

Contents

Acknowledgments	v
Introduction	vii
1. Getting Started: An Overview	1
What Is a Land Trust?	
Advantages of Land Trusts	
Should You Form a Land Trust?	
Common Steps in Forming a Land Trust	
Case Studies in Starting a Land Trust	
2. The Board of Directors	15
Setting Up the Board	
Electing Officers	
Effective Board Meetings	
Board Committees	
3. Nonprofit Incorporation: Articles and Bylaws	25
Researching Organizational Documents	
Articles of Incorporation	
Bylaws	
4. Federal Tax-Exempt Status: Applying, Maintaining, and Reporting	33
Obtaining a Federal Tax Exemption	
Obtaining Maximum Donor Deductions	
Maintaining Tax-Exempt Status	
5. Financial Management: Budgeting, Accounting, and Insurance	45
Preparing a Budget	
Accounting	
Liability and Insurance	

STARTING A LAND TRUST

6. Volunteers and Staff	57
Volunteers	
Staff	
7. Building Support: Public Awareness, Membership, and Fundraising	63
Some Common Themes	
Public Awareness	
Membership Development	
Fundraising	
8. Saving Land: From Criteria to Stewardship	81
Choosing Which Acres to Protect	
Working with Landowners	
Land Protection Methods	
Acquisition Methods	
Cooperative Protection Roles	
Consulting, Advisory Roles, and Advocacy	
Tax Benefits of Land Conservation	
Financing Land Protection	
Stewardship - Taking Care of the Land	
9. Planning for Action	105
Appendix A: Additional Resources	111
Appendix B: Useful Contacts	121
Appendix C: Board Committee Structure	135
Appendix D: Sample Articles and Bylaws	137
Appendix E: Sample Press Release	155
Appendix F: Sample Public Awareness Materials	159
Sample Brochures	
Sample Newsletter	
Sample Annual Report	
Sample Fact Sheet	
Appendix G: Sample Land Protection Criteria	193

Acknowledgments

The Land Trust Alliance would like to thank the many individuals and land trusts who shared their experiences, ideas, and materials with us in the preparation of this handbook. Thomas C. Bailey, executive director of the Little Traverse Conservancy in Michigan, and Tino O'Brien, founder and board member of the Georges River Land Trust in Maine, were extremely helpful. Each reviewed their records, interviewed others, and spent hours on the phone with us in the preparation of the case studies of these trusts in Chapter 1. The third case study, of the Jackson Hole Land Trust in Wyoming, is based on the experience of LTA President Jean Hocker, one of the trust's founders.

Representatives of diverse land trusts around the country completed detailed surveys about their formative stages; many points throughout the text are illustrated with quotations and examples of these surveys. They are: Mark Robinson of the Compact of Cape Cod Conservation Trusts, Massachusetts; Alan Edelman of the 40-Mile Loop Land Trust, Oregon; Mark Zenick of the Franklin Land Trust, Massachusetts; Robert Z. Norman of the Hanover Conservation Council, New Hampshire; Christine C. Brubaker of the Lancaster County Conservancy, Pennsylvania; Bruce Wiggins of the Neighborhood Gardens Association, Pennsylvania; Robert Myhr of the San Juan Preservation Trust, Washington; and Timothy O. Traver of the Upper Valley Land Trust, New Hampshire.

Additional organizations provided materials for the appendices: Maine Coast Heritage Trust, Inland Northwest Land Trust, Washington, Vermont Land Trust, The Lowcountry Land Trust in South Carolina, The Potomac Conservancy working along the Potomac River in metropolitan Washington, D.C., Florida Keys Land & Sea Trust, and Peninsula Open Space Trust, California.

We were fortunate to have a pool of professionals who generously donated their time to write or review sections of the book. Marion Fremont-Smith, and attorney specializing in nonprofit law at the Boston law firm of Choate, Hall & Stewart, contributed Chapter 4, "Federal Tax-Exempt Status," revising earlier

STARTING A LAND TRUST

versions of it that appeared in *Land-Saving Action*, published by Island Press, and *The Connecticut Land Trust Handbook*, published by the Connecticut Land Trust Service Bureau. We thank these organizations for permission to reprint the chapter. Fred Butt, of Washington Insurance Services, and Jeffrey Sabot, C.P.A., of Kaufman, Davis, Ruebelmann, Posner & Kurtz, reviewed portions of the text and made invaluable suggestions. Legal review and consultation was provided by attorneys Kingsbury Browne and Richard Choute, both of the Boston law firm of Hill & Barlow, and by attorney Stephen J. Small, of Powers & Hall in Boston. Three directors of the Land Trust Alliance reviewed the handbook in its entirety: Leslie Barclay, a founder and former board chairman of the Dutchess Land Conservancy, New York; Brian Steen, former executive director of the Big Sur Land Trust, California; and Martin Zeller, former associate director of the Vermont Land Trust.

Many other members of the land trust community, too numerous to list here, provided valuable suggestions and guidance. The California State Coastal Conservancy's *Nonprofit Primer*, a guide to starting a land trust in California was an indispensable resource in the preparation of this handbook. Much of the material in this handbook parallels that in the *Primer*.

We are especially grateful to the David and Lucile Packard Foundation for providing financial support to make this publication possible.

Above all, we wish to thank the many land trusts whose experiences helped shape the handbook and the people who will care enough about America's land resources to make use of it.

Introduction

In Iowa, not far from Cedar Rapids, there's a large tract of land that is home to an endangered holly plant and myriad wildlife species — a rich blend of wetlands, floodplain, and woodlands. It lies in the path of development. But today it's protected as the Chain-O-Lakes Wildlife Area. The Iowa Natural Heritage Foundation raised the money to buy the land and then turned it over to the state's department of natural resources.

On 8,000 acres of the Upper Big Hole River in Montana, the Montana Land Reliance holds conservation easements — legal agreements to prevent harmful development — that protect some 20 miles of habitat and spawning grounds for the last major population of river grayling south of the Canadian border.

A 190-acre dairy farm in Vermont will never be developed because the Vermont Land Trust bought development rights and put together a multi-party transaction to keep the land in farming.

Success stories like these are no accident. They happen because a few people — in a community, state, or region — got together and said, "We don't like what's happening here. Open land that ought to stay a natural area (or a farm or a trail or a community garden) is being taken over by urban sprawl or subdivisions. Special places that ought to be enjoyed by everyone are instead being destroyed. We need to do something!"

And what they did was start a land trust.

Maybe they don't call it a land trust. Maybe it's a "conservancy," or a "conservation foundation" or an "open land association." No matter; these dedicated people formed a nonprofit organization to take direct action to protect the open spaces that make their communities and their regions livable and unique. The first land trust began more than one hundred years ago, and since then it's been done more than 1,200 times, for that is the approximate number of local and regional land trusts that now flourish across the country.

STARTING A LAND TRUST

And the Montana river valley, the Vermont dairy farm, the Iowa wildlife area, and some 5 million more acres across the country, are protected because people who cared started a land trust.

Land trusts are not all alike. Some are very small, run entirely by volunteers, doing their work in just one town or neighborhood. Others, though they started small, have grown to be quite sophisticated, perhaps serving an entire state, maintaining a staff of many professionals, and doing complex, multi-million-dollar land transactions.

Some land trusts own and operate nature preserves and recreation areas open to the public. Others own no land at all, but hold conservation easements, legal agreements that forever limit development on important conservation properties. Still others work in partnership with government agencies to acquire critical land that they later convey to those agencies.

Many land trusts do all of these things, and more. Each group operates in whatever way makes the most sense for its area and for the kind of land it wants to protect. That individuality and local responsiveness are two great strengths of the land trust movement.

No matter what its size and goals, each land trust starts with the vision of a few people and a commitment to persevere. Starting a land trust can be immensely rewarding. But to succeed, it also requires a willingness to learn new skills, to operate in a sound, professional way, and to take on some very long-term responsibilities.

This book is designed to make that work easier, to get you off on the right foot, to help you learn from the experience of those who have done it.

There's no single, perfect way to start a land trust. But there are some fundamental principles and practices that seem to work, and many of them are essential.

Starting a Land Trust will guide you through the early stages of the organization, from the time you decide to go forward with a land trust through at least the first year. It discusses the legal steps needed to incorporate and to obtain and keep tax-exempt status. It makes recommendations about the selection and responsibilities of a board of directors. It talks about fundraising, record keeping, and membership. It shows you ways to build community support for the organization and for land protection. And it describes in some detail a wide range of tools land trusts can use to meet their land-saving goals.

It won't answer all of your questions. You'll have to do your own research, get professional advice, and make some tough decision.

The Land Trust Alliance believes you'll find here a road map to start you in the right direction. If a land trust is right for your community, the book will give you the confidence to get underway quickly and effectively. It may be one of the most satisfying things you'll ever do.

1. Getting Started

An Overview

This chapter summarizes the steps involved in forming a land trust, from setting up a board, to organizing support and interest, to getting a land-saving program underway. These steps cannot be reduced to a formula, but many of them are necessarily the same for every new group – each must learn about land trusts, file articles of incorporation, locate sources of funding, and so on. To illustrate both the diversity and common themes inherent in starting land trusts, this chapter presents case studies of how three land trusts started in different ways under different circumstances.

What Is a Land Trust?

Land trusts are local, state or regional nonprofit organizations directly involved in protecting land for its natural, recreational, scenic, historical, productive value. Most land trusts are private, nonprofit corporations. There are also a few governmental or quasi-governmental bodies that operate with the freedom and flexibility of a private land trust, some of which have a private board or the ability to use private funds. Land trusts are not “trusts” in the legal sense, and may also be called “conservancies,” “foundations,” or any number of other names descriptive of their purpose.

Land trusts are distinguished by their firsthand involvement in land transactions or management. This involvement can take many forms. Land trusts purchase or accept donations of land or of conservation easements (permanent, binding agreements that restrict the uses of land to protect its conservation resources). They may manage land owned by others or advise landowners on how to preserve their land. Land trusts may help negotiate conservation transactions in which they play no other role, and they often work cooperatively with government agencies by acquiring or managing land, researching open space needs and priorities, and assisting in the development of

STARTING A LAND TRUST

open space plans. They also may work with other nonprofit organizations and sometimes with developers.

Some land trusts are organized to protect a single piece of property, but the more active trusts have a larger land protection agenda. They may focus their efforts in a community or region, on a particular type of resource or on a protection project. Some operate statewide and work cooperatively with local land trusts in addition to conducting their own land conservation projects. Resources protected by land trusts include forests, prairie grasslands, islands, urban gardens, river corridors, farmland, watersheds, parklands, marshes, ranchland, scenic vistas, cultural landscapes, Civil War battlefields and hiking trails.

Most land trusts depend on volunteer leadership and support even if they also have a professional staff. They have the potential to bring together a wide range of people, all of whom care about special lands in their communities.

Advantages of Land Trusts

Land trusts have many advantages as a vehicle for protecting land. They can hold and manage land and other assets as a corporation. Because they are private organizations, land trusts can be more flexible and creative than public agencies, and can generally act more quickly than government agencies. They are able to negotiate with landowners discreetly and quickly.

Their nonprofit status brings them a variety of tax benefits. Donations of land, conservation easements or money may qualify for income, estate or gift tax savings. Properly-structured land trusts are exempt from federal and state income taxes and sometimes from local property and real estate transfer taxes as well. Nonprofit status is also an advantage in raising funds.

As community-based organizations, land trusts draw on community resources, including volunteer time and skills. Their community orientation is also helpful in selecting and negotiating transactions. They are familiar with the land in the area and often have the trust and confidence of local landowners who may not want to work with public agencies or entities from outside the community.

Should You Form a Land Trust?

Land trusts are extremely effective vehicles for conserving land. But sometimes starting a new land trust may not be necessary, timely or the best approach to achieving a community's conservation goals.

Limited purpose. If, for example, the land area you want to protect is finite, small and/or does not have very special resource value, it may make sense to try to protect it without setting up a new organization. Also, an organization established to protect only one or two parcels of modest significance may find it difficult to sustain itself.

One possible alternative is to find a regional, statewide or national land conservation organization that will undertake the project. Another approach is to develop an agreement with a larger land trust that allows you to operate under its umbrella. A growing number of regional and statewide land trusts are willing to undertake such cooperative efforts where the project is compatible with their goals and purposes. The larger organization might manage the project's funds and provide technical advice and expertise; the local committee might raise the funds, promote the project and contact landowners in the community.

Duplication of effort. Setting up a new organization may be inadvisable when there is already a land trust or other conservation organization that is willing and able to take on the work. Duplicating efforts may confuse the public and cause conservation groups to compete for limited funding, directors, members, and volunteers, weakening the overall effort.

This does not mean that there should be only one land trust per state or region. Indeed, many states have scores of land trusts. But you should avoid setting up a new organization where it is unneeded. Avoid competing with other conservation groups as much as possible.

Similarly, if government programs for conservation are adequate or the work the land trust seeks to accomplish could be undertaken by a willing conservation commission or other agency, it may be sensible to work through that vehicle. On the other hand, public agencies are increasingly the impetus for the formation of land trusts and sometimes even provide initial staff support and help to fund the trust's start-up. In a few areas, government entities that operate like land trusts have been established.

Other considerations. Are there community conditions that can make operation of a successful land trust difficult or impossible? To operate an active program of land protection, a land trust needs leadership, public support and money.

If the trust's start-up group or board does not include people who are or have access to community leaders, the trust will find it difficult to raise money and may lack credibility. If the start-up group or board lacks skills in motivating people, harnessing group talents and reaching the public, the land trust may stall. If the community does not see a need for land protection, the trust will have a hard time getting the help and funds it needs.

In such circumstances, establishment of a land trust either may not be timely, or the organization may need to spend its early years laying the groundwork for a more active conservation program. It may need to spend time cultivating the support of community leaders or attracting the active involvement of volunteers. It may need to spend special time educating the community about the importance of and potential threats to its land resources.

In some cases, enough money may not exist in the community to support a land trust. It is easy to underestimate a community's wealth, especially for

STARTING A LAND TRUST

people who are not wealthy and who have no fundraising experience. Perhaps the problem is not a lack of money in the community, but the trust's lack of access to it, a circumstance that can be remedied.

The land trust will face continuing difficulties if it is operating within a town with little wealth, and the trust wants to operate an active, aggressive program of acquisition and to hire staff. Then, the trust will have to be creative in stretching its resources. Several local land trusts may be able to join together to hire a shared staff person or consultants. Perhaps a group of trusts can make a joint funding proposal to a foundation or business that would not pay attention to a single, small organization. A local land trust may be able to affiliate with a larger trust.

Successful land trusts have been organized in all kinds of communities, by all kinds of people, under a wide variety of circumstances. Dedication and hard work can accomplish great things. But enthusiasm should be mixed with a healthy dose of realism. If there is a better alternative than starting a new land trust, it is important to recognize it. If the timing or situation is not right for a land trust, focus your efforts instead on paving the way for future action.

Common Steps in Forming a Land Trust

As these examples illustrate, land trusts are very diverse. Some start with high-powered support from government agencies, business leaders or other conservation groups. Others are started by concerned citizens with little help beyond their own resources. There is no single, correct way to start a land trust, but many of the same steps must be taken by any trust:

Start with good people. Almost invariable, the key to getting a land trust off the ground is the dedication of one or two people who will put in time and energy to launch the land trust; who exercise good judgment; and who are credible to the community. As the following case studies show, the people who organize land trusts come from different backgrounds and have different resources, but they share several characteristics: they care for the land, are willing to work hard at organizing and motivating a group, and understand and can work successfully with the community. Land trust founders need to be effective in the community to win public support, locate potential funding sources, anticipate obstacles and seize opportunities.

Do the research. If you haven't yet contacted the Land Trust Alliance for information about land trusts, do so. Be sure to specify the type of information you seek. Then read up on land trusts, visit and talk to other trusts in your area, invite representatives of other groups to talk to you and talk to other national land conservation organizations, such as the Trust for Public Land and The Nature Conservancy.

Interest a broad group of people. Try to assemble a group with the wide range of skills, interests and backgrounds needed to start and run the land trust. Commitment and energy are essential, but connections, expertise and access to funding are also important. One of the first activities should be to draw up a list of people you would like to interest in the trust. Include friends, business people, public figures and people interested in conservation or community service.

Involve or inform the community. A land trust is a charitable organization, operating in the public interest and ultimately depends on community goodwill for its success. Most land trusts take early action to make the community aware of or involved in it. Some land trusts begin by holding a public meeting. Others propose the idea at a town council meeting and then bring it to a general public meeting. Others never hold a public meeting, but still let the community know about their plans.

Most groups find that holding a public meeting is useful. Be prepared to answer questions about land trusts. This may be a good time to bring in a speaker from another land trust. Discuss the possibility of forming a trust and come to a conclusion that moves the process along.

Public meetings may attract opponents. Don't feel that the meeting has to reach consensus or have a majority vote for the land trust to proceed. The purpose of the meeting is to inform the community about the plans for a land trust, to assess general community opinion and to find others who support the idea.

Form a steering committee. A steering committee does not need to operate formally but some individual or group will need to perform initial organizing tasks, including setting criteria for and recruiting board members, researching legal documents and researching land protection strategies and funding sources. If the board is established early, it may do some of these jobs.

Hold regular meetings. The steering committee and/or board will need to meet frequently and on a regular schedule while the trust is getting started. An established schedule for meeting and accomplishing certain tasks helps ensure that the trust gets up and running. Otherwise, it might take a trust more than a year to accomplish what the Jackson Hole Land Trust steering committee achieved in two months.

Choose board members. A hard-working board with a good mix of skills is essential. Once it is formed, the board is the organization. Pay attention to what skills and groups need to be represented and remember that people will judge you by the individuals who serve on your board. Most land trusts have a diverse board; a homogenous group can limit effectiveness. Also avoid choosing people solely for their name or money.

STARTING A LAND TRUST

Do the paperwork. To set up your land trust legally, you must draft and file articles of incorporation and bylaws, obtain tax-exempt status and possibly meet other state or local filing requirements. For some land trusts, this process will begin before the board is established; for others, it comes later. You should have a lawyer familiar with nonprofit law help prepare or at least review these documents. When a group is forming and anxious to act, completing paperwork can seem a major obstacle. Take the time and care to do it right, but don't get bogged down.

Define the mission. Decide precisely what the trust is trying to accomplish. What will be its geographic area of operation? What land conservation methods will it use? Will the trust work in partnership with public agencies or strictly in the private sector? Write up a one-page statement for internal and external use.

Decide on a course of action. Once the land trust's mission and methods are clear, develop a specific operation plan. This plan should address questions such as: Where are you going to look for money? How are you going to build community support and awareness? Do you want to undertake a land transaction immediately or do you want to focus first on membership building or fundraising? If you are going to start on transactions right away, how will you determine your priorities?

Begin raising money. The trust will soon need money for printing, postage, attorneys' fees, etc. Targeted appeals to a few key individuals is an efficient way to raise seed money. The start-up group or board may be able to contribute sufficient funds for early activities. Local foundations may provide start-up grants. You may also begin soliciting funds from the general public.

Set up the books. As soon as you start taking in money, you should have a record-keeping system. Once you spend or collect more than a few hundred dollars, you need a formal accounting system. The trust will need an accountant's help to set up its books, preferably one experienced with nonprofits. To protect your assets, you also need to obtain insurance.

Do something. It is important not to lose sight of the organization's purpose: *to conserve land*. Don't take too long to take action directly related to the trust's goals. Taking action will renew excitement as well as build public awareness and interest. This action may or may not be a land transaction. Some trusts are immersed in a project right away or make a deliberate decision to seek a project quickly for the attention it will bring. Some trusts decide to devote their initial efforts toward building their organizational base by fundraising, building public support and sometimes hiring staff. In some cases, the trust may have little choice; if there is unfamiliarity with or resistance to the trust, it may spend its first several years in gaining the community's confidence.

Consider hiring staff. Most land trusts do not hire staff right away; others make it a priority. Many all-volunteer land trusts are successfully saving land and many are satisfied with the level of activity they can achieve without full-time staff. But land trusts with staff say that getting full-time employees made the biggest difference in their progress. In retrospect, many trusts say that they would hire staff sooner. An interim step may be hiring a part-time administrative secretary or coordinator. Taking the administrative burdens off the people running the trust can improve their morale and enable them to spend more time on the trust's programs. However, a full-time executive director is almost always necessary for a trust to do a substantial number of transactions each year or undertake a number of complex or costly projects.

Case Studies in Starting a Land Trust

The diversity of land trusts is reflected in the diversity of ways in which they form. These case studies of the early months of three land trusts illustrate both different approaches and common needs and procedures.

The Jackson Hole Land Trust

The Jackson Hole Land Trust in (WY) was formed in 1980. It operates primarily in one valley and its drainages. The town of Jackson Hole is surrounded by federally-owned land – Grand Teton National Park and national forests. The trust was started to protect the scenic ranchland and wildlife habitat in the valley adjacent to these federal lands. Many residents felt that development was eroding the valley's natural resources and beauty.

The trust was organized primarily by a valley resident who was working for the Izaak Walton League of America, a national conservation organization. Building momentum for the trust was part of her job, but a committed volunteer or two with enough time could do all of the organizing work she did. Indeed, the volunteer work of other committed valley residents was essential in launching the land trust.

Quick organizing. The organizers of the land trust took a very deliberate, well-considered, professional approach to forming the trust. They started by researching land trusts, primarily by calling other trusts around the country. (The Land Trust Alliance did not exist in 1980.)

Once the organizers had a thorough understanding of land trusts and how they wanted to proceed, they held a public meeting for anyone interested in the idea. The meeting was well attended, and a representative of the Trust for Public Land spoke to the group.

The public meeting was followed the next morning by a smaller meeting for people interested in helping to form the trust. Although this was an open meeting, certain people were specifically invited in hopes that they would

STARTING A LAND TRUST

become involved. At this meeting, a steering committee was established to guide the trust through initial formation.

The steering committee was an interim step between the birth of the land trust and the naming of its board of directors. The committee met frequently during the next two months, during which it assembled the board of directors, drafted articles of incorporation and bylaws and developed initial land protection priorities and policies.

Whether or not it is called a steering committee, some group of people needs to perform these functions for a new land trust. As a temporary body, the steering committee can be a good way to involve interested and helpful individuals who do not want to make a long-term commitment to serve on the board.

The key to the success of the Jackson Hole Land Trust's steering committee was its businesslike approach. It met approximately every week for 10 weeks. Steering committee members also worked diligently between meetings on such tasks as contacting and interviewing potential board members, obtaining samples of land trust bylaws and articles of incorporation, which were reviewed by a lawyer, researching land protection strategies and methods and preparing items for the new board to consider.

Structuring the board of directors. The transition from the steering committee to the board was gradual. The last steering committee meetings were attended by an increasing number of new board members, and steering committee members attended the first board meetings. At the first official meeting of the Jackson Hole Land Trust board, the bylaws were adopted.

The Jackson Hole Land Trust started with a board of 10 members, but the bylaws provided the option of adding more. This allowed the trust the flexibility to add someone to the board if a particularly good candidate appeared.

The original board included local ranchers and landowners, an architect, a float trip operator, a lawyer and a former county commissioner who owned a sporting goods store. By 1999, the board had grown to 21 members.

Focus on building a firm foundation. The Izaak Walton League continued to cover the land trust's staff and office costs for about a year, by which time the land trust had raised money to hire a full-time director and cover all its own expenses. Other major national conservation organizations were also interested in land protection in Jackson Hole, and representatives of the trust were able to have a planning meeting with officers of The Nature Conservancy and the American Farmland Trust.

This national interest was a distinct advantage, but the same basic steps could be taken by any group of committed individuals. Field representatives of various national land conservation organizations are usually glad to assist a new land trust.

The Jackson Hole Land Trust made a public announcement of its formation once the board of directors was assembled. However, it waited to seek more publicity until it was more firmly established. The group spent its first year

educating itself on land transactions, building a solid organizational base, raising funds and negotiating two conservation easement donations. It also produced a brochure and held a legal seminar on tax issues for local lawyers and realtors. It was able to raise initial operating funds from a few key individuals, who donated gifts ranging from \$1,000 to \$10,000. Only then did the trust seek publicity and begin to build broad-based community support.

The Jackson Hole Land Trust has grown to be a very successful and well-respected professional organization. As of 2000, it had protected more than 10,000 acres, had an annual operating budget of approximately \$580,000, employed six full-time and one part-time staff members.

