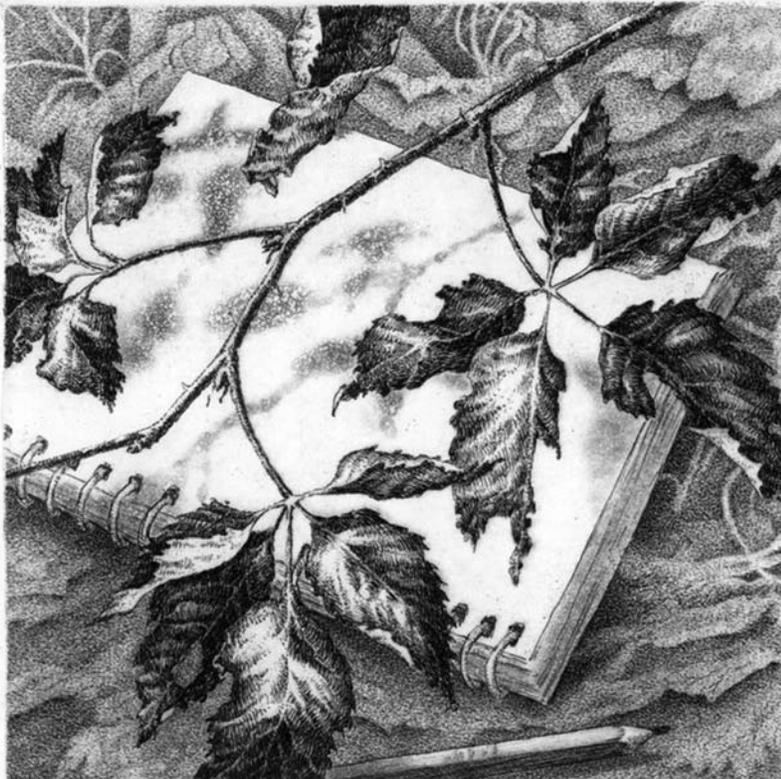


# The New Hampshire **MUNICIPAL CONSERVATION FUND** Guidebook



**DIJIT TAYLOR**

*Conservation Assistance  
and More!*

**CAROL ANDREWS**

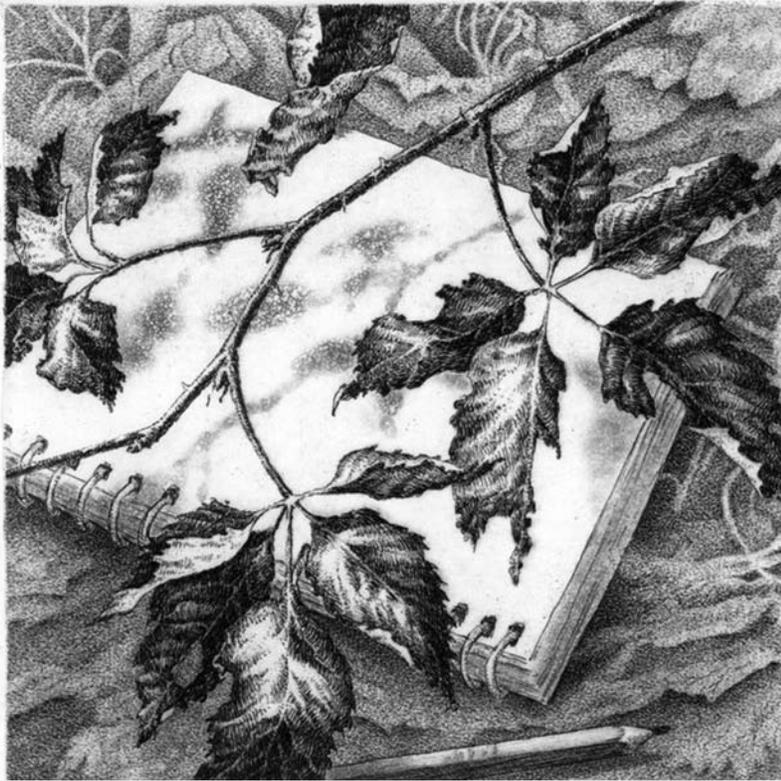
*New Hampshire Association  
of Conservation Commissions*

SOCIETY FOR THE  
PROTECTION OF  
NEW HAMPSHIRE  
FORESTS





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SOCIETY FOR THE  
PROTECTION OF  
NEW HAMPSHIRE  
FORESTS



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Since 1901, the Society for the Protection of New Hampshire Forests has worked to establish permanent conservation areas and promote the wise stewardship of private lands. Supported by 10,000 families and businesses, the Forest Society is the state's oldest and largest non-profit land conservation organization.

Printed copies of *The New Hampshire Municipal Conservation Fund Guidebook* are available from the New Hampshire Association of Conservation Commissions, 54 Portsmouth Street, Concord, NH 03301; (603) 224-7867. Price is \$10.00 per copy for 1–9 copies; \$8.00 per copy for 10 or more, including postage. The NHACC has been a valuable resource for New Hampshire communities since 1970. The organization's contributors and 195 member commissions make it possible for us to support the important work of New Hampshire's Conservation Commissions.

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Laws can change frequently. The information contained in this book reflects the New Hampshire laws in effect as of May 2010. As with any real estate transaction, you should seek professional legal advice before purchasing or selling any interest in real estate.



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## References cited

*Handbook for New Hampshire's Municipal Conservation Commissions*  
*NH Department of Revenue Administration 2007 Current Use Report*  
*Saving Special Places: Community Funding for Land Conservation*  
*The Economic Impact of Open Space in New Hampshire*  
*Conserving Your Land — Options for New Hampshire Landowners*



# Introduction

Conservation commissions in New Hampshire are actively and appropriately involved in a wide variety of projects and activities to fulfill their responsibilities. Many of these activities have financial costs, and conservation commissioners have many questions about the appropriate and legal uses of the funds available to them.

The New Hampshire Association of Conservation Commissions (NHACC) and the Society for the Protection of New Hampshire Forests receive many questions about conservation funding. There is no doubt that the work of conservation commissions in New Hampshire is becoming increasingly sophisticated.

This guidebook provides detailed information about the principal sources of money used for municipal conservation funds, options for structuring the fund, general guidance on proper expenditures from the conservation fund, some guidelines for accomplishing successful land protection projects, and resources for more information.

The information contained in this book should not be considered legal advice. If you have questions about a particular situation in your town, you are advised to contact your municipal attorney or the New Hampshire Local Government Center's Legal Services Department (<http://www.nhlgc.org>).



# Conservation Fund Basics

A conservation fund is a municipal finance account to be used by the conservation commission. It is the most common way for a conservation commission to hold money from various income sources.

A conservation fund may be created in municipalities that have voted to establish a conservation commission. Conservation commissions were created in 1963 when the Conservation Commission Enabling Act, [Chapter 36-A](#) of the NH Revised Statutes Annotated, was passed by the General Court and signed by Governor John King. Various parts of that law define the detailed application of the conservation fund and are referred to throughout this guidebook.

A municipality may establish a conservation commission by a vote of the legislative body (e.g. town meeting). The vote must be by simple majority. The conservation fund is usually established at the same time the commission is formed. Although current legal opinions state that creating the conservation commission automatically creates the conservation fund, many conservation commissions have established the fund through a separate vote by the legislative body. “Conservation fund” is the correct name from the state law, and its use is recommended.

Money in the conservation fund is non-lapsing, which means it carries over from one fiscal year to the next. (RSA 36-A:5 I) This is not the case with most municipal funds, and it provides the conservation commission with the opportunity to budget for anticipated expenses and to save toward important projects. The conservation fund, may hold money from both public and private sources. (RSA 36-A:4 and 36-A:5) Private donations to the conservation fund may be tax deductible as a charitable contribution under section 170 (c)(1) of the IRS code for the person making them. More information about donations to the conservation fund is found in Chapter 2 “Land Use Change Tax and Other Sources of Money for the Conservation Fund”.

For most expenditures, the conservation commission is allowed to spend the money by a majority vote of the commission. A few types of expenditures from the conservation fund require additional public hearings, approval or authorization. Those situations are described in Chapter IV, Expenditures from

the Conservation Fund. The Town Treasurer has custody of the conservation fund and can release money only by request of the conservation commission.

If you are unsure whether your municipality has formed a conservation commission, or if you'd like to form a new commission, please contact the [New Hampshire Association of Conservation Commissions](http://www.nhacc.org) (<http://www.nhacc.org>). (The *Handbook for New Hampshire's Municipal Conservation Commissions*, available through NHACC, provides sample wording for warrant articles to create the conservation commission and conservation fund, as well as a treasure trove of other information that will assist conservation commissions in understanding and carrying out their work.)

The conservation fund should not be confused with other funds that may be held for conservation purposes such as conservation commission operating budget dollars, a forest maintenance fund, conservation or open space bond monies, capital reserve funds, or trust funds. Other sources of money for conservation are discussed further in Chapter II of this book and in *Saving Special Places: Community Funding for Land Conservation*.

To determine if your town has established a conservation fund account, ask your municipal treasurer. A word of caution: many municipalities call funds that serve the purpose of the conservation fund by a variety of different names, which can cause a great deal of confusion. To minimize confusion, we recommend that the fund be referred to as “the conservation fund” and that other names be phased out.

If you find that your municipality has a conservation commission but does not have a conservation fund, you may ask your municipal treasurer to set up a new account. If a conservation fund account exists, your principal tasks are to:

- determine how much money is in it;
- find out if the money in the account is encumbered by specific requirements; and
- identify the way in which additions to and disbursements from the account are tracked.

**Recommended practice for starting a conservation fund or for clarifying its use:**

- Ask your municipal treasurer if your municipality has a conservation fund account (the name may be different) or to set up a new account
- NH law specifies the name “conservation fund”. It’s best to be consistent with the use of this name so that all parties understand the laws that govern its use.
- Provide your municipal treasurer and local governing body (e.g., board of selectmen) with copies of the following actions that have been passed in your town, carefully including the date of passage for any legislative body votes or governing body decisions:

- The parts of [RSA 36-A](#) that highlight the process for creating the fund, its purposes, and the details of expending from the fund.
- Warrant article language for the formation of your conservation commission.
- Warrant article language for formation of the conservation fund, if applicable.
- Warrant article language for the legislative body vote to allocate Land Use Change Tax dollars to the conservation fund.
- Warrant article language of the legislative body vote to allow the conservation commission to contribute to qualified organizations for land protection projects.
- Warrant article language of the legislative body vote to allow the conservation commission to expend funds for interests in property outside of town boundaries.
- Information about any other municipal decisions pertinent to your conservation commission and the conservation fund.

Money held in the conservation fund can be used for a variety of expenses that support the purposes for which the conservation commission was created, including:

- natural resource inventories
- maps of town properties
- wetland evaluations
- purchase of land or conservation easements
- training and education for conservation commission members and interested citizens
- guest speakers
- publications about conservation

The money in the conservation fund is managed by the municipality's treasurer, who should write checks from the fund only upon order of the conservation commission (RSA 36-A:5 II). It is important to work cooperatively with your municipal treasurer to create a mutually agreeable process for the disbursement of funds. You may also want to discuss this with your local governing body (e.g. board of selectmen in a town); it's important that they understand the process required to spend money from the conservation fund. Only the conservation commission can order a disbursement from the conservation fund.

---

## Summary

The conservation fund:

- ◆ May be formed in any municipality with a conservation commission
  - ◆ Should be named the “conservation fund”
  - ◆ Does not lapse (money in it can be carried over from year to year without any special authorization)
  - ◆ May hold both public and private dollars
  - ◆ May receive tax-deductible donations
  - ◆ Expenditures are authorized by a majority vote of the conservation commission.
  - ◆ Is held by the municipal treasurer who disperses only by request of the conservation commission
-



# Land Use Change Tax and Other Sources of Money for Land Conservation

## Current Use Taxation RSA 79-A:1 Declaration of Public Interest

“It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state’s citizens, maintaining the character of the state’s landscape, and conserving the land, water, forest, agricultural and wildlife resources. It is further declared to be in the public interest to prevent the loss of open space due to property taxation at values incompatible with open space usage. Open space land imposes few if any costs on local government and is therefore an economic benefit to its citizens. The means for encouraging preservation of open space authorized by this chapter is the assessment of land value for property taxation on the basis of current use. It is the intent of this chapter to encourage but not to require management practices on open space lands under current use assessment.”

## A. Land Use Change Tax

By far, the most popular source of money for municipal conservation commissions is the Land Use Change Tax (LUCT) per RSA 79-A:25. This is money paid to the municipality when land that was enrolled in the Current Use assessment program is removed from current use to be developed. The reasoning behind such an investment in the conservation fund is that the money acquired when land is removed from open space is logically used to protect more open space. Further details about both the Current Use assessment and the land use change tax can be found in *Saving Special Places: Community Funding for Land Conservation* (<http://clca.forestociety.org/publications/saving-special-places-book.asp>) and on the websites of SPACE, <http://www.nhspace.org> and NHACC (<http://www.nhacc.org>).

Many municipalities have decided, by vote of the legislative body (town meeting), to put some or all of the LUCT money into a conservation fund. As of spring 2009, 160 New Hampshire municipalities have

done this. Figure 1 shows the towns that have allocated LUCT to conservation. Appendix 2 provides details of the amount allocated for each community as of spring 2009. For further updated information, visit <http://www.nhacc.org>.

The amounts set aside range from 3% to 100% of the LUCT. Some towns put dollar limits on the total amount that can be set aside annually. In 2007, \$7,655,703 of land use change tax money was allocated to conservation funds all across the state. (See the Department of Revenue Administration's *2008 Current Use Report*).

### **How to Assign Land Use Change Tax Money to the Conservation Fund**

Allocating the Land Use Change Tax to the conservation fund is allowed under state law [RSA 79-A:25](#) and requires a majority vote by the legislative body (town meeting).

