



LAND TRUST ALLIANCE
RALLY
2017 **30** YEARS

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Anatomy of a Land Deal

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#RALLY2017



Land Trust Alliance
Eager for conserving the places you love.

Introductions

- ▶ Rick Remington, West Wisconsin Land Trust
- ▶ Kevin Thusius, Ice Age Trail Alliance
- ▶ MaryKay O'Donnell, Land Trust Alliance



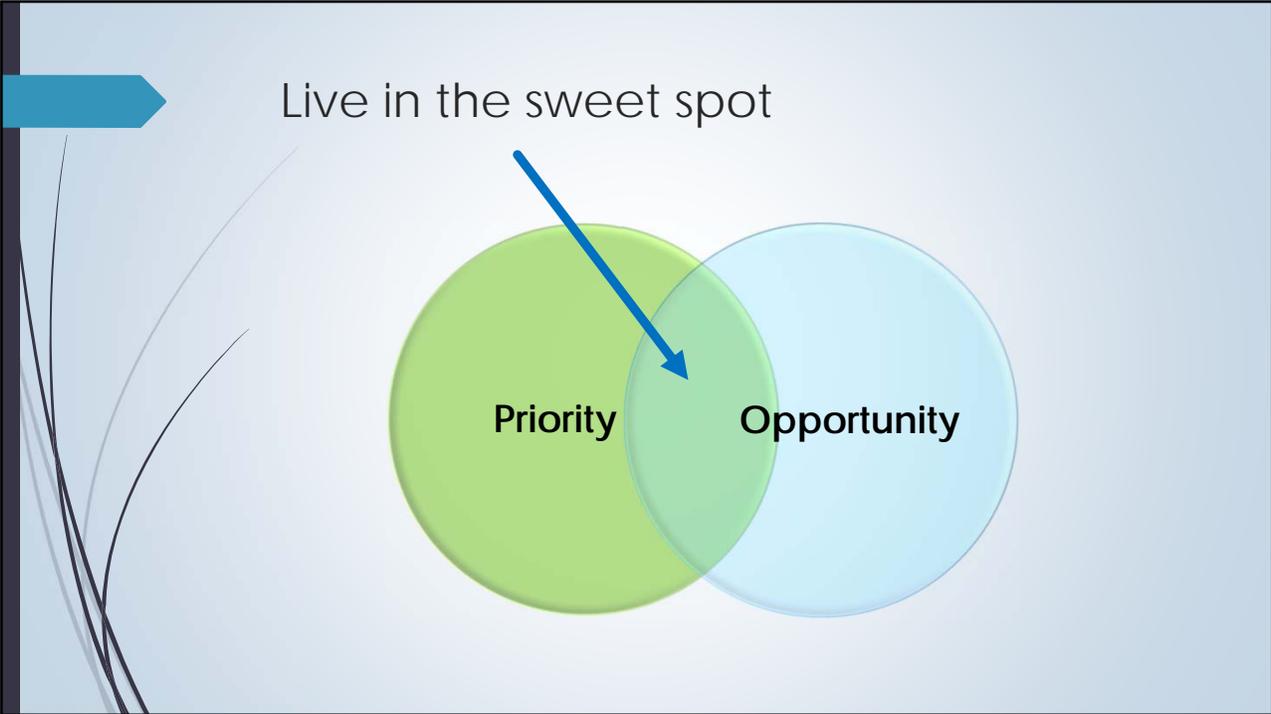
Today's session

- Introduction to the Anatomy of a Land Deal
- Segment one: Learn how a land trust board makes a decision on a land protection project
- Segment two: Discuss troublesome terms for conservation easement restrictions
- Segment three: Principled Negotiations



Introduction

- Land Transactions
- Revised Standards and Practices:
 - 8. Planning (Evaluating and selecting projects)
 - 9. Ensuring sound transactions (Due diligence)
 - 10. Tax Benefits and Appraisals
 - 11. Conservation Easement Stewardship
 - 12. Fee Land Stewardship (Nature preserves, sanctuaries, etc.)
- Need to set up the organization for the long haul to make good on promises of perpetuity
- Land Trusts are moving to being more STRATEGIC





Anatomy of a Land Deal:

