



**FOREVER**  
MARYLAND

*Enhancing and Advancing  
Land Conservation*



# Sample Policies and Best Practices for Land Trust Boards



## ***2022 Building Better Land Trust Boards Series***

# **A Handbook of Sample Policies and Best Practices for Local Land Trusts**

### **Introduction**

Forever Maryland is proud to present *A Handbook of Sample Policies and Best Practices for Local Land Trusts* as part of the *Building Better Land Trust Boards* program. This handbook, which complements the five-part series of virtual workshops held for Maryland land trusts between January and May 2022, consists of sample policies and best practices that local land trusts in Maryland can use to (1) develop and maintain board manuals for orienting new board members, as well as keeping current board members informed, and (2) develop and refine their own internal land trust operational policies and procedures according to best practices. The program was funded by a grant from the Rural Maryland Council – MAERDAF Program.

Like the virtual workshop series, this compilation of materials is intended to address the basic tenets of running an effective and ethical land trust. This handbook can, however, serve as an introductory reference for a new (or relatively new) land trust board member who is interested in understanding the framework for land trust operations, as well as a tool for land trusts seeking to develop additional policies and procedures to guide their operations.

Every land trust should aspire to operate in a professional manner, consistent with the Land Trust Alliance's *Land Trust Standards and Practices*. The samples of policies and best practices provided in this handbook are intended to help land trusts achieve this goal.

**Please keep in mind that Forever Maryland, its employees, and its consultants are not CPAs or lawyers, and are not offering financial or legal advice. Please contact your financial advisor or legal counsel for advice on these matters.**



## FOREVER MARYLAND

*Enhancing and Advancing Land Conservation*

### **About Forever Maryland:**

Forever Maryland promotes and advances land conservation statewide through education, advocacy, and outreach. We function as the Maryland land trust association and work to ensure land trusts have the tools, expertise and resources to be strong, effective organizations.



*Forever Maryland's Board and staff at the  
2022 Maryland Land Conservation Conference*

We advocate for public conservation policies and we work to ensure Maryland's communities understand the benefits of supporting their local land trusts.

### **Educational:**

Forever Maryland hosts the annual two-day Maryland Land Conservation Conference, webinars, and workshops on timely topics with local, state, and national leaders.

### **Advocacy:**

We advocate at the federal, state, and local government level for the conservation of our state's land, water, wildlife, and natural resources. From protecting conservation funds and being the fiscal sponsor for *Partners for Open Space*, to supporting local land trusts, we seek to be a policy resource to conservation leaders across the state.

### **Outreach:**

We support and convene Maryland Regional Conservation Partnerships, manage the *Keep Maryland Beautiful grants*, participate in the Land Trust Advisory Council and offers innovative tools and resources for land trusts, landowners and land conservationists.

We would like to take a moment to thank the Rural Maryland Council and the Maryland Agriculture, Education, and Rural Development Assistance Fund for the grant to support the *Building Better Boards* series and to develop this handbook. Additionally, we'd like to thank Don Owen, Lands Trails and Parks LLC, for the added support in making this learning series and document come to life.

Forever Maryland Inc. is a 501(c)(3) nonprofit organization. Your donation is tax deductible to the fullest extent of the law.

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## Guide To Using This Handbook

The sample policies and best practice examples provided in this handbook follow the format of the virtual workshops, which in turn align with the Land Trust Alliance’s *Land Trust Standards and Practices*. Each policy or best practice is identified by a reference to a specific “element” in the *Land Trust Standards and Practices*, such as 3.B.1.

These samples have been provided by the Land Trust Alliance, local and state land trusts in Maryland, and land trusts in other states. Most represent examples of policies and best practices adopted by land trusts that have either achieved accreditation or are currently seeking accreditation. A land trust board manual can be an invaluable resource.

A board manual serves two purposes: (1) to orient and provide new board members with an introduction to board service, and (2) to provide current board members with a “one-stop shop” for key information about their roles and responsibilities.

At a minimum, a land trust board manual should contain the following board policies and information:

<b>Board Manual/Common Board Policies</b>	
<u>Common Policies and Procedures</u>	<u>Other Information</u>
<b>Code of Ethics</b>	Board and Staff Contacts
<b>Board Member Responsibilities</b>	Nominating Committee
<b>Bylaws</b>	Other Committees
<b>Conflict of Interest Policy and Disclosure</b>	Strategic Plan
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<b>Easement Enforcement Policy</b>	Map of Properties
<b>Amendment Policy</b>	Organization History

## Building Better Land Trust Boards

The “Common Policies and Procedures” listed in **boldface** type in the table above can be used to create a basic policy structure for orienting new board members. (The items listed under “Other Information” are primarily logistical documents that can help facilitate day-to-day board coordination and operations.) To create your own “board book,” begin by collecting policies, procedures, and other information from your land trust’s files, using the framework above as a template.

If you find that a policy, procedure, or other document is missing, outdated, or otherwise insufficient, you can start to develop or refine it by using the corresponding sample document provided in this handbook. Then, conduct research as necessary to adapt and revise it to suit your land trust’s needs, and work within your committee and board structure to review, revise as necessary, and approve the policy.

This handbook also contains sample policies and procedures for many other facets of land trust operations. Should you wish to develop a policy or procedure on any of the topics provided in the handbook, follow the same procedure: use the corresponding sample document provided in this handbook as a starting point, conduct research as necessary to adapt and revise it to suit your land trust’s needs, and work within your committee and board structure to review, revise as necessary, and approve the policy.

**Important Note:** A land trust seeking to create a policy or internal procedure can use one of the sample documents provided herein to begin creating their own policy or procedure. However, since each land trust has a different setting, mission, purpose, geographical footprint, and organizational structure, a land trust should use these samples only as a starting point, and then adapt and revise them as necessary to reflect their specific needs and context.

The materials provided in this handbook are organized into five major sections, as follows:

***Workshop #1: How to Build a Board of Directors – Recruiting, Vetting, Nominating, and Orienting New Board Members.*** This workshop, held on January 24, 2022, was specifically designed to help land trust leaders and nominating committee members effectively and efficiently seek out and evaluate potential new Board members. Recorded Session available here: <https://youtu.be/ZpLLrXyg824>

***Workshop #2: Governance – How to Run an Effective Nonprofit Organization.*** This workshop, held on February 28, 2022, was intended to provide land trust board members with a refresher and/or introduction to the responsibilities of being an effective member of the Board of Directors of a land trust. This workshop provided an overview of Land Trust Standards 1, 2, 3, and 4, and a small portion of Standard 7. Recorded Session available here: <https://youtu.be/Tx2AKEkBSzY>

***Workshop #3: Finance and Fundraising – How to Raise It, Spend It, and Keep Track of It.*** This workshop, held on March 14, 2022, was designed to provide new and less-involved land trust board members with an introduction to the fiduciary responsibilities of a nonprofit organization’s Board of Directors. This workshop provided an overview of Land Trust Standards 5 and 6. Recorded Session available here: [https://youtu.be/9B\\_LcmB\\_8Ko](https://youtu.be/9B_LcmB_8Ko)

### ***Workshop #4: Transactions – How to Save Land***

This workshop, held on April 25, 2022, was designed to provide new and less-involved land trust board members with an overview of land conservation – easements, fee acquisitions, and everything in between. This workshop provided an overview of Land Trust Standards 8, 9, and 10. Recorded Session available here: <https://youtu.be/XQJAgMJBYPs>

***Workshop #5: Stewardship – How to Conserve Land in Perpetuity*** This workshop, held on May 16, 2022, provided an introduction to the most important job of all – stewarding and monitoring easements and fee properties forever. This workshop provided an overview of Land Trust Standards 11 and 12 Recorded Session available here: <https://youtu.be/pzfBFYEyv0g>

## **Building Better Land Trust Boards**

### **Additional Resources and Reference Materials**

Many documents have not been included in this compilation due to their size or scope. Links to resources and reference materials for further reading are provided at the end of each section. In addition, you may wish to consult the following excellent resources for further information:

#### **Land Trust Standards and Practices (2017)**

The Land Trust Alliance's *Land Trust Standards and Practices* provides the "gold standard" of ethical and technical guidelines for responsible operation of a land trust.

<https://www.landtrustalliance.org/publication/land-trust-standards-and-practices-revised-2017>

#### **Land Trust Alliance Learning Center**

The Land Trust Alliance's *Learning Center* contains a wealth of information about fundraising and finance, as well as hundreds of other topics of interest to land trusts and conservation organizations. The *Learning Center* can be accessed at:

<https://tlc.lta.org/topclass/topclass.do?expand-esdUserWelcome>

(user name and password required for unlimited access)

#### **Land Trust Accreditation Commission**

The Land Trust Accreditation Commission verifies a land trust's compliance with *Land Trust Standards and Practices* by evaluating a subset of critically important land trust practices, which are called "indicator elements." The Accreditation Commission's *Requirements Manual* can be accessed at:

<https://www.landtrustaccreditation.org/help-and-resources/requirements-manual>

#### **Forever Maryland Library ([www.forevermaryland.org](http://www.forevermaryland.org))**

Additional reference materials, recorded copies of the *Building Better Boards* virtual workshops, and an electronic copy of this document and the sample policies and best practices documents contained herein can be found here:

<https://forevermaryland.org/2022-workshop-library>

#### **Maryland Environmental Trust Land Trust Toolbox**

The Maryland Environmental Trust maintains a *Land Trust Toolbox* to support local land trusts. The *Toolbox* can be accessed at the following link:

<https://dnr.maryland.gov/met/Pages/toolbox-products-conservation-tools.aspx>



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***Workshop #1: How to Build a Board of Directors – Recruiting, Vetting, Nominating, and Orienting New Board Members.***

This workshop, held on January 24, 2022, was specifically designed to help land trust leaders and nominating committee members effectively and efficiently seek out and evaluate potential new Board members.

Recorded Session available here: <https://youtu.be/ZpLLrXyg824>



**SAMPLE  
LAND TRUST  
Responsibilities of Board Members and Affirmation of Service (3.A.1. and 3.C.1.)**

**Responsibilities of Board Members**

- 1) Be committed to the LAND TRUST mission. Make decisions based on the organization's values and vision.
- 2) Establish policies for how the LAND TRUST will do business. Mutually agree on board and staff roles and responsibilities and monitor to ensure that these policies are followed.
- 3) Ensure that adequate resources – human, financial, and physical are available to carry out the LAND TRUST goals and objectives.
- 4) Nurture an atmosphere of trust within the LAND TRUST Board as well as recruit and orient new board members.
- 5) Organize the LAND TRUST board to operate efficiently and with the highest standards of honesty and good faith. Have the will to act.
- 6) Assess your own performance as a LAND TRUST Board Member and act to improve areas that need improvement.
- 7) Establish and maintain a long-range plan for the LAND TRUST.
- 8) Be willing and available to represent the LAND TRUST at relevant and strategically selected meetings and social functions.

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**LAND TRUST Board Member Affirmation of Service**

- 1) I am fully supportive of our mission, purpose, goals, and leadership.
- 2) I understand that the Board requires a commitment of my time, including preparation and meetings. I am able to give that time during the 12 months ahead; and I expect to attend board meetings and committee meetings unless I give the respective chair advanced notice of my need to be absent for good cause.
- 3) I intend to contribute financially to the work of the LAND TRUST during the year and I will help "open doors" to those who may be interested in contributing to our work.
- 4) If anything should occur during the year that would not allow me to be a positive contributor to our board, I will take the initiative to talk to the officers about a voluntary resignation so that another may serve who is able to be fully involved.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**BEST PRACTICES  
LAND TRUST  
Diversity, Equity, Inclusion, and Justice Resources (3.B.2.)**

**Recommended Websites**

DEIJ in Action: A Diversity, Equity, Inclusion, and Justice Guide for the Chesapeake Bay Watershed  
[https://cbtrust.org/wp-content/uploads/CB-Watershed-DEIJ-Guide\\_May-2019.pdf](https://cbtrust.org/wp-content/uploads/CB-Watershed-DEIJ-Guide_May-2019.pdf)

Recruiting for Board Diversity — Without Disrespecting People of Color  
<https://blog.boardsource.org/blog/recruiting-for-board-diversity-with-respect>

The National Black MBA Association  
<https://nbmbaa.org>

Associated Black Charities  
<https://www.abc-md.org/>

The Hispanic National Bar Association  
<https://hnba.com/>

The National Black Chamber of Commerce  
<https://www.nationalbcc.org/>

Latino Outdoors  
<https://latinooutdoors.org/>

Outdoor Afro ([www.outdoorafro.org](http://www.outdoorafro.org))  
<https://www.blackcareernetwork.com/>  
<https://blog.boardsource.org/blog/reflections-on-trust-and-its-relationship-to-racial-inequity-on-nonprofit-boards>

Diversity on Nonprofit Boards  
<https://www.councilofnonprofits.org/tools-resources/diversity-nonprofit-boards>

Nonprofit Quarterly  
<https://nonprofitquarterly.org/real-strategies-board-diversity/>

Interaction Institute for Social Change  
<https://interactioninstitute.org>

Center for Diversity & the Environment  
<https://www.cdeinspires.org/>

Groundwork USA  
<https://groundworkusa.org/>

People, Parks, and Power  
<https://preventioninstitute.org/projects/people-parks-and-power>

Project for Public Spaces *A Playbook for Inclusive Placemaking: Community Process* (May 31, 2019).  
Retrieved from <https://www.pps.org/article/a-playbook-for-inclusive-placemaking-community-process>

**Suggested Reading**

- Brown, L. (2021) *The Black Butterfly*. Johns Hopkins University Press Books. Publication January 26, 2021- preorder available! <https://jhupbooks.press.jhu.edu/title/black-butterfly>
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## Building Better Land Trust Boards

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  - Penniman, L & Washington, K. (2018). Farming While Black. Chelsea Green Publishing Company.
  - Rankine, C. (2020). Just Us: An American Conversation. Greywolf.
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**SAMPLE  
LAND TRUST  
Nominating Committee Policy, Procedure, and Guidelines (3.B.3.)**

**Recruitment and Nominating Guidelines**

**The Committee receives suggestions from others plus actively seeks out candidates**

- The committee maintains an accurate roster of the Board, which includes tracking terms of office, when terms are expiring, and when seats need to be filled.
- The committee assesses the current makeup of the Board
  - Using the grid system, lists those qualifications desired on the LAND TRUST Board
  - Reviews the current Board and determines what qualifications are being met and what are not
- Maintains a confidential running list of candidates
  - Periodically asks other Board members for recommendations to fill needs (When initially determining interest in serving on the Board, the Committee and other Board Members should not leave the impression that the candidate will be elected immediately to the Board, but that there is a process involved and that there are not necessarily any openings at the time. The initial contact is to determine a possible willingness to serve). Before contacting prospective candidates, the Committee should inform the Board of current objectives and skills currently needed from new Board Members.
  - Continually adds to the list of candidates, noting the source of the candidate (who recommended)
    - Does not delete from the list but rather tracks for historical record
    - Indicates skill sets, if known, by the person making the recommendation

**The Committee seeks out information on each candidate to determine compatibility and commitment to conservation.**

- Determines who knows the candidate and gets their opinion(s). This includes informing Board members; Seeks out and checks references
- Asks the staff to have a research report to determine past philanthropic interests and capacity

**Committee member(s) interview the candidate**

- If upon meeting with a candidate it is learned that they are interested in the LAND TRUST and if their interest matches the LAND TRUST's needs, inform them of the committee and Board's process.
- When meeting with candidates, Committee members should be informed of Board needs, Board committee needs, and project needs so that they can discuss these with the candidate. In so doing, they may learn what the candidate is and is not interested in doing during their volunteer time. For example: *The Board is interested in you because we know you own a website design firm and we really need help with the redesign of our website.*
- Committee members should make sure that they discuss the financial responsibility of serving on the Board. Suggested language, for example: *A current priority for the organization is building capacity, so that we can do more conservation. With this in mind, the Board has made fundraising a priority. It is important that we have 100% Board participation in giving, and as a Board member we ask you to make a gift that you are proud of. Each of us has to define for ourselves "what makes us proud".*

**Committee makes recommendation(s) to the full Board**

- If there are no concerns, Board members are invited to meet the candidate

**Candidate is invited to meet Board members**

- Committee will set up one or two meet and greets for any available Board members

**Committee makes formal recommendation to the Board and asks for a vote**

- Before a vote, every Board member will have been given an opportunity to meet the prospective member and every Board member will have been given a resume and results of Committee's findings. 100% consensus desired and approval by 2/3 of the Board required for election onto Board.

**Building Better Land Trust Boards**

**SAMPLE  
LAND TRUST  
Recruiting, Orienting, and Training  
New Board Members Guidance (3.B.3.)**

**Recruiting**

The LAND TRUST will identify the qualities needed in new board members using a profile grid that defines the skills, connections, and demographics it would like represented on the board.

When LAND TRUST applies these criteria to its existing board members, gaps will most likely emerge that can serve as profile priorities for board member recruitment.

**Developing a Profile Grid (Courtesy of the Land Trust Alliance)**

<b>Okanogan Valley Land Council Board Profile Grid</b>								
	José	Cynthia	Sam	Walter	Lydia	Dawn	Steven	Lamar
<b>Skills and Knowledge</b>								
Accounting/Financial Mgt.	x						x	
Personnel Management			x	x				
Fundraising								
Strategic Planning		x		x				x
Nonprofit Management		x		x				
Leadership			x					
Public Relations/Publications		x	x					
Meeting Skills			x	x				
Legal Issues	x							x
Education						x		
Biology/Site Ecology						x		
Grassroots Organizing		x						
Real Estate	x							x
<b>Contacts and Influence</b>								
Business Community	x				x			
Media			x					
Government Agencies								
Ethnic/Minority Groups	x					x		x
Conservation Organizations		x			x			
Native American Tribes							x	
<b>Demographics</b>								
Female		x			x	x		
Under 45 years	x	x	x		x	x	x	x
Ethnic/Cultural Minority			x			x		x
Rural Oregon		x			x		x	
Low income	x			x	x			

The LAND TRUST will highlight the items on the completed grid that match our criteria for board diversity. If necessary, we will modify the characteristics to meet LAND TRUST'S present needs and eliminate those that don't fit. In addition, board member characteristics can be modified to address specific needs at any given time.

When seeking new board members, we will fill in the profile grid with the names of current board members and evaluate the criteria and expertise of these board members.

Emphasizing the missing desired characteristics LAND TRUST will identify the profile of potential board members that will best complement existing board member skills, connections and backgrounds.

**Board Profile Grid**

<b>Skills and Knowledge</b>									
<b>Contacts and Influence</b>									
<b>Demographics</b>									

## Building Better Land Trust Boards

### Orientation

Recruiting is the first step in the board development process, but orienting prospective and new board members is an essential second step. Orientation is an investment made by the LAND TRUST to clarify expectations up front, and provide the information that makes a board member successful and engaged.

If a board member does not engage with the organization quickly, we lose momentum, unity and the potential early contributions that person could make. The sooner a new board member feels comfortable and connected, the sooner the organization benefits from that person's expertise on the board.

The LAND TRUST will help board prospects understand the expectations of board service early in the recruiting process. The LAND TRUST will provide each board prospect with a recruiting packet of basic information (job description, board list, strategic plan, budget, board member agreement, etc.) to supply the core information needed to understand the nature of the organization and the role played by the board. This information can help prospects decide if they feel that they can make a positive contribution given the LAND TRUST's mission.

The LAND TRUST's expectations of board members are critical and will be detailed early in the recruitment process. These expectations define the basic requirements of board service, including general roles and specific demands.

After a person agrees to serve on the board, the LAND TRUST will invest more time in the new board member so that he or she understands the details of how the organization operates and executes our mission. The LAND TRUST will give each new board member a more extensive orientation packet with detailed information about programs, personnel, plans and policies.

A board member agreement will more specifically define the board member's individual interests and what he or she hopes to get back from his or her board service. This agreement, coupled with the job description, is significantly more helpful in clarifying expectations than a job description alone.

The orientation process will also include a tour and discussion of the Natural Area, protected under easement by the LAND TRUST, to highlight our successes, opportunities and challenges faced.

### Training

All LAND TRUST board members can benefit from ongoing training and development. Training investments—including presentations, tours and workshops—pay for themselves many times over in greater service, greater commitment and more generous support.

The LAND TRUST has an overall strategy for board training that includes workshop opportunities outside of the organization (such as regional or state land trust conferences or the National Land Conservation Conference: Rally), inside the organization (such as a training for all board members on how to read financial statements), and individual training and development opportunities for single board members (such as participation in community workshops and networks of nonprofit organizations).

The LAND TRUST will organize its training needs on a calendar that schedules the specific times that these events will take place. This calendar includes both simple, short training sessions (such as 30 minutes focused on the land trust accreditation process) as well as more extensive training sessions, including a board retreat. Training programs will include specific information about conservation priorities and issues facing the LAND TRUST.

Training is critical for building capabilities within our organization, but there are important limitations. **A land trust that lacks board experience in fundraising might look to training to help make fundraisers out of existing board members.** However, if the board lacks the commitment to fundraise — if they are not motivated to become involved in fundraising — no amount of training will help. Training is valuable only when it is preceded by commitment. It is most effective when it builds on existing skills and talents rather than starting with a blank slate.

**SAMPLE  
LAND TRUST  
Board Member Commitment Agreement (3.C.1.)**

**Statement of Understanding**

As a member of the LAND TRUST Board of Directors, I understand that my duties and responsibilities include the following:

1. I share fiscal responsibility for this organization with the other Board members. It is my duty to know what our budget is, to play an active part in planning that budget, and to help with the fundraising necessary to meet that budget.
2. I share legal responsibility for this organization with the other Board members. I am responsible to know and approve all policies and programs, and to oversee the implementation of these policies and programs.
3. I share moral responsibility for this organization with the other board members. I pledge my full commitment and dedication to carry out the mission and purpose of the LAND TRUST.
4. I agree that I have read and understand the LAND TRUST Bylaws and will take responsibility to implement these bylaws as adopted.
5. I will give to the LAND TRUST what is, for me, a substantial donation, either as an annual gift or as pledge payments to be made through the year. Such a gift is necessary to maintain the fiscal well-being of the organization and to serve as a model to the community of my commitment to the LAND TRUST.
6. I will actively engage in fundraising for this organization, in whatever ways are best suited to me. These may include individual solicitation, doing special events, writing mail appeals, and the like.
7. I will aim to attend all Board meetings every year, and to miss no more than one per year, and will be available for phone consultation. I also agree to be active on at least one committee or task force and attend committee/task force meetings as needed. I understand that commitment to this Board will involve a good deal of time, and will probably not involve less than five hours per month.
8. I agree to represent the LAND TRUST in public meetings and conferences, and to act as a liaison to LAND TRUST partners, contacts and other organizations whenever possible.
9. I understand that my term as a Board member is for three years, that I may be re-elected for up to one additional consecutive terms, and that re-nomination to the Board is not guaranteed.
10. I understand that no quotas for participation in LAND TRUST fundraising have been set either in terms of dollars or hours, and that no rigid standards of measurement of Board participation or achievement have been formed. Every Board member is making a statement of faith about every other Board member. We are trusting each other to carry out the above agreements to the best of our ability, each in our own way, with knowledge, approval, and support of all. I know that if I fail to act in good faith, I must resign or someone from the Board may ask me to resign.



## Building Better Land Trust Boards

In its turn, the LAND TRUST is responsible to me in the following ways:

1. I will be sent, without request, bimonthly financial reports that allow me to meet the prudent person section of the law.
2. I can call on the staff to discuss program and policy, goals, and objectives.
3. Board members and staff will respond in a straight-forward and thorough fashion to any questions I have which I feel are necessary to carry out my fiscal, legal, or moral responsibilities to this organization.
4. As a Board member, I have the right to inspect all corporate financial and program files and documents, and to request additional information not specified in this document.
5. The LAND TRUST will maintain current Directors and Officers liability insurance.

