

2020

# A Guide for Land Trusts on Fee-Simple and CE Acquisitions



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## **A Procedural Guide for Land Trusts**

*This procedural document is to be used internally by land trust staff to evaluate and process fee and conservation easement (CE) acquisition projects. It is designed to be used in conjunction with the Land Trust Project Master Checklists found at the end of this document. The document and the checklists will help staff complete every Fee and/or CE acquisition step in order and with the correct amount of detail.*

*The Procedural Document and Checklists may also be used with the Projects Record Inventory found in the appendix. The Inventory is meant to track crucial documents and should be kept in the front of the project file.*

*This procedural guide is not meant to assist with yearly stewardship requirements or to replace the advice of your land trust's attorney.*

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## **1.0 First Contact**

Potential land conservation projects should be directed to one person. This is often a Land Trust Conservation Project Manager or staff member with similar title (hereinafter referred to as “Project Manager”). The Project Manager will note the date of first contact with a landowner (LO) on the *Land Trust Project Master Checklist* (See Appendix A for the Checklist).

He or she should collect basic information from the LO at this time, such as property location, size (in acres), Tax Parcel ID number(s) (if available) and easily identifiable significant natural resources. Ownership details, such as the landowner name(s), physical address, mailing address (if different) and contact number(s), should be noted.

Landowner (LO) intent should be recorded. This includes: Do they intend to gift the land or do they want to sell? What are their conservation concerns, if any? Is transfer of ownership to the Trust being proposed or a conservation easement (CE) where fee ownership is retained by the LO?

After initial contact, the Project Manager will use readily available tools such as aerials, existing files, online mapping resources and any adopted strategic conservation plan/selection criteria to assess potential conservation values. The maps and information gathered should contain, whenever possible: 1) the property’s proximity to other protected lands and resources; 2) any significant water resources (e.g. wetlands, floodplains, streams, aquifers, etc.); 3) areas of steep slope, ridgelines or other noteworthy geographic and geological resources; 4) any known significant ecological communities and/or threatened and endangered species; and 5) soil types especially those indicating prime agricultural soils and/or wetland (hydric) soils. On-line tools like the Nature Conservancy’s Natural Resources Navigator and the NYS DEC Environmental Mapper (in New York) provide insight into likely plant and animal species to be found in the vicinity.

A brief written comparison of the potential conservation project to the Trust’s adopted Selection or Acceptance Criteria should take place at this time. Note how the project meets each stated criteria as well as any potential deterrents or disqualifiers. Provide additional information, if necessary, on how the potential project meets any adopted or draft Strategic Conservation Plan goals.

After this initial review, the Project Manager should share his or her findings with someone with oversight authority, such as a Director or Board liaison. Dependent on your organization’s structure consultation with a Board subcommittee may also be appropriate. Oversight is important to ensure staff time and effort is not wasted on projects that may not ultimately have support. Materials gathered by the Project Manager should be presented and a determination made on whether to proceed with the project or end further investigation.

The degree or formality of this oversight can be determined by the organization; however, Project Managers should at a minimum take written notes regarding oversight findings - particularly those relating to the Land Trust’s project selection criteria.

If determined that the property has potential and further investigation is warranted, a Site Visit should be arranged with the LO. If the project will not be pursued the LO may be referred to another land trust at this point or simply informed that the Trust will not consider the opportunity further.

The dates of: 1) the abovementioned resource review, 2) consultation with supervisory staff and/or board committee and 3) the decision call and/or letter to the LO must be noted on the *Land Trust Project Master Checklist*. The gathered natural resource materials, selection criteria comparison and oversight findings to date should be kept with the *Checklist* in a simple inquiry file or folder.

## **2.0 Gather Additional Resources and Conduct Preliminary Assessment**

2.1 Information Packet - Prior to the Site Visit the Project Manager will send an information packet to the landowner (LO). The information packet should include, at a minimum, any Land Trust brochures and/or information sheets on your CE and fee-simple acquisition processes.

At least one component of the outreach material must include information emphasizing the need for the LO to have legal, financial and tax advisor representation. In addition to professional representation, the outreach material should discuss potential due diligence requirements (e.g., appraisals, title searches, mapping and stewardship fund calculations) and possible tax considerations. If a CE or fee donation is intended, a “donor or gift information letter” should be included.

This letter should inform potential donors who may claim a federal or state income tax deduction (or state tax credit), 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.

See WeConservePA’s “ConservationTools.Org” resources for sample outreach materials such as [this one](#) and here is a link to a LTA sample [Gift Letter](#). Note this Letter is separate from the (usually shorter) nonprofit gift or donation acknowledgment letter.

**Tip:** The Letter will refer to specific IRS provisions. As these provisions change over time it is best to look for recent examples and update your written statement accordingly.

In addition to outreach materials explaining the acquisition process and legal/tax obligations, your land trust may want further information from the LO prior to the site visit. If so, an LO Inquiry Form or Letter asking for any special knowledge of significant on-site resources may be desirable. For example, you can ask the LO to share their knowledge of site-specific resources including, significant stands of timber; unique, rare, threatened, and/or endangered species or biologic communities; potential public access to water, hiking trails, or adjacent public land; distinctive physical features or known areas of scenic beauty; and any known sites of significant historic, archaeological, or cultural value.

If a LO Inquiry Form is not used it is important the above information be collected during the site visit process. See a sample Site Visit Form in Appendix C below.

2.2 Project File - The Project Manager should create the Project File at this point. The format of the folders in the Project File will follow your Project Records Inventory Sheet. A sample Project Record Inventory Sheet is in Appendix B of this document. The form was created in keeping with Land Trust Alliance (LTA) recordkeeping standards and practices. It should be kept at the beginning of each Project File.

Recommended file keeping practices are to have at least three copies of all relevant documents:

- 1) a permanent file for originals (kept in fireproof cabinet or off-site in a secure location),
- 2) an office/working copy and
- 3) a digital copy to be stored either on your organization's server or a cloud drive such as Google.

A fourth, "field copy" may be desirable. It should be in a plastic, waterproof cover or binder and contain a limited number of relevant documents meant to be taken into the field. You may also want a second, digital "working" file for your day-to-day project work and drafts.

Note that it can be time consuming to ensure that each document as its completed gets copied and placed in the correct folders; however, this process makes file retrieval simple and easy, protects your originals, ensures there is always a back-up and makes Accreditation renewal a much easier process. Remember! Accessibility and redundancy are good!

**Tip:** Do not get into the habit of storing documents in binders alone or mixing important original legal documents with new material in a single folder. Label each folder separately as per your Project Record Inventory Sheet. Especially, do not store new information in the Baseline Documentation Report (BDR) binder. The BDR is meant to be a discrete document and a snapshot in time, not a permanent filing system. A BDR may contain a copy of any new deeds or surveys done at the time of the BDR, but you also want these critical legal documents in stand-alone files in a fireproof cabinet. You will add yearly information to each project file; therefore, a typical filing system is preferably to binders for permanent records (though items such as the BDR or appraisal should stay bound when added to the larger permanent project file).

2.3 – Begin Project Report - At this point, the Project Manager and/or staff may want to formalize the aerial photos, available GIS data, environmental resource mapping and any oversight findings into Project Report or similar document. Note: This is a draft. A site visit and further Committee and Board input are needed to inform and finalize the Project Report.

For the draft Report, any available Town Comprehensive Plan, open space plans, historic and scenic inventories should be consulted. Tax maps, surveys, deeds, property tax records, current uses and zoning district information should be obtained. Check whether the Land Trust has existing records on the property if you haven't already.

A limited needs assessment should be undertaken that looks at: 1) Community open space and recreational needs in the area, 2) potential impacts of conserving the land, 3) any known threats to the property's conservation values, 4) any current or potential risks and 5) existing land uses. Documentation of the project's Public Benefits as defined by IRC §170 (h) (*Required for easements; optional for fee ownership, but recommended*) must be completed regardless of the extent of this needs assessment.

