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LAND TRUST

# Standards and Practices

Ethical and Technical Guidelines for the  
Responsible Operation of a Land Trust

# Introduction

*Land Trust Standards and Practices* are the ethical and technical guidelines for the responsible operation of a land trust. The Land Trust Alliance drafted the first Standards in 1989 at the urging of land trusts and to affirm certain best practices as the surest way to secure lasting conservation. To maintain the land trust community's strength, credibility and effectiveness, the Standards were updated in 1993, 2001 and 2004. In preparing this 2017 update, an advisory team, comprised of land trust professionals from across the country, reviewed and discussed more than 1,600 comments from conservationists throughout the United States. These many voices were an invaluable asset throughout the revision process.

While this document is a publication of the Land Trust Alliance, the Standards are a collective product of the land trust community. The advisory team was as diverse in perspective as the comments the team reviewed. Unanimity was not necessarily achieved on each standard or practice, but this document reflects the expressed values and recommendations of the overall land trust community.

The nation's more than 1,300 nonprofit land trusts have conserved 56 million acres of wildlife habitat, farms, ranches, forests, watersheds, recreation areas and other open spaces as of 2015. The continued success of land trusts depends on public confidence in—and support of—our community as we build conservation programs that stand the test of time. It is, therefore, every land trust's responsibility to uphold this public confidence and ensure the permanence of its conservation efforts. Implementing the Standards positions a land trust to achieve these goals and, if it so wishes, to seek insurance through Terrafirma and pursue accreditation through the Land Trust Accreditation Commission. (Accreditation indicator elements are marked with ●; Terrafirma enrollment prerequisites are denoted with ■. Elements for both are represented with ▲.)

Each member of the Land Trust Alliance must adopt the Standards as guiding principles for its operations, pledging a commitment to uphold the public confidence and the credibility of the land trust community as a whole. (See the board adoption resolution on page 2.) It is important to note that while the Standards are thorough, they are not exhaustive. There will be times when the Standards do not make clear a land trust's best path forward. In these moments, the land trust's board should exercise its best judgment as informed by the spirit of these Standards.

Land trusts are a respected and integral part of our nation's land conservation work. Together, we must support our peers and hold ourselves to the highest standards as we continue to conserve the places we need and love.

# Board Adoption Resolution

The Land Trust Alliance requires that all land trust members adopt *Land Trust Standards and Practices* as their guiding principles. Some public or private funders also ask for such a statement. Here is the board resolution.

**WHEREAS**, the [land trust] has reviewed *Land Trust Standards and Practices* (“the Standards”), first published by the Land Trust Alliance in 1989, and with the most recent revision effective February 3, 2017; and,

**WHEREAS**, the [land trust] agrees that the Standards are the ethical and technical guidelines for the responsible operation of a land trust;

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board of Directors of the [land trust] hereby adopts and commits to implementing the Standards as guidelines for the organization’s operations.

\_\_\_\_\_ board meeting date when approved

## STANDARD 1

# Ethics, Mission and Community Engagement

Land trusts maintain high ethical standards and have a mission committed to conservation, community service and public benefit.

### PRACTICES

#### A. Ethics

1. Adopt a written code of ethics and/or values statement and adhere to it in implementing the land trust's mission, in its governance and in its operations
2. Adopt a written whistleblower policy that protects individuals who come forward with information on illegal practices or unethical behavior
- 3. Do not knowingly participate in transactions that are potentially fraudulent or abusive

#### B. Mission, Planning and Evaluation

1. Adopt a mission that advances conservation and serves the public interest
- 2. Establish strategic goals for implementing the mission, and then review and update them, as needed, at least once every five years
  - a. Revisit the mission during the strategic review to confirm it is relevant
3. Review programs and activities at least annually to ensure they are advancing the strategic goals and make adjustments, as appropriate

#### C. Community Engagement

1. Develop an inclusive, welcoming organizational culture that respects diversity
2. Seek to engage people who are broadly representative of the community in which the land trust works and foster opportunities to connect them with the land
3. Develop an understanding of the land trust's community, and communicate the land trust's work, services and impact in a manner that resonates with and engages that community
4. Build relationships with community leaders and other stakeholders in the land trust's community

## STANDARD 2

# Compliance with Laws

Land trusts fulfill their legal requirements as nonprofit tax-exempt organizations and comply with all laws.

