

***Who* Knows How to Use the
State Tax Credit in Land
Conservation Bargain Sales?**

These guys do.



**Mark H. Robinson, Executive Director, The Compact
of Cape Cod Conservation Trusts, Inc., Barnstable MA**



**Richard K. Hubbard, Executive Director,
Franklin Land Trust, Shelburne Falls MA**

CONSERVATION LAND TAX CREDIT (CLTC) PROGRAM (2011 - ?)

Purpose	provide credit for qualified donation of a property interest with “sufficient natural resources” in the public interest
Transactions	donations or bargain sale of fee or CR <u>must</u> be protected in perpetuity
Donors	all owners must agree to transaction credit is based on % interest in MA land, <u>not</u> residency status
Donees	government agency, town, <u>incorporated</u> land trust
Land	must have significant natural resource values (e.g., drinking water, rare species, agriculture)
Monetary caps	program cap = \$2 million per year credit cap per transaction = lesser of \$75,000 or 50% of appraised value of donated value
Non-transferable	specific to donor
Refundable	if credit is larger than donor’s tax liability precludes “carry-over”

“You gotta be kidding me! The State will send me a check?”



**Commonwealth of
Massachusetts**

Date April 2013

PAY TO THE
ORDER OF

John Landowner

\$ 75,000.00

Seventy-Five Thousand and 00/100

DOLLARS

MEMO

Conservation Land Tax Credit

MA Dept of Revenue

⑆ 123456789 ⑆

⑆001001234⑆

0790

“Yeah, it will.”

MISCONCEPTIONS ABOUT THE STATE TAX CREDIT

- “It can’t be real.”
But it is.
- “My accountant has never heard of it.”
No reason they would have, too new and niche, send them the CMR reference (301 CMR 14.00)
- “I don’t need more deductions.”
It’s a refundable credit, not a deduction.
- “I don’t have any taxable income.”
You don’t need to. Refund or credit or both
- “I don’t live in Massachusetts.”
You don’t need to. We have had Canadians get a credit!
- “The State is broke. Will this program survive budget cuts?”
Popular and intact for now. Of course, State facing huge deficit.

WHAT IS A BARGAIN SALE?

Simply, a negotiated reduction in fair market value to benefit a charitable buyer (in this case, a land trust or Town)

Part cash, part donation

Must be a permanent interest in the property (fee simple, CR)
sold to an eligible buyer (501c3)

Must show donative intent (no rules on discount—5% might not cut it)

OPEN SPACE FOLKS SHOULD ***ALWAYS*** SEEK A BARGAIN SALE
WHEN BUYING CONSERVATION LAND

WE HAVE ADVANTAGES NOT AVAILABLE TO OTHER
PRIVATE/COMMERCIAL BUYERS.

- * NO PERMITTING CONTINGENCIES
- * USUALLY, NO MORTGAGE CONTINGENCIES
(fundraising, perhaps)
- * TAX INCENTIVES TO FORGE A BARGAIN

WHEN MIGHT YOU ***NOT*** TRY A BARGAIN SALE?

- * PROPERTY SO CRITICAL
- * ACTIVE COMPETITION
- * AUCTION
- * SELLER HOSTILE

BARGAIN SALE GUIDING PRINCIPLES

A lot of variables in play:

1. The higher the appraised land value, the bigger the potential gift (Seller's appraisal determines donated value.)
2. The higher the federal income tax bracket, the bigger the potential gift.
3. Property listed by a broker or not (6% - 10% commission); ask for a "conservation exclusion" before listing
4. The lower the property basis, the better the net proceeds
5. Donor's financial circumstances:
 - a) Variable income levels over carry-forward period
 - b) Other deductions, tax preference items

Example of Sale for Conservation vs. Sale for Development

ASSUMPTIONS:

Fair market value is	\$210,000	2015 appraisal seller
Property basis is	\$65,000	1996 purchase price
Seller is in the	25	percent IRS tax bracket (guess) (ranges from 10% to 39.6%)
Broker's fee is	6	percent (assumes broker will make full commission on development sale only)
	\$75,000	maximum state tax credit (or half of donated value, whichever is less)

