



Hilltown Land Trust **Conservation Restriction** Landowner Handbook



Photo: Vicky Griswold



Photo: Tricia Bergland

About this Handbook

We welcome you as the owner of a private property protected under a permanent Conservation Restriction (CR) held by Hilltown Land Trust. As cooperative partners, we trust that our landowners know what's best for their property, but we also understand that caring for a conserved property can be a complicated task.

We have prepared this landowner handbook to:

- Help answer questions you may have about your CR
- Help you understand your rights and responsibilities as the owner of a conserved property
- Outline the assistance available from Hilltown Land Trust to help you steward your property's unique features in compliance with the terms of the CR
- Provide information on resources available for your land's conservation and management needs

We hope you find this document helpful in understanding your obligations as a CR landowner. We always welcome your questions, concerns, and feedback. Hilltown Land Trust takes great pride in 30 years of protecting land through conservation restrictions. Thank you for partnering with us in our efforts to protect the Hilltown landscape!

TO CONTACT US:

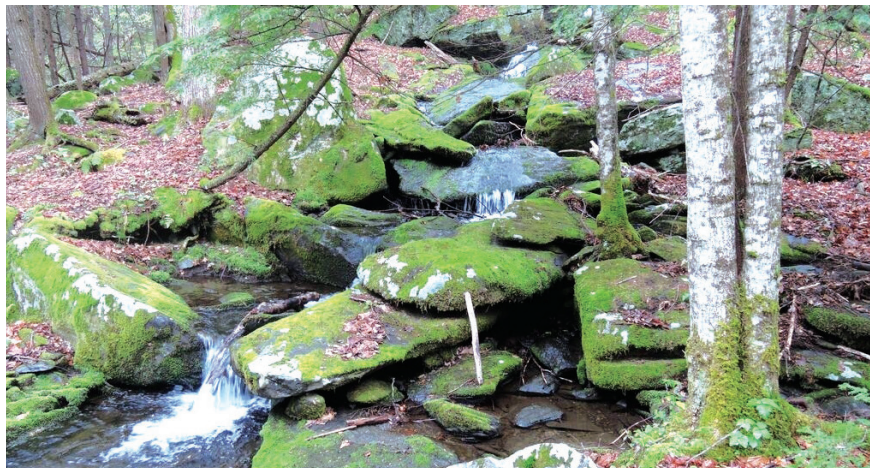
Hilltown Land Trust

332 Bullitt Road, Ashfield MA 01330

(413) 628-4485

HLT@thetrustees.org

www.hilltown-land-trust.org



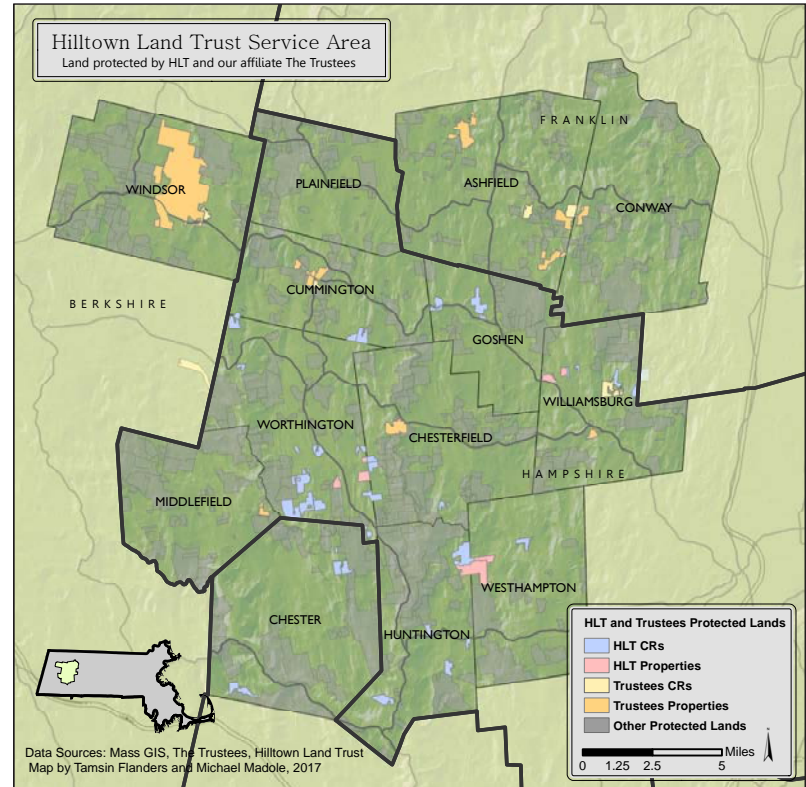
The text of this handbook was adapted from The Trustees Conservation Restriction Landowner Handbook, © 2016.

