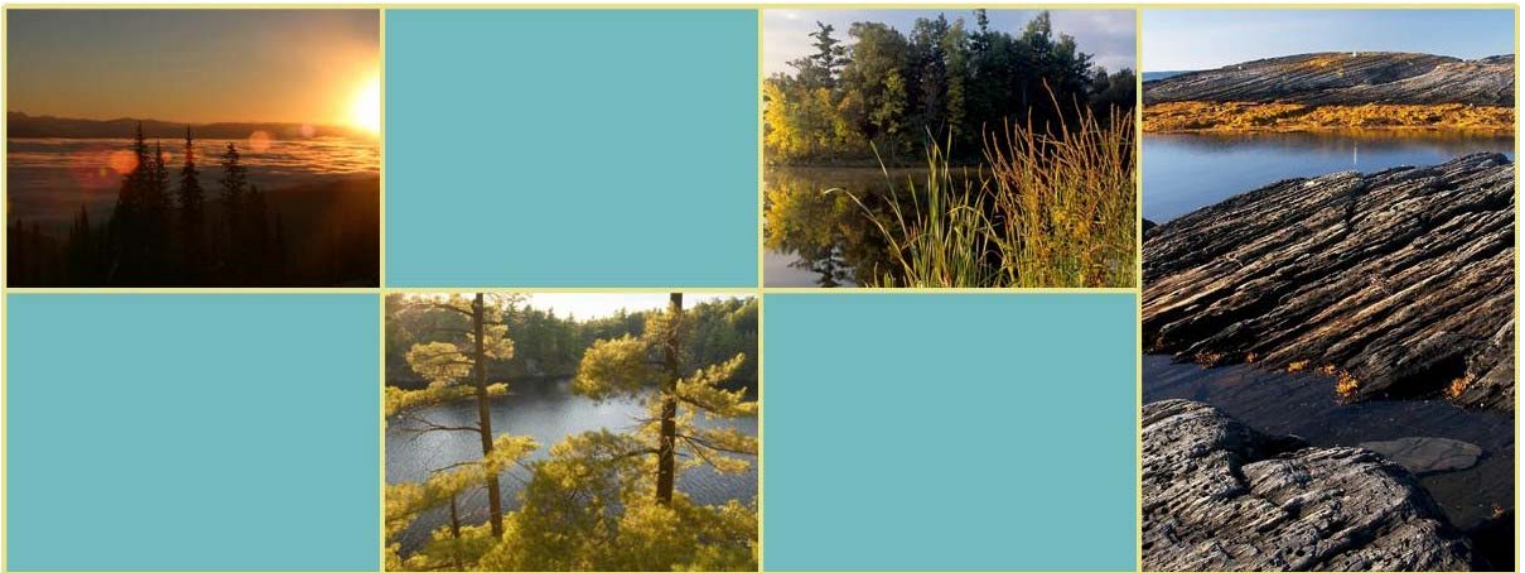


# Background

to the

*Canadian Land Trust*

*Standards and Practices*



2005

**Canadian Land Trust Alliance**

December 1, 2005

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# Introduction

*The Canadian Land Trust Standards and Practices*, the ethical and technical guidelines for the responsible operation of a land trust in Canada, were created by and for the land trust community. This document provides background information on and explanations for each standard and practice. This document is for informational and instructional purposes only and is not a formal part of the *Canadian Land Trust Standards and Practices*. It is a brief reference guide to the *Canadian Land Trust Standards and Practices* and does not contain the text of the actual standards and practices, but should be read in tandem with them.

## Guiding Principles

The Guiding Principles are intended to offer standards of behaviour and aspirations for all land trusts to aim for and be guided by. The four principles of Integrity, Perpetual Responsibility, Excellence and Good Governance reflect the long-term and positive values of the land trust community.

## Part I: Organizational Strength

### Standard 1: Mission

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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, why it exists and how it conducts its business. The mission statement can be used in bylaws, in charitable applications, in soliciting charitable donations, in fundraising activities and to explain the land trust's work to the public. It forms the touchstone for the organization. Land trusts may

also wish to consider developing a vision statement that addresses the direction of the land trust over the long term.

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 depends 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. Regular oversight of strategic planning direction is clearly a board responsibility, though implementation is usually left to the 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 non-profit organizations, public funding, tax incentives, and conservation agreements. 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 should consider adopting an ethics statement.

## **Standard 2: Compliance with Laws**

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A land trust must comply with applicable laws. An understanding of, and compliance with, the basic legal requirements is fundamental to operating a land trust. This includes such matters as becoming and remaining a charitable organization. A land trust that fails to comply with these requirements can face financial penalties and fines, which could also apply to directors, and even revocation of its charitable status. A lawyer who understands charitable 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: completing all corporate filings, completing the Registered Charity Information Return, Form T3010; retaining charitable status; following charitable solicitation laws; and adhering to the relevant federal, provincial or local regulations on non-profits or land trusts (such as waiting periods before being able to hold conservation agreements in some provinces).

## **2A. Compliance with Laws**

Federal, provincial and local agencies establish laws and regulations applicable to non-profit, charitable organizations. They also establish reporting requirements to monitor compliance with statutes. Knowing and following the law is essential for all land trusts. Canadian courts do not consider ignorance of the law to be a viable defence.

