to harvest timber. Contact NH DRED at (603) 271-2411.

Land and Community Heritage Investment Program -- This is a grant program for conserving and preserving New Hampshire's most valuable natural, cultural, and historical resources. Grant applications for the purchase of land/buildings or restoration of structures are accepted from tax –exempt organizations, municipalities, or other political subdivisions of the State. Contact the SNHPC or visit www.lchip.org.

Land and Water Conservation Fund Program -- Provides grants to state and municipal agencies for outdoor recreation and conservation projects. Contact Sheri Colby at NH DRED Division of Parks and Recreation, at (603) 271-3556.

Local Water Protection Grants (Drinking Water Source Protection) -- To protect public drinking water sources. Water suppliers, municipalities, conservation districts, and non-profits can apply. For more information, call DES at (603) 271-7017.

New Hampshire Drinking Water Source Protection Program --This grant is available to public water suppliers for source water protection. The program, which began in 1997, has a total of \$200,000 available to disburse every year to eligible municipalities. Grant amounts vary from \$2,000 to \$50,000. Past grants have been used to fund a watershed assessment and protection plan; perimeter fencing to protect a wellhead area; and monitoring wells for groundwater evaluation. Past recipients include: Conway, Lebanon,

Manchester, Rochester, Dover, Keene and Portsmouth. For further information contact: Sarah Pillsbury at (603) 271-1168 or e-mail swap@des.state.nh.us.

Nonpoint Source Local Initiatives Grants (Section 319 Grants) - For watershed management efforts. Grants are given to associations, organizations, and agencies. This grant program helps to fund all aspects of watershed management including organization, building, planning and assessment. Each year, a total of approximately \$160,000 is made available to about 15 eligible local projects aimed at protecting water quality. Call (603) 271-2358 or www.des.state.nh.us/wmb/was/grants.htm

Transportation Enhancement Program -- New Hampshire Department of Transportation provides funding for scenic highway projects and mitigation of water pollution due to highway runoff. Contact (603) 271-3734.

Watershed Restoration Grants (Section 319 Restoration Grants) -- Grants can be given to farmers, watershed associations, conservation districts, non-profit organizations, regional planning agencies, and municipalities to implement practices that help restore impaired waters. Call (603) 271-2358 or www.des.state.nh.us/wmb/was/grants.htm

Wildlife habitat – Small Grants Program – NH Fish and Game Department. For restoring, sustaining, or enhancing wildlife habitat on privately owned land. Owners of private, municipal, corporate or other non-governmental lands can apply for funds to implement habitat-improving practices. For more information, contact your regional F&G office at (603) 271-2461.