The Georges River Land Trust

The Georges River Land Trust operates in a predominantly rural area of Maine with a few summer resort towns along the coast. The area has undergone rapid development. The spark that led to establishment of the Georges River Land Trust occurred in 1986, when the land trust's founder's neighbor remarked that it would not be long before development destroyed much of the area's natural character. The founder felt that such fatalism was self-fulfilling and decided to channel his resentment into constructive action.

Starting from scratch. The founder had heard the term "land trust" and had some sense that land trusts did the sort of work he had in mind, but he knew little else about such organizations. A friend suggested he call Maine Coast Heritage Trust (MCHT), a regional land trust that assists other Maine land trusts.

After this initial contact, the founder called another friend who shared his feelings about preserving the area's natural character, and they decided to try to form a land trust. On their invitation, the director of MCHT visited and explained the basics of how to start and operate a land trust. The assistance was crucial.

Extensive public involvement. The two founders agreed that they wanted substantial public involvement from the start. They held a public meeting in the local elementary school, in a location where everyone would feel welcome. They advertised the meeting with flyers and by word of mouth.

At this meeting, attended by about 20 people, a representative of MCHT showed "For the Common Good," a video about the use of conservation easements produced by the Land Trust Alliance (available from LTA for purchase). The showing was followed by a question-and-answer session, and the two founders spoke about their vision for the area.

A follow-up planning meeting was scheduled about 10 days later. The dozen or so people at this second meeting developed an overall strategy, deciding to hold a series of meetings to elicit broad public involvement. They scheduled a public meeting for a month later, advertising it extensively with posters and flyers.

STARTING A LAND TRUST

This first public meeting, held at a local elementary school and attended by approximately 70 people, saw the first concrete steps taken to form the land trust. The core group had prepared questionnaires to gauge people's attitudes about forming a land trust and interest in serving on committees to recruit and select board members, develop articles of incorporation, or draft bylaws.

Doing the work themselves. The drafting committees used samples of bylaws provided by MCHT as the basis for their work. The group did not hire a lawyer. Instead, they decided that with the assistance of MCHT and several sample documents from other Maine land trusts, they could write documents on their own. The group felt the process worked well. The documents were reviewed by someone who had passed the Maine bar examination but was not a practicing attorney. (The Land Trust Alliance, however, recommends, that land trusts' legal organizational paperwork be reviewed by an attorney familiar with nonprofit law.)

The nominating committee drew up an application form for board members. Although the group recruited certain people for the board, the board was also open to anyone interested in serving on it.

At the next public meeting, attended by 29 people, the drafts of the bylaws and articles of incorporation were read, modified and approved. Potential board members were discussed and a date was set for signing the articles of incorporation.

Getting the board to work. The board began its service at the next meeting by working on the Georges River Land Trust application for 501(c)(3) tax-exempt status. The board included a retired businessman, a young gardener, a naval architect, an Outward Bound instructor (the original founder), a homemaker, a potter/part-time regional planner, who had worked for the state planning office, a retired army colonel/outdoor educator, a carpenter/boat builder, a local building contractor, and a lawyer.

At the board meeting about two weeks later, the board elected officers and established committees. They also began to design a brochure. Most importantly, the board decided to focus mainly on the watershed of the St. George River, an area of 225 square miles that includes four counties with 16 towns, at least 17 lakes and ponds and 50 miles of river.

In April, about six months after the idea for the trust had spawned, a representative of Maine Coast Heritage Trust conducted an all-day training session for the board, covering land trust techniques and internal and external operations. The 501(c)(3) application was submitted at the end of May. Most of the work on the application was done by a board member and a local volunteer, who had retired from the IRS. The group received its 501(c)(3) status in June, an unusually fast turnaround.

Setting the stage for transactions. The Georges River Land Trust focused its initial efforts on preparatory and educational work that would set a strong foundation for its land conservation program.

One of the trust's first priorities was to conduct a natural resources inventory of the St. George River watershed to determine what areas were most critical to protect. It gained support for this inventory from the state rivers coordinator, and it secured funding and support through another large environmental organization working on the Atlantic coast. The trust also received the services of three graduate students for almost a year and arranged many in-kind donations, including free room and board for the graduate students and the loans of cars and canoes to conduct field research.

The product was an 80-page report on the area's natural resources. The trust sent copies to selectmen in every town in the watershed and arranged to meet with them to discuss the report's recommendations. The trust also sold copies of the inventory.

The trust created a slide show that illustrated the area's natural resources, which the trust showed to many groups to build public understanding and support. This slide show was done professionally for approximately \$3,000, to which the county extension service contributed \$500. The group also began monitoring the river's water quality and leading educational river trips.

The trust's first land transaction, the negotiation of a conservation easement donation, occurred about a year after its formation began. By 1999, the land trust held 14 easements, protecting 486 acres, and owned 30 additional acres in fee title. Georges River Land Trust also assisted the Maine Department of Inland Fisheries and Wildlife in protecting another 88 acres. By 1999, the land trust's operating budget was \$41,000, about a third of which came from membership dues. The remainder came from various fundraising efforts. Part-time staff was brought onboard by 1992, including a part-time, paid executive director in 1994.

The Little Traverse Conservancy

The Little Traverse Conservancy was founded in 1972 and operates on Michigan's Northern Peninsula. The upper portion of the peninsula is very rural and sparsely populated, but the lower peninsula is probably the Midwest's premier resort area and has a long tradition of summer resort residents. The whole peninsula was undergoing heavy development when the trust was formed.

Little Traverse Conservancy's founders initially belonged to a group that had been involved for some time in litigation against questionable developments in the area. Eventually they decided that fighting developments in court was not the most effective route. They wanted to do something to protect the land on a long-term basis, "something that would last beyond our lifetimes," and decided to form an organization that would hold land. There were no land trusts in the region, but several of the founders were very familiar with the activities of The

STARTING A LAND TRUST

Nature Conservancy. They learned about the operations of a local land trust when one of the founders visited the Collier County Conservancy in Florida.

Starting with an established group. Little Traverse Conservancy's core group was hardworking and sophisticated and included people with many useful skills and contacts, such as the owner of a local marina who was also the former mayor of one of the area's larger towns, an attorney, a securities broker, a physician and a business executive who spent every summer on the peninsula. With this mix of skills and backgrounds, the founders were able to move quickly to form a land trust.

Bylaws and articles of incorporation were drawn up by the volunteer attorney, and work was begun on the application for 501(c)(3) status. The core group became the first board. The articles of incorporation were filed within three months of the decision to form a land trust. Obtaining 501(c)(3) status took approximately six months.

The Little Traverse Conservancy is unusual in that it did not incorporate under the usual Michigan nonprofit act, but under one that exempts it from property taxes, which the trust believes has been highly beneficial.

Building a committed, working board. Once the trust was incorporated, it began to broaden its board. Individuals already involved invited friends and acquaintances, as well as other targeted individuals. They first looked for people interested in and committed to the trust, and also well known and respected in the area. They also looked for people with skills the trust needed, including an attorney and a certified public accountant who would do pro bono work as well as someone knowledgeable in real estate.

The group also tried to cultivate potential donors by adding them to the board. This emphasis backfired to an extent; the group got some "dead wood" board members who had resources but did no work for the organization. The Little Traverse Conservancy (as does the Land Trust Alliance) advises against electing such "figureheads" to the board if they aren't willing to take an active interest in the work.

Focused community education. One of the most useful actions the group took in its early stages was to educate local government officials about the trust's existence, goals and methods of operation. Because land owned by the Little Traverse Conservancy would be taken off the tax rolls, the land trust representative who spoke to local officials was careful to explain the economic benefits of open space to both the region and to neighboring properties.

Targeted fundraising. The group did not hold a public meeting, partially because it had a list of likely supporters from its earlier litigation efforts. This list provided an initial fundraising and membership list.

The organization succeeded in making targeted appeals for funds from people in the community who were able to make substantial gifts and were interested in

conservation causes. The initial funds were used for printing, postage and organizational work.

Avoiding controversy. The conservancy decided to avoid politics and advocacy actions completely, feeling that it could be most effective by remaining noncontroversial. A few letters in local newspapers criticized the trust when it was formed, but the trust did not respond, not wanting to get drawn into a public battle. The criticism faded. Most land trusts try to avoid controversy, although many feel that playing a positive advocacy role for sound land conservation policies is an appropriate role (keeping in mind lobbying limitations inherent in their tax status – see Chapter 4).

After approximately one year, the Little Traverse Conservancy established criteria for land it would hold so that it could not be accused of taking real estate off the market indiscriminately.

Starting with land donations. The Little Traverse Conservancy's first project, a land donation, came even before the group had its 501(c)(3) status. Therefore, The Nature Conservancy helped insure the donor's deductibility by temporarily holding the land.

The group's first priority was to acquire land through donation, reasoning that this would bring it credibility and publicity. This strategy worked well; the central message of the first major fundraising campaign after approximately a year was: "Look at how much land we've saved already; imagine what we could do with more money."

Staff makes the difference. It took several years for the Little Traverse Conservancy to hire staff, but they believe "it was key in the transition from a passive organization that accepted land here and there to one that really is making a difference in the community." In retrospect, they would accelerate the transition from an all-volunteer organization to a staffed one.

As of 1999, the Little Traverse Conservancy had protected well over 11,000 acres, had an annual operating budget of \$568,000 and eight full-time staff members. It is still an expanding organization.

Rewarding Work

Organizing and running a successful land trust requires hard work and long-term commitment. You need to understand your community, be able to marshal the resources of money and manpower to your cause, and develop a good understanding of the technical intricacies of land transactions. If you don't have staff, running a land trust is likely to take up many evening and weekend hours.

But running a land trust is also fun. When you save a piece of land, you have the satisfaction of a tangible result from all your work, and an accomplishment that will last. You will work with an exciting group of people who are

STARTING A LAND TRUST

committed, energetic, and can get things done. You will be part of the sector of the land conservation movement where much of the most creative work is being done.

Across the country, people are deciding that if something is going to be done to protect the open space or natural resources in their community, *they* are going to have to do it. These are not, for the most part, people with a special expertise in conservation or nonprofit organizations, but simply people who want to take constructive action to solve a problem. And a land trust is a great way to do it.

2. The Board of Directors

Once you have decided to form a land trust, the next step is to establish it as a legal entity. Almost all land trusts are organized as nonprofit, tax-exempt charitable corporations. Forming such a corporation has four main components:

- drafting and filing articles of incorporation;
- drafting and approving bylaws;
- electing officers, directors, and perhaps members; and
- obtaining tax-exempt status from the federal and perhaps state and local governments.

The order in which these steps are taken varies. Frequently, a core group of people will begin drafting the articles and bylaws before or during the selection of the board of directors. This speeds the organizing process and allows the board to begin its deliberations by approving these documents and then to proceed quickly to other matters of substance. In other cases, the board will be chosen first and will draft the documents itself.

Regardless, choosing the board is the most important step in setting up a land trust.

Setting Up the Board

The board of directors may be the single most important factor in determining the land trust's future. Once formed, the board of directors *is* the land trust. The organization's vision and direction come from the board, and the board ultimately is responsible for the trust's actions, liabilities, and assets. The board is the group most responsible for the trust's success or failure. The board must establish goals and policies to ensure that the organization is successfully steered towards its goals. A "good board" is most frequently mentioned by land trusts as the key for a new land trust to succeed.

STARTING A LAND TRUST

Being on a board is hard work, but can be very fulfilling. To make the trust successful, the board must pay careful and regular attention to its finances, internal operations, programs, mission, performance of staff and volunteers, planning and evaluation, and more. The board members are also the trust's ambassadors to the public, both for public relations and fundraising.

Choosing Board Members

Careful consideration should be given to the composition of the board. One of the most important goals in assembling your board should be diversity. A healthy, productive board needs to include a wide range of opinions and experience. Your board members, called "directors" or "trustees," are one of the organization's primary links to the rest of the world. You will benefit from their contacts, skills, reputations, and outlooks. A small board may lack the broad range of talent or contacts needed. A homogeneous board may lack a useful range of views or experiences.

One special feature of most successful land trust boards, as contrasted with those of many other environmental groups, is the variety and types of interests represented. A land trust generally tries to work cooperatively with the citizens, government agencies, and business interests in its locale. The board may include developers, bankers, business people, and government officials, and generally will try to project a positive, pragmatic, and non-controversial image.

Here are some things the trust should consider in choosing board members:

Professional skills. The trust will need the skills of a variety of professionals: lawyers, bankers, realtors, and accountants. Having such professionals on the board brings a base of knowledge and experience that will benefit the board's operations, and may put skills at the trust's disposal when it could not otherwise afford them. These board members should not be overly imposed upon, and the relationship should be clear from the start: Are they willing to donate their services, or are they simply bringing their general experience to the trust?

Valuable contacts. A land trust needs to have access to certain types of people in the community, and your board should include people who can make such contacts. These include contacts with certain professionals, such as government officials, wealthy individuals or other funding sources, the business community, and particular landowners.

Credibility in the community. People who are well-known and respected in the trust's intended area of operation are also valuable assets for the board. Many people will evaluate the trust on the basis of its board members, especially in its early days. However, do not invite people onto the board simply for their name value. They must be willing to work for the trust and believe in its goals.

Conversely, avoid choosing board members who would alienate the types of people with whom you want. Most land trusts, for example, avoid loading the

board with people perceived as “hard-core” environmentalists, which could narrow the trust’s community appeal.

Ties with people you need to work with. People listen to and feel comfortable with people with whom they have things in common. Land trusts usually include on their boards representatives of the people whose land they hope to protect, such as farmers, ranchers, or people in a certain location. Some land trusts include developers or local officials who are favorable to the trust’s point of view.

Ability to make donations. Two of a land trust’s most basic needs are land and money. People with notable quantities of either may be valuable additions to the board, because of their knowledge and contacts and because their involvement may encourage them to become donors to the trust. “We have cultivated potential land donors and large endowment givers through involvement on the board,” says Tom Bailey of the Little Traverse Conservancy. “By having these people serve for a term or two, they get to know the organization and to feel a sense of ownership that motivates them to give more to the organization.”

However, people should not be on the board solely as potential donors. They must be prepared to be active participants. The trust can still involve people who cannot devote sufficient time to the trust by giving them an advisory or honorary position.

Time and energy. Perhaps most important, running a land trust takes a great deal of time and energy, especially during the early stages. Be sure to recruit board members who have enough of both to devote to the trust, particularly if you plan to rely entirely upon volunteers. Tom Bailey notes:

Certainly the more well-connected people and wealthier members are important. But people who are willing to work are the most important. It does not matter who someone knows if they are not willing to approach those people to ask for their support. Our best trustees have been those who are willing to get out and work for the conservancy and for conservation, whether it is through fundraising, stewardship work, or by offering legal and financial services. Avoid people who are figureheads only. We made this mistake. We placed several people on the board who had not been asked to do anything specific, and they really did not do much at all to help the organization.

Compatibility. Pay attention to personality traits and combinations of potential members. Will the members be able to work well together? There is no point in assembling a technically “correct” board if it won’t be able to get the work done.

STARTING A LAND TRUST

Personal qualities. Finally, a land trust board is a working board, and it is vital that its members have personal qualities that allow them to operate effectively in a group to get the job done. Karl Mathiasen of the Management Assistance Group, a nonprofit consultant who has spent 15 years studying nonprofit boards, suggests effective board members have the following qualities: commitment to the organization's purpose; common sense and good judgment; respect for group process; personal self-awareness and acceptance; openness; and a sense of humor. While it may be difficult to find this mix in every board member, it is worth striving for. A board with the perfect mix of skills, wealth, and prominence will not help the land trust if it can't operate effectively as a deliberating, decision-making body.

Size of the Board

How many board members should a land trust have? A common and generally effective board size is about nine to 15 people. Smaller boards may communicate and arrive at decisions more easily, but risk becoming stagnant or overworked and may lack important skills. Larger boards may offer greater resources of time, talent, and perspective, and provide broader representation, but can find it difficult to get much done with so many people involved in the discussions and decisions. Members on large boards also often feel less directly involved or responsible, which can lead to a sluggish, disinterested board.

Every trust will have to strike its own balance, and the size of the board can be changed later. There are effectively functioning land trusts with five board members—in cases where community outreach is not so essential and the trust has money to pay for the skills it needs—and others with more than 25 members, where community representation is considered one of the trust's most valuable assets.

One good compromise is to form board committees to deal with various aspects of the trust's work. This allows the trust to have more people on the board, while the committees are small enough to work efficiently. Even relatively small boards assign work to committees; the larger the board, the more it will have to rely on committees.

Length of Terms

Groups face similar trade-offs when deciding the length of directors' terms. Experience and continuity are extremely valuable in a board of directors, suggesting longer terms. However, shorter terms allow the trust to bring in fresh talent.

There are ways to keep valuable directors, maintain continuity and still bring in new board members:

BOARD OF DIRECTORS

- Keep terms short but allow members to be re-elected to additional terms (being sure to limit the number of consecutive terms they may serve). That way, some directors can be eased out sooner, while valuable ones continue into another term.
- Stagger terms so new and veteran directors overlap.
- Appoint valuable former directors to an advisory committee. This allows them to stay involved without dominating the organization.

One common structure is to have three-year terms with a limit of two consecutive terms. A new land trust will either have to shorten or lengthen the terms of some of its initial board members to make the transition to staggered terms. There should always be a limit on the number of consecutive terms directors can serve. It is essential to the trust's health and longevity that new people be recruited to the board.

Orientation

Most people will be flattered to be asked to serve on the board, but may not know what is expected unless you give them a clear idea. Board members should be given written information about what is involved in serving on the board. Some groups draw up job descriptions for board members. An information packet on the structure of the board and directors and officers' responsibilities is useful. Many established land trusts provide each new board member with a handbook that includes the trust's articles, bylaws, sample brochures and newsletters, policies, descriptions of accomplishments, etc.

Several books and pamphlets are listed in Appendix A that can help you familiarize yourself with the operations of a board and provide the basis for the development of your own written description. The Land Trust Alliance's *Standards and Practices*, which outline the essential practices for operating a sound land trust, are useful to give to board members as an overview of a land trust's basic operations and a board's responsibilities.

Duties of Directors

Directors of nonprofit organizations have specific legal duties. The specific standards to which directors are held vary by state and are usually found in a state's nonprofit corporation act. Directors' duties may be summed up as managing activities and assets in the best interests of the purposes for which the organization exists. In general, directors are required to exercise reasonable care in carrying out their responsibilities by acting in an informed and reasonable way; to act in good faith; and to be loyal to the trust and its purposes. Directors generally (depending on state law) may rely on information and opinions from

STARTING A LAND TRUST

others such as staff and consultants, but only when it is reasonable. The directors are still responsible for the trust's actions.

Directors may not use their position or information they learn in their position as directors for their own financial benefit, or that of their family, friends, or associates.

Many land trusts will find it difficult to have a board that is totally free from conflicts of interest. A board member, for example, may wish to donate to the trust a conservation easement that would give him or her a substantial tax deduction. Board members must, however, disclose all conflicts, and the trust should be sure to comply with state legal standards in dealing with them. The trust's attorney should review state law, and the trust should be sure all board members understand its implications.

The trust should also take any steps needed to avoid even the appearance of a conflict. For example, the trust should exclude the director from voting on the matter and perhaps also from discussions on the matter. A written policy, developed before any conflicts arise, can save embarrassment and dissent when conflicts do occur.

Electing Officers

Once the board is established, it must elect officers. Until officers are elected, rotate the positions of chair and secretary at board meetings. The offices listed below are the most common, but state law or the organization's choice may require that certain other offices be filled.

President or chairman. The president or chair is the spokesperson and main representative for the land trust. The chair should have lots of time and energy to get the organization moving and the ability to speak for the trust at public meetings. This person also chairs the trust's board meetings and should have the leadership ability to run effective meetings that allow views to be heard and decisions to be made. However, this person should not dominate the trust.

Vice-president or vice-chair. This officer presides over the organization in the president's or chair's absence. Additional ongoing tasks may be delegated to this office at the board's discretion. This position is often a training ground for the person next in line to become president or chair.

Secretary. The secretary is largely responsible for maintaining organizational continuity by keeping minutes of board meetings. The minutes, as a record of the board's deliberations and decisions, could be critical if the trust were sued, and it is important that a responsible, thorough person be elected to this position. This position can require considerable work, particularly if there is no staff.

Treasurer. The treasurer should be familiar with accounting and finance procedures and be able to file the necessary tax forms and organize a simple but effective accounting and budgeting procedure. If these matters are handled by staff or under contract, the treasurer is responsible for seeing that they are done accurately and thoroughly. Many land trusts combine the positions of treasurer and secretary.

One important responsibility of the treasurer is to prepare the group's books for the annual audit or review, or oversee their preparation by staff or a consultant (see Chapter 5).

Limit Officers' Terms

Officers' terms of service should be limited. Circulating the presidency and vice-presidency helps to develop and distribute leadership. Rotating secretarial duties prevents the overuse of one board member. Term limits for the treasurer help to ensure good bookkeeping by providing a check on the mistakes made by any one individual. Typically officers are elected for one-year terms, with provisions for re-election to one or more additional terms.

Effective Board Meetings

A good board is most useful if meetings are well run. Poorly run meetings can lead to bad decisions if discussions aren't clear; to ill will if various views aren't allowed to be aired; and to the alienation of members who are frustrated at wasting time in meetings where little gets done. Here are some of the basics of effective meetings:

Hold regular meetings. The frequency of board meetings will depend on the organization's size, range, and activity level. The board will probably need to meet more often when a trust is in the formative stage than when it is well established. Hold meetings on a regular schedule so that members can reserve the date and be sure to attend, and plan future meetings as far in advance as possible. The more preparation the board receives, the more productive meetings will be.

Have an agenda. The agenda should be established and sent to board members well before the meeting. This will help stimulate and focus board members' thoughts, as well as convey that a board meeting is a serious event requiring preparation. The agenda should be prepared by the president or chair, with input from board, staff and volunteers as applicable. Participants should be invited at the beginning of the meeting to add items to the agenda or suggest revisions.

STARTING A LAND TRUST

Choose an effective leader. The president or chair is responsible for keeping the discussion focused and moving, ensuring that everyone is heard and that decisions are clear and agreed to.

Tone. The meeting should be both structured enough to accomplish the agenda and make definite decisions, and informal enough to be comfortable, allowing people to bring up topics not on the agenda. Groups that want some guidance on conducting meetings can consult *Robert's Rules of Order*, the bible of parliamentary procedures.

Use committees. For matters that require research, investigation, or detailed review, assign a committee to prepare a report and recommendation to the board. This will streamline discussions and lead to better decisions.

Involve the staff. If the land trust has staff, they should be present at board meetings. The staff can arm the board with knowledge of the trust's daily operations, and the board can give the staff a larger perspective and sense of purpose.

Have a procedure for making decisions. When making decisions, be sure that everyone is heard. A board decision should be made by a formal vote; otherwise the last comment made sometimes becomes a de facto decision. Again, *Robert's Rules of Order* can be helpful.

Keep minutes. Keep careful minutes of board meetings, both for the trust's reference and for liability reasons. It should be clear why the trust took its actions, what factors were considered, and what information was presented. Minutes of the last meeting should be approved by the full board at each meeting.

Board Committees

Committees are often the most effective way to get things done, and they usually do much of the actual work of a board. By doing needed research, enlisting outside expertise, and carefully framing the issues at stake, committees facilitate sound and informed decision making. A committee's size, composition, and duration can be tailored to the needs of the project. Some committees may be a permanent part of the structure of the organization, while others may be formed only for one project. Committees provide a good way to make use of your board members' various skills. They also offer a way to bring in people who are not board members for certain projects.

Although committees can be useful and are often the most efficient way to carry out a certain project or function, use them carefully. The full board remains

responsible for committees' actions, and must oversee them adequately. Too many committees can become unwieldy.

Some likely land trust committees are described below. Other possible committees include fundraising, membership, public relations, and committees to oversee any special programs of the land trust, such as environmental education.

Executive committee. The executive committee can be empowered to make many of the board's decisions between regular board meetings, thus expediting decision making. Final approval of major matters still must come from the full board, and executive committee membership should rotate among board members. The executive committee traditionally includes the organization's officers, a few other board members, and one or two top staff members.

There are strong arguments against having an executive committee unless it is really necessary because the structure can lend itself to creating an "insider" group that makes most of the major decisions, leaving the rest of the board feeling uninvolved. But land trusts with an active program of land transactions will probably need an executive committee to make quick, informed decisions. Ultimately, however, the full board should vote on all transactions.