#### **RSA 79-A:25, II**

"The legislative body of the town or city may, by majority vote, elect to place the whole or a specified percentage, amount, or any combination of percentage and amount, of the revenues of all future payments collected pursuant to this chapter in a conservation fund in accordance with RSA 36-A:5, III. The whole or specified percentage or amount, or percentage and amount, of such revenues shall be deposited in the conservation fund at the time of collection."

Conservation proponents in different towns have used a variety of discussion points to advocate for allocating Land Use Change Tax money to the conservation fund:

- Explain what you propose.
- Define the Land Use Change Tax.
- Explain how much money your town has received from the LUCT in recent years.
- Explain where the LUCT money goes now.
- Give reasons to use the Land Use Change Tax for land conservation.
- Tell what other (nearby or similar) towns assign land use change tax to conservation, if applicable. Discuss potential tax impact.
- Explain what the money will be used for.
- Explain who will decide how the funds would be spent.
- Explain that future town meetings can change the decision.
- Summarize the key points.



Further details of items to include within each bullet point are found in Appendix 3. When selecting individuals to speak to town boards or committees, consider which of the available and interested people is most likely to make a clear presentation and be given a fair hearing. Choose speakers who are well respected in the community.

### **Talking Points for Increasing Land Use Change Tax Allocation to the Conservation Fund**

Sometimes conservation proponents in towns that have allocated less than all of the LUCT want to increase the percent of LUCT allocated to the conservation fund, or decrease a cap that limits the total amount going in to the conservation fund. The discussion points for doing this are much the same as to initiate the LUCT to conservation fund. However, in the cases of increasing the LUCT allocation to the conservation fund, it is also useful to talk about the projects and successes that have been achieved with the existing allocation and emphasize the reasons and benefits of increasing the allocation. See Appendix 4 for detailed discussion points that may be used in this situation.

### **Responding to Proposals for Reducing the Land Use Change Tax Allocation to the Conservation Fund**

Sometimes conservation commissions are presented with proposals from other interests in the town to reduce or eliminate the amount of LUCT allocated to the conservation fund. The points to cover in this case are to:

- Explain what outcome the conservation commission prefers
- Define the Land Use Change Tax
- Describe the history of the Land Use Change Tax allocation in your town
- Explain what the conservation fund has been used for
- Explain upcoming plans for the conservation fund
- Explain the tax benefits of keeping land in open space
- Emphasize the value of conservation land
- Explain the challenges of just asking the voters for money for projects as they arise
- Summarize the key points

Appendix 5 contains more details for each of these discussion points.

In some circumstances, it may be useful to create fact sheets supporting the conservation commission's preferred alternative. Fact sheets should provide information but not urge people to vote a certain way. Two sample fact sheets are shown in Appendix 6 and 7. If you choose to use fact sheets, it is preferable

to pay for these with funds that do not come from the taxpayers. Seek a modest private donation to support the creation of these sheets. Include a statement like, “no tax dollars were used to pay for this fact sheet” on the fact sheet itself. This way, you cannot be criticized for misusing tax dollars.

If you do not have access to modest private donations for fact sheets, and if you have planned far enough in advance, consider applying for a small grant. The [New England Grassroots Environment Fund](#) provides small grants for grassroots groups organizing themselves for environmental advocacy. The [New Hampshire Charitable Foundation](#) has also provided grants of this sort, so explore that prospect as well.

## **B. Other Sources of Money for the Conservation Fund**

In addition to the Land Use Change Tax, there are a number of other sources of funding that may be used to put dollars into the conservation fund. Most are described in greater detail in *Saving Special Places, Community Funding for Land Conservation* (<http://clca.forestociety.org/publications/saving-special-places-book.asp>).

Because funds from these sources can generally be held in accounts other than the conservation fund or used for purposes other than conservation, conservation commissions and other conservation proponents must exercise care both in providing correct wording for warrant articles dealing with the use of these funds and keeping track of where the money goes.

### **1. Appropriations and line items in municipal budget**

In many instances, towns vote an appropriation to the conservation fund at town meeting (or other legislative situation such as a special town meeting). Such money may be allocated for general conservation commission purposes or for specific uses.

The conservation commission should keep very clear records of what allocations have been made to the conservation fund and for what, if any, specific purpose the funds were designated. Designated funds may be spent only for the designated purpose.

### **2. Roll-over from conservation commission operating budget**

Some conservation commissions fund all their day-to-day operations through the conservation fund. A better process may be to pay for general operating expenses through the yearly municipal budget. To obtain funding through this mechanism, the conservation commission must participate successfully in the normal municipal budgeting process. Commissioners must find out who is responsible for preparing the budget, when budget requests should be submitted, and what information and supporting data should be included. The commission must prepare and submit a reasonable and well-documented budget request in a timely manner. In most towns, the budget committee or selectmen are responsible for preparing the proposed budget. In a city or larger town, the budget may be prepared by municipal staff.

Money in the conservation commission's operating budget can be used for any conservation purpose defined in the state law creating conservation commissions. Unlike the conservation fund, however, the annual budget is "lapsing," which means that any money left over at the end of the fiscal year automatically returns to the town's general fund.

Authority to spend money appropriated by a municipality lasts only to the end of the fiscal year. A commission should plan its budget and expenditures accordingly. It may be possible to encumber part of an annual appropriation to pay in the next fiscal year if the expenses are incurred prior to the close of the current fiscal year, but a commission should be absolutely sure of requirements and procedures prior to making commitments of this sort. Having both an operating budget and a conservation fund for use by the conservation commission can help to avoid some problems with the timing of expenditures.

A town meeting or city or town council may vote to place the unexpended portion of the commission's appropriation for a particular year in the conservation fund with the year specified in the warrant article or motion. This has minimal impact on the town budget for the coming year, as the money has already been raised. The vote requires a simple majority to pass. Such a warrant article might be worded as such:

"To see if the town will vote to authorize the conservation commission to retain the unexpended portion of its \_\_\_\_\_ (year) appropriation as authorized by RSA 36-A:5, said funds to be placed in a conservation fund account held by the municipal treasurer (RSA 41:29)."

The current procedure recommended by the Department of Revenue Administration (DRA) for rolling these funds from the conservation commission's operating budget into the conservation fund is to vote on this each year. This reallocation must be voted on annually because RSA 36-A:5 contains no language saying the allocation will continue until rescinded. For many previous years, the DRA treated a one-time vote to place unexpended operating budget appropriations in the conservation fund as a continuing allocation in subsequent years, but DRA no longer does so. Commissions will need to submit this warrant article annually in a timely way.

### **3. Municipal fund balance**

Sometimes town revenues exceed expenses, resulting in "extra" money that is held in an unreserved fund balance. Guidelines from the DRA require a town to keep 5-10% of the total revenue from its town, county, school, and state property taxes in reserve. This helps a community maintain adequate funding for cash flow purposes and town emergencies.

However, when the amount in the unreserved fund balance exceeds the amount that must be set aside, the extra can be used as the town chooses. Some towns have decided to allocate a portion of such extra money to be used for conservation. The decision to put unreserved fund balance monies in to the conservation fund must be made by a simple majority of voters at the annual town meeting.

Unreserved fund balance money, even if it is intended for conservation use, may be placed in other accounts that are dedicated to conservation. Conservation commissioners and conservation proponents need to be alert to the wording of the warrant article. This is a somewhat unusual but creative source of money for conservation. Voters may like it because it allocates funds for a generally popular activity like conservation without having a direct impact on taxes.

#### 4. Grants, donations, and bequests

The law that governs conservation commissions allows for the commission to receive money in the form of “gift, grant, bequest, or devise.” Such money can be placed in the conservation fund.

Before the conservation commission can accept such funds, the governing body of the municipality, typically the board of selectmen, must approve the acceptance of the funds. In some towns, the selectmen have passed blanket approval for the conservation commission to apply for and accept monetary grants, donations and bequests. In other towns, the standard is that the selectmen must pre-approve each income element individually.

Sometimes the grant or gift is made for a specific purpose, or with restrictions regarding the use of the money. Funds that are obtained through such sources for defined purposes require especially careful tracking to ensure that the money is used for the intended purpose and reported correctly to the grant funding source.

This section of the law governing conservation commissions applies to each of the following three sources of money that may be used to populate the conservation fund.

#### **RSA 36-A:4 Powers**

Said commission may receive gifts of money, personal property, real property, and water rights, either within or outside the boundaries of the municipality, by gift, grant, bequest, or devise, subject to the approval of the local governing body, such gifts to be managed and controlled by the commission for the purposes of this section . . .

##### *a. Grants*

There are a number of sources of grants for conservation purposes. Conservation commissions can apply for and accept grants for all the purposes described in the enabling legislation. The municipal governing body (Board of Selectmen for towns) must approve the acceptance of Grants made to the municipality.

Grants may come from a government source (like the state's Land and Community Heritage Investment Program (LCHIP) or the federal Land and Water conservation fund), from funds held by a community foundation, such as the New Hampshire Charitable Foundation, or from private foundations with an interest in a specific aspect of conservation, such as the grant from the Davis Conservation Foundation that provided funds for the creation of this publication.

Grants as sources of funding for land conservation are described in *Saving Special Places—Community Funding for Land Conservation* (<http://clca.forestsociety.org/publications/saving-special-places-book.asp>). Further information about a wide variety of grants for a number of conservation activities is found at <http://clca.forestsociety.org/pdf/funding-sources.pdf>.

Grant application processes can be extensive and time consuming. Before undertaking such an effort, be as sure as possible that the grant source is a suitable fit for the proposed project. This involves a careful and unbiased reading of the grant guidelines and, frequently, personal conversations with a grants administrator. It is advisable to alert the municipal governing body when grants are being applied for, because, as mentioned above and quoted in RSA 36-A:4, the governing body of the municipality must vote to accept any grants that are secured for the municipality.

Funding received from a grant source may be put into the conservation fund or into other suitable municipal accounts, depending on the timing of the funds, the preference of the municipal governing body, and the funding source. It is very important that the use of money from grant sources be tracked carefully and accurately so it can be reported in a timely and responsible way to the granting entity.

#### b. *Private Donations*

Conservation commissions are allowed to solicit and accept private donations for their work. Such donations may be tax deductible for the person making them under section 170(c) of the IRS code, as are donations to any other element of municipal government. The local governing body must approve the acceptance of such donations or gifts.

Like any other money placed in the conservation fund, care must be taken to properly track funds that were solicited, donated or gifted for a particular purpose.

#### **Recommended practices for handling donations:**

- Obtain the approval of the local governing body before accepting a donation
- Donations should be sent to the conservation commission before being passed along to the town treasurer for deposit. This will allow for internal tracking of the purposes of donations, the collection of names and addresses, and for thank you notes to be sent by the commission.

- Thank donors promptly with a phone call, email, note or letter. The IRS (§ 170) requires that the recipient (your conservation commission) send a letter acknowledging any donation over \$250.
- You may also thank donors by publishing their names in a newsletter, in your town report, on a website, or by other means.
- Keep a record of these donors and their donations. The donor names may be helpful in numerous ways: future appeals for donations, assistance with passage of town meeting warrants, recruitment for conservation commission membership or committees, newsletter mailings, invitations to celebrations, educational and other events, etc.

**The letter of acknowledgement, [on official town or conservation commission letterhead if applicable, or simply include the town's address] must include:**

- The name of the donor
- The donation amount
- The date of the donation
- Whether the town provided the donor with any goods or services as a result of the contribution (other than certain token items), or a description and good faith estimate of the value of any goods or services given
- Be signed by an identified municipal official (conservation commission members are municipal officials)

A letter of acknowledgement for donation to conservation fund might include the following wording:

Dear Mrs. Smith,

Thank you for your generous donation of \$XX.00 made on [date] to the Anytown Conservation Commission. Your gift will help us to conserve important land along the Reallywet River.

No goods or services were provided in exchange for your donation.

Sincerely,

John Doe, Chairman  
Anytown Conservation Commission

*c. Bequests and devises*

Bequests (gifts of money) and devises (gifts of real property) are gifts that are received through the terms of the will or other end-of-life document. Like a gift or grant, acceptance of a bequest requires the approval of the governing body of the municipality. Thanking the donor is a little trickier, but chances are good that the family of the person who has made the bequest through his or her will would very much appreciate hearing that the gift has been accepted and will be put to good use.

## **C. Money for Conservation That Is NOT Part of the Conservation Fund**

There are several sources of money for conservation in towns that are frequently used for conservation purposes but which are never or unlikely to be included in the conservation fund. These include the conservation commission operating budget, the forest maintenance fund, open space (or conservation) bonds, and capital reserve funds/trust funds. These are described briefly below because conservation commissions should be familiar with their functioning and possibilities.

1. *Conservation commission operating budget*

The annual conservation commission operating budget, like most municipal funds, is “lapsing” which means that any money left over at the end of the year automatically returns to the town’s general fund, unless the town votes to handle the money otherwise. See Section B above for more information about the operating budget and the mechanism for rolling it over into the conservation fund.

2. *The forest maintenance fund*

The forest maintenance fund is a distinctly different fund from the conservation fund and exists in conjunction with town forest designation. The formation of the fund is prescribed in RSA 31:113.

**31:113 Appropriations Authorized.** – For the purposes of establishing or maintaining a city or town forest, a city or town may raise and appropriate such funds as it deems necessary. The proceeds from said forest shall be placed in a special forest maintenance fund and shall be allowed to accumulate from year to year, unless otherwise voted by the legislative body of such city or town.

Management of this fund is given to either the conservation commission or to a separate forestry committee; this is designated by a vote of the legislative body (e.g. town meeting) under RSA 31:110. This fund is specifically allocated for the maintenance of lands that have been designated as Town Forests. For more information on Town Forests see RSA 31:111 and RSA 31:112 and consult the Local Government Center website for a Legal Q & A titled “Seeing the Forest for the Trees.”