About Hilltown Land Trust

Hilltown Land Trust (HLT) is a regional land trust serving 13 rural towns in western Massachusetts. Our Mission is to protect land and promote ecological diversity and health, respectful land stewardship, historic character, and natural beauty in our hilltowns.

HLT was founded in 1986 by a group of volunteers working to protect a Chesterfield sugarbush. For more than 20 years, we operated as an all volunteer organization protecting and stewarding numerous properties in western Hampshire County. By 2009, HLT was outgrowing our capacity as an all-volunteer organization. Our quest for assistance resulted in an affiliation with The Trustees of Reservations, a statewide land trust and the oldest regional land conservation organization in the country. This partnership allows HLT's small staff to focus on land protection and stewardship while receiving administrative support from The Trustees.

In 2014, HLT earned official accreditation by the national Land Trust Accreditation Commission. As of 2016, HLT has protected more than 40 properties totaling over 4,000 acres. We currently hold 32 Conservation Restrictions and own six properties where we maintain public hiking trails and host regular events.



What is a Conservation Restriction?

Conservation Restrictions, or 'CRs', are permanent legal agreements between a landowner and a conservation organization that protect important conservation values, primarily on privately owned property (CRs are known as 'conservation easements' in other states). Protecting these resources (e.g. water quality, farmland, scenic views, or wildlife habitat) benefits not only the private landowner, but the public as well.

CRs are permanent interests in property, recorded at the Registry of Deeds and held by a qualified conservation organization (often a land trust) or a government conservation agency such as a town conservation commission. This legal agreement between a landowner and a qualified holding organization allows the landowner to continue to own and use their land, but identifies certain use restrictions to help protect the conservation value of the land. The CR "runs with the land" and ensures the land is permanently protected through all subsequent changes in property ownership.

In Massachusetts, CRs are reviewed and approved by the municipality in which the land is located (via the town Select Board or City Council), as well as by the Executive Office of Energy and Environmental Affairs (EOEEA) at the state level.

Because individual landowners have different needs and goals for the conservation of their land, and because each property has different conservation values to protect, each recorded CR contains unique terms which reflect a balance between protecting the land and its resources and the personal objectives of the landowner granting the CR. Every CR outlines 'prohibited uses' of the protected land such as new structures or excavation, and 'permitted uses' or 'reserved rights' that are specific exceptions to the prohibited uses. Often the permitted uses specify how and when activities such as timber harvesting, agriculture, trails, and signs are allowed.

Additional benefits for a landowner granting a CR include:

- Peace of mind from knowing the land will remain protected forever
- A possible federal tax savings for donated CRs which may be considered a charitable donation
- A possible reduction in local property taxes as the property's assessed value may be reduced by the CR which restricts the property's development value

What is a Baseline Documentation Report?

A baseline documentation report (BDR) must be prepared for every new CR to document the physical conditions of the property at the time it is protected. The BDR describes the current conditions of the property's protected conservation values using narratives, maps, and photos.

