

# Conservation Easement Project Checklist

(courtesy of Stephen J. Small, Esq. From his book "Preserving Family Lands, Book III)

## 1. Getting started – the project team:

- Retain attorney: tax and conservation easement issues
- Retain attorney: state and local tax and legal issues
  - All state law issues
    - Conservation easement statute
    - State income tax incentives
    - Assessment and property tax
    - Subdivision
    - Recording
    - Enforceability
  - Appraiser
  - Review appraiser
  - Land use planner/engineer
  - Surveyor
  - Geologist
  - Water rights consultant
  - Forester, biologist, etc.
  - Accountant
  - Other family advisors

## 2. Due Diligence

- Title report
- Title and ownership issues
  - Mortgage
    - Subordination
  - Mineral interests
    - Geologist's report
  - Ownership
    - Authority to donate
- Donee
  - "Qualified organization"
  - IRS determination letter
  - Good standing certificate
  - Board resolution

## 3. Tax Rules and Benefits

- Conservation easement rules
- Donee organization rules
- Baseline documentation and certification
- Federal income tax deduction rules and benefits
- State income tax benefits
- Estate tax benefits
- Section 2031(c) exclusion
- Post-mortem conservation easement donations

## 4. The Easement Document

- WHEREAS clauses
- Purpose of the easement
- Permitted activities and prohibited activities
- Reserved rights
- Other reserved rights
- Required tax code rules
- Good legal drafting
- Exhibits

## 5. Closing and After Closing

- Enforceability letter
- Effective date and timing
- Baseline documentation and certification
- Recording
  - Signatures
  - Notarization
  - Mortgage subordination
  - Exhibits
- Complete appraisal
- Form 8283
- Gift acknowledgement letter
- Closing binders