The dates of all the above must be noted on the *Land Trust Project Master Checklist*.

2.4 - Site Visit - The Project Manager and/or staff will visit with the landowner (LO) and walk the property. If staff requested additional information from the LO it can be collected at this time.

To further document the conservation values that would be protected by fee or conservation easement acquisition, the site visit findings must be recorded in the field on a Site Visit Worksheet. Your Worksheet should include your Selection or Acceptance Criteria in an abbreviated form if necessary.

In all instances, the inspector will walk the property boundary lines, and do at least one transect of the property. If there are sites along the way that either support or preclude protection, notes will be recorded on the site visit worksheet, the geolocation recorded using a GPS unit, and photographs taken.

Photo locations must be noted on a property map showing location and direction of view. Photographs should be taken from at least 3 different perspectives per location. This will help in preparation of a Baseline Documentation Report when needed. LO Input may inform where additional photos are necessary.

Take note of what additional assessments, mapping and inventories will be necessary to complete the project. For example, there may be a suspected environmental hazard warranting a Phase I assessment or vernal pools on site that need delineation. Ultimately, you want the site visit and follow up studies to aid in the completion of the Baseline Documentation Report, conservation deed language and conservation map for CE projects and inform the stewardship and management plans for fee properties.

See APPENDIX C for an example of a Site Visit Worksheet.

### **3.0 Stewardship & Staff Input:**

The Project Manager now needs to prepare an acquisition budget. The acquisition budget includes possible due diligence costs and the development of a Stewardship Budget (link to [Stewardship Calculator](#)).

He/she should meet with staff, and possibly volunteers, who may have valuable input into the acquisition process and are responsible for the long-term stewardship of Trust lands. Staff/volunteers will be asked to review the gathered data with an eye toward the anticipated restrictions, reserved rights and/or management needs of the property.

Staff input on what additional assessments, mapping, plans and inventories may be necessary to inform the Deed of Conservation Easement (CE) language, Fee property management plan and Baseline Documentation Report (BDR for CEs) should be sought. For example, is Phase 1 Environmental Assessment needed? Wetland Delineation? Biological Assessment? Habitat map? Other maps? Dependent on institutional capacity, a discussion on who internally or externally can complete the necessary studies and maps is necessary.

If specific restrictions and reserved rights are suggested, the Projection Manager should make note of them for later discussion and inclusion in the CE. Your organizations easement template may contain examples of typical restrictions and reserved rights. Refer to these. LO intent should be kept in mind when discussing alternatives.

Examples of management topics to be considered are trails, parking, amenities, signage and safety issues. These items should be noted for later use in any required Fee management plan. Contiguous properties should be considered, including existing easements (such as a legal ROW) or infringements.

Development Staff may also need to be present if the discussion involves funding.

Make sure the meeting notes are kept in the project file for later use in the “due diligence” documents such as the CE, BDR or the Management Plan (for fee properties). Make note of completion of all prepared materials and meeting dates in the *Land Trust Project Master Checklist*.

Draft the acquisition budget once the above steps are complete.

#### **4.0 Approval of a Possible Project**

Based on the Site Visit and Stewardship/Staff Input, the Project Manager will update the Draft Project Report to a Preliminary Project Report. The Project Report should now include the proposed acquisition budget, Site Visit Worksheet, Stewardship Input and any other relevant materials, maps or findings.

The report should then be circulated to the oversight board or committee responsible for acquisition and stewardship. For the purposes of this document, we’ll call them the “Acquisition Committee.”

If the Acquisition Committee has been delegated authority to act on a Preliminary Project then a vote on whether to move forward with the due diligence phase of the project should be scheduled. If the vote is “yes” then the process outlined in Section 5.0 should begin.

The Acquisition Committee may also decide more information is needed before a formal vote and reschedule the matter for a later date. The Committee may also reject the project at this time.

If the Acquisition Committee votes to move the project forward, but does not have the authority to enter into legal agreements/authorize due diligence expenses, the Preliminary Project Report should be forwarded to your organization’s Board of Directors (BOD) or Trustees for consideration. The referral should include the Acquisition Committee’s vote and any recommendations. Note: The exact process should be consistent with your By-Laws.

Once before the BOD, a vote should be scheduled on whether to move forward with the due diligence portion of the project. The BOD may also reject the project.

Note: Whether the approval authority is a subcommittee or the full Board, a formal Resolution is suggested. A resolution to proceed is not a resolution to ultimately accept the parcel(s) or conservation easement (CE). A second formal vote will be required to accept the fee land or CE once the due diligence portion of the project is complete and no overwhelming obstacles have been found.

If the project involves Committee or Board approval of entering into a Purchase Agreement, Purchase Option or Sales Agreement this is the time to authorize such an action.

The dates of referral and all vote outcomes should be recorded on the *Land Trust Project Master Checklist*.

Why require a vote at this point? Because the next phase of the project may require considerable time and money.

#### **5.0 Negotiations, Due Diligence and Closing Document Preparation:**

Now begins the legal/due diligence document research and preparation work.

5.1 LO Commitment Letter - If it hasn’t been obtained in writing by this point now is the time to get a formal commitment from LO. The Letter of Intent should spell out easement location, size, purpose,



price considerations and legal obligations of each party. For a typical LO Letter of intent prepared in this case for an agricultural easement can be seen [here](#).

5.2 Purchase Agreements - If the land is to be purchased now is the time to discuss with your Land Trust attorney the appropriateness of entering into a Purchase agreement, option or other binding documents.

If drafted, any purchase or sales agreement must be reviewed by a Board appointed attorney. Note the date of attorney review and when the Agreement is executed.

5.3 Title Research - A title investigation should always be done no matter what type of land transaction is proposed. A Land Trust does not want to invest significant time and money only to find title issues just prior to closing, or worse, years after maintaining a property or easement. Courts have negated easements due to failure to subordinate prior interests.

Have a professional title company or attorney complete the report early in the process so that potential issues are discovered and corrected well in advance of the closing. A draft title policy binder can also be ordered at this time. Ordering the report early on may necessitate updating it prior to closing; however, this is better than last minute issues. Title research costs are not prohibitive.

Note the date the Title work and draft insurance policy binder were ordered on *the Land Trust Project Master Checklist*. Also enter the date title research was completed and the date it was reviewed by land trust attorney.

If confirmed no liens, mortgages or home equity loans, etc. are in existence then great. If issues are found have a conversation with the land trust's attorney on how to correct them.

Mortgage Subordination documents should be drawn up at this time if necessary. Note the date the Subordination was requested from your Attorney and the date she/he filed the Subordination on the *Master Checklist*. Also list any additional encumbrances and how they were addressed.

Make sure as part of the title research that all property taxes have been paid by either the landowner or by the land trust.

Projects can sometimes take years to complete. Make sure the title research is updated by the abstract company or attorney every six months. If the title work is over 30 days old when the closing date is set, request that it be updated as close to the closing date as practicable. List the date the update was requested and received on *the Project Master Checklist*.

Finalize the Title Insurance Policy before the closing. List the date ordered and received on *the Project Master Checklist*. See [here](#) for additional information on title reports from the LTA.

5.4 Appraisals - Any land or CE to be purchased by the Land Trust will require an appraisal. This includes bargain-sale purchases. You cannot rely solely on the LO's appraisal or tax assessment data to determine purchase price. The 2018 Land Trust Commission Accreditation Requirements Manual requires use of a qualified appraiser and qualified appraisal standards. The IRS defines a "qualified appraiser" as an individual who has earned an appraisal designation from a recognized professional appraiser organization. The Land Trust should keep a list of qualified appraisers. The list should be updated regularly.

A Trust should obtain legal advice if paying greater than appraised value. In general, a Land Trust should never pay above appraised value for either land or a CE. In rare circumstances where this is impossible, attorney advice/sign-off is strongly recommended. This sign-off should include documentation which appropriately justifies the purchase price and confirms there was no private inurement or impermissible private benefit.

