

# EVALUATING AND SELECTING CONSERVATION PROJECTS

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CONSERVATION PROJECTS

## EVALUATING AND SELECTING CONSERVATION PROJECTS

Practice 8B: Project Selection and Criteria

Practice 8D: Public Benefit of Transactions

Practice 8E: Site Inspection

Practice 8G: Project Planning

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EVALUATING AND SELECTING  
CONSERVATION PROJECTS



Jane Ellen Hamilton and Jonathan W. Moore

THE LAND TRUST ALLIANCE

**THE LAND TRUST ALLIANCE promotes voluntary land conservation and strengthens the land trust movement by providing the leadership, information, skills and resources land trusts need to conserve land for the benefit of communities and natural systems.**

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## A Note on the Standards and Practices Curriculum and Accreditation

*Evaluating and Selecting Conservation Projects* is part of the Land Trust Alliance's Standards and Practices Curriculum, and is designed to provide you with guidance and tools to implement practices 8B, 8D, 8E, and 8G.

This course will:

- Help you understand the practices;
- Provide you with tools to implement the practices in your organizations;
- Inspire organizational change; and
- Help you save more land for the long term.

The Standards and Practices Curriculum is made up of 15 courses that cover 42 accreditation indicator practices. Indicator practices demonstrate that a land trust is operating in an ethical, legal and technically sound manner, and ensure the long-term protection of land in the public interest. Voluntary land trust accreditation will provide independent verification of these practices.

The assessments contained in this book are for training purposes only. They are not designed or intended to determine if your land trust is ready for accreditation.

Completing a course does not necessarily demonstrate that an organization is actually carrying out the practice. Therefore, the Land Trust Accreditation Commission will examine documents and information in project files to verify that each indicator practice is being carried out in the land trust applying for accreditation. This course and others in the curriculum are designed to help your land trust understand how to implement the practices.

Please note:

- The curriculum is *not* required for accreditation; and
- Completing the curriculum will *not* guarantee accreditation.

For more information on accreditation, visit [www.landtrustaccreditation.org](http://www.landtrustaccreditation.org). To learn more about the Land Trust Alliance's training and assistance programs, visit [www.lta.org](http://www.lta.org).

SYLVIA BATES  
Executive Editor, Standards and Practices Curriculum  
Director of Standards and Research, Land Trust Alliance



## Summary

Having choices about which land protection projects to undertake may seem like a luxury to many land trusts. Faced with the urgency to save land before it is lost forever, a land trust may choose to protect now and think later. At times, such an approach is necessary to save critical land from development. Yet, unless the land trust reviews all of its projects, it may find itself with a property or a conservation easement that serves little public interest, is costly to manage or defend, or does not fit with the land trust's mission.

Every land trust must find a balance between being strategic and being opportunistic. Land trusts that focus on their strategic priorities typically find that they can raise more funds and protect more land. These land trusts work with their partners to develop conservation priorities appropriate for their communities. A land trust that does not prioritize and carefully select its projects may open itself to public criticism, credibility issues and even legal problems.

In order for land conservation to maintain public credibility, it is essential that all land trusts carefully screen projects for the public benefit they will provide. Once projects are selected, the land trust must determine how best to protect a given property's resources. For each property, sufficient information must be gathered to make sound judgments and avoid unacceptable risks. (See Standard 8: The land trust carefully evaluates and selects its conservation projects. From *Land Trust Standards and Practices*.)

Every land trust should create and follow a defined process for selecting land and easement conservation projects; the process should include written project selection criteria that are consistent with the land trust's mission. It is critical that a land trust have an evaluation and selection process for examining each potential land and easement project. The process and selection criteria provide a valuable instrument for evaluating projects and documenting the public benefit of each transaction.



**Conservation purposes** There are four conservation purposes set forth in §170(h) of the Internal Revenue Code, as further defined in §1.170A-14(d) of the Treasury Regulations.

Planning the conservation project is the final step in the project selection process, in which the land trust thoughtfully and deliberately synthesizes all the selection and evaluation materials and develops a road map, a plan to follow in completing the project. The project planning process should ensure that the land trust understands key background information and designs an overall strategy to proceed that fully integrates all of the pertinent information.

After taking this course a learner should be able to:

1. Describe the value of a formal process for selecting projects.
2. Assess the feasibility of a project based upon the land trust's mission and capacity.
3. Explain the value of written selection criteria and describe the elements that are included in selection criteria.
4. Apply the elements of a good selection process, which includes but is not limited to landowner contact, site inspection, review against criteria, determination of public benefit, evaluation of stewardship responsibilities.
5. Know when and how to reject a project while still maintaining good landowner relations.
6. Understand the Internal Revenue Code's conservation purposes test.
7. Identify the conservation values of a property.
8. Develop a project planning template for each individual project and a system to track projects once they are under consideration.

In order for this course to be useful to you in your land conservation work, it is important to understand the relationship between the four chapters in this course and how project selection, evaluation and planning fit within the context of a land trust's overall operations.

The first chapter, "Project Selection and Criteria," demonstrates that having an established process for evaluating and selecting conservation projects is important to the efficient and professional operation of a land trust. Elements of the project selection process include:

- Adoption and implementation of selection criteria (chapter 1);
- Analysis of the public benefit provided by a project (chapter 2); and
- Evaluation of a property's physical and conservation attributes (chapter 3).

By completing these initial steps in the project selection process, a land trust should have acquired sufficient information to prepare a project plan (chapter 4). A project plan represents the synthesis of all the information gathered about a particular conservation project and helps guide a land trust's negotiation for the protection of a particular property. These processes and associated forms should be reassessed on a frequent basis.

Through this course, you will become familiar with several project selection, evaluation and planning documents. After taking this course, you will have a strong foundation to develop and implement a project selection process within your organization that is consistent with *Land Trust Standards and Practices*.





# Introduction

This course is designed to be taught in a 7.5-hour classroom training. Self-learning, either online or off-line, can usually be completed in the same or slightly less time.

This course is part of a Land Trust Alliance response to an identified need and to land trust requests for an intentional and coordinated training series to help all land trusts implement *Land Trust Standards and Practices*. The Alliance training curriculum focuses on those practices from *Land Trust Standards and Practices* that indicate a land trust is operating in an ethical, legal and technically sound manner. Participation in the training curriculum will help land trusts ensure the long-term protection of land in the public interest.

## **Why is adoption of a project selection process important?**

The land it protects, more than anything else, defines a land trust. A land trust must have a well-defined process and established criteria for selecting projects and must evaluate every potential project with great care. Using a systematic process and criteria will not restrict a land trust's freedom of choice, but should prepare the land trust to assess opportunities when they arise and help it identify and pursue a truly significant land conservation agenda.

Using a systematic process and written criteria to select and evaluate projects has many benefits. It identifies important information about the project that must be gathered and helps ensure that the land trust does not forget essential procedural steps. It compels the land trust to consider costs, management responsibilities and other difficulties that may make a project inadvisable.

It focuses the land trust's decision making on the project's merits, and minimizes the effects of personalities, prejudice, impulse, financial gain and so forth. It describes to land trust supporters and the public at large

what the land trust intends to accomplish and provides a justification for the land trust's decision to undertake or reject each project.

Without a clear, documented project selection and evaluation process, a land trust risks becoming bogged down with internal conflicts, public criticism, difficult land management issues, or legal problems. It may accept projects that do not make wise use of its financial and human resources or that do not significantly further its goals or the public benefit. As a result, a land trust could face diminished credibility or even the revocation of its tax-exempt status. (See Standard 8, *Land Trust Standards and Practices*.)

A project selection and evaluation process also ensures that all of the pertinent factors are considered when deciding which conservation tool(s) to use and when finalizing the overall approach. For example, while a conservation easement may be the best approach to preserving a property's scenic or agricultural values, often fee acquisition is a more appropriate alternative for land to be used for public recreation. Similarly, conservation easements with substantial reserved landowner rights (such as multiple home sites) typically have a greater negative impact on the resources to be protected and require more on-going management than do easements without substantial reserved rights. These and other factors must be considered when determining how or whether to undertake a project.

A project selection process may look a little different at each land trust, but the basic elements are still the same. All project selection processes must involve *at least* the following steps:

- Interview with the landowner;
- Site inspection and identification of conservation values;
- Analysis of whether the project meets the land trust's mission, goals and strategic plan;
- Analysis of the project's compliance with Internal Revenue Code provisions, if applicable, and the public benefit that will be gained through completion of the project;
- Analysis of whether the project meets the land trust's written selection criteria;
- Preparation of a project plan; and
- Approval by the land trust's board of directors in accordance with Practice 3F.

This course forms the foundation for evaluating and selecting projects by establishing the necessary due diligence for all potential land and easement conservation projects.

Practices 8B, 8D and 8G can be satisfied independently or combined into one seamless project selection process, depending upon the land

trust's objectives, structure and approach. Using the information gathered through the project selection process, the public benefit analysis, and the site evaluation process, project planning ties it all together by viewing all the available data in a comprehensive manner so that a land trust can make an informed choice either to proceed or to decline a project.

### **Who should take this training?**

This course on evaluating and selecting conservation projects, including public benefit of transactions, site inspection and project planning, is designed for land trust staff, board members and volunteers.

### **Are there any prerequisites to the training?**

No, the course materials are designed for a wide range of learners, including those new to the subject and those seeking a refresher on important topics. You should, however, have your land trust's mission statement, goals, organizational strategic plan, and/or strategic conservation plan (if you have one) at hand when going through this course.

### **How can I use this student guide?**

You may use the student guide in the following learning situations: instructor-led training, self-study, review and reference. It can be used at home, in the office or in class.

If using the student guide for self-study, it is recommended that you refer to the Additional Resources at the end of each chapter for more information and samples. Case studies and Putting It into Practice exercises are designed to help you implement the practices described in the narrative. Discussion questions and answers to common questions about the studies and exercises are included. Further resources, including discussion forums, can be found online at The Learning Center.

For those who prefer classroom training, this course will be delivered on a regular basis by qualified trainers at conferences and special events sponsored by the Land Trust Alliance, land trust service providers and coalitions, and others.

The summaries provided at the beginning of this guide and at the start of each chapter are intended for use by learners to present and explain the practices covered by this course to land trust board members and other interested parties. You can use them to help brief board members, landowners and the public on why the adoption and implementation of these practices will help ensure that your land trust is successful in completing vital conservation projects that satisfy the land trust's mission and goals.

**What will I learn in this course?**

In chapter 1, you will learn how to develop project selection criteria that meet the needs and mission of your land trust. You will also learn how to apply those criteria to select projects. Chapter 2 discusses the IRS conservation purposes test and public benefit so you can confidently apply those concepts to proposed projects. In chapter 3, you will learn how to develop a site inspection form that will guide your staff and/or volunteers in collecting important data for a project. Finally, chapter 4 guides you in the steps needed to develop a project plan.

**What resources will be available to me in taking this training?**

This instructional unit includes the following resources:

- Sample land trust documents, including project selection criteria, acquisition checklists, site inspection forms, and project planning forms;
- Templates to guide learners in drafting their own forms;
- Case studies to demonstrate how land trusts have implemented the practice;
- Lists of additional resources for further study;
- A glossary of key terms; and,
- An index.

### **Tips and Tools**

You will find various tools to help you learn and implement the information presented. Important words are defined in the margins and highlighted with grasshoppers. Tips on implementing the practice or critical information are noted with dragonflies. The glossary begins on page 241; the Action Plan on page 238 can help you implement the training at your land trust.



Important words are defined in the margins and highlighted with grasshoppers.



Tips on implementing the practice or critical information are noted with dragonflies.



# Chapter One • Project Selection and Criteria

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## Practice 8B: Project Selection and Criteria

The land trust has a defined process for selecting land and easement projects, including written selection criteria that are consistent with its mission. For each project, the land trust evaluates its capacity to perform any perpetual stewardship responsibilities.

Selection criteria are a key component of a land protection program. Criteria are the rough screen that a land trust uses to assess a land conservation project at its outset. Criteria may evaluate a project's location, size or resource values. This practice clarifies that the criteria should reflect the organization's mission. Criteria often focus first on the land, but include additional tests for project feasibility and long-term sustainability. The practice also emphasizes that the project selection process should evaluate the land trust's capacity to meet its future responsibilities of stewarding the land or easement.

— From the *Background to the 2004 revisions of Land Trust Standards and Practices*.

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## Learning Objectives

After studying this chapter, you should be able to:

- Describe the value of a formal process for selecting projects;
- Apply the elements of a good selection process, including landowner contact, site inspection, review against criteria, and evaluation of stewardship responsibilities;
- Describe the elements included in selection criteria, which could include consistency with the land trust's mission and priorities, identification of the conservation values, public benefit of transactions, organizational capacity, federal and state requirements, feasibility, and capacity to fulfill stewardship responsibilities;
- Create or refine written project selection criteria;
- Describe the role of the land trust board in reviewing project selection;
- Describe how a land trust informs the landowner of the project selection process and keeps him or her informed as the project is evaluated;
- Evaluate whether the land trust has the capacity to take on the stewardship responsibilities of the project.
- Know when and how to reject a project while still maintaining good landowner relations;

- Develop a system to track projects once they are under consideration;
- Identify whether projects are consistent with the land trust's mission, goals and strategic plan;
- Assess the financial and staff implications of the project against the land trust's resources;
- Ensure that the land trust's resources are applied prudently to the projects that most significantly achieve the organization's mission;
- Ensure that the land trust's future activities stay focused on the goal of protecting the conservation values and to begin a formal record of the project; and
- Develop a coordinated staff response to the landowner(s) (and others) who have requested the land trust's participation in the project.

## Summary

The project selection process provides a land trust with a framework to make decisions about whether to undertake a specific project. The selection process ensures that the land trust staff and board evaluate and prioritize all potential projects and devote their resources to the best ones.

To select land conservation projects that are viable and fit with its mission, a land trust should establish two types of guidelines:

- **A selection process** that includes specific steps to follow and what information to gather in taking a conservation project from initial landowner contact to final board approval; and
- **Written selection criteria** that guide a land trust in determining whether a project is eligible for its consideration.

While an established process and criteria facilitate rational decision making, the selection, negotiation and approval of land transactions is not linear. It is cyclical and iterative: the land trust gathers information, takes certain steps, and decides whether to continue. Then it gathers more information, takes additional steps, and continues to make judgments about proceeding. Along the way, new circumstances may arise that cause the process to return to its early stages. An established selection process provides structure and guidelines for decision making, but how and when they are applied varies from project to project (see Practice 8B, *Land Trust Standards and Practices*).

The project selection and evaluation process guides the land trust's decisions, but it does not provide definitive answers. The selection process produces information that helps the land trust make decisions and



focuses the board's deliberations on the important issues. But the "go" or "no go" decision ultimately rests with the prudent judgment of the land trust's board (see Standard 8, *Land Trust Standards and Practices*).

Conservation projects, whether the acquisition of a conservation easement or fee interest in land, take time. They are also quite complex and involve a number of different steps. By adopting a written selection process, land trusts find that they save time, remember all important steps, and have a process that is equitable and applied consistently to all projects. A set process enables a land trust to do all the research and analysis necessary to ensure that its resources are being applied in the most effective and efficient manner possible. Such a process also assures a land trust that it will not take on projects that may harm the organization or fail to win the support of the community it serves.

## Organizational Assessment

Conduct a quick assessment of your land trust's project selection process and criteria. Give your organization one point for every "yes" answer. Scores are shown at the end.

1. Does your organization have a project selection process?
2. Is the process set forth in a written policy?
3. Does the process include an interview with the landowner?
4. Does the process include a physical site inspection of the property?
5. Does the process include the application of written selection criteria?
6. Does your land trust periodically review its written selection criteria?
7. Does the process include board approval?
8. Does the process include informing the landowner about the process and criteria?
9. Does the land trust keep the landowner informed of the progress of the selection process?
10. Does the land trust seek additional information as questions arise?
11. Are projects evaluated in terms of the land trust's mission and goals?
12. Does the land trust review any stewardship concerns that may arise *before* acquiring the property interest (either conservation easement or fee ownership)?



By adopting a written selection process, land trusts find that they save time, remember all important steps, and have a process that is equitable and applied consistently to all projects.

13. Does the land trust evaluate its organizational capacity to undertake a project?
14. Does the land trust keep written records of the selection process?
15. Does the land trust keep a written copy of how a particular project meets or fails to meet its selection criteria?
16. Does the land trust have a plan for how to decline projects in a respectful manner as well as suggest other options to a landowner?
17. Has your land trust ever declined a project or referred a project to another more appropriate organization?

### **If your organization scores:**

- 16–17: Great! This course may help you refine your process, but your land trust is well on its way to excellence. Share your expertise with your land trust colleagues by sending your policies to the Land Trust Alliance for posting in its digital library.
- 11–15: Good, but there is room for improvement. Better practices will make your work easier and help achieve the results your land trust seeks.
- 6–10: You are on the right track, but much still needs to be done to improve your land trust's practices and establish a professional approach to project selection.
- 0–5: It is time to take project selection seriously and adopt written policies and practices to assure that your organization acts in ways that are appropriate and efficient.

## **The Project Selection Process**

A land trust must weigh the following factors when determining the best means to preserve land:

- The type of land and the resources to be protected;
- The landowner's objectives;
- The land trust's available resources; and
- The long-term stewardship requirements of the project.

The selection process creates a project framework or flowchart to guide the land trust practitioner, from initial landowner contact and site inspection to recordkeeping and stewardship. This process can include one comprehensive approach, integrating all the essential elements of Practices 8B, 8D, 8E, 8F and 8G or it can be broken into separate components. In

either case, the land trust must gather the correct information about each individual project and ensure it considers this information when undertaking land acquisition and conservation easement projects.

## Elements of a Project Selection Process

Although a land trust may add additional steps to a project selection and evaluation process, at a *minimum* every such process must include the following steps:

- Initial landowner discussions;
- Site inspection;
- Project selection criteria analysis based upon:
  - Mission, goals and strategic plan compliance
  - Public benefit finding
  - Compliance with laws
  - Analysis of compliance with additional criteria;
- Staff, committee, board member, or land trust volunteer analysis; and
- Board approval.

It is not always easy to determine which should occur first—the site inspection or the selection criteria analysis (site inspection and initial landowner discussions will be addressed in chapter 3). You may not be able to address your land trust’s written selection criteria without visiting the property; therefore, in this instance, you will want to complete an initial site inspection prior to reviewing the criteria. For other projects, and on rare occasions, you may be so thoroughly familiar with a particular property that your land trust is able to begin the initial screen of the project by application of the selection criteria without first making a visit to the land, saving the land trust some time and expense. A final decision to accept a project should *never* be made, however, without a physical site inspection.

When creating a project selection process, it is important to map the steps necessary to take a project from the initial landowner contact to the stewardship, management or disposition plan. There will be any number of places within this process where decision making occurs as information is gathered, due diligence steps completed or landowner negotiations bring to light new or different information.



**Stewardship:** (1) Those steps necessary to uphold a conservation easement in perpetuity, including the creation of baseline documentation, regular monitoring, maintaining landowner relations including successor generation landowners, addressing amendments, and enforcing easements. (2) Those steps necessary to undertake the many responsibilities of managing a fee-owned property in perpetuity.

## Benefits of a Written Project Selection Process

There are significant benefits to following a written project selection process, including knowing that:

- Key steps will be remembered;
- Your land trust won't "reinvent the wheel" for every transaction;
- All actions are consistent and transparent; and
- Your land trust operates in a legal, professional and ethical manner.

Every step of the selection process, including how to apply the written selection criteria to a potential project, should indicate which parties in the land trust are responsible for what actions. For example, at a staffed land trust, the project staff may apply the criteria, followed by a review of their conclusions by a land trust board committee or by the entire board. At an all-volunteer land trust or at a land trust with a small staff, certain board members or a board committee (or a member of a board committee) may first apply aspects of the selection process (such as the written selection criteria) before presenting their conclusions to the full board. Larger land trusts sometimes assign more senior staff or the land trust attorney to the task of approving the completion of certain steps of the selection process.\*

Having an established selection process also assures the landowner that the land trust operates in a professional and consistent fashion. It helps the landowner understand all steps and the timeframe involved in selecting or rejecting a project. By educating a landowner early in the process about the project approval steps and updating the landowner throughout the process, a land trust generally finds that even if it needs to reject a project, it has maintained good relations with the landowner.

## Crafting Your Land Trust's Project Selection Process

Land trusts use different approaches to create selection processes and they might include narratives, checklists or graphics to describe the process. Some land trusts use a combination of these approaches—there is no one "right" way. A land trust simply needs to make sure it has documented its approach and that a copy of this documentation is kept in each project file.

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\* Whether a land trust has staff or is all-volunteer, generally at least one member of the land trust is responsible for completing initial research into a proposed conservation project. This research is then summarized or analyzed for the board's consideration.

A *narrative statement* may be particularly useful for distributing to people outside the land trust, such as landowners, supporters and other members of the public. Such a narrative is more descriptive than a checklist, but nevertheless is often accompanied by a checklist that is used internally to document the project. Some land trusts use different checklists for different types of transactions, one for a fee purchase of land and one for a conservation easement, for example.

Some items that might be included on a *checklist* are:

- Conducting research on the property to determine location, acreage, and relationship to surrounding land and water uses, etc.;
- Conducting research on the landowner, including how the property is owned;
- Contacting and meeting with the landowner;
- Visiting the property;
- Identifying the property's conservation resources;
- Obtaining natural resource and cultural inventories;
- Obtaining board or committee approval to proceed, as required by the land trust;
- Obtaining a copy of the landowner's deed and mortgage deed (if any);
- Identifying zoning ordinances or regulations that apply to the property;
- Identifying a property's designation, if any, in local or regional governmental plans;
- Obtaining maps of the property (various types may be specified);
- Obtaining or taking photos of the property;
- Identifying boundaries or obtaining a boundary survey;
- Identifying any liens, encumbrances, easements or restrictions;
- Identifying ownership of mineral rights;
- Completing a preliminary evaluation for hazardous waste;
- Obtaining a title abstract and, if necessary, title insurance;
- Obtaining mortgage subordination (for conservation easements);
- Sending a letter documenting the landowner's need to obtain his or her own legal counsel and financial advice;
- Providing the landowner with an explanation of the land trust's stewardship fund policy;
- Completing any written letters of understanding about the purpose or use of the property;
- Obtaining an appraisal (ordered by landowner or land trust, depending on type of transaction);



By educating a landowner early in the process about the project approval steps and updating the landowner throughout the process, a land trust generally finds that even if it needs to reject a project, it has maintained good relations with the landowner.

- Obtaining legal review by the landowner's counsel;
- Obtaining legal review by the land trust's counsel;
- Completing the criteria sheet and/or fact sheet for use in board review;
- Obtaining full board review and approval;
- Signing and recording of the deed or conservation easement;
- Thanking the donor;
- Completing (by the donor) IRS Form 8283 and signing by the land trust (if a donation);
- Preparing and distributing press releases;
- Organizing files and securing safe storage for originals of key documents;
- Posting boundary markers;
- Organizing baseline data and establishing monitoring schedules and responsibilities (for conservation easements); and
- Developing a management plan (for properties in fee).

No matter how you craft your land trust's selection process, it must identify major decision-making points or triggering events that require approval or review by a staff supervisor (if applicable), board committee or full board. Some land trusts require preliminary board approval to proceed on a project, and certain board approvals as the transaction proceeds. The process should also include steps to keep the board informed of the project's progress.

Before being completed, all easement and land projects must be approved by the land trust's board of directors in accordance with Practice 3F.

**Practice 3F. Board Approval of Land Transactions.** The board reviews and approves every land and easement transaction, and the land trust provides the board with timely and adequate information prior to final approval. However, the board may delegate decision-making authority on transactions if it establishes policies defining the limits to that authority, the criteria for transactions, the procedures for managing conflicts of interest, and the timely notification of the full board of any completed transactions, and if the board periodically evaluates the effectiveness of these policies.

Often the project selection process involves a staff or committee review, and sometimes a recommendation from staff or a committee, prior to taking the project to the full board for authorization. Practice 3F requires that the board be given sufficient and timely information about the proj-

ect in order to make an informed decision. This requirement may include a written or oral recommendation to the board, or a presentation of staff or committee findings on the merits of the project, in addition to other pertinent information.

See the sample documents at the end of this chapter (pages 59 and following) for examples of selection processes and acquisition checklists.

## Project Selection Criteria

### The Purpose of Project Selection Criteria

The purpose of selection criteria is to establish whether a project is eligible for the land trust's consideration. However, just because a project meets a land trust's criteria does not mean that the land trust will take on the project. Land trusts use criteria to screen properties offered to them and to target properties to pursue. In both cases, criteria provide the critical tool for determining which transactions are appropriate and worthwhile for a land trust to undertake and which ones are not (see Practice 8B, *Land Trust Standards and Practices*). One of the most important reasons for having criteria is to give a land trust the basis for rejecting a project or referring the project to a more appropriate conservation organization. It can be difficult to tell landowners "no" when they clearly value their land and its conservation values. A land trust that has selection criteria that demonstrate why it must reject a project can help avoid the impression that it acts arbitrarily. Selection criteria can help a landowner understand the reason his or her project was turned down while helping preserve relations with that landowner.

### The Importance of Project Selection Criteria

Project selection criteria provide the land trust with a consistent process and mechanism for examining each potential land acquisition and easement project, and a valuable means to evaluate and document their public benefit. New projects should be reviewed against the land trust's project selection criteria when the site inspection has been completed and when there is sufficient certainty regarding the most critical terms and conditions of the project. Any conditions that need to be met before closing should also be identified. It is important that the transaction be completed as described in the project selection forms developed by the land trust and in any board resolution authorizing the project.

Establishing and reviewing project selection criteria are essential to land trusts. However, even established land trusts sometimes operate without



No matter how you craft your land trust's selection process, it must identify major decision-making points or triggering events that require approval or review by a staff supervisor (if applicable), board committee or full board.



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them or need to revisit and update their criteria periodically. Adopting written project selection criteria is required by *Land Trust Standards and Practices*. Although such adoption takes time, having selection criteria yields many benefits.

- Criteria help ensure the land trust focuses on important projects, promoting wise use of its time and money. Criteria allow land trusts to be able to reject projects when they are too small, have little resource value or do not advance a land trust's mission and goals.
- Criteria flag potential problems and issues that otherwise might be overlooked. Considering a property in light of a land trust's criteria helps staff, committees and the board focus on the pros and cons of working on particular projects, and allows the land trust to make an informed decision based upon its analysis of the project's risks and benefits.
- Criteria communicate a land trust's policies and priorities to landowners and to land trust personnel. Criteria help landowners see a land trust as objective and professional. They also allow initial discussions with landowners to proceed in an efficient manner because the land trust knows *exactly* what information it must gather to satisfy its criteria.
- Criteria focus the evaluation of a project on its *merits* rather than personalities involved. The objective nature of criteria is even more important when the landowner is closely related to the organization (board member, donor or influential member of the community) or when the landowner is unpopular or unpleasant.
- Criteria provide the land trust with justifications for declining a project. This is the benefit most often cited by land trusts when asked why they adopted selection criteria. It helps a land trust explain to its supporters and the community why parcels are rejected, and helps a land trust avoid feeling pressured to undertake conservation of a property that may have sentimental value to a landowner but little conservation value.
- Criteria help a land trust be strategic in protecting those lands that are most important to the organization. Written criteria that are created based upon a land trust's mission, goals and organizational strategic plan (and strategic conservation plan) help a land trust achieve these goals and demonstrate success to its supporters and community.
- Criteria provide a consistent approach to all land trust projects so that *important steps are not forgotten* and all necessary approvals are obtained.



## Developing Project Selection Criteria

Criteria can be presented in a variety of formats, including:

- A narrative summary of the criteria for landowners or members of the public; and
- A checklist, questionnaire or outline that land trust personnel use during a field visit or as they see a project through its various stages.

Most land trusts use selection criteria that require a qualitative judgment on behalf of land trust staff, volunteers or board members about whether a particular project should be accepted or declined. Other land trusts and, more frequently, public agencies, use a quantitative method of selecting projects by determining particular qualities that are important to the organization and the community it represents and assigning values to these qualities. Projects that score the most points in such a ranking system are the projects that the land trust decides to pursue. Some land trusts combine the two approaches by using a qualitative approach for conservation easement or fee title donations and a quantitative approach for their purchase. Samples of these two types of criteria are included at the end of this chapter (see page 60). See also the list of additional resources at the end of this chapter.

Some land trusts also develop different types of criteria for different types of projects. Thus, there may be one set of criteria for fee acquisitions that addresses the costs of ownership and management, and another for conservation easements that addresses perpetual stewardship considerations. The makeup of selection criteria varies widely in both level of detail and content, but generally includes a review of at least the following:

1. Consistency with mission and goals;
2. Resource and public benefit values (factors weighing in favor of a project);
3. Feasibility (factors weighing against a project); and
4. Significance or priority of a project.

The first category is addressed below under “Organizational Considerations,” and assessing the public benefit of a project is discussed in chapter 2. The specifics of site inspections are discussed in chapter 3. Suggestions on what to include in your project selection criteria are described in the next section.

### General property description

It is important for the land trust to gather general information about the property as well as more specific information about the resources being



**Organizational strategic plan** The product of a disciplined effort to produce fundamental decisions and actions that shape and guide what an organization is, what it does, and why it does it, with a focus on the future. In a typical planning process, the land trust board develops a common vision of what it wants the organization to become. From there it establishes the land trust’s overall mission or purpose. Then it establishes goals to achieve the mission and activities that will begin to achieve the goals.

**Strategic conservation plan** A process that produces tools to aid decision makers in identifying, prioritizing, pursuing and protecting those specific tracts of land that will most effectively and efficiently achieve the land trust’s mission.



**Some land trusts also develop different types of criteria for different types of projects.**

protected. A brief overview of information to be obtained is included here, but more information is often gathered during the actual site inspection and, therefore, presented in chapter 3.

A land trust needs to have a way to document the necessary information it collects about a specific project and a process to determine what the information means and whether it is a conservation project that the land trust wants to pursue. Regardless of where the land trust records the general property information, it is important to include a description of the property and its resources.

A thorough site inspection commences with an interview with the landowner(s) designed to elicit the following information:

- The past and current uses of the land;
- The land's future proposed uses (by the landowner or others who may hold interests in the land, such as owners of mineral rights or road easements);
- The presence of hazardous materials stored or buried on the property; and
- The types of land management issues the landowner faces (trespass, invasive species, and so forth).

The interview is followed by a site inspection that provides the land trust with information that may or may not have been obtained during the landowner interview, specifically:

- A description of the land's physical characteristics;
- Identification of the property's conservation values;
- Identification of management issues (overgrazing, erosion, evidence of heavy off-highway vehicle use, for example) that may need to be addressed to conserve those values;
- An analysis of perpetual stewardship issues (distance of land from land trust office, difficulty with monitoring due to lack of access or terrain, and so forth);
- Any evidence of hazardous materials that warrants further investigation; and
- A description of surrounding land uses.

In the event a land trust is considering a fee acquisition of the property, additional information may need to be gathered, including:

- The taxes that must be paid on the land (property tax, use tax, ditch, water, or other assessments);
- Public access issues that must be addressed; and
- The land's management requirements (maintenance, irrigation, restoration, for example).

By assembling this information, a land trust can make an informed decision about whether to pursue the conservation transaction.

After an owner interview and site inspection, the land trust should have the following information about the property:

- Property location and acreage (legal description);
- Ownership details (how many people or entities own the property, how do they own it, are they united in their desire to conserve the property, etc.);
- Goals of the landowner(s) (need to sell the land or an easement, subdivide property, ability to donate the land or an easement, etc.);
- County in which the property is located;
- Context: region, priority area, focus area;
- Zoning and land use issues that may affect the property (limits on development potential, development on adjacent properties, etc.);
- Improvements: what exists on the property;
- Evidence of hazardous waste (storage tanks, evidence of trash burial, empty barrels, etc.);
- Current and past activities on the land;
- Surrounding land uses;
- Proposed future uses (agriculture, timber harvest, mineral development, etc.); and
- Land management issues.

The property description should also include information as to the general resources and property land types, such as forest, woodland, grassland, agricultural land, riparian, or wetland.

### **Project type**

The type of transaction being considered should be recorded. Is it a

- Fee purchase
- Conservation easement purchase
- Sale to third party
- Fee donation
- Conservation easement donation
- Bargain sale of fee title
- Bargain sale of conservation easement
- Amendment to conservation easement
- Other

### **Is the project consistent with mission and goals?**

If the project is not consistent with your mission and goals, *red flags* should wave! In most cases, a project should not be pursued if you answer “no” to this question (see further discussion in “Organizational Considerations”).

### **Is the project consistent with the land trust’s organizational strategic plan (and strategic conservation plan) and with its land trust priorities/focus areas?**

Ideally, the land trust has completed an organizational strategic planning process and a strategic conservation plan to define its protection priorities (both resources and geographic areas). If the proposed project does not fit with these plans, there still may be some flexibility in deciding whether or not to pursue the project. Your decision will depend upon the level of detail of your plan(s) and whether there is any room for variance.

### **Is the project part of a specific program?**

Strategic conservation plans (and often some organizational strategic plans) define and identify by name the priority resources and/or priority regions in which a land trust wishes to complete projects. This is where these regions can be identified. For example, the specific program might be individual landowner assistance (good projects outside priority areas); a community conservation project (projects within priority area); a watershed protection program (a specific focus area); or a habitat protection program (a specific focus area).

### **Resource and public benefit values**

Identifying a property’s conservation values and having land trust personnel acknowledge which conservation values are being protected are crucial first steps in the project selection process. Until land trust staff or volunteers identify the property’s conservation values, a land trust cannot begin to develop a conservation strategy for the property. The preservation and protection of a property’s conservation values form the foundation of any conservation easement or fee acquisition. Without this baseline information, a land trust cannot begin to determine what uses and activities are acceptable in light of the resources to be protected.

Therefore, project criteria should include, at a minimum, a general summary of the conservation values. The Internal Revenue Code and IRS regulations include the following four categories of conservation values. Satisfying the “conservation purposes test” should be one key component of the project selection process, particularly for conservation

easement donations. To satisfy the conservation purposes test, the project must meet one or more of the following:

- Outdoor Recreation and Education Values: the preservation of land areas for outdoor recreation by, or the education of, the general public [see Treasury regulations 1.170-14(d)(2)].
- Natural Resources Conservation Values: the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem [see Treasury regulations 1.170-14(d)(3)].
- Open Space Conservation Values: (A) the preservation of open space (including farmland and forestland) where such preservation is for the scenic enjoyment of the general public and will yield a significant public benefit [see Treasury regulations 1.170-14(d)(4)].
- Open Space Conservation Values: (B) the preservation of open space (including farmland and forestland) where such preservation is pursuant to a clearly delineated federal, state or local governmental conservation policy and will yield a significant public benefit [see Treasury Regulations 1.170-14(d)(4)] .
- Historic Conservation Values: the preservation of an historically important land area or certified historic structure [see Treasury regulations 1.170-14(d)(5)].

The conservation purposes test will be discussed more fully in chapter 2.

#### **Additional resource values**

In addition to considering the specific resource values set forth in the Internal Revenue Code and Treasury regulations, land trusts generally favor projects with characteristics that fall into the following categories:

- Provides open space valuable to a community due to its proximity to developing areas or because it helps define a community's identity;
- Furthers and/or is consistent with government conservation plans or policies;
- Buffers, adds to or otherwise helps protect or improve already protected areas;
- Is under probable threat from future development;
- Or is not under immediate development threat;
- Represents a prudent financial investment in conservation;
- Is of sufficient size to provide public benefit and its resource values are likely to remain intact, even if adjacent properties are developed; and
- Initiates or serves as a precedent that leads to additional protection.



**Identifying a property's conservation values and having land trust personnel acknowledge which conservation values are being protected are crucial first steps in the project selection process.**

### Feasibility factors

Land trusts may find that a proposed project has important resource values and meets the land trust's mission and goals, but nonetheless presents issues that may weigh against accepting the project. These issues may include:

- Probable development of adjacent properties in a manner that would significantly diminish the conservation values of the property in question;
- Landowner insistence on provisions in a conservation easement that would seriously diminish the property's primary conservation values;
- Inadequate access to the property for management or monitoring;
- Expensive stewardship responsibilities due to the location of the property, maintenance of structures, management of resources, hazards or liability problems, or the cost of property taxes;
- Unusually difficult stewardship responsibilities (e.g., multiple or fractured ownerships, frequent incidence of destructive trespassing, fencing restrictions, irregular configuration of the property, easement provisions that are difficult to enforce or monitor, etc.);
- Lack of staff or volunteer capacity to manage the project over time;
- Lack of financial capacity to monitor and defend the easement or manage and care for the land;
- Ethical, public image or conflict of interest problems if the land trust accepts the project;
- Adverse impact on the conservation resources of the planned open space from a proposed overall development project;
- Irreparable contamination (or prohibitive cleanup costs); and
- Excessive work (in relation to the conservation value) required to obtain the property.

### Significance or priority

The final factor generally addressed by selection criteria is the question of whether or not a particular project is of enough significance (or ranks high enough on a land trust's list of priorities) to merit the expenditure of the organization's scarce resources. At this point, the land trust may evaluate the threat of development to a particular parcel to help it make a decision. Some land trusts choose parcels that are under threat of imminent development, while others choose projects that have minimal development pressures. After analyzing a project, a land trust may still determine its significance is too low to pursue *even if it otherwise meets*

*the land trust's goals.* In such cases, the land trust may decide to decline a project or refer the project to a more suitable conservation organization.

All of these selection criteria should be reviewed by land trusts on occasion and refined as the organization grows, adjusts its mission, or adds focus areas or priorities for conservation. A land trust may also wish to revise its checklist based upon lessons learned from applying the criteria to several different projects. It is wise to establish a timeframe (every two years, every five years, in conjunction with strategic or conservation plan updates, etc.) for reviewing and/or revising the organization's selection criteria.

## Organizational Considerations

### Mission Statement

Most land trusts find that they would like to conserve more land than their organization has the capacity to. In order to be effective at serving its community, a land trust needs protection guidelines so that it uses its time and funds in a manner that maximizes the organization's scarce resources. The tools that will help a land trust create guidelines are its organizational strategic plan and its strategic conservation plan. A land trust defines its organizational purpose by adopting a mission statement, goals and an organizational strategic plan (including program focus areas). Many land trusts also adopt a strategic conservation plan to further identify and refine their protection priorities.

A mission statement defines the land trust's geographic scope and the resources it works to protect. Sometimes a land trust's mission statement defines particular land protection goals or priorities, sometimes these goals are implicit, and sometimes these goals are identified separately — as an adjunct to the mission statement or as part of the strategic conservation planning process. The practices identified in *Land Trust Standards and Practices* Standard 1 form the foundation of every land trust's operations.

**Standard 1. Mission.** The land trust has a clear mission that serves a public interest, and all programs support that mission.

**Practice 1A. Mission.** The board adopts, and periodically reviews, a mission statement that specifies the public interest(s) served by the organization.

**Practice 1B. Planning and Evaluation.** The land trust regularly establishes strategic goals for implementing its mission and routinely evaluates programs, goals and activities to be sure they are consistent with the mission.



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Questions that all trusts should be prepared to answer with respect to its mission and goals include:

- What is the land trust trying to accomplish?
- What will be its geographic area of operation?
- What conservation tools will it use or not use?
- Will the land trust work in partnership with government agencies or strictly in the private sector?

For additional help in developing or revising your land trust's mission statement, see the Land Trust Alliance course "Mission, Planning and Capacity."

