



You're Invited

FOUR TIMES A YEAR about 20 land trust volunteers and staff get together in the Augusta area as the Maine Land Trust Network Steering Committee. These people come from land trusts of all different sizes, areas, and levels of experience to help guide MLTN programs. Their input is invaluable and we would like to add yours as well.

Please feel welcome to join the committee or to attend our upcoming meetings **September 18 and December 5**. For more information please contact Megan Shore at 729-7366 or mshore@mcht.org.

Many thanks to the MLTN Steering Committee for their tireless efforts to conserve Maine's special places!

Debbie Chapman
Georges River Land Trust

Tony DeFeo, Chair-elect
Newburgh Area Heritage Trust

Jay Espy
Maine Coast Heritage Trust

Beth Gallie
Greater Lovell Land Trust

Maureen Hoffman
Sheepscot Valley Conservation Association

Sally Jacobs
Orono Land Trust

Jay Johnson
Orono Land Trust

Dawn Kidd
Boothbay Region Land Trust

Becky Koulouris
Brunswick-Topsham Land Trust

Bonnie Lounsbury
Androscoggin Land Trust

Lucy McCarthy
Vinalhaven Land Trust

Frank Miles, Chair
Maine Farmland Trust

Robert Miller
Great Auk Land Trust

Jim Mitchell
Mahoosuc Land Trust

Marcel Polak
Mahoosuc Land Trust

Tin Smith
Great Works Land Trust

Barbara Welch
Frenchman Bay Conservancy

Bill Zwartjes
Coastal Mountains Land Trust



Maine Coast Heritage Trust's Revolving Loan Fund enabled the protection of Pownal's Knight Farm (seen in the foreground) preserving one of the town's signature properties and the view from atop Bradbury Mountain.

Revolving Loan Fund Aids Land Conservation

A traditional farm with close to 20 acres of hayfields abutting and providing a beautiful view from Bradbury Mountain State Park, the Knight Farm is one of Pownal's most visible properties. When the historic farm appeared on the open market, the Pownal Land Trust knew it needed to act quickly to protect this critical property from fast encroaching development.

Premiere properties such as the Knight Farm are threatened throughout the state and all too often land trusts are faced with the need to rapidly raise significant dollars to ensure their protection. Despite extraordinary efforts, there are times when deadlines just can't be met. But, thanks to the generosity of individual donors and the foresight of Maine Coast Heritage Trust's Board of Directors, there is a fund that can help.

MCHT's Revolving Loan Fund provides short-term loans to land trusts and public agencies working on land protection projects in need of immediate funding. Land trusts throughout the state are eligible for the loan, with strong preference for Maine Land Trust Network members. Loans generally do not exceed one year in length, allowing the funds to revolve in and out for as many projects as possible. A variable interest rate of one percentage point below Fleet Bank prime is charged and, as with any loan, security on the loaned amount is required.

The Pownal Land Trust applied for, and was awarded, a revolving loan in the amount of \$360,000 to purchase the Knight Farm. According to Chris Ayers, former president of PLT, "The speed and availability of the Revolving Loan Fund allowed us to make the purchase of this property that defines the rural nature of the town."



Valerie DuBois

The Land for Maine's Future Board voted unanimously to award the **Windham Land Trust** \$180,000 toward the purchase of land located in Windham Center known as the Black Brook Preserve, bringing WLT's first land protection and major fundraising project to near completion.

The **Conservation Trust of Brooksville, Castine, and Penobscot** gained three new easements on Orcutt Harbor in Brooksville thanks to the interest and generosity of landowners. The Trust is also introducing orienteering to students at the Penobscot Elementary School and Trust members.

Ona and Harold Moody, with **Damariscotta Lake Watershed Association** and **Maine Farmland Trust**, are finalizing the preservation of the dairy farm that has been in their family for eight generations. Support from the Land for Maine's Future Program and the Federal Farmland Protection Program are making possible the protection of this 170-acre farm and its 2400-foot frontage on Damariscotta Lake.