When to obtain an appraisal on a Gift is a bit more complicated as IRS rules for charitable contributions and LTA standards and practices must be considered. The Tax Cuts and Jobs Act of 2017 (TCJA), contained no specific changes to IRC §170(h) regarding gifts of conservation easements or to the 'enhanced' tax deduction for gifts of conservation easements. However, numerous changes were made to tax code regarding the standard deductions and itemized deductions. Always have the LO consult their tax consultants on recent IRS changes.

For land or easements gifts the Land Trust may rely on the LO's appraisal to determine value. However, Trust staff and Board member must make a set of findings regarding the value of any gift - particularly before signing Form 8283. These findings include that Form 8283 is filled out accurately (see additional information on Form 8283 below), that a qualified appraiser was used and that the appraisal value seems accurate. If it is thought for any reason that the appraisal seems high then the Trust should not sign the Form.

A Land Trust should also be aware of IRS Notice 2017-10 concerning "Syndicated conservation easement transactions". These transactions are essentially tax shelters designed to generate profits to investors in pass-through entities from a charitable donation of a conservation easement, typically at inflated appraised values. Notice 2017-10 describes these transactions as "listed transactions," requiring disclosures by participants and material advisors involved in these transactions. A red flag would be if the property value has increased more than 2.5 times in the past 36 months.

Any substantial concerns about the appraisal and/or appraised value should be discussed with legal counsel and appropriate action taken, such as: (a) Document that the land trust has shared those concerns with the donor, (b) Seek additional substantiation of value including an independent appraisal or assessment, (c) Withdraw from the transaction prior to closing, (d) Or refuse to sign the Form 8283.

The Trust should be aware of the following LTA advice when an LO plans to seek federal tax deductions:

- The donor is responsible for determining the value of the donation, not the Trust.
- Internal Revenue Code requires a qualified appraisal
- The donor should use a qualified appraiser who follows USPAP
- Appraisal cannot be completed earlier than 60 days prior to the date of contribution and before the due date for the tax return on which the deduction is first claimed
- If the appraisal is after the donation, it must reflect the value of the conservation easement [or fee property] on the date of the conveyance.

See the Internal Revenue Code 26 CFR 1.170A-13 for more information. Each potentially tax-deductible conservation easement must be consistent with these Treasury Department regulations, especially the conservation purposes test of IRC §170(h). Also, check current LTA and Accreditation Commission publications for any updated appraisal standards and practices information, especially in light of 2018 tax reforms.

If not done in earlier outreach materials, the land owner should be informed that the Land Trust will request a copy of the appraisal and the Trust will not knowingly participate in a project if it has significant concerns about the tax deduction.

Requiring an appraisal for a mitigation project or extraction: Land set aside as part of a regulatory review and approval process will not qualify for state and federal tax benefits as a benefit has been incurred (e.g., regulatory approval). However, you will need to know the value of the land to help inform any request made to the LO for stewardship donations. If you can get a copy of the LO's appraisal, do so. Otherwise, tax assessment data may do. As with donations, when in doubt, order an independent appraisal.

5.5 What is Form 8283? - This is a tax form distributed by the IRS and used by filers who wish to deduct noncash contributions made to a qualifying charitable organization – this includes Land and CE Donations. This may also include bargain sales.

A Trust should only sign a Form 8283 when it is complete and accurate and the appraisal supporting the Form 8283 meets IRS requirements and accompanying Treasury Department Regulations and/or any state requirements. Any other attachments such as a description of the easement area should also be checked for accuracy. See Appendix D for “What to look for on FORM 8283.”

5.6 Drafting a Conservation Easement (CE) - Your land trust most likely has an adopted conservation easement (CE) template on which to base new CEs. If not, now is the time to develop one. See below for a breakdown of required easement components.

An easement must be site specific, should include information based on the resources gathered to date (e.g., the Site Visit and Project Reports) and must also contain the standard components listed below. Note that the Project Report should include gathered staff & committee input at this point. The Project Manager may want clarification or additional information from the LO regarding their rights to be retained if not adequately addressed by the LO Inquiry Form or Letter of Intent. If so, obtain any additional written statements.

Generally, Land trust staff will draft the first easement based on the template prior to sending it to the land trust's attorney for review. The attorney will consult with the LO's legal representative at some point to hammer out final details. See an outline of its specific components below.

**Important Tip:** Due to the importance of this document a procedure and schedule for circulation, review and editing should be established at the beginning. One staff person should be in charge of all edits prior to the final draft - where some negotiation or last-minute corrections between attorneys may occur. The first draft should be approved by the land trust's attorney before circulation to interested parties.

Note this circulated draft should be for review and comment only. No mark-ups or edits should be made by anyone other than the appointed staff member. How negotiated changes make it to this staff member should be discussed. When edits are complete the land trust attorney should give the nod before the updated version is circulated.

Some type of version control to track changes should be established. Interim drafts should follow the same procedure, though final drafts can be more flexible.

When drafting the easement keep in mind this information from the Land Trust Alliance:

Conservation easements are perpetual and need to include the following: 1) Name of grantor and grantee, 2) A legal description, 3) Identification of protected conservation values, 4) Locations of specific zones or areas when restrictions or permitted rights are specific to these areas (such as building envelopes, building exclusion zones, special restricted habitats, etc.), 5) Control over future exercise of significant reserved rights, including designation of when grantee review or approval is required and how review or approval is obtained, 6) Right of entry that does not unduly limit access to monitor, 7) Right to enforce and to take immediate action, 8) Extinguishment and proceeds provisions and 9) Baseline documentation report reference.

Tax-deductible conservation easements also include the following consistent with the Treasury Regulations: 1) Identification of conservation purposes, 2) Prohibition on surface mining, 3) Limitation on assignment and 4) Permitted rights in conservation easements have to be consistent with conservation purposes, not significantly impair protected conservation values & are not so broad that they negate other conservation easement provisions.

Examples of typical CE language and formatting:

There are many good examples of easement templates available from websites such as the Pennsylvania Land Trust Association's - [https://conservationtools.org/library\\_items/topic/165-Model-Conservation-Easements](https://conservationtools.org/library_items/topic/165-Model-Conservation-Easements)

It's important to understand of purpose behind the clauses.

Easements (and other formal documents) may start with "whereas" clauses while others may use Articles. Either way, the introductory statements should outline ownership, property details and CE intent. They should also list facts relating to the conservation "values and functions" of the subject

property. Specific natural resources, such as a named creek or endangered species habitat, are often cited here.

In the case of working landscapes, intent, such as preserving an existing dairy farm, can be given. These values may be put in local, regional and state context with reference to regional resources, special districts, local comprehensive planning and state legislative or policy initiatives. Though not absolutely necessary, these references establish the importance of protecting onsite resources and speak to public benefit. You can lift most of this language from the project report (See now why you did all that work upfront?).

Often, the next Article outlines the warranties and purpose of the easement with each party offering assurances as to their ability to enter into the agreement. The Intent of the CE can be further discussed under a “purpose” subsection within this article.

The next Article should give details on the easement area itself. It should contain language that the easement is in perpetuity and will run with the land. The nature of the transaction is often referenced here (e.g., “gift” “bargain sale,” “extraction”, etc.). Documentation supporting the easement, such as the Baseline Documentation Report and easement maps, should be referenced within this Article.

Further Articles should specifically list the Prohibited Actions and Reserved Rights that are in keeping with the intent shown earlier in the document. These subsections are tailored to address what may and may not occur on a specific site or on specific portions (often referred to as “zones”) of a site. These Articles can be fairly detailed and should contain multiple subsections of potentially prohibited and/or allowed actions easement-wide or within the zones. Again, you can obtain many of these details from the Reports gathered to date.

After the discussion on prohibited actions and Grantor’s reserved rights, any remaining Grantor obligations should be outlined. This may be followed by a discussion on the rights of the Grantee, including the right of entry and the right to enforce the provisions of the easement.