## **Goals**

The land trust's goals are legally articulated in its articles of incorporation, and the land trust should be sure that its transactions are consistent with these stated goals. The IRS grants a land trust tax-exempt status to pursue these stated goals; to maintain its tax-exempt status the land trust must continue to operate for the charitable purposes stated in its charter.

As a practical matter, however, the goals stated in the articles of incorporation are generally intended to allow an organization to engage in the widest possible range of activities with the most extensive powers permitted by law and may not provide an organization with clear guidance as to its specific role. At some point in its first few years, a land trust should undertake a strategic planning effort to identify a more specific focus that can make the best use of the land trust's money and time, provide significant benefit to the community, and build a coherent, synergistic program to protect significant conservation values. This effort will provide the land trust with clear guidance as to the kinds of projects it should undertake.

For guidance on drafting articles of incorporation and maintaining tax-exempt status, see the Land Trust Alliance course "How to Comply with Nonprofit Law and Create Sound Records."

## **Setting Priorities and Developing a Strategic Conservation Plan**

In addition to developing and adopting the land trust mission and goals and undertaking an organizational strategic planning process, the land trust should also develop a strategic conservation plan to establish priorities and target resources or focus areas.



**Practice 8A. Identifying Focus Areas.** The land trust has identified specific natural resources or geographic areas where it will focus its work.

This process naturally follows the broad mission statement and goals and will help define the organization's focus. Generally, this process will lead the organization to prioritize certain resources or geographic regions. Examples of resource priorities include:

- Important agricultural lands;
- Scenic view planes; and
- Riparian corridors.

This process also focuses the land trust's resources on certain geographic areas and/or specific areas of interest.

Both an organizational strategic plan and a strategic conservation plan will help a land trust stay focused, especially when the demand for work outpaces staff resources. These plans can also help a land trust determine which types of conservation programs (fee ownership, purchase of development rights, acceptance of conservation easement donations, etc.) it will engage in. When demand for the land trust's expertise and assistance exceeds staff or volunteer resources, hard decisions need to be made. It is helpful for the land trust have these plans as both a guide and a basis for its decision-making process.

While this course is not designed to address mission, goals, organizational strategic planning, and strategic conservation planning in depth, it is important to raise these topics when discussing project selection. Simply put, a land trust cannot begin to evaluate and select individual conservation projects without having this structural framework in place. See the additional resources at the end of this chapter for approaches to creating strategic land protection plans and identifying focus areas. See also the Land Trust Alliance courses "Mission, Planning and Capacity" and "Strategic Conservation Planning" for more information on strategic planning.

## **The Nexus between Mission, Goals, Organizational Capacity, and Project Selection: Applying Project Selection Criteria**

### **Mission, Priorities and Strategic Plan**

Determining if an individual project fits with a land trust's mission and goals is the first question that needs to be answered in the project selection process. Think of the selection process as a series of filters, starting from the coarsest and finishing with the finest. The initial screens should



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Every project that the land trust selects should fit the mission and goals of the organization and should be consistent with the priorities established in the organizational strategic plan (and the strategic conservation plan, if the land trust has one).

be easy to move through; the final screens should be much more difficult and feature the hardest questions. Every project that the land trust selects should fit the mission and goals of the organization and should be consistent with the priorities established in the organizational strategic plan (and the strategic conservation plan, if the land trust has one).

By the time your organization begins considering individual easement and land projects, you should be able to answer two key, potentially deal-breaking, questions:

**1. Is the project consistent with your land trust's mission, priorities and strategic plan?**

This is the first question and should be fairly easy to answer. If the project *is consistent* with your mission and goals, move it to the next level of project review.

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**Example**

**The Little Traverse Conservancy**

The Little Traverse Conservancy, located in Harbor Springs, Michigan, consistently demonstrates the interrelationship of its mission and goals with the kinds of projects it selects.

***Little Traverse Conservancy Mission***

*To protect the natural diversity and beauty of northern Michigan by preserving significant land and scenic areas and by fostering appreciation and understanding of the environment.*

***Goals***

1. Identify and protect significant land in northern Michigan by acquiring title or conservation easements.
2. Manage and monitor preserves and easements, and enforce restrictions to protect natural values.
3. Provide educational opportunities to foster appreciation and understanding of the environment and encourage conservation of natural resources.
4. Effectively communicate with members and the public to promote greater involvement in the conservancy's activities.
5. Continually improve the effectiveness and involvement of the board, staff and volunteers.
6. Obtain and manage funds to carry out the conservancy's work in a fiscally responsible manner.

In applying this first test of the project selection process, the Little Traverse Conservancy would likely find that a proposed project located

on the shore of Lake Michigan north of Harbor Springs would pass the first project selection test because it is consistent with the Conservancy's mission and first goal. The project would then move to the next step of the selection process.

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If the project is not consistent with your mission and goals, you should say “no” to the project and stay focused on those programs and projects that better fit your land trust. For example, given its mission and goals, the Little Traverse Conservancy would likely decline to proceed with a project located adjacent to the town of Ann Arbor in south-central Michigan that was not visible from any public road.

If the project is not consistent with your mission and goals, but you would like to proceed anyway, you should examine why the project does not fit your mission and goals and do one of two things:

- Decide that the project warrants an exception and seek the approval (staff and/or board) required by your land trust's bylaws and/or policies; or
- Consider whether it may be appropriate for your land trust to revise its mission and goals, so that this type of project would better fit your land trust. This type of decision will likely require approval from the board of directors.

Although project opportunities should not drive an organization's mission statement, a good project that does not meet a land trust's current mission may indicate that the mission was too narrowly drawn in the first place, given the community the land trust serves. Some land trusts find that their original mission statements need to be revised when considering a potential project. A recent mission review by the Trust for Land Restoration provides a good example.

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### Example

The Trust for Land Restoration (TLR) is a land trust that operates nationwide. Its current mission is to conserve “the last worst places by restoring, conserving and protecting environmentally significant lands degraded by mining *or other human activities*.” In 2002, TLR's mission statement did not contain the last four words, confining itself to protecting lands that had previously been mined.

In that year, TLR was offered a conservation easement that it wanted to accept, but the land had not been mined. Instead, the land had been degraded by former owners through overgrazing. The potential project offered TLR an opportunity to work with the new conservation-minded



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landowner to restore the land and preserve important conservation values, including habitat for a species eligible for listing as threatened or endangered by the U.S. Fish and Wildlife Service.

Pat Willits, TLR's executive director, asked his board of directors to consider whether, in light of this potential project, the organization's mission statement had been crafted too narrowly. The board agreed that the current statement did not completely reflect their vision for the organization, and it was revised. As Willits notes, "It was completely up to the board to make this decision, and some boards would not have been willing to change the mission statement in these circumstances. This was a perfect situation for the TLR board to revisit our organization's role in conservation and the purposes for which the land trust was formed."

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If you make an exception or revise your mission statement for a particular project, bear in mind that you are setting a precedent for pursuing these types of projects, and your land trust will have a more difficult time saying "no" to similar projects in the future.

A key principle for all land trust operations is the need to act consistently. Many land trusts operate in small communities where their constituents know what deals are pursued or declined. Furthermore, landowners talk to each other — it can be very awkward, if not extremely difficult, for a land trust to justify to one landowner why his or her project was rejected when a similar project was approved. It is important to consider all possible consequences when making an exception for a particular project or revising a land trust's mission statement or organizational goals.

## **2. Is the project important given the land trust's list of priorities, or is another land trust or public agency the more appropriate entity to handle the project?**

In asking this question, you are moving to the next step of the selection process by assessing where a particular project might rank in the land trust's focus areas. For example, your land trust mission statement, goals and strategic plan may identify important agricultural lands as one natural resource your organization works to protect. In your selection criteria, the conservation of agricultural lands with prime and unique soils may rank higher than the protection of agricultural lands used solely for grazing. If the project in question contains only grazing lands, but no prime and unique soils, it may not rank high enough to qualify as a project that is important to your organization. It may therefore be appropriate to decline the project at this point in your analysis.

Whether your land trust is the most appropriate entity to handle the

project is a question of staffing/volunteer capacity, land trust finances and local politics. If you happen to work in an area of the country where there are no other land trusts, the analysis may be simple: either your organization accepts the project, or the project will be abandoned. However, if the project is marginal (that is, has limited conservation benefits and is not entirely consistent with your mission and goals) you should carefully evaluate whether it's worth pursuing.

The more likely scenario is that you have two projects of similar appeal and you cannot complete them both based upon your organizational resources. In this case, you have to make a decision as to which project gets your land trust's attention and which project gets postponed or perhaps turned down. Your selection criteria and process helps guide your decision.

If both projects are comparably ranked, and only one can be pursued, it is helpful to examine which project demands more time and resources and to select the project that can be completed more efficiently. In reality, no two projects are exactly the same, and the land trust will need to weigh a combination of factors to decide where to spend its limited resources.

If there are other land trusts or conservation organizations operating in the same region, the best scenario for completing the greatest number of good conservation projects may be for the different groups to come together, discuss the opportunities, priorities and potential projects within the region, and create a partnership agreement or memorandum of understanding that outlines each organization's roles and responsibilities. Of course, this scenario assumes a perfect world of good communication and cooperation. While such partnerships can be difficult, they are also the most efficient and effective ways to articulate each organization's priorities and develop a strategy to preserve the most important lands within your region. By doing so, you will also become familiar with the other conservation groups and their mission and goals, which will allow you to refer projects your land trust must decline to another organization that may be more appropriate for the task. For more information on evaluating partnerships and partnership documentation, see Practices 8I and 8J of *Land Trust Standards and Practices*.

### Organizational Capacity

The next part of the selection process involves assessing the impact the project may have on the land trust's limited resources. This assessment is critical to ensuring that the land trust's resources are applied prudently to the projects that most significantly achieve the organization's mission. Practice 7A reflects the need to analyze the impacts a project has on an organization's capacity:



If both projects are comparably ranked, and only one can be pursued, it is helpful to examine which project demands more time and resources and to select the project that can be completed most efficiently.

**Practice 7A. Capacity.** The land trust regularly evaluates its programs, activities and long-term responsibilities and has sufficient volunteers, staff and/or consultants to carry out its work, particularly when managing an active program of easements.

Few land trusts, no matter how well staffed and funded, can complete all the conservation projects they would wish to. The challenge is to craft your selection process and criteria to highlight those projects where you will get the most “bang for the buck.”

### **Financial Details and Considerations**

Although a property or project may contain conservation and natural resource values or other public benefits, additional factors should be considered in evaluating the project. Completing land and easement projects is time consuming, the amount depending upon the type of project and its specifics.

Donated conservation easements are generally the quickest projects to complete; fee purchases generally take the longest. Purchasing conservation easements can be very time consuming, especially if the land trust needs to obtain the funds from outside sources (state or federal programs, private foundations, and so forth) or if there are many parties involved in the transaction.

Land trust selection criteria should provide a framework for examining the real costs of completing a project. Estimating the amount of staff or volunteer time a project requires can be a challenge, but certain aspects can be analyzed and quantified fairly confidently. For conservation easements, they include the following:

- **Reserved Rights.** The extent and nature of reserved rights included in a conservation easement can greatly increase the time it takes to complete the project and will also increase long-term stewardship responsibilities. In addition to the time it takes to negotiate building envelope location(s), subdividable parcels or limitations on any land use activities, such as timber cutting, the land trust must examine the overall impacts of these provisions on the property's conservation values. Therefore, the more reserved rights a project requires and the greater their complexity, the longer it will take land trust personnel to negotiate and draft documents to reflect these provisions. (See, for example, the Property and Environment Research Center study referenced in Additional Resources at the end of this chapter.)
- **Stewardship Issues.** Every restriction contained in a conservation easement must be monitored and may be subject to an enforcement action. When considering whether to accept a conservation



**Reserved rights** The rights to use or develop the property reserved by the landowner under the terms of the conservation easement.

easement, analyzing the time and costs necessary to steward these restrictions is part of the selection process. For example, restrictions preventing hunting on a property will require a great deal of monitoring, and thus will require a great deal of capacity to steward in perpetuity. If your land trust has a model easement, it may be able to confine this analysis to those restrictions that are new or different from those in the template (presumably, the land trust's adoption of its model easement is an acknowledgement that it has the capacity to steward the restrictions in the model).

For more information on these topics, see the Land Trust Alliance courses "Conservation Easement Drafting and Documentation" and "Determining Stewardship Costs and Raising and Managing Dedicated Funds."

In addition to costs associated with staff or volunteer time, a land trust should evaluate the out-of-pocket costs a project may require. Factors that may influence these costs for any particular project include:

- Professional services that may be required to assess land management plans or advise on restrictions necessary to protect the conservation values;
- Distance of the property from the land trust's office, which makes monitoring more costly;
- A landowner who lives out of state or out of the country;
- Projects arising late in the year that need to close by December 31;
- Fundraising costs associated with a purchase project (either easement or fee);
- Researching conservation values on a particular piece of land; and
- Legal fees and closing costs.

Finally, a land trust should consider the "opportunity cost" of each project. In other words, if the land trust decides to proceed with this particular project, what other opportunities might it be foregoing? To help assess this issue, a land trust might ask:

1. Will accepting this project divert staff resources from other priorities?
2. Is the land trust comfortable proceeding with the project even if it means it must decline other projects to complete this one?
3. Is the project controversial and thus potentially harmful to the land trust's reputation or ability to secure future projects?

Once the land trust has finished analyzing a project in terms of its organizational capacity, these findings should be reflected in a document retained by the land trust. Such a document may be in the form of a specific section



in the selection criteria checklist that addresses organizational capacity, or it may be a detailed record of the board's deliberations and part of the meeting minutes, or it may be a "memo to the file." Regardless of whether the land trust decides to proceed or not to proceed with the project, such documentation should be part of either the new project file or the declined projects file. Keeping written records of the project selection process assists the land trust in providing a rationale for its decision making. It also helps the land trust prepare for its perpetual stewardship obligations and is a vital part of a professionally run organization. The importance of such recordkeeping is underscored by Practice 9G.

**Practice 9G. Recordkeeping.** Pursuant to its records policy, the land trust keeps originals of all irreplaceable documents essential to the defense of each transaction (such as legal agreements, critical correspondence and appraisals) in one location, and copies in a separate location. Original documents are protected from daily use and are secure from fire, floods and other damage.

For more information on recordkeeping, see the Land Trust Alliance course "How to Comply with Nonprofit Law and Create Sound Records."

### **The Board's Discretionary Role—Exceptions to Project Selection Criteria**

Although selection criteria are vitally important, ultimately the decision about whether to conserve a particular property or not rests in the discretionary authority of the land trust's board of directors. Many land trusts acknowledge this discretionary role within the body of their selection criteria by stating that the board retains this authority and will examine each project on a case-by-case basis. Boards may decline projects that meet the selection criteria for a number of reasons, including practical considerations such as:

- Other organizational priorities;
- The particular timing of a project (for example, a good project that is proposed in November but which must close by the end of the year); or
- The complexity of a project.

In addition, a board may exercise its discretionary role by approving a project that is marginal — a project that barely meets the selection criteria or falls just short. The board may decide to pursue such a project because:

- No other organization can do so and it is worthy of completing by some entity;



- It will establish an important relationship with a landowner, agency or funder;
- The project is important not in and of itself but as a piece of a bigger conservation picture;
- Some aspect of the project's resources is of value even though this value is not reflected by the organization's written project selection criteria.

In such circumstances, a board must carefully consider why the project should be pursued even though it does not fit within the land trust's selection criteria (or cannot be revised to fit the criteria) and make *written* findings that address at least the following:

1. No reasonable conservation alternative exists, including revising the project;
2. The project is consistent with the land trust's mission;
3. Public benefit will be derived;
4. The project will not be an unreasonable drain on the land trust's resources; and
5. No ethical or public image problems are involved.

## Public Relations and Outreach

A land trust should develop a clear communications strategy with landowners, its members, project partners and others concerning the project selection process. The process should be transparent, consistently applied and easily understood by landowners, the community, conservation partners and the public at large. A transparent process establishes professionalism, and it clarifies and communicates how projects are selected and approved.

Each member of a land trust's staff, its volunteers and its board of directors should understand who is authorized to discuss the results of the project selection process with people outside the organization, and how such discussion should be handled. A land trust should take care that any disagreements about decisions made throughout the process remain confidential, avoiding unprofessional discussions about conflicting viewpoints. The activities of a land trust are highly visible, and the process of evaluating and selecting projects is fundamental to the land trust's day-to-day work. Adopting and consistently using a selection process that meets the principles discussed in this course establishes the framework for a trustworthy organization.



Although selection criteria are vitally important, ultimately the decision about whether to conserve a particular property or not rests in the discretionary authority of the land trust's board of directors.



The process should be transparent, consistently applied and easily understood by landowners, the community, conservation partners, and the public at large.

## Declining a Project

Declining a project will, at times, be the right course of action; however, it is not always easy. For those projects where the landowner has approached the land trust, the challenge lies in how the land trust tells a landowner it must decline the project, while preserving relations with that landowner (or at least not alienating the landowner from the land trust or conservation in general).

The land trust should establish an honest relationship with the landowner at the beginning of discussions by educating the landowner about the selection process and the land trust's selection criteria, not by creating false expectations that the project will be approved. Giving landowners this information up front will help preserve the relationship if the land trust must decline a project.

Land trusts use different methods for declining a project, including sending a courteous letter that explains the land trust's rationale or communicating the information in person. Some tips for helping to soften the news of rejection include:

- Suggesting alternative options (for example, suggest the landowner impose private deed restrictions); and
- Referring the landowner to another organization or agency whose mission might include the conservation of this particular type of property.

[illegible]

## Vermont Land Trust

*This case study may be completed in an instructor-led training or through self-study. In this case study, you can see the value of well-conceived and implemented project selection criteria to a land trust's work.*

*Read the case study and answer the questions below. Guidance on reading the case study follows the questions.*

The Vermont Land Trust (VLT) adheres to a strict policy of applying its selection criteria to potential new projects and rejecting those that do not conform to criteria, while striving to retain good relations with the landowners whose projects the land trust rejected. Fourteen years ago, the land trust was approached by precisely the type of landowner the organization prizes — a woman who owned a 96-acre farm that she managed for sustainable organic production. She approached VLT about donating an easement to protect the productive farmland and open space she owned.

When VLT applied its selection criteria, it found that the landowner's lack of clarity about the number of development rights she wanted to reserve for the property created too many “unknowns” about the future of the land, so VLT declined the project. Over the years, the landowner submitted three or four new proposals to VLT, including one that would have allowed a co-housing development (an intentional community with private homes and shared common spaces) on the property, all of which were declined by the land trust because the projects, as proposed, did not fit VLT's selection criteria.

During the 14 years of periodic discussions with the landowner, VLT strived to be honest about its concerns about reconciling its conservation goals with the landowner's development needs, but never tried to pressure the landowner to propose a different plan. Instead, VLT did its best to communicate patience while the landowner wrestled with her plans for the future of her farm.

Fourteen years after the landowner initially proposed conserving her farm with VLT, she proposed a conservation easement with no house sites on 50 of her 96 acres, keeping out the remaining 46 acres for her cherished dream of a co-housing project. The Vermont Land Trust accepted the proposal and now holds a conservation easement on the farm.

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The Vermont Land Trust (VLT) is a statewide land trust that has conserved more than 450,000 acres, which represents about 8 percent of all the private, undeveloped land in the State of Vermont, including more than 500 working farms. The Vermont Land Trust helps landowners voluntarily limit development on productive farm and forest land and other meaningful natural and community places. In addition, VLT is one of the state's largest landowners.

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## Discussion Questions

1. Why do you think VLT declined the project when it was first proposed?
2. Why did the landowner continue to propose conservation projects to VLT after being turned down the first time?
3. What did VLT gain by investing in 14 years of discussions with this landowner?

## Guidance

1. The Vermont Land Trust's mission is to conserve productive farmland, so its selection criteria assist the organization in choosing projects that are planned to promote and preserve working farms in Vermont. Land trusts always consider the extent and location of reserved development rights sought by a landowner in order to determine if those reserved rights are consistent with the conservation of those lands. In this instance, VLT applied its criteria and rejected the landowner's multiple proposals based upon the development's potential impact on agricultural soils and the ability to keep the land viable for agriculture (that is, of sufficient size to be sustainable without fragmentation).
2. Because VLT was honest with the landowner about both its desire to work with her to conserve her farm and its need to work with farms where reserved development rights would not adversely affect the land's ability to continue in agriculture, the landowner received support for her concept and encouragement to keep discussions open with VLT.

Over the years, the landowner learned that her proposals would be evaluated without criticism and that the land trust honored her right to plan for her future without pressure from outside sources to act precipitously. By giving the landowner the time to make the tough and permanent decisions about the future of her land, VLT showed the landowner it understood the seriousness of the decision and exhibited patience, respect and support for the landowner's efforts.

3. The Vermont Land Trust gained the trust of the landowner through both its internal selection process and its consistency in applying that process. The Vermont Land Trust worked hard not to alienate the landowner when it decided its selection criteria dictated that the land trust reject the landowner's initial conservation proposals, and demonstrated to the landowner that it was willing to wait for the right projects and for the right time for the landowner to act. By doing so, VLT showed that it was not in the business of pressuring landowners to conserve their land and that it was committed to accepting only those projects that met its selection criteria. In the end, VLT gained an easement on a property it prizes.

## Creating Selection Criteria for Conservation Easements: A Template

*This exercise may be done either through an instructor-led training or through self-study. The purpose is to assist you in developing written selection criteria for conservation easements. If your land trust already has selection criteria for this purpose, you may use this exercise as a way to analyze the existing criteria and determine if they need to be refined.*

*Fill in the blanks below with the appropriate information. **You should have your land trust's mission statement, goals, organizational strategic plan and strategic conservation plan (if you have one) at hand when completing this template.***

*The contents of this template are suggested as a minimum for selection criteria for conservation easements — your land trust can and should add additional criteria as appropriate. If the land trust acquires land in fee, additional considerations related to costs of ownership and management-related issues must be added to serve as fee acquisition criteria.*

### Land Trust

### Project Selection Criteria

### Conservation Easement Acquisitions

#### Background Information

*List the basic information your organization should know about a potential project before deciding whether or not to proceed.*

Name of landowner: \_\_\_\_\_

Landowner contact information: \_\_\_\_\_

Type of project: \_\_\_\_\_ (donation or purchase)

Size of property: \_\_\_\_\_ (acres)

Location of property: \_\_\_\_\_ (county, region)

Zoning/land use issues: \_\_\_\_\_

Date of site inspection and name of inspector: \_\_\_\_\_

\_\_\_\_\_

Brief description of project (deal terms and reserved rights, land and resources, description, why project is important, what issues must be considered, etc.):

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*Add other necessary background information* \_\_\_\_\_

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### **Mission, Goals, Strategic Plan Compliance**

*State mission, goals, strategic plan, focus areas, and priorities of your land trust.*

Mission: \_\_\_\_\_

Goals: \_\_\_\_\_

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How does this project address the land trust's mission and goals?

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List elements of the organizational strategic plan that this project will address:

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How does this project fit into the land trust's strategic conservation plan (if one exists)? \_\_\_\_\_

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OR Is the project located in a focus or priority area?

List areas \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

### Conservation and Public Benefit Values

*Check boxes for compliance with the Internal Revenue Code's conservation purposes test and other conservation values.*

To qualify for selection, a project must meet at least \_\_\_\_\_ ("one or more" or "at least three," etc.) of the Internal Revenue Code's Conservation Purposes:

- ☐ Outdoor Recreation and Education Values: The preservation of land areas for outdoor recreation by, or the education of, the general public.
- ☐ Natural Resources Conservation Values: The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem.
- ☐ Open Space Conservation Values: The preservation of open space (including farmland and forestland) where such preservation is for the scenic enjoyment of the general public and will yield a significant public benefit.
- ☐ Open Space Conservation Values: The preservation of open space (including farmland and forestland) where such preservation is pursuant to a clearly delineated federal, state or local governmental conservation policy and will yield a significant public benefit.
- ☐ Historic Conservation Values: The preservation of an historically important land area or certified historic structure.

Significant public benefit: Describe: \_\_\_\_\_

- ☐ Property is unique to area.
- ☐ Land development in vicinity of property is intense.
- ☐ Protection of land is consistent with public programs in region.
- ☐ Protection of land is consistent with private conservation programs in region.
- ☐ Protection of land is consistent with legislatively mandated program identifying particular parcels of land for future protection.
- ☐ Development of property is likely to contribute to degradation of scenic, natural or historic character of area.
- ☐ Public may use property or appreciate its scenic values.



- ☐ Property is important in preserving local or regional landscape or resource that attracts tourism or commerce to area.
- ☐ It is not likely the land trust will acquire equally desirable and valuable substitute property or conservation easement.

#### Additional Conservation Values

*Add other resource or conservation values important to the land trust, such as watershed protection, buffers for existing conserved properties, complies with area master plan for open space, etc.*

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#### Feasibility Issues

*Address those issues that might help the land trust reject proposals, where the risks or costs of completing the project outweigh the project's benefits.*

A project may meet the selection criteria favoring a land protection proposal and still may not be accepted if \_\_\_\_ (one, two, etc.) or more of the following considerations apply:

- ☐ Adjacent development may significantly diminish the conservation values of the property.
- ☐ The landowner insists on reserved rights inconsistent with conserving the property's primary conservation values.
- ☐ Inadequate or difficult access to the property for management or monitoring.
- ☐ Stewardship responsibilities will be too expensive.
- ☐ Stewardship responsibilities will be unusually difficult.
- ☐ The land trust does not have the staff or volunteers needed to manage the project over time.
- ☐ The land trust does not have the financial resources to monitor and defend the easement.
- ☐ Ethical, public image or conflict of interest problems exist in association with the acceptance of the project.
- ☐ The proposed open space is part of a development proposal that, overall, is likely to have significant adverse impacts on the property's conservation resources.

- ☐ The property is irreparably contaminated or the cost of cleanup is too high or the risk of accepting an easement on contaminated land is too high.
- ☐ The easement cannot be acquired by the land trust with reasonable effort in relation to the property's conservation value.
- ☐ The project does not satisfy state or federal requirements (*legal issues, funding issues, etc.*): \_\_\_\_\_

List other feasibility factors, such as: property is too small, likelihood of funding too remote, little likelihood of adjacent properties being protected, etc. \_\_\_\_\_

#### **Significance or Priority of Project**

*Identify significant conservation projects of high priority to the land trust.*

- Does this project add to an existing project underway at the land trust? How?
- Is this project important for the land trust as a new priority area?
- Is this project significant enough that other projects can be postponed or rejected in order to complete this one?
- Does another land trust rank this property as a higher priority than we do?

#### **Board's Discretionary Role**

*Add language confirming the discretionary role of the board's decision-making process with respect to projects.*

Example: "All the preceding notwithstanding, the Board of Directors retains discretion over acquisition and will evaluate each project and proposal on its own merits after careful investigation of the property, its resources and its public benefits."

## Conclusion

Land trusts benefit in many ways by creating and implementing project selection criteria and a project selection process. Doing so helps land trusts stay focused on their missions and goals, avoid accepting projects that will place an undue burden on their financial and human resources without a commensurate conservation benefit, maintain good relations with landowners, and sustain their reputation in the community. Having a project selection process with sound criteria also demonstrates that the land trust is familiar with the Internal Revenue Service's requirements and has a process for evaluating whether potential projects can satisfy these legal requirements. As will be discussed in chapter 2, it is important for a land trust to evaluate and clearly document the public benefit of every land and easement transaction along with how these benefits are consistent with the mission of the organization.

To implement Practice 8B fully, the Land Trust Alliance recommends that

- The land trust have written project criteria and applies them consistently;
- The land trust declines projects when they do not meet the criteria; and
- The land trust's criteria are
  - Consistent with the mission and goals of the land trust;
  - Address public benefit;
  - Reflect federal and state requirements when appropriate;
  - Aid in setting priorities; and
  - Assess feasibility and stewardship needs and capacity.

## Additional Resources

**For more information on preparing and adopting mission statements and organizational strategic planning, please consult**

The Land Trust Alliance course “Mission, Planning and Capacity.”

*Open Standards for the Practice of Conservation.* Originally designed by the Conservation Measures Partnership and adapted by the Land Trust Alliance in 2006, the Open Standards bring together common concepts, approaches and terminology in conservation project design, management and monitoring in order to help practitioners improve the practice of conservation through a casebook. ([www.conservationmeasures.org/cmp](http://www.conservationmeasures.org/cmp))

[http://www.managementhelp.org/plan\\_dec/str\\_plan/str\\_plan.htm](http://www.managementhelp.org/plan_dec/str_plan/str_plan.htm). Assistance for nonprofits in understanding and implementing strategic planning from the Free Management Library, an integrated online library for nonprofit and for-profit organizations.

*Managing the Nonprofit Organization: Principles and Practices*, by Peter F. Drucker, (Harper Collins, 1992).

*Profiles of Excellence: Achieving Success in the Nonprofit Sector*, by Knauff, Berger and Gray (The Independent Sector, 1991).

**For more information on developing strategic conservation plans, please see**

“Implementing Strategic Conservation: Establishing Criteria,” by Ole Amundsen (*Exchange*, Summer 2004).

The Land Trust Alliance course “Strategic Conservation Planning.”

**For information on the costs of negotiating and stewarding conservation easements see:**

*Cost Effective Strategies for Conserving Private Land*, by Dominic Parker (Property and Environment Research Center, 2002).

Land Trust Alliance course “Determining Stewardship Costs and Raising and Managing Dedicated Funds.”

## Sample Documents

Remember to use these sample documents only in instances that relate to your own land trust's mission and goals.

### Project Selection Processes

*Project Intake and Selection Guidelines:* Colorado Open Lands' Project Intake and Selection Guidelines (page 61)

Land trusts often use different terms to refer to the same document; for example, Colorado Open Lands (COL) refers to its site inspection form as a "Project Information Form" (for a copy, see Sample Documents in chapter 3). When using sample documents, land trusts should focus on the contents, not the name, of the document, and always be sure to adapt any sample documents to the organization's own mission, goals and the community it serves.

*Selection Process:* Colorado Open Lands' Project Process Checklist (page 63)

This checklist is designed to make sure that all the necessary procedures and steps have been followed to complete a project. Bold-faced items indicate the most essential steps. Note that COL refers to its project selection process form as a "Project Process Checklist." The title of the document is not as important as its contents and the purpose it serves.

*Acquisition of Conservation Easement Checklist:* Rocky Mountain Elk Foundation's Conservation Easement Checklist (page 68)

This acquisition checklist covers the full range of project-related tasks, and includes an area for both the staff person charged with completing the form to indicate when tasks are completed, and for legal staff to sign off on the aspects with which they are involved. It also includes room for recording contact information for parties important to the transaction.

*Acquisition of Fee Interest in Land Checklist:* Society for the Protection of New Hampshire Forests' Donation of Fee Checklist for Society for the Protection of New Hampshire Forests Land Agent (page 72)

This acquisition checklist relates to donations of land in fee, but with some minor modifications, it can also be used for the purchase of fee interest property. Many references are to New Hampshire codes and agencies; land trusts should insert applicable references for their own state.

*Selection Process for Conservation Projects:* Oconee River Land Trust (page 76)

This process outline is very thorough, commencing with initial land-owner contact and ending with thank you notes and media outreach.

Each of the steps in the process is clearly delineated with roles assigned to appropriate persons.

### **Selection Criteria**

*Small Land Trust:* Oconee River Land Trust's Criteria for Conservation Projects (page 79)

This project selection criteria form was developed by a small land trust in Georgia and contains a particularly good discussion of feasibility factors. Note that this land trust named its project selection criteria form "Criteria for Conservation Projects." Other titles may be equally acceptable, so long as the content of the document meets *Land Trust Standards and Practices*.

*Qualitative:* Colorado Open Lands's Project Selection Criteria (page 84)

This form is very detailed and demonstrates that a qualitative approach requires thoughtful analysis of the project and the goals of land trust and the landowner. The form poses a series of specific questions to help determine if the project meets the IRS conservation values test and whether the project fits the land trust's strategic conservation plan. Finally, it spurs the land trust to decide whether it is feasible to take on the project.

*Quantitative:* Lancaster Farmland Trust's Farm Scoring System (page 93)

This scoring system uses points to qualify projects for reasons deemed important to the Pennsylvania's Lancaster Farmland Trust. The points are meant to distinguish between different farm conservation opportunities, and do not include references to other types of conservation values, such as the Internal Revenue Code's conservation purposes.

*All-Volunteer Land Trust:* South County Conservancy's Ranking and Priority Point System (page 95)

This ranking system applies to land unique to this Rhode Island land trust's community, and does not include references to other types of conservation values, such as the Internal Revenue Code conservation purposes.

### **Colorado Open Lands' Project Intake and Selection Guidelines**

#### **Mission**

To preserve the significant open lands and diminishing natural heritage of Colorado through private and public partnerships, innovative land conservation techniques, and strategic leadership.

#### **Land Protection Policies**

Colorado Open Lands works to preserve significant open lands through acquisition or assisting others in the acquisition, of fee or other interests in property and may assist project partners, such as landowners and local governments, with other approaches to land protection such as estate planning and zoning incentives. The following are several fundamental factors in establishing land protection policies and selection criteria:

- To identify the project's standing within COL's list of priorities in light of COL's mission statement and current strategic plan.
- To determine if another land trust is the more appropriate entity to handle the project.
- To assess the financial and staff implications of the project against COL's limited resources. We must insure that those resources are applied prudently to the projects that most significantly achieve the organization's mission.
- To solidify the understanding by the COL staff of the conservation values to be protected by the project.
- To be able to complete a project in the most effective and efficient manner possible, and to demonstrate sound land preservation techniques.
- To develop a coordinated staff response to the landowner(s) who have requested COL's participation in the project.
- To ensure COL's future activities stay focused on the goal of protecting the conservation values and to begin a formal record of the project.

#### **Project Selection Criteria Form**

Colorado Open Lands has created a form, entitled "Project Selection Criteria" that collects data on the proposed project to present to the entire staff. Several factors determine the best means of preserving land. Among them are the type of land and the resources to be protected, landowner objectives, COL's available resources, and stewardship needs.

For example, a conservation easement may be the best approach to preserving a property's scenic or agricultural values, whereas fee acquisition is typically the best alternative for land to be used for public recreation. Conservation easements with substantial reserved landowner rights (such as multiple homesites) typically have greater negative impact on the resources to be protected and require more on-going management than do easements

## PROJECT INTAKE AND SELECTION GUIDELINES

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without substantial reserved rights. These and other factors must be considered when determining how or whether to undertake a project. COL has adopted the following criteria for project selection, which are included in the form.

### ***Conservation Values Checklist***

Colorado Open Lands is organized to protect lands that have value for conservation, education, recreational purposes, or agriculture uses and that provide “significant public benefit.” To determine if a property warrants preservation, COL uses the IRS’s “conservation purposes” test as a guideline, as well as other criteria consistent with its mission.

### ***Feasibility Checklist***

Although a property or project may contain conservation and natural resource values or other public benefits, other factors will be considered in fully evaluating the project. This checklist includes potential partnerships between COL and other private and/or public entities, as well as conflicts that may be associated with the property. In addition, stewardship concerns and how this project may relate to others nearby will also be considered.

### **The Board’s Discretionary Role**

All the proceeding notwithstanding, the Board of Directors retains discretion over acceptance, acquisition, or disposition and will evaluate each project and proposal on its own merits after careful investigation of the property, its resources, and public benefits.

### **Other Forms and Letters**

Throughout the intake and selection process, COL uses several other forms and letters to organize information and for correspondence. All of these forms and letters are included in this Intake and Selection section.

### ***Project Information***

This form is used to assemble information necessary to complete the land protection project. It can be taken out to initial site visits and discussions with the landowners. It is also helpful to use to fill out the Project Selection Criteria form.

### ***Project Process Checklist***

This checklist outlines all of the necessary procedures and steps to complete the project.

### ***Engagement Letters***

COL has several form letters that we send to landowners both before and after the initial site visit. These letters include information about all of the steps and costs involved with conservation easements, including the opportunity to have COL coordinate all of the necessary due diligence for the easement. These letters can be edited to fit the individual circumstances of each project.



**Colorado Open Lands' Project Process Checklist**

Project name: \_\_\_\_\_

Primary COL staff person responsible for project: \_\_\_\_\_

**1: INITIAL LANDOWNER CONTACT/OUTREACH****Date      Initials**

- |       |       |  |
|-------|-------|--|
| _____ | _____ | Initial Landowner contact (e.g. telephone call, personal visit, other)<br>Type of Contact: _____<br>Obtain phone number, address, and other relevant contact info  |
| _____ | _____ | Mail introductory materials to landowner (e.g. land trust information, conservation/preservation options, costs, etc.)<br>Date: _____<br>Type of Materials: _____  |
| _____ | _____ | Begin Property Information Form (ownership, liens, encumbrances, easements, etc.). Inquire about recent title commitment, obtain if possible.  |
| _____ | _____ | Meeting/Discussion with Landowner(s) and Family/Families:<br>Explanation of: <ul style="list-style-type: none"><li>• Mission of Colorado Open Lands</li><li>• What a land trust is, its tools and its role</li><li>• Conservation purposes, protection implications and land-use restrictions</li><li>• Process involved in the preservation/conservation of the land (based on whether it's an easement, donation etc.)</li><li>• Professional advice</li><li>• Transaction Alternatives/Landowner Options</li><li>• Financial incentives associated with donation (i.e.: tax deduction)</li><li>• Importance of legal and financial advice</li><li>• Associated transaction costs, including that landowner pays for COL's legal review</li><li>• Steps associated with donating a conservation easement</li></ul> |
| _____ | _____ | Site Visit   |

### 2: INITIAL DATA COLLECTION

*Date*      *Initials*

- |       |       |   |
|-------|-------|---|
| _____ | _____ | <b>Identify conservation values</b>   |
| _____ | _____ | Obtain any available natural resource information                                   |
| _____ | _____ | Obtain map/survey with property boundaries (preferably a USGS quad 7-minute series) |
| _____ | _____ | Determine local political support and influence                                     |
| _____ | _____ | Confirm zoning and subdivision regulations  |
| _____ | _____ | Identify potential funding sources (preliminary)                                    |
| _____ | _____ | Begin Conservation Easement Information Form  |

### 3: PROJECT ANALYSIS REVIEW & COL DECISION

*Date*      *Initials*

- |       |       |   |
|-------|-------|---|
| _____ | _____ | Obtain a recent <b>Title Report or Commitment</b> with all documents required in Schedules A and B (if a GOCO grant* is involved, title commitment and copies of all documents referenced in Schedule A and B must be submitted 45 days before closing or reimbursement)<br>_____ Date ordered<br>_____ Date received |
| _____ | _____ | Complete Project Selection Criteria Form  |
| _____ | _____ | <b>Assess Property using Project Selection Criteria through Committee review</b>  |
| _____ | _____ | Obtain Committee Approval to go forward with the project  |
| _____ | _____ | Obtain any additional information identified by Committee review  |
| _____ | _____ | Confirm and pursue likely funding options (if GOCO, see checklist attached)   |
| _____ | _____ | Send "Acceptance of project / Engagement" letter to landowner (include discussion of CVs, landowner's intent, mutual goals, estimated transaction costs, landowner's need for financial and legal advice, importance of obtaining deeds, mortgage information, title commitment etc.)                                 |
| _____ | _____ | Property Information Form should be complete by now   |

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\*The Great Outdoors Colorado (GOCO) Amendment to that state's constitution dedicates a portion of state lottery proceeds to projects that preserve, protect, and enhance Colorado's wildlife, parks, rivers, trails, and open spaces.