This information is in your handouts

- STEPS:
 - Project Initiation
 - Negotiations
 - Due Diligence
 - Stewardship Considerations
 - Closing and Post-Closing



Anatomy of a Land Deal

- **Project Initiation**
 - Landowner Contact
 - Site Visits
 - Evaluation of the property
 - Project Planning



Anatomy of a Land Deal

- **Negotiations**
 - Principled Negotiations
 - Contracts/Options/Agreements
 - Appraisals



Anatomy of a Land Deal

- **Due Diligence**
 - Legal review (with all of the diligence that is due)
 - Title investigation
 - Surveys and determining property boundaries
 - Hazardous materials evaluations
 - Water rights
 - Mineral surveys
 - External factors (surrounding areas, zoning plans, etc.)
 - Evaluations specific to your land trust, this property, or an identified priority (biological inventories if protecting a certain type of habitat, for example)
 - Requirements of funders, agencies, partners, and perhaps meeting fundraising goals
 - If applicable, drafting the conservation easement (also part of negotiations)
 - Address tax benefits – provide information, not advice, to the landowner and evaluate on behalf of the land trust
 - Determine stewardship and enforcement costs (see below)
 - Appropriate approvals by the organization's committees and board

Anatomy of a Land Deal

■ Stewardship Considerations

- Goals
- Funding
 - Calculate routine/annual costs, start up costs, and defense
 - Raise \$ / Identify sources of stewardship and defense funding
- Management Plan for fee owned (within 1 year)
- Baseline Documentation Report for easements (at closing)
- Committee approval

Anatomy of a Land Deal

■ Closing and Post-Closing

- In person is best
- Attorney review
- Recording and tax filing
- Thank you letters
- Form 8283 and Contemporaneous Acknowledgement Letter, if applicable
- Recordkeeping
- Grant reporting
- Partnerships
- Communications
- Begin stewardship
- CELEBRATE!



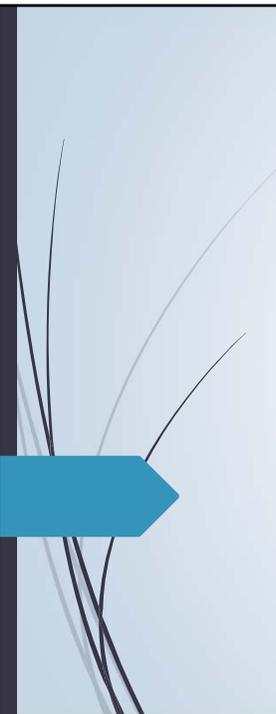
Anatomy of a Land Deal



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Board Approval Process Swan Landing Property



Swan Landing

- Board members were provided information about this project in their board packets which arrived electronically on October 13, 2017 (*pretend*).
- Everyone in the audience is a board member.



Board meeting is called to order

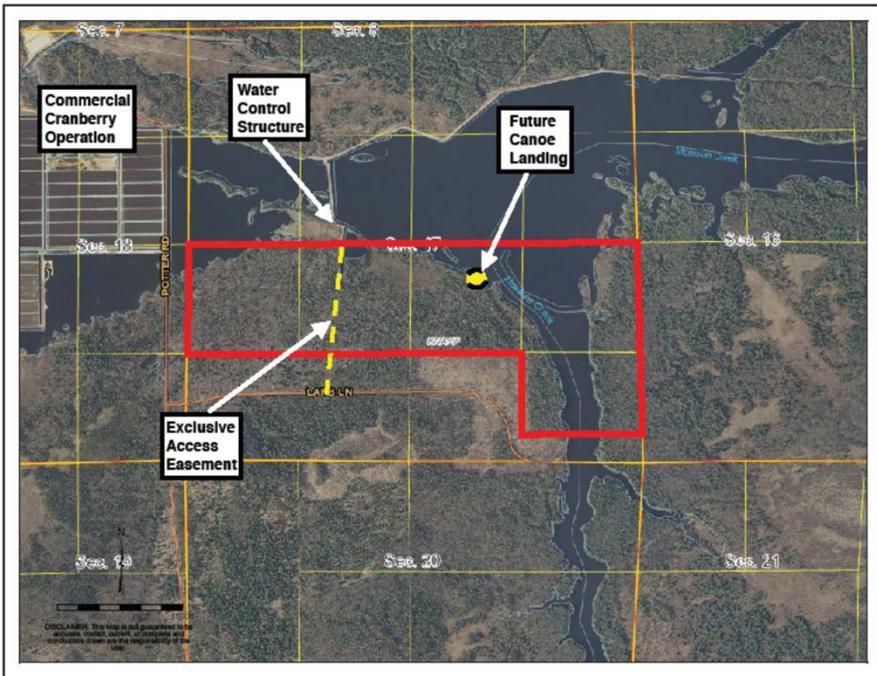
- Has sufficient information been received?
- Are there any *Conflicts of Interest*?
- Presentation by staff
- Board discussion and decision-making