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Board Member Signature

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Date



**FOREVER**  
MARYLAND

Advancing and Enhancing Land Conservation

**References for Further Reading  
Nominations**

1. *Growing a Strong Board*, Land magazine. Land Trust Alliance, 2010. <https://www.landtrustalliance.org/news/growing-strong-board>
2. *Board Building: Inviting People with a Shared Vision*, Field Guide Vol.2, No.2. Land Trust Alliance, 2013. (Land Trust Alliance Learning Center password required)  
[https://tlc.lta.org/topclass/uploads/documents/7560/Web\\_Field\\_Guide\\_Summer\\_2013\\_Issue\\_5.pdf](https://tlc.lta.org/topclass/uploads/documents/7560/Web_Field_Guide_Summer_2013_Issue_5.pdf)
3. *Diversity, Equity, Inclusion and Justice Action Statement*, Chesapeake Bay Program Principal's Staff Committee, undated. [https://www.chesapeakebay.net/documents/PSC\\_DEIJ\\_Action\\_Statement\\_FINAL\\_With\\_Signatures.pdf](https://www.chesapeakebay.net/documents/PSC_DEIJ_Action_Statement_FINAL_With_Signatures.pdf)
4. *DEIJ in Action: A Diversity, Equity, Inclusion, and Justice Guide for the Chesapeake Bay Watershed*. Chesapeake Bay Trust, 2019. [https://cbtrust.org/wp-content/uploads/CB-Watershed-DEIJ-Guide\\_May-2019.pdf](https://cbtrust.org/wp-content/uploads/CB-Watershed-DEIJ-Guide_May-2019.pdf)
5. *A Template for a Great Board Orientation*. Joan Garry, 2021. <https://blog.joangarry.com/board-orientation-template/>
6. *Board Orientation: More than Sink or Swim*, Field Guide Vol. 2, No. 2. Land Trust Alliance, 2013. (Land Trust Alliance Learning Center password required)  
[https://tlc.lta.org/topclass/uploads/documents/6492/Field\\_Guide\\_Vol2\\_No4\\_Winter2013\\_web\\_version\\_final.pdf](https://tlc.lta.org/topclass/uploads/documents/6492/Field_Guide_Vol2_No4_Winter2013_web_version_final.pdf)



**FOREVER**  
MARYLAND

Advancing and Enhancing Land Conservation

***Workshop #2: Governance – How to Run an Effective Nonprofit Organization.***

This workshop, held on February 28, 2022, is intended to provide land trust board members with a refresher and/or introduction to the responsibilities of being an effective member of the Board of Directors of a land trust. This workshop provided an overview of Land Trust Standards 1, 2, 3, and 4, and a small portion of Standard 7.

Recorded Session available here: <https://youtu.be/Tx2AKEkBSzY>

**SAMPLE  
LAND TRUST  
Statement of Ethics (1.A.1.)**

It is the policy of the LAND TRUST that its employees, board members, committee members and volunteers uphold the highest standards of ethical and professional behavior. To that end, LAND TRUST employees, board members, committee members and volunteers shall dedicate themselves to carrying out the mission of this organization and shall:

1. Recognize that the chief function of the LAND TRUST at all times is to serve the best interests of our community.
2. Accept, as a personal duty the responsibility, to keep up-to-date on emerging issues in land use and conservation, and to conduct ourselves with professional competence, fairness, impartiality, efficiency and effectiveness.
3. Respect the structure and responsibilities of the LAND TRUST Board of Directors, provide them with facts and advice as a basis for their making policy decisions, and uphold and implement policies adopted by the Board.
4. Keep the broader community informed about issues relevant to the land use, conservation and the mission of the LAND TRUST.
5. Conduct our organizational and operational duties with positive leadership exemplified by open communication, creativity, dedication and compassion.
6. Exercise whatever discretionary authority we have under the law to carry out the mission of the LAND TRUST.
7. Serve with respect, concern, courtesy and responsiveness in carrying out our mission.
8. Demonstrate the highest standards of personal integrity, truthfulness, honesty and fortitude in all our activities in order to inspire confidence and trust in our activities.
9. Avoid any interest or activity that is in conflict with the conduct of our official duties.
10. Respect and protect privileged information to which we have access in the course of our official duties.
11. Strive for personal and professional excellence and encourage the professional developments of others.

## **Building Better Land Trust Boards**

### ***External Values Statements***

Growth – Responsible growth protects the rural lands while also providing housing, jobs, and a good quality of life for people of all income levels.

Preservation -- Preventing the development of local lands preserves for future generations to maintain character of the region.

Stewardship – Encouraging landowners of all types – individuals, businesses, and local, state, and federal governments to be good stewards of the land helps maintains healthy wildlife populations and clean water.

Collaboration – In accomplishing its mission, the LAND TRUST places a high value on working in partnership with individuals, businesses, other non-profits, and local, state, and federal governments.

### ***Internal Values Statements***

Professionalism – We strive to go about our work with the highest standards of ethical conduct, transparency, and accountability;

Leadership – We firmly believe in the vision and mission of the LAND TRUST and see ourselves as critical leaders toward achieving that vision;

Openness – We respect a diversity of viewpoints and strive to listen as well as be heard; and

Environmental Stewardship – We aim to conduct our business in an environmentally friendly manner, for example, using recycled paper goods, and minimizing the use of fossil fuels whenever possible.

## Building Better Land Trust Boards

### SAMPLE LAND TRUST Whistleblower Policy (1.A.2.)

#### PURPOSE

The purposes of this whistleblower policy are for the LAND TRUST to be in compliance with the Sarbanes-Oxley Act and to promote corporate integrity by enabling employees, officers, and others to raise any serious concerns about the LAND TRUST.

The Sarbanes-Oxley Act provides protections for whistle-blowers and imposes criminal penalties for actions taken in retaliation against those who risk their careers by reporting suspected illegal activities in the organization. It is illegal for any entity—for-profit and nonprofit alike—to punish the whistle-blower in any manner.

#### POLICY

Section 1. Filing of Complaints. Employees, directors, volunteers, and officers are encouraged, in good faith, to report to the Board of Directors, Executive Director, or supervisor any violations of law or policy, any financial irregularities, and any other suspected wrongdoing or conduct, including any attempts to conceal any such conduct, that could damage the LAND TRUST's good name, interests, and relationships with supporters and the community at large.

The LAND TRUST has an open door policy and suggests that representatives share their concerns, suggestions or complaints with someone who can address them properly. In most cases, an employee's supervisor is in the best position to address an area of concern. However, if the complainant is not comfortable speaking with said supervisor, dissatisfied with the supervisor's response, or serves the LAND TRUST as a volunteer, any such individual is encouraged to speak with anyone in management with whom they are comfortable in approaching.

For suspected fraud, or when the complainant is not satisfied or uncomfortable with following the LAND TRUST's open door policy, individuals should contact the LAND TRUST Chair.

Section 2. Confidentiality Permitted. Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

Section 3. Protection of Whistleblowers. No representative who in good faith reports a violation shall suffer harassment, retaliation or adverse employment consequence. A representative who retaliates against someone who has reported a violation in good faith is subject to discipline up to and including termination of employment or position on the LAND TRUST's board. The intent is to encourage and enable employees and others to raise serious concerns within the LAND TRUST prior to seeking resolution outside the LAND TRUST.

Section 4. Investigating, Handling, and Documenting Complaints. The Board of Directors and Executive Director shall ensure the investigation and resolution of all reported complaints and allegations of misconduct in a reasonably prompt manner. The resolution of such complaints or concerns shall be reported to the Board of Directors, to Executive Director, and to the complainant, and shall include a report of any appropriate corrective action taken or planned to address the issues raised. A record of all material complaints and concerns shall be maintained.

The Board Chair shall advise the Executive Director, who serves as the compliance officer, of any violation of the Policy brought to his or her attention by a representative. The Compliance Officer will notify the sender and acknowledge receipt of the reported violation or suspected violation within five business days. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.

The executive committee of the Board of Directors shall address all reported concerns or complaints regarding corporate accounting practices, internal controls or auditing. The Chair shall immediately notify the executive committee of any such complaint and work with the committee until the matter is resolved.

Section 5. Acting in Good Faith. Anyone filing a complaint concerning a violation or suspected violation must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a

**Building Better Land Trust Boards**

violation. Anyone who makes allegations in bad faith or without any reasonable basis, and which allegations prove to have been made maliciously or knowingly of the falseness, can be subject to discipline.

Approved by the LAND TRUST Board of Directors on DATE.

Attest: \_\_\_\_\_,  
Secretary

**SAMPLE  
LAND TRUST  
Bylaws (2.B.2)**

Adopted [DATE]

These bylaws replace and supersede the bylaws adopted [DATE].

*Definition:* The LAND TRUST is a Maryland non-stock charitable corporation, located in [LOCATION], Maryland, and is dedicated to the protection of environmentally sensitive areas within or adjoining [LOCATION]. Incorporated on [DATE], the LAND TRUST is committed to using private, public, or other voluntary techniques to preserve land so that current and future generations may enjoy the benefits of ownership while employing protective land stewardship.

*Mission:* The LAND TRUST works with landowners and other partners to conserve natural and scenic areas in [LOCATION]. This work is accomplished by holding and facilitating land protection agreements (including conservation easements).

**Goals:**

- To identify and monitor natural areas within our region.
- To assist in the protective stewardship and/or management of natural resources.
- To guide land-use decisions and offer conservation options.
- To educate landowners, community leaders, and public officials about conservation.

**Article I. – Board of Directors Section 1.**

*General Powers:*

The property, affairs and activities of the Corporation shall be managed by a Board of Directors consisting of not less than (X) nor more than (XX) members, as may be determined at the annual meeting of the Board of Directors. The powers of the Board of Directors shall include the authority to accept, transfer and encumber property and interests in property and the authority to retain any necessary staff or contractors.

**Section 2. Election:** Directors shall be elected by the Board of Directors at the recommendation of the Nominating Committee at the annual meeting, or if there is no annual meeting, at the next meeting following. Each director shall serve until a successor is elected and qualified.

**Section 3. Terms of Office.** Members of the Board of Directors shall be elected for a two-year (2) term. They may be nominated to serve for a maximum of four (4) successive two-year (2) terms, and shall assume their posts at the [NEXT] meeting of the Board of Directors. The terms of members of the Board of Directors shall expire on a rotating basis, with approximately one-third (1/3) of the Directors' terms expiring at any one time. A Director, after having served four (4) successive two (2)-year terms, shall not be qualified for re-election until the year following the expiration date of the fourth such term.

**Section 4. Removal.** Any Director may be removed by affirmative vote of a majority of the current directors on the Board of Directors with or without cause. Any Director who misses more than two meetings without excuse over the course of a year shall be automatically removed without further action of the Board, unless a specific exception is made by the Board.

**Section 5. Vacancies.** In case of a vacancy, the remaining Directors may elect a successor for the remainder of the unfilled term.

**Section 6. Meetings of the Board.** The Board of Directors shall meet no fewer than four times a year and meetings shall be held at such time and place as shall be determined by the Directors. The Board may also meet on call by the President or by a written request filed with the Secretary by three (3) or more Directors. All meetings shall be governed by Robert's Rules of Order.

**Section 7. Call and Notice.** The annual meeting schedule for the coming year shall be distributed at the last Board of Directors' meeting of the calendar year. In addition, the Secretary shall give reasonable notice to each director of the time, place and date of each meeting by notice either in writing mailed postage prepaid, telephone, or email, not later than the tenth day before the day set for the meeting and addressed to the



## **Building Better Land Trust Boards**

director's last known post office address, telephone number or e-mail address, according to the Corporation's records.

**Section 8. *Quorum and Voting.*** At every meeting of the board, a quorum shall consist of one-half (1/2) of the current directors serving on the Board of Directors. The majority vote of those persons actually present at a meeting at which there is a quorum will prevail on all matters. There shall be no voting by proxy.

**Section 9. *Compensation.*** Directors shall receive no compensation for their services as such but may be allowed reimbursement for their expenses actually and reasonably incurred on behalf of the Corporation.

**Section 10. *Informal Action by Directors.*** Any action of the Directors, or of any committee of the Board of Directors, may be taken without a meeting if a unanimous consent setting forth the action taken is signed or otherwise affirmed in writing by each member of the Board of Directors or committee, and filed with the minutes of the Corporation. Such unanimous consent may be given either in writing or by electronic transmission.

**Section 11. *Participation in Meetings by Conference Communication.*** Members of the Board may participate in a meeting through use of a conference telephone or similar electronics communications equipment, so long as all members participating in such a meeting are in simultaneous communications with one another. All such directors shall be deemed to be present in person at such meeting.

**Section 12. *Rights of Inspection.*** Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the corporation. Any information obtained subject to this provision shall be held in confidence unless dissemination is authorized by the President or his/her designee.

**Section 13. *Self-Dealing Transactions.*** The Board shall not approve a self-dealing transaction except in accordance with this section and in compliance with Section 2-419 of the Annotated Code of Maryland, Corporations and Associations Article. A self-dealing transaction is one to which the corporation is a party and which one or more of the directors has a material financial interest, or a transaction between this corporation and one or more of its directors, or between this corporation and any person in which one or more of its directors has a material financial interest. The Board of Directors may approve a self-dealing transaction if the Board determines that the transaction is in the best interests of and is fair and reasonable to the corporation, and after reasonable investigation under the circumstances, determines that this corporation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances. Such determinations must be made by the Board, in good faith, with the knowledge of the material facts concerning the transaction and the directors' interest in the transaction, and by a vote of the majority of the directors then in office, without counting the vote of the interested director(s).

### **Article II – Officers and Committees**

**Section 1. *Officers.*** The officers of the Corporation shall be a President, Vice President, Secretary and Treasurer. All officers shall be directors and shall be elected by the Board of Directors at the recommendation of the Nominating Committee at the June Meeting or whenever a vacancy occurs. Each officer shall serve for one year or until a successor is elected and qualified. The Board of Directors may, from time to time, appoint such other officers, as it deems necessary.

**Section 2. *Powers and Duties.*** The President's powers and duties shall include:

- a. Presiding at all meetings of the Board of Directors.
- b. Signing or endorsing checks, drafts, and notes jointly with the Executive Director as set forth in Board policy.
- c. Acting as an ex-officio member of all committees except the Nominating Committee.
- d. Signing all contracts and other instruments authorized by the Board, unless such signing authority is designated to the Executive Director.
- e. Overseeing the hiring and firing of the Executive Director.

## Building Better Land Trust Boards

The Vice President's duties shall include:

- a. At the request, absence, or disability of the President, performing all the duties of the President, and when so acting, having all the powers of the President.

The Secretary's duties shall include:

- a. Keeping minutes of all meetings of the Board of Directors and the Executive Committee.
- b. Maintaining a file of the official documents and records of the corporation as directed by the Board, including: the bylaws; the articles of incorporation; a copy of the IRS non-profit designation; the Secretary of State nonprofit registration; the policies and resolutions approved by the board and the current page of passwords (updated annually).
- c. Ensuring that notices of all meetings of the Board of Directors and the Executive Committee are provided as required by these Bylaws.
- d. Providing for secure storage of documents.
- e. Performing all duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors from time to time.

The Treasurer's duties shall include:

- a. Providing, in conjunction with the Finance Committee, periodic review of the accounts and records of the assets, liabilities, receipts and disbursements related to the funds of the LAND TRUST.
- b. With the assistance of the Executive Director, rendering to the directors on a regular basis, or as may be required by the directors, a report of the finances of the LAND TRUST.
- c. With the Executive Director and in consultation with the Finance Committee (if such committee is convened pursuant to these Bylaws), preparing and presenting an annual budget to the directors for their timely approval.
- d. Performing all duties incident to the office of Treasurer and such other duties as may be assigned by the Board of Directors from time to time.

**Section 3. Executive Director.** The Board of Directors may appoint an Executive Director who shall be the chief executive and operating officer of the LAND TRUST and who, subject to the control of the Board of Directors, shall have overall responsibility for the routine management and affairs of the LAND TRUST. The Executive Director shall report to the Board of Directors and shall work closely with the President of the LAND TRUST. Duties of the Executive Director shall include:

- a. Coordinating the activities of the Board committees and serving as an ex officio non-voting member of all Board committees
- b. Representing the LAND TRUST in the community
- c. Supervising the administrative functions of the LAND TRUST
- d. Performing such other duties as may be assigned from time to time by the President or the Board of Directors.
- e. Overseeing the hiring and firing of all staff, subject to the board approved budget.

The Board of Directors may approve compensation and benefits for the Executive Director. The Executive Director may not be a member of the Board of Directors.

### **Section 4. Executive Committee.**

- A. The Board of Directors shall provide for an Executive Committee of (X) or more Directors. The Chair of this committee shall be the President of the Board of Directors. The members of the committee

## Building Better Land Trust Boards

shall include the Vice President, the Secretary, the Treasurer, and another member as designated by the Board. Additional members of the committee, if any, shall be elected by the Board. The Executive Director of the LAND TRUST shall be an ex-officio, non-voting member of the Executive Committee.

- B. Between meetings of the Board, the Executive Committee shall have the authority to authorize or engage in any transactions which advance the purposes of the LAND TRUST except that it may not take any action inconsistent with either a prior act of the Board of Directors or these Bylaws, remove or appoint the Executive Director of the LAND TRUST, dispose of any real property, or take any action that has been reserved to the Board by Board action, including, but not limited to, approving or amending easements. It may not buy, sell, enter into any contract or otherwise dispose of assets of the LAND TRUST having a value in excess of [XX] without first obtaining written authorization from a majority of the members of the entire Board. All actions taken by the Executive Committee shall be reported to the Board of Directors at its next meeting. All members of the Board of Directors are invited to attend and participate in discussions at all Executive Committee meetings in an ex-officio, or non-voting status, and will receive advance notice of such meetings and associated agendas.

**Section 5. Committees.** In addition to the Executive Committee, the Board of Directors may establish such other committees as it deems appropriate with powers as deemed necessary. Each member of the Board of Directors is required to serve on at least one committee. In addition, there shall be a member of the Executive Committee serving on each committee. Committee assignments will be made at the [DATE] meeting of the Board of Directors. Committees will meet between Board of Directors' meetings and shall report directly to the Board at its quarterly meetings, or, if urgent action is required before that, to the Executive Committee. Committees may include individuals who are not directors.

**Section 5. Nominating Committee.** At the first quarterly meeting of the Board of Directors each year, the Board shall appoint a Nominating Committee composed of (X) members of the Board of Directors, whose function shall be to nominate persons for the director's positions becoming vacant, officers of the Board, and members of the Executive Committee. This committee shall continue to function throughout the year should vacancies arise on the Board or in its offices.

### Article III – Financial Affairs

**Section 1. Fiscal Year.** The fiscal year of the Corporation shall end at 11:59 p.m. on December 31<sup>st</sup>.

**Section 2. Bank Accounts.** The funds of the Corporation shall be deposited in one or more banks or financial institutions as designated by the Board of Directors. All checks shall be signed by either the Executive Director and/or the President, as set forth in banking policies established by the Board.

**Section 3. Insurance.** The Board of Directors shall secure Directors and Officers ("D&O") insurance, or its equivalent, to protect the Corporation, the Board of Directors and the officers from liability.

**Section 4. Indemnification.** To the maximum extent permitted by the Maryland General Corporation law, as from time to time amended, the Corporation shall indemnify its currently acting and its former directors and any director who serves or has served, at the request of the Corporation, as a director, officer, partner, trustee, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise against any and all liabilities and expenses incurred in connection with their services in such capacities. The Corporation shall indemnify its currently acting and its former officers to the same extent that it indemnifies its currently acting and its form officers to such further extent as is consistent with law. The Corporation may indemnify its employees and agents and the extent determined by the Board of Directors. The Corporation may also advance expenses, to the extent permitted by law to persons referred to above.

### Article IV. Miscellaneous

**Section 1. Gifts.** The Board may accept on behalf of the Corporation any contribution, gift, donation, bequest or devise for the general purpose of the Corporation.

**Section 2. Amendments.** These bylaws may be amended by the approval of the Board at any meeting duly called pursuant to the Articles or these Bylaws, provided that the amendment has been submitted in writing to each Board member at least ten (10) days prior to the meeting at which it will be entertained.

**Building Better Land Trust Boards**

**SAMPLE  
LAND TRUST  
Board Member Self-Assessment for (Year) (3.C.4.)**

Name of Board member: \_\_\_\_\_

[NOTE: If any aspect of this self-assessment raises concerns for the Board member as to his/her privacy or any other personal sensitivity, the Board member is encouraged to avoid or omit any disclosure/statement that makes him/her uncomfortable. The principal purpose of this self-assessment is to raise Board members' consciousness as to his/her obligations as a Board member, to assist him/her in becoming a better participant in the organization and to provide an opportunity for Board members to offer suggestions about how Board members could work better together and how the Board could work better.]

**Participation:**

(Year), regular board meetings: Held \_\_\_\_\_ Attended \_\_\_\_\_

Before each meeting I review all written materials provided: [Circle answer]

Yes    Sometimes    Most of the materials    Not really

(Year), committee meetings

Executive Committee: Held \_\_\_\_\_ Attended \_\_\_\_\_

Capital Campaign Committee: Held \_\_\_\_\_ Attended \_\_\_\_\_

Governance Committee: Held \_\_\_\_\_ Attended \_\_\_\_\_

Easement and Stewardship: Held \_\_\_\_\_ Attended \_\_\_\_\_

Finance and Investment: Held \_\_\_\_\_ Attended \_\_\_\_\_

Audit: Held \_\_\_\_\_ Attended \_\_\_\_\_

Before each committee meeting, I review all written materials provided: [Circle answer]

Yes    Sometimes    Most of the materials    Not really

**Financial support:**

I contributed to annual fundraising as much as I was able to within my means: [Circle answer] Yes/No

I contributed to the capital campaign as much as I was able to within my means:

[Circle answer]    Yes    No

I contributed in total as much or nearly as much as I contribute to any other charitable organization:

[Circle answer]    Yes    No

I have included a gift to the LAND TRUST in my will/trust:

[Circle answer]    Yes    No

I encouraged my family and friends to contribute within their means:

[Circle answer]    Yes    No

**Strategic Planning:**

I have considered what our strategic plan should be:

[Circle answer]    Yes    No

I have shared my views on our strategy with fellow board members:

[Circle answer]    Yes    No

**Fundraising:**

I have tried to help the LAND TRUST's fundraising efforts in the following ways:

\_\_\_\_\_

## Building Better Land Trust Boards

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### **Financial oversight:**

I have reviewed the financial statements provided to me by staff:

[Circle answer] Yes No

I have asked for clarification of any aspects of the financial information that I did not fully understand:

[Circle answer] Yes No

I have shared any concerns about LAND TRUST's finances with other board members:

[Circle answer] Yes No

I understand that if I ever become concerned about the integrity of our financial statements or any financial activity of any staff or board member, I need to raise the issue with the Audit Committee of the Board or with one of the officers of the organization:

[Circle answer] Yes No

### **Setting policy:**

I understand and agree with LAND TRUST's mission statement: [Circle answer] Yes/No

When policy issues arise at board meetings or otherwise, I obtain information I need for deciding about the issue: [Circle answer] Yes/No

I share my views on policy issues: [Circle answer] Yes/No

### **Approving Easements and Stewardship Operations:**

I study information provided and vote accordingly: [Circle answer] Yes/No

### **Community Outreach:**

I act as an ambassador for the land trust in my dealings with our community: [Circle answer] Yes/No

I think of ways in which I can improve LAND TRUST's standing in our community: [Circle answer] Yes/No

### **Recruiting and Orienting New Board Members:**

I contributed \_\_\_\_\_ names of prospects

I met with \_\_\_\_\_ potential prospects for Board membership

I interviewed \_\_\_\_\_ prospects

I participated in orientation of \_\_\_\_\_ new board members

### **Conflicts of interest:**

I have read and I understand our Conflict of Interest policy and procedures: [Circle answer] Yes/No

I am fully committed to abiding by the letter and spirit of our Conflict of Interest policy: [Circle answer] Yes/No

### **Confidentiality:**

I have read and understand our Confidentiality policy: [Circle answer] Yes/No

I am fully committed to abiding by the letter and spirit of our Confidentiality policy: [Circle answer] Yes/No

## Building Better Land Trust Boards

### **SAMPLE LAND TRUST Board Approval of Land Transactions (3.D.1.)**

Adopted by the Board of Directors (DATE)

The LAND TRUST's Board will review and approve every land and easement transaction in which the LAND TRUST will have a future continuing role. For those properties in which the LAND TRUST's role will be facilitation, the Board will be duly informed of the organization's participation.