Budgeting and planning committee. This committee is responsible for the organization's overall finances and for developing annual and long-range plans and budget. Having the same committee handle both budgeting and planning makes sense, as neither can realistically be done independently of the other.

Land transactions committee. A land trust must pay very close attention to its land transactions, but the details of transactions may not require the continuous attention of the full board. If staff or volunteers are primarily in charge of land transactions, a committee can review each project and make recommendations to the full board regarding its approval or disapproval, or can simply be available to review problematic transactions. However, the full board must make the final decision on all land transactions.

Members of the land transactions committee should be willing to devote a great deal of time to the committee's work, particularly if there is no staff. Land transactions are the heart of the land trust's work and often involve complex legal, resource, and ethical issues. Each committee member needs to be fully informed about the transaction in question and its implications. Committee members should also have or obtain experience in real estate, financial, and legal matters.

Stewardship committee. Any land trust that plans to hold land or conservation easements probably should have a stewardship or land management and maintenance committee. Areas falling under this committee's responsibilities normally would include management and maintenance of land owned or leased by the land trust; monitoring of its conservation easements;

STARTING A LAND TRUST

policies for the establishment and use of a stewardship fund, real property taxes on land trust property, and liability insurance. The land trust should establish the stewardship committee before it holds land or easements. Many stewardship issues – cost of management, type and cost of insurance, how to fund stewardship activities – need to be addressed early and factored into the land trust's decision whether to approve each land project.

Nominating committee. While not essential for the land trust's first year, the nominating committee is one of the most important fixtures of any board's ongoing operations. Nominations for the board of directors and its officers are extremely important for the life of the board. Committee members need to understand clearly the purposes of the organization, the nature of its activities, the skills, qualities, and experiences of the current board members, and the gaps in board membership that need to be filled. The committee thus should probably include members of the executive committee or the chief executive officer, at least as non-voting participants.

Advisory committee. An advisory committee allows the trust to involve people without giving them a formal governance role. More opinions, perspectives, talents, and contacts can be gained, and the trust can increase its credibility, by having certain people on its advisory board. The advisory board can also be a training ground for prospective directors and provide a way to keep key former directors involved. Put people on the advisory committee only if there is a real role for them; they should not just be names on a letterhead.

3. Nonprofit Incorporation: Articles and Bylaws

To establish a land trust as a legal entity, you must first establish it as a nonprofit corporation. This is largely a paperwork exercise and includes filing articles of incorporation and preparing bylaws. The paperwork can be time-consuming and laborious. It is important for your land trust to set up a structure that meets legal requirements and suits the trust's particular needs and circumstances. Don't allow the paperwork become an obstacle. Appoint a committee or individual to do the bulk of the work, get good legal help, and keep the process moving.

Incorporating a land trust requires research, consideration of legal questions, working with an attorney, dealing with state and Internal Revenue Service requirements, and preparing and filing the appropriate forms. This chapter gives only an overview of the kinds of issues you need to consider in preparing your articles of incorporation and bylaws.

Researching Organizational Documents

There are three main sources of information for land trusts' organizational documents.

Your state's nonprofit corporation act. Every state has a law governing the incorporation and governance of nonprofit corporations. Obtain and study your state's law to determine what information you must include in your organizational documents and how it must be presented.

There are different names for the nonprofit corporation law in different states. The most common are: "Nonprofit Corporation Statute;" "Corporations Not for Profit;" and "Charitable Corporations." Other possibilities are "Eleemosynary Corporations;" "Philanthropic;" or "Corporations for Other Purposes." Obtain a

STARTING A LAND TRUST

copy of this law by contacting your secretary of state's corporations office. This office will also have other information about forming a nonprofit corporation in your state, such as annual filing requirements and possible state tax exemptions. This information also is available in law libraries (in a law school or courthouse).

Other land trusts' organizational documents. Each land trust's needs are different, but many find it helpful to review copies of other land trusts' articles of incorporation and bylaws. Your trust may want to adapt some of the ideas or language used by other trusts. *It is important, however, not to simply copy another organization's documents.* These documents are the foundation of your land trust's operations and must suit its particular needs. Since state laws vary, it is most useful to obtain samples from other land trusts in your state. Contact The Land Trust Alliance or land trusts in your area for samples. Some state-level land trust assistance programs also provide sample documents. One land trust's articles and bylaws are reprinted in Appendix D.

Internal Revenue Service publications. Your land trust should apply to the IRS for tax-exempt status to allow for tax-deductibility of donors' gifts (see Chapter 4). The IRS will review your articles of incorporation and bylaws when evaluating your application for tax-exempt status and you will want to be sure they will meet the IRS requirements.

Obtain and review IRS Publication 557, *Tax-Exempt Status for Your Organization*, and Form 1023, which is the IRS application for tax-exempt status. These are available free from the IRS. Many libraries also have copies.

Find an Attorney

Get the help of an attorney familiar with nonprofit law in drafting and filing your legal documents. Members of your group should participate in the drafting to be certain the language is appropriate for and meets the needs of the land trust. You should also be certain that you have a good understanding of the various documents. You may even do a substantial amount of the research and drafting yourself to save money on legal fees. (If members of your group take charge of the research and drafting, assign specific responsibilities and timetables to individuals or committees to keep the process moving.) However, an attorney should review your documents before filing.

You may be able to get pro bono legal help. However, don't hesitate to pay for legal services if necessary; it is well worth the investment. Be sure the attorney has experience with nonprofit law; it will save you time and money, and reduce the risk of error. You also need an attorney who works well with your group, one who understands the land trust's purposes and is willing to listen to your suggestions.

To find an attorney, contact other nonprofits in your area or ask the local bar association for the names of lawyers with nonprofit experience. The Land Trust Alliance also may be able to provide suggestions.

Articles of Incorporation

Almost all land trusts are organized as nonprofit corporations. Incorporating gives a group of people a common identity, both in the public's eye and in a legal and business sense. It limits the liability of the officers, directors, members, and employees of the corporation. A corporate identity provides the land trust with an ongoing, stable structure as individuals involved come and go. This is particularly important for a land trust, which often has permanent land stewardship responsibilities. Many institutions, such as banks and government agencies, view corporations as more businesslike and would often rather deal with them than with a group of individuals. Finally, nonprofit corporate status allows a land trust to apply for federal tax-exempt status.

The articles of incorporation are the land trust's most fundamental organizational documents, defining the organization's basic purposes and structure. The land trust's corporate legal existence begins once the state approves the articles. The IRS and the state will pay close attention to the land trust's articles of incorporation when evaluating its application for tax-exempt status.

Articles of incorporation must be filed with and approved by the state. A filing fee is usually required. In consultation with an attorney, be certain your articles of incorporation conform to the requirement of state law. Most states provide a form to be completed. Be sure your articles also contain wording that meets criteria for federal tax-exempt status and any criteria for local or state property tax exemption.

What to Include

The articles are public records and tend to be minimal documents, including only those provisions required by state law and by the IRS to qualify for federal tax-exempt status. (IRS Publication 557 includes sample language to include in your articles.) Most internal organizational details are covered in the bylaws, which are not public documents and are easier to amend. The exact content required in the articles varies according to state law but usually includes the following.

The name of the corporation and address of its principal office. The corporation cannot have the same name as another corporation incorporated in the same state. The office where you file the articles should have a list of every

STARTING A LAND TRUST

name currently in use. You frequently can reserve the name you want while drafting the articles.

Purposes of the corporation. The statement of purpose is critical, because the IRS will pay close attention to it when evaluating your application for federal tax exemption. Your statement of purpose should include language specifically designed to meet federal and state requirements for tax exemption. "The preservation and protection of natural resources for the benefit of the general public" is one common phrase used by land trusts to establish their charitable purpose. A land trust's purposes are often stated as generally as possible in the articles in order not to limit the organization unnecessarily.

Powers of the corporation. This section outlines what the corporation is allowed to do (how it will carry out its purposes, issues that will be carefully scrutinized by the IRS and the state to be certain that the corporation is operated exclusively for tax exempt purposes. If you plan to hold or manage property, it is advisable to specify the powers of the corporation in your articles.

There is general language commonly used in "powers" sections rather than listing each power of the corporation, it generally refers to having all of the powers conferred upon nonprofit corporations by state law. For example:

The Corporation shall be authorized to have and to exercise to the extent necessary or desirable for the accomplishment of any of the foregoing purposes and objectives, and to the extent that they are not inconsistent with the charitable purposes of the Corporation, any and all powers conferred upon non-stock corporations by the Maryland General Corporation Law.

However, some states require that you specifically list each power you want the corporation to have.

Incorporators. The number of incorporators required varies from state to state, usually from one to four, if you plan to operate as a 501(c)(3) charity (described in chapter 4), avoid having potential major donors as incorporators. Major donations to the land trust from its incorporators may cause difficulties for the land trust in meeting the public support test for qualifying as a public charity.

Basic membership information. State law may require the articles to include information such as qualifications for and categories of membership and members' voting rights. Otherwise, details about membership may be best covered in the bylaws, with the articles of incorporation simply referring to them. See the bylaws discussion below for details.

Initial directors. The articles of incorporation usually include the number of initial directors, their names, and their terms of service, or as much of this information as is available. If the terms haven't been determined, the articles often say that directors will serve "until their successors are duly chosen and qualified."

The duration of the corporation. Land trusts are set up as perpetual organizations.

Dissolution. To help qualify your land trust for tax-exempt status, the articles of incorporation should contain a provision insuring that the land trust's assets will be distributed for tax-exempt purpose if the trust dissolves (see IRS Publication 57 for recommended language). Although your state's law may provide for this anyway, having this provision in your articles should help speed approval. Some land trusts further specify that their assets will go to another qualified 501(c)(3) conservation organization with similar purposes.

Bylaws

The bylaws are the land trust's governing documents. |They define how the organization will be run. They cover issues such as membership categories and rights, annual meetings, decision-making processes, terms and responsibilities of directors and officers, procedures for meetings and actions of the land trust, and amending the bylaws. Drafting the bylaws usually takes longer than drafting the articles of incorporation because the bylaws are longer and more detailed and their content is more flexible. The bylaws need to be adopted by the incorporators of the board of directors.

What to Include

State law, which usually requires that a corporation have bylaws, may affect the content of your bylaws. But bylaws basically are internal documents. They usually do not have to be approved by the state and can contain any provisions for governing the land trust that do not contradict state law, the articles of incorporation, or the Internal Revenue Code. The IRS will review your bylaws when evaluating your tax exemption application.

Purposes and powers. The powers of the corporation are usually outlined in the bylaws in greater detail than in the articles of incorporation, perhaps specifying, for example, particular conservation methods the land trust will use.

Membership. If your state nonprofit corporation law does not require the land trust to have members, your bylaws need to specify whether or not your trust will have members and what their voting rights will be. Some land trusts

STARTING A LAND TRUST

have no members, or restrict membership to the board of directors, so that the board alone will vote on future members. Some land trusts have broader memberships, although they may limit their voting rights. Some states require that certain actions (such as amending the articles of incorporation) will require a given percentage vote of the membership.

The bylaws also should outline any categories and rights of membership. Membership categories are often determined by levels of donations, and these are either set forth in the bylaws or left to the discretion of the board. Some land trusts automatically make land or easement donors members, and some land trusts state that members must be approved by the board. Many land trusts have "members" in the commonsense of the term, which is that they derive annual dues income from supporters. A land trust can have such members without giving them voting powers. These are not members in the legal sense and they do not have to be described in the bylaws.

Board members. The bylaws should specify the number of directors, their terms, how they will be chosen, what powers they will have, and how unusual circumstances such as removing a director or replacing one in mid-term will be handled.

Officers. Provisions for the officers, addressing issues similar to those for directors, should also be set forth in the bylaws. What officers a land trust will have, and how many, varies; state law may require that there be a certain number or that certain positions be filled.

Meetings. Meetings may be held on a regular basis or as the occasion arises. The bylaws should contain any meeting, quorum, and adjournment requirements, rules on voting by proxy or mail, notification of meeting requirements, etc. Most organizations have at least an annual meeting, a common requirement under state law. The directors and officers often are elected at the annual meeting. The bylaws usually state when and where the annual meeting will be held, or how this will be determined.

Amending the bylaws. The bylaws should set forth the procedure for their amendment, such as requiring a certain percentage vote of the board of directors or the members.

Other Issues. The bylaws may also cover such matters as insurance, indemnification of directors, handling of funds, permanent committees, a corporate seal, the fiscal year of the corporation, and compensation (or lack thereof) to directors.

Once the articles have been accepted by the appropriate state office and the bylaws have been drafted, the new corporation must hold an organizational meeting of the board of directors, at which the board adopts the bylaws and elects the officers.

Charitable Solicitation

Organizations intending to solicit contributions from the public may be required to register with the state. Contact the appropriate state office (probably the secretary of state) for information about any such requirements and procedures for filing.

4. Federal Tax-Exempt Status

Applying, Maintaining, and Reporting

By Marion R. Fremont-Smith and Roger E. Koontz
Choate, Hall & Stewart

Editor's Note: Obtaining and keeping tax-exempt status is vital to a land trust's operation. So The Land Trust Alliance asked Marion Fremont-Smith, an experienced nonprofit attorney, to update this article, which previously appeared in different versions in Land-Saving Action and The Connecticut Land Trust Handbook. It is, necessarily, a technical discussion, and there are complexities not fully discussed here. Yet, while meeting tax-exempt status requirements takes considerable care, hundreds of land trusts are successfully doing so. Get the help of an attorney and perhaps an accountant familiar with nonprofits who can make sure your land trust meets IRS criteria.

To operate effectively, a land trust must clear two Internal Revenue Service hurdles. One establishes the trust's own tax-exempt status as a charitable organization; the other establishes the right of donors to the maximum allowable deduction for their contributions to the trust. Application for both of these determinations is made by means of a single document, IRS Form 1023. Detailed information about tax-exempt status is given in IRS Publication 557, *Tax-Exempt Status for Your Organization*. Although most land trusts should have no difficulty in qualifying as exempt organizations, maintaining that status depends on how the trust operates.

Obtaining a Federal Tax Exemption

Land trusts usually claim exemption as charitable organizations under section 501 (c)(3) of the Internal Revenue Code. A revenue ruling has held that the purposes of a typical land trust are "charitable." The overriding issue is whether

STARTING A LAND TRUST

the organization has been formed for an allowable public purpose rather than to serve the private interests of particular individuals.

As soon as it is organized, a trust seeking tax exemption should file IRS Form 1023 at the appropriate office listed in IRS Form 8718, "User Fee for Exempt Organization Determination Letter." Certain materials must accompany the form, including the organizational charter, which would usually be a certificate of incorporation; a copy of the bylaws; a statement of receipts and expenditures; and a balance sheet. For an organization that has not yet begun operations, a proposed budget for two full accounting periods and a current balance sheet showing assets and liabilities are acceptable. Many trusts are established with a minimum amount of assets (such as \$10.00) and do not accept contributions until tax-exempt status is determined. In that case the trust must note that information on the application, and there is no need to fill out the balance sheet.

The land trust will also need to include an employer identification number, whether or not it has employees. Form SS-4, "Application for Employer Identification Number," can be submitted concurrently with Form 1023. If the trust expects to be represented, either in person or in correspondence, by someone who is not an officer, director, or trustee of the land trust, a power of attorney must be filed with Form 1023 specifically authorizing that individual to represent the organization. Form 2448, "Power of Attorney and Declaration of Representative" can be used for this purpose.

Form 1023 contains an extensive set of instructions. It should be filed within 15 months from the end of the month when the organization was established. All required materials should be sent together; otherwise, approval may be delayed, or the trust may have to resubmit the entire package. An application fee of \$150 to \$500, depending on the size of the trust's anticipated budget, is required. Form 8718, "User Fee for Exempt Organization Determination Letter" is used to figure the amount and pay the fee.

Procedure and Timing

The trust will receive a letter from the IRS acknowledging receipt of the appropriate form. It will then be assigned to an examining agent for review. In some cases the trust will receive a request for additional information and clarification.

In most instances the trust will receive a ruling that it is an exempt organization as of the date of its creation. However, if the application is filed more than 15 months after its creation, exempt status will be effective only as of the date of filing of the application. Contributions made prior to that date will not be deductible. Although public charity land trusts with normal annual gross receipts of less than \$5,000 are not required to file for exemption, the ability to assure deductibility to potential donors makes filing worthwhile.

If exempt status is denied, the trust may file an administrative appeal within 30 days of the date of the adverse determination letter. The trust should seek the assistance of an attorney experienced in nonprofit law before filing an appeal.

Obtaining Maximum Donor Deductions

Obtaining tax-exempt status for the land trust does not automatically give donors maximum income tax benefits. Donations to all tax-exempt organizations are deductible. However, the extent of deductibility will depend on the category of tax exemption under which the land trust qualifies and the nature of the property contributed to it. For example, cash donations to certain organizations are deductible up to 50 percent of the donor's adjusted gross income, while the limit for cash gifts to other organizations is 30 percent. The limit on deductibility of certain appreciated long-term property such as land or securities can be 20 or 30 percent, depending on the type of organization it is donated to. Further, the value of gifts of appreciated long-term property (other than marketable securities) to certain charities must be reduced by 100 percent of the unrealized capital gain. For a donor who is considering a large gift, the differences described above can be significant.

There are three ways in which a land trust can qualify for maximum donor deductions: as a "publicly supported charity," as a "private operating foundation," or as a "supporting organization." These distinctions are a result of the Tax Reform Act of 1969, which reflected congressional concern about potential abuse by certain charitable organizations that are established and controlled by a few individuals, or that accumulate income in a way unrelated to their charitable purposes. These latter organizations, designated as "private foundations," are subject to an elaborate set of restrictions and reporting requirements, including the severe limits on the deductibility of large contributions just described. All charitable organizations are presumed to be private foundations unless they can demonstrate that they should be excluded from this status.

"Public charities" that can show broad public support are not considered private foundations. Most land trusts seek to qualify as public charities. "Private operating foundations" are a special form of private foundation. They are allowed maximum donor deductions because they spend most of their income directly for their charitable purposes, and meet other tests demonstrating that they are not primarily investment funds making grants to other organizations and individuals. "Supporting organizations" are formed to carry out the purposes of an existing public charity or government agency. These latter two categories are rarely used by land trusts but can be advantageous under certain circumstances.

Public Charity Status

Application. The vast majority of land trusts apply for public charity status on the basis that they normally receive a substantial part of their support from a governmental unit or from the general public. Application for public charity status is made by completing Part III and Part IV of Form 1023 and, except in rare instances, requesting an advance ruling under section 509(a)(1).

STARTING A LAND TRUST

In order to be classified as a “publicly supported organization,” a land trust must show that it meets one of the following tests.

One-third support test. A land trust will be found to be a public charity under section 509(a)(1) if it normally receives one-third of its support from the government and the general public. “Normally” is defined as the aggregate support for the four years preceding the current year. General public support includes contributions from governmental units, other public charities, and individuals, except that only that portion of an individual contribution which is less than 2 percent of the organization’s total support for the applicable period is counted as public support. This can be a problem for land trusts where support often comes mainly in the form of large pieces of land. An initial endowment may not prevent an advance ruling from issuing since future public support is expected. But the obligation to satisfy this requirement is a continuing one. This problem will be discussed in greater detail below.

Facts and circumstances test. If the trust fails to meet the one-third support test, it may still qualify under the facts and circumstances test. There are two primary requirements involved in this test:

- *10 percent of support.* This limitation operates in the same way and with the same qualifications and restrictions as the one-third support requirement. However, the lower percentage of public support required makes meeting the standard easier.
- *Attraction of public support.* To meet this requirement, the trust must show that it has a continuous and bona fide program of solicitation of funds from the public, government, or other charitable organizations. A trust seeking to meet this test may find it especially advantageous to have a large and broad membership.

In addition to these requirements, the following secondary factors will be considered as indications of public support. Not all of these factors need to be complied with, but weakness in one factor means the trust must be stronger in the others.

- *The percent of public support.* Obviously this figure will be somewhere between 10 percent (the nonqualifying level) and 33 percent (the level sufficient by itself for public charity status). The lower the percentage, the stronger the combination of remaining factors must be. If a large portion of income derives from endowment interest, the origin of the endowment will be considered.
- *Sources of support.* The trust should try to demonstrate broad support, a variety of potential donors, and significant governmental contributions.

- *Representative governing body.* A governing body that includes a cross-section of interests such as public officials, experts, and community leaders will weigh more heavily in the trust's favor.
- *Public facilities or services.* Benefiting the public directly through programs or services is considered evidence of public support.
- *Miscellaneous factors.* Breadth of solicitation, restrictiveness of dues, and broad appeal of activities will also be considered.

New organizations. Since a final determination of public charity status cannot be made until the end of the land trust's first taxable year (at least eight months after the trust is founded), the trust should apply under Part III of Form 1023 for an advance ruling in order to protect initial donors and to avoid the excise taxes on net investment income and undistributed income that are applicable to private foundations. The advance ruling also allows the land trust five years over which to meet the IRS public support requirements.

An advance ruling will be issued in the form of a determination letter if the organization can reasonably be expected to meet one of the support tests during its first five taxable years. The deductibility of contributors' donations will be protected during this period and until 90 days after the advance ruling period ends as specified in the letter, even if the trust later fails to meet the tests. However, if the trust is disqualified, its taxes are payable retroactively. (The IRS requires that Form 872-C, "Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940," be filed in duplicate with Form 1023 in order to permit the tax to be applied retroactively if public charity status is denied.) Within 90 days after the end of the advance ruling period, the trust must submit all information needed to establish that it did, in fact, meet all requirements of obtaining tax exemption. Usually the IRS will send the trust a questionnaire on which to provide this information. If the trust does not receive this form, it should contact the IRS.

Private Operating Foundation Status

Private operating foundations (defined in section 4942(j)(3)) are also entitled to maximum donor benefits for gifts of entire interests in land and of cash and securities, but they need not demonstrate broad public support. Operating foundations are subject to the reporting requirements and restrictions applicable to all private foundations, including prohibitions on self-dealing, lobbying, and certain financial transactions. These restrictions must be included in the organization's certificate of incorporation. In addition, a 2 percent excise tax is imposed on net investment income, if any exists.

None of these restrictions should severely hamper a land trust's operations. Although only a few trusts are currently qualified as private operating foundations, this status should be seriously considered under certain circumstances as it avoids the problem of demonstrating broad public support when the principal donations are a few substantial gifts of land. The major

STARTING A LAND TRUST

drawback is that operating foundations are not “qualified organizations” within the meaning of section 170(h) of the Internal Revenue Code and therefore are not eligible to receive deductible gifts of partial interests such as conservation easements. A trust wishing to change its status from “public charity” to “private operating foundation” should make sure that its certificate of incorporation includes the proper restrictions or that state law imposes them on the trust, and then file an application.

Supporting Organization Status

A supporting organization (under section 509(a)(3)) is one formed and operated exclusively for the benefit of, to perform the function of, or to carry out the purposes of a specified public charity or governmental agency. The organization does not need to meet any public support test and can be quite flexible in its operations so long as the necessary relationship is demonstrated. It cannot be controlled by one or more substantial contributors. Under certain circumstances, supporting organizations can be “qualified organizations” within the meaning of section 170(h) and can be eligible to receive tax-deductible gifts of conservation easements.

A land trust qualifying as a supporting organization must limit its functions in its founding documents to carrying out some or all of the purposes of one or more specified parent organizations. A second requirement--that it be operated, supervised, or controlled by or in connection with the parent--may be met in several ways. The easiest test is for the parent to appoint a majority of the trustees or board of directors. An alternative is for the parent and the land trust to have the same trustees or directors at all times. Finally, under a third alternative, the parent must maintain the authority to appoint one or more directors and have a significant voice in the investment and operating policies of the trust, and the trust must meet a so-called “integral part test.” This test can also be met in alternate ways. The trust must demonstrate either (1) that the activities it engages in for or on behalf of the parent are to perform the parent’s functions or carry out its services, and, but for the trust, the parent would normally engage in these activities; or (2) the trust must pay substantially all of its income to the parent, and the amount of that support must be sufficient to assure that the parent will be “attentive” to the trust.

Application for supporting organization status is made by means of Form 1023. A permanent ruling may be obtained if the parent organization has permanent status as a public charity.

Maintaining Tax-Exempt Status

Annual Reports

The Internal Revenue Service requires exempt organizations to file annual tax forms. These are due on or before the 15th day of the fifth month after the end of the organization's accounting period. The forms should be filed even if the application for exempt status is pending. The land trust is required to make its annual information returns for the past three years available for public inspection.

