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# Land Preservation Policy



## *The Conservation Foundation*

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# THE CONSERVATION FOUNDATION

## LAND PRESERVATION POLICY

First adopted on January 25, 2006

### **PURPOSE**

It is a purpose of The Conservation Foundation to actively protect and preserve land in conformance with its stated mission and goals.

### The Foundation's criteria for preserving land are:

- A. The primary geographic areas in which the Foundation will concentrate its activities are DuPage, Kane, Kendall, and Will Counties.
- B. The Foundation's preservation priorities are:
  - 1. Land along rivers and streams, and lands significant to watershed protection;
  - 2. Large wooded areas, prairies and wetlands;
  - 3. Areas serving as buffers to forest preserves and other preserved areas;
  - 4. In-holdings in already-preserved property;
  - 5. Property that provides connections to other parcels of preserved land.
- C. The Foundation will seek to protect properties with the following characteristics:
  - 1. Natural ecosystems or unique natural features;
  - 2. Freshwater resources such as floodplains, aquifers, stream corridors, and other lands that protect watersheds;
  - 3. Features of educational, scenic, recreational and/or scientific value.
- D. The Foundation will seek to protect properties that are large enough, or adjoining land already protected, so that it is likely that their conservation values will remain intact even if adjacent properties are developed.
- E. The Foundation will seek to protect properties that benefit the public in ways such as the encouragement of sound land use planning, promotion of open space conservation, and the furtherance of wise stewardship of natural resources.
- F. The Foundation will seek to protect properties in partnership with appropriate conservation agencies and organizations. The Foundation will work with partners that have expressed a desire, and possess the financial resources, to be the ultimate owner of the property. Where feasible, the Foundation will obtain written agreement outlining the terms under which the property will be transferred to the partner.
- G. The Foundation will not acquire or hold property that poses greater financial or organizational burdens than benefits.
- H. A "Project Selection Criteria Checklist for Land and Conservation Easement Acquisitions" (See Appendix H) form will accompany all projects undertaken on behalf of the Foundation.

- I. Assisting public agencies or other not-for-profit land conservation organizations with their land acquisition programs can also further the Foundation's mission. In order to preserve the financial integrity of the organization, the Foundation may charge a fee for facilitating and/or negotiating with landowners.
- J. It is in the interest of the Foundation to avoid conflicts of interest or the appearance thereof. Transactions with present or past board members, staff members, major donors, members of the Foundation's Advisory Councils or Leadership Board, or other interested parties will be conducted under the terms and conditions of the Foundation's Conflict of Interest Policy.
- K. It is critical that the Foundation maintain its credibility with its members, donors, stakeholders and the general public. Therefore,
  - a. the Foundation shall establish procedures for all potential land and easement donations which assure professional, honest and ethical transfer of interest held by the donor. Every potential donor shall be provided with a written copy of these procedures.
  - b. if, in the course of due diligence, board or staff members become aware that the value of the gift being claimed by a land or easement donor is suspect, the Foundation shall seek additional substantiation of the value prior to accepting the land or easement. If, upon further examination, it is determined that the acceptance of the gift may harm the reputation and/or the credibility of the organization, the Board will refuse the gift.

## Appendix A

### CONSERVATION EASEMENTS

#### **Establishing a Defense Fund for Monitoring and Defending Conservation Easements and TCF-Owned Properties**

Conservation easement and acquisition projects will be conducted according to the “Project Selection Criteria” (See Appendix H). A “Checklist for Conservation Easement Transactions” (Appendix J) shall accompany each project.

It shall be the policy of The Conservation Foundation to find, whenever practical, a governmental entity or nonprofit organization to hold conservation easements or land offered to or acquired by the Foundation. In cases where the Foundation decides to hold an easement or title to land, appropriate steps shall be taken to protect the financial interests of the Foundation. Those steps may include providing for an endowment to cover costs arising from holding the easement or land.

1. When it accepts a conservation easement, The Conservation Foundation assumes the legal responsibility to uphold the terms of the easement--- in perpetuity. To care properly for an easement, it is necessary to monitor the easement and to be prepared to enforce its terms. At the least, this will require a limited amount of staff time. In the worst case, it may be necessary to defend the terms of an easement through legal action. Similarly, when The Conservation Foundation accepts or acquires land, it assumes the legal responsibility to monitor the land and be prepared to defend it legally for as long as it holds title.
2. The Conservation Foundation shall seek a defense fund for land over which it will hold a conservation easement or title. The Conservation Foundation has established a pool of donated funds to offset annual monitoring expenses and provide for legal funds should they be necessary. The interest from this fund is used for annual monitoring expenses; the principal is held to pay potential future legal fees. The Foundation’s minimum for each conservation easement is \$10,000; amounts lower than this are rare, made on a case-by-case basis and must be approved by the Board of Trustees. The actual amount of the defense fund per easement depends upon the size, context and complexity of the property and the conservation easement. While the landowner is not required to contribute these funds, The Conservation Foundation cannot commit to accept the conservation easement unless it is satisfied that these funds will be raised. Defense funding for each property owned by the Foundation is decided upon by the Board; these funds may be comingled with conservation easement defense funds.
3. Each conservation easement shall have attached to it a Management Plan that specifies goals and objectives that ensure the continued existence of the conservation values that the easement is in place to protect. The funding, roles and responsibilities regarding the management shall be defined in the Management Plan. Similarly, each property owned by the Foundation shall have a Management Plan that specifies the goals and objectives, and identifies the funding, roles and responsibilities for its implementation.
4. In exceptional circumstances, conservation easements may be amended only when the proposed amendment is in accordance with the Foundation’s “Conservation Easement Amendment Policy” (see section below) and applicable state and federal laws and regulatory guidelines.

