

A Guide to Land Protection with the South Kingstown Land Trust



South Kingstown Land Trust
17 Matunuck Beach Road
South Kingstown, Rhode Island 02879
401-789-0962
www.skl.org

TABLE OF CONTENTS

1. WHY PROTECT YOUR LAND	3
2. ABOUT The South Kingstown Land Trust (SKLT)	4
3. OPTIONS FOR PROTECTING YOUR LAND	5
Section 1: Gifts of Land	6
• Outright Donation of land	
• Donation through a Will	
• Trade Lands	
Section 2: Sale of Land	7
• Fair Market Value Sale	
• Bargain Sale	
Section 3: Conservation Easements	8
Section 4: Other Scenarios	10
• Donation of Land with a Reserved Life Estate	
• Deed Restrictions	
4. FINANCIAL CONSIDERATIONS	11
5. SKLT LAND PROTECTION PROCESS	13
6. ONGOING LAND STEWARDSHIP AT SKLT	15

WHY PROTECT YOUR LAND

South Kingstown is rich in the diversity of its natural areas – forests, farmland, wetlands, coastal barrier beaches and other wildlife habitats. Our natural environment provides habitat for hundreds of plant and animal species, protects clean air and clean groundwater for drinking, offers recreational places and contributes greatly to our quality of life and our sense of place, and our farmland provides for local food, forage, and the commerce of agriculture.

If your land has special natural features or prime farmland soils that you want to ensure remain for future generations to enjoy, you may want to consider a formal, legal arrangement to provide lasting protection. This protection could cover an entire parcel or a portion of it.

Preserving natural areas and farmland may offer financial benefits. If you donate your land or place a conservation easement on it, you may be eligible for federal income tax reductions, federal estate tax deductions or local property tax relief.

The good news - and challenging news – is that there are a variety of ways to preserve land. Good because you can likely find the right approach for you and your land. Challenging because the process has many options to understand and analyze to be sure of the correct approach for you. It can be a complex process that will likely involve significant research on various topics.

This guide is intended as an overview of the most common techniques for land protection; it should not be used as the only reference in making your decision. In addition, ***consulting with an experienced lawyer, accountant or estate planner is essential***. The most important first step is for the landowner to define his or her goals for the land, then to consider the financial implications and conservation goals, many of which are summarized in this guide.



About the SOUTH KINGSTOWN LAND TRUST

SKLT is dedicated to preserving the sense of place in and around the town of South Kingstown by protecting open spaces and critical wildlife habitat, by creating trails, and by protecting the traditional landscapes and farmland that make our community unique.

SKLT was founded in 1983 as a private nonprofit 501(c)(3) charitable organization to protect open space in and around the town of South Kingstown. Since its inception, SKLT has preserved over 2950 acres of open space. Our priorities for land preservation focus on those areas which provide protection of biodiversity and ecosystems, groundwater resources and valuable farmland.

SKLT coordinates with agencies involved in land preservation in our town, including the Town of South Kingstown, RI Department of Environmental Management, The Nature Conservancy, US Fish & Wildlife Service, Audubon Society of RI, and the Narrow River Land Trust.

SKLT raises funds as needed for each project that we undertake. SKLT has successfully sought funds from many federal, state, local and private organizations. In addition to raising funds for the purchase price, SKLT also needs to raise funds for a stewardship contribution for each project that we do, so that long-term responsibilities can be ensured. SKLT asks landowners to make a voluntary donation for this specific purpose. Stewardship contributions from all projects are pooled in the restricted Clarkson A. Collins Stewardship Fund to cover expenses of SKLT's stewardship program.

Our staff will work with many landowners in any given year, providing information on protection options as needed. When the landowner is ready to either sell or donate land to the land trust, we will negotiate an agreement, based on their goals and ours, and on appraisals and other fact-based analyses. For acquisitions, we will coordinate with our partner organizations to determine the best funding sources, and then proceed with grant applications and other fundraising. The average project takes 18 months to complete.



OPTIONS FOR PROTECTING YOUR LAND

If you wish to preserve your land, you will find a variety of ways to protect the natural features of your property. The challenge is to find the method that best suits your needs as a landowner.

The first decision is whether you wish to retain ownership of the land or to transfer ownership. The second decision is whether you can donate the land or easement (See below) or whether you wish to sell. If you wish to sell, could you sell at below market value, in what is called a bargain sale, and if so, how much of a bargain sale? Consulting with your tax preparer, accountant or lawyer is essential to see how the numbers work for you.

