

Background

to the 2004 revisions

of *Land Trust Standards and Practices*



LAND TRUST ALLIANCE

This document is for informational and instructional purposes only and is not a formal part of
Land Trust Standards and Practices.

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Drawn extensively from the 2001 *Statement of Land Trust Standards and Practices* and the 1993 *Standards and Practices Guidebook* published by the Land Trust Alliance.

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Introduction

Land Trust Standards and Practices, the ethical and technical guidelines for the responsible operation of a land trust, were created by and for the land trust community in 1989. They were amended slightly in 1993, and a new practice was added to the then Standard 13 in 2001. The comprehensive 2004 revisions, a top priority of the Land Trust Alliance's (LTA) strategic plan, followed from the first thorough review of *Land Trust Standards and Practices* since they were issued 15 years ago.

The 2004 revisions were developed by a team of land conservationists in partnership with LTA staff and board members. The team worked from July through December 2003 to analyze, draft and vet preliminary changes, and released a comment draft to the land trust community on January 5, 2004. More than 550 commenters, in listening sessions, one-on-one meetings, surveys, and in writing, provided more than 1,100 separate comments. The comments were reviewed and analyzed, and a second comment draft was prepared and released on June 25, 2004. More than 350 separate comments on the second draft from more than 50 commenters were used in creating the final draft. The 2004 revisions to *Land Trust Standards and Practices* were approved by LTA's board in October 2004.

Since *Land Trust Standards and Practices* were first issued, the land trust community has made significant advances in conservation and gained increased public recognition. The 2004 revisions reflect the invaluable lessons learned in the practice of conservation over the last 15 years, recent changes in the law of tax-exempt organizations and the need for every land trust to take responsibility for safeguarding the public's trust in land conservation.

This document provides background information on and explanations for each standard and practice in the 2004 revisions. This document is for informational and instructional purposes only and is not a formal part of *Land Trust Standards and Practices*. It is a brief reference guide to the 2004 revisions to *Land Trust Standards and Practices*. It does not contain the text of the actual standards and practices, and should be read in tandem with the 2004 revisions.

This document is not the only reference material for *Land Trust Standards and Practices* implementation. The Land Trust Alliance has many resources available to assist an organization with implementing each practice found in *Land Trust Standards and Practices*. Numerous training programs are offered, including the Land Trust Alliance Rally, the premier conference for those involved in land conservation efforts. Online, *LTA*net (www.LTAnet.org) offers sample policies, easement language, research results, and technical materials. New materials directly related to the 2004 revisions will be added to *LTA*net by December 31, 2004. Print publications are also available to aid in the implementation of *Land Trust Standards and Practices*, including *The Standards and Practices Guidebook* (published in 1993), *The Conservation Easement Handbook* (to be released in an updated edition in early 2005), *Appraising Easements*, and *Assessing Your Organization*. Please visit www.lta.org for publications and training information.

Sample Board Resolution

LTA requires that Sponsor member land trusts adopt *Land Trust Standards and Practices* as the guiding principles for their operations, indicating their commitment to upholding the public trust and to the credibility of the land trust community as a whole. The Land Trust Alliance encourages all land trusts to go beyond adopting the guidelines by implementing *Land Trust Standards and Practices* at a pace appropriate for the size of the organization and scope of its protection activities. In the sample board resolution, land trusts are asked to adopt the *Statement of Land Trust Standards and Practices* as guiding the practices of the organization, and to make a commitment to making continual progress toward implementation of the standards and practices. When a land trust passes a board resolution adopting *Land Trust Standards and Practices* it should send a copy to the Membership Coordinator at the Land Trust Alliance.

Part I: Organizational Strength

Standard I: Mission

A land trust has the responsibility to act in ways that benefit public rather than private interests. Everyone connected with a land trust's governance should have a similar understanding of the organization's mission in the event that the group is asked to take on programs and transactions that further individual interests but that do not advance the public purposes for which the land trust was organized. Land trust goals and programs implementing the mission may change over time, but change should be a deliberate decision. In establishing its mission, goals and programs, the land trust should reflect the needs and priorities of its constituency. Support from the community is essential for sustaining conservation over time, meeting conservation goals, defending conservation actions and obtaining financial support.

1A. Mission and 1B. Planning and Evaluation

These are the "planning practices" and specify the need for a clear mission statement and a process, such as a strategic plan, for establishing and evaluating land trust programs. A mission statement is important in that it embodies the work of the land trust and can be used in bylaws, in tax-exempt applications, in fundraising solicitations, and to explain the land trust's work to the public. It forms the touchstone for the organization. Likewise, some form of forward-looking plan with strategic goals is also essential for a land trust. How complicated this process is, how long it takes and what it encompasses depend on the particular circumstances of each land trust. A young, small land trust may use a simpler and quicker planning process than an established organization with multiple programs and a large staff. In either case, planning enables a land trust to chart its future and ensure that it is able to meet the land protection and stewardship obligations it accepts. Both the mission statement and planning process should reflect the needs and priorities of the constituency the land trust serves.

1C. Outreach

This practice emphasizes that a land trust must establish public support for its programs. Securing the permanent conservation of protected land will depend on the public's support of the land trust's conservation efforts. Land protection is accomplished within a social, political and legal framework that allows for nonprofit organizations, public funding, tax incentives, and conservation easements. Ultimately, the law will govern whether land conservation projects withstand the test of time, and laws can be changed if the public does not support land conservation efforts. Therefore, a land trust should identify the community it serves and then develop mechanisms to build and maintain support for its programs.

1D. Ethics

A land trust's ethical obligations extend from the land conservation community to donors and taxpayers, landowners, the land and the community at large. A land trust should embrace the fundamental values of honesty, integrity, fairness, respect, trust, responsibility, inclusiveness and accountability in all of its operations. A board may consider adopting an ethics statement.

Standard 2: Compliance with Laws

A land trust must comply with applicable laws. A good understanding of, and compliance with, the basic legal requirements of becoming and remaining a nonprofit, tax-exempt organization are necessary to operate a sound organization. A land trust that fails to comply with these requirements can face financial penalties and fines, and even revocation of its tax-exempt status. A lawyer who understands nonprofit organizations can assist, but ultimately it is the land trust board's responsibility to see that all requirements are met. Requirements include, but are not limited to: filing federal Form 990; retaining tax-exempt status; following charitable solicitation laws; and adhering to federal, state or local regulations on nonprofits or land trusts (such as waiting periods before being able to hold easements in some states).

2A. Compliance with Laws

Federal, state and local agencies establish laws and regulations applicable to nonprofit, tax-exempt organizations. They also establish reporting requirements to monitor compliance with statutes. Knowing and following the law is important for all land trusts.

2B. Nonprofit Incorporation and Bylaws

A land trust that raises money and holds land and/or easements is advised to incorporate as a nonprofit corporation, following the state's incorporation statute. Incorporation is a prerequisite for obtaining federal (and sometimes state) tax-exempt status and, as dictated by state law, helps shield board members associated with the land trust from liability for land trust actions. Bylaws outline the basic operating procedures of the land trust and should be reviewed regularly to ensure their relevance. Several states post sample bylaws on their web pages.

2C. Tax Exemption

Federal and most state governments provide an exemption from income tax for qualified nonprofit organizations and allow the deductibility of contributions to them. This subsidy of the nonprofit organization is offered in return for the organization's operation in the public interest. The Internal Revenue Service (IRS) requires that tax-exempt organizations operating as public charities meet certain tests both at the time of application for tax-exempt status and on a continuing basis. These include avoiding private inurement and excess private benefit, a prohibition on political

campaign activity, complying with limitations on lobbying, paying tax on unrelated business income, and meeting the public support test.

2D. Records Policy

This practice recognizes the importance of a records policy in protecting a land trust's assets from future legal challenges and in meeting reporting requirements. A records policy should address both organizational records, such as board minutes, and transaction records, such as deeds and baseline documentation reports. A policy helps identify the organization's key documents, what documents are needed in what format, how and when to store documents, how long to keep documents, and when to destroy documents, and it establishes business records practices for the organization. A related practice, 9G, guides recordkeeping for transactions. A document destruction policy is one of the requirements of the 2002 Sarbanes-Oxley Act that applies to all corporations, both for-profit and nonprofit. A complete land trust records policy will address document creation, retention and destruction.

2E. Public Policy

Many land trusts engage in public policy at some level, even if they are not primarily advocacy organizations. While some land trusts deliberately avoid all policy discussion, believing it would interfere with their ability to protect land, most land trusts have some interest in policymaking at the local, state or federal level. Land trusts may wish to seek support for the enactment of a bond issue, appropriations or other funding for land acquisition; seek sound tax policies for land conservation; forestall threats to tax deductions for charitable contributions to nonprofit organizations; and/or become involved in a host of positive open space initiatives. This practice clarifies that land trusts may engage in advocacy work or lobbying, but must always follow federal limitations on lobbying for tax-exempt charities. State filing and reporting requirements must also be met. Land trusts with federal tax-exempt status may not endorse political candidates. While lobbying is only limited by the rules governing tax-exempt organizations, prohibitions on political endorsements are absolute.