## **Legal and Financial Matters**

The Conservation Easement Donation Template Letter will be sent to the landowner that clearly explains our role, our interest and the need for their own expert tax and legal advisors. Potential conservation easement donors shall be informed in writing of the following:

- A. The Conservation Foundation does not provide legal or financial advice. The landowner needs to obtain their own tax and legal advisors.
- B. In order to qualify for income tax deductions, the project must meet the requirements of IRC 170 and the accompanying Treasury Department regulations and/or any other federal or state requirements.
- C. The Internal Revenue Code requires appraisals for land or easement donations valued at more than \$5,000 to be prepared by a qualified appraiser and be in accordance with the Uniform Standards of Professional Appraisal Practice, and that appraisals must be conducted within 60 days of the recordation of the land transfer or conservation easement.
- D. The Foundation requires a copy of the completed appraisal.
- E. The donor is responsible for providing the appraisal.
- F. The Foundation makes no assurances as to whether a particular land or easement donation will be deductible or whether the donor's appraisal is accurate.
- G. The Foundation will not knowingly participate in a project if it has significant concerns about the tax deduction and will sign Form 8283 only when the entire form has been completed .

## **Extinguishing Conservation Easements**

It is the policy of The Conservation Foundation to maintain, monitor and defend conservation easements in perpetuity. However, there may be a time when outside forces or changes make it impossible to protect the original conservation purposes. In that rare event, and if the landowner agrees, the Foundation has two options: it can amend the easement to account for other conservation values, or it could agree to have the easement extinguished by an appropriate court of law. In all cases, the Foundation shall ensure that the action will not result in private inurement or impermissible private benefit as those terms are defined under the Internal Revenue Code and related regulations and that there shall be no net loss of important conservation values or impairment of public confidence in the Foundation and its commitment to protect land in perpetuity. Additionally, to the extent practical, the Foundation shall notify any project partners or funders for the original project and notify them of any changes and the reasons for making those changes.

## **Transferring Conservation Easements**

It is the policy of The Conservation Foundation to maintain, monitor and defend conservation easements in perpetuity. However, if the Foundation finds that it is unable to adequately monitor and protect a conservation easement, or that a transfer would enhance the protection of the conservation values, , it shall seek to transfer the conservation easement to a public agency or another not-for-profit land conservation organization qualified to hold conservation easements under both state law and the Treasury Department regulations relating to conservation easements. For every easement the Foundation seeks to hold, staff shall seek out an appropriate agency or organization to be named as a backup holder, and, once a willing agency or organization is identified, include the organization's contact information as a backup holder. If a transfer

of the easement to another organization is to be made, the Foundation's Board of Trustees shall approve the transfer. Staff shall notify the conservation easement landowner according to provisions in the easement.

Should another organization seek to name The Conservation Foundation as a backup holder, or to transfer the responsibilities of a conservation easement to the Foundation, staff shall perform its normal due diligence including:

- Ensuring the easement adheres to all relevant provisions in the Land Preservation Policy;
- Ensuring that an appropriate endowment accompanies the easement;
- Seeking legal counsel regarding the conservation easement document;
- Seeking approval from the Board of Trustees to accept the easement.

### **Conservation Easement Amendments**

The success of The Conservation Foundation's conservation easement program is dependent on landowner confidence that the Foundation will meet its obligation to monitor and enforce the terms of its easements. This confidence would be seriously eroded if the Foundation allowed modifications of its conservation easements that reduce the conservation values of the protected land. Easement amendments could also conflict with the provisions of the Internal Revenue Code or related Treasury Department regulations.

Therefore, it is the policy of The Conservation Foundation to hold and enforce its conservation easements as written. As such, it will permit amendments to easements only in exceptional circumstances. It is the expressed intent that this policy be based on the premise that an amendment must reflect a change for the better. The amendment must never result in a net degradation of the conservation values the easement is designed to protect. Any request for an easement amendment will be reviewed according to the procedures set forth in this policy, and will be implemented where the Board of Trustees determines that:

- 1) The requested modification is warranted under one or more of the Purposes set forth below;
- 2) There are no feasible alternatives available to achieve that purpose;
- 3) It is the minimum change necessary to satisfy that purpose;
- 4) It clearly serves the public interest and is consistent with TCF's mission;
- 5) It complies with all federal, state, and local laws;
- 6) The action will not jeopardize TCF's tax-exempt status or status as a charitable organization under federal or state law;
- 7) The change will not result in private inurement or confer impermissible private benefit;
- 8) The change is consistent with conservation purpose(s) and intent of the conservation easement and with the documented intent of the donor, grantor, and any direct funding source; and
- 9) It will have a net beneficial or neutral effect on the relevant conservation values protected by the conservation easement.

Unless the amendment is requested by The Conservation Foundation, the landowner requesting the amendment shall pay all staff costs for the amendment, whether or not the request is approved; and, if approved, all additional costs for its implementation, if any.