### PRACTICES

#### A. Compliance with Laws

- 1. Do not knowingly conduct operations in violation of law

#### B. Nonprofit Incorporation and Bylaws

- ▲ 1. Incorporate or organize according to the requirements of state law and maintain legal status
- ▲ 2. Operate in accordance with established bylaws
- 3. Review the bylaws at least once every five years to ensure consistency with current operations, the articles of incorporation and state law

#### C. Federal Tax Exemption

- 1. Maintain status as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code (IRC)
  - ▲ a. File a complete and accurate annual information return (Form 990 or equivalent) with the Internal Revenue Service (IRS)
  - ▲ b. Do not knowingly engage in prohibited activities, such as private inurement or impermissible private benefit
  - c. Comply with federal lobbying limitations and reporting requirements
  - d. Do not engage in political campaigns on behalf of or in opposition to any candidate for public office

## STANDARD 3

# Board Accountability

Land trust boards act ethically in conducting the affairs of the organization and carry out their legal and financial responsibilities as required by law.

### PRACTICES

#### A. Board Responsibility

1. Individual board members are informed of and understand their role and their responsibilities as nonprofit board members, including their legal and fiduciary duties
- 2. The board provides oversight of the land trust's finances and operations by:
  - a. Reviewing and approving an annual budget
  - ▲ b. Working to ensure that sufficient financial resources are available
  - c. Receiving and reviewing financial reports and statements in a form and with a frequency appropriate for the scale of the land trust's financial activity
  - d. Reviewing the externally prepared financial audit, review or compilation
  - e. Adopting written policies or procedures for the responsible and prudent investment, management and use of financial assets
- 3. The board hires, oversees and evaluates, at least annually, the performance of any executive director (or chief staff person)
4. The board may delegate decision-making and management functions to committees, provided that committees have clearly defined roles and report to the board or staff

#### B. Board Composition and Structure

- 1. Have a board of sufficient size, skills, backgrounds and experiences to conduct its work effectively
2. Have a board substantially composed of independent members to reduce risk arising from conflicts of interest
- 3. Have a board development process that includes procedures for recruiting and training board members
4. Ensure the board's presiding officer and treasurer are not the same individual
5. If a staff member serves on the board, clearly define the staff role and limit the board member role accordingly to ensure separation of duties and avoid undue influence
  - a. No staff member serves as the board's presiding officer or treasurer

### **C. Board Governance**

1. Provide board members with written expectations for their service on the board
- 2. The board meets a minimum of three times per year and maintains adopted minutes of each meeting
- 3. Provide board members with sufficient and timely informational materials prior to each meeting to make informed decisions
4. Board members evaluate their performance annually as a group and as individuals at least once every three years
5. Adopt procedures for removing board members who are not fulfilling their responsibilities
6. Have governing documents that contain policies and procedures (such as provisions for a quorum and adequate meeting notices) to encourage broad participation and to prevent a minority of board members from acting for the land trust without proper delegation of authority

### **D. Board Approval of Transactions**

- 1. The board reviews and approves every land and conservation easement transaction
  - a. However, the board may delegate decision-making authority on transactions if:
    - i. It establishes written policies or has bylaws provisions that define the limits to the authority given to the delegated entity
    - ii. The delegated entity provides timely notification in writing to the full board of any completed transactions

## STANDARD 4

# Conflicts of Interest

Land trusts have policies and procedures to avoid or manage real or perceived conflicts of interest.