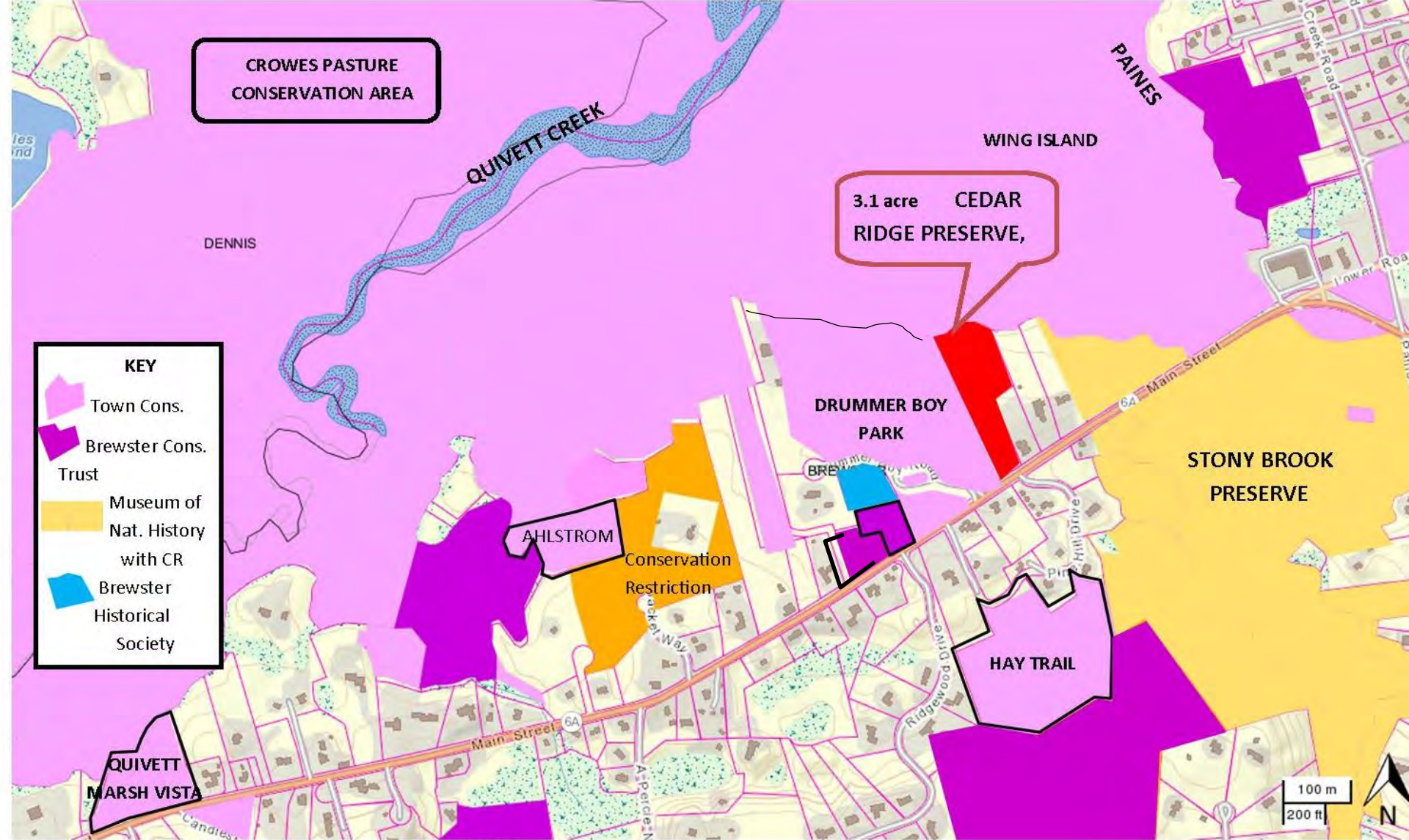
EXPLANATION:

EXAMPLE: WE WILL RETURN TO THIS

	A	B		
	2015 SALE for CONSERVATION	2015 FMV SALE for DEVELOPMENT	KEY	METHODOLOGY
Fair Market Value	\$210,000	\$210,000	A	appraisal;
Charitable Gift	\$70,000	\$0	B	seller's decision
Sale Price	\$140,000	\$210,000	C	A - B
Sale Costs (broker's fee)	\$0	\$12,600	D	6% of sale price, if developed; 0% if preserved
Net Sales Proceeds	\$140,000	\$197,400	E	C - D
Reportable Capital Gain	\$96,667	\$132,400	G1, G2	E-adjusted basis
15% Fed. Cap. Gains Tax	\$14,500	\$19,860	N	0.15 x G (for long-term assets);
5.25% State Cap. Gains Tax	\$5,075	\$6,951	P	0.0525 x G (for long-term assets);
TOTAL Cap Gains Tax	\$19,575	\$26,811	Q	N + P
Final Net Sales Proceeds	\$140,000	\$197,400	R	from E
minus: total capital gains tax	\$19,575	\$26,811	S	from Q (state and federal)
plus: saved fed. income taxes (taken over 6 years)	\$17,500	\$0	T	25% x B (see Seller's tax bracket from Assumptions)*
plus: state tax credit* (receive in spring 2016)	\$35,000	\$0	U	for bargain sale, half of "gift" in price reduction
minus: fed inc tx on state tax refund**	\$8,750	\$0	V	25% x refunded credit (U)
plus: Town is exempt purchaser	\$0	\$1,197	W	county excise tax on sale (\$5.7 per thousand)
TOTAL After-Sale NET Cash	\$164,175	\$169,392	net difference=	R - S + T + U - V - W
			\$5,217	

donation →

BOTTOM LINE: Using these variables, a \$70,000 “hit” on sale price for conservation is only a \$5,000 loss in net.



