

The ABCs of Conservation Restriction Stewardship

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Today's session

- Introductions
- [*Land Trust Standards and Practices*](#)
- CR Stewardship – Standard 11
- Best practices by element
- Questions



The Land Trust Alliance

The Land Trust Alliance is a national land conservation organization working to **save the places people need and love** by strengthening land conservation across America.



Dartmouth Natural Resources Trust (DNRT)

To preserve and protect
Dartmouth's natural resources
for people and nature, forever.

DNRT preserves habitat for
birds and other wildlife, saves
farmland that provides locally
grown products, and protects
beautiful natural areas for the
public to enjoy.



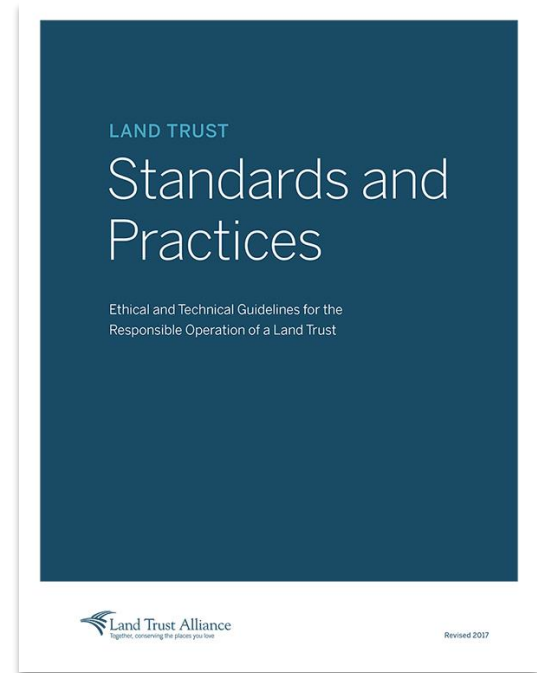
Land Trust Standards and Practices

The ethical and technical guidelines for the responsible operation of a land trust

- But, **why?**
- To maintain the land trust community's strength, credibility and effectiveness
- Sustainable organizations rely on written documentation, policies and procedures, and financial stability
- Collective wisdom of 1,000 land trusts
- The surest way to lasting conservation

Land Trust Standards and Practices

- **First created in 1989**
- **Updated in 1993, 2001, 2004 and 2017**
- **2017 update**
 - Received 1,600 comments
 - Advisory review team comprised of land trust professionals from across the country
 - Focuses on those practices that apply broadly to the land trust community
 - Available as online resource



12 Standards

Governance



- Ethics, Mission and Community Engagement
- Compliance with Laws
- Board Accountability
- Conflicts of Interest

Strong Organizations



- Fundraising
- Financial Oversight
- Human Resources

Land Protection



- Evaluating and Selecting Conservation Projects
- Ensuring Sound Transactions
- Tax Benefits and Appraisals

Stewardship



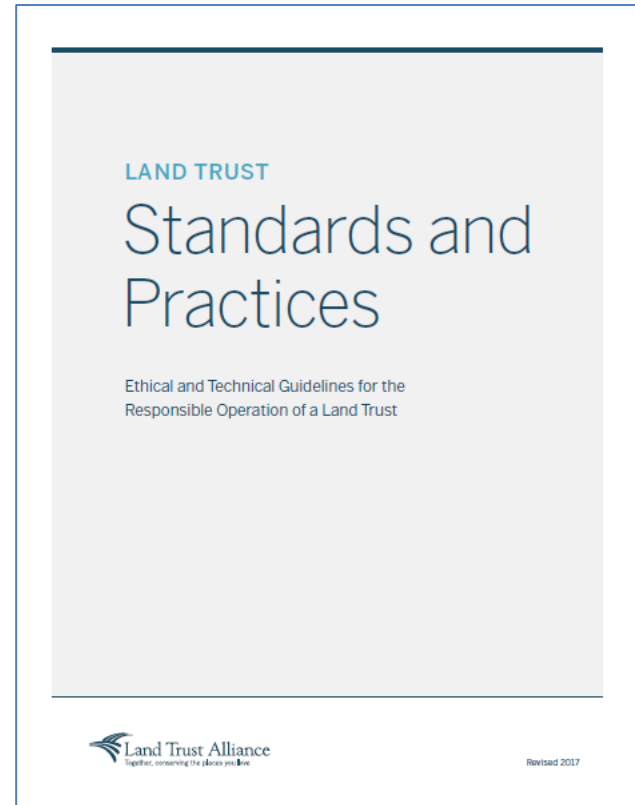
- Conservation Easement Stewardship
- Fee Land Stewardship

