

LAND TRUST NEWS

The Newsletter of the Maine Land Trust Network | Fall 2006

Expanded Tax Incentives for Conservation Easements

After years of advocacy by the land conservation community, Congress recently approved expanded federal income tax deductions for conservation easement donations. These incentives may accelerate the pace of land protection in Maine during the next two years. This law applies only to easements donated in 2006 and 2007 so land trusts should get the word out soon to potential easement donors, and to the lawyers, appraisers and accountants with whom they work. The Land Trust Alliance is working to make these changes permanent and will be seeking help from land trusts in this effort during 2007.

The law combines stronger tax incentives with several important reforms to the rules for easement donors (outlined below). The LTA web site (www.lta.org) has more detailed information on these changes and their implications.

Expanded Charitable Deductions

Individual taxpayers donating an easement in 2006 or 2007 can now claim a charitable deduction up to 50 percent of their adjusted gross income (up from 30 percent previously), with the remainder eligible to be carried forward for up to 15 years (increased from 5 previously). Easement donors who previously could not have deducted the full value of their gifts will be able



Marina Schaffler

Conservation easements donated in 2006 and 2007 qualify for expanded charitable contributions. An easement recently donated to Coastal Mountains Land Trust protects this scenic Camden hilltop.

to deduct more of that value over a longer time period, and will not lose these benefits simply because their income level is modest. For example, someone with an annual adjusted gross income of \$50,000 who donates a conservation easement worth \$200,000 could deduct up to \$25,000 initially and an additional \$25,000 in each of the ensuing seven years.

The benefits are even greater for farmers, who can deduct up to 100 percent of their adjusted gross income (assuming that 50 percent or more of their gross income comes from farming).

Appraisal Reforms

Deliberate overvaluations of conservation gifts rarely occur in Maine, but land trusts should be mindful of the increased penalties

for donors and appraisers in these cases. The bill sets higher standards for “qualified appraisers,” raises standards for appraisals of all donated property (worth \$5,000 or more), and sets higher penalties for both appraisers and donors who engage in a “substantial” or “gross” misstatement of value. The bill defines a “substantial valuation misstatement” as 150 percent or greater and a “gross valuation misstatement” as 200 percent or greater than the correct valuation. Under the new rules, “reasonable cause” is no longer a valid defense for a gross valuation misstatement. These new appraisal standards are permanent and apply to all donations made after August 17, 2006.

The Land Trust Alliance recommends that land trusts review the new law, and use LTA’s grassroots toolkit to help prepare landowner outreach materials. Since revisions are made frequently to state and federal tax laws, advice from legal counsel and tax professionals should be sought in any conservation transactions.

This article draws on material prepared by the Land Trust Alliance and on the August 2006 Maine Land Conservation Law E-Bulletin written by Robert H. Levin, Esq.

News from Our Members

Western Mountains Foundation (which is in the midst of an \$11 million campaign) purchased a 590-acre parcel along the Dead River that is critical to its efforts to build a 180-mile Hut and Trail system in Western Maine. Approximately 6.5 miles of trail will be built on the parcel this fall and next summer.

Coastal Mountains Land Trust

purchased a 112-acre property adjoining a block of other Land Trust properties on the southern ridge of Ragged Mountain. The resulting stretch of 317 contiguous, conserved acres protects wildlife habitat and miles of trails that wind through mature oak and beech forests.



Coastal Mountains LT



Steve Miller

Tremendous community support and a willing conservation buyer enabled **Islesboro Islands Trust** to successfully protect the island's gateway view across old farm fields to Gilkey Harbor and beyond. The transaction involved outright purchase and then resale of the property to a conservation buyer subject to a conservation easement.



Anne Hammond

Lower Kennebec Regional Land Trust held public ribbon-cutting ceremonies and guided hikes on four new preserves this summer: Sewall Woods in Bath, Green Point in West Bath, Merrymeeting Fields in Woolwich and the Bonyun Preserve on Westport Island (shown here).