Transactions in which the LAND TRUST would have a continuing role may be recommended to the LAND TRUST Board of Directors by the Conservation Committee or by the Executive Committee (according to the provisions of the By-Laws).

The Board in turn will approve all fee and conservation easement land transactions, whether purchase, gift or sale. The Board will be provided with adequate information about the proposed transaction and will have the material with adequate advance time to review the information thoroughly.

The Board will approve all land transactions keeping in mind its responsibility to benefit the public. All land decisions will be based on the following:

- a thorough review of materials presented,
- articulation of the land's conservation value,
- ensuring compliance with all state and federal agencies having jurisdiction,
- the public benefit resulting from the decision, and
- the ability of the organization to steward the land.

The Board will ensure that all property transactions in which the organization will hold continuing interests are carried out within legal constraints, are soundly structured, make good use of the organization's resources, avoid undue risk, and further the organization's mission.

The sale or transfer of any land must further the mission of our organization. For properties which have significant identified conservation values that we intend to trade or sell, the Board will convey the land with restrictions, as appropriate.

**SAMPLE  
LAND TRUST  
Conflict of Interest Policy (4.A.1.)**

**Purpose**

The LAND TRUST Conflict of Interest Policy is designed to ensure the highest level of ethical conduct of persons employed by or involved in the governance or operations of the LAND TRUST in all matters pertaining to the LAND TRUST, and to avoid public perceptions and financial consequences detrimental to the LAND TRUST that could arise from the misuse, or perception of misuse, of an individual's position or influence.

**Policy**

It is the policy of the LAND TRUST that every "Covered Person" (as defined below) shall disclose any real or potential Conflict of Interest, or situation in which there may arise a public perception of a Conflict of Interest, involving themselves, or with any "Interested Person" (as defined below), and that such conflicts shall be addressed by the LAND TRUST in a manner that will protect the integrity of the LAND TRUST, as well as all Covered Persons and Interested Persons.

All Covered Persons have a continuing responsibility to scrutinize their transactions and outside business interests and relationships, and to consider facts with regard to those of Interested Persons that come to their attention, in each case for Conflicts of Interest, or potential Conflicts of Interest, and make such disclosures as described herein.

**Definition of a Conflict of Interest**

A Conflict of Interest exists when a Covered Person or Interested Person has a material financial interest in a transaction or project under consideration by the LAND TRUST or when that person proposes to act on any issue, matter, or transaction in which the LAND TRUST has an interest, and in which the Covered Person may have any interest separate from that of the LAND TRUST. A Conflict of Interest may also exist in situations where there is an appearance that a Covered Person or Interested Person is utilizing, for his own benefit, inside information that is proprietary to the LAND TRUST; is acting in his own interest rather than the best interests of the LAND TRUST; has the ability to exercise undue influence over the LAND TRUST decisions; or is receiving favorable treatment by the LAND TRUST because of his status as a Covered or Interested Person.

**Definitions**

The term "Covered Person" shall mean all the LAND TRUST directors, officers, members of the Chairman's Advisory Council, members of the LAND TRUST committees, staff members, and interns.

The term "Interested Person" shall mean any "Major Donor," "Close Relative," "Other Insider," or "Other Related Party" as defined below.

- 1) Close Relative: "Close relative" shall mean a spouse, parent, step-parent, child, step-child, grandchild, great-grandchild, grandparent, great-grandparent, sibling, step-sibling, half-sibling, niece, nephew, aunt, uncle, or in-law of a Covered Person or Major Donor, or a person financially dependent upon the LAND TRUST Covered Person or Major Donor.
- 2) Major Donor: "Major donor" shall mean any individual, corporation, or foundation that makes a gift or pledge to the LAND TRUST of \$5,000 or more at one time, or a cumulative gift or pledge of more than \$25,000 within a five-year period prior to the occurrence of a conflict.
- 3) Other Insider: "Other insider" shall include volunteers, former employees, contractors, consultants and all other individuals and entities that have or have had access to inside information that could place them within a conflict situation with the LAND TRUST.
- 4) Related Party: "Related party" shall mean any organization of any kind, including any commission, corporation, partnership, trust, or other entity in which a Covered Person owns or controls more than 5% of voting security, serves in a fiduciary capacity, or has legal or *de facto* power to exert control over or influence the decisions of the organization, corporation, partnership, trust, or other entity.

**Examples of Conflicts of Interest**

A Conflict of Interest *may* exist if a Covered Person:

## **Building Better Land Trust Boards**

- has a business or financial interest in any third party or financial relationship with any Interested Person dealing with the LAND TRUST.
- holds office, serves on a board, participates in management, or is employed by any third party dealing with the LAND TRUST.
- derives remuneration or other financial gain from a transaction directly or indirectly involving the LAND TRUST (other than salary reported on a W-2 or W-9 or salary and benefits expressly authorized by the Board.)
- engages in any outside employment or other activity that will materially encroach on such person's obligations to the LAND TRUST; violates the LAND TRUST Standards and Practices; competes with the LAND TRUST activities; involves any use of the LAND TRUST equipment, supplies, or facilities; or implies the LAND TRUST sponsorship or support of the outside employment or activity.

## **Conflicts Review Procedure**

Whenever any Covered Person has an actual, potential, or perceived Conflict of Interest with the LAND TRUST, he or she shall promptly notify the President of such conflict in writing. (In the event that the President has an actual, potential, or perceived Conflict of Interest, he or she shall disclose such conflict to the Chairman of the Board.) In addition, whenever any Covered Person has reason to believe that an Interested Person may have an actual, potential, or perceived Conflict of Interest with the LAND TRUST, or cause a Conflict of Interest for any Covered Person, he shall promptly report to the President with regard to such matter in writing. A Covered Person shall make every effort to disclose a potential or perceived Conflict of Interest prior to the occurrence of the activity giving rise to the conflict.

With regard to any reported actual, potential, or perceived Conflicts of Interest or potential Conflicts of Interest, the President shall make a recommendation to the Board of Directors or a duly convened Conflicts Committee appointed by the Board. Covered Persons with a Conflict of Interest or potential Conflict of Interest shall not be present during committee or Board discussions or decisions on the matter. However, that person shall provide the Board or Conflicts Committee with any and all relevant information.

The Conflicts Committee may submit conflicts for consideration to the LAND TRUST Board of Directors as deemed necessary. The minutes of the meeting of the Conflicts Committee, and the Board if relevant, shall reflect that the actual, potential, or perceived Conflict of Interest was disclosed, that the Covered Person was not present during discussion or decision on the matter, and that the Covered Person did not vote on the matter. The minutes shall reflect whether a Conflict of Interest is present, whether the conflict is material, and what action, if any, the Conflicts Committee or the Board took.

In addition, when an action being considered by the LAND TRUST involves an actual, potential, or perceived Conflict of Interest with a Covered Person or Interested Person, the Board shall approve the action only after making a determination that the specific action being taken by the Board clearly benefits the LAND TRUST and furthers the LAND TRUST mission and goals, is being made with the full knowledge of the actual, potential, or perceived conflict, and would have been made in the absence of any conflict. The minutes of the Board meeting shall reflect this determination.

## **Annual Certification Requirement**

All Covered Persons shall be provided a copy of the LAND TRUST Conflicts of Interest Policy and be required to complete a Conflict of Interest Policy Disclosure Statement upon his or her employment or appointment, and on an annual basis thereafter. Failure to do so or failure to comply with this policy may lead to disciplinary action up to and including termination of employment or dismissal from the Board, Advisory Council, or other committee.



**SAMPLE  
LAND TRUST  
Conflict of Interest Disclosure and Affirmation Form (4.A.2.)**

The purpose of the LAND TRUST Conflict of Interest Policy is to protect the interests of the LAND TRUST when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the LAND TRUST or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

I hereby affirm that:

- a. I have received a copy of the Conflict of Interest Policy,
- b. I have read and understand the policy,
- c. I agree to comply with the policy, and
- d. I understand that the LAND TRUST is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

\_\_\_\_\_  
(signed)

Name: \_\_\_\_\_

Date: \_\_\_\_\_



Advancing and Enhancing Land Conservation

**References for Further Reading  
Governance**

1. *Growing a Strong Board*, Land magazine. Land Trust Alliance, 2010. <https://www.landtrustalliance.org/news/growing-strong-board>
2. *Responsibility and Liability of Nonprofit Board Members*, Virginia Society of Certified Public Accountants, 2012. [https://www.vscpa.com/sites/default/files/resources/Responsibility2012\\_0.pdf](https://www.vscpa.com/sites/default/files/resources/Responsibility2012_0.pdf)
3. *The Syndication of Conservation Easement Tax Deductions*, Saving Land magazine. Lindstrom, Timothy; Land Trust Alliance, 2015.
4. *Land Trust Standards and Practices, Governance, Compiled Documents*, Land Trust Alliance, 2019. <https://tlc.lta.org/topclass/uploads/documents/398097/Governance-guidance-compiled.pdf>
5. *Land Trust Boards, Preparing for Perpetuity*, Smiley, Marc. Land Trust Alliance, 2007. [https://conservationtools-production.s3.amazonaws.com/library\\_item\\_files/189/228/Boards.pdf?AWSAccessKeyId=AKIAIQFJLILYGVD4AMQ&Expires=1655330265&Signature=TeZebutJWGhJ1C0ScXk1cu%2F9ZIo%3D](https://conservationtools-production.s3.amazonaws.com/library_item_files/189/228/Boards.pdf?AWSAccessKeyId=AKIAIQFJLILYGVD4AMQ&Expires=1655330265&Signature=TeZebutJWGhJ1C0ScXk1cu%2F9ZIo%3D)
6. *Checklist of Written Materials, Policies, or Procedures*. Land Trust Alliance, 2018. <https://tlc.lta.org/topclass/uploads/documents/3931/Checklist%20of%20Written%20Materials.pdf>
7. *Board Governance in the Time of COVID-19*, Bates, Sylvia, Saving Land magazine. Land Trust Alliance, 2020. <https://www.landtrustalliance.org/news/board-governance-time-covid-19>
8. *Good Governance Policies for Nonprofits*. National Council of Nonprofits, 2021. <https://www.councilofnonprofits.org/tools-resources/good-governance-policies-nonprofits>
9. *Key Elements of Effective Board Committees*. Saving Land magazine. Harris Mayes, Carol, and Wilson, Sara, 2010. <https://www.landtrustalliance.org/news/key-elements-effective-board-committees>
10. *Nonprofit Bylaws Made Easy: Tips and Best Practices*. Ibrisevic, Ilma, Donor Box Blog., 2022. <https://donorbox.org/nonprofit-blog/nonprofit-bylaws-made-easy>



**FOREVER**  
MARYLAND

Advancing and Enhancing Land Conservation

***Workshop #3: Finance and Fundraising –  
How to Raise It, Spend It, and Keep Track of It.***

This workshop, held on March 14, 2022, was designed to provide new and less-involved land trust board members with an introduction to the fiduciary responsibilities of a nonprofit organization's Board of Directors. This workshop provided an overview of Land Trust Standards 5 and 6.

Recorded Session available here: [https://youtu.be/9B\\_LcmB\\_8Ko](https://youtu.be/9B_LcmB_8Ko)

**SAMPLE  
LAND TRUST  
Basic Gift Acceptance Policy (5.B.)**

Acceptance of any contribution, gift or grant is at the discretion of the LAND TRUST. The LAND TRUST will not accept any gift unless it can be used or expended consistently with the purpose and mission of the LAND TRUST.

No irrevocable gift, whether outright or life-income in character, will be accepted if under any reasonable set of circumstances the gift would jeopardize the donor's financial security.

The LAND TRUST will refrain from providing advice about the tax or other treatment of gifts and will encourage donors to seek guidance from their own professional advisors to assist them in the process of making their gift.

The LAND TRUST will accept donations of cash or publicly traded securities. Gifts of in-kind services will be accepted at the discretion of the LAND TRUST.

Certain other gifts, real property, personal property, in-kind gifts, non-liquid securities, and contributions whose sources are not transparent or whose use is restricted in some manner, must be reviewed prior to acceptance due to the special obligations raised or liabilities they may pose for the LAND TRUST.

The LAND TRUST will provide acknowledgments to donors meeting IRS substantiation requirements for property received by the charity as a gift. However, except for gifts of cash and publicly traded securities, no value shall be ascribed to any receipt or other form of substantiation of a gift received by LAND TRUST.

The LAND TRUST will respect the intent of the donor relating to gifts for restricted purposes and those relating to the desire to remain anonymous. With respect to anonymous gifts, the LAND TRUST will restrict information about the donor to only those staff members with a need to know.

The LAND TRUST will not compensate, whether through commissions, finders' fees, or other means, any third party for directing a gift or a donor to the LAND TRUST.

Approved: {DATE}

## Building Better Land Trust Boards

### SAMPLE LAND TRUST Detailed Gift Acceptance Policy (5.B.)

As a 501(c)3 non-profit organization, the LAND TRUST relies on charitable contributions to fulfill its mission. The LAND TRUST encourages current and deferred gifts from individuals, corporations, and foundations to secure mission aligned growth of its programs.

#### **Purpose**

The purpose of this policy is to govern the acceptance of gifts by the LAND TRUST and provide guidance to prospective donors and their advisors when making gifts to the LAND TRUST. The provisions of this policy apply to all gifts offered to the LAND TRUST for any of its programs.

#### **Restrictions on Gifts**

The LAND TRUST encourages donors to make unrestricted gifts, so that the Board of Directors (Board) may direct funds where they are most beneficial to supporting the LAND TRUST's mission and conservation projects. Donors may wish to direct their gift to a specific purpose such as the Stewardship Fund, Operating Fund, or a current project or program. The LAND TRUST staff is available to discuss these options with donors.

The LAND TRUST will accept unrestricted gifts, and gifts for specific programs and purposes, provided that such gifts are not inconsistent with the LAND TRUST's mission and strategic plan. This policy pertains to sponsorship and corporate partnerships as well.

The LAND TRUST reserves the right to decline any gift. Gifts that are too restrictive may include those that violate the terms of the corporate charter, gifts that are too difficult to administer, or gifts that are for purposes outside the mission of the LAND TRUST. All final decisions on the restrictive nature of a gift, and its acceptance or refusal, shall be made by the Executive Director upon consultation with the Finance Committee and Board.

The LAND TRUST's administrative efforts are executed in the general interest of its lands under conservation and its various outreach programs. As such, the LAND TRUST may require that up to 15% of restricted donation be applied to administrative costs. This requirement will be clearly communicated to the donor prior to the LAND TRUST's acceptance of the restricted gift.

The LAND TRUST may occasionally accept gifts with the provision that an endowment, fund, building, or other property be named in honor of the donor, a member of the donor's family, an honored friend of the organization, or another entity. The Board will set and approve the appropriate gift level for these naming opportunities. Such naming opportunities will be reviewed for approval by the Board prior to gift acceptance.

The LAND TRUST maintains detailed records of each restricted gift, including donor correspondence, accounting classification, the LAND TRUST's donor and gift management database, and the LAND TRUST's temporarily restricted asset schedule.

#### **Types of Gifts**

The following gifts are acceptable:

1. Cash
2. Securities
3. Tangible personal property
4. Real estate
5. Remainder interests in property
6. Bargain sales
7. Life insurance and life insurance beneficiary designations
8. Annuities and trust arrangements
9. Beneficiary designations and bequests
10. Airline tickets and air miles
11. In Kind Gifts

The following criteria govern the acceptance of each gift form:

1. **Gifts of Cash:**

## Building Better Land Trust Boards

Gifts of cash are acceptable in any form. Checks shall be made payable to "LAND TRUST" and mailed or delivered to the organization's office. Donations of cash may also be made by electronic funds transfer or credit/debit card through the LAND TRUST's website.

### 2. Gifts of Securities:

The LAND TRUST will accept gifts of publicly traded securities, including stocks, mutual funds, municipal and corporate bonds, and treasury bills and notes. The LAND TRUST staff and/or advisors will verify the ownership of the security, handle the transfer of ownership, and establish a value for deferred gift calculation purposes, as well as handle the sale, liquidation and/or investment processes related to securities. Such gifts will be reviewed by the Finance Committee and, as a general rule, such securities shall be sold immediately upon receipt.

### 3. Tangible Personal Property

The LAND TRUST may accept gifts of tangible personal property, such as furniture, automobiles, *etc.*, after reviewing the gift against the following criteria:

- Does the property support the LAND TRUST in fulfilling its mission?
- Is the property marketable?
- Are there any undue restrictions on the use, display, or sale of the property?
- Are there any carrying costs for the property?
- Has a written appraisal of the property, made by a reputable, knowledgeable appraiser, been provided to the LAND TRUST?

### 4. Real Estate

Gifts of real estate may include developed or undeveloped property, such as personal residences, rental properties, office buildings, and unimproved land. As real estate can be highly illiquid, costly to maintain, and have pre-existing conditions attached to it, any gifts of real estate will be carefully scrutinized and the decision to accept or decline the gift will be made by the LAND TRUST's Board. Prior to accepting a gift of real property, the LAND TRUST and its advisers will physically inspect the property and perform a title search. If deemed necessary, an environmental review and/or boundary survey may be required before a gift can be accepted. Such costs shall be borne by the donor.

Upon finding that the real property may be accepted by the LAND TRUST, the Executive Director and Board may elect to have outside legal counsel and/or financial consultants review the transaction before approval. The Board may recommend rejection of the donation upon any ground that has an adverse impact on the LAND TRUST. As part of the Board's consideration the Executive Director will report on various considerations, including without limitation:

- Is the property useful for the LAND TRUST's purposes?
- Is the property marketable?
- Are there any restrictions, reservations, easements, or other limitations associated with the property?
- Are there carrying costs, which may include insurance, property taxes, mortgage, or notes, etc. associated with the property?
- Does the property contain environmental risks?
- Does the property pose other risks to the LAND TRUST, which may include reputation, conflicts of interest, encroachment, etc.?

Gifts will not be accepted that may expose the LAND TRUST to material or personal liabilities as owners of the property.

If property is encumbered by indebtedness, the donor will be requested to provide for the payment of carrying costs. Similarly, if by accepting the gift, the LAND TRUST will be required to assume a financial burden, the donor will be required to provide for such costs, which may include the cost of demolishing unusable or hazardous structures, clean-up of debris or dumping, access way maintenance, etc.

As a general rule, gifts of real estate will be sold by the LAND TRUST, unless the Board finds that real estate meets:

- the LAND TRUST's Criteria for Land and Conservation Easement Acquisition; and/or,
- Such gift is in general accordance with other needs and considerations of the LAND TRUST.

## Building Better Land Trust Boards

If a property is deemed to have significant conservation value when evaluated using the LAND TRUST's Criteria for Land and Conservation Easement Acquisition, then the Board shall determine whether it is appropriate to: (a) retain ownership and manage the property to protect its conservation values; or (b) convey ownership to another non-profit or governmental entity that will manage the property to protect its conservation values; or (c) sell the property to a private owner subject to a restrictive covenant, such as a conservation easement, which will ensure protection of the property's conservation values.

Before a donation of real estate will be accepted by the LAND TRUST, a written appraisal by a reputable appraiser shall be provided by the donor. the LAND TRUST may opt to have an independent appraisal done if there is a question of the original appraisal's validity.

Bargain sale arrangements will also be reviewed using the criteria above. However, the LAND TRUST may elect to assume indebtedness as part of a bargain sale.

### 5. Remainder Interests in Property

The LAND TRUST may accept a remainder interest in a personal residence, farm, or vacation property subject to the provisions of real estate gifts above. The donor or other occupants may continue to occupy the real property for the duration of the stated life. At the death of the donor, the LAND TRUST may use the property or sell it. Where the LAND TRUST receives a gift of a remainder interest, expenses for maintenance, real estate taxes, and any property indebtedness are to be paid by the donor or non-the LAND TRUST beneficiaries, during the life of the donor.

### 6. Gifts of Life Insurance

"Whole" or "universal" life insurance often has cash value and can be donated to a charitable organization. The donor would receive a tax deduction for the replacement cost of the paid-up policy at the time of donation, not for the face value of the life insurance.

Donors can also purchase a new policy, naming the LAND TRUST as the beneficiary and irrevocable owner of the insurance policy. The gift is valued at its cash surrender value, upon receipt. If the donor contributes to future premium payments, the LAND TRUST will include the entire amount of the additional premium payment as a gift in the year that it is made.

If the policy requires continuing premium payments, the donor can continue paying those premiums and get a tax deduction for each payment if it is done in the following manner: gift the policy to the LAND TRUST, who then becomes the owner of the policy. The donor then makes annual donations in the amount of the annual premium costs to the LAND TRUST, who then pays the policy. The donor then receives a tax deduction for every contribution for the premium payment.

If the donor does not elect to continue to make gifts to cover premium payments on the life insurance policy, the LAND TRUST may:

- Continue to pay the premiums;
- Convert the policy to paid up insurance; or
- Surrender the policy for its current cash value.

When planning a gift of life insurance, it is important for the donor to consult their own personal tax and legal advisors.

### 7. Annuities and Trust Arrangements

The LAND TRUST may enter into charitable gift annuities, charitable remainder trusts, and charitable lead trusts. All donations of these types will be evaluated by one or more the LAND TRUST advisors to determine the benefits of the gifts to the organization. This evaluation will be utilized by the Board in determining gift acceptance.

### 8. Beneficiary Designations and Bequests

Donors may elect to name the LAND TRUST as beneficiary of a retirement plan, life insurance or make a bequest under a will or trust. the LAND TRUST encourages donors to notify the LAND TRUST's Executive Director when they have made the designation.

## **Building Better Land Trust Boards**

### **9. Airline Tickets and Air Miles**

The LAND TRUST may accept gifts of tickets or air miles for travel to be used by staff or Board members to attend conferences/meetings as approved by the Executive Director.

### **10. In-Kind Gifts**

In-kind gifts include donated product or services and will be reviewed by the LAND TRUST using the same criteria as tangible personal property donations.

### **Conflict of Interest**

The LAND TRUST encourages prospective donors to seek the assistance of personal legal and financial advisors in matters relating to their gifts and the resulting tax and estate planning consequences so that the donor is fully aware of the financial, tax and other impacts that a donation will have on the donor and the donor's estate. The LAND TRUST is not able to give legal or financial advice to donors.

### **Gift Acknowledgement**

Every gift to the LAND TRUST will be promptly acknowledged in writing in compliance with the current IRS requirements and applicable law. The LAND TRUST may send electronic or physical acknowledgements. Requests for public anonymity will be honored. Other requests for acknowledgment and/or public recognition will be reviewed and decided upon by the Executive Director.

In general, the LAND TRUST's gift acknowledgements will include the following:

- the LAND TRUST's name and address
- Donor's name and address
- Date of the donation
- Amount of any cash contribution

All acknowledgments will include a statement that no goods or services (other than certain token items and membership benefits) were provided by the LAND TRUST in return for the contribution, if that was the case; or a description and good faith estimate of the value of goods or services, if any, that the LAND TRUST provided in return for the contribution.

For noncash gifts, including real property, acknowledgement will include a description of the gift. No estimate of value will be included in the absence of an appraisal.

- For conservation easement donations, the date of donation is the date the easement is recorded in the public land records, ensuring it meets the perpetuity requirements.
- For fee-simple properties, the date of donation is when delivery of the gift is effective under state law.
- If the real estate transaction was a bargain sale, then the bargain sale amount paid by the LAND TRUST (or a partner or funder) will be reported in the acknowledgement because that amount is not deductible.