Standard 3: Board Accountability

Volunteers serve on a board for many reasons, but most often because they enjoy working with others to carry out the mission of the organization. The board has legal and ethical responsibilities to maintain the public's trust and the land trust's credibility. Every board member must understand these responsibilities. A board member who does not exercise reasonable oversight for the organization may be held liable for the organization's wrongdoings or errors of judgment. To fulfill their duties, board members must be knowledgeable about the activities of the organization. A person who is not able to assume the responsibilities of a board member should not be on the board, but could serve the land trust in some other way.

3A. Board Responsibility

The board has the ultimate management and fiscal responsibility for the nonprofit corporation. Board responsibilities include oversight of finances and fundraising, operations, programs, long-range planning, staff and volunteer conduct, and public relations. The board of an all-volunteer land trust takes on many of the day-to-day program and operations tasks. The board of a large staffed organization will focus on setting overall policies and management oversight. Regardless of size, a board that understands and meets its basic responsibilities provides a firm foundation for the land trust, builds public confidence, paves the way for financial success and allows the land

trust to focus its energies on creative, effective ways to accomplish its land conservation mission. A strong and informed board leads to a strong and effective organization.

3B. Board Composition

A land trust's board needs to be of sufficient size and diversity to minimize conflicts of interest, qualify the organization for tax-exempt status, provide credibility in the community, and ensure effective operations. A land trust can help ensure recruitment of good directors by standardizing board recruitment and evaluation methods, usually through a nominating or board governance committee. It is helpful for the land trust to provide board members with written expectations or a job description to explain the role of the board member, expectations for board service and evaluation processes.

3C. Board Governance

The legal standards of behavior for board members of nonprofit organizations vary from state to state. State law generally embodies a "duty of care," "duty of loyalty" and/or "duty of obedience" as the major duties that board members owe their organization. In general, they require honesty, good faith, and ordinary and reasonable care and diligence. A truly effective board, of course, goes far beyond meeting its basic legal responsibilities; it works hard at operating as a creative team that can guide the land trust on a path of achievement and success. The board should meet often enough so that board members are sufficiently informed and involved in decisions to meet their legal duty of care. Many boards of smaller organizations meet monthly; boards of larger organizations may meet less often. Often a board has committees that meet between board meetings. IRS guidelines for tax-exempt organizations suggest that an organization hold a minimum of three in-person meetings a year.

3D. Preventing Minority Rule

A land trust needs to have controls in place to prevent rule by the minority in order to ensure that the public interest is served. Decisions made by the board should reflect the opinion of a majority of the board and the constituencies that majority represents. Safeguards to prevent minority action can also prevent the takeover of a land trust by a small group of board members who are disgruntled or who want to take the land trust in a different direction than that stated by the mission. Safeguards can include requiring quorums of greater than 50 percent, advance notice of board meetings and agenda items requiring board action, providing adequate information in advance of board meetings and parliamentary meeting procedures.

3E. Delegation of Decision-Making Authority

The land trust board is responsible for setting the policies of the land trust and ensuring that the organization is properly managed. This does not mean that all board members have to do all the work themselves. Most states allow the board to set policy and then delegate implementation authority to officers, committees, staff, or other professionals. When delegating, it should be clear what authority is being delegated, to whom and what reporting procedures back to the board and/or staff are expected. It is the board's responsibility to determine the job description of any executive director or chief staff officer and to hire and evaluate the person in this position. The board should not direct other staff (see 7E).

3F. Board Approval of Land Transactions

Land transactions are the primary business of a land trust. Because they often represent substantial costs, both in acquisition and in future management, the board should seriously consider its ultimate fiduciary responsibility when considering land projects. As such, the board should be informed about the land trust's potential land transactions and must have the opportunity to act on all land transactions. In most land trusts, the full board reviews and approves every land transaction. In certain circumstances (mostly for large staffed organizations), after careful consideration and where consistent with applicable state law, the board may choose to empower a committee or staff to act on behalf of the board. In such cases, the board should

adopt policies that clearly describe the overall objectives of the organization's land transactions and define the committee or staff's scope of authority, particularly in situations that may involve a conflict of interest. The board should regularly evaluate the effectiveness of such a process and monitor compliance with all limitations. If approval is delegated, the full board should be notified promptly of each transaction.

Standard 4: Conflicts of Interest

A land trust that operates as a tax-exempt organization (as most do) must operate in the public interest—not for the benefit of any individual. Both actual conflicts and the perception of conflict can damage a land trust's credibility. To avoid conflicts, a land trust should adopt and follow a written conflict of interest policy. A board member who thinks his or her participation in a board action could be viewed as a conflict should not attempt to influence that action and should not be present for discussion on the issue. Staff members who think they may have a conflict should disclose their concerns to their supervisor or as described in the organization's conflict of interest policy. Other parties may also have conflicts of interest, and the policy should state how those conflicts are addressed. An individual who perceives the likelihood of serious continuing conflicts should not serve on the board or staff, both for legal reasons and to preserve the land trust's credibility.

4A. Dealing with Conflicts of Interest

A conflict of interest arises when insiders are in a position, or perceived to be in a position, to benefit financially (or create a benefit to a family member or other organization with which they are associated) by virtue of their position within the nonprofit organization. The best way to address conflicts of interest is to understand how they may arise; make board members and others aware of the need to avoid conflicts; require board members, staff and other insiders to disclose any potential conflicts; and establish a policy for dealing with conflict problems as they arise. The IRS recommends that all tax-exempt organizations have a conflict of interest policy, and so does *Land Trust Standards and Practices*. A policy should identify who is covered by the policy, identify the types of conduct that raise conflict of interest concerns (such as a financial interest in a transaction, personal relationships that might unduly influence a land transaction or land management action, or being on the governing body of a contributor to the organization) and specify how conflicts should be disclosed and managed. Each board and staff member should have a copy of the policy.

Internal Revenue Code (IRC) §4598, generally considers insiders or “disqualified persons” to be persons who, at any time during the five-year period ending on the date of the transaction in question, were in a position to exercise substantial influence over the affairs of the organization. Insiders generally include: board members, key staff, substantial contributors [see IRC 507(d)(2)], parties related to the above and 35-percent controlled entities. While these are strict definitions within the tax code, land trusts are advised to take an even more proactive approach to reduce or eliminate the potential damage that conflicts of interest may cause an organization and also include in the definition of insiders all staff members and those with access to information not available to the general public (such as certain volunteers). The term related parties is defined by the IRS to include spouse, brothers and sisters, spouses of brothers and sisters, ancestors, children, grandchildren, great-grandchildren, and spouses of children, grandchildren and great-grandchildren.

4B. Board Compensation

People serve on land trust boards as volunteers in a spirit of civic-minded service, contributing their time, talents and funds as they are able. Board members should not serve for any personal financial interest, or the interest of any firm or organization they may represent. While board members may be reimbursed for expenses (such as travel and lodging) incurred in attending board meetings and carrying out the land trust's business, additional direct compensation for land trust board members is virtually unheard of and is restricted by law in some states. Compensation of board members, either directly or indirectly via payment for services or contracts, leads to the risk that decisions will be made that are more in the interest of the compensated party than in the public interests the organization was established to serve. Direct or indirect compensation may also be construed as private inurement. This can jeopardize the land trust's tax-exempt status. In limited circumstances when the organization is seeking services that might be contracted out, a board member may be considered as a paid provider of these services. In these cases, the conflict of interest policy and policies on fiscal controls (such as bid requirements) should be carefully adhered to. Services provided by a board member should be offered at or below market rate and must not be in conflict with charitable trust or other laws. In all cases of providing compensation to a board member, the credibility of the land trust must be considered. The guidelines for charity accountability suggest that the board chair and the treasurer not be compensated for services either directly or indirectly and *Land Trust Standards and Practices* follows suit.

4C. Transactions with Insiders

This practice on buying from, selling to, and accepting donations of land from board members, employees and other insiders was added to respond to land trusts' requests for guidance relative to these types of transactions. While some land trusts avoid selling to or buying from board and staff members, others want to be able to engage these parties in transactions related to their mission. This practice will help land trusts avoid real and perceived conflicts of interest with regard to these transactions.

In order to ensure that the land trust's interests are being protected, the land trust should verify purchase or sales prices with an independent appraisal provided to the land trust. When buying land, a land trust should not rely on the seller's appraisal. When a land trust is selling land, and an insider may be interested in purchasing the land, the property should be marketed widely to prospective conservation buyers through web pages, personal contacts, mailings, and listings in newsletters and other publications.

With regard to donations of land, board members or staff may wish to demonstrate their commitment to the land trust's mission by donating or restricting their own land, advancing the land protection goals of the land trust. In these circumstances, the land trust should follow its conflict of interest policy, ensure that the potentially conflicted party is not part of the discussions relative to the acceptance of the donation or future stewardship of the easement, and keep thorough records so that the transaction is transparent and upholds the organization's credibility. All of the land trust's standard practices on reviewing projects against acceptance criteria, doing site inspections and other acquisition procedures should be followed closely.

Standard 5: Fundraising

Fundraising is a critical and ongoing activity of every active land trust. It is also an area that is highly regulated by law. Land trusts should approach fundraising as a way to build longtime supporters and friends of their conservation mission. Fundraising should be undertaken not only with an eye toward meeting short-term needs, but also with an understanding of how fundraising practices affect the long-term credibility of the land trust. A good source of charitable giving standards is the Wise Giving Alliance of the Better Business Bureau. Its standards can be found on www.give.org.

