YOUR FAMILY LAND:
LEGACY OR MEMORY?

An Introduction to the Family Land Protection Process

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Northeastern Area State and Private Forestry
11 Campus Blvd., Suite 200
Newtown Square, PA 19073
www.na.fs.fed.us

The Green Valley Institute
c/o University of Connecticut
Cooperative Extension System
139 Wolf Den Road
Brooklyn, CT 06234
www.greenvalleyinstitute.org

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Over time, many farm and forest owners come to love their land—its forests, fields, and streams, and the wildlife that live in them. All else being equal, many would love to know that some or all of their land would remain undeveloped after they are gone. The fact that you're reading this suggests you may be one of them.

If you have this perspective, protecting your land from development is a task you certainly can accomplish. Virtually every situation is workable and every problem can be solved. It does require some planning and decisionmaking, however, so the sooner you start the better. Experience has shown that the number one obstacle to the protection of family land is pure and simple procrastination.

The information presented here is designed for landowners who think they might want to permanently protect some or all of their land from development, but aren't sure where to start. It's built around a simple set of steps you can take that, once completed, can put you on the path to a land protection plan that accomplishes exactly what you want it to.

The steps are in a suggested order, which you may rearrange to fit your situation and the opportunities that present themselves.

Step 1 Get specific

What do you want to protect for future generations? What matters to you? You may want to protect water resources or wildlife habitat, preserve a scenic vista, or sustain a working farm or forest. Some questions to ask yourself include:

- Do you want an heir or heirs to own it someday, or do you prefer that a conservation organization own it?
- Do you want to retain the land and exclusive use of it for your lifetime, or is that unimportant?
- Do you want the public to be able to enjoy some or all of your land, or do you want it to remain private?
- Could you or your estate take advantage of income and/or estate tax benefits available to those who voluntarily protect conservation land during their lifetime?
- Do you want all of the property kept from development, or are some portions more important than others?

Step 2 Learn some basics about land protection tools and options

Many folks assume they have just three options for the future of their land:

- They can give it all away,
- They can sell it all for development, or
- They can leave it as is to their heirs.

In fact, these are just three options out of many, which may offer a wide range of income opportunities to you or your heirs and at the same time protect important natural resources for future generations.

Perhaps the single most important land protection concept to understand is the notion of "separable rights." This means that you as a landowner possess many individual, and separable, rights, which are "bundled" together in land ownership. Examples include the right to hunt, fish, grow and harvest crops or trees, erect buildings, and subdivide the land according to town or county land use regulations.

As a landowner, you can choose to remove one or more of these rights from your bundle and still retain all the other rights you currently have. A farmer who sells his or her development right to the State Department of Agriculture is a good example of this principle in action. That farmer can no longer subdivide or develop the land, but can still farm the land, sell the land to another farmer, or will it to heirs.

Land protection tools, then, come in three basic categories:

A. You retain ownership of your land but remove the right to build, subdivide, or both. Tools that provide for this are known as conservation easements or conservation restrictions.
B. You sell or gift the property itself to heirs, a government agency, or nonprofit conservation group.
C. You combine sensitive and limited development on a portion of the land with permanent protection for the rest.

These tools can be used simultaneously and in any combination. There are also an increasing number of local, State, and Federal funding programs available for land protection. Which ones you might qualify for will depend on the location and attributes of your land.

Many owners are torn between not wanting to see their land developed and not wanting to disinherit children or other heirs. Usually, however, it's not an "either/or" situation, as some may believe. Creative planning and compromise can allow for some measures of both.

Step 3 Discuss your idea with appropriate family members

Not everyone has immediate family members, and for some this step may not be necessary, or even desirable. But for many it is absolutely essential. Many a land protection effort has failed, or never gotten off the ground, because family members either didn't communicate or could not agree. Getting things "out on the table" can relieve anxieties, reduce misconceptions, and clarify which differences of opinion must be addressed.

Many owners are torn between not wanting to see their land developed and wanting to provide an inheritance for children or other heirs. However, it does not have to be an "either/or" situation. Creative planning and compromise can allow for some measure of both. The key is to open the lines of communication so the planning process can begin. At some point, we all must face our own mortality. There is nothing unseemly or morbid about having these discussions, but breaking the ice can be difficult.

Step 4 Make some calls

Let's assume you've thought through these first three steps. You've developed a clearer idea of what you want to happen to your land, and, in general, which land protection tool seems to make sense for you. If necessary, you've talked things over with appropriate family members. Now it's time to reach out and make some contacts. Which contacts you make, and in what order, will vary from one situation to another. The most common ones include:

A. **Your local land trust.** Land trusts are nonprofit organizations run by local, conservation-minded volunteers. They exist to permanently protect and care for open space. Land trusts can help you explore funding programs, locate good legal assistance, and much more.