The newly formed **Kennebec Estuary Collaboration**, which seeks to conserve the estuary's unique land and water resources, recently received a capacity-building grant from the Maine Coast Protection Initiative and two other matching grants. The \$177,500 in grant funds, along with support from The Lower Kennebec Regional Land Trust and Phippsburg Land Trust, will fund a new Executive Director and Administrative Coordinator—allowing the two organizations to streamline business and administrative functions.

The **Kennebec Land Trust** opened a trail on its newest property, the Webber-Rogers Conservation Area in Litchfield. An easement on 117 acres protects the shoreline along Pleasant Pond, stone walls, woodlands, a sledding hill, and hayfields that have been in the donor's family since 1790.



Jym St. Pierre

The **Freeport Conservation Trust** and Freeport's Town Council have completed a conservation easement protecting 35 acres adjoining Mast Landing Elementary School. FCT now holds an easement on the town-owned land, which includes an historic quarry, a complex of 16 vernal pools, and trails through forested wetland habitat that the public and school community can enjoy.



Freeport Conservation Trust

Land Trust Profile: Boothbay Region Land Trust

Public use of preserves can provoke mixed reactions among land trust staff and volunteers. Trusts may not publicize their properties widely for fear that heavy use could impinge on the ecological values of the land.



BRLT's Penny Lake Preserve now has a bridge that accommodates wheelchairs.

Peggy Voight

(keeping visitors away from sensitive habitats and seabird-nesting islands). Properties did not seem to be the worse for wear, and the Trust found itself getting much greater community support. According to board member Peggy Voight, “people who might have had some hesitation about land coming off the tax rolls have come around after walking the trails.”

Boothbay Region Land Trust (BRLT) operated in this mode for the first decade after it formed in 1980. It had virtually no trails and minimal involvement with the larger community. That changed around 1994, according to Dawn Kidd (who served as BRLT's Executive Director for 14 years), when a couple generously donated funds enabling BRLT to buy a 146-acre site that local residents had traditionally enjoyed. “Around that time,” Kidd recalls, “the Board made a conscious decision to look at each property in terms of its traditional use and what it was being protected for. We wanted to save what was special about our region, and we realized that a lot of what makes it special is that the land is there and people can go out and enjoy it.”

BRLT slowly began to encourage people to enjoy hiking, hunting, clamming and other traditional uses where those were appropriate

BRLT estimates that roughly 30,000 people visit their preserves each year, but with 36 fee properties totaling 1,204 acres, use is dispersed enough that it hasn't been problematic. Brochures showing the location of the Trust's 30 miles of public hiking trails are available at the local Chamber of Commerce, and BRLT has even published a boater's guide to its preserves.

BRLT sponsors dozens of free public events—from hikes and paddles to educational talks and bird-watching expeditions. In 2004, the Trust launched an annual Boat Builders Festival, which attracts more than 2,000 visitors and is now one of its biggest fundraisers (netting more than \$25,000 each year).

Area residents learn about Trust preserves at an early age as all the community's fifth graders participate in a 6-week program involving field trips to land trust properties.



Fifth-grade students in Boothbay schools all get to enjoy field trips to BRLT preserves like Damariscove Island.

BRLT

BRLT's commitment to access is evident, not just in its programs, but in its preserve infrastructure. More than half of Trust properties have clearly marked parking lots and visitor kiosks. The Trust recently completed one of the state's first handicapped access preserve trails, located near a retirement community, schools and the local YMCA. It also owns two piers, and is working actively to ensure that fishermen and clambers have access to the shore.

BRLT's investment in the community has brought unexpected paybacks. In 2005, nearly 400 volunteers logged more than 11,000 hours of time for the land trust. Charts depicting growth in funds and acreage since the mid-1990s show steep upward trajectories. BRLT has an approach that other trusts might successfully employ: “Trust the public and invite them in,” Peggy Voight says. “It certainly has worked here.”

Land Trust Standards & Practices

This is the fourth article in a 12-part series that describes the ethical and technical guidelines for operating a land trust responsibly. The following excerpts are adapted with permission from the Land Trust Standards and Practices: full text is available from the Land Trust Alliance (www.lta.org).

