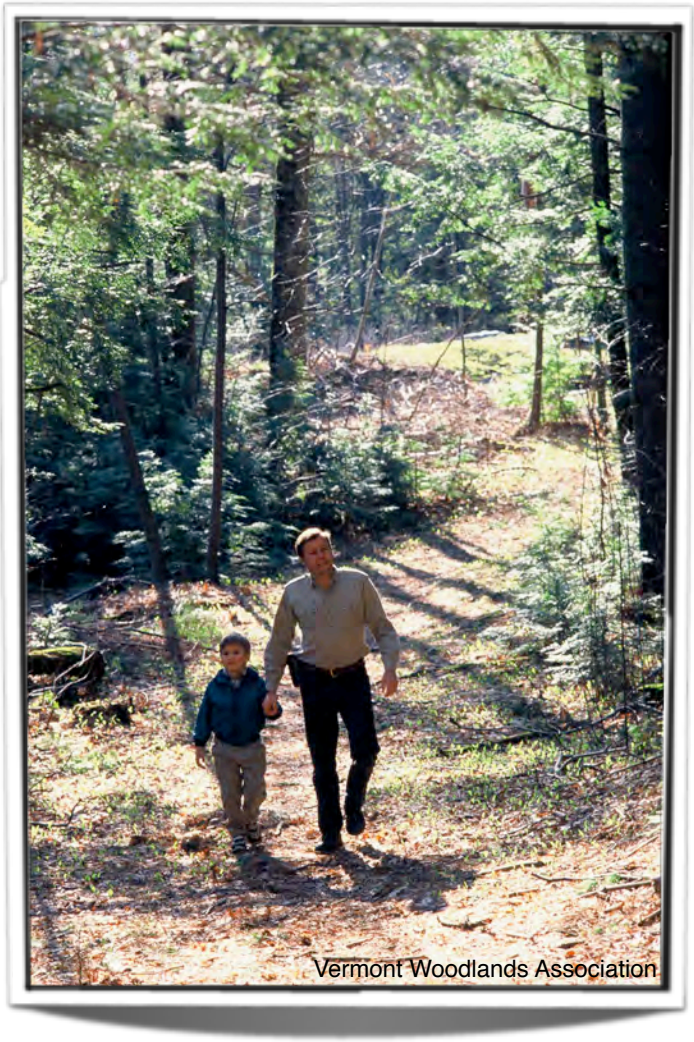
Keeping Forests for the Future

Planning a Legacy for Your Woodlands

Resource Toolkit



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Executive Summary

It has been noted by the U.S. Forest Service that more than 60% of private woodland owners in the United States are over age 55. This demographic trend means a majority of forestland holders now must decide how to transfer their land to the next generation. Much has been written about this topic, however getting landowners to talk and act on future ownership and management options has proven difficult. Our goal is to get critical information into the hands of landowners and resource professionals and help more landowners move through this process.

The process of planning future ownership incorporates many concepts such as estate planning, succession planning and intergenerational transfer. The underlying theme behind these concepts is how one set of landowners plans the future ownership or management of their land. There are many strategies that landowners should consider. This resource toolkit will highlight some of strategies and direct you to other resources that will help you as you move forward with the planning process. In this toolkit, you will also find a checklist and a resource guide that will help you determine who can help, and what you need to do to complete your plan.

Overarching themes that run throughout the literature offer guidance to landowners and resource professionals. They are presented here as a brief summary.

