

# Family Dynamics And Land Conservation

by Jerry Bley

From the eastern seaboard to western ranch lands, many of our country's most spectacular and cherished landscapes are owned by families. Family lands—be they held as tenants in common, family corporations, or trusts—represent some of the most important conservation opportunities for land trusts.

As most land trust practitioners are well aware, there are all sorts of important legal, financial, tax, and land use issues that come up when dealing with the conservation of family ownerships. While each of these topics can be challenging, many land trusts have discovered that the most serious obstacle to a successful family lands conservation project can be the inability of family members to come to agreement on the future of their lands.

Family lands are often an integral part of a family legacy. Families bring out the best, and at times the worst, in people. The same can be said of land. There is nothing more moving than listening to someone speak passionately about their family's land, be it a cherished summer cottage or a family farm. Conversely, it is very painful to

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watch when the family property becomes a battleground.

Many conservation opportunities are lost because family members are unable to agree upon a plan for their land. More often than not, the disagreement has little to do with the land itself, but is a result of unrelated and unresolved conflicts between family members.

## The Role of Land Trusts

Typically, families face critical decisions about their lands under three circumstances:

when estate planning is underway.

when property is jointly inherited by family members (which may be gifted prior to the death of the parents).

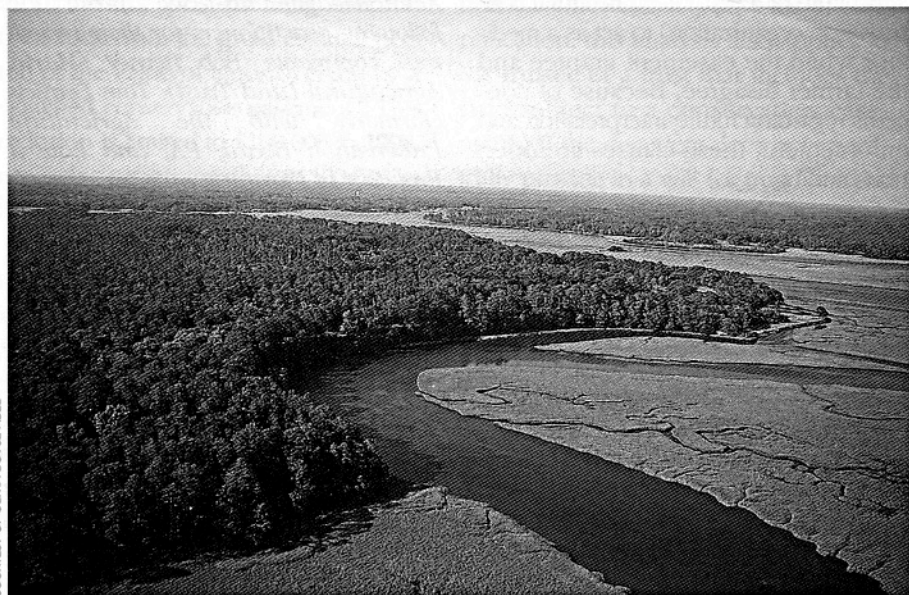
when a family member wants to bring about a change to the property which raises concerns for other family members. (For example, Sister Sue wants to build a log cabin and raise sheep on the family's summer retreat.)

As with most land deals, timing is everything, and it is important that land trusts be prepared to tackle difficult family lands projects when they appear. Often, a project seems straightforward when first presented to the land trust, but becomes bogged down when family members can't reach agreement. Project managers need to be sensitive to family issues and recognize when a project is "stuck" due to family dynamics.

One common indicator that the project is stalled is when the family does not respond to a conservation proposal put forward by the land trust. Other times, the family may continually ask the land trust to come up with new proposals to address concerns of certain family members only to find that the new proposals result in little progress. Without outside assistance, these projects are not likely to move forward and conservation opportunities will be lost.

"I think it's always helpful to bring new expertise to a land protection project when it's stuck," says Caroline Norden, senior project manager for Maine Coast Heritage Trust. "Often having the perspective of another person, whether they be a tax attorney, appraiser or land use planner can help."