### **Miscellaneous Provisions**

Responsibility for IRS filings upon sale of gift items: The Executive Director will be responsible for filing IRS Form 8282 upon the sale or disposition of any asset sold within three years of receipt by the LAND TRUST, when the charitable deduction value of the item is more than \$5,000. The LAND TRUST must file this form within the time frame specified by applicable taxing authorities.

Approved: (DATE)



**Building Better Land Trust Boards**

**SAMPLE  
LAND TRUST  
Letter of Contemporaneous Written Acknowledgement (5.B.2.)**

[DATE] (contemporaneous with donation)

Landowner  
Mailing Address  
Town/State/Zip

Re: Donation of conservation easement in \_\_\_\_\_ County PIN(s) \_\_\_\_\_ Tax ID \_\_\_\_\_

Dear Mr. and Mrs. Landowner,

Thank you for your donation of a conservation easement on \_\_\_ acres of land in \_\_\_\_\_ County to the LAND TRUST on [DATE]. This letter will acknowledge receipt of your gift.

Your contribution enables the LAND TRUST to carry on its critical land conservation programs protecting our region's natural resources and scenic beauty. The threats to our landscape are growing daily. However, as more and more people join in the effort to conserve our wonderful landscape, the tide will turn.

We invite you to join us at the various events sponsored by the LAND TRUST throughout the year. We will keep you informed about our activities through our newsletter and website ([www.LAND TRUST.org](http://www.LAND TRUST.org)). We also depend on volunteers and welcome your continued support for our outreach and stewardship programs.

Please feel free to contact us at if you or someone you know would like to volunteer to help. As a result of the support and commitment of you and many others like you, the LAND TRUST looks forward to a productive and sustainable future. Thank you for your continuing support of the LAND TRUST's efforts to save our farms, forests, and scenic landscapes.

Sincerely,

\_\_\_\_\_  
Executive Director

Please retain this acknowledgement letter for your tax return. The LAND TRUST, a 501(c)(3) non-profit organization, did not provide any goods or services in exchange for this gift of conservation easement. Your contribution is deductible to the extent provided by law.
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## Building Better Land Trust Boards

STEWARDSHIP FUNDING CALCULATION SAMPLE (6.A.5.)							
				Date: _____			
<b>Stewardship Funding Calculation</b>							
Project: _____							
1	Anticipated year of recordation	yr.	2022	15	Number of potential properties allowed (by division rights)	#	
2	Grantor ?	y / n		16	Total annual monitoring cost for property (Row 14 x Row 15)	\$ amt.	\$ -
3	Acreage	#		17	Adjustment based on concern- tration of Land Trust easements in area	%	
4	Distance of round-trip from Land T office to the property	hrs.		18	Adjusted Annual Monitoring Cost (Row 16 x Row 17)	\$ amt.	\$ -
5	Prep time for monitoring visit	mi.		19	Amortized Monitoring Cost (Row 19) x 20	\$ amt.	\$0.00
6	Hours to monitor property	hrs.		20	Legal Def. Fund (\$2000 x Row 15)	\$ amt.	\$ -
7	Time spent on monitoring report	hrs.		21	Major Reserved Rights (describe)		
8	Time spent creating & working on photos & maps	hrs.		22	Total time required to review exercise of major reserved rights	hrs.	
9	Time spent before and after on correspondence	hrs.		23	Total Cost of Review of Reserved Rights (Row 21 x \$35.00/hr)	\$ amt.	\$ -
10	Time spent on 5-yr photo updates (divided by 5)	hrs.		24	Total cost, long-term stewardship (Row 19 + Row 20 + Row 23)	\$ amt.	\$0.00
11	Total annual monitoring hours	hrs.	0	25*	Total stewardship request	\$ amt.	
12	Total annual staff cost (Row 11) x (\$35.00/hr)	\$ amt.	\$ -	*Row 25 is subject to the discretion of Land Trust. If the \$ amount in Row 25 is different from the \$ amount in Row 24, attach an explanation. Land Trust assumes that the investment of stewardship funds will yield a 5% annual return.			
13	Mileage cost (Row 4 multiplied by IRS mileage rate \$0.55/m )	\$ amt.	\$ -				
14	Total annual cost per division (Row 12 + Row 13)	\$ amt.	\$ -				

TEMPORARILY RESTRICTED FUNDS SCHEDULE SAMPLE (6.B.3.)					
[Land Trust Name]					
Temporarily Restricted and Designated Net Assets					
December 31, 2022					
<b>Updated [Date]</b>					
		<u>12/31/2021</u>	<u>Additions</u>	<u>Releases</u>	<u>12/31/2022</u>
<b>Restricted Grants</b>					
MET Grant		0	5,000.00	1,500.00	3,500.00
CBT Grant		14,800.00		3,400.00	11,400.00
MHA Mini-Grant		-	2,500.00	2,500.00	-
<b>Other</b>					
Stewardship Gift		50,000.00		10,000.00	40,000.00
Land Fund Gifts		10,000.00	10,000.00	5,000.00	15,000.00
<b>TOTAL Restricted</b>		<b>74,800.00</b>	<b>17,500.00</b>	<b>22,400.00</b>	<b>69,900.00</b>
Board Designated Land Funds		1,000,000.00			1,000,000.00
Board Designated Stewardship & Defense Funds		500,000.00			500,000.00
<b>TOTAL Board Designated</b>		<b>1,500,000.00</b>	<b>-</b>	<b>-</b>	<b>1,500,000.00</b>
<b>TOTAL Restricted and Board Designated</b>		<b>1,574,800.00</b>	<b>17,500.00</b>	<b>22,400.00</b>	<b>1,569,900.00</b>

**SAMPLE  
LAND TRUST  
Audit Report and Uniform Guidance  
Table of Contents (6.C.1.)**

LAND TRUST, INC.

AUDITED FINANCIAL STATEMENTS  
WITH SUPPLEMENTARY INFORMATION AND  
REPORTS REQUIRED BY  
GOVERNMENT AUDITING  
STANDARDS AND THE UNIFORM  
GUIDANCE

YEARS ENDED DECEMBER 31, 2020 AND  
2019

LAND TRUST, INC.

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Independent Auditors' Report

DATE

Board of  
Trustees  
Land Trust  
Address

*Report on the Financial Statements*

We have audited the accompanying financial statements of the Land Trust, Inc. (a nonprofit organization), which comprise the statements of financial position as of December 31 2020 and 2019, and the related statements of activities and changes in net assets, functional expenses, and cash flows for the years then ended, and the related notes to the financial statements.

**Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

**Auditors' Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Independent Auditors' Report  
(Continued)

**Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Land Trust, Inc. as of December 31, 2020 and 2019, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

**Other Matters**

Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The accompanying schedule of expenditures of federal awards, as required by Title 2

**Building Better Land Trust Boards**

U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated, in all material respects, in relation to the financial statements as a whole.

**Other Reporting Required by Government Auditing Standards**

In accordance with Government Auditing Standards, we have also issued our report dated August 24, 2021, on our consideration of the Land Trust, Inc.'s internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Land Trust, Inc.'s internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with Government Auditing Standards in considering Land Trust, Inc.'s internal control over financial reporting and compliance.

PREPARER SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**SAMPLE  
LAND TRUST  
Internal Financial Procedures (6.D.1.)**

Approved: DATE

The LAND TRUST will follow a set of procedures for the internal handling of money that is consistent with sound fiscal controls. Financial controls will be divided so that a system of checks and balances is achieved.

The LAND TRUST contracts with an independent bookkeeper, who is a Certified Public Accountant, to handle its financial books, using the QuickBooks computer program. The bookkeeper works under the supervision of the Executive Director and the Board Treasurer. All financial records are backed up electronically each month, and electronic copies of the financial reports are sent to the Chair President, Treasurer, and Executive Director.

The duties of the Board of Directors are to establish policy, determine fund designation, appoint a budget committee, and a committee to supervise an audit or financial review each year.

The duties of the Board Treasurer are to review and approve all payments, sign checks or \$2,500.00 or more, review the monthly books and invoices, and report to the Board. The Executive Director has the authority to sign checks less than \$2,500.00, after the Treasurer has reviewed and approved the expense. The Chairman, President, and Secretary are also authorized signers on the checking account, but the primary responsibility for signing checks belongs to the Treasurer and the Executive Director. All checks over \$5,000 require two signatures.

The Executive Director also is responsible for reviewing and approving all invoices; authorizing all office expenditures; and signing all IRS contribution acknowledgement letters.

The duties of the bookkeeper are to record in QuickBooks all invoices and deposits, maintain a file of all supporting documentation, print checks, manage payroll and payroll taxes, produce the monthly reports, and reconcile bank statements. In doing so, the bookkeeper will consider the proper classification of donated funds, including stewardship funds, under Generally Accepted Accounting Procedures (GAAP) and under Statement of Financial Accounting Standards (SFAS), after consulting with the LAND TRUST's Treasurer and accountant in cases of doubt.

The duties of the office administrator are to receive mail; log invoices, correspondence and money; deposit all monies paid to the LAND TRUST; send the mail log to the Executive Director and the Treasurer; maintain an invoice and expense documentation file, which is to be approved by the Executive Director and given to the bookkeeper; produce IRS contribution acknowledgement letters for the Executive Director's signature; record all gifts of money or in-kind contributions in the LAND TRUST's donor database; and record the donor's conditions of the gift.

Financial Standard Operating Procedures

Mail Logs

Incoming mail –

Checks

- 1- Event Party – goes to the Operating Account - IRS letters sent for gift \$250 and over – Sponsor Thank You letter sent, if a Sponsor
- 2- Donation – (money following Event Party) goes to Operating Account
  - Under \$500 - Small gift - IRS letter
  - Over \$500 - Large gift – IRS letter – note from Chairman or President

## Building Better Land Trust Boards

- 3- BDR or Preparation Fee – Operating Account – Letter from Executive Director or Easement Coordinator (called Steps to Closing Letter)
- 4- Stewardship – to Bank Investment Group – IRS letter sent – Acknowledgement letter from Executive Director or Stewardship Coordinator
- 5- notations as to express conditions recorded in donor spreadsheet.

### Charges

- Bookkeeper's Folder to be processed once a month
- IRS letters
- Note from Chairman, President or Executive Director if large gift
- Notations of express conditions recorded in donor spreadsheet

### Invoices

- Placed in Executive Director's inbox for his review and approval, then
- Bookkeeper's folder to be processed once a month

### Statements

- Placed in Executive Director's inbox for review, then
- Bookkeeper's folder to be reconciled once a month

Any incoming financial materials received by electronic transfer, fax or hand delivery added to the mail log to record receipt. E-mail mail logs to Executive Director, Chairman, President and Treasurer daily

### Bank Deposits – Operating Account

#### For checks that are deposited in the Remote Deposit System:

- Checks logged into mail log
- Deposit in Bank Remote Deposit system
- Print deposit report
- Clip cancelled checks to deposit report and file
- Log all donations into donor database system

#### For checks that are not deposited in the Remote Deposit System, use bank location deposit:

- Checks logged in to mail log.
- Entered in deposit slip book
- Endorsed - For Deposit Only, the LAND TRUST, Account #
- Photo copied with Deposit slip
- Log all donations into donor database system
- Deposited in the bank drive-up window at the end of the day.
- Deposit receipt clipped to transaction copies in Bookkeeper's folder the next morning.

Copy of deposit slip, checks, return charge cards, and mail clipped together; Placed in Bookkeeper's folder.

### Bank Deposit – Stewardship Account

- Contact Bank Representative
- Give check to secretary or mail directly
- Log in DONOR database system as a donation or a payment (normally a payment unless specifically identified as a donation)
- Confirm via follow-up receipt email from Bank

### Credit Card Donations

Card donations returned in mail, and Cards filled out from a phone conversation



Copied and placed in Bookkeeper's folder for processing once a month. Original retained in appropriate event materials. After the event is over all credit transactions will be regular donations and original cards retained in a file  
Log all donations into donor database system

#### Paypal Donation

Transfer money in Paypal account to Bank Operating fund  
Place copy of transaction in Bookkeepers folder  
Record individual donations in donor and note any donation conditions

#### Checks for Invoices

Processed by Bookkeeper from invoices in folder.  
Check to make sure that Executive Director has signed/approved each invoice  
Scan all invoices, details with checks, and copies of Quickbooks statements prepared by Bookkeeper and any other non-electronic statements. Remember to include brokerage statements  
E-mail check/invoice/statement package to Treasurer for second approval  
Upon receipt of second approval, Executive Director sign all checks under \$2,500.00 (checks of \$2,500 or more hand-delivered to Treasurer for signature)  
Office Administrator to mail checks and file invoices and details in Bookkeeper's box.

#### Handwritten checks for mid-month necessities

Obtain approval of second authorized officer  
Authorized and signed by Executive Director or other authorized officer  
Copies placed in Bookkeeper's folder for her to enter in Quickbooks  
Electronic paychecks for staff (monthly)

#### Audit and Review

Audit Committee Chairman has lead for arranging audit or review. Committee members follow-up. Office Administrator, Treasurer, Bookkeeper, and Executive Director's participate in review.  
Audit Committee reviews and recommends approval of audit and Form 990.  
The full Board then reviews and approves audit and Form 990.

#### Budget Structure

First \$25 of all gifts go to membership  
All donations logged into donor database  
Track separately both Operating and Stewardship in Mail log system and donor database  
All expenses (including stewardship) coming out of operating budget  
Bookkeeper puts BDR and Processing Fees into Quickbooks as a line item  
Begin working on budget in December, final draft by January Planning Meeting  
Budget gets adopted in January Planning Meeting, and reviewed in June during the Mid-Year Review.

#### Form 990 and State Form 102

Executive Director contacts auditor, contracts for Audit, Form 990, and State Form 102, reviews draft reports with the audit committee  
Draft reviewed and approved by Audit Committee, then Board of Directors

#### Automatic Debit and Deposit

Automatic debit from Bank  
Automatic deposit from Quickbooks for VISA, MC and AmEx



**References for Further Reading  
Fundraising and Finance**

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2. *Tools and Templates*. The Association of Fundraising Professionals. <https://afpglobal.org/tools-templates>
3. *The Fundraising Planner: A Working Model for Raising the Dollars You Need*, Schaff, Douglas, and Schaff, Terry. John Wiley & Sons, Inc., 1999.  
<https://www.betterworldbooks.com/product/detail/9780787944353?shipto=US&curcode=USD>
4. *Land Trust Standards and Practices, Finance, Compiled Guidance*. Land Trust Alliance,, 2021.  
<https://tlc.lta.org/topclass/uploads/documents/398657/Finance-guidance-compiled.pdf>
- 5.
6. *The Four Key Roles of Your Board of Directors*, The Fundraising Authority, 2022.  
<https://thefundraisingauthority.com/strategy-and-planning/four-fundraising-roles/>
7. *What Your Donors Want and Why*, Ahern, Tom. Emerson and Church, Publishers, 2017.  
<https://www.emersonandchurch.com/products/what-your-donors-want-and-why#details>
8. *The Board and Risk Management*, Land magazine. Land Trust Alliance, 2015.  
<https://www.landtrustalliance.org/news/board-and-risk-management>
9. *Practical Pointer Series: Assessing Insurance for Land Trusts*, Land Trust Alliance, 2014.  
[https://tlc.lta.org/topclass/uploads/documents/8732/Assessing\\_Insurance\\_Needs.pdf](https://tlc.lta.org/topclass/uploads/documents/8732/Assessing_Insurance_Needs.pdf)
10. *Insurance for Land Trusts*. Land Trust Alliance, 2021. <https://www.landtrustalliance.org/topics/insurance>



**FOREVER**  
MARYLAND

Advancing and Enhancing Land Conservation

### ***Workshop #4: Transactions – How to Save Land***

This workshop, held on April 25, 2022, was designed to provide new and less-involved land trust board members with an overview of land conservation – easements, fee acquisitions, and more. This workshop provided an overview of Land Trust Standards 8, 9, and 10.

Recorded Session available here:

<https://youtu.be/XQJAgMJByps>

**SAMPLE  
LAND TRUST  
Easement Acquisition Guidelines (8.B.)**

**Requirements for Land Meriting Protection by the LAND TRUST**

Every land conservation project pursued by the LAND TRUST must have the potential to contribute to the achievement of the purposes set out in the LAND TRUST Articles of Incorporation.

Every land conservation project pursued by the LAND TRUST must be in the public interest as that interest defined by the [STATE CODE], with regard to areas having natural, scenic, historic, scientific, open-space or recreational characteristics.

Except in a rare circumstance where a potential donor is not seeking tax benefits, each land conservation project pursued by the LAND TRUST should, after consideration of all pros and cons, have a clear conservation purpose, protect conservation values, and result in a net public benefit, as defined by the Internal Revenue Code (IRS) Section 170(h)(4)(A).

**Discretionary Land Conservation Factors**

The LAND TRUST Board may consider the factors set out below in evaluating (a) whether a property has important conservation values, (b) whether a proposed conservation easement will further one or more conservation purposes, and (c) whether and how the proposed easement's restrictions will adequately protect those values. These factors are intended to provide direction to the LAND TRUST Board and to the public but are not to be considered requirements. Specific circumstances may warrant flexibility and departure from these factors as the LAND TRUST Board determines is appropriate. The LAND TRUST Board of Directors may, notwithstanding these Guidelines, always exercise its discretion to deny or condition a conservation easement.

**Conservation Values and Characteristics of the Property** -- The existence of wetlands, riparian corridors, wildlife habitat, biological diversity, unique plant or animal species, historic resources, agricultural lands, forest resources, open space, scenic resources (e.g., views of the scenic aspects of the property from public areas such as roads and parks, and the contribution of the property to views of mountains or other scenic vistas), the property's contribution to preservation of scenic rural villages or to views of open space from such villages, views from scenic byways, unique geological features, and critical slopes increase the importance of protecting specific properties. The Board will make a case-by-case evaluation as to whether these characteristics exist in specific cases, and how the resulting conservation values can be best protected.

**Property Location and Size** -- Generally, large tracts of land provide more conservation value than small tracts of land. The LAND TRUST does not have a minimum property size requirement. For example, factors such as the property's historic nature or its proximity to designated statewide resources such as Scenic Rivers, Scenic Highways or By-ways, state or national parks, wilderness areas, properties listed on the State Landmarks Register, or proximity to other lands under conservation easement, may make smaller properties important candidates for protection by conservation easement. As a result, the LAND TRUST Board may consider, but should not be governed by, the size of the property and the location of the property.

**Geographic Context** -- The LAND TRUST Board may consider the relative importance of the conservation values to be protected, particularly in the context of the intensity of the surrounding development and the role that the property plays in the cultural geographic area.

## Building Better Land Trust Boards

**Current Zoning and Community Values** -- The LAND TRUST Board will also consider classification or identification of the property in the local government's Comprehensive Plan, and the current zoning of the property; and whether the easement being proposed is consistent with and promotes the goals of local land use planning.

**Nature and Degree of Threat** -- The Board shall consider the nature and degree of current and likely future threats or risks to protection of the property and its conservation values, including its contribution to scenic vistas, considering conditions on and future use of the property itself, as well as conditions on and future use of surrounding or near-by properties.

The Board shall consider whether such risks can be further reduced by modifying the project as proposed. The Board shall also consider how probable it is that if the LAND TRUST does not take the easement, the property will be developed (1) for residential or commercial use at a higher density than provided for in the proposed easement, or (2) in ways that are less compatible with, or less protective of, the conservation values protected in the proposed easement.

**Coordination with Other Conservation Organizations and Public Agencies** -- Prior to completing a land conservation project plan and submitting it to the Easement Committee, staff will make its best effort to determine if another conservation organization or agency is already working to protect the property or if another conservation organization or agency would be more appropriate to hold or co-hold the easement.

**Programmatic Priorities** – Priority will be given to land conservation projects that fall within the LAND TRUST's Programmatic Priorities as set out in the LAND TRUST Strategic Plan.

**Best Protection Tool** – The LAND TRUST will determine whether a conservation easement is the most appropriate conservation tool to achieve the goals of the landowner and the LAND TRUST.

**Best Conservation Organization or Agency** – The LAND TRUST will determine whether there is a more appropriate organization or agency that should protect the property.

**Stewardship Capacity and Funding** – The LAND TRUST will estimate future stewardship costs, develop a funding source or sources, and secure funds for the perpetual stewardship of the fund, prior to completing the project.

### Required Easement Provisions

Every easement accepted for holding or co-holding by the LAND TRUST must satisfy the following requirements:

Legal Purposes (Legal Requirement) -- Each easement must implement at least one of the purposes set out in the LAND TRUST Articles of Incorporation, as follows:

1. Retain or protect natural or open-space values of real property,
2. Ensure availability of real property for agricultural, forestal, recreational, or open-space use,
3. Protect natural resources,
4. Maintain or enhance water quality, or
5. Preserve the historical, architectural or archeological aspects of real property.

## Building Better Land Trust Boards

### State Statutory Requirements (Legal Requirement)

Local Comprehensive Plan Conformity- “[C]onform in all respects to the comprehensive plan at the time the easement is granted for the area [local jurisdiction] in which the real property is located”, and

Conservation Easement Definition - Qualify as a “conservation easement” under the criteria of the state code.

### Internal Revenue Code (IRS) Section 170(h) and Treasury Regulations 1.170A-14

Except in rare circumstances where an easement donor is not seeking tax benefits, each conservation easement accepted by the LAND TRUST must meet the requirements of Internal Revenue Code Section 170(h) and Treasury Regulations 1.170A-14.

### Other Considerations

Each easement accepted by the LAND TRUST should:

**Restrictions:** Restrict, through the Terms and Conditions of the Conservation Easement, uses that are incompatible with the purposes of the easement and only allow reserved rights that will not impair the conservation values identified for the property (full protection of all such values if possible). Unless the LAND TRUST Board expressly allows to the contrary, the Terms and Conditions of the Conservation Easement must also comply with the relevant provisions of the State Code.

**Monitoring:** Contain monitoring provisions that are both capable of being effectively implemented and are adequate for protecting the conservation values identified.

**Enforceability:** Contain enforcement provisions that are legally enforceable, capable of being effectively enforced, and adequate for protecting the conservation values identified.

**Public Benefit Test:** In the opinion of the Board and after consideration of all pros and cons, contain provisions to ensure a net public benefit to present and future generations, in terms of the LAND TRUST purposes as set out in its Articles of Incorporation.

### LAND TRUST Model Conservation Easement

Protections for conservation values are written into the LAND TRUST Model Conservation Easement Template. Any deviations in the proposed easement from the LAND TRUST Model Conservation Easement Template shall be reviewed by the Easement Committee, be brought to the attention of the Board, and be justified.

### Landowner-Proposed Further Restrictions

If a landowner proposes restrictions other than those identified in the LAND TRUST Model Conservation Easement, the restrictions must have a clear purpose, must be easily observable during routine monitoring visits, and must be practical to enforce, and must be consistent with and protect the conservation values being protected.

### Federal and State Tax Laws

Tax law compliance is the legal responsibility of the landowner, who shall be so notified in writing by the LAND TRUST. The LAND TRUST is not involved in determining the value of an easement for tax purposes. Nonetheless, the LAND TRUST will not knowingly participate in projects where it has significant questions about the donor’s conformance with tax laws. The LAND TRUST will only sign IRS Form 8283 if the information in Section B Part 1, “Information on Donated Property” and the attached statement is complete, if the LAND TRUST has a copy of the full final appraisal supporting the form, and if the LAND TRUST has no significant questions about the donor’s compliance with tax laws.

## Building Better Land Trust Boards

### *Consistency with IRS and State Tax Criteria*

Except in rare circumstances, the LAND TRUST intends for conservation easements it accepts to be consistent with IRS criteria for a "qualified conservation easement" and with the criteria for State tax credits. However, the LAND TRUST may accept easements that do not comply with these criteria where no tax benefits are to be pursued, as long as such easements comply with the State Code and otherwise comply with these Guidelines.

