

KENT LAND TRUST
PROJECT SELECTION CRITERIA
FOR CONSERVATION EASEMENTS AND CONSERVATION PROPERTY
ACQUISITIONS

The Kent Land Trust (KLT) has established the following criteria for selecting conservation easement projects and property acquisitions with a conservation (as opposed to trade) purpose. These criteria are intended to guide not limit the actions of KLT. The criteria shall be used, in the case of easements, for the proposed donation or purchase of conservation easements, to amend conservation easements, and to guide the stewardship and monitoring of lands protected by conservation easements. In the case of proposed acquisitions of property for conservation purposes, the criteria shall be used in determining whether to proceed with the acquisition and to guide stewardship and monitoring. KLT retains discretion over project selection and will evaluate each project and proposal on its own merits after careful investigation of the property and its resources and the extent to which its preservation is consistent with KLT's purpose and mission and the policies set forth below.

PURPOSE AND MISSION

KLT was formed in 1989 to preserve the rural character of Kent by protecting open space. A 1990 Town Character Study & Open Space Plan, which was subsequently adopted as part of the official Kent Town Plan of Conservation and Development (POCD), identified twenty areas of Kent where the preservation of open space is essential to the maintenance of Kent's rural character. In 2012 the POCD and Town Character Study were updated and three additional Town Character areas were identified (see attached Map). KLT gives priority to promoting land protection and conservation in these areas.

KLT's Mission Statement is as follows:

To promote for the benefit of the general public the preservation of natural resources principally in, but not limited to, the Town of Kent. These resources shall include land and water resources, the plant and animal life thereon, and unique scenic, natural and historic sites;

To engage in and promote scientific study and education regarding natural resources;

To use all properties held or controlled by the corporation and the net earnings thereof for the benefit of the general public and for charitable, educational, recreational, conservation, scientific, and historical purposes.

POLICIES

To protect land that has significant conservation value, including open space, land and water resources, wildlife habitat and places of scenic, historic, recreational or agricultural importance. The protection of such land must also provide a significant public benefit. KLT shall give particular attention to land located in the 23 areas identified in the 2012 Kent POCD, although it may consider land in other areas in or adjacent to Kent.

To work with landowners and the community to protect those remaining open lands and natural resources located within the KLT project area and supported by the KLT mission statement.

To accept easements only on properties where the duties of monitoring, management, and enforcement can be met by KLT.

To inform each potential easement donor about all aspects of the conservation easement and the obligation of KLT to defend and uphold the easement against violations in perpetuity.

To determine that the proposed reserved rights allowed by an easement do not excessively interfere with, or have an adverse impact on, the conservation values of the property.

To discourage amendment of conservation easements. Conservation easements shall be amended only for extenuating and compelling reasons, and only when KLT determines that there will be no net loss of the conservation values which the easement was designed to protect.

Joint Action: KLT recognizes that land protection may be achieved in ways other than conservation easement donation or acquisition. Land protection may be accomplished through cooperation with other organizations and institutions.

SELECTION CRITERIA

In selecting lands for protection by conservation easement donation or acquisition, KLT will use the following criteria (as well as the IRS criteria defined in Sec. 170(h)(4)(A) of the IRS Code) to guide its analysis. Each project shall be evaluated on its own merits. No one criterion shall be dispositive, nor shall the failure of a proposed property to meet one or more of the criteria preclude it from consideration by KLT if other criteria are met:

1. Land located within the 23 areas identified in the 2012 Kent POCD.

2. Land which offers significant relief from potential development and which helps to define the rural character of the community.
3. Land which provides scenic views from public roads or trail corridors.
4. Land which provides trail corridors or public recreational opportunities consistent with the conservation values of the property.
5. Land which provides a buffer or is in close proximity to existing protected areas, the protection of which would broaden an area of protected land and enhance trail corridors, recreational opportunities or plant and wildlife habitat.
6. Land which is important for preserving the quality and quantity of surface or underground waters or for providing the natural control of flooding (such as wetlands, alluvial and high water table soils, and riparian buffers).
7. Land which contains habitat for plant or animal species classified as rare, endangered or threatened by the state or federal government.
8. Land which contains exemplary or critical habitat for plant or animal species not classified as rare, endangered or threatened.
9. Land which contains prime or important agricultural soil or land in active agricultural production, where the proposed project preserves agricultural use.
10. Land of sufficient size that the resources being protected are likely to remain intact even if adjacent unprotected properties are developed. While properties of at least 10 acres are preferred, KLT may consider smaller parcels, particularly in the case of fee acquisitions, where its criteria are met and the project will not involve excessive effort or expense.
11. Land which is reasonably determined to be free from any hazardous wastes, or other contamination which could expose KLT to liability.
12. Land which is reasonably determined to allow physical access for inspection and will not present difficulties in monitoring and stewardship.