Finally, the draft should end with miscellaneous provisions including amendment processes and filing information.

Note that including a survey with the Deed of Conservation Easement is preferable. See more on maps and surveys below.

5.7 - SURVEYS/MAPS - Fee land: A recent survey is recommended for all fee acquisitions. If an updated survey will not be completed for a fee transaction, list the date of attorney consultation for proceeding without a survey update on the *Land Trust Project Master Checklist*. Attorney response should be kept as part of the permanent record.

*Conservation Easements (CE)*: CEs must have a map showing restrictions and allowances and where each apply. Make sure all special use areas and zones are marked on this map. It is recommended that this work be completed by a professional surveyor, especially if easement boundaries cover only a portion of an existing parcel or parcel(s). A new survey may also be a good idea if the CE encompasses the entire parcel and there is no recent survey.

You often notice in deeds that land was sold or exchanged by “exceptions” within the deed. For example, a deed may state the LO owns, “all that parcel or tract comprising “X” acres, but excepting

a ROW to party A and a 5-acre parcel to Party B and spring rights to Party C.” This can happen many times without a new outbound description drawn up or survey update. Having an accurate and up to date description of the parcel or parcels, resources on site (manmade and natural) and the easement area can prevent many future problems. It can be pricey, but so can feuds with neighboring properties or current CE subject properties regarding the content of existing deeds and easements.

If a formal survey is waived, at a minimum, an existing conditions site plan with sufficient detail for the abovementioned easement purposes (see LTA BDR & easement language practices for guidance) must be created. The site plan should meet general professional standards and be based on an actual survey or recently collected GPS information. In other words, all boundaries and resource locations should be field verified and depicted using actual GPS coordinates.

Make sure to list all survey dates and legal description completion dates on the *Project Master Checklist*.

Make note on the *Master Checklist* of the date the draft easement is sent to LT Attorney for review and completion and any and all recording dates.

Note that the Conservation Easements and fee title deeds should be submitted for recording generally within a week after final signatures are obtained.

5.8 Stewardship gift: The Stewardship Gift (as calculated above and included in the Resolution of Acceptance) should be requested in writing from the LO at this time. The Project Manager should record the date of this Stewardship solicitation letter. The Letter must contain the “no private benefit inured” language required by tax law and LTA standards. The LTA standards also require that a Trust have at least \$3,500 per conservation easement in board-designated or restricted stewardship funding. Land Trust accounting staff must be made aware that any funds received are classified to the trust and temporarily restricted for stewardship purposes.

If based on the site visit, research and committee recommendations a Phase I Environmental Assessment or Hazardous Waste assessment is needed it should be ordered now. List the date it was ordered, the company contracted for the work and the date completed on the *Master Checklist*. Review of any environmental report by the land trust attorney is recommended. Be sure to note the date of any review letter.

5.9 The Baseline Document Report (BDR) - For all CEs a BDR is required and should be started at this time. Much of your previous work can be recycled into the BDR.

As noted above, BDRs are distinct documents consisting of text, maps and photos that represent the property’s condition at a point in time as close to the closing as possible. They are a snapshot to compare all future monitoring reports against. When an issue arises, such as a question on the exact boundary of a building envelop or protected species habitat, there will be sufficient information within the BDR to guide decision making.

BDRs have essential components. Many current model documents are available and should be examined before proceeding. For a thorough presentation on the purpose and importance of BDRs (which includes sample components) see [this LTA Rally presentation](#).

Note, to obtain and maintain accreditation from the Land Trust Accreditation Commission your BDRs must contain certain “minimum content.” See [here](#) for the Commission’s Guidance Document. It also lists the Commissions desired content above and beyond the required minimum.

It is strongly recommended that your trust have an adopted BDR format meeting these requirements.

At a minimum the BDR must include:

- A date of completion,
- A written property description and information on the exact location of the easement.
- Documentation of the conservation values and public benefits, including written descriptions along with related maps and photographs.
- Documentation of existing conditions that relate to the easement’s restrictions and reserved rights, including written descriptions with related maps and photographs. This includes the location and condition of any manmade improvements, data that would influence the exercise of reserved rights, pre-existing conditions that are otherwise prohibited by the easement and/or other features that may threaten the conservation values.
- The maps and photographs documenting the protected conservation values and relevant conditions must be in sufficient detail to monitor and enforce the conservation easement.
- Acknowledgement attesting to the accuracy of the report signed by the Land Trust & LO. If the landowner is receiving tax benefits for a donated easement, the acknowledgement must be compliant with the Treasury Department regulations §1.170A-14(g)(5)(i)(D).

Further desired content includes, but is not limited to:

- Statement of the purpose (e.g., “to provide an accurate representation of the protected property at the time of the grant of the easement, to aid in the enforcement of the conservation easement, etc.).
- Background information on the project that would help in easement monitoring or enforcement.
- The authorship and qualifications of the preparer.
- Baseline or easement map(s) that contain the following: 1) clear property boundaries; 2) north arrow and scale; 3) date map created; 4) identification of map preparer. 5) Copy of the easement and 6) Any other elements recommended by the Treasury Department.

BDRs must be completed and signed by the land trust and landowner at or before closing. If seasonal conditions prevent this, interim data and a schedule for finalizing the full report are signed by the land trust and landowner at or before closing.

5.10 Coordinating with outside agencies or other organizations. Often, land protection involves multiple parties working together to preserve natural or cultural resources important to a community. In this instance several trusts, as well as local, state and federal agencies may be involved. Be sure to fully understand the procedures, deadlines and responsibilities of each party when coordinated efforts are involved. Record any final third-party agreement of grant submissions on your *Project Master List*.

## **6.0 Pre-Closing and Acceptance of Acquisition:**

**Board Action:** Once the above documents have been completed and found acceptable by staff and outside counsel, a written Board Resolution must be prepared. Dependent on how often your Board of Directors or Trustees meet, and the contents of your By-Laws, projects that are close to completion may be considered. The draft Resolution for Acceptance of a CE or Fee Property should be sent to all Board Members/Trustees prior to a regularly scheduled Board Meeting and the final vote scheduled on the Agenda.

The Resolution must contain specific language accepting and approving the area(s) to be donated or purchased and authorizing specific individuals to represent the Trust in finalizing the matter. The Resolution should include a specific project description, a list of all key documents and the dates of their completion. Any issues and resolution of issues may be noted. Stewardship fees should be noted. It must also reference any pending due diligence requirements and note the intent that they too be satisfied prior to closing. Any special conditions or other outstanding items may be referenced.

**Outstanding Documents:** In the case of an easement where the LO plans a federal tax deduction, a copy of LO appraisal should be requested at this time if not already in the files. Once received, the appraisal should be reviewed against LTA standards and your general knowledge of local land values.

The Title Insurance Policy/completion of binder on all fee and conservation purchases and fee ownership donations must be ordered at this time. For CE gifts, consult your attorney on whether a policy is recommended.

The Baseline Documentation Report (BDR) must be finalized now and Land Trust and LO signatures obtained.

The completion dates for all above mentioned documents should be added to the *Project Master Checklist*.

## **7.0 Closing:**

Once the Closing Date is set, the Landowner (LO) and LO attorney must be notified in writing.

All documents requiring a signature must be finalized, formatted and approved by land trust attorney prior to the actual closing date. This includes the deed of conservation easement or fee property deed, tax forms, and the BDR (CE only). At closing, the Trust should have written authorization for landowner signature from landowner's attorney if the LO is not present.

For Fee or CE purchases the closing statement must be prepared and approved by land trust attorney and landowner attorney. Any needed checks should be prepared and brought to the closing.

The Trust's attorney should prepare additional tax forms if necessary (e.g., state withholding tax, state conservation easement tax credit forms, etc.). For fee transfers, this includes the transfer tax form prepared and approved by land trust attorney.

The closing date should be listed on the *Project Master Checklist*. Be sure to include the BDR distribution date to the LO.

