

Connecticut Land Conservation Council Land Trust Board Boot Camp



Session 3
Land Transactions Bucket

LAND TRUST

Standards and Practices

Ethical and Technical Guidelines for the
Responsible Operation of a Land Trust

12 Standards

1-7 common to all non-profits

8-12 specific to land
conservation

Land Transactions are found in
Standards 8, 9, & 10

...& a little bit in 3 and 11

Dipping 1st back into Std 3: Board Accountability

Practice D: Board Approval of Land Transactions

The board reviews and approves every land and conservation easement transaction (often a two-vote process)

However, the board may delegate decision-making authority on transactions if:

- i. It establishes written policies or has bylaws provisions that define the limits to the authority given to the delegated entity
 - ii. The delegated entity provides timely notification in writing to the full board of any completed transactions
- 

Example: Form of Resolution

RESOLUTION

[NAME OF PROJECT] CONSERVATION RESTRICTION AGREEMENT

WHEREAS it is the responsibility of the Board of Directors of the ABC Land Trust to authorize execution of a land transaction

and

WHEREAS the Acquisitions Committee has reviewed the proposed Conservation Restriction Agreement and has concluded that it is in accordance with ABC's mission, project selection criteria, applicable law and will confer a public benefit

and

WHEREAS the Acquisitions Committee finds the transaction is feasible and that ABC has the means to properly steward the property

and

WHEREAS ABC's legal counsel has reviewed the proposed Conservation Restriction Agreement and associated due diligence

and

WHEREAS the Acquisitions Committee recommends approval of the proposed Conservation Restriction Agreement

NOW, THEREFORE, RESOLVED that ABC Land Trust, Inc. enter into a Conservation Restriction Agreement with [Landowner] comprising [±] acres on [Road in []], finding that the property subject to the Conservation Restriction has significant conservation value and that protection of the property through a Conservation Restriction serves the public interest, meets the selection criteria and fulfills the mission of ABC Land Trust.

AND FURTHER RESOLVED, that any officer of ABC Land Trust is authorized to execute any and all documents necessary to enter into said Conservation Restriction Agreement providing, however, the final Conservation Restriction Agreement has no substantial changes to the conservation values, prohibited uses, and reserved rights contained in the current drafts provided to the Board of Directors prior to this vote, and on satisfactory completion of all due diligence and project documentation required for statutory and regulatory compliance and in accordance with ABC practices.

Adopted Board of Directors [date]/

**Iron Mountain Preserve – Treasure Hill Road
Proposed Transfer in Fee – November 2020**



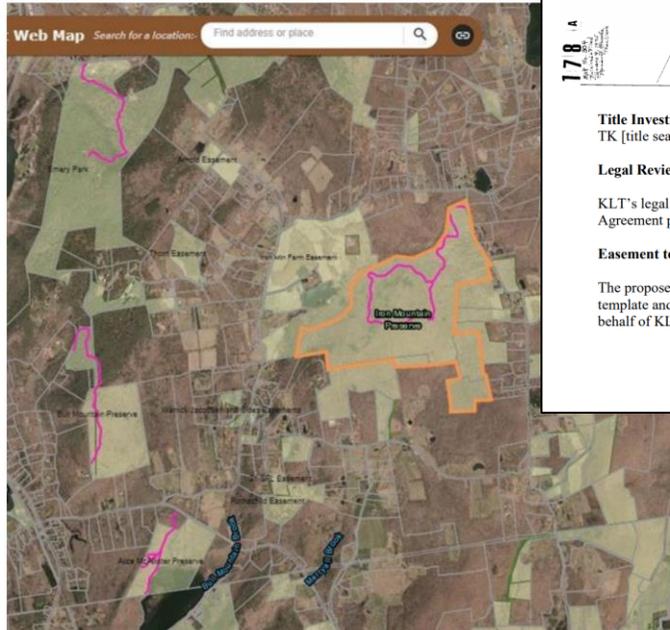
The Nature Conservancy – CT Chapter has offered to transfer its fee title interest in the Iron Mountain Preserve, a forested 300+ acre block of adjoining parcels situated between Ore Hill, Flat Rock, and Treasure Hill Roads, with parking and access to a three mile “lollipop loop” trail on Tre

