

A GUIDE TO CONSERVING LAND IN BELMONT



The picture on the cover, *Boys in a Pasture*, was painted by Winslow Homer in 1874. The boys, Patrick Keenan and John Carney, were both from Belmont. They were paid 75 cents a day by Homer for posing in a pasture off Somerset Street in Belmont. The land, known as Highland Farm, is now part of Mass Audubon's Habitat Wildlife Sanctuary. The original painting is in the Museum of Fine Arts, Boston. A stamp of the painting was issued in 2010.

The purpose of this pamphlet is to provide information on many ways to preserve existing open space, a brief introduction to options for conserving your own land, and direction on whom to contact for further information.

Land Conservation in Belmont

About one quarter of Belmont's 3000 acres of land and water is now open space, down from more than a third 50 years ago.* Only about half the remaining open space is protected from future development. (See pages 4 and 5.)

Fortunately, past generations of Belmont citizens protected large parcels of land. In the 1890s, a desire to preserve majestic oak trees near Waverley Square sparked the creation of both the first regional land trust in the world (the Trustees of Reservations) and the Metropolitan Parks Commission (now the state Department of Conservation and Recreation). One ancient oak and some descendents remain on the state's Beaver Brook Reservation.

Early in the 20th century, the Underwood family donated land and constructed a playground, a bathhouse,

* Town of Belmont Open Space and Recreation Plan, 2008 Update, and Belmont Assessors' maps; Adams, Howard and Greeley: "Alternative Land Development Policies for the Town of Belmont," February 1962.

and a spring-fed swimming pool. Opened in 1912, the pool was reported to be the first outdoor public pool in the United States. Across Concord Avenue, the town turned a former brickyard and dump into a park. In 1927, Belmont purchased the brickyard and diverted Wellington Brook into the abandoned clay pit to form a pond. More work was done on the park under the Works Progress Administration during the Depression, but a portion of the land was used as a dump until 1958. Clay Pit Park finally opened in 1963.

The roots of the Habitat Wildlife Sanctuary were planted in the 1960s when the Greenough Foundation Trust was established to hold 35 acres of land on Juniper Road. In 1965, Mass Audubon was given its first 23 acres next door and bought another 22 acres a year later. Habitat and Mass Audubon have since merged, and subsequent gifts and purchases have increased the Sanctuary to 90 acres.

In 1968, with money from the federal and state governments, the town purchased a 70-acre farm from McLean Hospital. Those meadows, forested uplands, wetlands, and vernal pools are now Rock Meadow conservation land.

Meanwhile, private landowners protected open space through the Snake Hill Road Trust, established in the 1940s; the Commons in 1981; and the Pleasant Hill Condominium Trust in 1986.

In 1999, rezoning for development preserved 120 acres of land around McLean Hospital. This land connects Rock Meadow, Habitat, and the Beaver Brook Reservation and is a link in the Western Greenway — 1200 acres of interconnected open space through Belmont, Waltham, and Lexington.

Also in 1999, the Belmont Land Trust was formed to help preserve open lands. So far, it has helped conserve seven parcels totaling more than 20 acres. One is the 10-acre Richardson Farm, which was part of a land grant from

Charles I of England and has been cultivated since 1634. The farm is now protected by an Agricultural Preservation Restriction. The Sergi family farmed the land for 65 years.

The history of land conservation in Belmont demonstrates just some of the creative ways open space can be preserved.