A public charity must submit Form 990 and Schedule A unless its gross receipts in each tax year do not average more than \$25,000. Gross receipts include gifts, grants, and contributions, whether in the form of cash or property. For tax years ending in 1989 and thereafter, a public charity with gross receipts of less than \$100,000 (but more than \$25,000) and total assets of less than \$500,000 can use a simplified Form 990, referred to as 990EZ.

Private operating foundations submit Form 990-PF to the Internal Revenue Service and a copy of that form to the attorney general of the state in which the trust is organized or operates.

Operational Requirements

The reporting forms filed by the land trust must continue to demonstrate compliance with the requirements for a charitable organization and the specific tests for public charity or private foundation status discussed above. Because compliance is generally assessed over a four-year period, one abnormal year does not necessarily disqualify the organization. The most frequent issue for a public charity, the receipt of a large grant, is discussed below.

Changes in structure or operation. If a land trust changes its legal status, a new exemption application must be submitted. If the charter or bylaws are amended, a letter containing the changes must be submitted to the district director of the IRS, either separately or with Forms 990 or 990-PF.

Lobbying. Charitable organizations are not allowed to support or oppose candidates for public office under the Internal Revenue Code, but they are allowed to engage in limited lobbying for or against proposed legislation if they are qualified as public charities. Private operating foundations are prohibited from lobbying, except with respect to legislation affecting the organization's existence or status. The penalty for violations by private operating foundations ranges from a tax to revocation of tax-exempt status.

Lobbying includes only attempts to influence legislation. Actions by executive, judicial, or administrative bodies such as a department of environmental

STARTING A LAND TRUST

protection or a zoning board are not legislation; therefore, expenditures made to influence these bodies are not restricted or prohibited.

A public charity must demonstrate either that lobbying does not constitute a substantial portion of its activities or, if it has filed an appropriate form, that the lobbying costs are less than a certain percentage of the organization's expenditures for charitable purposes. "Substantial" has never been precisely defined, although one case held that lobbying expenditures of less than 5 percent of the budget were not substantial.

A charity that may engage in extensive lobbying should consider filing Form 5768, which will entitle it to devote up to 20 percent of its exempt purpose expenditures to lobbying activities. Only 25 percent of these activities can be "grassroots lobbying," which is defined as urging members of the general public to support or oppose legislation. Form 5768 must be filed before the end of the taxable year in which it applies; it continues in effect until revoked.

Excess Benefit Transactions. Recently enacted provisions of the Internal Revenue Code that apply to publicly supported charities (and certain other tax-exempt organizations) impose penalty excise taxes on "disqualified persons" who enter into any "excess benefit transactions" with their tax-exempt organization, and on the officers, directors, trustees or other "organization managers" who approve of the transactions knowing that they are prohibited.

Disqualified persons on whom the taxes may be imposed include persons who at any time during the five-year period after the date of the transaction were in a position to exercise substantial influence over the affairs of the organization. Siblings and certain other family members of disqualified persons, as well as entities of which they own a total of more than 35 percent, are specifically included in this category as well. Organization managers include officers, directors or trustees, and persons having similar powers and responsibilities.

An "excess benefit transaction" is any transaction in which an economic benefit provided by the organization to a disqualified person exceeds the value of the consideration that person provided to the organization. This includes the payment of excessive compensation, a matter of primary concern to many organizations including land trusts. Proposed regulations set forth rules and presumptions for determining whether compensation is excessive. Payments of personal benefits and expenses will also be treated as excess benefit transactions unless it is clear from documentation that an organization intended the payments to be considered compensation for services.

Changes in Support: The Large Grant

Land trusts must be particularly aware of the potential effect of large grants on their public charity status. The basis for this status is a showing of relatively broad public support, rather than support by one individual or family. However, since large gifts of land may constitute a trust's principal revenue, demonstrating compliance with this requirement may require careful planning

and adjustments. The consequences of the failure to comply are severe: the trust becomes a private foundation with contributions deductible only up to 20 percent of the donor's income and no carry-forward of the undeducted balance.

Determination of significance. Both the one-third support test and the facts and circumstances test for public charity status refer to "normal support," which is defined as the aggregate support for the preceding four years. However, if in the current year there have been substantial and material changes in sources of support (apart from "unusual grants," discussed below), the current year is included in a new five-year aggregate. Whether or not a large land grant would be considered a substantial and material change might depend on how much of the trust's past support came from such grants; however, "an unusually large contribution or bequest" is specifically mentioned as an example of such a change.

There are several possible ways of resolving the difficulty posed by large grants, the easiest and best of which is to cluster land grants. As a matter of arithmetic, if the trust has five grants, each of which is greater than 2 percent of its total support, it will meet the 10 percent requirement of the facts and circumstances test. Of course, the trust will still need to meet the other requirements of that test.

Unusual grant. Another approach to the problem is to demonstrate to the Internal Revenue Service that the grant qualifies as an "unusual grant." If the IRS accepts this designation, the contribution is deducted both from total support and from qualifying support. The rule applies for the purpose of the one-third support test and the facts and circumstances test.

IRS regulations establish two sets of criteria for determining whether a gift qualifies as an unusual grant. The IRS has issued guidelines for interpreting its regulations, describing certain kinds of gifts that will be considered unusual grants. A trust may request a ruling from the IRS before accepting a gift that would affect its public charity status. Since a contributor who is responsible for a substantial and material change that disqualifies the trust as a public charity loses the benefits of the special deduction rules, the donor will also be concerned about this question. The request for a ruling is filed with the IRS district director's office in the district in which the trust operates.

There are several other ways a land trust can reduce the impact of large land grants on its public support mix. It could consider having the gift spread over a number of years, with part of the property donated each year for several years (e.g., fee-title or easement on one-third of the parcel donated each year for three years) or donated as a series of undivided interests (see Chapter 8 for a discussion of undivided interests). The value of the donation in each year might not be sufficient to cause the land trust public support problems. Or it could have a larger nonprofit organization accept the gift and then transfer it to the trust. Donations from other public charities count 100 percent toward public support. The land trust also can consider valuing easement donations on its own

STARTING A LAND TRUST

books at zero (see Chapter 5). Finally, if the large land gift would clearly upset the balance of public support, and if it would definitely not qualify as an unusual grant, the trust may want to seek reclassification as a private operating foundation, as discussed earlier.

Record Keeping and Reporting

It cannot be emphasized too strongly that merely obtaining a tax exemption ruling does not mean an end to government supervision or regulation. The Internal Revenue Code requires organizations to keep full records of all their financial transactions. This includes a cumulative list of donors and the amounts of their contributions so that it can be determined whether they are substantial contributors.

A publicly supported organization must make available for public inspection (and must copy for a reasonable fee) its application for tax exemption, its determination letter, and its three most recent annual tax returns. It is not required to make available for inspection its list of contributors. Proposed regulations would relieve an organization of the duty to copy documents if it can demonstrate that a particular request is part of a harassment campaign or if it makes documents available on the World Wide Web.

The trust must also keep track of lobbying expenditures. Often one activity will encompass several aspects, such as research, writing, preparation of educational material for the general public, and the submission of information to legislators. It is advisable to keep sufficiently adequate records so that these components may be separated.

Finally, trust income derived from business activities that are unrelated to the exempt purposes of the trust may be subject to income tax even though other income of the trust remains tax exempt. Dividends, interest, annuities, rents, and royalties are generally exempt from all tax, as is income from any activity that can be determined to contribute importantly to the carrying out of a trust's exempt purposes. An accountant or attorney should be consulted before engaging in any business activity in order to ascertain whether or not the income it generates will be subject to tax.

The Internal Revenue Service conducts periodic audits of exempt organizations and has demonstrated particular interest in conservation groups. An auditing agent will want to see the minutes for the period in question, as well as all financial data. It is advisable to have the agent meet with someone from the trust (perhaps its accountant) who is familiar with both the organization and the audit process.

There are also state and local filing requirements to be met, in some cases because the trust is a charitable organization and in others because it intends to solicit contributions from the general public and is required by state or local laws to obtain a certificate or license in order to do so. In most jurisdictions, exemption from real property tax is available only by meeting annual filing requirements. The trust may also be required to file state income tax forms.

TAX-EXEMPT STATUS

Finally, if there is a state sales tax, the trust may be eligible for exemption, but this will also require certain filings.

This chapter is intended as an educational guide; the trust should consult a tax attorney to ensure compliance with IRS rules and requirements.

5. Financial Management

Budgeting, Accounting, and Insurance

A land trust is a business. A land trust must institute careful financial management to carry out its mission successfully and to be accountable to the public for its use of funds. This chapter gives an overview of the issues and practices involved in managing a land trust's finances.

The financial management of the trust is one of the main responsibilities of the board of directors. Establishing appropriate board committees can help ensure that issues of financial management get careful scrutiny and consideration. A finance committee might review financial statements more frequently than the full board and oversee the preparation of the budget. A stewardship committee could handle risk management and possibly insurance (in addition to other stewardship matters). An audit committee could oversee the trust's annual audit. In addition, the board should obtain expert assistance when necessary from an accountant, insurance agent, and attorney, among other. Ultimately, however, the full board remains responsible for ensuring that these tasks are done properly.

Preparing a Budget

An operating budget is a plan showing expected income and its sources and anticipated expenses. It establishes a target for how much the trust needs to raise. It provides guidance on how funds are to be spent. It provides a measuring stick against which to monitor the trust's financial health. And, if a trust has to make a mid-course correction, it helps show the opportunity costs of making a change.

In some cases, a trust may want to prepare a monthly cash flow budget, showing when income is expected to be received and expenses incurred. This

can help a trust plan for large expenditures or principal payments on loans. It usually is not necessary for a new organization.

The budget has other valuable, although less direct, benefits. Preparing a budget may help the board refine and clarify its thinking regarding the trust's goals, priorities and use of resources. Potential donors also may want to see your budget (although you may condense it to make it easier to read and understand for outside presentation). The trust should prepare a budget annually, and it should be reviewed and approved by the full board.

Budget in Relation to Planning

A new land trust should prepare an operating budget as it is developing its operating plan for the next year or so. Your first budget may not encompass an entire year, depending on what you choose as your fiscal year and when you start your plan. The budget's preparation will help the group set priorities and begin making definite plans with dates, costs and sources of revenue. Cost estimates for each activity or project, and expected sources of revenue for covering their costs, should be included. The budget may indicate that some activities are dependent on raising funds—hiring an executive director, for example – but it should include how much the trust expects to raise for such projects and from where it expects to raise it.

Budget Categories

Choose budget categories that match the kinds of expenses and income sources the land trust wants to track and that will best allow the full board to see how the trust's money is being spent. Your budget categories generally should match your cash disbursements journal (see below), so that you can easily compare actual expenses during the year with budget projections.

Typical expense categories for a new land trust include printing, postage, telephone, supplies, travel, professional fees, and insurance. (See sample budget.) If the trust has staff, it will need to add categories for salary and perhaps benefits and payroll taxes, and eventually for office rent, utilities, etc. You may want to include separate categories for certain projects or programs so you can more easily track their costs and more accurately show how the trust's money is being spent. You might want to separate the cost of a newsletter or a one-time printing job rather than include those costs in the printing category. On the income side, typical categories are membership dues, contributions, grants, and interest.

.An operating budget generally does not include land acquisition. Acquisition costs are unpredictable, and you probably will need to conduct a special fundraising campaign to cover those costs.

Develop Accurate Estimates

The key to accurate budgeting is the development of realistic and reliable estimates of revenues and expenses. Be conservative, particularly at first when the organization has less experience upon which to draw and fewer resources on which to rely. Revenues may be particularly difficult to estimate, but it is essential to identify sources and set targets; otherwise it's easy to let fundraising slip. Talk with other land trusts and nonprofits to help you make estimates until you have sufficient experience on which to base your own.

The budget is a working document. The land trust needs to review the budget periodically and compare it with the trust's actual financial situation. A mid-year review is advisable, and for a new land trust, especially one with an aggressive budget, you will probably want a more frequent check. If revenue is less than projected, you will need to adjust expenses — a before the trust finds itself in trouble.

Sample Budget for New Land Trust

This budget assumes the trust hires a full-time executive director halfway through the year who works out of donated space. The trust anticipates raising about \$10,000 in excess of expenses to ensure that it can continue to pay the executive director's salary during the first few months of the following year. But it also faces some higher initial costs in buying equipment and printing its first brochure. These costs could decrease in subsequent years.

Income	
Membership Dues	\$8,000
Gifts/Contributions	17,000
Grants	14,800
Special Events	5,100
Interest	1,200
TOTAL	<u>\$46,800</u>

Expense	
Executive Director	\$22,000
Payroll Taxes	2,000
Employee Benefits	2,250
Professional Fees	650
Staff Recruitment	200
Printing	3,000
Postage	1,200
Telephone	1,200
Equipment	1,500
Internet	300

STARTING A LAND TRUST

Travel (Training)	1,500
Supplies	500
Insurance	500
TOTAL	<u>\$36,800</u>

Accounting

Accounting is the recording and periodic reporting of the trust's financial transactions, assets, and liabilities. This includes bookkeeping, periodic financial reports, and audits to check the accounts. Careful accounting is vital to the health of the trust and for presentations to donors and governmental agencies. The board should ensure that the trust's records are kept according to Generally Accepted Accounting Principles.

Bookkeeping

Bookkeeping is the day-to-day recording of all financial transactions, including money paid out (expenditures) and money received (receipts). Good bookkeeping makes it easy for the trust to prepare periodic and annual financial statements.

Handling the first money. Once the land trust starts to receive and spend money, it will need to start keeping financial records. The first step is to set up a checking account in the trust's name and determine who will be authorized to write checks and receive money for deposit. This is frequently the treasurer's job. You will also need to keep records of all receipts and expenditures, including from whom they were received or to whom they were paid and for what purpose. However, as soon as the trust starts soliciting funds, or is handling more than a few hundred dollars, it should consult a certified public accountant (CPA) who is familiar with nonprofits to help set up a more formal bookkeeping system.

Find an accountant. "Good legal and accounting advice is one of the most important things in setting up a land trust," says Bob Myhr of the San Juan Preservation Trust (WA). An accountant familiar with nonprofits can save the trust time, ensure its financial accounting is professionally run, and prevent costly mistakes that could cause trouble with the Internal Revenue Service. You may be able to get a CPA's help pro bono or at a reduced rate (especially if one is on your board). See if a local public interest accounting group can direct you to accountants experienced with nonprofits, or ask other nonprofits in your area for the names of their accountants.

Choose a system. There are many possible accounting and bookkeeping systems. The most basic tools are a checkbook and two journals — the cash disbursement journal and the cash receipts journal — for recording expenditures

and income. More complicated systems can involve bookkeeping by an outside service or using software run on an in-house computer. You should work with an accountant to design your system.

Who Should Do Your Accounting and Bookkeeping?

You can keep your books and do your accounting in-house, have the work done by an outside bookkeeper or accountant, or use some combination of these. Training someone to do the day-to-day bookkeeping is simple. Some trusts with very simple needs, or with someone trained in the field, do all of their accounting in-house. Another option is to keep only the most basic records yourself and give the information to an outside accountant to do all bookkeeping and accounting.

Safeguards for Handling Money

It is imperative that a land trust set up good financial controls to make error or dishonesty difficult. Good controls are sound business practice and, in the long run, they benefit everyone in the organization by eliminating most opportunities for problems or suspicions to arise. A good system of financial controls generally should include the following safeguards:

- Two or more people should be required to authorize expenditures. Often, one person is authorized to prepare checks and someone else is authorized to sign them. Some organizations require two signatures on each check, or on checks over a certain amount.
- The person who signs checks should not be the one to record transactions or reconcile bank statements.
- All money should pass through your checking account – that is, don't receive money and spend it without ever depositing it.

In general, pay by check because it facilitates accurate accounting. Try to avoid dealing in cash. If you must collect cash, be sure to give receipts; have two people working together, one collecting and the other recording; and deposit all cash as soon as possible. A small petty cash fund for sudden, small expenses can be useful, but keep careful records of it.

Financial Statements

Preparing and distributing regular financial statements allow the board to track how the trust is doing in relation to its budget and will make preparation of the annual audit and the next year's budget easier. Current and potential contributors may also be interested in the trust's financial statements.

STARTING A LAND TRUST

A land trust should use at least the following financial statements. A *balance sheet* to add up the trust's assets and liabilities at a given time to show its overall financial position. A *cash flow report*, sometimes called a budget status report, to compare the current fiscal situation, including expenditures and revenues, to that projected in the budget. A *statement of operations* to report revenues minus expenses to show financial performance over a period of time.

The financial statements generally should be prepared monthly for members of the finance committee and at least quarterly for the entire board; if there is no finance committee, the full board should see financial statements monthly. For trusts with little financial activity, less frequent financial statements may be adequate.

Accounting Issues of Special Interest

The following issues are of special interest to many land trusts. Be sure to discuss them with your accountant and attorney.

In-kind contributions. In-kind contributions are those other than money, such as time, services, supplies and space. These contributions have calculable values, which may be useful in meeting matching grants and demonstrating public support to foundations. Discuss with your accountant how to handle in-kind contributions on the trust's books.

Valuing land and conservation easements. A land trust must carry the value of gifts of land and conservation easements on its books. This is simple for land owned in fee; such land must be carried at its fair market value at the time of acquisition (although that value may be affected by restrictions on its use). A land trust, once challenged by the IRS for carrying land on its books at \$1 per acre, corrected the problem by carrying it at full market value.

For conservation easements, the correct value can be open to dispute. Some attorneys maintain that conservation easements should be valued at zero. They point out that conservation easements generally have no monetary value to the land trust and are, in fact, a financial burden, because the trust is obligated to monitor them and enforce their terms. In many cases, valuing easements at zero will help a land trust meet the public support requirements of its tax-exempt status.

Other experts argue that land trusts should value conservation easements at the value taken by the donor as a deduction (assuming that a deduction is taken). The argument for this approach is that if the donation generates a deduction for the donor, it must have a value. Conversely, if the land trust insists the easement has no value, then the donor should not be entitled to a deduction. A land trust could still avoid complications for its public support test by classifying them as "unusual grants," which are not included in the public support calculations,

although there may be cases where donated easements would not qualify for this exemption.

Each method is used by many land trusts, and you will have to decide how to value easements after consulting your attorney and accountant. For further discussion, see *The Federal Tax Law of Conservation Easements* by Stephen J. Small, and "Easements as Public Support" by William T. Hutton in *The Conservation Easement Handbook*, both available from LTA (www.lta.org).

Restricted funds. Many land trusts carry restricted funds, which must be used only for a stated purpose. Examples include funds specifically donated for easement monitoring, land acquisition and legal defense. The land trust's financial records need to document that, in fact, those contributions are used as promised. Consult your accountant to determine how to manage any restricted funds your trust arranges.

Fixed assets. Fixed assets are physical assets with a life beyond one year, such as land, buildings, or office equipment. They usually appreciate (gain value) or depreciate (lose value) over time. Consult your accountant about how to handle these assets and changes in value.

Annual Audits

An audit is a periodic, formal examination of financial records to assure their correctness. Every trust should have an audit at least annually to ensure that the group's books and financial dealings comply with the law and with sound business practices. Audits can help protect the trust and individual board members against financial mismanagement by catching mistakes or questionable practices early.

The audit can be done by an independent auditor or by someone within the trust. Using an independent auditor is generally preferable since the audit is a way of checking on the organization's internal controls, but this may not be affordable or necessary for smaller trusts. (A procedure for an internal audit is outlined in the excellent publication, *Self-Help Accounting: A Guide for the Volunteer Treasurer*, described in Appendix A.) The Land Trust Alliance's *Standards and Practices* recommend that land trusts handling more than a few thousand dollars annually have an annual audit or review by a CPA. If you have your audit done by an independent accountant, use one who has experience with nonprofits. It is good practice to assign a board committee to oversee the audit, whether it is done internally or externally. The board, or the assigned committee, should discuss the audit fully with the auditor so that it has a solid understanding of the audit's presentation and conclusions, and of the trust's financial condition.

Managing the Trust's Assets

A successful land trust often builds up substantial assets of money, land and interests in land. The trust has a responsibility to manage these assets soundly, both to ensure the future of the trust and any land it holds and to maximize the trust's ability to further its mission.

The board is responsible for making investment decisions, and should have a stated investment policy. This should cover issues such as minimum returns, acceptable risks, and how accessible funds need to be. Board members are legally liable if they do not act prudently, responsibly, and in good faith when making investment decisions, but should not be held liable for any lost investments as long as they do so.

Liability and Insurance

Liability

All nonprofit organizations are potentially liable in many ways. The most likely sources of liability are:

- The trust and its board, officers, or staff could be liable for injuries or other harm to users of property owned, operated, or managed by the land trust, or to participants in other trust activities wherever they may occur.
- The trust and its board, officers, or staff could be liable for injuries or other harm to volunteers or employees that occur while they are working for the trust.
- The trust, the individuals serving on its board, and its officers could be liable for official actions taken or not taken.

To handle potential liability, the land trust should manage its land and operations in such a way as to minimize risk, and should obtain insurance.

Risk Management

The first defense against potential liability problems is to anticipate them and eliminate or reduce them, a process known as risk management. Risk management starts when a land trust considers purchasing or accepting a donation of land or a conservation easement, or taking on land management or other responsibilities. For example, a trust must consider whether a property poses an unreasonable danger due to buildings or other structures in poor repair

or unsafe features, such as cliffs or washed-out trails. If the risks outweigh the benefits of protecting the property, or correcting the problems is too expensive, the trust may have to decide not to accept, acquire or manage the parcel.

Hazardous waste is one problem that land trusts must handle especially carefully. Trusts must be aware of environmental pollution hazards, such as old waste dump sites, industrial sites, containers, or tanks. Under federal law, the cost of clean-up can be levied against whoever owns the property and may be prohibitively costly. Insurance, for example, if it is available at all, begins at about \$20,000 annually. The solution is to be very wary, have a "deep pocketed" former owner assume all responsibility, or avoid acquiring such a property.

Once you hold land, you will need to inspect your properties regularly for all types of potential safety hazards, such as trails in need of maintenance, unsafe buildings, dangerous swimming areas, etc. Remedy such hazards if it is possible and consistent with management plan. Otherwise, post clear warnings.

Public access on land trust property is one of the main sources of potential liability for land trusts. Many trusts do permit public access on some or all of their properties, and problems arise relatively rarely. Many states have "recreational use statutes" that provide some protection to property owners who permit public access for recreational use, particularly if any hazards or off-limits areas are clearly posted. However, because these laws and their interpretations vary substantially, your land trust should research the laws and discuss public access and liability with your attorney. Liability insurance covering most types of public access in which land trusts are involved is available through the Land Trust Alliance and is usually not expensive.

Train your employees and principal volunteers in proper safety practices for work they do for the trust, such as leading hikes, using chain saws, etc. There may be appropriate courses available in the community. Use professional help when necessary.

Be sure to document any accidents and their circumstances carefully, report them to your insurance representative promptly and, where possible, change your practices to avoid such accidents in the future. Ask other land trusts in your state about how they handle public access and risk management.

The trust, and in some cases the individual board members, can be held liable if they do not perform their duties with sufficient care and judgment. Board members should be made aware of their legal and ethical responsibilities. Familiarity with the Land Trust Alliance's *Standards and Practices* is a good place to start.

Insurance

The land trust's surest defense against liability is insurance. All land trusts should have insurance; even the best risk management program cannot

STARTING A LAND TRUST

guarantee that no problems will arise. A single judgment against a land trust, or even a prolonged court case in which the land trust ultimately is found not at fault, may bankrupt an uninsured land trust. Insurance is necessary even if the land trust does not hold any land or easements to cover the corporation and the individuals who serve as directors, members, officers, staff, and volunteers for claims arising from its meetings, activities, advertising, etc. Officials of the trust should understand that a prime reason for insurance is to protect them should they be named in a suit along with the trust. Your board should assess your land trust's insurance needs in consultation with an insurance expert who understands the operations of the land trust and is familiar with nonprofit liability issues.

General liability. For many land trusts, especially new ones, a standard Commercial General Liability policy will cover most of their insurance needs. This insurance covers the organization, its officers, directors, employees, members, and volunteers for the majority of liability claims from the general public, including bodily injury on land trust property or at a land trust event; personal injury such as slander or libel; damages to others' property caused by the land trust's negligence; among other events. This insurance will cover the costs of defending against such claims and pay settlement to the policy's specified limits if the injury is found to be due to negligence of the insured.