Swan Landing

- The staff members have been on the property several times to evaluate the project against both the land trust's [land protection criteria](#) and its [Strategic Conservation Plan](#).
- The land protection committee has reviewed and vetted this project and is presenting it to the board as a motion for approval.

Swan Landing



Swan Land Project

OVERVIEW:

- The Swan Valley Land Trust has an opportunity to permanently protect 160 acres on Swan Lake, including "Swan Landing"
- The land trust will own and manage this property as a nature preserve with developed public access, include a universally accessible trail and parking area.
- The project is a purchase, and we will need to acquire public and private funding for both acquisition and stewardship costs.

Swan Land Project

OVERVIEW:

- This is our highest priority parcel as identified in our Strategic Conservation Plan which was updated in 2014.
- Owned by a family trust and has been in the family for several generations.
- Willing, conservation-minded sellers
- This is our first opportunity to acquire this land, which has been on our radar screen for close to 20 years.



Swan Land Project - Considerations

- ~160 acres
- Habitat is excellent quality.
- Property is in the heart of land trust's priority area.



Swan Land Project - Considerations

- ~Nesting whooping cranes
(Federally endangered bird)



Swan Land Project - Considerations

- ▶ Located within DNR Conservation Opportunity Area
- ▶ The flowage has a good-quality fishery.



Swan Land Project

- ▶ **Financial considerations:**
- ▶ 25% bargain sale
 - ▶ A "Bargain Sale" is a purchase at below Fair Market Value where the landowner actually donates a portion of the value, which is a charitable contribution.
 - ▶ In this way, we only have to raise 75% of the money to buy the land.
- ▶ \$10,000 stewardship gift from seller.



Swan Land Project

- **Community considerations** - risk assessment pro and con:
 - Knowles-Nelson Stewardship grant will enable/require public access.
 - Currently no public access to water – our plans include development of a public handicapped-accessible canoe launch.
 - Is there a negative economic impact to the local community?
 - There may be public perception that we are taking timber land out of production, even though the property has not been logged since the 1950s.
 - Taking land off of the tax rolls



Risks can be positive or negative



Swan Land Project

- ▶ Risk assessment issues:
 - ▶ Water body is an impoundment controlled by cranberry company.
 - ▶ Company is allowed to manipulate water level for its operation.
 - ▶ Possibility that water quality could be impacted from discharge from cranberry bogs (off of this property).
 - ▶ Unknown at this time how these items may affect water recreation opportunities for the community.



Swan Land Project

- ▶ Risk assessment issues:
 - ▶ Whooping cranes are sensitive to disturbance.
 - ▶ Will our plans for public access affect the whooping cranes?
 - ▶ Can we adjust development plans to protect whooping crane nesting habitat? Proper trail placement, for example.

Swan Land Project

- Risk assessment issues: ACCESS
 - Access issue #1:
 - Seller does not have deeded access to the property. They enter the property by virtue of an access easement with the neighbor. It is unlikely that this easement would allow for public access.
 - We have begun negotiations with the neighbor to the south to buy their land to acquire deeded access.
 - Access issue #2:
 - Cranberry bog owners have an access easement to cross the property to access the water control structure north of the property for management and maintenance of the structure.

Swan Land Project

- Risk assessment issues:
 - We need to fundraise to purchase this property.
 - Initial indications from DNR point to this being a very high priority for Knowles Nelson Stewardship funding next cycle.
 - The community has been using this property, albeit with "handshake" agreements for access for generations and people LOVE this lake and this property.
 - Therefore, we believe there would be good public support for the acquisition. A local family foundation has already agreed to a \$50,000 challenge grant.