The property’s conservation began with gifts of 257 acres in 1974 and 1981 by Annabel gifted to KLT the Iron Mountain Farm easement, see Vicinity Protected Properties map. Annabel’s neighbors Brigitta Lieberman, Joseph Gitterman, and Vilma Kurzer followed additional gifts in 1983, 1984, 1987, and 1991, bringing the total acreage to 303.2.

Iron Mountain Preserve has been a tremendous recreational resource for the Kent comm an important area for wildlife. It is visible from Flat Rock, Geer Mountain, Ore Hill, and Roads and is a key part of the scenic vista which caused the Town of Kent to name the C Panorama as one of Kent’s 23 Town Character Areas. The property is accessible via a U public parking area on Treasure Hill Road in South Kent. The Preserve contains the sunn from which the trail affords far reaching views during leaf-off. Most of the Preserve is n forest, though the eastern section includes younger old-field habitat. Signs of past huma include stone walls, charcoal mounds, wire fencing, three old foundations, a former orch old wood roads. A blue-blazed, 3.0-mile (round trip) hiking trail emanates from the park splits into a loop that circumnavigates the Ore Hill summit.

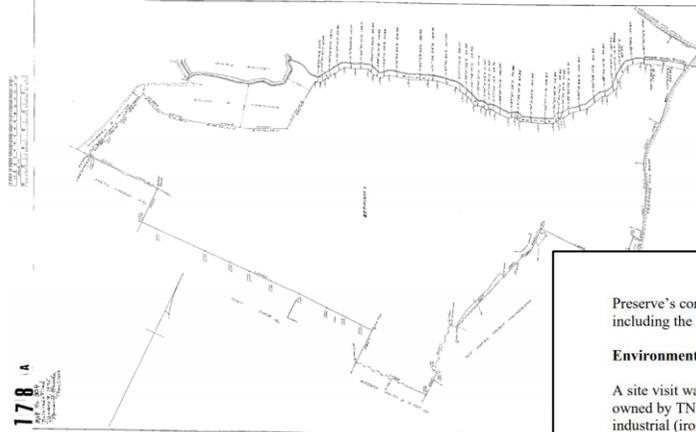
The Preserve is part of an 890-acre core forest block, interlaced with several stream cou Merryll Brook which eventually feeds into the West Aspetuck River. Patches of locally soils connect back to its agricultural use after being denuded of trees used to produce cha iron industry. Many charcoal mounds remain, some clearly visible from the existing tra adjoins or is near to many protected lands including KLT’s Iron Mountain Farm, Thom, Jacobsen, Warrick, Sides, Rothschild, 21 SFL and Wagner easements, KLT’s Geer Mou Mountain Preserves, and many easements held by Northwest Connecticut Land Conserv formerly Weantinoge Heritage Land Trust).

Iron Mountain Preserve Vicinity Protected Properties



Survey

TNC does not have a survey of the property in its entirety. A partial survey (Annabel Irving’s parcel of 257 acres) is copied below. We will obtain copies of surveys from the neighboring properties, insofar as they exist, in order to more accurately post and monitor the boundaries of the Preserve.



Title Investigation

TK [title search has been ordered]

Legal Review

KLT’s legal counsel Dolores Schiesel has reviewed the draft Deed and draft Purchase Agreement provided by TNC.

Easement to NCLC

The proposed Conservation Easement Agreement is based on the Connecticut Land C template and was reviewed and negotiated by Lorry Schiesel, Marc Weingarten, and behalf of KLT in 2018. Linda Francois represented NCLC. The Agreement takes car

Preserve’s conservation values while maintaining KLT’s rights to manage the property for public benefit, including the trail system and public access.