Most land trusts will want to add Non-Owned Automobile Liability coverage to the general liability policy. This will cover the organization and its board, officers, employees, members, and volunteers for claims arising from automobiles operated on behalf of the trust that are rented or otherwise not owned by the trust. This insurance is in excess of whatever coverage the vehicle owner carries, but is needed to cover the trust if claims exceed the owner's coverage or if that coverage is in some way faulty.

Other insurance. The land trust may also want to obtain property insurance coverage to protect its office (if it owns one), equipment, or other property against fire, theft, or other damage; accident insurance to cover board members, officers, and volunteers who are injured in the course of land trust service; and blanket fidelity bonding to cover the loss of land trust assets due to fraud or dishonesty by land trust employees or board members. If the trust hires paid staff, it probably will be legally required to carry workers compensation insurance. Check with your attorney or your state's workers compensation commission.

Directors' and officers' liability. One frequent question is whether a land trust needs to get directors' and officers' liability insurance (sometimes called Errors and Omissions insurance). This insurance covers individual board members and officers for defense and payment of claims alleging damages arising out of a decision they made, or failed to make, such as poor business

decisions. A land trust should weigh carefully whether to purchase D&O insurance. It may be difficult for a new land trust to obtain; insurers may require the organization to have been in existence for a period of years to qualify. It may also be quite expensive. Moreover, many claims to which board members may be subject are covered by the commercial general liability insurance and are only covered by this insurance. D&O is a supplement, not a replacement, for general liability coverage. However, certain individuals – particularly those with substantial assets – may be uncomfortable about serving on the board if the land trust does not carry D&O.

If you do seek this type of insurance, ask about association liability insurance, which includes the organization, its staff, and volunteers, in addition to the directors and officers.

LTA's Conserve-A-Nation® Insurance. One of the best sources of land trust insurance is the Conserve-A-Nation® program liability insurance, offered through the Land Trust Alliance. This insurance plan is specially crafted to meet land trusts' needs and problems. The insurance underwriter for the basic plan, Chubb Group of Insurance Companies, is a top-rated insurance company with extensive experience with nonprofits and conservationist insurance. The insurance agent is Franey, Parr & Muha, Inc., which specializes in conservation association liability insurance. Franey, Parr & Muha, Inc., operates similar plans for The Nature Conservancy, the National Audubon Society and a number of other conservation organizations.

More than 500 land trusts are insured under LTA's Conserve-A-Nation® program. To qualify, land trusts must meet certain LTA membership requirements and must be recognized by the IRS as federally tax-exempt, "charitable" organizations. Some organizations that are not strictly land trusts but are involved in land conservation may also qualify, and the coverage extends to urban garden land trusts as well as the more traditional rural trusts. Because the program is operated specifically for land conservation organizations, land trusts may find the Conserve-A-Nation® plan can provide coverage that is difficult or prohibitively expensive through other insurers. For more information, contact the Land Trust Alliance.

Records

All of the trust's records should be well organized and kept in a safe place. Someone, often the secretary or treasurer, should be assigned this responsibility to ensure that it never gets overlooked. For essential documents such as membership lists, organizational documents, deeds, and easement documents, make copies and store them in a separate location, such as a safe deposit box.

6. Volunteers and Staff

Running a land trust is a lot of work. Without additional help, even the most involved and active board will burn out and become frustrated. Most boards include busy, professional people who will lose interest if faced with too many demands to help with mailings, special events, and other activities that do not use their special skills and abilities. Land trusts need to supplement the work of their board with the help of volunteers. Many also hire staff. This chapter describes considerations in recruiting, managing, and rewarding volunteers and staff, those vital people who get the work done.

Volunteers

Most land trusts rely heavily on volunteer efforts, in addition to the work of the board (and staff, if they have one). Volunteers save the trust money and reinforce the land trust's ties in the community. Land trusts use volunteers for a wide range of activities, including landowner contact, management and monitoring of conservation lands, mailings of newsletters and membership renewals, organizing and overseeing special events, mapping and collecting information about land resources, editing and illustrating the newsletter, and much more.

To make effective use of volunteers, a land trust needs to operate a carefully planned program of recruitment, supervision, recognition, and possibly training. Most volunteers are busy people with special skills. The trust needs to use volunteers' time and skills effectively, and to make sure they feel appreciated and useful or it risks losing their help.

Finding Volunteers

The bottom line in recruiting volunteers is to get the word out. Put notices in your newsletter and on bulletin boards; mail flyers to homes; put in the local paper; make announcements at public meetings. Ask current volunteers to

STARTING A LAND TRUST

suggest other people to contact. Ask other local nonprofits how they recruit volunteers.

Develop a mailing list of potential volunteers. Sending out a questionnaire to these people, as well as to your members, can help identify potential volunteers with particular skills. Before recruiting volunteers, the land trust needs to know what it wants them to do. Asking for someone's help but not knowing what you want them to do is a sure way to make your land trust look disorganized and to lose the volunteer's interest. Writing basic job descriptions for some volunteer positions can help attract people, clarify tasks, and make it clear that the jobs are important.

Screening volunteers is essential for many tasks, particularly if the volunteer will represent the trust in public. The land trust needs many of the same qualities in its volunteers that it needs in its staff: someone who is cooperative, is able to do the assigned job, and reflects well on the trust. Prospective volunteers should be interviewed by a board or staff member or a volunteer coordinator. It may be appropriate to ask for references, particularly if the task you plan to have the volunteer undertake is sensitive, difficult, or specialized.

Putting Volunteers to Work

Time invested in the volunteers will pay off; the better they understand the goals, programs, and operations of the land trust, the better they will be able to perform their work and to represent the trust in the community. A thorough knowledge of the organization also will make volunteers feel more involved and help to maintain their interest.

Try to match volunteers with jobs in which they are interested; they will do better work and stay with the land trust longer. Rotating jobs, particularly undesirable ones, can also help. No one is likely to come in on a regular basis just to do the trust's photocopying. On the other hand, some volunteers prefer to keep one job.

For some specialized jobs, such as landowner contact or monitoring a property, the volunteers may need training. While the initial investment of effort can seem troublesome, the long-term benefits to the trust may make the effort well worthwhile.

Recognition

Formal recognition of volunteers' work can go a long way toward maintaining their involvement and the strength of their commitment. Some possible approaches to recognition are:

- certificates and awards
- social functions in their honor
- recognition in writing by community or land trust leaders
- the opportunity to lead or chair an activity or meeting

Whatever the approach, the point is to demonstrate that the trust realizes that volunteers are an essential part of its success and are not taken for granted.

Staff

Many land trusts operate effectively without professional staff. Some feel they don't have the money to hire staff and prefer to devote their fundraising efforts solely to raising money for land protection and management. Some land trusts have a limited agenda that can be accomplished without complex or costly transactions and do not need staff. Others are able to meet all of their time and talent needs through the efforts of a few directors and volunteers who have a substantial amount of time and expertise to devote to the trust's work, usually supplemented by paid consultants. A few land trusts are fortunate to operate with de facto staff: usually a retired person who devotes full time (or more) to the trust's work.

For many land trusts, however, paid professional staff makes the difference between a land trust that can only react to opportunities and a land trust that can set challenging goals and meet them. Most of the land conserved by land trusts has been protected by trusts with staff. According to a 1998 survey by the Land Trust Alliance, land trusts with full-time staff comprise 25 percent of the nation's trusts but are responsible for 84 percent of the total acreage protected by land trusts.

Of course, land trusts without full-time staff are saving important conservation resources. But trusts that have an ambitious agenda, anticipate undertaking costly or complex land transactions, or want to move quickly to carry out their program will want to hire staff a few years after their founding. Although an all-volunteer group can be successful, a paid staff will accelerate the growth of a land trust. Invariably, staffed land trusts say that hiring staff made the most difference in their success and that they should have done so sooner.

Can You Afford Staff?

Some land trusts believe the cost of hiring staff is prohibitive. And it can be difficult to raise that first money needed to hire staff. However, as many land trusts have discovered, staff often more than pays for itself. Full-time staff can allow a land trust to do more and more complex projects, raise the trust's visibility, step up its fundraising, build membership, make new contacts with sources of professional help, funding, and other assistance, and much more. All of this ultimately contributes to an increased financial base for the organization.

How does a trust raise the first year's salary? As with all fundraising, it depends on the trust's circumstances. The Upper Valley Community Land Trust in New Hampshire devoted most of its first year to fundraising, primarily to hire staff. About half of the \$35,000 raised in the first year came from memberships

STARTING A LAND TRUST

and donations and about half from local and regional foundations. The Little Traverse Conservancy in Michigan conducted a special, targeted fundraising campaign among its supporters to raise its first executive director's salary. The conservancy raised sufficient funds to cover the full salary the first year, two-thirds the second year, and one-third the third year. The Lowcountry Open Land Trust in South Carolina raised the funds for its first staff person primarily through grants from three local foundations.

In some cases, local government agencies may be able to help supply staff. The Severn River Land Trust in Maryland was promised the loan of staff for the first year or its operations by the government of Anne Arundel County; the city of Gainesville loaned \$20,000 to the Alachua Conservation Trust in Florida to help it hire its first executive director.

It may also be possible to share staff with other land trusts. The Roxbury Land Trust and the Steep Rock Association in Connecticut jointly hired an executive director, as did the Napa County Land Trust and the Sonoma Land Trust in California (before Napa hired its own full-time executive director). On Cape Cod, 15 land trusts contribute funds to the Compact of Cape Cod Conservation Trusts, which provides them with expert technical assistance.

What Kind of Staff?

In their early stages, land trusts frequently hire a part-time administrative coordinator to help with bookkeeping, mailings, telephone requests, correspondence, membership maintenance, etc. This can ease the burden on the board and other volunteers, but is not the type of staff assistance that usually makes a real difference in a trust's success.

Hire professional staff. The kind of staff that really allows a land trust to elevate its effectiveness to a new level is professional staff, usually an executive director. This person is responsible for a wide range of activities, from coordinating the trust's fundraising, to public relations, to landowner contact and negotiations. In some cases, the board may retain certain functions, at least for a time, to allow the staff to focus on activities. The board of the Napa County Land Trust in California decided to continue handling membership development – at which it had been very successful – to allow its new executive director to focus his attention on developing and implementing a land conservation strategy for the trust.

How much to pay. The salary for a full-time land trust executive director depends on the experience of the person you hire and the cost of living and general salary ranges in your area. Salaries for executive directors range from perhaps \$20,000 to \$85,000, and can be even higher for regional or statewide organizations with large staffs and budgets. Check with other small nonprofits in your area to determine what executive directors' salaries run, and be prepared to negotiate on salary to get the person you want.

Staff qualifications. The board needs to choose its executive director carefully. Think about the type of personality you are looking for: you will want the executive director to be able to deal well with a wide range of people, particularly the landowners in the community and the board itself. The California State Coastal Conservancy's *Nonprofit Primer* lists the following skills as those that a land trust executive director ideally should have:

- knowledge of and commitment to natural resource protection
- knowledge of the real estate development process
- experience in negotiations of some kind
- ability to work with landowners and to understand their perspective
- knowledge of finance and financial analysis
- experience in private fundraising
- experience in managing nonprofits

Remember that this is an ideal list. Land trust work is a very specialized field, and it is difficult to find someone who meets all of these criteria. To find such a person may mean hiring an executive director away from another land trust, which can be difficult and expensive for a new trust. An assistant or associate director from another land trust may also be a good candidate, but there are very few of these positions. The trust may need to find a way to train its staff in certain areas, or let its executive director learn on the job. Keep in mind that it is easier to train someone in technical skills, such as real estate law, than in personal skills, such as public relations and negotiating.

Some organizations feel that only a local person can know the community and the area well enough to do the job. Local people can be the best choices, but the trust should keep an open mind in its search. Someone with the experience and the ability to work with people will quickly become familiar with the area and make the necessary contacts; moreover, he or she won't carry any of the personal baggage that a local person may have.

The Land Trust Alliance announces land trust job openings on its Web site, www.lta.org. There are also several environmental job newsletters in which land trusts and other conservation organizations list job announcements (see Appendix A).

Board and Staff Roles

A good working relationship between the board and the staff is vital to the success of the trust. Board and staff roles need to be clearly understood on both sides to prevent resentment or stagnation. This can be particularly difficult during the transition from an all-volunteer organization to a staffed one. If the board is accustomed to being involved in all aspects of the organization, it may be difficult for directors to step back and leave details and decisions up to the executive director. On the other hand, the board may be tempted to reduce its

STARTING A LAND TRUST

involvement too sharply, leaving the executive director with too much work and insufficient support.

The division of responsibilities between board and staff is frequently described as follows: the board is responsible for setting the trust's goals and directions, and the staff is responsible for the day-to-day work of carrying them out. This is, however, only a very general rule. The board is still responsible for significant participation and work. In particular, the board members need to put substantial effort into fundraising and public relations and continue to provide whatever specialized expertise they have. The staff, at the same time, needs to exercise leadership and try to refine the trust's goals and programs.

The relationship between the board and the executive director is a responsible partnership, with both the board and the executive director ultimately obligated to consider the organization's entire scope of operations – regardless of assigned responsibilities – and to point out when some aspect of that operation is going awry.

The board has a duty to supervise the executive director. This includes providing guidance and assistance and evaluating performance. The latter is particularly difficult for the catch-all job of executive director. The board should work with the executive director to establish clearly defined goals and objectives against which to evaluate the executive director's performance, although these goals may be altered during the course of the year. Reviews should be conducted on a regular basis, at least annually.

If more than one staff person is hired, the top staff person, not the board, should be responsible for the evaluation and hiring of all other staff members.

Staff and Volunteer Roles

Even with professional staffing, land trusts need volunteers in order to be fully effective. Some organizations measure their success at the end of the year in part by whether they have increased volunteer participation. No matter how good the staff is, the land trust will be able to do far more with the help of a large, effective pool of volunteers.

The hiring of professional staff can pose a threat to volunteer participation and morale. Volunteers may feel that "their" organization is being taken away from them, or that certain work should now be done by the paid staff, or may resent that staff is being paid to do work they used to do for free. These problems may be mitigated by clearly defining the roles of staff and volunteers, by making it clear that volunteers are still essential to the trust's success, and by continuing to make good use of volunteers' abilities. The staff should understand that its role is to motivate, support, and coordinate the ongoing efforts of volunteers without taking over their roles.

7. Building Support

Public Awareness, Membership, and Fundraising

Community support is vital for most land trusts. The community is the source of volunteers and board members as well as funds and land donations. A supportive community notifies the trust of opportunities for land protection and provides a constituency for land conservation. And the trust's effective public image gains community support that also attracts assistance from businesses, foundations and government agencies.

Increasing public support entails three interrelated activities: building public awareness, developing membership, and fundraising. Together, these activities constitute a "marketing" effort, and its success will be a major factor in determining the overall success of your organization.

Some Common Themes

Whether you are building public awareness, recruiting members, or raising funds, there are several practices that will substantially aid your success.

Establish a Clear Identity

Convey a clear sense of your land trust's goals and program and how you will accomplish them.

After establishing the board, many land trusts develop a detailed mission or goals statement. More specific than the purposes statement in your articles of incorporation and bylaws, it can be distributed to potential contributors, the press, and other interested parties. It also provides the "characterization" of your trust that should be used by board and staff in all presentations and future materials. Part of having a clear image is having a consistent one.

STARTING A LAND TRUST

Be Professional

A land trust needs to convince the community that it is a professional organization that can be counted upon by contributors to use their funds wisely, by reporters to provide reliable information, and by landowners to deal with them knowledgeably and fairly and to conduct a sound program of land stewardship.

A land trust builds a reputation for professionalism primarily by its actions. But appearances are also important, especially for a new land trust that has no record yet to stand on. Anything you distribute – your brochure, your newsletter, information sheets on land conservation techniques – should look professional. This does not mean that all brochures should have color photos or that you need to use the most expensive paper. It does mean that materials should have a clean design and be professionally printed. (Good photocopies are fine for fact sheets, press releases, and some other materials.) Some land trusts are able to get design and printing services donated or at a reduced rate. Businesses and corporations, interested in visibility, will frequently fund the printing of materials that are widely distributed if their support is acknowledged.

Stress Your Success

People like to be involved with a winner. Whether talking to the press, landowners, or potential members or funders, pointing to your successes is one of your strongest selling points. Initially, a new land trust may have to rely on the credibility and reputation of its board members to project a successful image, but even a new land trust will soon have small successes to promote, such as public lectures, a completed survey of properties needing protection, or environmental education efforts.

Tailor the Message

The general audience for a land trust is the community or region in which it operates, and the overall message the trust will want to send is that it operates for the benefit of the people in that community or region – protecting *their* land for *their* benefit. But the land trust has many specific audiences it needs to address: other environmental groups, reporters with particular interests, the business community, government agencies, perhaps certain types of landowners or recreational interests. Tailor the message so that it will have a special appeal to each audience.

Take Advantage of Opportunities

A land trust should have a continuing, regular program for building public awareness, recruiting members, and raising money. But it should also watch out

for and capitalize on special opportunities for accelerating these efforts. These include:

A high visibility, popular project. All the land projects undertaken by the land trust will seem worthwhile to the land trust, but certain ones will attract special attention in the community - perhaps because of their location or the degree of threat. You may want to tackle such a high visibility project early on - even if it doesn't rank highest in terms of your other criteria - in order to galvanize early interest and support. Mark Zenick, executive director of the Franklin Land Trust, a Massachusetts land trust that got off to a strong start with an early project, says, "High visibility accompanies the protection of a threatened piece of property. Acquisition is a bold first step, but nothing is better to produce strong, positive recognition for a new land trust."

After a successful project. A successful project can do more for a land trust than any other action. It can bring in members and contributions and yield tremendous media attention. Rather than considering the close of a project a time to relax, a land trust should consider it a time to capitalize on its success.

After positive media exposure. When your land trust is covered in the news, you might want to take advantage of the exposure with a membership appeal. And you can use the news story to reinforce your ties to existing members and funders by distributing copies of the coverage to them.

Public Awareness

One of the most important determinants of a land trust's success is the extent to which it makes the public aware that it exists, is needed, and - with the public's help - is effective. A primary tool is media coverage, but a public awareness program (sometimes called a communications program) can also include lectures and workshops, nature walks, talks for other groups, newsletters and brochures, special events, and environmental education programs for local schools.

A good public awareness program is integrated with your land saving efforts, membership, and fundraising, and is designed to enhance your success in these areas. Christine Brubacker, former president of the Lancaster (PA) County Conservancy, said, "Find the interested people and the land and money will follow." A public awareness program finds those people.

Developing a Public Awareness Program

In developing your public awareness program, you need to determine whom you want to reach and what you want your audience to hear or do.

STARTING A LAND TRUST

Identify your audiences. For most land trusts, the community at large is a primary audience, and much of the communications work you do may focus on building general awareness. This encourages support for the land trust, and can also yield unanticipated benefits. Several years ago, the Wildlands Conservancy in Pennsylvania received a large bequest from a man who had read about the conservancy's trust fund in the newspaper. The conservancy had known nothing of the man's intentions, and he had never supported the trust while he was alive.

In addition, land trusts need to reach a number of particular audiences. These include:

1. landowners (and perhaps owners of certain types of land or in certain areas)
2. business people
3. professionals who have skills the land trust needs
4. real estate agents and developers
5. people who are already interested in conservation
6. people who use or have an interest in the resources the trust plans to protect
7. potential donors and funders
8. local government agencies
9. local, state, or federal legislators

Choose the audiences that will best help you achieve your land-saving and fundraising goals.

Determine your messages. Think of what you want each of your audiences to do, and give them the information that will make them want to do it. If you want landowners to make donations or bargain sales of land or easements, educate them about the tax advantages. If you want government agencies to work with and support the land trust, provide information about how land trusts can work with government agencies and save them time, money, and administrative work.

Choose the appropriate vehicles. Once you know your audience and your message, you can choose the most effective method for conveying that message. To reach landowners with information about tax advantages, for example, written information – fact sheets, brochures, or booklets – might be most useful. (The Land Trust Alliance can provide samples of other land trusts' "landowners' guides.") Some land trusts have sponsored landowners' workshops or luncheons at which a tax attorney made a presentation and answered questions.

During its first year, the Westchester Land Trust (NY) identified as one of its highest priorities building a constituency for and understanding of its goals – encouraging environmentally sensitive development and combining development, where possible, with affordable housing. An effective vehicle proved to be a series of lectures given by regional experts.

Outreach Activities for a New Trust

There are many activities a trust can undertake in its first year or two to enhance public awareness and convey its message:

Develop a basic brochure. You need something you can hand out at meetings, mail to potential members, and give to landowners, potential donors, and government officials explaining what your land trust is, who is on its board, what you intend to accomplish, and how you intend to accomplish it. You may start with a fact sheet, but you will soon want at least a simple, professional-looking brochure. If you haven't already designed letterhead and, if you wish, a logo, you need to do that first. Continuity in design helps people associate materials with your land trust.

Develop fact sheets. You may quickly find you need material to explain land conservation techniques to landowners, or to address specific issues such as property taxes, or to describe a particular project. A neatly typed fact sheet, photocopied onto your letterhead, is a flexible, easy format. You may be able to adapt language already developed by other land trusts.

Distribute a newsletter to a broad audience. A simple newsletter is important if you have a membership. A newsletter can be distributed relatively cheaply in large quantities (apply for a nonprofit bulk mail permit from your post office) and is a good vehicle for getting your specific message into the hands of those you want to hear it. The Iowa Natural Heritage Foundation distributes its magazine to some 35,000 people, many of whom are not members. Occasionally the foundation receives a large contribution or bequest from someone who has never been an active member, but who was on the mailing list.

A newsletter does require someone to write, edit, design and produce it. Mailing can be done on a volunteer night. (A sample newsletter is reprinted in Appendix F.)

Speak to other groups in your community. Speaking to other groups is free to the land trust and allows you to give your exact message to a targeted audience. Your board members, staff if you have it, or people with some special "advisory" relationship to the land trust are potential speakers. Land trusts commonly talk to groups such as the Chamber of Commerce, a meeting of local real estate agents, garden clubs, youth groups, service clubs, etc. Ties with other, established groups in your area can give you legitimacy in the public's eye. Similarly, participation in other civic activities or events – such as operating a booth at the county fair – can enhance the image of the land trust as an organization that is integrated into the fabric of the community.

It can be particularly important for the land trust to meet with other established environmental groups in its area. The land trust is a potential competitor for members and funds, and may conduct activities that overlap with

STARTING A LAND TRUST

or affect the programs or issues of concern of other organizations. There may also be opportunities to work together on certain projects. Opening lines of communication and clarifying roles will help insure good relationships with such allies.

Host lectures by outside speakers. These may be on topics directly related to your land trust, such as conservation easements, open space, or planning sensitive development, or on topics more generally supportive of your mission, such as how water quality is being degraded in your watershed by inappropriately planned development. Look for speakers from nearby land trusts, other conservation organizations, colleges and universities, planning departments and other government bodies, and environmental consulting firms.

Hold field trips, nature walks. Taking people to see the resource you are trying to protect or the problems you are trying to solve is often the most effective way to sell the need for your efforts. If you're trying to protect a greenway along a river corridor, host a boat trip to show the beauty of the area as well as threats and properties in need of protection. If you have a variety of open space projects in mind, lead a combination driving/walking tour. Many land trusts spend their first year or more making contacts and building the trust's reputation without doing a land transaction. The Roxbury Land Trust (CT) had little public use of its nature trails until it started leading organized hikes. On the second hike, more than 100 people showed up! The Lake Forest Open Lands (IL) includes use of its preserves as a membership benefit, and has encouraged greater interest by printing a nature and trail guide.

Special events. Special events – such as a festival, a race, a special dinner – usually have the dual goals of raising funds and building public awareness. Organizing a special event can take a tremendous amount of time and energy, and may not raise a substantial amount of funds for the work invested. But it can be a terrific public support builder. Special events are discussed further under fundraising.

Getting Media Coverage

A positive, active relationship with the local media is invaluable. Media coverage increases a trust's name recognition and credibility and raises the public's understanding of its work. Frequent, supportive media coverage gives the impression of your land trust as a community institution an organization that conducts vital work and is worthy of everyone's support.

How you deal with the media will depend on your location. In a small town with one or two radio stations and a local paper, your approach may be more informal and personal. In a metropolitan area, you will have more competition for media attention, and your approach must be more carefully planned and professional.

Don't overlook any possible sources of coverage: daily or weekly newspapers, radio, television, regional magazines and Sunday supplements. Coverage can include news stories, editorials, feature stories, interviews, and public service announcements or ads that you prepare. Whatever your media program, consider seeking someone with media relations expertise and contacts.

