Risk Assessment & Management

Session 3 – Governance and Finance
November 1, 2021
What is Risk?

The threat or possibility that a future event or action may be substantially different from what the leaders of an organization expect, and may adversely or beneficially affect an organization’s ability to achieve its mission and objectives.
Risk Management – Coping with Uncertainty

• reduce the likelihood of negative downside risks and
• position the organization to seize mission-advancing opportunities

DIMENSIONS OF RISK
• Likelihood (More or Less Likely, Frequency)
• Magnitude (More or Less Impactful)
• Direction (Good or Bad)
Risk Categorization

- **A** (High Impact, High Likelihood): Immediate action—extensive control activity essential
- **B** (High Impact, Low Likelihood): Manage and monitor, consider contingency planning
- **C** (Low Impact, High Likelihood): Management effort worthwhile
- **D** (Low Impact, Low Likelihood): Accept but monitor
Land Protection
Project Selection (Std 8)

Written Criteria applied to demonstrate:

- Mission
- Public benefit
- Feasibility
- Stewardship capacity
Legal representation (both parties)
Title Investigation (early and then at the end)
Review of title
Title insurance
Environmental Review
Land trust’s appraisal to support purchase price
Well negotiated documents
Survey
Tax Matters

• Is the landowner donating some or all of the land or easement?

• Assuming the landowner intends to take a tax deduction, have you checked to determine that the transaction will qualify?

• Have you informed the landowner about the provisions of the tax code and your need to see the appraisal before signing the Form 8283?

• Do you know what you are looking for when you get the Form 8283?

• Could this be a syndication????
Stewardship Planning

- Easements
  - BDR
  - Annual Monitoring
  - Recordkeeping
  - Is it – easy, moderate, hard to monitor?
  - Is there low, moderate, high degree of risk of encroachment?
  - Are there reserved rights that if exercised will take extra resources to determine compliance?

- Fee Properties
  - Management Plan
  - Restoration or one-time expenditures upon protection (e.g. trail)
  - Annual monitoring
  - Recordkeeping
  - Is it – easy, moderate, or hard to monitor?
  - Is there low, moderate, high degree of risk for trespass, other liabilities
  - Is there low, moderate, high degree or management and activity needed?
Post-Closing + Recordkeeping

- Recording
- Recordkeeping policy and procedures
- “irreplaceable documents” or Record Set
- Protecting the Record Set, and a copy
- Making sure these can qualify as “Business Records” in court
- What about Digital?
- Adding to the Record Set
The Path Forward: Breakout Discussions

1. What do you think is your organization’s biggest risk related to Land Transactions?

2. What is a strategy you currently use or will implement to address this risk?
Applying for consultant support

• Fill out and submit in Google Forms
• Applications will be open to any land trust that has participated in all five training sessions
• Continued training for your assessment team (3 person minimum)
• Includes 10 hours of individual meeting with consultant
  • Consultant compiles recommendations and work plan that prioritizes short- and long-term activities
  • Following assessment, land trust assessment team has an additional 2 hours to meet with consultant to discuss implementation
• Participants will receive over $1,500 worth of consultant support
• Offered at a reduced cost: $300/member; $500/non-member
Application Timeline

- Applications open
  - November 1, 2021
- Applications due
  - November 30, 2021
- Applicants notified
  - Mid Dec. 2021

Risk Assessment Timeline

- Agreement and payment due
  - First week of January 2022
- Assessments begin
  - Mid January 2022
- Assessments finalized
  - End of March 2022
Application Questions

- Organizational questions
  - Name, year of establishment, description of land protection efforts
  - Structure (e.g., staffed or all-volunteer), number of directors on board

- Participation in training

- Assessment team – names and roles of members

- Preparedness to begin this work in January 2022

- Commitment to continue this work
Resources on Land Transactions

- **Real Estate Fundamentals: A Primer for New Land Trust Staff**, presented by Steve Swartz in 2020
- **Introduction to Transactions Requirements for Accreditation**, self-study module available on The Learning Center
- **Learn Practice Element 9D2: Include Locations of Restrictions or Permitted Rights in the Easement**
- **Learn Practice Element 9E1: Drafting Conservation Easements**
- **Learn Practice Element 9E2: Review Each Easement for Consistency with Treasury Regulations and the IRC**
- **Learn Practice Element 9F1: Title Investigation**
- **Learn Practice Element 9F2: Evaluating Title Exceptions**
- **Learn Practice Element 9F3: Recording Land and Easement Transactions**
- **Learn Practice Element 9G1: Adopting Recordkeeping Policies**
- **Learn Practice Element 9G2: Protecting Essential Original Documents**
- **Learn Practice Element 9G3: Creating and Protecting Copies of Essential Documents**
- **Learn Practice Element 9H1: Obtaining an Independent Appraisal**
- **Learn Practice Element 9H2: Documenting a Purchase Price above Appraised Value**
Training Sessions

- October 18th: Introduction to risk management
- October 25th: Governance and finance
- November 1st: Land transactions
- November 8th: Stewardship and programming
- November 15th: Risk assessment
Please share your burning questions!

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