Environmental Review

A site visit was conducted on Tuesday, September 8th. The bulk of the Iron Mountain Preserve has been owned by TNC since 1974 and property records indicate that the entire property has been free of industrial (iron) activity since at least the 1920s. Thus, it is highly unlikely that any hazardous materials occur on site. KLT Land Manager Mike Benjamin performed physical inspections of the premises on several occasions, including walking the entire boundary in November 2017 and inspecting the trail system and much of the interior in June and July 2018. There are no apparent environmental hazards. There is significant streambed erosion in a few locations, likely due to off-site water management practices. KLT will investigate and attempt to mitigate further erosion if it threatens the property’s conservation values.

Management Plan

KLT will continue to preserve the property in its predominantly natural state. We will also mark the property boundaries; clear and remark the hiking trail, as needed; install and populate a new kiosk; and maintain the parking area by clearing vegetation and trash, as needed, and periodically re-grading the driveway. We do not intend to clear snow from the parking area during winter months. The existing trail has some erosion problems and could be rerouted and/or expanded to better showcase the Preserve’s natural and cultural features. Trail improvements would involve up-front costs but would also lead to a better visitor experience and lower long-term maintenance costs.

Stewardship Cost Assessment and TNC Stewardship Gift

In October 2017, KLT’s Land Manager Mike Benjamin prepared the following stewardship estimates:

One-time stewardship expenses:

- boundary posting: \$600
- kiosk, install and populate: \$750
- write management plan: \$600
- re-mark trail: \$200
- Total One-Time Expenses: \$2,150

Basic annual stewardship:

- kiosk updates and maintenance, including trail map supply: \$100
- annual trail walk through and trail maintenance (basic maintenance – no structural repairs): \$500
- fallen tree removal: \$300
- annual monitoring: \$150
- Total Basic Annual Stewardship: \$1,050

Other stewardship needs/contingencies:

- re-route sections of trail to minimize erosion and improve use experience: \$1,000-\$3,000
- control invasive species near Preserve entrance, along Geer Mountain and Treasure Hill Road edges, and in old orchard areas (mechanical and chemical treatment): \$15,000-\$20,000
- periodically replace footbridges: \$300-500

Example: Board Summary prior to Vote

3

Stages of Land Acquisitions

1. Project Selection (Std 8)
2. Project Planning & Due Diligence (Stds 8+9, some of 10)
3. Closing & Post-closing (aka Forever)