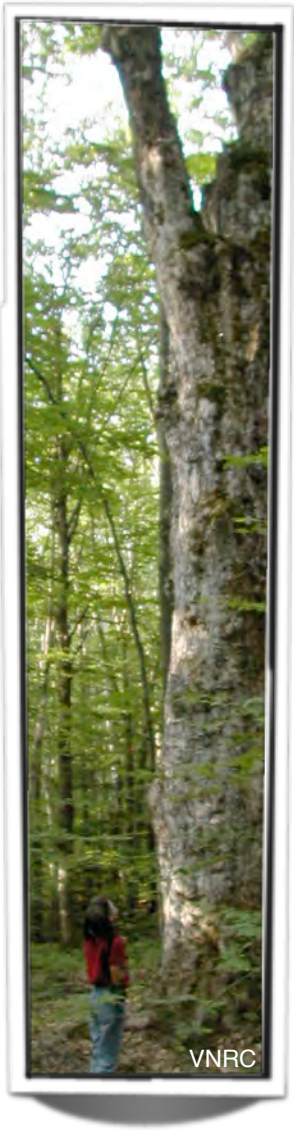
1. Estate planning is not just for the wealthy. Regardless of your financial status, planning for the future of your land is a task you should undertake. The concept of estate planning or intergenerational transfer can be overwhelming, but preparation and planning will pay off in the end. Benefits may include a lower tax burden, improved family relations, and peace of mind that your forestland will remain intact.

2. If your vision is to see your land remain intact the time to plan is now. Land is different from other resources because it posses personal and financial value. Its management, conservation, and disposition involve practical and emotional issues. Waiting until the last minute to plan may put your land and your family relations at risk.

3. There are many options available to landowners, but the first step is to determine what the landowners' vision and goals are for the land and the family. To begin this process it is important to assemble pertinent documents and your list of resources (See checklist in the toolkit).

4. Communication is the key to making this process successful. Communication needs to occur between spouses, with children, other heirs or partners, and with professionals. It can be uncomfortable to speak about one's eventual passing but it is important that your heirs or future owners understand what you want. Being clear about your intentions and soliciting buy-in to the process and eventual plan can help to avoid conflict after you are gone. In discussions with family focus on the land, the meaning it has to you and the legacy you hope will be carried on into the future

5. You will need to involve professionals to advise you on the options and the right combination of tools. It is important to assemble a team that has experience in the passing of forestland. Choosing those with experience is important because over time land values will change and estate tax laws will change. This "team" which can include an attorney, financial planner, and accountant will be important to understand financial considerations to limit and reduce taxes, increase the assets given to future owners, and help as you work to maintain good family relationships.



6. This process takes time and is not without costs. There are a lot of steps involved and determining which options may be right for you will involve careful consideration and communication within your families and with professionals. Remember, though, the time and investment could lead to saving money in the end! Just work to keep the process moving forward.

7. There are many creative solutions both within and outside the family for passing lands that depend on the property and the people involved. Some of these tools are further explained in the document "Preserving the Family Woods: Tools to Help Guide Transfer to the Next Generation of Landowners." Working with professionals experienced in succession

planning will help you find the best strategy for you and your family.

8. As you plan, remember that you are establishing a pattern for future generations. To continue the pattern, create reasons for the family to feel connected to the land. Have a family picnic or reunion at the property, plant trees together, hike, etc.

Please consult the documents included and referenced in this toolkit. Review where you are at on the checklist and make plans that will move you to the next step. Forethought to ensure that your land is managed and passed to a successor or successors can leave a positive legacy. Who will own your land and how will it be used? What will your land legacy be? Now is the time to answer these questions and take the steps to make the plan. With your connection and commitment to long term stewardship of the land, your land legacy will be a positive one!

Introduction

In both Vermont and New Hampshire, at least eighty percent of the state's forestland is owned by private landowners. The vast majority of these forest landowners wish to see their forests remain intact. Unfortunately, however, all too often privately owned forestland gets broken up and sold into scattered, fragmented lots divided among heirs or sold off because landowners did not make long-term plans. Since the future of our forests lie in the hands of so many private landowners, it is imperative for woodland owners to think about the long-term vision of their land.

There is going to be a large transfer of land holdings to the next generation in the near future due to the average age of forestland owners in the United States. This toolkit is designed to help landowners and resource professionals plan for this transfer so that the forest landscape remains intact and fragmentation and parcelization of land are minimized.