#### **Purpose of Requested Amendment**

The Conservation Foundation will consider amendments to easements only if they satisfy one or more of

the following circumstances:

- 1) **Enhanced protection.** The proposed amendment would significantly enhance the resource protection of the easement.
- 2) **Prior agreement.** In a few cases, a conservation easement may have a specific provision allowing modification of the easement at a future date under specific circumstances. Such agreements must be set forth in the conservation restriction document or in a separate document at the time the conservation agreement was executed.
- 3) **Correction of an error or ambiguity.** The Foundation may authorize an amendment to correct an error or oversight made at the time the conservation easement was executed. This may include, but is not limited to, a misspelling, correction of a legal description, inclusion of standard language or exhibits unintentionally omitted, and clarification of ambiguous language or obsolete terms.
- 4) **Clarification or upgrade of easements.** The Foundation or Grantor may seek to modify an easement in such a way as to conform to current standards and/or formats.
- 5) **Settlement of condemnation proceedings.** Easements held by the Foundation may become subject to condemnation proceedings. Where it appears that the condemnation power would be properly exercised, the Foundation may enter into a settlement agreement with the condemning authority in order to avoid the expense of litigation. In reaching such an agreement, the Foundation shall attempt to preserve the intent of the original conservation easement to the greatest extent possible. In the event that the Foundation is compensated for the extinguishment or amendment of a conservation easement, the Foundation shall use the funds to further conservation activities in its service area.
- 6) **Amendments consistent with conservation purpose and values.** The Foundation may authorize other modifications of a conservation easement if the modification is consistent with the statement of purpose contained within the easement document, and if the new level of protection of conservation values provided by the amended easement is the same or greater than that provided by the easement before the amendment. Such amendments may be used to address changes in conditions due to external factors such as broad changes in climate which make the original terms inadequate to protect the original conservation purposes.

### **Procedures for Requesting an Amendment**

Either The Conservation Foundation or the landowner may propose an amendment. Any landowner seeking a modification of an existing conservation easement shall file a request in writing with the Foundation stating what change is being sought and the specific reasons it is needed or warranted. Where appropriate, the request shall also be accompanied by a map and other documentation. Unless waived by the Board of Trustees, the request shall also be accompanied by a payment of \$500 to cover the Foundation's costs. *Any unexpended portion of the fee shall be refunded; the landowner shall be responsible for all costs exceeding the initial fee, including staff and legal costs.*

The President/CEO shall review all requests and, where appropriate, refer them to the staff for evaluation, site visit and recommendation. The review shall include consultation with the Foundation's legal counsel and, when feasible, with the principal parties to the original agreement, including the landowner who donated or sold the easement, any town or state agency that contributed funds to the acquisition, and any persons who supported the acquisition through financial gifts.

TCF staff, President/CEO and legal counsel will review the amendment to determine if the proposed amendment is consistent with the terms of this Land Preservation Policy and will make a recommendation to the Board of Trustees for final action.

The Board of Trustees shall approve, approve with modification, or reject the request for amendment at its next regularly scheduled meeting or at a special meeting called for that purpose. Notification of the decision by the Board of Trustees will be forwarded in writing to the party proposing the amendment.

### **Procedures for Enforcing a Conservation Easement**

The Foundation is responsible for enforcing all of its conservation easements through a rigorous monitoring program designed to identify any potential violations of the easement terms. Regular communication with landowners and diligent annual monitoring can result in minimizing violations and help to resolve enforcement issues in a timely manner. In order to fulfill its long term commitments, it is the policy of the Foundation to aggressively enforce its conservation easements preferably through voluntary compliance, but if necessary, with all legal remedies available to it.

In order to protect the integrity of each conservation easement, maintain the Foundation's tax-exempt status and authority to enforce all its easements' terms and to build and maintain the public confidence in the Foundation, if Foundation staff become aware of a violation of any restriction detailed in a conservation easement, it will as soon as practical inspect the land and document the reported violation.

If a violation is determined to exist, the Foundation staff shall:

- I) Determine the extent and level of issue present. This determination shall be based upon the actual conditions or proposed use and the terms of the conservation easement.
  - A) If the violation is either minor, a technical compliance issue, or an issue of a proposed use and does not present an immediate threat to the conservation values of the land and if ecological damage is neither occurring nor imminent:
    - 1) The Foundation staff will as soon as practical contact the landowner either in person or by phone or email to advise the landowner of the violation and to determine who is responsible for the violation. Should the landowner fail to respond to these attempts at contact, the Foundation staff shall send a letter via certified mail outlining the violation and seeking the landowner's cooperation in rectifying the violation.
    - 2) Once contact with the landowner has been made and once the violator is identified, the Foundation staff will work with the violator to correct or otherwise cure the violation.
    - 3) If the violation can be addressed through these means, the resolution shall be documented in the Foundation's files and through a written notice to the landowner describing the agreed upon solution.
  - B) If the Foundation staff determine that: severe ecological damage is either occurring or imminent; the violation presents an immediate threat to the conservation values of the land; or the landowner or violator fails or refuses to respond to the Foundation's attempts either to make contact or to correct the violation, then the staff shall notify the Board President of the situation and shall take all steps deemed necessary by the Board or President/CEO to protect the conservation values of the property and shall seek legal help to remedy the violation including, as needed, seeking injunctive relief or other courses of action as recommended by counsel.
- C) In all cases, staff shall:
  - 1) keep the President/CEO informed of all steps taken;
  - 2) document all requests and landowner or violator response in writing;
  - 3) utilize the means of communication, such as registered mail, as recommended by legal counsel;

- 4) maintain the highest levels of professionalism and integrity in all communications in order to retain the most constructive working relationship possible with the landowner;
  - 5) seek to avoid litigation if it possible to protect the conservation values through other means, but take whatever legal steps are necessary to enforce the terms of the conservation easement; and
  - 6) act in an expedient fashion knowing that time is of the essence in all suspected violations.
  - 7) Remember that time is of the essence for all suspected violations. Responses and enforcement should be as expeditious as possible and practical.
- D) In the case of all substantial violations or threatened substantial violations, the Board of Directors shall approve the actions taken and the final resolution of the situation in an emergency or regularly scheduled Board meeting.

