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# EQUESTRIAN LAND PROTECTION GUIDE

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PUBLISHED BY

EQUESTRIAN LAND  
CONSERVATION RESOURCE

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## DEDICATION

"There is more to lose than land. A way of life and an understanding of who we are is also at stake. Horsemanship is important to our country's history and lore. It teaches us responsibility and stewardship and how to care for another life form. When we protect this, it enriches our communities."

— John F. Turner, 1997

As we produce this, the first in a series of work products intended to help stem the loss of open space and access for equestrians, the Equestrian Land Conservation Resource (ELCR) recognizes the vital contributions of John Turner. Turner, president and CEO of the Conservation Fund, a former director of the United States Fish and Wildlife Service, a Wyoming rancher and former state senator, seized the opportunity to foster ELCR. He recognized the inherent potential of a united equestrian community to contribute to the ongoing, effective work already being done across this country to protect accessible open space for all users.

ELCR will forever be indebted to John Turner and the Conservation Fund. The Fund's philosophy of working through creative partnerships is the reason that ELCR and this text exist. The Fund nurtured us and provided an environment that is a model for the future of land conservation in the United States, an environment of inclusion.

ELCR intends to do everything possible to fulfill that vision.

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## I. INTRODUCTION

- A. The Equestrian Land Conservation Resource
  - ELCR's goal is to ensure open space for equestrian activities.
  - ELCR serves as a clearinghouse for approaches to land conservation.
  - ELCR was founded on partnerships with other conservation groups.
- B. Why Conserve Land for Horses?
  - 1. Loss of Passage
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- D. The Purpose of This Guide
  - This Guide shows the reader how to conserve land for permanent equestrian use.
- E. Using This Guide

### A. The Equestrian Land Conservation Resource

The publisher of this Guide is the Equestrian Land Conservation Resource (ELCR), a nonprofit organization that promotes access to and conservation of land for equestrian and other compatible uses through education and partnerships. ELCR was founded on the principle of partnerships. Early on, ELCR was endorsed by the United States Pony Clubs, Inc., and developed relationships with the Conservation Fund, the Land Trust Alliance, the American Farmland Trust, and the American Bird Conservancy, thereby creating a bridge to the larger conservation community. The combination of equestrians and conservationists working toward a mutual goal of open space will ensure the continuance of riding in the open.

ELCR serves as a clearinghouse for information about specific approaches to conserving land and, when appropriate, facilitates contact with local experts who may be available to assist a land protection project. ELCR is also researching issues related to equestrian access to land, to develop more effective land protection models, more horse-friendly public policies and land management and stewardship standards.

### B. Why Conserve Land for Horses?

#### 1. Loss of Passage

For horseback riders and carriage drivers who enjoy taking their horses outdoors on passage cross-country, the answer to "Why Conserve Land for Horses?" seems obvious.



Every day, traditional passageways are cut off by new owners of the land who either are developing it in a manner not compatible with horses or for some reason no longer want horses passing through their land. Already traditional passageways for horses have been so restricted in metropolitan areas that ring riding and riding or driving on paved roads are the only outdoor activities available to equestrians. This means that such traditional horse activities as recreational and competitive trail riding, combined training or driving, recreational driving on dirt roads, and fox hunting are being forced away from metropolitan areas to areas distant from a majority of amateur horse people.

## 2. Loss of Stabling, Training, and Competition

With a few exceptions, stabling, training, and competition are dependent upon open land. Many highly trained horses that train and compete in arenas and rings benefit from grazing in open pasture. Moreover, indoor and outdoor training and competition facilities may fall victim to more lucrative land uses or activities. Land conservation can permanently protect these pastures and training and competition sites for the use of equestrians.

## 3. Loss of Pasture and Fodder

Even a rider or driver who enjoys ring work and has no desire to ride cross-country needs to be concerned about loss of open land. Land is essential to the breeding of the horse. Without land, no food for the horse will be raised.

## 4. Economic and Social Impacts

Open land for horses is the foundation of a huge economic and social force in our nation. According to a 1997 American Horse Council (AHC) study, *National Economic Study of the Horse Industry*, the horse industry is a \$25.3 billion business based on economic activity associated with 6.9 million horses and 7.1 million participants. It employs 619,400 people directly.

The AHC study concludes that when \$25.3 billion in goods and services is calculated with its multiplier effect, the total impact created, as a result of spending by industry suppliers and employees, is \$112 billion, resulting in approximately 1.4 million jobs throughout the economy. The industry pays nearly \$2 billion in federal, state, and local taxes.

The economic clout of horse people can have very positive effects at the local level. A lively local economy may be driven by breeding, boarding, feeding, training, vetting, shoeing, and use of these animals. The education of riders and drivers, and their apparel, vehicles, and farm equipment are investments made by equestrians that ripple throughout a community. Contractors build stables and fencing with materials provided by local distributors and producers. Hay sales can be one of the last vestiges of an agricultural economy that allows farmers to keep their land productive and out of development.

Additional economic studies indicate that there are positive impacts on municipal budgets from maintaining a mixture of land uses including open space.<sup>1</sup> According to



*Economic Benefits of Land Protection*, published in 1994 by the Land Trust Alliance, incorporating open land into growth plans as part of a mix of residential, commercial/industrial, and agricultural/open space can aid in achieving a positive cash flow for local governments. The simple fact is subdivisions cost the government more in infrastructure such as trash collection, fire and police protection, and schools than the tax money the house lots generate.

Furthermore, communities where working horse operations host clinics, competitions, or exhibitions attract outside riders and spectators who bring part of their disposable income into the community, where it remains when they depart. In states where livestock operations are an important segment of the agricultural heritage, such as California, Florida, Maryland, Colorado, Kentucky, and Vermont, the establishment of horse farms presents the opportunity to sustain existing rural communities, which otherwise might be consumed by sprawl and lost forever. Racing commissions, horse councils, or trails organizations can provide detailed information and statistics in support of horse ownership and use.<sup>2</sup>

#### 5. Maintaining Traditions and Cultural Benefits

Conservation of land for horses assures the preservation of a way of life. The traditions and lore surrounding the horse are a part of Americana. It is imperative that we provide a place for this most noble animal, so that it may continue to contribute to the quality of the human experience.

Youth education and improvement programs, such as 4-H, Pony Club, and Therapeutic Riding, foster healthy qualities such as discipline, responsibility, leadership, sportsmanship, and stewardship, which promise benefits to society for years to come.

### C. Why Me Now?

#### 1. An Urgent Matter

Across the entire conservation community, as well as among the ranks of those who use open land, there is a shared sense of urgency. This is especially true for those who enjoy nature's open spaces on horseback. More than 1 million acres of productive farmland are converted to other uses in this nation every year.<sup>3</sup> The loss of productive forests and those environmentally essential lands that used to be considered "marginal" can be even more devastating to riders who appreciate their diversity.

#### 2. If Not You, Who?

Denny Emerson, a leading three-day eventer and coach has answered why the reader of this Guide needs to act now. Denny says:

"Coulda," "woulda," "shoulda," and "if only" are the four great phrases of regret. If only horse people would act together and act soon, to help

preserve the open land and trail systems that still remain in their communities, they would have less loss to regret in later years.<sup>4</sup>

If we allow ourselves to feel hopeless before the onslaught of developers, if we give up without a fight, most of the trails and fields in our communities will be swallowed up.<sup>5</sup>

#### D. The Purpose of This Guide

This Guide is intended to galvanize the reader into action that will cause land traditionally used by equestrians to be permanently available for horse activities.

Traditionally, horse people have enjoyed access to training or competition facilities or open space under terms and conditions that are not permanent rights of use or access. They are normally temporary rights based on informal understandings, such as oral permission of the landowner. Sometimes the rights are memorialized in an agreement providing a license to use or a lease agreement for a specific term.

This Guide is a primer that sets forth what the reader needs to know in order to plan and implement successful conservation of land for equestrian use.

#### E. Using This Guide

This basic Guide cannot cover all situations. Since there will always be unique situations not contemplated by the authors, we urge equestrians to seek local expert advice in the process of planning a land acquisition. To provide more comprehensive information about conservation of land, the Guide directs the reader to other sources at points in the text where, by its nature, information provided is too general or incomplete.

Although the technical and financial aspects of this process may intimidate at first, real estate has been changing hands for less worthwhile purposes for thousands of years! The future ability of people to enjoy horses in open spaces will hinge largely on the efforts of today's equestrians. You jumped that fence, mastered that dressage test, bred that championship yearling. You can do this, too.

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## II. DEVELOPING THE TEAM

- Land protection normally requires efforts by a number of people (the "Team").
  - A. Positive People
  - B. The Champion
    - 1. Assessing Capabilities
  - C. The Leader
  - D. The Landowner
  - E. The Horse Organization
  - F. A Land Trust
  - G. Other Organizations
  - H. Developers
  - I. Technical Experts
  - J. Government
  - K. Finance

Normally a successful land protection project requires a group of people with a number of different skills and resources. This Guide refers to this group as the "Team." Since each project is unique, this Guide does not attempt to suggest the perfect team but, rather, to identify various team players who might be important to the project.

### A. Positive People

"I've been on lots of boards, and I've found that positive, optimistic, cooperative people can get about anything accomplished. On the other hand, negative, pessimistic people usually wind up wrangling and nit-picking about everything."<sup>6</sup>

— Denny Emerson

Denny has this right, and the project will benefit if the Team members meet these qualifications.

### B. The Champion

A successful Team needs a person who is passionate about achieving the goal of land protection and does not allow inevitable obstacles to cool his or her zeal. This Guide calls this person the "Champion" because he or she motivates the Team to overcome the obstacles. The Champion must be so committed to the project that he or she will sacrifice time and substance to the cause.

The Champion is not necessarily the leader of the Team. Champions can be difficult team players because they are so passionate that they may fail to recognize that each member of the Team is adding value to the project or that sometimes pragmatism must reign over the ideal.



As stated well by Kandee Haertel in *Trail Blazer* magazine:

Your visionary [Champion] is the one who never forgets the end goal. The visionary had the inspiration to get it all started, but may be too bold or too general to be a good leader. A visionary is probably not the person to be in front, because some of the beneficial side issues may be mistakenly perceived as not necessary. If you are building a trail, what good is a family potluck? The visionary may not see that the suggested potluck just may be the key to gaining the involvement of the local Boy Scout troop, which will give you the additional trail clearing volunteers you need. But your visionary can help the group keep its focus on the end goal of getting the trail in place when too many side issues may be using valuable volunteer time and resources where they may not be necessary.<sup>7</sup>

#### 1. Assessing Capabilities

Since the Champion is usually the first person to recognize the need for action, it is necessary to assess his or her capabilities as a leader. If in doubt, the Champion needs to recruit a leader who fits the description in Section C, "The Leader," below. Even if the Champion is not the leader, he or she will continue to play the essential role of keeping the Team focused on the goal and maintaining a sense of urgency.

