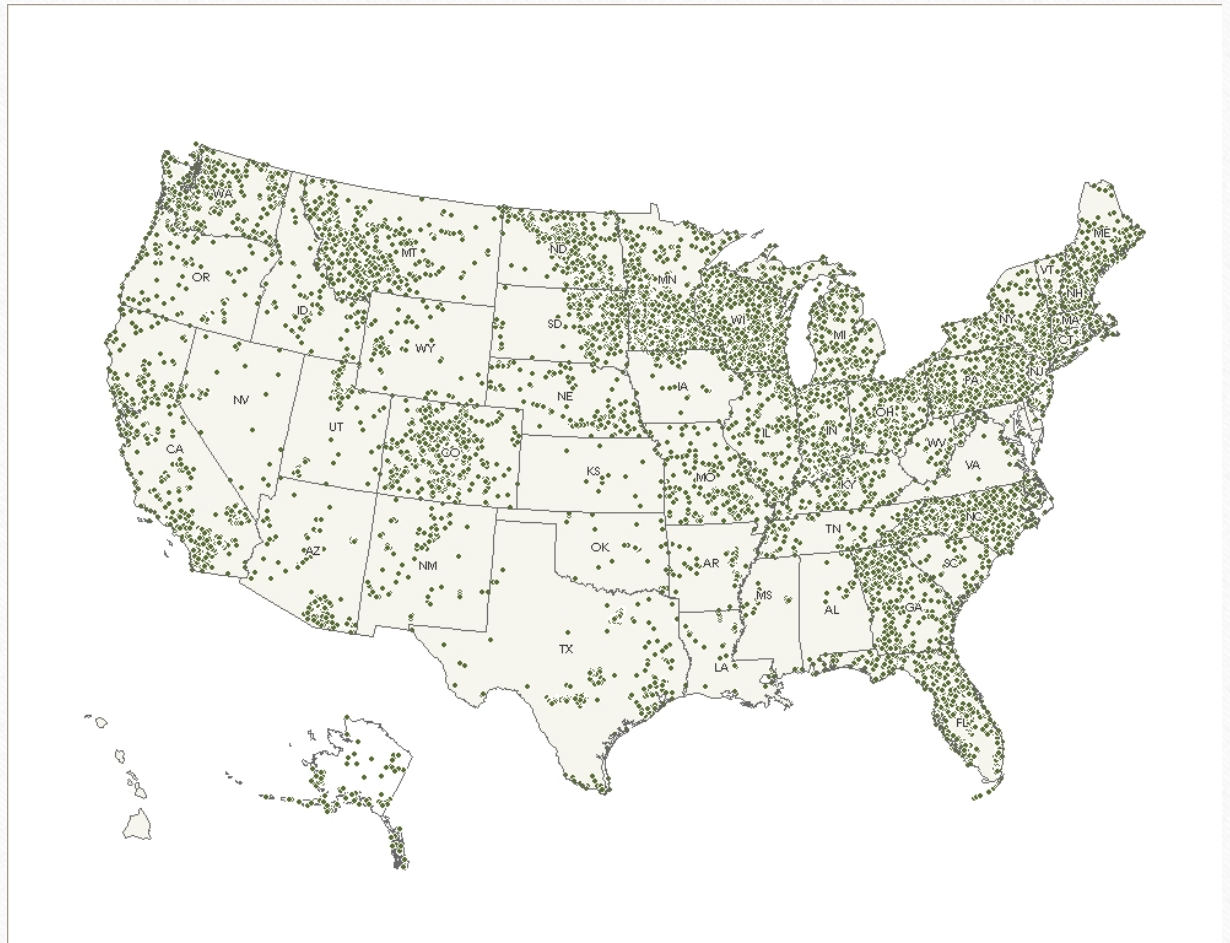# Conservation 101

Charles B. Allott, Esq.

Aquidneck Land Trust

Rhode Island Land &Water Summit, March 19, 2016

"The earth is common ground and…gradually the idea is taking form that the land must be held in safekeeping,
that one generation is to some extent responsible to the next…."
–E. B. WHITE

Over 1400 lands trusts in this country have conserved over 50 million acres of land for specific conservation values

Rhode Island is the hot bed of the land trust movement with more land trusts per square mile than anywhere else in the country – 49 land trusts and counting!