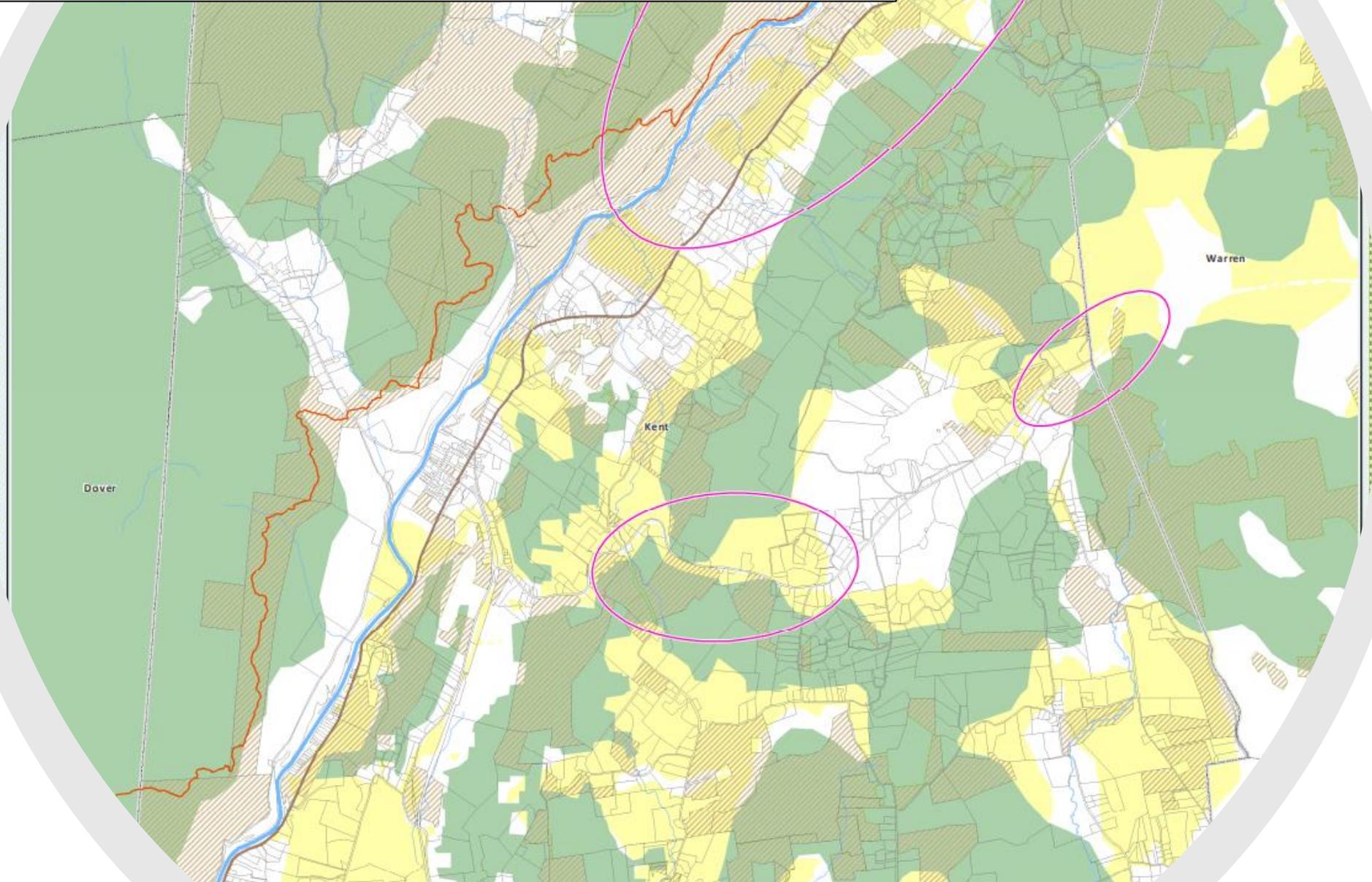
Standard 8: Evaluating and Selecting Conservation Projects

A. Strategic Conservation
Planning

B. Project Selection
Criteria & Public Benefit

1. Identify specific conservation priorities consistent with the land trust's mission and goals
 2. Develop and implement a written process to select land and conservation easement projects
 3. Develop and apply written project-selection criteria that are consistent with the land trust's conservation priorities
 4. Document the public benefit of every land and conservation easement project
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Example: Map of Conservation Priorities



Example: Project Selection Criteria

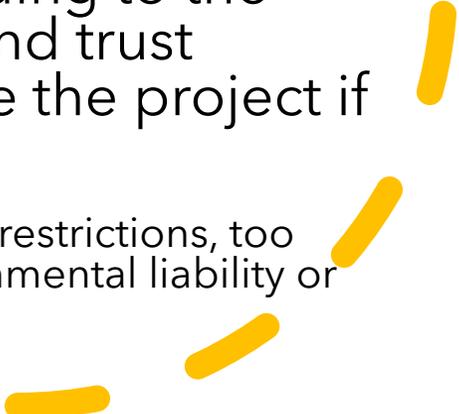
1. Land located within the 23 areas identified in the 2012 Kent POCD.
2. Land which offers significant relief from potential development and which helps to define the rural character of the community.
3. Land which provides scenic views from public roads or trail corridors.
4. Land which **provides trail corridors or public recreational opportunities** consistent with the conservation values of the property.
5. Land which provides a buffer or is in close **proximity to existing protected areas**, the protection of which would broaden an area of protected land and enhance trail corridors, recreational opportunities or plant and wildlife habitat.
6. Land which is important for preserving the quality and quantity of surface or underground waters or for providing the natural control of flooding (such as wetlands, alluvial and high water table soils, and riparian buffers).
7. Land which contains habitat for plant or animal species classified as rare, endangered or threatened by the state or federal government.
8. Land which contains **exemplary or critical habitat** for plant or animal species not classified as rare, endangered or threatened.
9. Land which contains prime or important agricultural soil or **land in active agricultural production**, where the proposed project preserves agricultural use.
10. Land of sufficient size that the resources being protected are likely to remain intact even if adjacent unprotected properties are developed. While properties of at least 10 acres are preferred, KLT may consider smaller parcels, particularly in the case of fee acquisitions, where its criteria are met and the project will not involve excessive effort or expense.
11. Land which is reasonably determined to be free from any hazardous wastes, or other contamination which could expose KLT to liability.
12. Land which is reasonably determined to allow physical access for inspection and will not present difficulties in monitoring and stewardship.