SKLT is happy to work with landowners to find the best approach for preserving their land. SKLT has extensive experience in preserving land through both fee transfer and conservation easement methods. Protecting land and stewarding that land is the core mission of our organization. In accepting land and easements, SKLT takes on significant, long-term stewardship responsibilities including at a minimum annual field monitoring, addressing violations or encroachment and, when needed, legal defense.

To ensure SKLT's ability to carry out these stewardship and enforcement obligations, SKLT asks each landowner to make a voluntary contribution to our pooled stewardship reserve. The amount of the suggested contribution varies by the size and complexity of the project.



Section 1: GIFTS OF LAND

Most of the land protected by SKLT has been donated by generous property owners. If you are able to consider a gift of your land, review the approaches listed below.

A. Donation of Conservation Land

Giving your land to a non-profit conservation organization or a government agency is the simplest and quickest way to protect your land. Both are qualified under Internal Revenue Service rules to receive gifts of conservation land. You only need to discuss your goals for the land and obtain acceptance of your gift from the organization or agency, then have an attorney prepare the deed, and sign it. A gift ensures long-term protection of the land, relieves the owner of management responsibilities and property taxes, and offers income tax benefits. Capital gains taxes are avoided, and instead, the owner can use the value of the gift as a charitable deduction in calculating income taxes. In addition, a landowner's cash contribution for future stewardship may also be tax deductible – consult with your tax preparer or attorney.

B. Donation of Conservation Land by Will

If you wish to donate land but do not want to give up use of it immediately, you could direct in a will that the land be given for conservation after death. It is important to discuss the gift with the organization to which the land will be left prior to its inclusion in the will, both to discuss future use of the land and to ensure that the organization will accept the gift. In most cases, a conservation organization will request that a stewardship donation to help fund the long-term care and stewardship of the land also be gifted in the will.

The major benefits of a donation of conservation land by will are that, as the owner, you retain full control over the land during your lifetime, while being assured that it will be cared for after your death. Removing the land from your estate also reduces the estate or inheritance taxes, thereby eliminating a potential major stumbling block to preservation of the land by your heirs. You would still, of course, remain responsible for property taxes while you own the land.

C. Donation of Trade Lands

If you own developed real estate, or open land which is not strategically located for preservation, you could donate it as a 'trade land' to SKLT. The Land Trust would only accept such a gift with the understanding that it would be sold, and the proceeds used to purchase other high priority natural areas or farmlands. Such lands must have a fair market value of at least \$25,000 because of the high administrative costs of resale.

By giving trade lands, you will still enjoy the same tax benefit as for conservation land, and you will be providing financial resources to help SKLT continue to protect important open space in South Kingstown.

Section 2: SELLING YOUR LAND

If you cannot donate your land, you may wish to sell it outright to SKLT. Our staff would apply to appropriate agencies and foundations to fund the acquisition, and our ability to complete the transaction would be contingent on grant awards from those sources. Options for the sale include selling at fair market value, or at a bargain sale.

Fair Market Value

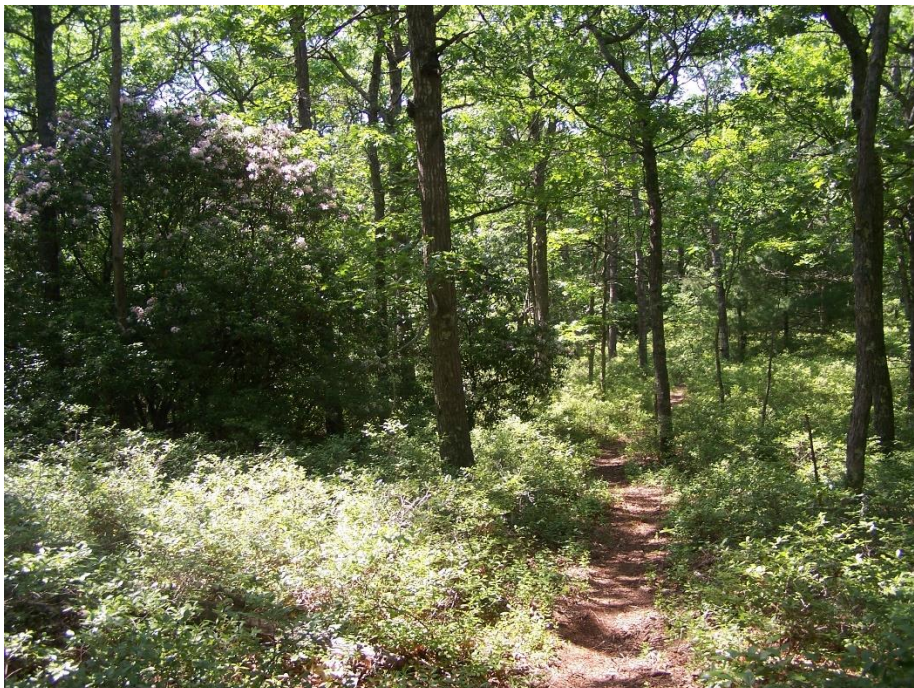
The fair market value of a property would be determined by an appraisal done by a certified appraiser. SKLT maintains a list of qualified certified appraisers who have experience valuing vacant land, which we are happy to share with landowners.