A Few Media Tips

Make ongoing personal contacts. Get to know the key media people in your community - the editors, reporters, radio and TV commentators, perhaps even owners or publishers. You may want to introduce them to your trust in a meeting with a board member or two to let them know you exist and explain your purpose, who is involved, and how you plan to carry out your program. Leave supporting background material with them, if possible. It's useful to seek such periodic meetings, to keep the media aware of your activities. When you have a hot story, they will already know who you are and have an interest in covering it.

Watch what you say. Sometimes you will want to provide your media contacts with background information that will help them understand your story, but that you do not want to have publicized. Be wary of speaking "off the record," which means the reporter is not supposed to quote you. Never say something to a reporter that you really don't want to see in print.

Be accurate. The importance of being completely accurate in your dealings with the press cannot be overstated. If you give your media contacts incorrect information once, they will be unlikely to trust your information again. Check your facts carefully before releasing them. If you are asked a question and aren't sure of your answer, don't try to muddle through; offer to get back to the reporter with the information later. Ultimately it is best to be honest, even if it puts the land trust in a bad light. Also, don't exaggerate the importance of a story. Establishing yourself as a reliable source of information and someone who is professional will be your best asset in dealing with the press.

Effective Press Releases

The most common way to let the media know about your activities is through press releases. These are information sheets, written in a journalistic style, about newsworthy items such as upcoming events, the formation of the trust, the protection of a significant property, or the launching of a new program. Here are a few simple rules about writing a press release:

1. Keep it to one or two pages. Use separate fact sheets if you need to supply additional information. Double space and use only one side of the page; the reporter may simply mark up your release to turn it into a story.

STARTING A LAND TRUST

2. Include a contact person, with office, home and cell phone numbers so a representative of the trust can always be reached.
3. Get the basic information – who, what, when, where, why and how – into the first two paragraphs.
4. Don't let your release be discounted for lack of professionalism. Check your spelling and grammar, and be sure the release has a neat, readable appearance.
5. Send the release long enough before an event so that reporters and editors have time to research and act on it, but not so long before that they forget about it. Find out how much lead-time is best for various media contacts by asking them.
6. Use a concise description of the land trust and its goals as a standard closing paragraph.
7. Follow up with a telephone call to make sure they got the release and to see if you can provide further information. In smaller areas, or if you know the likely reporter, you might deliver the release in person. Either way, be prepared to answer additional questions on the spot, if asked. A radio reporter may even want to tape your answers for broadcast.
8. Don't send releases when you don't have any news to report. It will be too easy for the media to discount your releases when something really important does come along.

A sample press release you can use in announcing your new land trust is in Appendix E. It also shows an appropriate press release format.

Media Tours

Showing your media contacts your story is a powerful way to get them interested. Take them (individually or together) to see the problems you are addressing, a special property that needs protection, or – once you have protected land – some examples of your success. Prepare carefully for such trips to be sure that the points you want to make are the ones that come across.

Take Advantage of Your Successful Projects

Land trust projects make great media stories: they involve local people, provide good opportunities for photos or film, and affect the future of the community. Don't let the opportunity to publicize a project slip by. The closing on a property may even deserve a press conference, perhaps at the project site.

But first be sure all parties to the transaction agree to coverage, especially the landowners involved. If they are reluctant, try to get them to understand the value of publicizing the project, but never make public the details that a landowner prefers to keep confidential.

Be Persistent

The most important outcome of your public awareness effort is to create a broad, ongoing and favorable awareness of your organization. That kind of image comes from a consistent, ongoing effort. The big, splashy front page stories about your trust are important, but a successful awareness effort will include much more than that.

Membership Development

Most land trusts have members or supporters who contribute to the land trust annually. These are not necessarily the same as the "legal" members who are designated in the trust's bylaws as having voting privileges. They are simply people who financially contribute to the trust on a regular basis, generally in response to a mailing. While some land trusts have contributors who make very large repeatedly, the bread and butter members or supporters discussed here usually make contributions in the range of perhaps \$15 to \$500. Higher level contributors are discussed under fundraising.

Advantages of Members

Most land trusts believe the effort put into recruiting members is worthwhile for the many benefits they bring:

Money. A dues-paying membership (or regular contributors) gives a land trust a relatively steady and predictable source of income. Some smaller trusts fund their entire operating budgets out of membership dues. Larger trusts may raise most of their revenues from other fundraising efforts, but these funds frequently are pledged to specific projects.

However, if a trust isn't careful, the costs to recruit and maintain members can exceed the income. It is the members in the higher-paying categories and a high rate of renewals that bring in the real financial return.

Community relations. Having members helps to build good will in the community. It conveys a sense of ownership. Allen Morgan, the late executive director of the Sudbury Valley Land Trust (MA) and a membership development professional, said, "The word 'member' has an important, if subtle, connotation - of 'belonging,' of an unstated intent or even commitment to continue to support the organization."

STARTING A LAND TRUST

Some trusts, however, prefer to only have “supporters” or “contributors” or “donors,” out of concern that a “membership” program implies that the trust will provide special membership benefits or services or that managing the program will be too much work.

A source of volunteers. Members form a pool of potential volunteers vital to the land trust for a variety of critical jobs, ranging from getting mailings out to contacting landowners.

Broad public support. Support from a substantial portion of the community can help convince public agencies and the media of your legitimacy, get corporate and foundation funding, and meet the IRS public support tests discussed in Chapter 4.

Potential donors. People who have made a commitment to the land trust by regularly supporting it are a potential source of larger gifts. Members should be encouraged to increase their support when they renew. You can also ask them to make additional contributions to special fundraising efforts; some trusts have an “annual appeal,” in which they ask for additional contributions. Membership can be a way to cultivate a potential donor whom you are uncomfortable asking for a large contribution right away.

Membership Categories

A land trust that has “contributors” may not suggest specific contribution levels, but land trusts with members almost always designate categories of membership. To get ideas for establishing your own categories, borrow the land trust brochure collection from the Land Trust Alliance. Also, consider the following points when setting up your categories:

Charter members. A land trust can raise early seed money by soliciting “charter” members who contribute a substantial amount, usually \$1,000. Such members should be prominently recognized.

Life members. Many development professionals advise against having life members – members who make a very large contribution and receive all membership benefits for the rest of their lifetime. Such people usually are well-to-do and have a long-term interest in the trust, and would be likely to contribute more if asked on an ongoing basis. Also, inflation and gradually increasing member benefits can make this a losing proposition for the trust.

What should the minimum dues be? There are good arguments for both low and high minimum levels of membership. A minimum membership level of \$5 allows a maximum number of people to support the trust and helps establish it as a community organization. However, a \$5 membership does not cover the

cost of finding, soliciting, and renewing the member. A \$15 to \$35 minimum is common, but it varies widely.

Recruiting Members

Where to get names. Most land trusts start their list of potential members by having everyone involved with the trust list anyone they can think of who might support it. (People who are likely to give a substantial amount to the land trust should probably be approached individually for a special donation.)

Also be sure to get the names of people who attend any event or meeting. You can do this by passing around a sign-up sheet, having a registration desk, or holding a raffle where people submit a business card or a slip with their name and address. Many groups also get good results by mailing to carefully selected lists from other organizations.

Make it personal. Personalizing your appeal will increase its chances of success. The Little Traverse Conservancy assembles a large “finance committee” of people on and off the board who help with membership efforts. Each committee member identifies the people he or she knows on a master mailing list. The prospect then receives a letter from the committee member on personal letterhead.

A more common technique is to mail a form letter from the trust, personalized with the recipient's name and address. Trusts can personalize letters by having individuals associated with the trust write short, personal notes on the bottom of a printed letter. Postage stamps or hand-addressed envelopes also make the mail seem more personal.

For members at the more basic contribution levels, personalizing may not be important, but it is critical for soliciting larger donations.

Every member gets a member. This is an effective way to personalize membership recruitment efforts. People are more likely to join or contribute when directly asked by someone they know, especially someone who has already made his or her own contribution to the trust.

Conducting an Ongoing Membership Program

If building membership is a priority for your land trust, you will want to assign a board committee to guide the program, ideally chaired by an individual who has contacts in the community, a good sense of outreach, and ability to organize. The day-to-day work, such as keeping records and getting out mailings, needs to be handled by someone who is conscientious and pays attention to detail.

Once you recruit members, you must make the effort to keep them. A newsletter is a good way to keep your members informed of your work. Send it out on a regular basis, not just when you are asking for money. Many land trusts

STARTING A LAND TRUST

find a newsletter is their most valuable membership tool. Bob Myhr, executive director of the San Juan Preservation Trust (WA), relates his experience: "We found a little, inexpensive newsletter did wonders for us. Our membership grew from 200 to 500 in just two years, and our membership contributions went from \$11,000 to \$30,000 - much of this because our \$160-per-issue newsletter (including postage) helped get the word out."

Also invite your members to attend land trust events, or hold special picnics, dinners, or other events just for them. Many land trusts make their annual meeting a special occasion for members, with a dinner, guest speaker and report on progress and accomplishments.

Finally, members should be thanked for their support. Small contributions might be acknowledged by a form letter if necessary, but larger ones (certainly \$100 and up) should be personalized. The more people feel a vital, appreciated part of your success, the more committed will be their support for your efforts.

Fundraising

Fundraising is one of the top concerns of most new land trusts and, indeed, of every active land trust. That's because money is one of the major needs of any land trust - and because most people who start land trusts do not have fundraising experience, doubt their ability to be successful at it, and resist the thought of asking people, especially friends and neighbors, for money. Fundraising can require a lot of work, and experience is helpful. But like other aspects of running your trust, it is mostly a matter of assessing the strengths and opportunities of your community, developing a sensible plan, and making a commitment to carry that plan out. Don't let a fear or distaste for fundraising hamper your effort. Your ability to fundraise will be one of the major determinants of your ability to accomplish your mission.

The Board's Involvement Is Key

Fundraising is one of the board's key responsibilities. "People give to people" is a basic rule of fundraising, and one of the board's major functions is to provide access to the people who can contribute substantial funds. Ideally, you want board members who are friends with such individuals - people of wealth, heads of businesses or corporations, etc. You at least want board members who will have credibility with such people and are their peers.

In addition, every board member should make a substantial contribution (within his or her means). This demonstrates to other potential funders the board members' commitment to the organization. They also should be willing to ask their friends, neighbors and associates for money.

All board members should be involved in fundraising, not just those on your fundraising or financial development committee. Even if a land trust has staff, the board must play a major role in fundraising. Staff usually increases the

effectiveness of the trust's fundraising by researching sources of funding; writing case statements, proposals and other materials; making sure plans are carried out; and conducting more aggressive land conservation and outreach programs. But staff rarely has the connections that are critical to a fundraising effort's success.

Your Major Funding Source: Individuals

On average, more than two-thirds of land trusts' operating budgets comes from individual donations and memberships. This percentage is usually even higher for new land trusts. Almost 700 of the land trusts surveyed by the Land Trust Alliance in 1998 reported their operating income comes, on average, from the following sources:

Individual donations and membership	55%
Foundations	12%
Sales of services and publications	3%
Government	6%
Land Transactions	3%
Business/Corporations	3%
Other	8%

However, each community and land trust is different, and you will have to investigate what particular resources exist in your community. A few land trusts, developed out of government-related initiatives, have received substantial support from local government agencies. Others have received large foundation grants. But such support for new trusts is rare, and even trusts that get it need to develop early support from individuals. Individuals are the most reliable and consistent source of funding, and will almost always provide the essential core of the land trust's operating budget.

Most of the money that comes from individuals comes from large donations. A fundraising rule of thumb is that 80 percent of the money comes from 20 percent of the donors, and sometimes the ratio is more like 90:10. But don't rule out the possibility of substantial gifts from people of more modest means; people sometimes will make surprisingly large gifts if they are committed to your cause.

You will particularly want to focus your first efforts on wealthy individuals if you want to raise substantial sums quickly. It takes a lot more time and effort doing the education, public relations and solicitation required to raise \$10,000 through 400 gifts than to raise it through two gifts of. Of course, most land trusts will want to use both approaches – having broad community support ultimately may be just as important as the amount of money raised – but in your early days, a few large gifts can help you get off to a strong start and allow you to focus on getting your other programs underway.

Other Funding Sources

Local government. Land trusts are frequently started to help accomplish community goals that are not being fully achieved by government agencies. Land trusts can raise private money, sometimes acquire land more cheaply, move more quickly, and be more flexible in their dealings with landowners. Government agencies that understand that a land trust can be a good partner sometimes provide operating funds, support staff, technical assistance, office space, mailing costs, etc. This is particularly true when a government agency is a motivator for or is closely involved in the formation of a land trust.

Local businesses/corporations. Local businesses or corporations may be convinced to support a land trust because it benefits the local economy by improving the quality of life, sometimes by increasing property values, and by enhancing the area's potential for tourism. Local businesses also often like to demonstrate their support of and involvement in the local community, and supporting the land trust can be a good vehicle for projecting such a public image.

Local or family foundations. A number of land trusts get start-up help from foundations. These usually are small, local or family foundations. Support from larger, regional foundations usually goes to more established groups, and national foundations rarely give funds to local organizations, although there are always exceptions. Most foundations want to see groups that are already raising funds elsewhere and have definite plans for moving towards self-sufficiency.

Local or family foundations are frequently operated by the person who established the foundation or his or her heirs, and a personal connection is usually best. Fundraising where you do not have connections requires research and a careful approach. Several useful publications about foundations are listed in Appendix A.

Fundraising to Buy Land

This chapter has focused on raising money for operating funds, but raising money to buy land follows the same principles - except that it usually is easier. The opportunity to help save an important property in the community, particularly if the parcel is threatened and the need is urgent, has broad and strong appeal. It makes sense, when conducting such a fundraising effort, to raise a sufficient amount beyond the amount needed to close the deal to cover at least some of the trust's costs in doing the transaction, including some staff time and overhead. For further discussion of financing land transactions, see Chapter 8.

Develop a Fundraising Strategy

Almost from the start, your trust will need some money for printing, mailing, legal fees, etc. In many cases, each member of the initial core group contributes a sum or pays early expenses (as long as they are not too large) out of their own pockets. Once your board is formed, contributions made by each board member may provide a temporary funding base. You may also have connections with a few other interested people who will contribute while the trust is still getting its feet on the ground.

But as soon as you have outlined your basic program for the next year and have developed an operating budget, you need to prepare a more focused fundraising plan. Determine how much money you need to raise, identify sources of funding, and set target amounts for each source. Think about where the money is in your community and what special opportunities you may have through contacts on your board or other special circumstances. Also consider the trust's goals. Do you want to get off to a fast start and just focus on getting a few large gifts? Or are you equally concerned with getting broadly distributed financial support among the community right away? A simple example of a hypothetical first year fundraising strategy is presented below.

FUNDRAISING STRATEGY			
Goal for first year: \$50,000 for operations (office, one staff, supplies, mailing, brochure, telephone, etc.).			
Fundraising Targets			
Individuals			
2 gifts @	\$5,000 =	\$10,000	
10 gifts @	1,000 =	10,000	
20 gifts @	500 =	10,000	
50 gifts @	100 =	5,000	
100 gifts @	25 =	2,500	
			37,500
Businesses			
10 gifts @	500 =		5,000
Events			
Carnival	=	2,500	
Art Auction	=	5,000	
			7,500
Total			\$50,000

Develop a Case Statement

To solicit substantial contributions, you need to be able to make a strong case to potential donors and be prepared to answer any questions. A good way to do this is to develop a written “case statement.” Even if you don't distribute it widely, developing the statement will help your board think through key issues about the land trust and will give you more confidence when you ask for funds. A case statement answers the following questions:

1. What problems is the land trust trying to address? You may want to include statistics or examples on the loss of open space, declines in wildlife populations, projections for recreational crowding – whatever supports your case.
2. How does the land trust expect to address these problems? Outline your goals, objectives and methods of achieving them.
3. How will the community benefit? Explain what is or will be different because of the land trust, and perhaps what the future will look like if you can't carry out your program.
4. How will the donor benefit? Make a case for why an individual should contribute.
5. Who is involved in the land trust? Describe your board members, staff, or any special advisors. Explain why they are the right people for the job, and how they will help insure your success.
6. What will the money be used for? Show how the contribution will help the land trust meet its goals.

Asking for Money

Here are a few tips about asking for large contributions:

Choose the right person to do the asking. The corollary to the fundraising rule that “people give to people” is that people give to people they know or at least feel comfortable with. Pick the right people to ask for large gifts: friends and acquaintances are usually best because people respond to their peers. Have wealthy people ask wealthy people, business people ask business people, etc. If you don't have some of these types of people on your board, get them, and make it clear that part of their job will be to help raise money for this exciting, new enterprise.

Use a personal approach. A personal approach helps any solicitation. For large contributions, it is essential. Even foundations are more likely to support an organization in which they know the people involved and have confidence in their ability to make good use of the funds provided.

Be positive. Don't apologize for asking for money. Your land conservation mission is a terrific cause. You are giving people an opportunity to make an investment in the future of the quality of the community, to participate in a vital and successful venture.

You have to ask. People rarely give money if they aren't asked. No one should be offended by a polite request for funds for a good cause, so you have nothing to lose by trying. Also, ask for a specific amount, based on your needs and on the donor's ability to give. People need to know the level of support you are seeking; if you don't specify an amount, you will usually get less than you hoped.

Research. In a small community your board may know most of your potential donors. But in some situations, it will help to research your potential donors before asking for large sums. Determine just who is the right person to make the approach, what special interests the donor has that might relate to your appeal, and the amount the donor is likely to be able to give.

Special Events

Many land trusts hold special events – picnics, races, dinners, carnivals. Special events can raise significant amounts of money, but are often more important as a way to build public support. You need to think carefully about the goals you want to achieve and then design the event appropriately.

Special events generally demand intensive attention from one very competent person who can coordinate all the people and details involved. They also require lots of volunteer time and energy, substantial up-front investment, or both. You need to consider carefully whether the benefits of holding the event are worth the investment.

An example of the dual benefits of special events is the annual “Gap to Gap Relay” hosted by the Yakima Greenway Foundation (WA). The race includes mountain biking, canoeing, biking, and running along a protected portion of the Yakima River. In recent years, the event has netted perhaps \$12,000 to \$14,000 for the trust. This covers roughly 10 percent of the trust's operating budget. But the event brings tremendous public attention to the land trust, and support for continued protection of the greenway. One year the event involved 150 volunteers and was co-sponsored by the local newspaper, athletic club, a sporting goods store, winery, and investment firm. More than 600 people participated in the relay and the entire weekend was devoted to greenway-oriented events, also hosted by the YMCA, the Yakima Firing Center and the Volksmarchers Club.

Similarly, the Jackson Hole Land Trust (WY) held a “western carnival and auction” to raise money for purchasing a highly scenic property. The carnival, held at a town park near the property, included three bands, a volleyball tournament, western swing dancing lessons for children, and old-fashioned

STARTING A LAND TRUST

buggy rides. More than 75 volunteers helped organize the event, local restaurants donated food, volunteer carpenters built the booths and many others provided free services. The day was kicked off with a fundraising walk; all participants received "Save the Hardeman Meadows" T-shirts. More than 100 local businesses donated items for a silent auction. The carnival raised \$37,000, a relatively small share of the \$750,000 the trust needed to raise to acquire the property and an amount that perhaps could have been raised through easier methods. But 1,000 people attended the carnival, and the value of making the community feel they all had contributed to the success of the project will have lasting benefits.

To raise a really large amount of money, an event usually needs to be rather elegant or unusual and attract wealthy people. Many land trusts are not in communities that can support such events, but those that are can have tremendous success. Consider the Southwest Florida Land Conservation Trust in Naples. When a wealthy businessman in the county wanted to open his new antique car museum, he sought a nonprofit in the community to arrange the event. The organization would organize and pay all the costs of the opening, and would receive all the receipts. The land trust, chosen over several other nonprofits, hosted a \$300 per plate dinner, attended by 600 people in the business community. After covering its costs, the land trust netted \$90,000.

The Rewards of Fundraising

Although many people are reluctant at first to ask for money, fundraising can be fun. There is nothing more rewarding than opening envelopes with contribution checks, or seeing crowds of people at your picnic, or having someone hand you that big check. No matter what the size of the donation, it means that people share your love of the land, support what you are doing, and have confidence in your success. Moreover, the difference between a successful, dynamic land trust and a passive, weaker land trust that chronically feels unable to achieve its goals is the ability to raise money over the long term. To be successful, a land trust needs to start its fundraising program early and keep it strong.

8. Saving Land

From Criteria to Stewardship

Saving land requires a good understanding of real estate and tax law, the local real estate market, and the steps required to protect a piece of land—including negotiating, appraisals, surveys, title searches and financing. It also requires careful planning, effective landowner contact and good research. This chapter introduces the complex and technical subjects that a new land trust must learn as it begins its land protection program. Before undertaking conservation projects, you will need to consult more comprehensive and detailed resources and, when necessary, obtain good professional guidance.

Choosing Which Acres to Protect

Most land trusts would like to protect more land than their limited time and resources permit. To be most effective, the trust needs to establish guidelines for selecting the land it will try to protect. Most trusts narrow their focus in their statement of mission or purpose and define it further in their land conservation criteria. This, however, can still leave the trust with an immense array of opportunities, and many trusts take the additional step of establishing priorities or developing a particular strategy for conducting a very deliberate plan of action.

Statement of Purpose

Among other things, the mission statement or statement of purpose usually defines the overall geographic scope of the land trust's activities and the type of resources it intends to protect. Statements vary in their specificity. For a new land trust, a narrower purpose or mission may be the most useful; it can be expanded as the organization evolves. Here are some excerpts from land trust statements of purpose:

STARTING A LAND TRUST

The Marin Agricultural Land Trust (CA) is dedicated to the protection and preservation of Marin County's productive agricultural land.

The goal of the Alachua Conservation Trust (FL) is to protect natural areas and historic and archaeological sites in Alachua County for the benefit of present and future residents.

The Prairie/Plains Resource Institute (NE) is dedicated to the preservation, restoration, and ecological management of native grasslands and other unique natural habitats of the plains in the state of Nebraska.

The Trust for Appalachian Trail Lands (WV) protects land adjacent to the 2,100-mile Appalachian Trail corridor.

The primary objective of the Middlebury Land Trust (CT) is to preserve those natural areas, including forests, meadows, swamps, marshes, ponds, and streams, that contribute to and enhance the rural nature of the Town of Middlebury. In this capacity, it makes itself available to the Town of Middlebury to assist in implementing the Town Open Space Plan.

Criteria

In addition to a general narrowing of its focus through the statement of purpose, a land trust needs to establish written criteria for determining whether it will protect specific parcels of land. Criteria help ensure that the trust uses its limited resources most efficiently and effectively and that it avoids projects that could be a serious liability. Well-conceived criteria, soundly applied, also help ensure that the trust has a rational, defensible program of conservation that benefits the public.

Criteria cover factors such as the type or significance of the resources in question, the property's proximity to other protected areas, the degree of threat to the property, the likelihood that the proposed project can protect the resources in perpetuity, the size of the property, the long-term costs for the land trust, etc.

Some criteria consider a property's or project's appropriateness for the trust. For example, the Society for the Protection of New Hampshire Forests, a statewide land trust, generally assumes responsibility only for parcels that are 50 acres or larger, due to the difficulty of managing and monitoring many small parcels all over the state.

Criteria should be designed to screen out properties with excessive management difficulties, serious risk of contamination by hazardous waste and other negative features. Criteria can also give the trust an objective basis on which to refuse parcels that do not have sufficient public benefit. For example, developers might try to gain a tax deduction and minimize their management

responsibilities by offering the trust small parcels of undeveloped land with little conservation value inside a subdivision. Well-intentioned landowners may wish to donate land that would be too difficult to manage, or has little resource value, or is so surrounded by development that its conservation resources may be too difficult to protect.

Landowners may try to use the land trust for their own ends. In one case, a landowner interested in blocking a utility right-of-way across his property tried to donate a conservation easement to a land trust, an action that could have given the appearance of the land trust serving private interests unrelated to its public benefit purpose. Written criteria allow a land trust to say, “no.”

The focus and resources of every land trust are different, and criteria vary widely in definitiveness and detail. More basic criteria may be a simple list of questions about the property that the trust answers “yes” or “no:” the more “yeses,” the more seriously the trust considers taking on the project. Some sophisticated trusts use a scoring system to weigh various factors. Others have separate criteria for land acquisition versus conservation easements, or for donated properties versus purchased properties. For sample criteria, see Appendix G.