### **Procedures for Reserved and Permitted Rights and Approvals**

Landowners who elect to exercise reserved rights must notify the Foundation of their desire to do so and must obtain approval before proceeding. Foundation staff shall carefully review each request, documenting existing and proposed conditions and make a recommendation to the Board. The standard of review shall be that described within the conservation easement, or if none is designated, it shall be based on a determination that the use is in compliance with the easement terms and is not inconsistent with the easement purposes or protection of the conservation values. Staff will respond to the landowner within 15 business days of receiving notice (fewer if required to do so in the conservation easement document) of the landowner's intent, and will notify the landowner of its recommendations to the Board. The Board will act at its next regularly-scheduled meeting (earlier if required to do so in the conservation easement document). All documentation relating to the exercise of reserved/permitted rights and approvals shall be retained in accordance with the Land Transaction Records policy (Appendix I).

## **Appendix B**

### **LAND DONATIONS**

Donations of land may come to The Conservation Foundation for several reasons:

- Landowners ask the Foundation to own and preserve their property (long-term preservation);
- Landowners wish to donate the value of their land to the Foundation (financial contribution);
- Public agencies ask the Foundation to accept a donation that will ultimately be transferred to the agency at a more opportune time.

All potential donations of property shall be scrutinized to ensure that the land meets acquisition criteria established in this document, and a “Project Selection Criteria Checklist for Land and Conservation Easement Acquisitions” document (Appendix H) as well as a “Checklist for Land Donations” form (Appendix K) shall accompany each project. The Land Donation Template Letter will be sent to the landowner that clearly explains our role, our interest and the need for their own expert tax and legal advisors. Potential land donors shall be informed in writing of the following:

- A. The Conservation Foundation does not provide legal or financial advice. The landowner needs to obtain their own tax and legal advisors.
- B. In order to qualify for income tax deductions, the project must meet the requirements of IRC 170 and the accompanying Treasury Department regulations and/or any other federal or state requirements.
- C. The Internal Revenue Code requires appraisals for land or easement donations valued at more than \$5,000 to be prepared by a qualified appraiser and be in accordance with the Uniform Standards of Professional Appraisal Practice, and that appraisals must be conducted within 60 days of the recordation of the land transfer or conservation easement.
- D. The Foundation requires a copy of the completed appraisal.
- E. The donor is responsible for providing the appraisal.
- F. The Foundation makes no assurances as to whether a particular land or easement donation will be deductible or whether the donor’s appraisal is accurate.
- G. The Foundation will not knowingly participate in a project if it has significant concerns about the tax deduction and will sign Form 8283 only when the entire form has been completed.

Prior to the Board’s consideration of any potential donation, donors will need to provide a title report, a Phase I Environmental Assessment report and an ALTA survey to The Conservation Foundation. If warranted, the donor will also provide a Phase II Environmental Assessment.

#### **Land donations for long-term preservation**

Landowners may donate land to the Foundation in order to preserve its natural value. Clear understanding of the long terms goals and uses of the property is critically important to all parties. Prior to the donation, TCF shall inform the landowner of their intentions for the property and shall document any specific restrictions placed on the property by the donor. It shall be the policy of The Conservation Foundation to find, whenever practical, a governmental entity or nonprofit organization to take ownership of land offered to or acquired by the Foundation. In cases where the Foundation decides to retain long-term ownership, staff will develop a management plan for the property that includes estimated costs. The Foundation will

secure an adequate defense and management fund for each conservation property it accepts and sources of funding for the management will need to be identified prior to final consideration of the gift. It is in the interest of the Foundation that these management costs be considered when evaluating a land donation.

### **Land donations as financial contributions**

Landowners may donate land to the Foundation so that its value can be used to further the organization's mission. In such cases, it may be appropriate to accept a parcel of land that does not possess sufficient natural or open space characteristics to warrant preservation. In these instances it is important that the donor understand that the donated land may be sold or otherwise disposed of by the Foundation.

### **Land donations on behalf of public agencies**

Circumstances also arise when landowners may wish to donate land to park districts, forest preserve districts and other governmental land preservation entities. Public agencies can often use such donations as a match for grants to accomplish other acquisitions or capital improvements. In cases when landowners are ready to donate, but the agency is not ready to accept the land, The Conservation Foundation can assist by accepting title to the property and holding it until the government entity is ready for it. The property is then transferred to the government entity.

In those instances where The Conservation Foundation accepts donated land on behalf of another organization or governmental entity, it shall be the policy of The Conservation Foundation to recoup the costs of that transaction. It is important that the ultimate owner of the property be notified in advance that The Conservation Foundation will seek to recover costs incurred by it, plus a service fee, if any, in accepting and temporarily holding a property donation.