Land Trust Standards and Practices

Resource Center:

[Land Trust Standards and Practices](#)

- Accreditation indicator element
- Terrafirma enrollment prerequisite
- ▲ Required for both





Terrafirma Risk Retention Group LLC is a unique charitable risk pool for conservation organizations that helps its members uphold the promise of lasting conservation.

One-of-a-kind coverage to offset the costs of legal action to defend conservation easements and land owned by a land trust.

Traditional liability insurance can help pay your legal costs if someone sues you. But what if you need to defend your preserves or conserved land?

LAND TRUST ACCREDITATION COMMISSION

An independent program of the Land Trust Alliance

- Voluntary process to demonstrate implementation of *Land Trust Standards and Practices*
- Awarded to land trusts meeting highest national standards for excellence and conservation permanence
- Rigorous review process to demonstrate fiscal accountability, strong organizational leadership, sound transactions and lasting stewardship



Questions?



Conservation Restriction Stewardship

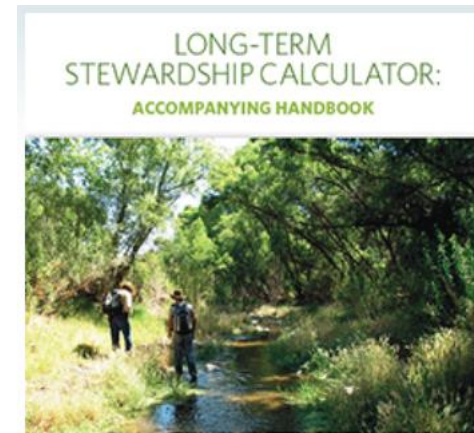
- Land trusts have a program of responsible stewardship for their conservation restrictions
- Standard 11
- 10 Practices
- *Italic text in the following slides means this is not the exact wording, only a summary.*
- Refer to the Standards for exact language



11A. Funding Conservation Easement Stewardship

1. Estimate the long-term expenses for each transaction
2. Track stewardship and enforcement costs

LONG-TERM STEWARDSHIP COSTS CALCULATOR				NOTE: Enter values in blue-shaded cells, click on individual Tasks and Descriptions for additional guidance.		
3	Project Name:	Acres:	State (or state equivalent):	Country:	Prepared by:	Date:
6	Unit Cost Estimates:					
		Quantity	Units	Cost		
8	Regular staff hourly rate (inc benefits)		hour	\$ -		
9	Short-term staff hourly rate (inc benefits)		hour	\$ -		
14	Click + to the left to expand additional hourly rates (see instructions below).					
15	Travel Costs:					
16	Mileage OR cost (round-trip)		miles	\$ -		
17	Mileage rate		0.54	\$/mile		
18	Vehicle Travel Cost			\$ -		
19	Overnight lodging cost (per night)		\$ -	\$/night		
20	Per diem (meals)		\$ -	\$/day		
22	Additional Rates:					
23	Capitalization rate		0.00%			
24	% of annual costs covered by fund (50% or 100%)		100%			
25	Contingency (10-20%)					
26	Administrative (recommended min 10%)					
28	Instructions:					
29	To expand additional hourly rates, the sheets must be unprotected (on the Review tab, click Unprotect Sheet). Then click the + to expand the hourly rates. Note this					
30	unprotects cells with formulas - take care not to inadvertently change formulas.					
31						
32	Rows may be copied and pasted where needed to add additional tasks. To copy and paste, select the rows by clicking on the row numbers on the left side (to					
33	select multiple rows, click and drag the cursor down). Right-click the selected rows and choose "Copy." Select and right-click on the row above which you want to					
34	paste the copied rows, then choose "Insert Copied Cells." After pasting, check subtotal formulas to make sure pasted rows are included in the sums.					
35						
36						
37	After all costs have been estimated for all necessary tasks, rows for unused tasks may be deleted.					
38						
39	Do not delete columns.					