## **2B. Non-profit Incorporation and Bylaws**

A land trust that raises money and holds conservation agreements is advised to incorporate as a non-profit corporation, following the appropriate provincial or federal incorporation statute. Incorporation is not a prerequisite for obtaining federal (and sometimes provincial) charitable status but provides a legal mechanism that gives the organization separate legal status and thereby can distance the liabilities of the land trust itself from its membership.

Land trusts that wish to own property under the land trust's name must be incorporated. Bylaws outline the basic operating procedures of the land trust and should be reviewed regularly to ensure their relevance. Several provinces post sample bylaws on their web pages.

## **2C. Charitable Status**

The federal government provides an exemption from income tax for qualified non-profit organizations and allows the deductibility of contributions for those non-profits with charitable status. This subsidy of the non-profit organization is offered in return for the organization's operation in the public interest. The Canadian Revenue Agency (CRA) requires that charitable organizations operating as public charities meet certain tests both at the time of application for charitable status and on a continuing basis. These include avoiding the creation of a private benefit, a prohibition on political campaign activity, complying with limitations on lobbying, and meeting the public benefit test. In some provinces, land trusts that intend to hold conservation agreements also need to receive approval to do so from the provincial government. In addition, Environment Canada must approve land trusts who intend to participate in the Ecological Gifts Program.

## **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 donor information, property details, deeds and baseline documentation reports. A policy helps identify the organization's key documents, what documents are needed and 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. Records should be backed-up electronically and kept in a separate, off-site location. The land trust recognizes that complete record keeping is essential to maintaining the corporate memory of both the organization and the properties it manages. A related practice, 9G, guides recordkeeping for transactions.

The federal and provincial privacy legislation introduced in 2004 will impact the collection and management of private information. Land trusts should be aware of the applicable legislation and integrate a response to that legislation into both a privacy policy and a records policy for their organizations. 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, provincial or federal level. Land trusts may wish to seek sound tax policies for land conservation; forestall threats to tax deductions for charitable contributions to charitable organizations; and/or become involved in a host of positive open space initiatives. This practice clarifies that land trusts may engage in non-partisan political activity, but all public policy activities must relate to the land trust's field of operations and should comply with the Canada Revenue Agency's (CRA) limitations on political activity. Land trusts should be aware of the percentage of resources allowed to be directed to political activity by the CRA. Provincial filing and reporting requirements must also be met. Land trusts with federal charitable status may not endorse political candidates. While political activity is only limited by the rules governing charitable organizations, prohibitions on political endorsements are absolute. Some provinces require additional information on lobbying to be submitted to the provincial government.

## **2F. Current Information**

Land trusts are impacted by legislative changes, both to legislation governing non-profit and charitable activities, but also to legislation that governs tax matters and land use designations. In order to be effective, land trusts must remain current regarding potential changes to any legislation that may affect their operations.

# **Standard 3: Board Accountability**

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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 properly fulfill such duties or responsibilities may incur personal liability. To fulfill their duties, board members must become knowledgeable about their duties and responsibilities and 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 non-profit corporation. Board responsibilities include oversight of finances, philanthropy and fundraising activities, 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 charitable 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 Decision-making**

The legal standards of behavior for board members of non-profit organizations are established by the relevant legislation and what is referred to as the common law. Generally, a director's duties include what may be referred to as a "duty of care," "duty of loyalty" and "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 acting in the best interests of the organization. Directors owe a duty to themselves to be fully informed of the applicable duties and standards that they must fulfill in order to fulfill the role of a director. However, 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.

Land trusts should work to support the needs of their directors to learn and understand their duties. Land trusts may consider developing background materials that can help educate board members, or may wish to avail themselves of more formal learning opportunities.

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.

### **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 incorporating legislation provides a 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 provincial 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**

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A land trust operates in the public interest—not for the benefit of any individual. Both actual conflicts and the perception of a 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 in some way, commonly financially (or create a benefit to a family member or other organization with which they are associated) by virtue of their position within the non-profit 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 Canadian *Land Trust Standards and Practices* recommends that all land trusts have a conflict of interest policy. The 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.

Insiders are considered persons who are in a position to exercise substantial influence over the affairs of the organization. Insiders generally include; board members, key staff,



substantial contributors and persons related to the above. 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 persons is defined by the CRA to include individuals who are related to each other by blood, marriage or adoptions. Examples include spouses, brothers and sisters, spouses of brothers and sisters, ancestors, children, grandchildren, great-grandchildren, and spouses of children, grandchildren and great-grandchildren. Generally, common law partners are treated in the same way as legally married spouses. Adopted children are treated in the same way as blood-related children. Related persons also include individuals or groups and the corporations in which they have a controlling interest. Persons related to these individuals or groups are also considered related to those corporations. For more information, land trusts should refer to CRA Interpretation Bulletin IT-419R.