Std 8 cont'd: Evaluating and Selecting Conservation Projects

C. Project Evaluation

1. Site visit, to determine *and document*:
 - a. The conservation values on the property
 - b. That the project meets project selection criteria
 2. Evaluate potential threats to the conservation values on the property and structure the project to best protect those conservation values

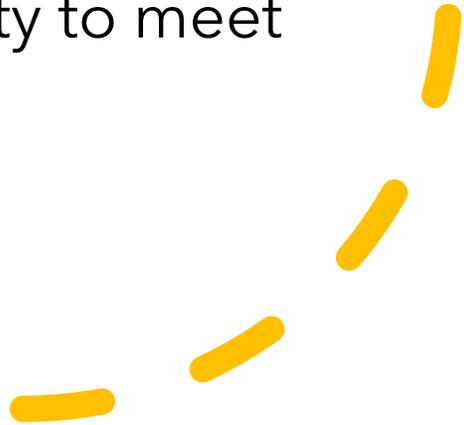
(e.g. conservation easement with sensitive habitat allows no reserved rights in that area)
 3. Evaluate any current or potential risks associated with the project, including to the land trust's reputation or to the land trust community, and modify or decline the project if the risks outweigh the benefits

e.g., too many reserved rights, unenforceable restrictions, too high risk of encroachment, high risk of environmental liability or injury
- 

Std 8 cont'd: Evaluating and Selecting Conservation Projects

D. Project Planning

1. Individually plan all land and conservation easement projects to:
 - a. Identify the best available conservation strategy for the property
 - b. Protect the property's important conservation values
 - c. Further the organization's mission and goals

 2. Assess the stewardship implications of each project and the land trust's capacity to meet those obligations
- 

Std 8 cont'd: Evaluating and Selecting Conservation Projects

E. Partnership Documentation

When engaging in a partnership on a joint acquisition or long-term stewardship project or when co-holding conservation easements, create written agreements to clarify:

- a. The goals of the project
- b. The roles and responsibilities of each party
- c. Legal and financial arrangements
- d. Communications to the public and between parties

Example? Co-holders of a property - who is responsible for monitoring? Who for maintenance?



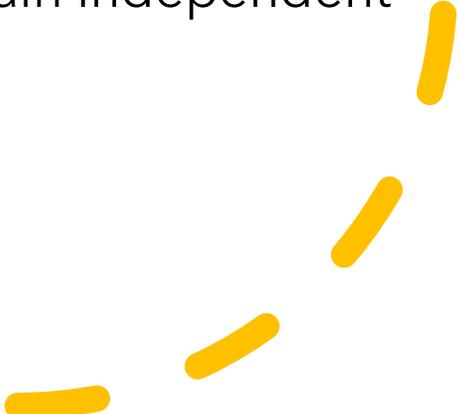


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Std 9: Ensuring Sound Transactions