#### Costs to be recovered in transactions with public agencies

- a. Staff costs
- b. Property taxes during holding period
- c. Insurance costs during holding period
- d. Environmental assessment, appraisal costs, or other studies
- e. Legal costs
- f. Title and closing costs
- g. Service fee, if any. The amount of the service fee to be collected shall be determined periodically by the Board of Trustees. The service fee may be a percentage of the cost of the property, a flat fee, or other arrangement as determined by the Board. The service fee shall be retained by The Conservation Foundation and used to enhance the ability of the Foundation to carry out its mission.

## Appendix C

### BUY AND HOLD TRANSACTIONS

Circumstances arise when park districts, forest preserve districts and other governmental land preservation entities wish to buy a parcel of land, but are not financially prepared to do so. The Conservation Foundation will acquire land on behalf of the government agency, hold it and transfer ownership at a later date. In order to protect its financial interests, the Foundation shall transfer ownership to the agency as quickly as possible.

A “Checklist for Buy and Hold Transactions” (Appendix L) shall accompany each project.

In those instances where The Conservation Foundation acquires land on behalf of another organization or governmental entity, The Conservation Foundation shall recoup the costs of that transaction. The Foundation shall seek a service fee for such transactions. A title report, Phase I Environmental Assessment report and ALTA survey are required for all transactions.

1. Costs to be Recovered in Transactions With Third Parties

- a. Amount paid for property
- b. Value of the funds expended by the Foundation (interest costs or interest foregone) plus 1.5% administrative costs (minimum of 3% total interest)
- c. Staff costs
- d. Property taxes during holding period
- e. Insurance costs during holding period
- f. Environmental assessment, appraisal costs, and other studies
- g. Legal costs
- h. Title and closing costs

2. Service Fee

The amount of the service fee to be collected shall be determined periodically by the Board of Trustees. The service fee may be a percentage of the cost of the property, a flat fee, or other arrangement as determined by the Board. The service fee shall be retained by The Conservation Foundation and used to enhance the ability of the Foundation to carry out its mission.

## Appendix D

### LAND TRANSACTIONS ON BEHALF OF THE CONSERVATION FOUNDATION

**Purchases.** The Foundation recognizes that a take-out by a public agency or other not-for-profit land conservation organization may not be possible in the short-term or that it may be in the long-term interest of The Conservation Foundation to purchase land without a take-out. Land acquisition projects on behalf of the Foundation will be conducted according to the “Project Selection Criteria” (See Appendix H). A “Checklist for Land Acquisition Transactions” (Appendix M) shall accompany each project.

As part of its due diligence process prior to purchasing the land, staff will develop a management plan for the property that includes estimated costs. Sources of funding for the management will need to be identified. It is in the interest of the Foundation that these management costs be considered when evaluating a land purchase without a take-out. The Foundation will secure dedicated stewardship funds adequate to provide income which will cover the annual monitoring of the property and its legal defense for each fee property it intends to own.

A Phase I Environmental Assessment report, a title report, an ALTA survey and, if warranted, a Phase II Environmental Assessment report will be provided to the Foundation prior to consideration by the Board of Trustees.

The Foundation shall obtain a qualified independent appraisal to justify the purchase price. In limited circumstances where acquiring above the appraised value is warranted, the Foundation shall document the justification for the purchase price and warrant that there is no private inurement or impermissible private benefit.

**Sales.** The Foundation recognizes that it may be in the interest of the organization to sell land that it owns. In all such cases the Foundation shall ensure that any donor restrictions are followed both at the point of sale and in the future. Other than lands which were donated as a financial donation, the Foundation will first document the conservation values of the property, put protections in place for the conservation values, and obtain a qualified appraisal that reflects the limits and conditions put in place for the land. The Foundation will market the property and select buyers in a manner that avoids any appearance of impropriety and preserves the public’s confidence in the Foundation.

When contemplating selling land to a Board member, major donor, staff member or member of its Advisory Council or Leadership Board, the Foundation shall avoid the reality or perception that the sale inappropriately benefited that individual by:

- first marketing the property widely,
- following its conflict of interest policy,
- documenting that the project meets the Foundation’s mission,
- following all transaction policies and procedures,
- ensuring that there is no private inurement or impermissible private benefit.

## Appendix E

### RIGHTS AND INTERESTS THAT CAN BE ACQUIRED

The Foundation recognizes that the following types of ownership meet the goals of the Foundation regarding land preservation.

- A. Fee Simple Ownership---acquiring full legal title and all rights associated with a parcel of land.
  
- B. Conservation Easement---a legal agreement that a property owner can make to restrict the amount and type of development on his or her property. A conservation easement is typically donated or sold to an organization or government entity which assumes the responsibility of monitoring the easement in perpetuity.
  
- C. Fee Simple/Leaseback---purchase of full title and then leasing the property to the previous owner or other person/entity. The lease can contain provisions that limit development and activities that can be carried out on the property.
  
- D. Lease---a short or long term rental of land.
  
- E. Undivided Interest---situation in which ownership is split between different owners, with each fractional interest extending over the whole parcel. Each owner has equal rights to entire property.
  
- F. Underlying Fee or Remainder Interest---situation where a property is owned by others (privately) for a term of years or pursuant to a life estate.

