

Analytical Framework for Preserving 100 Acres of Maine Land

**Estate-planning and real-estate decision
memo**

Prepared for a Maine couple in their 70s

Prepared March 16, 2026

*Formatting: body text in 24-point type for
readability*

Important note: This is a planning framework, not a substitute for a signed engagement letter, title review, survey, wetland delineation, tax modeling, or town-specific land-use advice. Maine law is relatively clear on some tools - especially conservation easements, probate

disinheritance of adult children, and partition risk among co-owners - but less clear on how some family-control structures will perform decades from now if relationships deteriorate or circumstances change.

Executive summary

The strongest planning path is usually a **layered plan**: (1) confirm exactly what is worth protecting; (2) decide whether the goal is absolute no-development or carefully limited stewardship; (3) record a conservation easement or transfer to a conservation-oriented owner if the preservation goal must survive disagreement among the children; and (4) separately solve the fairness issue for the child who would prefer a sale, rather than leaving all three children as equal co-owners of unrestricted land.

If the couple simply leave the land equally to all three children, the legal risk is obvious: **one dissatisfied child may seek a**

partition or sale, or may pressure the others for a buyout. Maine partition statutes give co-owners real leverage, and an equal tenancy-in-common structure is usually the weakest way to preserve undeveloped land over time. Maine law also generally allows parents to disinherit or disproportionately benefit adult children if the documents are clearly drafted; unlike a surviving spouse, an adult child does not have an elective share right simply because the child feels unfairly treated.

At-a-glance option ranking

Option	Preservation strength	Family conflict risk	Main caution
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Equal devise to all 3 children as co-owners	Low	High	Partition or holdout risk
Trust or LLC without easement	Medium	Medium to high	Restrictions may erode or buyout fights may follow
Conservation easement + family ownership	High	Medium	Need careful drafting and equalization
Gift/sale to land trust or charity	Very high	Low to medium	Family gives up future control
Conservation easement +	Very high	Lower	Requires liquidity and

cash/insurance
equalization
for third child

appraisal work

My bottom-line planning instinct: do not rely on good intentions alone. If permanent preservation truly matters, place the land - or at least the development rights - under a legally durable conservation structure during the parents' lifetimes or at the first death, and separately design an economic solution for the child who wants liquidity.

1. Define the real objective before choosing a legal tool

Questions to answer: Do the parents mean absolutely no future subdivision, no timber harvesting, no roads, no utility corridors,

and no house lots? Or do they mean no commercial or residential development, while allowing trails, habitat work, selective forestry, or one reserved family cabin area?

Pros of doing this first: The documents can match the actual goal. An easement that is too strict may make family cooperation harder; an easement that is too loose may not really preserve the land.

Cons / caution: Families often say “keep it undeveloped” but mean different things. Ambiguity here becomes litigation later.

Law clearer here: Maine conservation easements can be tailored to prohibit some uses and allow others; the statute is flexible about content and generally allows

perpetual duration. 33 M.R.S. sections 476-479 support that structure.

Law less clear here: Words like “undeveloped,” “sustainable forestry,” or “family recreation” may sound clear at signing but still generate disputes in application decades later. The uncertainty is practical rather than statutory.

2. Confirm what the land actually is: title, wetlands, old growth, access, and town regulation

Questions to answer: Is title held as joint tenants, tenants by the entirety, or in another form? Is there road frontage? Is there legal access? Are the wetlands delineated by a consultant? Has anyone

mapped vernal pools, rare natural communities, or old-growth characteristics? What does the town zoning ordinance permit?

Pros: A good baseline increases leverage with land trusts, improves appraisals, and reduces later surprises. Wetlands and old-growth features may materially strengthen conservation value.

Cons / cost: Survey, title, soil, wetland, forestry, and ecological work costs money up front.

Law clearer here: Maine's NRPA regulates many activities in, on, over, or adjacent to protected natural resources, including certain wetlands and significant vernal pools. That does not make the land

automatically unbuildable, but it does make development more constrained and fact-specific.