A. Legal Review & Technical Expertise
(Get it)

B. Legal and Financial Advice (Don't Give it)

- Obtain a legal review of every land and conservation easement transaction, appropriate to its complexity, by an attorney experienced in real estate law
 - As dictated by the project, secure appropriate technical expertise, such as in financial, real estate, tax, scientific and land and water management matters
 - Do not give individualized legal, financial or tax advice when providing transaction-related information
 - Recommend in writing that each party to a land or conservation easement transaction obtain independent legal, financial and tax advice
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Std 9 cont'd: Ensuring Sound Transactions

C. Environmental Due Diligence

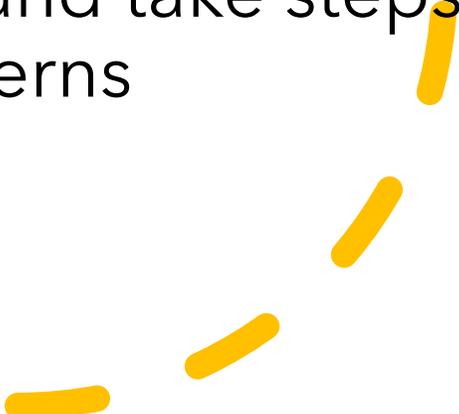
For every land and conservation easement transaction, conduct or obtain a

preliminary environmental investigation

transaction screen or

Phase I assessment

to identify whether there are any conditions that pose environmental risks, and take steps to address any significant concerns



Std 9 cont'd: Ensuring Sound Transactions

D. Determining Property Boundaries

Determine both the legal description and physical boundaries of each property or conservation easement

If a conservation easement contains restrictions or permitted rights that are specific to certain zones or areas within the property, include the locations of these areas in the easement document so that they can be identified in the field

Note: Always get a survey, with physical monuments as appropriate for the property and what you are protecting



Std 9 cont'd: Ensuring Sound Transactions

E. Conservation Easement Drafting

For every conservation easement,

- Individually tailor it to the specific property
- Identify the conservation values being protected
- Allow only uses and permitted rights that are not inconsistent with the conservation purposes and that will not significantly impair the protected conservation values
- Avoid restrictions and permitted rights that the land trust cannot monitor and enforce
- Include all necessary and appropriate provisions to ensure it is legally enforceable

Review, on the land trust's own behalf, each potentially tax-deductible conservation easement for consistency with the Treasury Department regulations (U.S.C. §1.170A-14), especially the conservation purposes test of IRC §170(h)

Note: CLCC maintains a suite of well-vetted Conservation Easement Templates with Commentary.



Std 9 cont'd: Ensuring Sound Transactions

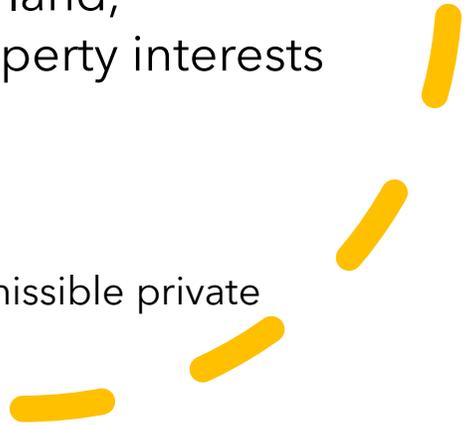
H. Purchasing Land or Conservation Easements

1. When buying land, conservation easements or other real property interests, obtain an independent appraisal by a qualified appraiser in advance of closing to support the purchase price

However, a letter of opinion from a qualified real estate professional may be obtained in the limited circumstances when:

- A property has a very low economic value
- A full appraisal is not feasible before a public auction
- Or the amount paid is significantly below market value

2. In limited circumstances where acquiring land, conservation easements or other real property interests above the appraised value is warranted, contemporaneously document:

- The justification for the purchase price
 - That there is no private inurement or impermissible private benefit
- 