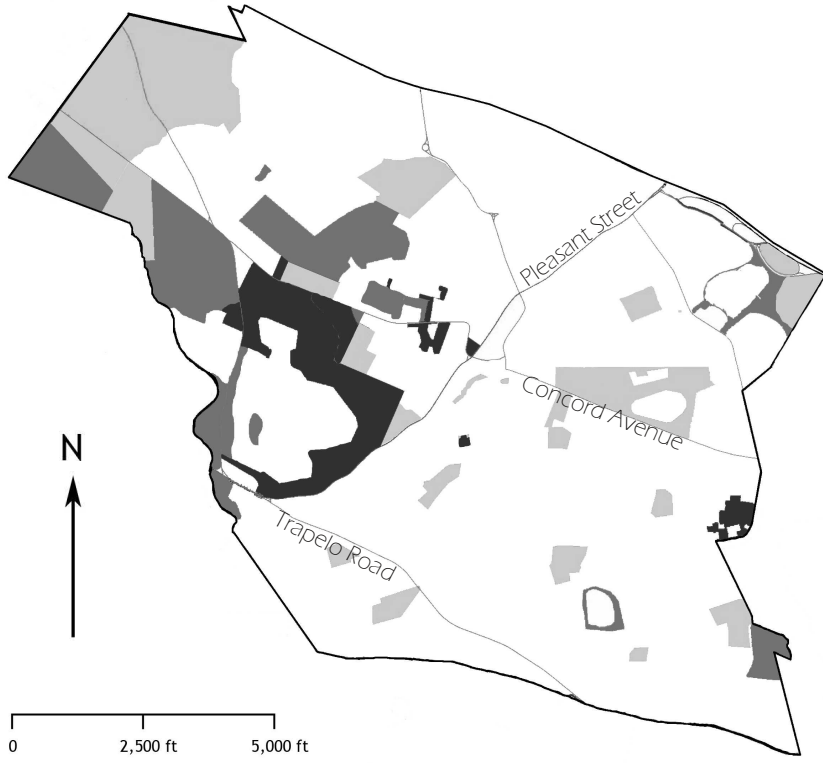
Community Planning and Land Protection




Belmont is one of Massachusetts' most densely populated communities — the 18th densest of the 351 cities and towns.* Therefore, preserving as much as possible of our 750 acres of open space has long been a concern. In addition to donating land, many people help improve open space by volunteering with Habitat, Friends of Rock Meadow, Friends of the Western Greenway, and other groups to build walking paths, weed out invasive species, clean up litter, and become advocates for the land.

Open space is a major issue in town planning debates. While some urge more building to increase tax revenue, others point out that development can increase town costs and prefer to limit development of green space. Both the town's Comprehensive Plan, completed in 2010, and the Open Space Plan, revised periodically, map and describe our open spaces. The desire to protect more open space was a factor in Belmont's adoption in 2010 of the state's Community Preservation Act, which creates a dedicated reserve fund for open space and recreation.

* 2010 US Census, Mass GIS; calculation by the Metropolitan Area Planning Council.

Belmont Open Space Lands



-  **Permanently Protected Open Space**
— covered by Conservation Restrictions (CRs)
-  **Protected Open Space**
— not covered by CRs
-  **Other Open Space**

Adapted from Town of Belmont maps

Open Space Land in Belmont

	Approximate Acres
Permanently Protected Open Space — covered by Conservation Restrictions (CRs)	
Lone Tree Hill — owned by Belmont and McLean; public*	106
Highland Meadow Cemetery Phase II	10
Richardson/Ogilby Farm (agricultural restriction) CRs by homeowners	10 9
Other CRs (Belmont Day, Woman’s Club, McLean)	6
Habitat — Mass Audubon	4
Protected Open Space — not covered by CRs	
Habitat – Mass Audubon (not covered by a CR)	86
Rock Meadow — Town of Belmont	70
Beaver Brook North Reservation — Mass. DCR	56
Alewife Brook Reservation — Mass. DCR*	43
Beaver Brook Reservation — Mass. DCR	16
Belmont Cemeteries (except Phase II of Highland Meadow)*	17
McLean Private Open Space	17
Cambridge Reservoir	12
Other Conservation Land	2
Other Open Space*	
Belmont Country Club (M.G.L. c. 61B)	134
Belmont Schools, Belmont Park and Recreation Facilities	94
Belmont Hill School	30
Belmont/Lexington border wetlands	23
Town-owned undeveloped parcels	13
Uplands/Silver Maple Forest — AP Cambridge Partners	13
Belmont Day School	12
Belmont Incinerator/Transfer Station	10
Belmont Hill Club	8
Other Privately Owned Open Space	3

*includes buildings, driveways, parking lots, and ponds

Why Conserve?

Open space and natural vistas foster peace of mind and provide a refuge from the physical and psychological stress of urban life. Other effects of open space include:

ADVANTAGES

To the public:

- Protection of wildlife, flora, wetlands, and other natural resources.
- Cleaner water and air and natural controls on flooding, pollution, and erosion.
- Preservation of scenic vistas and historic landscapes.
- Public use, if the donor allows, for recreation including walking trails and pocket parks.

To the town:

- Reduced need for public services: no school costs, lower costs for police, fire protection, roads, water.
- Increased value of adjacent properties.
- Greater appeal of a more attractive community in a natural setting.