#### C. The Leader

Each project needs a leader who will motivate all parties to work together in a constructive and creative manner. Sometimes as new parties are brought into the Team, the leader will change.

According to Kandee Haertel:

Your leader must keep the group focused on the reason for being. . . . [He or she] must be the best person you have to do that: lead. A leader keeps the group on track, focuses on the group's desires (not personal wishes), understands the details required to complete the project, is a delegator, not a ruler. Leading in this case, is about showing people the way to accomplish what needs to be done in a step-by-step process that can be broken down to specific tasks volunteers can perform. The leader then enlists the people to do the jobs.<sup>8</sup>

An essential role for the leader is to avoid turf wars. It is not important who takes credit for success or failure so long as the goal remains in sight. Many a great project has failed because potential key players felt slighted and failed to devote themselves completely to the success of the project. The solution is to be inclusive and work as a facilitator to achieve consensus among all potential interested parties.

#### D. The Landowner

If the landowner takes an interest in the project, success is much more likely. See Section V, "Building a Relationship with the Landowner," below.

#### E. The Horse Organization

Permanent protection of equestrian rights to use land requires that the rights be owned by a permanent organization. If no such organization exists, a group of equestrians may form a nonprofit corporation or other permanent organization. State laws provide a number of possible organizational structures that have perpetual existence.<sup>9</sup> Fundraising will be easier if the equestrian organization is qualified as a charity under tax laws.

#### F. A Land Trust

A land trust is a charitable organization established for the purpose of conserving land. The land trust either owns the land in fee simple or is the owner, known as the grantee, of development rights, usually through agricultural or conservation easements. Any project intended to keep land permanently free of residential or commercial development may require the participation of a land trust. Land owned by an equestrian organization may not be perpetually free from development if the equestrian organization should cease to exist or sell its rights. ELCR can provide the name of the land trust(s) operating in the area of the project.

#### G. Other Organizations

If the project requires greater funding than may be available from members of the equestrian organization that initiated the project, other organizations may need to be brought in as partners. These could include other horse organizations, bird-watchers, hikers, environmental education organizations, neighbors, the municipality, mountain-bike clubs, and even motorized users. It makes sense to seek partners whose use requirements would impose the least likelihood for conflict. Also, the potential partner may already have access to open land that it might make available for equestrian use in the spirit of the partnership.

It may be advisable to include various public service groups in the project. For instance, the land might be appropriate for an annual fair benefiting community service organizations that, in return, would be glad to promote the project among their members. Consideration might be given to including therapeutic riding or a program for the economically disadvantaged. This will also help to dispel the common misconception that horse owners are elitist.

#### H. Developers

Sometimes the project involves a large tract of land where the equestrian organization needs only a portion. By partnering with a developer or developers, ways may be found to gain the equestrian rights at little or no cost to the equestrian organization. There is a growing market of equestrians willing to pay a premium price for deed-restricted residential lots with access to riding trails. The equestrian buyer not only will be drawn to the properties by the available open

space, but also will support the permanent preservation goals of the project to maintain real estate values.

#### I. Technical Experts

Professionals in law, finance, real estate, public relations, fundraising, and the environment are important to the process. In addition, if governmental decisions are involved in the funding or the required zoning approvals, the Team might include an individual who understands governmental relations. These talents may be available pro bono from members of the Team, or the Team may need to provide for the services of consultants in the project budget. Free service is only beneficial if the person providing it is an expert in the area and is willing to provide timely attention.

#### J. Government

In some jurisdictions, the government is actively involved with land conservation, and a representative may be a desirable member of the Team.

#### K. Finance

The formation of a realistic budget is a critical part of the project. Someone experienced in this field would be an invaluable addition to the Team.

Building the best possible Team is a process that will continue throughout planning of the project. Careful planning is a key to success.



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### III. DEVELOPING THE PLAN

- A plan for the project is critical.
- A. Identify the Right Property
- B. Determine Range of Value
- C. Government Regulation of Uses and Practical Concerns
- D. Identify the Equestrian Organization
- E. Consider Permanent Protection
- F. Determine Degree of Ownership
- G. Consider Other Organizations
  - 1. Other Horse Groups
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For it to be successful, the project must be based upon a carefully developed plan that has been adopted by all key members of the Team. This section will suggest factors that should be considered during the development of the plan and costs that should be included in the budget for the project.

#### A. Identify the Right Property

Human tendency has been to use up the best land first, leaving marginal areas as open space, until eventually even that is lost. Any plan for preserving an equestrian area should recognize that the most threatened open areas are those with land easily developed without major expense. These are the readily accessible, flat, well-drained fields and woodlands.<sup>10</sup>

If the equestrian community is in a crisis because a key part of its horse territory, a trail link or an important competition site, is for sale, that key property is likely the right property for the project. At the same time, however, the Team should view the larger picture, considering all of the countryside enjoyed by local equestrians.

Analysis of comprehensive plans, including those developed by local governments or conservation coalitions, will help the Team to gain perspective about the area and avoid isolation. Ideally, the property should contribute to a larger protected area and/or trail system. A plan for preserving an area for equestrian use should also create or maintain links in an interconnected landscape. Ideally, it should stabilize the community by contributing to a network that can be traversed without riding over pavement in competition with motor vehicles. Such linkage properties are ideal targets for protection and partnerships with other conservation organizations.<sup>11</sup>

If government planning does not exist, equestrians may become the leaders in what could become a comprehensive land use plan for the area. If they are located in areas where ongoing conservation efforts are focused, the equestrian projects will encourage cooperation between the conservation and equestrian communities and possibly result in greater access by equestrians to land that is already conserved.

#### B. Determine Range of Value

Early in the process, the Team should have a ballpark figure for the value of the property. This can often be obtained by applying community-recognized values to the acreage and structures. Members of the Team probably have a sense of property values in the area and can agree on a probable range of value for the property to be conserved. This will assist with the early planning. Ultimately, professional appraisals will be required (see Section M, "Appraisals of Value," below).

#### C. Government Regulation of Uses and Practical Concerns

The planned use for the property should be considered in relation to applicable federal, state, and local laws and regulations. If the use is passive, such as trail riding, this is not a major concern. However, if funding is dependent upon intensive use of the property for public events, careful analysis must be undertaken. Matters to be considered include the following:

- Zoning - Does the current zoning permit this activity?
- Access - Are the roads adequate for anticipated traffic? Are there safety issues?
- Parking - Is there adequate provision for parking the vehicles that may be anticipated and is there any problem with limitations on impervious surface coverage?
- Utilities - Are required electricity, gas, and water available? Is there an adequate way to handle sewage and trash removal?
- Structures - Do the existing structures conform with the zoning and will desired construction be permissible?
- Nuisances - Is anything planned for the use of the property contrary to local nuisance laws, such as laws limiting loudspeakers or lighting?
- Manure - How will manure and bedding be stored and removed?
- Wetlands, Streams, and Rivers - Are any involved in the project? If so, what restrictions apply to uses in or adjacent to these sensitive areas?



#### D. Identify the Equestrian Organization

An equestrian organization is needed to own permanent rights to use land. Permanent means perpetual, long beyond the lifetime of today's active horse people. This requires that the equestrian organization have perpetual existence. In addition, the organization must have the stability and financial strength to manage the land rights once they are acquired through the project.

The privilege of use brings with it responsibilities. Land must be maintained in a responsible manner. Funds may be needed for such necessities as mowing and clearing. Trails must be maintained and monitored. Capital improvements such as fencing and facilities may be necessary. Taxes and insurance are typical costs of operation. There is no point to preserving land for equestrian use if there is not a strong, local organization in place to assume these responsibilities. Without such a group, land can become a liability or a nuisance, to both riders and the community.

If the horse group that initiated the project is concerned about its long-term strength, the project could be accomplished by joining forces in a legally binding arrangement with another organization, such as another equestrian organization, a land trust, a governmental body, or an educational institution.

#### E. Consider Permanent Protection

The Team should consider measures to ensure the permanent protection of the land. It should not assume that the will of the founders will survive them. The politics of organizations change, and future board members may not share the belief that the land should remain in its natural state so that there will always be a place to ride. Removal of some or all of the development rights associated with the property by granting a conservation easement to a qualified conservation partner is a sure way to protect open space for the future. Although land for equestrian use can be acquired by the purchase of real estate in fee, any plan for permanent protection of the land should include the imposition of conservation easements, or removal of at least some of the development rights from the land. This cannot always be accomplished in the early stages of preservation because financing of the project may require that the value of the development rights be maintained until a later time.

Since even a perpetual organization can dissolve, provisions can be made to ensure future equestrian use and proper management of the land. Legal documents can designate that, upon dissolution, ownership will pass to an appropriate public or private entity that would best satisfy the intent of the original organization. Seek expert local advice on the most appropriate way to protect your project in perpetuity.

#### F. Determine Degree of Ownership

For purposes of permanent equestrian rights to use land, there are two forms of ownership provided in state laws: fee simple and perpetual easement. Fee simple means that the owner has all of the rights in the land, with the exception of specific rights granted to others in



legal documents, such as previously granted easements. The owner of an easement has only the limited rights to use the land set forth in the document granting the easement.

The greater the degree of ownership, the greater the responsibilities and financial obligations. For this reason, the plan should seek the least interest in real estate that will satisfy the goals of the Team. Will the intended intensity of use require a purchase of the property in fee? Or, would an easement with provisions for permanent equestrian access or specific equestrian use satisfy the present and future needs of the Team?

For example, if intensive use is contemplated, such as an educational facility or show grounds with improvements such as arenas, rings, tracks, courses, and stabling, the equestrian group clearly should purchase fee interest and assume total responsibility for the property. However, an easement may satisfy the goals of the group's interests, such as trail riding or occasional field events. In that case, it would not be necessary to buy the fee interest in the property unless no other alternative were available.

Easements can be crafted to suit the individual project. Hierarchies of use, such as shared trails, can be specified to prevent future conflicts that interfere with the priority purposes of the land. Equestrian use could be specified as the priority, with all other uses being subordinate. At the same time, provision can be made for perpetual rights of way for equestrians that are movable to accommodate other future uses on the property, such as residences or agricultural activities. These issues can be addressed in organizational documents, agreements with partners, and deeds. Provisions should be flexible where appropriate, and, when necessary, there should be a mechanism for modification.

#### G. Consider Other Organizations

Often the target property is larger, or the cost to acquire and maintain it is greater, than the equestrian organization requires or can afford to protect. This is when the Team should consider partnering with other organizations. Possible partners might include the following groups:

##### 1. Other Horse Groups

Many times, another equestrian organization in the area may be able to use portions of the property for its activities and would be willing to contribute to the costs. This also provides organizational stability. In one instance, a member club of the U.S. Pony Clubs, Inc., financed a portion of the acquisition and maintenance costs by partnering with a local hunt club, a three-day event, and several horse show associations.