## Appendix F

### WAYS THAT TITLE CAN BE ACQUIRED

The Foundation recognizes the following ways in which title may be acquired to preserve land.

A. Purchase at Fair Market Value

Land is acquired at a price that reflects the highest and best use to which the property could be put.

B. Purchase Pursuant to a Bargain Sale

A bargain sale is part sale and part donation. The property is acquired at a price less than its fair market value. The seller is entitled to a charitable deduction for the difference between the sale price and the fair market value of the property. This combination of sale and donation can be attractive to some property sellers.

C. Outright Donation

A landowner may donate all interests that he or she possesses in a property.

D. Purchase Pursuant to an Installment Contract

Land is purchased over time using a series of regular payments.

E. Bequest

A bequest is a transfer of ownership as specified in a will. The bequeathed property remains in the control of the owner until his or her death, at which time ownership passes to the party designated in the will.

F. Donation with Life Estate

A property owner may donate a property and retain ownership rights and responsibilities during his/her lifetime. At the donor's death, all property rights pass to the recipient of the donation.

G. Land Exchange

It may be possible to acquire land with conservation values in exchange for other types of land owned by the Foundation or other public entity.

## Appendix G

### MANAGEMENT AND OWNERSHIP OPTIONS FOLLOWING ACQUISITION

The Foundation recognizes that the following management and ownership options are appropriate ways for the Foundation to preserve and protect open space.

A. Conveyance to Public Agency

The Foundation may acquire or accept property on behalf of a government entity and hold it until that public agency is ready to accept the property. The property may be conveyed to the government entity at fair market value, at less than fair market value, free of charge, or traded for other property. A service fee may be added to the purchase price. The public agency may access and manage the property while under Foundation ownership subject to an acceptable lease arrangement.

B. Conveyance to Another Nonprofit

The Foundation may acquire and hold property until another not-for-profit is ready to accept the property. The property may be conveyed to the not-for-profit at fair market value, at less than fair market value, free of charge, or traded for other property. A service fee may be added to the purchase price. The not-for-profit may access and manage the property while under Foundation ownership subject to an acceptable lease arrangement.

C. Permanent Ownership and Management

The Foundation may choose to retain ownership and permanently assume management responsibilities. The Foundation may also choose to retain ownership but to lease the property to a governmental entity, another not-for-profit, or an individual. In all cases where the Foundation will hold title to land permanently, the Foundation will secure dedicated stewardship funds adequate to provide income which will cover the annual monitoring of the property and its legal defense. These funds may be pooled, with the income used for annual monitoring of fee properties and the principal used for defending those properties. Additional funds may be necessary to perform specific property management tasks and those funds shall be raised independently.

D. Limited Development

The Foundation may purchase a property and determine its future by means of a land plan which controls future development and use. This may involve subdivision of the property. Conservation easements, deed restrictions and restrictive covenants may be utilized. The Foundation will then sell or lease, some or all, of the property. In any such transaction, the Foundation shall consider the conservation benefits as well as the public relations and financial impacts involved.

## Appendix H

### PROJECT SELECTION CRITERIA CHECKLIST FOR LAND AND CONSERVATION EASEMENT ACQUISITIONS

*Adapted from the Land Trust Alliance's Standards and Practices Guidebook*

*These criteria are intended to guide rather than limit the actions of the Foundation.*

This form shall be used in evaluating all land transactions.

#### **Mission Statement**

The Conservation Foundation works to enhance the quality of life by preserving open space, protecting natural lands and improving rivers and watersheds.

TCF is a private, not-for-profit organization that legally must demonstrate that its land protection projects are consistent with its goals and provide a public benefit.

Proposed Land Project: \_\_\_\_\_  
(Name of Landowner)

\_\_\_\_\_  
(Location and Acreage)

\_\_\_\_\_  
(Date of Property Review)

\_\_\_\_\_  
(Reviewer)

#### **Goals and Purposes**

*To qualify for selection, property must meet ALL of these criteria:*

- The property is located within the Foundation's general service area.
- The protection of this property is consistent with the Land Preservation Policy.
- The property is in a relatively undisturbed natural, scenic, or historical condition, is located along a river or stream, or has recreational value.
- The property is of sufficient size (or sufficient neighboring property is either already protected or to be included) that its conservation values are likely to remain intact even if adjacent properties are developed.
- Protection of this property aids sound land use planning, promotes land conservation, and encourages careful stewardship of land and water resources.

## **Public Benefit & Natural Resource Values**

*To qualify for selection, a property must meet ONE OR MORE of these criteria:*

- Provides open space (including farmland and forest land) that is either preserved for the scenic enjoyment of the general public or protected pursuant to clearly delineated federal, state, or local governmental conservation plans or policies.
- Contains endangered, threatened, or rare species or natural communities.
- Provides public recreational opportunities consistent with the protection of natural resources.
- Protects quality or quantity of surface or underground waters, or provides natural control of flooding.
- Contains relatively natural ecosystems, natural features, or habitat for wildlife, fish, or plants.
- Contains or has potential to contain natural features of educational or scientific value.
- Provides a buffer for or a connection to an existing conservation easement, park, preserve, or other protected land.
- Will permit public access for education or recreation.
- Sets an important precedent for resource or open space protection in a targeted area.
- Contains unique or outstanding physiographic characteristics.