To the landowner:

- Continued enjoyment of the land's natural beauty.
- Preservation of family heritage.
- Possible tax savings:
 - ◆ A charitable deduction on the federal income tax — the largest financial benefit to most people.
 - ◆ A reduction in the value of an estate and thus a reduction in estate taxes — also often a significant benefit.

“What is such a resource worth? Anything it costs. If we never hike it or step into its shade, if we only drive by occasionally . . . we have our money’s worth. We have been too efficient at destruction; we have left our souls too little space to breathe in. Every green natural place we save saves a fragment of our sanity and gives us a little more hope that we have a future.”

— **Wallace Earle Stegner (1909-1993)**
American historian, novelist, and environmentalist

- ◆ A credit on the Massachusetts income tax via the state’s new conservation tax credit.
- ◆ A possible reduction in property taxes if a conservation restriction (CR) significantly cuts the property’s fair-market value, or elimination of property taxes if the land is donated to a conservation organization.

DISADVANTAGES

To the town:

- Possible reduction in property tax revenue under a conservation restriction, or a loss of tax revenue if the land is donated to a tax-exempt organization. (However, see the reduced need for public services noted on page 6.)
- Fewer places to develop in the future.

To the landowner:

- Potential loss of proceeds from a market-price sale.
- Upfront costs like a survey, consultations with a tax lawyer and/or financial adviser.
- For a CR or land donation covering only part of a property, fewer options for building on the rest of the land.
- Possible costs for oversight and administration of the CR. Some organizations require funds to cover those costs.

Many Ways to Save Your Land

One widely used method to preserve your own land for future generations is a conservation restriction. A conservation restriction (CR) is granted by the landowner, usually to a nonprofit organization. Once the restriction is imposed, it controls use of the land. As determined by the landowner, the restriction permits certain uses and permanently prohibits other uses. Once imposed, the restriction becomes irrevocable.

The owner of the land and the holder of the conservation restriction are different entities. Sometimes the landowner retains title to the property. Sometimes the land is donated or sold to a conservation organization. Some land acquired by Mass Audubon, for example, is covered by CRs held by the Belmont Land Trust.

Substantial federal income tax benefits result from a conservation restriction; however, not all open space can be protected by a CR. U.S. tax law will honor conservation restrictions only when they will preserve land for at least one of four reasons:

- Outdoor recreation or education for the general public.
- Protection of a relatively natural habitat for fish, wildlife, and/or plants.
- Scenic enjoyment by the general public or protection of open space as part of a clearly delineated federal, state, or local conservation policy.
- Protection of a historically important land area or a certified historic structure.

Under Massachusetts law, the public benefits must be approved both by the Belmont Board of Selectmen and the state's Executive Office of Energy and Environmental Affairs. As the Trustees of Reservations noted in an excellent pamphlet, "A conservation restriction designed to enhance the value or appeal of an abutting development, without really accomplishing at least one of these four purposes, will not qualify as tax deductible. Donated restrictions must be thoroughly documented to show that they carry out one or more of the above conservation purposes, and their claimed value as charitable deductions must be thoroughly substantiated by appraisal."

Other types of land protection are available:

- Donation, sale, or sale at a bargain price of land to an organization trusted to preserve it.
- Inclusion of land in a historic district.
- A private deed restriction to limit future uses and/or development, such as size of building.
- A mutual covenant or neighborhood association.
- A temporary restriction on development under Massachusetts General Laws Chapters 61, 61A, and 61B to reduce property taxes in return for giving the town a right of first refusal to buy the land.
- Sale to the town of the land or of a CR on the land. The town's purchase could be funded through the Massachusetts Community Preservation Act for open space or recreation purposes.

Other laws provide some measure of protection for open space and landscapes: a scenic road designation, the state Wetlands Protection Act, and municipal zoning laws.

For some property owners, outright gifts may not be financially desirable. These donors may want to consider a bargain sale: the property is sold to a charity for less than its fair market price. Generally, the bargain element of the sale is a deduction to help the donor offset federal income taxes.

Land protection specialists at such organizations as the Belmont Land Trust, Mass Audubon, and the Trustees of Reservations have become expert in matching the desires of the landowner to the various state and federal laws that cover preserving open space. The best results for the landowner and the public might come from a combination of methods: for example, the donation of land to one organization with a conservation restriction held by another, or the grant of a conservation restriction followed by the gift of a remainder interest with a retained life estate.