Law less clear here: A few acres of “old growth forest” is not automatically a universal legal category that bars development everywhere in Maine. Its legal significance may depend on whether the area is formally identified through Maine Natural Areas Program data, conservation review, permit review, local ordinances, or easement drafting.

3. Decide whether the family wants private ownership or charitable / conservation ownership

Option A: Keep ownership in the family but restrict development.

Option B: Give or sell the property, or a remainder interest, to a land trust or public body.

Pros of private ownership: The family keeps emotional connection, private use, and some management control.

Cons of private ownership: Family governance problems remain. A future child, in-law, creditor, divorce court, or trustee can complicate matters.

Pros of charitable ownership:

Preservation is often strongest because mission-driven holders exist to keep land conserved.

Cons of charitable ownership: The family gives up some or all future control and may not retain exclusive recreational rights.

4. Evaluate a conservation easement as the core preservation device

Why it matters: For these facts, a conservation easement is often the most direct answer. The parents can keep ownership or pass ownership to family, while permanently restricting subdivision and development.

Pros: Strong preservation; can be tailored; may lower value for estate-tax purposes; may create federal charitable deduction if donation requirements are satisfied; easier to justify when wetlands, habitat, scenic value, or old growth are present.

Cons: Permanent means permanent. Future children cannot easily undo it. There will be baseline documentation, monitoring, drafting, and negotiation costs. Some buyers and lenders dislike heavily restricted land.

Law clearer here: Maine expressly authorizes conservation easements, allows perpetual duration unless the instrument says otherwise, and limits amendments and terminations. Courts may enforce them by injunction, and material weakening is not

supposed to occur casually. 33 M.R.S. sections 477, 477-A, and 478 are the key anchors.

Law less clear here: A conservation easement is powerful but not metaphysically indestructible. Changed circumstances, eminent domain, condemnation, judicial modification, drafting ambiguity, and holder conduct can affect outcomes over time. Also, federal tax deductibility is highly technical: perpetuity, qualified organization, conservation purpose, mortgage subordination, appraisal, and reporting rules must all be satisfied.

5. Compare lifetime easement now versus will/trust direction later

Lifetime easement now: The parents control the negotiation, choose the holder, and reduce the chance that one child derails the plan after death.

Testamentary easement later: This can preserve flexibility while both parents are alive, but it increases execution risk because children, fiduciaries, appraisers, and land trusts must cooperate after death.

Pros of acting now: Less uncertainty, stronger proof of intent, possibly better conservation fundraising, and less leverage for the child who wants a sale.

Cons of acting now: Less flexibility if family circumstances change. The parents must accept the restriction during life.

My practical view: If the preservation goal is firm and the dissenting child is already known, lifetime action is usually safer than a purely testamentary instruction.

6. Avoid equal unrestricted co-ownership among all three children unless there is a very strong reason

Why this is dangerous: If all three children inherit undivided interests in unrestricted land, the child who wants liquidity may press for a buyout or a sale, and the others may lack cash to resist.

Law clearer here: Maine partition law gives co-owners a pathway to force a division or sale. That is the central legal reason this structure is weak for preservation.

Pros: Simple to draft; feels facially “equal.”

Cons: Equality on paper can destroy the preservation objective in practice. A one-third owner can become a holdout, and later descendants multiply the problem.

Best use: Usually only acceptable if combined with a conservation easement and a robust buy-sell mechanism.

7. Test family-control vehicles: trust, LLC, or both

Trust approach: The land passes into trust for long-term stewardship, with an independent trustee or trust protector, detailed management standards, and authority to buy out a beneficiary who wants cash.

LLC approach: The land is transferred to an LLC; the operating agreement restricts transfers, requires supermajority votes, gives rights of first refusal, and provides an appraisal-based buyout formula.

Pros: Centralized governance; smoother management; easier accounting; can slow down unilateral action by one child.

Cons: These structures do not substitute for a conservation easement if permanent no-development is the real goal. Internal governance documents can be amended or attacked; beneficiaries can still litigate; valuation fights remain.