The NH Department of Revenue Administration now advises that expenditures from the forest maintenance fund must be approved by the legislative body (town meeting) and not simply by a

vote of the forestry committee or conservation commission. Conservation commissions, especially those that manage their municipality's forest maintenance funds, need to be aware that the procedure for spending money from the forest maintenance fund is different from the procedure for spending money from the conservation fund. Including the expenditures from the forest maintenance fund as part of the annual budget is a very clear way to ensure getting the needed approval from the legislative body.

### 3. *Open space/conservation bond*

Since 2001, New Hampshire towns have adopted the idea of using bonds to finance major conservation acquisitions. The process and several examples are explained in detail in *Saving Special Places, Community Funding for Land Conservation* (<http://clca.forestsociety.org/publications/saving-special-places-book.asp>).

For purposes of this document, think of a conservation bond, like any municipal bond, as being similar to a line-of-credit. No dollars from the bond are available to be stored in the conservation fund.

### 4. *Capital reserve funds/trust funds*

Some municipalities include funds specifically for land conservation in a capital reserve fund or trust fund. This is arguably the most effective form of long-term planning for land conservation expenditures. However, funds held this way are not part of the conservation fund so are outside the scope of this guidebook. For further information on Capital Reserve Funds/Trust Funds see *Saving Special Places, Community Funding for Land Conservation* (<http://clca.forestsociety.org/publications/saving-special-places-book.asp>) and RSA 31:19, and RSA 31:19-a.

If a funding source depends on passage of a warrant article at regular town meeting or through the official ballot (Senate Bill 2) process, be aware that there are timing requirements and very strict deadlines that must be met prior to submitting articles for inclusion in the municipal warrant. Ask your local officials or visit the NH Local Government Center's website <http://www.nhmunicipal.org>, click on "Local Officials Info", then click "Important Dates for Local Officials".

## **Partnerships**

Partnerships are not literally funding sources, but may be creative and valuable ways for conservation commissions to add energy, expertise, value, and sometimes dollars to a proposed conservation project. Partnerships allow for groups with intersecting interests to come together to produce great results. A conservation commission may not be able to fully fund a particular project, but they can successfully partner with any number of organizations (parks and recreation committee/commission, heritage commission, historical society or state and federal programs) in order to meet broader goals. If your conservation commission is collaborating with a historic preservation organization to protect a farm, conservation funds may appropriately be used to conserve the land, while other resources would be used to preserve any buildings on the property.

TABLE 1

<b>Conservation Funding Options</b>	
<b>Funding Mechanism/Source</b>	<b>Required Vote to Create/Accept</b>
Conservation Money That Can be Held in the Conservation Fund	
<b>Land Use Change Tax</b>	Simple majority vote of legislative body
<b>Annual appropriation/ budget line item</b>	Simple majority vote of legislative body
<b>Roll over from conservation commission operating budget</b>	Simple majority vote of legislative body
<b>Municipal Fund Balance</b>	Simple majority vote of legislative body
<b>Grants</b>	Governing body must approve acceptance
<b>Private Donations</b>	Governing body must approve acceptance
<b>Bequests and Devises</b>	Governing body must approve acceptance
Conservation Money that is Not Held in the Conservation Fund	
<b>Conservation Commission Operating Budget</b>	Simple majority vote of legislative body
<b>Forest Maintenance Fund</b>	Simple majority vote of legislative body
<b>Bond</b>	Super majority vote of legislative body (3/5 or 2/3)
<b>Capital Reserve Funds/ Trust Funds</b>	Simple majority vote of legislative body

# Structure of the Conservation Fund

The conservation fund is different from other municipal funds; it can hold both private and public dollars. These dollars can be used for many different purposes and can come from many different sources. Your commission has the option of setting up different internal accounts for different purposes; all can be held within the conservation fund. Talk with your municipal treasurer to find out whether separate accounting (within the conservation fund) can be tracked using your municipal accounting system. Whether or not your municipal treasurer has the ability to track separate accounts within the conservation fund, your commission may want to form a conservation commission treasurer position to track the income and expenditures of the commission and ensure that all monies within the conservation fund are used as intended. Consider setting up different accounts within the conservation fund for purposes such as land conservation, stewardship, maintenance of town-owned property, etc. This does not mean that the conservation commission will be able to write its own checks, only that there is careful internal tracking of the conservation fund.

Sample of conservation fund sub-accounts

Anytown Conservation Fund		Balance
	<b>Sub-Accounts</b>	
	Easement Stewardship Fund	\$20,000
	Reallywet River Land Conservation Initiative	\$50,000
	Unrestricted	\$30,000
	<b>Total</b>	<b>\$100,000</b>

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## Summary of Conservation Fund Structure

- ◆ The conservation fund bank account is held by the municipal treasurer.
  - ◆ The conservation commission can keep track of different monies acquired for specific purposes within the conservation fund.
  - ◆ If the conservation fund holds money that is restricted in any way (such as by donor's stated intent), it is even more important to form and carefully track restricted accounts within the conservation fund.
- 

### Recommended practices:

You may want to consider a more sophisticated accounting system if:

- Your legislative body (e.g. Town Meeting) created special parameters for the use of your Land Use Change Tax allocation. Your commission may choose to separate those dollars from the rest of your conservation fund.
- You have collected private donations that have a restricted purpose (e.g. dollars for the protection of a certain parcel). It is imperative that these dollars are spent only on the specified purpose.
- Your municipality holds interests in real estate (e.g. conservation easements). You should have money set aside for stewardship!
- Remember to incorporate the future costs of stewardship into the total cost of every land protection project.
- Hold these dollars in a separate, restricted fund within the conservation fund.



# Expenditures from the Conservation Fund

## A. What Can We Spend Conservation Fund Money On?

Guidance for making expenditures from the conservation fund can be found in the law that specifies the work of conservation commissions. Conservation fund dollars may be spent in accordance with the purposes set forth in [RSA 36-A](#), the legislation that created the conservation commissions. **Generally speaking, any expenditure “for the proper utilization and protection of the natural resources and for the protection of watershed resources of said city or town” is a proper expenditure.**

The same law gives guidance for the activities of a conservation commission and therefore expenditures from the conservation fund.

### RSA 36-A states that the conservation commission:

- shall conduct researches into its local land and water areas
- shall seek to coordinate the activities of unofficial bodies organized for similar purposes
- may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which in its judgment it deems necessary for its work
- shall keep an index of all open space and natural, aesthetic or ecological areas within the city or town, as the case may be, with the plan of obtaining information pertinent to proper utilization of such areas, including lands owned by the state or lands owned by a town or city
- shall keep an index of all marshlands, swamps and all other wet lands in a like manner, and

- may recommend to the city council or selectmen or to the department of resources and economic development a program for the protection, development or better utilization of all such areas
- shall keep accurate records of its meetings and actions
- shall file an annual report which shall be printed in the annual town or municipal report
- may appoint such clerks and other employees or subcommittees as it may from time to time require (RSA 36-A:2)
- may acquire in the name of the city or town, subject to the approval of the local governing body, by purchase, the fee in such land or water rights within the boundaries of the municipality, or any lesser interest, development right, easement, covenant, or other contractual right including conveyances with conditions, limitations, or reversions, as may be necessary to acquire, maintain, improve, protect, or limit the future use of or otherwise conserve and properly utilize open spaces and other land and water areas within their city or town, and shall manage and control the same (RSA 36-A:4)
- may expend funds for the purchase of interests in land outside the boundaries of the municipality, subject to the approval of the local governing body (a one-time vote of the legislative body is required) (RSA 36-A:4-a)
- may expend funds for contributions to “qualified organizations,” as defined in section 170(h)(3) of the Internal Revenue Code of 1986, for the purchase of property interests or facilitating transactions relative thereto to be held by the qualified organization, when such purchase carries out the purposes of this chapter. Because such contributions further the protection of the state’s natural resources, they are hereby declared to be a public purpose (a one-time vote of the legislative body is required) (RSA 36-A:4-a)

If proposed expenditures from your conservation fund are questioned by municipal officials or citizens, it is often useful to quote and/or refer to the part of the state law that allows the kind of expenditure you propose.

Generally speaking any expenditure “for the proper utilization and protection of the natural resources and for the protection of watershed resources of said city or town” is a proper expenditure.

## B. What Do We Have to Do to Spend Conservation Fund Money?

The process for spending conservation fund money varies depending on which of four basic types of expenses are being paid. The four types of expenses are explained below and summarized in Table 2 on page 23.

1. General expenditures: In general, the conservation commission has authority to spend conservation fund money for whatever conservation-related purposes the members agree on.

**RSA 36-A:5-I Appropriations Authorized**...Money may be expended from said fund by the conservation commission for the purposes of this chapter without further approval of the town meeting.

**RSA 36-A:5-II** ...The disbursement of conservation funds shall be authorized by a majority of the conservation commission.

2. Purchase property interests in town: If the expenditure is to be used to acquire property or interest in property (such as a conservation easement or executory interest in a conservation easement) within the municipal boundaries:
  - a. The board of selectmen (or other governing body) must approve the expenditure.
  - b. The conservation commission must hold a public hearing to allow citizens to comment on the proposed expenditure.
  - c. The conservation commission must vote to expend the conservation funds.

**RSA 36-A:4 Powers**... Said commission may acquire in the name of the city or town, subject to the approval of the local governing body, by purchase, the fee in such land or water rights within the boundaries of the municipality, or any lesser interest, ...

**RSA 36-A:5-II Appropriations Authorized**...Prior to the use of such funds for the purchase of any interest in real property...the conservation commission shall hold a public hearing with notice in accordance with RSA 675:7.

...The disbursement of conservation funds shall be authorized by a majority of the conservation commission.

3. Purchase property interests out of town: If the property interest is outside the municipal boundaries:
  - a. The legislative body must vote to authorize the conservation commission to make such expenditures. This is a one-time vote, and it is valid until rescinded by a subsequent vote. A special vote is not required for each project.
  - b. The governing body approval must approve the expenditure.
  - c. The conservation commission must hold a public hearing.
  - d. The conservation commission must vote to expend the conservation funds.

**36-A:4-a, I(a) Optional Powers.**

The legislative body of a city or town may vote at an annual meeting to authorize the conservation commission to:

- (a) Expend funds for the purchase of interests in land outside the boundaries of the municipality, subject to the approval of the local governing body...

**RSA 36-A:4 Powers...** Said commission may acquire in the name of the city or town, subject to the approval of the local governing body, by purchase, the fee in such land or water rights within the boundaries of the municipality, or any lesser interest, ...

**RSA 36-A:5-II Appropriations Authorized**

...Prior to the use of such funds for the purchase of any interest in real property..... the conservation commission shall hold a public hearing with notice in accordance with RSA 675:7.

...The disbursement of conservation funds shall be authorized by a majority of the conservation commission.

4. Contribute conservation fund money toward a land protection project where the municipality will NOT hold property interest. (This option for spending conservation fund monies was clarified in statute by the legislature in 2008 in response to long-standing disagreement among the legal community about the legality of municipalities providing funds for land acquisition projects in which they did not hold property interest.):
  - a. The legislative body must authorize the conservation commission to expend conservation fund monies to “qualifying organizations” (e.g. land trust) according to RSA 36-A:4-a, I(b). This is a one-time vote and does not need to be passed for each project.
  - b. The conservation commission must hold a public hearing.
  - c. The conservation commission must vote to expend the conservation funds.

**36-A:4-a, I(b) Optional Powers.**

The legislative body of a city or town may vote at an annual meeting to authorize the conservation commission to: .....

(b) Expend funds for contributions to “qualified organizations,” as defined in section 170(h)(3) of the Internal Revenue Code of 1986, for the purchase of property interests or facilitating transactions relative thereto to be held by the qualified organization, when such purchase carries out the purposes of this chapter. Because such contributions further the protection of the state’s natural resources, they are hereby declared to be a public purpose.

**RSA 36-A:5-II Appropriations Authorized**

Prior to the use of such funds...for a contribution to a qualified organization for the purchase of property interests under RSA 36-A:4-a, I(b), the conservation commission shall hold a public hearing with notice in accordance with RSA 675:7.

...The disbursement of conservation funds shall be authorized by a majority of the conservation commission.

TABLE 2

<b>Process for Spending Conservation Fund Money</b>	
<b>Expenditure Type</b>	<b>Authorization Required</b>
<b>General Expenditures to pay for conservation-related goods or services</b>	Requires majority vote by conservation commission (RSA 36-A:5, II)
<b>Purchase Property Interest</b>	
<b>Purchase property interest within municipal boundaries</b>	Requires approval of Selectmen or other governing body (RSA 36-A:4)
	Conservation commission must hold a public hearing with notice in accordance with RSA 675:7 (RSA 36-A:5 II)

TABLE 2, CONTINUED

<b>Purchase Property Interest</b>	
<b>Purchase property interest within municipal boundaries</b>	Requires majority vote by conservation commission (RSA 36-A:5 II)
<b>Purchase property interest not within municipal boundaries</b>	Town must have passed special warrant article (RSA 36-A:4-a, I(a))
	Requires approval of Selectmen or other governing body (RSA 36-A:4)
	Conservation commission must hold a public hearing with notice in accordance with RSA 675:7 (RSA 36-A:5 II)
	Requires majority vote by conservation commission (RSA 36-A:5 II)
<b>Contribute toward land protection project where municipality will NOT hold property interest</b>	
	Town must have passed special warrant article (RSA 36-A:4-a, I(b))
	Conservation commission must hold a public hearing with notice in accordance with RSA 675:7 (RSA 36-A:5 II)
	Requires majority vote by conservation commission (RSA 36-A:5 II)
Conservation commission sends request for release of funds to the Town Treasurer	
Town Treasurer disburses funds	

If the proposed expenditure depends on passage of a warrant article at regular town meeting or through the official ballot (Senate Bill 2) process, be aware that there are timing requirements and very strict deadlines that must be met prior to submitting articles for inclusion in the municipal warrant. Ask your local officials or visit the NH Local Government Center’s website <http://www.nhmunicipal.org>, click on “Local Officials Info”, then click “Important Dates for Local Officials”.