### Guidelines for Development and Building Restrictions

The LAND TRUST will generally seek the same or an equivalent level of protection in its land conservation projects as similar conservation organizations and agencies in the State. However the LAND TRUST Board may determine that certain easement provisions, either more or less restrictive than those of other organizations, are necessary or satisfactory to achieve the LAND TRUST purposes or landowner goals for the land conservation project.

### Subdivision and Development Restriction

The most significant threat to open space in the State, including agricultural and forest land, is residential and commercial development. As a matter of course, the LAND TRUST prohibits division or subdivision of the conservation property. The LAND TRUST may depart from this standard on a case-by-case basis in circumstances where the Board believes it is necessary to do so in light of other factors it may consider, including total acreage being protected, average parcel size in the surrounding area, contiguous protected parcels, conservation values to be protected, and the amount of development which may be sustained without compromising the conservation values. In the event the LAND TRUST agrees to consider allowing limited subdivision or development of the property under the easement, it will be guided by generally accepted standards in State and by IRS regulations on conservation easements that state, "A deduction will not be allowed for the preservation of open space under section 170(h)(4)(A)(iii), if the terms of the easement permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land or with the governmental conservation policy that is being furthered by the donation." Subdivided parcels may be a cluster of small lots that retain the maximum open space on the remainder in order to maintain a viable size for farm or forestry use or for other conservation purposes.

### Multiple Parcels

Where an easement or easements are proposed on several contiguous parcels, the landowner shall be encouraged, but not necessarily required, to consolidate the separate parcels into one parcel encompassing them all, to which the LAND TRUST guidelines would then apply. In any case, these guidelines apply to all of the parcels on which an easement is proposed to be placed, considered for the purposes of the easement as one. Further, the building guidelines shall also apply separately to each parcel allowed by division under the easement, once the division is made, except to the extent that the easement provides to the contrary.

### *Guidelines Relating to Building Restrictions*

Construction of residential and commercial structures and associated infrastructure such as roads are the most important threat to the characteristics and conservation values of land. To achieve the purpose of the land conservation project, the LAND TRUST seeks to eliminate or very significantly reduce development through building restrictions in the easement. The following buildings and other structures can be permitted on each parcel if they meet the following guidelines.

For each parcel, one principal single-family residence and associated non-residential outbuildings appropriately incidental thereto, including garage, gazebos, tool sheds, stables, etc., and associated structures such as a swimming pool and tennis court, are normally permitted. Secondary dwelling units (residential units subordinate to the primary dwelling and situate on the same parcel, including tenant or guest houses, rental cottages, and barn or duplex apartments) may be permitted to the extent that they are not in conflict with the conservation values of the

## Building Better Land Trust Boards

property. Secondary dwelling units are permitted on a general scale of one per 100 acres; however, the use and character of the land may warrant an increase, or, in some cases, a decrease in these numbers.

Any new residence, secondary dwelling unit, or roads or access ways that may be allowed under an easement will be subject, at a minimum, to 60 days advance notice and written approval by the LAND TRUST Board to determine whether the proposed construction is in compliance with the terms of the easement. The easement will normally also limit the number, location, and size of any new residences, roads or access ways, on a case-by-case basis, as the Board deems necessary to preserve the conservation values of the property. Advance notice to the LAND TRUST Board prior to construction of permitted ancillary or agricultural structures, if necessary to ensure protection of conservation values, may also be required.

### *New Construction Location Restrictions*

The LAND TRUST will generally specify a building envelope (or a buildable area within which a building envelope may be located) identifying the location for new construction on the property and the maximum permitted height of new or enlarged structures. An envelope may include both the horizontal and vertical outline of a designated building or building area.

Properties with high visibility or areas of high sensitivity may need greater restrictions to protect the public and conservation values. For properties taken under easement to protect a scenic, natural, or historic resource, building setbacks from or within the viewshed of that resource (such as a scenic river or road) or “no-build” areas may be required.

Topographic or other intrinsic features of the property which allow for greater density of development without compromising the conservation values of the property may also be considered at the request of the landowner.



**SAMPLE  
LAND TRUST  
Land Protection Priorities and Project Acceptance Policy  
(8.B.2.)**

**I. Purpose**

The LAND TRUST pursues land protection projects that are consistent with the organization's mission, goals, and conservation priorities. The following policy guides the LAND TRUST's process for evaluating both fee-simple and conservation easement acquisition opportunities. Formal evaluation of each opportunity is based on two sets of criteria.

- Land Protection Priorities guide an evaluation of the property based on its natural features.
- Project Acceptance Considerations guide a detailed evaluation of the size, location, and feasibility of a project.

These criteria are intended to guide rather than limit the actions of the LAND TRUST as one of the important benefits of a local land trust is the flexibility to address unusual opportunities. Each fee-simple and conservation easement property that the LAND TRUST accepts is approved by the Board of Directors. The Board of Directors retains discretion over all acquisition of land and conservation easements as well as disposal of land and will evaluate each project and proposal on its own merits after careful investigation of the property, its resources, and its public benefits. While the LAND TRUST will consider all land conservation opportunities, it is rare that properties under ten acres will meet the LAND TRUST's criteria and the increasingly demanding requirements of the Internal Revenue Service (IRS). Additionally, given the LAND TRUST's limited time and resources, projects that do not result in the extinguishment of any development rights will rarely be considered unless the property has extraordinary conservation value.

**II. Land Protection Priorities**

All properties to be considered for the LAND TRUST acceptance must have one or more of the following characteristics:

- i. Wildlife and biodiversity
  - a. Part of a large, unfragmented landscape (i.e., contiguity)
  - b. Important wildlife corridors
  - c. Important wetlands, surface waters, and riparian corridors
  - d. Diverse and/or unique physical landscapes
  - e. Rare, threatened, or endangered species habitat
  - f. Significant natural communities or complexes of communities
  - g. Ecosystem of significant scientific and/or educational value
- ii. Working farmland or forestry use
  - a. Currently in active production
  - b. High-quality soils and other agricultural resources (e.g., fertile, well-drained cropland and lush pasture)
  - c. Part of a viable farm operation
  - d. Under sound resource management (including water quality practices)
- iii. Water quality
  - a. Important wetlands, surface waters, and riparian corridors (repeated from 1.c. as it also pertains to water quality)
  - b. Floodplains and proximity to water bodies
  - c. Steep slopes
  - d. Supports the implementation of a watershed implementation plan

When one or more of the three above characteristics is present, the following two characteristics will be considered for any potential enhancements to the value of the property:

- i. Scenic beauty
  - a. Visually prominent (e.g., scenic byways, high points, parks, waterways)
  - b. Viewed and enjoyed by many people
  - c. Contributes to rural character

## Building Better Land Trust Boards

- d. Likely to be impaired without protection
- e. Remain scenic even if nearby property is developed
- ii. Recreation opportunities
  - a. Areas that benefit a broad segment of the community (i.e., accessible)
  - b. Contiguous with other publicly accessible lands or remains viable even if nearby property is developed
  - c. Increase trail corridors between publicly accessible lands

### III. Project Acceptance Considerations

The following are Acceptance Considerations for all potential land projects:

- i. How many development rights could be eliminated under current state and local laws?
- ii. Is the property under imminent or probable threat from development?
- iii. Is the property of sufficient size that its conservation resources are likely to remain intact, even if adjacent properties are developed?
- iv. Is preservation of the property consistent with federal, state and local government land use policies that relate to managed growth?
- v. Does the protection of the land further government plans or policies such as the county Master Plan, the county Land Protection, Parks and Recreation Plan (LPPRP), the county Green Infrastructure Plan, and the Chesapeake Critical Area plan?
- vi. Are there any ethical, public image, or conflict of interest concerns with accepting the property?
- vii. Is access adequate for management and monitoring?
- viii. Can the property be acquired with reasonable effort and cost in relation to its value or purpose? Does the project represent a prudent financial investment in conservation? Does the LAND TRUST have access to required acquisition funds?
- ix. Are there any hazards present, or indicated in the map, such as existing or historic fuel or hazardous waste storage, farm waste, evidence of use of biocides, fertilizer storage, fire hazards, waterside cliffs, quarries, landfills, dumps, or any other portents of future costly clean-up, personnel hazard, or legal action?
- x. Are there any concerns with the chain of title? Could the LAND TRUST obtain title insurance for its real estate interest?
- xi. Is the property already protected by easement, covenant, deed restriction, etc.?
- xii. Would another organization be a better fit to achieve the conservation goals of the project? Or is a partnership necessary for the LAND TRUST to complete the transaction and/or steward the property?

The following are additional Acceptance Considerations for conservation easements:

- i. Is the landowner insisting on provisions that would seriously diminish the property's conservation values?
  - a. Where on the property will reserved residences (if any) be located? What other accessory structures and means of access are reserved to serve the residence(s)?
  - b. What long term impact will reserved subdivision rights (if any) on the property have on the conservation values, with respect to: number, configuration, and size of parcels; continuity of open lands; and multiple ownerships?

## Building Better Land Trust Boards

- ii. Does the proposed easement include restrictions, reserved rights, or conditions, the quantity and/or character of which make it more likely that monitoring and enforcement may become complicated, burdensome, or expensive?
  - a. Are there multiple independent owners?
  - b. Is there a history of destructive trespassing?
  - c. Is the configuration of the property irregular? Are property boundaries clear and undisputed?
- iii. Does the LAND TRUST have sufficient staff and financial capacity to monitor and defend the easement?
- iv. While it is not the intention of the LAND TRUST to own and manage large numbers of properties, it is recognized that fee-simple ownership in some cases may be necessary and/or advantageous on either a temporary or long-term basis to achieve the LAND TRUST's mission, goals, and conservation priorities.

The following are additional Acceptance Considerations for fee-simple land acquisition:

- i. Would property management be unusually difficult – for example, due to use of adjoining or neighboring properties, proximity to major or high-traffic roadways, maintenance of structures, and/or management of natural resources?
- ii. Does the LAND TRUST have sufficient personnel and financial capacity to manage and care for the property over time?
- iii. Would the LAND TRUST dispose of the property after ensuring its permanent protection?
  - a. Would disposal violate any conditions or understanding (oral or written, explicit or implied) that were entered into as part of the acquisition?
  - b. Who is the likely future owner (a private entity or a government entity) and what is the disposal timeframe?

Adopted [DATE]

**SAMPLE  
LAND TRUST  
Property Information and Site Visit Form (8.C.1.)**

Property Owner Name: \_\_\_\_\_

Property Owner Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Property Owner Mailing Address: \_\_\_\_\_

Date of Visit(s): \_\_\_\_\_

Met With: \_\_\_\_\_

Learned of Land Trust From \_\_\_\_\_

Type of project: \_\_\_\_\_ (donation or fee acquisition)

**Property Information**

Property Address: \_\_\_\_\_

Tax Map(s): \_\_\_\_\_ Parcel #(s): \_\_\_\_\_

Acreage: \_\_\_\_\_

County and Region: \_\_\_\_\_

Current Land Use(s): \_\_\_\_\_

Acreage: \_\_\_\_\_ Farm  
Acres: \_\_\_\_\_  
Hay/Grass: \_\_\_\_\_  
Pasture: \_\_\_\_\_

Row Crops: \_\_\_\_\_

Forest Acres: \_\_\_\_\_ Forest  
Type: \_\_\_\_\_

Tree/plant Species:  
\_\_\_\_\_  
\_\_\_\_\_

Wetland  
Acres: \_\_\_\_\_ Type: \_\_\_\_\_

Meadow Acres:  
\_\_\_\_\_

Pond(s): \_\_\_\_\_ ac \_\_\_\_\_ (#)

Existing Buffer Width:  
\_\_\_\_\_

Type of Existing Buffer:  
\_\_\_\_\_

Home Site/ Improvement  
Acres: \_\_\_\_\_

Other features/uses:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Research of Existing Data Sources:  
FIDS  ITEA  AgPrint   
GI  NHA  SSPRA

Important Bird Area   
Critical Area  
Wetlands of Special State  
Concern

RTE Species: \_\_\_\_\_  
Historic Register: \_\_\_\_\_

Rural Legacy Area: \_\_\_\_\_

**Building Better Land Trust Boards**

Name(s) of Water Body(ies): \_\_\_\_\_ Watershed:  
\_\_\_\_\_

Spring(s)  Yes  No Number of Spring(s): \_\_\_\_\_

Shoreline Improvements (i.e. Pier, Riprap, Bulkhead, Boat Ramp, etc...) (List):  
\_\_\_\_\_

Climate Change Impacts (list, describe and cite source data; include map is needed):  
\_\_\_\_\_  
\_\_\_\_\_

Nearby Parks or Natural Areas:  
\_\_\_\_\_

Dump Site (Describe):  
\_\_\_\_\_  
\_\_\_\_\_

Encroachment (Describe):  
\_\_\_\_\_

**Structures**

Primary Dwelling Unit(s):  Yes  No

# of Primary Dwelling Units:  
\_\_\_\_\_

Condition, Date, Historic?:  
\_\_\_\_\_

Notes: \_\_\_\_\_  
\_\_\_\_\_

***Accessory Residential Structures***

(i.e. swimming pool, gazebo, tool shed, etc...)  Yes  No

List: \_\_\_\_\_  
\_\_\_\_\_

***Accessory Dwelling Unit*** (i.e. tenant house, farm manager house, guest house, barn apartment, etc...)  Yes  No

List: \_\_\_\_\_  
\_\_\_\_\_

**Building Better Land Trust Boards**

*Agricultural Structures* (i.e. barn, run-in shed, silo, corn crib, milking parlor, etc...)  Yes  No

List:

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*Other Structures:*

**Due Diligence Questions**

Conversation about Hazardous Materials w/ Landowner:

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Check MDE's Land Restoration Program map for property (<http://mdewin64.mde.state.md.us/LRP/index.html>)

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Mineral rights united in surface, or severed? \_\_\_\_\_

If severed: what types of minerals are mentioned and when were they severed?

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Historic Land uses:

Present Land uses:

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Proposed future land uses: \_\_\_\_\_

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**Supporting Documentation**

- Plat
- Conveyance Deed: Liber: \_\_\_\_\_ Folio: \_\_\_\_\_
- Outstanding Deed of Trust / Mortgage / Equity Line
- Management Plan(s) (List): \_\_\_\_\_

**Conservation Attributes**

Conservation Values based upon Land Trust priorities:

- Diverse and Healthy Wildlife Populations
  - o Green Infrastructure hubs and corridors
  - o Proximity to protected lands
  - o Forest Interior dwelling species or potential habitat
  - o Area Susceptible to sea level rise
  - o Wetlands and wetlands of special state concerns
  - o Important Bird Areas
- Provide Natural Buffers that maintain water quality
  - o Lands important for water quality in targeted watersheds; Isle of Wight, Newport Bay, Nanticoke River, Wicomico River, and other watersheds as identified over time
  - o Lands critical to protecting drinking water supplies, including aquifer recharge areas

**Building Better Land Trust Boards**

- Wetlands and wetlands of special state concern
  - Maintain Forestry and Agriculture as viable industries
- Large blocks of farms and forests
- Productive agricultural soils
- Proximity to protected lands or other working lands
- Rural Legacy areas, historic sites/cultural lands
  - Scenic Protection (visible from roadway, waterbody, historic site)
- Natural and agricultural areas visible from water and Scenic Byways, ViewTrail 100 and other sites as recognized by conservation and/or heritage partners
  - Protect lands for public access and recreation
- Enhance or support the creation of recreational trails
- Support efforts to ensure routes which cross multi-jurisdictions are seamless and offer safe alternatives to access recreational opportunities
- Support efforts to allow for low impact camping, hiking and paddle sites
- Supports of Gov't Policy such as Comprehensive Plan and Land Preservation Parks and Recreation
  
- Plan
- Protection would protect from threats from development and/or impervious surface
- Historic Resource Protection

**Notes:**

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**SAMPLE  
LAND TRUST  
Ensuring Sound Transactions Policy (9.)**

This policy is intended to complement and expand upon the LAND TRUST Land Protection Policy, which is hereby incorporated by reference. This policy applies only to (1) land that has been identified for acquisition as an easement or fee holding, or (2) existing easements or fee properties with conservation values, as defined in the LAND TRUST's Policy on Land Protection, that the LAND TRUST wishes to dispose of.

The LAND TRUST is responsible for ensuring that all fee and conservation easements interests accepted by LAND TRUST are acquired or conveyed, in instances when LAND TRUST conveys property to other parties, through sound legal procedures and that all "due diligence" steps of the acquisition process are followed.

**Legal Review and Technical Expertise**

For each fee or conservation easement property that the LAND TRUST proposes to accept, the LAND TRUST will obtain a legal review by an attorney familiar with the relevant areas of law in the state in which the property lies. As necessary, the LAND TRUST also will seek professional advice of tax, real estate, financial, water and mineral rights, and resource specialists, and document such technical advice in writing.

**Independent Legal Advice**

The LAND TRUST will advise each landowner in writing that the LAND TRUST does not offer legal counsel and will encourage each landowner to obtain legal counsel. This communication to the landowner will be kept as part of the Land Transaction File described below.

**Environmental Due Diligence for Hazardous Materials**

The LAND TRUST will ensure that all necessary steps are taken to identify and document the presence of hazardous or toxic materials on each property being considered for acquisition or disposal. Said due diligence steps may include, as appropriate, site inspections by the LAND TRUST staff or qualified contractors, review of CERCLA databases, and Level 1 or 2 Pre-Acquisition Environmental Site Assessments. The LAND TRUST will ensure that a written procedure is developed that defines the appropriate scope and methodology for conducting hazardous or toxic waste evaluations.

**Determining Property Boundaries**

The LAND TRUST will identify and document the boundaries of each property being considered for acquisition, through review of the legal description of the property, site inspection to confirm the location and condition of marked boundaries, and, if necessary, survey of the property.

**Fee or Conservation Easement Deeds**

The LAND TRUST will update and maintain a current conservation easement template, and adapt it as necessary for individual properties in specific states. All fee and conservation easement deeds will conform in all respects to state conservation and real estate law, and will properly identify the significant conservation values, use restrictions, and reserved rights, if any.

**Documentation of Purposes and Responsibilities (Including Financial Obligations of Donors or Sellers)**

The LAND TRUST will ensure that any deed of conservation easement or fee interest clearly articulates the roles, rights, and responsibilities of all partners. The LAND TRUST will clearly document the intended uses of any property that it accepts in the deed, on the IRS Form 8283, and in the Land Transaction File (see Record Keeping below). Said intended uses may include retention of the property in perpetuity, conveyance of the property to public agency, resale of a fee property subject to an easement, or resale. All financial obligations of the transaction, including legal fees, appraisals, surveys, and closing costs, should be borne by the party conveying the fee or easement property to the LAND TRUST, unless otherwise agreed to in writing.



## **Building Better Land Trust Boards**

Unless otherwise agreed to in writing in advance, the LAND TRUST will require each donor or seller to pay an amount into the LAND TRUST's stewardship fund commensurate with the long-term cost of monitoring and enforcement (for easement properties) or land management (for fee properties) for the subject property.

### **Record Keeping**

The LAND TRUST will immediately transfer and hereafter maintain original copies of deeds, baseline documentation reports, legal agreements, appraisals, maps, critical correspondence, and other critical documents essential to the defense of each transaction in a fireproof, flood-proof, secure storage facility. Said records will be copied into a permanent electronic form, and said electronic records will be retained in multiple locations. Another set of documents will be maintained as working documents, which will be transferred as necessary to permanent storage.

A Land Transaction File will be established for each fee land or conservation easement. It will include, at a minimum, the following records, which will be maintained as permanent records of the transaction:

- A summary or checklist of all documents pertaining to the specific transaction;
- A baseline documentation report, which includes conservation values for conservation easements, photographs of key features, aerial photographs, and maps, as appropriate;
- Recorded deed or conservation easement;
- Documentation of understandings, including the LAND TRUST's communication to the landowner concerning independent legal advice;
- Title report and/or title insurance policy;
- Escrow instructions and closing statement, if applicable;
- Maps;
- Survey report, with maps and legal description;
- Appraisal, if the value of the property interest is greater than \$5,000;
- Board resolutions and reports;
- Real estate tax data, e.g., exemption status or special treatment tax data
- Government reports—such as IRS Form 8283 for acquisitions, or IRS Form 8282 for sales;
- Baseline data, including results of the hazardous materials assessment;
- Updated resource data;
- Monitoring reports;
- Log of communications with owners of land subject to conservation easements; and
- Management plans for fee lands.

The director of conservation will ensure that written procedures are developed defining the requirements for Land Transaction Files for any new conservation easements or fee land that the LAND TRUST acquires. These procedures will meet IRS and applicable state regulations for conservation easements and adhere to Land Trust Alliance Standards. The LAND TRUST staff will endeavor to bring documentation for all current fee lands and conservation easements up to these requirements as quickly as reasonably possible.

### **Title Investigation and Subordination**

The LAND TRUST will ensure: (1) that a full title report or title insurance policy is available for each property being considered for acquisition; (2) that all mortgages, liens, and other encumbrances that could result in extinguishment of the easement or fee interest, or have a significant adverse impact to the conservation values of the property, are discharged or properly subordinated; and (3) that the title report or title insurance is reviewed by legal counsel.

### **Recording**

The LAND TRUST will ensure that fee and easement deeds in which the LAND TRUST is the Grantee are legally recorded as soon as possible in the appropriate local records office, in accordance with state and local law.

## **Building Better Land Trust Boards**

### **Purchasing Land**

The LAND TRUST will ensure that it obtains a qualified, independent appraisal prior to purchase (or partial purchase, in a bargain sale transaction) of any fee or easement interest in real property estimated at a value of \$5,000 or more.

### **Transfers of Land, Including Selling Land or Easements<sup>1</sup>**

Except in specific circumstances as outlined herein, the LAND TRUST will only convey or sell land or interests in land to a government agency, or to another land trust, if said land trust accepts, in writing, permanent responsibility for protecting the property's conservation values and is deemed capable of fulfilling said responsibilities.

The LAND TRUST may convey a fee interest in land that has conservation values to a private party if: (1) the conveyance is not contrary to the expressed wishes of the donor (if the property was conveyed to LAND TRUST through a donation or bargain sale); and (2) the conveyance is subject to restrictions that fully protect the conservation values of the property. If the LAND TRUST intends to dispose of lands or interests in land to a private party, it will obtain a qualified independent appraisal that justifies the selling price for the property. Under no circumstances will the LAND TRUST permit a sale of assets to any party deemed to have a conflict of interest.

**SAMPLE  
LAND TRUST  
Recordkeeping Policy (9.G.)**

**Adopted: (DATE)**

**Purpose of this policy:** This records policy is to ensure that LAND TRUST retains all the documents it needs to comply with legal and financial obligations, uphold conservation easements and their proper stewardship, and maintain Land Trust Alliance Accreditation. These documents also serve to guide future decisions concerning the organization.

This policy shall be reviewed and approved by the LAND TRUST's Board of Directors no less than every three years.

There are two categories of records: 1) Corporation (Organization) Records and 2) Conservation Easement and Stewardship Records.

**CORPORATION RECORDS**

**Purposes of recordkeeping:**

- Fulfill legal, organizational and financial obligations
- Document past and current policies and procedures
- Provide guidance and reference for future board and staff members regarding decision making, positioning, and events

**A. CORPORATE AND LEGAL RECORDS:**

**Retention period:** Retain permanently. The Executive Director shall keep a copy of corporate filings and an additional copy shall be kept in the archives of the land trust. The Board President or Executive Director shall sign any documents that require a signature, as further provided in the bylaws or delegation of authority. Corporate and legal records include:

- Articles of Incorporation, By-Laws, IRS letter of 501(C)(3) status
- State Tax exempt status
- Current/Updated edition of any policy manuals
- Acquisition documents - motions, letters of agreement, legal advice
- Mortgages, loans, property sales documents
- Documents related to litigation or other legal land matters
- Strategic planning documents

**B. FINANCIAL RECORDS:**

**Retention period:** Retain in land trust office or archives for seven years, then destroy at will. The Board President or Treasurer shall sign any documents that require a signature. Financial records include:

- Federal, state, and municipal tax returns and filings
- Audits and financial statements
- Investment documents
- Insurance policies
- Annual financial reports

**C. EMPLOYEE RECORDS:**

**Retention Period:** Retain in land trust office or archives for seven years, then destroy at will.

Employee records include, but are not limited to:

- Resumes
- Employee evaluations
- Terms of employment & salary changes

**D. BOARD MINUTES:**

## Building Better Land Trust Boards

**Retention period:** Retain permanently. Minutes of each Board of Directors meeting shall be kept in the minute book of the land trust and signed by the Secretary or Acting Secretary. It will be the responsibility of the Secretary to keep the current minute book, and provide a digital copy to the Executive Director. Older minute books shall be kept permanently in the archives of the land trust.