##### 2. A Land Trust

A local land trust, in addition to holding development rights to ensure permanent protection as described above, could purchase and protect the remaining property over which equestrians could hold trail easements or rights allowing intermittent equestrian use, such as competitions.

### 3. Other Compatible User Groups

Other user groups whose activities are not mutually exclusive of equestrian use might be served by a cooperative relationship, such as bird-watchers, horticultural societies, walkers, and so on. The community may need a location for community events such as festivals, fairs, and shows. If so, some level of support may come from discussions with other organizations in the community.

### 4. Historical Societies

Sometimes the property contains archeological resources, such as Indian mounds, or sites or structures of historic importance, such as an old house or a battlefield. If so, there will be local, regional, or even national organizations that may be willing to undertake ownership and/or maintenance of interests in the property.

## H. Analyze Community Environs

Support for the project can also come from the general community, where conservation of open space is usually applauded. Existing leaders in the community, who can build support for the project, should be identified and briefed about the plan as it develops. In the process, the Team may encounter a powerful individual or group that seems opposed to the project. If so, effort must be devoted to converting this opposition to support through education or to neutralizing this opposition to the extent possible.

Answering these questions will help identify potential allies and adversaries:

- Community - How does the property contribute to the integrity of the community? Who shares appreciation for those values and might be an ally?
- Neighbors - What will the impact be on neighboring property owners? Will any neighbors be opposed to the intended uses?
- Real Estate Values - Protected open space that preserves views or supports recreational use can impact adjacent real estate values in various ways. Are there local examples of increases in property value from view protection or neighboring recreation, such as a golf course, which might allay concerns?
- Aesthetic - What aesthetic value is attributable to the property? What impact does the subject land have on the visual character of the area, and who would support its preservation?
- The Environmental Community - Who are the active environmental groups that are working to protect resource values in the area? What might their concerns be regarding the project?

These are the groups most likely to share concerns about irreversible changes to the landscape. They must be considered when seeking support for the project. At the same time, there may be members of this community who do not fully appreciate the value of equestrians as conservation partners, and they may need to be won over.



## I. Evaluate Physical, Financial, and Legal Risks

It is important to become thoroughly familiar with the property as early in the process as possible. Of course, the cooperation of the landowner is essential to gain access. The landowner can provide invaluable information about the condition and history of the property. Among matters that should be considered are the following:

1. Environmental Conditions - Are there sensitive environmental conditions to be concerned about?

Identify wetlands and habitats on the subject and adjacent properties to determine the usefulness of the property for its intended purposes as well as requisite stewardship responsibilities. This presents a valuable opportunity to enlist the cooperation and support of other conservation interests.

2. Sources of Environmental Contaminants - Is the property clean?

The presence of hazardous materials in the environment has become an issue of major concern to landowners and communities alike. Of particular concern are leaking or old underground storage tanks. They should at the very least be tested, but it is advisable to have the previous landowner have them removed by a certified tank removal contractor. Removal may be required by law.

There are many other potential sources for environmental-contaminants liability that are not as easy to detect, but for which the owner, present and future, can be liable. It does not matter how or when these materials were introduced to the property, and there is no waiver of liability that will protect a person who is in the chain of title for a piece of property that requires environmental action under law. The presence of even small concentrations of these materials in the soil or water on the property can have devastating legal, ethical, and financial consequences. These materials include motor fuels and lubricants, heavy metals, and complex chemicals found in solvents and pesticides, and they are often related to agricultural practices.

Recognizing environmental hazards requires expertise. If this expertise is not available within the Team, a professional environmental consultant should analyze the property and satisfy a buyer's due diligence requirements to national standards. Many financial institutions require this inspection before they will finance a real estate purchase. If complete satisfaction on this issue has not been reached before signing of the purchase agreement, the agreement should contain a condition to this effect.

3. Improvements - What is the condition of improvements to the property?

Structures on the property will require some degree of inspection. It is important to be sure that structures are sound or the costs associated with repair are considered. Costs of demolition or proper disposal of the structures that are unsafe or must be removed should be

added to the budget for the project. These costs may impact the negotiation of the purchase price.

#### J. Property Use, Management, and Stewardship Plans

Plans for property use, management, and stewardship are essential to the development of a credible budget for the project. Complete plans state clear management objectives and specific conditions for public and private use, but they might also include details such as standards for horsemanship. The plans should clearly state the purposes, such as education, that justify ownership and management by a nonprofit organization, and they should support the premise that the acquisition provides a significant public benefit. A stewardship component to plans could be necessary if there are environmental and physical attributes such as sensitive wetlands, aquifer recovery values, wildlife habitats, agricultural and forestry resources, trails, historical and archeological values, and views requiring special consideration. The plans should specify what improvements will be necessary and how they support the purposes of the land acquisition. Ongoing maintenance and property-damage insurance costs associated with existing or proposed buildings should be evaluated and budgeted.

Security, intensity of use, or other responsibilities of stewardship may require or justify the active management of the property by employees or contractors. In such cases, provision should be made for this in the budget and the planned funding. Such plans will also be useful to convince third parties that the project is feasible and that there will be sound management of the property after acquisition.

#### K. Liability and Insurance

Personal injury liability on private property is a major concern to owners of equestrian land rights. Responsible landowners must carry adequate liability insurance to protect their investments and their property. It is imperative that the Team meet with its insurance consultant or agent to determine liability insurance requirements, as well as property casualty needs for improvements, to manage its real estate responsibly.

Although there are laws in several states for the protection of landowners from suit by recreational users, and several other states have laws limiting liability for equestrian professionals because of the inherent risks of the activity, the plan should fully recognize the limits of protection afforded by statutes or liability waivers granted by users.<sup>12</sup>

The cost of insurance premiums is another important consideration in budgeting for the long-term management expenses.

#### L. Title Report

A title report is also called a title commitment or binder. This report is a result of research of ownership records, or the title history of the subject property. To avoid unpleasant surprises such as liens, legal actions, and easements, obtain this as early in the process as possible. Such



situations might make the property inappropriate for the intended use or require removal before closing. A title search may turn up something of which the current owner is unaware.

Knowing the history of ownership shown in the title report will also help document its historical use, which will be necessary for the requisite environmental-contaminants survey referred to above.

A title report also helps if an appraisal of the property is necessary. A lawyer or real estate professional can look over the title report to determine if there are any issues of concern. The title may also provide information that may disclose weaknesses in the landowner's negotiating position, such as an inability to pay taxes on time or judgments entered on the property in favor of creditors. A title report will also disclose the actual owner of the property, who may not be the apparent owner.

Some options for obtaining a title report include the following:

- Seek to have title services donated. Some title companies may provide pro bono services as part of their community service.
- If possible, obtain a copy of any existing policy from the current landowner. The search work associated with this report can be updated and endorsed by the agency that performed it originally at a reduced cost.
- Purchase title services. This can be done through a title insurance agent, an attorney, or a real estate agent.

#### M. Appraisals of Value

Early in the planning process, the Team established a ballpark value for the property. A more precise value is desirable before entering into negotiations with the landowner. Someone familiar with the local real estate market or an officer at a local financial institution can provide a useful pro bono estimate of the value of the property, taking into account the information developed in the planning process.

Prior to closing, a professional real estate appraisal may be necessary, and the costs should be part of the project budget. Purchases financed by a mortgage will require a professional appraisal to meet lending institution standards. An appraisal by a qualified professional appraiser will certainly be required if financial strategies involving tax-advantaged donations of interests in real estate are being considered. A professional appraisal may also be useful to assure donors that their contributions are being well spent. Transactions involving public funds and some charitable foundation grants for purchase money require very detailed appraisals.

An appraisal that is needed by the landowner to substantiate tax benefits should be commissioned by the landowner. The landowner will thus own the results and can use them as a basis for representations regarding the value of the property to taxing authorities.

Appraisals are only opinions. Real estate valuation lies somewhere between science, magic, and art, and it uses information not always publicly available to compare the subject



property to factors in the marketplace. The appraiser places an opinion of value on the interest to be purchased or donated. The subject of the evaluation can be any interest in real estate from the air rights over the land to the water or minerals on or under the ground. An appraisal can be developed for a right to cross or to use land for a special purpose such as riding horses. There can even be an appraised value for the right to harvest crops or timber from the land, or any combination of interests in real estate.

The dollar amounts of appraisals by different professionals for the same property interest can fall within a range of values depending upon who commissioned the appraisal, its purpose, and the interpretation by the appraiser of the factors considered. Well-qualified professional appraisers will develop widely differing values for a property, particularly if it is unique and there are limited recent comparable sales. Before relying on an appraisal commissioned by a third party, the Team should seek the opinion of a knowledgeable and trusted adviser, such as a local banker, who is sympathetic to the project.

Many successful transactions occur with no appraisal whatsoever. The best way to determine the actual value of real estate is the consummation of the transaction. The amount an informed buyer is willing to pay and an informed seller is willing to accept is the actual value of an interest in real estate.

#### N. Real Estate Transfer Taxes

This transactional expense, if it is applicable to the property, is usually a percentage of the value of the property. In some jurisdictions, nonprofit organizations are exempt from transfer taxes. It is also the custom in some areas for the impact of this tax to be shared between the seller and buyer. A real estate professional, banker, or lawyer can be a reliable source of information on this tax, which, if payable, is a detail of the project budget.

#### O. Real Estate Taxes

Similarly, the structure of the deal and the implications of ownership by a nonprofit could be factors in calculating this expense. Current taxes are usually prorated between the buyer and seller at closing, with the buyer paying for the remaining balance of the tax year. Presumably these taxes have been considered in the property use, management, and stewardship plans for the property described in Section J, "Property Use, Management, and Stewardship Plans," above. The creation of a conservation easement on the property may reduce property taxes (see Section B.1, "A Conservation Easement," below).

Is the property under some form of favorable assessment? Determine whether the property is under an agricultural or forestry incentive tax-rollback program. If this is the case, transfer of ownership can trigger back-tax liability. This can be substantial in some cases and can have a significant impact on the negotiations. If due, and payment is not provided for at the closing, it could result in a lien being placed on the land after the transaction closes. The Team must understand the actions that trigger rollback and ways it can be avoided.

## P. Gift Taxes

Donations of interests in land can create gift tax liability for the grantor, which, if not paid, may become an obligation of the grantee. If the grantee is not a charitable organization, gift tax could apply. Moreover, even if the grantee is a charitable organization, some gifts of less than a full interest in the property may be taxable. If donations are part of the plan, consult a tax expert regarding gift tax consequences.