### PRACTICES

#### A. Dealing with Conflicts of Interest

- 1. Adopt a written conflict of interest policy that addresses, for all insiders, how conflicts are identified and avoided or managed
- 2. Document the disclosure and management of actual and potential conflicts
- 3. When engaging in any transaction with an insider,
  - a. Follow the conflict of interest policy
  - b. Contemporaneously document that there is no private inurement

#### B. Payments to Board Members

- 1. Do not financially compensate board members for board service, except for reimbursement of expenses
- 2. If, in limited circumstances, the land trust compensates a board member for professional services that would otherwise be contracted out,
  - a. Document the circumstances surrounding the decision to do so
  - b. Document how the land trust uses appropriate comparability data to determine the amount to be paid and to confirm that there is no private inurement
  - c. Do not compensate the board's presiding officer or treasurer for professional services
- 3. Do not provide loans to directors, officers or trustees

#### C. Land and Conservation Easement Transactions with Insiders

- 1. When engaging in land and conservation easement transactions with insiders,
  - a. Follow all transaction policies and procedures
  - b. For purchases from and sales of property to insiders, obtain an independent appraisal by a qualified appraiser to justify the purchase or sales price



## STANDARD 5

# Fundraising

Land trusts conduct fundraising activities in a lawful, ethical and responsible manner.

### PRACTICES

#### A. Legal and Ethical Practices

1. Conduct an analysis of state charitable solicitation laws and register where the land trust determines it is appropriate
2. Do not compensate internal or external fundraisers based on a commission or a percentage of the amount raised

#### B. Accountability to Donors

1. Provide accurate solicitation materials and other communications to donors and the public
- 2. Provide timely written acknowledgment of all gifts, including land and conservation easements, in keeping with IRS charitable contribution substantiation requirements
- 3. Maintain financial and other systems to document and comply with any donor restrictions on gifts
4. Have a written policy or procedure to ensure donor privacy concerns are honored

#### C. Fundraising Plan

1. Develop and implement a fundraising plan or program appropriate to the land trust's size and scope to secure adequate support for its activities

#### D. Non-conservation Real Property for Resale

1. When acquiring non-conservation real property with the intent of selling it to advance the land trust's mission,
  - a. Obtain a written acknowledgement from any donor of the land trust's intent to sell before accepting the property
  - b. Follow applicable transaction policies and procedures
  - c. Maintain the property while in the land trust's ownership in a manner that retains the land trust's public credibility, manages community expectations and minimizes risk

## STANDARD 6

# Financial Oversight

Land trusts are responsible and accountable for how they manage their finances and assets.

### PRACTICES

#### A. Fiscal Health

1. Develop an annual budget that reflects the land trust's annual programs and activities
- 2. Develop and implement a strategy to address any deficit-spending trends
- 3. Assess the nature and variability of revenue and seek to diversify funding sources
- 4. Build and maintain sufficient operating reserves to sustain operations
- ▲ 5. Build and maintain dedicated or restricted funds sufficient to cover the long-term costs of stewarding and defending the land trust's land and conservation easements
  - ▲ a. If funds are insufficient, adopt a plan to secure these funds and a policy committing the funds to this purpose

#### B. Financial Records

1. Keep financial records in accordance with Generally Accepted Accounting Principles (GAAP) or Other Comprehensive Basis of Accounting (OCBOA)

#### C. External Financial Evaluation

- 1. Obtain an annual financial audit, review or compilation by an independent certified public accountant or a qualified accounting professional, in a manner appropriate for the scale of the land trust

#### D. Written Internal Controls

- 1. Establish written internal controls and accounting procedures, including segregation of duties, in a form appropriate for the scale of the land trust, to prevent the misuse or loss of funds

#### E. Risk Management and Insurance

1. Routinely assess and manage risks so that they do not jeopardize the land trust's financial health and its ability to carry out its mission and legal responsibilities
- 2. Carry general liability (■), directors and officers liability, property and other insurance, all as appropriate to the land trust's risk exposure or as required by law

## STANDARD 7

# Human Resources

Land trusts have sufficient skilled personnel to carry out their programs, whether volunteers, staff and/or consultants/contractors.