**Recommended Practice:**

Check with your municipal treasurer to determine what process he or she prefers in order to make a disbursement from the conservation fund. It's important to have a good working relationship with the town treasurer. Most treasurers and bookkeepers prefer that the request be presented to them typed or neatly written on a full sheet of paper (not scrawled on a little scrap of paper) that clearly states the amount of the expenditure, any numbers associated with the municipal account, the name and address of the recipient, and the signature of the chair or other officer. You may attach other documents to this sheet, such as the bill that is being paid, the minutes indicating that/when a majority of the conservation commission voted to expend the funds, or other relevant documentation.

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**Summary of How to Spend Conservation Fund Monies:**

- ◆ RSA 36-A describes the scope of a conservation commission's authority.
  - ◆ Only the conservation commission can request disbursements from the conservation fund.
  - ◆ In some circumstances, the conservation commission must receive authorization from the legislative body and/or approval from the governing body before making expenditures (see Table 2 on page 23).
-



# Land Protection Basics

Most conservation commissions in New Hampshire are very interested in protecting land. Fully 95% of conservation commissions responding to a 2007 survey expressed intent to protect more land in their communities. Land protection expenditures are frequently both the largest and the most complex uses of the conservation fund.

**RSA 36-A:4 Powers.** – ...Said commission may acquire in the name of the city or town, subject to the approval of the local governing body, by purchase, the fee in such land or water rights within the boundaries of the municipality, or any lesser interest, development right, easement, covenant, or other contractual right including conveyances with conditions, limitations, or reversions, as may be necessary to acquire, maintain, improve, protect, or limit the future use of or otherwise conserve and properly utilize open spaces and other land and water areas within their city or town, and shall manage and control the same, but the city or town or commission shall not have the right to condemn property for these purposes.

Conservation commissions choosing to undertake land protection projects should seriously consider the following questions:

- Why should you protect land?
- What land should you protect?
- Are partners available to assist with the project?
- What are the available land protection strategies?
- Which land protection strategies suit your municipality?
- Which land protection strategy is best for a given project?

- What project costs might be incurred?
- How will perpetual protection be insured?

Information about each of these questions follows.

## **A. Why Should You Protect Land?**

It is the statutory responsibility of the conservation commission to be concerned with the natural resources of its community. RSA 36-A states that a conservation commission is established “*for the proper utilization and protection of the natural resources and for the protection of watershed resources of said city or town*”. (emphasis added) Voluntary land conservation is one of the best ways to accomplish the permanent protection of natural resources that provide important ecological functions. In some cases, protection of natural resources with cultural, recreational, or other values is also a valid activity for the conservation commission. It is also appropriate for the conservation commission to be actively involved in regulatory land use decisions through the municipal and regional planning processes.

Permanent protection of selected high value properties provides both ecological values and economic benefits to the community. A number of studies done around the state have shown that land in open space uses (farming, forestry, open-space recreation) make substantial contributions to the economy of the state and municipalities through employment in these sectors, the timber yield tax, the money spent and recirculating locally on fresh healthy local foods, and dollars from residents and tourists engaging in outdoor recreation. Sixteen percent of all New Hampshire workers are employed in open space land uses, which also contribute 35% of state and local taxes.<sup>1</sup> The average property tax is lower in municipalities where more of the land has been retained in open space.<sup>2</sup>

In addition to regulatory and economic reasons for conserving open space, there is a strong community preference for doing so. In town after town, community surveys find that residents love and want to retain the rural character of their communities. Most community master plans show a strong preference for retaining “rural character”. Rural character can be a difficult concept to define: some communities interpret it to mean ensuring that undeveloped land remains available for sustainable natural resource based economic activities like farming and forestry.

## **B. What Land Should You Protect?**

Knowing what you have for resources helps you to understand what is most important to protect. Ideally, your municipality has a natural resource inventory and/or a conservation plan that has been created

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<sup>1</sup> Resource Systems Group, 1998, The Economic Impact of Open Space in New Hampshire

<sup>2</sup> Ad Hoc Associates, 1995. Building a Healthy Squam Lakes Economy and Trust for Public Land, 2005. Managing Growth: The Impact of Conservation and Development on Property Taxes in New Hampshire

by the conservation commission to reflect the existing natural resources and the priorities of the municipality. It is especially helpful if the conservation plan is a chapter of a current and officially adopted municipal Master Plan.

Having objective selection criteria that relate to the elements of the natural resource inventory or conservation plan helps the conservation commission to decide which land to protect. In addition to assisting the conservation commission in choosing which projects to pursue for permanent land protection, land protection selection criteria can assist your commission by:

- Educating landowners, new commission members, other town officials, and the general public about important natural resources in your community
- Creating better communication about your goals to the general public, landowners, and other potential partners
- Demonstrating to potential funding entities that you are operating in a very professional manner
- Documenting the reasons why you chose to invest in a certain project for current fund raising purposes or for future stewardship of the protected parcel

Conservation commissions that have established selection criteria have asked themselves questions like:

- Does this area or parcel fall within priority areas of a conservation plan?
- Does the area or parcel abut protected lands or municipal lands?
- Does the area or parcel provide protected land in a part of town that lacks this resource?
- Is the area or parcel actively farmed and/or does it include important farm soils?
- Is the area or parcel a well-managed woodlot? Is it a Tree Farm?
- Does the area or parcel include important habitat? The 2006 New Hampshire Fish and Game Department's Wildlife Action Plan contains a great deal of highly useful information about wildlife habitat value for every town in the state ([http://www.wildlife.state.nh.us/Wildlife/wildlife\\_plan.htm](http://www.wildlife.state.nh.us/Wildlife/wildlife_plan.htm)).
- Have rare plant or animal species been identified or documented on the area or parcel or on an abutting parcel?
- Has another entity, such as a state agency or land trust, identified this parcel as a focus area?
- Does the area or parcel contain an important cultural resource, such as a trail or place of historic significance?
- Is the land presently used by the public for recreational purposes? Will public access be provided if it is protected?
- Does the area or parcel fall within the watershed of a drinking water supply area or an aquifer?
- Does the area or parcel meet the selection criteria of likely conservation partners?

The characteristics of the natural and cultural resources of your municipality and the priorities of the municipality will help to determine which of these types of criteria are most important for your town. This is where the science of a natural resource inventory merges with the art of setting land use planning priorities for the whole community. Articulating how the protection of the land helps to fulfill the goals of the municipal Master Plan strengthens the proposal.

Some conservation commissions, open space committees, and land trusts use numeric score sheet filled out by commission/committee members in order to prioritize projects, while others look for the presence or absence of elements of the selection criteria. Samples of selection criteria for some conservation groups are found in Appendix 8. You can use these to customize selection criteria for your community.

### **C. Are Partners Available to Assist with the Project?**

Given the array of responsibilities and activities that conservation commissions are charged with, it is a rare conservation commission that is able to develop the depth of knowledge needed to accomplish some of the more complex land protection transactions. Your project is likely to go much more smoothly if you are able to work with an available local, state, or regional land trust or other skilled professional organization. These groups have specialized expertise in land protection activities and are frequently willing and able to share that expertise with local conservation commissions. Find a list of land trusts working in your area at <http://clca.forestsociety.org/conservation-organizations/resources-by-town.asp>.

You can also use your natural resource inventory or the state's conservation land mapping information (<http://mapper.granit.unh.edu>) to determine what conservation groups already hold conservation land in your community. These are possible partners for new land protection projects.

Depending on the scope and complexity of the project, if there is no available conservation organization to partner with, you may find it effective to engage someone with special skills to manage the project for you. This may be either a skilled local volunteer or a paid professional consultant. Assistance of this sort can speed up the project, help highlight and clarify the areas where you need to make important decisions, and prevent you from inadvertently making costly errors.

### **D. What Are the Available Land Protection Strategies?**

There are three main strategies that are used by towns and other conservation entities when seeking to ensure permanent protection for a parcel of land. These are:

1. acquisition of full ownership (fee title)
2. acquisition of a conservation easement (extinguishing development rights)
3. acquisition of an executory interest in a conservation easement held by another qualified holder

Any of these three protections may be established through:

- donation of the property interest by the owner to the town or a conservation partner
- purchase by the town or conservation partner
- purchase for less than the full value. The latter is often referred to as a bargain sale

The pros and cons of each of these strategies are summarized in the table below.

<b>Type of Property Interest</b>	<b>Pros</b>	<b>Cons</b>
Fee ownership	Town has full control over all the resources and uses of the property.  Possible town income from sustainable management of the property	Loss of property tax income to town  Management responsibility and costs lie with the town  Intent to conserve may be subverted by future town meetings
Conservation easement (extinguishment of development rights)	Usually costs less than full fee acquisition  Property owner continues to pay taxes (at current use rate)	Monitoring and enforcing terms of easement forever is a substantial responsibility/liability
Executory interest in conservation easement	May meet requirements of funding source or preference of land owner  Requires much less involvement than being primary holder of conservation easement	Ensuring that the primary conservation easement holder is monitoring and enforcing terms of easement forever is a significant responsibility

### **Full Ownership (also Called Fee Title)**

Fee ownership is traditional ownership of all of the property interests in a parcel. Fee ownership may be acquired by gift or purchase. In this familiar type of exchange, the landowner gives up all of his/her rights and responsibilities for the land to the town or conservation partner. This kind of acquisition is often the simplest because all the parties involved are fully familiar with the general concept and needed elements of the transaction. If the property interest is being purchased, this is the most expensive option because it includes all the landowner's rights to the property.

Land held by municipalities or conservation partners in fee title requires management to ensure that the conservation purposes of the acquisition continue to be met. There may be opportunities to earn money through agricultural leasing and sustainable timber harvesting on the property.

Many municipalities that hold fee title to conservation land provide further protection for the conservation value by donating a conservation easement on the land to a suitable conservation partner. The conservation partner thereby accepts the perpetual responsibility of protecting the defined conservation value(s) by monitoring the municipality's use of the land and preventing uses that are detrimental to the goals of the conservation easement. NB: Although a municipality may hold a conservation easement, it may **not** hold the conservation easement on land that it owns.

### **Conservation easement (extinguishment of development rights):**

A conservation easement is a legal agreement between a landowner and a conservation partner or government entity that limits and restricts future uses of a parcel of land. A conservation easement typically allows continued sustainable use of the land for agriculture and forestry but does not allow residential or commercial development.

A conservation easement is entered into voluntarily, but becomes legally binding on both the landowner and the conservation partner once it is signed. Each conservation easement is customized to reflect the unique interests of the two parties and the attributes of the land.

The landowner retains ownership of the land and can use it for agriculture, forestry and/or whatever uses are not restricted in the conservation easement document. The landowner continues to pay property taxes on the property, although the amount may be reduced. The landowner can sell, transfer, or bequeath the property to another owner; subsequent landowners are also subject to all of the terms of the conservation easement.

The conservation easement holder (again, this must be an entity separate from the landowner) accepts the responsibility of making sure that the terms of the agreement are met now and far into the future, including being prepared to enforce the terms through legal action if necessary. This practice of oversight is usually called easement stewardship. This involves making a detailed inventory of the condition of the land when the conservation easement is created (baseline documentation). In order to insure

that all of the terms of the agreement are being met, a visit to the site, ideally with the landowner, should be done every year. If the municipality holds the conservation easement, it accepts the responsibility and liability for this ongoing monitoring. The municipality should have a plan for securing the human and financial resources to meet those needs and for safely retaining records of the baseline documentation and annual monitoring visits as these are important pieces of evidence needed if legal action is ever required.

The value of a conservation easement, and hence the purchase price, is typically less than the value of the fee title. The difference between the full value and the conservation easement can be difficult to determine, as that value depends on the location and resource values of the land, local land use regulations, and the local market for land of its type. Further information about this topic is included below in section G. What project costs might be incurred?

Under some circumstance, the landowner may be entitled to a charitable contribution income tax deduction if the gift of a conservation easement meets the strict requirement of Section 170(h) of the Internal Revenue Code.

Extremely careful legal language and wording are required to create effective and valid conservation easements. Municipalities protecting land through this technique should seek expert legal advice. You can find more information about conservation easements at [clca.forestsociety.org](http://clca.forestsociety.org), [LandTrustAlliance.org](http://LandTrustAlliance.org), and from your local or regional land trust.

### **Executory interest in a conservation easement (also called secondary or back up interest in a conservation easement):**

Under some circumstances, two conservation partners agree to share a conservation easement. One partner, the primary conservation easement holder, accepts the majority of the responsibility for caring for the conservation easement under the scenario described above. The secondary (executory or back-up) interest holder agrees to make sure the primary easement holder fulfills its responsibility to ensure that the terms of the easement are met. If the primary easement holder ever fails to fulfill its duty, the executory interest holder can assume responsibility for the conservation easement and its stewardship.

An executory interest in a conservation easement is typically used in the following situations:

- A funding source may require that there be an executory interest holder, either their own agency or some other entity of the funding source's choice.
- If the town is providing funds for land protection to a land trust (or other organization qualified to hold easements) and the municipality has not passed RSA 36-A:4-a, I(b).
- If the town is providing a substantial percentage of the funding for a land protection project and a conservation easement is being held by another entity, the town may feel that it should hold some legal interest in the property.
- If the landowner wants the added security of an additional holder of the conservation easement.

Some other techniques are used to provide temporary protection of various durations in a variety of more complex situations. One of these is the Current Use tax program, which encourages landowners to leave their land undeveloped by assessing undeveloped land at a lower tax rate. A penalty is paid by the landowner to the municipality when the land no longer qualifies for the program. Research shows that this penalty is typically larger than the amount of property tax income that was foregone by the municipality during the time the land was retained in open space. Learn more about the Current Use program from the Statewide Program of Action to Conserve Our Environment website at [nhspace.org](http://nhspace.org).