Establishing Priorities

A land trust's statement of purpose and criteria define the parcels it will or will not acquire. But they do not outline a plan of action or give the land trust guidance as to where it should immediately focus its resources. Such a plan can be particularly important for a land trust that has a broad land protection mission, encompassing many different types of resources.

While the land trust's criteria will help assure that individual parcels the trust protects are important, the trust still runs the risk of acquiring a hodgepodge of properties that don't have a substantial impact on the community's open space or are not of high priority. The lack of a plan or strategy can also leave a land trust feeling uncertain about what to do next.

A land trust may want to consider some of the following factors in establishing priorities or a plan of action. Many of these considerations are discussed in *Developing a Land Conservation Strategy*, published by the Adirondack (NY) Land Trust (518-576-2082).

Identifying parcels that meet the trust's criteria. Some land trusts begin by conducting an inventory of the land within their geographic focus, and mapping the location of features that significantly meet its criteria. (*Developing a Land Conservation Strategy* describes how to use overlays to show different types of land characteristics.) In the process, the trust may want to rank the features or identify the most prime examples — such as the best scenic views, most productive wetlands, best agricultural soil, among others. This not only will

STARTING A LAND TRUST

identify high priority features but show where several features are found in the same location.

Critical nature of the resource. Of the several resources the trust intends to protect, one may be identified as having overriding importance. The Adirondack Land Trust (NY), for example, decided initially to focus on lands it had identified as being critical to scenic vistas because they are vitally important to the character of the region and could be quickly destroyed by minor changes in land use.

Size of parcels. A trust might focus first on large parcels that may provide the greatest conservation benefit for the effort and may have the most impact if developed.

Degree of threat. Parcels subject to imminent sale or development may deserve highest priority. Maintaining contacts in the real estate community allows a land trust to keep abreast of what properties are threatened by commercial development.

Potential for “blocking up” properties. A land trust may produce greater conservation benefits and have more visible success, if it can protect a large, contiguous area or areas. It may make sense to focus initial efforts in one or two areas with large parcels and willing landowners, and then work to secure adjacent properties.

Potential for public support or funding. There may be opportunities for special focuses in the community that capture people's imaginations or have particular appeal. These might include, for example, a pilot project to demonstrate the effectiveness of some larger program, the protection of a road, river, or trail corridor that would provide a tangible public use, or a conservation plan for the gateway into the community. While the land trust's basic goal always must be to provide maximum conservation benefits, it also makes sense for a trust to choose its projects based in part on whether they will build public support for the trust and its mission, attract new or key sources of funding, and build good relations with government agencies, among other benefits. Ultimately, these factors will strongly influence the trust's ability to accomplish its goals.

Sources of Information

The following are sources of information for finding out more about specific properties. (This list is partially adapted from the California State Coastal Conservancy's *Nonprofit Primer*.)

- *Professional appraisers.* Appraisers can be helpful sources of information about area land values. Try to use appraisers with Member Appraisal Institute (MAI) or other professional certification. To find an appraiser, you may consult American Society of Appraisers, Herndon, VA, (703) 478-2228, www.appraisers.org; Appraisal Institute, Chicago, IL, (312) 335-4100, www.appraisalinstitute.com; or the National Association of Independent Fee Appraisers, St. Louis, MO, (314) 781-6688, www.naifa.com.
- *Local lenders/real estate brokers.* These professionals can provide useful information on property values and market conditions as well as help a land trust implement a transaction.
- *Title companies.* For a modest fee, title companies generally will furnish current title reports on target properties. These reports are the best single source of information on the title encumbrances, mortgages, and other materials pertaining to a parcel.
- *County recorder's office.* This public office maintains records of deeds, easements, mortgages, and other title encumbrances in files, referenced by the name of grantors and grantees. A word of warning: researching these records can be tedious, so it helps to know precisely what information you are looking for.
- *County assessor.* This office can provide tax maps of land parcels, as well as data on assessed valuation and tax history. These records are generally organized hierarchically, starting with large land divisions and working toward individual lots.
- *Local planning agency.* The local planning agency can supply relevant land use plans, land use regulations, and data on economic, social, and natural factors in the area.
- *Natural Resource Conservation Service offices.* Located in virtually every county, these federal offices can provide useful maps of soil conditions, soil surveys, and other natural systems data. Their computerized Land Evaluation and Site Assessment System can be used at the local level to help identify land acquisition priorities.

Working with Landowners

The ability to communicate and negotiate effectively with landowners is critical to a land trust's protection program. Because a land trust depends heavily on donations and bargain sales of land and easements, it must be able to persuasively communicate its goals and comfortably discuss the tax benefits of charitable contributions. Because landowners and their families usually have strong feelings about their land, land trust personnel need to be patient, thoughtful, and sensitive in their dealings. A few tips on effective communication:

STARTING A LAND TRUST

Anticipate the landowner's position and concerns. The first step toward success in approaching landowners is research. The amount and type of research required depends on what you want from the landowner, how important the project is for the trust, and your initial sense of how the landowner will react. If, for example, your goal is to get an outright donation of a valuable piece of land from someone you do not know, you need more preparation than if you are approaching a wealthy, conservation-minded, long-time acquaintance about an easement donation.

Before you approach a landowner, try to find out enough so that you can see the situation and the possible conservation alternatives from the landowner's point of view. Anticipate questions and concerns. Develop answers to likely questions. Tailor your proposal to the landowner's needs. Investigate the property's conservation resources, its current fair market value, attitudes of the landowner and family members, and the owner's financial position and needs. Other considerations may include local development pressures, whether neighbors or friends have worked with the land trust, the property's history, what the landowner originally paid for it, and what any heirs want to do with the property.

Point out the precedent. Examples are extremely useful. Once one respected landowner in the area has worked with the trust to protect his or her land, others may be more comfortable with the idea.

Be above question. The land trust must maintain an excellent reputation in the community, so be painstakingly discrete, fair and candid in all landowner contacts.

Know what you want. In negotiating with landowners, the land trust needs to decide its goals in advance. Perhaps the trust can protect the property adequately only through ownership. Perhaps the trust does not want to assume ownership and will accept only a conservation easement. After deciding your goal, consider acceptable fall-back alternatives: perhaps you would like to protect the whole property, but limited development of a certain portion would be acceptable. Perhaps you prefer a conservation easement donation, but could pay a certain amount if necessary. Knowing what you want keeps you from giving away too much.

Don't get carried away by "The Deal." When you have invested substantial time and energy in a negotiation, and the property is an important resource, closing the deal can become an end in itself. But you should always be prepared to walk away. Compromise is frequently part of a successful negotiation, but never compromise your fundamental goals. Don't agree to excessive development that will harm a property's conservation resources. Don't set

precedents that will jeopardize future transactions. Don't agree to an inflated purchase price. Know your real “bottom lines” and stick to them.

Be patient, persistent and diplomatic. Convincing someone to make a major land donation to the trust can take years. You may have to wait for the real estate market or the owner's financial situation to change. Some members of the family may block a decision for long periods. Other personal factors may be at play. Stay in touch without being a nuisance, inform the landowner of changing circumstances that could encourage the owner to act, and be ready to take advantage of opportunities. It's not unusual for a land trust to get a property many years after the first contact was made.

Land Protection Methods

In most land trust projects, the land is protected through one or a combination of two basic methods: ownership by a conservation-minded individual, organization or agency, or a conservation easement, a legal agreement protecting a property's conservation resources (discussed in detail below). Land trusts use other methods, including some that provide only temporary protection, but these two are the mainstays of most trusts' efforts.

There are many different ways of using the methods described below. Some transactions are simple: a landowner may donate a property or conservation easement to the land trust. Others are more complicated and involve widely varying combinations of multiple techniques. Much of the variety and ingenuity in saving land lies in finding combinations that work. Complicated projects can involve several different players, nonprofits and government agencies, various sources of funds, and complex "packaging," mixing ownership, conservation easements and development. Some land trusts rely on the most straightforward and simple approaches; others – particularly if they work at the regional level and in expensive real estate markets – deal in complexities.

Fee-Simple Ownership

When someone owns all the rights to a piece of land and holds title to it, this is called “fee-simple” or “fee-title” ownership or owning land “in fee.” Complete ownership gives the land trust the most certain ability to protect the conservation resources on the property. The trust alone can determine who will be allowed on the property and under what circumstances, how the resources will be managed, and what the future of the property will be. Ownership is generally favored where the resources are highly sensitive and the trust cannot guarantee their protection using other conservation approaches.

Owning land, however, usually places the greatest long-term demands on the trust and its resources. The trust may be liable for accidents or injuries on the property, must monitor the property to check for trespass and the condition of

STARTING A LAND TRUST

the conservation resources, and may need to manage the land to ensure the perpetuation of its conservation resources.

A land trust must carefully evaluate whether ownership is appropriate before purchasing or accepting donation of a property. If ownership is not necessary, the trust may try to convince the owner to agree to other conservation methods, such as granting a conservation easement, or allowing the trust to acquire the property, then place a conservation easement on it, and resell it to another private owner. If ownership is necessary, but the trust feels it cannot or does not want to own the property, it might try to find another nonprofit conservation organization or government conservation agency to acquire the parcel. Sometimes, however, ownership by the trust is the best or only option, and land trusts have been quite successful at managing the more than 800,000 acres they collectively hold.

Sometimes a landowner, to be sure that the trust manages the land according to his or her wishes, will include restrictions in the deed. Before accepting a parcel with deed restrictions, the land trust should be sure it can abide by them over the long term without undue constraints or complexities. (It also should be sure the landowner understands that imposing restrictions reduces the tax-deductible value of the gift.)

Conservation Easements

A conservation easement (in some states called a conservation restriction) is a legal agreement between the owner of a property and a nonprofit organization or government agency in which the owner agrees to restrict future uses of the land. The landowner and subsequent owners must comply with the provisions of the easement. The organization or agency ensures such compliance by periodic inspection and, if necessary, legal action.

To understand the easement concept, think of property ownership as a bundle of rights: the right to live on the land, the right to build, the right to farm, the right to cut trees, etc. In granting a conservation easement, the landowner retains some rights and gives up others. Typical restrictions are prohibitions on some or all industrial and commercial activities, restrictions on removal and disturbance of a property's vegetation and surface, and limitations on the number and siting of houses or other structures. The exact terms of the easement are negotiated between the land trust and the landowner and depend on the nature of the property's conservation resources and the landowner's needs. Just as each piece of land and each landowner is different, each easement is different.

Conservation easements may be donated or sold like any other interest in land. Conservation easements that are donated *in perpetuity* and that meet IRS criteria qualify the donor for a federal income tax deduction. The value of a donated conservation easement is generally the difference between the fair market value of the property before the grant of the easement and the value afterwards. For example, if the property without the easement restrictions is valued at \$800,000,

and with restrictions is valued at \$500,000, the easement value is \$300,000. The easement value must be determined by a qualified appraiser, as defined in IRS regulations. The conservation easement may also reduce the landowner's property taxes and estate taxes.

Conservation easements are a flexible and increasingly popular conservation tool. For land trusts, holding a conservation easement often is less expensive than holding land, and may be preferred where the trust is able to negotiate restrictions that protect the property's conservation resources. An easement may originate in many ways: in addition to holding an easement granted by a landowner, the trust may itself place an easement on land it has acquired, and then resell the parcel to another owner or donate the property to a public agency. Conservation easements can be used in "limited development" projects, where a property is partially developed but its major conservation values are protected.

For the community, conservation easements have proven to be politically popular because they keep the property in private ownership and on property tax rolls. The terms of an easement can be crafted to meet the landowner's needs. An easement can be granted on all or part of the property. Usually public access need not be allowed. The landowner continues to own the land and can use it, sell it, or bequeath it, subject to the terms of the easement, and all subsequent landowners are bound by the restrictions in the easement.

Acquiring a conservation easement can be complex. The land trust must determine what restrictions are necessary to protect the property's conservation values. It must negotiate the restrictions and other terms of the easement with the landowner. It needs to help guide the landowner, who probably will be unfamiliar with conservation easements, through the process - perhaps suggesting a list of attorneys and appraisers and making sure the landowner understands his or her responsibilities. It may need to conduct a baseline data inventory (this can be the responsibility of the landowner instead) to establish the condition of the property at the time the easement is granted. The trust must have access to the professional advice needed to acquire the easement - attorneys, appraisers, and sometimes natural resource specialists - and must be sure that it will have the personnel and financial resources to monitor and enforce the easement in the future. While the long-term management responsibilities may be less than if the land trust owned the land, they are still substantial.

The Land Trust Alliance has published several books on conservation easements, covering how to administer an easement program, appraising easements, and IRS regulations and federal policy on tax-deductible easements (see Appendix A). Any land trust planning to negotiate or hold conservation easements should obtain and read these books.

Temporary or Nonbinding Protection Measures

Temporary or nonbinding agreements are used when permanent protection does not suit the land trust's or landowner's current needs and wishes. Perhaps the trust believes that the property's conservation value is not great enough or endangered enough for the trust to put its resources into permanent protection measures, or perhaps the landowner is willing to enter into only a temporary or nonbinding agreement. Temporary measures can still provide significant protection for a property. And the relationship these arrangements build between the land trust and the landowner may eventually lead to more permanent protection.

Leases. Leases provide a land trust at least some temporary control over land use in cases where the landowner or the trust either cannot or does not want to make a more permanent arrangement. Leases typically give a land trust exclusive access rights to properties for the term of the lease; this approach can be useful in ensuring protection of fragile on-site resources. They are recorded in the office of the local recorder of deeds and generally remain in force for their full term even if the land itself changes hands.

Management agreements. Management agreements are used less frequently than leases. They specify a plan under which the property will be managed, either by the landowner (with the advice or assistance of the land trust) or by the trust itself. Management agreements usually are recorded and remain in force for their full term even if the land changes hands. Both leases and management agreements have been used extensively by The Nature Conservancy, among others.

Registration programs. Many land trusts operate programs to register significant conservation properties. The registration usually is a nonbinding agreement stating that the landowner will not develop the land, or at least certain portions of it, and will notify the trust of any threat to the land or plans to sell. The land trust provides the landowner advice on managing the property to protect the conservation resources on it, and may visit the property annually to ensure that its conservation values are being protected.

Methods that Buy Time

Options and rights of first refusal preserve a land trust's opportunity to purchase a property in the future if, for some reason, immediate acquisition is impossible or unnecessary. These agreements can be purchased from or donated by the landowner. To strengthen the land trust's legal claim, these agreements should be made through written contracts recorded with the appropriate local government agency, and the trust should pay at least a token sum of one dollar.

Options. An option is the exclusive right to purchase a property under certain terms and conditions, at a specified price and by a certain date. If the land trust obtains the necessary funds, it can exercise the option; if not, the option expires and the trust forfeits any money it paid. Having an option does not obligate the trust to purchase the land.

Acquiring an option gives a land trust time to raise funds when a property is put on the market and threatened with imminent development. A land trust may also acquire a series of options that expire sequentially to allow it to acquire an expensive parcel over a period of time. When the Little Traverse Conservancy (MI) was preparing to buy an expensive piece of land, it negotiated separate options on individual parcels within the larger property. Each option expired at the end of a different quarter. This gave the conservancy periodic goals and crises, which were useful in fundraising. It also meant that the difficult project was not an all-or-nothing proposition: if the trust failed to raise enough funds to exercise one of the options, it still retained ownership of those parcels it had already purchased.

Rights of first refusal. A right of first refusal is an agreement between a landowner and the land trust that gives the trust the right to match any *bona fide* purchase offer made on the property and acceptable to the landowner within a specified time period. Before matching an offer, the trust should be sure that it is a serious offer by a third party. The trust is under no obligation to make an offer on the property.

Acquisition Methods

The method of acquisition determines how much the land trust pays to acquire the property rights and when those rights accrue to the land trust.

Amount of Payment

Purchase at fair market value. Purchasing land or interests in land (such as conservation easements) at fair market value is the most expensive acquisition method, and land trusts will usually try to negotiate a donation or purchase at less than fair market value. It is difficult for a land trust to sustain its activities if it frequently purchases land at fair market value. Landowners can be told reasonably that, as a nonprofit, charitable organization, the trust cannot be expected to offer prices competitive with developers. Expensive purchases can be broken into installments, either by paying for one transaction in installments or buying a piece of land in multiple, separate transactions. (Installment sales may also produce greater tax benefits for the landowner.) A landowner selling property at fair market value is subject to tax on any gain on the sale of the property.

STARTING A LAND TRUST

Bargain sales. A bargain sale is a sale of land or an interest in land below fair market value. The difference between the fair market value and the actual price paid may qualify as a tax-deductible charitable donation to the trust. For example, if a property appraised at \$300,000 is sold to the land trust for \$200,000, the seller has made a contribution of \$100,000. The value of such a donation must be determined by a qualified appraiser. The seller does owe tax on the sale portion of the transaction (see IRS regulations regarding the determination of the basis of the sale portion).

Bargain sales can be an attractive option for landowners who want to preserve their land but also need income from the transaction. Although a landowner generally will make more from a sale at fair market value than from a bargain sale, the tax benefits of the gift portion of a bargain sale can reduce or eliminate the disparity and create important negotiating opportunities for a land trust.

Donations. A land trust's acquisition method of first choice is, of course, donation by the landowner. Landowners may donate almost any property right or interest in their land, including the entire parcel in fee, a conservation easement, or the other property rights discussed in this chapter, such as an option or a lease. Donations of land or certain interests in land may qualify a donor for certain tax benefits, as discussed below. Donations are vital to most land trusts' land protection efforts.

Timing of Acquisition

In most transactions, the land trust will take full ownership of the property or conservation easement as soon as the terms are worked out and the appropriate documents signed. But landowners may work out agreements that result in the trust taking ownership at some future date.

Remainder interests. A landowner may give his or her property to the trust, but reserve the right to live on or use the property for his or her lifetime (a "life estate"). The donor usually qualifies for an income tax deduction at the time of the donation (usually substantially smaller than one for an outright donation), based on the value of the property but taking into account the life expectancy of the donor.

Bequests. A landowner can also leave property – land, an easement, or other assets – to the land trust in his or her will. Donation by bequest can significantly reduce the estate tax for the donor's heirs by removing the value of the donation from the taxable estate. However, this approach will not result in any income tax benefits since the gift does not actually take place until the donor dies. Particularly when dealing with a conservation easement, a land trust should try to negotiate the exact terms of the donation during the donor's lifetime to ensure that the conservation resources are protected, that the trust is given sufficient

management flexibility and, where possible, that adequate management or monitoring funds are donated.

Donation of undivided interests over time. An undivided interest is a portion of the landowner's entire interest in a property. Like a conservation easement, an undivided interest may be donated or sold to the land trust, giving the trust a partial interest in a property. As the owner of an undivided interest, however, the land trust becomes a co-owner of the property and shares an interest in all ownership rights. Under this arrangement a land trust could find it difficult or impossible to guarantee adequate protection for a property's conservation resources, and land trusts rarely use undivided interests. However, in some cases, for tax reasons, a landowner may wish to transfer the entire interest in a property to a land trust by donating a series of undivided interests over time. For example, a donor might donate a 20 percent interest in the property to the trust in each of five years.

Cooperative Protection Roles

Land trusts often work in cooperation with other land trusts and conservation organizations, government agencies, or sometimes private sector interests to protect land. Their roles can vary widely from jointly financing acquisition to simply facilitating the transaction.

Preacquisition. Preacquisition is a technique in which land trusts acquire land in need of quick protection with the intention of selling it later to a government agency. This strategy involves some risk that the agency ultimately will not acquire the land from the trust, but this can be minimized by good communication and cooperation. Sometimes simultaneous closings are arranged so that the land trust owns the property only for a few minutes before conveying it to the agency. Frequently the trust will acquire the land below fair market value and include its acquisition costs in the resale price.

Preacquisition has many advantages for both the land trust and the agency. The agency benefits because the trust may be able to acquire the property less expensively and more quickly and sometimes can negotiate transactions where the agency has had no success. The agency may be able to acquire the land from the trust at less than fair market value. Even if the agency has to pay full fair market value, it will save on staff time and related costs. The land trust benefits because it is usually able to at least cover its transaction costs and does not have the burden of long-term management or monitoring responsibilities.

Assisting government acquisition. Land trusts assist government acquisition in many other ways - undertaking preliminary negotiations, identifying important conservation properties, conducting appraisals and title work, raising

STARTING A LAND TRUST

local matching funds, managing and monitoring certain parcels. Cooperative acquisition efforts are increasingly popular as government agencies learn the benefits of working with land trusts.

Partnerships for land protection. A land trust may join with other land trusts, a national conservation organization like The Nature Conservancy, the Trust for Public Land or the American Farmland Trust, or a government agency to jointly finance or share responsibility for protection of a property. Participation in a joint venture with a more experienced or better-financed partner can be especially beneficial to a land trust conducting its first project. But as land prices rise and land trusts become more aggressive about purchasing large parcels, the cooperation of several different parties – local and national, public and private – is often essential.

In most cases, these partnerships are formed for one particular transaction. But recently some statewide land trusts have developed programs to assist local land trusts in protecting land. For example, the Maryland Environmental Trust, a statewide, quasi-governmental land trust, and the Chesapeake Bay Foundation, a regional conservation organization with a land trust arm, operate a land trust assistance program carried out through formal cooperative agreements signed with local trusts.

Consulting, Advisory Roles and Advocacy

Land trusts quickly acquire expertise and familiarity with a community's conservation resources and needs, and may use this expertise to participate in government programs and committees, to help landowners and developers plan more conservation-oriented development, to consult with town governments on planning processes, and to advance sound government land conservation policies. Most land trusts seek to avoid controversy, and some reject playing any advocacy role at all, believing that such activity will hurt their ability to work with landowners and others in the community whose support is essential to their success. But it is not uncommon for a land trust to take a sound, professionally-based position on a public policy proposal that will directly affect land protection. This list of activities of the Brunswick-Topsham Land Trust (ME) illustrates some of the roles a land trust can play:

- Accepting an invitation to join Brunswick's Comprehensive Plan Committee for the 1990's. The land trust is using its position on the committee as a forum for advancing the permanent protection of open space in the town.
- Applying, with the Town of Brunswick, to the Land for Maine's Future Board for the creation of a major, passive-use coastal park.

- Joining an area property tax reform group and articulating the property tax system's relationship to the loss of open space.
- Working as an integral member of the Brunswick Bay's Planning Committee to make recommendations for comprehensive planning on Maquoit and Middle Bays, Brunswick's 66-mile share of the Gulf of Maine coastline.
- Lobbying with other town leaders to ensure that the new high school incorporated state-of-the art environmental design.
- Becoming a member of the Maine Wetlands Protection Coalition, which is working to protect priority waterfowl habitats in Merrymeeting Bay.
- Ongoing work with local planners and developers on limited development projects that involve regulatory tools like clustering and transfer of development rights.

Tax Benefits of Land Conservation

Donations of land, or interests in land such as conservation easements, may qualify donors for significant tax benefits. While the primary motivation for most donors is a desire to protect their land, these tax benefits may make donations much more attractive.

The land trust's representatives need to be knowledgeable about tax benefits so that they can discuss them with potential donors. They must be careful, however, not to give *specific* legal or financial advice. It is the responsibility of the landowner, with the advice of his or her attorney, accountant or other advisors, to determine whether a donation qualifies for a tax deduction and its value.

Only a brief discussion of tax benefits is given here. There are many exceptions and special rules that a land trust needs to be aware of. Land trusts also must be familiar with the tax laws of their state. Land trusts should consult additional publications and work with a knowledgeable tax attorney.

Income Tax Benefits

A charitable gift of land generally is deductible in computing the donor's federal income tax. Donations of conservation easements or other permanent restrictions on property are deductible if they meet the Internal Revenue Code criteria and regulations. In some cases, landowners may also deduct the donation of a remainder interest in a farm or personal residence and of an undivided portion of their entire interest in a property. Costs associated with the donation, such as appraisals, and cash donations for monitoring or endowment funds are also deductible in figuring the donor's federal income tax to the extent they exceed, when added to certain other miscellaneous itemized deductions, 2 percent of the donor's adjusted gross income. The IRS has stringent criteria regarding what types of partial interests qualify for tax deductions. For further

STARTING A LAND TRUST

discussion, see *The Conservation Easement Handbook* and *The Federal Tax Law of Conservation Easements*. Failure to meet IRS criteria results not only in loss of income tax benefits but possibly liability for gift tax.