## **8.0 After Closing:**

Now is the time to review the record and ensure it is complete. Confirm all original transaction documents have been placed in the permanent file and copies placed in the Office and electronic file.



Thank-you letter(s) with IRS language (if a gift component) should be sent immediately after closing. Maintain a board approved sample in your Land Trust files.

Form 8283 should be sent to the LO if the transaction was a bargain sale or gift. If the LO has already provided Form 8283 with the LO/appraiser sections completed, compare it to the previously requested appraisal. See the Form 8283 guide in APPENDIX D and LTA guidance for determining correctness.

If a CE, send in the NYSDEC CE filing notice (NY only). The LO will not be able to claim state tax credit until the DEC receives notice.

Be sure to check in with your trust attorney to confirm the date key documents were recorded with the County Clerk. Add the dates to the *Project Master Checklist*.

Schedule a handoff meeting to discuss the details of the easement/preserve with stewardship volunteers or staff. Discuss project history, landowner background and wishes (non-binding), project description, possible stewardship issues, etc.

For Fee properties, assist in preparation of the Management Plan. Management plans are an LTA requirement and should contain certain components. See LTA standards for what makes a good management plan or look at the format of any plans your Trust may have recently created.

Follow up to make sure that stewardship funds pledged were received by the land trust.

Work with outreach and public relations staff to highlight land acquisition success.

**Congratulations! You have successfully completed the land acquisition process!**

End Notes:

- Edited June 2020 & January 2021.
- This Procedural Guide *does not* outline yearly stewardship requirements or other general Trust standards and practices, such as overall financial requirements or good governance.
- Regularly check for changes to IRS tax codes regarding gifting is recommended. The tax information contained herein was current as of December of 2019.

About Dara C. Trahan: Dara has over twenty years of experience in land use and environmental planning. She received her Masters in Regional Planning from the University of Albany in 2006. She was an AICP certified planner from 2007 to 2018. She was the Planning Specialist for the Woodstock Planning Board from 1999 to 2011. Dara has assisted Land Trusts through the Accreditation process and was a Board Member of the Greene Land Trust from 2012 to 2018.

**APPENDIX A.1 – LAND TRUST PROJECT MASTER CHECKLIST (Fee)**

## Land Trust Project Master Checklist

(For Completeness in Fee Ownership Transactions)

*To Be Used Internally by Trust Staff as They Work Through Conservation Projects. It is designed to be kept at the front of a Project File and updated throughout the project.*

*This checklist will help staff remember to do every step in the right order. It should be used in conjunction with the Projects Record Inventory sheet also to be placed in the front of the Project File.*

*For further land acquisition guidance see the full Land Project Procedural Document.*

Project Checklist for \_\_\_\_\_ [project name] In [town, county]  
\_\_\_\_\_, \_\_\_\_\_; FEE case number (once assigned): \_\_\_\_\_

**This is a Purchase Transaction** (steps that are necessary for purchase transactions only are shown in CAPITAL below)

**This is a Gift** (steps that are necessary for gifts only are underlined below)

**All items in plain text should be done in either type of transaction!**

ENTER DATE ON LINES

### First Contact

\_\_\_\_\_ Initial call/contact by land owner (LO) with Land Trust Staff

\_\_\_\_\_ Examine aerial photos, available GIS data, online environmental resource mapping, strategic conservation plan and selection (acceptance) criteria.

\_\_\_\_\_ Consultation with Supervisory Staff or Committee on gathered data & whether to proceed

\_\_\_\_\_ LO contracted with decision & Date site visit arranged if decision is "yes": \_\_\_\_\_

Decision: \_\_\_\_\_

### Gather Resources and Conduct Preliminary Assessment:

\_\_\_\_\_ Create Project File as per Record Inventory & LTA Standards and Practices.

- \_\_\_\_\_ Gift Acceptance Information Letter or Sheet sent to landowner (sheet includes need for landowner to be represented by legal counsel & tax consultant). Include additional outreach material (e.g. Brochures, Info Sheets, Owner Inquiry Form, etc.)
- \_\_\_\_\_ LETTER TO LANDOWNER ON NECESSITY OF LEGAL/TAX PROFESSIONALS SENT TO LO (if purchase planned and gift acceptance sheet not appropriate). Include brochure and additional outreach material.
- \_\_\_\_\_ Examine available Town Comprehensive Plan; historic information; scenic inventories; etc.
- \_\_\_\_\_ Obtain tax maps; property tax records; current uses and zoning district
- \_\_\_\_\_ Collect any available surveys and deeds from LO and/or County
- \_\_\_\_\_ Check if Land Trust has existing past file or records on the property
- \_\_\_\_\_ Assess Community needs; impacts; uses (written notes should be kept in project file)
- \_\_\_\_\_ Visit with landowner and walk the property; Collect Landowner Inquiry Form from LO and complete the Site Visit Worksheet and key photographs of property; Complete Selection Criteria comparison onsite or shortly afterwards (date of comparison): \_\_\_\_\_
- \_\_\_\_\_ Documentation of projects Public Benefits as defined by IRC §170 (h) (Note: optional for fee ownership projects, but recommended)
- \_\_\_\_\_ Formalize the maps and other data gathered above into a Draft Project Report; create additional maps if necessary.

**Stewardship/Staff Input:**

- \_\_\_\_\_ Develop Stewardship Budget (link to [Stewardship Calculator](#))
- \_\_\_\_\_ Circulate Draft Project Report & Budget to appropriate stewardship staff and/or volunteers. Arrange meeting to discuss the Report and items below.
- \_\_\_\_\_ Determine any specific restrictions, rights or management needs (such as available staff resources, owner’s intent, parking and safety issues, trail development, existing ROWs, etc.)
- \_\_\_\_\_ Discuss these needs and issues with Stewardship Staff and/or Committee; get input; discuss project and budget with Development Staff, if necessary
- \_\_\_\_\_ Put all notes in project file for later “due diligence” and management plan use

**Approval of a Possible Project**

- \_\_\_\_\_ Prepare preliminary Project Report and proposed acquisition budget based on above data and circulate to the appropriate Oversight Committee and/or Staff.
- \_\_\_\_\_ Get appropriate Committee/Staff OK to proceed. Project approved/rejected (circle) on: \_\_\_\_\_; describe any caveats or specifics here: \_\_\_\_\_

\_\_\_\_\_ Distribute Project/Project Report for upcoming Board of Directors, if necessary. Mtg held on \_\_\_\_\_ and project approved/rejected (circle); describe any caveats or specifics here:  
\_\_\_\_\_

\_\_\_\_\_ BOARD APPROVAL OF ENTERING INTO PURCHASE OPTION OR SALES AGREEMENT (IF OPTION IS USED)

**Negotiations, Due Diligence and Closing Document Preparation:**

\_\_\_\_\_ DRAFT PURCHASE OPTION AGREEMENT OR PURCHASE AND SALE DOCUMENTS

\_\_\_\_\_ Obtain signed Letter of Intent From LO.

\_\_\_\_\_ APPRAISAL ORDERED: \_\_\_\_\_ (use an appraiser that meets federal standards - see [http://www.irs.gov/irb/2006-46\\_IRB/ar13.html](http://www.irs.gov/irb/2006-46_IRB/ar13.html) for specifics). Required for purchase, but may still be desirable if Gift)

\_\_\_\_\_ OBTAIN LEGAL ADVICE IF PAYING GREATER THAN APPRAISED VALUE.