Budget: COSTS – include ALL costs

ACQUISITION COSTS:	
Acquisition Price (FMV)	\$ 480,000
Transaction Costs	\$ 19,500
Staff salary and benefits (for transaction)	\$ 40,000
Initial Stewardship Costs	\$ 9,500
Long-term Stewardship Endowment Needs (Defense and Routine costs)	\$ 20,000
Universally-accessible canoe launch	\$ 15,000
Universally-accessible trail	\$ 15,000
TOTAL Acquisition and Stewardship:	\$ 599,000

Budget: Sources of Funds

We have over 80% of the funding identified

SOURCES OF FUNDING:	
Knowles-Nelson Stewardship Fund	\$ 240,000
Landowner Donation of Value	\$ 120,000
DNR contribution to transaction costs	\$ 9,750
Landowner intended donation to stewardship	\$ 10,000
Private Family Foundation Pledge	\$ 50,000
Fundraising from private sources	\$ 169,250
	\$ 599,000



Board Discussion – Any questions?



Board Resolution, as amended.
Time to Vote!



Lessons Learned

- ▶ Every project must be properly vetted
- ▶ Rigorous discussion helps assure the land trust is making the right decision
- ▶ Example: Door County Land Trust and West Wisconsin Land Trust project inspection sheets (will be available on Rallynet)
- ▶ Board members must be informed and approve transactions
 - ▶ Board resolution template (available on Rallynet)
- ▶ Risks can be negative or positive



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Conservation Easement Terms

Considerations as you negotiate a conservation easement



Problematic Conservation Easement Terms

Ask this question with EVERY provision in your draft conservation easement:

Do these covenants and prohibitions really matter in protecting the conservation values?

Problematic Conservation Easement Terms

Then Ask:

Even if these covenants do matter, does/will the land trust have the resources and skills necessary to adequately **monitor** them?

Will we have the resources and skills to **defend** this prohibition or provision?

ASSUMPTIONS:

The perfect conservation easement has never been written.

There are no "right" answers: each easement is different.



Problematic Conservation Easement Terms

Every covenant or restriction must be able to be tied to an impact, or potential impact, on the **STATED** conservation values that your land trust is trying to protect.

If it doesn't, why is it there?

Conservation Value: Protecting Water Quality

- ▶ Do you know what the water quality is now?
- ▶ How will you measure the quality in the future?
- ▶ Is this feasible? Affordable?
- ▶ Is this defensible?

Commercial or industrial activity

- ▶ How does this impact the conservation values?
- ▶ Home businesses?
- ▶ Could this be controlled by limitations on structures?

Height of buildings (and other stuff, like paint color)

- ▶ How does this impact conservation values?
- ▶ Is scenic protection a stated conservation value?
- ▶ If so, does this matter?
- ▶ Are you willing to defend in court? How important is it?

Organic farming/row crops/ gardening/gathering

- ▶ How will you monitor?
- ▶ Do you have the expertise?

"Only native local genotypes may be planted"

- ▶ How will you monitor?
- ▶ How will you define?
- ▶ Do you have the skills and resources?
- ▶ Is this flexible enough considering climate change?
- ▶ Is LT responsible or landowner?



No hunting or trapping

- ▶ What is the real issue? Noise? Critters?
- ▶ How will you monitor? You are not on the property every day.
- ▶ Explain it is up to the landowner to control these types of activities.



No snowmobiles or ATVs

- ▶ Can you monitor?
- ▶ IF important to the protection of the conservation values . . . Can you tie it to something you CAN monitor – like damage to the substrate?

Limitation or prohibition on type or number of pets

- ▶ Can you monitor?
- ▶ Good intentions (protecting songbirds, for example) do not necessarily translate well into legal restrictions.
- ▶ Are you willing to be on the front page of the local newspaper over enforcement of this provision?

Required management plans

- ▶ What kind of expertise will your organization need to acquire or need to hire to evaluate management plans?
- ▶ Incorporate such expenses into stewardship cost estimates for the property.
- ▶ Forest management plans, harvest plans, conservation plans, farm management plans



What about splits?

- ▶ What is your system for regularly checking to see if the land has been divided (in violation, or not, or the conservation easement)?
- ▶ Sold?



Good intentions. Owning it.