**4: DUE DILIGENCE / EASEMENT NEGOTIATIONS****Date      Initials**

|       |       |   |
|-------|-------|---|
| _____ | _____ | If not done already, obtain a recent Title Report or Commitment with all documents required in Schedules A and B  |
| _____ | _____ | Obtain copy of Deed (Warranty, Quit Claim) or copy of Deed of Trust (Mortgage Deed)   |
| _____ | _____ | Complete Stewardship Endowment Formula  |
| _____ | _____ | <b>Negotiate terms of easement/deal</b> (price, payment terms, and payment of stewardship endowment etc.)   |
| _____ | _____ | Complete Conservation Easement Information Form   |
| _____ | _____ | <b>Begin appraisal process</b> (if applicable)  |
|       | _____ | ordered   |
|       | _____ | received  |
| _____ | _____ | <b>Draft conservation easement</b> or restriction (if a GOCO grant is involved, must be submitted at least 45 days before closing or reimbursement)   |
| _____ | _____ | <b>Mortgage subordination</b> (if applicable)   |
|       | _____ | ordered   |
|       | _____ | received  |
| _____ | _____ | <b>Environmental Hazard Assessment</b> (Phase I) Report (if needed) (if a GOCO grant is involved, must submit 45 days before closing or reimbursement)  |
|       | _____ | ordered   |
|       | _____ | received  |
| _____ | _____ | <b>Present Conditions Report</b> (COL needs 2 copies) (if a GOCO grant is involved, must be submitted 45 days before closing or reimbursement) (see attached)   |
|       | _____ | ordered   |
|       | _____ | received  |
| _____ | _____ | <b>Final Appraisal</b> (needed within 60 days of donation of easement to comply with IRS regulations and, if a GOCO grant is involved, must submit within 100 days after the date of the grant award) |
|       | _____ | ordered   |
|       | _____ | received  |
| _____ | _____ | <b>Remoteness Letter</b> or Mineable Resource Assessment Letter (if needed)   |
| _____ | _____ | Survey (if needed) (if a GOCO grant is involved, survey or waiver request must be submitted 45 days before closing or reimbursement)  |

## SELECTION PROCESS

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- \_\_\_\_\_ Obtain Covenants, Conditions and Restrictions (if applicable)
- \_\_\_\_\_ **Legal review** by COL's counsel
- \_\_\_\_\_ Legal review by landowner's counsel
- \_\_\_\_\_ Sign purchase or option agreement if applicable (if a GOCO grant is involved, must be submitted within 100 days of grant award)

### 6. CLOSING

*Date      Initials*

- \_\_\_\_\_ **Received stewardship endowment**
- \_\_\_\_\_ Sign all legal documents
- \_\_\_\_\_ **Final Present Conditions Report** signed by COL and LO
- \_\_\_\_\_ Obtain copy of closing documents
- \_\_\_\_\_ Record CE in relevant county
- \_\_\_\_\_ **ORIGINAL RETURNED TO COL**

### 7. POST CLOSING

*Date      Initials*

- \_\_\_\_\_ COL Board acceptance of Project
- \_\_\_\_\_ Complete IRS-8283: Noncash Charitable Contributions

*Obtain 30 days after closing*

- \_\_\_\_\_ **Recorded deed** for fee title and/or conservation easement
- \_\_\_\_\_ Signed settlement statements
- \_\_\_\_\_ **Signed miscellaneous closing documents** (such as signed contract, water rights deed, closing confirmation, affidavits, tax statements, and misc. agreements and affirmations)
- \_\_\_\_\_ **Title policy** issued by the title company after closing (if necessary)

*Due 30 days after closing*

- \_\_\_\_\_ COL thank you for donation of property (easement, fee)
- \_\_\_\_\_ COL Board acceptance of any stewardship donation received (if necessary)
- \_\_\_\_\_ COL thank you for any stewardship donation received (if applicable)
- \_\_\_\_\_ Press release prepared and issued

*Due 1 year after closing*

- \_\_\_\_\_ Final Land Management Plan (if applicable)

*Due periodically after closing as agreed*

- \_\_\_\_\_ Reports and Updates – note it is necessary to review the terms of the grant agreement to understand the responsibilities in this area

\_\_\_\_\_ Administrative Follow-up steps – organization of files and securing safe storage for originals of key documents (due 30 days to 6 months)

\_\_\_\_\_ Names of landowner(s), donor(s) and other individual names forwarded to COL Development Office to receive newsletters and solicitations (due 30 days to 6 months)

**GOCO REQUIREMENTS** *(example of state government funding requirements)*

**Date**      **Initials**

*Due 60 days after date of grant award*

\_\_\_\_\_ Signed Grant Agreement

\_\_\_\_\_ Resolution of corporate authority accepting the grant

*Due 100 days after date of grant award*

\_\_\_\_\_ Qualified Appraisal

*Due 45 days prior to closing or reimbursement*

\_\_\_\_\_ Notification of closing date

\_\_\_\_\_ Project update description

\_\_\_\_\_ Draft of conservation restriction or easement

\_\_\_\_\_ Site Map of the property showing boundaries of the property preferably on a topographic map

\_\_\_\_\_ Area Map showing property and surrounding area

\_\_\_\_\_ Survey or waiver request

\_\_\_\_\_ Environmental Hazard Assessment (Phase I) Report (if needed)

\_\_\_\_\_ Copy of Title Commitment (including all documents referenced in Schedule A and Schedule B)

\_\_\_\_\_ Draft Baseline Inventory

\_\_\_\_\_ Draft Land Management Plan a.k.a. a stewardship plan

\_\_\_\_\_ Draft Monitoring Plan resulting from GOCO's stewardship policy

*Due 30 days prior to closing or reimbursement*

\_\_\_\_\_ Final Project Budget

\_\_\_\_\_ Copy of Title Policy

*Due 7 days prior to closing or reimbursement*

\_\_\_\_\_ Draft settlement statements, other closing documents and wire transfer instructions

\_\_\_\_\_ Signage plan

# ACQUISITION OF CONSERVATION EASEMENT CHECKLIST

## Rocky Mountain Elk Foundation's Conservation Easement Checklist



### Lands Department Rocky Mountain Elk Foundation CONSERVATION EASEMENT CHECKLIST

**Original:**  
January 19, 2001  
  
**Revised:**  
April 16, 2003

|                                 |                                  |  |                              |
|---------------------------------|----------------------------------|--|------------------------------|
| <b>PLEASE<br/>Print or Type</b> | Name of Project:                 |  | County and State of Project: |
|                                 | Complete Landowner Contact Info: |  | Contact Person:              |
|                                 | LPM:                             | Lead Attorney:   | Others Working on Project:   |
| <b>Legal<br/>Sign-off</b>       | <b>Lands/LPM<br/>Sign-off</b>    | <b>Item</b>  | <b>Status</b>                |
|                                 |                                  | 1. Amendment or New Easement   |                              |
|                                 |                                  | 2. Grantor Advised of Costs: baseline, stewardship donation, appraisal, recording fees, and title commitment   |                              |
|                                 |                                  | 3. Grantor Advised in Writing:<br>a. to Obtain Independent Legal/ Financial Advice?<br>b. to comply with requirements of Section 170(h) of IRS Code if a deduction will be claimed<br>c. of IRS Appraisal Requirements if gifting property valued over \$5,000?<br>And, Owner's Responsibility for valuation?<br>d. No assurances of deductibility |                              |

## ACQUISITION OF CONSERVATION EASEMENT CHECKLIST

| Legal Sign-off | Lands/LPM Sign-off | Item  | Status |
|----------------|--------------------|---|--------|
|                |                    | 4. Property Examination:<br>a. On-Site Inspection Performed?<br>b. Conservation Values Identified?<br>c. Existence of Hazardous Materials or Concerns?  |        |
|                |                    | 5. Low-Risk Determination?  |        |
|                |                    | 6. RMEF Authority:<br>a. Board Resolution & Executive Summary; or<br>b. "Low-Risk" Pocket Veto & Sign-Offs<br>c. Project Consistent with RMEF Goals & Purposes?   |        |
|                |                    | 7. Title Commitment w/ Exception Docs<br>a. Received<br>b. Reviewed & Approved<br>c. Legal Description in Easement Matches Legal Description in Title Commitment<br>d. Grantor on Easement Matches Owner on Title Commitment / Grantor has Authority to Sign<br>e. Amount of Insurance Requested \$ |        |
|                |                    | 8. Does Grantor Believe They Hold All Mineral Rights?<br>a. Any Indication in Title Info to the Contrary?<br>b. If Unclear, Remoteness Letter Received?   |        |
|                |                    | 9. Any Mortgages on the Property?<br>a. If so, Subordination Received?  |        |
|                |                    | 10. Any Leases or Other Encumbrances on the Property?<br>a. If so, Subordination Necessary?<br>b. If so, Subordination Received?  |        |
|                |                    | 11. Hazardous Materials?  |        |
|                |                    | 12. Does Property Map Match CE Legal Description?   |        |
|                |                    | 13. Access:<br>a. Legal Access to Property?<br>b. Physical Access to Property?  |        |

## ACQUISITION OF CONSERVATION EASEMENT CHECKLIST

| Legal Sign-off   | Lands/LPM Sign-off | Item   | Status |
|--|--------------------|--|--------|
|  |                    | 14. Baseline:<br>a. Ordered<br>b. Received<br>c. Reviewed & Approved by Grantor & RMEF<br>d. Baseline Acknowledgement Sent to Grantor<br>e. Signed Baseline Acknowledgement Received |        |
|  |                    | 15. Final CE Deed:<br>a. Sent To:<br>b. Date Sent:<br>c. By:   |        |
|  |                    | 16. CE Recorded:<br>a. Date:   |        |
|  |                    | 17. Final Recorded Copy in Fireproof Safe,<br>Copy to Lands File & Regional HCPM,<br>Copy to Grantor   |        |
|  |                    | 18. Thank You Letter; Letter of Acknowledgement to:<br>a. Lands Staff<br>b. Landowner  |        |
|  |                    | 19. Title Policy Issued  |        |
|  |                    | 20. Appraisal Received?  |        |
|  |                    | 21. Stewardship Donation Received  |        |
|  |                    | 22. Form 8283  |        |
|  |                    | 23. Form 8282 if necessary   |        |
| <b>THE FOLLOWING ITEMS ARE FOR ADDITIONAL CONSIDERATION:</b> |                    |  |        |
|  |                    | 24. Transaction Events Summary   |        |
|  |                    | 25. Lands Locator Summary  |        |
|  |                    | 26. Plaque   |        |
|  |                    | 27. Public Relations:<br>Bugle<br>Wapiti<br>Tracking<br>News Release<br>Key Volunteer Contact<br>RMEF Board Informed   |        |



## ACQUISITION OF CONSERVATION EASEMENT CHECKLIST

| Legal Sign-off | Lands/LPM Sign-off | Item   | Status |
|----------------|--------------------|--|--------|
|                |                    | 28. Photos   |        |
|                |                    | 29. Communication initiated with:<br>Field Director<br>Regional Director<br>Regional Development Director<br>State Chair<br>State Board Member |        |
|                |                    | 30. File Closed Out  |        |

29. Contact List as Applicable to Project: (Name, Mailing Address, Phone, Fax)

|                       |                      |
|-----------------------|----------------------|
| a. Grantor's Attorney | d. Baseline Preparer |
| b. Ranch Manager      | e. Title Company     |
| c. Geologist          | f. Appraiser         |
| d. Other              | g. Other             |

## ACQUISITION OF FEE INTEREST IN LAND CHECKLIST

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### **SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS** **Donation of Fee Checklist for the Society for the** **Protection of New Hampshire Forests Land Agent**

☐ **Pre-Acquisition**      ☐ **Permanent Ownership**

PROJECT NAME: \_\_\_\_\_

ACRES: \_\_\_\_\_

ROAD/LOCATION: \_\_\_\_\_

TOWN: \_\_\_\_\_

GRANTOR'S NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

(W) PHONE #: (      ) \_\_\_\_\_

(H) PHONE #: (      ) \_\_\_\_\_

E-MAIL: \_\_\_\_\_ FAX #: \_\_\_\_\_

**CONTACTS:** Specify role and Names/Addresses/Phone #/Fax #/E-Mail

\_\_\_\_\_  
\_\_\_\_\_

**Date  
Completed**

\_\_\_\_\_ Receive initial referral or inquiry

\_\_\_\_\_ Ask Memb. Dept. for membership status (☐Active ☐Lapsed ☐Non-member)

\_\_\_\_\_ Ask Land Prot. staffer for existing dead or inactive project file

**Send written response enclosing:**

\_\_\_\_\_ Land Prot. Options sheet

\_\_\_\_\_ Land Mgt. Mission Statement

\_\_\_\_\_ SPNHF Info sheet, Join Us brochure, & Forest Notes (if not member)

\_\_\_\_\_ Copy excerpt from protected lands map

\_\_\_\_\_ Check NH Fish & Game Dept. deer yard maps; make copy &  
add property outline

\_\_\_\_\_ Check USGS aquifer maps; if relevant, make copy & add property outline

\_\_\_\_\_ Stop at Town Offices & get:

\_\_\_ Property tax info (complete form), incl. C.U. status & recreational discount

\_\_\_ Copy of last tax bill    \_\_\_ Copy of tax map    \_\_\_ Zoning designation/regs.

\_\_\_ Possible scenic road status    \_\_\_ Possible prime wetlands designation/map

## ACQUISITION OF FEE INTEREST IN LAND CHECKLIST

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- \_\_\_\_\_ Meet w/landowner
- \_\_\_\_\_ Walk land & take prelim. photos of landowner & special features
  - Get: ☐ Copy of any existing survey map
  - ☐ Copy of current deed
  - ☐ Copy of any title abstract
  - ☐ Copy of any pending mortgage
  - ☐ Copy of other pending restrictions
  - ☐ Copy of any forest mgt. plan
- \_\_\_\_\_ Get map & rpt. from N.H. DES w/ waste sites & Source Water Protection Areas shown
- \_\_\_\_\_ Get entire town listing for all RCRA sites, for hazardwaste report
- \_\_\_\_\_ Send ltr. with: SPNHF's interest in continuing or not
  - ☐ need to obtain legal counsel & financial advice on effect of gift
  - ☐ documentation of any restrictions or commitments regarding property's use or disposition (copy to Land Prot. staffer, if appropriate)
  - ☐ wording for property sign (for permanent holding)
  - ☐ request for mgt. Funds (\$\_\_\_\_\_)
  - ☐ request landowner permission to obtain info from NHNHI
    - ☐ Received landowner's permission
  - Provide: ☐ IRS appraisal fact sheet
  - ☐ appraisers list
- \_\_\_\_\_ Confirm whether landowner wants appraisal done before vs. after gift
- \_\_\_\_\_ Confirm donor's coverage of property taxes vs. proration
- \_\_\_\_\_ Mention project at staff meeting
- \_\_\_\_\_ Ask Land Mgt. staffer for any Tree Farm Certification
- \_\_\_\_\_ Outline property on topo map showing other protected lands
- \_\_\_\_\_ Confirm Town Mtg. authorization to accept gift if Town (not Cons. Comm.) receiving. interest
- \_\_\_\_\_ Request SPNHF forester to walk site & prepare written report
- \_\_\_\_\_ Rcvd. written report from SPNHF forester
- \_\_\_\_\_ Specify new (N) vs. existing (E) Block # for property (consult forester, if appropriate); If E, specify name or Block # \_\_\_\_\_
- \_\_\_\_\_ E-mail "preliminary" Land/Easement Donor Membership Info Form (top half only) to membership dept. once project seen as likely
- \_\_\_\_\_ Send ltr. to N.H. Fish & Game
- \_\_\_\_\_ Rcvd. response from N.H. Fish & Game
- \_\_\_\_\_ Send ltr. to N.H. Division of Historical Resources
- \_\_\_\_\_ Rcvd response from N.H. Division of Historical Resources
- \_\_\_\_\_ Contact NH Natural Heritage Inventory
- \_\_\_\_\_ Rcvd response from NH Natural Heritage Inventory
- \_\_\_\_\_ Send ltr. to Selectmen requesting info re haz. waste

## ACQUISITION OF FEE INTEREST IN LAND CHECKLIST

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- \_\_\_\_\_ Rcvd. Selectmen's written response re haz. waste
- \_\_\_\_\_ Send ltr. to Town's Fire Chief requesting info re haz. waste
- \_\_\_\_\_ Rcvd. Fire Chief's written response re haz. waste
- \_\_\_\_\_ Order title abstract
- \_\_\_\_\_ Rcvd. & reviewed title abstract
- \_\_\_\_\_ Request SPNHF atty. to review title abstract
- \_\_\_\_\_ Rcvd. & reviewed atty's conclusions about title
- \_\_\_\_\_ If corporation, (profit or non-profit), check status in NH Secy. of State's Corp. Div. office; if non-profit, also check NH Atty. Gen. Charitable Trust Div.
- \_\_\_\_\_ Map soils & determine acreage of different soil types & productivity classes
- \_\_\_\_\_ Complete project description for Lands Comm. & Bd. of Trustees
- \_\_\_\_\_ Lands Committee votes to approve acceptance
- \_\_\_\_\_ Bd. of Trustees votes to approve acceptance
- \_\_\_\_\_ Evaluate survey map (incl. review of map against current deed) & request changes
- \_\_\_\_\_ Walk land to check areas not visited on prelim. visit, confirm survey work, take addtl. photos
- \_\_\_\_\_ Prepare and send draft deed & plan to SPNHF atty. for review
- \_\_\_\_\_ Receive SPNHF atty's comments
- \_\_\_\_\_ Send draft deed & plan to landowner and his/her atty. for review
- \_\_\_\_\_ Landowner's atty reviews draft deed & plan
- \_\_\_\_\_ Secure aerial photos for large properties
- \_\_\_\_\_ Request Land Prot. Staffer for 11"x17" reduction of final survey, plus full-size copy on mylar
- \_\_\_\_\_ Label all photos, & show location on reduced map
- \_\_\_\_\_ Obtain ltrs. of support from govt. entities, if appropriate
- \_\_\_\_\_ Obtain copies of mtg. mins. for any Town discussions or decisions, if appropriate
- \_\_\_\_\_ Get copy of most recent property tax bill & confirm pmnt. Status
- \_\_\_\_\_ Complete hazardous waste checklist & send to SPNHF atty for review
- \_\_\_\_\_ Rcvd. SPNHF atty approval of hazwaste checklist
- \_\_\_\_\_ Give photo & sentiment to Land Prot. staffer for award preparation
- \_\_\_\_\_ Secure donor's ok to publicity
- \_\_\_\_\_ Send closing invites: media, local officials, funders, Trustees, & Commun. Dept.
- \_\_\_\_\_ Arrange closing location/date, with J.P./Notary present

### **Closing tasks:**

- \_\_\_\_\_ Record mortgage discharge if mortgage pending
- \_\_\_\_\_ Confirm surveyor sends copy of plan, before recording, to Pl. Bd.  
(if no new lot)
- \_\_\_\_\_ Final survey plan recorded & recording data added to final deed
- \_\_\_\_\_ Grantor signs deed

## ACQUISITION OF FEE INTEREST IN LAND CHECKLIST

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- \_\_\_\_\_ Grantor signs and adds Social Security # to Declaration of Consideration Form
- \_\_\_\_\_ Inform all staff about completion, within one day after closing, including:  
grantor, # ac., town, type of transaction, and date
- \_\_\_\_\_ Give Land Prot. staffer original deed to record
- \_\_\_\_\_ Provide "Completed Project Information Sheet" to Land Prot. Staffer
- \_\_\_\_\_ Organize project file and place in fireproof cabinet within one week after closing
- \_\_\_\_\_ Send "Lands Project Summary for Communications Office" to  
communications office
- \_\_\_\_\_ Send thank you letter to donor, w/ post-gift details, incl. Form 8283, etc.
- \_\_\_\_\_ Prepare thank you ltr. for Pres/Forester to sign, incl. lifetime membership, and  
have returned to Land Prot. Staffer for mailing
- \_\_\_\_\_ Send "final" Land/Easement Donor Membership Info Form to Memb. Dept.
- \_\_\_\_\_ Identify for Land Mgt. staffer others to receive docs. besides donor, donor's atty,  
Sel., & Cons. Comm.
- \_\_\_\_\_ Obtain press releases and/or published articles
- \_\_\_\_\_ Secure mtg. mins. of Lands Committee decision
- \_\_\_\_\_ Secure mtg. mins. of Bd. of Trustees decision
- \_\_\_\_\_ Receive Mgt. Contribution (\$\_\_\_\_\_)
- \_\_\_\_\_ Send Dir. of Land Mgt. Request for gates, signs, etc. including exact wording  
for sign, suggested placement, etc.
- \_\_\_\_\_ Notify Dir. of Land Mgt. of any need for Current Use application/adjustments
- \_\_\_\_\_ Complete "Land Acquisition Information Sheet"
- \_\_\_\_\_ Complete "Data Sheet for Bookkeeping Dept.", w/ copy remaining in project file
- \_\_\_\_\_ Inform Land Mgt. staffer of completed file within 3 months after closing

### Staff time & other project expenses:

| Date | #Hours | Task | Date | \$ Amt. | Type of Expense |
|------|--------|------|------|---------|-----------------|
|------|--------|------|------|---------|-----------------|

### Oconee River Land Trust

The conservation project selection process may appear short and easy when the property is outstanding or obviously critical and the owner is willing and eager to make an agreement. However, the process should be followed in any case; its purpose is to insure prudent conservation, financial, and public credibility decisions. The conservation project selection process is designed to be used with the Project Prospectus, Baseline Document, Benefits and Risks Assessment, and Project Checklist forms.

#### **Step 1 Project Prospectus**

- Landowner contact, obtain preliminary property information:
- Conservation intent of landowner,
- Potential conservation features,
- Proposed transaction type, and
- Names and addresses of all involved in project.
- Mail introductory materials to landowner.
- Request landowner to send property maps and pertinent information for pre-site visit review.
- Assign Project Manager.
- Perform preliminary property research — gather existing material and information from various sources:
- Locate property on standard maps, and
- Determine acreage of conservation project.

#### **Step 2 Landowner Visits**

- Review and confirm conservation intent on Project Prospectus.
- Identify mutual goals.
- Discuss the project selection process and the role of each party and agree upon major responsibilities.
- Discuss protection implications for landowner(s).
- Review fee/project cost estimate.
- Project evaluator(s) makes recommendation for or against further action.
- Present Project Prospectus to Board, and obtain Board authorization to proceed. Send follow-up letter:
- Confirm landowner and land-trust goals,
- Confirm tax-deductible project fee,
- Provide information about appraisers and surveyors, and
- Request copies of deed, survey, etc.

### **Step 3 Baseline Document**

- Obtain deed and plat from courthouse (if not received).
- Determine if a survey is required.
- Walk property.
- Assess and document condition of existing resources:
- Take additional slides/photos of property,
- Key photographic documentation to a site map and standard maps,
- Annotate aerial photography,
- Complete Inventory Report,
- Complete Land History and Management Report, and
- Complete Hazards Report.
- Research and document financial and legal factors:
- Complete Financial Report,
- Complete Title and Deed Report, and
- Complete Proposed Covenants Report (reservation of rights).
- Design terms of easement (if applicable).

### **Step 4 Benefits and Risks Assessment**

- Determine if project meets goals and public benefit criteria and summarize conservation values as an exhibit to be recorded later with deed.
- Determine if an environmental audit is required; if so, donor retains qualified environmental engineer to conduct site assessment to show premises to be free of contamination from toxic and/or hazardous substances.
- Gauge community/political sentiment.
- Determine future management issues/needs.
- Set Stewardship Fund amount.
- Survey and Mark Boundaries.
- Rank project based on land trust's critical, high, moderate, or low priorities.
- Select preferred alternative.

### **Step 5 Board Assessment of Project**

- Present Benefits & Risks Assessment to Board.
- Discuss and agree on project acceptance conditions (legal, financial, and management terms and provisions).
- Send letter of intent if Board approves.

### **Step 6 Deed/Conservation Easement Draft and Negotiation**

- Negotiate terms and provisions.

### **Step 7 Mortgage Subordination**

### **Step 8 Appraisal**

- Donor provides land trust with copy of land appraisal used for state and federal charitable donation purposes.

### **Step 9 Completion of Baseline Document**

- Review Baseline Document to determine if a final site visit and/or additional photographs are necessary.
- Conduct final site visit, determine if changes have occurred to the resource, re-inventory if necessary, and document current state of the property.
- Have Baseline Document signed by landowner(s) and land trust board; it becomes legal property description.

### **Step 10 Execution and Recording**

- Board reviews and approves final documents before they are executed.
- Record deed with appropriate county clerk.
- For deed transaction, the donor provides the land trust with fully executed Transfer Gains Tax Affidavit and State Board of Equalization and Assessment Transfer Report.

### **Step 11 Administration**

- Prepare escrow instructions; close escrow & record.
- Sign IRS Form 8283 (for gifts).
- Prepare Management/Monitoring/Enforcement Plan and budget.
- Establish stewardship account with financial institution.
- Compile permanent resource management file.

### **Step 12 Distribution and Safekeeping of Documents**

### **Step 13 Publicity and Goodwill**

- Send thank-you notes to everyone involved.
- Send life membership letter to donor.
- Prepare press releases and arrange other publicity if appropriate.



## **Oconee River Land Trust Criteria for Conservation Projects**

The following criteria guide the actions of the land trust. They were developed to ensure that the Board act in a manner consistent with its vision, land conservation goals, and the Internal Revenue Service's regulations governing tax deductibility. The Board retains discretion over acquisition or disposition of projects and will evaluate each project proposal on its own merit after investigating the property, its resources, and its public benefits.

### **Goals Criteria**

Property must support the conservation values that the land trust was formed to protect.

To qualify for selection, property must meet ALL three following criteria.

1. Except for trade or income lands, the property is within the river basin.
2. Property is of sufficient size that its conservation resources are likely to remain intact and sustained despite adjacent development or there is potential for adding more acreage in the future or sufficient neighboring property is either already protected or will be. For some types of resource protection, large parcels are preferred; in other cases smaller properties may accomplish the land trust's purposes.
3. Protection of the property aids sound land use planning, promotes land conservation, and encourages careful stewardship of land and water resources.

### **Public Benefit Criteria**

To qualify for selection, property must meet AT LEAST ONE of the following 15 criteria with preference given to those projects meeting multiple public benefit criteria.

1. Project contributes to protection of lands in furtherance of federal, state, regional, or local conservation plans or policies.
  - The property is part of a critical areas plan, comprehensive land use plan, management plan, local parks and recreation plan, local zoning ordinances/regulations, or local resolution;
  - the property is, or has potential to be, part of a community, regional, state, or national hiking trail or greenway or contributes to the scenic and passive recreational attributes of such a trail or greenway by its proximity; or
  - the property is determined to be of special environmental, aesthetic, or historic significance.
2. Project contains or buffers endangered, threatened, or rare species or natural communities.

## SELECTION CRITERIA, SMALL LAND TRUSTS

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3. Project contains or buffers relatively natural wildlife habitat, exemplary or critical ecosystems, or natural features such as:
  - Old-growth forests,
  - wetlands,
  - wildlife migration routes,
  - migratory waterfowl wintering areas,
  - undeveloped bottom lands, or
  - exceptional natural communities.
4. Project contains natural features of educational or scientific value including land used, or likely to be used, for the demonstration of sustainable agriculture, horticulture, or silviculture practices or for education in methods of good land stewardship.
5. Project involves land in active agriculture or forestry use such as:
  - Property designated as prime agricultural land or as an agricultural preservation district, or
  - farms significant for scenic beauty or historic resources.
6. Project contains important hydrologic features necessary for protecting water supply, water resources, wetland habitat or for providing natural flood control such as:
  - Wetlands,
  - flood plains,
  - waterways,
  - riparian corridors,
  - aquifer recharge areas, or
  - lake shores.
7. Land borders or affects the integrity of a significant stream or river, including those designated as natural, wild or scenic rivers or classified as outstanding or high quality resource waters.
8. Project contains land that buffers or is contiguous with existing protected open land or that is likely to be protected in the foreseeable future:
  - Shares a boundary with, or is in close proximity to, a national forest, national or state park or parkway, nature preserve, or other public preserve, or
  - provides access to public land or public waters.
9. Project contains open space contributing to the scenic enjoyment of the general public:

- Has scenic attributes visible from parks, parkways and roadways, public foot trails, streams used by the public for recreation, or public use areas within state or national parks or national forests, or
  - is situated such that its development would obstruct or diminish scenic views from public use areas, interfere with views across already protected open space lands, or diminish the visual integrity of the community.
10. Property can be acquired with legal, unconditional access from a public road, unless it is contiguous with other land trust or public property open for inspection and/or public use, and public access for education or recreation is permitted if it is consistent with the protection of the resource.
  11. Project sets an important precedent for resource or open space protection in a targeted area:
    - Land that will serve as a primer for a larger land protection effort, abuts existing land-trust holdings, or represents highly significant natural resources; or
    - land along the Oconee, North Oconee, or Middle Oconee Rivers, or one of their tributaries.
  12. Land provides connection to other open protected or open space lands and is important for movement of wildlife between habitats or through developed corridors so that natural areas do not become isolated islands.
  13. Land has recognized historic, archaeological, or cultural value, especially land included in, or adjacent to, designated historic properties, and necessary for the protection of the resources, including land providing a buffer for properties of historical, archaeological, or cultural value.
  14. Land contains unique or outstanding physiographic characteristics such as geologic landforms, caves, waterfalls, cliff faces, etc.
  15. Project involves open space valuable to a community due to its proximity to developing areas or areas on which development appears imminent or due to its prominent role in how people perceive their community.
    - The property provides a buffer for active agricultural or forestry use or wildlife habitats, wetlands, flood plains, or surface water and groundwater supplies, so that its protection would diminish the negative impacts of development;
    - The property is a significant part of a community's designated greenbelt, whose future land use in natural or open space is important to the environmental quality and appearance of the community;
    - The property offers significant relief from urban closeness and/or helps define community form; or
    - A threat to the resource is imminent and of high magnitude.

### **Feasibility Criteria**

ONE or MORE of the following factors MAY preclude involvement even though the property may meet the selection criteria favoring a land protection proposal.

1. Land trust's cost for acquiring the land.
2. Property's values are primarily scenic but cannot be readily viewed by the general public.
3. Property is part of a development proposal that is likely to have significant adverse impacts on conservation resources or the public image of the land trust.
  - Development may take undue advantage of the land trust's status or reputation, or
  - Full information on all related permits, variances, or legal approvals for the development plans is not available.
4. Adjacent properties are being developed in a way that is likely to significantly diminish the conservation values of the site.
  - The surrounding land use or character prohibits potential linkage to protected lands or avoidance of potential hazardous waste sites.
5. Project would be unusually difficult or burdensome to monitor, manage, and/or enforce in perpetuity in relation to the land trust's limited financial and time resources.
  - Cost of management would prevent the land trust from fulfilling its stewardship responsibility, grantor is unwilling or unable to contribute to a stewardship fund, or there is a tax burden;
  - Multiple or fractured ownership, frequent incidence of destructive trespassing, fencing restrictions, irregular configuration, difficulty for using burning to maintain a fire-dependent ecosystem, denial of permanent legal access to the property, or other unusual long-term constraints; or
  - Special management problems and issues associated with the site preclude a sound and proper management plan.
6. Landowner insists on reserving rights or provisions in an easement or deed that would
  - Seriously diminish the property's primary conservation value or the land trust's ability to enforce protection, or
  - Restrict the land trust's use of the property and prevent or deter the land trust from its goals, such as restrictions on re-sale to government or on selling/transferring portions that have little or no significance to conservation.
7. Property cannot be negotiated or acquired by the land trust with reasonable effort in relation to the property's conservation value, size, or merit.
  - There are significant problems or defects in the title;

- There are property encroachments or easement or boundary disputes;
  - The deed does not have a proper survey or a clear property description and easily identified map prepared by a civil engineer or registered land surveyor that locates all corner points on the ground; or
  - The donor does not agree to pay all costs of property transfer such as a title search, recording fees, minor partition fees, or other property transfer costs.
8. Project may incur an unacceptable legal or financial liability because of a known threat to public health or safety or the expense of clean-up.
- Property is irreparably contaminated;
  - Property may be measurably affected by a disposal site, hazardous wastes, or air, soil, or water pollution; or
  - Property has potentially burdensome unoccupied buildings or structures, signs, markers, parking lots, trails, steps because funds for long-term maintenance are not available.
9. There is an equal or more effective way to achieve conservation through cooperation with other, or more qualified, conservation organizations, institutions, or holders, such as the town, the state, the federal government, or another non-profit agency.
10. Legal, ethical, or public image problems are associated with the acceptance of the project.
- There is a conflict of interest on the Board, interested transactions by board members or officers, or involvement in controversial projects with developers;
  - The project may jeopardize IRS non-profit status;
  - There may be a significant negative economic impact on the community;
  - The project may produce a significant negative precedent or impact on local zoning;
  - The project does not add to the diversity or continuity of the trust holdings;
  - There is opposition or no support from local property owners; or
  - There is opposition or no community or political support.
11. Administrative burdens are associated with the acceptance of the project.
- There is not sufficient enthusiasm within the land trust for the project,
  - Proper property inspection or information gathering has not been completed prior to consideration of acceptance,
  - There is not sufficient baseline data to determine compliance,
  - The language of an easement is not clear and readily understandable,
  - Staff capability and capacity do not meet project demands, or
  - There are undue opportunity costs.

**Colorado Open Lands  
Project Selection Criteria (2006)**

Project Name: \_\_\_\_\_

Landowner name: \_\_\_\_\_

Address/phone: \_\_\_\_\_

Date of Site Visit: \_\_\_\_\_

Project Map(s) Attached: ☐ Yes ☐ No

Photos Available: ☐ Yes ☐ No

Acres Involved: \_\_\_\_\_ acres

County: \_\_\_\_\_

Zoning: \_\_\_\_\_

Quad Map(s): \_\_\_\_\_

COL Priority Area: ☐ Yes ☐ No

If so, which one? \_\_\_\_\_

Type of Project: ☐ Individual Landowner Assistance

☐ Community Conservation Project

☐ Other: \_\_\_\_\_

Type of Deal: ☐ Fee Purchase by COL ☐ CE Purchase ☐ Sale to 3rd Party

☐ Fee Donation to COL ☐ CE Donation ☐ Bargain Sale

Is there a conflict of interest for COL? ☐ Yes ☐ No

If yes, describe: \_\_\_\_\_

\_\_\_\_\_

Presenter: \_\_\_\_\_

Date Reviewed: \_\_\_\_\_

Committee Members: \_\_\_\_\_

Key: **CV** = a conservation value      **CE** = a conservation easement

**Brief Description of Potential Deal:**

1. Describe in reasonable detail what the land resources and CVs are:

\_\_\_\_\_  
\_\_\_\_\_

2. Describe in reasonable detail the potential deal.

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3. Describe in reasonable detail why the project is important.

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4. Describe what the major issues may be.

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**Additional Investigation Needs:**

List additional investigation needs:

**Comments/Questions raised by the committee:**

1. \_\_\_\_\_

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2. \_\_\_\_\_

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3. \_\_\_\_\_

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**Committee Decision:**

Favorable review, project to proceed \_\_\_\_\_

Unfavorable review, project rejected \_\_\_\_\_

Project tabled, need further information and subsequent review \_\_\_\_\_

Notes: \_\_\_\_\_

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## SELECTION CRITERIA, QUALITATIVE

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### Conservation Values

#### Overall:

What are the CVs?

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Are the CVs equal or are some more important than others?

☐ Equal? ☐ Prioritized?

If CVs are prioritized, please list them in order of priority: \_\_\_\_\_

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What CVs are most important to COL and to the landowner (LO)?

COL: \_\_\_\_\_

LO: \_\_\_\_\_

Yes No

- ☐ ☐ Is the property of a sufficient size and location to protect the CVs?
- ☐ ☐ Is the property large enough so that conservation resources remain intact in the face of potential development on adjacent properties? If not, what are these threats and how immediate are they?
- ☐ ☐ Will the water rights remain with the property? If not, describe how the CVs might be jeopardized if the water is removed:

**Natural Resources Conservation Values:** (from IRS regs 1.170-14(d)(3)) The protection of a relatively natural habitat for fish, wildlife, or plants, or similar ecosystem as well as the protection of critical species.

- a. Identify the habitat.
- b. Identify the extent to which the habitat or environment has been altered by human activity.
- c. Identify habitats for rare, endangered, or threatened species of animals, fish, or plants.
- d. Identify natural areas that represent high quality examples of terrestrial or aquatic communities.
- e. Identify natural areas which are included in, or contribute to, the ecological viability of a local, state or national park, nature preserve, wildlife refuge, wilderness area, or other similar conservation area.
- f. Identify the type of public access to the Property.



Yes No

- ☐ ☐ Contains relatively natural wildlife habitat ecosystems?
- |  |  |
|--|--|
| <input type="checkbox"/> Grasslands    | <input type="checkbox"/> Alpine Tundra |
| <input type="checkbox"/> Forests       | <input type="checkbox"/> Shrublands    |
| <input type="checkbox"/> Riparian Area | <input type="checkbox"/> Other:        |

Comments:

- ☐ ☐ Contains significant hydrological features?
- |                                      |  |
|--------------------------------------|--|
| <input type="checkbox"/> Wetlands    | <input type="checkbox"/> Floodplains           |
| <input type="checkbox"/> Bogs        | <input type="checkbox"/> Springs               |
| <input type="checkbox"/> Ponds/lakes | <input type="checkbox"/> River/stream corridor |
| <input type="checkbox"/> Fens        | <input type="checkbox"/> Aquifer Recharge Area |
| <input type="checkbox"/> Other:      |  |

Comments:

- ☐ ☐ Contains an Endangered/Threatened Species listed by the Feds or the state?
- ☐ Unknown at this time
- Name of Species:
- Name of Species:
- Name of Species:
- ☐ ☐ Contains a species of special concern to the Feds or the state?
- ☐ Unknown at this time
- Name of Species:
- Name of Species:
- Name of Species:
- ☐ ☐ Contains a unique natural feature important to the area?
- Type of Feature:
- Type of Feature:
- ☐ ☐ Buffers relatively natural habitats? Describe:
- ☐ ☐ Buffers or is close to existing protected land? Describe:
- ☐ ☐ Provides connection to other protected or open space lands important for movement of wildlife between habitats? Describe:

**Open Space Conservation Values:** (from IRS regs 1.170-14(d)(4)) The preservation of open space (including farmland and forest land) where such preservation is for the enjoyment of the public and pursuant to a clearly delineated federal, state, or local governmental conservation policy.

- ☐ ☐ Is there a clearly delineated federal, state, or local governmental policy for open space preservation in the area?

Describe:

- ☐ ☐ Does preservation of the Property further a specific, identified conservation project?