5A. Legal and Ethical Practices

There is increasing federal and state regulation of fundraising practices, and public and donor scrutiny of nonprofit fundraising activities. Charitable solicitation laws are designed to enhance public accountability and to aid potential donors by making government-required registration material and financial reports available to the public. Compliance with the standards of the fundraising industry is considered prudent for land trusts.

Professional fundraisers are discouraged from engaging in commission-based fundraising by national associations. The *Code of Ethical Principles and Standards of Professional Practice* of the Association of Fundraising Professionals states: “Members shall not accept compensation that is based on a percentage of charitable contributions; nor shall they accept finder’s fees.” (See www.afpnet.org.) As public charities, land trusts are trustees of other people’s money. As such, they have ethical obligations to keep the costs of doing business—raising funds and administering the office—within acceptable bounds. The Wise Giving Alliance standards suggest that organizations spend less than 35 percent of related contributions on fundraising. The Wise Giving Alliance also suggests that at least 65 percent of expenses be spent on program activities.

5B. Accountability to Donors

Strong relationships with donors are crucial to the land trust’s fundraising success. Land trusts are accountable to their donors for how donated funds are spent. Thorough recordkeeping practices are integral to donor accountability. This practice includes a reminder that federal law contains gift substantiation requirements (for gifts greater than \$250). Land trust solicitations must specify for what purpose funds are being raised, and then the funds must be used for that purpose. Likewise, donor-restricted funds must be used for the purposes indicated by the donor. Substantial gifts of cash or other assets can have significant tax and legal consequences for the donor; thus it is prudent for the land trust to advise potential donors to consult their attorney and financial advisor when considering such gifts.

5C. Accurate Representations

Accurate representations are a basic rule of ethical fundraising. For prospective donors to make well-informed decisions about which organizations to support and how much to contribute, they need clear and accurate information about the organizations’ purposes and about the specific activities for which funds are being requested. In turn, land trusts need to spend those funds for those purposes the organization has identified. Land trusts should not be misleading with respect to their involvement in any project.

5D. Marketing Agreements

Occasionally, a land trust may enter into a marketing agreement that allows the organization’s name, land or logo to be used by a commercial entity in return for financial support (for instance, when a land trust’s logo is used on a commercial product and a portion of the income from the sale of that product is then given to the land trust). This is an area that is addressed by the Wise Giving Alliance. The practice suggests that these agreements be approached cautiously, that the activity not impair the credibility of the land trust and that any financial benefit to the land trust be clearly disclosed to the public.

Standard 6: Financial and Asset Management

Sound financial and asset management is critical for a land trust. Federal and state laws have financial reporting requirements, and financial records should be available to donors upon request. Poor financial management may jeopardize the future of the land trust and its land conservation programs. It could even lead to legal challenges against the land trust. IRS guidelines suggest that even a small land trust with modest revenue and expenditures should have an annual budget and periodic financial reports, although the format of these may be simple. Organizations with larger budgets must follow specific reporting formats. Assuring sound financial management is one of the core responsibilities of the full board, no matter who keeps the books or prepares financial reports.

6A. Annual Budget

This practice tracks the IRS guidelines in calling for an annual budget. In most land trusts, the budget is reviewed and approved by the full board. In certain limited circumstances, for some large organizations, the board sets budget policies and the staff or committees are able to create budgets that fall within these carefully circumscribed policies. Budgets should track the annual program plans for the organization. This allows an organization to use the budgeting process to clarify what it can and cannot accomplish in any given year. Annual budgets should also be in line with a multiyear framework budget or fundraising plan, if available.

Because land trusts must be sustainable for as long as the protection agreements they secure, organizations should place a priority on long-term financial stability and create an operating reserve to sustain the organization in difficult fiscal years. (Land trusts with reserves found them to be essential for sustaining their level of operations during the financial instability of the early years of this decade.) The land trust should have a practice of regularly contributing to reserves, but can and should choose to use those reserves when needed. Operating at a deficit or tapping into the reserves should be a careful decision made by the board during the budgeting process.

6B. Financial Records

The purpose of financial records is to provide the information necessary for financial reports. The reports are used by the board to guide and ensure the health of the organization, by staff to monitor operations, and by external parties to assess the stability and management of the organization and how wisely it uses its funds. Good recordkeeping, as the foundation for the organization's financial management, is essential. For financial records to be clear and credible, they should conform to Generally Accepted Accounting Principles (GAAP) set forth by the Federal Accounting Standards Board. In the event a small organization does not follow the GAAP standards, it should seek the counsel of an experienced financial advisor for the format of its financial reports.

6C. Financial Reports and Statements

The objective of maintaining accounting records is to be able to present a clear snapshot of the land trust's financial condition at any given time. This picture is presented in the form of financial statements. The review of timely and carefully prepared financial reports is the only way for a board to be properly informed about the organization's financial condition. Board members should review the statements at regular intervals, generally at least quarterly. In larger organizations, staff (sometimes in conjunction with a board member) usually review financial statements monthly.

6D. Financial Review or Audit

To protect the users of financial statements against any biases of the financial manager or outright misrepresentation by the organization, it is important to have an independent certified professional accountant or other qualified financial professional conduct a yearly audit or review of the organization's financial systems. An audit is the most extensive form of financial review and is often recommended for organizations with incomes of more than \$250,000—although some states and

public funding programs have lower thresholds. A financial review is a less costly option and suitable for smaller organizations. A financial advisor can help determine what approach is best for the land trust.

6E. Internal System for Handling Money

Internal controls are a system of checks and balances that keeps any one person from having complete control over a financial transaction. Proper internal controls are crucial, not only to help protect the organization against theft, fraud and loss due to unethical or illegal behavior, but also to inspire confidence in donors, regulators and other board members. Controls may include requiring multiple signatures for large checks, having one person log in checks received and another responsible for making bank deposits, and requiring multiple bids for certain contracts.

6F. Investment and Management of Financial Assets and Dedicated Funds

A system for management and investment of the land trust's financial assets is important for several reasons: the board is responsible for the prudent management of the land trust's assets; a sound investment program builds the land trust's resources and its ability to carry out its programs; and it helps ensure the land trust's long-term existence. A land trust that has dedicated funds (including operating reserves, endowments, stewardship funds, and/or long-term acquisition funds) should also have policies on how these funds may be used. Policies typically determine the use of the interest generated by the fund and describe if and when the principal can be used.

6G. Funds for Stewardship and Enforcement

Land trusts have a perpetual obligation to steward conservation easements and manage lands they hold in fee for conservation purposes, and to defend these conservation lands. These ongoing obligations set land trusts apart from many nonprofits and require that the land trust have a source of funds available to meet its responsibilities. The surest way to meet stewardship and defense costs is to set up a dedicated fund that is managed separately from the land trust's operating budget. Some land trusts maintain a single fund for all purposes; others have separate funds for stewardship and defense. The choice is largely a matter of financial policy and organizational philosophy and may also reflect donor wishes. Likewise, the choice of an internal board-designated fund or a formal endowment is also a matter of financial policy and philosophy. Land trusts with a secure source of annual operating income for stewardship and defense or a general endowment to support their stewardship responsibilities sometimes forgo a dedicated fund.

Whether the source of stewardship and enforcement funds is operating, dedicated or from a general endowment, the land trust must track its stewardship and enforcement expenses and periodically evaluate whether the funds it has are sufficient to fulfill its long-term responsibilities. Most land trusts are still building funds required for long-term stewardship. Thus, at a minimum, a land trust should have a strategy for raising the funds necessary for its stewardship and defense obligations, have a board commitment to raising these funds, and make demonstrable progress toward meeting the goals of the fundraising strategy. See also related practices 11A and 12A.

6H. Sale or Transfer of Assets (Including Land and Easements)

A land trust may face a variety of situations in which it considers disposing of its assets. It may own a computer that no longer meets its needs or a building that is no longer cost-effective to manage and maintain. A land trust may have good reason for disposing of an asset, but it should take care in doing so, especially if it involves real property. It should thoroughly consider IRS requirements, the public trust doctrine, and the land trust's public image and credibility, and create standard policies or procedures to follow. See also 9K and 9L for specific practices related to the sale or exchange of land.

6I. Risk Management and Insurance

Every land trust should regularly assess its risks and evaluate risk management options. This may involve inventorying potential hazards on and potential uses of land trust properties, reviewing state liability and protective laws, setting up a procedure to document and review every injury or potential claim and decide what steps need to be taken to avoid similar events in the future, and other actions. However, the best risk assessment and management program, the best state recreational use statutes, and the best lawyers

cannot prevent lawsuits. Thus insurance (commercial general liability, nonowned automobile liability, property and owned assets, directors and officers, and other, as appropriate) is important for every land trust. A risk assessment should also be conducted before a land trust considers mortgaging any of its property. In these situations, the land trust should carefully consider factors such as whether or not the land is subject to any restrictions designated by the donor or others, how the land trust's supporters and the general public will perceive such an action, and whether it is consistent with or furthers the land trust's mission.