If your land is sold for full fair market value and it has appreciated in value since your purchase of it, you will be liable for income tax on the capital gain, which directly affects your net profit. Land trusts like SKLT suggest that the landowner consider a bargain sale to offset the impact of the capital gains tax.

Bargain Sale

In a bargain sale, your land is bought by the Land Trust for less than fair market value. The amount of the bargain sale could simply offset capital gains taxes or could be more substantial and lead to an income tax deduction on your federal taxes, as allowed by the Internal Revenue Service.

In any acquisition of land, the value of the land must be determined by a qualified appraiser and documented in a report that meets funder and/or IRS guidelines. SKLT will not pay above appraised fair market value.



Section 3: CONSERVATION EASEMENTS

A conservation easement (CE) enables the landowner to protect land in perpetuity while retaining ownership by placing legal restrictions on the property that bind both the present and future landowners. The conservation easement is a permanent restriction that runs with the land.

A conservation easement is a landowner's voluntary agreement to permanently restrict the use and development of their property. The landowner continues to own, use, and manage the property subject to the terms of the conservation easement. The landowner may sell, rent, lease, bequeath, or mortgage the property like any other landowner, although the property always remains subject to the conservation easement. Any existing mortgages must be subordinated to the easement.

The landowner may donate or sell a CE on land. The most common purchase of conservation easements is for agricultural land. Each conservation easement is created to suit the landowner's needs and to protect the natural values targeted by the easements and to allow activities acceptable to the landowner. SKLT has a conservation easement template that can be used as the basis for discussions.

Each conservation easement is tailored to its particular property. The CE is a flexible document, and the landowner is encouraged to envision all possible future desired uses on the land, so the document can specifically address that land. An easement does not have to cover the entire property; it may cover only a portion which would be delineated by a survey.

Landowners donate conservation easements primarily to protect their land's natural or farmland values. However, the financial benefits of granting an easement in perpetuity can be significant. The value of a conservation easement donated to a charitable organization can be claimed as a charitable contribution against your other income which may be subject to federal tax. In contrast, if an easement is sold, the amount received by the landowner would be taxed by the IRS as a taxable gain. Public access is not a requirement to qualify for an income tax deduction. See FINANCIAL CONSIDERATIONS section for more detail.

To claim the value of a conservation easement as a charitable deduction for income tax purposes, three conditions must be met:

- 1- The easement must be given to an organization qualified to accept it – government agencies and private land trusts like SKLT qualify.
- 2- The easement must be given in perpetuity; and
- 3- The easement must be for conservation purposes.

Section 4: OTHER SCENARIOS and RESOURCES

There is a myriad of more complex approaches that can include land protection, such as like-kind exchanges and charitable remainder trusts, and short term like a deed restriction. This guide presents an overview of the basic options – once you have a general idea of your goals, please consult with your tax preparer, attorney, or other professionals.

Donation of Land with a Reserved Life Estate

To reduce your real estate tax burden and receive an income tax deduction during your lifetime, you may want to consider a donation with a reserved life estate. In this way you can donate a remainder interest in the land to a qualified conservation organization while you and the other members of your family retain the use of all or part of the land during your lifetime and/or their lifetimes.

A reserved life estate ensures that your land is accepted by a conservation organization and protected in perpetuity, yet you may continue to live there. The tax advantages with a retained life estate are less than those of an outright donation.

Deed Restriction

Restrictions on the future use of your land may be placed in the deed before the property is transferred. However, deed restrictions are weaker than conservation easements in two important ways. First, with an easement, a conservation organization assumes responsibility for monitoring and enforcing the restrictions placed on the land. Second, deed restrictions cannot be made in perpetuity and expire after a period of time, so ultimately cannot protect the land's natural values. In Rhode Island the expire in 30 years. In addition, the IRS does not allow deductions for deed restrictions.