Source: MassGIS OLIVER, 2014, with updates to May 2014 by Town

CEDAR RIDGE PRESERVE, Brewster MA
PROTECTED OPEN SPACE MAP

*Note: Properties outlined in **bold** have received State grants in the past 25 years*





Cedar Ridge Preserve at Drummer Boy Park, Main Street, Brewster MA

Seller's equation: (2013 listing had expired)

\$ 545,000	2008 purchase price
\$ 600,000	2014 Appraised Value (by Seller)
\$ 500,000	Negotiated purchase price by Town
\$-100,000	Price reduction by Seller (savings by Town)
\$ +50,000	State tax credit (Conservation Land Tax Credit to Seller)
\$ +33,000	Saved federal taxes on up to 6 years for deduction (33% bracket)
\$ 583,000	Gross proceeds to Seller (before fed. tax on tax credit)
\$ 0	Capital gains taxes (sold at less than purchase price)

Funding sources for Town purchase of \$600,000 property:

\$ 100,000	Seller's discount as negotiated (owing to state tax credit)
\$ 100,000	Contribution by local land trust
\$ 260,000	State LAND grant to Town (52% of sales price)
\$ 42,000	30% State match to local CPA revenues
\$ 98,000	Final Net Cost to Town (Community Preservation Fund)

Seller: "When do I get my money?"

At closing: December 2014

Town of Brewster
10111
Date December 2014
PAY TO THE ORDER OF John Landowner \$ 500,000.00
Five hundred Thousand and 00/100 DOLLARS
MEMO Land Purchase, closing check TOWN TREASURER
⑆ 123456789 ⑆ ⑆001001234⑆ ⑆777

**When you file your 2014 return to State:
Spring 2015**

Commonwealth of Massachusetts
Date April 2015
PAY TO THE ORDER OF John Landowner \$ 50,000.00
Fifty Thousand and 00/100 DOLLARS
MEMO Conservation land Tax Credit MA Dept of Revenue
⑆ 123456789 ⑆ ⑆001001234⑆ ⑆777

As you file your federal returns over 6 years (2015-20)

April 2015

United States Treasury
X072,559,986
01 01 00 PHILADELPHIA, PA
12344321
12344321
ALEXANDER HAMILTON
1804 AARON BORN DRIVE
WEHAWKEN NJ 07086
DECEMBER 3***1234*00
⑆ 123456789 ⑆ ⑆0000005486 ⑆23443210⑆ ⑆90400

\$5,500 refund

April 2018

United States Treasury
X072,559,986
01 01 00 PHILADELPHIA, PA
12344321
12344321
ALEXANDER HAMILTON
1804 AARON BORN DRIVE
WEHAWKEN NJ 07086
DECEMBER 3***1234*00
⑆ 123456789 ⑆ ⑆0000005486 ⑆23443210⑆ ⑆90400

\$5,500 refund

April 2016

United States Treasury
X072,559,986
01 01 00 PHILADELPHIA, PA
12344321
12344321
ALEXANDER HAMILTON
1804 AARON BORN DRIVE
WEHAWKEN NJ 07086
DECEMBER 3***1234*00
⑆ 123456789 ⑆ ⑆0000005486 ⑆23443210⑆ ⑆90400

\$5,500 refund

April 2019

United States Treasury
X072,559,986
01 01 00 PHILADELPHIA, PA
12344321
12344321
ALEXANDER HAMILTON
1804 AARON BORN DRIVE
WEHAWKEN NJ 07086
DECEMBER 3***1234*00
⑆ 123456789 ⑆ ⑆0000005486 ⑆23443210⑆ ⑆90400

\$5,500 refund

April 2017

United States Treasury
X072,559,986
01 01 00 PHILADELPHIA, PA
12344321
12344321
ALEXANDER HAMILTON
1804 AARON BORN DRIVE
WEHAWKEN NJ 07086
DECEMBER 3***1234*00
⑆ 123456789 ⑆ ⑆0000005486 ⑆23443210⑆ ⑆90400

\$5,500 refund

April 2020

United States Treasury
X072,559,986
01 01 00 PHILADELPHIA, PA
12344321
12344321
ALEXANDER HAMILTON
1804 AARON BORN DRIVE
WEHAWKEN NJ 07086
DECEMBER 3***1234*00
⑆ 123456789 ⑆ ⑆0000005486 ⑆23443210⑆ ⑆90400

\$5,500 refund

BARGAIN SALE CAVEATS:

Bargain Sale of High-Value Properties when ordinary income is low


Watch out for Alternative Minimum Tax!!

Must “run the numbers” for each donor in each transaction

ALWAYS tell seller to “check with your tax advisor.”

It is often hard to come out ahead with bargain sale NET.

It does not work for every seller.

A photograph of a river with vibrant autumn foliage reflected in the water. The colors range from deep blues and purples to bright yellows and oranges. The text is overlaid on a white rectangular box with an orange border.

OK, let's move to the
interactive model...