11B. Baseline Documentation Report



1. *Each CR must have a baseline (BDR) with descriptions, maps, and photographs, that documents the conservation values (B.1.a) and relevant conditions necessary to monitor and enforce the CR (B.1.b)*



Baseline Documentation Report (BDR)

2. Prepare the report prior to closing and have it signed by the landowner and land trust at or prior to closing
 - a) *If seasonal conditions prevent the completion of a full BDR by closing, the landowner and land trust sign a schedule for finalizing the full report and an acknowledgement of interim data*
3. *Document significant changes in an appropriate manner, such as monitoring report, baseline supplements, or current conditions report.*

Baseline Documentation Report/File (BDF)

Baseline Summary Sheet

Written description of existing conditions and conservation values that are highlighted in Conservation Restriction.

Land use & topography

Natural resources (vegetation types, water bodies,
geologic features, vernal pools, wildlife)

Roads/trails

Buildings/structures

Landscape areas/cut vistas

Other



Baseline Documentation File (BDF)

Maps

Highlight natural resources

Include the basics!

Generate with GIS – ArcMap or Mass Mapper

Aerial – leaf-off, date

Assessor's

Wetlands

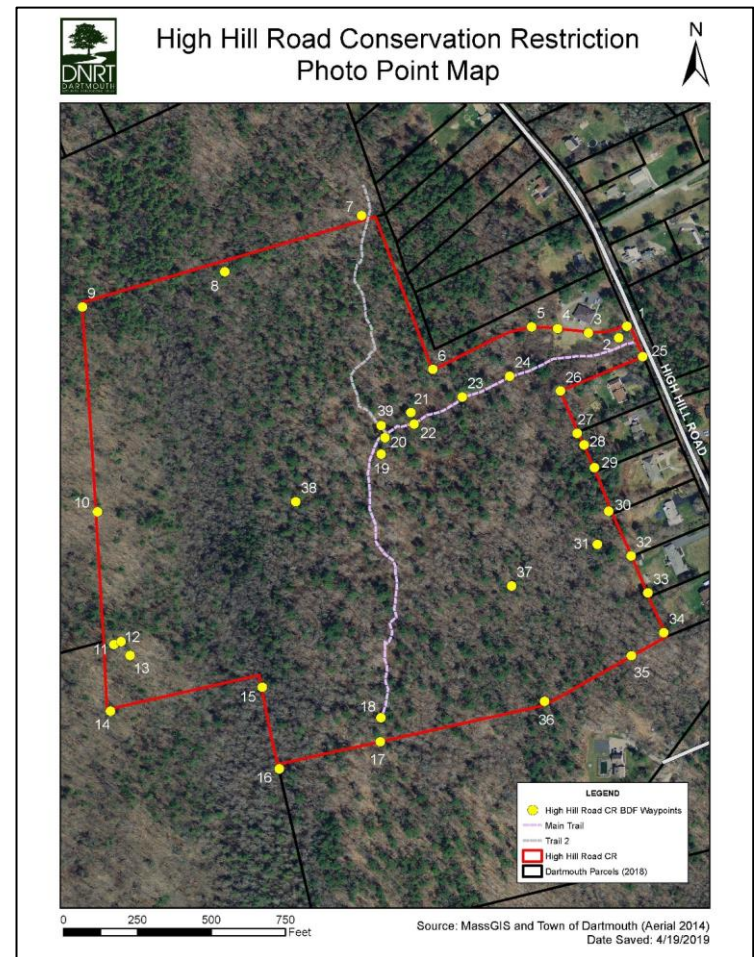
Soil

Topo

NHESP

Proximity to Open Space

Photo Point



Baseline Documentation File (BDF)

