



UPPER PENINSULA LAND CONSERVANCY

Policy 8D: Public Benefit of Land Transactions

Standard 8, Evaluating and Selecting Conservation Projects

2017 Land Trust Alliance Standards and Practices;

2021 Accreditation Requirements Manual

Board Approved: **June 10, 2014**

Board Revision Approved: April 12, 2022

PURPOSE

The purpose of this policy is to ensure that every conservation transaction provides adequate and appropriate public benefit. This policy outlines requirements for accompanying procedures, so that they align with Land Trust Alliance Standard 8B.3:

8B. Project Selection Criteria and Public Benefit

- 1. Develop and implement a written process to select land and conservation easement projects*
- 2. Develop and apply written project-selection criteria that are consistent with the land trust's conservation priorities*
- 3. Document the public benefit of every land and conservation easement project*

INTRODUCTION

Land trusts are organized as nonprofit, tax-exempt public charities under Section 501(c)(3) of the Internal Revenue Code and thus are required by law to operate in a manner that provides a public benefit in every conservation project they complete. Because landowners may receive substantial tax benefits as the result of a transaction with a land trust, land trusts must justify this expenditure of public funds by operating in a manner that clearly benefits the general public. Ensuring that every conservation project provides a public benefit is critical to land trust operations.

A failure to adopt and implement procedures and policies to ensure that each and every transaction the Conservancy completes provides a significant public benefit risk the loss of charitable status and the loss of the community's support. Understanding the Internal Revenue Code provisions applicable to conservation transactions and adopting procedures that ensure that policies, procedures, and actions meet all federal, state and local requirements for public benefit and comply with charitable trust laws is critical to operating in a legal, ethical and professional manner.

REFERENCES

Please refer to the accompanying Procedural Template Document, Procedure 8B.3: Documentation of Public Benefit for Land Transactions, for guidelines regarding execution of this policy.



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POLICY

Summary:

It is the policy of the Upper Peninsula Land Conservancy (UPLC) to ensure that all conservation transactions provide significant and appropriate public benefit and does not convey impermissible private benefit. All transactions must meet, at minimum, the Internal Revenue Code “conservation purposes” test of the Treasury regulations set forth in Section 1.170A-14(d)(1) and shall ensure:

1. *IRC, state, local municipal codes for public benefit shall be integrated into the project selection criteria,*
2. *Impermissible private benefit shall not occur,*
3. *Documentation of significant public benefit to be kept on permanent record.*

Meeting Regulations

When making taxation determinations, local and federal entities will examine land transactions for meeting the test of *significant public benefit*. All land transactions should meet and document how they meet one or more of the following factors that are considered *of significant public benefit*.

The project should meet, at bare minimum, one or more of the following: **IRS Criteria providing public benefit - IRC 170(h):**

1. Protection of a relatively natural habitat for fish, wildlife or plants, or similar ecosystems; or
2. The preservation of an historically important land area or certified historic structure; or
3. 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 policy that will yield a significant public benefit; or
4. Outdoor recreational or educational use by the general public.

How the project meets the IRC Code above should be considered in light of the project’s qualities including one or more of the following:

- The uniqueness of the property to the area
- The intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development);
- The consistency of the proposed open space use with public programs (whether federal, state or local) for conservation in the region, including programs for outdoor recreation, irrigation or water supply protection, water quality maintenance or enhancement, flood prevention and control, erosion control, shoreline protection, and protection of land areas included in, or related to, a government approved master plan or land management area;
- The consistency of the proposed open space use with existing private conservation programs in the area, as evidenced by other land protected by easement or fee ownership by nonprofit organizations in close proximity to the property;



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- The likelihood that development of the property would lead to or contribute to degradation of the scenic, natural or historic character of the area;
- The opportunity for the general public to use the property or to appreciate its scenic values;
- The importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;
- The likelihood that the conservancy will acquire equally desirable and valuable substitute property or property rights;
- The cost to the conservancy of enforcing the terms of the conservation easement;
- The population density in the area of the property; and
- The consistency of the proposed open space use with a legislatively mandated program identifying particular parcels of land for future protection.
- Does the project support local, regional or statewide conservation plans, national designations, or similar goals?
- By protecting this particular property, will you further other state laws, local master or comprehensive plans, scenic highway plans, watershed protection strategies, national designations, etc.?
- For easements purchased using local, state or federal dollars, does the project satisfy the requirements for use of such funds?

Avoiding Impermissible Private Benefit

Public benefit is also defined in part as what it is not — a conference of impermissible private benefit. Charitable organizations qualified under section 501(c)(3) of the Internal Revenue Code are prohibited from conferring any benefit that constitutes private inurement or an impermissible amount of private benefit.

Documentation of Public Benefit

Given the seriousness of ascertaining whether or not a potential conservation project will result in a public benefit, UPLC Staff must document in writing the presence or absence of a public benefit. Simply stating a public benefit exists will not suffice. As part of the project selection process, the board must make findings consistent with the law on the subject and memorialize those findings in writing in written minutes of a board meeting. Finally, it is important to document the reasons why a particular transaction provides a public benefit in the conservation easement deed itself. The Lands Program Manager will create a procedural and template document to ensure consistency of documentation across projects.

REVISIONS

This policy should be reviewed by the Stewardship Committee on an annual basis. Any amendments must be approved by vote of the Board of Directors (Board) and will require a simple majority to be changed.





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This policy may be amended or repealed, and new related policies may be adopted, from time to time by the Board of UPLC, except that no change in the policies will affect obligations accepted by the Conservancy for funds or properties donated prior to the change, unless such change is approved in writing by the donor or donors of such properties, interests, or funds.

The Board may make reasonable exceptions to the policy in particular cases by Board vote with simple majority, and will document the reasons accordingly in the minutes of the meeting where the decision was made and copies will be placed within the appropriate files in accordance with Recordkeeping policies.