#### **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 provinces, most notably in Ontario by the Public Guardian and Trustee Act). 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 benefit. This may jeopardize the land trust's charitable 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 limited circumstances where payment is made, the amount will be taxable to the recipient. The land trust must prepare an appropriate T4 slip if salary type payment or receive appropriate supporting invoice from recipient before payment is made. 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 executive officers not be compensated for services either directly or indirectly and the *Canadian 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 a qualified independent appraisal provided to the land trust. When buying land, a land trust should not rely on the seller's appraisal. In certain circumstances, the land trust should consider getting a second qualified independent appraisal if there is disagreement with the insider on the initial appraisal. When a land trust is selling land, and an insider may be interested in purchasing the land, the property should be widely marketed 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 conservation agreement, 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: Philanthropy and Fundraising

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Raising money through philanthropy and fundraising activities is a critical and ongoing activity for every active land trust. Philanthropy is a voluntary gift eligible for a tax receipt. Fundraising activities generally include some type of benefit to the supporter such as at a special event, lottery or gaming, for which no receipt may be issued. Land trusts should approach fundraising as a way to build longtime supporters and friends of their conservation mission. Charitable solicitations and fundraising activities should be undertaken not only with an eye toward meeting short-term needs, but also with an understanding of how philanthropy and fundraising practices affect the long-term credibility of the land trust. A good source of charitable giving standards is Imagine Canada, an organization formed in 2004 with the joining of the Canadian Centre for Philanthropy (CCP) and the Coalition of National Voluntary Organizations (NVO). Imagine Canada's standards can be found on the website: [www.imaginecanada.ca](http://www.imaginecanada.ca)

### **5A. Legal and Ethical Practices**

There is increasing federal and provincial regulation of philanthropy and fundraising practices, and public and donor scrutiny of non-profit charitable solicitation 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. Land trusts should be familiar with laws governing charitable solicitation in their jurisdictions. Compliance with the standards of the philanthropy and fundraising industry is considered prudent for land trusts.

Professionals raising money in the charitable sector are discouraged from engaging in commission-based fundraising by national associations. Imagine Canada's *Ethical Fundraising & Financial Accountability Code* states "Paid fundraisers, whether staff or

consultants, will be compensated by a salary, retainer or fee, and will not be paid finders' fees, commissions or other payments based on either the number of gifts received or the value of funds raised. Compensation policies for fundraisers, including performance-based compensation practices (such as salary increases or bonuses) will be consistent with the charity's policies and practices that apply to non-fundraising personnel.” (See [www.imaginecanada.ca](http://www.imaginecanada.ca).) Imagine Canada’s code complements the professional codes of ethics and standards of practice to which many professional fundraisers individually adhere, such as those of the Association of Fundraising Professionals, the Canadian Association of Gift Planners, and other national and provincial organizations.

Funds spent in excess of 80% of charitable receipts can be carried back one year to offset a shortfall in that period. A charity can also draw on an excess for up to five of its following fiscal periods to help it meet its disbursement quota. A charity can draw on previous years’ excesses to cover a shortfall. If no excesses are available to draw on, a charity can try to spend enough the following year to create an excess that will make up for the shortfall. However, continuous shortfalls can lead to revocation of the charity’s registration. For more information, refer to bulletins on the CRA website at [www.cra-arc.gc.on](http://www.cra-arc.gc.on).

#### **5B. Accountability to Donors**

Strong relationships with donors are crucial for the land trust to secure charitable gifts. 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 requirements to establish the Fair-Market Value of all non-cash gifts with an independent third party appraisal of gifts over \$1000. 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 lawyer and financial advisor when considering such gifts. Some provinces require donations that are solicited for a certain purpose to be held and managed separately from operating and other funds. Land trusts should be aware of any legislation that exists in their jurisdiction.

A Donor Bill of Rights was developed by four professional organizations: the American Association of Fund Raising Counsel (AAFRC), Association for Healthcare Philanthropy (AHP), Council for Advancement and Support of Education (CASE) and the Association of Fundraising Professionals (AFP). It has also been widely endorsed by other professional organizations and individual charities. It is recommended that land trusts develop and adopt a Donor Bill of Rights.

#### **5C. Accurate Representations**

Accurate representations are a basic rule of ethical philanthropy and 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 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**

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Sound financial and asset management is critical for a land trust. Federal and provincial 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. Even a small land trust with modest revenue and expenditures should have 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**

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 and should include an annual cash flow projection that will show expected cash flow deficiencies. This allows an organization to use the budgeting process to clarify what it can and cannot accomplish in any given calendar or fiscal year. Annual budgets should also be in line with a multiyear framework budget or philanthropy and 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 Canadian Institute of Chartered Accountants.

### **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 and approve the statements at regular intervals, generally at least quarterly. In larger organizations, staff (sometimes in conjunction with a board member) usually reviews 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 provinces and public funding programs have lower thresholds. A financial review is a less costly option and suitable for smaller organizations. Where possible, all land trusts should consider a yearly audit, rather than a review. A financial advisor can help determine what approach is best for the land trust. Both a financial review and audit should be performed by a qualified certified accountant.

### **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 cheques, having one-person log in cheques 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. Land trusts should develop a conservative investment policy that safeguards the assets of the organization. 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. The directors of the land trust should approve all significant investment decisions in writing.

### **6G. Funds for Stewardship and Enforcement**

Land trusts have a perpetual obligation to steward conservation agreements 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 non-profits and require that the land trust have a source of funds available to meet its responsibilities. The surest way to meet

stewardship and defence 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 defence. The choice is largely a matter of financial policy and organizational philosophy and may 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 defence or a general endowment to support their stewardship responsibilities sometimes forgo a dedicated fund.

Like all Canadian charities, land trusts must spend 80% of their charitable receipts on charitable activities in each year (disbursement quota). Charities that exceed the 80% mark in their expenditures may carry the excess forward up to five years or back one year to offset a shortfall. Fundraising expenses are not included as charitable activities (see 5A). Funds applied to endowment funds or other dedicated funds that are established to earn interest over the long term are not included as charitable activities by the Canadian Revenue Agency. Therefore, land trusts who wish to develop these types of funds must either do so by using less than 20% of their incoming receipts, or by carrying over an excess into a future year, or by receiving funds through a bequest (considered exempt by CRA) or by having donors direct funds into a gift that must be retained by the organization for 10 years.