In other instances, a neutral facilitator can help a family with its planning process, guiding them through long meetings and emotional issues



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Family lands along Little River, South Carolina

that land trust staff might not have time for, she says. Such a facilitator can be particularly helpful when land has passed to a new generation that does not have decision-making procedures in place. A professional facilitator also may make it easier for family members who were previously leading the process to air their opinions more freely, Norden notes.

It is important to understand that a land trust's ability to assist with the family's planning can be limited, particularly when there are different perspectives among family members. Facilitating family decision-making in these situations typically requires a neutral party that does not have its own agenda. By definition, land trusts are in the business of protecting land and therefore have an agenda. When tensions are high, family members will tend to view you as either being on their side or that of another family member.

There are a variety of professionals around the country who specialize in working with families to plan the future of their lands. Some, like myself, come from a land use planning background, while others are trained mediators, facilitators or attorneys. Land trusts need to be aware of qualified professionals to whom they can confidently refer families when projects are stuck.

If your land trust is not aware of such professionals, talk with other land trusts in the region or individuals, such as estate planners, who might be aware of qualified facilitators. It may be worthwhile for a land trust to encourage local professionals who could work well with families to cultivate this expertise. *[LTA's Expertlink directory lists professionals across the country offering services in land planning and protection, law, appraisals and estate planning.]*

If a family, or specific family members, are reluctant to hire someone to facilitate the planning process, consider arranging a meeting for them with another family that has successfully completed a planning effort.

In many cases, the professionals who are involved in a land transaction

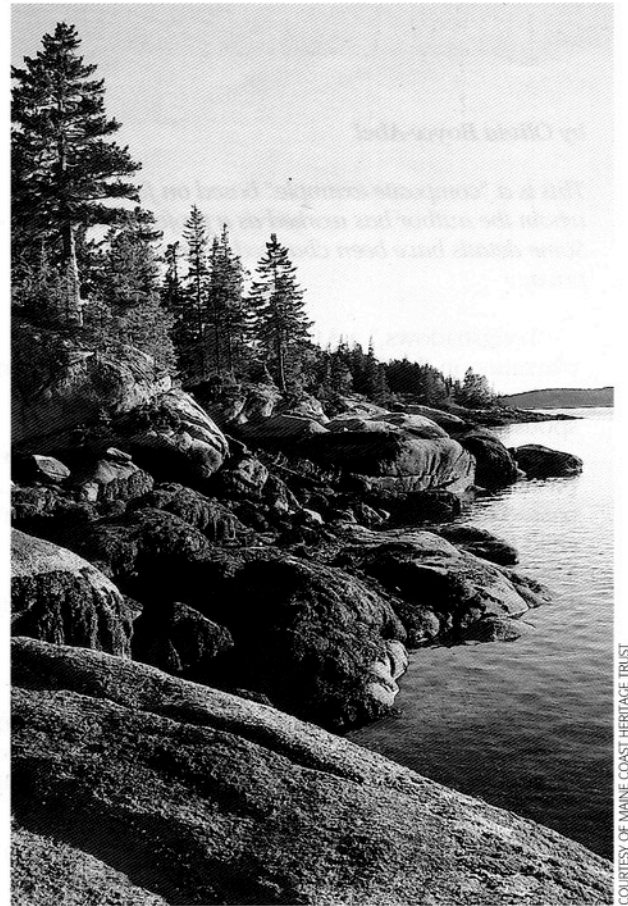
fill the role of a neutral outside party. For example, while Little Traverse Conservancy (MI) has never specifically referred families it has worked with to a facilitator or mediator to aid in the planning process, "a lot of times what we find is that the family lawyer or tax person fills that role," says Executive Director Tom Bailey.

If an outside professional is brought in to assist the family, it is both appropriate and important for the land trust to stay involved in the process, providing information, expertise and a conservation perspective. However, it is important to remember that the facilitator is working for the family, not the land trust.

### Getting to Yes

In some cases, disputes among family members may be a result of very real differences in objectives for the land. For example, Sister Sue wants to sell the land to make money, while Brother Bob wants to maintain the family homestead and protect the lands surrounding it. In these situations, land trusts can play an important role in developing conservation options that address various family members' objectives. With some creative thinking, solutions can often be found that meet the needs of family members and the goals of the land trust. In the example mentioned above, Sister Sue could receive the portion of the property with the least conservation value to sell and realize her financial objective, while Brother Bob could retain the key conservation area and donate an easement to the land trust.