The tax benefit to the donor of the deduction depends on a number of variables, including the donor's income and the amount of other deductions claimed. The general rule is that for gifts of appreciated property, the donor can deduct the fair market value of the donated property, up to 30 percent of the donor's adjusted gross income. Any remaining value can be carried forward and deducted, subject to the same 30 percent limitation, for up to five succeeding tax years. If the value of the contribution is reduced to the property's basis (essentially the price the landowner paid for it), the donor may deduct the value of the gift up to 50 percent of adjusted gross income per year for five years. Under some limited circumstances, the 50 percent option may be more advantageous for the donor.

Special rules apply for taxpayers who are subject to the Alternative Minimum Tax (AMT). This generally includes taxpayers who have unusually high deductions in relation to their income. Taxpayers subject to the AMT may, in effect, deduct only the cost (or basis) of the gift – that is, they may not deduct the value represented by the property's appreciation. However, the effect of the AMT on any particular individual's tax situation varies substantially and should be analyzed by the landowner's advisors. Many gifts are not affected at all by the AMT. And even where the AMT does affect the amount of income tax deduction the donor may take, the estate tax benefits may still be substantial. A good discussion of the AMT is included in *Preserving Family Lands*, by tax attorney Stephen J. Small (see Appendix A).

Estate Tax Benefits

Estate taxes are paid on the value of an individual's assets at death. Recent changes in tax laws were intended to reduce or eliminate the estate tax burden for most people of modest wealth. One spouse can transfer an unlimited amount of property to the other tax-free. The amount of an estate that can be passed on tax free increases gradually from \$675,000 in 2000 to \$1 million in 2007.

But because of escalating real estate values, landowners with sizable properties may nevertheless be subject to a significant estate tax. Especially for landowners who have highly valuable land and limited cash assets, all or part of the land may have to be sold to pay the estate tax. Not only will the land pass out of family ownership, but its conservation values could well be irrevocably lost to development. As land values in some parts of the country have soared, many families have found themselves faced with a serious, looming estate tax problem.

The total value of the landowner's estate, and consequently the estate tax, may be reduced by making a charitable donation of a portion of the land or by restricting the entire parcel with a conservation easement. A donation made

during the landowner's lifetime may also qualify for an income tax deduction. *Preserving Family Lands* is an excellent resource on this topic.

Property Taxes

Restricting a property's use through a conservation easement may reduce the owner's property taxes. Property tax assessment is governed by state law and determined at the local level. In most states, the assessment is based on the fair market value of the land, which is usually closely related to its development potential, not its current use. (There are exceptions: some states have laws that allow a property under certain circumstances to be assessed based on its current use value.)

A conservation easement that reduces the fair market value of the land generally should reduce the property taxes. Landowners usually will need to apply to their local assessors for this reduction. Of course, if the current property tax assessment on the property is low, perhaps because it has not been reassessed for some time or because public pressure has kept assessments below fair market value, the conservation easement may turn out to have little or no effect on the property tax bill.

Local assessment practices vary substantially. Assessors may not be familiar with conservation easements, and reducing property taxes may be politically unpopular. The land trust may need to work with local assessors and other public officials to build understanding of conservation easements and support for reduced property taxes. In some cases, where property tax reductions are not a major incentive for easement donations and where seeking tax reductions would be politically unpopular, the land trust may decide not to promote property tax reductions.

A landowner may, of course, reduce his or her property tax burden by donating or selling the property to the land trust. If the trust will be required to pay taxes on the land, it should be sure it can do so before accepting the parcel. In some cases, the trust may be exempt from property tax on its conservation holdings. However, this may make land trust ownership of the land locally unpopular. Some land trusts have countered this by promoting the economic value to the community of their conservation efforts; in a few cases, they have even decided to continue paying the taxes.

Appraisal and Valuation

A deduction for a charitable gift of property with a value in excess of \$5,000 will be allowed only if the donor obtains a qualified appraisal by a qualified appraiser and files an appraisal summary (IRS Form 8283) with the tax return on which the deduction is first claimed. IRS regulations govern what constitutes a qualified appraisal and qualified appraiser. Consult an attorney familiar with charitable donations of land to be sure these requirements are met. The land trust may want to maintain a list of appraisers experienced in conservation

STARTING A LAND TRUST

appraisals, particularly conservation easements, to help insure the landowner gets competent help and advice.

The land trust (the donee) must sign the appraisal summary, which is attached to the donor's tax return. The donee's signature is only to acknowledge receipt of the gift and is not a statement regarding the value claimed by the donor. The land trust is not responsible for what the donor claims as a deduction. However, land trusts do have an interest in discouraging donors from claiming inflated values for their donations. Such claims may damage official and public faith in the land trust's work and in the tax system in general, and ultimately threaten the deductibility of gifts to nonprofits.

For further discussion of appraisal issues, particularly as they relate to conservation easements, consult *Appraising Easements*, published by the Land Trust Alliance and the National Trust for Historic Preservation (see Appendix A).

Financing Land Protection

Land and easement purchases can be financed through three basic methods: fundraising from the private sector (individuals, foundations, and corporations); government funding; and using market forces to finance the protection. On average, land trusts finance more than two-thirds of their acquisition costs by fundraising from the private sector, and most new land trusts rely almost solely on this source. In areas where government funding is available, and for land trusts that have gained some sophistication and credibility, government funding may be a vital element of a land trust's acquisition program. Using the private real estate market forces to finance land protection is less common, as land values rise, this is becoming an increasingly necessary approach.

Fundraising

Project campaigns. A project campaign is a focused drive to raise money solely for a certain project rather than for the trust's general operations. Raising money for a specific project, particularly an urgent one, is frequently easier than raising it for the trust's operating budget; giving to save a certain piece of land in the community has more appeal than paying the trust's utility bill. People are also more inclined to give when they know exactly what their money is going towards. "A crisis – or even the appearance of one – can heighten attention toward a project and encourage financial support," says Tom Bailey of the Little Traverse Conservancy. "The fact that a forest may be cut or a shoreline developed sparks action." Most of the funds in project campaigns come from individuals in the community or region, but certain foundations or corporations may be contributors as well.

Although project campaigns can be very effective, there are dangers to overdoing them: if the trust presents too many crises, it may appear to be crying

"wolf." It can also be difficult to ask the same people for money for general operations and other programs.

Trade lands. Land that has no significant conservation value can still be donated to a land trust for its monetary value – just like a gift of cash or stock. The trust can then sell the property to finance other land protection projects – or possibly use it in an exchange for a conservation property. The trust must make its plans to dispose of the property absolutely clear to the donor at the time of the donation or bargain sale. Be sure there is a market for the property and that there are no unusual problems that would make it difficult to sell.

Government Funds

Land trusts can tap government funds in a number of ways. They can acquire land and resell it to government agencies. They can nominate and advocate properties to be purchased with government funds, and sometimes help raise local matching funds required by government programs. Increasingly, government bodies loan funds or make grants directly to land trusts for acquisition or related activities. (The California State Coastal Conservancy is the premier example.)

Government funds can come from the federal, state, and local level. At the federal level, the major source of acquisition funding is the state grants program of the Land and Water Conservation Fund. Each year, Congress appropriates a specific amount to various federal projects, such as national parks, forests, and wildlife refuges. In addition, a certain portion of the funding usually is allocated among the states to be spent on state and local projects that meet certain criteria. (In some years, Congress has appropriated no money to the states.) While none of this funding can be allocated directly to land trusts, it can finance projects of interest to the trust. Land trusts may seek to have the state use LWCF money to purchase lands the trust has preacquired, or it may make the case and work the political process to have the state directly acquire a particular parcel. LWCF funds require a state or local match, which the land trust can help raise.

Perhaps most important is what government programs and funds can do directly for land protection, both through acquisition and comprehensive planning. Even the most dynamic and effective land trusts would be hard pressed to match what can be done through a state land acquisition program, such as those in California, New Hampshire, Vermont, Florida, Maine and Maryland. Private conservation groups have been the catalyst in or essential to the formation of many of these programs. Often one of the most effective actions a land trust can take to conserve land is to promote or support such government programs – and then participate in their implementation.

Using the Market

Limited development. Limited development refers to the development of the less sensitive portion of a property in order to finance the protection of the more environmentally sensitive areas. The undeveloped areas are usually placed under a conservation easement or held in fee by the land trust or another conservation organization or agency. Typical subdivisions put as many lots on a parcel as possible; limited development projects have fewer lots, often clustered on one portion of the property. These often sell for higher prices, although limited developments, coupled with other subsidies, may also provide for affordable housing.

Most land trusts regard limited development as a tool of last resort. Although full protection of a property usually would be preferred, it is not always possible: the trust may not be able to afford it, or it may not meet the landowner's objectives. Rising land prices and increased competition for open land have made limited development an increasingly necessary tool for land trusts. In a few cases, particularly with very large properties, some development may be perfectly appropriate and in the community's interest.

A new land trust must consider carefully before entering into a limited development project. If the trust does not have a firmly established conservation image, undertaking a project involving development could be damaging to its reputation. Limited development projects frequently involve high financial risk, which can place undue strain on a board that is still trying to learn how to work together and to chart a course for the organization's future. These projects tend to be very complex, and may consume all of the trust's energy and resources for some time, severely restricting its ability to take on other high priority, less intensive conservation projects. A trust needs to have a reasonable level of sophistication and access to extensive help from different types of experts to successfully complete the project. Most land trusts that have done a limited development project have had at least a full-time executive director.

On the other hand, a successful limited development project that clearly saves an important property from a disastrous fate can boost a land trust's public image, build its self-confidence, and launch it to a new level of ability to accomplish land transactions. There are land trusts that have undertaken a limited development as a first project. A new trust that is considering taking on such a project should seek advice and assistance from another land trust experienced in limited development or from the Trust for Public Land.

Conservation buyers. Land trusts are sometimes able to link potential buyers who are interested in owning a protected property with the sellers of a property with conservation values, thus protecting the property without having to finance it itself. The new buyer generally donates a conservation easement to the trust. The land may or may not pass through the trust's ownership. A land trust seeking conservation buyers should work cooperatively with local realtors and

avoid creating any feeling that the trust is competing with realtors or any public perception that the land trust is becoming a real estate broker.

Most land trusts may just have an occasional, individual project suitable for a conservation buyer, but for a few, conservation buyers can be significant in their land protection effort. Several regional land trusts have organized formal programs to identify conservation properties and locate conservation buyers for them. Such programs have limited application they generally require properties that are large, rural, and scenic, and buyers who are well-to-do. But they are an important additional tool under certain circumstances.

Interim Financing

Land trusts frequently need to buy a property before they have raised the money to acquire it, or sometimes even before they have been able to determine how they may ultimately finance a project. One of the hallmarks of land trusts is their ability to act fast. To do so, they must have access to quick financing, which they obtain in a number of ways.

Revolving funds. A revolving fund is a fund that the land trust maintains at or above a certain level so that it always has acquisition money available. The money from the fund may be spent frequently, but it is replaced through fundraising or income from transactions. Some ways that land trusts raise the initial funding for revolving funds include setting aside a portion of the trust's overall income each year, conducting a special capital campaign, and soliciting bequests or developing planned giving programs.

Loans. When a land trust needs time to raise money for a project, or needs interim financing for a property it plans to resell to a government agency or other entity, a loan may be the answer. Land trusts can take out loans from a variety of sources, including private individuals, local businesses, banks and corporations, and established nonprofits. As a local, non-profit group, a land trust may be able to find low-interest loans from sources interested in the work of the trust or in furthering their community reputation. Foundations occasionally make low-interest loans, known as program-related investments. Adjacent landowners who will benefit from a parcel's protection may help provide low-cost interim financing. However, land trusts should not rule out market-rate loans when necessary to finance a project. With techniques such as limited development and preacquisition, and with good fundraising, land trusts should be able to pay off their loans. Newer land trusts with little equity have been successful in securing bank loans by having several board members co-sign.

In its first 10 years of existence, the Iowa Natural Heritage Foundation borrowed more than \$3.2 million through 58 separate loans at interest rates ranging from zero to 12.5 percent. In an unusual and highly successful transaction, Colorado Open Lands received a multi-million dollar loan from a

STARTING A LAND TRUST

foundation to buy a ranch when the organization was only a few months old. By dividing the ranch into a few smaller, carefully designed parcels and re-selling those parcels with conservation restrictions in place, the trust was able to pay off the loan – and do so early.

Charitable creditors. The land trust may occasionally decide that a crisis situation warrants purchasing a piece of land or other property interest without the trust knowing in advance how it will recover its purchase costs. The original money may come from the trust's revolving fund or a loan, but these sources need to be repaid.

One way for the trust to cover itself is through the use of charitable creditors. This is a system of pledges arranged to back up the trust's expenditure or loan. The pledges are legal agreements that the charitable creditors, who can be individuals or organizations, will pay a certain amount if the trust is unable to repay the source of the original funds. If the trust succeeds in raising the money through its normal methods, the pledges are never used. If the trust recovers some but not all of its costs, the charitable creditors pay some percentage of their pledge. A pledge campaign can be conducted basically like a donation campaign. While not an uncommon technique, a charitable creditor campaign is probably most appropriate for trusts with prior fundraising and project campaign experience.

Stewardship - Taking Care of the Land

Owning or managing land or conservation easements is a major responsibility. Acquisition is only the first step in land protection, and in the long run often not the most expensive or difficult. A land trust must give serious consideration to the future of all of its land and easements and make its capacity for long-term stewardship one of the major criteria in evaluating projects. The trust must be prepared to pass up some projects that otherwise meet its conservation criteria when lack of funding, management difficulties, or other problems prevent the trust from being able to ensure the property's long-term protection.

Long-Term Costs and Responsibilities

Stewardship entails many costs. To truly protect land permanently, a land trust must be prepared to meet them.

Maintaining and managing the property. A land trust must maintain and manage property that it owns. It must comply with any deed restrictions on property donated to it. It has to maintain any trails or structures to be sure they are safe. It may need to actively manage the property's resources in order to meet its conservation goals for the parcel – which could include regular plantings, repairs, mowing, etc. If the land is open to the public, its upkeep is

especially important, both for the trust's image and to help prevent liability problems. These are perpetual responsibilities, requiring time and money.

Monitoring the property. A land trust needs to monitor its land and easements, usually at least annually. For property it owns, the trust must make sure management goals are being met, safety hazards are identified, and any trespass or vandalism is detected and dealt with. Failure to detect and halt trespassing could ultimately cause the trust to lose some of its property rights. Land trusts have had trees cut, pits dug and trash dumped on property they own.

For conservation easements it holds, the trust must try to ensure that the owner is complying with the easement's terms. Failure to enforce the terms of the easement will erode public confidence in the trust's easement program and could eventually lead to the termination of the easement if violations are not corrected. For a more detailed discussion of easement monitoring, see *The Conservation Easement Stewardship Guide*.

How frequently and intensively the trust monitors its properties will depend on many factors, including the location of property, the fragility of its conservation resources, the degree of threat to those resources, and perhaps the ownership of the property. Monitoring requires time, trained personnel, and money. Monitoring parcels is much easier when they are close to the trust's base of operations, close to one another, in a highly visible place such as a roadside, or when the trust has the cooperation of someone near the parcel.

Enforcement. A land trust has an obligation to enforce the terms of conservation easements and to protect the properties it holds—first through negotiation, if possible, but ultimately by going to court if necessary. The threats can come from a variety of sources, and defending against them can be timely and costly. One land trust spent months and incurred extensive legal expense negotiating with a power company that threatened to condemn portions of its conservation easements for a pipeline right-of-way. Another conducted a national campaign of public pressure to thwart local government plans to site a sewage treatment plant on one of its nature preserves. Another had to negotiate compensation for trees an adjacent landowner had cut on its property. Recently a land trust was forced to go to court to halt illegal activities on one of its easements. A local fishing guide had cut trees and installed picnic tables and concrete fireplaces to boost his business. The land trust won in court but a year later still has not received the court-ordered compensation from the landowner.

Such occurrences are relatively rare, but the land trust must be financially able to deal with them when they arise.

Stewardship Funds

Before a land trust agrees to acquire or accept a property or conservation easement, it must be fairly confident that it can cover the long-term costs. Many land trusts set aside funds for the care of their properties and easements, usually called monitoring funds, endowments, stewardship funds, or legal defense funds. It is common practice for land trusts to solicit contributions to their stewardship fund at the time of acquisition, often from the donor of the land or easement. While a land trust initially may feel uncomfortable asking someone who has already donated valuable property to also make a cash contribution, keep in mind that donors usually wish to see their properties preserved, and it is usually not unreasonable to ask them to contribute to their long-term care. Land trusts have also built stewardship funds in part by conducting special fundraising campaigns or simply by setting aside a portion of the trust's annual income.

Setting aside funds for stewardship may be difficult for a new land trust. However, doing so is vital to ensuring that the trust can meet its obligation to protect the property over the long-term.

9. Planning for Action

You've decided to start a land trust. The articles and bylaws are being drafted; potential board members are being interviewed. Or maybe you've already held your first board meeting, approved the bylaws, elected officers and filed for federal tax-exempt status. You've read this book and obtained additional materials to study. Now what do you do?

If the land trust has an urgent project to tackle, the course of action is fairly obvious. Determine what needs to be done, get whatever help you need and get moving. But many land trusts do not form in response to a specific threat, and the next step after formation is not so clear. This can be a difficult time for the trust. The board is anxious to accomplish something. The community is waiting to see what the land trust is actually going to do. The trust needs to keep the momentum going – but how?

Why Plan?

What the land trust needs to do is develop a plan of action. Planning sounds – and can be – slow and boring, and land trust members may feel the urgency to act is too great to take the time to plan. Planning doesn't mean the land trust should halt all activity until some written document is approved. And planning, at least at this stage, does not have to take much time. But failure to plan can leave a land trust uncertain about what to do next and cause it to spin its wheels or lurch in different directions. Even if the trust was formed to deal with an imminent threat, it will need to plan for its future after the threat has been averted.

Planning also helps a land trust in many other ways:

- It helps ensure that the land trust focuses on a deliberate course of action and top priorities.
- It shows funders and supporters that the land trust has identified a rational program and specific steps for accomplishing it.

Sample First Year Land Trust Plan

Action	Responsibility	Date
Complete incorporation and all state filings	John and Sue with lawyer	January
File for federal tax exempt status	John and Sue with lawyer	February
Solicit start-up donations from key individuals. Use other nonprofit as temporary pass-through pending our tax exemption	John and board members	February-May
Visit with all key elected and appointed local officials	Marie to schedule, board participates	February-March
Inventory open space in county, including current use, ownership, zoning. Prepare map.	John, Ed, Marie	February-July
Hold introductory community meeting to announce trust's formation	Louise	March
Visit individually with all major landowners to explain land trust	John to organize, board participates	May-July
Hire part-time administrator	Board	June
Set up small office (space donated by Don)	Administrator	June-July
Hold series of community meetings on open space options with guest speakers	Louise, administrator	July-August
Identify land protection priorities	Board	August
Identify first potential land project(s). Contact landowner(s)	Board	August-September
Complete first project??? (probably not, but the stage is set for next year)		December

STARTING A LAND TRUST

- It tells the land trust how much money it needs to raise and what it is needed for.
- It helps ensure that the trust is making the best use of limited resources.

Most important, planning helps ensure the land trust will *act*. It's important to take the time to plan a deliberate course of action, but it's also important not to plan so much that the action never happens.

Steps in Planning

A new land trust needs to plan at several levels — first determining what kind of organization it will be, then identifying generally where it is going, then developing a specific plan of action for its first year or two.

Fundamental decisions. Early on, the steering committee or board should make some fundamental decisions about the nature of the organization. It may want to establish whether the land trust will play an advocacy role in the community or restrict itself to land transactions. It will want to determine whether it will be primarily a passive organization, accepting donations of land or easements when they come along, or will take an active role in seeking out, negotiating and financing more complex transactions. The land trust may want to determine whether it will have a significant public education effort. This is all part of deciding just what kind of organization the land trust is going to be. Certainly the organization will evolve, but the board needs to reach general agreement on some basic issues to move forward as a cohesive unit.

Long-range goals. The board also needs to develop a broad idea or vision of what it would like to accomplish over several years, perhaps three to five, and identify the major steps it will take to achieve that vision. The trust needs to have this longer-range context so that the board has a common sense of purpose and goals – and so that the land trust can explain to the public what it is trying to do. As the land trust matures, it will want to develop a formal long-range or strategic plan to guide its development. A new land trust, however, should identify a few major goals and move on.

One- to two-year action plan. The land trust should spend the time it takes to develop a very specific short-term plan of one to two years. Who develops this plan and at what stage will vary. The steering committee may draft a proposed plan – or at least a basic outline – while the board is being chosen, so that the new board has something to work with and react to as soon as it meets. Or the board may develop the plan, perhaps by establishing a planning committee to come up with a draft. Or some combination of the two may be most appropriate: the steering committee could suggest a course of action for the first six months, allowing the land trust to get to work right away, and the board, once it's

established, could assign one or several committees to draft a longer-range plan to carry the trust through its next year or so.

This plan should be very specific, outlining the particular action to be taken, who has lead responsibility for it, and the date by which it is to be completed. A hypothetical plan for the first year of a land trust is included at the end of this chapter.

Board committees can undertake more detailed planning about how to achieve each action and what the cost will be. These committees should also give the plan a reality check. Can volunteers do everything outlined? Will it take staff? Is the community ready for the outlined actions, or does some initial groundwork need to be laid? Can the land trust afford to carry out the plan?

The land trust needs to strike a balance in its planning. It may want to stretch itself – to raise more money than seems easily possible, to get high-profile news coverage, or to tackle a land project that seems out of its reach. At the same time, the trust should not set itself up for failure by charting an overly ambitious course. A new land trust needs to establish an early record of success – to build the board's commitment and confidence and to establish a strong image in the community.

How Can a New Land Trust Plan?

At first it may seem almost impossible for a new land trust to develop a realistic plan of action. The trust may have no idea what properties will become available or when. But there are many other activities a land trust can and needs to take aside from land transactions. A trust can use the start-up period to establish its presence and credibility, to raise money, to meet with landowners, to educate the community, and to learn as much as it can about the tools and techniques of land conservation. In addition, the plan should set the stage for land transactions by identifying properties that the trust has some reasonable likelihood of being able to protect.

Some activities a land trust might easily undertake in its first year include:

- Hold a series of meetings for the public with expert speakers from universities, other land trusts and conservation organizations, government agencies, etc., to address conservation issues of importance or to present conservation approaches being explored in other regions.
- Meet with lawyers, accountants, bankers and other community professionals to introduce the land trust.
- Solicit financial support from people capable of making large donations (if possible) to provide the land trust seed money-ideally enough to cover the trust's first year of operations.
- Prepare and distribute an attractive and informative brochure.
- Hold a seminar for lawyers and accountants on tax advantages of charitable giving for land conservation.

STARTING A LAND TRUST

- Prepare a survey of conservation properties, noting ownership, acreage, resources, approximate value, known information about potential ownership or use changes, etc.
- Meet with all owners of key properties to introduce the land trust, to explain its purposes, and to get whatever preliminary information you can about the owner's plans for the property, family situation, etc.
- Hold a seminar for landowners on estate planning for family lands.
- Establish a membership program and solicit membership at all land trust functions.
- Bring in outside organizations and/or consultants to meet with the board and provide ideas, inspiration, and/or technical assistance.
- Identify one or two high priority properties and develop a strategy for protecting them; nominate properties to be protected under a local or state acquisition program if one exists.
- Meet with key media contacts to introduce them to the land trust.
- Ask to speak to established civic and service clubs and other organizations – garden clubs, professional societies, League of Women Voters, Rotary, etc. – to explain the trust and its activities.
-

There are many steps a land trust can take in its early months to set the stage for its future success. Completing a transaction early on is exciting and can be a tremendous boost to the trust's image in the community. But a land trust should not feel undue pressure to complete a land protection project just for the sake of doing so. This might lead the trust to undertake a project that doesn't fit with its purpose or is fraught with difficulties. As long as the trust is making steady progress toward its goals, the trust and the community should feel confident and positive about the organization.

Maintain Flexibility

Planning is vital to a land trust's success. But the trust should remember that the plan is a guide, not a rigid mandate. The plan shows what the land trust will forgo if it chooses to change its course of action, but does not mean that such changes should not be made. One of the hallmarks of land trusts is their ability to act quickly, to take advantage of opportunities, to respond to the needs of the community. The land trust should be willing to depart from its plan when unexpected events offer a preferable course of action – as long as it keeps moving the trust forward toward its conservation goals.

Good luck!