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## IV. DEVELOPING THE RESOURCES

- Resources include money, tax incentives, land revenues, and donated services.
- A. Charitable Donations
- B. Tax Benefits to the Landowner
  - 1. A Conservation Easement
  - 2. A Bargain Sale
  - 3. Donation of the Entire Property
- C. Owner's Life Estate/Remainder Interests
- D. Pro Bono Services
- E. Fundraising
  - 1. Potential Sources of Funding
  - 2. Establishing Priorities
  - 3. Case Statements
  - 4. Contacts
- F. Land as a Resource—Sustainable Use
- G. Borrowing
  - 1. Purchase Money Mortgage
  - 2. Lending Institutions
  - 3. A Repayment Plan
- H. Installment Sales
- I. Publicity

What follows are some suggested devices, techniques, and resources for financing the land acquisition project. Some strategies may outstrip the capacity of local equestrian organizations and require professional land conservation assistance. Therefore, we recommend either forming synergistic partnerships with these local groups or seeking information from their resource base.<sup>13</sup>

Resources are not just money, although it is paramount. They also include immediately available tax incentives and opportunities provided by real estate to generate future funds or tax incentives.

### A. Charitable Donations

The project will benefit if the proposed owner of permanent rights to use land is a charitable corporation as described in Section 501(c)(3) of the U.S. Internal Revenue Code. In most instances, donors to such an organization may deduct the value of the donation on their federal income tax returns. If the donation is of appreciated marketable securities, the market value may be deducted without reporting the capital gain, which would otherwise be taxed if the donor sold the securities.



For example, if a donor has shares of Microsoft that have a tax basis of \$5 per share and are now worth \$100 per share, the donor could give to a charity ten shares and deduct on his or her federal income tax return \$1,000, although the purchase price was only \$50. In a top tax bracket (assume 40 percent) the \$1,000 deduction might save the donor \$400 in federal income taxes, plus a tax of approximately \$190 that the donor avoided on the \$950 capital gain. These potential savings often result in generous donors being able to give much larger donations than they could otherwise afford.

There are circumstances in which an equestrian organization, such as a hunt club, will not be able to qualify as a 501(c)(3) charity and gifts to it will not provide tax benefits to donors. In such an instance, the equestrian organization could seek a bona fide charity, such as a land trust or an equestrian education organization, and partner with it to achieve the needed funding creatively and legally.

## B. Tax Benefits to the Landowner

The landowner might be convinced to donate interests in the land to a charitable organization in view of the tax benefits. If purchased or inherited a number of years ago, the land may have a tax basis far below current values. In such instances, the landowner might be prepared to consider a conservation easement, a bargain sale, and/or a donation of the entire property. That is one of the reasons for the Team to cultivate a relationship with the landowner early in the planning of the project (see Section V, "Building a Relationship with the Landowner," below).

Donation of property in a manner that provides benefits under the Internal Revenue Code (and in many instances with state taxes) is a highly technical area of the law requiring the advice of experts. This Guide will not provide this technical advice, but it will set forth what is possible with guidance from experienced tax practitioners.

The following types of transactions can have favorable tax consequences:

### 1. A Conservation Easement

An easement that qualifies for tax benefits under the Internal Revenue Code is generally a perpetual easement restricting use of the property that has been donated to a qualified organization for conservation purposes. A conservation easement restricts uses of the property (but can allow some development such as residences or even commercial uses) and controls the manner in which the property will be used, to protect the environment. Trails or other rights of way over the property can be set aside by the easement for the benefit of equestrians. Since equestrian organizations are not normally organized to accept donations of conservation easements, the Team may need an experienced land trust that knows the technical requirements of the Internal Revenue Code as a partner for this purpose. In some parts of the country where a local land trust does not exist or is not cooperative, an equestrian organization may wish to organize a horse-friendly land trust.

For the owner, a qualifying easement can result in a deduction from federal and sometimes state taxable income in the amount of the value of the easement. This is the difference in market value of the property before and after the easement becomes effective as determined by a qualified appraiser. This deduction is limited to a percentage of the landowner's taxable income in one year, and the excess may be carried over for a period of years. A landowner with low taxable income may not benefit significantly from this charitable deduction.

If the same owner holds the property until death, the conservation easement can result in very substantial reductions in estate taxes. Some knowledgeable tax practitioners have concluded that, in the right circumstances, an owner who contributes a conservation easement on property will have a greater estate to pass on to heirs than would be true if there were no conservation easement. By reducing death taxes, heirs have the financial option of keeping the property in the family. There are instances where the overall after-tax benefits of conserving family lands result in value equal to or greater than would have been realized had they sold to a developer. Federal tax laws even allow estate tax deductions and exclusions for donations made after death, by the estate of the owner.<sup>14</sup>

Another advantage of a conservation easement to the owner of the property is that it may reduce local property taxes. For example, if before the easement there are fifty permitted house sites and after the easement there are only five house sites, the market value of the property has been reduced and, in many jurisdictions, the tax assessor should recognize the reduced value.

For a horse organization, a conservation easement can ensure that the land will never be densely developed and that equestrians will have perpetual rights of way or other perpetual forms of limited use. An easement alone is not sufficient for a permanent competition or training site. However, it would serve for the cross-country portion of a combined training event, a point-to-point or annual steeplechase, a trail, a fox chase, or a similar sport that does not make intensive, continuous use of the land.

Nevertheless, a conservation easement may be a useful device in instances where an equestrian group intends more intensive uses, such as a training or competition center. If the owner can be convinced to place a conservation easement on the property prior to or as part of the sale, the value of the property may be reduced to a level within the financial reach of an equestrian organization that needs to own all of the remaining property rights.

## 2. A Bargain Sale

An owner may be willing to sell land to a charitable organization for less than its full market value. In such a case, it is possible for the landowner to deduct from taxable income the amount by which the sale price is less than the market value established by a qualified appraiser.



### 3. Donation of the Entire Property

Assuming that such a wonderful gift meets the technicalities in the tax laws, an owner who donates all of the land interests to a charitable organization may have a substantial tax deduction and will not be required to pay capital gains on some or all of the appreciation in value during his or her ownership. A full donation will also reduce the taxable estate upon the death of the owner. Before accepting any such gift, the equestrian organization or a partner land trust needs to be certain that it can support the ownership costs and that there are no hidden liabilities, such as an environmental hazard.

#### C. Owner's Life Estate/Remainder Interests

Often the owners do not want to leave their land, but they feel compelled by financial circumstances to sell it for development. In such instances, it may be possible for an equestrian organization to purchase a remainder interest in the land, thereby giving the owners financial security and allowing them to use for their lifetime the portions of the property and improvement not needed by the equestrian organization. After the death of the owners, the equestrian organization (or a partnership with other organizations) would have all rights to the property. The value of the life estate may significantly reduce the purchase price of the property and bring it within the reach of the equestrian organization. Such a strategy could be combined with a conservation easement, even further reducing the purchase price.

Another strategy would be for the owner to donate the entire property to an equestrian organization or to a partner land trust that is a tax-exempt organization, with the owner reserving a life estate in a portion of the property. In such an instance, the owner may have a tax deduction equal to the entire value of the property less the value of the life estate, which may be minimal if the owner is of advanced age.

#### D. Pro Bono Services

Earlier in the Guide, pro bono services from various professionals, such as lawyers, real estate agents, or financial advisers, were suggested as a way to reduce costs. Other pro bono services could come from local contractors who might be willing to inspect or even build structures on the property, architects who might design improvements, or developers who might cooperate to finance the acquisition through environmentally sensitive subdivision of the property. When accepting pro bono services, the Team should keep in mind the old adage that sometimes the advice or service is worth what is paid for it. There are circumstances where it is better to pay for expert service than to accept friendly advice.

#### E. Fundraising

Fundraising is mostly detailed planning. Some potential donors are impressed by carefully prepared case statements. Others require personal contact by persons they trust. The key is analyzing all potential sources of funds, establishing a prioritized list of likely prospects, preparing case statements that are carefully tailored to each prospect, and identifying the right

contacts for each prospect. This effort is basically the art of convincing other people to provide financial support for the project.

If it is fortunate, the Team will include people who understand the art of fundraising and can make the Team effective in talking to individuals and organizations who will contribute the funds needed to achieve the acquisition and management budget for the project. If the Team does not include such talent, it may have to retain a professional fundraising consultant.

## 1. Potential Sources of Funding

### (a) The Membership of the Equestrian Organization

First and foremost, the members of the equestrian group involved must be committed to the cause and demonstrate their commitment by making personal donations. Others are unlikely to join the cause if the primary beneficiaries of the project do not show that it is very important to them.

### (b) The Neighbors

Usually, the neighborhood welcomes permanent open space, and residents will be inclined to support the project with funds or in-kind gifts of land or services.

### (c) A Neighboring Developer

Developers might be enlisted as supporters if they can be made to appreciate the advantage of having the views of the adjacent property protected. This could not only enhance the sale price of adjacent lots, but also improve their marketability by making the lots desirable to equestrians. Their customers could be granted access in exchange for the developers' support. Additional open space might be made available to horse people as part of a quid pro quo arrangement with the developers where mutual interests are served.<sup>15</sup>

### (d) Public Funding Sources

Numerous public funding sources exist because governments at all levels have recognized the value of maintaining open space for various reasons. Open space has immeasurable public value, including reduced stress, improved air and water quality, less traffic congestion, and numerous recreational and wildlife benefits, all of which translate into economic, social, and individual quality-of-life improvements for the community. For these reasons, there may be public programs with funding available to support the Team's project. If such a program does not exist, the proposed protection might present an opportunity to foster such an initiative.

These programs may be researched through government offices or through a partnering land trust. The research should not only identify available funding, but also determine if the requirements of the government programs are compatible with the intended uses of the land. The following types of programs may be available:

- State and Local Open Space Accounts - States, counties, and local governments are creating funds for acquisition of development rights to preserve farmland and other desirable open space.



- Federal Programs - Programs administered by several departments of the federal government encourage private land protection initiatives. The Department of Agriculture 1996 Farm Bill provides numerous provisions for farmland protection, including:
  - Incentives for farmers to implement riparian buffers to wetlands (such buffers could accommodate trails);
  - Habitat restoration funds that could provide resources to purchase/protect open space.

The Department of Interior, U.S. Fish and Wildlife Service, administers its Partners for Wildlife Program for the protection and restoration of wildlife habitat, and the Transportation Department, through the Federal Highway Administration, administers the Intermodal Systems Transportation Equity Act (ISTEA), which provides funding for trail development and improvement. A recent provision of that legislation funds land protection and trail acquisition, development, and user education programs in areas where a Federal Highway Administration project is being developed or enhanced. This program alone has more than \$180 million earmarked for the creation and maintenance of nonmotorized and mixed-use recreational trails between now and the year 2003. ISTEA funding has been awarded for the protection of view-sheds associated with scenic highways. This is one of the most important sources of governmental funding for the protection of open space and trails.

Various other government programs exist that may support equestrian land conservation and management goals. Their purposes vary widely from pollution mitigation settlement accounts, which could be applied to land conservation, to disposal of government property such as former prisons and military installations. Diligent research on the part of the Team may disclose the right funding program or source of land for the equestrian use project. The Equestrian Land Conservation Resource can provide guidance on whether such funding might be available for the Team's project.