## SELECTION CRITERIA, QUALITATIVE

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- ☐ ☐ Is the Property contiguous to, or an integral part of, the surroundings of existing recreation or conservation sites?
- ☐ ☐ Does the government program involve a significant commitment, including preferential tax assessments or zoning, by the government?
- ☐ ☐ Is it funded?
- ☐ ☐ Does the project preserve a wild or scenic river?
- ☐ ☐ Will the easement be accepted by a government agency?
- ☐ ☐ If so, does the agency have a review process?
- ☐ ☐ Does the project set an important precedent for resource or open space protection in an area of importance to the federal, state or local governments?
- ☐ ☐ Does this open space project yield a significant public benefit? How?
- ☐ ☐ Provides scenic views from public roadways, waterways or recreation areas?
- ☐ ☐ Is unique to the area?
- ☐ ☐ Is consistent with existing public programs?
- ☐ ☐ Is consistent with existing private programs?
- ☐ ☐ Prevents the degradation of the scenic, natural, or historic character of the area?
- ☐ ☐ Provides opportunity for the general public to use the property or appreciate its scenic values?
- ☐ ☐ Contributes to preserving a local or regional landscape or resource that attracts tourism or commerce?
- ☐ ☐ Provides relief from intense land development in the vicinity?
- ☐ ☐ Is there a likelihood the donee will acquire equally desirable and valuable substitute property? If so, describe:
- ☐ ☐ Is the cost of enforcement excessive? If so, describe:
- ☐ ☐ Does the population density of area affect this project?  
If so describe:
- ☐ ☐ Is this project consistent with legislatively mandated program identifying particular properties for future protection? If so, describe:
- ☐ ☐ Does the easement permit a degree of intrusion or future development that would interfere with the governmental conservation policy that is being furthered by the use? If so, describe:

**Agricultural Lands Conservation Values** *(IRS regulations do not speak directly to the preservation of agriculture. For whatever information we need, look in 1.170-14(d)(4))*

- ☐ ☐ Does the project preserve farmland pursuant to a state program for flood prevention and control?
- ☐ ☐ Is in active agricultural use or is an example of historic agricultural use?
- ☐ ☐ Is the agricultural operation viable as a stand-alone entity according to the landowner?
- ☐ ☐ Is any portion of the property irrigated?  
☐ Hayfield(s)?                      ☐ Pasture(s)?

- ☐ ☐ Does the agricultural operation depend on leasing other lands?  
Describe:
- ☐ ☐ Is the property adjacent to other agricultural and/or leased lands?
- ☐ ☐ Is it important that the property is adjacent to other agricultural lands?
- ☐ ☐ Is there sufficient infrastructure in the area to support a viable agricultural operation?
- ☐ ☐ Does the property possess soils of national, state or local importance?
- ☐ ☐ Does the property have adequate water rights to support the agricultural operation? If not, what contingency measures can be included to permit the land to be restored to native vegetation:

**Scenic Conservation Values:** (from IRS regs 1.170-14(d)(4)) Identify the significant public benefits the general public will enjoy through preservation of the Property.

- ☐ ☐ Development of the Property would impair the scenic character or a scenic panorama.
- ☐ ☐ Is the land use compatible with other land use in the vicinity?
- ☐ ☐ Will the general public enjoy sufficient visual access to or across the Property?
- ☐ ☐ Does the easement permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land?
- ☐ ☐ Is the property open?
- ☐ ☐ Does the property provide relief from urban closeness?
- ☐ ☐ Is the scenic view consistent with a regional or local landscape inventory?
- ☐ ☐ Is the scenic view consistent with a methodical state scenic identification program?
- ☐ ☐ Does the land use maintain the scale and character of the urban landscape to preserve open space, visual enjoyment, and sunlight for the surrounding area?
- ☐ ☐ Is there a degree of contrast and variety provided by the visual scene?
- ☐ ☐ Are there a harmonious variety of shapes and textures?

**Historic Conservation Values:** (from IRS regs 1.170-14(d)(5)) The preservation of a historically important land area or certified historic structure.

- ☐ ☐ Does the project preserve an independently significant land area including any related historic resources that meets the National Register Criteria for Evaluation in 36 CFR 60.4?
- ☐ ☐ Does the project preserve any land area within a registered historic district including any buildings on the land area that can reasonably be considered as contributing to the significance of the district?
- ☐ ☐ Does the project protect any land area adjacent to a property listed individually in the National Register of Historic Places, but not within a registered historic district?
- ☐ ☐ Does the project protect a historic structure listed in the National Register?

## SELECTION CRITERIA, QUALITATIVE

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- ☐ ☐ Does the project protect a historic structure located in a registered historic district and has historic significance to the district?
- ☐ ☐ Is there visual public access to the land area or historic structure?

**Outdoor Recreation and Education Values:** (from IRS regulations 1.170-14(d)(2)). The preservation of land areas for outdoor recreation by, or the education of, the substantial and the general public.

- ☐ ☐ Contains or has potential to contain natural features of recreational, educational or scientific significance? If yes, describe:
- ☐ ☐ Provides public access for education or recreation?

1. Identify the outdoor recreation or education opportunities:

2. Identify the type of public access to the property and limitations on the access:

### Feasibility Checklist

#### Specific Project Issues:

Does the project have any problems associated with:

Tax/Legal Issues?

- ☐ Unknown   ☐ No Problem   ☐ Problems   ☐ Resolvable   ☐ Unresolvable

Comments:

Title Issues

- ☐ Unknown   ☐ No Problem   ☐ Problems   ☐ Resolvable   ☐ Unresolvable

Comments:

Minerals?

- ☐ Unknown   ☐ No Problem   ☐ Problems   ☐ Resolvable   ☐ Unresolvable

Comments:

Hazardous materials?

- ☐ Unknown   ☐ No Problem   ☐ Problems   ☐ Resolvable   ☐ Unresolvable

Comments:

Legal (and saleable) parcels?

- ☐ Unknown   ☐ No Problem   ☐ Problems   ☐ Resolvable   ☐ Unresolvable

Comments:

Project Funding?

- ☐ Unknown   ☐ No Problem   ☐ Problems   ☐ Resolvable   ☐ Unresolvable

Comments:

Other? Comments:

**Support/Leverage:**

- ☐ ☐ Does the project support and/or partner with other public or private entities?  
Which?
- ☐ ☐ Does the project leverage the resources of other public or private organizations?  
Which?
- ☐ ☐ Is the project free of conflicts with other conservation projects/priorities in process by a public or private entity? If there is a conflict what is it?

**Issues for COL**

***Issues associated with owning the property in fee:***

- ☐ ☐ Answer yes, if COL is the more suitable owner rather than any other entity.  
If not, explain:
- ☐ ☐ Does COL intend to hold the property in perpetuity? If not, describe the exit strategy proposed/possible for this property:
- ☐ ☐ Is the tax burden created by the ownership of this property acceptable to COL.  
If not, explain:
- ☐ ☐ Does owning the property create an acceptable liability for COL?  
If not, describe how COL can resolve the liability problems:
- ☐ ☐ Does the seller or funding partner require any conditions that significantly diminish the property's CVs. If so, describe the conditions and the potential adverse affects on the CVs:
- ☐ ☐ Is there more than one legally described parcel that could be sold separately for a residence? If so, describe:

***Issues associated with holding the conservation easement:***

List the major structures, improvements, and infrastructure currently on the property

List the reserved rights desired by the landowner:

What is the local zoning?

How much development is permitted under the above zoning?

What development rights is the landowner giving up?

- ☐ ☐ Is COL the most suitable owner/CE holder? If not, explain:
- ☐ ☐ Are there any reserved rights that would significantly diminish the property's CVs? If so, what are these provisions:
- ☐ ☐ Is the holding of this conservation easement free from any other known problems? If not, please describe:
- ☐ ☐ Is the landowner able to pay the transaction costs and the stewardship endowment? If not, describe the situation and how these costs can be met:
- ☐ ☐ Will COL, by holding the CE, take on liability problems? If so, describe the liability issues:

## SELECTION CRITERIA, QUALITATIVE

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- ☐ ☐ Is there more than one legally described parcel that could be sold separately for a residence? If so, describe:

### **Project Related Issues for COL**

- ☐ ☐ Does this project extend or buffer adjacent/nearby COL holdings? Which?
- ☐ ☐ Does this project establish a toehold in a new area of interest for COL? Which?
- ☐ ☐ Will COL have adequate authority to complete the project and/or carry out its long-term obligations? If not, why?
- ☐ ☐ Is the attitude of immediate neighbors and the general community regarding the project supportive? If not, why?
- ☐ ☐ Was the project rejected by another land trust or governmental entity? If so describe by whom and why?

### **Committee Questions:** (to be answered to the best of the presenter's ability)

- ☐ ☐ Is the project consistent with COL's current strategic plan?  
If not, describe why staff should consider it further:
- ☐ ☐ Does COL have sufficient staff expertise? If not, describe what is needed:
- ☐ ☐ Does COL have sufficient staff time? If not, describe what is needed:
- ☐ ☐ Does COL have sufficient management capacity? If not, describe what is needed:
- ☐ ☐ Does COL have sufficient financial resources? If not, please describe:

## Lancaster Farmland Trust's Farm Scoring System

### Mission of the Lancaster Farmland Trust

Lancaster Farmland Trust is a private, non-profit organization working to preserve the rich and productive farmland of Lancaster County, to support good stewardship of the land, and to encourage a thriving agricultural economy, recognizing that our farm heritage enriches the lives of all citizens.

### Lancaster Farmland Trust Farm Scoring System

This system is intended to be used as a guide for the Board of Trustees and to assist in deciding the dollar amount to offer a farm owner for a conservation easement. It is not intended to be used to rank farms against one another. There are five categories, totaling 100 points. Because most areas of Lancaster County contain excellent soils, it was thought that soils should not be emphasized as much as development pressure.

**I. 20 points SOILS** – this score measures the soil productivity of a farm, using the same system as the County's Clean & Green measurements.

- |  |           |
|--|-----------|
| 1. Eighty percent or more class I and II prime soils | 20 points |
| 2. Fifty-eighty percent class I and II prime soils   | 15 points |
| 3. Fifty percent class I, II, III soils              | 10 points |

**II. 30 points DEVELOPMENT PRESSURE** –prioritize those farms under the most development pressure.

- |  |           |
|--|-----------|
| A. Proximity to the edge of an Urban Growth Area   |           |
| 1. adjacent to an UGB                              | 10 points |
| 2. within ½ mile of an UGB                         | 7 points  |
| 3. within 1 mile of an UGB                         | 4 points  |
| B. Proximity to public sewer and water service     |           |
| 1. adjacent to existing service area               | 10 points |
| 2. within ½ mile of existing service area          | 7 points  |
| 3. within 1 mile of existing service area          | 4 points  |
| C. Number of Feet of Road Frontage                 |           |
| 1. extensive, developable road frontage (2,000' +) | 10 points |
| 2. moderate road frontage (500'-2,000')            | 7 points  |
| 3. limited frontage (50'-500')                     | 4 points  |

**III. 30 points FARM VIABILITY** – the capability of a farm to be farmed generations from now. This is not meant to take into consideration the type of current farm operation.

- |   |           |
|---|-----------|
| A. Size of farm – emphasize a greater than county average of 84 acres |           |
| 1. farm size of 100 acres or greater                                  | 10 points |
| 2. farm size of 50-100 acres  | 7 points  |
| 3. farm size of less than 50 acres                                    | 4 points  |

## SELECTION CRITERIA, QUANTITATIVE

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- B. Stewardship (soil and water conservation practices)
  - 1. farm is operated with a documented plan of soil and water conservation measures which has been reviewed by the Conservation District or by Trust Staff 10 points
  - 2. Farm is operated with some soil and water conservation techniques 5 points
- C. Percentage of Harvested Cropland and Pasture
  - 1. 75% or greater harvested cropland and pasture 10 points
  - 2. 50-75% harvested cropland and pasture 7 points
  - 3. less than 50% harvested cropland and pasture 4 points

**IV. 10 points FARMLAND CONCENTRATION POTENTIAL** – LFT prioritizes those farms which are near other preserved farms and have the potential to build a “cluster” of preserved farms; however, a farmer willing to be the first landowner to preserve in his area also is prioritized.

- A. Distance from other preserved farms
  - 1. adjacent to one or more preserved farms 10 points
  - 2. within ½ mile of a preserved farm or adjacent to an applicant to the County Agricultural Preserve Board 8 points
  - 3. the first farm in preserve in a geographic area 10 points

**V. 10 points SPECIAL CHARACTERISTICS** – are unique or subjective factors which staff and Board believe add intangible value to the farm, and may include:

- 1. the farm is located in a specific LFT geographic priority areas
- 2. the farmer is very committed to preservation and wishes to have an especially restrictive conservation easement on his farm.
- 3. the farm is greater than the average size for its region
- 4. special fundraising – funds could be recouped from a different source at a later date or the project itself would lend well to special fundraising
- 5. there is obviously a deep family commitment to farming and agriculture – for example, more than one generation of the family shows a commitment to farming
- 6. the farm contains important wildlife habitat, woods or wetlands – landowner is interested in protecting all natural aspects of the landscape as an ecological unit
- 7. the farm is owner-operated, not rented out
- 8. the project will be completed in partnership with other agencies and is a model of collaboration



**South County Conservancy, Inc.  
Ranking and Priority Point System**

| Criteria   | 0                | 1                   | 2                      | 3                                 |
|--|------------------|---------------------|------------------------|-----------------------------------|
| Size of Parcel   | <1 acre          | 1-5                 | 5-10                   | Over 10 acres                     |
| Groundwater protection   | No impact        | Wellhead protection | Aquifers               | Recharge areas                    |
| Proximity to other protected land or to ponds or barrier beaches       | >1/2 mile        | ¼ to ½              | <1/4 mile away         | Abutting or connecting such areas |
| Ecologically significant habitat                                       | Degraded Habitat | Average             | Above average          | Prime habitat                     |
| Farmland Preservation  | No               | Inactive farm       | Active farm < 10 acres | Active farm >10 acres             |
| Potential to offset impact of development: # of housing units possible | 0                | 1-10                | 11-20                  | Over 20                           |
| Protects rural character   | Minimal          | Low                 | Medium                 | High                              |
| Historic value   | Minimal          | Low                 | Medium                 | High                              |
| Scenic value   | Minimal          | Low                 | Medium                 | High                              |
| Price to SCC   | >\$25,000        | 10-25,000           | Up to \$10,000         | 0                                 |

Each parcel will be evaluated on the 10 criteria above. For each criterion a point score will be assigned, with the maximum score possible of 30. Projects scoring 14 or above will be considered priority projects. Projects scoring less than 14 will be put on a list for possible later consideration. Exceptions to this priority ranking may be made in cases where funding is immediately available and may be lost by delay. Flexibility may also be needed due to the timing of the agreement and needs of the landowner. If projects are selected for these exceptions, the recommendation to proceed with the project must be documented in writing.

Projects that meet the threshold rank of 14 may be funded whenever agreement can be reached with the owner, SCC and any other party participating in the project.

## Check Your Progress

Before moving on to the next chapter, check that you can accomplish the following:

- ☐ Describe the value of a formal process for selecting projects;
- ☐ Apply the elements of a good selection process, including: landowner contact, site inspection, review against criteria, and evaluation of stewardship responsibilities;
- ☐ Describe the elements that are included in selection criteria, which could include: consistency with the land trust mission and priorities, identification of the conservation values, public benefit of transactions, organizational capacity, federal and state requirements, feasibility, and capacity to fulfill stewardship responsibilities;
- ☐ Create or refine written project selection criteria;
- ☐ Describe the role of the land trust board in reviewing project selection;
- ☐ Describe how a land trust informs the landowner of the project selection process and keeps him or her informed as the project is evaluated;
- ☐ Evaluate whether the land trust has the capacity to take on the stewardship responsibilities of the project.
- ☐ Know when and how to reject a project while still maintaining good landowner relations;
- ☐ Develop a system to track projects once they are under consideration;
- ☐ Identify whether projects are consistent with the land trust's mission, goals and strategic plan;
- ☐ Assess the financial and staff implications of the project against the land trust's resources;
- ☐ Ensure that the land trust's resources are applied prudently to the projects that most significantly achieve the organization's mission;
- ☐ Ensure that the land trust's future activities stay focused on the goal of protecting the conservation values, and begin a formal record of the project; and
- ☐ Develop a coordinated staff response to the landowner(s) (and others) who have requested the land trust's participation in the project.

## This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



## Chapter 2 • IRS Requirements and Public Benefit

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### Practice 8D: Public Benefit of Transactions

The land trust evaluates and clearly documents the public benefit of every land and easement transaction and how the benefits are consistent with the mission of the organization. All projects conform to applicable federal and state charitable trust laws. If the transaction involves public purchase or tax incentive programs, the land trust satisfies any federal, state or local requirements for public benefit.

Land trusts have a legal and ethical obligation to ensure that each land conservation project they pursue serves the public benefit. Land trusts exist as public charities organized under IRC Section 501(c)(3) and, as such, are tax-exempt organizations with a duty to engage in activities that benefit the community at large, not a privileged few. Therefore, all land conservation transactions must provide some public benefit. It is the land trust's obligation to uphold the public's trust in land conservation and to ensure that projects meet the public benefit mission of the organization. In order to ensure that projects have a public benefit, land trusts may want to start by incorporating the Internal Revenue Code's conservation purposes test into their criteria to help ensure that any transactions involving a federal or state income tax deduction (or credit) meet these tests. In addition, every project should be consistent with federal and state charitable trust laws. For purchased easements using federal, state or local dollars, any additional requirements for public benefit also need to be met. All conservation easements should document the public benefit of the transaction in the easement itself. For non-easement projects, the project file should contain some documentation of the public benefit served by the transaction.

— Adapted from *The Land Trust Standards and Practices Guidebook: An Operating Manual for Land Trusts*

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### Learning Objectives

After studying this chapter, you should be able to:

- Determine if a project meets applicable federal, state and local requirements, especially the Internal Revenue Code's conservation purposes test;
- Understand and incorporate the Internal Revenue Code conservation easement purposes language into your project selection criteria;
- Define what “public benefit” means;
- Evaluate and document the public benefit of every land and easement transaction;

- Understand the link between public benefit and the land trust's mission; and
- Ensure that the project does not result in impermissible private benefit or any private inurement.

## Summary

Land trusts are organized as nonprofit, tax-exempt public charities under Section 501(c)(3) of the Internal Revenue Code and thus are required by law to operate in a manner that provides a public benefit through every conservation project they complete. Because landowners may receive substantial tax benefits as the result of a transaction with a land trust, land trusts must justify this expenditure of public funds by operating in a manner that clearly benefits the general public. Ensuring that every conservation project provides a public benefit is critical to land trust operations, but it can be challenging to understand exactly how this is accomplished. In this chapter, you will learn how your land trust can satisfy this practice.

Incorporating the Internal Revenue Code's conservation purposes test into project selection criteria is one way of analyzing the public benefit, but not all fee or conservation easement acquisitions will meet this test. Therefore, land trusts must create a process within the organization that will ensure that no project is pursued unless it clearly provides some lasting benefit to members of the land trust's community. This process should not only address the conservation benefits of a particular project, but also prevent the land trust from conveying an impermissible amount of private benefit or any private inurement; *all* nonprofit Section 501(c)(3) organizations are prohibited by federal law from conferring such prohibited benefits. The results of the public benefit analysis process should always be set forth in a written document (a memorandum, detailed minutes of board or committee meetings, or other instrument) and should be kept in the project file for projects that will be pursued by the land trust, or in a rejected project file or similar location for those projects the land trust decides to abandon.

The importance of ensuring that all land trust actions show significant public benefit — to the advantage of each land trust and the land trust movement as a whole — was expressed persuasively by Stephen J. Small in his plenary speech at the National Land Conservation Conference, Rally 2003:

Ninety to 95 percent of the conservation easement deals in this country are still done primarily right. But we are now starting to see a very disturbing trend. We are starting to see bad deals

out there; we are starting to see bad promoters out there; we are starting to see a lot of egregious advice coming from the professional planning community. The media is watching us, Congress is watching us, some donors are beginning to get a bit skittish, and the whole mood is starting to change. That is the chill in the air . . .

What Congress wanted to do was to provide an income tax incentive — a deduction — for landowners who protected open space, farmland, forestland, wildlife habitat and scenic property. Congress wanted to provide an income tax deduction for people who protected land with important conservation values, not for people who developed large estate lots in gated communities with some woodland buffer around and between the house lots.

Land trusts that do not adopt procedures and policies to ensure that each and every transaction they complete provides a significant public benefit risk the loss of their charitable status and the loss of their community's support. Understanding the Internal Revenue Code provisions applicable to conservation transactions, and adopting procedures that ensure the land trust meets all federal, state and local requirements for public benefit and complies with charitable trust laws, is critical to operating a land trust in a legal, ethical and professional manner.

## Self-Assessment

Please answer as many of the following questions as you can; see the notes that follow to evaluate your responses. Answers to the questions follow the notes.

1. Can you describe categories of land that, if protected with a conservation easement, would satisfy the Internal Revenue Code's conservation purposes test?
2. Why must a land trust only accept conservation projects that provide a public benefit?
3. Can you explain what constitutes a "public benefit"?
4. Can you explain what is meant by the statement: "A charitable organization is prohibited from conferring an impermissible private benefit"?
5. How much private inurement is permitted to be conferred by a land trust? Briefly describe what this means.
6. In addition to meeting the requirements of the Internal Revenue Code, what other laws might apply to a land trust's project selection analysis?

If you are able to answer each of these questions confidently and correctly, congratulations, you understand IRS requirements and other legal requirements applicable to land trust project selection.

If you are unsure of any of these answers, or unable to answer one of the questions, it is critical that you increase your knowledge about the legal requirements that must be met — and documented — for every land trust project.

## Answers

1. The categories of land that, if protected with a conservation easement, would satisfy the Internal Revenue Code's conservation purposes test are:
  - The preservation of land areas for outdoor recreation by, or the education of, the general public;
  - The protection of a relatively natural habitat of fish, wildlife or plants, or similar ecosystem;
  - Open space (including farmland and forestland) that is either preserved for the scenic enjoyment of the general public, or protected pursuant to a clearly delineated federal, state or local governmental conservation policy, and that will yield a significant public benefit; or,
  - The preservation of a historically important land area or a certified historic structure.
2. Land trusts, as nonprofit organizations, must be qualified as a public charity under IRC Section 501(c)(3) in order to receive tax-exempt status and accept conservation easements that may qualify for federal tax benefits. Public charities are obligated by federal law to operate for the benefit of the community at large rather than for the benefit of select individuals.
3. "Public benefit," when applied to land conservation transactions, means those transactions that satisfy the conservation purposes test of Section 170(h) of the Internal Revenue Code and its accompanying Treasury regulations and that benefit the land trust's community in general, rather than benefiting a select, or a few select, individuals.
4. As a nonprofit organization that works to conserve lands in a particular area or region, the land trust's work will necessarily confer some benefit on certain individuals (the landowner who donates the easement and receives a tax deduction, the landowner's



neighbors who benefit from the conservation of adjacent open space, etc.). This level of benefit is generally considered “permissible” because such benefits are “incidental” to the land trust’s mission of conserving land in and for its community. A benefit conferred on a private individual is *impermissible* if that benefit is substantially greater than the incidental benefit conferred by the land trust’s work on members of the community.

5. Private inurement occurs when the net earnings of a tax-exempt organization, like a nonprofit land trust, are distributed to an “insider” (staff, board members, substantial donors, etc.). Federal tax law prohibits tax-exempt organizations from creating *any* private inurement. For a detailed discussion of private inurement and private benefit, see the Land Trust Alliance course “Avoiding Conflicts of Interest and Running an Ethical Land Trust.”
6. Federal or state charitable trust and nonprofit laws and regulations guiding federal or state grant funding.

## Internal Revenue Code Conservation Easement Criteria

*For a complete discussion of the tax code requirements under Section 170(h) and the accompanying Treasury Regulations, see the Land Trust Alliance course “Tax Benefits and Appraisals of Conservation Projects.”*

Not all conservation easements qualify for federal tax benefits — only those that comply with the provisions of Internal Revenue Code (IRC) Section 170(h) and with Treasury Regulations (Regs.) Section 1.170A-14. In order to qualify for tax benefits, among other requirements, a conservation easement must meet the “conservation purposes” test of the regulations set forth in Section 1.170A-14(d)(1). Practice 10A suggests that land trusts be familiar with both the Internal Revenue Code and any other federal or state requirements for conservation transactions.

**Practice 10A. Tax Code Requirements.** The land trust notifies (preferably in writing) potential land or easement donors who may claim a federal or state income tax deduction, or state tax credit, that the project must meet the requirements of IRC §170 and the accompanying Treasury Department regulations and/or any other federal or state requirements. The land trust on its own behalf reviews each transaction for consistency with these requirements.

The conservation purposes test set forth in the regulations is met if an easement is donated *exclusively* for one or more of the following purposes:

1. The preservation of land areas for outdoor recreation by, or the education of, the general public;
2. The protection of a relatively natural habitat of fish, wildlife or plants, or similar ecosystem;
3. Open space (including farmland and forestland) that is either preserved:
  - a. For the scenic enjoyment of the general public; or
  - b. Pursuant to a clearly delineated federal, state or local governmental conservation policy; and
  - c. That will yield a significant public benefit; or
4. The preservation of a historically important land area or a certified historic structure.

In effect, the adoption of these categories of natural resources by Congress as worthy of federal tax benefits represents the identification of the types of land that are of national interest for preservation. Although land trusts do occasionally accept conservation easements that do not meet the conservation purposes test, failure to meet this test should be seen as a red flag. In this case, the land trust should make a special effort to define exactly what public benefit is served by the acceptance or purchase of such an easement.

Because properties with these characteristics have been recognized nationally as worthy of protection, these purposes should be included as part of any conservation organization's selection criteria — even those that purchase easements at fair market value. The regulations provide a great deal of assistance in helping a land trust determine what factors should be present to satisfy the conservation purposes test, and provide a good starting point for the creation of your own land trust's selection criteria that incorporate the IRC requirements. (See chapter 1 for more information about selection criteria.)

Easements that are not intended to qualify for federal tax benefits must still satisfy their state's conservation easement enabling statute.\* For example, the Texas Natural Resource Code, Chapter 183, allows conservation easements to be used to "maintain or enhance air or water quality." Therefore, land trusts in Texas may well wish to include this item as one of the criteria they will examine when proceeding through their project selection process. State statutes, such as the Texas statute, may allow for additional resources or values to be protected by a conservation easement.

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\* For links to all state conservation easement enabling statutes go to the Land Trust Alliance's digital library on The Learning Center.

## Public Benefit

Because land trusts are organized as charitable organizations under IRC Section 501(c)(3), a land trust must draft its mission statement to reflect the organization's obligation to provide a public benefit through its operations. Practice 1A (Mission) requires that a mission statement specify what public interests a charitable organization will serve. Charitable organizations are prohibited by law from taking actions that result in private inurement or impermissible private benefit.

Some land trusts view their role as providing a service to landowners, and indeed this is an important part of any land trust's work, but the service provided to these landowners must *always* result in a public benefit. A land trust cannot limit its work solely to completing projects requested by landowners in order to assist those landowners in securing federal and/or state tax benefits or other benefits. A land trust must always ensure that the conservation values it identifies, in accordance with Practice 8F, are those that will provide a public benefit.

**Practice 8F. Documenting Conservation Values.** The land trust documents the condition of the important conservation values and public benefit of each property, in a manner appropriate to the individual property and the method of protection.

One of the most important roles a land trust board of directors provides is to evaluate projects for their public benefit. Practice 3F requires that all projects receive board review and approval and that the board receive sufficient information to make such decisions.

**Practice 3F. Board Approval of Land Transactions.** The board reviews and approves every land and easement transaction, and the land trust provides the board with timely and adequate information prior to final approval. However, the board may delegate decision-making authority on transactions if it establishes policies defining the limits to that authority, the criteria for transactions, the procedures for managing conflicts of interest, and the timely notification of the full board of any completed transactions, and if the board periodically evaluates the effectiveness of these policies.

Land trusts may implement this practice differently but, at a minimum, the board must have sufficient information to determine:

- If a proposed project is consistent with the organization's mission, goals and strategic plan;
- Whether the project provides a significant public benefit; and



A land trust must always ensure that the conservation values it identifies, in accordance with Practice 8F, are those that will provide a public benefit.

- Whether the project meets the organization's selection criteria (including the IRC's conservation purposes test).

Some land trusts use a committee of the board or staff to fulfill this function, followed by notification of the full board of completed projects, as permitted by this practice. In this instance, the same requirements must be met for projects reviewed by the committee or staff.

What, exactly, is meant by "significant public benefit"? One relatively easy way to meet this test is to provide public access to a conserved property for recreation and/or educational purposes. The fee acquisition of conservation land commonly allows such access to an extent. Generally, though, conservation easements do not allow for public access because of landowners' concerns about intrusions on their privacy, the potential for trespassing beyond established public access routes, worries about theft or vandalism, or interference with the landowners' uses of their land. The Internal Revenue Code and Treasury regulations provide detailed assistance in helping a land trust determine if a particular open space, farmland or forestland conservation easement project constitutes a "significant public benefit," and land trusts would be wise to incorporate or adapt these factors to apply to fee acquisition projects as well.

Specifically, the regulations list the following factors to consider:

- The uniqueness of the property to the area;
- The intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development);
- The consistency of the proposed open space use with public programs (whether federal, state or local) for conservation in the region, including:
  - Programs for outdoor recreation;
  - Irrigation or water supply protection;
  - Water quality maintenance or enhancement;
  - Flood prevention and control;
  - Erosion control;
  - Shoreline protection; and,
  - Protection of land areas included in, or related to, a government-approved master plan or land management area;
- The consistency of the proposed open space use with existing private conservation programs in the area, as evidenced by other land protected by easement or fee ownership by nonprofit organizations in close proximity to the property;

- The likelihood that development of the property would lead to or contribute to degradation of the scenic, natural or historic character of the area;
- The opportunity for the general public to use the property or to appreciate its scenic values;
- The importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;
- The likelihood that the land trust will acquire equally desirable and valuable substitute property or property rights;
- The cost to the land trust of enforcing the terms of the conservation easement;
- The population density in the area of the property; and
- The consistency of the proposed open space use with a legislatively mandated program identifying particular parcels of land for future protection.

Adapting these factors into a land trust's selection criteria and public benefit analysis, whether for acquisitions of conservation easements or fee ownerships, will help ensure that all projects result in a public benefit.

Public benefit is also defined in part as what it is not — *a conference of impermissible private benefit*. Charitable organizations qualified under Section 501(c)(3) of the Internal Revenue Code are prohibited from conferring *any* benefit that constitutes private inurement or an impermissible amount of private benefit.

Private benefit occurs when an organization provides *more than an incidental benefit* to a private entity, including an unrelated private party. Because organizations with tax-exempt status must demonstrate that they are organized and operated exclusively for charitable purposes, which contemplates *some* benefit to the public at large, the IRS considers an organization that benefits private interests in anything *more than* an insignificant or incidental fashion to have failed this test.

From a land trust's perspective, incidental benefits may include conducting land planning for a landowner as part of the protection project, or conserving land next door to a landowner — activities that land trusts regularly engage in during the performance of their mission. So some private benefit is unavoidable in the operation of a conservation organization, but it must be *incidental* to the land trust's serving the public as a whole.

Determining whether or not a land trust has conferred more than an incidental amount of benefit is a *balancing* test. Examples of what likely



**Private benefit** occurs when a tax-exempt organization provides more than an “incidental” benefit to a non-insider. Although charitable organizations such as land trusts may provide benefits to private individuals, federal tax-exempt law prohibits more than an “incidental” benefit. The IRS prohibition on private benefit is absolute. Incidental benefits are considered to be those benefits that are insubstantial when measured in the context of the overall public benefit conferred by the activity. Incidental benefits occur as part of the nonprofit's public purpose and activity, which cannot be achieved without benefiting some private individuals. For example, the incidental benefits to an adjoining property owner that typically result from a conservation easement both fall within the land trust's mission and are insubstantial in the context of the overall benefit of protecting the property. Such incidental benefits to the adjoining property owner would not be considered a private benefit.



**Private inurement** occurs when a person who is an “insider” to the tax-exempt organization, such as a director or an officer, derives a benefit from the organization without giving something of at least equal value in return. The IRS prohibition on inurement is absolute. The IRS also imposes penalties on directors, officers, key employees, and other insiders who engage in transactions that confer an excess benefit on the individual (“excess benefit transactions”). The penalties for a land trust conferring any private inurement or an impermissible amount of private benefit range from revocation of the organization’s charitable status to fines and penalties assessed against those who received the benefits *and* those who approved them. Although these issues arise most frequently in the area of conservation easement amendments, staff salaries, and the sale of property, certain other projects may also raise issues of private benefit or inurement.

constitutes an impermissible amount of benefit include: payment of more than fair market value for a property absent adequate justification, sale of property at less than fair market value (unless to another nonprofit or government entity), or granting an amendment to a conservation easement that results in substantial benefit to the recipient of the amendment (additional home sites, removal of restrictions, and so forth).

Private inurement occurs when part or all of the organization’s net earnings are distributed to a party *related to the organization*. A “related party” is an insider, generally defined as “any individual who has a personal and private interest in the activities of the organization or who is in a position to exercise substantial influence over the affairs of the organization, and their family members.” This definition likely covers both current and former land trust staff and board members, and may extend to major donors as well (donors of either money or land). The IRS prohibition on inurement is absolute. *No* private inurement is allowed — the amount is irrelevant (unlike private benefit). Examples of private inurement include payment of excessive salaries, fees or expenses; free use of property (when such use is not enjoyed by the general public); and loans at terms more favorable than commercially available.

For a full discussion of private benefit, private inurement and related issues, see the Land Trust Alliance course “Avoiding Conflicts of Interest and Running an Ethical Land Trust.”

Given the seriousness of ascertaining whether or not a potential conservation project will result in a public benefit, land trusts must document in writing the findings made with respect to the presence or absence of a public benefit. Simply stating a public benefit exists will not suffice. As part of the project selection process, the board (or board committee) that approves a project must make findings consistent with the law on the subject and memorialize those findings in writing (in written minutes of a board or committee meeting, or in a memo to the file or other document). Some land trusts secure a statement from a local or state government agency endorsing the public benefit of a conservation transaction, and the land trust then includes this statement in its project file. Finally, it is important to document the reasons why a particular transaction provides a public benefit in a conservation easement deed itself.

## Other Legal Requirements

In addition to satisfying IRC standards for conservation purposes and public benefit, any proposed conservation transaction should be pursued only if the written project selection process also ensures that any other

legal requirements are satisfied. These requirements may include those necessary to qualify for federal, state or local funding. Government funding may also impose the need for a public benefit, so funding guidelines must be carefully scrutinized and added to the project selection process to ensure that the land trust only pursues those projects that meet such funding requirements.

In addition to meeting the federal charitable rules for nonprofit organizations qualified under IRC Section 501(c)(3), individual states may also have charitable trust or nonprofit corporation laws applicable to land trusts. Land trusts must adopt procedures to ensure that all of their activities, including the selection of projects and the public benefit they must provide, are consistent with these laws. An attorney familiar with charities and nonprofits in the land trust's state of operation will provide the best guidance on these issues.

To implement Practice 8D fully, the Land Trust Alliance recommends that

- All projects have documentation of the public benefit of the transaction.
- All projects have documentation of how the project is consistent with the land trust's mission.
- For programs that accept donated easements, written project criteria incorporate the conservation purposes from the Internal Revenue Code as appropriate to the land trust's mission, as well as any state requirements.



**Some land trusts secure a statement from a local or state government agency endorsing the public benefit of a conservation transaction, and the land trust then includes this statement in its project file.**

## Understanding a Land Trust's Obligations to the Public

*This exercise is suitable for instructor-led training or self-study. The purpose of this exercise is to help you learn to identify and address public benefit, private inurement, and private benefit issues when they arise in your work.*

*Please review the following questions; guidance on what needs to be considered in these situations follows.*

### What are your land trust's obligations to the public?

- To prevent impermissible (excess) private benefit and any private inurement.
  - What if a board member wants to donate a conservation easement to your land trust?
  - What if a board member wants to buy land offered for sale by your land trust? What if a board member wants to buy the land *before* it is listed for sale to the general public?
  - What if a major donor wants an amendment to his or her easement?
  - What if a major donor has violated her conservation easement and the land trust board is reluctant to enforce the easement?
  - What if a staff member wants to donate a conservation easement to your land trust and requests assistance in locating reserved building sites and other reserved rights?
- To ensure public benefit.
  - What is public benefit?
  - Does public benefit require consideration of community values, and how do we know what the values of a community are?
  - Is a list of conservation values the same as public benefit?
  - Is there public benefit from 200 acres of conserved land with 20 reserved 1-acre house lots? How would you know?
  - Is there public benefit from protecting a private golf course in a developed area?
  - Is there public benefit if the holder of the conservation easement over the land has no capacity or intention to enforce it?
  - How can a land trust document public benefit?



## Guidance

### What are your land trust's obligations to the public?

- **To prevent impermissible (excess) private benefit or any private inurement.** Transactions involving “insiders” (board members, staff, and major donors, for example) by their nature present issues of conflicts of interest and one of the most common areas of concern with respect to impermissible private benefit or private inurement. When examining these types of situations, land trusts should question themselves honestly about whether accepting a project, agreeing to an amendment, or assisting with land planning for an easement are services provided to all members of the land trust's community, or if the organization is only willing to proceed given its insider relationship with the proponent of the action. Given the nature of their work, land trusts take actions that result in some private benefit. The question is whether, in a particular situation, the land trust would be providing more than its usual benefits to a particular individual or whether it is considering an action only because an insider has requested the action, and would likely decline the action for someone with no close relationship to the land trust.
- **To ensure public benefit** (see Practice 8D) As a charitable organization, a land trust must provide a public benefit through its land protection activities. By considering community values, embodied in part by the requirements within federal, state and local laws, you can ensure that the actions of your land trust provide a public benefit. Public benefit can be measured in a number of different ways, but it extends beyond a list of conservation values. As natural, cultural, open space and historic resources are increasingly threatened and diminished, the idea of public benefit has been considerably broadened from that of simply public access. The preservation and protection of the natural environment is generally recognized as a charitable purpose by the IRS. A wide range of federal, state and local conservation statutes and policies make it clear that public benefit may be broadly defined. Thus, whether or not there is public benefit from 200 acres of conserved land with 20 reserved 1-acre house lots depends upon an array of factors. Possibly yes, if such a configuration preserves an endangered plant or animal species. Probably not, if the conservation plan simply sets aside open space that can only be visually or physically enjoyed by the residents of the house lots. All conservation easements should document the public benefit of the transaction in the easement itself. In addition, the baseline documentation report should identify how the protection of the property meets the Internal Revenue

## PUTTING IT INTO PRACTICE

Code's conservation purposes test and any other requirements of state or local laws and regulations. For non-easement projects, the project file should contain some documentation of the public benefit served by the transaction. A mission statement that clearly identifies your land trust's public purpose is also an important guidepost in ethical and private–public benefit discussions. Keeping your organization's public purpose in the forefront can help your land trust make choices that further public rather than private interests.

[illegible]

## Determining Public Benefit

*This template is designed to help you determine if a particular project will meet the public benefit test. Once you have collected enough information about a property, answer the following questions. Although directed to conservation easements, this template can also be easily adapted for fee land acquisitions.*

**Who benefits from the conservation of this particular property and why?**

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**If the project involves a donated conservation easement for which a tax benefit is contemplated, does the project meet the IRS conservation purposes test? (Check all boxes that apply.)**

- ☐ Outdoor recreational and/or educational use by the general public.
- ☐ Protection of a relatively natural habitat of fish, wildlife or plants, or similar ecosystem.
- ☐ Preservation of a historically important land area or a certified historic structure.
- ☐ Open space (including farmland and forestland) that is either:
  - Preserved for the scenic enjoyment of the general public and will yield a significant public benefit; or
  - Protected pursuant to clearly delineated federal, state or local governmental conservation policy and will yield a significant public benefit.