### E. FUNDRAISING AND COMMUNICATIONS:

**Retention period:** Retain in the land trust office or archives for the period of time indicated for each item, then destroy at will:

- |  |         |
|--|---------|
| • Member/donor database (backup annually on paper)         | 7 years |
| • Grant applications, LOA, reports                         | 7 years |
| • Solicitations  | 7 years |
| • Correspondence with donors (thank you letters)           | 7 years |
| • Pledge forms   | 7 years |
| • Fundraising documents (materials, talking points)        | 7 years |
| • Documentation of partnership activities                  | 7 years |
| • Documentation of advocacy activities                     | 7 years |
| • General correspondence general                           | 7 years |
| • Newsletters and publications                             | 7 years |
| • Website documentation                                    | * years |
| • Activity records - communication, fundraising, education | * years |
| • Voicemails, emails, mail                                 | * years |

\* Retain as long as deemed necessary for institutional memory.

Note: The above retention schedules refer to the formal archiving of documents for the organization. Board members, committees, and staff may wish to keep copies in addition to working files. These duplicates may be destroyed when no longer needed.

## CONSERVATION EASEMENT AND STEWARDSHIP RECORDS

### Purposes of recordkeeping:

- Document the development and completion of conservation projects
- Document the management and monitoring of ongoing conservation easement obligations
- Provide guidance and reference for future board and staff members regarding the history and status of each project

**Retention period:** Retain permanently, except for duplicates in field files.

1. All files shall have copies as such:
  - a. Archived original file
  - b. Onsite hard copy
  - c. Onsite digital copy stored on a computer hard drive, and computer is regularly backed up by a cloud-based program.
  - d. Stewardship information shall have a digital copy on an online stewardship management cloud program, separate from hard drive backup program.
2. All onsite paper files remain in the office except copies designated for field use (field file)
3. All files are organized for completeness of pertinent information, ease of use and storage
4. Only essential information is stored. Essential information is determined by reference to our guiding philosophy and to the conservation easement or other conservation document

Each conservation easement file shall contain:

- A. Baseline documentation
  - a. Date of completion
  - b. Adequate legal description of property
  - c. Conservation values & public benefits

## Building Better Land Trust Boards

- d. Inventory of structures on the property
  - e. Pictures of land condition
  - f. Description of land condition photos
  - g. Tax map
  - h. Aerial map or photo of easement location and boundaries
  - i. Signature and Date of landowner and the land trust acknowledging that both attest to the accuracy of the information contained in the report (or documented attempts to gain signature)
- B. Original deed of easement - signed by involved parties, including grantor, grantees, notary, and lawyer.
  - C. Legal agreements, deeds, and amendments.
  - D. Acquisition decision-making documents (checklists, etc)
  - E. Acquisition documents - motions, letters of agreement, legal advice, etc.
  - F. Donor instructions (if any have been received)
  - G. Title Investigation, insurance or policies (required for easements after September 1, 2017 only)
  - H. Surveys (if any, includes wildlife inventories, boundary surveys, environmental assessments)
  - I. Appraisals if it was a purchased easement or landowner claimed tax-deduction (required for easements after September 1, 2017 only)
  - J. Forms 8283 for projects when landowner claimed a federal tax deduction (original can be a copy of landowners signed original)
  - K. Contracts and leases relative to long-term land management activities
  - L. Forest Management plans (if required by easement deed)
  - M. Settlement documents and maps
  - N. Critical correspondence (includes project goals, tax and legal matters, enforcement, permitting certain activities, etc)
  - O. Records of ownership (includes notices of change of ownership)
  - P. Stewardship file
  - Q. Annual monitoring reports
    - a. Report form - with live signature of monitor and date completed
    - b. Photo schedule (descriptions)
    - c. Photos
    - d. Photo location map
    - e. Summary of ownership and past stewardship reports
  - R. Location maps
  - S. Stewardship records (includes substantive notices, approvals, denials, interpretations, exercise of significant permitted rights)
  - T. Fee property inspection reports & management plans
  - U. Field File (for field use) - *Does not need any duplicates digitally or in archives, since it is a copy of the stewardship file.*
  - V. Copy of stewardship file, live signatures not required
  - W. Any other important information related to the conservation easement

### STORAGE:

All records will be maintained as paper (hard) files and/or digital (soft) files. The archives of LAND TRUST shall be digital, using a cloud-based program or off-site archival software. All archived records concerning conservation easements shall be kept in a way that meets the requirements of applicable federal and state law with respect to rules of evidence regarding electronic originals. For documents requiring signatures, archives shall be replicas of the signed originals with all exhibits and attachments. All archived records shall be stored in a scanned pdf format. Onsite is considered within the office of the LAND TRUST. All retention periods begin with the end of the activity or event.

### DESTRUCTION:

After retention period is completed, hard copy documents containing sensitive information (nonpublic personal or organizational) shall be shredded. Otherwise they can be recycled or trashed. Soft copies may be permanently deleted. Destruction is not required immediately after the retention period is completed. The retention period is considered a minimum time of recordkeeping.

**SAMPLE  
LAND TRUST  
Easement Intake Documentation Schedule (9.G.1.)**

Grantor: \_\_\_\_\_

Attorney: \_\_\_\_\_

Date:

1. Site Visit/Conservation Value Form: \_\_\_\_\_
2. Letter of Intent signed by landowner: \_\_\_\_\_
3. Project Evaluation: \_\_\_\_\_
4. Easement Draft (date of first draft): \_\_\_\_\_
5. Preliminary Written Easement Concurrence by Landowner: \_\_\_\_\_
6. Title Report (done by): \_\_\_\_\_
7. Land Trust Legal Review (done by): \_\_\_\_\_
8. Environmental Hazards/Survey and Legal Description: \_\_\_\_\_
9. Easement Committee Recommendation (date of meeting): \_\_\_\_\_
10. Final Easement Draft (done by): \_\_\_\_\_
11. Board of Directors Approval (date of meeting): \_\_\_\_\_
12. Final Easement Review (done by): \_\_\_\_\_
13. County Comp Plan compliance letter \_\_\_\_\_
14. Steps to Closing Letter \_\_\_\_\_
15. Attorney's letter (re: zoning, districts & title) \_\_\_\_\_
16. BDR (done by): \_\_\_\_\_
17. BDR Acknowledgment: \_\_\_\_\_
18. Appraisal (done by): \_\_\_\_\_
19. Title Report/Certificate received: \_\_\_\_\_
20. Original Easement executed by:
  - Lien Holders/Trustees: \_\_\_\_\_
  - Owner: \_\_\_\_\_
  - Land Trust: \_\_\_\_\_
21. Easement Recorded (date of recordation): \_\_\_\_\_
22. Recording Notifications (date sent to \_\_\_\_\_): \_\_\_\_\_
23. IRS Form 8283 and supplemental statement (date signed): \_\_\_\_\_
24. Contemporaneous Written Acknowledgment (date sent): \_\_\_\_\_

Fees (if required)

Processing fee: (deposit) \_\_\_\_\_ – (remainder) \_\_\_\_\_

BDR fee: \_\_\_\_\_

Stewardship fee amount: \_\_\_\_\_ (via agreement? \_\_\_\_\_ )

Dates Received:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Building Better Land Trust Boards**

**SAMPLE  
LAND TRUST  
Easement File Cover Sheet Sample (9.B.2.)**

Name of Property:

Date of Acquisition:

Transaction Type (e.g., purchase, donation, bargain sale, mitigation/regulatory, co-hold, other):

Easement Agreement/Contracts/Legal (all which are applicable)

- Easement Agreement
- Option agreement/Memorandum of Understanding/Purchase and Sale Agreement
- Title Report
- Title Insurance Policy
- Property appraisal(s)
- Environmental assessment
- Mortgage subordination documents
- Donor substantiation (Acknowledgement)/Tax Letter
- IRS 8283 and Summary attachment
- Amendments

Stewardship

- Baseline Documentation Report
- Stewardship Monitoring Reports
- Enforcement documentation
- Other stewardship documentation

Maps

- Survey
- Aerial Map
- Topographic Map
- Other map(s) \_\_\_\_\_

Board Documentation and Correspondence

- Board of Directors meeting minutes at which the project was approved
- Board of Directors meeting minutes at which a Stewardship funding plan was approved, if applicable
- All relevant correspondence, including emails

Historical Information

Publicity/Outreach

**ACTIONS**

Destroy all drafts/ambiguous Documents

Scan/copy/file all documents into each file (archive, office, field, digital)

**SAMPLE  
LAND TRUST**

**Landowner Notification and Consent Form (10.A.1.)**

Donation of an interest in property, whether it is a fee or easement interest, is an act of land protection which is completely voluntary, and you may change your mind at any time until you have signed and delivered the deed to the LAND TRUST for recordation.

If you convey a fee interest in the property, you will relinquish all right, title, and interest in the property, unless you specifically reserve a right, such as a life estate.

If you convey an easement, all restrictions on the use of your property under easement are contained in the deed of easement. After the deed of easement is signed and recorded, these restrictions become permanently binding on you and all subsequent owners of the easement property.

The terms and conditions of the deed and other information related to the donation that you provide to the LAND TRUST will become a matter of public record.

**The LAND TRUST does not provide legal or tax advice. You should consult with your advisors on estate planning, real estate, and tax matters, and have an attorney assist you in the review of the easement throughout the process. You will also need your attorney to review with you the effect of the gift of a fee interest or easement on your estate plan.**

Donors who wish to claim a federal or state income tax deduction or state tax credit must ensure that the project meets the requirements of IRS § 170 and the accompanying Treasury Department regulations and/or any other federal or state requirements.

The LAND TRUST requires that an appraisal be produced although the LAND TRUST is not involved in the appraisal process. If you intend to take a federal tax deduction or to claim a state tax credit for a non-cash charitable gift, it is your responsibility, for gifts of property valued at more than \$5,000.00, to engage a qualified independent appraiser to determine the value of the gift and to provide you with a qualified appraisal. The timing of the appraisal is essential: it cannot be made earlier than 60 days before the date of the gift, and must state the fair market value of the gift as of the date of the contribution. The entire written appraisal and Appraisal Summary (IRS Form 8283) must be received by the donor on or before the due date (including extensions) of the tax return on which the deduction is claimed. The LAND TRUST strongly recommends the use of a *Certified General Appraiser* who follows the Uniform Standards of Professional Appraisal Practice. The LAND TRUST will request a copy of the IRS form 8283 signed by the appraiser and copy of the appraisal. The LAND TRUST will not knowingly participate in projects where it has significant concerns about tax law compliance.

If you are conveying a fee interest in the property, all mortgages, liens, and other encumbrances must be cleared from the title, unless specifically approved by the LAND TRUST, in advance in writing.

If you are conveying a conservation easement and there is a mortgage on the property, the mortgage holder must subordinate the mortgage to the easement so that the easement will continue to protect the property after sale in the event of a foreclosure. In addition, subordination by the holder is necessary for the easement to be tax deductible under federal tax law. You or your attorney should contact the mortgage holder as soon as possible, but certainly no later than a final draft of the easement is complete, as the subordination process frequently takes time to complete.

In cases where the mineral rights have been severed prior to June 13, 1976, and are owned by a third party, a mineral rights report will be prepared to identify the owner of the mineral rights and demonstrate the amount of mineral reserves, the feasibility of commercial mining, and the probability of extraction and removal by any surface mining method.



## Building Better Land Trust Boards

A Baseline Documentation Report (BDR) must be prepared prior to the closing transaction. This report documents the condition of the property, identifying existing physical conditions, natural and man-made, at the time of acquisition. It provides a baseline for measuring future changes in the property's conservation resources and other features. Baseline documentation is required by the IRS for tax-deductible donations of conservation easements. The BDR includes photographs of key features, an aerial photo or detailed current map of the property showing property boundaries, waterways, resource areas, roads, and structures. Recent site-specific resource inventories should also be included. Information from the appraisal report, such as photos and summaries of man-made and natural features, should be included. The BDR must meet applicable tax requirements and should be satisfactory to the LAND TRUST. The Baseline Documentation Report will be completed prior to closing, and signed by the landowner and the land trust at closing. Costs of the BDR will be borne by the landowner. The LAND TRUST will arrange for and/or approve the entity/agency developing the BDR.

**Please note again that the LAND TRUST does not provide legal or tax advice. You should consult with your advisors on estate planning, real estate and tax matters and have an attorney assist you in the review and drafting of the easement throughout the process. You will also need your attorney to review with you the effect of the gift of easement on your estate plan.**

**Please sign and return to this statement to the LAND TRUST.**

I acknowledge that I have read and understand the above information.

---

Owner's Signature

Date

**SAMPLE  
LAND TRUST  
Tax Benefits Disclosure for  
a Conservation Easement (10.A.1.)**

The LAND TRUST works with landowners and land trusts to protect [our region's] most treasured landscapes and natural resources as a legacy for future generations. Landowners protect their land with an agreement called a Deed of Conservation Easement that permanently affects how the land may be used in the future. Landowners donate conservation easements to with the goal of ensuring permanent conservation and good stewardship of their land. Some donations involve the full gift of a conservation easement, where no money changes hands. Others may involve a partial gift, whereby you sell the conservation easement at a price below its appraised value, thus receiving cash for part of the easement's value and making a charitable contribution of the balance of the value. Protections of the property that restrict uses of the land are contained in the Deed of Conservation Easement, and, upon recordation, will become permanently binding on you and all subsequent owners of the property. The restrictions described in the Deed of Conservation Easement are not impacted by whether your donation is considered a full or partial gift.

As a conservation easement donor you enjoy the pleasure of knowing your land is protected for future generations and also receive potential financial benefits such as a deduction on federal income taxes and a credit for state income taxes. Voluntarily agreeing to protect your land in the form of a Deed of Conservation Easement may be considered a non-cash charitable gift by the Internal Revenue Service (IRS). Property tax credits and possible federal estate tax exemptions may also be available to donors.

This document provides you with information about local, state and federal tax benefits arising from the gift of a conservation easement to a qualified organization such as . This document is not intended to provide legal or tax advice.

**Best Practices and Standards**

The LAND TRUST will follow procedures and best practices in how it acquires a conservation easement to ensure a sound transaction and to uphold the trust of the public. Governing the process are the policies adopted by the LAND TRUST's Board of Directors, state laws and regulations, federal law and regulations of the IRS, and best practices developed by the Land Trust Alliance in its nationally recognized "Land Trust Standards and Practices".

If you plan to seek federal, state, and local tax benefits that are available to conservation easement donors, your conservation easement gift must meet certain legal and technical requirements of federal and state tax law. A summary of these benefits and the relevant statutory references are detailed in Exhibit A entitled "Tax Benefits of Conservation Easement Donations." Each tax benefit has its own requirements for eligibility. Since both the LAND TRUST and you must adhere to requirements, it is in both parties' interests to be clear and consistent in how each handles the transaction.

**Recommendation for Landowner Counsel**

The LAND TRUST encourages you to seek legal counsel competent in tax and real estate matters to advise you. Conservation easements are technical documents and involve a complex area of real property law. If you choose to seek federal, state or local tax benefits, further encourages you to seek the advice of competent tax/financial experts and a qualified appraiser. Although the LAND TRUST staff tries to provide helpful information, the information is not intended to be, nor will it be construed to be advice. The LAND TRUST will not and does not give landowners legal, tax, estate planning, real estate, or accounting advice. To qualify for a federal charitable deduction for your easement gift, you, with your advisors, must ensure that the donee (recipient of the gift) and the content of the conservation easement conform to certain IRS tax laws and the regulations developed for them by the US Treasury Department. In addition, you must follow certain Treasury Department regulations for claiming a deduction. The ultimate responsibility for compliance with all the federal and state tax requirements is yours, with the help of your advisors.

### Appraisal

The LAND TRUST does not require an appraisal for the gift of a conservation easement and is not involved in the appraisal process; however, if you intend to take a federal tax deduction or claim a state tax credit for the donation of a conservation easement, you will need to engage an appraiser to determine the value of the gift. To claim a deduction for donating a conservation easement, a landowner must obtain a **qualified appraisal** and complete Internal Revenue Service Form 8283 for noncash charitable contributions. A “qualified appraisal” is one done by a “qualified appraiser” as those terms are defined in 26 CFR 1.170A-13(c)(3) and (c)(5). The donor is responsible for any determination of the value of the donation. You will need to engage an appraiser who is experienced in valuing conservation easements because such appraisals are unlike other appraisals and are highly technical. The appraiser should be state-licensed and/or certified and follow the Uniform Standards of Professional Appraisal Practice. This appraisal cannot be completed more than sixty (60) days before your conservation easement is recorded, or later than the date upon which you file the return on which you first claim your deduction (including extensions). The appraisal must value the conservation easement as of the date it is recorded in the land records.

Upon your request, the LAND TRUST staff can provide maps, a draft of the conservation easement, and other information to the appraiser you hire. Appraisers are often busy, it’s a good idea to contact an appraiser early in the process to ensure that the appraisal can be completed on time. The relatively complex process for appraising a conservation easement may help explain the relatively high cost for such an appraisal compared to the cost of an appraisal for just land alone. Expenses you incur in making your conservation easement gift, such as for your appraisal, legal services, etc., are generally not deductible, but there may be other ways in which you can realize tax benefits from them—check with your tax advisor. See “What is a Qualified Appraisal” for information about IRS requirements.

### Liens and Mortgages

If there is a mortgage or deed of trust on the property you are placing under conservation easement, the lien holder must subordinate it to the easement so that the easement will continue to protect the property in the event of a foreclosure. In addition, subordination is necessary for the donation to be a federal tax-deductible contribution. You or your attorney should contact the lien holder as soon as you begin the easement process. Obtaining approval from the mortgage company to subordinate the mortgage can be difficult and can take time. The LAND TRUST will provide you with a Subordination Form for the lien holder to complete. Upon your request, staff can provide maps, a draft of the conservation easement, and other information that the lien holder may request. The Subordination Form is recorded in the land records as page in the conservation easement.

### Acknowledgement of the Gift

The IRS requires that the donor of any charitable contribution, including a conservation easement, that exceeds the value set forth in the tax code, obtain certain documentation of the gift, including a contemporaneous written acknowledgment from the recipient. Shortly after receiving your conservation easement gift (by recordation of the conservation easement in the land records) the LAND TRUST will mail a letter acknowledging receipt of your gift.

### Federal Income Tax Deduction

In order to obtain a federal tax deduction for the donation of a conservation easement, the contribution must be made exclusively for one of the four conservation purposes set forth in Internal Revenue Code Treas. Reg. § 1.170A-14:

1. The preservation of land areas for outdoor recreation by, or the education of, the general public,
2. The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
3. The preservation of open space (including farmland and forest land) where such preservation is -
  - a. For the scenic enjoyment of the general public, and will yield a significant public benefit or
  - b. Pursuant to a clearly delineated Federal, state, or local governmental conservation policy and will yield a significant public benefit, or
4. The preservation of a historically important land area or a certified historic structure.

The LAND TRUST regularly evaluates its easement program and model easement document, for among other reasons, to comply with the federal tax code and regulations. The LAND TRUST cannot and will not

**Building Better Land Trust Boards**

guarantee that the IRS will grant you a charitable gift tax deduction for your donation. Like any other tax matter, the IRS will make the final determination of deductibility.

The IRS has been focused in recent years on amendment clauses, rights reserved to the donors to build on the land in the future, and the location and scope of building areas on protected land. There are conflicting court opinions relating to those and other issues, some of which have not yet been addressed by the Fourth Circuit Court of Appeals, would impact conservation easements granted in Maryland.

You should confer with your tax advisor or attorney, who can help you understand the Internal Revenue Code, Treasury Regulations, and the case law and to assist you in applying for the federal tax deduction.

**Reduction in federal charitable deduction**

Treasury Regulations, effective August 28, 2018 (US Treasury Decision 9864), informally known as “SALT”, reduces the amount of federal charitable deductions by any claimed state and local tax credits. Consult with your tax advisor or attorney, who can help you understand if or how this may impact you.

**IRS Form 8283, “Noncash Charitable Contributions”**

To claim a charitable deduction for your gift of a conservation easement, you must file IRS Form 8283 “Noncash Charitable Contributions” with your federal income tax return for the year of your gift. For claiming a deduction of more than \$5,000, you must get this Form signed by both your appraiser and the LAND TRUST. Part V of the Form is the “Donee Acknowledgement” to be completed by the recipient of the noncash charitable contribution. In order for to complete Part V of Form 8283 acknowledging receipt of a conservation easement donation, the LAND TRUST requires the following be completed, at a minimum: the name, description of donated property and fair market value of the donation [Section B, Part I, Item 2, Item C, Columns (a) and (c)]. Your appraiser should also complete and sign Section B, Part IV on Page 2. will also read your appraisal, please provide a copy of your appraisal to staff.

Please also be sure to include the required supplemental statement as described on page 3 of the Form 8283 instructions. The Form 8283 instructions require attachment of what is commonly referred to as the “supplemental statement” that:

- Identifies the conservation purposes furthered by your donation;
- Shows, if before and after valuation is used, the Fair Market Value of the underlying property before and after the gift;
- States whether you made the donation in order to get a permit or other approval from a local or other governing authority and whether the donation was required by a contract; and
- If you or a related person has any interest in other property nearby, describes that interest.

Completion of Form 8283 and the supplemental statement takes time. It is important that you initiate the completion of your Form 8283 soon after making your conservation easement gift and securing your IRS qualified appraisal. See “Land Trust Requirements Before Signing Federal Form 8283.”

Also see: “Tax Benefits of Conservation Easement Donations” for information regarding state tax credits, federal and state tax deductions, state and county property tax credits, and estate tax benefits.

**Landowner Acknowledgement**

I/We acknowledge that I/we have received this Disclosure, including attachments.

Signatures (All owners of the property must sign.)

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

**PLEASE SIGN AND RETURN TO THE LAND TRUST**

## **Building Better Land Trust Boards**

### **EXHIBIT A: TAX BENEFITS of CONSERVATION EASEMENT DONATIONS**

There are potential financial benefits available to landowners who agree to protect their land with a conservation easement such as a deduction for federal income taxes, a credit for state income taxes, property tax credits, and federal estate tax exemptions. Agreeing to protect your land in the form of a Deed of Conservation Easement may be considered a non-cash charitable gift by the Internal Revenue Service (IRS). A qualified appraiser must establish the value of the easement which is then used to calculate some of the tax benefits.

#### **Federal Income Tax**

The donation of an easement, under Federal and State tax law, can serve as the basis for a deduction from income taxes. To use the value of the donation as a deduction, a qualified appraiser must determine the value of the conservation easement gift using criteria established by the IRS. For appreciated property, the maximum Federal deduction permitted is 50% of adjusted gross income for up to 16 years. Donors may deduct up to 100% of their adjusted gross income **if** the majority of that income came from farming, ranching or forestry and may continue to take deductions for as long as 16 years. For further information, see Internal Revenue Code section 170(b) and 170(h).

#### **State Income Tax Credit (MET, DNR and MALPF easements only)**

The State of Maryland Personal Income Tax Credits for Preservation and Conservation Easements applies to individual and pass-through entity donors of conservation easements. Legislated in 2001 and in 2016, the income tax credit is an additional benefit for the donation of a conservation easement or the bargain sale of a conservation easement. For pass-through entity donors, please refer to "Part X—Preservation and Conservation Easement Tax Credit" on Form 500CR. For individual donors please refer to or "Part F – Credit for Preservation and Conservation Easements" on Form 502CR. These forms and associated instructions are available on the Maryland Comptroller's website. See: [www.marylandtaxes.gov](http://www.marylandtaxes.gov).