Land conservation serves many critical purposes in society.

• It provides open spaces for mental and physical health. It provides a place for social interactions in an increasingly urbanized and human‑built world.

• It protects agricultural lands and soils from development to allow for localized food production and that in turn drives a thriving agricultural economy

• It promotes biodiversity by preserving plant species and habitat critical to wildlife species.

• It is a vital component of any plan to protect and sustain drinking water and coastal watersheds. Land use and land development can have severe adverse impacts on watersheds, unless planned and managed in environmentally sustainable ways. That planning has to include land conservation within the watersheds and especially riparian buffers close to the water supplies

Something about ALT:

Traditional land trust activities:

2550 Acres of land under conservation in three municipalities on Aquidneck Island

➢ 45% full or limited accress

➢ 27% of the farmland parcels

➢ 20% of watershed areas

➢ About 11% of total land area with 21% total conserved.

➢ Almost 12M raised for land acquisition over 25 years

➢ 76 Parcels – 73 by Conservation Easement; 3 in fee

Something about ALT:

Non-traditional Land Trust – we do other things to try to be more relevant to our communities.

➢Created a 10 Mile Trail System over 11 properties Land Trust

➢2 utility undergrounding projects

➢Partner in Coyote Management Initiative (actually a human management related to coyotes)

➢Partner in Public/Private Open Space Master Planning initiative in Newport

➢Partner in Food System Planning Initiative with food equity component

Todays Discussion – Traditional Land Conservation

Outline:

- Land acquisition and stewardship assessment - strategic prioritization of lands and land owners and what it will cost to maintain and enforce the restriction

- Conservation tools – what are they and which is right for each specific project

- Initial communication with landowners about land conservation

- Negotiations with:

➤ Landowners

➤ Other Stakeholders, Donors

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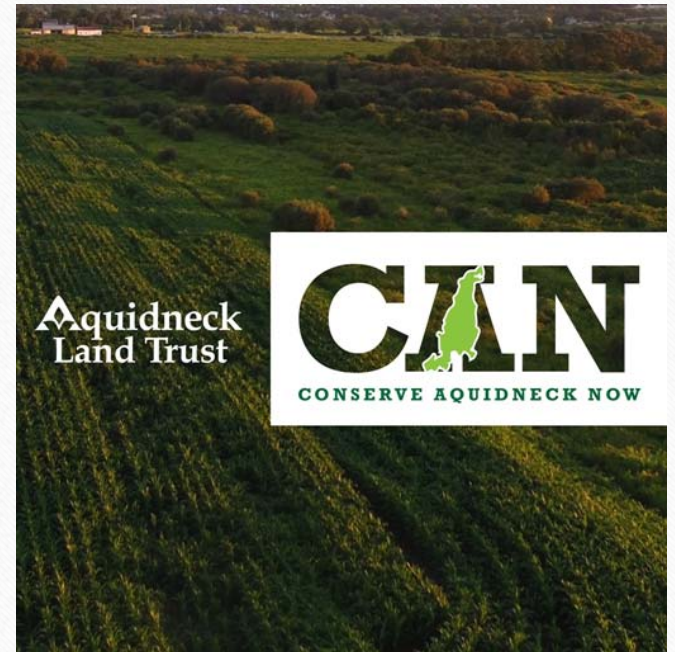# Todays Discussion – Traditional Land Conservation

Outline (continued):

- Due diligence;
- Drafted conservation documents you need to have
- The closing;
- Post closing responsibilities
- Monitoring
- Relationship Building