**Does the project meet the IRS definition of providing a “significant public benefit” when considering the following factors set forth in the Treasury regulations?**

- The uniqueness of the property to the area;
- The intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development);
- The consistency of the proposed open space use with public programs (whether federal, state or local) for conservation in the region, including programs for outdoor recreation, irrigation or water supply protection, water quality maintenance or enhancement, flood prevention and control, erosion control, shoreline protection, and protection of land areas included in, or related to, a government approved master plan or land management area;
- The consistency of the proposed open space use with existing private conservation programs in the area, as evidenced by other land protected by easement or fee ownership by nonprofit organizations in close proximity to the property;
- The likelihood that development of the property would lead to or contribute to degradation of the scenic, natural or historic character of the area;
- The opportunity for the general public to use the property or to appreciate its scenic values;
- The importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;
- The likelihood that the land trust will acquire equally desirable and valuable substitute property or property rights;
- The cost to the land trust of enforcing the terms of the conservation easement;
- The population density in the area of the property; and
- The consistency of the proposed open space use with a legislatively mandated program identifying particular parcels of land for future protection.

**Does the project support local, regional or statewide conservation plans, national designations, or similar goals?**

By protecting this particular property, will you further other state laws, local master or comprehensive plans, scenic highway plans, watershed protection strategies, national designations, etc.?

**For easements purchased using local, state or federal dollars, does the project satisfy the requirements for use of such funds?**

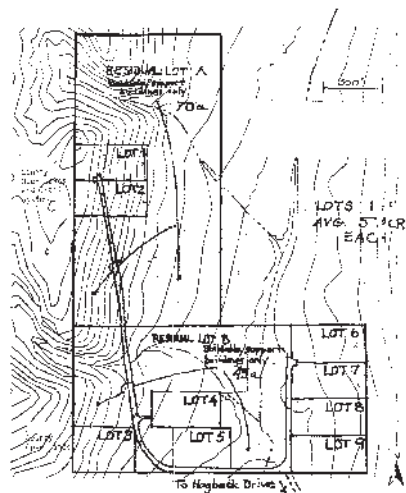
*Note:* Document the public benefit requirements, in addition to any listed above, required for the use of such funds.

## Hogback Preserve

*This case study is suitable for instructor-led training or self-study. The purpose of this case study is to demonstrate the importance of strict adherence to IRS public benefit regulations.*

*Please read the case study and review the questions that follow. Guidance on answering the questions follows.*

### Hogback Preserve



On June 30, 2004, the Treasury Department and the Internal Revenue Service issued a notice advising taxpayers that the IRS intended to disallow improper charitable contribution deductions.

The notice included a statement by IRS Commissioner Mark W. Everson that, “We’ve uncovered numerous instances where the tax benefits of preserving open spaces and historic buildings have been twisted for inappropriate individual benefit. . . . Taxpayers who want to game the system and the charities that assist them will be called to account.”

The notice included further warnings: “The IRS may impose penalties on promoters, appraisers and other persons involved in these transactions. In appropriate cases, the IRS may challenge the tax-exempt status of the charitable organization, based on the organization’s operation for a substantial nonexempt purpose or impermissible private benefit.”

These statements should clearly demonstrate to all conservation organizations that the IRS is looking closely at conservation easement transactions and will examine whether a particular project demonstrates a public benefit or just individual private benefit.

## Colorado Open Lands' Hogback Preserve Project

### Background

This project was a proposed conservation easement to preserve a 160-acre parcel in Colorado. The property is located in the rapidly growing Front Range corridor and could likely be developed with as many as 50 new lots. On its west side, the property is adjacent to open space — a county park. The landowner proposed to preserve the entire property with a conservation easement but retain the right to sell and/or develop nine residential lots. Seven of the lots were clustered in the southern portion of the property adjacent to the existing access road and other abutting properties. Two of the lots were located in the undeveloped, northern portion of the property on a ridge, adjacent to the county park. Access to the two lots would require a new road up the slope. (See map on page 116.)

### Project Review

The initial site inspection and project review meeting identified that the property should qualify under the open space category of the IRS conservation purposes test. Specifically, Section 170A-14(d)(4)(ii) allows for a charitable deduction for the preservation of open space for the “scenic enjoyment of the general public.” Scenic enjoyment by the general public means that the public must have “visual access to or across the property” from “a park, nature preserve, road, water body, trail, or historic structure or land area, and such area or transportation way is open to, or utilized by, the public.” The land trust initially determined that it thought the conservation easement could qualify under this section of the regulations if the owner removed Lots 1 and 2 from the proposal because they were not clustered on the valley floor with the other lots.

The land trust’s concern was based upon Section (d)(4)(v) of the regulations, which states:

A deduction will not be allowed for the preservation of open space under [this section], if the terms of the easement permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land.

As part of their project selection process, the land trust stated in writing to the landowner that it believed the reservation of Lots 1 and 2 and the access road represented “a degree of intrusion that would interfere with the essential scenic quality of the land.” The land trust also stated that it believed these lots “could potentially disqualify the easement for a charitable deduction.” This letter was met with frustration on the part of the landowner. The land trust agreed to conduct an additional site visit in which the landowner would float helium balloons from the proposed building locations on Lots 1 and 2 in an attempt to depict the visual impact of homes on the two lots.

The land trust wanted to view the property from the adjacent county park to the west. The additional site visit revealed that due to the unusual topography of the property and surrounding landscape, the majority of the property is not visible to the general public, putting in question the scenic value of the project. Given the lack of visual access to the property, the land trust was not comfortable moving forward with the project. The land trust's final letter to the landowner stated:\*

As I quoted in my previous letter, scenic enjoyment, as defined by the IRS, by the general public means the public must have "visual access to or across the property" from a "park, nature preserve, road, water body, trail, or historic structure." However, the IRS adds that "the public benefit from the donation may be insufficient to qualify for a deduction if only a small portion of the property is visible to the public." After a more thorough reading of the IRS code, combined with a better assessment of the property with additional photographs, we do not believe your property qualifies under the definition of scenic conservation values, because so little of it is actually visible to the general public.

Our concerns are magnified, as I mentioned in my first letter, by the current hearings and investigation by the Senate Finance Committee regarding land trusts' lax interpretation of the conservation purposes of the Treasury Regulations. We have taken this very seriously and made it a point to understand and apply them with great care. This is not an easy task, and the burden of proof regarding defending the validity and strength of the conservation values lies solely on us as the land trust. Because of this, and our belief that your property will not qualify under the scenic conservation values test, we are unable to accept an easement on your property.

## Discussion Questions

*Guidance on the discussion follows.*

1. Does your land trust realize that the "open space" category of the IRS conservation purposes test requires that the project satisfy the initial open space test *and* yield a "significant public benefit"?
2. How does your land trust determine whether or not a project meets the public benefit test?
3. Where do you incorporate this review into your existing process?

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\*For a complete discussion of a land trust's responsibilities regarding the tax code requirements and how best to explain these and similar concerns to landowners, see the Land Trust Alliance's course "Tax Benefits and Appraisals of Conservation Projects."



4. Does your land trust realize that the IRS will expect and require the land trust, as well as the landowner, to defend the public benefit test as part of an IRS audit? Would you be prepared to do so?

### Guidance

1. This additional requirement is not present in the other three conservation purposes. Each land trust should review the regulations pertaining to the conservation purposes test and incorporate this analysis into their project review procedures.
2. The regulations provide a list of *factors* to consider when evaluating public benefit. It is the land trust's responsibility to review these factors carefully in determining whether or not a specific project meets the public benefit test. This review is imperative and should always be documented by the land trust.
3. It does not matter when during the process the land trust conducts this evaluation or where it documents this issue. It could occur as part of the site inspection process, during documentation of the conservation values and/or as part of the project selection process. However, the land trust must have a clear understanding of the importance of the public benefit test and must document the outcome of its findings.
4. As part of the recent IRS audits of conservation easements conducted in Colorado, the Service is asking both the landowner/Grantor and the land trust/Grantee to defend how the purpose(s) of the conservation easement fulfills the requirements of Section 1.170A-14(d)(4)(iv) to yield a significant public benefit. And, in 2006, the IRS Form 8283 (completed to identify a charitable gift for the donor's tax return) was revised to require the donor (landowner) to file a statement identifying the conservation purposes of his or her gift. The land trust's staff and board need to be aware of the additional requirements of the conservation purposes test pertaining to public benefit, and should be careful to understand and document how each project meets this test.

### Conclusion

All contributions made for the preservation of open space pursuant to the conservation purposes test *must* yield a "significant public benefit." The regulations state:

The preservation of an ordinary tract of land would not in and of itself yield a significant public benefit, but the preservation of ordinary land areas in conjunction with other factors that demonstrate significant public benefit or the preservation of a unique land area for public enjoyment would yield a significant public benefit.

## Additional Resources

Internal Revenue Code §170(h) can be accessed at [www.fourmilab.ch/uscode/26usc/www/t26-A-1-B-VI-170.html](http://www.fourmilab.ch/uscode/26usc/www/t26-A-1-B-VI-170.html)

Treasury Regulations §1.170A-14 can be accessed at [www.access.gpo.gov/nara/](http://www.access.gpo.gov/nara/)

*The Conservation Easement Handbook*, by Elizabeth Byers and Karin Marchetti Ponte (Land Trust Alliance, 2005).

See also the following Land Trust Alliance courses:

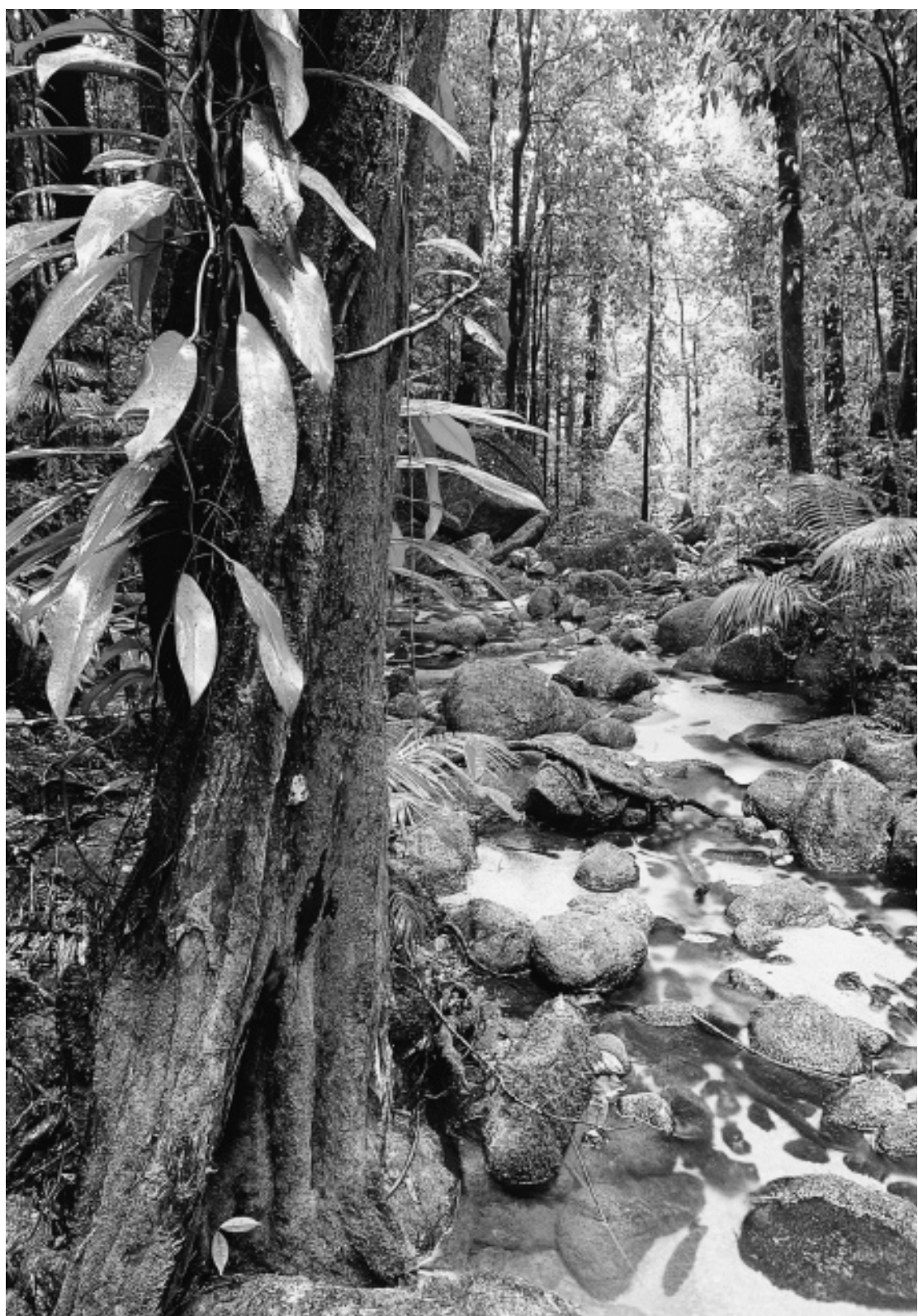
- “Tax Benefits and Appraisals of Conservation Projects”
- “Avoiding Conflicts of Interest and Running an Ethical Land Trust”

## Check Your Progress

Before continuing on to the next chapter, check that you can:

- ☐ Determine if a project meets applicable federal, state and local requirements, especially the Internal Revenue Code’s conservation purposes test;
- ☐ Understand and incorporate the IRC conservation easement purposes language into your project selection criteria;
- ☐ Define what “public benefit” means;
- ☐ Evaluate and document the public benefit of every land and easement transaction;
- ☐ Understand the link between public benefit and the land trust’s mission; and
- ☐ Ensure that the project does not result in impermissible private benefit or any private inurement.

[illegible]



## Chapter Three • Site Inspection

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### Practice 8E: Site Inspection

The land trust inspects properties before buying or accepting donations of land or easements to be sure they meet the organization's criteria, to identify the important conservation values on the property and to reveal any potential threats to those values.

A land trust should not enter into a transaction without seeing and evaluating a property, and the earlier in the transaction process that it can visit the property, the better. The purpose of a basic site inspection is to determine whether the property meets the land trust's criteria, identify the property's conservation resources, discover any management-related problems, and identify problems or threats that should be investigated further. Often a land trust visits the property several times as the project develops.

— From the *Background to the 2004 revisions of* Land Trust Standards and Practices

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### Learning Objectives

As a result of studying this chapter, you should be able to:

- Explain the important elements of a site inspection, including how to:
  - Determine if the property meets the land trust's written selection criteria;
  - Identify and document conservation values;
  - Identify boundaries;
  - Evaluate current and past activities on the land and on relevant adjacent lands, including any potential for hazardous waste;
  - Identify threats to the conservation values and/or safety hazards, public use or encroachment areas, management problems, or other threats;
  - Conduct research on the property via maps, Natural Heritage Inventory data and other sources; and
  - Gather any other information relative to the conservation of the land;

- Use the tools provided in the course to create a site inspection form;
- Determine when additional site inspections, inventories or studies might be warranted;
- Explain what should happen at the land trust once the site inspection is completed, where the information goes, who evaluates it, and who makes the next decision;
- Describe how data obtained at the initial site inspection can be used for future baseline documentation reports or management plans; and
- Document the site inspection and keep inspection records.

## Summary

Preserving and protecting land, whether by conservation easement or fee acquisition, is a decision that should not be taken lightly by the land trust. As with any real estate transaction, one of the most important elements of the due diligence process is to make sure you “know what you are getting.” A land trust can only satisfy this requirement by visiting the property and familiarizing itself with its key characteristics. This process should begin as soon as possible after initial contact with a landowner.

There are three main purposes to a site inspection that can only be satisfied by a field visit to the property, not simply a drive-by. The first purpose is to determine whether or not the property meets the land trust’s written selection criteria, in particular, whether the land’s conservation resources and their public benefit are sufficient to warrant the land’s protection.

The second purpose of a site inspection is to identify any land management issues that might make it impossible or infeasible for a land trust to protect the property. And the third is to identify potential problems that must be further investigated, resolved or mitigated before the land trust board gives final approval to the project.

A related practice, Practice 8F, Documenting Conservation Values, is important to the site inspection process because it is through this process that a land trust can confirm a property’s conservation values and begin their documentation. Understanding the conservation values is critical to designing a project that will protect those values in perpetuity, whether through a conservation easement or fee acquisition.

The overarching goals of the site inspection process are to familiarize the land trust staff, volunteers and board members with the property’s physical characteristics and to identify any issues that need to be considered during the project selection and evaluation process.

## Organizational Assessment

Conduct a quick assessment of your land trust's site inspection process, giving your organization one point for every "yes" answer. Scores are shown at the end.

Does your organization:

1. Arrange a site visit to a potential project early on in its consideration of the project?
2. Conduct more than one site visit to confirm physical aspects of the property, assess management and conservation issues, and so forth?
3. Use its site visit to confirm and document any conservation values associated with the property?
4. Gather information about a potential project from other sources and use this information in its project selection process?
5. Have a site inspection form to assure consistent reviews of different properties?
6. Include an interview with the landowner as part of the site inspection process?
7. Understand additional levels of site inspections and when they might be advisable to perform?
8. Understand all of the uses for information gathered during site inspections?

If your organization scores:

- 8: Great! Your organization clearly values the benefits of a site inspection and is well on its way to excellence. This course may help you expand or refine your site inspection process and/or form.
- 6–7: Good, but there is room for improvement. A more thorough process will ensure your land trust only accepts the best projects and will help achieve the results your land trust seeks.
- 4–5: You are on the right track, but much still needs to be done to improve your land trust's due diligence practices and to ensure that the projects your land trust chooses accomplish the objectives you seek.
- 0–4: It is time to implement site inspections as a critical part of your organization's project selection process, and adopt written policies and practices to ensure that your organization acts in ways that are effective and efficient.

## Site Inspection

### Preliminary Steps

A key component of the inspection of a potential conservation site is the identification of the conservation values associated with the land. Practice 8F describes this process.

**Practice 8F. Documenting Conservation Values.** The land trust documents the condition of the important conservation values and public benefit of each property, in a manner appropriate to the individual property and the method of protection.

Before beginning the site inspection process, it is necessary to distinguish between the information that must be gathered for a conservation easement acquisition versus a fee title acquisition. In the first instance, a land trust is acquiring a property interest in the land but not the land's entire ownership. The organization generally does not acquire or assume the responsibility of upkeep and maintenance, the payment of property and other taxes, public liability risks, and other typical attributes of land ownership. In a fee title acquisition, a land trust acquires the land in its entirety and thus takes on all obligations of ownership, including the potential liability for hazardous waste that may be on the property. Therefore, land trusts sometimes create two different site inspection forms, one for each type of acquisition.

The creation of a site inspection form has many of the same benefits as creating a project completion or project acquisition checklist (described in chapter 1). These benefits include helping ensure the land trust does not forget to secure important information about the property, ensuring that consistent types and amounts of information are collected for each potential project, and enhancing the land trust's decision-making process through timely and complete site inspection data. The site inspection form also provides a record of the land trust's visit to the property.

### Background Research

The first basic step in a site inspection is preparing for the visit. A land trust must identify which staff, volunteers or board members should be present. Those land trusts without staff often assign a particular board member to each conservation project. Others encourage board members to accompany the staff or volunteer who is charged with the site visit in order to begin to familiarize the board with the property.

It is generally important for those land trust representatives (project staff or trained volunteers) who will be responsible for negotiating, drafting and revising the conservation easement or overseeing the property's



acquisition (or working with the land trust's attorney to accomplish these tasks) to visit the property. Other land trust staff or volunteers who may benefit from attending the site inspection are those who will be charged with the property's stewardship.

Once the parties who will attend the site inspection are identified, these land trust representatives should be trained in:

- How to research a property prior to the site visit;
- How to conduct an interview with the landowner (including what not to say);
- How to dress and what to carry for the visit;
- How to complete the site inspection form;
- Determining what must be done as a follow-up to the site inspection; and,
- Determining what records must be kept in the land trust's project files, in accordance with Practice 9G, Recordkeeping.\*

The land trust representative(s) who will conduct the site inspection must complete some research with respect to the property before the inspection, in order to be fully prepared for the visit. Such research might include:

- Understanding the property's location relative to land trust priorities or focus areas;
- Reviewing topographic and/or parcel maps and aerial photos to understand the property's size and general physical features and its relationship to other land trust projects, public lands, etc.;
- Reviewing U.S. Natural Resources Conservation Service soil surveys, state wildlife department maps, scenic byway master plans, historic preservation district designations, and Natural Heritage Inventory data<sup>†</sup>; and
- Reviewing local zoning and land use information such as area master plans.

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\* Practice 9G. Recordkeeping. Pursuant to its records policy, the land trust keeps originals of all irreplaceable documents essential to the defense of each transaction (such as legal agreements, critical correspondence and appraisals) in one location, and copies in a separate location. Original documents are protected from daily use and are secure from fire, floods and other damage.

<sup>†</sup> Conceived by The Nature Conservancy and instituted in the 1970s, Natural Heritage Programs function in all 50 states and most Canadian provinces, and identify rare flora and fauna and associated habitats. Heritage Programs are also excellent sources of information about relevant publications and local naturalists and biologists.

Some of the information you should secure before the site inspection through this research includes:

- Property location and acreage
- County in which the property is located
- Zoning and land use issues that may affect the property (limits on development potential, development in the area, etc.)
- Important natural and/or historic resources located on the property

It may not be possible to secure all of the above information in a timely fashion prior to a site visit, but it is advisable to do so to the extent possible. All of this information should be noted in the project file and kept pursuant to the land trust's records policy (see Practice 2D, Records Policy).

### **Site Inspection Preparation**

Choosing the right time of year for a site inspection is critical to acquiring sufficient information about a property in order for a land trust to make informed decisions about which projects it accepts. If a land trust has a choice in the time of year to make a site inspection, early spring and fall may be the best times for viewing a property in many parts of the country because summer foliage will not block views and winter snows will not obscure important natural resources, such as wetlands, or evidence of the possible presence of hazardous materials.

It is important to note that the site inspection referred to in this chapter is not the same as a Phase I Environmental Assessment. A Phase I Environmental Assessment is a technical investigation conducted by qualified scientists or engineers to determine whether or not hazardous substances are present on a property and, if so, to understand their nature and extent. A land trust's site inspection, if performed correctly, should result in an understanding of whether a Phase I Environmental Assessment is warranted or not. (See Additional Resources for guidance on recognizing hazardous materials and the Hazardous Waste Assessment Form in the Sample Documents section. See also Practice 9C, Environmental Due Diligence for Hazardous Materials.)

The land trust takes steps, as appropriate to the project, to identify and document whether there are hazardous or toxic materials on or near the property that could create future liabilities for the land trust.

Land trust personnel attending a site inspection should prepare as they would for an annual monitoring visit:

- By informing other personnel of the visit, the property's location and the estimated time of return;

- By wearing clothing appropriate for the circumstances and taking field-related gear such as water, sunscreen, compass and/or GPS, and maps; and
- By taking all necessary materials to the visit, such as inspection forms, notebooks, cameras, tape measures, etc.

In addition, the landowner should be encouraged to attend the site inspection, so that an interview of the landowner about important aspects of the property can be conducted at the same time.

Land trusts should interview landowners to obtain information only they possess, (e.g., leases they may have executed granting others the right to use the property) and for background information about historic uses of the property. Some of the questions asked of landowners at this stage may need to be confirmed during a formal due diligence process later (e.g., thorough examination of title matters). At this stage, you are merely trying to assess the feasibility of proceeding with the project.

A landowner interview should include the following questions:

1. Who has ownership rights in the property? (E.g., family members, easement holders, partners in a partnership or limited liability company, mineral-rights holders.)
2. What are the past and current uses of the land? List all improvements on the land.
3. If a conservation easement, what does the landowner wish to use the land for in the future? (To secure an initial understanding of what reserved rights the landowner might require.)
4. Has the property been subject to a clean-up order by the state or federal government for hazardous waste? Has the landowner ever buried waste on the property, installed underground storage tanks, or otherwise stored chemicals or petroleum products on the land?
5. Are there any land management problems the landowner is addressing, such as trespass, vandalism or invasive species?
6. Has the landowner granted any rights to someone else with respect to the property that would not show up in the public records, such as grazing or hunting leases, the right to remove trees that block a neighbor's views, or the right to recreate on the property?
7. What and where are the important conservation resources on the property?
8. Are there any surrounding land use issues the land trust should be aware of, such as oil and gas development, wildfire mitigation efforts, proposed reservoirs, etc.?

9. Is the property enrolled in any local or state programs that may affect specific uses on the land (such as a state forestry tax program)?

In addition to interviewing the landowner, this is the ideal time to educate him or her about the land trust's project selection process. If your land trust has developed materials for distribution on this topic, you should provide them to the landowner at this time. Explain what should happen at the land trust once the site inspection is completed, where the information goes, who evaluates it, and who makes the next decision. For projects where the landowner has approached the land trust, be careful that any enthusiasm you express for the property during your site visit is not communicated to the landowner as a promise that the land trust will accept the project.

### **The Site Inspection Process**

During the site inspection, you should learn as much as possible about the following property characteristics:

**Property Access.** Is the property accessible from a public road? If not, how is legal access to the property attained? Is the access gated? Is the property accessible year-round? If not, why, and when is it accessible?

**Property Boundaries.** If possible, the land trust inspector should walk the entire boundary of the land in order to understand any stewardship challenges associated with unclear boundaries and to look for potential problems associated with adjacent land uses. Note whether the boundaries are marked by survey monuments, fence lines or natural features, or if boundaries are not possible to locate in the field.

**Existing Land Use and Intensity of Activity.** Note all residential, agricultural, commercial, industrial, recreational, and forest harvest activities (including those authorized under leases or rental agreements) and their relative intensity of activity.

**Existing Improvements and Their Condition.** Note the number and approximate location of all structures and improvements (roads, trails, gates, dams, fences, etc.) and their general condition. Also note any visible easements such as utility lines, driveways, railways, and ditches.

**Potential Threats to Natural or Historic Resources.** Note activities, both on- and off-site, such as incompatible development, logging, mining, overgrazing, off-highway vehicle use, evidence of trespass or vandalism, erosion or runoff, evidence of trash dumping or the presence of invasive species.

**Safety Hazards, Natural and Manmade.** Note any swimming holes, fishing sites or rock climbing areas that might attract uninvited visitors, as well as any natural hazards such as landslides, fire hazards or steep cliffs. In addition, note any unstable bridges, roads, buildings or walls.

**Adjacent Land Use.** Identify the extent and intensity of adjacent residential, commercial or industrial land uses; the presence of mining, logging and road construction; and any water control or drainage issues.

**Evidence of Hazardous Waste Problems.** Look for dumps, evidence of underground tanks, bald spots lacking vegetation or where vegetation is dying, fumes, pipes venting from the ground, empty tanks in which chemicals, pesticides or petroleum products may have been stored, or evidence of buried waste, such as disturbed soil. A more thorough inspection for hazardous materials will be needed if the land trust proceeds with the transaction, but such obvious signs of contamination provide an early warning that the property may have serious problems.

**Identify Conservation Values.** Identify the conservation values associated with a particular property to the extent necessary for the land trust to make an informed decision to proceed with a project or not, in accordance with Practices 8F, Documenting Conservation Values, and 3F, Board Approval of Land Transactions.

Once the project is approved, the land trust will need to conduct and document a more thorough review of the property's resources sufficient to provide a baseline for future management, monitoring and defense. For purposes of project selection, however, particular attention should be given to determining if a property's conservation values will meet the Internal Revenue Code's conservation purposes test for conservation easements intended to qualify for federal tax benefits (and in some cases, state tax benefits), or to determine what public benefit will result if the land is acquired in fee. *At a minimum*, the site inspection must identify those conservation values that will determine if a property meets the land trust's selection criteria.

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## Example

The Tall Timbers Research Station and Land Conservancy is a land trust operating in the Red Hills region of southern Georgia and northern Florida. It works to promote exemplary land stewardship and to protect the distinctive Red Hills landscape, and holds conservation easements on more than 70,000 acres of land. The Red Hills region contains some of the highest levels of biodiversity in the United States. The Conservancy was contacted by a landowner interested in donating a conservation

easement on 5,000 acres he had recently purchased. The Conservancy was somewhat familiar with the property. Although intrigued by the large size of the proposed project, the land trust was skeptical that the land would meet the organization's selection criteria because its previous owner, a timber company, had managed the land solely for timber production. The land trust believed the land would likely contain little native vegetation, and thus little biodiversity, but agreed to perform an initial site inspection with the landowner.

After spending several hours on the property and meeting with both the landowner and the land manager, the Conservancy was happily surprised to find that the land was suitable for conservation after all. Not only did the land contain pockets of undisturbed native habitat that were worthy of protection, but interviews with the landowner and land manager revealed a commitment to restore the majority of the land to native species, despite the large costs that would be involved. The site inspection, therefore, showed the Conservancy that the land contained the habitat and biodiversity the organization was formed to protect. It also revealed an opportunity to work with the landowner and land manager to restore the land and heal the timber harvest damage, while presenting the community and other local landowners a great model of exemplary land stewardship.

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Generally, a site inspection should obtain the basic types of information about natural resources listed below:

- **Water resources.** Indicate kind and condition — pristine, degraded or restorable. Types might include:
  - Marsh;
  - Riparian;
  - River/stream;
  - Open water;
  - Vernal pools;
  - Springs;
  - Floodplain;
  - Aquifer recharge area;
  - Wetland; and
  - Upland watershed.

- **Natural habitat** (plant and animal). The inspection might identify:
  - Rare, threatened or endangered species;
  - State species of special concern;
  - Wildlife habitat;
  - Plant communities;
  - Documented biotic resources; and
  - Whether the property connects or buffers other protected natural areas.
- **Agriculture.** The inspection might identify:
  - Present and potential agricultural uses;
  - Presence of prime, unique or productive agricultural soil;
  - Favorable microclimates;
  - Irrigated lands; and
  - Whether the property buffers other productive agricultural land.
- **Open space.** The inspection should identify:
  - Whether the property connects to or buffers other protected lands;
  - Whether the property is visible from public lands or waterways; and
  - Whether the property is visible from public roads or scenic byways.
- **Aesthetic and cultural features.** The inspection should identify:
  - Archaeological sites;
  - Historic sites (land and/or buildings);
  - Geologic features of significance;
  - Whether it is accessible to the public or could be; and
  - Whether it is a potential park site.

### **Post Site Inspection Matters**

Following the site inspection, a review of the data collected may indicate that further studies are necessary in order for the land trust to decide whether to proceed with the project. A second site inspection may be warranted to evaluate biological changes, such as the emergence of vernal

pools, or to uncover occasional uses of the property or adjoining lands that may pose management or resource protection problems, such as the dumping of trash or debris, or to complete a project plan (see chapter 4) or baseline documentation.

A land trust may need additional information to determine if a property will meet the Internal Revenue Code's conservation purposes test, such as a biological inventory that would identify threatened or endangered species of which the landowner is unaware or which were not visible on the site visit. Alternatively, a land trust may need additional information about agricultural or forestry resources that require an analysis by an experienced professional.

A *biological inventory* is a catalog of a property's or region's natural characteristics and is based on a systematic search for the best examples of natural habitats and locations of rare species. Such inventories identify not only the diversity of natural resources, but also their condition, extent and relationship to each other. There are three fundamental reasons for a land trust to invest time and money in biological inventories:

1. To direct protection efforts to land that merits protection most;
2. To determine the funds needed for easement stewardship, land management and possibly restoration of those properties; and
3. To provide basic management guidance and information for a land trust negotiating a conservation easement on a property, or, for fee acquisitions, to inform the creation of a land management plan.

An inventory of *agricultural resources* will focus on the extent and location of prime and unique soils (as identified by the U.S. Natural Resources Conservation Service) and soils of statewide interest (generally identified by state agriculture departments or cooperative extension services). Such an inventory will also examine climate and, in some parts of the country, the availability and supply of water.

An inventory of *forestry resources* will examine the health of the forest, the size of the trees and the forest's current stocking levels, the soils, and the current forest infrastructure, including roads, landings and any camps. Such an inventory should also examine the effects of a working forest on water resources and watersheds, soil erosion and impacts on other natural resources.

An inventory of *scenic resources* may examine the viewsheds that are available to the public on the prospective property or views of the property.



IRS regulations favor scenic easements that are consistent with a regional or local landscape inventory made pursuant to a sufficiently rigorous review process. By having a *scenic resource inventory*, a land trust can justify both present and future easements that cite scenic values as their core public benefit. The scenic benefit must be viewable to the public, usually from a nearby public roadway, trail or other publicly accessible site. Existing scenic resource inventories may be available from government agencies, such as the local historical commission, a state or federal Scenic Byways Program, or the National Park Service's Wild and Scenic Rivers Program.

Once the inspection is completed and supplemented by any additional inventories the land trust secures, the land trust should develop, as part of its project selection process, the next step in evaluating the data. Often the data is incorporated into the project selection criteria as appropriate, and then an evaluation is made of additional information learned from the inspection. Such an evaluation may be completed by a staff member or trained volunteer and then presented to a committee of the board or the full board, or there may be a process whereby the staff or volunteer and/or a committee evaluate the data and make a recommendation to the board. Both the inspection itself and its final evaluation must be documented in writing and kept in the land trust records in accordance with Practice 9G, Recordkeeping.

## Additional Uses for Site Inspection Data

Although the information gathered in a site inspection is critical to the project selection process, it is also important to other land trust functions. Site inspection information is used in the creation of baseline documentation reports prepared for conservation easement projects. Although such information will likely not be sufficient for a complete baseline, the data provides a critical starting point for such documentation.

If a conservation easement requires the preparation of a land management plan, or if the land trust acquires the land in fee and manages the property in accordance with such a plan, the data acquired in the site inspection can help identify areas that must be addressed by such plans, including:

- Safety hazards;
- Resource depletion issues (overgrazing, erosion, etc.);
- Public use issues; and
- Maintenance of existing improvements.



***Natural resource inventories*** include biological, agricultural, forestry, and scenic.

A biological inventory is a catalog of a property's or region's natural characteristics and is based on a systematic search for the best examples of natural habitats and locations of rare species.

An inventory of agricultural resources will focus on the extent and location of prime and unique soils and soils of state-wide interest. Such an inventory will also examine climate and, in some parts of the country, the availability and supply of water.

An inventory of forestry resources will examine the health of the forest, the size of the trees and its current "stocking," the soils, and the current forest infrastructure – roads, landings and any camps. Such an inventory should also examine the effects of a working forest on water resources and watersheds, soil erosion and impacts on other natural resources.

An inventory of scenic resources may examine the viewsheds that are available to the public on the prospective property or views of the property.

Finally, the data acquired during a site inspection may demonstrate the need to obtain a Phase I Environmental Assessment of the property in situations in which a land trust might not routinely do so, as is generally the case with donated conservation easements.

## Notes

## Creating a Site Inspection Form

*This exercise is designed for instructor-led training or in-house study. It will help your land trust develop a site inspection form that is suited to the needs of your land trust and help you comply with Practice 8E.*

*This site inspection form is intended for conservation easement transactions; the acquisition of fee title to property requires the collection of additional data. See page 149 for an example of a fee title acquisition site inspection form.*

\_\_\_\_\_ LAND TRUST  
SITE INSPECTION FORM  
CONSERVATION EASEMENT ACQUISITIONS

### Property and Landowner Information

*Insert all useful information about a particular project.*

Project Name: \_\_\_\_\_

Landowner Name: \_\_\_\_\_ Telephone #: \_\_\_\_\_

Address: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Additional information about land ownership: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

*Is the land owned by an entity such as a partnership — describe; is the land owned by more than one person — list names and relationship, etc.*

Address of property: \_\_\_\_\_

County: \_\_\_\_\_

Directions to property: \_\_\_\_\_

(attach topographic, county and/or other maps and note location of property on maps)

## PUTTING IT INTO PRACTICE

Total acreage: \_\_\_\_\_ Acreage to be conserved: \_\_\_\_\_

*Insert how the acreage amount was determined — obtained from landowner or by estimate from map, etc.*

Tax or parcel #: \_\_\_\_\_

Zoning: \_\_\_\_\_

Land use issues: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

*Insert land use issues your land trust may need to know — special planning districts, how land is identified in local master plan, types of restrictions on development such as minimum lot size, ridgeline regulations, floodplain restrictions, etc.*

Do any surveys exist for the property? \_\_\_\_\_ Date: \_\_\_\_\_

### Property Access and Boundaries

What is the legal access to the property? \_\_\_\_\_

Describe any difficulties with respect to access: \_\_\_\_\_

\_\_\_\_\_  
*Access via private easement, locked and/or gated access, seasonal access, etc.*

Condition of boundaries: \_\_\_\_\_

\_\_\_\_\_  
*Are boundaries monumented, fenced, unclear, difficult or impossible to walk, etc.*

Is the land adjacent to other protected areas:

Public lands: \_\_\_\_\_ (describe)

Privately conserved lands: \_\_\_\_\_ (describe)

### General Description of Property

Historic land uses: \_\_\_\_\_

Current land uses and their intensity: \_\_\_\_\_

Surrounding land uses and their intensity: \_\_\_\_\_

Existing improvements and their condition: \_\_\_\_\_

Proposed improvements: \_\_\_\_\_

Visible easements or encumbrances: \_\_\_\_\_

General description of topography and any natural features: \_\_\_\_\_

Resource management (note any of the following resources that apply to the property and how the landowner wishes to address them; note if a management plan may be necessary)

Agriculture: \_\_\_\_\_

Timber harvest: \_\_\_\_\_

Mining, oil and gas development: \_\_\_\_\_

Recreation, both private (hunting, fishing, etc.) and public (trail, park, etc.): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Water features including water rights: \_\_\_\_\_

### Conservation Values

Does land contain relatively natural habitat? ☐ Yes ☐ No

If yes, describe for what plants and/or animals: \_\_\_\_\_

Is or will land be available for public recreation or education? ☐ Yes ☐ No

If yes, describe what kind of access: \_\_\_\_\_

Does land represent scenic open space, farm or forest land? ☐ Yes ☐ No

If yes, from where does public view land? \_\_\_\_\_

Is land identified for conservation by a federal, state or local governmental policy?