Photos

Winter or early spring

Boundaries – 8 per waypoint

Boundary markers – close & distance

Conservation values/natural features
(meadow, vernal pool, bedrock outcrop)

Manmade features (roads, trails, shed, well,
building envelope)

Existing issues

Photo descriptions

Completed BDF

3 hard copies, 1 electronic

Landowner signature



High Hill Road Conservation Restriction

Baseline Documentation Photos

March 18-19, 29, 2019

Photographs and Captions by: Leah Howard

GPS Waypoint	Photo #	Direction	Description
31	249	NE	In the CR near the eastern boundary, characterizing the interior of the CR.
31	250	E	In the CR near the eastern boundary, characterizing trail leading from 151 High Hill Road.
31	251	SE	In the CR near the eastern boundary, characterizing brush pile in the CR from 151 High Hill Road.
31	252	S	In the CR near the eastern boundary, characterizing brush pile in the CR from 151 High Hill Road.
31	253	SW	In the CR near the eastern boundary, characterizing brush pile in the CR from 151 High Hill Road.
31	254	W	In the CR near the eastern boundary, characterizing brush pile in the CR from 151 High Hill Road.
31	255	NW	In the CR near the eastern boundary, characterizing the interior of the CR.
32	256	N	On the eastern boundary of the CR, looking into 151 High Hill Road yard.
32	257	NE	On the eastern boundary of the CR, looking at 151 High Hill Road to the left and 143 High Hill Road to the right.
32	258	E	On the eastern boundary of the CR, characterizing 143 High Hill Road shed and yard.
32	259	SE	On the eastern boundary of the CR, looking down the CR boundary line with 143 High Hill Road shed and yard to the left and CR to the right.
32	260	S	On the eastern boundary of the CR, looking into the CR.
32	261	SW	On the eastern boundary of the CR, looking into the CR.
32	262	W	On the eastern boundary of the CR, looking into the CR.
32	263	NW	On the eastern boundary of the CR, looking down the CR boundary line with the CR to the left and 151 High Hill Road yard to the right.
33	264	N	On the eastern boundary of the CR, looking into 143 High Hill Road yard characterizing house and shed.
33	265	NE	On the eastern boundary of the CR, looking into 143 High Hill Road yard characterizing the house.
33	266	E	On the eastern boundary of the CR, looking into 135 High Hill Road property.
33	267	SE	On the eastern boundary of the CR, looking down the CR boundary line with 135 High Hill Road to the left and the CR to the right.
33	268	S	On the eastern boundary of the CR, looking into CR.
33	269	SW	On the eastern boundary of the CR, looking into CR.
33	270	W	On the eastern boundary of the CR, looking into CR.

11C. Conservation Easement Monitoring

1. *Adopt written policy and/or procedures for monitoring*

2. Monitor each conservation easement property at least once per calendar year

a) *If monitoring aerially, conduct on-the-ground monitoring at least once every five years*

b) *Promptly document annual monitoring*



Discover changes in land ownership



See if the easement is effective



Uncover violations



Save time and money on enforcement



Establish a record in case of court action



Develop a relationship with the landowner

Conservation Easement Monitoring

Written Policy

Created during accreditation application

Covers BDF creation, monitoring, and enforcement

How often monitored

Landowner notification

What happens to completed reports

What happens if property changes hands

Approved by DNRT Land Management Committee &
Board of Directors



DNRT Conservation Restriction Baseline Documentation, Monitoring, and Enforcement Policy

Approved by the Land Management Committee, April 2013

Approved by the Board of Directors, April 2013

Revised: November 18, 2013

Approved by the Land Management Committee, December 4, 2013

1. Baseline Documentation

Before a Conservation Restriction is recorded, a thorough baseline documentation report (BDR) of the property shall be prepared, consistent with current professional guidelines for BDRs (as outlined in The Conservation Easement Handbook, published by the Land Trust Alliance), but at a minimum including:

1. topographic and soil map
2. assessor's map
3. relevant plans of land
4. ground monitoring photos of existing conditions, photo locator map and photo descriptions
5. aerial photo
6. CR summary and abstract
7. Written report detailing the condition of the restricted property and its conservation values.