\_\_\_\_\_ Stewardship gift determined; date of Stewardship solicitation letter to LO: \_\_\_\_\_

\_\_\_\_\_ Hazardous Waste Forms completed/approved by land trust attorney (when necessary)

\_\_\_\_\_ Survey Work and legal description of boundaries completed; FOR FEE TRANSACTIONS: IF SURVEY NOT ORDERED get date of attorney consultation for proceeding without survey: \_\_\_\_\_

\_\_\_\_\_ Title work (and draft insurance policy binder) ordered; Date title research completed \_\_\_\_\_; Date reviewed by land trust attorney \_\_\_\_\_. Make sure as part of the title research that all property taxes have been paid by either the landowner or by the land trust. \_\_\_\_\_. Updated title research if more than 30 days old at closing: \_\_\_\_\_; Any encumbrances addressed: \_\_\_\_\_ List: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Confirmed that no liens, mortgages or home equity loans, etc. exist; if so, date of Mortgage Subordination: \_\_\_\_\_

**Pre-Closing and Acceptance of Acquisition:**

\_\_\_\_\_ Draft Resolution for Acceptance of Fee property by BOD; include key documents and dates requirement satisfied as well as any pending due diligence requirements.

\_\_\_\_\_ Order Title Insurance Policy/completion of binder on all fee purchases and fee ownership donations.

Closing:

- \_\_\_\_\_ EXERCISE PURCHASE OPTION (IF USING)
- \_\_\_\_\_ Written authorization for landowner signature from landowner's attorney
- \_\_\_\_\_ Signature docs finalize, formatted and approved by land trust attorney (including exhibits)
- \_\_\_\_\_ Closing Date Set and Landowner, LO attorney notified (in writing if required by Option)
- \_\_\_\_\_ CLOSING STATEMENT PREPARED AND APPROVED BY LAND TRUST ATTORNEY AND LANDOWNER ATTORNEY (purchase only)
- \_\_\_\_\_ PREPARE WIRE OR CHECK (purchase only)
- \_\_\_\_\_ ADDITIONAL TAX FORMS PREPARED IF NECESSARY (purchase only); LIST: \_\_\_\_\_  
\_\_\_\_\_ (e.g., state withholding tax)
- \_\_\_\_\_ Transfer Tax Form Prepared and Approved by land trust attorney (fee transfers only)
- \_\_\_\_\_ Documents Recorded w/County (\_\_\_\_\_)

After Closing:

- \_\_\_\_\_ Complete records of the transaction according to Land Trust & LTA Recordkeeping Policies
- \_\_\_\_\_ Thank you letter(s) with IRS language (if a gift component) (send immediately after closing)
- \_\_\_\_\_ 8283 attachment sent if bargain sale or gift
- \_\_\_\_\_ Review and Assess Landowner Appraisal before signing the 8283 form (gift only)
- \_\_\_\_\_ Finalize Project Report and Handoff meeting to discuss the details of the easement/preserve with stewardship volunteers or staff (discuss project history, landowner background and wishes (non-binding), project description, possible stewardship issues, directions to the property)
- \_\_\_\_\_ Assist in preparation of the management plan.
- \_\_\_\_\_ Follow up to make sure that stewardship funds pledged were received by the land trust.
- \_\_\_\_\_ Work with outreach and public relations staff to highlight land acquisition success.

**APPENDIX A.2 – LAND TRUST PROJECT MASTER CHECKLIST (CE)**

**Land Trust Project Master Checklist**

(for completeness in Conservation Easement (CE) Transactions)

*To Be Used Internally by Trust Staff as They Work Through Conservation Projects. It is designed to be kept at the front of a Project File and updated throughout the project.*

*This checklist will help staff remember to do every step in the right order. It should be used in conjunction with the Projects Record Inventory sheet also to be placed in the front of the Project File.*

*For further land acquisition guidance see our full the Land Project Procedural Document.*

Project Checklist for \_\_\_\_\_ [project name], In [town, county]  
\_\_\_\_\_, \_\_\_\_\_; CE Project Number (once assigned): \_\_\_\_\_

**This is a Purchase Transaction** - (steps that are necessary for purchase transactions only are shown in CAPITAL below)

**This is a Gift** - (steps that are necessary for gifts only are underlined below)

**All items in plain text should be done in any type transaction!**

ENTER DATE ON LINES

First Contact

- \_\_\_\_\_ Initial call/contact by land owner (LO) with Land Trust Staff
  - \_\_\_\_\_ Examine aerial photos, existing data, available GIS data & online environmental resource mapping. Do brief Selection Criteria & Strategic Conservation Plan comparison.
  - \_\_\_\_\_ Consultation with Supervisory Staff or Committee on gathered data & whether to proceed
  - \_\_\_\_\_ LO contracted with decision & Date site visit arranged if decision is “yes”: \_\_\_\_\_
- Decision: \_\_\_\_\_

Gather Resources and Conduct Preliminary Assessment:

- \_\_\_\_\_ Create Project File as per Record Inventory & LTA Standards and Practices.

- \_\_\_\_\_ Gift Acceptance Information Sheet sent to landowner (sheet includes need for landowner to be represented by legal counsel & tax consultant). Include additional outreach material (e.g. CE Brochure, Owner Inquiry Form, etc.)
- \_\_\_\_\_ LETTER TO LANDOWNER ON NECESSITY OF LEGAL/TAX PROFESSIONALS SENT (if purchase planned and gift acceptance sheet not appropriate). Include brochure and additional outreach material.
- \_\_\_\_\_ Formalize maps and data gathered above into a draft Project Report; create additional maps if necessary.
- \_\_\_\_\_ Examine available Town Comprehensive Plan; historic information; scenic inventories; etc.
- \_\_\_\_\_ Obtain tax maps; property tax records; current uses and zoning district
- \_\_\_\_\_ Collect any available surveys and deeds from LO and/or County
- \_\_\_\_\_ Check if Land Trust has existing past file or records on the property.
- \_\_\_\_\_ Assess Community needs; impacts; uses (written notes should be kept in project file)
- \_\_\_\_\_ Visit with landowner and walk the property; Collect Landowner Inquiry Form from LO and complete the Site Visit Worksheet and key photographs of property; Complete Selection Criteria comparison onsite or shortly afterwards (date of comparison): \_\_\_\_\_
- \_\_\_\_\_ Documentation of projects Public Benefits as defined by IRC §170 (h) (*Required for easements; optional for fee ownership, but recommended*)

Stewardship/Staff Input:

- \_\_\_\_\_ Develop Stewardship Budget (link to [Stewardship Calculator](#))
- \_\_\_\_\_ Determine any specific restrictions, rights or management needs (such as trails, parking and safety issues)
- \_\_\_\_\_ Discuss these needs and issues with Stewardship Staff and/or Committee; get input; discuss project and budget with Development Staff, if necessary
- \_\_\_\_\_ Put all notes in project file for later “due diligence” and management plan use

Approval of a Possible Project

- \_\_\_\_\_ Prepare preliminary Project/Project Report and proposed acquisition budget based on above data and circulate to the appropriate Oversight Committee. Get Committee approval to proceed: held on \_\_\_\_\_ and project approved (if rejected note here and file)
- \_\_\_\_\_

\_\_\_\_\_ Distribute Project/Project Report for upcoming Board of Directors or other oversight Committee meeting(s): held on \_\_\_\_\_ and project approved (if rejected note here and file) \_\_\_\_\_; describe any caveats or specifics here: \_\_\_\_\_

\_\_\_\_\_ BOARD APPROVAL OF ENTERING INTO PURCHASE OPTION OR SALES AGREEMENT (IF OPTION IS USED)

Negotiations, Due Diligence and Closing Document Preparation:

\_\_\_\_\_ DRAFT PURCHASE OPTION AGREEMENT OR PURCHASE AND SALE DOCUMENTS (purchase only).

\_\_\_\_\_ Obtain signed Letter of Intent From LO.

*Negotiate the easement terms using the approved conservation easement template, Selection (Acceptance) Criteria and Project/Project Report as guides. Land trust staff and attorney will use this to develop a conservation easement specific to the individual property.*

\_\_\_\_\_ APPRAISAL ORDERED: \_\_\_\_\_ [use an appraiser that meets federal standards (see [http://www.irs.gov/irb/2006-46\\_IRB/ar13.html](http://www.irs.gov/irb/2006-46_IRB/ar13.html) for specifics) (Purchase only. May use LO's appraisal for gifts)

\_\_\_\_\_ OBTAIN LEGAL ADVICE IF PAYING GREATER THAN APPRAISED VALUE (purchase only).