The BDR documents in detail the condition of all property features that are protected or affected by the terms of the CR. These include current land uses and improvements (e.g. existing structures, roads, trails) as well as CR purposes such as protecting ecological, scenic, and/or historic resources. The specificity of each BDR depends on the details of the CR's purposes and reserved rights. HLT stewardship staff or volunteers reference the BDR during annual monitoring visits to identify natural and man-made changes to the property. As landowners exercise reserved rights and changes occur on the land, HLT will record descriptions and photos in our permanent records to provide a continual record of the protected property over time.

Before the CR can be recorded, the BDR must be reviewed and acknowledged by both the landowner granting the CR (Grantor) and holder of the CR (Grantee). The CR grantor and all successive owners will receive a copy of the BDR for their permanent records. The BDR also includes a copy of the recorded CR. We recommend keeping these materials where they can be easily referenced to ensure any future changes made on the property are consistent with the CR's terms.

Every 10 – 15 years, HLT staff will conduct a more in-depth monitoring visit to your property that also serves as a BDR update. This visit will include a thorough walk around the property and detailed written and photographic documentation of current conditions.



Annual Monitoring Visits



Tree Swallow; Photo: Matthew Watson

After Hilltown Land Trust accepts a CR, we are legally responsible for ensuring your property's conservation values are protected forever. To meet this obligation, we monitor your property once per calendar year and produce an annual monitoring report (including a route map and photos, if necessary). These reports document any issues observed, changes to the property and/or boundary encroachments, and provide an ongoing record of the property's condition and use over time.

In addition to ensuring that the terms of your CR are being followed, annual monitoring also helps us to build and maintain positive working relationships with our landowners by providing an opportunity for us to meet in person and answer any questions you might have about your reserved rights and/or proposed changes to your protected property.

Prior to each year's visit, we will contact you to schedule a mutually convenient day and time to monitor your property. We understand that it may not always be possible for CR landowners to meet with the monitor, but we welcome the opportunity whenever possible and especially when several years have gone by without any substantive contact. If repeated attempts to connect with you are unsuccessful, we must still visit your property to fulfill our obligation as the CR holder. To ensure timely communication, please notify us of any changes to your contact information as well as your preferred method for our staff to reach you (e.g. email, cell, or home phone). Successful CR stewardship is an ongoing commitment that depends on open communication between you and Hilltown Land Trust staff.

As a small organization with one permanent staff member, HLT relies on the work of volunteers in our CR stewardship program. Monitoring volunteers are typically hilltown community members, many of whom have a long-standing relationship with HLT as a board member or volunteer, or students interested in working with a land trust. The CR stewardship program is currently coordinated by a well-trained AmeriCorps volunteer who serves with HLT through an 11-month program called Massachusetts Land Initiative For Tomorrow (MassLIFT). This MassLIFT-AmeriCorps member typically changes year to year. Because of the transient nature of our stewardship coordinator, we aim to maintain a consistent monitoring presence by pairing your property with a community volunteer who will know you and your land.

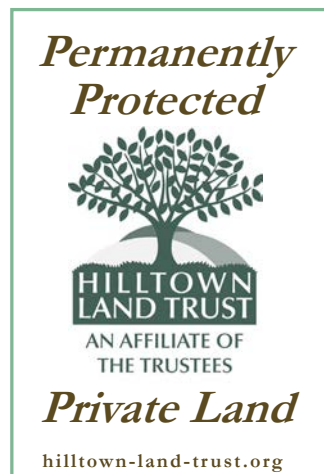
CR Boundaries

While some CRs cover an entire parcel, others protect only a portion of a landowner's property. Each CR document includes a legal description of the restricted area, and many have a boundary survey completed and recorded at the time the CR is established. Knowing the location of your boundaries is an essential element in fulfilling our mutual obligation to protect your property's conservation values, to conduct our annual monitoring visits, and to help inform your neighbors and others that your property is covered by a CR.

