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**Fee Land and Conservation**

**Easement Acquisition Checklist**

**Introduction**

This checklist was created to fulfill a need identified by the Connecticut Land Trust Community. It focuses on the major steps to be taken during the land acquisition process and highlights best practices according to Land Trust Alliance Standards and Practices (LTA S&P) with emphasis on Standards 8-12. It is proposed that project managers utilize this checklist as a guideline to facilitate the acquisition of fee land and easements for conservation purposes within the state of Connecticut. To ensure compliance with Standards and Practices and prepare one’s land trust for accreditation, project managers should directly reference the Land Trust Alliance publication.

**Project Planning and Due Diligence**

INITIAL INFORMATION / LANDOWNER CONTACT

* Have initial conversation with landowner to collect background information & identify their needs and hopes for conservation. Provide landowner with explanation of conservation options. Do a preliminary evaluation about whether Fee Acquisition, a Conservation Easement or another option is the best tool for the job[[1]](#footnote-0)
* Conduct off-site research to include gathering maps (survey & GIS), interviewing neighbors, chatting with partners and gathering any public information about the property
* Do a preliminary evaluation of how this property fits within land trust’s established project selection criteria[[2]](#footnote-1)
* Continue the conservation with the landowner about initial project evaluation, ask follow-up questions and notify them of next steps if moving forward. Provide landowner with organizational materials and land trust specific process

SITE VISITS

* Once all off-site research is complete and decision is made to move forward, conduct site visit/s
* Document all site visits within a narrative report to include photographs and maps for clarification
* During site visit/s evaluate the property’s conservation values within land trust’s specific selection criteria
* During site visit/s also identify if any of the following risks/threats exist:
	+ Threats to conservation values and existing land use
	+ Limited access to property
	+ Structures on the property
	+ Visible easements and encumbrances
	+ Issues with adjacent land use and property boundaries
	+ Management issues and invasive species concerns
	+ Encroachments
	+ Potential for hazardous waste
	+ Any public use issues (dumping, etc.) or safety issues
	+ Illegal uses
	+ Zoning Issues (information typically available at government planning & zoning office)

PROJECT EVALUATION

* Once all on and off-site information is gathered document thorough evaluation of project’s consistency with the land trust’s established project selection criteria
* Document project’s public benefit and ensure it is consistent with conservation purposes as defined by the IRC §170(h)[[3]](#footnote-2) *(Required for easements but can guide other acquisition projects as well)*
* Evaluate feasibility of project stewardship through cost estimates[[4]](#footnote-3) of management planning, monitoring, landowner relations, administration, grantee approvals, legal/professional fees associated with enforcement, and property maintenance, etc.
* Conduct a risk and cost assessment in order to determine if potential risks and costs outweigh conservation benefits[[5]](#footnote-4)
* Have a conversation with the landowner about whether or not the land trust will be proceeding with the project, why the decision was made and the next steps if moving forward

COMMITTEE/BOARD APPROVAL FOR FURTHER PROJECT DEVELOPMENT

* Present full project evaluation and cost/risk assessment to appropriate committee or board
* Receive committee or board approval in accordance with Land Trust policy prior to proceeding with project

SURVEY

* Obtain property description in existing deed and an existing survey if possible
* Determine property boundaries through a legal property description, and marking
* Conduct a survey if necessary. *Always for fee acquisition*
* Ensure any special use areas or zones are described in detail and are identified on a map. *For* *easement*
* Consult with legal counsel if proceeding without survey

TITLE INVESTIGATIONS/DEED & EASEMENT DRAFTING

* Ensure a title search issuing a title certificate is conducted by a competent professional
* Address all and any title encumbrances to include:
	+ Liens, mortgages, or other financial encumbrances. If mortgage exists, ensure mortgage is subordinated
	+ Easement rights-of way
	+ Water and/or mineral rights
	+ Other
* Draft transaction agreements and legal documents with an attorney qualified in conservation law (tax and real estate) preferably outside counsel or legal staff. If you are using a template, ensure the template has been reviewed within the last year. Have any deviations from the template reviewed by an attorney
* Engage professionals with expertise in tax, scientific, land and water management as necessary
* Purchase title insurance *(Fee acquisition only)*

APPRAISAL

* If purchasing interest, obtain qualified independent appraisal (preferred) or a letter of opinion from a real estate professional if the property (for properties with low economic value)
* Ensure negotiations are honest and forthright if land trust negotiates a sale below appraised value
* Obtain legal advice if paying greater than appraised value[[6]](#footnote-5)

TAX EXEMPTIONS

* Ensure donors are notified that the project must meet IRC §170(h) and other regulations
* If land is owned by a corporation, inform landholder of Public Act 99-173, the Tax Incentive for Connecticut Corporations[[7]](#footnote-6)
* Provide land owner a statement in writing that the land trust makes no assurance as to whether or not a donation will be deductible, or what gift will qualify according to the IRS
* Inform land donor in writing of the requirement for a qualified appraisal for all land donations in excess of $5,000 tax purposes[[8]](#footnote-7)
* Inform donor of the requirement to fill out IRS Form 8283, signed by the appraiser and the donor and attached to the income tax form
* Inform donor of requirement to maintain a record of the appraisal
* Inform donor of requirement to attach full appraisal to tax return for gifts of over $500,000

**Board Review and Approval**

* Prepare project summary for presentation to the board in accordance with Land Trust’s policy
* Document the decision of the board prior to proceeding

