

Upper Peninsula Land Conservancy
Acceptance and Sale of Non-Conservation Land
Part of LTA Standard 8

Board Approved: 13 June 2016

UPLC may acquire and transfer to other owners non-conservation lands (a.k.a., trade lands) that do not meet the project selection criteria (see Project Selection Criteria, LTA Standard 8). UPLC may sell such donated property and use the cash for its charitable programs, but it must take care in doing so for several reasons:

IRS requirements - Land trusts (as 501(c)(3) tax-exempt organizations) are prohibited from transferring assets for less than fair market or bargained-for (arms-length transaction) value to any other individual or organization except another 501(c)(3) organization or government agency.

Public trust doctrine - Land trusts are deemed under state law to hold conservation properties in an implied trust for the benefit of the public. Transfer of conservation properties into non-conservation uses could be considered adverse to the public interest.

Public image and credibility - Transfers of land or interests in land, may cause credibility problems with donors, funders, government agencies, and other people in the community if they perceive the land trust is not following through on its promises or is acting in a way contrary to its conservation purposes.

For these reasons, UPLC has established these policies for the consideration and approval or rejection of accepting and selling of non-conservation lands:

1. Follow the *Trade Lands Procedure Summary* that outlines the roles and responsibilities of the Stewardship Committee, the Board, the staff, and the donors.
2. Provide for notification of appropriate third parties. Have written documentation of the donor's consent to sell the property as non-conservation land. This will help avoid donor relation problems. It is best to obtain this consent at or before the time of donation. For those properties where the land was acquired in partnership with other conservation organizations or government agencies, UPLC should notify all project partners of its intent to transfer the land, and obtain consent, where appropriate.
3. Define any conditions that must be met for the board to approve such a transfer. Such conditions may include how UPLC markets the property, reviews bids and makes final decisions.
4. The Board of Directors must approve the initial intent to sell non-conservation land and the final sale.
5. Require that the selling price be justified and documented prior to closing. UPLC requires an appraisal or other professional estimate of value for several reasons: (*See Appraisal Policy*)
 - a. To show fiscal responsibility. UPLC should be able to show its members and supporters that it negotiated the best deal possible, given current, local market conditions, for the property.
 - b. To avoid private benefit or inurement. UPLC operates for the public, not private, benefit. (However, UPLC may sell a property below market value, or donate it, if the purchaser is a public agency or other nonprofit charitable organization. Such sales or gifts, when entered into responsibly, are deemed to be in the public interest.)

- c. To substantiate prices in the marketplace. UPLC sales, as well as purchases, also affect the marketplace. UPLC should try to anticipate that effect and thoroughly research market values before committing to a sales price.
 - d. To help in bookkeeping and financial reporting. UPLC needs to establish the property's fair market value for bookkeeping and accounting purposes.
6. Work to sell the asset at or as close to fair market value as possible. UPLC is not required to sell the asset at its appraised or estimated value, but any agreement to sell at substantially less than that value should be based on arm's length bargaining and negotiations, should provide some compensatory non-financial benefit to UPLC, and UPLC should take care that it is not engaging in an excess benefit transaction or private inurement.
7. Market properties prior to sale to ensure a fair price is received for the property. UPLC may put ads in newspapers, UPLC newsletters or other related publications, market the property through the Internet or with targeted mailings, and/or engage the services of a qualified broker.
 - a. UPLC may establish a process to allow for neighbors, or other specific group, to bid on the property. Using an appraisal to establish the minimum bid UPLC will accept, the property may be offered to the neighbor(s) or other identified group. The offeree is given a timeframe in which to respond and, if the minimum bid price is not offered, the property is then offered on the open market.
8. If several offers are acceptable and are equal with respect to conditions and terms of sale, UPLC should accept the highest offer. If acceptable offers differ in price, conditions, or terms, the UPLC 's Board has a duty to select the offer that best achieves the Conservancy's objectives and need not be based solely on price.
9. UPLC is not obligated to accept any offer, even one that meets the trust's exact terms. In all its direct marketing of land UPLC shall reserve the right, for whatever reasons, to reject all offers and withdraw the land from the market, and UPLC shall ensure that any offering of the land for sale by third parties includes a written rendition of UPLC's rights in this regard. However, if UPLC has listed the land with a broker and it rejects an offer that meets the requirements of the listing it may have certain obligations to the broker. An obligation to sell is triggered when UPLC accepts an offer or when the purchaser accepts a counteroffer.
10. File IRS Form 8282 notifying the IRS of the property's transfer if it was received by UPLC within the previous three years as a donation for which UPLC signed the donor's Form 8283.
11. Keep documentation of the approval for transfer and the transfer of the property, such as appraisals, bills of sale, deeds, settlement statements, transmittal letters, and the like. This applies to transfer to UPLC and transfer from UPLC.