Often CR boundaries have been professionally surveyed and the corners marked with permanent survey monuments (e.g. iron pins or marked trees). For protected properties without a survey, we rely on other information such as recorded surveys of abutting properties, county parcel map data, forestry maps, compass, GPS, and field evidence to help us identify CR boundaries for monitoring and enforcement purposes. Where no survey exists, or where an existing survey is not adequate to define a restriction boundary, hiring a professional land surveyor may be necessary to protect your property from external threats of trespass and third party encroachments.

As a complement to surveying your property, marking your boundaries with these HLT signs helps to facilitate our annual monitoring and informs abutters and others that your property is protected by a permanent CR. Marking your CR boundaries is entirely optional, but is a good proactive measure.

Hilltown Land Trust has two types of signs available for landowners free of charge:



Actual Size: 9" x 12"



Actual Size: 3" x 3"

Assistance Available to CR Landowners

Hilltown Land Trust's primary obligation to your protected property is to document its conditions over time and ensure compliance with the terms of the CR. We are also always available to help you better understand your CR, how its terms may impact any future land management decisions, and whether or not certain activities are permitted. Additionally, our staff is available to provide general advice on issues that may affect your property's conservation values, including managing invasive/non-native plant species and wildlife habitat restoration. Staff may also be able to provide assistance with identifying resources and providing connections to foresters and grant-funding opportunities to support management of your property. Please refer to the resources page at the end of this handbook for more information.



Blue Dog Forestry oxen team; Photo: Dorothy Barnard

Exercising Reserved Rights



Photo: Nicole Rhodes

Every CR document outlines basic rights that the landowner retains. Certain reserved rights, however, require prior notification to HLT and often written approval as well. Although many simple reserved rights can be carried out at will, such as selective pruning and composting, every CR is unique and it is important for you to be familiar with its requirements. The purpose of requiring the landowner to provide prior notice for certain activities is to afford HLT an opportunity to ensure that the activity or use is designed and carried out in a way that is consistent with the terms of the restriction.

Notification of your intent to exercise a reserved right is typically required in writing. If you are unsure whether notification is required, it is always better to err on the side of caution and check in with HLT before beginning your project.

When written approval is required, there are usually a set number of days of advance notice that the landowner must give HLT before undertaking certain activities. To aid us in issuing a timely approval, please be sure to provide sufficient detail of the nature, scope, design, location and timetable for your project. If we find that the activity you are seeking to undertake is inconsistent with the terms of your CR, we cannot issue our approval. However, we are fully committed to working with you to negotiate an approvable plan that will ensure the protection of your property's conservation values.

CR Violations and Enforcement



Baltimore Checkerspot Butterfly; Photo: Carol Wasserloos

Hilltown Land Trust's careful and consistent monitoring of the property under CR and enforcement of the provisions of every CR we hold are critical to ensuring that the conservation values entrusted to us are protected forever. A key component of HLT's CR enforcement policy is maintaining open communication and healthy working relationships with our CR landowners.

We realize that most violations are not intentional and more often than not result from landowners, abutters, or other parties being unaware of the CR or not understanding it. We strongly encourage you to review the terms of your CR carefully and contact us if you need help with interpreting the language. A phone call or email from you to ask questions and/or schedule a site visit with a staff member can help prevent costly CR violations before they happen as well as irreplaceable damage to your property's conservation values.

If a violation does occur, HLT is obligated to work towards resolving it in order to meet our responsibilities as the CR holder. We will schedule a site visit with you to take a look at the issue together and determine the nature, extent, and significance of the violation. Each CR violation is reviewed on a case-by-case basis. While many violations are minor, others directly impact the CR purposes and values, such as clear cutting protected forest habitat to open a new view or building in the wrong location.

Working in partnership with CR landowners, we aim to proactively avoid violations, but we take them very seriously when they do occur. We are fully committed to working with you to resolve violations amicably and always seek to negotiate a voluntary resolution.