#### (e) Conservation Organizations

Conservation organizations could take an interest in the project, particularly if the land has special characteristics such as being adjacent to a previously protected property or an area identified for preservation. Properties that provide habitat for wildlife, or other values that are worthy of protection, without interfering with the intended equestrian uses might be of interest to a local land trust or environmental conservation group. A product of the partnership might be the ability to leverage joint resources for a project of greater scale that satisfies multiple goals.

#### (f) Other Equestrian Organizations

A project that provides uses for other equestrian organizations is likely to result in funding from their members and from national organizations of which they are a part.

#### (g) Business/Corporate Sponsorships

Corporations often have budgets specifically designated for support of worthwhile projects in communities in which they operate and their employees live. If it is dependent

on the general public, such as a bank, the business may wish to sponsor the project to build goodwill in the community. Other companies seek a more direct link between the donation and the market for their products or services. The case statement prepared for these businesses may be advanced if it contains facts about the economic impact of the horse industry in the area of the Team's project. Such data may be found in studies conducted by the state horse council, the American Horse Council, and the Horse Industry Alliance.

There are a number of local horse-related businesses that will benefit from protected horse activities, including veterinarians, farriers, feed and tack stores, construction/fencing companies, hay and bedding suppliers, and the hospitality industry serving visitors to competitions. All should be asked to support the project.

Consideration might also be given to stimulating the generosity of a business by offering significant recognition for the sponsor. For instance, a local car or truck dealer might wish to have its name on a show ring in return for a substantial contribution.

#### (h) Community Service Organizations

Broad outreach to the community, including therapeutic riding and programs for underprivileged riders, may result in attracting support from groups and individuals who otherwise would have no interest in equestrian projects. Similarly, if the project can benefit a community service organization by providing a site for its annual fundraising event, its members may want to give their support to the project.

#### (i) Foundations

There are local, state, and national charitable foundations that might contribute funds for the project. Unless they have a personal relationship with a key decision maker at a foundation, the Team may wish to seek assistance from a professional fundraiser in selecting the right foundations and in writing an effective grant application. Every foundation is beseeched by applicants, and it takes experience to know how to approach the right foundation and to make an effective case.

## 2. Establishing Priorities

Establishing priorities is a simple matter of selecting the most likely areas of substantial gifts. There is no point in spending many hours on \$10 donors when what is needed is \$10,000 donors. Moreover, volunteer fundraisers need assurance that they have a high likelihood of success and will be asked to contact only a small number of prospective donors. An axiom of the experienced, successful fundraiser is that at least half the amount necessary should be raised from as few sources as possible, prior to broadening the appeal. This allows the Team to establish the momentum for the later part of the campaign with an efficient, focused effort at the beginning.



### 3. Case Statements

Case statements are written presentations that in a few words explain the need for the project and the plan for funding it and its later management. Donors want to know that the plan is feasible and that after the land interest has been acquired, its annual costs will be met from sustainable sources. If they lack the talent to prepare a compelling case statement, the Team may wish to retain a professional fundraiser for this purpose. Often the right contact for a prospect will use the case statement as the basis for drafting a solicitation letter that highlights the direct interests of the prospect.

### 4. Contacts

The goal is to identify the right person to solicit a prospect. Most organizations distribute lists of names among their leaders asking them to identify persons they know. Some likely prospects may not be known and will have to receive calls or letters from persons they do not know. An important adage to remember when there is no obvious relationship with a good prospect is that if they are not asked to give, they will not give.

## F. Land as a Resource—Sustainable Use

The land itself can help finance the project in a number of ways. For instance, land not needed for equestrian use can be resold or leased, and/or revenues can be gained from sale of timber or agricultural uses of the land as well as from events held on the land.

As usable open space diminishes and the popularity of activities such as shows, races, or community fairs increases, these events will require venues. Equestrians may be willing to pay fees for use of facilities such as dressage or show-jumping rings. For the long-term maintenance of the land, sustainable economic use is important; since it avoids the need to seek annual support from donors. Moreover, a predictable income stream may provide the security necessary to obtain financing of a portion of the acquisition cost.<sup>16</sup>

## G. Borrowing

Land acquisition may be financed in part by borrowing, provided there is a feasible plan for repayment of the funds.

### 1. Purchase Money Mortgage

The selling landowner may be willing to accept a purchase money mortgage in partial payment for the land. In such an instance, the landowner will assume that in a worst case the mortgage may have to be foreclosed and the landowner will regain ownership. In the right circumstances, a selling landowner may accept a below-market interest rate or no interest rate, thereby benefiting the charitable organization that is acquiring the land. An equestrian organization would be unwise to buy land subject to a purchase money mortgage, even at a favorable interest rate, unless it has a feasible plan of repayment.

## 2. Lending Institutions

A financial institution will lend to the purchaser only if it is satisfied that there is a feasible plan for repayment. Sometimes a financial institution will accept a low rate of interest or very favorable repayment terms as a gesture of community service.

## 3. A Repayment Plan

### (a) Pledges by Donors

The fundraising campaign may have accepted multiyear, legally enforceable pledges of financial support from responsible donors that will repay the mortgage.

### (b) Resale of Land

There may be a plan to resell a portion of the acquired land, with the proceeds used to repay the mortgage.

### (c) Revenues from Use

There may be sustainable uses of the land that will provide revenues sufficient to pay all operating expenses and retire mortgage debt.

## H. Installment Sales

If the landowner will incur very substantial capital gains taxes upon sale of the property, he or she may desire to spread the gains over a period of years through use of an installment sale meeting technical requirements of the Internal Revenue Code. An installment sale agreement can provide the purchaser with current rights to use the land, but the title will remain with the seller until the last installment has been paid. If the purchaser gains the equestrian use of the property it desires, an installment sale may give the purchaser time to fund the purchase price. However, if installments are not paid in a timely manner, the seller may, in a worst case, declare a default, retain title to the property, evict the equestrian organization, and keep all prior installments paid to him or her. In light of this, a feasible repayment plan is critical.

## I. Publicity

Favorable publicity about the project in local and regional newspapers, community magazines, equestrian and conservation magazines, and other publications will build the image of the project with potential donors and enhance all forms of fundraising. Such publicity can be arranged by cultivating the press. The Team may benefit by having a member who understands how to get the attention of editors who will provide favorable coverage of the project. Warning: If the landowner or major donors wish to have a low profile or be anonymous, great care must be taken in arranging publicity about the project.

Although they may produce only a small part of the funds needed for an acquisition, community functions, such as social events, auctions, raffles, and bake sales, may serve to publicize and demonstrate the resolve of the Team, thereby leading to major resources. They also emphasize the grassroots nature of the effort and broaden the base of support.



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## V. BUILDING A RELATIONSHIP WITH THE LANDOWNER

- A. Research
  - 1. The Title Owner
  - 2. The Size and Property Lines of the Parcel
  - 3. Other Public Information
- B. Selecting the Team's Representatives
- C. The Introduction
- D. The First Meeting
- E. Subsequent Meetings
- F. Memorandum of Understanding
- G. Landowners in the Area

The landowner is an important partner, and his or her cooperation will increase the likelihood of the success of the Team's effort.

If the target parcel is listed with a broker, this section may be inapplicable, and all contact with the owner may have to be through the broker. If a member of the Team is a close friend of the owner, it would be appropriate for the friend to contact the owner and determine the relationship with the broker. Not all listings are exclusive and the owner may have reserved the right to deal directly in certain circumstances. Both the owner and the Team should honor the terms of any brokerage agreement that may exist.

Getting to know the landowner is basic to gaining any of the benefits that only the landowner can provide, such as willingness to sell, a reduced sales price, and favorable financing. The starting point is gathering information, followed by an introduction, friendly discussion, and eventually agreement on the terms of the transaction.

### A. Research

The degree of research required will depend on how well the Team knows the property and the owner. The more the Team knows about the principals before they meet with them, the better able they will be to generate goodwill. Useful information that can be gathered without first contacting the owner includes the following:

#### 1. The Title Owner

The Team may think that the owner is the person who lives on the property, but that is often not true. The title owner may be another person, a trust, a family partnership, a corporation, or any number of other groups or entities. By going to the local land records and determining the title owner, much time may be saved (see Section L, "Title Report," above). Even if the member of the Team who goes to the land record or tax assessor's office is not

trained in title search procedures, there is usually a clerk willing to help. It is a simple matter to find the legal name of the current owner of a parcel of land in the public records.

## 2. The Size and Property Lines of the Parcel

Tax parcel maps, available in most taxing authorities' assessor's office, disclose the property lines and the number of acres of each subdivided parcel. Sometimes this information may disclose that there are several tax parcels in what appears from the road as one tract, and these property lines may be quite different from what appears on the ground. This information may lead to further search for the title owner of each such parcel.

## 3. Other Public Information

If the landowner is not well known, information about the individual or organization may be available on the Internet, from local newspaper files, or from government sources. If the land is owned by an organization, research should disclose the names of the officers and directors, the address and telephone number of the organization, and some financial and other data about the organization.

Research may disclose financial and lifestyle information that will affect the way the Team presents its plan to the owner.

## B. Selecting the Team's Representatives

Depending on the talents and abilities available within the Team, there are several variations of how the Team might approach the landowner. Perhaps the Champion is the best person to represent the Team in sensitive discussions. Although it is not recommended, the Team may decide that approaching the landowner as a group is the best way to demonstrate their capacity, resolve, and sincerity. However, it is important to have a single spokesperson conduct detailed discussions with the landowner. The identity of the spokesperson may change according to the relationship that develops. The Team should be sensitive to personalities and select a spokesperson who is likely to have the best rapport with the landowner while being effective in promoting the Team's goals. Personal egos on the Team should not govern this selection.

## C. The Introduction

Nothing improves the early stages of a relationship more than an introduction by an individual respected by the owner. Likely sources could include the owner's banker, lawyer, doctor, religious leader, or relatives. This same approach is needed for the representative of an organization that may own the target property.

If all else fails, the Team will have to make a "cold call," which is best preceded by a letter describing the Team's purposes and intentions. During the telephone call, the Team can set up a meeting.



#### D. The First Meeting

The first meeting is seldom a time for negotiation. Rather, it is an opportunity to win the confidence of the owners and to educate them in general terms about conservation and its tax benefits, to both the community and landowners alike. The purpose of this meeting is to determine whether the owners are interested in the project. Since the owners agreed to the meeting, they are likely to have some interest in selling all or a portion of their property or learning about the tax advantages of conservation.

