

TRUST...then Verify

Protecting the integrity of land transactions in a partnership

A land transaction is only as good as the paper it's recorded on. Such is the lesson drawn from a recent *New Hampshire Union Leader* column titled "Missing Easement Opens Protected Manchester Area to Development." The article explained how a conservation easement, which should have preserved an undeveloped area enjoyed by both fishermen and bald eagles on the Merrimack River, was drafted but never properly signed and recorded. As a result, docks are being constructed along that part of the river—development that would have been prevented by the easement had the city and state partners who drew it up done the job right.

Any land trust entering into a land transaction with a municipality, public-private organization or fellow land trust should take heed.

"When working with partners, *Land Trust Standards and Practices* still applies to all land and easement projects, particularly recordkeeping," says Melissa Kalvestrand, review manager for the Land Trust Accreditation Commission. "If you don't have copies of final documents in your files from the transaction, those documents may as well not exist."

She offers the following guidance for land trusts looking to enter into land and easement partnership projects with both eyes—and the Commission's *Requirements Manual*—open. While all of the standards and practices are important to follow during transactions, the following are especially relevant when working in partnership.

1. Regardless of your partner's goals, ask key questions about the project. For instance, does it meet your project selection criteria? Mission? Capacity? Document your review. **(Practices 8B**

and 8D from Land Trust Standards and Practices)

2. Even in a partnership, your land trust board must document its review and approval of the transaction. **(Practice 3F)**
3. You don't need to obtain separate title investigation, but secure a copy from your partner to review and keep. **(Practice 9H)**
4. When your land trust buys land or easements with a partner, either can obtain the appraisal—just ensure you keep a copy. **(Practice 9J)**
5. In a donation or bargain sale where the landowner takes a tax deduction, keep a copy of the landowner's appraisal and retain a copy of the Form 8283 for your files (even if signed by your partner only). **(Practice 10B)**
6. Review the conservation easement deed and work with your partner to ensure it includes basic required elements—and is signed and recorded. **(Practice 9E)**
7. Work with your partner to ensure the baseline documentation report includes

all required contents and is signed by the landowner at closing. Keep a copy. **(Practice 11B)**

8. When the project is done, the landowner should receive an acknowledgment letter for gifts of land and conservation easements valued at more than \$250. You should either send the acknowledgment letter yourself or obtain a copy from your partner. **(Practice 5A)**
9. If the conservation easement is coheld, all partners are expected to individually meet the funding requirements for stewardship. **(Practice 11A)**
10. Always maintain a record of annual monitoring of conservation easements, even if you must secure a record of your partner's monitoring activities for your files. **(Practices 11C and 9G)**

Sylvia Bates, Land Trust Alliance director of standards and research, recommends that land trusts entering into a partnership transaction have a written agreement that clearly spells out responsibilities for each party along the way, asking such questions as who will be responsible for each task? How will disagreements be resolved? How will records be shared? "It's the philosophy of trust but verify," says Bates. "Doing your own due diligence and maintaining your own permanent records are key to ensuring the perpetuity of your work." 

KIRSTEN FERGUSON IS A FREELANCE WRITER/EDITOR AND CAN BE REACHED THROUGH WWW.KIRSTENFERGUSON.COM.