However, tensions around family



Family lands on Vinalhaven Island, Maine

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lands usually have little to do with the land itself. Rather, they sprout from the endless variety of conflicts that can be found in today's families. As part of my work with families, I routinely utilize questionnaires that ask each family member a multitude of questions regarding their views about the family property. It is not at all unusual to find that there is a broad consensus among family members regarding the land, even when family members have been unable to agree. This can be a revealing experience to family members.

When dealing with family lands, it is important to understand who is involved in the decision-making. While legally the landowners make the decisions, in reality it can often work differently. Parents planning their estate may involve their children in the process. Land that has been gifted by parents to their children may still be under the *de facto* control of a parent, because "that is the way it has always been."

With family lands, as with all

by Olivia Boyce-Abel

*This is a "composite example" based on families with whom the author has worked as a professional facilitator. Some details have been changed to protect clients' privacy.*

"Longshadows," a 3,000-acre, \$10 million coastal plantation in the Southeast, provided a vacation home for Mr. and Mrs. "Wallace," three of their children, spouses, and 12 grandchildren.

Mr. and Mrs. Wallace, ages 78 and 82, wanted to preserve the land and maintain family harmony as they passed the property on to the next generation. One child lived in London, one in Montana, one in New York City. One lived on and operated the family's 1,000-acre farm at Longshadows. All the children had strong emotional ties to the property.

### The Issues:

The parents weren't totally ready to cede control of their money, property and farming business. They were particularly worried about providing for their retirement and health care needs.

The children were apprehensive about changes to the land.

Three children needed future liquidity; one did not.

The three children who did not live at Longshadows wanted vacation homes on the land.

The farmer son wanted to continue both farming and living on the property with his family. He was also concerned about the ownership of the farming business.

The family wanted to minimize its estate, income and gift taxes. The parents were jointly allowed to gift up to \$1.2 million in their lifetimes plus \$20,000 per year to each child, spouse, and grandchild without having to pay taxes on their gifts.

### The Professional Facilitator:

The Wallace family reached a clear and workable consensus by using a professional facilitator to:

1. Conduct quarterly family meetings over one year to focus discussion, brainstorm a wide spectrum of opportunities, and bring the family to satisfactory choices and closure.
2. See that all parties met with financial and estate planners and appraisers as well as land trust representatives and other professionals when appropriate.
3. Meet individually with participants so they could air emotional concerns.
4. Help the family deal with practical problems such as liquidity needs, inheritance taxes, property taxes,

maintenance and upkeep, health care for the parents, the family farm business and other equity issues for the children.

5. Establish a workable governance structure that was acceptable to everyone. This includes addressing such questions as:

How will decisions about jointly owned land be handled (for example, by majority owner, committee or consensus)?

Is there a mechanism for family members to buy one another out? (If, for instance, the Wallace's grandchildren or great-grandchildren want their liquidity, are funds set up for purchasing their part so there will not be a partition suit?)

6. Deal with emotional issues among family members and their spouses such as:

lack of trust creating barriers to open dialogue.

parents' fear of death and loss of control.

children's nostalgia for the land to be preserved as it was in their childhood.

different viewpoints about equitable division of property.

the need for guidance and leadership to maintain focus and momentum.

the need for encouragement to both explore and continue moving to closure.

personal fears of change, not having enough, reopening old wounds, being minimized, loss of love.

### The Plan:

1. With the help of the facilitator, the Wallace family set up a mission statement and governance structure.
2. They agreed to place the 1,000 acres of farmland in agricultural easement which the farming son would own along with his home and the family farm business. That was the extent of his inheritance.
3. The remaining property was divided for the benefit of the three other children, their families, and grandchildren into:

A 500-acre tract set aside as the family compound including the existing vacation home. The tract consisted of three separate parcels (approximately 166 acres each) with a house site for each child, under conservation easement.

Another 500-acre tract was in joint ownership and under conservation easements permitting timber harvest and providing for financial liquidity.