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 defence obligations, have a board commitment to raising these funds, and make demonstrable progress toward meeting the goals of the philanthropy and fundraising strategy. See also related practices 11A and 12A.

#### **6H. Sale or Transfer of Assets (Including Land and Conservation Agreements)**

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 Canadian Revenue Agency requirements and required Environment Canada authorizations, 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 risks involved with uses of land trust properties, reviewing provincial 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 provincial recreational use statutes, and the best lawyers cannot prevent lawsuits. Thus, insurance (commercial general liability, non-owned 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 the *Canadian Land Trust Standards and Practices* will impact their risk of litigation. Following the guidelines contained within the *Canadian Land Trust Standards and Practices* could help reduce the land trust's risk. If a land trust were 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 conservation agreement was, well-drafted and contained language related to estoppels and waiver of defences. If involved in litigation a land trust should always seek outside legal counsel to guide their actions.

## Standard 7: Volunteers, Staff and Consultants

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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 conservation agreement monitoring and management. A land trust that acquires, owns, or manages land or conservation agreements, 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 a sufficient number of people share the work. 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 agreements in particular, this places obligations on the land trust to develop conservation agreement 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 trusts needs change and as the land conservation field evolves.

## **7E. Board/Staff Lines of Authority**

Non-profit 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 non-profit 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 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. As part of their personnel policy, land trusts should also adopt policies to deal with discrimination and harassment for both staff and volunteers.

#### **7G. Compensation and Benefits**

Every non-profit 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. To understand what compensation norms are in the land trust's region of operation, it should periodically survey comparable non-profits regarding compensation and benefits. Land trusts should consider consulting with its auditor/external accountant regarding the taxation of compensation and benefits provided to any staff, reporting requirements, and any tax efficient ways of providing benefits.

#### **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 provincial labour 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 *Canadian Land Trust Standards and Practices* that are relevant to their work. This is particularly true of contractors assisting with charitable giving and fundraising, financial management, land transactions, or stewardship.

## **Part II: Land Transactions**

### **Standard 8: Evaluating and Selecting Conservation Projects**

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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 agreement 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 or cultural 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 screens 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. Land trusts should recognize that some opportunities will not fit within the land trust's objectives and criteria.

### **8C. Federal and Provincial Requirements**

As emphasized in Standard 10, land trusts have a responsibility to be compliant and to encourage donors to be compliant with the tax laws. In addition to the federal income tax benefits available under the Canadian Revenue Agency and Environment Canada, an increasing number of provinces are offering tax credits to land and conservation agreement donors. For projects where the land trust is asked to issue a tax receipt, the land trust ensures that these projects have met the Canadian Revenue Agency's criteria for gifts and/or Environment Canada's criteria for Ecological Gifts, any other federal or provincial requirements. Application for certification under the Ecological Gift Program is the responsibility of the donor, not the land trust. Because donors may apply for Ecological Gift certification up to three years after the donation, in circumstances where a project is not intended to be submitted under the Ecological Gifts program, the land trust and the donor

should sign an agreement acknowledging this. Where necessary, land trusts should consult with outside experts.

#### **8D. 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.

#### **8E. 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.

#### **8F. 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 lawyer drafting the conservation agreement. 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.

#### **8G. 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 agreement 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 important 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.

#### **8H. 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 agreement 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.

#### **8I. 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.

#### **8J. 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.

#### **8K. Non-conservation Lands**

This practice clarifies that non-conservation 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, 9K and 9L.

### **8L. Public Issues**

While direct land protection is the mainstay of a land trust's work, organizations often operate related programs (such as public policy, regulatory matters or education programs) or find themselves involved in related projects (such as responding to a specific development proposal). 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**

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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 a lawyer familiar with real estate and tax law and who understands the nuances and implications of the legal language. Land trusts regularly engaged in conservation agreement transactions may use a standard agreement template that is prepared by a lawyer. Staff or volunteers may do the drafting from the template, but a lawyer 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. A lawyer should also review the template on an annual basis. Land trusts using lawyers on their board to review their transactions must take special care to see that the lawyer has the appropriate experience with conservation agreements and that any private benefit is avoided. In many transactions, a land trust may also need professional advice and assistance with land planning, water rights, mineral rights, biological inventories, and environmental assessments for hazardous materials, land management, and other issues.

### **9B. Independent Legal, Financial and Tax 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 and financial representation. By advising landowners to obtain legal, financial and tax counsel, land trusts make them responsible for their own legal, financial and tax interests. By documenting that recommendation in writing, land trusts safeguard themselves from claims by landowners that the land trust gave them legal, financial or tax advice. Land trusts should never give assurances about a particular legal outcome or donation value. 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. Land trusts should consider including a clause in the conservation agreement that states the landowners have obtained independent legal, financial and tax advice.

### **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. Legislation on this topic varies between provinces, however, a land trust that owns or was a previous owner of a property contaminated by hazardous or toxic materials may 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 complete a Phase I Environmental Survey for every property it considers acquiring, whether by purchase or donation. Many land trusts also conduct preliminary evaluations for conservation agreement acquisitions, although the law's applicability to conservation agreement 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 lawyer.