Changes in Ownership

As with any property, land under CR will change hands over time. In order to help ensure perpetual protection of your land, we ask that you notify your realtor and all potential buyers and lessees about the CR on your property. It is very important that your realtor and the prospective new owner of your CR property understand the significance of the restriction: why it exists, how it works, the specific restrictions and allowances, and our monitoring protocol. All too often, we learn of a change in ownership after the sale, making our relationship-building efforts with the new landowner difficult from the outset, and raising the risk of unintentional CR violations.

If you do sell your property or transfer ownership, most CRs contain the requirement that you notify HLT before any conveyance and that the transfer deed references the book and page of the recorded CR. Please check the 'Transfer' section in your restriction to avoid an unintentional violation. Even if these terms are not required in your CR, we urge you to notify us as it helps ensure that we will be able to:

- Acquaint the new landowners with Hilltown Land Trust
- Help new landowners better understand the terms of the CR and answer any questions
- Prevent violations from taking place because of a misunderstanding

We also ask that you let us know when you plan to transfer legal ownership to a family member, real estate trust, or to a limited liability corporation, as we need to maintain records of the correct legal ownership of all our CR properties.

It is always helpful to know the name and best contact information for all new owners.

Can a CR Be Removed or Changed?

Since CRs are designed to be permanent, changing or revoking them is quite difficult. However, HLT can provide guidance on the limited conditions under which a CR may be amended. Such situations include:

- Clarifying or strengthening the CR's language
- Adding acreage under the CR's protection

In Massachusetts, a 'CR amendment', or change to a CR, must go through the same approval process as a new CR, meaning both the landowner and the CR holder agree to it, and secure approval from the town Select Board and the state EOEEA. Both HLT's policy and state law dictate that a CR amendment will only be considered and approved in situations where the amendment will not result in any diminishment in protection of the CR's purposes and conservation values. Therefore, an amendment must result in a neutral or, ideally, an improvement to the CR's protected conservation values (i.e. a net conservation gain).

The amendment process is very time intensive, and any request by a landowner to amend a CR may require payment to cover associated costs (e.g. appraisal, land surveying, recording fees).



Pink Lady Slipper; Photo: Eric Weber



Wintergreen; Photo: Eric Weber

Appendix

PLEASE NOTE that the language, terms, and content of your individual CR supersede the following. These descriptions are provided to give you a general outline of a typical CR along with some examples of specific CR language. If you have specific questions about current or future uses, permitted structures, and/or proposed land management activities on your protected property, please consult your CR document and/or Hilltown Land Trust.

The Anatomy of a Conservation Restriction

1) Granting paragraph

This section identifies GRANTOR (Landowner/s placing the CR) and GRANTEE (Hilltown Land Trust and, if applicable, any co-holding organization). It cites the Massachusetts enabling statute for CRs (MA General Laws, Ch. 184, Sections 31-33). It also includes basic information regarding CR location, acreage of the property, deed reference to CR grantor's legal title, survey plan references, etc. This paragraph typically refers to a detailed Exhibit at the end of the document to define a legal description of the CR premises.

2) Purpose(s)

This section identifies the CR purposes and public benefits and will define the conservation values of the property. These may include water quality protection, wildlife habitat protection, rare species habitat, general ecological value, agricultural or forestry resources, proximity to and enhancement of other protected conservation land, scenic value, and historic resources.

3) Prohibited Uses/ Activities

Common Prohibited Uses:

This section and the one that follows (Reserved Rights/ Permitted Uses) must be read together to understand the intent and impact of the CR. While an activity may generally not be allowed under the prohibited uses, refer to the reserved rights for exceptions to these prohibitions. For example, most CRs generally prohibit additional structures and tree cutting. However, the CR's reserved rights might allow these activities under certain conditions by permitting construction of an outbuilding of a certain size or a timber harvest governed by a professional forest management and timber harvest plan.

(Read your CR document for what is specific to your property.)