The final 1,000 acres was set aside as a limited conservation development to provide future financial liquidity in a manner the family feels proudly carries on their legacy: A conservation easement was donated to a local land trust on 500 acres. On the

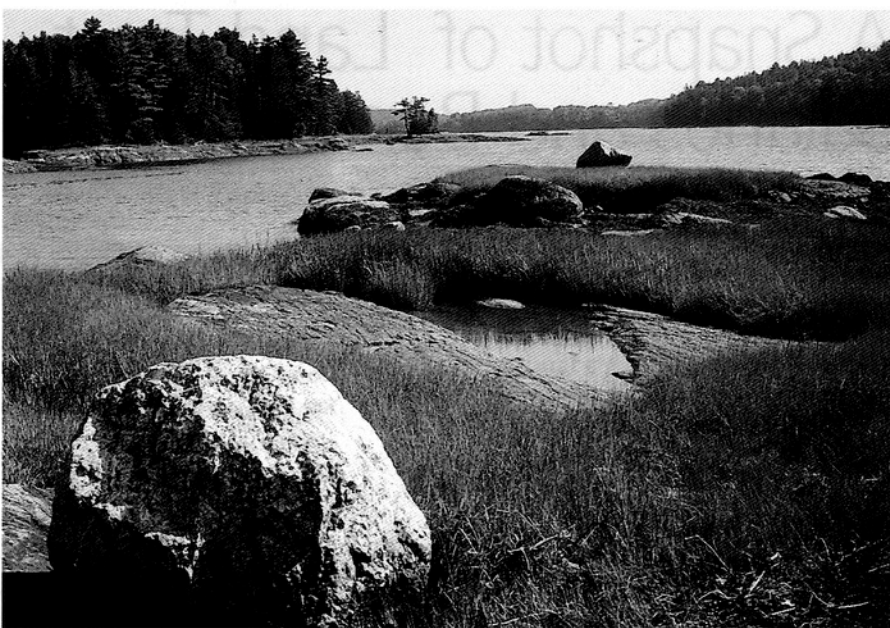
remaining 500 acres, the family allowed for 175 houses, on parcels of approximately 2.8 acres, each house having a 200-foot set back from the road and a winding driveway so no house would be visible from the road.

4. The parents decided to gift their joint \$1.2 million among their children and grandchildren. They determined the order of recipients by financial advantage. After meeting with financial planners and estate attorneys, they may give more and pay the gift tax if that is preferable to the estate tax they would pay if they waited until their deaths. They may establish a trust or utilize other financially advantageous methods.
5. The parents decided to jointly begin annually gifting \$20,000 per child and grandchild.
6. The children agreed to share financial responsibility for their parents' health and retirement care and to compensate their brother for his role as on-site caregiver as necessary.

Not every family with land holdings needs all the skills a professional facilitator can provide, but nearly all need some help to conserve or rebuild family unity. A facilitator helps ease the way while resolving complex family differences around emotionally charged issues of inheritance of family lands.

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Family lands along John's River, Maine

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planning efforts, the key to success is to get the parties to come to agreement on a set of guiding principles or objectives. An agreed upon set of objectives becomes the touchstone for the planning process from which solutions will flow.

For example, a set of objectives might include the following:

- take action to reduce estate taxes;
- preserve the blueberry barren and beach;
- ensure that all family members will have continued access to trails and the beach; and
- provide each child the opportunity to construct a single family residence.

Given this guidance, land use options can be developed that attempt to achieve the objectives that have been endorsed by family members.

The goal of a family lands planning effort is to come up with a plan that meets the principle objectives of all family members. It is important, both for the family and the land trust, that there not be "winners and losers." With conservation easements and other land protection strategies, there is often an ongoing relationship between the family and the land trust. It is not in the land trust's interest to have family members feel antipathy towards the conservation disposition of the property.

## The Challenge Ahead

The trends all indicate that land trusts have growing opportunities to conserve family lands. Our country's population is aging, resulting in a transfer of valuable family properties from one generation to another. The tax benefits of conservation gifts continue to expand, making conservation easements an increasingly attractive land use option for many families.

As land trusts face the challenge of protecting family lands, they must do so with a recognition that the perfect "Ozzie and Harriet" family is a rare commodity in today's world (and probably always has been). To take full advantage of the opportunities to protect the spectacular properties held by families across the country, land trusts must be able to recognize when families are having a difficult time in planning the future of their land and assure that they get the assistance they need.

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