Resources

Landowners can read more about conservation options on The Nature Conservancy website, tnc.org, or the Land Trust Alliance website, lta.org. Both are national organizations with years of experience and with a wealth of information on land preservation on their sites.

FINANCIAL CONSIDERATIONS

Tax Benefits – Federal and Local

Gifts to charity can be deducted from your federal income taxes. SKLT is a 501(c)3 non-profit organization, so gifts to our land trust are deductible, to the extent allowed by law. So, in addition to your annual membership or end-of-year donation, your gift of land or conservation easement is also deductible on your federal taxes. The portion of a bargain sale for land or easement is likewise an eligible deduction.

An easement usually decreases the market value of the land because it limits its development potential. This reduction in value can lead to lower property taxes – consult the Town’s Tax Assessor’s Office for specific information. Generally, if the land had already been enrolled in the Farm, Forest and Open Space Program, the property’s assessed value usually does not change.

The reduction in market value of the land will also reduce future estate and inheritance taxes. Too often, heirs who inherit family land must sell some or all of it to pay these taxes. Conservation easements are a very effective way to pass land on to the next generation in its natural state.

Federal Tax Benefits for Conservation Easements

In order to be eligible for federal tax benefits, a donated (or partly donated) conservation easement must meet strict federal standards. Among other requirements, a "qualified" easement must be granted in perpetuity and meet at least one of the conservation purposes described in the regulations:

- The protection of relatively **natural habitat** of fish, wildlife, or plants, or similar ecosystem.
- The preservation of **open space** (including farmland and forest land) either for the **scenic enjoyment** of the general public or pursuant to a clearly delineated **governmental policy** and that will yield a "significant public benefit".
- The preservation of an **historically important** land area or a certified historic structure; and/or
- The preservation of land areas for the outdoor **recreation** by, or **education** of, the general public.

Please keep in mind that the final determination of whether the conservation easement complies is up to the Internal Revenue Service. For a bargain sale, the portion of the full value donated by the landowner could be eligible for these tax benefits.

Although SKLT makes every effort to ensure that the technical and substantive requirements of the tax code are met, **we cannot guarantee that a tax deduction will result from your conservation easement donation.** It is important to understand that the federal government will not allow a tax deduction if the conservation easement does not meet the conservation purposes test. In addition, if your property meets one of the enumerated purposes but the proposed conservation easement allows development or other use of your property that would impair the conservation values (*e.g.*, as a result of reserved building sites), the proposed conservation easement will not qualify.

Appraisal

To claim a federal income tax deduction for any gift valued over \$5000, the landowner (not SKLT) is responsible for obtaining what the IRS terms a "qualified" appraisal of the value of the donated land or conservation easement. The cost of such an appraisal depends upon the complexity of the project, the size of the property, and the fee schedule of the individual appraiser. Conservation easement appraisals are complex and subject to special rules with which your appraiser should be familiar. If you like, we can provide you with names of some qualified appraisers who are experienced in appraising conservation easements and who follow Uniform Standards of Professional Appraisal Practice.

Once the appraisal is complete, to claim a federal income tax deduction, you must submit an IRS Form 8283 for "Noncash Charitable Contributions." See [irs.gov](https://www.irs.gov) for the most recent form and instructions. Form 8283 calls for an acknowledgement and signature from the donee organization (*i.e.*, SKLT). Prior to signing the Form 8283, however, SKLT requires receipt and review of your appraisal, and requires that all relevant parts of the form be correctly filled out and that the appraiser has signed. Also, for a "qualified conservation contribution" as defined in section 170(h) of the Internal Revenue Code (which includes conservation easements), the Form 8283 must include the supplemental statement referenced in the instructions to Form 8283, which statement shows the fair market value of the underlying property before and after the gift and the contribution purpose furthered by the gift.

If, in our opinion and at our discretion, the appraisal is deficient in any way, **we reserve the right to decline to sign the Form 8283** until such deficiency is corrected. Failure to submit a Form 8283 signed by the donee organization may have substantial adverse impacts on your claimed deduction. In any event, SKLT's execution of the Form 8283 is neither a guarantee of desired tax benefits nor an endorsement of the appraisal.