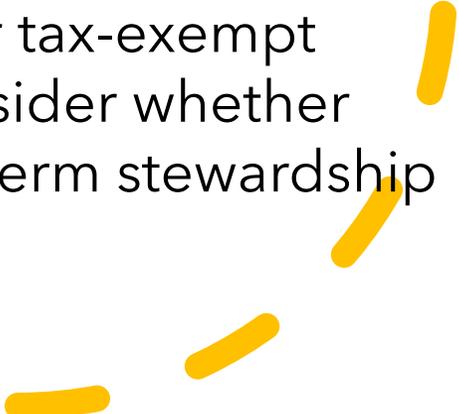
Std 9 cont'd: Ensuring Sound Transactions

F. Title Investigation & Recording

- Prior to closing and preferably early in the process, have a title company or attorney investigate title for each property or conservation easement the land trust intends to acquire
 - a. Update the title at or just prior to closing
 - Evaluate the title exceptions and document how the land trust addressed mortgages, liens, severed mineral rights and other encumbrances prior to closing so that they will not result in extinguishment of the conservation easement or significantly undermine the property's important conservation values
 - After closing, promptly record land and conservation easement transaction documents at the appropriate records office
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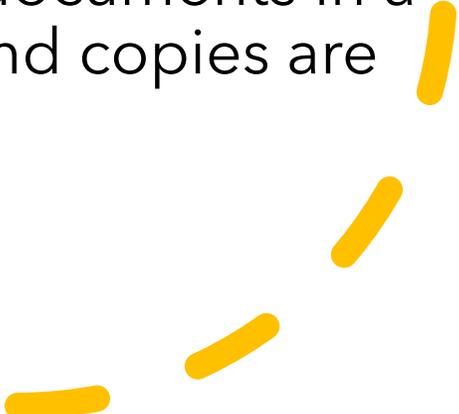
Std 9 cont'd: Ensuring Sound Transactions

I. Selling Land or Conservation Easements

1. When selling land, conservation easements or other real property interests,
 - Establish protections as appropriate to the property
 - If the sale is to a party other than another tax-exempt organization or public agency, obtain an independent appraisal by a qualified appraiser or a letter of opinion from a qualified real estate professional to determine the value of the asset and to support the selling price
 - Select buyers in a manner that avoids any appearance of impropriety
 2. When selling or transferring conservation land or conservation easements to another tax-exempt organization or public agency, consider whether the new holder can fulfill the long-term stewardship and enforcement responsibilities
- 

Std 9 cont'd: Ensuring Sound Transactions

G. Recordkeeping

- Adopt a written records policy that governs how and when organization and transaction records are created, collected, retained, stored and destroyed
 - Keep originals of all documents essential to the defense of each real property transaction in a secure manner and protected from damage or loss
 - Create and keep copies of these documents in a manner such that both originals and copies are not destroyed in a single calamity
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Standard 10: Tax Benefits and Appraisals

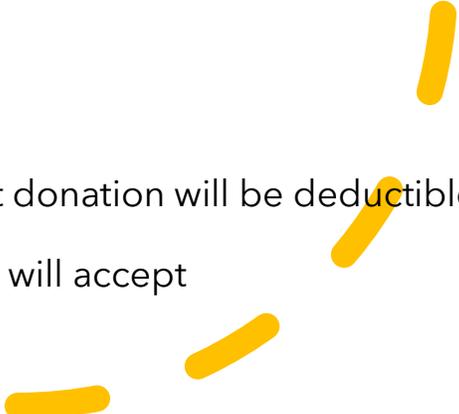
Land trusts work diligently to see that every charitable gift of land or conservation easement meets federal and state tax law requirements, to avoid fraudulent or abusive transactions and to uphold public confidence in land conservation



Std 10 cont'd: Tax Benefits and Appraisals

A. Landowner Notification

1. Inform potential land or conservation easement donors who may claim a federal or state income tax deduction (or state tax credit), in writing and early in project discussions, that:
 - a. The project must meet the requirements of IRC §170 and the accompanying Treasury Department regulations and any other federal or state requirements
 - b. The donor is responsible for any determination of the value of the donation
 - c. The Treasury Department regulations require the donor to obtain a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$5,000
 - d. Prior to making the decision to sign IRS Form 8283, the land trust will request a copy of the completed appraisal
 - e. The land trust is not providing individualized legal or tax advice