Massachusetts General Laws Chapter 184, Sections 31–33, provide four types of land protection restriction:

- Conservation restriction (CR)
- Historic preservation restriction
- Agricultural restriction
- Watershed preservation restriction

If these restrictions are executed so they meet the requirements of the U.S. Treasury Regulations, sections 1.170A-14, they would qualify the donor for a charitable deduction from federal income tax. Restrictions limiting the use of land generally will reduce the land's value and may result in lowered property taxes and also in a reduction in federal and state estate taxes upon death.

How Do I Start?

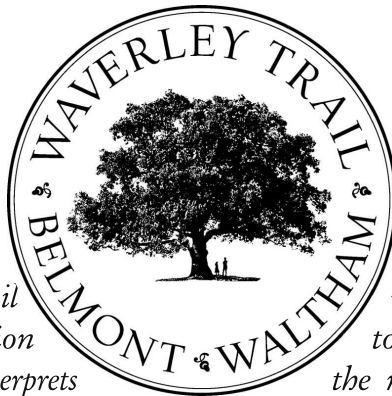
A private owner who wants to conserve his or her land needs to:

- Decide whether to continue to own the land or give up ownership. Here are some of the issues:
 - ◆ If you continue to own it with a CR (see previous section), you may qualify for a federal income tax deduction, but a smaller one than if you gave the land away. You may restrict public access. Your property taxes may be reduced; they will not be eliminated.
 - ◆ If you give up ownership by donating your land to a group like Mass Audubon or the Belmont Land Trust, you'll get a larger income tax deduction and you won't pay any further property taxes. No longer the owner, you'll lose control over the land. To ensure that the land will never be developed, you can place a CR on the land before donating it.
- Have a lawyer, accountant, or knowledgeable party represent your interest while in discussion with the chosen organization.
- Have the title searched for encumbrances and have the land surveyed by a registered surveyor.
- Decide what special requests to make of the chosen organization: preserving the right for some uses, for example. This can be crafted to suit your needs. You're in the driver's seat, provided that your wishes are compatible with the purposes of the organization. Most land trusts are happy to work with the donor.

- Have the land appraised by a qualified appraiser, and follow through to make sure proper documents are submitted. A qualified, full appraisal is essential to take a charitable deduction from income tax.
- For a CR, have the proposal approved by the state Executive Office of Energy and Environmental Affairs and the Belmont Selectmen. (The state now requires review by the Belmont Conservation Commission and other steps.) While this may sound daunting, organizations like the Belmont Land Trust have shepherded many such approvals and are available to assist with the process.

The owner is responsible for paying the surveyor, the lawyer, and the appraiser, though those services may be tax-deductible expenses.

Thank you. We hope that reading this pamphlet has given you ideas of how to conserve some part of Belmont for posterity.



The Waverley Trail runs from the former fire station to Beaver Brook Reservation. It interprets the natural heritage and the historical significance of the Waverley Square area.

Glossary

Bargain Sale — Sale of land or a conservation easement to a nonprofit organization for less than its fair-market value.

Community Preservation Act — A state law that imposes a surcharge on property taxes to create a fund, with a state match, for open space protection, historic preservation, affordable housing, and recreation. Belmont adopted the Community Preservation Act in 2010 with a 1½% surcharge.

Conservation — Preservation and protection of natural and scenic resources to prevent their loss and/or destruction.

Conservation Restriction — A specific type of deed restriction that is a voluntary, legal agreement between a landowner and a nonprofit organization or governmental agency that permanently limits uses of the land to protect its conservation values. It must be approved by the state in accordance with M.G.L. c. 184, § 31–33. The landowner can still sell the property or pass it to heirs, but specific uses or development are prohibited as outlined in the agreement.

Deed Restriction (General) — Limitation of certain uses through private restriction that under Massachusetts law may run with the land for no more than 30 years, unless a longer term limit is specifically stated. The holder of the restriction must re-record it prior to its expiration to extend the restriction. Unlike in the case of specific types of deed restrictions — such as conservation restrictions, agricultural preservation restrictions, historic preservation restrictions, and affordable housing restrictions — no income or tax benefits are associated with a general deed restriction due to its temporary nature: it may expire or be released upon agreement of private parties.

Easement — A grant of a right to use another person’s real property for a stated purpose; the grant may be permanent. For example, Smith may convey an easement to Jones in perpetuity to walk over a specified portion of Smith’s property to reach the pond.