☐ Yes ☐ No

If yes, which policy applies? \_\_\_\_\_

Is the land part of an historically important land area or does it contain a certified historic structure? ☐ Yes ☐ No

If yes, describe: \_\_\_\_\_

*Insert other conservation values, either through a listing related to the land trust's selection criteria priorities (watersheds, prime and unique soils, working forests, wetlands/riparian areas, etc.) or by general description.*

### Hazards, Public Use Issues

Safety hazards: \_\_\_\_\_

Public use problems:

Dumping? ☐ Yes ☐ No

Trespass? ☐ Yes ☐ No

Vandalism? ☐ Yes ☐ No

Off-highway vehicle use? ☐ Yes ☐ No

If yes, describe: \_\_\_\_\_

Evidence of potential hazardous waste issues:

Fumes or unusual odors? ☐ Yes ☐ No

Evidence of underground tanks (piping, vents, depressions or mounds)?  
☐ Yes ☐ No

Dumps? ☐ Yes ☐ No

Areas lacking vegetation or where vegetation is dead/dying? ☐ Yes ☐ No

Disturbed soil? ☐ Yes ☐ No

Drains? ☐ Yes ☐ No

Unusual color in water or sheen on water? ☐ Yes ☐ No

Empty drums? ☐ Yes ☐ No

Any potential stewardship concerns? ☐ Yes ☐ No

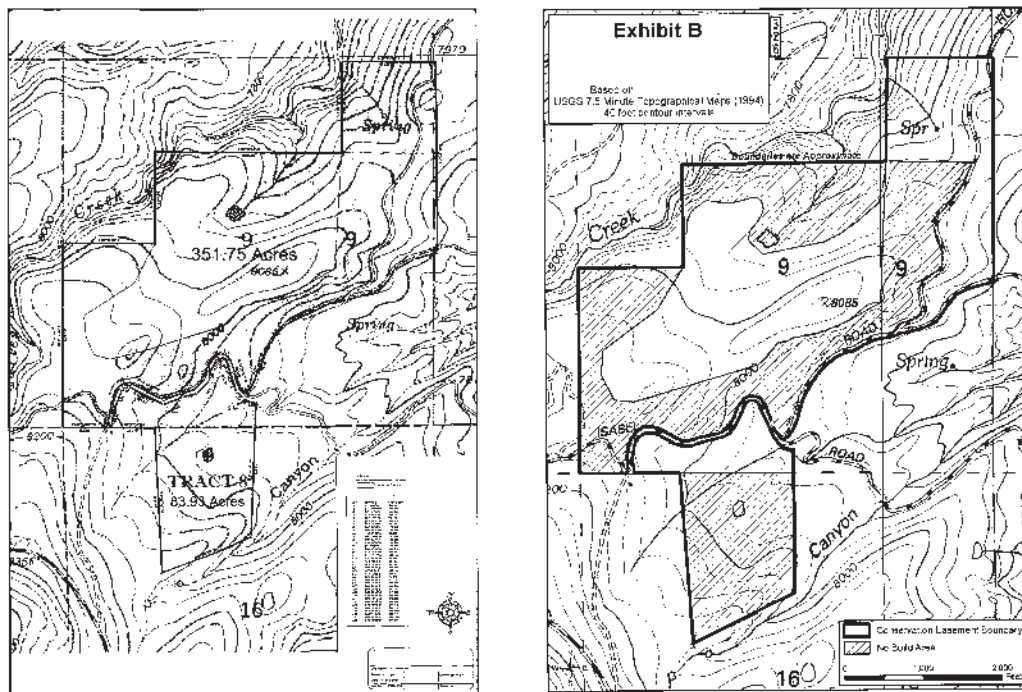
If yes, describe: \_\_\_\_\_

Signed by Inspector: \_\_\_\_\_

Date of Inspection: \_\_\_\_\_

## Greenhorn Ranch

*This case study may be completed either through an instructor-led training or through self-study. In this case study, you can see the value of using knowledgeable personnel to conduct site inspections, and potential problems involved with allowing floating building envelopes. Read the case study and review the questions that follow. Following the questions is guidance on what needs to be considered.*



## Background

Greenhorn Ranch consists of approximately 436 acres, divided into a 352-acre parcel and an 84-acre parcel. The property contains several large meadows, riparian areas and forests. The property abuts a national forest and is located in an area where the land trust is working.

The landowners approached the land trust with a proposal to place the entire 436 acres under conservation easement. In addition to a reserved right for the existing single family residence, the landowners requested the right to convey an equal portion



of the property to each of their three daughters, each of whom would also retain the right to one subdividable building area. Because the daughters had not determined the locations of each residence, the owners asked to keep the final three home-site locations (building envelopes) and their access roads “floating.”

### Site Inspection and Documenting the Conservation Values

Based upon the initial site inspection, the land trust determined that the property possessed significant conservation values. Specifically, it identified “relatively natural habitat” and “open space” (scenic) as the property’s likely conservation values, in accordance with the IRS’s conservation purposes test provisions. The first draft of the conservation easement included the following recitals:

**Relatively Natural Habitat** [§ 1.170A-14(d)(3)]. The Property contains meadows, riparian areas and forests that provide food, shelter, breeding ground, and migration corridors for several wildlife species. The Property abuts \_\_\_\_\_ National Forest and contributes to the ecological viability of the national forest. The Property provides significant habitat for cougar, elk, mule deer, black bear, coyote, bobcat, and fox as well as numerous small mammals. \_\_\_\_\_ Creek crosses the Property and contains trout.

**Open Space** [§ 1.170A-14(d)(4)]. The Property qualifies as open space because it will be preserved for the scenic enjoyment of the general public and will yield a significant public benefit.

**Scenic enjoyment.** The Property adds to the scenic character of the local rural landscape in which it lies, contains a harmonious variety of shapes and textures, and provides a degree of openness, contrast and variety to the overall landscape. A large portion of the Property is visually accessible to the general public from both \_\_\_\_\_ Road and \_\_\_\_\_ Road and the adjacent \_\_\_\_\_ Forest, which are open to and actively utilized by residents of \_\_\_\_\_ County and the State of Colorado.

**Significant public benefit.** There is a foreseeable trend of intense development in the vicinity of the Property in the near future. The City of \_\_\_\_\_ lies just 25 miles northeast of the Property, and the Town of \_\_\_\_\_ lies just 5 miles south. There is a strong likelihood that development of the Property would lead to or contribute to degradation of the scenic and natural character of the area. Preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values.

### Project Review

The land trust project review process raised the concern of allowing too much flexibility in regard to the future building sites and the associated roads. Pursuant to the IRS regulations, the land trust was concerned that the terms of the easement requested by the landowners provided too much flexibility as to the final location of residential and agricultural improvements, and thus might permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land.

Land trust staff discussed this concern with the landowner. The landowner was adamant that his three daughters did not live in the state, were not familiar with the property and simply did not know where they would like to build in the future. Given the impasse, the land trust suggested trying to create an exhibit map that would depict “no-build” areas that would be off-limits for the improvements rather than depicting the building envelopes. The landowner seemed open to this approach.

Because the initial site inspection was *not* conducted with a qualified resource specialist (e.g., a biologist or ecologist), and because the land trust did not feel comfortable evaluating and delineating (using GPS) the unique habitat areas, it decided to conduct a second site visit with the consultant who would be preparing the baseline documentation report. The goal was to have the consultant, a professional biologist, evaluate the property’s natural habitat values and accurately delineate the boundaries of the no-build areas. The landowner arranged for his surveyor to be present so that the no-build areas could be depicted on the easement map. (See map on page 142).

The results of the second site inspection were mixed. While the resource specialist felt the property contained significant scenic value, he was concerned that the property did not possess “significant habitats and ecosystems, includ[ing], but not limited to, habitats for rare, endangered, or threatened species of animals, fish, or plants,” as required by the IRS regulations for this conservation purpose.

Based upon the first site inspection, it appeared that the large meadows on the property would be part of the no-build areas and that the forested edges would be the best places to locate future improvements. Based upon the consultant’s input, the land trust staff became less concerned with substantiating the natural habitat conservation values (given the lack of significant habitat) and shifted their emphasis to the property’s open space conservation values. This increased the land trust’s concern about having unspecified locations for future improvements.

The land trust spoke to the landowner about these issues and summarized its comments in writing. The highlights of the land trust’s letter to the landowner follow:

Determining the conservation values of a particular property is partially a subjective process. Internal Revenue Code section 170(h) provides excellent parameters to help determine what may qualify. We try very hard to state explicitly which conservation values the easement is trying to protect and to ensure that there are consistent, supportive/descriptive statements within both the conservation easement and the Present Conditions Report that substantiate the conservation values. These statements may ultimately be the basis for defending the easement.

The criteria used to determine if a property possesses “Open Space” conservation value is perhaps the most complicated of the list. The regulations recommend that you consider factors such as: the uniqueness of the property to the area, the existing and potential intensity of land development in the vicinity of the property, the opportunity for the general public to use the property or to appreciate its scenic values, etc. In order for the property to qualify for the scenic enjoyment category, physical access to the property is not necessary; however, there must be at least visual access to or across the property, and it is important to identify the “park, nature preserve, road, waterbody, trail, or historic land structure or land area” from which the public can see the property.

The regulations also state, “A deduction will not be allowed . . . if the terms of the easement permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land . . .” This is the area where we have some concerns with your conservation easement as proposed. Specifically, we are concerned that without a clear understanding of the location of the three proposed residences, the appurtenant buildings, and the roads and driveways, we cannot adequately respond to whether the degree of intrusion will impair the conservation values. While we have tried to accommodate your wishes of not requiring the building areas to be defined, we must retract our original support for this approach and request that all of the future building envelopes be identified at the time the easement is granted. Initially, we felt that the “no-build area” would ensure the preservation and protection of the conservation values. Unfortunately, we now feel that the current terms of the conservation easement provide too much uncertainty and we are no longer comfortable with this approach.

In the end, the landowner was not willing to designate any of the home-site locations, and the project did not move forward.

## Discussion Questions

*Guidance for the discussion follows.*

1. Does your site inspection form and process provide enough detail to understand the property adequately? Would your current forms have provided you with enough information about this property to make an informed decision?
2. Does your site inspection process provide a framework to identify different types of conservation purposes and values, including those you may not expect to find on a particular property? Does your site inspection form or process assist in developing alternative conservation plans for a property? In this case study, was the landowner's desire to reserve a total of four home sites (one already in existence; three to be created in the future) inherently inconsistent with conservation of the property's important values?
3. Does your site inspection form and process adequately address the Internal Revenue Code's conservation purposes test?
4. The case study demonstrates why floating building envelopes (envelopes that could be placed anywhere on a property) are inconsistent with land conservation. What alternatives might exist that could be discussed during a site inspection visit?

## Guidance

1. Consider how your form and process would have worked in this case study. Would their implementation have resulted in the same outcome? If not, are there some modifications you might make to your form and/or process to improve their use in evaluating projects? (Note that the site inspection form used by Colorado Open Lands has a section for listing other conservation values.)
2. The Treasury regulations state that a "deduction will not be allowed if the contribution would accomplish one of the enumerated conservation purposes but would permit destruction of other significant conservation interests." In this case study, do we see conflicting conservation values? A thorough site inspection would help a land trust sift through this question, and help it create a project plan (see chapter 4) leading to a conservation easement whose terms would ensure that different conservation values are protected while permitting appropriate levels of development.
3. As part of its recent audits of conservation easements in Colorado, the IRS is asking both the landowner/Grantor and the land trust/Grantee "how the conservation purpose of the easement falls within the examples in IRS require-

ment 1.170A-14(d)(3) for habitats and ecosystems.” The IRS is also asking for “evidence of the existence of rare, endangered or threatened species of animals and fish.” In addition, the 2006 revised IRS Form 8283 requires every donor (landowner) to attach a statement identifying the conservation purposes addressed by the conservation easement. Each land trust’s staff and board need to be aware of the requirements of the Internal Revenue Code’s conservation purposes test and should be careful to evaluate and document how each project meets the test.

4. If landowners are unable or unwilling to identify permanent building envelope locations in the conservation easement, a land trust may not be able to satisfy the requirements of the Treasury regulations governing conservation easements, as demonstrated by this case study. Rather than declining such a project, there are at least three techniques land trusts use to address this not uncommon challenge:
  - Land trusts might identify no-build zones where the home sites or other building sites cannot be located in order to protect identified conservation values (although the case study demonstrates that this technique may not be appropriate for projects intended to qualify under the “open space” conservation purposes test).
  - Another method some land trusts use is to identify twice as many envelopes as the landowner ultimately is permitted to choose (in the case study the number would be six) and permit the landowner to choose the permitted number of sites (e.g., up to three, as in the case study) from among the pre-identified envelopes when he or she is ready to build.
  - A final method might be to identify a larger area within which a specific building envelope would ultimately be located. For example, a land trust might identify a 10-acre area within which a landowner could choose a rectangular, two-acre building envelope. The remaining eight acres would then be permanently dedicated to non-development uses.

## Conclusion

While the entire review process took several months and was somewhat challenging for the land trust and landowner, this case study highlights the importance of being detailed and deliberate in conducting site inspections and documenting the property’s conservation values. This case study also highlights the importance of bringing in additional expertise when warranted.

## Additional Resources

*Doing Deals: A Guide to Buying Land for Conservation* by the Trust for Public Land (Land Trust Alliance and Trust for Public Land, 1995).

U.S. Geological Survey ([www.usgs.gov/](http://www.usgs.gov/))

U.S. Natural Resources Conservation Service Soil Survey (<http://soils.usda.gov/survey/>)

The Learning Center's digital library, specifically Practice 9C, Environmental Due Diligence for Hazardous Materials, for materials and additional forms related to site inspections for hazardous waste.

## Sample Documents

*Land Acquisition Information Sheet:* Society for the Protection of New Hampshire Forests (page 149) This form is used by the Society both as a site inspection form and as a written project plan (see chapter 4). It includes room for detailed descriptions of the land and its natural resources (particularly the condition of the forestland), and the landowner's objectives.

*Site Evaluation Form — Conservation Easement:* Colorado Open Lands Project Information Sheet (page 154) The purpose of this form is to assemble the information needed to complete this land preservation project. This can be used during preliminary site visits and conversations with the landowner, and will help with the completion of COL's Project Selection Criteria Form (see Sample Documents, chapter 1).

*Hazardous Waste Assessment Form:* The Nature Conservancy Environmental Assessment Form (page 156) The Nature Conservancy's comprehensive form can be used by any land trust personnel to identify potential hazardous waste issues on a prospective conservation property (whether fee or easement). No specific expertise is necessary to complete most of the form.

*Also see the project planning template in chapter 4.*

**Society for the Protection of New Hampshire Forests  
Land Acquisition Information Sheet**

Property Name: \_\_\_\_\_

**1. Grantor(s):** \_\_\_\_\_

Town \_\_\_\_\_ County \_\_\_\_\_

Acres \_\_\_\_\_ Determined by: Survey Tax Map Deed Estimate

Other: \_\_\_\_\_

ABSTRACT: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PURPOSE: Pre-Acquisition Land Value Transfer Permanent Ownership

METHOD OF ACQUISITION: Gift Purchase Bargain Sale  
Land Swap/Trade Bequest

Completed by \_\_\_\_\_ Date \_\_\_\_\_

Grantor's Address: \_\_\_\_\_ Phone ( ) \_\_\_\_\_

Grantor's Agent: \_\_\_\_\_ Phone ( ) \_\_\_\_\_

Agent's Address: \_\_\_\_\_

Other Contacts (Resource Consultants, etc): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SPNHF Deed: Book # Page # Tax Map # Block # Lot #

Date of Deed: \_\_\_\_\_ Well-defined description Title work necessary

Known encumbrances: \_\_\_\_\_

\_\_\_\_\_

**2. DONOR OBJECTIVES:**

**3. LAND USE RESTRICTIONS:**

## EVALUATING AND SELECTING CONSERVATION PROJECTS



G. Wildlife: List species (or groups of species) likely to be found given habitat conditions; note rare, threatened, or endangered wildlife species:

H. Unique/Outstanding plants/aquatic, geologic, scenic or other physical features/historical, archaeological or cultural significance; note rare, threatened, or endangered plant species.

I. Listed as a Natural Area, Scenic Road, Prime Wetland, Historic or Geologic Landmark? If so, explain:

## 8. BUILDING INFORMATION

A. Type/Size/Condition/Location/Present Use:

B. Potential Uses:

C. Other Comments:

## 9. FOREST RESOURCE INFORMATION:

|  | Good |   |   |   | Poor |    |
|--|------|---|---|---|------|----|
| A. Site Productivity   | 1    | 2 | 3 | 4 | 5    |    |
| B. Relative Stocking   | 1    | 2 | 3 | 4 | 5    |    |
| C. Relative Tree Quality   | 1    | 2 | 3 | 4 | 5    |    |
| D. Is the land large enough to facilitate regular scheduling of TSI and periodic harvests by itself/with other adjacent SPNHF lands?                       |      |   |   |   | Yes  | No |
| E. Is the area part of a larger similar area under protection/needling protection?   |      |   |   |   | Yes  | No |
| F. Do unproductive portions of the land contain features or qualities that may enhance other SPNHF objectives?   |      |   |   |   | Yes  | No |
| G. Does the land contain stands that: are in productive condition/<br>can be put into productive condition with reasonable cost within<br>reasonable time? |      |   |   |   | Yes  | No |
| H. Does the land offer potential for demonstration of forest management techniques?  |      |   |   |   | Yes  | No |

EXPLAIN:

I. Describe Forest Types, approximate acres, tree species, age classes, total volume, 1st thinning value, anticipated timing, management history; certified Tree Farm?:

J. Other Comments:

## LAND ACQUISITION INFORMATION SHEET

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### 10. AGRICULTURAL RESOURCE INFORMATION

- A. The land is/is not currently farmed by
- B. Current/potential crops:
- C. What arrangements could be made to farm the land?

### 11. VALUES, TAX STATUS, ACQUISITION COSTS:

- A. None      Some      All      of the land is under Current Use Assessment
- B. Total Assessed Value: \$                      Buildings \$                      Land \$  
Annual Taxes: \$                      Buildings \$                      Land \$
- C. Appraisal in file?                      Yes                      No  
Appraised Fair Market Value:                      \$  
Appraiser:                      Date of Appraisal:
- D. SPNHF's Purchase Price: \$                      Source of Funds

### 12. COMMENTS REGARDING POTENTIAL INCOME:

### 13. COMMENTS REGARDING ANTICIPATED EXPENSES:

### 14. SUGGESTED LAND STEWARD:

NAME:  
ADDRESS:  
TEL:

### 15. EDUCATION AND PUBLIC USE:

What are the land's prime educational features? (marshland, cellar holes, exemplary woodlot, etc.)

What are the land's prime public use/recreation features? (lake frontage, hiking or ski trails, viewpoints, etc.)

List any educational facilities or activities that are consistent with property, considering donor's interest, SPNHF objectives, and the potential of the land.

Which of the following public uses are consistent with the site and donor interests?    hiking    camping    hunting    fishing    picnic area  
                         parking area    boating    other

## LAND ACQUISITION INFORMATION SHEET

---

### POTENTIAL EDUCATIONAL PARTNERS:

Nearest elementary school

Nearest high school

Potential college users

Local organizations

### DIRECTIONS FOR LANDS MAP:

### OTHER COMMENTS:

**Colorado Open Lands  
Project Information Sheet**

**Name of Project:** \_\_\_\_\_

**Contact Information:**

Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Physical Address of the Property:** \_\_\_\_\_

**Proposed Transaction Type**

\_\_\_\_ Conservation Easement: Donated or Bargain Sale \_\_\_\_\_

\_\_\_\_ Deed Restriction      \_\_\_\_ Fee Acquisition

\_\_\_\_ Land Donation      \_\_\_\_ Land Trade

\_\_\_\_ Land Transfer      \_\_\_\_ Land Exchange

\_\_\_\_ Limited Development      \_\_\_\_ Other: \_\_\_\_\_

**Financial Information**

Is it necessary to find funding for this project? If so, what are the anticipated sources?

\_\_\_\_\_  
\_\_\_\_\_

**Landowner Goals** \_\_\_\_\_

\_\_\_\_\_

**Property Information**

Total Number of Acres: \_\_\_\_\_

Acres in Project: \_\_\_\_\_ County: \_\_\_\_\_

Directions to the Property: \_\_\_\_\_

\_\_\_\_\_

Current zoning: \_\_\_\_\_

General description of property: \_\_\_\_\_

\_\_\_\_\_

## SITE EVALUATION FORM — CONSERVATION EASEMENT

---

Current land use: \_\_\_\_\_

\_\_\_\_\_

Past land use: \_\_\_\_\_

\_\_\_\_\_

Surrounding land uses: \_\_\_\_\_

\_\_\_\_\_

Current Property Improvements: \_\_\_\_\_

\_\_\_\_\_

Proposed Property Improvements: \_\_\_\_\_

\_\_\_\_\_

**Resource Management:** Describe any of the following resources that apply and how the landowner wishes to address them. Note whether a management plan would be necessary.

Agriculture: \_\_\_\_\_

\_\_\_\_\_

Timber: \_\_\_\_\_

\_\_\_\_\_

Mining, Oil, Gas, and Geothermal Resources: \_\_\_\_\_

\_\_\_\_\_

Recreation: \_\_\_\_\_

\_\_\_\_\_

Water Features, including water rights: \_\_\_\_\_

\_\_\_\_\_

**Conservation Values:** Based upon the above information, describe potential conservation values.

\_\_\_\_\_

\_\_\_\_\_

**Additional Information:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## The Nature Conservancy Environmental Assessment Form

SITE/TRACT: \_\_\_\_\_

COUNTY/STATE: \_\_\_\_\_

PREPARED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**POLICY:** Conservancy policy requires an environmental assessment, or audit, on every tract of land the Conservancy is proposing to acquire. In some situations, an assessment may also be required before the Conservancy transfers land it owns. The scope of each assessment may vary depending on the circumstances but, *at a minimum*, an assessment *must* include a physical inspection of the property and an appropriate inquiry into the historic uses of the property. Surrounding areas which could have an impact on the property in which the Conservancy is interested should be considered in the assessment as well. The assessment should be conducted by a Conservancy staff member whenever possible or, if necessary and if in accordance with Conservancy policy, by another knowledgeable individual under Conservancy supervision. The assessment should be reviewed by the Conservancy staff responsible for the project and by the Conservancy attorney assigned to the project.

**ASSESSMENT FORM:** This environmental assessment form *must* be completed to document your evaluation of the property. Please complete the form as fully as possible using “don’t know” or “not applicable” as appropriate for questions you cannot answer. Identify the source of specific information throughout the form whenever appropriate. Add additional pages/information where necessary. This form must be signed by the preparer and the reviewer. The *original* of this form (with attachments) should be submitted to the regional office with the project package.

**IMPORTANT REMINDER:** Never place yourself in any situation which you believe may be dangerous to your own health or safety. If you have any concerns about a particular site for any reason, contact the Conservancy attorney assigned to the project immediately.

### OVERALL ASSESSMENT:

1. Listed below are some sources of information which you might consult in conducting this assessment. Please check those you actually relied on.

- \_\_\_\_ Interviews with owner
- \_\_\_\_ Interviews with others identify: \_\_\_\_\_
- \_\_\_\_ Interviews with fire, health, building, land use or environmental officials—identify: \_\_\_\_\_
- \_\_\_\_ Aerial photos — current
- \_\_\_\_ Aerial photos — historical (give years of photos)
- \_\_\_\_ Topographic maps

\_\_\_\_ Neighborhood zoning maps/land use maps  
\_\_\_\_ Chain of title history  
\_\_\_\_ Title report  
\_\_\_\_ Building specifications/plans  
\_\_\_\_ CERCLIS list (date of list \_\_\_\_)  
\_\_\_\_ National Priorities list (date of list \_\_\_\_)  
\_\_\_\_ Federal Facilities list (date of list \_\_\_\_)  
\_\_\_\_ State superfund or similar list (date of list \_\_\_\_)  
\_\_\_\_ Other government records—identify: \_\_\_\_\_

Previous environmental assessments—identify: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Other—specify: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

2. Describe your visit(s) and how you inspected the property (e.g., walked perimeter, entered buildings, drove all passable roads, flew over interior).

Number of visits: \_\_\_\_ Date/Time Inspected \_\_\_\_\_

Identify all persons present during visits (including owner, TNC staff, others):

3. Attach a *sketch* of the property covered by this assessment (and adjacent property, if appropriate). Use the sheet included at the end of this form if that is helpful or any other useful map. Show any bodies of water, swamps, wetlands, wells, improvements, structures, man-made features and any areas of concern noted in this assessment. Identify those areas that you physically inspected (e.g., paths walked, roads driven, etc.)

Take *pictures* of the property (particularly of any problem areas) and include them with this form.

**PROPERTY HISTORY/USE:**

1. List all known historical and current uses of the property (e.g., agricultural, manufacturing, undeveloped land, etc.). Identify all known owners/operators. Include dates/time periods as appropriate.

2. List all known historical and current uses of adjacent properties which might have an impact on this property. Again, include dates/time periods as appropriate.

3. List all buildings/structures on the property and their uses.

## HAZARDOUS WASTE ASSESSMENT FORM

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### GENERAL PROPERTY CONDITION:

When visiting the property, did you observe any:

- ☐ Distressed vegetation or any areas that are bare for no apparent reason?
- ☐ Unusual odors?
- ☐ Stains (unusual or around areas where chemicals are stored/used)?
- ☐ Evidence of dumping?
- ☐ Trash or other debris?
- ☐ Drains?
- ☐ Any unusual depressions or mounds?
- ☐ Are there any sheens or unusual colors on the surface of any water bodies?
- ☐ Piping/vents for underground storage tanks?
- ☐ Other areas of concern?
- ☐ Comment on any yes answers above and locate those areas on the property sketch.

### DRUMS:

Are there any storage drums on the property? If yes, locate them on the sketch and indicate:

- a. Are they empty?
- b. What is/was in the drums?
- c. Any evidence of leaking?
- d. Will the drums need to be removed?
- e. Describe the area around the drums.

### TRANSFORMERS:

Are there any transformers (pole-mounted or pad-mounted) located at the property? If so, indicate:

- a. The types of the devices and who owns them.
- b. Are they labeled as containing PCBs or being PCB free?
- c. Is there any evidence of leaking or damage?

### TANKS/WELLS:

Are there (or were there) any above or below ground storage tanks on the property? If yes, locate each tank on the sketch and indicate:

- a. Is the tank above ground or underground? Its age \_\_\_\_ size \_\_\_\_  
What was/is stored in the tank? \_\_\_\_\_

Are there any ditches, pits, ponds, lagoons, clarifiers, oil/water separators, surface impoundments, or sumps on the property? If so, describe how are they used and what they contain.



b. Is the tank still there? If not, obtain details on removal.

\_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Don't Know

c. Have any permits been obtained for the tank? If yes, review permits.

\_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Don't Know

d. Has the tank and associated piping ever been tested? If yes, attach results.

\_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Don't Know

e. Describe the area around the tanks. Identify any evidence of leaking or spilling.

\_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Don't Know

Does the property contain any septic tanks or fields? If yes, locate on the sketch and indicate:

a. Are they in use or abandoned?

b. Did they receive any industrial materials? If yes, discuss.

Are there any wells on the property? If so, locate on sketch and indicate:

a. What type of well is it? How is it used?

b. Are the wells in use or abandoned?

c. Are the wells locked or protected?

d. Has the well water ever been tested? If yes, attach results:

e. Have there been any complaints about the quality of the water or flow rate?

If yes, discuss.

**MINERAL/PETROLEUM OPERATIONS:** Have there ever been any oil or gas wells or other mining activities on the property? If yes, locate these operations on sketch and indicate:

a. The type of operations on the property. Where were the wastes from such operations disposed of?

b. Are there any oil or gas pipelines?

Has the pipeline leaked? If yes, give details.

c. Identify the owner/operator of any well, mine or pipeline.

**RADON:** Has a radon test been performed in any building at the property? If yes, attach results.

**ASBESTOS:** Is there any evidence of materials that are likely to contain asbestos? (Check roof, exterior, pipe coverings, spray-on fire proofing, cement sheet.) If so, describe the types, amounts and condition of materials (intact or deteriorating).

**FILL/GRADING:** Has fill ever been brought on the property? If so, indicate where it was placed and when and where it came from. \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Don't Know

Has there been any grading or disturbance to the soil? If so, indicate why.

\_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Don't Know

## HAZARDOUS WASTE ASSESSMENT FORM

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**CHEMICALS/WASTE DISPOSAL SPILLS:** Have any chemicals been used on the property? (Consider “chemicals” to mean industrial materials *and* such products as cleaning compounds, lubricating agents, greases, oils, heating fluids, gasoline, pesticides, herbicides, fertilizers, metals.) If so, indicate the types of chemicals, how they were used, and where and how they were stored.

\_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Don't Know

Has the property ever contained any areas used to dispose of waste? If so, check below the kinds of materials disposed and identify the method of disposal (e.g., burning, discharge to water body, dump, land farming, landfill, recycled, settling ponds, surface impoundment, etc.).

\_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Don't Know

### Method of Disposal

\_\_\_\_ Appliances \_\_\_\_\_  
\_\_\_\_ Asbestos \_\_\_\_\_  
\_\_\_\_ Automobiles \_\_\_\_\_  
\_\_\_\_ Chemicals \_\_\_\_\_  
\_\_\_\_ Construction debris \_\_\_\_\_  
\_\_\_\_ Garbage (food wastes) \_\_\_\_\_  
\_\_\_\_ Household trash \_\_\_\_\_  
\_\_\_\_ Incinerator ash \_\_\_\_\_  
\_\_\_\_ Industrial wastes (identify type) \_\_\_\_\_  
\_\_\_\_ Mining wastes \_\_\_\_\_  
\_\_\_\_ Pesticide or herbicide containers \_\_\_\_\_  
\_\_\_\_ Pesticides or herbicides \_\_\_\_\_  
\_\_\_\_ Petroleum products \_\_\_\_\_  
\_\_\_\_ Sewage sludge \_\_\_\_\_  
\_\_\_\_ Tires \_\_\_\_\_  
\_\_\_\_ Other (identify: \_\_\_\_\_) \_\_\_\_\_

Locate these activities on the property sketch.

How long were these activities conducted?

Has there ever been a chemical spill or leak on this property? If yes, indicate what was spilled, where it was spilled, how much was spilled and what actions were taken in response.

Have there been any chemical spills or leaks on adjacent property or in the surrounding area? If yes, discuss.

### STUDIES/RECORDS/ENFORCEMENT:

Have any previous environmental assessments/tests/samplings/impact statements been conducted for the property? If so, attach copies.

Has the current owner had any communications with any government agency concerning environmental conditions on the property? If yes, explain.

Have any government officials ever investigated, cited, or been involved with any violations of any environmental law at this property or on property in the immediate vicinity? If yes, explain.

Does this property or any property within one-half mile appear on any list of "problem" sites that is maintained by any environmental agency? If yes, explain.

**SUMMARY:**

Summarize the overall condition of the property and your conclusions/recommendations regarding the property.

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Signature of Preparer

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Date

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Signature of Reviewer

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Date

## Check Your Progress

Before continuing on to the next chapter, check that you can:

- ☐ Explain the important elements of a site inspection, including how to:
  - Determine if the property meets the land trust's written selection criteria;
  - Identify and document conservation values;
  - Identify boundaries;
  - Evaluate current and past activities on the land and on relevant adjacent lands, including any potential for hazardous waste;
  - Identify threats to the conservation values and/or safety hazards, public use or encroachment areas, management problems, or other threats;
  - Conduct research on the property via maps, Natural Heritage Inventory data and other sources; and
  - Gather any other information relative to the conservation of the land;
- ☐ Use the tools provided in this course to create a site inspection form;
- ☐ Determine when additional site inspections, inventories or studies might be warranted;
- ☐ Explain what should happen at the land trust once the site inspection is completed, where the information goes, who evaluates it, and who makes the next decision;
- ☐ Describe how data obtained at the initial site inspection can be used for future baseline document reports or management plans; and
- ☐ Document the site inspection and keep inspection records.

[illegible]



## Chapter Four • Project Planning

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### Practice 8G: Project Planning

All land and easement projects are individually planned so that the property's important conservation values are identified and protected, the project furthers the land trust's mission and goals, and the project reflects the capacity of the organization to meet future stewardship obligations.

This practice calls for each project to be tailored to the specifics of the property through some form of project planning. The process may take the form of an actual project plan, a completed project planning data sheet, or may be reflected in the correspondence, maps or other documents related to the project. The formal or informal project plan becomes the guide for the next steps in the protection process. The planning documentation becomes particularly important when there is more than one person working on the project. The project plan or data sheets prepared by the land trust representative evaluating the property, for instance, can be essential for the attorney drafting the conservation easement. Initial project planning should evaluate the conservation values and protection strategies against the land trust's mission and capacity. Project planning should also include the identification of the conservation values and the potential threats that could significantly impair those values (threats may vary by geographic region and land trust mission). In addition, project plans should evaluate the land trust's and landowner's goals for the project, and then devise protection strategies accordingly.

— From the *Background to the 2004 revisions of* Land Trust Standards and Practices

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### Learning Objectives

As a result of studying this chapter, you should be able to:

- Develop an evaluation process for land conservation projects that is consistent and systematic, relating to the organization's mission, goals and capacity;
- Understand the link between project planning, project negotiation and landowner education;
- Affirm and summarize how the project meets the land trust's mission and goals, and public benefit test;
- Utilize the site inspection information as part of the project planning process, including developing a clear sense of the property's conservation values;

- Create and identify systems, a series of questions, and tools that help evaluate possible immediate and long-term threats and/or opportunities to the conservation values;
- Consider various conservation planning tools, relate them to your land trust's goals and organizational capacity, and confirm the most appropriate conservation strategy for the property;
- Evaluate the land trust's capacity to undertake the project and fulfill any long-term stewardship obligations; and
- Provide a written summary or plan regarding the land trust's conservation priorities on an individual project that will clearly inform the conservation easement drafting or land acquisition process, and document key questions and decisions.

## Summary

Project planning builds on the project selection process. It consists of synthesizing all of the information gathered by the land trust about a particular potential conservation project into an evaluative *process*, involving a partnership with the landowner, to comprehend, identify and prioritize the conservation values in need of protection on an individual parcel of land. The purpose of project planning is to use the information gathered by the land trust through its project selection process to craft a fee acquisition or conservation easement that will protect the identified conservation values while meeting the landowner's goals for the future of the property. Most land trusts intuitively create a project plan for each of their land conservation projects, but they either do not recognize it as such, or call the process and its result by a different name. Practice 8G is not a new step in the land conservation process. It emphasizes the importance of evaluating all the information gathered about a potential project and using the synthesis of this information to guide the negotiation and drafting of the terms of the conservation easement or the components of a fee acquisition project in order to ensure the expected conservation results are achieved.

The project planning process brings together all the elements discussed in chapters 1, 2 and 3. It involves a willingness to understand the landscape and the landowner's goals through a thorough site inspection process, including landowner interviews and research into the property's history and its conservation values. It involves applying the land trust's selection criteria. Finally, it involves asking, What are the most important conservation goals of the project? The answer to this question will guide the development of the project plan.

A land trust's conservation projects reflect the needs of the organization's constituency, its mission and its strategic planning goals. Land trusts



select projects based upon their written project selection criteria. For the most part, these selection criteria involve general questions that enable the land trust to screen for project appropriateness, rather than a specific analysis of the landowner and land trust's goals and how they may best be achieved. The latter is the object of a project plan.

Project planning involves evaluating a property to identify the important resources for protection, understanding the landowner's conservation goals and desired future uses of the land, and creating a plan that best meets the needs of the land trust, the landowner and the land itself. Creating such a project plan is necessary before negotiations can conclude for the acquisition of the fee interest in the land or a conservation easement, so that all parties to the transaction are clear about the project's conservation objectives.

Every organization should clarify the depth of knowledge it needs to conduct this planning process, based on the complexity of its conservation program and goals. For some, this will mean "in-house" staff or regular volunteers who possess the knowledge and time required to develop a plan will be tasked with its creation. Land trusts that engage in complex conservation transactions and do not have the capacity to prepare a project plan in-house may need to obtain outside assistance. In addition, because the land and its uses are continually changing, project planners benefit from skills in site interpretation and active listening, and should understand how to transform their ideas into land protection strategies that can withstand the test of time.

A project plan can take many forms, and no one particular format is required in order for a land trust to be consistent with Practice 8G. It is simply important that land trusts understand that project planning ensures a comprehensive, integrated thought process for each parcel of land by tailoring each project to the specifics of the property. This requires that the land trust have processes and procedures in place to create the project plan.

### **Different Organizations, Different Project Plans**

Each organization has its own mission, conservation philosophy and mechanisms for achieving its conservation goals. These allow the organization to establish consistency in its land protection efforts, which in turn helps inform the public of the organization's identity.

When developing your land trust's overall conservation philosophy and land protection strategies, you need to consider the organization's immediate and long-term stewardship capacity, as well as which conservation

techniques will best protect those resources you most desire to conserve. This process must necessarily consider the cost of these different conservation tools and techniques as they relate to your organizational capacity, your ability to defend the conservation resources over time, and the likelihood of successfully achieving your land protection goals. A land trust's overall conservation philosophy and its strategies create the framework from which you select the appropriate tools to conserve a property's important natural or cultural resources. Therefore, each organization will develop its own process and desired "product" to meet the project planning practice.

For example, if an organization's conservation goals for a property include habitat restoration, the land trust will need to consider the condition of the existing habitat (presence of exotic species, erosion, cover types, water or lack of water, etc.). Through its project planning process, the land trust will need to prioritize and evaluate how much restoration work is required and what the organization can appropriately take on given the scope of the project (easement or fee acquisition), the land trust's mission, and its long-term capacity.

Another organization, whose emphasis is on farmland protection, might focus on soil quality, field patterns, water availability, road frontage, farmland viability issues, and the possibility of residential conflicts/encroachment. Here, the land trust's project plan will likely revolve around issues concerning land fragmentation, placement of any reserved house sites as they affect future agricultural production, the need for additional agricultural structures, and the relationship between cultivated land and other "supporting lands" (woodlands, wetlands, and so forth).

By creating a project plan for every conservation project, a land trust will better ensure its long-term conservation goals for a particular property can be met, given its capacity, the landowner's goals and any potential threats that could significantly impair the property's conservation values.

## Organizational Assessment

Conduct a quick assessment of your land trust's existing project planning process giving your organization one point for every "yes" answer. Scores are shown at the end.

1. Does your land trust review the data obtained in the project selection process to determine if it needs any additional information prior to creating the project plan?
2. When your land trust's representative meets with landowners, does he or she discuss the overall significance of their land within the context of the organization's conservation programs?

3. Does your land trust's representative review maps, aerial photographs, and the like with landowners in order to understand the property in the context of your land trust's larger conservation vision?
4. Does your land trust's representative discuss the important conservation features on the land with the landowner, *and* listen to what the landowner feels are most important?
5. Does your land trust's representative walk the property with the landowner to gain clarity on what portions of the property the landowner cares most about, and why?
6. Does your land trust use its site visits as an opportunity to educate the landowner about the land trust's long-term stewardship capacity, and explain to the landowner how the property can best be protected?
7. Does your land trust assess if acquiring a specific property will require changes from its standard project planning processes or, for conservation easements, its template easement document?
8. Does your land trust regularly assess the long-term stewardship and administrative costs associated with the project plan and subsequent conservation easement or fee acquisition?
9. Does your land trust consider and help the landowner evaluate the immediate and long-term resources needed by the landowner to implement the project plan? (For example, any property boundary surveys, biological surveys, timber harvest plans, site clean-up, etc. that may be required as part of the project.)
10. Does your land trust consider the existing or possible future uses of surrounding properties as part of its project planning process?
11. Has your organization prioritized its conservation goals and techniques and provided the landowner with clear guidance as to what types of restrictions and/or permitted uses it will accept for any conservation project?
12. Does your organization periodically review its protection strategies and update these based on the land trust's conservation goals and capacity?
13. Does your land trust periodically review its project selection process and criteria to ensure they clearly identify those projects that your organization wishes to conserve? (It is important to note that the project planning process builds on the project selection process to guide the next steps in the protection of the property.)

If you/your organization scores:

- 11–13: Great! This course will help you consider possibilities to refine your planning process, but you are well on your way to excellence. Share your expertise with your colleagues by sending your sample forms to the Land Trust Alliance.
- 8–10: Very good. You may find that you can improve your project planning process to build stronger landowner relationships, clarify your stewardship responsibilities, and ensure that the landowner's and land trust's goals are met.
- 5–7: Your instincts are good, and you will likely benefit from better incorporating your project planning process into your overall conservation program (project selection/criteria, site visits, planning, and drafting conservation easements or acquiring fee land).
- 0–4: It is time to adopt processes and procedures that will ensure your conservation programs are successful over the long-term. Project planning is a process based on strategic negotiation and land assessment skills, as related to your organization's goals, philosophy and capacity.