This document was compiled to be a quick resource for landowners and resource professionals utilizing many of the techniques fostered by experts in estate planning and land conservation. It is meant to be a synthesis of information found in publications and on the internet to move a landowner through the process of passing land to the next generation. A primary resource utilized was "Your Land, Your Legacy: Deciding the Future of Your Land" by Paul Catanzaro, Jay Rasku, and Wendy Sweetser from the University of Massachusetts Extension Forestry Program. Certain sections of this document closely follow the format of this report with portions reprinted with permission. "Your Land, Your Legacy: Deciding the Future of Your Land" can be found online at http://www.masswoods.net/images/stories/pdf/ylyl_web.pdf. Ideas were also utilized from the program "Ties to the Land" a project of Oregon State University Forestry Extension. Information on this program can be found at http://tiestotheland.org/. A list of resources, references and websites are listed at the end.

Programs similar to those developed in Oregon and Massachusetts continue to be developed throughout the country to address forestland planning, but two themes run through all of them. First, if you own land you need to plan how it will be passed to the next generation. Second, this is a process that requires time, planning and communication. The

following material is intended as a general overview of the subject and not as legal advice. Landowners should consult with resource professionals, utilizing guidance in this toolkit.

Forest landowners own land for a variety of reasons; a place to walk, grow timber, provide habitat for wildlife, syrup production and much more. For landowners, many decisions regarding the use of land are made with the intent of improving the condition of forests for the future. Important considerations include; managing water quality, recreational trails, wildlife habitat, timber resources, views, and other forest values. In order for these benefits to be realized for generations to come, landowners must consider what will happen to the land when they are gone.

Land is different from other assets and resources because it posseses personal and financial value. Its management, conservation, and disposition involve practical and emotional issues. Some of your family may be interested in receiving personal value by keeping the land in the family in its natural state (Your Land, Your Legacy at p. 3). Others may be interested in receiving financial value from the land, a piece of land, or maybe no one is interested in owning the land in the future (Your Land, Your Legacy at p. 3). Many landowners wish to be fair and split their assets equally among their children or heirs, while other landowners have strong feeling about who should inherit their land.

Many think that estate planning is just for the wealthy or for those who own "estates" (Your Land, Your Legacy at p. 3). In truth, if you own land, then you need to

determine how to pass this asset. Whether your intentions are to pass the land to family members, friends or a charity, planning is a necessary step. An estate plan ensures that your assets are distributed in a way that will meet your financial and personal needs and that which you want for your heirs or future owners (Your Land, Your Legacy at p. 2). Using a variety of tools and customizing the options to your situation will help you achieve success.

Simply doing nothing, or using only a will as the means to transfer land, will not guarantee success if your goals are for the land to stay in an undeveloped state. Lack of proper planning and poor communication may lead to results that are detrimental for the land and the family. It may be necessary for heirs to sell off some or all of the land due to financial pressure causing fragmentation of the land into smaller and smaller parcels.

This document will focus on the steps a landowner can take that address keeping land intact and managed as a legacy. This process is not easy and will not happen overnight. Determining which options may be right for you will involve careful consideration and communication with your family and with professionals. The primary objective of this documents is to get you started and move the process forward!

Action Steps

Step 1: Gather Information

To begin, you need to have a solid understanding of the land. Gather relevant facts about your land, its management and other assets you hold. Refer to your forest management plan if you have one and any other relevant documents. A questionnaire and checklist adapted from a number of sources can be found in your resource notebook to help guide you in this step. Having this information at your fingertips will make each of the successive steps easier and may help you save some time and money when working with professionals (Your Land, Your Legacy at p. 33).