- New buildings, structures, asphalt/pavement, tennis courts, utility lines, antennas, billboards, etc.
- Mining, excavating, dredging of soil or earth, mineral resource, or natural deposit
- Storing or dumping of trash/waste, soil, vehicle parts, any other materials, and installation of underground storage tanks
- Cutting, removing, destroying trees, grasses, or other vegetation
- Any activities detrimental to drainage, flood control, water conservation/quality, soil conservation, erosion control, or archaeological conservation
- Use of motorized vehicles, except in carrying out reserved rights, or as required by police, firemen, or other governmental agents to carry out their lawful duties
- Any other use or activity inconsistent with the purpose of the CR, or which would materially impair significant conservation interests on the property
- Division or subdivision of the property or conveyance of a part of the property alone (except with HLT's prior written permission), while conveyance of the premises in its entirety is permitted
- Use of property in subsequent transfer of development rights to any property, or use in any calculation involving development of any other property
- Use of property for more than de minimis commercial activities

4) Reserved Rights/ Permitted or Allowed Uses

Most CRs will name and explain reserved rights (allowed activities) in this section, usually following the prohibited uses. Many activities listed under reserved rights require prior written notice to HLT before undertaking and/or written approval.

Common Reserved Rights:

(Read CR document for what is specific to your property.)

- Recreational activities
- Trail construction and maintenance
- Limited vegetation pruning/cutting and forestry activities in accordance with a professional plan
- The removal of diseased or damaged trees and non-native or invasive species
- Composting and stockpiling of biodegradable materials originating on premises, in locations that are not harmful to conservation purposes of the CR, or within 100 feet of a wetland or stream
- Agricultural, horticultural, and animal husbandry uses
- Right to erect fencing or limited structures in relation to agricultural, horticultural, and animal husbandry uses
- Measures to improve wildlife habitat or native biotic communities
- Construction of simple structures in a certain area or of a certain size
- If there is a building envelope on the property, construction of residence and outbuildings within building envelope, often with additional terms (prior approval, size limit, etc.)
- Posting of signs relating to trespass, trail access, landowner identity, conserved status, etc.
- Rights relating to well drilling, utilities installation, septic systems, etc.

5) Notice and Approval

This paragraph explains the process and timeline for exercising reserved rights where prior written notice and/or written approval by HLT is required. Typically, you will need to notify HLT by written notice a minimum number of days (often 60) before commencing with certain activities. If HLT's written approval is required, we likewise will have a set number of days in which to respond to your request.

NOTE: All written approval requests should be sent to: Hilltown Land Trust, 332 Bullitt Road, Ashfield, MA 01330 or via email to hlt@thetrustees.org

6) Access

This paragraph grants HLT the right to enter the property to inspect compliance with the terms of the CR. HLT staff or volunteers will inform you of our intended visit and seek your permission prior to coming on the property. However, HLT typically reserves the right to enter the property without express permission where necessary to uphold our legal obligations to monitor and enforce the CR's terms. HLT will make all reasonable efforts to schedule visits in consultation with the landowner, and will only access the property at reasonable times and in a reasonable manner, as necessary to conduct routine annual monitoring and, in rare circumstances, to inspect CR violations.

This paragraph also addresses whether public access is permitted or restricted, for what purpose, and where access is granted. In certain, less common cases, a property may have existing formal or informal public access (for example public trail easements). This paragraph will reflect these existing points of public access, or, in the case of mutual agreement between the landowner and CR grantee, create new public access permissions.

7) Further paragraphs and execution pages

There are typically several further paragraphs in the CR consisting of legal explanations. These sections are generally not as important for day-to-day understanding of your CR, but contain important legal language necessary to make the CR valid and enforceable. These paragraphs often define issues surrounding what happens if the CR is ever extinguished, the grantee's legal remedies to enforce the CR, acts beyond the grantor's control, the perpetual duration of the CR, and requirements surrounding subsequent transfer of the property under CR, among others. If you have specific questions about these sections, please feel free to ask HLT. We can often provide basic information, however we advise that you consult an attorney if you need legal advice or a substantive legal understanding of these terms. To follow are the CR's signature pages executing, accepting, and approving the grant of the CR, with official notarized signatures by the grantor(s), grantee, town Select Board members, and the MA Secretary of Energy and Environmental Affairs.