### **9D. Determining Property Boundaries**

It is important for a land trust to know the boundaries of its fee holdings and conservation agreements. 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 agreement 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 conservation agreement and supporting documentation should provide enough detail so that these areas can be clearly identified on the ground by the landowner and conservation agreement monitors.

### **9E. Conservation Agreement Drafting**

This practice is integrally linked with 8F, project planning, and reflects the integration between conservation agreement planning, drafting and enforceability. The actual drafting of a conservation agreement 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. A conservation agreement's restrictions must be monitored and enforceable, and a clear statement of the conservation agreement purpose must support them. Future interpretation of a conservation agreement 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. This documentation will serve to provide clarity on the donor's wishes for the property and will allow the land trust to assess both their ability to manage the property in accordance with those wishes as well as serving to reduce misunderstandings on both sides. Memorandum 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 conservation agreement. With conservation agreement projects, much of this information is contained in the conservation agreement itself, but when it falls outside of the agreement, 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, baseline documents 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. As with financial records, land trusts should consider creating electronic backups of all transaction-related files for off-site storage. 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 conservation agreements, it needs to make sure there are no title problems that could undermine the important conservation values of the property or unacceptably restrict its use. The land trust should search the title of properties as early as possible in the negotiation process in order to prevent problems later on. Land trusts may wish to have landowners sign a letter of intent restricting them from placing new restrictions on title during the negotiation process. 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 conservation agreements 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. An encumbrance or interest on title, which is not postponed in the land trust's favour, may preclude certification of a donated property or conservation agreement as an Ecological Gift.

#### **9I. Registration**

Recording is the process of placing a document on file with a designated local public official for public notice. This is often required by provincial law to effectuate the transfer of

property. Land titles are registered in the appropriate manner as required provincially. A land trust should be familiar with the law in its province regarding recording. A land trust should also be aware if their province has a marketable title act that requires periodic re-recording of documents.

### **9J. Purchasing Land or Conservation Agreements**

A land trust must be able to justify the price paid for land and conservation agreements for several reasons: to show fiscal responsibility; to avoid 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 an expropriation action. The surest way to justify the acquisition price is to obtain a qualified independent appraisal from an appraiser certified by the Appraisal Institute of Canada. However, there are some limited circumstances when a short narrative 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 and as currently accepted by the Ecological Gifts Program); 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 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 split receipt transactions, a land trust should take care to be honest and forthright in its communications with the landowner.

### **9K. Selling Land or Conservation Agreements**

This practice specifies that when a land trust sells land it should first evaluate every property for its important conservation values, and design protections (such as conservation agreements) accordingly (see 8G). Once the protection strategy has been determined, the land trust should then obtain a qualified independent appraisal (or, if the property has extremely low economic value, a short narrative). 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. For Ecological Gifts, Environment Canada must authorize disposition in order for the recipient to avoid penalty provisions as per section 207.31 of the Income Tax Act. See also 6H.

### **9L. Transfers and Exchanges of Land**

Land trusts may "reacquire" land or a conservation agreement 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 important 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, a short narrative) to make sure that the transaction does not result in excess private benefit. For Ecological Gifts, Environment Canada must authorize disposition in order for the recipient to avoid penalty provisions as per section 207.31 of the Income Tax Act.

### **9M. Split Receipting**

Land trusts should consult the CRA's Income Tax Technical News No. 26 for information about split receipting. Under those guidelines, split receipting transactions must meet four criteria: the transfer of property must be voluntary and the gift must have an ascertainable value; the recipient must be qualified to receive the gift; any advantage received or obtained by the donor must be identified and its value ascertainable; and the donor's intent to enrich the recipient of the gift must be clear.

### **9N. Subsurface Rights**

Land trusts recognize that the subsurface rights of conservation properties may be owned and developed by outside parties. Land trusts make an effort to investigate the ownership of any relevant subsurface rights and where possible work to purchase those rights, negotiate with the owner of those rights or use other means to prevent a loss of conservation values from the property in question.

## **Standard 10: Tax Consequences**

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As the beneficiary of the tax receipt, the landowner, not the land trust, has the primary responsibility to comply with the specific requirements regarding federal or provincial tax deductions for the donation of land or conservation agreements. 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. The land trust's role is important in that deductions that are overturned by the Canadian Revenue Agency may make future potential donors wary of working with land trusts, 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. Independent Legal, Financial and Tax Advice**

Even in instances where land trust staff or volunteers have relevant legal or tax knowledge, land trust representatives should advise landowners to obtain independent tax and legal advice to avoid misrepresentation and conflict of interest. Land trust staff should discuss the possible implications of a landowner's donation that may help the landowner in those discussions with tax and legal professionals. Land trusts should be careful to notify landowners about potential tax consequences, without offering specific tax or legal advice. Given the specialization of expertise required, and if requested by the landowner, land trusts may provide a list of tax and legal professionals who have expertise that can assist the landowner. However, land trusts should avoid recommending individual professionals.

## **10B. Appraisals**

The Canadian Revenue Agency 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 \$1,000, which includes most donations of land or conservation agreements 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. Gifts of property may also be subject to capital gains. Land trusts should advise landowners about the potential for capital gains (see 10A).

Appraisals of land, especially land with subdivision potential, are substantially different from typical residential property appraisals. Appraisals of conservation agreements are even more highly specialized. The land trust should advise the landowner (preferably in writing) to use a provincially licensed or provincially certified appraiser who is certified by the Appraisal Institute of Canada and who follows the Canadian Uniform Standards of Professional Appraisal Practice. Land trusts may also wish to request a statement of qualifications from appraisers that they are not familiar with.