Other strategies that may be used to secure parcels for shorter lengths of time while financing or other details are worked out include deed restrictions, options to purchase, and right of first refusal. These techniques are outside the scope of this publication but are described briefly in *Conserving Your Land, Options for New Hampshire Landowners*, available through the Society for the Protection of New Hampshire Forests (<http://www.forestociety.org/giftshop/guide-conserving-land.asp>).

## **E. Which Land Protection Strategies Suit Your Municipality?**

Take a clear-eyed look at the capacity of your community to properly manage conserved land as part of your decision about what land protection strategy to pursue. Some of the factors to consider include the following:

- Is your conservation commission strong, knowledgeable, well organized, and well supported by the municipality?
  - Are you able to attract new members to the conservation commission when needed?
  - Do you have an inventory of the natural resources of your municipality?
  - Does your conservation commission have a good understanding of the different ways land may be protected?
  - Does your conservation commission understand the IRS conservation purposes (<http://www.wwlt.org/irscodesection170h.pdf>)?
  - If your municipality holds or plans to hold conservation easements, do you use an up-to-date model conservation easement?
  - Do you have access to an attorney who is very familiar with conservation easements?
  - Do municipal leaders and voters express support for conservation initiatives?

- Does your municipality own any other municipal conservation land or hold any other conservation easements?
  - If yes, is the land well managed to insure that the resource values that led to its protection are being maintained?
  - Are the deeds and other important paperwork stored in a safe and secure place?
  - Do you know the location and terms of ownership of each protected parcel?
  - Do you know who is responsible for the management of each parcel?
  - Do you have a written management plan for each parcel?
  - Is the land included on local and state maps of protected land (such as your Master Plan and GRANIT)?
  - If your community holds property in fee title, are the conservation values further protected by a conservation easement or deed restriction to minimize the chances of future town votes changing its use?
  - If your municipality already holds land in conservation easements:
    - Were baseline documents created to record the condition of the land the conservation easement was accepted?
    - Are conservation easements monitored annually?
    - Do you know who does the annual monitoring?
    - Are the records of monitoring visits kept in a safe and secure place and referred to prior to each year's monitoring visit?
    - If the monitoring and record keeping are presently done by volunteers, does your municipality set aside funds (likely within the conservation fund) for a future date in case paid assistance is needed to monitor all the properties correctly? (It appears that volunteers may manage to monitor up to about two dozen conservation easements per year. If your community has or anticipates having more than that, consider contracting easement monitoring services in the future.)
    - Do you have money set aside (likely within the conservation fund) to pay for any legal costs that may occur if someone does something that is not allowed by the terms of the conservation easement?

If you answered NO to many of the questions above, think long and hard about your municipality's capacity to undertake permanent land conservation projects. If you can not bring your knowledge and capacity up to a higher level, work even harder to find an experienced conservation partner for your

project. Educational programs about land conservation and stewardship are available at the NHACC Annual Meeting and conference held on the first Saturday in November. UNH Cooperative Extension and New Hampshire's land trust community also sponsor additional training events.

Some cities and towns already own municipal conservation land and conservation easements and have a strong record of good land management. If this is the case in your municipality, ensure that this commitment and the resources needed to sustain it are extended to each new parcel conserved.

Different cities and towns have preferences for one type of land protection over another. Some prefer the simplicity of outright fee title ownership. Others prefer the lower initial expense of ensuring land protection through conservation easements. Still other cities and towns feel that they are already protecting as much conservation land as they are capable of and prefer to always work with an available conservation partner.

## **F. Which Land Protection Strategy Is Best for a Given Project?**

The choice of which of the available land protection strategies to use in each particular situation depends largely on the preferences of the current landowner and the availability of financial resources. If the landowner will only sell fee title or insists that a conservation easement is his/her preference, the municipality may have to accede to that desire or choose not to do the project.

Municipalities also have a variety of perspectives about the pros and cons of the several land protection options. Some municipalities prefer the simplicity of acquiring fee ownership, while others prefer the cost saving of acquiring a conservation easement or executory interest in a conservation easement. Some municipalities prefer to leave as much private land on the tax rolls as possible, so conservation easements become the tools of choice.

Many owners of land proposed for permanent conservation will be interested in the potential income and estate tax benefits that may accrue to them and their heirs from a conservation project. Landowners should be encouraged to obtain information about these benefits from a qualified tax advisor. The basic concepts are explained in the publication *Conserving Your Land: Options for New Hampshire Landowners* (<http://clca.forestssociety.org/publications/conserving-your-land.asp>) and in a series of publications by attorney Stephen Small (<http://www.preservingfamilylands.com>). Tax implications of conservation donations are subject to change by the US Congress and the Internal Revenue Service. Current information about the status of such implications can be found through the national Land Trust Alliance (<http://www.landtrustalliance.org>).

Some public and private funding sources require a certain ownership pattern, so be sure to check on that before finalizing your protection plan.

## **G. What Project Costs Might Be Incurred?**

Land protection project costs include not only the cost of purchasing the property or conservation easement, but also transaction costs and the cost of the long-term stewardship.

If land or a conservation easement is purchased, the property value needs to be determined using some rational basis. For purchase of fee title, in some situations, the municipal assessed value may be an agreeable price for fee title to a parcel. More frequently, an appraisal of the value of the fee title is appropriate, as an appraisal done specifically for the property is considered to be a more accurate representation of fair market value than the typical tax assessment.

For purchase of a conservation easement, an appraisal is nearly always needed to establish value and thus a fair purchase price. To appraise the value of the conservation easement, the appraiser must first determine the value of the fee title before the easement is applied, then back out the value of the interests that are restricted under the proposed conservation easement. Some appraisers have taken special training to prepare themselves to appraise conservation easements. Lists of appraisers with this training and appropriate qualifications are maintained at UNH Cooperative Extension and by some statewide and regional land trusts. Seek referrals to appropriately skilled appraisers from conservation partners. The value of a conservation easement may range from 10% to 90% of the value of the fee title to the same land. The variability is a function of the location and resource values of the land, local land use regulations, and the local market for land of its type.

Appraisals are done with different levels of detail, and the cost of the appraisal varies quite a lot depending on the level of detail. Conservation commissions should understand what level of detail is needed for any appraisal they choose to have performed.

If the landowner is planning to claim a tax deduction for any of the value of the conservation easement donated or sold at less than its full value, the IRS requires that the landowner pay for the appraisal to document their claim of the value donated. It is not unusual for the conservation commission or other conservation partner to pay for an appraisal early in the project to determine the price for the conservation easement, but the landowner must still obtain and pay for a later appraisal, written to IRS specifications, to document their donation.

Other project costs that may be accrued during a land protection project include:

- Legal fees (town or city attorney and/or other attorney's time)
- Survey
- Title search, title review, and title insurance if desired
- Closing costs
- Conservation easement drafting and legal review

- Stewardship costs
- Fees for conservation partner staff time
- Environmental (hazardous materials) site assessment
- Recording fees
- Real estate transfer tax (waived if the municipality is a party to the transaction)

It is appropriate for the conservation commission to pay such costs using money from the conservation fund or other source. It is best if the town money is used to make direct payment to the provider of the service rather than, for instance, reimbursing the private landowner for a service that they paid for. Note that if your municipality wishes to assist with these costs for a project being carried out by a land trust (or similar group) in which the town will not hold property interest, a one-time simple-majority vote of the legislative body to authorize this type of payment must precede this. (See Chapter IV Expenditures from the Conservation Fund for more information.)

A Memorandum of Agreement or Memorandum of Understanding can be a good tool to clarify and communicate which party is responsible to pay which expenses. Such agreements may be made between the municipality and a landowner and/or any land trust or conservation partner.

A major but sometimes overlooked cost of conservation land is its long-term stewardship (see next section: How will perpetual protection be insured?). Especially in the case of a conservation easement, which requires annual monitoring and funds to cover possible legal challenges, the project budget should include money for this long-term cost.

If full fee title to the property is being acquired by the town, the property tax income that the landowner has been paying will no longer accrue to the town. If a conservation easement is being acquired, the landowner will continue to pay taxes, but the taxes will likely be paid at the appropriate Current Use rate. These numbers are usually not very large. It is useful to be aware of the potential property tax changes, as voters whose support for project funding may be needed are interested in these numbers and sometimes have inflated ideas of their size.

## **H. How Will Perpetual Protection Be Assured?**

A very important part of municipal land protection projects is the long-term plan for stewardship of the land. Whether the land is being acquired in full fee title or as a conservation easement, a plan for its long-term stewardship must be created and followed. Who will have responsibility for managing municipally-owned lands or conservation easements? Is town staff available to oversee the property? Will conservation commissioners perform annual monitoring? Are funds being set aside to pay for someone to assume these tasks when more properties are protected than the current staff or conservation commission can take care of?

Even with the best of stewardship practices on conservation easements, the easement holder must be prepared for possible conflict with a land owner, or violations of the terms of a conservation easement. The holder of any conservation easement must have the will and the financial resources to take action to protect the conservation values of the protected parcel. Sometimes that action can include expensive legal fees. Finding funds for this can be a challenge even for municipalities that recognize the potential for future financial requirements.

Money from the conservation fund can very appropriately be used for this purpose. Some landowners are willing and able to contribute to a fund for the permanent protection of the conservation easement they are donating or selling. Some of the sources of outside funding that may help with a land protection project can also be used for conservation easement stewardship and legal defense, especially if these needs are budgeted into the project budget from the outset. Sometimes funding for this or other elements of the project can be successfully sought from neighbors, townspeople, and others who will benefit. Some municipalities will take on easements with the assumption that if they have to take enforcement action, the costs will be covered by the annual legal budget. Others may seek to create special funds for this purpose. To learn more about creating easement enforcement funds or endowments, contact the [NH Department of Justice Division of Charitable Trusts](#).

### Land Protection Overview

Questions	Factors in Responding	
Why protect land?	This is the best way to protect natural resources in the community Keeping land in open space stabilizes the municipal tax rate Retains rural character Because we love it	
What land to protect?	Know your resources Set priorities Have and use project selection criteria based on natural resources and municipal priorities	
Can we find partners?	Land trusts, other conservation commissions Some county, state, and federal agencies	
Land protection strategies	Fee title ownership Conservation Easement Backup (executory) interest in conservation easement	See Table on page 30 for summary of the pros and cons of each strategy
What strategy works for our community?	Evaluate municipal capacity	
What strategy works for this parcel?	Landowner preference Funding source requirements	
What projects costs may we incur?	Property price (unless donated) Variety of possible transaction costs Funding for long-term stewardship	
How do we insure permanent protection?	Long-term plan for stewardship	



# Where to Go for Further Help

## **NH Association of Conservation Commissions**

The New Hampshire Association of Conservation Commissions (NHACC) is a nonprofit whose mission is to support the work of New Hampshire's municipal conservation commissions and to create a climate where they can be successful. Conservation commissioners are welcome to contact NHACC with questions. NHACC is funded primarily by yearly dues paid by member conservation commissions.

*New Hampshire Association of Conservation Commissions*

54 Portsmouth Street

Concord, NH 03301

(603) 224-7867

[info@nhacc.org](mailto:info@nhacc.org)

<http://www.nhacc.org>

## **NH Local Government Center**

The Local Government Center's (LGC) Legal Services Department is available to answer specific legal questions for member municipalities. If you are a member of a conservation commission or are a town official in another capacity, you may contact the LGC with legal questions.

*NH Local Government Center*

25 Triangle Park Dr.

Concord, NH 03301

(603) 224-7447

Legal Inquiries Department:

(800) 852-3358

Email: [legal\\_inquiries@nhlgc.org](mailto:legal_inquiries@nhlgc.org)

<http://www.nhlgc.org>

## **Society for the Protection of New Hampshire Forests**

The Society for the Protection of New Hampshire Forests' Center for Land Conservation Assistance website (<http://www.clca.forestsociety.org>) is a great resource for information about land protection. The site has useful information for landowners and municipal officials.

*Society for the Protection of New Hampshire Forests*

54 Portsmouth Street

Concord, NH 03301

(603) 224-9945

<http://www.clca.forestsociety.org>

## **UNH Cooperative Extension Land and Water Conservation Program**

UNH Cooperative Extension provides technical assistance to conservation commissions through its Land and Water Conservation Program. The program provides project guidance and training for conservation projects. There is an application process which can be found on the website or by contacting the Land & Water Conservation Coordinator.

Amanda Stone

Land & Water Conservation Program Coordinator

UNH Cooperative Extension

220 Nesmith Hall, 131 Main Street

Durham, NH 03824-2500

(603) 364-5324

E-mail: [amanda.stone@unh.edu](mailto:amanda.stone@unh.edu)

## **Other Resources**

### ***Town Counsel***

Your town attorney (also referred to as town counsel) can be consulted for answers to many legal questions. Be aware that consulting your municipal attorney may involve significant cost. It's best to check with your local governing body about the policy for contacting the town attorney. Town attorneys can answer a number of questions regarding municipal finance but may not have specific expertise with land conservation.

### ***Other Attorneys***

New Hampshire is fortunate to have many attorneys with specific expertise in many subjects relating to conservation. Most entities that provide assistance to conservation commissions can also give guidance about hiring an appropriate attorney.

### ***Land Trusts***

Statewide and regional land trusts are very important partners for the work of conservation commissions and open space committees. Many land trusts are eager to work with conservation commissions in their service area, and some offer excellent educational opportunities for town officials. To find local and regional land trusts and other conservation resources for your town, visit the CLCA website <http://www.clca.forestsociety.org/conservation-organizations/resources-by-town.asp>

### ***Conservation Districts***

Conservation districts are important partners for conservation commissions and open space committees. It's important to keep in touch with your conservation district to learn of their services and how they can assist your commission. Your conservation district office may provide educational materials, workshops, maps and aerial photos, and technical assistance with permitting. Find information about your conservation district at <http://www.nhacd.org>.