8) CR Exhibits

Refer to this section for the legal description(s) of the property subject to the CR, which usually includes some or all of the legal deed description of the parcel, reference to the CR grantor's title to the property, and may include a sketch map or surveys (or references to recorded surveys) depicting the protected premises. It may also define areas excluded from the CR, special use areas, or building envelopes.

Landowner Resources

In protecting your land or owning protected land, you have already completed the most important step towards increasing your land's role in providing wildlife habitat, slowing land conversion, protecting water quality, and preserving the scenic landscape of western Massachusetts.

Most of these resources can be found on-line at the links noted below. If you would like a hard copy, please contact HLT and we should be able to help. Special thanks to UMass Extension and their website <https://masswoods.net> for offering excellent up-to-date resources for Massachusetts landowners.

Conservation-based Estate Planning:

- Your Land, Your Legacy: Deciding the Future of Your Land to Meet the Needs of You and Your Family, UMass Extension: <https://masswoods.net/sites/masswoods.deciding-future-my-land>

Forest Management

- Increasing Forest Resiliency for an Uncertain Future, UMass Extension: <https://masswoods.net/caring-your-land/forest-resiliency>
- Restoring Old Growth Characteristics, UMass Extension: <https://masswoods.net/caring-your-land/restoring-old-growth-characteristics>
- Find a Forester: <https://masswoods.net/professionals>

Invasive Plant Management

- Picking Our Battles: Planning Successful Invasive Plant Management Project, New Hampshire Fish and Game: www.wildlife.state.nh.us/invasives
- Invasive Plant Atlas of New England: www.eddmaps.org/ipane/
- Westfield River Watershed Invasive Species Partnership: <http://www.westfieldriver.org/invasives.html>

Forest Pests and Diseases

- Pest Alerts, USDA Forest Service: <https://www.na.fs.fed.us/pubs/palerts.shtm>
- Massachusetts Invasive Pests Outreach Project: <http://massnrc.org/pests/>
- Don't Move Firewood: www.dontmovefirewood.org

Habitat Management

- Massachusetts Endangered Species Program: www.mass.gov/eea/agencies/dfg/dfw/natural-heritage
- Berkshire Wildlife Linkages, Staying Connected Initiative:
<http://stayingconnectedinitiative.org/assets/Berkshire-Wildlife-Linkage-A-Corridor-for-Wildlife-and-People.pdf>
- Riparian Forest Buffers, USDA Forest Service: www.na.fs.fed.us/spfo/pubs/n_resource/buffer/cover.htm
- White-Tailed Deer in Northeastern Forests: Understanding and Assessing Impacts, USDA Forest Service:
www.na.fs.fed.us/pubs/2014/NA-IN-02-14_WhitetailedDeerNEForestsWEB.pdf
- Massachusetts GIS Natural Heritage Resources: <http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/natural-heritage-gis-resources.html>

Climate Change and Forest Resiliency

- Climate Action Tool: <https://climateactiontool.org/>
- New England Climate Change Response Framework: <http://forestadaptation.org/new-england>
- Climate Change Tree Atlas: www.fs.fed.us/nrs/atlas
- Creating and Maintaining Resilient Forests in Vermont: <http://fpr.vermont.gov/node/1250>

Tax Incentive Programs

- Massachusetts State Current Use Tax Programs: <https://masswoods.net/landowner-programs/chapter-61-current-use-tax-programs>

Grants

- NRCS Massachusetts: <https://www.nrcs.usda.gov/wps/portal/nrcs/main/ma/programs/financial/>
- Foresters for the Birds, Massachusetts Woodlands Institute: <http://masswoodlandsinstitute.org/programs/foresters-for-the-birds>



© 2017 Hilltown Land Trust • All rights reserved

Photo ©Lauren Owens