Appraisals should be commissioned by the land trust but may be paid for by either the land trust or the landowner or by both jointly. In instances where the landowner is responsible for the appraisal, land trusts should have a practice of requesting a copy of the landowner's appraisal. Where an existing appraisal is used, it should be dated within a year of the donation, or the land trust should request an update from the appraiser.

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 Environment Canada's or the Canadian Revenue Agency's requirements and that the appraised value does not appear unreasonably high and thus likely to attract a CRA challenge or cause difficulties in the certification of the donation's value by Environment Canada. 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. Ecological Gifts Program**

The Ecological Gifts Program can provide landowners with additional tax benefits that might not be achieved with a standard donation. However, this program may not benefit every landowner. Land trusts should be familiar with the tax implications of the Ecological Gifts Program as well as provincial and federal requirements for donations under the program. Recipients that dispose of, or change the use of, lands or conservation agreements are subject to penalties under the *Income Tax Act* (ITA S.207.31) unless they receive written authorization to dispose of or change use of the lands from Environment Canada.

## **10D. No Assurances on Deductibility or Tax Benefits**

Landowners frequently want assurances that fee simple or conservation agreement donations will be considered deductible by the CRA and, especially early in a transaction, may want to know how large a tax benefit is likely as a result of their donation. Land trusts should be

aware that not all donations may be considered gifts by CRA (donations required as part of development approvals, for example) and should seek advice accordingly. 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. Due to their responsibilities for issuing charitable tax receipts, land trusts will also want to be confident about the value of gifts received and should access the necessary financial expertise to make these determinations.

## Standard 11: Conservation Agreement Stewardship

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A land trust that accepts and holds conservation agreements 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 conservation agreement program to be invalidated, may erode public confidence in conservation agreements, and ultimately risk the protection of the land. Not all land trusts have the capacity to hold conservation agreements 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 important conservation values protected by conservation agreements are sustained over time.

### **11A. Funding Conservation Agreement Stewardship**

This practice emphasizes the need to review immediate and long-term costs of conservation agreement 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 conservation agreement. The land trust should then collect these fees or raise the necessary funds for each conservation agreement, 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.

Like all Canadian charities, land trusts must spend 80% of their charitable receipts on charitable activities in each year. Charities that exceed the 80% mark in their expenditures may carry the excess forward up to five years or back one year to offset a shortfall. Fundraising expenses are not included as charitable activities (see 5A). Funds applied to endowment funds or other dedicated funds that are established to earn interest over the long term are not included as charitable activities by the Canadian Revenue Agency. Therefore, land trusts who wish to develop these types of funds must either do so by using less than 20% of their incoming receipts, or by carrying over an excess into a future year, or by receiving funds through a bequest (considered exempt by CRA) or by having donors direct funds into a

gift that must be retained by the organization for 10 years.

### **11B. Baseline Documentation Report**

Baseline documentation reports are critical for establishing the condition of the property at the time the conservation agreement is transferred, and are the basis of future monitoring and enforcement. In addition, for conservation agreements for which a federal tax deduction is granted under the Ecological Gifts Program, the compilations of some baseline documentation are required at the time of closing. 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 important conservation values of the property, an interim baseline report with an acknowledgement that the interim report will be replaced by a full baseline documentation report can be signed by both parties at closing and recorded/registered where possible. The interim report can include all of the data available by the date of closing and should indicate when the final report will be completed. The use of interim reports and acknowledgements of full reports with the land trust and landowner's signature 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 conservation agreements without a baseline documentation report. In these cases, the land trust should have a plan for completing documentation for all conservation agreements. Where possible, the land trust may wish to involve the landowner in the collection of baseline information as a means of establishing a working relationship between the two parties. Both the landowner and the land trust should have a copy of the baseline documentation report with the land trust having two copies; one for safekeeping and the other for monitors to use in the field.

### **11C. Conservation Agreement Monitoring**

There are several reasons why a land trust should monitor its conservation agreements annually. In exceptional circumstances, due to the remoteness of the property, monitoring may not be carried out on an annual basis, but a schedule for monitoring should still be developed to insure the conservation values of the property will be safeguarded. Monitoring helps a land trust develop a relationship with the landowner, helps discover changes in land ownership, enables it to see if the conservation agreement 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 conservation agreement 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 conservation agreement. 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 conservation agreements 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. Conservation agreements held under the Ecological Gifts Program must be monitored to ensure that the land use of the property is consistent with the original donation. Monitoring documentation for Ecological Gifts should be made available to Environment Canada upon request. If conservation agreements are monitored by volunteers, they should be trained, tailoring the monitoring techniques and requirements to the specific property. Depending on the complexity of the property and the conservation agreement,

volunteers with certain technical backgrounds may be required. Good record keeping is essential to monitoring. Staff and/or volunteers should be provided with standard monitoring forms. Where violations occur, enforcement may be necessary and therefore detailed, credible records will be required.

#### **11D. Landowner Relationships**

Landowner contact has always been a part of the *Canadian 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 agreement conflicts. This practice is expanded to address the need to build relationships with existing and new owners of lands with conservation agreements and the managers of such land. Maintaining contact with landowners, who have granted you conservation agreements, is as important as or more important than establishing relationships with new landowners. 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 conservation agreements. These staff or volunteers should also be trained on how to work with landowners.