Land Trust Standard 4: Conflicts of Interest

The land trust has policies and procedures to avoid or manage real or perceived conflicts of interest.

Conflicts may entail self-dealing (where insiders could benefit financially from their position with the trust), competing loyalties, or problems of public perception. The best way to address conflicts of interest is to understand how they might arise; to make board members and others aware of the need to avoid conflicts; to require that board members, staff and other insiders disclose any potential conflicts; and to establish a policy for dealing with conflicts that arise. Failure to prevent real or perceived conflicts of interest can lead to financial losses, diminished credibility and a corrosive atmosphere of distrust.

Practice 4A: Dealing with Conflicts of Interest

The land trust has a written conflict of interest policy to ensure that any conflicts of interest or the appearance thereof are avoided or appropriately managed through disclosure, recusal or other means. The conflict of interest policy applies to insiders (see definition below), including board and staff members, substantial contributors, parties related to the above, those who have an ability to influence decisions of the organization and those with access to information not available to the general public. Federal and state conflict disclosure laws are followed.

A policy should identify who is covered by the policy (such as board, staff, major contributors and other “insiders” — those with specialized information who might influence organizational decisions); the types of conduct that raise concerns; and how conflicts will be disclosed, managed and documented. Every board and staff member should have a copy of the policy.

Practice 4B: Board Compensation

Board members do not serve for personal financial interest and are not compensated except for reimbursement of expenses and, in limited circumstances, for professional services that would otherwise be contracted out. Any compensation must be in compliance with charitable

trust laws. The board’s presiding officer and treasurer are never compensated for professional services.

The credibility of the land trust must be considered in any case where a board member might receive compensation. When the organization is seeking services that might be contracted out, occasionally a board member may be considered as a paid provider of these services (as long as the board member is not an officer and the organization carefully adheres to its conflict of interest policy and policies on fiscal controls).

Practice 4C: Transactions with Insiders

When engaging in land and easement transactions with insiders [see definition above], the land trust follows its conflict of interest policy; documents that the project meets the land trust’s mission; follows all transaction policies and procedures; and ensures that there is no private inurement or impermissible private benefit. For purchases and sales of property to insiders, the land trust obtains a qualified independent appraisal prepared in compliance with the Uniform Standards of Professional Appraisal Practice by a state-licensed or state-certified appraiser who has verifiable conservation easement or conservation real estate experience. When selling property to insiders, the land trust widely markets the property in a manner sufficient to ensure that the property is sold at or above fair market value and to avoid the reality or perception that the sale inappropriately benefited an insider.

Some land trusts avoid selling or buying transactions with board and staff members; others enter into such agreements only after following a carefully proscribed procedure (including a detailed disclosure statement).

If a board member wishes to donate land or a conservation easement, the land trust should follow its conflict of interest policy; ensure that the potentially conflicted party is not part of internal discussions concerning the donation or future land stewardship; and keep thorough records so that the transaction is transparent and upholds the organization’s credibility.

Steward's Corner: Controlling Invasive Plants

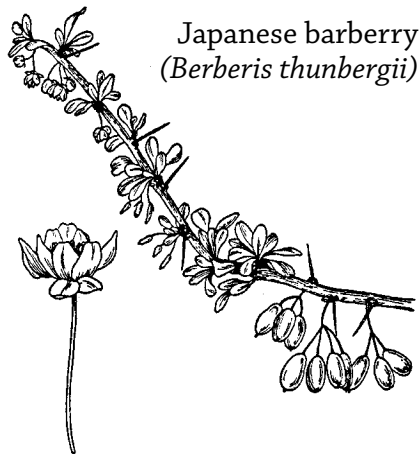
This new "Steward's Corner" feature is designed to help trusts build their stewardship capacity. It will cover "in the field" issues as well as administrative concerns. This piece draws on information provided by Theresa Kerchner of the Kennebec Land Trust and Gary Fish and Henry Jennings of the State's Board of Pesticides Control.