A land trust, like any organization, is open to the threat of litigation and some land trusts have asked how adopting *Land Trust Standards and Practices* will impact their risk of litigation. Following the guidelines contained within *Land Trust Standards and Practices* could help reduce the land trust's risk. If a land trust is involved in litigation, a court would be likely to look at the specifics of the issue at hand—for instance, if the land trust had the proper documentation or employed standard business procedures, or if the easement was well drafted and contained language related to estoppel and waiver of defenses. If involved in litigation a land trust should always seek outside legal counsel to guide their actions.

Standard 7: Volunteers, Staff and Consultants

The work of a land trust is substantial, diverse and often technical or specialized, and includes fundraising, public relations, financial management, landowner contact, designing and carrying out transactions, legal and tax matters, and land and/or easement monitoring and management. A land trust that acquires, owns, or manages land or easements, even temporarily, is dealing with complex issues and thousands or even millions of dollars' worth of assets. Conducting this work properly takes trained individuals. If a land trust is completely managed by volunteers they have a responsibility to see that the work is carried out with appropriate expertise and supervision and that the work is shared by a sufficient number of people. If the land trust has staff, it must be sure that the staff is properly trained to manage the complex tasks of land conservation, and the board must establish appropriate policies and procedures to guide staff. All land trusts must engage outside expert help in the event they do not have sufficient time or expertise in-house and must be sure to select projects that are consistent with their capacity.

7A. Capacity

A land trust must have enough knowledgeable and dependable assistance to carry out its programs, no matter what its level of activity. A land trust needs to be sure not only that it can undertake the necessary work of the land trust today, but also that it can sustain its work into the future. Because land trusts promise to protect their conservation properties forever, their responsibility to structure transactions knowledgeably and manage their organizations wisely is especially great. With conservation easements in particular, this places obligations on the land trust to develop easement stewardship systems and to implement these systems consistently. The land trust should periodically assess the stewardship obligations it has, determine if more assistance is necessary to fulfill these obligations and plan accordingly. A land trust should evaluate projects carefully and select projects that are consistent with their capacity to manage the projects in the short- and long-term.

7B. Volunteers

Volunteers provide tremendous benefits to a land trust and may be one of the organization's strongest assets. In many organizations, they perform the work that would otherwise be done by

paid staff. In other organizations, they reduce the workload on staff and dramatically expand a land trust's capacity. If not used effectively, however, volunteers can be a drain on the organization and they may feel unrewarded for their efforts. Poorly trained or unsupervised volunteers can even pose liability problems. A land trust that wishes to engage volunteers effectively to accomplish important work should establish a program for recruiting, screening, training, supervising, and recognizing them.

7C. Staff

Staff help provide organizations with capacity to take on certain projects and with specific technical skills. When hiring staff, written job descriptions are important. The process of writing a job description helps evaluate whether the duties assigned to that person are reasonable. Job descriptions protect employees, outlining what is expected of them and providing a basis for evaluation. Likewise, a job description protects the organization by making sure that the responsibilities are not disputed. Key staff should periodically document the processes they use to carry out their responsibilities and the lessons they have learned in developing or implementing programs. This documentation helps organizations learn and grow, and makes transitions to new staff easier.

7D. Availability of Training and Expertise

A land trust should seek volunteers and staff who have appropriate training or experience to carry out its work or a willingness to learn new skills. Where volunteers and staff are lacking certain skills, the land trust should ensure they gain them by providing access to training and education opportunities. In addition, the land trust should make provisions for ongoing or in-service training to allow board, staff and volunteers to keep skills and knowledge current as the land trust's needs change and as the land conservation field evolves.

7E. Board/Staff Lines of Authority

Nonprofit organizations with staff commonly struggle with confusion about lines of authority and areas of responsibility between the board and staff. In most organizations, the division of power is even and respected, but perceptions of responsibility and authority sometimes shift as board and staff interact and conduct their work. Sometimes a board dominates the organization, taking on many of the day-to-day management decisions and relegating the staff to a minor role. Sometimes a board is passive, leaving the staff to define organizational policies as well as implement them. A land trust needs to do its best to be sure that responsibilities and lines of authority are clear. Failure to do so risks confusion, mistakes and problems with internal morale. One of the standard guidelines of nonprofit management is that the board has authority to hire, oversee and fire the executive director (or chief staff person) and that the executive director has the power to hire, oversee and fire the rest of the staff. This is essential for the executive director to be able to manage the work of the organization effectively. In land trusts where board members serve in the dual capacity of board and volunteer staff, it is advisable that these board members' staff roles be clearly defined and that, in their staff capacity, they report directly to the executive director or other appropriate staff member and do their work as volunteer staff, not as board members.

7F. Personnel Policies

A sound set of personnel policies is essential for land trusts with staff. Written policies provide guidelines for dealing with employees in an equitable manner, clarify employee/employer roles and responsibilities, assure employees of due process in employment-related disputes, and provide a degree of legal protection for the land trust in case of employee lawsuits. A formal policy may be a brief document meeting legal requirements, backed up by more detailed procedures for everyday operations. As land trusts grow, their personnel policies and procedures tend to become more detailed. However, organizations with only one or two staff are still advised to put their basic personnel benefits, board and staff roles, and grievance procedures in writing.

7G. Compensation and Benefits

Every nonprofit organization struggles to provide fair compensation to its staff. Often, it is possible to find staff willing to work for lower compensation because they are committed to the mission, or a volunteer willing to serve as staff with no pay. However, even if a land trust has low- or no-cost help today it should be financially prepared to meet its responsibilities if these resources are not available in the future. As the land trust community continues to mature, it is important to retain qualified staff and maintain the credibility of the profession by providing reasonable compensation to employees. On the other end of the spectrum, the IRS is increasing its investigations into compensation that exceeds the norm. Excessive executive compensation, in particular, is subject to more scrutiny. To understand what compensation norms are in the land trust's region of operation, it should periodically review what other comparable nonprofits are paying or access LTA's periodic salaries and benefits surveys.

7H. Working with Consultants

Consultants and contractors can provide important skills to a land trust. Contractor relationships and deliverables should be clearly delineated; it is often helpful to define this relationship through a written contract. If a contractor is assuming many of the roles of a staff person, the land trust should clarify contractor versus employee status, and consult the appropriate federal and state labor and employment statutes. Contractors in certain positions can affect the credibility of the land trust's land conservation work. These contractors should be familiar with the *Land Trust Standards and Practices* that are relevant to their work. This is particularly true of contractors assisting with fundraising, financial management, land transactions, or stewardship.

Part II: Land Transactions

Standard 8: Evaluating and Selecting Conservation Projects

Having choices about which land protection projects to undertake may seem like a luxury. Many land protection projects are done under great time pressure; the tendency is to protect now, think later. Sometimes that is inevitable. Yet unless the land trust exercises care in reviewing all of its projects, it may find itself with a property or a conservation easement that serves little public interest, is costly to manage or defend, or does not fit with the land trust's mission. Every land trust must find a balance between being strategic and being opportunistic. Land trusts that focus on their strategic priorities typically find that they can raise more funds and protect more land. These land trusts work with their partners to develop conservation priorities appropriate for their community. A land trust that does not prioritize and carefully select its projects may open itself to public criticism, credibility issues and even legal problems. In order for land conservation to maintain public credibility, it is essential that all land trusts carefully screen projects for the public benefit that will be provided. Once projects are selected, the land trust must determine how best to protect a given property's resources. For each property, sufficient information must be gathered to make sound judgments and avoid unacceptable risks.

8A. Identifying Focus Areas

Land trusts must engage in various levels of conservation planning. Planning should start with a strategic or long-range plan to guide all organizational activities. In addition to or as part of such a plan, land trusts should have a land protection strategy for their region. Such a strategy goes beyond the land trust's project selection criteria to the identification of high-priority areas or specific natural resources that meet the mission and goals of the organization. These land protection strategies go by various names (strategic conservation plans, focus area plans and so forth) and may be in the form of written descriptions, maps or notes for internal guidance. Regardless of

form or name, these priority or focus areas are the places where the land trust works proactively to accomplish its conservation goals. A focus area can encompass various ecological or cultural resources and overlap political jurisdictions, but generally has some cohesive element. Examples include a small watershed, an undeveloped stretch of shoreline, a cluster of farms or ranches, a grouping of prime agricultural soils, or a specific mountain peak. A land trust may have several focus areas within its operating territory.

8B. Project Selection and Criteria

Selection criteria are a key component of a land protection program. Criteria are the rough screen that a land trust uses to assess land conservation projects at the outset. Criteria may evaluate a project's location, size or resource values. This practice clarifies that the criteria should reflect the organization's mission. Criteria often focus first on the land, but include additional tests for project feasibility and long-term sustainability. The practice also emphasizes that the project selection process should evaluate the land trust's capacity to meet its future responsibilities of stewarding the land or easement.

8C. Federal and State Requirements

As emphasized in standard 10, land trusts have a responsibility to encourage compliance with the tax laws. In addition to the federal income tax benefits available under the IRC, an increasing number of states are offering tax credits to land and easement donors. For projects where the landowner anticipates taking advantage of a federal or state tax benefit, this practice clarifies that the land trust should determine that these projects meet the IRC's conservation purposes test [see IRC §170(h) for easements] and any other federal or state requirements. A land trust may want to consider adding these tests to its written criteria to help it make sound choices regarding these transactions early in the project selection process.