### ***Regional Planning Commissions***

Regional planning commissions maintain strategic partnerships with various state and federal agencies and develop planning policies, programs, legislative positions, responses to topical issues, and special projects and initiatives for the member cities and towns across New Hampshire. <http://www.nharpc.org/>

# Land Use Change Tax Allocations as of Spring 2009

In 2009, 160 municipalities allocated Land Use Change Tax to their conservation funds

Municipality	Allocation	Annual Cap or Other Conditions	Date Adopted/Notes
Acworth	100%	\$2,500	2001 \$2,500 cap
Alexandria	50%		2008
Allenstown	100%	\$10,000 cap	2004 100%; 2005 added \$10,000 cap
Alstead	100%	\$2,000	2003
Alton	100%	Up to \$20,000 with	1990 50% \$20,000 cap; 2008 100% 50% thereafter \$20,000 cap with 50% thereafter
Amherst	50%		1990 50%; 1996 75%; 1999 50%
Andover	50%		2000
Antrim	50%		2002 \$5,000 cap; 2006 cap removed
Auburn	100%		2002
Barnstead	50%		1990 100%; 1995 lesser of 10% or \$1,000; 2002 50% or \$10,000, whichever is less; 2004 50%
Barrington	50%		1999
Bath	100%		2002
Bedford	70%		1991 30%; 2000 70%
Belmont	100%		1999 \$5,000 cap; 2001 removed cap
Bennington	50%		2009
Bethlehem	5%		2004
Boscawen	100%		1993 50%, \$10,000 annual cap; 2000 100%
Bow	100%		1996
Bradford	50%		1990
Brentwood	50%		2001
Brookline	100%		1990 50%; 2000 100%
Campton	50%		2001 \$5,000 cap; 2005 no cap
Canaan	50%	\$5,000	2000
Candia	25%	\$25,000 cap	1997 25%, \$1,000 cap; 2000 no cap; 2001 100%; 2009 25% w/ 25k cap
Canterbury	100%		1990
Center Harbor	25%		1989; reaffirmed with corrected language 2009
Charlestown	50%	\$5000 (or 10% with \$5,000 cap)	1990

<b>Municipality</b>	<b>Allocation</b>	<b>Annual Cap or Other Conditions</b>	<b>Date Adopted/Notes</b>
Chester	100%		1997 with \$20,000 cap; cap removed 1999
Chesterfield	100%	\$25,000 cap	1994 50%, \$10,000 annual cap; 100% 2000, \$25,000 annual cap
Chichester	75%	\$250,000 cap	1999 50%; 2004 75%; 2008 \$250,000 cap
Claremont	100%	\$5,000	1993
Concord	50%		1988 25%; 2002 100%; 2007 50%
Conway	100%	100% to \$100,000; 50% thereafter	1999
Dalton	50%		1989 5%; 2005 50%
Danville	100%		1997
Deerfield	50%	\$500,000	2005
Deering	100%		1999 50%; 2004 100%
Derry	100%		1997
Dover	100%		1999
Dublin	50%		2007
Dunbarton	50%		1993 with cap; cap deleted 1997
Durham	100%		1990 50%; 2001 100%
East Kingston	50%		1998
Effingham	50%	\$2,500	2005 with \$2,500 cap
Epsom	10%		2005
Farmington	50%	50% or \$10,000, whichever is less	2001
Fitzwilliam	50%		1994 25%; 2004 50%
Francestown	50%		2001
Franconia	50%		1995
Freedom	50%		2005
Fremont	50%	50% over \$10,000	1999
Gilford	100%		2004
Gilmanton	100%	Allocation figured on a per parcel basis: 100% up to \$2,500 + 10% thereafter	1997 up to \$2,000; 2001 up to \$5,000 + 10% over \$5,000; 2007 100% up to \$2,500 + 10% thereafter
Gilsum	100%		2006
Goffstown	100%		50% 2005; 100% 2007
Goshen	50%		1995
Grantham	50%		1993
Greenfield	100%	\$5,000 cap	2001
Greenville	20%		2007
Groton	3%		2008
Hampstead	35%		2000
Hampton	50%	\$10,000	early 1990s
Hampton Falls	15%		1996 10%; 2001 100%; 2007 15%;
Hancock	50%	\$6,000	2001 \$3,000 cap, 2004 \$6,000 cap
Hanover	50%		1999
Harrisville	100%		30%; 2005 100%
Henniker	50%		2004
Hillsborough	50%	\$25,000	2000 \$7500 cap; 2006 \$25,000 cap
Hinsdale	100%		2002 \$5,000 cap; 2008 cap removed
Holderness	50%	\$5,000	2003
Hollis	50%		1997
Hooksett	50%		1993
Hopkinton	35%		1993

Municipality	Allocation	Annual Cap or Other Conditions	Date Adopted/Notes
Hudson	50%		2004
Jackson	50%		2006
Jaffrey	50%		2003 75%; 2008 50%
Keene	50%	\$100,000 cap	2004
Kensington	50%		1989 25%; 2001 50%
Laconia	100%	\$100,000 cap	2003
Lebanon	100%		25%; 2002 100%
Lee	50%		1989
Lempster	25%	\$5,000 cap	2007
Litchfield	100%		1994 10%; 2003 100%
Littleton	100%	\$10,000 cap	2008
Londonderry	100%		1996
Loudon	50%		2005
Lyme	100%		1993 50%; 2000 100%
Lyndeborough	50%		2003 15%; 2007 50%
Madbury	50%		1989
Madison	50%		10% 1997; 50% 2003
Marlborough	10%		1990
Mason	100%		2000
Meredith	100%	\$50,000	1990 \$10,000 cap; 2005 \$50,000 cap
Merrimack	50%		2002 100%, 2007 50%
Middleton	100%		1996
Milton	50%		2000
Nashua	100%		1989
Nelson	100%		2004
New Boston	60%		1995 10%; 2003 60%
New Durham	100%		1998 \$5,000 cap; 2004 \$10,000 cap; cap lifted 2007
New Hampton	50%		1989 25%; 2005 50%
New Ipswich	100%	\$25,000	1989 50%, \$10,000 cap; 2004 100%, \$25,000 cap
Newbury	50%		1990
Newfields	50%		1990
Newington	100%		2001
Newmarket	50%		1989
Newton	25%		1990
North Hampton	100%		1990
Northfield	50%		2002 20%; 2004 50%
Northwood	50%		1990 10%; 2003 50%
Nottingham	100%		2003 50% \$100,000 cap; 2007 100%, cap removed
Orange	100%		2007
Orford	100%		2000
Pelham	75%		2000
Pembroke	100%		2002
Peterborough	50%		1994 \$5,000 cap; removed cap 2005
Piermont	10%		1997
Pittsfield	20%		2006
Plainfield	50%		1989; 1999 deleted "over \$20,000"
Plaistow	100%		2000
Portsmouth	100%		1995
Randolph	50%		1995
Raymond	50%		1989 25%; 2001 100%; 2005 30%; 2008 50%

<b>Municipality</b>	<b>Allocation</b>	<b>Annual Cap or Other Conditions</b>	<b>Date Adopted/Notes</b>
Rindge	100%		1999
Rochester	50%	\$10,000	1999
Rumney	50%		1989
Rye	50%	\$10,000 cap per property	1996
Salem	100%		1990 50% \$50,000 cap; 1997 50% \$100,000 cap; 2004 100% no cap
Salisbury	25%		2006
Sanbornton	50%	50% or \$5,000, whichever is more	1999 up to \$5,000
Sandown	100%		25% 1997; 50% 2002; 2005 100%
Sandwich	25%		1995
Seabrook	25%		2000 10%; 2005 25%
Sharon	100%		1994 - \$5,000 cap; cap removed 2002
Somersworth	100%	\$75,000 cap	2006
South Hampton	50%		1989
Strafford	100%		2003
Stratham	100%	Stratham Land Conservation Fund	2000
Sugar Hill	100%	\$5,000	2000
Sullivan	50%		30% 1990; 50% 1999
Sunapee	50%	\$2,500	
Surry	100%		2000
Sutton	100%		1993 25%; 2001 50%; 100% 2003
Swanzey	50%	\$10,000	1995
Tamworth	100%	\$5,000	2000
Temple	50%		1990 10%; 2001 100%; 2004 10%; 2006 50%
Thornton	100%	\$1,500 cap	2007
Tilton	100%		2003
Tuftonboro	15%		100% \$5,000 cap; 15%
Wakefield	100%		2000 \$25,000 cap; \$100,000 cap; 2006 removed cap
Walpole	100%	\$25,000	1995 25%, 2001 100%, \$25,000 cap
Warner	100%		2000
Washington	100%		2004
Weare	75%		2000
Webster	100%	\$3,000	1990
Westmoreland	50%		2002
Wilmot	100%	\$15,000 cap	2007
Winchester	75%		2003 75%; 76%; 2008 77%; 2009 75%
Windham	100%		1998 100%
Wolfboro	100%		2007



# Talking Points for Allocating LUCT to Conservation Fund

## **Define the Land Use Change Tax**

The land use change tax (LUCT) is a tax assessed by towns on owners of undeveloped forest or farmland when it is taken out of “current use” property tax assessment, usually for development. The tax is assessed at 10% of the fair market value of the land area being removed at the time of the change in use.

## **Explain what the LUCT revenues are used for now**

State law advises that municipalities put their LUCT revenues into a designated LUCT fund (RSA 79-A:25-a). The municipality can choose to transfer that money to specific purposes, most often to the general fund. Check with your municipal governmental body or town treasurer to see how the LUCT funds are used in your town.

## **Explain how much your town has earned from the LUCT in recent years**

Show lowest and highest values and averages for the past decade or other representative time period. Tell what percentage of the whole town budget that amount represents.

## **Explain the potential tax impact of the proposal**

If LUCT revenues are currently directed to the general fund, those revenues may need to be drawn from some other source if the LUCT is redirected to a conservation fund. If that “other source” is going to be local taxpayers, estimate the total amount of the tax impact, as well as the dollar amount per thousand dollars of assessed value.

## **Explain what you propose**

To put all or part of the LUCT into the conservation fund with or without a cap. If there is a cap, explain how that would work. (See NHACC Handbook for sample warrant article language.)

## **Reasons to use the Land Use Change Tax for conservation**

- The Land Use Change Tax was created in 1972 as an incentive for landowners to keep their land undeveloped. Because the Land Use Change Tax is assessed when the land is taken out of open space for development, this is a logical funding source for investing in important community open space.
- This is a good source of conservation funding that does not depend on local property taxes and has no direct impact on tax bills.

- Share survey or master plan information showing that your town supports land conservation or retaining rural character.
- If there were strong votes in favor of land conservation spending or other conservation initiatives earlier in your town, list them.
- Conserving selected parcels of open space buffers the town from tax increases related to growth. (“Trees don’t need roads, trash collection, or a public education.”)
- Conserving land is a way to retain what people like about the town, even while the population increases, other land becomes developed, and schools and roads become more crowded. (Cite population statistics from your town, which you can find at the State Data Center, under Trends, Population Growth Trends, Municipal Populations 1960-2000 Arranged by Count. Watch for 2010 updates after the census results are compiled). <http://www.nh.gov/oep/programs/DataCenter/Population/documents/Munipop60-00.doc>.
- If you have accomplished good conservation projects, describe them and their funding sources.
- If you have a potential project that could be supported with this money, explain it (without violating confidentiality).
- If an undesirable land use change could have been prevented with conservation funding, explain that.
- Protecting more open space is good for wildlife and plants, air and water quality, working farms and forests, and the people who enjoy outdoor recreation.

### **What other towns assign land use change tax to conservation?**

This is the most popular source of money for the conservation fund. As of Spring 2009, 160 towns (68% of all New Hampshire towns) have voted to assign some or all of their land use change tax to the conservation fund. List towns abutting yours that do this and the amount they allocate. Find the updated information about this at <http://www.nhacc.org/files/LUCT.pdf>.

### **Explain what the money will be used for**

This depends on the priorities of your conservation commission. Be as specific as possible. Give examples of the costs for similar expenditures in your town or nearby towns. If you will be cooperating with other conservation groups (local, regional, or statewide land trusts or others), state that.

### **Explain who would decide how the funds would be spent**

State laws governing conservation commissions define the purposes for which conservation commissions can spend money. If the conservation commission plans to purchase land or interest in land (like a conservation easement), it must hold a public hearing and get approval from the community’s governing body. Be aware of the two parts of the conservation commission law enacted in 2009 (RSA 36-A:4-a, I(a) and RSA 36-A:4-a, -time votes by town’s legislative body (usually town meeting) to authorize certain types of expenditures from the conservation fund. See section on “What do we have to do to spend conservation fund money” chapter on pages 21 and 22.)

### **Explain that future town meetings can change the decision**

Future town meetings can vote to change (increase or decrease) the amount, raise lower or remove the cap, or to discontinue the allocation.

### **Summarize the key points**

Identify and review the most compelling points for the people and situation in your community.



# Talking Points for Increasing LUCT Allocation to Conservation Fund

## **Explain what you propose**

Increasing an existing allocation of all or part of the LUCT into the conservation fund, with or without a cap, or removing an existing cap. If there is a cap, explain how that works. (See NHACC Handbook for sample warrant article language.)

## **Define the Land Use Change Tax**

The land use change tax (LUCT) is a tax assessed by towns on owners of undeveloped forest or farmland when it is taken out of “current use” property tax assessment, usually for development. The tax is assessed at 10% of the fair market value of the land area being removed at the time of the change in use.

## **Explain what the LUCT revenues are used for now**

State law advises that municipalities put their LUCT revenues into a designated LUCT fund (RSA 79-A:25-a). The municipality can choose to transfer that money to specific purposes. Describe what portion currently goes to the conservation fund and where the remainder goes, most likely the general fund. The municipality’s governing body, the budget committee, or the town treasurer can tell you this.