\_\_\_\_\_ Stewardship gift determined; date of Stewardship solicitation letter to LO: \_\_\_\_\_

\_\_\_\_\_ Hazardous Waste Forms completed/approved by land trust attorney (when necessary)

\_\_\_\_\_ Survey Work and legal description of boundaries completed; If formal survey was waived was LT Attorney Consulted? \_\_\_\_\_

\_\_\_\_\_ If formal survey waived, create existing conditions site plan with sufficient detail for easement purposes (see LTA BDR & easement language practices for guidance). Make sure all special use areas and zones are marked. \_\_\_\_\_

\_\_\_\_\_ Title work (and draft insurance policy binder) ordered; Date title research completed \_\_\_\_\_; Date reviewed by land trust attorney \_\_\_\_\_. (Make sure as part of the title research that all property taxes have been paid by either the landowner or by the land trust.) Updated title research if more than 30 days old at closing: \_\_\_\_\_; Any encumbrances addressed: \_\_\_\_\_ List: \_\_\_\_\_

\_\_\_\_\_ Confirmed that no liens, mortgages or home equity loans, etc. exist; if so, date of Mortgage Subordination: \_\_\_ - \_\_\_\_\_

Pre-Closing and Acceptance of Acquisition:



- \_\_\_\_\_ Draft Resolution for Acceptance of CE or Fee property by Executive Committee and/or BOD; include key documents and dates requirement satisfied as well as any pending due diligence requirements.
- \_\_\_\_\_ Copy of LO appraisal requested prior to signing Form 8283
- \_\_\_\_\_ Order Title Insurance Policy/completion of binder on all fee and conservation purchases and fee ownership donations. Consult land trust attorney on whether necessary for CE gifts.
- \_\_\_\_\_

Closing:

- \_\_\_\_\_ EXERCISE PURCHASE OPTION (IF USING)
- \_\_\_\_\_ Written authorization for landowner signature from landowner's attorney
- \_\_\_\_\_ Signature docs finalize, formatted and approved by land trust attorney (including exhibits)
- \_\_\_\_\_ Baseline data documentation completed
- \_\_\_\_\_ Closing Date Set and Landowner, LO attorney notified (in writing if required by Option)
- \_\_\_\_\_ CLOSING STATEMENT PREPARED AND APPROVED BY LAND TRUST ATTORNEY AND LANDOWNER ATTORNEY
- \_\_\_\_\_ PREPARE WIRE OR CHECK
- \_\_\_\_\_ ADDITIONAL TAX FORMS PREPARED IF NECESSARY (LIST: \_\_\_\_\_ (e.g., state withholding tax, state conservation easement tax credit forms, etc.)
- \_\_\_\_\_ Conservation Easement and Baseline Documentation Report signed by land trust and landowner
- \_\_\_\_\_ Copy of BDR given to LO
- \_\_\_\_\_ Documents Recorded w/County ( \_\_\_\_\_ )

After Closing:

- \_\_\_\_\_ Complete records of the transaction according to Land Trust & LTA Recordkeeping Policies
- \_\_\_\_\_ Thank you letter(s) with IRS language (if a gift component) (send immediately after closing)
- \_\_\_\_\_ 8283 attachment sent if bargain sale or gift
- \_\_\_\_\_ Review and Assess Landowner Appraisal before signing the 8283 form
- \_\_\_\_\_ *Send in NYSDEC CE filing notice (NY)*

- \_\_\_\_\_ Finalize Project Report. Handoff meeting to discuss the details of the easement/preserve with stewardship volunteers or staff (discuss project history, landowner background and wishes (non-binding), project description, possible stewardship issues, directions to the property)
- \_\_\_\_\_ Follow up to make sure that stewardship funds pledged were received by the land trust.
- \_\_\_\_\_ Work with outreach and public relations staff to highlight land acquisition success.

**PROJECT RECORDS INVENTORY**

**Conservation Easement:**

**Date:**

\* denotes that record is “essential” and subject to Practice 9G requirements

<b>Document</b>	<b>Permanent</b>	<b>Office</b>	<b>Stewardship (field)</b>	<b>Electronic</b>	<b>Notes</b>
Project Summary					
*Conservation Easement (CE) deed					
*CE amendment deed					
*Other legal agreements (co-hold agreements, mitigation agreements, management agreements, etc.)					
*Record of exercise of reserved or permitted rights					
*Critical correspondence w/landowner (Inquiry Form, Notification of IRS Code appraisal requirements, Letter of Acknowledgement of Gift/Land, Stewardship fund solicitation, etc.)					
*Baseline documentation report					
*Monitoring reports					
*Title opinions					
*Mortgage subordination(s)					
*Title insurance policies					
*Survey					
*Form 8283 (if tax deduction)					
*LO’s appraisal or appraisal summary (if tax deduction)					
*LT’s appraisal (if purchased)					
Board resolution to accept CE					

Board/Commission Meeting Minutes & other evidence of review by Board					
Documentation of public benefit					
Agreement(s) with funder(s)					
Purchase agreement ( <i>if applicable</i> )					
Documentation that project evaluated against acquisition/project selection criteria					
Documentation easement amendments meet amendment policy					
Environmental assessment					
Initial site visit record					
Stewardship Fund calculation worksheet for management/enforcement costs					
Documentation of enforcement action(s)					
Other documents deemed important or permanent (list):					

## PROJECT RECORDS INVENTORY

**Fee Property:**

**Date:**

\* denotes that record is "essential" and subject to Practice 9G requirements

Document	Permanent	Office	Stewardship (field)	Electronic	Notes
Project Summary					
*Deed (s)					
*Other legal agreements (easements held by other parties, management agreements w/others, etc.)					
*Critical correspondence w/landowner (Inquiry Form, Letter of Acknowledgement of Gift/Land, Stewardship fund solicitation, etc.)					
*Title opinions					
*Title insurance policies					
*Surveys					
*LT's appraisal (if purchased)					
*Form 8283 (if tax deduction)					
*LO's appraisal or appraisal summary (if tax deduction)					
*Contracts and leases					
*Monitoring reports					
Management plan					
Board resolution to acquire project					

Board/Commission Meeting Minutes & other evidence of review by Board					
Documentation of public benefit					
Agreement(s) with funder(s)					
Purchase agreement					
Documentation that project evaluated against acquisition/selection criteria					
Environmental assessment					
Initial site visit record					
Documentation of actions to defend vs. trespass, vandalism, etc.					
Stewardship Fund calculation worksheet for long term management costs					
Other documents deemed important or permanent (list):					

# Site Visit Worksheet

## Potential Property Acquisition

### Part 1: Property Owner Information

<b>Landowner Name</b>		<b>Phone 1</b> <b>Phone 2</b>	
<b>Mailing Address</b>		<b>e-mail</b>	
<b>Property Address</b>		<b>Referred by</b>	
		<b>Property No.</b>	
<b>Is property in LT service area?</b>	Yes <input type="checkbox"/> No <input type="checkbox"/> Notes:		
<b>Landowner Goals (e.g. proposed restricted activities and any reserved rights)</b>			
<b>Type of transaction (e.g. easement or fee?)</b>			
<b>Compensation sought or gift?</b>			

### Part 2: Property Information

<b>Property Size (acres):</b>	<b>Tax Parcel No.(s):</b>	<b>Municipality:</b>
<b>Is the proposed acreage a portion of the property?:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>		<b>Zoning District:</b>
If yes, describe:		
<b>Property Access (public road frontage, private ROW, etc.)</b>		