Step 2: Determine Your Personal Goals

Once you have assembled the information about your property you need to evaluate your own thoughts and preferences for the property and its future. Many landowners that have a forest management plan have worked through part of this process, but maybe only looking out 10 years out. It is a good place to start, but now you must think beyond that. What do you want for your property in 15, 20 and 30 years? What about in 100 years? Why do you own land? Do you view your land strictly as an asset or as a priceless family heirloom, or are you somewhere in between (Your Land, Your Legacy at p. 10). Do you care if your land is developed? Is it important to you that it remain in the family for generations to come? Do you know if your children are interested in owning land? Develop a list of potential heirs or forestland owners. Are any qualified or willing to take on the responsibility of the land? Do you want to remain on the land until your death? Do you want the land to remain intact regardless of who owns it in the future? What challenges do you see ahead in reaching these goals? Determining answers to these questions will help you clarify your vision and goals. Don't forget to write down the answers to these and other questions. Keep a record of what you have discussed and steps you plan to take. Doing so, will help keep the process moving forward.

Step 3: Communication

Once you have established your vision and goals for the land, it is time to begin the conversation with your family. As a landowner you can do what you like with the land, but communication within the family will help facilitate an understanding for the future of the land. Many landowners assume that their children or heirs know how they intend to manage the future use of the land. But are the children or your heirs actually interested in the land? Finding out their beliefs and desires may influence how you choose to implement yours. Communication is the key to the success of this process.

This step can be challenging. Family dynamics can be stressful and it is always uncomfortable to speak about one's eventual death (Your Land, Your Legacy at p. 6). The alternative of not having these kinds of conversations will be the sale and development of your land which may be contrary to everyone's wishes. Being clear about your intentions and soliciting buy-in to the process and your eventual plan can help to avoid conflict after you are gone (Your Land, Your Legacy at p. 6). There are many creative solutions both within and outside the family for passing lands. Whether you choose to involve your family or not is up to you. However, good communication in any event can go a long way toward a solution that is understood by those affected by your decisions and it is more likely the land will remain intact.

Family Meeting

Planning for the passing of land can be challenging, but it is not an impossible task. We have already noted it is difficult to discuss death. So, don't focus on death (Owning and Managing Forests at p. 213). Center the discussion on the land, the meaning it has to you and your hopes for the future. It can be equally difficult to pull one's family together to have this or any discussion. There may be fears of conflict, or concerns of siblings returning to their childhood ways. A good meeting plan with an agenda can help avoid some of these concerns. It is also possible to use someone outside the family such as a facilitator or mediator to assist in the process.

The goal of the family meeting is to share your vision for the land and determine your family's interest in the land, including what will happen to it. You will want to create an "open, honest, and respectful conversation where everyone can communicate their feelings about the land and their needs (Your Land, Your Legacy at p. 6). Keep in mind that every family has its own unique dynamics, based on things like parent child relationships, birth order and past events" (Your Land, Your Legacy at p. 9). These dynamics can affect how family members communicate with one another. The objective is to create an atmosphere where family members contribute their voice to a vision for the future of the land (Your Land, Your Legacy at p. 9).

Steps for a Successful Family Meeting

Whenever possible, a family meeting should be held in person and take place at a neutral site (Your Land, Your Legacy at p. 9). A neutral site like a restaurant or conference room will help create an atmosphere where family members will feel more at ease without any emotional connection to the site (Your Land, Your Legacy at p. 9, See also Ties to the Land). It helps to level out the playing field.

Decide who you will invite. Do you want to include your children and their spouses, or just your children? Make this decision yourself and be consistent. Some advise that it is better to be inclusive while others advise to involve only blood relatives. Whether to be inclusive or not may depend on your family dynamics. The decision is yours to make.

If the meeting will be held near the land, visiting or walking the land together before the meeting can help everyone to prepare for the meeting (Your Land, Your Legacy at p. 9). It provides a chance for each family member to see the land and to reflect on what the land means to them (Your Land, Your Legacy at p. 9).

Before the meeting prepare an agenda that will be distributed to all participants. List the topics you want to cover. This will help keep the meeting focused and drive the discussion and keep everyone on task. Establish guidelines that will help facilitate good

communication. Some of these include; letting each participant finish his or her statement, being considerate, being open to what others have to say, being honest, and agreeing to disagree with without being confrontational.