## **Explain how much your town and conservation fund has earned from the LUCT in recent years**

Show the lowest and highest values and averages for the past decade or other representative time period, including what portion of the whole town budget that represents. Tell the total amount allocated to the conservation fund as well as the total amount in the fund from the LUCT and any other sources.

## **Explain the potential tax impact of the proposal**

If additional LUCT revenues are redirected from the general fund to the conservation fund, those general fund revenues may need to be replaced from some other source. If that other source is going to be

local taxpayers, estimate the total amount of the tax impact, as well as the dollar amount per thousand dollars of assessed value.

### **Reasons to increase the Land Use Change Tax allocation for land conservation**

- The Land Use Change Tax was created in 1972 as an incentive for landowners to keep their land undeveloped. Because the Land Use Change Tax is assessed when the land is taken out of open space for development, this is a logical funding source for investing in important community open space.
- This is a good source of conservation funding that does not depend on local property taxes and has no direct impact on tax bills.
- Share survey or master plan information showing that your town supports land conservation or retaining rural character.
- If there were strong votes in favor of land conservation spending or other conservation initiatives earlier in your town, list them.
- Conserving selected parcels of open space buffers the town from tax increases related to growth. (“Trees don’t need roads, trash collection, or a public education.”)
- Conserving land is a way to retain what people like about the town, even while the population increases, other land becomes developed, and schools and roads become more crowded. (Cite population statistics from your town which you can find at the State Data Center, under “Trends, Population Growth Trends, Municipal Populations 1960-2000 Arranged by County”. Watch for updates after the 2010 census results are compiled). <http://www.nh.gov/oep/programs/DataCenter/Population/documents/Munipop60-00.doc>.
- If you have accomplished good conservation projects, describe them and their funding sources.
- If you have a potential project that could be supported with this money, explain it (without violating confidentiality).
- If an undesirable land use change could have been prevented with conservation funding, explain that.
- Protecting more open space is good for wildlife and plants, air and water quality, working farms and forests, and the people who enjoy outdoor recreation.
- Leverage: Outside grant money sources prefer/require local matching funds. A community’s conservation fund is one of the best sources for that local match and signals to the funder that your town has a serious commitment to conservation.
- Even if you put all of the LUCT into the conservation fund, it is not enough to replace the land that is changed from open space to developed use. Unless you can protect land at less than its full value, 100% of the LUCT will only allow you to protect one tenth of the land that is converted from open space use.

### **What other towns assign land use change tax to conservation?**

This is the most popular source of money for the conservation fund. As of Spring 2009, 160 towns (68% of all New Hampshire towns) have voted to assign some or all of their land use change tax to the conservation fund. List towns abutting yours that do this and the amount they allocate. Find the updated information about this at <http://www.nhacc.org/files/LUCT.pdf>.

### **Explain what the money will be used for**

This depends on the priorities of your conservation commission. Be as specific as possible. Give examples of the costs for similar expenditures in your town or nearby towns. If you will be cooperating with other conservation groups (local, regional, or statewide land trusts or others), state that.

### **Explain who would decide how the funds would be spent**

State laws governing conservation commissions define the purposes for which conservation commissions can spend money. If the conservation commission plans to purchase land or interest in land (like a conservation easement), it must hold a public hearing and get approval from the municipality's governing body. Be aware of the two parts of the conservation commission law enacted in 2009 (RSA 36-A:4-a, I(a) and RSA 36-A:4-a, time votes by town's legislative body (usually town meeting) to authorize certain types of expenditures from the conservation fund. See section on "What do we have to do to spend conservation fund money" chapter on pages 20 and 21.)

### **Explain that future town meetings can change the decision**

Future Town Meetings can vote to change (increase or decrease) the amount, raise lower or remove the cap, or to discontinue the allocation.

### **Summarize the key points**

Identify and review the most compelling points for the people in your community.



# Talking Points for Preventing Decrease to LUCT Allocation to Conservation Fund

## **Define the Land Use Change Tax**

The land use change tax (LUCT) is a tax assessed by towns on owners of undeveloped forest or farmland when it is taken out of “current use” property tax assessment, usually for development. The tax is assessed at 10% of the fair market value of the land area being removed at the time of the change in use.

## **History of Land Use Change Tax allocation in your town**

Explain what percent of the LUCT is allocated to the conservation fund, when it was passed, how large the support was when it was passed. How much money has come into the fund each of the past years? (Go back far enough to be thorough but not so far back that you get really boring.) How much money is presently in the conservation fund?

## **Explain what the conservation fund has been used for**

Describe specific property interests you have acquired and anything else that the money has been used for. Focus on the projects that are well known, have wide appeal, and provide clear benefit to the community.

## **Explain what upcoming plans there are for the conservation fund**

Describe the number and type of projects under negotiation and their anticipated costs. Be careful not to reveal any confidential information about parcels being negotiated. Mention any outside funds that the conservation fund is a likely match for. Explain what the conservation commission will NOT be able to do without the funds.

**Explain the tax savings** that the proposed change in LUCT allocation would provide to an average homeowner should it be allocated to the general fund. These are typically very modest numbers.

## **Emphasize the value to voters of conservation land**

- Mention popular previous uses of the conservation fund.
- List any data from surveys or Master Planning process that demonstrate local support for conservation.
- If there are local, regional, or statewide plans that document value of open space/natural resources in your town, cite these.
- The Land Use Change Tax was created in 1972 as an incentive for landowners to keep their land undeveloped. Because the Land Use Change Tax is assessed when the land is taken out of open space for development, this is a logical funding source for investing in important community open space.
- This is a source of money for good conservation projects that does not depend on local property taxes and has no direct impact on tax bills.
- Reemphasize any previous strong votes in favor of conservation spending or other conservation initiatives in your town.
- Conserving selected parcels of open space buffers the town from tax increases related to growth. (“Trees don’t need roads, trash collection, or a public education.”)
- Conserving land is a way to retain what people like about the town, even while the population increases, other land becomes developed, and schools and roads become more crowded. Cite population statistics from your town, which you can find at the State Data Center, under Trends, Population Growth Trends, Municipal Populations 1960–2000 Arranged by County. Watch for 2010 updates after the census results are compiled (<http://www.nh.gov/oep/programs/DataCenter/Population/documents/Munipop60-00.doc>).
- Protecting more open space is good for wildlife and plants, air and water quality, working farms and forests, and the people who enjoy outdoor recreation.

## **Why not just ask the voters for money for projects as they arise?**

Having money in the conservation fund allows the conservation commission to negotiate with willing landowners. A landowner may want or need to complete the project before the next regular town meeting. Special town meetings are possible, but you must petition the Superior Court for permission to hold a special town meeting to vote on money that wasn’t previously approved in concept at a regular town meeting. The Courts’ willingness to allow special town meetings for such purposes is variable.

## **Summarize the key points**

Identify and review the most compelling points for the people and situation in your community.



# Sample Fact Sheet for Discussion of Land Use Change Tax Allocation at Town Meeting

## **Wilmot Conservation Commission Information about Warrant Article 10 Allocating Land Use Change Tax to the Wilmot Conservation Fund**

### **What is the Land Use Change Tax?**

The land use change tax (LUCT) is a tax assessed by towns on owners of undeveloped forest or farmland when it is taken out of “current use” property tax assessment, usually for development. The tax is assessed at 10% of the fair market value of the land area being removed, assessed at the time of the change in use. Over the past ten years, land use change tax payments to the Town of Wilmot have varied each year, from a high of \$28,294 in 2004 to a low of \$0 in 1999. During the past decade, the LUCT has generated an average of \$15,239 per year. To date, revenues from the land use change tax have gone to the town’s general fund.

### **What would Article 10 do?**

If approved by Wilmot voters, Article 10 would allocate future land use change revenues to the town’s conservation fund, up to an annual cap of \$15,000. Any land use change tax revenues above this cap would continue to go to the town’s general fund. The allocation proposed in Article 10 could be changed or discontinued in the future by a vote at town meeting.

### **Why use land use the land use change tax for conservation?**

Current use assessment was instituted in 1972 as a way to help owners of forest and farmland keep their land undeveloped. The case for using the land use change tax for conservation is straightforward: since the purpose of Current Use is to conserve undeveloped land, when property comes out of current use for development, the tax paid should be re-invested in the conservation of other undeveloped land in town.

### **What other towns are doing this?**

Currently, 153 out of the 234 towns in New Hampshire allocate some portion of land use change tax revenues to fund local land conservation. Neighboring towns that currently allocate LUCT revenues to land conservation include Andover (50% of LUCT revenues), Bradford (50%), Newbury (50%),

Salisbury (25%), Sunapee (50%), Sutton (100%), and Warner (100%). Source: NH Association of Conservation Commissions.

### **How much will this cost Wilmot taxpayers?**

While the land use change tax is paid only by landowners removing land from current use, allocating the revenues to the town's conservation fund means they do not go to the town's general fund, and the revenues is made up by property taxes. The estimated annual property tax impact of the proposed LUCT allocation (assuming the maximum of \$15,000 in LUCT comes in and is allocated to the town conservation fund) is .0827/\$1000 of assessed valuation, or \$8.27 per every \$100,000 of a property's assessed value. Note: this tax rate estimate is based on 2006 total assessed valuation of \$181,287,141 for Wilmot, as published by the NH Department of Revenue Administration.

### **How would the funds be used?**

- To help pay for out-of-pocket transaction costs (appraisal, legal, title work, etc.) on donated conservation easements, in cases where the landowner is unable or unwilling to pay. Transaction costs run anywhere from \$5,000-\$15,000 on a typical donated easement, and can be significantly higher if the project requires a survey (surveys can cost \$10,000-15,000). Examples of neighboring towns using their conservation fund to help pay for transaction costs are: the Sunapee Conservation Commission recently drew on their conservation fund to cover \$12,000 of the transaction costs on two conservation easements worth \$1,000,000. The Sutton Conservation Commission also recently agreed to pay \$11,000 toward transaction costs on a conservation easement.
- To contribute to cooperative projects with private land conservation organizations. The town could be approached by a private conservation group (Ausbon Sargent, Forest Society, NH Audubon, etc.) working to conserve a property in town where the landowner is being paid for some or all of the value of the land or conservation easement (as opposed to donating it). In this situation, the town could be asked to contribute towards the purchase price and/or transaction costs.

If sufficient funds were available in the town's conservation fund, they could be used for this purpose. An example of this approach is the Warner Conservation Commission's recent contribution of \$125,000 from its conservation fund to Ausbon Sargent's Courser Farm project.

- To temporarily secure property through purchase option, if a property of interest to the town as conservation land became available between town meetings. Purchase options essentially "buy time" from a landowner, allowing the town to think through whether it wants to invest town funds in the project, and if it does, to bring a proposed appropriation to the voters at town meeting.

### **Who would decide how the funds are spent?**

Under state statute, the Conservation Commission has the authority to draw on the conservation fund for any of the purposes described above. The Wilmot Conservation Commission would present the details of any proposed land conservation project at a public hearing before drawing on the conservation fund. In the event that money from the conservation fund was proposed to be used for a land or easement acquisition held by the town, only the Board of Selectmen has the authority to acquire a town-held interest in real estate, not the Conservation Commission.

### **What criteria would be used?**

The Wilmot Conservation Commission has begun work on a conservation plan for the town, and expects to complete the project in 2007. If a conservation opportunity arose before the conservation plan is completed, the Conservation Commission (and selectmen, other town boards and town residents) already have ample information available to judge the merits of investing town conservation fund dollars in a particular project, including:

*Wilmot Natural Resources Inventory* (WCC, 2005) – baseline information on natural resources in Wilmot.

*Wilmot Conservation Survey* (WCC, 2006) – guidance on what town residents value in terms of conservation in town.

*Wilmot wetlands study* (WCC/UNH, 2006) — qualitative information on selected wetlands in town.

*NH Wildlife Action Plan* (NH Fish & Game, 2006) – qualitative information on highest quality wildlife habitat.

*Quabbin to Cardigan Conservation Plan* (Forest Society et al, 2005/2007) – qualitative information on forest, water and habitat resources.

Key criteria would include:

- Is the land of high natural resource value based on hard data (using info sources above)?
- Is the land of high recreational value? For what kind of recreational uses?
- Is the conservation project give a high “bang for the buck” for the town? What other sources of funding (if applicable) are being brought to the table? Landowner donation? Other grants?
- What, if any, long-term management responsibilities would the town be taking on?

### **Why now?**

Public interest: the town conservation survey conducted in 2006 by the Wilmot Conservation Commission (193 surveys were returned out of 650 mailed) found that 59% of year-round residents who responded supported allocating some portion of the land use change tax to conservation (22% did not support the idea, and 17% didn’t know whether they supported the idea or not). It was this surprisingly high level of interest in the idea that spurred the Conservation Commission to present an article to town voters this year.

Cost-effectiveness: in 2006, Congress passed changes to the federal tax law that dramatically increases the tax incentive for landowners to donate conservation easements in 2006 and 2007. These incentives will likely be extended into 2008, but there is no guarantee they will go on forever. Wilmot has the opportunity now to work with landowners and private land trusts to leverage these federal tax incentives with a modest investment of town funds to encourage voluntary private land conservation in town at very low cost to the taxpayers.

**Thank you for taking the time to read this information sheet.**

*No town funds were used for the production of this flyer.*

# Sample Fact Sheet for Defense of Land Use Change Tax Allocation

## To conserve the future of Boscawen, please vote NO on Article 21



In 1988, the NH Legislature recognized the need to help towns and cities offset development with tools and resources for conservation. The resulting law enables and empowers communities to create their own support for conservation. By 2000, 87 towns and cities—including Boscawen—had created conservation funds. By 2006, that number increase to 144—almost 62% of NH! In 2001, the citizens of Boscawen decided to invest in their future by dedicating all of their Land Use Change Tax to conserving open space.