## **Creating the Project Plan**

### **What Constitutes a Project Plan?**

Different organizations have found different mechanisms for creating project plans. The process may take the form of an actual narrative plan, a completed project data sheet, a memorandum prepared by land trust staff or volunteers, detailed minutes of project staff or project committee meetings, or may be reflected in the correspondence, maps or other documents related to the project. The universal thread is the underlying thinking, evaluation and analysis that support the plan. Each organization should develop a consistent format to compile and present the information they have gleaned about the property during the project planning process.

Project plans may consist of a property map, a checklist, memoranda, and detailed minutes of project consideration meetings.

### **A Property Map, with Supplementary Information**

This map should depict the important characteristics of the property and identify any special “use zones” as defined by the conservation easement or, for fee ownerships, the land management plan (see the sample documents at the end of this chapter for examples). For conservation ease-

ment projects, this map may later become, or inform the creation of, the baseline map. (For more on creating baseline documentation and baseline maps, see *Land Trust Standards and Practices*, Practice 11B, Baseline Documentation Report, and the Land Trust Alliance course “Conservation Easement Drafting and Documentation.”)

The challenge is to keep the property map simple enough so that people unfamiliar with the project will be able to understand the project plan and, therefore, the proposed conservation easement or fee acquisition. Through the property map, the project plan illustrates the key aspects of the property that the landowner and land trust are striving to conserve — forever.

When creating the property map, avoid the tendency to “pile” all resources onto one map, resulting in a document that contains too much information for people to understand easily. It is more effective to create a property map that notes the land’s key “use zones” and special features, with supporting references (such as topographic lines, woodland margins and boundary lines) so that the landowner and the land trust can easily orient themselves to the property. Roads, buildings, stone walls, and other manmade and natural physical features should also be included. These maps need to be created to a known scale; drawn by hand or with the aid of computer mapping.

Supplementary information can include supporting natural resource materials and/or other data (such as viewsheds, soils, and so forth) that clarify your decisions as to how the land will be protected. These materials can be attached to the property map as part of the project plan. Frequently, this is information that you have already compiled as part of the site inspection or project selection process. You should also append written documentation of your conversations with the landowner, the overall conservation goals and future consistent uses that are proposed for the property.

## Checklist

Some organizations document the project planning process by creating a checklist of issues to be addressed (see the Maine Coast Heritage Trust’s Conservation Data Planning Sheet in Sample Documents on page 201). This technique is particularly helpful if the person working on the project and negotiating with the landowner is not the same person drafting the conservation easement or negotiating the fee acquisition. In this case, the checklist constitutes the project plan, and is a compilation of the natural resource analysis and the conversations with the landowner. Another version of this type of project plan is to use the checklist initially,

and then take one additional step and create a formal document that serves as a project plan, as the Maine Coast Heritage Trust does.

This technique of using a checklist as a project plan is also helpful if more than one person is working on the same project over the course of one or more years. Again, you should append supporting maps, letters, references, and other documentation relating to the property's important natural resources. These materials should become part of the project file.

### **Memorandum**

Some organizations have found that a detailed memorandum to the board, committee or person who oversees the land trust's protection program — or a memorandum to the file — is an effective method for documenting the project planning process. The memorandum should clarify any issues that are out of the ordinary, outline the property's important conservation attributes, describe the landowner's conservation and development goals (if any), and confirm the land trust's capacity to undertake the project.

It is important that such memoranda are consistent from one project to the next. Supporting maps and other documentation should be appended, as outlined above. It may be helpful to create an internal checklist or outline of the items the memo should address and of the documents to be appended.

### **Detailed Minutes**

Some organizations use detailed minutes of project staff meetings (for land trusts with staff) or project/conservation committee meetings to serve as their project plan. At these organizations, once the project selection process has progressed to the planning stage, these meetings are used to discuss the property's conservation attributes, the landowner's conservation and development goals, and the basic terms necessary to achieve both the land trust's conservation goals and the landowner's goals for the property. These minutes should include copies of maps or other materials discussed in the meeting in order to constitute a project plan that meets Practice 8G.

Land trusts may use one of these forms as their project plans at one stage in their organizational life and move to a more formal style of project plan as they grow and add capacity. Remember, no one format is correct. It is important that land trusts recognize the need for a project plan and

adopt a process that will produce a plan that reflects the synthesis of the information gathered about a particular conservation proposal.

## **Project Plans for a Conservation Easement and Fee Land Acquisition**

Each project plan should be tailored to each property within the context of the organization's overall land protection program. For fee ownerships, the project plan should focus on:

- Land management issues;
- Habitat restoration and/or maintenance; and
- Public access and/or cultural and educational interpretation, as appropriate.

Conversely, for conservation easements, it is less likely that the land trust will be involved in the direct management of the property. Therefore, the project plan will focus on how the easement will protect the property's important conservation resources.

One of the goals of a project plan is to identify the appropriate tools for protecting a particular parcel of land. Land trusts often try and “do it all” without considering the practical or financial ramifications of committing to extensive conservation easement restrictions or complex land management scenarios for a single parcel. Creating project plans helps land trusts evaluate the entire cost of a proposed conservation project and plan for the resources it must devote to accomplish its conservation goals for that property.

Project planning is a helpful tool for weighing the organization's conservation and strategic goals in concert with the landowner's and/or community's goals. The net result should be a plan that is both responsive and responsible, a plan that will engender public confidence in the organization.

## **Land Management Plan versus a Project Plan**

A land management plan identifies the resources and processes on the land that are to be protected and promoted, determines what actions to take or avoid, and designates who shall accomplish those objectives. A project plan outlines the overall conservation goals for the property, the restrictions necessary to protect the conservation resources, and the uses that may be permitted on the land while protecting its resources. It directly informs the conservation easement drafting process or acquisition strategy.



**Project planning is a helpful tool for weighing the organization's conservation and strategic goals in concert with the landowner's and/or community's goals.**



**Land management plan** A plan that identifies the resources and processes on the property that are to be protected and promoted, determines what actions to take or avoid, and designates who shall accomplish those objectives.

For example, a written project plan for a proposed fee acquisition might determine that the property shall contain a rustic trail to be designed primarily for nonmotorized vehicles. The project plan may further dictate that the trail's design shall avoid any habitat for rare and endangered species, and shall focus on fostering a greater understanding and appreciation for the property, all as consistent with the land trust's mission, goals and existing financial resources for the property's management.

The land management plan for this property, by contrast, would delineate where the trail is to be located, what type of trail it is to be (narrow, wide, paved, dirt, rustic, groomed), when it will be constructed, and who is responsible for the trail's maintenance and the enforcement of the trail's use restrictions.

## When To Create a Project Plan

The project planning process is generally initiated after the land trust board has reviewed and granted preliminary approval for the project based upon its compliance with the organization's selection criteria. This timing enables the land trust to create a project plan only for those projects that meet the organization's mission and goals and are consistent with its other conservation initiatives.

Some organizations' project selection processes may result, prior to board approval, in the collection of some of the information necessary to create a project plan. However, for other groups, the project selection process provides a much more general review in contrast to the more detailed project planning process.

## How to Create a Project Plan

Techniques for creating a project plan vary, but universally involve the synthesis of available information. Through this process, the appropriate land protection tools and goals become evident, and the project's goals are aligned with the landowner's desires and the organization's mission and capacity. Whether or not to include other conservation partners is also regularly considered during preparation of the plan.

Your organization is often unlikely to realize all its (or the landowner's) ideals in conserving a property. Therefore, the land trust must establish the best possible protection strategy that it will be able to uphold in perpetuity. Therefore, as part of every project plan, you will need to assess the immediate, ongoing and long-term costs (staff time, volunteer time, consultant time, legal time, etc.) that will be required to monitor and defend a conservation easement or steward the fee-owned property over time.



Organizational capacity is a difficult concept to grasp. However, understanding your land trust's capacity and how it affects any given project proposal will improve the project plan and your conservation efforts. (See the more detailed discussion about organizational capacity in chapter 1; see also *Land Trust Standards and Practices*, Practice 7A, Capacity, and the Land Trust Alliance course "Mission, Planning and Capacity.")

For example, an element of the project plan for a property might include establishing protected buffers along wetlands and streams. However, depending on the land trust's mission and capacity, the buffer restrictions could vary widely. Some organizations may decide that they will simply identify a buffer that prohibits barns in an area along a stream (thereby preventing nutrient loading in the stream due to manure from animals housed in and around the barn). For others, the project plan might include the prohibition of livestock in the buffer area and therefore require fencing and a greater level of monitoring. Still other organizations with greater organizational capacity and whose mission includes preservation of water quality might require buffers that are maintained in a certain manner (e.g., mowing to remove phosphates, no mowing to maintain a shaded stream area, specified cutting restrictions, and so forth).

A land trust's standard restrictions and management techniques should be established prior to working with a landowner. They are based upon the organization's long-term easement or fee land stewardship capacity. If the acceptable strategies are not determined in advance, the land trust representative may be put in an awkward position if he or she proposes to the landowner what seems like a logical method to protect a conservation resource, only to find out later that the land trust does not have the capacity to carry out what was suggested. The result can be a loss of landowner confidence in the land trust's conservation program and frustration on the part of the project negotiator due to unclear expectations and inefficient use of time.

### Gathering Information

Much information about a potential conservation project will have already been gathered by the time the project planning process begins through a site inspection, interviews with the landowner, consideration of the public benefits associated with the project, and application of the land trust's selection criteria. Gaps in that information will likely become apparent when land trust representatives apply their selection criteria to a particular parcel and/or take the project to the land trust board for preliminary approval of the transaction. Therefore, land trusts often need



A land trust's standard restrictions and management techniques should be established prior to working with a landowner. They are based upon the organization's long-term easement or fee land stewardship capacity.

additional information about a conservation proposal before being able to complete the project plan.

There is ever-increasing access to a wide and varied amount of information regarding land; the accessibility and scope of the information depends on your community. Site-specific information is increasingly available on the Internet, in public computer databases, and from online service agencies (see Additional Resources for suggested contact information). Land trusts should also remember that historical documentation and landowner narratives about the property can prove helpful when creating a project plan. Some organizations undertake this substantive data collection as part of their project selection process, while others wait until after the board has given preliminary approval for the project.

### **Maps/data layers**

One of the best ways to assess the conservation attributes of a specific property is to compile information and maps on a property's geology, water, cultural features, proximity to other protected lands, and plant and animal composition.

Many local municipalities throughout the country now have ready access to Geographic Information System (GIS) databases that provide data layers for geography (slope, topography, soil types, bedrock configurations), vegetation cover types, wetlands and water bodies, wildlife habitat, and roads and structures.

Many counties and townships will often readily share it with conservation organizations (although there may be a fee). However, if you are in an area that does not yet have this technology, you can obtain much, if not all, of the same data by referencing published maps and reports (see Additional Resources for suggestions).

Some local or state governments may also have information on rare and endangered species, wind patterns, fire occurrence patterns, culturally important viewsheds, and related features (such as historic trails, battlefields, overlooks, gathering areas, burial grounds, etc.), or this information may be available through other resources (see Additional Resources).

### **Planning and zoning information**

It is often helpful to know what a community believes should happen with a property or the land adjacent to it. Therefore, land trusts should research local zoning laws (if zoning exists) and comprehensive or master plans. Reviewing the pertinent plans and zoning is useful in understanding the community's overall goals related to conservation and the potential development of a particular property. For example,

- For projects that involve public access (usually on lands owned outright by the land trust), it is helpful to know the process (if any) to establish trails, access, signage, etc.
- If land adjacent to a proposed conservation project is zoned for dense commercial development, a land trust will need to analyze the implications of this development on the property it is considering protecting.
- For conservation easement projects, it is useful to know the current zoning and any government plans affecting the property in order to understand what uses are compatible with long-term community goals. Such knowledge can also help avoid negotiating reserved rights for the landowner that he or she may not be able to implement under existing land use laws. Granted, not every community has this information. However, if it is available, it can help identify potential threats to a parcel and neighboring land, such as unplanned development, lack of sophisticated planning techniques (e.g., a density bonus or cluster development), and subdivision regulations that perpetuate land fragmentation.
- For conservation easement projects, if the landowner wants to reserve the right to subdivide a portion of the land in the future, you will need to ensure that both parties understand how local (and other government) regulations will affect the project in both the short and long term. The regulations will likely influence conservation easement language and any map or subdivision plan that is prepared as part of the project.

### **Gaining information within the broader context**

Too often, project plans are devised by only looking at the property currently under consideration for protection. The result of this limited analysis is that important natural and cultural resources can be overlooked, and the overall project plan may fall short of its potential conservation benefits.

For example, it may be possible to overlook an important wildlife migratory route on an isolated property that would otherwise be evident when looking at aerial photographs and resource maps of the surrounding area or after consulting with a wildlife expert. Or, when locating a reserved house site, it might be logical to place it in one corner of the property (if you are only considering that one property) but when viewed in a larger context, the proposed house site's location could severely impact the overall landscape.

Another issue to consider when examining the larger landscape is the impact of neighboring development and roads. If you are fortunate enough to work with surrounding landowners, examine how those properties will

affect your project plan. How would the existing roads and development, and possible construction of future roads and development, impact your immediate project and that of additional conservation work in the area?

### **Talking with the landowner**

As part of the project planning process, it is important that the land trust and landowner discuss the conservation and development goals (if any) for the property. Many landowners are new to their property and often enjoy “seeing the land through your eyes” as a land trust representative. Other landowners, particularly those whose land may have been in the family for generations, will likely enjoy sharing their knowledge of the property with you and actively collaborating on its protection. These discussions should commence during the site inspection process, but may need to be expanded upon once the project planning process begins.

Sometimes, landowners have development goals in mind for their property that are incompatible with the conservation of its natural resources. You will need to understand these goals and work with the landowner to ensure that the project plan addresses both the landowner’s needs (to the extent possible) and the land trust’s conservation goals.

For example, say a landowner wants to reserve a building envelope that would be located in prime habitat for a species eligible for listing as threatened or endangered by the U.S. Fish and Wildlife Service. Your land trust’s mission is to protect wildlife habitat, so the organization’s conservation goals would be severely compromised if you accept the landowner’s proposed building envelope location. You explain your concerns to the landowner and offer to meet with him on his land. Take an aerial photo and topographic map of the land to illustrate your concerns. Together with the landowner, you explore other potential homesite locations that offer attributes similar to those of his requested location, but that will also preserve the native community that is critical habitat for the species in question. You choose an alternative site for the building envelope.

After these discussions, you suggest that it might be helpful to stake out the new approximate building envelope on the ground so that the landowner can see what that location offers for a home site. You also note that the local land use code requires preserving habitat for this species and that the county has been diligent about enforcing this code. Using a GPS unit, you could stake out the proposed building envelope (you can also pace out the area on foot or use a measuring tape).

Once the landowner sees the size of the building envelope on the ground and recognizes that it offers many of the same attributes as his original,

preferred location, the landowner may readily accept the new building envelope's location.

### **Aerial photographs**

Aerial photographs are another great way to gain helpful information and facilitate communications with the landowner (and his or her advisers, as appropriate). Depending upon the level of specificity of your project plan and your overall conservation goals for the property, aerial photographs may provide much of the background information you need. In addition, you can often obtain photographs that track the property over a series of years, which may be helpful if you are analyzing a resource for long-term trends.

### **Ground-proofing the data**

It is often helpful to take a composite sketch map (or a copy of your various data sheets) and conduct a site visit to “ground-proof” or verify the relevant project information. For example, you may check waterways to verify their presence and configuration, walk or drive roadways, and establish the presence or absence of other manmade improvements (which you might have noted on the aerial photographs). Any differences regarding the features you have observed on the ground should be corrected and noted as part of the project plan.

This site visit can be conducted with or without the landowner, and serves to confirm or enhance your knowledge of the property. Generally speaking, this site visit occurs early in the process and helps the land trust gain the knowledge it needs to make educated decisions about both the landowner's and its own conservation goals.

The total number of visits to a potential project property that will be necessary to complete a thorough project selection process (including preparation of a project plan) is determined on a project-by-project basis. The number of visits will vary depending on the property, the complexity of the land trust's conservation program and the clarity of the landowner's goals.

You may also find site visits with the landowner a helpful way to negotiate the project plan should you discover significant differences of opinion or perspectives. In this case, you may wish to schedule site visits rather than discuss the project details through a letter or over the phone. Doing so allows for a more informed dialog with the landowner and an exchange of views on-site.

The natural resource complexity of your target property will also determine how extensive your site visits need to be. For a property that is



**Affirmative rights** (1) Easement provisions that require the property owner to maintain the resources protected by the easement (e.g., mow a field to keep open a view) or that require the land trust to maintain if the owner does not. (2) Rights granted to the land trust to perform physical acts on the property (e.g., build a trail or access the property for monitoring).

largely comprised of similar landscape types, or where the land trust and the landowner agree that large portions will remain much “as is,” you can usually reach consensus on a project plan relatively quickly, perhaps in as few as one or two visits.

### **Determining the Most Appropriate Conservation Strategy for the Property**

As part of the project planning process, your land trust should evaluate each project to discern the most appropriate conservation strategy based on the organization’s goals and capacity, the landowner’s goals and community needs. Not all land lends itself to protection with a conservation easement, just as not all land lends itself to public access. Smaller land trusts may not have the capacity to steward a conservation easement or fee acquisition after learning details about the land’s complex conservation values, and thus may need to engage another conservation organization as a partner in the project, or refer the entire project to another conservation group. For a more detailed discussion of this topic, see *Land Trust Standards and Practices*, Practice 8H, Evaluating the Best Conservation Tool.

#### **Very high “land sensitivity”**

It is possible that upon evaluating a parcel of land through its project selection process, the land trust realizes that the land’s conservation resources (or attributes) are so significant that the property is more suited to outright ownership than a conservation easement.

For example, if you find yourself devising complex protection strategies for a particular parcel requiring active restoration or detailed land management plans, it could be impractical to expect a private landowner to carry out these directives in perpetuity as part of a conservation easement. If a great many restrictions or affirmative rights are required to protect a property, fee ownership may be a better choice. As many land trusts are finding, the original landowner may be willing to subject their property to this degree of control, but subsequent owners may not have the resources or be comfortable with such tight restrictions or affirmative rights in a conservation easement. For the land trust, this can mean demanding long-term stewardship obligations (both financially and in terms of staff time) to enforce such provisions in perpetuity.

There is no single, correct approach in these situations. However, land trusts need to have realistic expectations as to what they and the landowners are obligated to uphold over time. Thus, if a parcel of land contains highly sensitive resources or requires intensive management, outright ownership is generally favored. Ownership gives the land trust the most

certain ability to protect and manage the conservation resources on the property. Some organizations use this opportunity to form ownership or management partnerships with other conservation organizations or agencies, or may serve as an “acquisition agent” and “pre-acquire” the land with the goal of transferring it to another entity that can undertake its appropriate management.

### **Public access as part of an organization’s strategic goals**

If the land trust has identified an important trail corridor or network on the property, it must weigh the various approaches toward achieving its public access goals, minimize long-term maintenance costs through careful planning and design, and create strategies to develop (or maintain) community (and landowner) confidence in the trail(s).

If a property is appropriate for intensive public use, land trust or public ownership is usually favored. Public access on privately owned land requires an additional level of sophistication in the project planning process. While not universally common because of many landowners’ concerns about privacy and liability problems, an increasing number of land trusts and communities are working to establish public access trails — many of which are partially on privately owned lands.

As part of the project planning process, the land trust must carefully determine whether a conservation easement or fee acquisition of the property is the most appropriate protection mechanism.

### **Limited development**

Increasingly, because of the price of land or the landowner’s goals, land trusts have to consider incorporating some development into conservation projects. In these situations, a land trust should ensure that any development is sited in such a way as to minimize the detrimental impacts to the property’s conservation values.

You should not only gather information as you would for any conservation project plan, but you should also analyze where development would be most appropriate from both a conservation and human perspective. In some instances, this level of planning may be beyond the expertise or capacity of a land trust; therefore, it may be necessary to suggest a landowner hire a professional land use planner to assist with this task. In other instances, land trusts rely upon landowners to propose building envelopes. The land trust then limits its own project planning to determining zones where such development can *not* be sited in order to protect the property’s conservation values. The landowners will then conduct the rest of the research and locate acceptable development areas.



Land trusts need to have realistic expectations as to what they and the landowners are obligated to uphold over time.



## Using a Project Plan

Project plans create the basis from which your land trust's conservation goals are realized for a particular property. For example, a project plan for a conservation easement helps inform the land trust and the easement drafter about the important features that should be conserved, as well as what special restrictions or other provisions might be warranted. A project plan also helps land trust personnel and landowners understand the implications of provisions that are outside the norm of the land trust's model conservation easement language.

Project plans help an organization think through the long-term stewardship costs of a specific parcel of land, and, for a conservation easement, any land uses desired by the landowner that may be inconsistent with the property's conservation values. The process will identify any deviations from a land trust's standard easement format and prompt the land trust to review its procedures.

For example, your land trust's model easement allows for agricultural structures anywhere on a property, with the exception of certain "scenic zones" or "habitat zones." However, upon compiling information about a specific proposed project, you note that the land includes a historic barn that is worthy of preservation and lies within an area that would ordinarily be designated as a "scenic zone." Both you and the landowner agree that the structure should be preserved and maintained. In your project plan, you note (with supporting documentation) that this is a deviation from your model easement, and, if accepted by the board, will entail a different level of stewardship than your land trust regularly conducts. Although you have deviated from the organization's model easement format, after considering the increased stewardship responsibilities, the board agrees to accept the change as generally consistent with the land trust's goal of preserving farmland and the local landscape. The board also agrees to raise money to train staff in basic historic preservation issues and increases the amount of dedicated stewardship funds for the conservation easement due to the unique aspects of the easement.



# Conservation Easement Project Planning

*This exercise is designed for either instructor-led training or in-house study.*

*For each example below, determine the key planning issues that a project plan for this property should address and why they need to be addressed. Consider how these issues may affect the decision to accept or reject a project, or how they may affect the form and content of the conservation easement. Guidance on discussing these examples follows.*

### Example 1: Conserving a Riverfront Farm

*Landowner goals:* maintain “as is,” pass to children

*Land trust goals:* protect scenic value, agricultural viability, water quality

*Land:* includes 1/2-mile river frontage, 1,000 feet road frontage and a homestead/farm operation area

*List as many key project planning issues as you can identify:*

[illegible]

### Example 2: Conserving a Scenic Hillside Property

*Landowner goals:* tax deduction for easement donation, build a vacation cabin

*Land trust goals:* open space conservation, protect locally known view from public road, public access

*Land:* includes scenic views from river valley, elk travel corridor, hiking trails

*List as many key project planning issues as you can identify:*

[illegible]

**Discussion: Example 1**

Some of the key planning issues for the riverfront farm might include:

- The need to provide for subdivision, or at least additional home sites, so the land can be passed to children;
- Assuring such subdivision will still permit a farm to remain viable by specifying minimum acreage requirements for each resulting parcel;
- Locating any reserved rights far enough from the river to prevent sedimentation, nutrient loading or other detriments to water quality;
- Identifying the need for a farm management plan to protect water quality and scenic quality;
- Locating any reserved rights to protect scenic quality from the road and perhaps from the river; and
- Preventing uses of the property other than what exists as of the date of easement.

The key to planning this conservation easement will likely be balancing the desire of the landowner to keep the land essentially as it is today, the desire to it to pass to his or her children. Because there is more than one child, a single parcel (or a single piece of land) may not achieve the goal without some land use planning, for example, permitting subdivision of the property so each child can inherit a portion or establishing building envelopes for additional home sites. Either of these options may conflict with the land trust's conservation goals, so parcel sizes should be sufficiently large to permit the continuation of a viable farm, and building envelopes should be sited to preserve the scenic qualities and farm viability and to avoid impairing the water quality by allowing construction too close to the river.

Meeting the land trust's goals while permitting both farming and farmstead maintenance may require a management plan that will seek to protect both scenic quality (from the public road and perhaps from the river if it is navigable) and water quality. Animal run-in shelters, corrals, and so forth may need to be kept a distance from the river, and farm support housing or other farm-related outbuildings may need to be located so they do not impair the scenic qualities of the land.

**Discussion: Example 2**

Some of the key planning issues for conserving scenic hillside property might include:

- Meeting the Internal Revenue Code's conservation purposes test;
- Locating the building envelope to protect views from the public road;
- Locating the building envelope to protect the elk travel corridor;
- Locating the building envelope to protect open space;
- Working with the landowner to provide public access for hiking existing trails and/or for elk hunting; and
- Creating design restrictions that maintain views from the public road.

The key to planning this conservation easement will likely be balancing the landowner's desire with securing tax benefits for the donation of the easement with his or her desire for a vacation cabin. The cabin must be located to preserve the conservation purposes of the project, so it should be sited and restricted to preserve views of the property from the public road and to maintain the wildlife corridor. Finally, the land trust will need to work with the landowner to open existing hiking trails to the public and/or allow hunting to the public. Public access issues need to be carefully considered because they may negatively affect other values, such as preservation of the wildlife corridor. Limiting access to certain times of year when the land is not generally used by elk, or adopting and enforcing regulations to manage the access may be necessary. These types of restrictions must be evaluated for their stewardship obligations because they require more frequent visits to the property than an annual monitoring visit.

## Hardworking Land Trust\*

*This case study may be completed either through an instructor-led training or self-study. In reading this case study, consider how the Hardworking Land Trust can use the project planning process to bring together the goals of the land trust and the landowner and ensure the best protection strategy for the property. Read the case study and answer the questions below. Guidance on the discussion questions follows.*

### Background

A number of years ago, the Hardworking Land Trust received a call from a landowner who owned 500 acres of land. The property is located in one of the land trust's important projects areas and abuts protected land. The landowner expressed an interest in protecting his land through a conservation easement, and requested that the land trust begin the process.

Land trust staff explained that the first step in the process would be for them to conduct a site visit to obtain an overall sense of the property, its conservation characteristics and its relation to other protected lands. In addition, they would leave a "landowner information form" for him to complete, which asks for detailed information about the property.

In preparation for the site visit, the staff printed a GIS image of the property from the land trust's computer that layered aerial photographs, a USGS topographic map and a soils map, and obtained a copy of the tax map from the county assessor that delineated the land's approximate boundaries and those of surrounding properties.

The land trust has a standard conservation easement and general project planning guidelines that reflect its conservation goals and organizational capacity (both immediate and long-term). The staff (not the board) conducts the landowner negotiations.

### Site Visit

#### Property characteristics

The property consists of a beautiful farm, with high meadows backed by a large tract of deciduous forest, a series of fields around the homestead, and two perennial streams. The property contains a main house, guest house and farm manager's house, along

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\*The land trust discussed in this case study wishes to remain anonymous; it is located in the north-eastern part of the United States, has a staff of 12 and a mission to protect scenic landscapes, open space, wildlife habitat, and working agricultural and timber lands.

with three barns (horse, dairy and storage). Accessory improvements include fencing, riding rings, a pond, silos, trails, a small farm dump, and other farm-related improvements, such as a bunk silo.

From the soils maps and the site visit, the land trust staff determined that approximately 50 percent of the farm (the majority of the fields) consists of high-quality agricultural soils. The wooded areas and some areas of the high meadows have marginal soils for production, but could be developed to meet county and state health codes.

## Meeting the land trust's project selection criteria

It quickly became clear from the pre-site visit research that the farm met the land trust's project selection criteria. The site visit confirmed the information gleaned from the maps and aerial photographs, and that staff took a number of photographs documenting the views from public roads. In addition to the high quality farmland, the woodlands, if protected, would enhance a ridgeline conservation corridor that the land trust was working to establish for wildlife and productive forestry.

The only remaining issue to be resolved prior to bringing the project to the board for approval as a donated conservation easement was the number of house sites and subdivision rights the landowner wished to retain.

## Discussions with the landowner

The land trust staff arrived at the property and began a site visit with the landowner. After viewing the lower part of the property, the staff related that this was an outstanding project and inquired, "How many house sites do you envision retaining?" To which the landowner responded, "Twelve, tucked away in discrete locations so that they each have a great view and some privacy."

The staff knew that 12 house sites spread out across the property would destroy its conservation values. The land trust's board had established planning guidelines for residential dwellings at one subdividable house for every 75 acres in order both to maintain the integrity of the conservation project and to attempt to control the number of long-term conservation easements the land trust would have to manage. In addition, the board had requested that the staff avoid siting reserved house sites on top of hills, in the middle of fields or within 150 feet of a stream or body of water in order to meet the land trust's conservation goals. The staff were also expected to prioritize conservation resources for each property to ensure a clear decision-making process as to where any reserved house sites should be located.

The staff were taken aback when the landowner stated he wanted 12 reserved house sites. They knew that a small number of house sites that minimized land fragmentation might be acceptable and allow the farm to continue to function as a working farm with ongoing forestry operations. They also recognized that there was no point bringing the project to the board for approval, given how incompatible the landowner's goals were with the land trust's conservation goals for the land.

However, they knew that other ridgeline/large-lot developments in the area were frequently developed at this density. If this type of development were to occur on this property, it would ruin the conservation corridor, the future farming and forestry potential, and the community's views of the farm from public roads.

### Discussion Questions

*Guidance for the discussion follows.*

1. As part of the project planning process, what could the staff have done to circumvent the landowner's stated desire to retain 12 house sites?
2. What would you advise the staff to do now?
3. When should a land trust walk away from a project because the project planning process fails to meet the overall conservation goals of the organization? How can this be done without alienating the landowner?
4. What are the roles of the board, staff and land trust advisers in project planning?

### Guidance

1. Some land trusts counsel their representatives not to ask landowners how many home sites they wish to develop, directing them instead to help landowners understand the conservation attributes their land contains. Other groups may alert landowners early in the meeting to any density maximums adopted by their boards (such as the Hardworking Land Trust's adopted policy of not permitting more than one home site per 75 acres) in order to discourage landowners from proposing too dense a development.
2. In this case study, the land trust representative must find a way to persuade the landowner to reduce the number of home sites. Sometimes a board member can provide assistance in discussing this difficult subject with a landowner, or the board itself can provide back-up to land trust representatives negotiating project plans by establishing clear and non-negotiable standards. Ultimately, the staff must find a way to reduce the number of proposed home sites if the project is going to be completed.

3. Land trusts should walk away from projects when the landowner insists on reserved rights that will adversely impact the land's conservation values. The best way to avoid alienating landowners is to explain the land trust's processes, goals and criteria early on and to keep the landowner updated as the project planning process develops (see discussion and other suggestions in chapter 1).
4. If a land trust is small or all-volunteer, generally a board member or trained committee member is responsible for negotiating the project plan with a landowner. Land trusts with staff generally assign this responsibility to a staff member. Land trust advisers can assist by providing feedback about particular restrictions, helping analyze land use issues, or suggesting alternative language to achieve conservation goals. In this case, the land trust (or landowner) may wish to engage a professional land planner to help identify potential home sites and present an alternative proposal to the landowner.



## Conclusion

In addition to assisting land trusts with evaluating the long-term stewardship costs of a particular conservation proposal, project plans can also be used as starting points for the creation of baseline documentation reports and land management plans. Therefore, project plans are important to all phases of land protection, from project selection, to landowner education, to negotiation and, finally, to long-term stewardship considerations.

To implement Practice 8G fully, the Land Trust Alliance recommends:

- The land trust have a written process for evaluating and designing projects prior to land acquisition or easement drafting. The process should:
  - Identify the property's important conservation values and its importance to the land trust;
  - Evaluate threats to the conservation values;
  - Clarify the land trust's and landowner's goals for the project; and
  - Select the most appropriate conservation strategy.
- The project planning process evaluates the ability of the organization to meet any future stewardship obligations.

## Additional Resources

Note: This list is designed to be a starting point and is not inclusive of all possible contacts and related references.

Possible references and ideas for information sources:

### Aerial photographs

- Your state GIS clearinghouse
- Your state department of transportation
- Environmental Air Force (or similar volunteer pilot organization). For two examples, see <http://www.lighthawk.org/index.htm> and <http://www.col-east.com/>
- <http://earth.google.com/>

### Topographic maps (can be digital or print versions)

- Local bookstores (for prints)
- United States Department of Agriculture (check your regional office)
- <http://cugir.mannlib.cornell.edu/>; <http://www.topozone.com/>; <http://topomaps.usgs.gov/>

### Vegetative analysis/cover type/location (can be digital or print versions)

- Aerial photographs
- Stereoscope analysis (see local universities, for assistance from students)
- Field visits (college interns, volunteers, consultants)
- Black-and-white photographs
- Soil data is available at <http://www.ncgc.nrcs.usda.gov/products/datasets/ssurgo/>
- Wetland data and maps

### Property boundary delineation

- Survey maps (filed in courthouse, records, etc.) and supporting descriptions
- Survey maps and supporting descriptions, held by surveyors
- Tax maps (can often have errors, but can give you a general idea of the area); check your local real property office or town clerk/town office
- Plat maps (similar to tax maps, used in the Midwest and West); less likely to have errors, but not as reliable as surveys; check your local real property office or town clerk/town office
- The landowner may have copies of survey, tax, or plat maps

**Waterbodies**

- Topographic maps
- Black-and-white aerial photographs
- Aerial photographs
- Hydrologic mapping (if it exists—depends on the area of the country)
- Landowner interview

**Cultural information**

- Local historical society(s) and/or regional/state organizations
- Local residents
- Published materials (check libraries, Internet, etc.)
- Landowner interview

**Wildlife and plant species information**

- State wildlife departments, colleges and natural history museums
- Natural Heritage Programs (located in every state)
- Horticultural societies
- Local offices of The Nature Conservancy
- Wetlands data: <http://wetlandsfws.er.usgs.gov/wtlnds/launch.html>

**Scenic viewshed information**

- Scenic byway departments of state government
- National Park Service scenic surveys
- Local planning departments, master plans, comprehensive plans
- Historic commissions or historic preservation groups
- Local conservation commissions or similar community groups

**GIS information and general sources (data layers)**

- <http://www.mass.gov/mgis/giswww.htm> (GIS around the world, links to GIS data by state)
- Local, county, regional or statewide planning, agricultural, forestry, wildlife, and/or conservation organizations
- Universities and colleges
- Natural Heritage Programs or other similar state or federal programs
- Planning or mapping consultants
- <http://mapping.usgs.gov/>
- <http://www.terraserver.com/>
- <http://www.topozone.com/>

- <http://topomaps.usgs.gov/>
- <http://earth.google.com/>
- <http://www.esri.com/data/data-maps/overview.html>

## Sample Documents

*Note:* The following sample forms should not be used without adapting them to your organization's mission, capacity and conservation goals. The sample from the Maine Coast Heritage Trust is detailed and complex, reflecting that land trust's large organizational capacity. It can be useful as a starting point to help smaller organizations create their own data planning sheets or project plan formats.

*Project Plan for a Conservation Easement Utilizing a Property Map and Supporting Information:* Columbia Land Conservancy's Conservation Easement Information Form (page 196)

The Columbia Land Conservancy in New York uses this form to gather important information about a landowner and his or her land and conservation and development goals in order to prepare a thorough project plan. It should be adapted to an organization's particular needs. A fully completed landowner information form, plus maps, may be sufficient to comprise a project plan. The maps attached to this form demonstrate different ways to illustrate a particular potential conservation project, including a conservation easement map that, in some jurisdictions, may be suitable for attaching as an exhibit to a conservation easement.

Each organization will tailor its property map/project plan to suit its overall conservation easement program. The more sophisticated the conservation easement program (and the more detailed and/or complex the restrictions are in the conservation easement), the more difficult it is to depict them on a single map. However, the more maps you include, the more challenging it can be for the layperson to understand the overall project plan.

*Project Planning Checklist and Conservation Plan:* Maine Coast Heritage Trust's Conservation Planning Data Sheet (page 201) and A Conservation Plan (page 226)

Please tailor your own organization's project planning data sheet to focus on the information you will need to implement your conservation program. Organizations can spend a great deal of time obtaining interesting information about a property that is not directly relevant to

their conservation goals. The Maine Coast Heritage Trust uses this form to analyze its complex land conservation projects — which it is able to complete due to its significant capacity. Land trusts with less capacity may need less information, or less detail, or may not choose to impose the same restrictions on protected property, but this comprehensive form can provide a starting point from which to create a project planning checklist.

*Project Planning Template (page 231)* This sample is a blank project planning form that you can adapt for your own land trust.

PROJECT PLAN FOR A CONSERVATION EASEMENT  
UTILIZING A PROPERTY MAP AND SUPPORTING INFORMATION

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**Columbia Land Conservancy  
Conservation Easement Information Form**

Please fill out the following information as completely as possible and return it to the Conservancy at your earliest convenience. If there are questions that are not applicable or are unknown, please make a note on the form. This information will enable Conservancy staff to complete your conservation easement and supporting charitable deduction tax forms. This form, as well as your \$850 deposit, must be received no later than two weeks prior to a board meeting to facilitate its inclusion for board review.

Date: \_\_\_\_\_

Your Name: \_\_\_\_\_

1. Legal names/owners of the Property as they appear on the property deed:

\_\_\_\_\_  
\_\_\_\_\_

Primary mailing address: \_\_\_\_\_

Telephone Numbers: Daytime \_\_\_\_\_ Evening \_\_\_\_\_

Weekend \_\_\_\_\_ Fax(s) \_\_\_\_\_

Email address: \_\_\_\_\_

2. Property Owner(s) social security number(s). The Conservancy only needs this information if you wish to utilize a charitable gift as part of your conservation easement: \_\_\_\_\_

\_\_\_\_\_

3. Location of the Property that would be protected: \_\_\_\_\_

\_\_\_\_\_

4. Is there a mortgage, home equity loan or other lien or agreement without a filed satisfaction on the property? \_\_\_\_\_

If yes, please name the lender: \_\_\_\_\_

Who is the contact person? \_\_\_\_\_

Note: A mortgage does not prohibit the restricting of your land with a conservation easement. However, if you do have a mortgage or lien on your property, you will need to get subordination approval from your lender as soon as possible. Conservancy staff will assist you as necessary.

**PROJECT PLAN FOR A CONSERVATION EASEMENT  
UTILIZING A PROPERTY MAP AND SUPPORTING INFORMATION**

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5. Are there tenants on your property? \_\_\_\_\_

If yes, please list: \_\_\_\_\_

6. Is there a survey for your property? \_\_\_\_\_

Please note: A boundary survey is required. CLC will need a copy of your survey prior to commencing work on your conservation easement map.

7. What is the total acreage of the property? \_\_\_\_\_

8. Are all property taxes and utility fee expenses up-to-date? \_\_\_\_\_

If no, please explain: \_\_\_\_\_

9. What is the principal use of your property (farming, forestry, wildlife habitat, recreation, etc.)? \_\_\_\_\_

Is your property enrolled in New York State's agricultural or forestry "current use" program? \_\_\_\_\_

10. To enable Conservancy staff to create the conservation easement and supporting land planning map as efficiently as possible, please list the number of existing:

Houses: \_\_\_\_\_

Guest houses, carriage houses, apartments, tenant houses: \_\_\_\_\_

Barns, garages, sheds: \_\_\_\_\_

Tennis courts, swimming pools, etc.: \_\_\_\_\_

Gravel pits: \_\_\_\_\_

Farm dump (state whether it is old or being used): \_\_\_\_\_

Other: \_\_\_\_\_

11. What is the name and address of the attorney who will be reviewing your conservation easement? If you wish, Conservancy staff can provide you with names of attorneys who are familiar with conservation easements.

\_\_\_\_\_

\_\_\_\_\_

Phone number: \_\_\_\_\_ Fax number: \_\_\_\_\_

12. Have you read, and are comfortable with, CLC's model conservation easement?

\_\_\_\_\_

**PROJECT PLAN FOR A CONSERVATION EASEMENT  
UTILIZING A PROPERTY MAP AND SUPPORTING INFORMATION**

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13. Do you wish to complete this conservation easement during this calendar year?