Preventing the spread of invasives requires widespread education targeted at land stewards, land trust members, landowners and conservation commis-

sions. Field programs and slide lectures can help people identify the most problematic non-native plants and learn about the ecology and specific control methods for each species. For information on the most common in-

vasives in Maine, see materials prepared by the Maine Natural Areas Program (http://www.mainenaturalareas.org/docs/program_activities/invasive_plants_factsheets.php) and the Nature Conservancy (<http://tncweeds.ucdavis.edu/>).

When you assess a property to determine the amount and kinds of invasives, consider your goals for the land and how control of invasives might be funded (along with possibilities for volunteer assistance). Focus control efforts on areas with the highest biodiversity, and work from the outside in (from where the density of invasives is lowest to where it is highest).



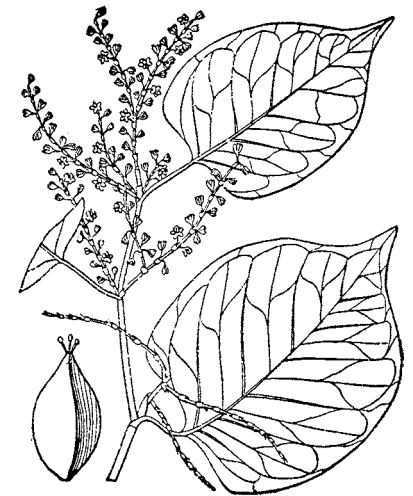
Japanese barberry
(*Berberis thunbergii*)



Asiatic bittersweet
(*Celastrus orbiculata*)

Mechanical control can be the simplest approach as it does not require permitting or a pesticide applicators license. It is not always feasible with large infestations, though, and it can disrupt soils and demand considerable labor. Approaches such as pulling/digging are best employed in the spring when soil is moist and seeds have not yet been produced. You can cut or mow to keep plants from photosynthesizing, but you may need to keep up this routine for 3 to 5 years before results are visible.

Some land trusts are using chemical means of control, applying herbicides such as Glyphosate (often known by its trade name, Roundup, or Rodeo for wetland areas) and Triclopyr. Consider the potential effects of chemicals on non-target species (such as aquatic invertebrates, native plants and amphibians) before any application. Chemical treatments, while often effective, can be costly.



Japanese knotweed
(*Fallopia japonica*)

Understanding Pesticide Rules

The common herbicides used to control invasive plants are regulated as pesticides. A commercial pesticide applicator license is required to legally apply an herbicide (like Roundup) when the application will take place in an area open to the public, when the application is done by a government employee, or when the application is done under contract. If the property or affected part of the property is clearly posted as closed to public use for seven days following the application, then it is not considered open to public use and no license is required. There are no exceptions to the license requirements when the application is done by a government employee or under contract. Only licensed applicators may purchase and apply aquatic herbicides like Rodeo or Renovate or "restricted use" pesticides like Tordon. For more information on control options, visit www.thinkfirstspraylast.org or contact Gary Fish at the Maine Board of Pesticides Control (gary.fish@maine.gov, 207-287-2731).

Brookings Report: Charting Maine's Future

A new report sponsored by GrowSmart Maine, entitled *Charting Maine's Future: An Action Plan for Promoting Sustainable Prosperity and Quality Places*, provides a wealth of recommendations relevant to the state's land trust community. Researchers from Brookings Institution, a think tank in Washington D.C. that provides research and policy advice on issues involving economic development and metropolitan and regional development, spent 18 months assessing Maine's current situation, analyzing economic data, holding public forums, and conducting interviews. The resulting report has four primary sections, outlined below.

Emerging Trends

Charting Maine's Future details three major emerging trends:

- Maine's population, once stagnant, is growing again;
- Maine's economy, once based on goods production and extraction industries, is becoming more oriented to diverse and innovative services; and
- Maine's landscape is shifting from rural to suburban.