Appraisals should be completed before the conservation easement is finalized (but no more than sixty days before closing). Appraisals can be done after the conservation easement is signed and recorded as long as the date of valuation is the date of the donation, *i.e.*, appraisers can "look back" and determine the fair market value of the donation as of the date it was made. If an appraisal is done after the conservation easement is signed and recorded, however, and the appraised value of the donation is not satisfactory to the landowner, **the conservation easement donation cannot be undone**. Thus, we strongly recommend that you consult with a qualified appraiser early in the process and review the results of the appraisal prior to finalizing a conservation easement.

Please note that if the transaction is a bargain sale, the appraisal used for the purchase will be out of date by the time the transaction is completed, so the landowner would need an updated or supplemental appraisal to state value for IRS Form 8283 filing purposes.

Landowner Expenses

The expenses that a landowner may incur will vary by project, type of project, and available funding sources.

For all projects, the landowner should expect to pay for:

- Legal, accounting, and other professional advisors
- Appraisal for tax purposes, if taking a tax deduction for donation or bargain sale

For every project, SKLT will ask the landowner to contribute to our stewardship fund, in an amount determined by type of project. SKLT has years of data on stewardship costs and our request reflects this experience. This amount ranges from \$8,000 - \$24,000.

For land acquisitions where federal, state, or local funding agencies cover related expenses such as appraisal or survey, the landowner may not need to contribute to these out-of-pocket costs. Often for farmland protection projects in particular, these agencies do not yet provide such assistance and SKLT asks the landowner to cover or share these expenses.

Appraisal costs average \$2,000 - \$3,500, and surveys are generally \$6,000 - \$15,000. SKLT endeavors to find alternative funding to cover expenses, but that is not always possible.

In addition to the costs associated with securing grants other costs, such as Environmental Hazard Assessment, preparing baseline documentation, recording closing documents and doing a title search are usually considered costs to the buyer, in this case SKLT, and we bear those expenses.

SKLT'S LAND PROTECTION PROCESS

SKLT receives many requests from landowners interested in preserving their land, and we appreciate all offers of gifts of land or easements.

A good first step is for the landowner to contact SKLT's Land Protection staff, please be ready to provide a reference to the plat and lot. If possible, please send a cover letter and map of the land, or a reference to the plat and lot, either by mail or email. Include your goals for the land, and your contact information.

SKLT staff will evaluate the property and discuss options with the landowner. At that time, a site visit would be scheduled, then staff will review the project with the Board of Directors, which has the ultimate decision-making authority on which projects are accepted.

Not all properties in South Kingstown can or should be protected. At all stages, the staff and board must scrutinize projects to assess their risks and benefits in light of the goals and purposes of SKLT, the natural resource and public benefit values, the feasibility of the project, and its significance or priority.

Conservation values are determined by a combination of site visits, statewide databases, and information from the landowner. Features that support a conservation option with significant public benefit include:

- (a) most of the land in a relatively natural, undisturbed condition,
- (b) active agricultural use,
- (c) presence of rare, threatened, or endangered species or natural communities,
- (d) proximity to a riparian area or marshland,
- (e) an exemplary ecosystem of scientific or educational value,
- (f) an important scenic vista, visible to the general public,
- (g) significant historic value as well as natural value,
- (h) prominent or strategic location in how people perceive their community,
- (i) sufficient size and likely to retain conservation values even if adjacent properties are developed, and
- (j) abutting or near lands that are already permanently protected.

If SKLT decides a project is not suitable for conservation, it may be acceptable as a trade land, which would be sold to support other conservation acquisitions. The following factors tend to indicate that a project may not be suitable for preservation:

- (a) small size, where adjacent properties have not been protected and there is little likelihood that they will be protected in the future; high-density residential parcels are inappropriate, but small parcels may be considered if the parcels are adjacent to existing protected lands or otherwise important.
- (b) part of a development proposal or activity that would unduly compromise or diminish conservation values to an extent that SKLT cannot be involved,
- (c) adjacent properties developed in a way that is likely to significantly diminish the conservation values of the property in question, such as subdivision open space,

(d) landowner provisions in the proposed CE that SKLT believes would unduly diminish the property's conservation values, present difficult monitoring or enforcement problems, or compromise SKLT's long term objectives,

(e) difficult enforcement because of fractured ownership, irregular configurations, or other circumstances, or

(f) parcels with toxic substances or similar risks, or parcels with unresolved boundary or ownership disputes.

A Baseline Documentation Report (BDR) is created for every protected property. it records the conditions of the land at the time of recording and identifies the conservation values of the property. It includes maps, photos, and descriptions of the land. The BDR serves as the foundation for future monitoring, stewardship, and documentation in the event an issue arises.