8D. Public Benefit of Transactions

All land conservation transactions must provide some public benefit. It is the land trust's obligation to uphold the public's trust in land conservation and to ensure that projects meet the public benefit mission of the land trust. In order to ensure that projects have a public benefit, land trusts may want to start by incorporating the IRC's conservation purposes test into their criteria to help ensure that any transactions involving a federal or state income tax deduction (or credit) meet these tests. In addition, every project should be consistent with federal and state charitable trust laws. For purchased easements using federal, state or local dollars, any additional requirements for public benefit also need to be met. All conservation easements should document the public benefit of the transaction in the easement itself. For non-easement projects, the project file should contain some documentation of the public benefit served by the transaction.

8E. Site Inspection

A land trust should not enter into a transaction without seeing and evaluating a property, and the earlier in the transaction process that it can visit the property, the better. The purpose of a basic site inspection is to determine whether the property meets the land trust's criteria, identify the property's conservation resources, discover any management-related problems, and identify problems or threats that should be investigated further. Often a land trust visits the property several times as the project develops.

8F. Documenting Conservation Values

The conservation values on a property are the basis for its protection. The land trust must identify and document the conservation values of each property it protects for several reasons: to clarify the benefit to the public; to determine whether the property is significant enough to warrant the land trust's involvement; to decide how best to protect the property; to establish a baseline of the land's condition; and to defend the property over time from conflicting land use activities. It may not be possible to document and protect every conservation value on a property—thus it is

important that the land trust identifies the most important conservation values in keeping with its mission and capacity, and structure its protection strategy accordingly.

8G. Project Planning

This practice calls for each project to be tailored to the specifics of the property through some form of project planning. The process may take the form of an actual project plan, a completed project planning data sheet, or may be reflected in the correspondence, maps or other documents related to the project. The formal or informal project plan becomes the guide for the next steps in the protection process. The planning documentation becomes particularly important when there is more than one person working on the project. The project plan or data sheets prepared by the land trust representative evaluating the property, for instance, can be essential for the attorney drafting the conservation easement. Initial project planning should evaluate the conservation values and protection strategies against the land trust's mission and capacity. Project planning should also include the identification of the conservation values and the potential threats that could significantly impair those values (threats may vary by geographic region and land trust mission). In addition, project plans should evaluate the land trust's and landowner's goals for the project, and then devise protection strategies accordingly.

8H. Evaluating the Best Conservation Tool

Land trusts have a wide array of options for structuring transactions. From the point of view of how the resources are protected, there are certain major considerations, including: Is fee ownership or a conservation easement preferable? To what extent may development or other uses of the property be allowed? Can the land trust undertake the required long-term monitoring, management and enforcement responsibilities? How can the property's conservation values best be maintained? These are judgments that a land trust, in partnership with the landowner, makes on a case-by-case basis—and that are most often determined through the project planning process described above. Whatever the ultimate strategy, the approach should reasonably ensure long-term protection for the important conservation values found on the property. The land trust and the landowner will be well served in the long run if the land trust informs the landowner of the array of feasible and realistic conservation options available, including those provided by other organizations and agencies, so that the landowner clearly understands his or her options and willingly chooses to engage in the specific protection strategy offered by the land trust.

8I. Evaluating Partnerships

In evaluating the best conservation tool, a land trust may find that it does not have the capacity to undertake the size or scope of the protection project that is necessary to protect the important conservation values on the property. It is critical that land trusts do not engage in projects that exceed the organization's capability to manage the land or conservation easement over time and that do not exceed their mission or expertise. In cases where a project exceeds the land trust's mission or capacity, it is encouraged to form partnerships with (or refer projects to) other organizations that have sufficient capacity. Land trusts have engaged in many creative partnerships with other land trusts, public agencies, historic preservation organizations, and other conservation entities.

8J. Partnership Documentation

Partnerships are integral to the success of many land conservation transactions, and land trusts are increasingly engaging in partnerships to maximize their conservation success. Partnerships bring together important skills for complex projects, but can also leave one or more parties feeling disappointed with the process. Partnerships involving acquisition of land can be particularly challenging. As with any partnership, it is important for the partners to understand their respective roles and responsibilities. A memorandum of understanding or other written agreement that spells out the terms and conditions of the partnership and provides protection for all parties should guide acquisition, management or stewardship partnerships.

8K. Evaluating Risks

Land transactions may expose the organization to risks of hazardous waste liability, inability to protect the important conservation values adequately due to external circumstances, or damages to credibility. Physical examinations of the property and other sources of information allow the land trust to assess a project's merit and identify its benefits, and to assess management and enforcement risks and identify potential problems. Based on this information, the land trust makes decisions throughout the transaction process about how to proceed. If there are significant risks, the land trust may allow the project to continue on its course toward acquisition, stop for troubleshooting, modify the project, or if the problem is severe enough reject the project outright. Accepting a project where the risks outweigh the benefits may be an unwise use of the time and money that people contribute to the land trust. To move forward with a project, a land trust must be satisfied that the benefits are worth the land trust taking the risk.

8L. Nonconservation Lands

This practice clarifies that nonconservation land (sometime referred to as “trade lands”) need not meet the land trust’s selection criteria, but that the intent to sell or transfer the property must be clear between the organization and the donor. Many organizations use trade lands as an important source of funding for their organizations, and have policies or procedures for how they accept, sell and use sale proceeds. See related practices 4C, 6G, 9K and 9L.

8M. Public Issues

While direct land protection is the mainstay of a land trust’s work, organizations often operate related programs (such as advocacy, education or research) or find themselves involved in related projects (such as responding to a specific development proposal or supporting a local bond issue). Just as criteria are important for land conservation transactions, it is important for the land trust to develop a deliberate process and evaluation mechanism to help decide what additional programs or projects to take on and where to focus its limited resources. This process helps the organization stay focused on its mission and maintain effective programs.

Standard 9: Ensuring Sound Transactions

A land trust usually intends to protect the property it conserves in perpetuity. To help secure the perpetual conservation of land, its transactions must hold up over time and withstand challenges. Sound transactions rely on the land trust performing “due diligence” in its transaction steps. Land trust representatives need not be lawyers, but they must have good legal advice, and they should familiarize themselves with basic principles of real estate and tax law. The land trust should draw a landowner’s attention to issues that must be addressed as the transaction proceeds. However, a land trust should not represent itself as giving specific legal or financial advice; a landowner’s own advisors should do that. A land trust may have to call on other financial and technical experts in order to complete the transaction. Carefully documenting the steps a land trust takes in performing its due diligence can help secure the perpetual conservation of the property.

9A. Legal Review and Technical Expertise

A timely and thorough legal review for every transaction is essential—to protect both the land trust and the resource values entrusted to it. Land transactions need to be structured in a way that protects the land trust’s interests and ensures that they last. To be durable and defensible, legal documents and agreements should be reviewed by an attorney familiar with real estate and tax law and who understands the nuances and implications of the legal language. Land trusts

regularly engaged in conservation easement transactions may use a standard easement template that is prepared by an attorney. Staff or volunteers may do the drafting from the template, but an attorney should conduct at least a brief review of the final document, particularly of the legal description and areas where the drafter has deviated from the template. An attorney should also review the template on an annual basis. Land trusts using attorneys on their board to review their transactions must take special care to see that the attorney has the appropriate experience with conservation easements and that any private inurement or excess private benefit is avoided. In many transactions, a land trust may also need professional advice and assistance with land planning, water rights, biological inventories, environmental assessments for hazardous materials, land management, and other issues.

9B. Independent Legal Advice

In many transactions, the land trust and the landowner are working so closely together toward the same goal that it can be easy to forget that each has independent interests to protect. Thus, each party should have separate legal representation. By advising landowners to obtain legal counsel, land trusts make them responsible for their own legal interests. By documenting that recommendation in writing, land trusts safeguard themselves from claims by landowners that the land trust gave them legal advice. Land trusts should never give assurances about a particular legal outcome. Land trusts are not licensed to practice law, and they should not give, or appear to give, legal advice. However, land trusts do provide technical assistance, and they provide information to help the landowner and his or her advisors understand the ramifications of proposed transactions.

9C. Environmental Due Diligence for Hazardous Materials

Hazardous and toxic substances may pose serious environmental threats if improperly stored or managed. Contamination from these substances can also pose serious economic threats if it occurs on land trust property. A land trust that owns or was a previous owner of a property contaminated by hazardous or toxic materials can be held liable for all costs associated with the contamination, including the cost of cleaning up the site. It may not matter who initially caused the problem or if the property was donated to the land trust. Preventing the acquisition of contaminated property is clearly preferable to discovering a problem later. A land trust should obtain a preliminary environmental evaluation or assessment for every property it considers acquiring, whether by purchase or donation. Many land trusts also conduct preliminary evaluations for conservation easement acquisitions, although the law's applicability to conservation easement holders is unclear. This is a rapidly changing area, and there is no single answer appropriate to the question of what constitutes an adequate environmental assessment or due diligence. Each land trust should establish and follow procedures for investigating contamination on potential projects in consultation with a knowledgeable attorney.