While Maine's population is increasing, "economic shifts continue to cancel traditional, good-paying jobs (especially in rural Maine) and produce new and different ones." In addition, growth is contributing to "an extraordinary bout of suburban sprawl . . . intruding upon the state's storied rural landscape in many areas."

Emerging Implications of Maine's Trends

The report's second section explores the effects of Maine's recent growth and development patterns. On a positive note, in-migration appears to be "replenishing the state's hard-working but aging workforce" (even in some struggling rural areas). Also the "continuing shift to a more diversified service-oriented economy means that the state now has a more balanced small-business economy that is beginning to gain a toehold in the knowledge-driven, innovation-oriented industries of tomorrow." Unfortunately, Mainers are seeing "good jobs being replaced with lower-paying ones" and some "lack the skills to secure something better." The report notes that "unplanned haphazard suburban development" is degrading "Maine's special essence—its pristine coastline and forests and its authentic towns."

This section tracks other implications as well:

- Demographic change is raising education levels and accelerating population growth, but many workers remain unprepared for tomorrow's jobs;
- Economic restructuring is producing quality jobs in emerging innovation clusters, but these clusters remain very small; and
- Development patterns are beginning to revitalize some cities and towns, but suburban sprawl is consuming rural land, increasing government costs, and degrading the state's small towns and environment – its true "brand."

Working toward Change

The report's next section examines obstacles and challenges to greater prosperity such as national and global markets; the state of the Boston economy; the coming retirement boom; and Maine's own tax, regulatory, and investment policies. Maine has had limited success meeting these challenges in the past, the report notes, and state policy choices bear closer scrutiny in at least three areas. The three primary problems observed include:

- an inconsistent stance toward economic development;
- high costs of government, supported by an unbalanced state-local tax system; and
- building and planning rules that shunt development away from regional hubs and service centers, contributing to sprawl.

An Action Plan for Promoting Sustainable Prosperity in Maine

Charting Maine's Future concludes with an Action Plan that identifies two principle challenges. First, Maine must "locate the resources to invest significantly in its most promising assets—its outstanding quality of place and promising research ideas and industrial clusters—without driving taxes up." Second, Maine must "find new ways to revitalize its regional centers and manage growth while honoring the fierce independence of its towns."

The report calls for Maine to "invest heavily in what matters; to free up the resources to do that (as well as to reduce taxes) by making government more efficient; and likewise to modernize the state's develop-

ment rules.” To further these goals, the action plan recommends:

- Investing in building a place-based, innovation-focused economy;
- Trimming government to fund investments in place and to finance tax reform; and
- Supporting the revitalization of Maine’s towns and cities while channeling growth.

Noting that investments both in Maine’s ‘green’ and ‘brown’ infrastructure have been hit-or-miss, the report advocates greater bonding—creating a \$190 million “Maine Quality Places Fund” and a \$200 million “Maine Innovation Jobs Fund.” Out of the first 10-year fund, \$95 million might be dedicated to the Land for Maine’s Future Program, with an additional \$5 million supporting traditional access and \$5 million promoting outdoor recreation and high-value tourism. The balance would go towards revitalizing downtowns. This fund would be financed by increasing the state’s lodging tax from 7 to 10 percent (currently Maine’s tax is slightly below the regional average).

The Brookings Report notes that Maine’s current debt load is quite small compared to the national average and peer states, and suggests that “the state’s strong debt position is in fact a key asset that Maine should leverage as it builds toward future prosperity.” The Quality Places Fund, which the report considers a modest investment, “should be viewed as a base commitment to a sustained strategy of making sure Maine holds onto the beauty and small-town community that sets it apart.”

The report cites a recent 6-year, \$625 million bond approved by Pennsylvania voters in 2005 that takes a similar approach—coupling urban revitalization with land conservation by supporting a wide range of projects that enhance quality of place. Pennsylvania’s Growing Greener II program is investing in urban parks, redevelopment and brownfields remediation, while protecting natural resources and traditional



recreational uses and promoting tourism.