If the owners show interest in conservation and in the project, they should be receptive to information about provisions of the federal tax code that encourage land conservation. Some states provide similar incentives. These facts could result in an improved bottom line for the sellers. If they are motivated to sell because of difficulty paying property taxes or fear of estate and income tax liability, tax incentives encouraging conservation may allow them to remain on the land while reducing their financial burden. When these strategies are properly applied, there is even the possibility that the owners may gain value by donating all or part of the property to the equestrian organization or to a land trust.

Some owners will have no interest in conservation and will want to sell at the highest price. If this appears to be the case, the Team should make an effort to convince the owners to keep the property off the market while continuing to educate them about conservation alternatives. Over time, the owners may come to appreciate the financial benefits afforded by a conservation easement or other donation.

If the first meeting ends with the owners being adamant about receiving full market value, this knowledge is important to the planning effort. The Team knows that it must fund the full market value from other sources, although a purchase money mortgage may still be a possibility.

The discussion may suggest some changes to the plan for the project that would win greater support from the owners.

Normally, details should be avoided at the first meeting, and the Team should concentrate on building goodwill with the owners and learning their plans for the future of the property.

#### E. Subsequent Meetings

Building relationships with landowners should not occur solely at meetings. Every opportunity for positive interaction with affected property owners, while mounted or on foot, on the trail or in the community, should be utilized.

After the first meeting, the Team will need to review its plan and determine whether there are aspects that should be adjusted to meet the needs of the owner. Subsequent meetings may occur to develop a mutual understanding of how the Team and the owner can work together for completion of the project. This time can be used to develop a shared vision for the land with its owner, one that may keep it essentially the way that it is.

At what point the price of the property will become a topic of discussion depends upon how the relationship develops. If the owner is talking about a donation or bargain sale, the price will depend upon a detailed appraisal. If donations are not in the discussion, price may be an early subject upon which nonbinding agreement in principle may be reached. There are no legalities or technicalities related to a negotiated price. It is what an informed seller is willing to accept and an informed buyer is willing to pay (see Section M, "Appraisals of Value," above).

#### F. Memorandum of Understanding

The purpose of these discussions with the landowner is to reach a nonbinding memorandum of understanding (MOU). This informal letter of agreement between the Team and the owner will serve as the basis for the drafting of legal documents leading to further steps. If lawyers have not been involved prior to this point in the discussions, this is the time for a lawyer representing the Team to draft a written memorandum of understanding. A memorandum of understanding may contain, among other things:

- A description of the plan for the property;
- The actions to be taken by the owner, which might include subdivision of the property, an appraisal, and/or drafting of a conservation easement;
- The actions to be taken by the Team, which might include incorporation as a nonprofit charitable organization, preparation of an agreement of sale, detailed inspection of the property if this has not already occurred, a survey, and fundraising. Sometimes the owner will not wait for the Team to accomplish its actions without receiving compensation for an option to purchase the property, in which case the first action will be drafting and signing of a formal option agreement;
- A time limit by which all of the actions will be taken and a formal agreement of sale will be signed;
- A legally binding agreement of the owner to keep the property off the market until the various actions are taken or the time limit has been exceeded. This is only fair since the Team will now spend money in preparation of formal legal documents and possibly in forming a nonprofit charitable corporation;
- Sometimes there are legally binding clauses requiring that the terms of the transaction be confidential.

#### G. Landowners in the Area

Most riders whose sport requires open space know that their activities depend on the goodwill of private landowners. Cultivation of these relationships is integral to any plans that the Team might have for conserving a substantial area for equestrian use. Nothing is more important than building positive relationships with all landowners. A longstanding cooperative relationship between equestrians and landowners can result in opportunities for the protection of lands and trails that would otherwise be lost before the equestrian conservation group has time to react. The logical precursor to negotiating to acquire ownership of real estate is a relationship built on mutual respect and understanding of land use issues. Every equestrian in the area should be encouraged to give landowners a friendly greeting, demonstrate respect for the land, and use



opportunities that may arise to educate landowners about the benefits of land conservation for equestrian use.

Practicing this philosophy with neighbors will build acceptance for the Team and its efforts to conserve land for equestrian use throughout its local area. A community of landowners who admire and respect the Team is likely to make every effort to cooperate toward the achievement of shared goals.

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## VI. NEGOTIATIONS AND AGREEMENTS

### A. Negotiating Styles

- “Win-win” must be the goal of all negotiations.

### B. Types of Agreements

1. Option Agreement
2. Lease/Purchase Option
3. Agreement for Sale of Real Estate
4. Mortgage
5. Conservation Easement

In the process of developing understandings with the landowner and among the other parties to the transaction, negotiation is occurring. In the early stages, discussion tends to be general and the resolution of specific, controversial issues tends to be postponed. Thus, the memorandum of understanding with the landowner described in Section F, “Memorandum of Understanding,” above, may not resolve many difficult issues that will arise as the formal, legally binding agreements are prepared by lawyers. These matters must be resolved by negotiation.

### A. Negotiating Styles

Styles of negotiation are as unique as the individuals involved and the particulars of the transaction. This Guide will not prescribe a particular way of negotiating since there are numerous successful negotiators using many different approaches. However, the surest approach is one that results in both parties walking away feeling positive about the process. Subjective points of view need to be brought from the extremes to the middle ground, where agreement can occur. The Team should start by placing their intent to achieve a “win-win” result in the forefront of all discussion. Look at potential adversaries as potential allies. Seek constructive solutions to conflict and get past them so that everyone can see where interests converge. Once this is accomplished, parties to negotiations can approach consensus, striving for outcomes in the middle ground and developing the cooperation necessary to achieve them.<sup>17</sup>

### B. Types of Agreements

Although this Guide cannot anticipate all of the agreements that might be needed to complete a transaction, there follows a brief summary of some of the more common agreements.

#### 1. Option Agreement

The purpose of an option agreement is to provide the Team with assurance that if they enter into a binding agreement with the landowner within a specific period of time, the property rights will be available to the Team at the price and other conditions set forth in the option agreement. An option agreement is needed where the landowner is anxious to sell and



does not wish to take the property off the market solely on the basis of a nonbinding memorandum of understanding.

The option price and its relationship to the purchase price are matters of negotiation. The Team will want a low option price and a provision that upon closing the option price will be credited against the purchase price. The option price could also be converted into the deposit that will accompany a binding agreement of sale. The landowner may counter that he or she is losing income on the value of the property while awaiting action by the Team and should be entitled to retain the option price as compensation in excess of the purchase price. Depending on the landowner, something fair can probably be negotiated. Building goodwill early on will reap rewards.

The option period (term) depends on the actions that the Team must accomplish before it is prepared to enter into a binding agreement of sale. Most likely, the Team will need to raise funds, and it may need to create an organization to own the property rights. Normally, the Team wants as lengthy an option period as possible for a reasonable option price.

The terms of an option agreement would be quite similar to the terms of a memorandum of understanding (see Section F, "Memorandum of Understanding," above). However, the penalty to the Team for failing to take required action within the option period (and any negotiated extension of it) could be loss of both the option price and the proposed transaction.

## 2. Lease/Purchase Option

The lease/purchase option is an agreement that allows for lease of the property by a prospective owner for a specified period of time, with an option to purchase the property for an agreed-upon price at any time during the lease period. Terms could include the application of all rents paid during the lease period to the purchase price. Sometimes there can be a long lease period coupled with an option price that increases during the lease. In one instance, a lease of 200 acres for a golf club had a term of twenty-five years with the option price per acre increasing after each five years of the lease. This arrangement expedites transfer of possession of the property and allows contingencies such as financing to be addressed subsequent to occupancy by the prospective buyer.

## 3. Agreement for Sale of Real Estate

This is a binding agreement between the purchasing organization and the landowner for a parcel of land and the improvements located upon it. Normally a landowner will not be willing to enter into such an agreement until the purchasing organization has the required financial resources. Financial resources could include cash, pledges, a purchase money mortgage, and/or a probability of a third-party mortgage loan. Typical elements of a real estate sales agreement follow:

(a) A Description of the Property

Unless a metes-and-bounds description is available from a deed or survey-plat description, the property can be identified by reference to a tax parcel number. These references should be contained in the title report. In the absence of a reliable description, a professional survey may be necessary.

(b) The Terms of Purchase

The terms recite the amount of the deposit (a negotiated amount); the total purchase price to be paid at closing; the amount the seller will finance through a purchase money mortgage; the date of closing; how transfer taxes, if any, will be apportioned between the buyer and seller; and the manner of apportioning taxes, assessments, rents, water and sewer rents, and any other lienable municipal services (which are almost always apportioned to the seller until closing and to the buyer after closing).

(c) Mortgage Contingency

If the Team intends to finance through a third-party mortgage and does not have its commitment at the time of signing the agreement, they should insist on the right to call off the transaction and have the deposit returned if there is no mortgage commitment by a specified date prior to the closing.

(d) Conditions to Closing

Both the seller and the buyer may have conditions to fulfill prior to closing. Usually the conditions provide that the party benefited by the condition has the right to waive the condition and demand that closing occur. Conditions could include the following:

- (i) Rezoning of the property to permit uses intended by the buyer but not currently permitted by the zoning may be desired. For instance, if the plan calls for events on the property, such as horse shows, fairs, or races, rezoning may be necessary and the closing may be conditioned upon the change of zoning being effective before a specified date.
- (ii) Subdivision of a larger parcel may be required before the seller can convey a portion of the property. This is a condition that cannot be waived.
- (iii) Easements or reservations may be placed on the property by the landowner before or contemporaneously with closing. Easements and reservations might include a conservation easement that could protect the property from intensive development and require horse trails and other equestrian rights of way. Such easements or reservations could be devices to reduce the purchase price to a level within the reach of the buyer. Other easements or reservations might provide the seller with rights of way over the parcel being sold. Such rights reserved to the seller should not diminish or interfere with the usefulness of the rights being conveyed to the buyer.



- (iv) Inspections of the property and its improvements, including termite certificates, environmental hazards, condition of on-site water and sewage, and condition of structures may be needed.
- (v) The buyer may require environmental cleanup, such as removal of underground oil tanks or remediation of a farm dump.
- (vi) The buyer will insist that the title be in fee simple and free of liens, encumbrances, and easements, except those listed in the agreement of sale.
- (vii) If the buyer is willing to assume lease agreements, he or she should insist on approving them before closing. If the buyer does not want tenants, the buyer should insist that all leases be terminated and the tenants vacate the property before closing. Certificates from tenants acknowledging that they have no claim on the property are desirable to insure clear title.
- (viii) There are circumstances where the property must be surveyed to provide assurance of metes and bounds and that existing or planned structures are or will be located on the property with lawful setbacks from property lines. The cost of a metes-and-bounds survey can be considerable depending on the size of the property. How this cost is shared between the seller and buyer is a negotiable issue.

#### 4. Mortgage

If the lender is a financial institution, there will be limited opportunity for negotiation. Usually the lending officer is bound by bank policy. However, there may be some room for more favorable terms, particularly if a member of the Team is important, for other reasons, to the lending institution, or if the lending institution wishes to build its image in the community. Accordingly, the following discussion about purchase money mortgages may have some applicability to negotiation with a financial institution.