The agenda for the first meeting should include the information about the property and your goals. It is important to express how you feel about your land. Then provide an opportunity for each family member to express what the land means to them (Your Land, Your Legacy at p. 10). What are their hopes for the future of the land? Remember the focus is on the land. How do they view the land; as a priceless family legacy, only as an asset, or, somewhere in between? (Your Land, Your Legacy at p. 10). Be a good listener and hear what they are saying. By listening to these comments, family members may learn they share common feelings and connections to the land (Your Land, Your Legacy at p. 10). It is possible that everyone will learn something that surprises them.

Take careful notes and write down the ideas of what each person would like to see happen to the property. Things can stall out here if you don't identify specific steps to keep the process moving forward. Options include a visit to the property, setting up meetings with estate planning professionals or determining an appropriate time for another family meeting.

It is possible that your family may not be able to agree on the best course of action for the land (Your Land, Your Legacy at p. 12). Do not let lack of agreement amongst your family stop you from determining how to handle the situation (Your Land, Your Legacy at p. 12). You have asked for their thoughts, vision and goals (Your Land, Your Legacy at p. 12). Take the information you've collected, consult with the appropriate professionals and do what you believe is right for yourself, your family and the land (Your Land, Your Legacy at p. 12). If you do not make the decision about your land's future, it is likely that the issues that derailed your process will only get worse when you are gone and the land and your family will suffer (Your Land, Your Legacy at p. 12).

Step 4: Working With Professionals

It is now time to assemble a team of professionals that will help you achieve your goal of passing your land intact to the next generation. The issues and strategies to accomplish the passing of your family lands are complex and you will need to consult good legal counsel to make this process work. Selecting the right professionals, with experience in passing lands, is important because legal and financial issues in this area change fast. Remember these professionals, work for you. It should be someone you feel comfortable with both personally and professionally (Your Land, Your Legacy at p. 15). If you don't understand something, ask questions and ask again until you truly understand.

You want to find professionals that have specific experience working with forest succession planning (See generally Owning and Managing Forests). Talk to your friends and neighbors. Ask how they have handled the idea of passing lands. Who have they used and were they happy with the job? Check with the extension forester, woodland organizations, or a local or state land trust to obtain suggestions of attorneys and other professionals that have worked with forest succession planning. Once armed with a list, call and ask questions; how many plans have they completed, have they worked with the passing of forestland, what kind of tools have they used to pass lands, do they participate in continuing education classes?

While on the hunt for the advisors for your team ask how they charge for their services (Your Land, Your Legacy at p. 15). Will they offer you a free consultation? Ask for an estimate of the total cost (Your Land, Your Legacy at p. 15). The cost will depend on many things including the complexity of the solution, documentation needed, the number of people involved, and how well they work together (Your Land, Your Legacy at p. 15).

This process will not be without costs, but it is an investment and may save you money in the end. The savings your family will realize and the benefits to the land will make the investment well worth the effort.

Team Members
(These brief descriptions of team members are taken from Your Land, Your Legacy)

Appraiser – a licensed professional with training and experience in determining the current market value of your land based on its location, characteristics, and the sale of similar properties in your area (Your Land, Your Legacy at p. 27).

Certified Public Accountant – a licensed professional who understands tax codes and specializes in helping individuals prepare tax returns (Your Land, Your Legacy at p. 24).

Certified Financial Planner – a professional who can help you set and achieve your long-term financial goals through investment, income and retirement planning (Your Land, Your Legacy at p. 24).

Estate Planning Attorney – a lawyer who specializes in the legal strategies and tools used to help you reach your personal and financial goals. In this situation, look for one that has a specialized knowledge of land conservation tools (Your Land, Your Legacy at p. 17).

Forester – a professional that can help you evaluate your land management options, including determining the value of your timber for a land appraisal (Your Land, Your Legacy at p. 28).

Land Protection Specialist – professionals with land trusts or government conservation agencies that assist landowners who want to achieve personal and financial goals for the land through land conservation (Your Land, Your Legacy at p. 16).