Law clearer here: A well-drafted trust or LLC can absolutely improve control and succession. Maine trust law recognizes charitable trusts and noncharitable purpose trusts, and business-entity agreements are generally respected.

Law less clear here: A private trust or LLC restriction that effectively immobilizes land for generations can run into drafting, fiduciary, public-policy, or changed-circumstances problems. Maine's perpetuity

rules and trust law are technical. I would not rely on a purely private family entity as the only preservation mechanism if the objective must survive family conflict for many decades.

8. Solve the fairness problem separately from the land problem

Core point: The couple do not need to make the land itself do all the fairness work. They can preserve the land and compensate the child who wants money by other means.

Possible equalization tools: Different percentages of the residuary estate; life insurance earmarked for the third child; installment buyout funded by the other siblings; reserved house lot or limited

development envelope sold now to create liquidity; bargain sale or partial sale of development rights; note payable over time.

Pros: This reduces the chance that the third child attacks the preservation structure as financially unfair.

Cons: Requires appraisal, liquidity planning, and careful tax analysis. Also, “equal” is not always “fair” once the land is restricted and discounted.

Law clearer here: Parents in Maine generally may favor one adult child over another if the estate plan is clearly drafted and executed with capacity and without undue influence. Adult children do not have a statutory forced share comparable to a surviving spouse’s elective share.

Law less clear here: Even a legally valid unequal plan may provoke litigation over capacity, undue influence, valuation, or fiduciary conduct. A no-contest clause may help at the margins, but Maine will not enforce a will contest penalty clause when probable cause exists.

9. Model taxes and current-use programs before signing anything

Questions to answer: Is the land already in Tree Growth, Open Space, or another current-use program? What happens to value and recapture penalties if use changes or if land is withdrawn? Does a donated easement produce a usable charitable deduction? Is the overall estate likely to exceed the Maine estate-tax threshold?

Pros: Tax modeling can make preservation financially easier and can reduce resentment among heirs.

Cons: Tax rules are technical, change over time, and must be tailored to valuation, basis, income, and timing.

Law clearer here: Maine has current-use programs, including Tree Growth and Open Space, and withdrawal can trigger penalties. Maine also has its own estate tax, with a 2026 exclusion amount of \$7.16 million. The federal estate-tax basic exclusion is much higher in 2026 - \$15 million per person - so for many Maine families the state tax matters first.

Law less clear here: Whether a conservation easement donation produces a

meaningful federal deduction depends on appraisal quality and strict compliance, not just good intent. IRS scrutiny remains real, especially after years of easement abuse cases, so casual assumptions are dangerous.

10. Choose the enforcement structure that will still work after both parents are gone

Key issue: Who will actually enforce the preservation goal twenty years from now?

Options: A reputable land trust as easement holder; a public entity; a charitable trust; a family trust protector with removal powers; third-party enforcement rights; a stewardship fund for monitoring and legal enforcement.

Pros: The best plan is one that does not depend on future family harmony.

Cons: Strong enforcement can feel inflexible and may reduce future options.

My practical recommendation: For land with wetlands and old-growth features, consider a reputable Maine land trust early. A land trust can help test whether the property has enough conservation value for an easement, bargain sale, fee gift, reserved life estate, or hybrid transaction.

Option A - Do nothing now; leave land by simple wills

Pros: Maximum lifetime flexibility and lowest immediate legal cost.

Cons: Worst option for preservation. It invites probate delay, valuation disputes, and co-ownership conflict.

Option B - Leave land to the two preservation-minded children only; give other assets to the third child

Pros: Often the cleanest family solution if the rest of the estate can absorb the equalization.

Cons: Can feel unequal if the rest of the estate is not large enough. Litigation risk rises if intent is not discussed and documented.

Option C - Conservation easement now, then leave ownership to children

Pros: Excellent fit when the goal is to keep the land private but undeveloped.

Cons: Still requires governance among the children. The easement solves development pressure, not every management dispute.

Option D - Place land in trust or LLC and pair it with a conservation easement

Pros: Usually the most durable family-retention structure.

Cons: Most drafting complexity and highest up-front transaction cost.