Land trusts should have processes and practices in place that address changes in ownership. Conservation agreements should require the landowner to notify the land trust of an impending sale or transfer of property. Land trusts should also ensure that they educate new landowners of the terms of the conservation agreement. New owners should also be provided with a copy of the conservation agreement, baseline documentation report and all monitoring reports.

#### **11E. Enforcement of Conservation Agreements**

When a land trust accepts a conservation agreement, it also accepts the responsibility to enforce that agreement 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, lawyer involvement, and steps to take in the event a potential violation is discovered. This practice calls for all conservation agreement holding land trusts to develop such a policy or procedure. These policies and procedures should ensure that all discussions and actions taken are recorded and that all copies of correspondence and documents are retained and kept in a safe location. 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 conservation agreement violation. Landowners and conservation organizations should consider what types of dispute resolutions they want included in the conservation agreement. It should be noted, however, that a strong landowner contact and relations process is the best practice for avoiding breaches of the conservation agreement.

#### **11F. Reserved and Permitted Rights and Approvals**

Many conservation agreements 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 conservation agreement, 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 conservation agreement, 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 conservation agreement. 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 conservation agreements. 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 conservation agreement and stewardship funds available to transfer to a new conservation agreement 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 conservation agreement. Land trusts should also transfer any endowment funds that are specific to the property in question to the new conservation agreement holder. Environment Canada must authorize the transfer of any Ecological Gift properties, including conservation agreements, or land trusts may face penalties under Section 207.31 of the Income Tax Act.

### **11I. Amendments**

While conservation agreement 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 a conservation agreement, recognize a boundary adjustment 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 benefit, clarify board and staff roles, and ensure that all amendments result in either a positive, or not less than neutral conservation outcome. Amendment of Ecological Gift conservation agreements may be subject to Section 207.31 of the Income Tax Act. Many other standards are involved in reviewing amendment requests, including 1, 4, 6, 8, and 9, and practice 3F.

### **11J. Expropriation**

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

### **11K. Extinguishment**

In rare instances, a conservation agreement may be extinguished (for instance, when a conservation agreement holder merges fee and conservation agreement interests). In some provinces, certain forms of extinguishment must be court-ordered or court-approved.

Extinguishments may occur where, changes to the surrounding landscape, have negated the ecological value of the land, which the conservation agreement protects, thus making the conservation agreement obsolete. It is a good practice to address these in the conservation agreement itself. 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 a conservation agreement 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 agreement tool itself. Extinguishment of Ecological Gift conservation agreement may be subject to Section 207.31 of the Income Tax Act.

#### **11L. Plans and Agreements.**

If management prescriptions are recommended for lands covered by a conservation agreement, they should be accompanied by a management plan/agreement for the property. Some cases, management plans/agreements are included in the conservation agreement and form part of the documentation that is registered against title to the property. Management plans/agreements should identify the management needs, who will undertake the management activities and who will secure the resources for carrying out the long-term management of the land is preferable if this is done at the same time the conservation agreement is executed and registered.

## **Standard 12: Land Stewardship**

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Many land trusts hold land other than through conservation agreement 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 immediately and over time. The land trust should set priorities, ensuring first and foremost that the values for which the property was acquired are at least maintained or strengthened. The land trust should then create a budget and 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. Special funds such as legal defense funds may be set up in the event of challenges against conservation agreements.

Like all Canadian charities, land trusts must spend 80% of their charitable receipts on charitable activities in each year. Charities that exceed the 80% mark in their expenditures may carry the excess forward up to five years or back one year to offset a shortfall. Fundraising expenses are not included as charitable activities (see 5A). Funds applied to endowment funds or other dedicated funds that are established to earn interest over the long term are not included as charitable activities by the Canadian Revenue Agency. Therefore, land trusts who wish to develop these types of funds must either do so by using less than 20% of their incoming receipts, or by carrying over an excess into a future year, or by receiving funds through a bequest (considered exempt by CRA) or by having donors direct funds into a gift that must be retained by the organization for 10 years.

### **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. Principles should be clearly stated in all management plans and all public relations material.

### **12C. Land Management**

Land trusts may engage in resource management activities on lands they hold, 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 plans should state the conservation goals for the property and clearly state the uses and activities that are allowed on the property. They should also state what management prescriptions are required to either maintain or enhance the values for which the property is being protected. 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 unauthorized uses or encroachments are not detrimentally affecting the property and 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 or conservation values altogether. Such problems usually can be prevented if the land trust marks and maintains its boundaries and regularly monitors its properties. Land donated under the Ecological Gifts Program must be monitored to ensure that the land use of the property is consistent with the original donation. Monitoring documentation for Ecological Gifts should be made available to Environment Canada upon request. (See 11.C)

Monitoring may also be done for other reasons including; tracking the changes on a property, tracking the health of a particular species or its habitat, or tracking the response to a



management measure. A land trust that holds property will want to ensure that the values for which the property was acquired are maintained and that any impacts to the property are not negatively affecting those values. It also has the responsibility to ensure that the public assumes no negative experiences.

### **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. This practice can be accomplished by regularly training staff and volunteers on administration requirements and processes. The practice gives a general idea of the types of records that must be maintained for properties held by the land trust. 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. Land trusts should also transfer any endowment funds that are specific to the property question to the new conservation owner. The transfer of any Ecological Gift properties must be authorized by Environment Canada or land trusts may face penalties under Section 207.31 of the Income Tax Act.