<b>Existing Land Uses (e.g. residential, ag. commercial, open space, etc.)</b>	
<b>Past Land Uses</b>	
<b>Survey and/or Boundary Markers Observed?</b>	
<b>Existing Improvements</b>	
<b>Adjoining Land Uses (including proximity to other conserved lands)</b>	
<b>Existing Easements</b>	
<b>Is Property in Imminent Danger of Development?</b>	
<b>Is This a Mitigation Project?</b>	
<b>Known Safety or Environmental Hazards</b>	
<b>Known Regulatory Issues</b>	
<b>Miscellaneous Notes</b>	

**Part 3: Title/Survey/Appraisal Information**

<b>Legal Name of Owner(s):</b>		
<b>How is Title Vested? (Sole Ownership, Co-owners, Corporation, Trust, etc.):</b>	<b>Title Encumbrances? (List):</b>	
<b>Is There A Formal Survey?</b> Yes <input type="checkbox"/> No <input type="checkbox"/>	<b>If "Yes" List Survey Date:</b>	<b>Is There A Recent Appraisal? If "Yes" List Value:</b>



**Part 4: Site Observations (list approx. acreages where applicable)**

<p><b>Waterbodies, Wetlands, Floodplains &amp; Other Significant Water Resources</b></p>	
<p><b>Wildlife Habitat and Observed Fauna (including incidences of threatened/ endangered species)</b></p>	
<p><b>Dominant Vegetation (including incidences of threatened/ endangered species)</b></p>	
<p><b>Agricultural or Forestry Resources (including prime soils and significant forest communities)</b></p>	
<p><b>Open Space, Public Access &amp; Recreational Opportunities</b></p>	
<p><b>Aesthetics, Cultural &amp; Historical Resources</b></p>	
<p><b>Unique Areas or Features (ex., cliffs, caves, gorges, fens, bogs, unique species habitat)</b></p>	

**Part 5: Acquisition Criteria Comparison & Analysis (Note: modify this section to list your Land Trust's specific selection criteria!)**

<b>Consistency with LT's Project Selection Criteria (use information collected above)</b>	Proposed size sufficient for proposed purpose?
	Property shares boundaries, or is in close proximity, with or other conserved lands?
	Site contains important water resources?
	Site hosts important "working lands" (e.g. Forestry or ag resources)?
	Site hosts critical wildlife habitat?
	Site provides important educational or recreational opportunities?
	Site contains unique and distinctive natural features?
	Site contains important historical, archaeological or cultural resources?
	A site containing any of the above is in imminent danger of development.
	CE or fee lands serve as important offset to a development proposal.
	Acquisition would set an important precedent.
	Is the Project in an LT Priority Area?
<b>Negative Factors That Would Preclude Acquisition? (see Acceptance Criteria for guidance)</b>	
<b>Best Acquisition Method</b>	
<b>Cost/Benefit Summary</b>	
<b>Estimate of Post-Acquisition Costs</b>	

**Part 6: Supplemental Information, Property Maps & Photos (w/geo-locations)**

Additional Notes (Add map and photo attachments)

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**Part 7: Property Review Date & Action**

<b>Site Visit Date:</b>	<b>Form Completed by:</b>
<b>Present:</b>	
<b>Planned follow up Action: (e.g. What are the suggested mapping and inventories based on site visit? Survey and/or marking of physical boundaries needed? Wetland delineation required? Is a Phase I assessment necessary due to known hazards or historical/cultural resources? Legal research needed? Other actions/questions?)</b>	

**What to look for on Form 8283:**

Part I — Information on Donated Property: For number 4, box “b” should be checked for a for Qualified Conservation Contribution. If they made a gift of land, that is, not a conservation easement but a gift of the property itself, box “e,” Other Real Estate should be checked instead.

Note the “Note” at the bottom of Part I: “In certain cases, you must attach a qualified appraisal of the property. See Instructions.” Simply put, if the LO claims a deduction greater than \$500,000, they must file a copy of the appraisal with their tax return. As an appraisal is required for any donation of \$5000 or more, the LO may decide to attach the appraisal even if below the \$500,000 threshold.

Number 5, or line 5: The IRS says that information included on Line 5(a) needs to be clear enough so that the reader knows something specific about the property. In other words, “conservation easement” isn’t enough. There isn’t much space under 5(a), so the filer should add language such as, “Conservation easement under IRC 170(h) on land in XXXX County, New York, to protect wildlife habitat (or other primary conservation value).” Then add, “See Attached Deed of Easement and Statement.” The Deed of Easement will contain a very accurate description of the CE area. The Instructions to the Form 8283 are clear that if you donate a conservation easement, you must attach a separate Statement providing certain additional information. See the Instructions about what needs to be included in the Statement.

A conservation easement is not tangible personal property, so Line 5(b) is blank.

Line 5(c) asks for the appraised fair market value of the charitable gift. Enter the fair market value from the appraisal. Note though that in some cases the actual deduction may need to be modified to below the fair market value noted on Line 5( c).

Example: “Related persons” own other property in the area where the CE will go into effect. The value of the related persons’ property will increase by the donation of the conservation easement – let’s say by \$50,000. According to the Treasury Regulations, that reduces the deduction to be taken by \$50,000. Note that it does not reduce the value of the easement, just the deduction. The attached Statement should include a discussion on the donation’s effect, the amount of the enhancement to the “related persons” property and how the actual deduction shown on the donor’s tax return was determined.

Lines 5(d), (e), and (f) seem straightforward, but are not always. The Instructions say about this information: “If you have reasonable cause for not providing the information in columns (d), (e), or (f), attach an explanation so your deduction will not automatically be denied.”

In some cases, such as with lands that have been in the family for generations, things like the transaction dates or cost or adjusted basis is not clear, and in those cases the donors should explain that on the attached Statement. In many cases the IRS will be looking at the numbers. If the valuation jumped dramatically in a short period of time this is a red flag. In some instances, rapid value changes are completely defensible, so under no circumstances should these lines be left blank with no explanation about why they are left blank.

Also note, with respect to Line 5(f), the Form itself is not completely clear whether the information requested is for the basis of the easement or the basis of the property itself. The Instructions simply state that you have to tell the IRS which one you are using – just tell them which one.

If the easement was sold in a bargain sale, the amount received should be entered in Line 5(g). Otherwise, (g), (h), and (i) are left blank.

#### Part II – Taxpayer (Donor) Statement

For the gift of a conservation easement, this is left blank. A donor's signature can be placed here, but is not required.

#### Part III – Declaration of Appraiser

All blanks must be filled in correctly and the appraiser has to sign and date where indicated.

Note if one appraiser signs the qualified appraisal report, that one appraiser should sign where indicated. But if two appraisers sign the qualified appraisal report, both should sign where indicated and so forth.

Part IV – Donee Acknowledgement - First, the Form calls for the date on which the donated property was received. In the case of a conservation easement, the easement is not deductible until it is recorded, so the County filing date should be added here.

If the gift is of a conservation easement, the donee organization does not intend to, "use the property for an unrelated use," so that "No" box should be checked.

The other issue that has come up include that the person who signs the Form 8283 on behalf of the donee organization must have the authority to do so. This is standard due diligence. A messenger can't just show up at the donee's office with Form 8283 and have the volunteer receptionist sign and date it (unless the receptionist also happens to be "an official authorized to sign the tax returns of the organization").

Supplemental Statement: Trust staff might want to look at a few sample Supplemental Statements at this point to see what they are like.

If the donation is a gift of a conservation easement, the Instructions are specific about what information must be provided in a statement attached to the Form 8283. Read the Instructions!! The LO can also use the Supplemental Statement to make a clear case that this conservation easement on this property meets all of the tax code requirements for deductibility. Excerpts from the Baseline Documentation about the conservation values of the property are often incorporated into the recitals in the conservation easement. It is good practice to repeat them in the Supplemental Statement.

As you will see from reading the Supplemental Statement, it tells the reader a lot about the property but it also tells the reader a lot about other IRS and tax code requirements that are relevant here, i.e., the easement meets various "conservation purposes" tests, the donor has the so-called "gift letter" required by Section 170(f)(8), there is no mortgage on the property, the appraiser has considered the "enhancement" rule.

END