## **Feasibility**

**Factors that may preclude TCF involvement:** *A property may meet the selection criteria favoring a land protection proposal and still may not be accepted if one or more of the following considerations apply:*

- The property's values are primarily scenic, but are not readily visible or accessible to the public.
- Protection of the property primarily benefits a single landowner or developer for personal gain, including tax benefits or to ensure personal privacy.
- The proposed open space is part of a development proposal that, overall, is likely to have significant adverse impacts on conservation resources.
- Adjacent properties are not protected and are being, or are likely to be, developed in a manner that would significantly diminish the conservation values of the property in question.
- The landowner insists on provisions in a conservation easement that the Foundation believes would seriously diminish the property's primary conservation values or the Foundation's ability to enforce the easement.
- The project cannot pay for itself or would not lend itself to special fundraising.
- There is reason to believe that the land/easement would be unusually difficult to manage/enforce, for example because of multiple or fractured ownership, frequent incidence of destructive trespassing, fencing restrictions, irregular configuration, or other reasons.
- The property is irreparably contaminated.
- The property cannot be acquired by the Foundation with reasonable effort in relation to the property's conservation value.
- Ethical or public image problems exist in association with the acceptance of this project.

## **Appendix I**

### **Policy for Maintaining Land Preservation Transaction Records**

Land preservation transactions necessarily involve the creation, gathering and analysis of several key documents. Once the transaction has been completed, these documents need to be safeguarded against fire, theft and loss in order to remain accessible for future reference. In order to ensure the foundation's ability to protect both its fee and easement properties it will follow the terms and conditions set forth in its Records Retention Policy. One unique attribute of conservation land transaction is the role that photographs play in the property's long term protection. Photographs present an interesting challenge as far as long-term storage *and retrieval* options. We use photographs to document conservation easement lands and conditions, and they may be needed if a dispute arises. The digital age in which we live offers a way to store many photographs in a very tiny space; however, file formats and storage materials are not universal and become obsolete within a decade's time. As such, it is important that photographs are stored in print form, on as archival a paper as is practical.

## Appendix J

### Checklist for Conservation Easement Transactions

Land Project: \_\_\_\_\_  
(Name of Landowner)

\_\_\_\_\_  
(Location and Acreage)

\_\_\_\_\_  
(Acreage of Conservation Easement Area)

\_\_\_\_\_  
(Project Coordinator)

\_\_\_\_\_  
(Project Start Date)

Date Completed:

- \_\_\_\_\_  Template letter sent to landowner
- \_\_\_\_\_  Sketch of easement area (agreed to by the landowner)
- \_\_\_\_\_  Outline of conservation easement terms (agreed to by the landowner)
- \_\_\_\_\_  Title policy (equal to appraised value); names  
The Conservation Foundation as insured
- \_\_\_\_\_  ALTA Plat of Survey and Legal Description
- \_\_\_\_\_  Conduct or obtain a preliminary environmental assessment or  
Phase I
- \_\_\_\_\_  Existing Conditions and Management Plan
- \_\_\_\_\_  Appraisal
- \_\_\_\_\_  Foundation Board resolution approving holding the conservation  
easement and authorizing Staff to execute documents
- \_\_\_\_\_  Easement defense fund (including funds for annual monitoring as  
well as legal defense)
- \_\_\_\_\_  Conservation easement document signed by landowner
- \_\_\_\_\_  Recording of conservation easement
- \_\_\_\_\_  Press release
- \_\_\_\_\_  Sign for the property

## Appendix K

### Checklist for Land Donations

Land Project: \_\_\_\_\_  
(Name of Landowner)

\_\_\_\_\_  
(Location and Acreage)

\_\_\_\_\_  
(Take-Out Agency)

\_\_\_\_\_  
(Project Coordinator)

\_\_\_\_\_  
(Project Start Date)

Date Completed:

\_\_\_\_\_

Template letter sent to landowner

\_\_\_\_\_

Letter of intent to donate (from the donors)

\_\_\_\_\_

Letter of intent to accept the donation and pay expenses (from the take-out agency)

\_\_\_\_\_

Appraisal

\_\_\_\_\_

Phase I Environmental Assessment

\_\_\_\_\_

ALTA Survey (either ordered new or accepted if within 1 year)

\_\_\_\_\_

Title policy (equal to appraised value); names The Conservation Foundation as insured

\_\_\_\_\_

Foundation Board resolution accepting donation and authorizing Staff to execute documents

\_\_\_\_\_

If it is property to be owned by the Foundation, property defense fund (including funds for annual monitoring as well as legal defense)

\_\_\_\_\_

Agreement with take-out agency granting immediate access for management purposes

\_\_\_\_\_

Press release

\_\_\_\_\_

Sign for the property

\_\_\_\_\_

Notification to Foundation's insurance carrier

\_\_\_\_\_

Closing

\_\_\_\_\_

Reimbursement by take-out agency for any closing costs or other expenses

## Appendix L

### Checklist for Buy and Hold Transactions

Land Project: \_\_\_\_\_  
(Name of Landowner)

\_\_\_\_\_  
(Location and Acreage)

\_\_\_\_\_  
(Take-Out Agency)

\_\_\_\_\_  
(Project Coordinator)

\_\_\_\_\_  
(Project Start Date)

Date Completed:

- \_\_\_\_\_  Letter of intent to sell (from the landowners)
- \_\_\_\_\_  Letter of intent to repurchase the property and pay fees and expenses (from the take-out agency)
- \_\_\_\_\_  Appraisal
- \_\_\_\_\_  Loan commitment (if necessary)
- \_\_\_\_\_  Phase I Environmental Assessment
- \_\_\_\_\_  ALTA Survey (either ordered new or accepted if within 1 year)
- \_\_\_\_\_  Title policy (equal to appraised value); names The Conservation Foundation as insured
- \_\_\_\_\_  Foundation Board resolution approving purchase and authorizing Staff to execute documents
- \_\_\_\_\_  Lease agreement with take-out agency granting immediate access for management purposes
- \_\_\_\_\_  Press release
- \_\_\_\_\_  Sign for the property
- \_\_\_\_\_  Notification to Foundation's insurance carrier
- \_\_\_\_\_  Closing with landowner
- \_\_\_\_\_  Reimbursement by take-out agency for any fees, closing costs or other expenses
- \_\_\_\_\_  Closing with take-out agency

## Appendix M

### Checklist for Land Acquisition Transactions

Land Project: \_\_\_\_\_  
(Name of Landowner)

\_\_\_\_\_  
(Location and Acreage)

\_\_\_\_\_  
(Project Coordinator)

\_\_\_\_\_  
(Project Start Date)

Date Completed:

- \_\_\_\_\_  Letter of intent to sell (from the landowners)
- \_\_\_\_\_  Appraisal
- \_\_\_\_\_  Loan commitment (if necessary)
- \_\_\_\_\_  Phase I Environmental Assessment
- \_\_\_\_\_  ALTA Survey (either ordered new or accepted if within 1 year)
- \_\_\_\_\_  Title policy (equal to appraised value); names The Conservation Foundation as insured
- \_\_\_\_\_  Management plan with estimated costs
- \_\_\_\_\_  Property defense fund (including funds for annual monitoring as well as legal defense)
- \_\_\_\_\_  Foundation Board resolution approving purchase and authorizing Staff to execute documents
- \_\_\_\_\_  Press release
- \_\_\_\_\_  Sign for the property
- \_\_\_\_\_  Notification to Foundation's insurance carrier
- \_\_\_\_\_  Closing with landowner

## Appendix N

### Natural Areas Assurance Program for Developments

The Natural Areas Assurance Program for Developments provides assurance to the municipality, the regulators, the future occupants and the community that the natural areas and open space within the development is protected from further development and that the natural resources and functions will be maintained forever.

Increasingly, land that contains important natural features is being considered for development. Some of this land has conservation values that need to be protected. On the other hand, some contain degraded or virtually non-existent natural environments. *We believe that the development process offers a wonderful opportunity to protect and restore natural areas.* In other words, our interest in working with developers is to be able to *increase* the conservation values of the natural areas within the development and to educate new homeowners on the environment.

To participate in the Natural Areas Assurance Program:

- The conservation easement will be tailored to protect the specific natural values and functions of the land.
- An easement defense fund is required. This fund will pay the annual costs of monitoring the easement and the costs to defend the conservation easement, if necessary, in court. We will consider the easement area's size, complexity and risk when assigning a value for the fund. This is typically paid by the developer prior to obtaining permits.
- A fund of \$10,000 is required upfront to pay for The Conservation Foundation's legal costs to establish the conservation easement. If TCF's legal bills are less than \$10,000, a refund will be made for the difference. If TCF's legal bills are greater than \$10,000, no additional funds will be required from the developer.
- Management (and restoration if necessary) in order to bring the entire conservation easement area up to a sustainable level (Floristic Quality Assessment Index of 35+) is required.
  - This restoration, typically funded by the developer, will cover all existing and created natural areas.
  - The Landscaping Plan and Short-Term Management Plan for this period will be reviewed and approved by TCF.
  - There needs to be coordination between contractor responsible for the restoration of the natural area and any other construction or landscaping that is done within the development.
- We require ongoing, fully-funded maintenance and management in accordance with a Long-Term Management Plan that will be part of the easement document.
  - The funding could be accomplished through a one-time endowment, transfer fees, a specially-dedicated Special Service Area tax, or separate, dedicated assessments on the lot owners deposited into an account controlled by TCF expressly for ecological management activities. TCF's educational efforts and contract management will be part of this funding arrangement. TCF will hire appropriate, qualified contractors, when needed, to carry out ecological management activities.
  - The Long-Term Management Plan (including a 5-year cycle of site evaluation, management recommendations, and bidding process) will be reviewed and approved by TCF.

- Placement of buildings will allow proper management techniques (i.e, burning, herbiciding, etc.).
- Preferred ownership of the conservation easement parcel is with an appropriate public agency or private conservation organization.
- A boundary marking plan will need TCF approval. In general, conservation easement boundary corners will be clearly marked with permanent monumentation; lengths in excess of 250 yards shall have additional monuments for each 250 yard stretch. An electronic spatial file for the easement area with accompanying metadata, along with paper drawings, will be furnished to TCF.
- TCF will be the ecological manager of the vegetation only; trail and stormwater infrastructure maintenance will remain with the property owner.
- Property owner governance documents must address the perpetuity and management of the natural areas.
- Characteristics of the land and circumstances may necessitate other requirements.

It is our hope that, through these activities, we can all achieve a more beautiful, healthy environment for your community. Call Dan Lobbes (630) 428-4500, extension 201 for further information.