Once your land is protected by SKLT, it will be inspected annually as part of our ongoing monitoring process. Periodic monitoring is crucial to the continued security of the conservation values protected by the deed or easement. When the land is protected by easement, SKLT will notify landowners of the upcoming monitoring visit; landowners are welcome to accompany SKLT staff or volunteers on the inspection visit.



ONGOING STEWARDSHIP AT SKLT

Once protected, SKLT shoulders the responsibility to protect your land forever. Though the protection project successfully closes, SKLT's responsibility to fully protect the land entrusted to our care is just beginning. While a land protection project may take 2 years to complete, the job to steward that land never ends.

Stewardship work consists of two major components: the ongoing physical care of the land, and its legal defense against any encroachment, violation, or trespass. One of SKLT's primary duties is to ensure adequate resources exist to faithfully accomplish these tasks. With each land protection project, SKLT must secure funding for the property's perpetual eternal care and defense. Landowners protecting their land are always asked to make a contribution for this purpose.

Funding Stewardship by Project

SKLT has calculated the amount of funding needed per project, by type of project, so that the interest from the fund might support annual stewardship costs, or the corpus provide ready capital to address remediation for catastrophic weather events, infestations or other landscape altering impacts. Stewardship activity is least costly for conservation easements and properties without public access. The lands SKLT owns outright, known as "in fee" that will feature public access trails will cost much more, in annual on-the-ground maintenance as well as more likely legal defense issues. The funds requested by project reflect those differences, with minimum asks of \$8,000 for conservation easement projects, \$10,000 for low impact fee land, \$16,000 for average impact fee land, and \$24,000 for public access fee land.

The Clarkson A. Collins Stewardship Fund

All contributions towards stewardship are pooled and held in a fund named after the one individual who has been part of SKLT's entire existence – first as a board member, then board president, then land management director, and now, after his retirement from the staff, back on the board. SKLT has benefitted enormously from Clark's vision and stewardship of this organization, and so it is fitting that our fund is named in his honor. Our long-term goal for this fund is \$5 million, in accordance with guidelines from the Land Trust Alliance, based on the acreage we protect.

Stewardship Essentials

On-the-ground land stewardship activities include annual monitoring, posting property boundaries, creating and maintaining public access trails where appropriate, controlling invasive plants when possible, and special projects - perhaps forestry work to improve habitat, creating trailhead kiosks with Scouts or other volunteers, or creating pollinator habitat. The range of possible activities is vast, and for each parcel of land, SKLT will first determine the appropriate level of activity, and types of activity, suited to that property.

These discussions begin when the property is being protected, with the development of a management plan for properties that SKLT acquires outright in fee. SKLT utilizes publicly available data sources, as well as site visits by staff and other experts, to collect information on the various natural resource conservation values present on the site, and then determine the most

appropriate strategy for managing that property. A property acquired for public access, where we find a rare plant community, for example, will be managed so that the trail avoids the fragile habitat.

Less enjoyable stewardship tasks involve removing a paintball course, a treehouse, or household debris dumped on the land. Sometimes our neighbors, not all of whom honor the land, dump brush on SKLT land or extend their yards onto our land. These violations and trespasses cost more, in both time and money, to resolve, often involving a lawyer to send warning letters or hiring a surveyor to determine accurate property boundaries. Our stewardship fund planning must include the time and money needed to address these transgressions, which, as we protect more land, becomes a larger problem.

Other costs of stewarding land include liability insurance for every property, and legal defense insurance through Terrafirma, an insurance provider dedicated to providing legal defense insurance to the land trust industry. Annual monitoring is largely achieved by volunteers but coordinated by staff and board. All monitoring reports are read by staff who then address and infractions. SKLT is now in the process of digitizing records, to ensure our long-term ability to defend our land. The need for equipment and supplies for land maintenance continues to increase with our land protection activity. Many properties have restrictions against hunting, wheeled vehicles, buildings, or planting of non-native species; it is also our job to monitor and enforce these restrictions.

SKLT's goal is to continue serving the community with open trails, clean water, protected vistas, cultural landscapes, farms, and native habitat. Property stewardship and legal defense are at the core of ensuring that land protected by SKLT remains protected in perpetuity. Landowners whom SKLT assist to preserve their lands understand that over time, changes in land use are inevitable. Violations of the terms of a conservation easement or threats to conservation values on fee land would require SKLT to take action. To truly protect its holdings, SKLT must have the financial resources to monitor, defend and enforce the integrity of each property entrusted to its care.