### PRACTICES

#### A. Capacity

1. Periodically evaluate whether the land trust has sufficient volunteers, staff and/or consultants/contractors to achieve its strategic goals and carry out its programs, and then add capacity as needed

#### B. Volunteers

1. Provide volunteers with training, supervision and recognition

#### C. Consultants or Contractors

1. Clearly define relationships with consultants or contractors, ensure they are consistent with federal and state law and document them in a written contract, as appropriate

#### D. Transition Planning

1. Develop a written process or plan to provide for continuity in the leadership and management of the land trust's functions

#### E. Staff

1. Have a written job description for each staff member and conduct periodic performance reviews
2. Document the lines of authority, communication and responsibility between board and staff
3. Ensure staff have appropriate training and experience for their responsibilities and/or opportunities to gain the necessary knowledge and skills
4. Adopt written personnel policies that conform to federal and state law
5. Provide fair and equitable compensation and benefits

## STANDARD 8

# Evaluating and Selecting Conservation Projects

Land trusts carefully evaluate and select their conservation projects.

### PRACTICES

#### A. Strategic Conservation Planning

1. Identify specific conservation priorities consistent with the land trust's mission and goals

#### B. Project Selection Criteria and Public Benefit

1. Develop and implement a written process to select land and conservation easement projects
- 2. Develop and apply written project-selection criteria that are consistent with the land trust's conservation priorities
3. Document the public benefit of every land and conservation easement project

#### C. Project Evaluation

- 1. Visually inspect properties before buying or accepting donations of conservation land or conservation easements to determine and document whether:
  - a. There are important conservation values on the property
  - b. The project meets the land trust's project-selection criteria
2. Evaluate potential threats to the conservation values on the property and structure the project to best protect those conservation values
3. Evaluate any current or potential risks associated with the project, including to the land trust's reputation or to the land trust community, and modify or decline the project if the risks outweigh the benefits

#### **D. Project Planning**

1. Individually plan all land and conservation easement projects so that:
  - a. The land trust identifies the best available conservation strategy for the property
  - b. The property's important conservation values are protected
  - c. The project furthers the land trust's mission and goals
2. Assess the stewardship implications of each project and the land trust's capacity to meet those obligations

#### **E. Partnership Documentation**

1. When engaging in a partnership on a joint acquisition or long-term stewardship project or when co-holding conservation easements, create written agreements to clarify:
  - a. The goals of the project
  - b. The roles and responsibilities of each party
  - c. Legal and financial arrangements
  - d. Communications to the public and between parties

## STANDARD 9

# Ensuring Sound Transactions

Land trusts work diligently to see that every land and conservation easement transaction is legally, ethically and technically sound.

### PRACTICES

#### A. Legal Review and Technical Expertise

1. Obtain a legal review of every land and conservation easement transaction, appropriate to its complexity, by an attorney experienced in real estate law
2. As dictated by the project, secure appropriate technical expertise, such as in financial, real estate, tax, scientific and land and water management matters

#### B. Legal and Financial Advice

1. Do not give individualized legal, financial or tax advice when providing transaction-related information
2. Recommend in writing that each party to a land or conservation easement transaction obtain independent legal, financial and tax advice

#### C. Environmental Due Diligence

1. For every land and conservation easement transaction, conduct or obtain a preliminary environmental investigation, transaction screen or Phase I assessment to identify whether there are any conditions that pose environmental risks, and take steps to address any significant concerns

#### D. Determining Property Boundaries

1. Determine both the legal description and physical boundaries of each property or conservation easement
- 2. If a conservation easement contains restrictions or permitted rights that are specific to certain zones or areas within the property, include the locations of these areas in the easement document so that they can be identified in the field

### **E. Conservation Easement Drafting**

- 1. For every conservation easement,
  - a. Individually tailor it to the specific property
  - b. Identify the conservation values being protected
  - c. Allow only uses and permitted rights that are not inconsistent with the conservation purposes and that will not significantly impair the protected conservation values
  - d. Avoid restrictions and permitted rights that the land trust cannot monitor and enforce
  - e. Include all necessary and appropriate provisions to ensure it is legally enforceable
- 2. Review, on the land trust's own behalf, each potentially tax-deductible conservation easement for consistency with the Treasury Department regulations (U.S.C. §1.170A-14), especially the conservation purposes test of IRC §170(h)