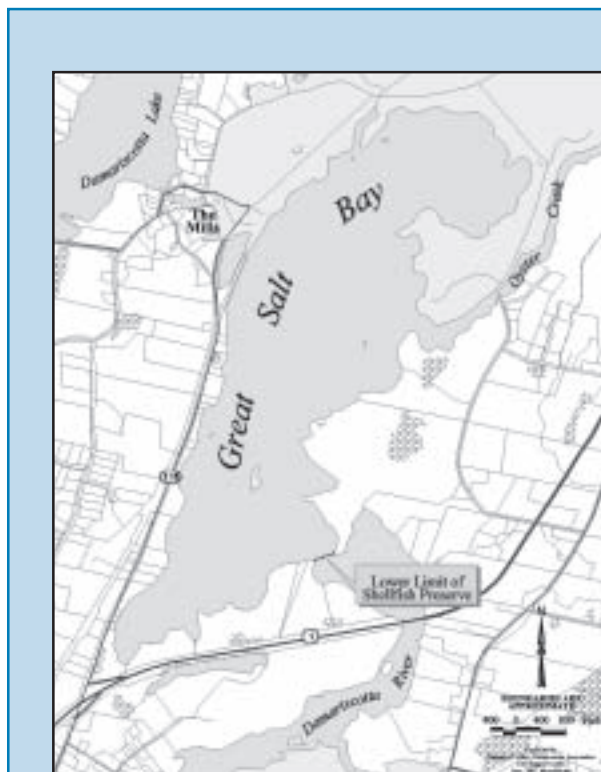
The **Downeast Rivers Land Trust**, a program of the Downeast Salmon Federation, is donating a 41-acre parcel of land and a traditional boating access site on the Narraguagus River to the Town of Cherryfield. Under the terms of the agreement, the boating access site will be preserved forever for public use. The organization is also pleased to announce the hiring of its first Executive Director, Dwayne Shaw.

In April the **Forest Society of Maine**, working with the state, completed the campaign to protect Big Spencer Mountain, nearly six miles of frontage on Moosehead Lake and a 233-acre old-growth and rare plant site.

The **Mahoosuc Land Trust** is working with the National Park Service's Rivers and Trails Program to form the Androscoggin Canoe Trail stretching from the New Hampshire state line to Rumford, with extensions possible both upstream and downstream in the future.

Amos Eno, a nationally recognized conservationist, has been chosen to lead the **New England Forestry Foundation** as the new Executive Director. Eno is the former director of the National Fish and Wildlife Foundation.

Saco Valley Land Trust recently reached an agreement with Alpha Eudoo, LLC for the grant of a 37+ acre parcel off Wadlin Road in Biddeford. This open space is part of the Meadowridge II subdivision, Biddeford's first cluster development.



The **Damariscotta River Association** is very proud to have played an instrumental role in the passage of L.D. 2172—An Act to Designate the Great Salt Bay Marine Shellfish Preserve. The Great Salt Bay and the larger Damariscotta River estuary are both significant areas for DRA's conservation work, and passage of this bill has helped to reinforce the statewide importance of the region.

Does "perpetual" mean forever and ever without end?

Not really. We probably all believe we understand the meaning of "perpetuity." But there are at least two meanings: one for common parlance, meaning the almost unimaginable duration to the end of time; and another legal meaning, as applied to conservation easements, among other things. "Perpetuity" as a legal term that describes the duration of a restriction on land, is something less than forever. Under state and federal laws, a perpetual conservation easement lasts until the restrictions can no longer accomplish the conservation purposes and public benefit intended by its original creators, but only a court of law can make this determination. A little history is in order to explain this.

In the United States, landowners have very liberal property ownership rights, including the right to prevent or restrict certain future uses of their land. Of course, they can prevent some possible future land uses simply by exercising inconsistent or destructive land uses (for example, you can't very well farm what's been mined of topsoil.) Landowners also have the long-standing right to impose legally binding restrictions on the future use of their land. Historically, an owner can impose "permanent" restrictions on land they convey to another if the restrictions benefit other nearby land they retain—as in appurtenant deed restrictions. "Permanent" restrictions can also be imposed on land the owner keeps, in order to benefit their neighbors' nearby land—as in mutual covenants. However, these kinds of deed restrictions, and other private easements and rights of way, though written to be permanent, can be terminated anytime by the agreement of all owners of both the burdened and the benefited land, or by court order for a variety of technical reasons, upon the request of the burdened party. These traditional termination options posed obvious limits for conservation easements, that were intended as enduring protection of privately owned land to serve a public, rather than private, benefit.

Before the 1970's, the only way an owner could reliably prevent unfortunate development or exploitation of important natural land, in the interest of the public, was by transferring the entire ownership "in trust" to government or to a charitable trustee. Now, the laws of most states and the federal tax law permit landowners to effect permanent protection of land important to their community, AND retain ownership. This means the owner can sell the land or pass it on to his/her heirs, without the risk that divorce, bankruptcy, or the personal whim of a future landowner, will leave it vulnerable to uses that may frustrate the public benefit.