If the seller agrees to accept a purchase money mortgage in partial payment of the purchase price, the Team should negotiate for favorable terms. The elements of a mortgage that could be favorable to the buyer without being unfair to the seller include the following:

##### (a) Interest Rate

If the buyer is a charitable organization, the interest rate can be as low as the seller is willing to accept, because any imputed interest will, in most cases, be offset by a charitable deduction. If the buyer is not a charitable organization, a rate lower than the Internal Revenue Service publishes monthly for different types of loans will cause the seller to have imputed taxable income. In such an instance, the lowest rate is probably the interest rate published by the Internal Revenue Service.

(b) Terms of Repayment

The Team should seek terms for repayment of the principal amount of the mortgage loan that have some reasonable relationship to the Team's repayment plan. If the seller insists on faster repayment, the Team could negotiate for small installments or no repayment of principal for a short period of years, with the entire principal amount becoming due at the end of that period. The plan would be to refinance such a balloon payment by a mortgage loan from a financial institution after the equestrian organization has proven its ability to manage the property.

(c) Taxes and Other Liable Charges

Most financial institutions insist that the borrower deposit the real estate taxes and other lienable charges with the institution that then pays the bills. The Team wants to arrange for the right to pay taxes and so on directly and merely provide proof of payment to the lender.

(d) Insurance

Most mortgages require that the borrower maintain adequate insurance on the property. The Team must determine the amount of coverage and type of insurance that the borrower will be required to carry. Prudence will dictate the amount of insurance required.

(e) Default

Most mortgages provide that the lender can call a default without prior notice to the borrower if the borrower has in some manner failed to comply with a covenant in the mortgage. This means that the lender could declare that the mortgage is in default without any responsible member of the borrowing organization being aware of what it has failed to do. A default allows the lender to demand full payment of the entire loan and to sell the property to obtain payment. Therefore, an effort should be made to require written notice to the borrower of its breach of a covenant and some reasonable time to cure the breach before the lender can demand immediate payment of the entire principal amount.

5. Conservation Easement

Conservation partners that would be the grantees of a conservation easement will have information about forms of easements and knowledge of alternative provisions. Assuming that the easement is part of a plan developed by the land trust and the equestrian organization working together, the equestrian organization should try to insure that the provisions of the easement clearly permit its intended equestrian uses. This Guide will merely highlight the major portions of a conservation easement.

(a) The Property and Its Natural Features

A preamble to many easements describes the property (the "Conservation Area") and the natural features that make it desirable for conservation. Usually a documentation report concerning the natural features of the property has been prepared, and both the report and a summary of its findings are listed in the preamble. The conservation purposes of the easement are also set forth in the preamble.



(b) Rights of Access

Some easements provide rights of access to the public for horseback riding and other cross-country sports. Usually these rights are limited to a trail corridor of limited width (20 feet, for example) delineated on a plan of the property, with a proviso that the trail corridor can be relocated on the property so long as the conservation purposes are upheld. The rights of access are subject to restrictions designed to preserve and protect the Conservation Area.

(c) Restrictions on Use

These restrictions are designed to prevent uses in the Conservation Area that are contrary to the conservation purposes. Uses that are often forbidden or limited include industrial and commercial activities other than forms of agriculture (with some restrictions on these), billboards, quarrying and excavation, groundwater removal, dumping, certain forms of tree cutting, and improvements, except those specifically permitted.

(d) Permitted Improvements

The easement specifies the type, size, location, and number of structures that may be constructed and used in the Conservation Area. There are many variations on these permitted improvements. This is the portion of the conservation easement that has the most impact on the reduction in value of the property as a result of the easement. The amount of any tax benefit to the grantor of the easement depends upon this reduction in value as determined by an appraiser.

(e) Restricted Subdivision

Often subdivision of the Conservation Area into separate lots is restricted and requires approval of the land trust that is the grantee of the easement.

(f) Subsequent Changes

Provision can be made for subsequent changes in the terms of the easement with the agreement of the land trust, provided the change does not adversely impact the conservation purposes of the easement.

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## VII. PREPARING FOR CLOSING

- A. Title Insurance
- B. Corporate Actions
- C. Casualty and Liability Insurance
- D. Funding of Acquisition Costs
- E. The Closing

If the project involves an acquisition of fee simple title to land by an equestrian organization and an Agreement for Sale of Real Estate (the "Agreement") has been signed by the seller and the buyer (the equestrian organization), there will be a closing at the time and place set forth in the Agreement. Before the closing, all conditions to closing set forth in the Agreement (see Section B.3, "Agreement for Sale of Real Estate," above) should be satisfied or waived by the party benefited by the condition. The attorney for the buyer will work with the seller's attorney and the title insurance company to prepare closing documents. If there is a conservation partner to the transaction, its legal counsel will ensure that the conservation intentions of the Team are met.

This Guide assumes that the buyer or its attorney is making certain that the specific conditions set forth in the Agreement of Sale are being satisfied.

There are some pre-closing steps that are not necessarily set forth in the Agreement, and this section will discuss them.

### A. Title Insurance

Title insurance provides assurance that if there is a defect in the title, such as a person claiming ownership or an easement or lien that was not recognized in the title report, the title insurance company will defend the title and pay damages to the insured (the buyer) should the claim be successful. Mortgagees usually insist upon title insurance protecting the lien of the mortgage, and it is prudent for a buyer to purchase title insurance. Title insurance is usually arranged through a real estate broker or lawyer, but it can be ordered directly from a title insurance company. The amount of the title insurance premium is indexed directly to the purchase price of the property. If the buyer is a charity or the subject tract of land is unusual, the premium may be negotiable.

As described in Section L, "Title Report," above, a commitment for title insurance is issued by the title insurance company showing all information of record about the property and setting forth requirements to be complied with before closing. The information about the title is useful during negotiation of the Agreement of Sale, since it discloses encumbrances that the buyer will insist be satisfied prior to closing. The compliance requirements are mostly obligations of the seller, but the equestrian organization (the buyer) should review them for items it must satisfy, such as proof of its incorporation and the authority of its officers to act at closing.



## B. Corporate Actions

The Team will need to familiarize itself with corporate procedures, or consult with an attorney experienced in this field. For example, prior to closing, the board of directors of the nonprofit equestrian organization must meet (or sign a unanimous written consent) to adopt resolutions authorizing the actions to be taken by it at the closing. A copy of these resolutions certified by the corporate secretary and duly adopted on a specified date will be a closing document.

## C. Casualty and Liability Insurance

Unless some provision was made in the Agreement of Sale for the seller's casualty insurance to protect structures on the property until closing, the buyer should arrange for such casualty insurance to be effective upon signing of the Agreement of Sale. Alternatively, provision can be made in the Agreement for reductions in the purchase price, and/or a right of the buyer to quit the deal, should the condition or value of the property change as a result of damage prior to closing. If there are no structures, insurance or other conditions related to damage may be unnecessary.

Liability insurance is needed as of the date of closing or any earlier date that the buyer gains possession, since the buyer could be liable from that date for injuries to persons or property on the newly acquired land.

Consult a knowledgeable insurance broker, one who understands equestrian activities, about the type and amount of insurance the buyer will require. The national organizations of equestrian activities to be conducted on the property may provide guidance in this area and may know of an association group policy available at reduced premium rates.

Consider obtaining directors' and officers' liability insurance to protect the directors and officers of the owning equestrian organization. Some persons are unwilling to act as a director or officer of an organization unless such insurance exists. Again, it may be available through an association group policy.

## D. Funding of the Acquisition Costs

If complete funding is dependent upon a mortgage loan from a financial institution or other third party, a firm commitment with terms and conditions acceptable to the Team must be arranged prior to the date that the mortgage contingency in the Agreement of Sale expires. The approach of that date is a critical event. Action to cancel the Agreement, or the negotiation of an extension, may be necessary if mortgage financing cannot be arranged within the time limit.

At the closing, the buyer must deliver the cash portion of the purchase price in the form agreed upon in the Agreement of Sale, which may be a cashier's check, a certified check, a wire transfer, or some other type of guaranteed available funds. Obviously this means that sufficient donations must have been received, as cash, prior to the closing and must be available for

delivery on the date of the closing. Available funds are a technical matter. If a donor is planning to delay a donation until it is needed, care must be taken that there is time to clear the check or, in the case of securities, to sell them and have available cash at the closing.

If the final date for closing is approaching and the funding is not completed, the buyer should renegotiate the closing date and possibly other terms with the seller. Sometimes the financial needs of the seller will cause him to make concessions to facilitate an early closing.

#### E. The Closing

The buyers must arrange to have persons at the closing who are authorized to act for the organizations acquiring interests in the property. This is usually their president and the secretary, but it could be other representatives named in the resolutions authorizing the transaction. The secretary should bring the corporate seal if one exists. Extra people should be discouraged from attending the closing since there are numerous essential parties and there is seldom room for more.

In spite of the formality of a meeting in the conference room of the attorney of one party or the other, or in a title office, the energy can be palpable. This event can become even more exciting if there is disagreement over whether the conditions of the closing have been met, or whether someone has failed to satisfy a contingency. Months or even years of preparation may be at risk because of the failure of some document or approval to appear at the eleventh hour. Fortunately, by the time of closing there is more often than not a desire by the parties to complete the transaction. Ways will be found to prevent the deal from collapsing. In such cases, deeds and consideration checks can be placed in escrow contingent upon the unforeseen conditions being satisfied.

A celebration may be an appropriate way to channel the fitful energy that often arises from this special day. In planning the celebration, the Team will want to invite and recognize each individual who contributed to the success. Everyone should be there. The invitees should include the individuals whose vision sparked the idea but who may not have been a part of the Team by the time of closing, as well as the grandmother of the Pony Clubber who made the cookies for the bake sale. Certainly the donor who, without fanfare, gave you the leadership gift to get the ball rolling or put your fundraising drive over the top should be allowed to revel in the day with the grant writer who leveraged the gifts to make the campaign successful.

The entire Team should feel a great sense of accomplishment as its members attend the post-closing celebration, particularly if it is held on the Team's first equestrian conservation property. This celebration not only serves the valuable function of providing an opportunity to recap the achievement of the day, but also allows the participants to ponder the challenges that remain in their development of the property for the responsible use and enjoyment of the community it will serve.



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## VIII. POST-CLOSING CONSIDERATIONS

- A. Management of the Rights under Conservation Easement
  - 1. Reasonable Conservation Practices
  - 2. Control of Usage
- B. Management of Fee Simple Rights
- C. Funding
- D. Real Estate Taxes
- E. Insurance
- F. Keeping the Organization Strong
- G. The Next Property

As the euphoria of the closing passes, the equestrian organization will need to establish programs to carry out its plans for the management, stewardship, and development of the land rights.