9D. Determining Property Boundaries

It is important for a land trust to know the boundaries of its fee holdings and conservation easements. The best way to secure this information is through a survey, but this is not always practical on large parcels or in inaccessible locations. In all instances, a good property description is essential. Accurate descriptions of any special use areas or zones within a conservation easement are also essential. These may be building envelopes, natural areas, riparian corridors, or other restricted zones. The ability to identify these areas in the field is necessary for the future enforcement of activities in these zones. The easement and supporting documentation should provide enough detail so that these areas can be clearly identified on the ground by the landowner and easement monitors.

9E. Easement Drafting

This practice is integrally linked with 8G, project planning, and reflects the integration between easement planning, drafting and enforceability. The actual drafting of an easement should implement the project plan. Restrictions should be drafted to ensure that important conservation

values are not significantly impaired, and in a way that ensures public benefit and maintains the credibility of the land trust. An easement's restrictions must be monitorable and enforceable, and a clear statement of the easement's purpose must support them. Future interpretation of an easement rests on how clearly the document explains the restrictions and their intent, as well as on how enforceable the restrictions are.

9F. Documentation of Purposes and Responsibilities

Written documentation of the landowner's intentions and the land trust's plans avoids misunderstandings and misrepresentations—both during the landowner's lifetime and after the original parties to the transaction are no longer around to provide clarification. Memoranda of understanding, letters of agreement and/or correspondence should clarify the relationship of all parties to each other and to the land. This documentation is especially important when more than one party will share in the management of the land or stewardship of the easement. With conservation easement projects, much of this information is contained in the easement itself, but when it falls outside of the easement, or it is a fee project, the written documents should be part of the project file.

9G. Recordkeeping

A land trust should prepare and maintain complete written documentation of transactions. It needs to have two sets of documents: (1) documents that are accessible and can be used for monitoring or as problems and issues arise ("working" files); and (2) documents that are safely stored in a way that ensures that they will last and be acceptable evidence in the event of a court proceeding ("permanent" files). Originals of important documents (such as legal agreements, critical correspondence, or one-of-a-kind studies) that are part of the permanent file should be kept in a secure place, such as a safe-deposit box or fireproof file cabinet. For additional protection, working files should be kept in one location and permanent files should be kept at a separate location. See also 2D.

9H. Title Investigation and Subordination

The term title means evidence of ownership—that is, the legal documentation of an owner's right to the property. Before a land trust commits to acquiring land or easements, it needs to make sure there are no title problems that could undermine the conservation values of the property or unacceptably restrict its use. A land trust needs to know who owns the property and who has any interest in it; the status of property tax payments; whether there are liens, mortgages or other financial encumbrances; whether there are easements and rights-of-way; the status of water rights; and whether there are other claims, encumbrances or conditions that impair title. A land trust must evaluate which of these "exceptions" to title will compromise its ability to protect the property and address them accordingly.

9I. Recording

Recording is the process of placing a document on file with a designated local public official for public notice. This is often required by state law to effectuate the transfer of property. Deeds are recorded in the office of the recorder of deeds, registrar, or register of deeds in the county or municipality where a property is located. A land trust should be familiar with the law in its state regarding recording. A land trust should also be aware if their state has a marketable title act that requires periodic re-recording of documents.

9J. Purchasing Land

A land trust must be able to justify the price paid for land and easements for several reasons: to show fiscal responsibility; to avoid private inurement or excess private benefit; to substantiate prices paid in a changing market; to avoid inflating market value; to avoid losing money on resale; and to be prepared in the event of a condemnation action. The surest way to justify the acquisition price is to obtain a qualified independent appraisal. However, there are some limited

circumstances when a letter of opinion from an appraiser or real estate professional is adequate: if the land trust is considering the purchase of land with low economic value (such as a wetland or other property with extremely limited development potential); or if the land trust is under the time pressure of having to bid at a public auction. In the very rare case of considering whether to pay more than the appraised value, the land trust should have good legal advice and carefully weigh the public benefit, risk of private inurement or private benefit and risk to its credibility. If the land trust does decide to proceed, it should thoroughly document the property's unique value, its worth to the land trust and the public interest the property serves. When negotiating bargain sale transactions, a land trust should take care to be honest and forthright in its communications with the landowner.

9K. Selling Land or Easements

This practice specifies that when a land trust sells land it should first evaluate every property for its conservation values, and design protections (such as conservation easements) accordingly (see 8G). Once the protection strategy has been determined, the land trust should then obtain an appraisal (or, if the property has extremely low economic value, a letter of opinion.) The land trust should market its conservation properties to ensure that the land trust receives a fair price and has the best potential stewards of the property, and to retain public trust and credibility. The goal of marketing is to reach as many potential conservation buyers as possible. Land trusts have increased ability to target marketing to conservation buyers via the Internet and tailored databases, eliminating the need to list a property with a real estate broker. This practice is further clarified in 4C when insiders may be involved in the transaction. See also 6H.

9L. Transfers and Exchanges of Land

Many land trusts "preacquire" land or an easement for public agencies by acquiring it from a landowner, then transferring it to the agency for permanent conservation management. Land trusts' ability to act quickly in the private market and maintain flexible working relationships makes them ideal partners in assisting and supporting public land acquisition programs. A land trust may also find that it wishes to divest of a conservation property to a public agency or another land trust, or to exchange conservation properties with other partners. This practice specifies that the land trust's sale or transfer of the property is consistent with the landowner's intent and preserves the conservation values of the land. It also recommends that the land trust carefully consider the stewardship capabilities of the organization or agency receiving the property. For transfers to or exchanges with a private party, the land trust needs to secure an appraisal (or, in limited circumstances, an opinion of value) to make sure that the transaction does not result in private inurement or excess private benefit.

Standard IO: Tax Benefits

It is the legal responsibility of the landowner, not the land trust, to comply with specific requirements regarding federal or state tax deductions for the donation of land or easements. Nevertheless, land trusts have a responsibility to see that those requirements are met and should take reasonable measures to ensure that landowners understand those requirements and consult their own advisors about meeting them. Given the increased scrutiny of tax benefit programs, land trusts should take what steps they can to encourage compliance with the tax laws. The land trust's role is important in that deductions that are overturned by the IRS may make future potential donors wary of working with the land trust, could lead to investigations of the land trust and, ultimately, can reduce public support for deductions as incentives for land conservation. A land trust must take care never to guarantee or

appear to guarantee that a deduction will be allowed or what its value will be, but the land trust can help guide the landowner and establish policies to protect the land trust.

10A. Tax Code Requirements

Land trusts have a special interest in trying to make sure that tax-deductible gifts of land and conservation easements meet IRS requirements. Gifts of conservation easements in particular tend to be complex, are generally unfamiliar to most landowners and their advisors, and may be subject to more scrutiny by the IRS than gifts of fee interests. The land trust should educate potential land and easement donors and their counsel about the IRS requirements, providing information both verbally and in writing. A land trust should also review every land and easement gift for which a tax deduction will be claimed against the IRS requirements in order to satisfy itself that there are no obvious errors. While the land trust does not bear legal responsibility for seeing that IRS requirements are met, as noted above, it benefits the land trust and the larger land conservation community to see that they are.

10B. Appraisals

The IRS has specific requirements for reporting on and determining the value of charitable gifts. These are highly detailed and complex for gifts of property valued at more than \$5,000, which includes most donations of land or conservation easements to land trusts. The land trust needs to make sure the donor knows about these requirements. Helping the landowner understand the law can avoid criticism from donors, help ensure that the substantiation requirements are met and help maintain the credibility of donations to land trusts overall.

Appraisals of land, especially land with subdivision potential, are substantially different from typical residential property appraisals. Appraisals of conservation easements are even more highly specialized. While the appraisal is the donor's responsibility—not the land trust's—the land trust should advise the landowner (preferably in writing) to use a state-licensed or state-certified appraiser who follows the Uniform Standards of Professional Appraisal Practice (USPAP). The Appraisal Foundation (the nonprofit organization directed by Congress to establish the qualification criteria for state licensing and certification of appraisers) adopted USPAP in 1989, and it is recognized throughout the United States as the generally accepted statement of standards of professional appraisal practice.

Land trusts should have a practice of requesting a copy of the landowner's appraisal (even if it may not always receive it). While the land trust cannot pass judgment on the appraisal, it does have an interest in helping to see that the donor's appraisal will meet the IRS's requirements and that the appraised value does not appear unreasonably high and thus likely to attract an IRS challenge. If the land trust believes the appraised value is significantly overstated or the project does not conform in some other way with the tax law, the land trust should share its concerns with the donor and decide whether to proceed with the transaction. The danger of appearing to be a party in a transaction that unfairly benefits a private individual—or, worse, perpetrates tax fraud—is a serious risk. It could jeopardize not only the credibility and tax status of the land trust, but also the credibility of donations to all land trusts.

10C. No Assurances on Deductibility or Tax Benefits

Landowners frequently want assurances that conservation easements will be considered deductible by the IRS and, especially early in a transaction, may want to know how large a tax benefit is likely as a result of their donation. A land trust can provide general information and examples based on its experience, but should make it clear that the legal issues of deductibility and the value of donations are the responsibility of the landowner and his or her advisors.