\_\_\_\_\_  
Please note that your easement project, once completed, will be featured in CLC's publications.

14. CLC has several project periods (January-April, May-August, and September-December) in which to work on specific easement projects. Board approval is needed prior to the project period selected. Which period would work best for you, if there is a slot available? \_\_\_\_\_

15. Are there individuals, other than yourself, who should be included in the conservation easement planning process? \_\_\_\_\_

If yes, please explain: \_\_\_\_\_

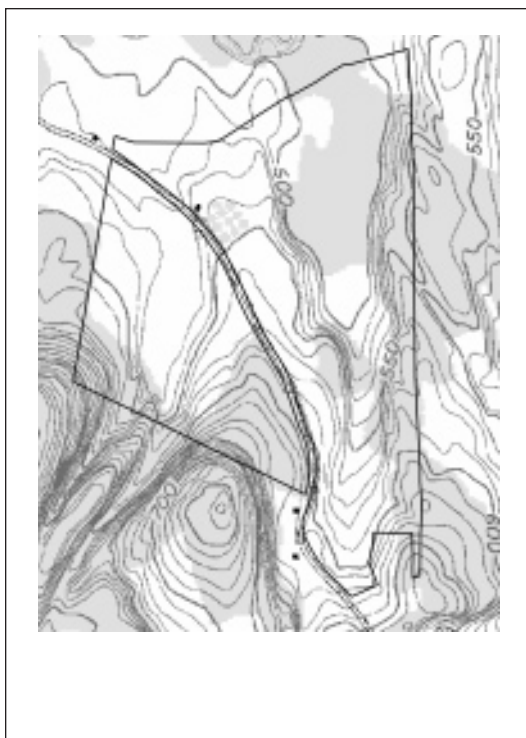
16. Please explain any additional information or concerns the Conservancy staff should be aware of: \_\_\_\_\_





## PROJECT PLAN FOR A CONSERVATION EASEMENT UTILIZING A PROPERTY MAP AND SUPPORTING INFORMATION

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*Sample USGS Topographic Map*



*Sample Aerial Map*

**Maine Coast Heritage Trust  
CONSERVATION PLANNING DATA SHEET**

Project/Property Name \_\_\_\_\_

OWNER \_\_\_\_\_

COUNTY \_\_\_\_\_

TOWN \_\_\_\_\_

U.S.G.S. QUAD \_\_\_\_\_

TOWN TAX MAP and LOT \_\_\_\_\_

CHART NO. \_\_\_\_\_

ECOLOGICAL CHARACTER OF COASTAL MAINE: Region \_\_\_\_\_

Map \_\_\_\_\_

GEOGRAPHIC/INTEREST AREA \_\_\_\_\_

\_\_\_\_\_

LAND TO BE PROTECTED: acres \_\_\_\_\_

\_\_\_\_\_ shorefront feet \_\_\_\_\_ road frontage \_\_\_\_\_

general character \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

other \_\_\_\_\_

\_\_\_\_\_

If a part of larger parcel, give details on larger parcel:

acres \_\_\_\_\_

\_\_\_\_\_

shorefront feet \_\_\_\_\_

\_\_\_\_\_

road frontage \_\_\_\_\_

\_\_\_\_\_

PROJECT PLANNING CHECKLIST

general character \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What is special about this land that merits preservation? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Key Contact People** (owner, attorney, planner, staff, etc.)

\_\_\_\_\_  
name/relationship  
  
\_\_\_\_\_  
address  
  
\_\_\_\_\_  
city/state/zip  
  
\_\_\_\_\_  
phone/fax  
  
\_\_\_\_\_  
email

\_\_\_\_\_  
name/relationship  
  
\_\_\_\_\_  
address  
  
\_\_\_\_\_  
city/state/zip  
  
\_\_\_\_\_  
phone/fax  
  
\_\_\_\_\_  
email

## PROJECT PLANNING CHECKLIST

---

\_\_\_\_\_  
name/relationship

\_\_\_\_\_  
address

\_\_\_\_\_  
city/state/zip

\_\_\_\_\_  
phone/fax

\_\_\_\_\_  
email

\_\_\_\_\_  
name/relationship

\_\_\_\_\_  
address

\_\_\_\_\_  
city/state/zip

\_\_\_\_\_  
phone/fax

\_\_\_\_\_  
email

**Legal Information:** (add sheets if more space is needed) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RECORD OWNERS:** (year round and seasonal info/dates)

\_\_\_\_\_  
name as on deed

\_\_\_\_\_  
address

\_\_\_\_\_  
city/state/zip

\_\_\_\_\_  
phone/fax

\_\_\_\_\_  
email

\_\_\_\_\_  
name as on deed

\_\_\_\_\_  
address

\_\_\_\_\_  
city/state/zip

\_\_\_\_\_  
phone/fax

\_\_\_\_\_  
email

**TYPE OF OWNERSHIP** (tenants in common, joint tenant, corporate, trust, partnership,  
long term, family holding, developer, etc.) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## PROJECT PLANNING CHECKLIST

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**INTENDED FUTURE OWNERS** (buyers, family, associates - details) \_\_\_\_\_

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**HOW PROPERTY WAS ACQUIRED** (probate dockets, deeds, declarations of trust -- including names, dates, book and page numbers, locale) \_\_\_\_\_

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**SOURCE FOR DESCRIPTION OF PROPERTY** (list deeds, line agreements, partition orders, surveys - if only a portion will be restricted, list source of description for entire property and tell plan for describing relevant portion, i.e., lots, survey, landmarks) \_\_\_\_\_

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**CONTIGUOUS LAND OWNED BY FAMILY** (donor, spouse, brother, sister, ancestor, lineal descendent - inform appraiser for IRS "enhancement" computation) \_\_\_\_\_

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**EXISTING ENCUMBRANCES** (mortgages, liens, public or private rights-of-way, power easements, deed restrictions, zoning, pending or threatened litigation, boundary issues)

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**PRIMARY LANDOWNER MOTIVATION** \_\_\_\_\_

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**TAX INCENTIVES DESIRED:** income tax deduction? estate/gift tax relief? property tax relief? \_\_\_\_\_

**Baseline Information, Existing Character and Condition of Land to Be Protected By Easement:** (Specify where information relates to owner's entire parcel and to portion to be protected if they are not the same, add, and refer to more pages if space insufficient.)

**General Baseline Information:**

**PRIMARY CURRENT USE OF LAND** \_\_\_\_\_

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**SECONDARY USES** \_\_\_\_\_

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**INTENDED USES PENDING EASEMENT, SUBDIVISION APPROVALS, TRANSFERS** \_\_\_\_\_

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## PROJECT PLANNING CHECKLIST

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### EXISTING PUBLIC USES \_\_\_\_\_

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### EXISTING LIMITATIONS ON USE (intrinsic, zoning, covenants, current use classification)

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### SPECIAL CLASSIFICATIONS, RECOGNITION (site specific and/or feature specific governmental/scholarly recognition of land/history/ecological features, [attach reports, statutes].) \_\_\_\_\_

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### NEIGHBORING LAND/INFLUENCES (any information on nearby land use, population density, aesthetic character, zoning, public or private land conservation, development trends, public use, proximate public vantage points, disputes, etc.) \_\_\_\_\_

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**FAMILY INFLUENCES** (involvement of non-owners with concern for land, cooperative or otherwise) \_\_\_\_\_

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**OTHER IMPORTANT GENERAL INFORMATION** \_\_\_\_\_

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**Specific Baseline Information:**

**TERRAIN** (include description of elevations, views from land, water bodies large and small, wetlands, character of shoreline, geology, important features) \_\_\_\_\_

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## PROJECT PLANNING CHECKLIST

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**EXISTING CHARACTER OF FLORA AND FAUNA** (include habitat information, animal/plant communities, rare species, vegetation cover, agricultural and forestry practices/plans/history, extent of clearing and vegetative screening, location, aesthetic character) \_\_\_\_\_

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**EXISTING SURFACE ALTERATIONS** (include size, location, and uses)

roads/trails: \_\_\_\_\_

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cultivation: \_\_\_\_\_

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archeological sites: \_\_\_\_\_

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ponds/wells/springs: \_\_\_\_\_

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gravel pits/ mines: \_\_\_\_\_

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subsurface utilities/septic: \_\_\_\_\_

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## PROJECT PLANNING CHECKLIST

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soil test pits: \_\_\_\_\_

\_\_\_\_\_

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waste disposal: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

other: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### **Sketch or Attach Map of Vegetation Types & Surface Alterations:** **EXISTING STRUCTURES** (INCLUDE size, visibility, setback, location).

residences: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

accessory structures: \_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

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\_\_\_\_\_

commercial buildings: \_\_\_\_\_

\_\_\_\_\_

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PROJECT PLANNING CHECKLIST

docks/floats/piers: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

walls, fences: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

seasonal storage: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

bridges, stairs, boardwalks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

utility apparatus: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

recreational facilities: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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aquaculture facilities: \_\_\_\_\_

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junk/refuse: \_\_\_\_\_

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other: \_\_\_\_\_

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**Sketch or attach drawings for clarity:**

**The Conservation Plan/Proposed Restrictions/Reserved Rights**

**Conservation Purpose:** What is important to preserve? (Refer back to cover sheet and limit the actual plan to restrictions that actually further conservation purposes, deferring any private purposes or wishes to private legal or informal mechanisms.)

**PRIMARY CONSERVATION PURPOSE** (refer to IRS tests: habitat protection, public recreation, open space/scenic, and historic preservation, but specify important features)\_\_\_\_\_

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## PROJECT PLANNING CHECKLIST

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Secondary \_\_\_\_\_

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Competing conservation values? Methods to reconcile these? \_\_\_\_\_

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What sort of uses would threaten values? [Given your organization's goals] \_\_\_\_\_

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Competing uses owner desires \_\_\_\_\_

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Can these be limited to be made compatible? How? \_\_\_\_\_

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If scenic preservation, who sees land? From where? \_\_\_\_\_

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**Land Use Areas/Specific Restrictions and Reserved Rights**

PROTECTED LAND (Should entire parcel, or only a portion be included in easement?  
Should easement cover land intended for development? Describe areas, survey needed)

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LAND USE ZONES (If included in easement, should development be limited to particular locations, specify why and where – natural areas, exclusionary zones, buffers, setbacks, development areas, building envelopes – strive for least complex arrangement) \_\_\_\_\_

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PUBLIC ACCESS AREAS (All, part or none of land, means of access, specific limits on, specific allowances) \_\_\_\_\_

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## PROJECT PLANNING CHECKLIST

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SUBDIVISION (permitted/prohibited/limited? prescribe extent) \_\_\_\_\_

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(May land be used to permit increased density on abutting unrestricted land?) \_\_\_\_\_

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SPECIAL PROTECTION AREAS (i.e.; rare species habitat, buffers, other) \_\_\_\_\_

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### **Specific Restrictions/Reservations**

#### **VEGETATION MANAGEMENT**

general prohibition of cutting of standing timber/or alteration of vegetation? \_\_\_\_\_

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## PROJECT PLANNING CHECKLIST

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exceptions and reserved rights: prevention of fire/disease/exotics, emergency, holder approvals? \_\_\_\_\_

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vegetative screening of permitted structures? \_\_\_\_\_

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personal firewood/building materials, methods and location limits? \_\_\_\_\_

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commercial timber harvesting? \_\_\_\_\_

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forestry plan, standards? \_\_\_\_\_

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need for holder approval? \_\_\_\_\_

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location limits? \_\_\_\_\_

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clear-cutting/selective harvesting, definitions \_\_\_\_\_

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## PROJECT PLANNING CHECKLIST

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commercial/personal agriculture, limits, methods \_\_\_\_\_

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creation of views from permitted structures/from public vantage points/from neighboring lands, cleared or selective cuts \_\_\_\_\_

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planting/landscaping/harvesting vegetation \_\_\_\_\_

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maintenance of existing clearings \_\_\_\_\_

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creation of additional clearings, size/location/screening limits \_\_\_\_\_

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clearing for yards/lawns, size/location/screening limits \_\_\_\_\_

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## PROJECT PLANNING CHECKLIST

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clearing for roads, trails, permitted structures, setback/ screening limits \_\_\_\_\_

boundary maintenance \_\_\_\_\_

other \_\_\_\_\_

SURFACE ALTERATIONS (specify intended uses, limitations)

General prohibition on all surface alterations, excavation, filling, wetland alteration,  
surface mining \_\_\_\_\_

**Exceptions to no surface alterations, and reserved rights, as necessary for:**

permitted structures/ vegetation management \_\_\_\_\_

roads, trails, size/location/setback/paving limits \_\_\_\_\_

cultivation of household gardens \_\_\_\_\_

PROJECT PLANNING CHECKLIST

agricultural cultivation, limits \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

archeological \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ponds/wells/springs, limits \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
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shellfish harvesting \_\_\_\_\_  
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other \_\_\_\_\_  
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gravel for road-building, restoration \_\_\_\_\_

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**PERMITTED STRUCTURES** (specify intended structures/limitations)

General prohibition on all structures, temporary, permanent, meaning any man made object, not just buildings, with exceptions listed \_\_\_\_\_

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Is the land divided into development and natural areas? (Describe here and show on Sketch map and specify information below for each area)\_\_\_\_\_

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## PROJECT PLANNING CHECKLIST

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### **Exceptions to prohibition on Structures, and Reserved rights:**

If the easement, or a portion of it will generally prohibit building altogether, can there be signs? fences? boundary markers? outdoor furniture? walkways? culverts? hunting blinds? interpretive signs? outhouses? stairs? boardwalks? wells? septic systems? utility structures? any items to serve owner's other land? other? Specify materials or visibility limitations? \_\_\_\_\_

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If there are existing structures, may they be maintained, replaced, increased in size, moved to other locations, altered significantly? \_\_\_\_\_

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converted into residences? \_\_\_\_\_

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Limitations on size, height, location, setback, screening, number, designs, visibility? \_\_\_\_\_

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## PROJECT PLANNING CHECKLIST

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If there are existing structures or if residences may be built, are additional structures accessory to principal structures permitted; i.e., sheds, outbuildings, garages, well-houses, garden furniture, fences, utility, septic, freshwater supply? \_\_\_\_\_

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guesthouses? \_\_\_\_\_

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bunkhouses, tents, trailers? \_\_\_\_\_

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Limitations on size, height, location, setback, screening, numbers, visibility? \_\_\_\_\_

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What agricultural/silvicultural/other business structures are permitted? \_\_\_\_\_

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Limitations on size, height, location, setback, screening, numbers, visibility, other? \_\_\_\_\_

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Are additional residences permitted? \_\_\_\_\_

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## PROJECT PLANNING CHECKLIST

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Limitation on numbers, type, permitted and prohibited locations, size, height, screening, visibility, setbacks, other? \_\_\_\_\_

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Are there any other special sorts of structures that should be mentioned as either specifically permitted, prohibited, limited in some way, or as an exception to a general limitation, for instance, docks, tent platforms, boathouses, bunkhouses? \_\_\_\_\_

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SPECIFIC PROHIBITIONS (things that are worth mentioning in the conservation easement, even though the general restrictions would imply that they are prohibited, specify if limits such as setback, screening, siting, will be allowed.)

bridges or causeways? \_\_\_\_\_

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towers, antennae, satellite dishes? \_\_\_\_\_

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hotels, motels? \_\_\_\_\_

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inns, bed & breakfasts? \_\_\_\_\_

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waste disposal sites? \_\_\_\_\_

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## PROJECT PLANNING CHECKLIST

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junkyards? \_\_\_\_\_

\_\_\_\_\_

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apartment buildings, multifamily units? \_\_\_\_\_

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\_\_\_\_\_

campgrounds? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

condo, timeshares? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

trailer parks? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

others? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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**Project History** Date Initiated \_\_\_\_\_ By whom/why? \_\_\_\_\_

\_\_\_\_\_

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**Project Goals** \_\_\_\_\_

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## PROJECT PLANNING CHECKLIST

Initial staff visit Date \_\_\_\_\_ Details \_\_\_\_\_

| DATE | ACTION |
|------|--------|
|------|--------|

Community sentiment? \_\_\_\_\_

Contribution to Stewardship? \_\_\_\_\_

Holder? \_\_\_\_\_

Survey needed/done? \_\_\_\_\_

Baseline Data compiled? \_\_\_\_\_

Baseline Data certified? \_\_\_\_\_

## PROJECT PLANNING CHECKLIST

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Subordination/consent? \_\_\_\_\_

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\_\_\_\_\_

Right-of-way needed to access protected portion of owner's land? \_\_\_\_\_

\_\_\_\_\_

IRS Form 8283 discussed w/accountant? \_\_\_\_\_

\_\_\_\_\_

Appraisal? \_\_\_\_\_

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\_\_\_\_\_

Other? \_\_\_\_\_

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Sketch Map (This should ideally be two maps, one showing the geographic location in the larger context, and another showing the approximate boundaries of the owner's entire parcel, the area to be restricted, and important information which will vary depending on the purpose of the easement, (for instance: existing roads and trails, existing buildings, surface alterations, cultivated areas, cleared areas, vegetation notations, slope and elevation info, height of tree canopy in places, wetlands, special habitat features, public access areas, nearby public vantage points, etc.)

### **Maine Coast Heritage Trust A CONSERVATION PLAN**

*(Prepared from the conservation checklist set forth above)*  
**for  
[Name of Parcel]  
[town ], Maine**

#### **Background.**

The [landowner] wishes to donate a conservation easement on the [ ]-acre farmstead parcel to [land trust]. This parcel includes the family's house and some outbuildings. It is surrounded by land already conserved by his father in 1989 under a conservation easement held by [land trust]. [Landowner] wishes to ensure that the scenic character of this saltwater farm is not compromised by a future owner building a prominently visible house that does not fit the rural character of this area. [Landowner] also needs to reduce the property's value for estate tax purposes; he faces an onerous estate tax bill.

- the dominant purpose of this easement is to enhance protection of the highly scenic nature of the [name of property] saltwater farm as viewed from the Sasanoa River and adjacent conserved lands.

#### **Conservation Goals.**

The goals section lays out the conservation values to be protected. This becomes the Purpose and 'Whereas Clauses' of a conservation easement. The conservation values or features to be protected here include the following:

- Highly scenic nature of a traditional saltwater farmstead as viewed from the Sasanoa River and adjacent conserved land.
- Complements scenic values of existing conserved lands that surround the Protected Property.

**Future Land Uses.** (The following sections A-G become restrictive covenants within the easement.)

#### **A. GENERAL.**

This easement would limit the property to its current use as a single family residence with the same number of outbuildings. It is important to both [landowner] and [land trust] that any renovations or additions to the residence, barn, and boat-house are in keeping with the character and appearance of the existing structures.

Industrial uses or quarrying and mining activities would be prohibited. Also prohibited would be apartment buildings, multi-family residential units, motels, hotels, commercial campgrounds, landfills, junkyards, exterior high intensity lights, parking lots, and antennae or apparatus for telecommunication or radar which are visible from public vantage points.

**B. DIVISION OF THE PROPERTY.**

The owner does not wish to see this lot further subdivided, even if permitted under local zoning.

**C. PERMITTED STRUCTURES.**

Existing structures on the property include the following: a residence with attached shed, boathouse, abandoned outhouse, temporary greenhouse, and stone steps down the shoreline embankment to the tidal inlet [name of cove].

[Landowner] would like to reserve the right to build a detached sunporch or gazebo, with a footprint not to exceed 250 ft<sup>2</sup>. No other structures would be permitted.

[Landowner] would like to reserve the right to maintain the residence and make minor additions, such as adding dormers and possibly a small sun room. The height of the house should never exceed its current height. The footprint could be expanded by a maximum of 30%, to the north, south, or east of the house, but not to the west toward the shoreline.

[Landowner] wishes to replace the shed with a breezeway and barn. The footprint of the barn could be shifted slightly to be in line with the house. The footprint of the barn could also be expanded by a maximum of 30% over the footprint of the existing shed. The second floor of the barn might be used as a guest quarters. [Landowner] would want to reserve the right to attach a greenhouse to the barn.

The boathouse is within the shoreland zone, and could be renovated within its current footprint if local zoning permits it.

[Landowner] would like to reserve the right to install either above-ground or underground power to the boathouse, which presently has no power.

The outhouse structure is within 50 ft of the shoreline. [Landowner] will either remove the outhouse structure entirely or let it fall down and remove all the materials, but not rebuild it.

[Landowner] might want to construct a small stone platform/patio along the shore at the base of the existing stone steps. He may also realign the existing stone steps.

### **D. SURFACE ALTERATIONS.**

Existing surface alterations include the following: an unpaved driveway entering the property from the north and parking area behind the house and shed, and a narrow unpaved driveway to the boathouse from the main driveway near the house. [Landowner] would like to reserve the right to maintain and even pave the main driveway, and to maintain but not pave the drive to the boathouse. He has no wish to see any other roadways on the property. He wants to reserve the right to create footpaths.

[Landowner] would like to reserve the right to create gardens.

He would also like to reserve the right to replace the existing septic system. Any replacement system would be located in front of (south) of the existing house. The existing septic system is just northwest of the residence along the south side of a ravine that drains to [name of cove].

[Landowner] would also like to be able to drill a well on this property if needed in the future; water currently comes from a spring off the property.

As described above, [landowner] would reserve the right to excavate the surface for the purpose of installing above-ground or underground power to the boathouse.

It may be desirable to rework part of the existing steep embankment along the shoreline of [name of cove]. [Landowner] would like to reserve the right to excavate and add fill only to the degree necessary to accomplish erosion control along a ditch that empties over the embankment.

### **E. VEGETATION MANAGEMENT.**

Most of the property consists of open lawn/field around the house. There is a narrow strip of tall white pines along the shore of the inlet, and some woodland in the northwest corner of the lot behind the boathouse and at the south end of the lot. The owner would have the right but not the obligation to keep the lawn/field mowed, and to plant trees, shrubs, and other plants for gardens or agricultural purposes. If the existing white pines fall naturally, they need not be replanted. The owner may plant shrubs along the shoreline embankment, or let it revegetate naturally, but is not obligated to replant trees. He would also reserve the right to thin the woodlands, provided such activity conforms to shoreland zoning standards. He would also reserve the right to harvest dead or diseased trees or trees that present a safety hazard.

The use of potentially harmful substances (e.g, insecticides, pesticides, fungicides, herbicides, fertilizers, etc.) should be limited so as not to have an adverse effect on wildlife habitat or water quality.

**F. WASTE DISPOSAL.**

Discharge of wastewater into wetlands, streams, or the tidal inlet would be prohibited. Offensive or hazardous waste material should not be dumped or stored; organic compost and vegetative waste, however, is not a problem.

**G. PUBLIC ACCESS.**

[Landowner] is not granting the public access to this property. He or any future owners may grant the public access, but that access is at the owner's discretion.

**Administrative Provisions.**

For an easement document to be most effective, it addresses a number of issues that will guide the future relationship between the landowners and the easement holder. The most common administrative provisions are summarized below:

**A. BOUNDARY MAINTENANCE.**

It would helpful if the owner maintained the boundaries or agreed to restore them at some time in the future if it were important to [land trust] monitoring of the easement. [Land trust] reserves the right to require additional surveys if a prohibited land use is close to a boundary and only a survey can resolve the question of whether the easement has been breached.

**B. BASELINE DATA.**

[Land trust] will prepare an inventory of the property's relevant features and conditions, known as the baseline data. This may include surveys, photographs, slides, ecological information, maps, deeds, etc. Any historical information about the property might be helpful to include. The baseline data is used as a starting point in comparing and evaluating future changes.

**C. PRIOR NOTIFICATION/APPROVAL.**

Prior written notification by the Grantors [landowner], and approval by the easement holder [land trust], are often required for some permitted uses and structures to ensure that the conservation values protected by the easement are upheld.

**D. MONITORING AND ENFORCEMENT.**

After making reasonable efforts to notify the landowners, the easement holder [land trust] has the right to enter the property (at reasonable times and in a

reasonable manner) for purposes of monitoring and upholding the restrictions in the easement. [Land trust] will be required to notify the landowners and give them a chance to correct any violations.

### **E. COSTS, TAXES, AND INDEMNIFICATION.**

Recognizing that the easement holder is not the owner of the property, the landowner agrees to pay all real property taxes and bear all costs and responsibility for upkeep of the property. In addition, the landowner indemnifies the easement holder from any claims for damages except those that arise from negligence or misconduct of the easement holder. This is because the easement holder has no management control over the land but might be sued by an injured person simply because its name is on the deed.

### **F. GRANT IN PERPETUITY AND TRANSFER OF OWNERSHIP.**

The conservation easement will run with the title to the property and be binding on all future owners. The landowner agrees to notify the easement holder of any change in ownership.

### **G. TRANSFER OF THE CONSERVATION EASEMENT.**

The easement holder reserves the right to transfer the easement to another qualified conservation entity (e.g., a land trust in the same town if one is ever established).

### **Other.**

If the grantor is planning to take an income tax deduction for their charitable gift, the IRS requires all parties with liens or mortgages on the property to subordinate to the easement so that it will not be extinguished in the event of foreclosure. There are no liens/mortgages on the property.



## PROJECT PLANNING TEMPLATE

Note: Some of this information will already have been gathered through the site inspection and project selection processes for board approval, and is included here. For some organizations, the site inspection form and the project planning form may be the same document.

### Summary of Site Inspection/Project Planning Template

Land Trust Mission: \_\_\_\_\_

\_\_\_\_\_

Person responsible/lead contact for the project: \_\_\_\_\_

\_\_\_\_\_

Board approval for the project (attach information sent to the board and resolution):

\_\_\_\_\_

### Project information

Is the proposed project:

- ☐ A donation of conservation easement?
- ☐ A proposed bargain sale of a conservation easement?
- ☐ A proposed sale of a conservation easement at fair market value?
- ☐ A donation of the fee interest in land?
- ☐ A proposed bargain sale of the fee interest?
- ☐ A proposed sale of the fee interest at fair market value?

What are the possibilities for funding the purchase? Discuss.

\_\_\_\_\_

\_\_\_\_\_

What is the estimated time period for raising the funds necessary for the purchase?

\_\_\_\_\_

### Landowner information

Landowner Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Email address: \_\_\_\_\_

Fax: \_\_\_\_\_

Cell phone: \_\_\_\_\_

Farm/land manager name: \_\_\_\_\_

\_\_\_\_\_

**Contact information:**

How long has the landowner owned the land?

Who will be the key decision-makers regarding this land protection project—will the landowners involve other family members, etc.?

**Current restrictions on the land**

Has the landowner leased any/all of the land? \_\_\_\_\_

If so, to whom and for how long? \_\_\_\_\_

Are there any deeded or right-of-way restrictions on the land? \_\_\_\_\_

If so, where on the land? \_\_\_\_\_

Can the landowner provide you with a copy of these restrictions? \_\_\_\_\_

Is the land subject to special use valuation? \_\_\_\_\_

**Location/site characteristics (tailored to the project selection criteria)**

Town/county where land is located: \_\_\_\_\_

Acreage involved: \_\_\_\_\_

Is this all the land owned by the landowner in the region? \_\_\_\_\_

What are the topographic characteristics of the land? (*Attach a copy of a topographic map.*) \_\_\_\_\_

What watershed is the property in, draining to where? Is it part of a public water supply or public waterbody/watershed (i.e., drains into the \_\_\_\_ River, a publicly accessible river)? \_\_\_\_\_

What is the vegetative cover like on the land? (*Attach a copy of a recent aerial photograph.*) \_\_\_\_\_

Coniferous forest? \_\_\_\_\_

Deciduous forest? \_\_\_\_\_

Fields? \_\_\_\_\_

Wetlands? \_\_\_\_\_

Wet meadows? \_\_\_\_\_

Are there any important wetlands, waterbodies, etc.? (*Attach a copy of any related wetland maps, surveys, if available. This information can also come from the aerial photographs, topographic maps, etc.*) \_\_\_\_\_

Does the land contain farmland soils of local, statewide or national importance? (*If yes, attach a copy of the relevant soil map.*) \_\_\_\_\_

Has the land been actively logged in the past 25 years? Logging information of note? \_\_\_\_\_

Is the land currently under agricultural use? If so, clarify what kinds. \_\_\_\_\_

Any other information of note? \_\_\_\_\_

Are there wildlife species of particular note that reside on the property (check Natural Heritage Inventory maps, refer to local information)? \_\_\_\_\_

Are there habitat types of note that could provide habitat for important species (check biological assessment manuals for likely occurrence for habitat types, e.g. this type of ridgeline is cited in the Journal of “y” as prime habitat for “x” species)? \_\_\_\_\_

**Public views, zoning, development pressure**

How much road frontage exists on the property, and on what public or private roads?

What is the current zoning (if any) for the property? \_\_\_\_\_

Is there development activity in the area that could render the conservation of this property obsolete? \_\_\_\_\_

What are the adjacent land uses? \_\_\_\_\_

\_\_\_\_\_

What will the zoning permit for adjacent lands? \_\_\_\_\_

\_\_\_\_\_

How does the property fit within any adopted local master or comprehensive plan?

\_\_\_\_\_

**Structures/cultural information**

How many residential structures are currently on the land? \_\_\_\_\_

What is their approximate size? \_\_\_\_\_

Are they all owned by the landowner? \_\_\_\_\_

Is there a survey for the property? \_\_\_\_\_

If so, can the landowner send you a copy? \_\_\_\_\_

When was the survey completed? \_\_\_\_\_

Is it for the property's boundary? \_\_\_\_\_

Other survey details? \_\_\_\_\_

What other structures exist on the land? \_\_\_\_\_

Are there historic structures or historic artifacts of record or based on local knowledge that you should know about? Cemeteries, Native American burial grounds, cellar holes, historic battlefields, etc.? \_\_\_\_\_

Are there public access points, trails or potential public access issues associated with the property? \_\_\_\_\_

## PROJECT PLANNING TEMPLATE

---

### Landowner goals

(NOTE: this information may be obtained later, in different conversations over time)

What are the reasons the landowner wishes to protect the land? \_\_\_\_\_

For easement projects: does he/she plan to sell any of the property within the next five years (if so, what portion)? \_\_\_\_\_

For fee acquisition purchases: does he/she need to sell the land within a specific timeframe? \_\_\_\_\_

For easement projects: is there a desired timeline/time to protect the land? \_\_\_\_\_

If a donation or bargain sale, is the landowner likely to request a tax deduction? \_\_\_\_\_

Does he/she have an attorney/landowner advisor? If so, who? \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

email: \_\_\_\_\_

Are there children involved in the property? \_\_\_\_\_

If so, how? \_\_\_\_\_

For fee acquisitions: does the landowner wish to continue use of the land or desire to influence the use of the land? \_\_\_\_\_

Explain any specific/noteworthy conservation goals that would result in a deviation from the model conservation easement or from the land trust's standard fee land management goals. \_\_\_\_\_

Did you explain to the landowner that this is unusual, and that the organization would have to assess if, and how, these goals could be achieved? \_\_\_\_\_

### Organizational outreach/clarity

Have you explained the land trust's overall conservation goals and its general conservation philosophy? \_\_\_\_\_

For easement projects: have you reviewed the model conservation easement with the landowner? \_\_\_\_\_

For fee acquisition purchases: have you explained the process for raising funds and closing the project? \_\_\_\_\_

Does he/she understand the land trust's organizational capacity, and thus its prioritization of restrictions for the land? \_\_\_\_\_

If the landowner wished to conserve the land with restrictions the land trust is unable to provide, did you discuss other possible partners? Which organizations did you discuss? Did you discuss the land trust's commitment to long-term easement/land stewardship and the requested/required stewardship contribution? \_\_\_\_\_

For easement projects: when did you agree to send the landowner a sketch map and draft conservation easement? \_\_\_\_\_

For fee acquisition purchases: when did you agree to send the landowner a draft purchase contract? \_\_\_\_\_

For easement projects: when did the landowner approve the final sketch plan, and thus initiate the creation of the final conservation easement map? \_\_\_\_\_

Have you generally mapped out the turn-around-time the land trust needs to complete the process within the landowner's stated timeframe? \_\_\_\_\_

What were the benchmarks agreed upon? \_\_\_\_\_

## Check Your Progress

Before finishing this chapter, check to see that you can:

- ☐ Develop an evaluation process for land conservation projects that is consistent and systematic, relating to the organization's mission, goals and capacity;
- ☐ Understand the link between project planning, project negotiation and landowner education;
- ☐ Affirm and summarize how the project meets the land trust's mission and goals, and public benefit test;
- ☐ Utilize the site inspection information as part of the project planning process, including developing a clear sense of the property's conservation values;
- ☐ Create/identify systems, a series of questions and tools that help evaluate possible immediate and long-term threats and/or opportunities to the conservation values;
- ☐ Consider various conservation planning tools, relate them to your land trust's goals and organizational capacity, and confirm the most appropriate conservation strategy for the property;
- ☐ Evaluate the land trust's capacity to undertake the project and fulfill any long-term stewardship obligations; and
- ☐ Provide a written summary or plan regarding the land trust's conservation priorities on an individual project that will clearly inform the conservation easement drafting or land acquisition process, and document key questions and decisions.

As a result of studying the material in this course, there are many things that you will want to share with the rest of your land trust. The following list of next steps and the To-Do Sheet will help you plan your strategy.

## This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

# Action Plan

## Next Steps

To apply what you've learned from this training to improve the operation of your land trust, you should:

1. Create a written project selection process that addresses the steps discussed in chapter 1, and create written project selection criteria that include:
  - Consideration of the public benefit of a transaction;
  - The Internal Revenue Code's conservation purposes test and other conservation values;
  - Analysis of your land trust's mission statement, goals and strategic plan;
  - Analysis of organizational capacity issues; and
  - Analysis of feasibility issues, while retaining the board's discretionary authority.

If your land trust already has these written policies and forms, consider revisiting and perhaps refining them based upon the content of this course. *Working through the Putting It into Practice exercise in chapter 1 (page 52) will help your land trust save time in creating its own project selection criteria.*

2. Ensure that your land trust has practices and policies in place that require all land transactions to provide a public benefit. *Using the template from chapter 2 (page 114), create a form or policy for your land trust that addresses these important issues.*
3. Create a written site inspection form or consider revisiting and refining your existing form based upon the materials contained in chapter 3. *Working through the Putting It into Practice exercise in chapter 3 (page 137) can help your land trust adopt or revise its site inspection form. Also, see the project planning template in chapter 4 (page 231).*
4. Ensure that your land trust has a method for creating a project plan for each project that conforms to your organization's staff and/or volunteer capacity and achieves the goals of project planning. *Use the project planning template in chapter 4 (page 231) as a basis for creating your own project plan format. Adopt a policy or procedure reflecting how your organization prepares a project plan in accordance with the discussion in chapter 4.*



## To-Do Sheet

Use this sheet to record any “to dos” that occur to you during the course. Be specific with the action item and date by which you hope to accomplish this task.

## Evaluating and Selecting Conservation Projects

[illegible]



## Glossary

**Affirmative rights** (1) Easement provisions that require the property owner to maintain the resources protected by the easement (e.g., mow a field to keep open a view) or that require the land trust to maintain if the owner does not. (2) Rights granted to the land trust to perform physical acts on the property (e.g., build a trail or access the property for monitoring).

**Conservation purposes** is one of the four conservation purposes set forth in §170(h) of the Internal Revenue Code, as further defined in §1.170A-14(d) of the Treasury Regulations.

1. The preservation of land areas for outdoor recreation by, or the education of, the general public;
2. The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem;
3. The preservation of open space (including farmland and forest land) where such preservation is:
  - a. for the scenic enjoyment of the general public; or
  - b. pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and
  - c. will yield a significant public benefit; or
4. The preservation of an historically important land area or a certified historic structure.

**Land management plan** A plan that identifies the resources and processes on the property that are to be protected and promoted, determines what actions to take or avoid, and designates who shall accomplish those objectives.

**Local comprehensive or master plan** Land use plans adopted by communities in order to help guide growth and development to protect important physical, natural or human resources.

**Organizational strategic plan** The product of a disciplined effort to produce fundamental decisions and actions that shape and guide what an organization is, what it does, and why it does it, with a focus on the future. In a typical planning process, the land trust board develops a common vision of what it wants the organization to become. From there it establishes the land trust's overall mission or purpose. Then it establishes goals to achieve the mission, and activities that will begin to achieve the goals.

**Private Benefit** occurs when a tax-exempt organization provides more than an “incidental” benefit to a non-insider. Although charitable organizations such as land trusts may provide benefits to private individuals, federal tax-exempt law prohibits more than an “incidental” benefit. The IRS prohibition on private benefit is absolute. Incidental benefits are considered to be those benefits that are insubstantial when measured in the context of the overall public benefit conferred by the activity. Incidental benefits occur as part of the nonprofit’s public purpose and activity, which cannot be achieved without benefiting some private individuals. For example, the incidental benefits to an adjoining property owner that typically result from a conservation easement both fall within the land trust’s mission and are insubstantial in the context of the overall benefit of protecting the property. Such incidental benefits to the adjoining property owner would not be considered a private benefit.

**Private Inurement** occurs when a person who is an “insider” to the tax-exempt organization, such as a director or an officer, derives a benefit from the organization without giving something of at least equal value in return. The IRS prohibition on inurement is absolute. The IRS also imposes penalties on directors, officers, key employees, and other insiders who engage in transactions that confer an excess benefit on the individual.

**Project plan** The product of a process that brings together the goals of the land trust and the landowner to ensure the best protection strategy for a property. The project plan becomes the guide for the next steps in the protection process.

**Reserved rights** The rights to use or develop the property reserved by the landowner under the terms of the conservation easement.

**Stewardship** (1) Those steps necessary to uphold a conservation easement in perpetuity, including the creation of baseline documentation, regular monitoring, maintaining landowner relations including successor generation landowners, addressing amendments, and enforcing easements. (2) Those steps necessary to undertake the many responsibilities of managing a fee-owned property in perpetuity.

**Strategic conservation plan** A process that produces tools to aid decision makers in identifying, prioritizing, pursuing, and protecting those specific tracts of land that will most effectively and efficiently achieve the land trust’s mission.

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## EVALUATING AND SELECTING CONSERVATION PROJECTS

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## Land Trust Standards and Practices Courses

### Governance

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MISSION, PLANNING AND CAPACITY

HOW TO COMPLY WITH NONPROFIT LAW  
AND CREATE SOUND RECORDS

LAND TRUST BOARDS: PREPARING FOR  
PERPETUITY

AVOIDING CONFLICTS OF INTEREST  
AND RUNNING AN ETHICAL LAND TRUST

### Land Protection

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EVALUATING AND SELECTING  
CONSERVATION PROJECTS

ACQUIRING LAND AND  
CONSERVATION EASEMENTS

SELLING AND TRANSFERRING LAND  
AND CONSERVATION EASEMENTS

TAX BENEFITS AND APPRAISALS OF  
CONSERVATION PROJECTS

CONSERVATION EASEMENT  
DRAFTING AND DOCUMENTATION

### Stewardship

---

CARING FOR LAND TRUST PROPERTIES

CONSERVATION EASEMENT STEWARDSHIP

MANAGING CONSERVATION EASEMENTS IN  
PERPETUITY

### Strong Organizations

---

ETHICAL FUNDRAISING FOR LAND TRUSTS

FINANCIAL MANAGEMENT OF LAND TRUSTS

DETERMINING STEWARDSHIP COSTS  
AND RAISING AND MANAGING  
DEDICATED FUNDS

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