Tax Attorney – a lawyer who specializes in tax issues (property tax, estate tax, capital gains tax, etc.) (Your Land, Your Legacy at p. 24)

Step 5: Understanding Some of the Strategies

There are several documents included in the resource toolkit that explain various strategies that are available to landowners to keep their land intact. Please refer to these documents for detailed descriptions of the strategies. Furthermore, it is critically important that you consult with experts that are well versed in the details of these strategies.

Several toolkit documents that explain strategies include:

1) Preserving the Family Woods: Tools to Help Guide Transfer to the Next Generation of Landowners (Refer to Forest Service CD).

2) Conservation Easement Information - Vermont Land Trust (Refer to tab in toolkit).

The following offers a brief overview of some of the strategies that are explained in the above documents. This is not comprehensive list and additional strategies may be more appropriate for your planning needs.

Wills – This is the simplest method of estate planning. A will is a document that specifies the way a person's wealth (assets and property) will be distributed when they die. Wills can effectively transfer property to heirs, but if the goal is to keep the property intact for forestland functions, other strategies should be examined (See generally Preserving the Family Woods at p.7).

Family Partnership – This is a business structure where a partnership is formed between members of a family for the management and control of the land. The owner can determine how the land and partnership is managed or it can be a joint decision by the owner and heirs (See generally Preserving the Family Woods at p.7).

Limited Liability Company – Family members can form a Limited Liability Company (LLC) to manage the family forest. All members become shareholders and the LLC can be managed by all the members or by a manager (i.e. parents while the children share ownership) (See generally Preserving the Family Woods at p.7).

Conservation Easements - A conservation easement is a voluntary agreement between a landowner and a land trust or a government agency that limits the type or amount of development, almost always permanently, but occasionally for a certain term. The landowner typically retains ownership of the property, but the easement holder ensures that a property will not be subdivided or developed except as provided in the easement, and that it will be managed in accordance with the terms of the easement. The landowner will usually be allowed to use the land for farming, forestry, recreation, or educational purposes, as provided by the easement (See generally Conservation Easement Information tab in toolkit).

Donating Easements - There are several techniques commonly used to donate a conservation easement:

- The owner may give an easement on land outright during their lifetime; or
- They may bequeath an easement on land through their will; or
- They may give a "remainder interest" in the land to a land trust. The owners retain the use of the property during their lifetime and full ownership passes to the land trust at their death.

Landowners may also make a series of donations (expressed as an undivided percentage interest) whereby ownership is transferred over a period of years. You and the land trust would then act as co owners until the last set of undivided percentage interests is transferred to the land trust. Gifts of undivided interests are eligible for income tax benefits, but they tend to be complex and landowners should consult with the land trust and their tax advisors.

Where land is donated by will, you will not receive the income tax benefits described above, but your land will be excluded from your taxable estate, which will reduce the federal and state estate taxes your heirs would otherwise have to pay. The organization receiving the land should be approached during your lifetime to make all necessary arrangements and ensure such organization will (i) be able to receive your land, and (ii) determine with you what they may do with the land (e.g. can the land be sold to a suitable buyer).

Remainder interests allow the landowner to remain on the land until the life interests terminate or are released. The deed to your land is transferred to the land trust or conservation agency that you wish to donate your land to during your lifetime. You then hold a "reserved life estate". Upon the death of the holder of the reserved life estate (you, or a third party), the full ownership of the land is automatically transferred onto the holder of the remainder interest. Donating a remainder interest allows you to enjoy all of the benefits introduced above but is a little more complex to set in motion than a mere land donation (Read more in Conservation Easement Information tab in toolkit).