Option E - Donate, bargain-sell, or sell the land to a land trust or public conservation body

Pros: Strongest long-term conservation result and often lowest long-run family conflict.

Cons: Family may lose private control, access, or sentimental ownership.

Option F - Reserve a small buildable or saleable parcel; conserve the balance

Pros: Can create liquidity for the third child while preserving most conservation value.

Cons: Requires careful site planning; done poorly, it can compromise habitat, access, or the easement value.

Recommended work sequence

- Engage Maine estate-planning counsel and real-estate / land-conservation counsel together, not sequentially.
- Order a title review, survey review, deed review, and access review.
- Obtain wetlands delineation, forestry assessment, and a quick conservation-values screen from a reputable land trust or conservation professional.
- Ask the assessor whether any current-use enrollment already exists and model recapture consequences before changing use.

- Get an as-is unrestricted appraisal and, if needed, a restricted-value appraisal scenario.
- Have a family meeting after the parents know the numbers, not before.
- Pick one of two targets: family-retention with easement, or charitable / conservation ownership transfer.
- Draft the land documents first, then align wills, revocable trusts, powers of attorney, and beneficiary designations around them.
- Create liquidity for the dissenting child if fairness matters: insurance, other assets, note, or reserved parcel strategy.

- Document the parents' reasons in writing to reduce later claims of mistake, confusion, or undue influence.

Where I am confident, and where I would proceed cautiously

High confidence: Maine clearly recognizes conservation easements; permits perpetual duration; limits amendments and termination; generally allows parents to favor some adult children over others; gives surviving spouses, not adult children, the principal forced-share protection; and preserves partition risk when land is left to co-owners.

Moderate confidence: A combined easement plus trust/LLC structure is usually

the best family-retention model for this fact pattern, assuming competent drafting and liquidity planning.

Lower confidence / fact dependent: How much the wetlands and old-growth area independently restrict development without an easement; whether the parcel qualifies for particularly strong conservation funding or tax outcomes; and how a future court would treat unusual long-term control provisions in a purely private trust or LLC if family conflict becomes intense.

Reason for caution: Those issues depend on parcel-specific mapping, town ordinances, appraisal methodology, future tax law, and facts we do not yet have -

especially access, frontage, exact title, debt status, and ecological significance.

Provisional recommendation for this couple

Based on the facts given, I would seriously evaluate this sequence first: **(1) conservation due diligence now; (2) negotiate a conservation easement over all or most of the tract; (3) decide whether the post-death owner should be a trust or an LLC controlled by the two preservation-minded children, with strong transfer restrictions and a buyout mechanism; and (4) provide separate economic value to the third child from other assets, insurance, or a carefully carved-out liquidity strategy.**

I would place **low priority** on a plan that leaves the parcel equally and unrestrictedly to all three children. That path looks superficially fair but is legally fragile.

Selected legal and research anchors

- Maine conservation easement statutes: 33 M.R.S. sections 476, 477, 477-A, 478, 479.
- Maine partition of real estate statutes: 14 M.R.S. chapter 719.
- Maine Probate Code: spouse elective share under 18-C section 2-202; will may expressly exclude heirs from intestate succession under Article 2; no-contest clause limit under 18-C section 3-905; omitted child rule under 18-C section 2-302.

- Maine trust statutes: charitable purposes and enforcement under 18-B section 405; noncharitable purpose trusts under 18-B section 409.

- Maine current-use and tax sources: Maine Revenue Services estate-tax guidance for 2026; current-use program pages for Tree Growth and Open Space; 36 M.R.S. section 1112-C on open-space recapture; Tree Growth withdrawal guidance.

- Maine DEP Natural Resources Protection Act materials on protected natural resources, wetlands, significant vernal pools, and permit-by-rule activities.

- IRS charitable-contribution guidance and 26 C.F.R. section 1.170A-14 on qualified conservation contributions.

*Web research completed March 16, 2026.
Because Maine land-use, tax, and conservation practice can shift, any final recommendation should be checked again immediately before drafting and again before recording or filing returns.*