The BDR shall be signed by DNRT, any other grantee, and the grantor(s) as an accurate representation of the property on the date of the recording of the restriction. The grantor(s) will be provided with a copy of the BDR and a second DNRT copy will be stored off-site.

After the BDR has been created, the in-office version that will be added to over time will become known as the Baseline Documentation File (BDF). DNRT shall keep a field copy of the entire BDF in the office, and a second copy off-site. The BDF shall be reviewed at least annually and be updated when new data becomes available (e.g., new monitoring reports, new aerial photos, new soil maps, etc.). Assessor's records shall be monitored for change of ownership.

2. CR Monitoring

- DNRT shall undertake regular monitoring visits at a rate of no less than one visit per year.
- Landowners will be notified and invited to accompany the monitor.
- Monitoring inspection reports will be filed in the BDF for the respective CR in DNRT's files, as well as the BDF off-site.
- Landowners will be provided with a copy of the report only in the event there is a violation confirmed by the Land Manager.
- When a CR property is transferred, DNRT will contact the new owner(s), introduce them to DNRT, review the CR terms with them, and explain DNRT's monitoring procedure. A copy of the BDF will be provided to them if they were not provided it by the previous owner.

3. CR Enforcement

- DNRT will enforce the terms of its conservation restrictions and take necessary steps to see that violations are remedied.
- DNRT will address all potential violations, no matter how minor, but will maintain perspective and keep its response proportional to the severity and circumstances of the violation. DNRT will make every effort to maintain a good working relationship with the CR landowner.

Conservation Easement Monitoring

Monitoring Visits

Annual

Conducted by volunteers, staff, and contractor

Volunteer training (GPS, plans of land, photos, report)

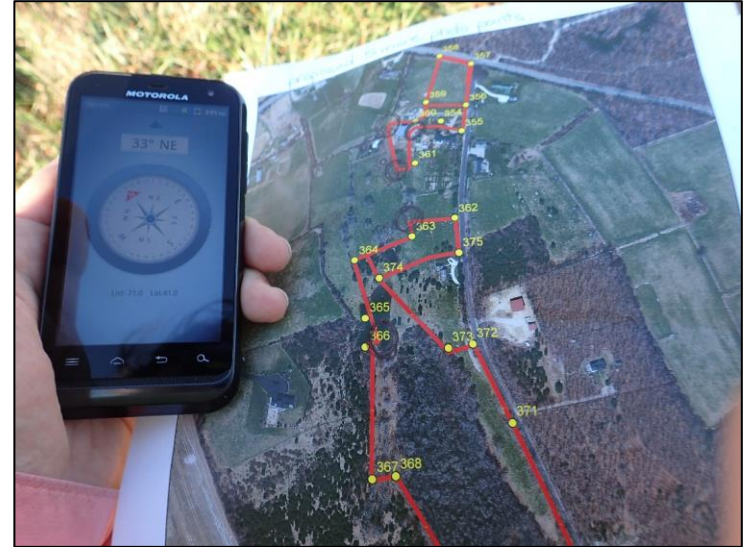
January – May

Reports submitted to DNRT by May 1

3 copies of everything (electronic, office, off-site)