- ▶ CAN we? SHOULD we?
- ▶ Consider if there is a need to own a property instead of hold a conservation easement to better control use.

Conservation Easement Terms - Summary

- ▶ Clearly identify (and prioritize) conservation values.
 - ▶ Tie each covenant to conservation value(s).
- ▶ Does the land trust have the resources to monitor the covenant?
- ▶ Is the covenant defensible? Does the LT have the resources to defend?
- ▶ Can it be clearly described?

What is your favorite example? Questions?



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Principled negotiations

What is it? Why should I care? Can I do this?



Don't be afraid . . .we negotiate every day.



Principled negotiations:
Information in your packets

- Developed at Harvard by Roger Fischer and William Ury
- Was applied to the Camp David negotiations between Egypt and Israel in 1978.
- Co-authored book, **Getting to Yes: Negotiating Agreement Without Giving In**



What is it?

- ▶ It is more than just getting to "yes."
- ▶ It improves relationships.
- ▶ Satisfies both parties' interests.
- ▶ Fair and lasting.
- ▶ Takes into account HOW you get there.



How is it different? Typical negotiations:

- ▶ Parties take positions . . . on "opposite sides"
- ▶ Start at extremes, and meet in the middle
- ▶ But, the middle isn't particularly satisfying for either side
- ▶ You may not have addressed the actual needs of the parties.
- ▶ Often focus on only one issue (price, for example).



Principled negotiations:



4 prescriptions of principled negotiations

- 1. PEOPLE
- 2. INTERESTS
- 3. OPTIONS
- 4. CRITERIA



4 prescriptions of principled negotiations

- ▶ 1. Separate the PEOPLE from the problem
 - ▶ Think of each other as PARTNERS trying to solve an issue, rather than adversaries
 - ▶ 3 things to be aware of:
 - ▶ Different perceptions
 - ▶ Emotions (fear, anger, sadness)
 - ▶ Communications problems
 - ▶ Use active listening skills



4 prescriptions of principled negotiations

- ▶ 2. Focus on INTERESTS not positions
 - ▶ Focusing on interests allows new solutions to arise.
 - ▶ If the other party presents a "position" - ask "why?" Then ask why. Then ask why again. The power of "3 why's" enables you to move beyond positions to understand underlying interests.
 - ▶ Explain your interests clearly - without defining an end position.
 - ▶ Remain open to different proposals.



4 prescriptions of principled negotiations

- Try the “from what” “for what” method
 - Ask the landowner to write down on one side of a piece of paper what they want to protect the property FOR and on the other side . . . What they want to protect the property FROM
 - Then you do the same on behalf of the land trust.

- This helps to clearly define *interests*.

4 prescriptions of principled negotiations

- 3. Invent OPTIONS for mutual gain
- There are four obstacles to creative problem solving
 - 1) Deciding prematurely on an option; and thereby failing to consider alternatives
 - 2) Being too intent on narrowing options to find the single answer
 - 3) Defining the problem in win-lose terms
 - 4) Thinking it is up to the other side to come up with a solution to “their” problem

4 prescriptions of principled negotiations

- **3. Invent options for mutual gain**
- To overcome these obstacles to creative problem solving
 - 1) Separate the process of inventing options from the act of judging them
 - 2) Broaden the options rather than only look for a single solution
 - 3) Search for mutual gains
 - 4) Invent ways of making decisions easy

- One key is to look for items that are of *low cost* to you and *high benefit* to them and *vice versa*

4 prescriptions of principled negotiations

- **4. Insist on Using Objective CRITERIA**
- Criteria should be legitimate and practical
 - An appraisal to set a selling price, for example
 - Scientific evidence for how far back a protection zone should go in a conservation easement to ensure streambank protection, for example.



Principled Negotiation - **ADVICE**

- ▶ Focus on the solving the problem **together**
- ▶ Be **respectful** . . . “Drink the dang coffee” . . . Use manners that would make your parents proud
- ▶ **Never ever EVER tell a landowner what they *SHOULD* do with their property. Ever.**
- ▶ Find the **decision maker** in the negotiation. And it may not be the person you are talking with.
- ▶ **Never promise** something your organization cannot do. Be firm and fair.



QUESTIONS?



Anatomy of a Land Deal

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Contact information on the Rally App and Website

Feel free to reach out with questions.