**Closing**

LEGAL DOCUMENTS AND RECORDING

* Obtain signatures from appropriate land trust representative and landowner/s to finalize documents
* Ensure transaction is recorded at the local records office in accordance with state and federal law
	+ Ensure recording is done immediately and by the land trust, escrow company, or via written instructions to the landowner’s attorney
	+ Ensure original documents with “recording” stamp are filed

BASELINE DOCUMENTATION

* For easements, document baseline conditions at time of closing to be signed by land trust and landowner/s[[9]](#footnote-8)

**Post-Closing**

PROJECT FILES

* Maintain all record in accordance with organizational recordkeeping policy[[10]](#footnote-9)
* Keep all original and irreplaceable documents in one location, protected from fire, floods etc.
* Keep copies of all “working” documents and files in a separate location

DONOR SUBSTANTIATION

* Send thank-you letter to landowner thanking them for protecting their land, and include information required of public charities to substantiate a charitable deduction

REVIEW OF FORM 8283 AND DONOR’S APPRAISAL[[11]](#footnote-10)

* Sign the donor’s Form 8283 ensuring “Information on Donated Property” and “Declaration of Appraiser” sections are completed and signed by donor and appraiser
* File Form 8282 when reselling a donated property at more than $500 within two years, or within 125 days when transferring the property to another tax-exempt organization

STEWARDSHIP

* Ensure land trust has a written stewardship policy
* Post property boundaries *(If fee acquisition)*
* Develop a site management plan for fee land. Consult with a professional in developing a management plan as necessary
* For easements, develop a monitoring plan that is appropriate for the size and complexity of the land holding, and ensure easement monitoring is conducted on a defined and routine basis and is documented in reference to baseline documentation
* Send an annual letter or make phone call to owners of conserved land to notify them of upcoming easement monitoring
* Consider employing volunteer stewards and/or monitors to build participation and enthusiasm for the land trust activities throughout the community
* Ensure sustainable funding is allocated for management of fee land and monitoring of easements. If an endowment exists ensure funding is earmarked for monitoring and management

INSURANCE CONSIDERATIONS

* Although outside the scope of the land acquisition process, it is recommended that land trust’s evaluate their insurance needs and consider Conserv-a-nation and Terrafirma insurance policies to offset required legal action necessary in defense of conserved land and to manage the inevitable risk and uncertainty inherent in operating a land trust

PRESS

* Develop press release following closing, consulting landowner, partners and donors as appropriate

**Additional Guidance**

LEGAL GUIDANCE

* Send letter to landowner suggesting they seek independent advice for the transaction, include a statement about independent counsel when a legal document is sent to the landowner
* If landowner does not seek legal counsel, ask the landowner to acknowledge this fact in writing
* DO NOT make assurances to landowner about the legal and tax implications of the transaction, and
* DO NOT make assurances that the easement will be deductible
* DO NOT make assurances that an appraisal report will meet IRS requirements

DOCUMENTATION OF PURPOSES AND RESPONSIBILITIES

* Document intended future use with deed restriction (legally binding) or letter of intent (not legally binding) *for fee acquisition*
* Specify future sale of the property as a possibility to the land owner through memorandum of understanding or letter of agreement
* Document roles, rights and responsibilities of all parties involved in the acquisition and stewardship of the land
* Document rights and responsibilities of the owner and the land trust for any remainder interest/reserved life estate property
* Document in escrow instructions or other written communications who will be responsible for specific costs to include, legal fees, appraisals, surveys, closing costs, contributions to stewardship fund

EASEMENT DRAFTING[[12]](#footnote-11)

* Use qualified professional to draft easement
* Ensure easement:
	+ Protects conservation values
	+ Documents the public benefit served by easement
	+ Only permits uses or reserved rights that will not affect conservation purpose
	+ Can be monitored and is enforceable

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*–Kyle D. Smith, Yale School of Forestry & Environmental Studies*

***The Connecticut Land Conservation Council's mission is to advocate for land preservation, stewardship and funding, and ensure the long-term strength and viability of the land conservation community.***

[***www.ctconservation.org***](http://www.ctconservation.org)

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1. *See LTA S&P PRACTICE 8H* [↑](#footnote-ref-0)
2. Many land trusts will have an additional checklist and/or policy that will provide specific guidance to ensure the project is compatible with the organization’s mission. *See LTA S&P PRACTICE 8B* [↑](#footnote-ref-1)
3. *IRC §170(h) identifies the federal deductibility criteria for the donation of an easement* [↑](#footnote-ref-2)
4. *See LTA S&P PRACTICE 11A (easement) or 12A (fee)* [↑](#footnote-ref-3)
5. *See LTA S&P PRACTICE 8K* [↑](#footnote-ref-4)
6. *If proceeding with transaction above appraised value, document the reasoning and the benefit to the land trust and public benefit associated with the land* [↑](#footnote-ref-5)
7. *Public Act 99-173 outlines two tax incentives in CT. Section 47 in Connecticut’s tax law outlines a 50% tax credit for land donated to land trusts for preservation in perpetuity as “protected open space” in Section 39, outlines a corporate tax exemption on the sale of open space* [↑](#footnote-ref-6)
8. *See LTA S&P PRACTICE 10B* [↑](#footnote-ref-7)
9. *See LTA S&P PRACTICE 11B* [↑](#footnote-ref-8)
10. *See LTA S&P PRACTICE 9G* [↑](#footnote-ref-9)
11. *See LTA S&P PRACTICE 10D* [↑](#footnote-ref-10)
12. *See LTA S&P PRACTICE 9G* [↑](#footnote-ref-11)