### **F. Title Investigation and Recording**

- 1. Prior to closing and preferably early in the process, have a title company or attorney investigate title for each property or conservation easement the land trust intends to acquire
  - a. Update the title at or just prior to closing
- 2. Evaluate the title exceptions and document how the land trust addressed mortgages, liens, severed mineral rights and other encumbrances prior to closing so that they will not result in extinguishment of the conservation easement or significantly undermine the property's important conservation values
- 3. Promptly record land and conservation easement transaction documents at the appropriate records office

### **G. Recordkeeping**

- ▲ 1. Adopt a written records policy that governs how and when organization and transaction records are created, collected, retained, stored and destroyed
- 2. Keep originals of all documents essential to the defense of each real property transaction in a secure manner and protected from damage or loss
- 3. Create and keep copies of these documents in a manner such that both originals and copies are not destroyed in a single calamity

## H. Purchasing Land or Conservation Easements

- 1. When buying land, conservation easements or other real property interests, obtain an independent appraisal by a qualified appraiser in advance of closing to support the purchase price
  - a. However, a letter of opinion from a qualified real estate professional may be obtained in the limited circumstances when:
    - i. A property has a very low economic value
    - ii. A full appraisal is not feasible before a public auction
    - iii. Or the amount paid is significantly below market value
- 2. In limited circumstances where acquiring land, conservation easements or other real property interests above the appraised value is warranted, contemporaneously document:
  - a. The justification for the purchase price
  - b. That there is no private inurement or impermissible private benefit

## I. Selling or Transferring Land or Conservation Easements

1. When selling land, conservation easements or other real property interests,
  - a. Establish protections as appropriate to the property
  - b. If the sale is to a party other than another tax-exempt organization or public agency, obtain an independent appraisal by a qualified appraiser or a letter of opinion from a qualified real estate professional to determine the value of the asset and to support the selling price
  - c. Select buyers in a manner that avoids any appearance of impropriety
2. When selling or transferring conservation land or conservation easements to another tax-exempt organization or public agency, consider whether the new holder can fulfill the long-term stewardship and enforcement responsibilities



## STANDARD 10

# Tax Benefits and Appraisals

Land trusts work diligently to see that every charitable gift of land or conservation easement meets federal and state tax law requirements, to avoid fraudulent or abusive transactions and to uphold public confidence in land conservation.

### PRACTICES

#### A. Landowner Notification

- 1. Inform potential land or conservation easement donors who may claim a federal or state income tax deduction (or state tax credit), in writing and early in project discussions, that:
  - a. The project must meet the requirements of IRC §170 and the accompanying Treasury Department regulations and any other federal or state requirements
  - b. The donor is responsible for any determination of the value of the donation
  - c. The Treasury Department regulations require the donor to obtain a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$5,000
  - d. Prior to making the decision to sign IRS Form 8283, the land trust will request a copy of the completed appraisal
  - e. The land trust is not providing individualized legal or tax advice
- 2. Do not make assurances as to:
  - a. Whether a particular land or conservation easement donation will be deductible
  - b. What monetary value of the gift the IRS and/or state will accept
  - c. What the resulting tax benefits of the deduction or credit will be, if any

#### B. Legal Requirements: Land Trust Responsibilities

- 1. If the land trust holds federally tax-deductible conservation easements, it meets the requirements for a qualified organization under IRC §170(h)
- 2. Sign the Form 8283 only if the information in Section B, Part I, "Information on Donated Property," is complete and is an accurate representation of the gift
  - a. Refuse to sign the Form 8283 if the land trust believes no gift has been made or the property has not been accurately described
- 3. File IRS Form 8282 when conveying a donated real property interest within three years of the date the land trust received the property