Under Maine's Conservation Easement Act, unless a termination date is stated, an easement is deemed to be "perpetual." Under the federal tax code, in order for the donor of an easement to enjoy the tax benefits available for easements, they must be granted "in perpetuity" and cannot be terminated without a court order. These laws and the weight of legal precedent in easement litigation, direct courts to treat these "perpetual" easements differently than private restrictions. The Maine easement statute allows a court to terminate a perpetual easement for changes in circumstance that render its purposes impractical or impossible, but the court may not consider economic inconvenience to the landowner, as they may under private deed restriction and trusts. Courts have not been willing to terminate a "perpetual" restriction and thereby frustrate the public benefit, as long as the restriction continues to serve some stated conservation purpose. Under this system all future owners will be bound by the conservation protections afforded by the easement, in perpetuity.

This is the technical distinction between colloquial "forever" and legal "perpetuity." Courts are permitted to extinguish or modify conservation easement restrictions if changed circumstances render the purposes of the grant impossible or impracticable to accomplish. This high standard is borrowed from the ancient law of trusts and the doctrine of cy pres, under which courts are instructed to modify impossible trust intentions to achieve a similar goal, rather than to frustrate the trustor's intent.

What does this mean in the real world? Well, if a perpetual easement is established for the lone purpose of protecting an endangered species, and that species becomes either extinct or abundant, a court would have the power to terminate the easement, or it might choose to modify the easement to serve another similar conservation purpose. If an easement is established to provide for forestry and scenic preservation, and natural causes render forestry impossible, a court can modify it to serve the remaining possible purpose and perhaps other similar conservation purposes. Most easements are designed to serve several compatible conservation goals, sometimes expressed in order of importance, so that the alternative public purposes will be evident to a reviewing court, making termination highly unlikely.

Application of the colloquial meaning of the term "perpetual" to conservation easements - or any law for that matter—would not make sense in our world of change. The conservation easement is a rational and flexible tool for achieving a public good while preserving private rights. It should serve us well for as long as our legal system endures, which we expect will be a very long time.

New Service to Benefit All Easement Holders

Maine Coast Heritage Trust is pleased to announce the creation of its Conservation Easement Registry. This service, available to all conservation easements holders in the state who choose to participate, is a listing of easements in a central database, providing a capacity to track down easements and re-assign them in the event of a Holder dissolution.

The concept arose in response to increasing concerns about the possibility of “lost” conservation easements and the impact they might have on all land trusts and associated requests from landowners and land trusts for a “double layer” of protection on easement lands. Listing in the Registry is another means of assurance (in addition to such methods as Third Party Rights of Enforcement, Co-holding and Declarations of Trust) that a given easement will be cared for in the future.

All identified conservation easement holders in the state have received a formal invitation to participate in this program as well as a data questionnaire. To facilitate participation MCHT is asking for the minimum data needed to identify and locate an easement and will not use or distribute the information for other purposes. Strong participation in this program will further

strengthen conservation easements as a tool for land protection in Maine.

For more information on this program please contact Forrest Dillon, Stewardship Associate, MCHT: (207) 729-7366 or by email at fdillon@mcht.org.

Thank you!

I'd like to offer a special note of thanks to Erin Lloyd for stepping in as the Land Trust Coordinator during my maternity leave this winter. Knowing that MLTN was in good hands, I was fully able to step back and enjoy my daughter, Caitlin. Thanks to all of you, too, for your good wishes!

We greatly appreciate the use of the Maine State Planning Office and Natural Resources Council of Maine conference rooms for MLTN Steering Committee Meetings.

*~Megan Shore
Maine Land Trust Coordinator*

Not Receiving Land Trust News Year-round?

If you would like *Land Trust News* and other MLTN correspondence to be mailed to a seasonal address please let us know where and when to send it. Contact Charlene Montz at (207) 729-7366 or by email at cmontz@mcht.org.



Maine Land Trust Network
Maine Coast Heritage Trust
One Main Street, Suite 201
Topsham, ME 04086
(207) 729-7366
(207) 729-6863 (fax)
<http://www.mltn.org>

return service requested

Land Trust News is published four times a year for the directors, officers, and staff of the 65 subscribing members of the Maine Land Trust Network (MLTN). The MLTN is a communication and coordination service provided by Maine Coast Heritage Trust. For more information, contact MCHT. Suggestions and contributions are encouraged.

Nonprofit Org.
U.S. Postage
PAID
Permit #6
Portland, ME