### Open space benefits everyone

Hunters, hikers, skiers, snowmobilers, cyclists, and many others have asked for it. They know that when open space is conserved, it not only benefits their activities but also the town's finances by reducing the use of services including schools, police, and road maintenance.



### More development raises the property taxes that we all pay

With more residential development and less open space, businesses, homeowners, and renters will see their taxes continue to rise to support the growth of the schools and town services. Conserving land reduce our taxes FOREVER.



### A Conservation Fund provides leverage for other funds

Only communities that have matching funds will be able to participate in programs such as the LCHIP federal land conservation funds. A conservation fund will also enable Boscawen to initiate projects with willing sellers and work with organizations such as the Society for the Protection of NH Forests and local land trusts.

### There is very strong public support

In 1993, the citizens of Boscawen created their Conservation Fund. Without a dissenting vote in 2001, the citizens of Boscawen dedicated 100% of these funds to conserving open space. This was revisited in 2003 and 2005 and **Boscawen's support for conservation was overwhelming.**

### Some unsettling trends...

From 1992 to 1997, 107,300 acres of open space were developed in NH. This means that we are losing over 20,000 acres of fields, forests, farms, and shoreland every year! With Boscawen's proximity to Concord, prime access from I-93, and regional development patterns moving north, Boscawen is right in the path of these increased pressures. Currently only 566 out of Boscawen's 16,256 acres are permanently protected. Since 1970, housing units have increased by over 42%. The population of Boscawen is expected to increase 22% by the year 2020. Please see the reverse side of the sheet for more statistics and trends.



**The funds are currently and will continue to be held in trust for the people of Boscawen for land conservation.**

## Fast Facts

### In New Hampshire

- NH's population has doubled since 1950 and is projected to triple by 2020
- Since 1974, over 24% of all cropland in New Hampshire has been converted to other uses
- New Hampshire has been losing over 20,000 acres of forest land to development each year

### In Boscawen

- According to the survey conducted by the town for the Master Plan revision process, *89% of respondents indicated that they felt more land in Boscawen should be permanently conserved*
- In the same survey, 83% felt that open space was very important or important
- 67% of the respondents to the Master Plan Survey support acquisition of lands for conservation purposes
- 75% of those surveyed indicated that maintaining agriculture and forestry as economically viable land uses is important
- When the citizens of Boscawen overwhelmingly voted for this fund when it was established and unanimously voted down this same article two years ago.
- We are not alone: By 1999, 84 towns had dedicated Conservation Funds. By 2003, that list had grown to 128—almost 55% of NH—with many towns and cities increasing their allocations. The numbers increase each year: by 2006, 144 towns—almost 62% of NH—had implemented this valuable tool with many municipalities increasing their allocation.
- **This fund belongs to and is controlled by the citizens of Boscawen.**

**Boscawen is a leader in open space conservation—let's not go backwards.**

**Everyone's funds together make a difference and will support open space conservation.  
Every tax dollar paid by residential development costs taxpayers much more.**

**Please don't mortgage Boscawen's future—vote NO on article 21.**

*For further information, please contact Michele L. Tremblay, Chair,  
Boscawen Conservation Commission, 116 North Main Street, Boscawen, NH 03303, 603.796.2615,  
boscawenc@tds.net, or the other members of your Conservation Commission:*

Sylvia Bradford

Mark Ciarametaro

James F. Colby

Paul Fisher

Michael Jette

Ernie Jones

Norm LaPierre

Ray Powelson

Michele L. Tremblay



Sources: *The Dollars and Sense of Open Space* by the NH Wildlife Federation and the Society for the Protection of NH Forests, *New Hampshire's Changing Landscape*, Society for the Protection of NH Forests, *1998 Natural, Cultural, and Historical Resources Inventory of the Central New Hampshire Region*, Central NH Regional Planning Commission, Boscawen town records, *2001-2002 Boscawen Master Plan*, and maps from the Society for the Protection of NH Forests.

• *This document was entirely produced with private funding and is printed on 30% post-consumer recycled content paper* •



# Sample Project Selection Criteria (Pembroke)

## Land Protection Criteria<sup>1</sup>

This criterion was developed through a series of meetings of the Pembroke Conservation Commission, reviewing the 2004 Natural Resources Chapter of the Pembroke Master Plan, input from other Town Boards and Committees, and the examination of protection criteria from other towns and other land protection organizations.

This set of criteria provide a rough guide which, when properly applied, will give a useful indication whether a parcel is worthy of protection for natural resource or conservation reasons. The values represented by these criteria are conservation values and not monetary values. Below are brief explanations of the criteria that will be used to evaluate conservation land in Pembroke:

### 1) Shorelines and River Frontage

Three rivers, the Suncook, the Soucook and the Merrimack Rivers, make up the borders of Pembroke. These three rivers are an important natural resource and the majority of survey respondents have expressed an interest in preserving these riparian habitats. These shorelines are particularly important because they provide several habitats along side each other — the water, the low shrubby margins and the taller adjacent forests. The biodiversity along these shorelines supports a wide variety of mammals, birds, reptiles, amphibians and plants.

### 2) Aquifers and Watersheds

Aquifers provide the primary source of drinking water for most of Pembroke's residents. There are three stratified drift aquifers in Pembroke, as identified by the US Geological Service; all three are linked to the three rivers with the largest occurring along the Soucook River.

### 3) Parcel Size, Accessibility, and Enhancement of Other Existing Protected Lands

Larger unfragmented parcels help to maintain the rural character and wildlife habitats of Pembroke. To preserve this we need to conserve these larger areas from fragmentation and add adjacent parcels for expansion or linkage whenever possible. Having pieces of conservation land that are accessible to

the public for passive recreation and wildlife viewing ensures continued support for the acquisition of conservation land in town.

**4) Wildlife**

Protect habitat for rare, threatened, or endangered animal or plant species and/or contains an exemplary natural community which provides significant wildlife habitat.

**5) Agricultural Land**

Emphasis will be placed on farmland in production and associated cleared land because of the biodiversity they provide and the importance of maintaining an agricultural presence in our community. (To be used in conjunction with the Land Protection Criteria Rating Sheet adopted on June 12, 2006.)

**6) Contains a Portion of a Major Trail Corridor or Other Nature Trail.**

Recognizing that existing trails and Range Roads contribute to quality of life for the community. Special attention is to be given to parcels adjacent to or spanning the Range Roads. Other parcels that have existing trail systems or linkage as laid out in the Pembroke Open Space Plan.

**7) Cultural, archaeological or historic significance**

Historical or cultural features enrich our community through a sense of continuity with the past and ongoing traditions of the present that often define the essence of our community.

**8) Scenic Vistas**

Land from which there are outstanding scenic views of mountains or water bodies was considered highly valuable to preserve.

**9) Land Use Restrictions**

Restrictions on how the land can be used or on-going maintenance requirements placed on the property.

**10) Funding Sources**

Land or grant monies that provide additional funding to offset purchase price.

**11) Unique Features**

Important and unique natural resources, such as year-round streams and vernal pools, which are not covered by any other criteria.

June 12, 2006 Adopted

**TOWN OF PEMBROKE  
CONSERVATION COMMISSION  
LAND PROTECTION CRITERIA RATING SHEET<sup>1</sup>**

Name of Property \_\_\_\_\_ Location of Property \_\_\_\_\_

Dave Evaluated \_\_\_\_\_ Commission Member \_\_\_\_\_

<b>FEATURE</b>	<b>DEFINITION</b>	<b>SCORING<sup>2</sup></b>	<b>NOTES</b>
Shoreline and River Frontage	Frontage on the Merrimack, Soucook, or Suncook Rivers		
Aquifers and Watersheds	Property located in the most recent USGS aquifer and watershed maps		
Parcel Size, Accessibility, and Enhancement of Other Existing Protected Lands	Larger unfragmented parcel and/or abuts existing conservation land. Accessibility to the site		
Wildlife	Contains rare, threatened, or endangered plant or animal species and/or contains an exemplary natural community		
Agricultural Land	Productive farm land and other associated pasture/cleared land		
Contains a Portion of a Major Trail Corridor or Other Nature Trail	Existing trail corridors on or abutting the parcel and/or abutting Class IV roads		
Cultural, Archaeological, or Historical Significance	Identified and confirmed historical, archaeological, or cultural significance		
Scenic Vistas	Land that provides scenic view to others or land from which scenic views are seen		
Land Use Restrictions	Restrictions on how land can be used or on-going maintenance requirements		
Funding Sources	Funding available to off-set conservation costs		
Unique Features	Unique natural resources not covered by other criteria		

<sup>1</sup> To be used in conjunction with the Land Protection Criteria

<sup>2</sup> Scoring is on a scale from 1-3 0=not present, 1=poor, 2=average, 3=excellent



# Sample Project Selection Criteria (Newmarket)

Project Name \_\_\_\_\_

Date Reviewed \_\_\_\_\_

## Newmarket Open Space Commission Selection Criteria and Checklists For Land and Conservation Easement Acquisitions

September 10, 2002

### Purpose

At the May 2002 Town Meeting Newmarket residents approved warrant article 3 enabling bonding authority for land acquisition. The town can bond up to \$2,000,000 to purchase land or other property interests therein: (1) to protect the town's rural character and natural resources by conserving land, (2) for outdoor recreation including athletic fields, or (3) other public purposes (the full language of the warrant article is available at the Town Hall).

### Purposes Checklist

To qualify for selection a property must meet ALL of the following criteria:

\_\_\_ The property is located in or partially in the town of Newmarket (If property is partially in another town, Newmarket's costs will be proportionate to the amount of land in Newmarket)

\_\_\_ The property meets at least one of the following purposes:

\_\_\_ protects the town's rural character and natural resources

\_\_\_ provides outdoor recreation including athletic fields

\_\_\_ The property meets one or more goals identified in the Newmarket Master Plan and/or Open Space Plan and encourages careful stewardship of land and water resources

\_\_\_\_ The property is owned by an interested landowner

### **Public Benefit Checklist**

To qualify for selection a property must meet one or more of the following criteria (these are listed alphabetically):

#### ***Athletic***

\_\_\_\_ Is suitable for creating recreational athletic fields

#### ***Drinking Water Resources***

\_\_\_\_ Contains aquifer recharge areas, wellhead areas, surface waters, watersheds or other lands necessary for the protection of drinking water supplies and water resources

#### ***Linkages and Buffers***

\_\_\_\_ Buffers, expands, or adds other conservation value (e.g., wildlife corridors, recreational trail linkages) to existing conservation land

#### ***Outdoor Recreation***

\_\_\_\_ Is suitable for recreational trails for walking/hiking and enjoying nature or provides access to public waterways for fishing and swimming

#### ***Scenic Views***

\_\_\_\_ Protects scenic views from public roadways or recreation areas

#### ***Waterways and Wetlands***

\_\_\_\_ Contains rivers, riparian corridors, salt marsh, estuary, floodplains, prime wetlands, or other water bodies

#### ***Wildlife Habitat***

\_\_\_\_ Contains significant wildlife habitat, rare plants or animals, or exemplary natural plant communities

#### ***Working Lands***

\_\_\_\_ Is in active agricultural or forest management use

#### ***Other***

\_\_\_\_ Provides other significant public benefit \_\_\_\_\_

### **Other Criteria**

In addition to meeting a public benefit there are additional criteria that may affect the town's interest in a given property and priority for acquisition.

#### **Funding Leverage**

\_\_\_ The ability of the town or partnering organization to leverage additional funds to protect the property

#### **Donation Opportunities**

\_\_\_ A landowner is interested in donation, bargain sale, or other scenario that leverages town funds

#### **Threat of Conversion**

\_\_\_ The property is under immediate threat of development

### **Feasibility Checklist**

A property may meet the selection criteria favoring a land protection proposal and still may not be accepted if one or more of the following considerations apply:

\_\_\_ The property is not large enough to be significant for its purpose

\_\_\_ The property is found to be irreparably contaminated or the cost of clean-up is too high

\_\_\_ There is reason to believe that the land/easement would be unusually difficult to manage or enforce

\_\_\_ Adjacent properties are being, or are likely to be, developed in a manner that would significantly diminish the conservation or public values of the property in question

\_\_\_ The landowner insists on provisions that the Open Space Commission believes would seriously diminish the property's primary conservation or public values or the town's ability to enforce an easement and/or manage the land

\_\_\_ Ethical or image problems exist in association with the acceptance of the project

\_\_\_ The proposed open space or public value is part of a development proposal that, overall, is likely to have significant adverse impacts on conservation resources





## **Dijit Taylor**

Dijit Taylor has worked to conserve the environment and community character of New Hampshire throughout her career. In 2009, she became the principal in the consulting firm Conservation Assistance and More!, an organization that offers assistance in conservation and education topics to land trusts, municipalities, agencies, and landowners. Her work includes publications, strategic planning, grant writing, cost of community services studies, workshops, training events, and conservation project planning and coordination.

She served as the director of the Center for Land Conservation Assistance at the Society for the Protection of New Hampshire Forests from 2001 to 2009. Prior to that, she worked for the New Hampshire Wildlife Federation, the New Hampshire Rivers Council, and the Appalachian Mountain Club. She lives in Hopkinton, where she chairs the Open Space Committee.

### **Conservation Assistance and More!**

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## **Carol Andrews**

Carol Andrews has served as executive director of the New Hampshire Association of Conservation Commissions (NHACC) since 2006. This private, non-profit association of municipal conservation commissions fosters land conservation and appropriate use of the state's natural resources by providing assistance to conservation commissions, facilitating communication and cooperation among commissions, and helping to create a climate in which commissions can be successful.



Carol is deeply committed to land conservation and has completed several important forest and farmland projects. She also serves on the board of the Temple-Wilton Community Farm (the first community supported agriculture farm in NH), has been trained as a Forest Society land steward, is active in the state's Volunteer Lake Assessment Program, and is a founding member of the Washington Conservation Commission.

### **New Hampshire Association of Conservation Commissions**

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