Maryland law provides a tax credit of up to \$5,000 per year against state income taxes when an easement is donated by individual landowners and pass-through entities to MET, DNR, or MALPF. This \$5,000 credit may be taken for each of the following 15 years, for a maximum total of \$80,000 in credit, but the total amount cannot exceed the value of the donation. For a taxable year the total aggregate amount of credits claimed by members of pass-through entities cannot exceed \$200,000. For further information, see Md. Ann. Code Tax-General 10-723. *Note: tax benefits may be impacted by US Treasury Decision 9864 regarding regulations on charitable contributions and state and local tax credits. See a tax advisor for more information.*

#### **State Income Tax Deduction**

Maryland law allows, with some limitations, an individual who itemizes deductions on their federal income tax return to itemize deductions on their state income tax return. Generally, an individual cannot claim both a deduction and credit for the donation of the conservation easement. For further information, see Md. Ann. Code Tax-General 10-218 and 10-219 of the Tax-General Article.

#### **Federal and State Estate Taxes**

For estate-tax purposes, land is generally valued at its maximum development potential, often generating very high estate taxes. An easement limits the amount of development that can occur, thus lowering the appraised value of the land. Conservation easements can be effective tools for reducing estate taxes. See Internal Revenue Code Section 2031(c).

#### **Property Tax Credit (MET and DNR easements only)**

If your conservation easement donation is a full gift, you may submit the Conservation Property Tax Credit Application to the County office of the Maryland State Department of Assessments and Taxation. The Application requires the following, which MET or DNR will provide to you: a copy of both the recorded Deed of Conservation Easement, and the Board of Public Works approval letter. The Application is available on the website of the Maryland Department of Assessments and Taxation. See: [dat.maryland.gov](http://dat.maryland.gov).

Maryland law allows a landowner to pay no property tax on unimproved land that is subject to a donated MET or DNR easement for 15 years from the date of donation. For further information, see

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Md. Ann. Code Tax-Property 9-107. At the end of the 15-year period, the unimproved land under donated easement will be assessed at the highest agricultural rate and will qualify for this assessment rate even if it is not actively farmed. If the land is in agricultural use it will be assessed at the appropriate agricultural level. For further information, see Md. Ann. Code Tax – Property 8-209.1.

### ***EXHIBIT B: WHAT IS A QUALIFIED APPRAISAL?***

Tax deductions for charitable contributions must meet federal standards. To claim a deduction for donating a conservation easement, a landowner must obtain a **qualified appraisal** and complete Internal Revenue Service Form 8283 for noncash charitable contributions. The following are excerpts from the Federal Treasury Regulations §1.170A-13(c)(3) and §1.170A-14(h)(3)(i) with emphasis added.

Please consult the complete Federal Treasury Regulation text for more information.

***A qualified appraisal must contain certain items outlined in and comply with 26 C.F.R. § 1.170A-13 including:***

- (A) that is made no earlier than 60 days prior to the date of contribution of the appraised property;
- (B) is prepared, signed, and dated by a qualified appraiser;
- (C) does not involve a prohibited appraisal fee; and
- (D) contains all information required by the tax code.

***A qualified appraisal must include the following information 26 C.F.R. § 1.170A-13(c):***

- (A) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed;
- (B) In the case of tangible property, the physical condition of the property;
- (C) The date (or expected date) of contribution to the donee;
- (D) The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor or donee that relates to the use, sale, or other disposition of the property contributed, including, for example, the terms of any agreement or understanding that— (1) Restricts temporarily or permanently a donee's right to use or dispose of the donated property, (2) Reserves to, or confers upon, anyone (other than a donee organization or an organization participating with a donee organization in cooperative fundraising) any right to the income from the contributed property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or (3) Earmarks donated property for a particular use;
- (E) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser; and, if the qualified appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person (whether an individual, corporation, or partnerships), or an independent contractor engaged by a person other than the donor, the name, address, and taxpayer identification number (if a number is otherwise required by section 6109 and the regulations thereunder) of the partnership or the person who employs or engages the qualified appraiser;
- (F) The qualifications of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations;
- (G) A statement that the appraisal was prepared for income tax purposes;
- (H) The date (or dates) on which the property was appraised;
- (I) The appraised fair market value (within the meaning of § 1.170A-1 (c) (2)) of the property on the date (or expected date) of contribution;
- (J) The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, and the replacement-cost-less-depreciation approach; and
- (K) The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

26 C.F.R. § 1.170A-13 (Effective August 11, 2020).

*The IRS requires that the valuation of the conservation easement in the **qualified appraisal** must follow rules outlined in 26 C.F.R. § 1.170A-14 stating:*

**(3) Perpetual conservation restriction—(i) In general.** The value of the contribution under section 170 in the case of a charitable contribution of a perpetual conservation restriction is the fair market value of the perpetual conservation restriction at the time of the contribution. See § 1.170A-7(c). If there is a substantial record of sales of easements comparable to the donated easement (such as purchases pursuant to a governmental program), the fair market value of the donated easement is based on the sales prices of such comparable easements. If no substantial record of market-place sales is available to use as a meaningful or valid comparison, as a general rule (but not necessarily in all cases) the fair market value of a perpetual conservation restriction is equal to the difference between the fair market value of the property it encumbers before the granting of the restriction and the fair market value of the encumbered property after the granting of the restriction. The amount of the deduction in the case of a charitable contribution of a perpetual conservation restriction covering a portion of the contiguous property owned by a donor and the donor's family (as defined in section 267(c)(4)) is the difference between the fair market value of the entire contiguous parcel of property before and after the granting of the restriction. If the granting of a perpetual conservation restriction after January 14, 1986, has the effect of increasing the value of any other property owned by the donor or a related person, the amount of the deduction for the conservation contribution shall be reduced by the amount of the increase in the value of the other property, whether or not such property is contiguous. If, as a result of the donation of a perpetual conservation restriction, the donor or a related person receives, or can reasonably expect to receive, financial or economic benefits that are greater than those that will inure to the general public from the transfer, no deduction is allowable under this section. However, if the donor or a related person receives, or can reasonably expect to receive, a financial or economic benefit that is substantial, but it is clearly shown that the benefit is less than the amount of the transfer, then a deduction under this section is allowable for the excess of the amount transferred over the amount of the financial or economic benefit received or reasonably expected to be received by the donor or the related person. For purposes of this paragraph (h)(3)(i), related person shall have the same meaning as in either section 267(b) or section 707(b). (See Example 10 of paragraph (h)(4) of this section.)

**(ii) Fair market value of property before and after restriction.** If before and after valuation is used, the fair market value of the property before contribution of the conservation restriction must take into account not only the current use of the property but also an objective assessment of how immediate or remote the likelihood is that the property, absent the restriction, would in fact be developed, as well as any effect from zoning, conservation, or historic preservation laws that already restrict the property's potential highest and best use. Further, there may be instances where the grant of a conservation restriction may have no material effect on the value of the property or may in fact serve to enhance, rather than reduce, the value of property. In such instances no deduction would be allowable. In the case of a conservation restriction that allows for any development, however limited, on the property to be protected, the fair market value of the property after contribution of the restriction must take into account the effect of the development. In the case of a conservation easement such as an easement on a certified historic structure, the fair market value of the property after contribution of the restriction must take into account the amount of access permitted by the terms of the easement. Additionally, if before and after valuation is used, an appraisal of the property after contribution of the restriction must take into account the effect of restrictions that will result in a reduction of the potential fair market value represented by highest and best use but will, nevertheless, permit uses of the property that will increase its fair market value above that represented by the property's current use. The value of a perpetual conservation restriction shall not be reduced by reason of the existence of restrictions on transfer designed solely to ensure that the conservation restriction will be dedicated to conservation purposes. See § 1.170A-14 (c)(3).

**(iii) Allocation of basis.** In the case of the donation of a qualified real property interest for conservation purposes, the basis of the property retained by the donor must be adjusted by the elimination of that part of the total basis of the property that is properly allocable to the qualified real property interest granted. The amount of the basis that is allocable to the qualified real property interest shall bear the same ratio to the total basis of the property as the fair market value of the qualified real property interest bears to the fair market value of the property before the granting of the qualified real property interest. When a taxpayer donates to a qualifying conservation organization an



easement on a structure with respect to which deductions are taken for depreciation, the reduction required by this paragraph (h)(3)(ii) in the basis of the property retained by the taxpayer must be allocated between the structure and the underlying land.  
26 C.F.R. § 1.170A-14

*This information is for informational purposes only. Correctly claiming all of the tax benefits you are eligible for can be complicated. Consult a tax advisor or tax attorney for advice on how a conservation easement would affect your taxes and estate. Tax advantages of easement donations will vary with individual financial situations. Tax advantages may differ between individual landowners, institutions, and other legal entities.*

**EXHIBIT C: LAND TRUST**  
**REQUIREMENTS BEFORE SIGNING**  
**FEDERAL FORM 8283**

Federal Form 8283 is the tax form to use to claim the federal income tax deduction for a noncash charitable contribution. Part IV of the form is the "Donee Acknowledgement" to be completed by the recipient of the noncash charitable contribution. In order for the LAND TRUST to complete Part V of Form 8283 acknowledging receipt of a conservation easement donation, the LAND TRUST requires the following:

1. The Landowner (or representative) fills out Form 8283. The information in Section B, Part 1, "Information on Donated Property," Part 4, "Declaration of Appraiser," and Required Statement must be complete. The IRS requires a statement from you, the landowner, ("Required Statement"), that acknowledges = Conservation Purposes of the easement, the Fair Market Value before and after the easement and the value of the easement, whether or not the easement donation was a condition for a permit or contract, and whether you or any relations have an interest in a property located near the donated property as well as the nature of the relation and the interest (see as described on page 3 of the tax form instructions).
2. The Appraiser **MUST** sign Form 8283 before the LAND TRUST reads and signs it.
3. Landowner submits Form 8283, Required Statement and the full and complete appraisal to the LAND TRUST. To ensure sufficient time for staff to read, the LAND TRUST requires that the Form 8283, Required Statement and appraisal be submitted **no less than 10 working days** before the tax return is due.
4. The LAND TRUST's reading of the appraisal focuses on determining that the assumptions of the appraisal accurately reflect the restrictions, prohibitions, and other terms of the conservation easement; thus the LAND TRUST may correctly represent that it has "received the donated property as described in Section B, Part 1" of Form 8283. The appraisal report is part of that description. The LAND TRUST may refuse to sign the Form 8283, or may seek revisions in the appraisal, if the appraisal is inaccurate, implicitly or explicitly, in its representation of the conservation easement terms.
5. The LAND TRUST returns Form 8283 to the landowner to be filed with Federal Income Taxes. The LAND TRUST retains a copy of Form 8283 and the appraisal.

If the LAND TRUST believes that no gift has been made or the property has not been accurately described on the Form 8283, it may refuse to sign the form. Staff may refuse to sign a Form 8283 in cases where the easement conveyance is not a gift, e.g. a regulatory requirement, a condition of a contract, a developer easement or other quid pro quo easements. Staff will make every effort to identify any such potential easements early in the process and educate the parties involved that such easements lacking donative intent would not be tax deductible. Other factors that could provide the basis for refusing to sign the Form 8283 include: factual errors, inaccurate representations of easement restrictions, and if no appraisal report is provided, or if the enhancement value to a landowner of property adjacent to the easement land is not addressed. If the LAND TRUST has significant reservations about the value of the gift, particularly as it may impact the credibility of the LAND TRUST, it may seek additional substantiation of value or may disclose its reservations to the donor.

## Important Advisory: Tax Shelter Abuse of Conservation Donations

All Land Trust Alliance (the “Alliance”) member land trusts adopt and commit to implement *Land Trust Standards and Practices* (“the Standards”), the ethical and technical guidelines for the responsible operation of a land trust. Those guidelines require that all Alliance member land trusts refuse to knowingly participate in tax shelter transactions. To assist land trusts in avoiding these transactions, the Alliance is providing this updated Advisory, **which updates and supersedes in full all prior versions.**

The purpose of this Advisory is to:

- assist land trusts in understanding tax shelter transactions that use conservation tax incentives;
- explain applicable practices, requirements and regulations
- describe due diligence that land trusts can use to identify tax shelter transactions;
- make clear a land trust’s options and obligations once it has identified a likely tax shelter transaction;
- and
- make clear that Practice 10C4 in the Standards and this Advisory do not apply to donations of conservation easements or land by an individual or sole proprietorship, or by a pass-through entity that consists of related parties.

## Background

The Alliance is concerned about transactions that disguise a tax shelter designed to generate profits from a charitable donation for conservation. In these tax shelter transactions, unrelated investors acquire interests in various pass-through entities, such as partnerships or limited liability companies, which entities hold title to land. Then, after a short holding period, usually fewer than three years, the entities donate conservation easements (or land) to land trusts and claim deductions based on appraised values that are significantly in excess (often by three to 10 times) of the original acquisition price. As a result, investors each receive tax benefits that are worth significantly more than each investor’s initial investment. Typically, promoters organize these transactions in return for high fees. Sometimes promoters offer extraordinary stewardship donations to the participating land trusts.

These transactions are antithetical to the concept of charity that Section 170(h) of the Internal Revenue Code was designed to reward. As such, the Alliance is acutely concerned that congressional support for the federal charitable deduction for conservation donations is imperiled by these transactions, which is a major threat to the conservation work of land trusts. Because of these concerns, the Alliance has taken a number of actions to help its land trust members identify and avoid these transactions.

In February 2017, the Alliance released the revised Standards, which include a new Practice 10C4. That practice prohibits Alliance land trust members from engaging in these transactions. The Alliance is also aggressively advocating for legislation in Congress to stop tax shelters that use conservation tax incentives, including preventing passive partnership investors from profiting from these types of transactions by claiming excessive federal tax deductions.

The IRS was so concerned about these transactions that it took the extraordinary step of issuing Notice 2017-10 (the “Notice”) to describe these transactions, to classify them as “listed transactions” and to require disclosures by participants in, and material advisors to, these transactions. Notably, the IRS also indicated in the Notice that it considers the transactions to be “tax avoidance transactions” that it intends to challenge. The description of tax shelter transactions in the Notice is similar to the text of Practice 10C4, and it also focuses on the fact that promoters typically market these transactions to investors using promotional materials that highlight the potential for outsized federal tax deductions.

The purpose of the Notice is to require participants and material advisors in these transactions to disclose them to the IRS for further scrutiny. Merely being a transaction described in the Notice does not automatically make the transaction illegal; however, it underscores the likelihood that the transaction violates federal tax law.

## Duties of Alliance Land Trust Members

The Standards state that land trust members of the Alliance shall not knowingly participate in potentially fraudulent or possibly abusive transactions (see Practice 1A3). Practice 10C contains exact criteria for each land trust to evaluate transactions with pass-through entities consisting of *unrelated* parties so that land trusts are able to make an informed independent determination regarding Practice 1A3. Practice 8C3 requires land trusts to evaluate projects for potential risks, including credibility issues. Practice 9A1 requires a land trust to obtain a legal review by an attorney of every transaction appropriate to its complexity.

**In order to not violate Practice 10C4 and other provisions in the Standards, and to be able to maintain its membership in the Alliance, a land trust member must not participate in a transaction that falls into one or more of these categories:**

### **1. As Prohibited under Practice 10C4**

Practice 10C4 first requires that the land trust obtain a copy of the landowner’s appraisal prior to closing when engaging in transactions with pass-through entities of unrelated parties. Practice 10C4 then requires that the land trust decline to participate in any transaction with pass-through entities consisting of unrelated parties, particularly those offered or assembled by a third party or described in the Notice, or otherwise described as a syndication by the IRS, in which:

- a. the appraisal indicates an increase in value more than 2.5 times the basis in the property *and*
- b. the easement or property is donated within 36 months of the pass-through entity’s acquisition of the property *and*

- c. the value of the donation (not the *deduction*) is \$1 million or greater *and*
- d. the terms of the transaction do not satisfy this Advisory.

## 2. As Defined in the IRS Notice

By the Notice and a subsequent notice (IRS Notice 2017-29), the IRS has ruled that land trusts are neither a participant in, nor a material advisor to, the tax shelter transactions described in the Notice and, therefore, have no obligation to file a disclosure. Land trust members of the Alliance, however, must decline to participate in any transaction involving a conservation donation by *unrelated parties* that appears to have all of the following characteristics as set forth in the Notice:

- a. A pass-through entity will make the contribution.
- b. Members of the entity are investors who have been solicited to invest in the entity.
- c. The investment is offered to investors in oral or written promotional materials.
- d. The promotional materials offer the possibility of a federal tax deduction that is at least 2.5 times the investor's investment.
- e. The transaction is intended to result in a contribution for which a federal income tax deduction will be claimed by investors.

Donations of land in fee simple that meet the criteria described in the Notice are also subject to its provisions. When the IRS identifies a "listed transaction," the listing applies not only to the exact transaction described but also to transactions that are "substantially similar." A transaction that involves the donation of land in fee simple that meets the above five criteria is "substantially similar" to the conservation easement donation described in the Notice. As such, a land trust member of the Alliance must not participate in such a transaction.

### Due Diligence to Avoid Tax Shelter Transactions

To avoid the transactions described above, a land trust should follow these steps:

#### **Step 1: Understand the People Behind the Donor Entity**

The tax shelter transactions addressed by this Advisory all involve pass-through entities (i.e., an S corporation, general partnership, limited partnership or limited liability company or any other pass-through entity). As such, this Advisory does not apply to donations of conservation easements or land by individuals or sole proprietorships. Likewise, the Advisory also does **not** apply to transactions involving pass-through entities that solely consist of related parties.

*At the commencement of any transaction that appears to involve a donor entity consisting of unrelated parties*, the land trust must document the request to and response of the donor entity if it is a partnership or other pass-through entity involving unrelated parties and reach an independent informed conclusion whether it is. If **no**, then this Advisory does not apply to the transaction.

Related parties are those individuals related by blood, adoption or marriage to another individual owner of such a family partnership interest. Such relationships by blood, adoption or marriage may include, but

are not limited to, the following: spouses, children, siblings, parents, ancestors of parents, nieces and nephews, aunts and uncles, members of the same household of any of the foregoing and spouses of any of the foregoing.

If **yes**, then proceed to Step 2, and then as dictated by the results of the Step 2 due diligence, the Action Steps if a tax shelter transaction, or Practice 10C3 if not a tax shelter transaction but still overvalued or of concern.

## **Step 2: Conduct Due Diligence to Determine If a Transaction Is a Potential Tax Shelter**

### **a. Obtain the following information from the donor entity**

Ask the donor entity to certify all of the following information in writing so that the land trust is able to make an independent informed determination as to whether the transaction meets the criteria in Practice 10C4 or appears to satisfy the criteria in the Notice. The land trust must evaluate the information gathered in its due diligence with outside legal counsel against all the criteria in Practice 10C4, the Notice, this Advisory and, if applicable, any federal legislation addressing tax shelter transactions and determine:

Whether a promoter or third party played a role in facilitating the proposed contribution or otherwise promoted, organized or secured the transaction.

Whether the promoter has produced or disseminated any promotional materials about the transaction, oral or written, including an advertisement, solicitation, prospectus, offering memorandum or similar document, presentation or communication. Ask the donor to provide a copy of the promotional materials. (This information may reveal that the transaction is likely a listed transaction under the Notice because of the potential return on investment that is asserted [often measured in federal tax deductions possibly available to investors] or because the promotional materials disclose that the transaction may qualify as a listed transaction. *Such a disclosure is dispositive that the transaction is a prohibited tax shelter transaction for purposes of this Advisory.*)

The date the donor entity acquired the property to be conserved.

The original purchase price or basis of the property to be conserved.

Whether the donor entity intends to claim a federal tax deduction based on the donation of a conservation easement or land. (The donation of a conservation easement or land is often listed as one of a number of options for how the donor entity might use aggregated investor funds [e.g., often described as the "Conservation Option" or "Green Option"], which would be sufficient evidence of such intent).

Whether the donor entity's expectations for value of the land or easement to be donated compared to the purchase price approach or exceed an increase in value of more than 2.5 times the basis in the property.

Whether the appraisal reveals a value that meets or exceeds the thresholds stated in Practice 10C4 or the Notice, regardless of any justifications in the appraisal or elsewhere in the transaction documentation.

**b. Notify the donor in writing**

*At the commencement of any transaction involving a donor entity*, inform the donor entity in writing of the land trust’s requirements for accepting a donation of land or a conservation easement, including, without limitation, that:

The donor entity and each of its partners or members have been informed and understand that the land trust will only close on the transaction and subsequently sign a Form 8283 if the fully completed form is presented to the land trust with the full appraisal sufficiently prior to the closing to enable the land trust to read and understand the full completed Form 8283 with all attachments, *and* the land trust determines that the transaction does not violate Practice 10C4, does not appear to be a listed transaction under the Notice and does not otherwise violate this Advisory.

The qualified appraisal shall identify the donee land trust, by name or by organization type as an *intended* user of the appraisal.

If the donee is an accredited land trust, the qualified appraisal shall identify the Land Trust Accreditation Commission by name, as an *intended user* of the appraisal.

The qualified appraisal shall identify “verification of valuation compliance with the Advisory” as an *intended use* of the appraisal.

The donor entity and each of its partners or members have been informed by the land trust in writing and understand that the land trust reserves the right not to accept the land or conservation easement, the right to withdraw from the transaction at any point and the right to refuse to sign Form 8283, all at no risk or liability to the land trust.

The donor entity and each of its partners or members have been informed and understand that the donor entity and each of its partners or members are solely responsible for relying on their own judgment and professional advice furnished by the appraiser and all legal, financial and accounting professionals engaged by the donor entity and its partners or members in connection with the conservation donation.

The land trust is providing no representation with respect to the availability, amount or effect of any deduction, credit or other benefit to the donor entity, its partners or members under the Internal Revenue Code, the Treasury regulations or other applicable law as to any of these values:

the fee interest if a gift of fee,

the conservation easement or any other partial interest,

the land subject to the conservation easement or any other partial interest.

The donor entity understands the IRS rules and the penalties associated with overvaluation and has been fully and competently advised by the donor’s tax adviser as to all the tax rules associated with a qualified contribution of a conservation easement or land.

**c. Secure opinion from outside counsel expert in tax matters**

Obtain a written legal opinion from outside legal counsel who is an expert in tax law, to determine if the *entire* conservation transaction complies with all applicable state and federal laws, the Standards, this Advisory and the Internal Revenue Code and U.S. Treasury regulations, including, without limitation, a full

assessment and opinion of the legal compliance of the appraisal with all applicable Internal Revenue Code and U.S. Treasury regulations (“qualifying opinion letter”). Please note that counsel’s failure to directly opine on appraisal compliance with the Internal Revenue Code and U.S. Treasury regulations fails to satisfy this step. *The land trust must withdraw from the transaction if it does not have such a qualifying opinion letter.*

**d. Review the due diligence documents and appraisal before closing**

The land trust must carefully review with appropriate experts before closing: the information provided by the donor entity, the appraisal and other due diligence findings to determine whether the transaction appears to be a tax shelter transaction. If it is, the land trust must decline to accept the land or conservation easement, as stated below.

Remember, that for the purposes of pass-through entity transactions of unrelated parties, Practice 10C4 requires that the land trust *must* obtain the appraisal prior to closing.

Action Steps If a Tax Shelter Transaction

**Withdraw from the Transaction as Early as Possible**

Land trust members of the Alliance are required by the Standards to decline to participate in prohibited tax shelter transactions, even when the donation would lead to extraordinary conservation (participation in tax shelter transactions for purposes of this Advisory by land trust members of the Alliance means promoting, facilitating or enabling the transaction by serving as the recipient of a conservation easement or fee interest in land). A land trust must withdraw from the transaction with the pass-through entity of unrelated parties before accepting the proposed conservation easement or land gift if:

information gained during the due diligence phase indicates the appraisal shows or will show an increase in value of more than 2.5 times the basis in the property within 36 months, the value of the donation (not the resulting deduction) is \$1 million or greater and the transaction does not qualify under the “Potential Exception” described below; or

the transaction appears to be a listed transaction under the Notice; or

the transaction is prohibited or federal tax deductions for such transactions are prohibited by federal law; or

the transaction otherwise violates this Advisory.