### **12H. Non-permanent Holdings**

Many land trusts accept non-conservation land with the express intention of reselling or transferring the property. This ability to resell or transfer property should be explicitly identified within the land trust's land securement policies. Before a property is sold and while 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. Neighbours 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 non-permanent holdings.

### **12I. Expropriation**

Conservation lands may be subject to acts of expropriation. In these instances, a land trust should be prepared for the expropriation action, including having an understanding of the value of the interests being condemned. A land trust should evaluate the impact of the

expropriation 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. Donors should be made aware that expropriation is an action, which is beyond the land trust's ability to control.

# Sample Board Resolution

The Canadian Land Trust Alliance requires that member land trusts accept the *Canadian 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 Canadian Land Trust Alliance encourages all land trusts to go beyond accepting the guidelines by implementing the *Canadian 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 accept the statement of the *Canadian 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 *Canadian Land Trust Standards and Practices* it should send a copy to the appropriate land trust alliance.

## Addendum - British Columbia

### **9O. Protected Lands Catalogue**

The BC Lands in Trust Registry was originally initiated to track conservation covenants in British Columbia. Since then, the Land Trust Alliance of BC determined that a full inventory of conservation lands should also include sites also owned by land trusts as fee simple lands. The BC Lands in Trust Registry, with its database inventory program (The Protected Lands Catalogue), offers a central location for this inventory offering detailed information about protected areas on private lands, their ecosystems, habitats, species, cultural or aesthetic features and their land uses. Given recent changes to privacy legislation, land trusts should take care to remove all personal information that is submitted to the BC Lands in Trust Registry.

### **11L Joint Covenants**

Land trusts in BC are advised to hold covenants jointly with a second land trust as a means of ensuring the longevity of the covenant should one land trust fail. This is especially important for smaller land trusts that may not have the resources to sustain themselves over the long term.

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

2005 Editions

2001 Edition

## **Standard 1: Mission**

- 1A Mission
- 1B Planning and Evaluation
- 1C Outreach
- 1D Ethics

## **Standard 1: Purpose and Goals**

- 1A Clear statement of Purpose and Goals
- 1B Consistency with Purpose and Goals
- New
- New

## **Standard 2: Compliance with Laws**

- 2A Compliance with Laws
- 2B Nonprofit Incorporation and Bylaws
- 2C Tax Exemption
- 2D Records Policy
- 2E Public Policy
- 2F Current Information .....

## **Standard 4: Basic Legal Requirements**

- 4D Reporting Requirements
- 4A Nonprofit Incorporation
- 4B, 4C Tax Exemption / Retaining Charitable Status
- New
- New
- New for Canada

## **Standard 3: Board Accountability**

- 3A Board Responsibility
- 3B Board Composition
- 3C Board Governance
- 3D Preventing Minority Rule
- 3E Delegation of Decision-Making Authority
- 3F Board Approval of Land Transactions

## **Standard 2, 13: Board Accountability / Board Approval of Transactions**

- 2A Basic Legal Standards of Behaviour
- 3C Board Size and Diversity
- 2B, 2C Informed Participation / Board Meetings
- 2D Preventing Minority Rule
- 2E Delegation of Decision-Making Authority
- 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**

- 4A Dealing with Conflicts of Interest
- 4B Board Compensation
- 4C Transactions with Insiders

## **Standard 3: Conflict of Interest**

- 3A Dealing with Conflicts of Interest
- 3B Board Compensation
- New

## **Standard 5: Philanthropy and Fundraising**

- 5A Legal and Ethical Practices
- 5B Accountability to Donors
- 5C Accurate Representations
- 5D Marketing Agreements

## **Standard 5: Fundraising**

- 5A, 5E Charitable Solicitation Laws / Reasonable Fundraising Costs
- 5B Donor Notification of Deductibility
- 5C, 5D Accurate Representations / Use of Funds as Specified
- New

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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
<b>Standard 7: Volunteers, Staff and Consultants.....</b>	<b>Standard 7: Staff, Consultants, and Volunteers</b>
7A Capacity .....	7A, 7E Knowledgeable, Dependable Assistance / Evaluating the Need for Staff
7B Volunteers.....	7C Managing Volunteers
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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
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8C Federal and provincial Requirements .....	New
8D Site Inspection .....	10A Doing a Basic Site Inspection
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8G Evaluating the Best Conservation Tool .....	9A, 9B Selecting the Best Conservation Tool / Informing the Landowner of Conservation Options
8H Evaluating Partnerships .....	New
8I Partnership Documentation.....	New
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**Standard 9: Ensuring Sound**

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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/covenant/servitude 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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**Standard 11: Conservation Easement/ Covenant/Servitude Stewardship.....** **Standard 14: Conservation Easement/ Covenant/Servitude Stewardship**

11A Funding Easement/Covenant/ Servitude Stewardship .....	14A Easement/Covenant/Servitude Stewardship Funding
11B Baseline Documentation Report .....	New
11C Easement/Covenant/Servitude Monitoring .....	14B Easement/Covenant/Servitude Monitoring
11D Landowner Relationships .....	14C Landowner Contact
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11G Contingency Plans/Backups .....	14E Contingency Plans/Back-ups
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11I Amendments .....	New
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11K Extinguishment.....New

**Standard 12: Land Stewardship .....Standard 15: Land Stewardship**

12A Funding Land Stewardship.....15A Financing Land Stewardship

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12E Land Stewardship Administration .....15D Land Stewardship Administration

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12H Non-permanent Holdings ..... New

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