Selling Land to a Conservation Minded Entity - Selling land to a conservation-minded person or organization, along with the conveyance of a conservation easement may be the easiest way to place the future of your land in someone else's hands, and if the buyer is a trusted person or organization, this solution may be perfectly acceptable. It presents the advantages of forever ridding your estate of your land and effectively reduces your property taxes, since the land is not yours anymore. It does however entail some major drawbacks:

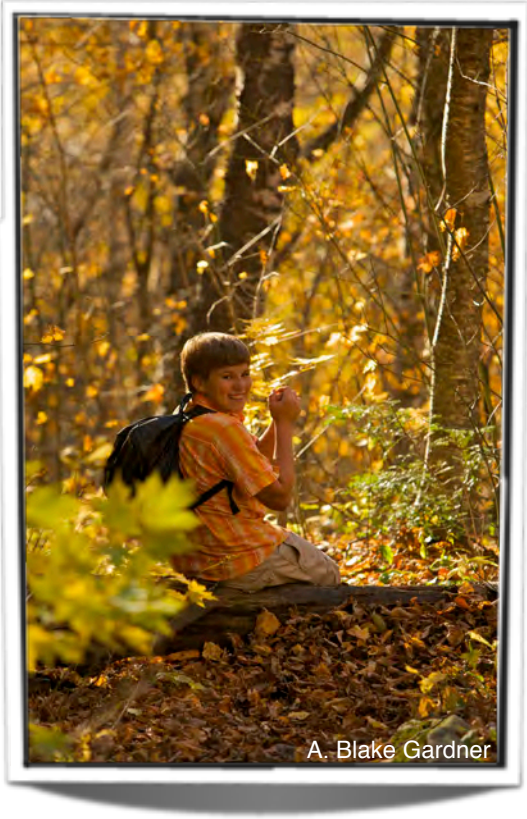
- Land value most likely went up since you came into possession of your land. This will trigger capital gains tax on the sale's proceeds;
- Finding a suitable buyer may be a lengthy process;
- If you wish that your land be maintained as a working landscape, the landowners ready and willing to take over your land may not have the funds necessary to acquire your land at market value.

In order to reduce these limitations or negative consequences, some landowners have put in place "bargain sales". In a bargain sale, your land is not sold at fair market value, but at a bargain rate. This facilitates land acquisition by lower income buyers (such as farmers or land managers) and can substantially lower potential capital gains taxes. If the buyer is a qualified organization under the Tax Code, some or all of the reduced part of the price may be considered as a charitable donation.

Current Use - Enrollment is Use Value Appraisal (Current Use) can significantly reduce property taxes since land is appraised based on its value for forestry rather than fair market value. While enrolled, landowners manage their land according to a forest management plan approved by the Vermont Department of Forests, Parks, and Recreation (Read more in Current Use Information tab in toolkit).

Step 6 – Completing the Process

If you have gotten this far you are on track to getting your land legacy established. You are also establishing a pattern for future generations. But don't stop here. You need to complete the process and then revisit the plan over time. Also, continue to create opportunities for the family to feel connected to the land. With your connection and commitment to long term stewardship, your land legacy will be a positive one. It will offer you peace of mind and your heirs will appreciate your efforts and the opportunity to keep the land intact.



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McEvoy, T.J. 2005. Owning and managing forests: A guide to legal, financial, and practical matters. Island Press, Washington, D.C. 300p.

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Siegel, W.C., H.L. Haney, Jr., and J.L. Greene. 2009. Estate planning for forest landowners: What will become of your timberland? Southern Research Station, Asheville, NC 180p.

Resources/Websites

US Forest Service, NE Area, State and Private Forestry
http://na.fs.fed.us/stewardship/estate/estate.shtml

Mass Woods Forest Conservation Program
http://www.masswoods.net/index.php/update/your-land-your-legacy-deciding-the-future-of-your-land.html

University of Minnesota
http://www.myminnesotawoods.umn.edu/2007/04/intergenerational-land-transfer/

Tampa Bay Forest
http://tampabayforest.org/publications/Gutter%20Landowners%20Land%20Transfer%20workshop.pdf

Ties to the Land
http://www.familybusinessonline.org/index.php?option=com_content&view=article&id=51&Itemid=52

Estate Planning for Forest Landowners: What Will Become of Your Timberland
http://www.srs.fs.usda.gov/pubs/gtr/gtr_srs112.pdf