### C. Avoiding Fraudulent or Abusive Transactions

1. Review, on the land trust's own behalf, each transaction for consistency with federal and state income tax deduction or credit requirements
- 2. Evaluate the Form 8283 and any appraisal to determine whether the land trust has substantial concerns about the appraised value or the appraisal
- 3. Discuss substantial concerns about the appraisal, the appraised value or other terms of the transaction with legal counsel and take appropriate action, such as:
  - a. Documenting that the land trust has shared those concerns with the donor
  - b. Seeking additional substantiation of value
  - c. Withdrawing from the transaction prior to closing
  - d. Or refusing to sign the Form 8283
- 4. When engaging in transactions with pass-through entities of unrelated parties, particularly those offered or assembled by a third party or described as a syndication by the IRS,
  - a. Require a copy of the appraisal prior to closing
  - b. Decline to participate in the transaction if the appraisal indicates an increase in value of more than 2.5 times the basis in the property within 36 months of the pass-through entity's acquisition of the property, the value of the donation is \$1 million or greater and the terms of the transaction do not satisfy the Land Trust Alliance Tax Shelter Advisory

## STANDARD 11

# Conservation Easement Stewardship

Land trusts have a program of responsible stewardship for their conservation easements.

### PRACTICES

#### A. Funding Conservation Easement Stewardship

1. Estimate the long-term stewardship and enforcement expenses of each conservation easement transaction
2. Track stewardship and enforcement costs

#### B. Baseline Documentation Report

- 1. For each conservation easement, have a baseline documentation report (■), with written descriptions, maps and photographs, that documents:
  - a. The conservation values protected by the easement
  - b. The relevant conditions of the property as necessary to monitor and enforce the easement
- 2. Prepare the report prior to closing and have it signed by the landowner and land trust at or prior to closing
  - a. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, the landowner and land trust sign a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulation §1.170A-14(g)(5)(i)] at closing
- 3. When there are significant changes to the land or the conservation easement (such as a result of an amendment or the exercise of a permitted right), document those changes in an appropriate manner, such as through monitoring reports, a baseline supplement or current conditions report

### **C. Conservation Easement Monitoring**

1. Adopt a written policy and/or procedure for monitoring conservation easements that establishes consistent monitoring protocols and recordkeeping procedures
- ▲ 2. Monitor each conservation easement property at least once per calendar year
  - ▲ a. If the land trust uses aerial monitoring, conduct on-the-ground monitoring at least once every five years
  - ▲ b. Promptly document the annual monitoring activities for each conservation easement

### **D. Landowner Relationships**

1. Maintain regular contact with owners of conservation easement properties to maintain relationships and avoid potential easement conflicts
2. Establish systems to track changes in land ownership
3. When the property changes hands, attempt to meet with the new owner or property manager and provide information in writing about the conservation easement and the land trust's stewardship policies and procedures

### **E. Conservation Easement Enforcement**

- 1. Adopt a written policy and develop written procedures for documenting and responding to potential conservation easement violations
- 2. Investigate potential violations in a timely manner and promptly document all actions taken
3. Involve legal counsel as appropriate to the severity of the violation and the nature of the proposed resolution

### **F. Approvals and Permitted Rights**

1. Respond to landowner required notices or requests for interpretation or approvals in a timely and consistent manner, as specified in the conservation easement deed or in a written procedure
2. Establish written procedures to guide the land trust's decision-making if using discretionary approvals or if conservation easement deeds contain such clauses
- 3. Maintain a permanent record of all notices, approvals, denials, interpretations and the exercise of any significant permitted rights

### **G. Contingency Strategy**

1. Take reasonable steps to provide for the disposition of conservation easements in the event the land trust ceases to exist or can no longer steward and administer them

### **H. Amendments**

- 1. Adopt and follow a written policy or procedure addressing conservation easement amendments that is consistent with the Land Trust Alliance Amendment Principles
- 2. Evaluate all conservation easement amendment proposals with due diligence sufficient to satisfy the Amendment Principles
- 3. If an amendment is used to adjust conservation easement boundaries (such as to remedy disputes or encroachment) and results in a *de minimis* extinguishment, document how the land trust's actions address the terms of J.1. below

### **I. Condemnation**

1. If a conservation easement is threatened with condemnation,
  - a. Take steps to avoid or mitigate harm to conservation values and document the actions taken
  - b. Have or obtain appropriate documentation of the percentage of the full value of the property represented by the conservation easement
  - c. Document the land trust's attempts to receive its proportional share of the proceeds and use any proceeds in a manner consistent with the conservation easement deed

### **J. Partial or Full Extinguishment**

- 1. In the rare case that it is necessary to extinguish a conservation easement, in whole or in part,
  - a. Follow the terms of the conservation easement with respect to taking appropriate action, and obtain judicial or regulatory review when required by law or specified in the easement deed
  - b. Ensure there is no private inurement or impermissible private benefit
  - c. Take steps to avoid or mitigate harm to conservation values and/or use any proceeds in a manner consistent with the conservation easement deed
  - d. Consider the land trust's actions in the context of its reputation and the impact on the land conservation community at large

## STANDARD 12

# Fee Land Stewardship

Land trusts have a program of responsible stewardship for the land held in fee for conservation purposes.