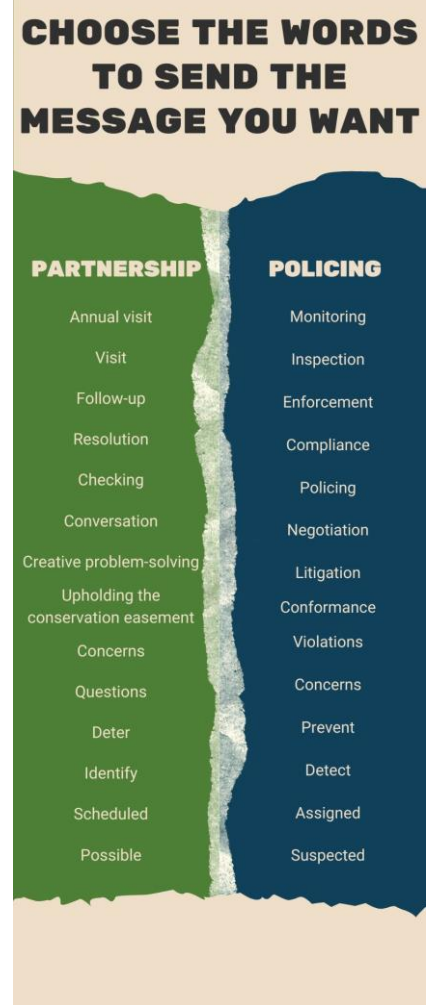
Properties with no issue get letter

Try to respond to issues as they come in



11D. Landowner relationships

1. Maintain regular contact with owners of conservation easement properties to maintain relationships and avoid potential easement conflicts
2. Establish systems to track changes in land ownership
3. *When the property changes hands, attempt to meet with the new owner and provide information in writing about the CR and the land trust's stewardship policies and procedures*



Landowner Relationships

Maintaining Regular Contact

~75% of CR landowners are DNRT members or collaborative partner organizations

Annual outreach from monitor

Periodic communication of things of interest

Women on the Land programs

Occasional DNRT workshops

Newsletter – Some day!



Landowner Relationships

Tracking Ownership Changes

CR requires notice, but rarely followed

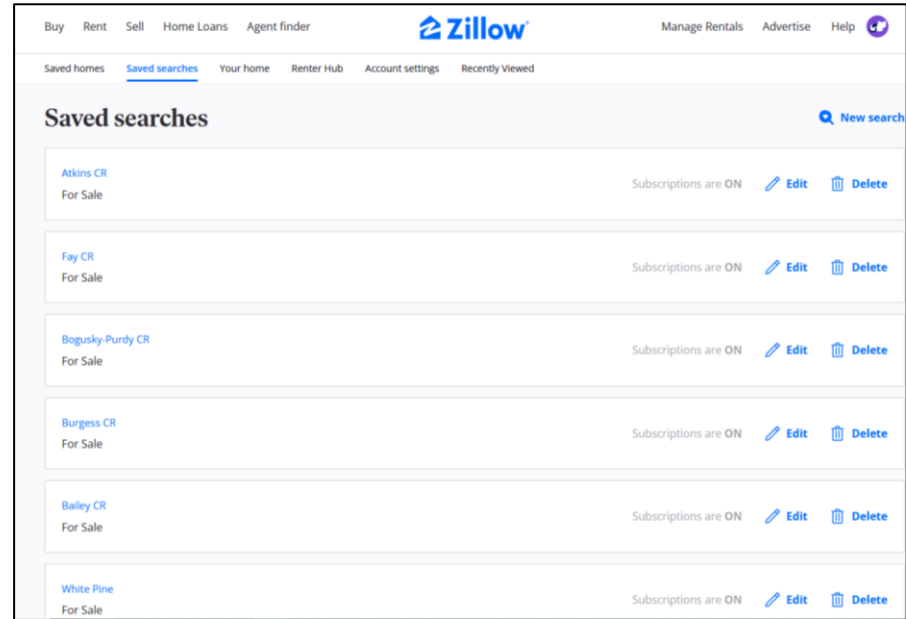
Monitor inquires annually about plans to sell