B. **Your local government.** Many local governments have commissions or committees that are concerned with conservation, woodlands and farms, and water. These local government groups exist to inventory and protect important open space as your community grows. Often they can work with you and the local land trust to help you meet your land protection goals. Contact your local government offices for more information.

C. **A conservation attorney.** Conservation easements have very specific legal requirements. If you do not have an attorney you like and trust, ask your land trust or Conservation Commission for a recommendation.

Step 5 Take stock of what you have

People who own thousands of dollars worth of stocks or mutual funds usually keep close track of the companies they've invested in—how healthy they are, what kind of return they're producing, and what risks they might be facing in the future. Yet these very same people might own tens or even hundreds of thousands of dollars worth of land and timber, and yet know almost nothing about the health of their forest, what the land and/or timber is worth, or even the boundary locations.

Your land protection effort will probably require:

A. Accurate boundary information. This doesn't necessarily mean you need an expensive survey, but someone should know where your property corners are and how to find them.

B. A property appraisal. General real estate appraisers can estimate the current market value of your land, as well as the value of its development rights. This information isn't required early on, and may not be necessary at all. It will eventually be needed, however, if you intend to take advantage of Federal income tax deductions that are allowed for conservation gifts or bargain sales.

If some of your land is forested, a forest resource inventory can also be helpful. A professional forester can conduct one and alert you to such features as unique plant communities, valuable or productive timber stands, and valuable wildlife habitats, among others. This information enables you to make the best possible choices about what portions of your land may be the most important to protect.

Either your local Cooperative Extension office or State Department of Forestry may be able to provide this assistance, or help you find someone who can.

ACT NOW!!!

Who knows what tomorrow will bring?

Step 6 Don't forget: NOW IS THE TIME!

Contrary to popular belief, protecting family land is not something to put off until just before you die. There are at least three good reasons why the time to do this is now:

A. If you should die unexpectedly without a plan, either the State, your heirs, or both will create one for you. Their plan may not look much like your plan.

B. You may lose significant income, tax benefits, or both, by waiting to protect land using a last will and testament. Good planning can save land now, save or earn you money now, and may save your heirs money later.

C. Peace of mind. If you keep thinking about this, you must want to do it. Taking steps to protect your land changes your worry into pride and contentment.

For more information

Funding Programs for Land Protection

U.S. Department of Agriculture, Forest Service, Forest Legacy Program: works through State agencies to purchase conservation easements on important forest land threatened with conversion to other uses.

Forest Service
Cooperative Forestry Staff, Forestry Legacy Program Manager
1400 Independence Avenue, SW Code 1123
Washington, DC 20250
http://www.fs.fed.us/spf/coop/programs/loa/flp.shtml

U.S. Department of Agriculture, Natural Resources Conservation Service Farm and Ranch Lands Protection Program: purchases conservation easements on prime, unique, or other productive soils to limit conversion of the land to nonagricultural uses.

Natural Resources Conservation Service
14th and Independence Avenue, SW
Washington, DC 20250
http://www.nrcs.usda.gov/programs/frpp/

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YOU CAN FIND ADDTIONAL INFORMATION THROUGH THE FOLLOWING RESOURCES

Further Reading

Conservation Options: A Landowner's Guide
The Land Trust Alliance
331 H Street NW, Suite 400
Washington, DC 20005-4711
(202) 638–4725
www.lta.org

Legal Aspects of Owning and Managing Woodlands
McEvoy, Thomas J.
Reidel, Carl. Island Press
1718 Connecticut Avenue, Suite 300
Washington, DC 20009
tmcevoy@uvm.edu

Preserving Family Lands: Essential Tax Strategies for the Landowner
A three-book series available for $14.95 each from Preserving Family Lands
Small, Stephen J.
P.O. Box 2242
Boston, MA 02107
www.stevesmall.com

The Landowner's Guide to Conservation Easements
Bick, Steven; Haney, Harry L., Jr.
Kendall/Hunt Publishing Company
4050 Westmark Drive
Dubuque, IA 52002. 179 p.

Web Resources

U.S. Forest Service—estate planning
www.na.fs.fed.us/stewardship/estate/estate.shtml

The Nature Conservancy—private lands conservation
www.nature.org/aboutus/howwework/conservationmethods/privatelands/

American Farmland Trust—farm and ranch land protection programs and conservation
www.farmland.org/programs/campaign/StewardshipPolicies.asp

The Trust for Public Land—land conservation
www.tpl.org/

The Land Trust Alliance—private land conservation
www.lta.org

Oregon State University, Ties to the land: Your Family Forest Heritage: Planning for an Orderly Transition—transferring property smoothly to the next generation
www.familybusinessonline.org/resources/ttl/home.htm

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