### PRACTICES

#### A. Funding Land Stewardship

1. Determine the immediate financial and management implications of each conservation property acquisition and estimate the long-term implications
2. Anticipate and track costs associated with long-term land management, stewardship and enforcement of conservation properties

#### B. Land Management and Stewardship

- 1. Develop a written land management plan for each conservation property (■) within 12 months after acquiring the land to:
  - a. Identify the property's conservation values, including any significant cultural and natural features or those that have significant community value
  - b. Identify the overall management goals for the property
  - c. Identify activities to achieve the goals and to reduce any risks or threats to the conservation values
  - d. Specify the uses that are appropriate for the property, in keeping with the property's conservation values, any restrictions and donor or funder requirements
    - i. Provide public access opportunities as appropriate to the property and the land trust's mission
2. Manage each conservation property in accordance with its management plan, and review and update the plan as necessary
3. Perform administrative duties (such as paying insurance, filing required forms, keeping records) in a timely and responsible manner
4. Maintain the property in a manner that retains the land trust's public credibility, manages community expectations and minimizes risk

### **C. Inspecting Land Trust Properties**

1. Determine the boundaries of land trust properties and physically mark them to the extent possible or necessary
- 2. Inspect properties at least once per calendar year for potential management problems and promptly document the inspection
- 3. Address management problems, including encroachments, trespass and other ownership challenges, in an appropriate and timely manner and document the actions taken

### **D. Contingency Strategy**

1. Take reasonable steps to provide for the continuing protection of conservation properties in the event the land trust ceases to exist or can no longer own or manage them

### **E. Condemnation**

1. If a conservation property is threatened with condemnation, take steps to avoid or mitigate harm to conservation values and document the actions taken

## DEFINITIONS OF KEY TERMS

**Amendment Principles:** An amendment should meet all of the following: (1) clearly serve the public interest and be consistent with the land trust's mission; (2) comply with all applicable federal, state and local laws; (3) not jeopardize the land trust's tax-exempt status or status as a charitable organization under federal law; (4) not result in private inurement or confer impermissible private benefit; (5) be consistent with the conservation purpose(s) and intent of the easement; (6) be consistent with the documented intent of the donor, grantor and any funding source; and (7) have a net beneficial or neutral effect on the relevant conservation values protected by the easement.

**Capacity:** The ability to perform all the actions required to acquire and manage conservation land and manage other programs by having adequate human and financial resources and organizational systems in place.

**Conflict of interest:** A conflict of interest arises when a person in a position of authority in an organization, such as a director, officer, manager or other "insider," is in a position, or perceived to be in a position, to be able to benefit personally (or to create a benefit to a family member or other organization with which he or she is associated) from a decision he or she could make.

**Conservation values:** The key values on a site that are the focus of protection efforts. Important conservation values are determined during property evaluation and project planning.

**Form 990:** Most tax-exempt organizations are required to file an annual return with the IRS. Which form of the Form 990 (Form 990-N, Form 990-EZ or full Form 990) a land trust must file depends on its financial activities.

**GAAP:** The Federal Accounting Standards Board (FASB) issues Generally Accepted Accounting Principles (GAAP). FASB's guidance for nonprofit organizations can be found in ASU 2016-14, Not-for-Profit Entities (Topic 958): "Presentation of Financial Statements of Not-for-Profit Entities."

**Impermissible private benefit:** Occurs when a tax-exempt organization provides more than an "incidental" benefit to a non-insider.