Investments in place and innovative job sectors need to be coupled with increased governmental efficiency, the report notes, citing the “redundant systems and excessive numbers of units [that] pervade state, school district, and sometimes even local government” bureaucracies. Maine needs to engage in a “major, top-to-bottom review of state government,” with the goals of saving costs, consolidating func-

tions and improving performance. The

report recommends that this process be done by a commission modeled after the Base Realignment and Closure Commission that could “develop a blueprint for securing \$60 to \$100 million annually in efficiency and structural savings within state government” (a target that represents less than 4 percent of the biennial general fund budget). The report also calls for a complete overhaul of the State’s K-12 educational system, which is one of the most expensive and cumbersome in the nation. The report’s authors commend efforts already underway that are exploring ways to provide educational and other services on a regional basis.

The Action Plan also recommends systematic reform of Maine’s “unbalanced, intrusive revenue system,” funded by savings located through the review of governmental inefficiencies. Specifically, the report advocates reducing Maine’s property tax burden; lowering the top rate of the income tax, and reducing exposure to it among those with modest incomes; and broadening the state’s revenue base by “exporting” more tax burden onto Maine’s millions of visitors and tourists.

The report ends on an optimistic note: “Maine’s rooted, committed citizens—who love their state—have a talent for figuring things out. They’ve done it repeatedly in the past. We believe they will do it again, when it matters most.”

To receive more information or a copy of the complete report, visit www.growsmartmaine.org.

Land Trust Collaboration: One Region's Experience

Maine land trust representatives recently gained insights into how land trusts can work together from Rich Cochran, Director of the Western Reserve Land Conservancy in Ohio. Cochran described the collaborative process by which eight Ohio land trusts recently merged to more effectively engage in strategic land conservation.

The Chagrin River Land Conservancy, which had far greater capacity than the other ten trusts in the region, took the initiative to explore how the trusts might work more effectively together. It contracted a neutral facilitator to gather information and engage others in considering options (a step that Cochran noted could be costly but was critical). The emphasis should be on building trust, Cochran cautioned, saying "a merger is a process, not an event" and "everything is about people." The facilitators helped the group explore three different options for improving services: having CRLC form agreements with individual trusts to provide services; having CRLC form a separate "service center" with centralized staff to assist CRLC and other trusts; or having interested trusts merge. After extensive dialogue and unhurried investigation, the latter option emerged as the best means to gain quality control, credibility, funding, political clout and organizational stability. CRLC invited the trusts to merge, and the facilitators expected that two would. In fact, seven land trusts joined because the process had made them "feel like owners." Serendipitously, they secured major

funding to catalyze the process, an element that Cochran felt was key.

Workshop participants were interested to learn that their concerns about collaboration echoed those experienced by members of the Ohio trusts: founding trust members might become less vested; people may care less about larger, more amorphous regions than about local lands; conflicts could arise from divergent missions; trusts could lose identity, control and their traditional donor base; and staff might lose jobs. By focusing on a shared mission and creating a "constant feedback loop," (asking questions, gathering points of view, floating them back and forth, and refining them), the Ohio trusts were able to address those concerns and move forward.

The Western Reserve Land Conservancy began operating as a single entity (with eight chapters and three offices) on January 1, 2006 and it is still working to integrate staff, volunteers and trustees. Already, though, WRLC is achieving impressive results: it has preserved more than 1,000 new acres so far this year and garnered unprecedented publicity, foundation support and public funding.

Documents describing WRLC's merger process will be posted on the MLTN web site in coming months (or contact Donna Bissett at dbissett@mcht.org for copies).

Maine Land Trust Network
is a program of



Land Trust News is published three times a year for the directors, officers and staff of the 85 members that subscribe to the Maine Land Trust Network (MLTN). A program of Maine Coast Heritage Trust, MLTN builds and sustains the quality and effectiveness of land trusts and other conservation organizations—drawing on their collective expertise and resources to ensure responsible conservation.

To submit material for publication in *Land Trust News*, please contact Megan Shore at 729-7366 (mshore@mcht.org).

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