Fair Market Value — The price that a willing buyer would pay a willing seller, neither being under any compulsion to buy or sell and both having full knowledge of relevant facts surrounding the transaction.

Historic District — Designation of an area containing certain properties of historic importance as formally adopted by Town Meeting in accordance with M.G.L. c. 40C. Exterior changes to structures in the District may require approval from the town’s Historic District Commission.

Historic Preservation Restriction — A specific type of deed restriction that is a voluntary, legal, permanent agreement made between an owner of a historic property and a qualified restriction-holding organization. The restriction may protect the interior, exterior, and/or landscape of the qualifying property by limiting future alterations and uses.

Land Trust — A nonprofit organization formed for the express purpose of holding land (or conservation restrictions on land) for conservation, historic preservation, wildlife protection and/or recreation values.

Open Space — Land and/or water bodies that are predominantly undeveloped for residential, commercial, industrial, or institutional use and have surface open to the sky serving aesthetic, agricultural, ecological, or recreational functions.

Pocket Park — A small parcel designated as open space to serve certain groups or the public as a whole.

Retained Life Estate — An interest in real property that is transferred subject to the life of the grantor and/or any living family members specified in the deed. Gifts of life estates to nonprofits may be tax deductible.

Zoning Law and Regulations — Municipal limitations on uses and dimensions of development of land.



Winslow Homer, *Waverly Oaks*, 1864

Thousands of people ventured from the city to see these mighty oaks on the Belmont/Waltham border. In 1890, in a letter to Garden and Forest magazine, landscape architect Charles Eliot proposed protecting them. He suggested creating a regional organization to preserve land “as the public library holds books and the art museum holds pictures.” The original painting is in the Thyssen-Bornemisza Museum in Madrid.

Resources

Belmont Conservation Commission: <belmont-ma.gov/public_documents/BelmontMA_BComm/conservation>.

Belmont CPA (Community Preservation Act): <belmont-ma.gov/Public_Documents/BelmontMA_BComm/cpa>.

Belmont GIS map: <mapsonline.net/belmontma> Many interactive features.

Belmont Historic District Commission: <belmont-ma.gov/Public_Documents/BelmontMA_BComm/historicdistrict> See Additional Links at the top for both “Belmont Values Preservation: The Economics of Historic Preservation and of Historic Districts” and “Design Guidelines for Belmont Historic Districts.”

Belmont Land Trust: <belmontlandtrust.org> See especially “Guidelines for Landowners” and “Information for Potential Donors of Conservation Restrictions to the Belmont Land Trust,” September 2003.

Historic New England: <www.historicnewengland.org> Under Preservation, see especially “The Stewardship Program.”

Mass Audubon’s Habitat and Land Protection Office: <www.massaudubon.org> See booklet “Shaping the Future of Your Community,” September 2009.

Massachusetts Land Trust Coalition: <massland.org> For information for landowners on taxes and land conservation, see <massland.org/landowner-information-library>.

Mount Grace Land Conservation Trust: Athol, MA <mountgrace.org>.

Trustees of Reservations: <thetrustees.org> See especially the 40-page pamphlet “Your Land, Your Legacy” <thetrustees.org/hci/library/ylyl_web.pdf>

The Voter Education Fund of the League of Women Voters of Belmont funded this pamphlet. The Voter Ed Fund, P.O. Box 426, Belmont, MA 02478, also publishes an annual *Voter Guide* with information about local candidates. Donations to the Voter Education Fund are tax deductible.

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This pamphlet is an outgrowth of a study by the Open Space Study Committee of the League of Women Voters of Belmont <BelmontLWV.org>. Such studies are frequently undertaken before a League establishes a new policy. As a result of this one, the Belmont League formally endorsed “the protection of open space for conservation by means of public or private acquisition or conservation restrictions.”

Members of the study committee are Anne Allen, Sue Bass, Virginia Falvey, Bonnie Friedman, Julie Perkins, Maryann Scali, and Margaret Velie. They would like to thank Sam Knight, Jim Levitt, David Merfeld, Carla Moynihan, Richard Simmons, Wes Ward, Jeffrey Wheeler, Neal Winston, and Roger Wrubel for reviewing drafts and giving feedback.

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**LEAGUE OF WOMEN VOTERS®
OF BELMONT**

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