INTERNAL REVENUE CODE DEDUCTIBILITY CRITERIA FOR EASEMENTS

In addition to fulfilling the above criteria, a charitable income tax deduction will be available only if the following Internal Revenue Code §170(h) standards are fulfilled. Those standards require compliance with either the "scenic enjoyment" or the "governmental policy" test **AND** the "significant public benefit" test.

- A. Scenic Enjoyment.** Preservation of the property as open space is for the scenic enjoyment of the general public:
- Development of the property would impair the scenic character of the local landscape or would interfere with a scenic panorama that can be enjoyed from one or more (usually public) locations, and the location(s) is open to or used by the public. (See Treas. Reg §1.1709A-14(d)(4)(ii)(A) for a list of some factors to consider with regard to ascertaining "scenic character.")

OR

- B. Governmental Policy.** Preservation of the property as open space is pursuant to a clearly delineated federal, state or local governmental conservation policy:
- This criterion is fulfilled by projects that further a specific, identified conservation project, such as the preservation of land within a state or local landmark district that is locally recognized as being significant to that district; preservation of a wild or scenic river; or the protection of the scenic, ecological or historic character of land that is contiguous to, or an integral part of, the surroundings of existing recreation or conservation sites.
 - Programs providing preferential tax assessment or preferential zoning for conservation purposes constitute significant commitment by the government.
 - "Clearly delineated governmental policies" in the Kent context should include: lands within the 23 areas designated for preservation in the Kent POCD.

AND

- C. Public Benefit.** Preservation will yield significant public benefit.

Consider such factors as:

- Uniqueness of the property to the area.
- 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 of 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 KLT will acquire equally desirable and valuable substitute property or property rights.

D. Other Limitations.

1. The conservation easement must conform to the prohibition against "inconsistent use" set forth in Treasury Regulation 1.170A-14(e)(2).
2. The conservation easement must be enforceable in perpetuity as provided in Treas. Reg 1.170A-14(g).
3. The conservation easement cannot permit the landowner to retain certain qualified mineral interests as provided by Treas. Reg. 1.170A-14(g)(4).
4. The easement donor must make available to the Land Trust documentation sufficient to establish the condition of the property at the time of the gift as provided in Treas. Reg. 1.170A-14(g)(5).
5. The easement must be transferable only to another "qualified organization" as provided by Treas. Reg. 1.170A-14(c)(2).

LAND STEWARDSHIP PLANNING

In connection with each transaction, KLT shall prepare an estimate of expected and potential stewardship costs as part of the project planning process. Such estimate shall include start up, monitoring, enforcement and administration costs as well as likely and possible costs associated with the characteristics and risks particular to the property under consideration. KLT shall use experience-based information from its current and past stewardship program to inform such estimates, however each property shall be considered on a case-by-case basis.

The stewardship costs estimate is a critically important element in KLT's determination to accept or reject the project. KLT will either secure funds for stewardship or develop a realistic plan for providing for stewardship expenses in the project plan prior to closing. In the case of an easement donation KLT's policy is to request a stewardship contribution from the donor in conjunction with the easement gift. For donated fee parcels and property purchases, fundraising campaigns or other funding requests shall include funds for stewardship. In the event funds for estimated stewardship costs are not secured prior to closing, KLT shall commit to covering such costs through its stewardship or operating budget or reserves.

Stewardship costs associated with easement properties include annual monitoring, landowner relations, administration (e.g., posting, updating baseline information, record maintenance), grantee approvals, and professional and legal services associated with enforcement.

Stewardship costs associated with fee properties include preparation of a management plan, monitoring, maintenance activities specific to the property (e.g., mowing, invasives control, boundary posting and signage, trails, gates, parking areas, storm cleanup), habitat and other restoration work, administration, and enforcement of property rights.

Reviewed and approved Acquisitions Committee June 18, 2010

Adopted Board of Directors June 27, 2010

Revised Board of Directors March 14, 2015