Prioritize Lands

A land trust needs a road map of where it's going in land conservation. A simple ranking system that tells board members, supporters and donors that this parcel is important and why.
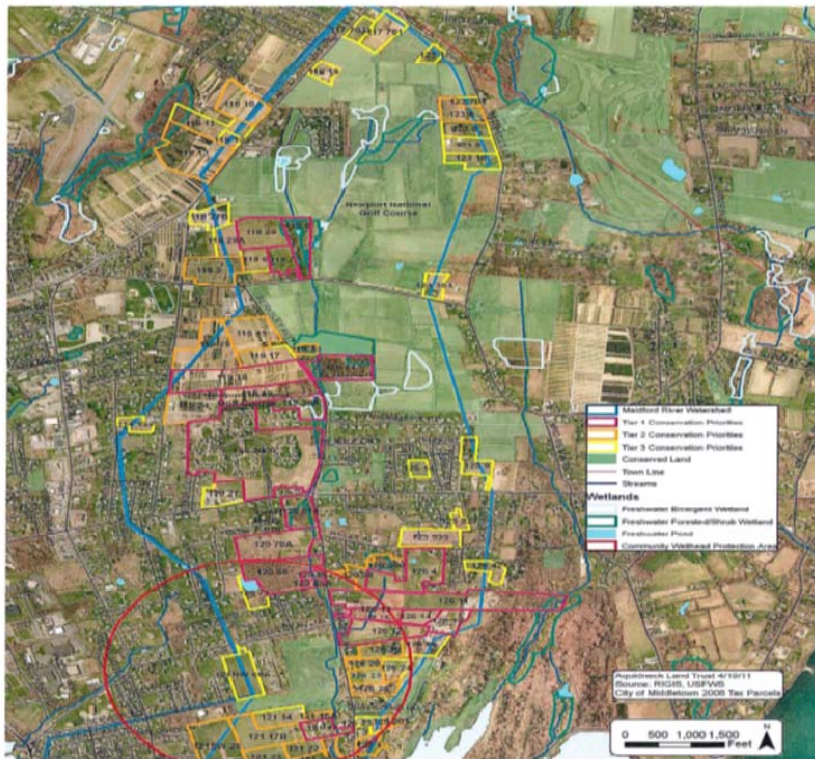
Prioritization (cont.)

- Define Criteria depending on the conservation value being propected. (Soil types; slope; types of vegetation, proximity to water resource, size, nature of the water resource along a boundary, lack of succession planning

- GIS Mapping so that priority parcels are readily identifiable.

- Confidentiality of maps and data?

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Prioritization (cont.)

Mapping:

- Colored Tiering System
- Depicts the entire watershed
- Different map for each watershed
- Hammer it over and over with board and stakeholders

Conservation Tools

- Conservation Easement

- Deed to fee Simple Title (Quitclaim, Warranty, Bargain Sale)

- Agricultural Preservation Restriction, OPAV or Agricultural Preservation Restriction with OPAV

- Testamentary Bequest

- Conveyance of a Remainder Interest

- Conservation/Cluster Subdivision

- Land Conservation Options

- Tax Deductions (income, estate and property)

- Donating Undivided Interests

- Charitable Remainder Trust

Initial communications with landowner

- Certain words or concepts are dos and others are don'ts

-The Nature Conservancy, "The Language of Conservation 2013: Updated Recommendations on How to Communicate Effectively to Build Support for Conservation", April 15, 2013. http://www.massland.org/files/2013_LanguageofConservation_Memo_0.pdf

- Know your audience – Is the landowner conservationminded or profitminded?

- Consider a Publication First: **The Trustees of The Reservation, "Land Conservation Options - A Guide for Massachusetts Landowners", Fifth Revised Edition, October 2001 - http://www.thetrustees.org/assets/documents/what-we-care-about/LandConservationOptions.pdf**

Negotiations with Land Owners and other Stakeholders

- Structure of the Conservation depends on parties wishes.

- Decision Tree – pg. 5 of Land Conservation Options Publication

- Municipal Stakeholder

- Donor communications

- State and Federal - grant applications

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Due Diligence

- Appraisal

- Environmental Assessment

- Title search/Title Commitment/Title Policy

- Survey

- Zoning analysis

Drafted Conservation Documents

- Memorandum of Understanding (MOU) - non-binding
- Option – pay a fee for time to fundraise – binding
- Purchase Agreement - binding
- Deeds are not all created equal (Quitclaim, Bargain Sale, Warranty)
- Conservation Easements
  - Superlien - RIGL Title 34, Chapter 39 grants CE's special status.
  - Use model easement when available.
  - Not all provisions should be subject to negotiation (i.e. prohibited uses, default provisions).
  - Outzones
  - Amendments

Closing

- Closing Checklist

- onservation Easements

    ➤ Superlien - RIGL Title 34, Chapter 39 grants CE's special status.

    ➤ Use model easement when available.

    ➤ Not all provisions should be subject to negotiation (i.e. prohibited uses, default provisions).

    ➤ Outzones

    ➤ Amendments

Post Closing

- Land Conservation is transactional but its also relational