Obituaries

Assessor's maps online = too slow

On-the-ground network volunteers & members

Zillow alerts



Landowner Relationships

Property Transfers

Most still under original grantor or family

All new owners receive updated BDF

Maps

Approved requests

Contact info

Meet to review

Require approval signature



11E. Conservation Easement Enforcement

1. *Adopt a written policy and develop written procedures for documenting and responding to potential violations*
2. Investigate potential violations in a timely manner and promptly document all actions taken
3. Involve legal counsel as appropriate to the severity of the violation and the nature of the proposed resolution



**Philosophy
on
Easement
Violation**



**Assessment
of Severity**



**Possible
Responses**



**Mitigating
Circumstances**

Conservation Easement Enforcement

Written Policy

Determines if a violation exists

Technical

Minor

Major

Levels of appropriate enforcement action

Enforcement Action

Contact landowner

Site visit from Land Manager

Work toward resolution

Legal counsel if necessary

Lawsuit = last resort!



11F. Approvals and Permitted Rights

1. *Respond to landowner requests for interpretation or approvals in a timely and consistent manner as specified in the CR deed or written procedure*
2. Establish written procedures to guide the land trust's decision-making if using discretionary approvals or if conservation easement deeds contain such clauses
3. Maintain a permanent record of all notices, approvals, denials, interpretations and the exercise of any significant permitted rights



Approvals and Permitted Rights

Written Policy

Covers discretionary approval process

Approval Requests

Requests *must* be in writing

Usually ~60 days to approve

Review CR

Consult Land Management Committee
& attorney as needed

Site visit

Written approval/denial

1 copy to landowner

3 copies for DNRT



11G. Contingency Strategy

1. Take reasonable steps to provide for the disposition of conservation easements in the event the land trust ceases to exist or can no longer steward and administer them



11H. Amendments

1. *Adopt and follow a written policy or procedure addressing conservation easement amendments that is consistent with the [Land Trust Alliance Amendment Principles](#)*



11I. Condemnation

1. If a conservation easement is threatened with condemnation,
 - a) Take steps to avoid or mitigate harm to conservation values and document the actions taken
 - b) Have or obtain appropriate documentation of the percentage of the full value of the property represented by the conservation easement
 - c) Document the land trust's attempts to receive its proportional share of the proceeds and use any proceeds in a manner consistent with the conservation easement deed



11J. Partial or Full Extinguishment

- a) In the rare case that it is necessary to extinguish a conservation easement, in whole or in part,
- b) Follow the terms of the conservation easement with respect to taking appropriate action, and obtain judicial or regulatory review when required by law or specified in the easement deed
- c) Ensure there is no private inurement or impermissible private benefit
- d) Take steps to avoid or mitigate harm to conservation values and/or use any proceeds in a manner consistent with the conservation easement deed
- e) Consider the land trust's actions in the context



Resources - webinars

- [Title Review: What Land Trusts Need to Know](#) – March 14
- [Orienting New Landowners to Their Easements](#) – March 21
- [Managing the Transition from Acquisition to Stewardship](#) – March 23
- [Dealing with Requests for Approval and Amendment](#) – March 28
- [Tree Troubles – Addressing Illegal Timber Harvesting](#) – April 3
- [Solar Energy Siting: The Right Power in the Right Place](#) – April 4

Acquisition and stewardship peer group

We have a new peer group for you!

- Join your land and conservation easement acquisition and stewardship peers across the Eastern U.S. to expand your knowledge and skills and find a place for support — sharing your successes and seeking solutions to your challenges.
- Online and virtual components: Learning circles (training and discussion), regional network building, roundtable discussions.
- Beginning in April and running for 15 months.
- The Land Trust Alliance, the Alliance of North Florida Land Trusts, Gathering Waters: Wisconsin's Alliance for Land Trusts, the Partnership for Gulf Coast Land Conservation, and Prairie State Conservation Coalition are joining forces to a new round of peer learning.
- Learn more and apply [here](#).

Questions?



Thank you!

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