 2. Do not make assurances as to:
 - a. Whether a particular land or conservation easement donation will be deductible
 - b. What monetary value of the gift the IRS and/or state will accept
 - c. What the resulting tax benefits will be, if any
- 

Std 10 cont'd: Tax Benefits and Appraisals

B. Legal Requirements: Land Trust Responsibilities

1. If the land trust holds federally tax-deductible conservation easements, it meets the requirements for a qualified organization under IRC §170(h)
 2. Sign the Form 8283 only if the information in Section B, Part I, "Information on Donated Property," is complete and is an accurate representation of the gift
 - a. Refuse to sign the Form 8283 if the land trust believes no gift has been made or the property has not been accurately described
 3. File IRS Form 8282 when conveying a donated real property interest within three years of the date the land trust received the property
- 

Std 10 cont'd: Tax Benefits and Appraisals

C. Avoiding Fraudulent or Abusive Transactions

1. Review, on the land trust's own behalf, each transaction for consistency with federal and state income tax deduction or credit requirements
 2. Evaluate the Form 8283 and any appraisal to determine whether the land trust has substantial concerns about the appraised value or the appraisal
 3. Discuss substantial concerns about the appraisal, the appraised value or other terms of the transaction with legal counsel and take appropriate action, such as:
 - a. Documenting that the land trust has shared those concerns with the donor
 - b. Seeking additional substantiation of value
 - c. Withdrawing from the transaction prior to closing
 - d. Or refusing to sign the Form 8283
 4. Transactions with pass-through entities of unrelated parties, particularly those offered or assembled by a third party or described as a syndication by the IRS
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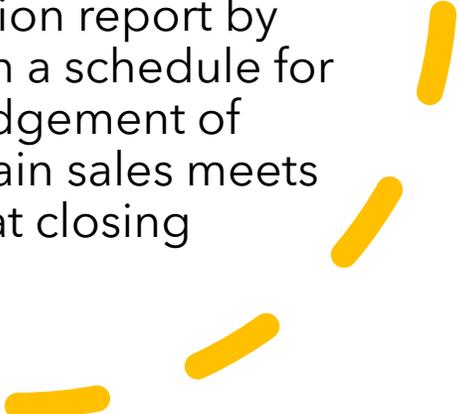
FOR EASEMENTS

Std 11: Conservation Easement Stewardship

Practice B: Baseline Documentation Report

Prepared contemporaneous with closing.

1. For each conservation easement, have a baseline documentation report with written descriptions, maps and photographs, that documents:
 - a. The conservation values protected by the easement
 - b. The relevant conditions of the property as necessary to monitor and enforce the easement

 2. Prepare the report prior to closing and have it signed by the landowner and land trust at or prior to closing
 - a. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, the landowner and land trust sign a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulation §1.170A-14(g)(5)(i)] at closing
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Top Five Takeaways for new Directors

1. Land Transactions are a Process with steps to be followed each time
2. Due Diligence: Title / Environmental Investigation / Survey - engage with attorneys and other professionals
3. Documentation is key
 - a. Meets Project Selection Criteria, public benefit, mission-consistency.
 - b. Due diligence including title review.
 - c. Purchase price substantiation.
 - d. Board review of it all and vote to accept the property.
 - e. Letters to prospective donors re: tax regulations + appraisal requirements.
 - f. Review of donor's appraisal + Form 8283.
 - g. Records policy + procedures ensure you have the records you need, *forever*
4. The reputation of land conservation is dependent on sound transactions free from abuse of the conservation easement tool
5. Acquisitions are only the beginning of responsibility to protect a property's conservation values - plan accordingly!

Protecting land is super-rewarding - serve on the Acquisitions Committee if you have the chance 😊

Questions/comments



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Thanks!