10D. Donee Responsibilities – IRS Forms 8282 and 8283

The land trust should understand its responsibilities with regard to signing Form 8283 and recognize the conflicting notions that while the IRS does not hold land trusts responsible for the

values claimed by a landowner on a Form 8283, the public impression of land trusts is affected by the perception of the integrity of the conservation transactions in which they participate, including the validity of a donor's appraised value for a donation. For these reasons, the land trust should refrain from signing a Form 8283 that does not have Section B, Part 1 "Information on the Donated Property" and Part 3 "Declaration of Appraiser", fully completed. While the IRS only requires that Part 1 of Form 8283 be completed prior to the land trust signing the document, given the land trust's role in protecting the credibility of easements, it is prudent for the land trust to also request that Part 3 be completed before signing.

While Form 8283 is often signed after the transaction is complete and recorded, the land trust can still exercise its judgment in signing the form. If the land trust believes that no donation has been received (for example, the conservation easement was the *quid pro quo* for a zoning approval), or if the gift that is described in the form is not the gift that the land trust received, the land trust should not sign the form. It should work with the landowner to make sure that the gift is accurately described. If a land trust has reservations about the value of the deduction being claimed, the land trust may seek additional substantiation of value, and/or share these reservations with the landowner in advance of signing the Form 8283.

Standard II: Conservation Easement Stewardship

A land trust that accepts and holds conservation easements commits itself to their annual stewardship in perpetuity, to enforcement of their terms, and to building positive landowner and community relationships to support the land trust's conservation programs and enforcement actions. A land trust that fails to do so may eventually lose its credibility, could cause its easement program to be invalidated, may erode public confidence in easements, and ultimately risk the protection of the land. Not all land trusts have the capacity to hold easements in perpetuity and may achieve their conservation goals through partnerships with other organizations, fee ownership or other conservation methods. These practices will help ensure that the conservation values protected by conservation easements are sustained over time.

11A. Funding Easement Stewardship

This practice emphasizes the need to review immediate and long-term costs of easement holding, and to secure operating and/or dedicated funds to carry out the land trust's obligations. A land trust should perform a calculation for every transaction to determine the funding needed for stewardship and enforcement, or determine a standard fee to assess for every easement. The land trust should then collect these fees or raise the necessary funds for each easement, or ensure that it has a steady source of operating income to cover these costs. Land trusts should be able to fund their annual stewardship costs and have enough funding in place to at least initiate an enforcement action, if not pay for it completely. Specifically restricted funds should be placed in a designated fund or funds (see 6G.) If a land trust does not have adequate funds for stewardship and enforcement it should have a fundraising strategy and a board policy committing the funds for this purpose, and be able to demonstrate progress toward meeting the goals of the strategy.

11B. Baseline Documentation Report

Baseline documentation reports are critical for establishing the condition of the property at the time the easement is transferred, and are the basis of future monitoring and enforcement. In addition,

for certain easements for which a federal tax deduction is granted, some baseline documentation at the time of closing is required. While it is sometimes difficult for land trusts to prioritize or gather all the data required, baseline reports should be completed prior to closing, and signed by the landowner and the land trust at closing. In the event of poor seasonal conditions for documenting the conservation values of the property, an interim baseline report with a finalization schedule can be signed by both parties at closing. The interim report can include all of the data available by the date of closing and should specify when the final report will be completed. The baseline documentation and any interim data should meet the requirements of IRC §1.170A-14(g)(5)(i). The use of interim reports with the land trust and landowner's signature and date certain for finalization has proven effective in regions of the country where ground conditions prevent the completion of the full baseline documentation report at closing. In the past, land trusts may have accepted easements without a baseline documentation report. In these cases, the land trust should have a plan for completing documentation for all easements.

11C. Easement Monitoring

There are several reasons why a land trust should monitor its easements annually. Monitoring helps a land trust develop a relationship with the landowner, helps discover changes in land ownership, enables it to see if the easement is effective, helps uncover violations, saves time and money on enforcement actions, and establishes a record in case of court action. Annual monitoring routinely reminds the landowner of the easement and provides a means for annual landowner contact. With annual monitoring the land trust can promptly document any changes in the property's condition relative to the easement. While some land trusts regularly conduct "drive-by" or informal monitoring activities, the monitoring results should be documented to build a record for future monitoring and in case the land trust must address a violation. Some easements with particularly sensitive conditions, or on land where a landowner is performing management activities, may require monitoring more frequently than once a year. Land trusts use a combination of on-the-ground review, aerial observation and other methods in their annual monitoring.

11D. Landowner Relationships

Landowner contact has always been a part of *Land Trust Standards and Practices*, but land trusts are increasingly realizing that developing strong relationships with landowners is the best way to help provide for good stewardship of the land and avoid potential conservation easement conflicts. This practice is expanded to address the need to build relationships with existing and new owners of easement land and the managers of such land. Landowner relationships should ideally extend beyond once-a-year contact during a monitoring visit, and may include newsletters and updates, special workshops or other events. Land trusts may refer landowners to individuals who can help with the property's natural resource management. Every land trust should have a person (staff or volunteer) assigned to respond to landowner requests or inquiries about their easements.

11E. Enforcement of Easements

When a land trust accepts an easement, it also accepts the responsibility to enforce that easement in the event it is violated, and to defend it from challenges. Land trusts facing their first enforcement action often wish they had a formal policy or written procedure to follow governing contact with landowners, board and staff roles, attorney involvement, and steps to take in the event a potential violation is discovered. This practice calls for all easement-holding land trusts to develop such a policy or procedure. In addition, land trusts must be prepared for enforcement actions and should have access to appropriate legal counsel and the financial resources to pursue the enforcement. Every land trust should promptly address every easement violation.

11F. Reserved and Permitted Rights and Approvals

Many easements contain specific reserved rights or require that the land trust approve certain landowner actions. It is essential that land trusts track these rights and approvals in order to

evaluate their capacity to steward the easements, respond to landowner information requests and prepare for any enforcement or defense actions. A land trust should have a paper file system or database for tracking this information. For every easement, the land trust should have complete information about the exercise of reserved rights or any granted or denied approvals. Land trusts should promptly respond to landowner requests for approvals to exercise reserved rights.

11G. Contingency Plans/Backups and 11H. Contingency Plans for Backup Holder

It is vital that every land trust consider what will happen to its assets if the organization ceases to exist, and plan accordingly. One strategy is to include backup or contingency provisions in the easement. This strategy may not be effective, however, without alerting the potential backup grantees or providing the necessary funding for backup grantees to take on the responsibility for the easements. In these two practices, original grantees and future grantees are encouraged to follow established procedures and plan accordingly. In planning for a backup strategy, land trusts should have complete files for each easement and stewardship funds available to transfer to a new easement holder. Land trusts that regularly agree to be a backup holder may want to have criteria for what projects they will accept. Some land trusts that are named as backup holders follow the same acquisition and approval process for backup interests as they do when they are accepting any other easement.

11I. Amendments

While easement amendments are not common, land trusts should expect to receive requests for amendments and may, in certain circumstances, wish to initiate an amendment to strengthen an easement or clarify language. Most land trusts, when faced with their first amendment request from a landowner, wish they had a policy to guide their actions. This practice encourages land trusts to develop an amendment policy to help ensure that amendments meet the mission of the organization and maintain the land trust's credibility. A policy should prohibit private inurement or excess private benefit, clarify board and staff roles, and ensure that all amendments result in either a positive, or not less than neutral conservation outcome. Many other standards are involved in reviewing amendment requests, including 1, 4, 6, 8, and 9, and practice 3F.

11J. Condemnation

Conservation easements may be subject to acts of condemnation. In these instances, a land trust should be prepared for the condemnation action, including having the percent of value data for the interests being condemned. A land trust should evaluate the impact of the condemnation action on the conservation values and, to the extent possible, work with the condemning authority to craft remedies that reduce these impacts or allow for additional conservation action.

11K. Extinguishment

In rare instances, an easement may be extinguished (for instance, when a conservation holder merges fee and conservation easement interests). In some states, certain forms of extinguishment must be court-ordered or court-approved. To the extent possible, a land trust should ensure that the conservation values will continue to be protected on the land following the extinguishment or ensure that additional conservation action is taken. Extinguishment of an easement should never be considered lightly, should only be an option of last resort, and should always consider the precedent that might be set and how extinguishment may impact the viability of the conservation easement tool itself.

Standard 12: Fee Land Stewardship

Many land trusts own land in fee for a variety of conservation purposes, and must take care of these properties. Failure to manage and monitor the property could lead to loss of or damage to the property's conservation values, injury to visitors, or even loss of the property itself. A land trust that does not care for its holdings will lose credibility. A land trust should also make contingency provisions for its land in the event it can no longer fulfill its stewardship obligations.

12A. Funding Land Stewardship

This practice emphasizes the need to review immediate and long-term costs of holding land and to secure operating and/or dedicated funds to carry out the land trust's responsibilities. A land trust should determine the amount of funds it will need to properly care for the land over time. The land trust should then secure these funds, or ensure that it has a steady source of operating income to cover these costs. Specifically restricted funds should be placed in a designated fund or funds (see 6G.) If a land trust does not have adequate funds for the stewardship of its land it should have a fundraising strategy and a board policy committing the funds for this purpose, and be able to demonstrate progress toward meeting the goals of the strategy.