### A. Management of the Rights under Conservation Easement

If the rights arise under a conservation easement and there are trails or other rights to cross a property, consideration must be given to how the trails or other ways of passage will be maintained in accordance with the conservation purposes of the easement. There are few precedents in this area, and a number of issues need to be resolved. Equestrian organizations will be finding and, through the Equestrian Land Conservation Resource, sharing solutions to issues such as the following:

#### 1. Reasonable Conservation Practices

Except on hard ground, horses do make hoofprints, tear up ground cover, degrade stream banks, and cause erosion. Equestrians working with conservationists must be willing to develop practices that limit the damage, while permitting equestrian sport to continue. There is much to learn in this area, but equestrians are beginning to recognize that without the cooperation of the conservationists, the land they love will be closed to them.

#### 2. Control of Usage

If an equestrian organization assumes responsibility for a trail or other right of passage, it will be assuming financial obligations, and its members may be volunteering to maintain the rights of way. The use may not be exclusive, and the general public or a number of other organizations may have rights of passage. Measures must be taken to manage multiuse conflicts so that one activity is not interfering with another. Protocols for shared use must be established. Plans for sharing the expense of maintenance with other users must be implemented. If the right is exclusive, nonmembers will have to be kept off the right of passage. Regular monitoring and enforcement will become essential.

## B. Management of Fee Simple Rights

Ownership of land in fee simple eliminates many of the conservation obligations arising under a conservation easement, but an equestrian organization that wishes to continue receiving support from the community should undertake good conservation practices in managing its property. Much can be gained by working with conservation interests to develop practices that will stabilize or enhance the natural values of the property without curtailing the equestrian activities. If a show or event on a rainy day causes damage to the ground cover in parking lots, practice areas, rings, and courses, make a major effort after the show or event to restore the ground cover. Proactive measures may be necessary for future events if degradation results, such as restricting access to areas that inadvertently become disturbed or by providing siltation barriers, such as hay bales, on slopes to prevent runoff from impacting sensitive areas until vegetation can be reestablished.

If the plan is to have a contractor responsible for the management of the property, a contract will need to be negotiated and implemented so that the management plan can be initiated as quickly as possible following the transfer in ownership. Similarly, if sustainability partners are a part of the management and financing plans, contracts or memoranda of agreement will need to be implemented for agricultural or forestry management of the property.

## C. Funding

After closing, fundraising may continue, both to meet mortgage payments and to meet annual operating expenses. Sometimes dues and revenues from land uses, such as shows, will cover many of these expenses. If annual donations will be needed to meet operating expenses, then a program for raising these funds and a solicitation committee must be established.

## D. Real Estate Taxes

The taxing authorities may exempt charitable organizations from real estate taxes, and the possibility of an exemption warrants exploration. If not exempt, consider qualifying the property under an agricultural or open space tax-abatement program.

If there is a conservation easement on the property, the equestrian organization would be wise to request reassessment to be certain that the reduction in market value is considered. If there is no conservation easement, consideration might be given to trying to reduce taxes by granting one.

## E. Insurance

After taking possession of property, or assuming obligations under an easement, the equestrian organization would be wise to review its insurance coverage and establish a policy of annual review. This will ensure that a claim for damages will not result in a lien on the property that might cause the equestrian organization to lose its ownership.



## F. Keeping the Organization Strong

Even though an equestrian organization has acquired perpetual rights to use land, those rights may be lost if the organization loses its ability to manage the property. This can happen for many reasons, usually related to loss of dynamic leadership.

It is imperative to keep the equestrian organization strong. Steps to achieve this could include the following:

- Establishing a nominating committee to identify and groom future leaders;
- Creating a membership recruiting committee to keep the organization vital with "new blood";
- Formulating an active plan to partner or otherwise collaborate with others to build a stable base of membership; and
- Creating a program to develop ongoing financial support.

## G. The Next Property

Another way to keep the organization strong is to keep it active. Looking back at the achievements of the group can result in stagnation. Looking forward toward a goal will keep the organization vital. Closing on one property is only the beginning for conserving an area for equestrian use. The equestrian organization may wish to identify additional areas that need protection and to make their initial triumph only the first step in an ongoing process.

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## IX. ACTIONS IN A CRISIS

- A. Equestrians vs. Developers
- B. Purchase by Friendly Holders
- C. Negotiate an Option

Most of the preceding sections of this Guide have assumed that there is time to act in a carefully planned manner. Sadly, this is often not the case. In so many cases, the person who has allowed an equestrian organization to use his or her land as a training center for many years unexpectedly dies and the heirs want to sell to the highest bidder as soon as possible. Or, owners whose trails link major parts of the equestrian countryside suddenly announce that they are considering selling to a developer and will not wait for the community to respond. There are no easy answers, but there are possibilities.

### A. Equestrians vs. Developers

Buy the property at the market value. A landowner may believe that a developer will pay much more than a group of equestrians and conservationists for a property, but this is generally not true. Many developers are looking for low-priced deals and many are unwilling to pay any significant amount until all of the land use approvals have been obtained. Even then, the developer may agree to pay only as it sells sections of the property, resulting in risk for the landowner, who essentially finances the enterprise of the developer! If the equestrian community is prepared to consider paying fair market value for the property, coupled with tax benefits to the owner, the owner may be willing to work out a favorable arrangement that allows the equestrian community time to act.

### B. Purchase by Friendly Holders

There may be in the community a person or group of persons with sufficient financial means to purchase the property and hold it for a period of time until the equestrian community can get organized with funding. This happened in one instance where three persons bought the training center of a member club of the U.S. Pony Clubs, Inc., subject to a favorable purchase money mortgage, and held it for resale to the Pony Club at their cost, including interest and expenses. After about a year, the Pony Club purchased the property from the three friends of the club.

### C. Negotiate an Option

Before an equestrian organization is organized to act, a friend may be able to negotiate an option with the landowner that will keep the land available long enough for the equestrian community to act. By using a charity, like a land trust, as the holder of the option, the option price could be a charitable deduction that a friend or group of friends may be willing to contribute.



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## **X. FINAL WORDS**

- ELCR wants comments on this Guide.

ELCR hopes that when an equestrian group has successfully completed a land conservation project, the group will inform ELCR of ways that it can make the Guide more useful.

ELCR also would like to know the particulars of successful projects so that it can share this good news with others and learn from your experience.

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## ENDNOTES

<sup>1</sup> Available through the Land Trust Alliance ([www.lta.org](http://www.lta.org)), *Economic Benefits of Land Protection*, and the American Farmland Trust ([www.farmland.org](http://www.farmland.org)), *The Economic Benefits of Open Space Protection*. Access both organizations' Web sites through ELCR's Web site ([www.elcr.org](http://www.elcr.org)).

<sup>2</sup> ELCR's Web site ([www.elcr.org](http://www.elcr.org)) provides links to the American Horse Council and the Horse Industry Alliance, which act as national clearinghouses for economic and demographic data related to the horse industry.

<sup>3</sup> Calculated using figures provided by the American Farmland Trust ([www.farmland.org](http://www.farmland.org)).

<sup>4</sup> Emerson, Denny. "Between Rounds: How One Group of Horse People Is Saving Some Land." *The Chronicle of the Horse*. Friday, October 9, 1998. Pages 40-41.

<sup>5</sup> Emerson, Denny. "Between Rounds: Safety, Riders from 'Down Under' and Land Were the Themes of 1998." *The Chronicle of the Horse*. Friday, February 5, 1999. Pages 160-61.

<sup>6</sup> Emerson, Denny. "Between Rounds: How One Group of Horse People Is Saving Some Land." *The Chronicle of the Horse*. Friday, October 9, 1998. Pages 40-41.

<sup>7</sup> Haertel, Kande. "National Trails Forum: Leaders and Visionaries Opening New Trails—Start Right." *Trail Blazer*. March/April 1997. Pages 10-11.

<sup>8</sup> Haertel, Kande. "National Trails Forum: Leaders and Visionaries Opening New Trails—Start Right." *Trail Blazer*. March/April 1997. Pages 10-11.

<sup>9</sup> All member clubs of the United States Pony Clubs, Inc., are qualified under Section 501(c)(3) of the Internal Revenue Code, and member clubs may incorporate in their states in order to own rights to land. The national office will provide guidance on details.

<sup>10</sup> The trend has been for society to develop along the natural features of the landscape. Riparian and wildlife corridors became the Native trails. Subsequent European colonization developed roads and improvements along these once-natural lines. The availability of water for irrigation and rich soils often determined the destinations for, and resulted in the development of, these systems. As development swept over these systems, that trend has resulted in the best land nature had to offer being the most likely to be lost to natural purposes. If that trend continues, land will inevitably be devoured by pavement, foundations, and contrived landscapes, leaving only fragments of those once-natural corridors.

<sup>11</sup> Even marginal land might be worth preserving for equestrian use. Former gravel banks and industrial sites might be converted to productive use. Former landfill, mine reclamation, and demolition sites can provide excellent opportunities for recreational activities that are dependent on open space.

<sup>12</sup> Landowner liability is of great concern and interest to horse people around the country because it affects their ability to ride on private lands. ELCR's Land Use Policy Program will be examining the liability issue, and it will provide recommendations, referrals, and guidance in a planned equestrian liability publication.

<sup>13</sup> Included in the appendix of this Guide is a copy of the Land Trust Alliance's Public Policy Principles. Land Trusts are guided by these precepts. "Books and More," a list of LTA publications, which is available through LTA or ELCR, lists numerous useful guides, including *The Conservation Easement Handbook*, *The Standards and Practices Guidebook—An Operating Manual for Land Trusts*, *The Federal Tax Law of Conservation Easements*, and many other useful publications and resources.

<sup>14</sup> Refer to LTA's "Books and More" as a source to obtain *Preserving Family Lands*, Books I and II, by Steven J. Small.

<sup>15</sup> ELCR's Web site ([www.elcr.org](http://www.elcr.org)) can link you to the Conservation Fund's Web site ([www.conservationfund.org](http://www.conservationfund.org)). Click on "American Greenways" or contact ELCR for more information. Greenways's studies show positive conclusions about the impacts of open space on abutting landowners, such as increased sale/resale prices, shorter marketing time, and, in certain instances, lower infrastructure costs related to increasing density as a trade-off for open space.

<sup>16</sup> Yes, nonprofits can have income. They can even generate income in excess of cost of operation. Under certain circumstances, the nonprofit organization may be required to pay Unrelated Business Income Tax (UBIT). Seek advice from financial or legal consultants.

<sup>17</sup> Fisher, R., and W. Ury. *Getting To Yes—Negotiating Agreement Without Giving In*. Houghton, Mifflin Co. April 1992. Fisher, R., and W. Ury. *Getting Past No—Negotiating Your Way from Confrontation to Cooperation*. Bantam Doubleday Dell. February 1993.