**Independent appraisal:** An independent appraisal prepared in compliance with the Uniform Standards of Professional Appraisal Practice by a state-licensed or state-certified appraiser who has verifiable conservation easement or conservation real estate experience.



**Independent board member:** Per the Independent Sector, independent members should not: (1) be compensated by the organization as employees or independent contractors; (2) have their compensation determined by individuals who are compensated by the organization; (3) receive, directly or indirectly, material financial benefits from the organization except as a member of the charitable class served by the organization; or (4) be related to anyone described above (as a spouse, sibling, parent or child) or reside with any person so described.

**Insiders:** Board and staff members, substantial contributors, parties related to the above, those who have an ability to influence decisions of the organization and those with access to information not available to the general public. The IRS generally considers “insiders” or disqualified persons under IRC Section 4958 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 Section 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 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). 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.

**IRC:** Internal Revenue Code.

**Land trust:** A nonprofit organization that, as all or part of its mission, actively works to conserve land by acquiring land or conservation easements (or assisting with their acquisition) and/or stewarding/managing land or conservation easements.

**Letter of opinion:** A written estimation of a property’s value, most often prepared by a qualified real estate professional. A letter of opinion may be used instead of an independent appraisal prepared by a qualified appraiser when the economic value of the property is so low as to negate concerns about private inurement or private benefit, when a full appraisal is not feasible before a public auction or when the amount paid is significantly below the market value of the property. (A letter of opinion is not sufficient in the case of transactions with insiders.) An appraiser may call this document a Restricted Use Appraisal Report.

**OCBOA:** Other Comprehensive Basis of Accounting is the term used for a comprehensive basis of accounting other than generally accepted accounting principles (GAAP).

**Pass-through entity:** Pass-through entities include sole proprietorships, partnerships, LLCs and S corporations. Unlike traditional C corporations, pass-through entities do not pay income tax. Instead, income, losses and deductions pass through to the shareholders in proportion to their ownership interest. For purposes of the Standards, sole proprietorships consisting by definition of only one person are not included in this definition.

**Phase I assessment:** A formal investigation conducted by a qualified environmental consultant or engineer into the presence or absence of hazardous materials on or near a property that satisfies the “all appropriate inquiries” rule of the Environmental Protection Agency.

**Policy:** A written, board-adopted document specifying a course of action to guide and determine present and future decisions.

**Private inurement:** When the net earnings of a tax-exempt organization come to the benefit of any private shareholder or individual. Federal tax-exempt law requires that “no part of . . . [a tax-exempt organization’s] net earnings [may] inure to the benefit of any private shareholder or individual.” An action in which a person who is an “insider” to the tax-exempt organization, such as a director or an officer, derives a benefit from the organization without giving something of at least equal value in return. The IRS prohibition on inurement is absolute. The IRS also imposes penalties on directors, officers, key employees and other insiders who engage in transactions that confer an excess benefit on the individual (“excess benefit transactions”).

**Tax Shelter Advisory:** Refers to the advisory first issued by the Land Trust Alliance in 2015 on tax shelters using conservation for potentially abusive federal income tax deductions. The Advisory includes recommendations to maintain public confidence and cautionary measures land trusts should take to avoid tax shelter transactions. [www.lta.org/tax-shelter-advisory](http://www.lta.org/tax-shelter-advisory)

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The Land Trust Alliance's mission is to save the places people love by strengthening land conservation across America.

Founded in 1982, the Land Trust Alliance is a national land conservation organization that works to save the places people love and need by strengthening land conservation across America. The Alliance represents more than 1,000 member land trusts supported by more than 100,000 volunteers and 5 million members nationwide. The Alliance is based in Washington, D.C. and operates several regional offices. More information about the Alliance is available at [www.landtrustalliance.org](http://www.landtrustalliance.org).

The Land Trust Alliance provides resources to assist land trusts in implementing *Land Trust Standards and Practices*. General information on the Standards and on Alliance publications and training programs related to their implementation can be found at [www.landtrustalliance.org](http://www.landtrustalliance.org). Alliance member land trusts and partners can find additional technical information and sample documents on The Learning Center at <http://tlc.lta.org>.



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