12B. Stewardship Principles

Many land trusts find it useful to develop general stewardship policies or principles to guide the management and use of their properties. These general policies or philosophic principles may be adapted in individual management plans to address the specific needs for a particular property. Stewardship policies or principles might address such items as public access, use of properties for research and environmental education, habitat manipulation, and standards for improvements. The more consistency in the types of properties a land trust owns, the more specific a set of general policies may be. The stewardship principles can be useful in guiding board decisions on land management and can help explain land management decisions to the public.

12C. Land Management

Land trusts may engage in resource management activities on lands they own, including forest management, farming and ranching, and other activities. This practice clarifies that land management activities should follow some form of management plan. Management activities should conform to the organization's mission and stewardship principles. Management activities should advance learning and demonstration or restore degraded habitat, not impair important conservation values on the site.

12D. Monitoring Land Trust Properties

A land trust that holds property also takes on a responsibility to the public and has certain legal liabilities for injuries that occur on the land. Thus, at a minimum, a land trust needs to monitor each property to ensure it is not damaged by malicious or negligent acts, that people are not endangered by safety hazards and that continuous encroachment or unauthorized use do not cause the land trust to lose the property or parts of it altogether. Such problems usually can be prevented if the land trust marks and maintains its boundaries and regularly monitors its properties.

12E. Land Stewardship Administration

Good recordkeeping and administration ensure that stewardship responsibilities are met, and are essential to provide continuity as the board or staff changes. A land trust needs to anticipate the time necessary to accomplish administrative obligations and make them regular practices. The practice gives a general idea of the types of records that must be maintained for fee properties. The records policy of 2D should also be followed.

12F. Community Outreach

Good public relations, especially with adjacent landowners and community leaders who have a special interest in the property, can aid immeasurably in a land trust's stewardship program and benefit the land trust in many other ways. Offering tours of conservation lands, maintaining trail networks or having field days can help encourage community support for the land trust's work. Community support for land trust properties can help build strong local relationships and help prevent damage to the land.

12G. Contingency Backup

It is vital that every land trust consider what will happen to its assets if the organization ceases to exist, and plan accordingly. A land trust may evaluate other potential conservation owners in its area and discuss with them the potential to transfer its conservation lands if the land trust is ever unable to carry out its ownership responsibilities. In planning for a future transfer of conservation lands the land trust should have a complete file for each property it holds (that contains deeds, maps, management plans, and other documents important to the property) and stewardship funds available to transfer to a new conservation owner.

12H. Nonpermanent Holdings

Many land trusts accept nonconservation land with the express intention of reselling or transferring the property. As long as the land is in the land trust's ownership, it should be managed or maintained in such a way that liability risks are minimized and the land trust's credibility is maintained. Neighbors and community leaders should be aware of the land trust's plans to sell the properties and not hold them for permanent conservation. Properties that are sold should reflect the property donor's intentions. Practices 6H and 8L also contain information on how to address nonpermanent holdings.

12I. Condemnation

Conservation lands may be subject to acts of condemnation. In these instances, a land trust should be prepared for the condemnation action, including having an understanding of the value of the interests being condemned. A land trust should evaluate the impact of the condemnation action on the conservation values and, to the extent possible, work with the condemning authority to craft remedies that reduce these impacts or allow for additional conservation action.

Quick Reference Guide: How Revised *Standards and Practices* Compare to the Previous Edition

2004 Revisions

2001 Edition

Standard 1: Mission	Standard 1: Purpose and Goals
1A Mission	1A Clear Statement of Purpose and Goals
1B Planning and Evaluation	1B Consistency with Purpose and Goals
1C Outreach	New
1D Ethics	New
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2A Compliance with Laws.....	4D Reporting Requirements
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2C Tax Exemption	4B, 4C Tax Exemption / Retaining Tax-Exempt Status
2D Records Policy.....	New
2E Public Policy.....	New
Standard 3: Board Accountability	Standard 2, 13: Board Accountability / Board Approval of Transactions
3A Board Responsibility	2A Basic Legal Standards of Behavior
3B Board Composition	3C Board Size and Diversity
3C Board Governance.....	2B, 2C Informed Participation / Board Meetings
3D Preventing Minority Rule	2D Preventing Minority Rule
3E Delegation of Decision-Making Authority	2E Delegation of Decision-Making Authority
3F Board Approval of Land Transactions.....	13A, 13B, 13C Opportunity for Board Action for Every Land Transaction / Accurate and Sufficient Information / Authority Delegated to Committee or Staff
Standard 4: Conflicts of Interest	Standard 3: Conflict of Interest
4A Dealing with Conflicts of Interest.....	3A Dealing with Conflicts of Interest
4B Board Compensation	3B Board Compensation
4C Transactions with Insiders	New
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5A Legal and Ethical Practices	5A, 5E Charitable Solicitation Laws / Reasonable Fundraising Costs
5B Accountability to Donors	5B Donor Notification of Deductibility
5C Accurate Representations	5C, 5D Accurate Representations / Use of Funds as Specified
5D Marketing Agreements	New
Standard 6: Financial and Asset Management	Standard 6: Financial and Asset Management
6A Annual Budget	6A, 6B, 6C Annual Budget / Budget Reflects Goals and Purposes / Revenue is Greater than Expenses
6B Financial Records.....	6F Clear, Complete, and Accurate Financial Records
6C Financial Reports and Statements.....	6G Frequency and Form of Financial Reports and Statements
6D Financial Review or Audit	6H Annual Audit

6E Internal System for Handling Money.....	6E Internal System for Handling Money
6F Investment and Management of Financial Assets and Dedicated Funds	6I Investment and Management of Financial Assets and Dedicated Funds
6G Funds for Stewardship and Enforcement.....	New
6H Sale or Transfer of Assets (Including Land and Easements).....	6J Sale or Transfer of Assets (Including Land)
6I Risk Management and Insurance.....	6K Risk Management and Insurance

Standard 7: Volunteers, Staff and**Consultants..... Standard 7: Staff, Consultants, and Volunteers**

7A Capacity	7A, 7E Knowledgeable, Dependable Assistance / Evaluating the Need for Staff
7B Volunteers.....	7C Managing Volunteers
7C Staff	New
7D Availability of Training and Expertise	7B Availability of Training and Expertise
7E Board/Staff Lines of Authority	7F Board/Staff Lines of Authority
7F Personnel Policies	7G Personnel Policies
7G Compensation and Benefits	New
7H Working with Consultants	New

Standard 8: Evaluating and Selecting**Conservation Projects Standards 8, 9, 10: Selecting Projects / Choosing the Best Conservation Method / Examining the Property**

8A Identifying Focus Areas.....	8D Identifying High-Priority Projects
8B Project Selection and Criteria	8A, 8B Project Selection Process and Criteria / Consistency of Transactions with Goals and Purposes
8C Federal and State Requirements.....	New
8D Public Benefit of Transactions	8C Public Benefit of Transactions
8E Site Inspection.....	10A Doing a Basic Site Inspection
8F Documenting Conservation Values	10B Identifying Conservation Resources
8G Project Planning.....	New
8H Evaluating the Best Conservation Tool.....	9A, 9B Selecting the Best Conservation Tool / Informing the Landowner of Conservation Options
8I Evaluating Partnerships	New
8J Partnership Documentation	New
8K Evaluating Risks.....	10E Risk/Benefit Assessment
8L Nonconservation Lands	New
8M Public Issues	New

Standard 9: Ensuring Sound**Transactions Standards 10, 11: Examining the Property / Ensuring Sound Transactions**

9A Legal Review and Technical Expertise	11A, 11B Technical Expertise / Legal Review of Every Transaction
9B Independent Legal Advice	11C, 11D Independent Legal Advice for All Parties / Don't Give Legal Advice
9C Environmental Due Diligence for Hazardous Materials	10C Environmental Due Diligence for Hazardous Materials
9D Determining Property Boundaries.....	10D Determining Property Boundaries
9E Easement Drafting	New

9F Documentation of Purposes and Responsibilities.....	11E, 11F Clear, Documented Understanding of Purposes and Uses / Clear Understanding of Roles, Rights and Responsibilities
9G Recordkeeping	11G Recordkeeping
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9I Recording.....	11I Recording
9J Purchasing Land	11J Justifying Acquisition Price / Appraisal
9K Selling Land or Easements	11K Justifying Selling Price
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Standard 10: Tax Benefits

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10B Appraisals.....
10C No Assurance on Donor Deductibility or Tax Benefits
10D Donee Responsibilities — IRS Forms 8282 and 8283.....

Standard 12: Tax Benefits

12A Tax Code Requirements for Conservation Easement Donations
12B Appraisal/Substantiation of Charitable Gifts of Real Property
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12C Donee Responsibilities — IRS Forms 8283 and 8282

Standard 11: Conservation Easement Stewardship

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Standard 14: Conservation Easement Stewardship

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New
New
New
New

Standard 12: Fee Land Stewardship.....

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Standard 15: Land Stewardship

15A Financing Land Stewardship
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15B Monitoring Land Trust Properties
15D Land Stewardship Administration
15E Community Relations
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New
New

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