



Land Protection 101

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Life Cycle of a Conservation Transaction

- a. Priority Assessment
- b. Landowner Communications
- c. Identify the conservation opportunity and the partners
- d. Discussions to frame the transaction in an Agreement (goals of landowner, goals of partners, goals of land trust)
- e. Due Diligence
- f. Fundraising
- g. Closing
- h. Recording
- i. IRS Requirements for deduction



Priority Assessment

- Does your Land Trust have a way of prioritizing parcels in your geographic service area?
- Does it evaluate across all conservation values or prioritize within each conservation value?
- Do you give greater or lesser weight to certain sets of criteria?
- Do you consider non-site specific criteria?



Priority Assessment – cont.

- GIS Criteria:
 - Parcel Size
 - Habitat
 - Water Resources
 - Ag
- Non-GIS Criteria:
 - Stewardship Burden
 - Land Management
 - Cost
 - Partners
 - Development Risk



Communications with Landowner


- Know your landowner or even type of landowner;
- Make use of introductions;
- Listen;
- Everything they say about donor contact is true with landowner contacts:
 - Cultivate over time
 - Do your research; What motivates them?
 - Small steps – “just let me appraise it”
 - Look for intel from insiders that know the landowner and landowner’s motivations



Developing the Narrative for Conservation Opportunity

- Unique conservation values
- Immediacy of threat of development
 - ❑ Traffic
 - ❑ Taxes/Cost of Services
 - ❑ Water quality concerns
- Contiguity to other protected land
- Motivated partners





Based upon narrative developed – who are your potential partners?

- State
 - ❑ ALPC
 - ❑ DEM
- Fed
 - ❑ NRCS
 - ❑ REPI
 - ❑ US F&W
 - National Land Trusts
 - ❑ TPL
 - ❑ TNC



- Municipalities
- Foundations
- Individuals



Discussions to frame the transaction in an Agreement

(goals of landowner, goals of partners, goals of land trust)



- Deeper conversation on goals will establish each partners funding capacity but also whether differing goals of partners and landowner and land trust can align in one property.
- Allow only uses and permitted rights that are not inconsistent with the conservation purposes and that will not significantly impair the protected conservation values
- Town wants soccer fields and DEM wants Ag.



Types of Conservation Tools Depending on Goals

- Conservation Easement
- Agricultural Easement – Do they work?
- OPAV
- Combination Ag. Easement/OPAV
- Limited Development
 - Subdivision
 - Outzone
- BPS Program
- Fee Title



Discussions to frame the transaction in an Agreement

(goals of landowner, goals of partners, goals of land trust)

Form of Agreement based upon framework and funding of the transaction:

- MOU – non-binding understanding
- Option – money at risk; time to fundraise
- PSA – Legally Obligated to buy subject to certain pre-conditions.



Due Diligence

- Some preliminary due diligence before entering into agreement –
Make sure you know who owns the Land!
- Appraisal – Appraisal must be done in a purchase in advance of agreement to determine the value and negotiated price.
- Landowner must do their own appraisal if they intend to seek a tax deduction for the granting of a conservation easement.



Due Diligence – cont.

Boundary Survey – Make sure it meets all of your needs. A R.I. Class 1 Survey is typically what is required.

It needs to have:

- Accurate measurement of bounds and full narrative legal description
- Shows no Encroachment
- Shows improvements, easements, rights-of-way and other elements impacting land ownership such as evidence of Adverse Possession
- Shows legal access to property (physical access and utility access)
- Sufficient to get required to get appropriate title insurance



Due Diligence – cont.


Environmental Assessment – Transaction Screen or Phase 1

- Look at the Conclusion. Does it recommend further testing?
- Farmland concerns
- S&P recommends it but Accreditation doesn't require it (Standard 9, Practice C).



Due Diligence – cont.

Title

- Have a complete title search performed. If based on a start ask to have it go back one owner with after-acquired tax lien search.
 - If land is in a trust, the power of the trustee to donate interests in real estate must be expressly stated in the Declaration of Trust otherwise you need consent of all beneficiaries.
 - If conservation easement is the back portion of a parcel do you have deeded access to the property?
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Fundraising

- Municipal Partner(s) – marshall political will “fill the council chambers!”
- Foundations and State – facts and data based
- Individuals – emotional based
- If it’s a big project – do you treat as a mini capital campaign?
- Seek out influencers for support
- Communicate with landowner and partners about fundraising. Let them know how hard you are working it!



Closing:

- Be well prepared; Ensure that you have final signature documents in file;
- Have a closing checklist or closing agenda;
- Do not allow yourself to be triggered if there is tension in the air;
- Speak when asked a question.
- Obviously, be represented by competent real estate counsel.





Contemporaneous written acknowledgement in keeping with IRS charitable contribution substantiation requirements