**Refuse to Sign Form 8283**

If the land trust has already accepted a gift of a conservation easement or land from a pass-through entity of unrelated parties and is subsequently presented with a Form 8283 or an appraisal or both and the transaction falls into one or more of the four categories described immediately above, the land trust *must* refuse to sign Form 8283. Also remember that, in other transactions that are not tax shelters, but where a land trust is uncomfortable with the valuation or any other aspect of the transaction, the land trust is under no obligation to participate or to sign Form 8283 until the donor adequately addresses the land trust’s concerns.

## Potential Exception Related to Practice 10C4

In the unlikely event that the land trust completes all of the required due diligence and concludes that, even though a transaction meets or exceeds the thresholds of Practice 10C4 and is presumptively a prohibited tax shelter, there are extenuating circumstances that make it a legitimate transaction, it may proceed if **all** of the following conditions are met:

1. The transaction does not appear to be a listed transaction under the Notice.
2. The appraisal:
  - a. has fully documented assumptions;
  - b. does not use a subdivision, development, income or mineral extraction methodology to value the transaction unless the value determined using such methodology is confirmed by comparable sales as described in subsection c below; and
  - c. uses the before and after method with current comparable sales from adjacent counties or the same county as the subject property; unless the appraisal convincingly establishes that the property being appraised has a highest and best use that is regional or national.
3. If the donor entity requires any permits or approvals to justify the appraised value, the donor entity has obtained all such permits and approvals.
4. The land trust board, after receiving and carefully reviewing all of the above due diligence documents, finds that the transaction is not a prohibited tax shelter, as defined in this Advisory, and votes to approve the transaction.

Discuss Substantial Concerns with Legal Counsel and the Donor

Even if the review of due diligence determines that the transaction is not a prohibited tax shelter, Practice 10C3 requires that the land trust discuss any substantial concerns about the appraisal or the transaction with legal counsel and take appropriate action, such as:

- documenting that the land trust has shared those concerns with the donor;
- seeking additional substantiation of value;
- withdrawing from the transaction prior to closing; or
- refusing to sign the Form 8283.

Land trust permanent records should also include copies of all of the information collected during the due diligence step and the land trust's written assessment of those materials, including outside experts' opinion letters.

## Evaluate Land Trust Policies

Evaluate your existing acquisition policies and procedures with the advice of outside legal and tax advisers (not a board member or staff) in light of this Advisory. Include cautionary measures, such as those in this Advisory, to ensure that your land trust does not unwittingly participate in tax shelter transactions.



## The Land Trust Alliance Is Here to Help You

This is a complex topic. Land Trust Alliance regional and national staff are available to assist you in working through this Advisory. If you become aware of a tax shelter transaction or have questions or concerns, call or write to Leslie Ratley-Beach, 802-262-6051, or Diana Norris, 202-816-0221.

*Last revised February 1, 2018.*

*Approved by the Conservation Defense Committee February 1, 2018.*

*Nonsubstantive corrections March 1, 2018, and May 23, 2018, that do not impact the substance, intent or contents of the document. Please contact Leslie Ratley-Beach, [lrbeach@lta.org](mailto:lrbeach@lta.org), with any questions.*

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**FOREVER**  
MARYLAND

Advancing and Enhancing Land Conservation

### **References for Further Reading Land Transactions**

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Advancing and Enhancing Land Conservation

### ***Workshop #5: Stewardship – How to Conserve Land in Perpetuity***

This workshop, held on May 16, 2022, provided an introduction to the most important job of all – stewarding and monitoring easements and fee properties forever. This workshop provided an overview of Land Trust Standards 11 and 12.

Recorded session available here: <https://youtu.be/pzfBFYEyv0g>

**SAMPLE  
LAND TRUST  
Stewardship, Legal Defense, and Administrative Fees Policy  
(11.A. and 12.A.)**

The LAND TRUST's policy is not to accept a conservation easement or title to fee land unless contributions to the Stewardship Endowment Fund, the Legal Defense Fund and the Operating Endowment are made at or before the closing in accordance with the policy set forth below. The raising of the amount called for in this policy is a requirement that must be met before the transaction will proceed, but is not a condition placed upon the donor for the acceptance of the easement or fee land.

The contributions may be raised by contribution from the landowner, funds from grant money in connection with the transaction, fundraising, donations, foundation grants or any other source. The amount covered under this policy does not include initial costs of the project (title examination, negotiation of the terms of the transaction, preparation of present condition report, recording costs, etc.) nor initial and subsequent site improvement costs (removal of invasive species, removing of buildings and other hazards, etc.) which funds must be raised separately from the amount called for in this policy.

**A. STEWARDSHIP AND LEGAL DEFENSE**

**The amount that shall be contributed to the Stewardship Endowment Fund and the Legal Defense Fund shall be at least the amount calculated under the Long-Term Stewardship Costs Calculator of The Nature Conservancy (TNC).**

For every proposed conservation easement or fee simple acquisition, the LAND TRUST shall estimate the long-term stewardship, enforcement and management expenses using the Long-Term Stewardship Calculator promulgated by The Nature Conservancy in 2016 or succeeding editions and shall preserve that estimate in the records of the transaction. This estimate shall include a lump sum for the Legal Defense Fund contribution based on the Land Trust Alliance Legal Defense Reserves calculator (as incorporated in TNC calculator).

If the owner is receiving a federal ACEP grant, the amount going to the stewardship fund and the legal defense fund may be reduced to 2% of the value of the easement if federal law requires it.

Contributions to the Stewardship Endowment Fund and the Legal Defense Fund are pooled in those two funds and shall not be maintained as funds restricted to the particular property. Contributions to such funds may be used toward payment of stewardship and enforcement costs for other properties that the LAND TRUST protects.

In situations where the Stewardship and Legal Defense Fund contribution is made according to TNC's Long-Term Stewardship Costs Calculator, the amount to go into the Legal Defense Fund shall be the amount stated in that calculator. If the amount is determined otherwise, the amount to go into the Legal Defense fund shall be determined by the LAND TRUST finance committee, in its sole discretion.

The LAND TRUST will evaluate the success of its stewardship program and the adequacy of the Stewardship Endowment Fund and the Legal Defense Fund on a periodic basis, and make adjustments as needed. To this end, this policy shall be reviewed every three years by the land committee, which shall recommend any needed changes to the Board. Changes in best practices, economic conditions and other practices of the LAND TRUST may require adjustments to this Policy. The capitalization rate to be used in TNC's Long-Term Stewardship Calculator is 4 %.

Additional Request for Stewardship Funds: If landowners are able, a larger contribution to the Stewardship Endowment Fund may be requested. Larger contributions will allow the LAND TRUST to build a reserve for stewardship and defense of all easements and properties and will also allow the LAND TRUST to work with committed landowners who are not able to make a financial gift of funds with their easement or fee donation in keeping with the hardship clause set forth below.

**B. OPERATING ENDOWMENT CONTRIBUTION**

From any landowner who is receiving grant money for transferring title to fee land to the LAND TRUST, the LAND TRUST will charge a fee to be put in its Operating Endowment equal to 8% of the purchase price for

the land after deducting the closing costs of the transaction (survey, title work, title insurance, escrow and recording costs, etc.). The costs of any restoration of the land that is paid for by a grant shall also not be included in the amount upon which the 8% contribution is to be calculated. Operating Endowment donations will be placed in the LAND TRUST's general Operating Endowment and not in a special restricted fund established for a single property unless otherwise agreed to by the LAND TRUST. In appropriate cases, landowners who are selling or donating land or selling or donating conservation easements may be requested to make (additional) contributions to the LAND TRUST's Operating Endowment.

**C. WAIVER**

In the case of hardship or financial difficulty, the LAND TRUST Board may lessen or waive the amount of the contributions called for above, but only if doing so will not reduce the over-all amount of the LAND TRUST's Stewardship Endowment Fund or Legal Defense Fund below that called for by LTA Standards and Practices.

Adopted by the LAND TRUST Board [DATE]

**SAMPLE  
LAND TRUST  
Conservation Easement Endowment Policy Sample (11.A.)**

Approved [DATE]

This policy establishes the principles governing stewardship endowment for conservation easements, fee donations and/or purchases, the methods for determining endowment principal requests, and the procedures to be followed in establishing endowments for conservation projects.

To cover the cost of documenting the conditions of the property, monitoring, administering, and enforcing the easement, and to assist with the long term stewardship and management of lands in fee, the LAND TRUST requests that each donor make a one-time, tax deductible contribution to the *Endowment Fund*. Upon receipt of payment, the endowment will be placed in a segregated, interest bearing account.

The amount of the requested stewardship contribution for conservation easements is based on an estimate of staff time and out of pocket expenses needed to document conditions, monitor, administer and enforce the easement. Costs for litigation, remedial action or the legal defense of conservation easements in general, are also covered by the endowment fund. Likewise the stewardship contribution for land in fee is based on a number of factors including, but not limited to, public access, acreage, condition of the land, and the long term management and protection of the land's natural resources. Costs for litigation, remedial action, or the legal defense for actions involving the LAND TRUST lands in fee are also covered by the endowment fund.

In addition to the stewardship contribution made by the landowner, the LAND TRUST requires a provision in the conservation easement that 1% of proceeds from future sale of the land will be payable to the LAND TRUST at time of closing/transfer. This will be paid by the buyer as part of closing cost. This method ensures that the LAND TRUST is informed when a transfer of ownership occurs and provides for a stewardship funding stream in perpetuity.

**ENDOWMENT PRINCIPLES**

- A. the LAND TRUST will not accept easements or land in fee without an endowment contribution, either by the donor or other interested parties, unless agreed upon by the Board.
- B. Easements shall provide that no subdivision of an easement area shall be permitted unless additional funds within the endowment principal were provided at the time of easement donation. If full payment in advance is not possible or landowner is not certain that they will exercise the reserved right to subdivide, satisfactory arrangements can be made for additional endowment principal to cover these costs to the LAND TRUST at the time of subdivision.
- C. The endowment principal requested for an individual easement donation shall be based upon the projected costs of monitoring and enforcement, plan approval and review, and a minimum endowment amount based on staff time and consultant fees for easement protection during IRS audits and legal issues as hereinafter described.
- D. Contribution of stewardship endowment funds shall be recorded by donor, project, and location but shall not be maintained as funds restricted to the particular property.
- E. The 1% transfer fee paid by buyer will be deposited in the stewardship endowment fund, which is restricted to general stewardship expenses of conservation easement and fee simple properties.

**METHOD OF DETERMINING ENDOWMENT AMOUNT**

Factors to be considered in establishing the amount of stewardship endowment requested include but are not limited to the following:

- A. The size and nature of the easement area to determine the time necessary for inspection.

The LAND TRUST uses a Flat Rate Formula based on acreage to determine the initial amount of the stewardship endowment. Costs are increased or decreased depending on the amount of reserved rights,

subdivision, proximity to other conserved lands and administrative burdens as outlined below in section C.

- I. 1-20 acres \$2,500- \$5,000
- II. 20-40 acres \$5,000-\$7,500
- III. more than 40 acres \$7,500- \$20,000 or TBD

B. Location in relationship to X and other (existing or pending) easements to determine travel time and costs to the protected land.

C. The complexity of the easement and the extent to which easement provisions will impose significant administrative burdens (e.g., including but not limited to: approval of improvement location and design, subdivision, building rights retained, reserved rights and uses, number of owners, public access, prior land use by owners and adjacent landowners, the existence and implementation of a management plan for the property, number of abutting properties, historic component).

D. General administrative costs (e.g. inspection notices, follow-up to landowner requests, etc.).

E. Base endowment principal required to cover increased administrative costs of a subdivision reviewed yearly and approved by the Board.

F. A set minimum contribution to the legal defense fund to cover any costs associated with the LAND TRUST support of potential donor audits or other legal issues which might arise in the future. This amount is to be reviewed by and approved by the Board annually.

G. Endowment principal requested is based upon the amount of yield to cover the above costs using the Flat Rate Formula for acreage, in addition to the other associated costs outlined in section C above, as reviewed and approved each year by the Board.

#### PROCEDURE

A. During the process of negotiating land purchases or donations, the LAND TRUST will discuss with the donor the factors affecting stewardship endowment needs and the provisions of this policy.

B. The LAND TRUST will prepare a preliminary stewardship endowment estimate for review with the donor(s).

C. Revisions to the preliminary stewardship endowment amount shall be forwarded to the Board for approval. Depending on the property, the Board may wish to secure a formal agreement with the landowner outlining the stewardship contribution process and timeline.

D. Stewardship endowment funds received from the donor(s) shall be acknowledged by the LAND TRUST and placed in a segregated, interest bearing fund and shall not be restricted to a particular property.

**SAMPLE  
LAND TRUST  
Baseline Documentation Report Policy (11.B.1.)**

**Guiding Principles**

The LAND TRUST is committed to upholding its legal and community obligations to preserve the conservation easements it accepts for as long as such easements exist. Acknowledging that the LAND TRUST's easements are perpetual in duration, it is necessary to preserve these easements through annual monitoring visits that compare current conditions to conditions identified prior to protection in a Baseline Documentation Report. The Baseline Documentation Report describes the conserved land and its conservation values at the time of easement conveyance in words, maps, and photographs to the extent necessary to monitor and enforce the easement. The LAND TRUST's Baseline Documentation Report meets the current standards recognized by land trust professionals and the Land Trust Alliance (LTA).

The Baseline Documentation Report will serve as a standard against which to gage whether the uses of a conserved property are in accordance with the terms of the property's conservation easement. To evaluate each property's adherence to its conservation easement, the LAND TRUST requires that a Baseline Documentation Report be completed for every conservation easement it accepts. The LAND TRUST staff will abide by this Policy as amended from time to time by the LAND TRUST's Board of Directors as a condition of continued employment with the organization except in the event of extraordinary or unforeseeable circumstances.

Baseline Documentation Reports shall be prepared and presented prior to the time of the easement closing. When possible, the landowner's signature shall be secured, confirming the accuracy of the Baseline Documentation Report, effective the date of this policy. Baseline files which make up the permanent easement file and completed prior to the effective date of this policy, are considered complete if they include the grantors' signatures dated and notarized in the deed of easement. Current Conditions Reports will be developed for easements that require supporting documentation for information that was not executed or made available to LAND TRUST at the time the original easement was executed. The Baseline Documentation Report and Current Conditions Reports and associated files shall be preserved in perpetuity in LAND TRUST's permanent file collection.

**Contents of Baseline Documentation Report and File**

The LAND TRUST has the goal for every Baseline Documentation Report and associated file to contain the necessary contents as identified by LTA for national accreditation (appendix I). Such contents include:

- Title page stating that the document is a baseline documentation report indicating date of completion, authorship and qualifications of the baseline preparer. When possible, the landowner's signature shall be secured on the title page.
- Exhibit A, Boundary description and property reference
- Exhibit B, Documentation of the conservation values and public benefits protected by the conservation easement.
- Exhibit C, Documentation of existing structures.
- Exhibit D, Color digital images of the Property documenting Conservation attributes and existing structures.
- Exhibit E, Aerial Photograph of the Property.
- Exhibit F, Tax Map showing location of the easement.

**Preparation of Baseline Documentation Report**

The Baseline Documentation Report shall be prepared by a qualified preparer, meaning the LAND TRUST's Executive Director or Stewardship Coordinator, who has a background in environmental science, biology, ecology, or other physical sciences, and/or training in the preparation of Baseline Documentation Reports to meet LTA. Pursuant to IRS regulations, the LAND TRUST completes every Baseline Documentation Report by the date of the closing of a conservation easement. The Baseline Documentation Reports should be signed at the easement closing. The LAND TRUST recognizes that on occasion, baseline completion before an easement closing date is impossible due to snow cover or other factors. In such case, an Interim Baseline Documentation Report and completion schedule should be signed at closing and the full baseline should be completed within nine months.



### **Baseline Report Update**

Information that the LAND TRUST may acquire with respect to a conserved property may be added to the Baseline Documentation Report if it documents substantial changes to the property, such as changes due to easement violations, amendments, or other circumstances as determined by staff. The document will be titled a Baseline Report Update, and will be completed in a timely manner for appending to the original Baseline Documentation Report.

### **Current Condition Report**

If a conservation easement property does not have an original Baseline Documentation Report that was completed at the time of easement closing, a Current Conditions Report will be completed to identify the property's current land uses and conservation values. The Current Conditions Report will have the disclaimer that "This isn't a Baseline Documentation Report and is not representative of original conditions at time of easement closing." The Current Conditions Report will contain the same contents as the Baseline Documentation Report, but will represent existing conditions instead of original conditions at the time when a property was first protected.

### **Storage of Baseline Documentation**

Staff shall implement all feasible techniques to preserve the Baseline file and updated documentation materials in perpetuity. Such techniques may include the use of acid-free paper, archival plastic sheets, compact discs of original digital photograph files, and external hard-drive backup of all digital materials. Staff shall archive the Baseline Documentation Report and associated files in accordance with the LAND TRUST's Record Policy and shall only use copies of the original file for office use if at all.

### **Review and Revision**

Staff and the LAND TRUST's Board of Directors shall revisit this Policy and any associated implementation procedures on an as needed basis to determine whether amendments are necessary to reflect changing LTA standards or to otherwise upgrade file contents. Staff shall make recommendations for Board review and approval.

### **Appendix I: Contents of the Baseline Documentation File**

#### **1. Deed of Easement and Baseline Documentation**

Deed of Conservation Easement, dated  
Baseline documentation report  
Baseline documentation photographs Easement Map or survey

#### **2. Essential Supporting Materials**

Title report  
Title insurance policy or evidence of title investigation  
Full appraisal (or summary appraisal)  
Waivers and subordinations (if applicable)  
Notices of exercise of reserved rights Documentation of understandings  
Board resolutions and reports (if applicable)  
Critical pre-closing documents and correspondence (sorted by date)

#### **3. Stewardship and Monitoring Records**

Easement Profile  
Landowner history and contact information  
Aerial Map and other optional maps include:  
Map of other contiguous or nearby protected areas

- USGS Survey
- Topographic map
- Vegetation/Land cover map
- Improvements map
- Resource features maps, as needed (special wildlife habitats, occurrences of rare plants or special ecological communities, cultural resource features, etc.)
- Regional location map (indicate driving route to property if applicable)
- Soils map (optional, only where required by Grantee or where differences in soil types on the property strongly influence conservation values)

Maryland Real Property search records/maps Directions

Correspondence related to monitoring  
Annual Easement Monitoring Reports  
Special monitoring instructions  
Amendments and other important documents (if applicable)  
Amendments Subdivisions  
Violation records and resolution  
Critical Correspondence  
Form 8283 for acquisitions, or Form 8282 for sales  
Boundary Surveys Ecological inventories:  
Management plan(s):  
Forest Management Plans Conservation Plans  
Contracts and leases relative to long term land management activities  
Updated resources data

**4. Management Plans (where applicable)**

**SAMPLE  
LAND TRUST  
Baseline Documentation Report Acknowledgment Sample (11.B.2.)**

The undersigned Donors, owners of the hereinafter described property, and the \_\_\_\_\_  
\_\_\_\_\_ LAND TRUST, Donee, do hereby declare, affirm and acknowledge, as follows:

1. The Donors are the fee simple owners of certain real property situate in \_\_\_\_\_ County, MARYLAND, containing \_\_\_\_\_ acres, more or less, situated at \_\_\_\_\_  
\_\_\_\_\_.
2. The Donors propose to convey a perpetual conservation easement in and to such property, unto the \_\_\_\_\_ LAND TRUST, for no monetary consideration.
3. Prior to the effective date of said conservation easement, the Donors obtained a Baseline Documentation Report, (also known as the \_\_\_\_\_ Property Conservation Easement Baseline Documentation Report) prepared by \_\_\_\_\_, Stewardship Coordinator, \_\_\_\_\_ LAND TRUST, a copy of which is to be maintained on file in the offices of \_\_\_\_\_ or its successors.
4. The aforementioned Baseline Documentation Report, together with the survey maps, plats, aerial photographs, on-site photographs, descriptions or inventories of improvements and natural resources contained or incorporated therein, accurately represents the current condition, use, character and state of improvements of said property, and the natural resources and conservation values sought to be protected by the terms and conditions of the aforesaid perpetual conservation easement.

IN WITNESS WHEREOF, we have caused this Acknowledgement to be executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

By: \_\_\_\_\_ (SEAL)

\_\_\_\_\_ (NAME)

\_\_\_\_\_ LAND TRUST

By: \_\_\_\_\_ (SEAL)

\_\_\_\_\_ (NAME)

By: \_\_\_\_\_ (SEAL)

\_\_\_\_\_ (NAME)

**DONEE**

**DONORS**

**SAMPLE  
LAND TRUST  
Conservation Easement Monitoring Policy (11.C.1.)**

The LAND TRUST accepts and holds conservation easements in perpetuity. When the LAND TRUST accepts easements, it commits to the perpetual stewardship of the easements. Stewardship consists of monitoring visits, documentation of visits, maintenance of landowner relations, landowner education, enforcement of easement terms, and many other activities. As part of its stewardship obligations, the LAND TRUST will monitor each property at least annually, unless extraordinary circumstances exist that prevent the LAND TRUST from conducting an annual monitoring visit (see further discussion below). Additional visits may be necessary if such matters as construction or active forest management activities are occurring on the property.

The LAND TRUST recognizes that the landowner is the ultimate steward. The LAND TRUST seeks to develop positive relationships with all landowners. The LAND TRUST views the landowner relationship as a partnership in which communication engenders cooperation in the long-term maintenance, enhancement and overall stewardship of eased properties and the publicly beneficial conservation values protected thereon. Monitoring is the backbone of stewardship, and requires awareness and vigilance by both the LAND TRUST and the landowner. The LAND TRUST currently employs a Stewardship Manager to fulfill the vast majority of responsibilities associated with stewardship, as the LAND TRUST views regular monitoring as a critical component of responsible stewardship.

No LAND TRUST Board of Directors member, staff, or volunteer shall ever take part in monitoring of any conservation easement in which she or he has any conflict of interest, as defined in the applicable the LAND TRUST Conflict of Interest Policy.

In the event that a landowner denies entry for monitoring purposes, the LAND TRUST staff will, as appropriate: (a) report the matter to the Executive Director and/or Easement and Stewardship Committee Chair; (b) document the files; (c) prepare additional written correspondence to the landowner requesting entry; (d) notify the LAND TRUST counsel of the matter; and, (e) make arrangements for aerial inspection of the property.

In addition to workman's compensation, the LAND TRUST shall have in place a liability insurance policy that covers the LAND TRUST staff, Board members, and volunteers during the performance of monitoring activities. Said policy shall include coverage for damage to property, as well as injury to staff, Board members, and volunteers.

Listed below are guidelines for monitoring visits conducted by or on behalf of the LAND TRUST.

**Procedures for Monitoring Visits:**

1. Check the Notice provision in the easement
2. Contact the landowner concerning the upcoming visit (by phone or mail or email)
3. Request permission pursuant to the terms of the easement to enter the property, and invite the landowner to participate in the monitoring visit
4. If the landowner is contacted by phone, make a notation in the file
5. Schedule a date for the monitoring visit
6. Review the monitoring reports from the previous year(s)
7. Review the Landowner Discussion form from the previous year(s)
8. Review the conservation easement (especially regarding the restrictions)
9. Review the photographs in the Baseline Report and any photographs taken during previous monitoring visits
10. Review the List of Monitoring Tools and gather the necessary items
11. Check the directions and the mileage for the trip
12. Monitor the property with an "On-the-ground" visit
  - a) Traverse the property on foot or by vehicle, as appropriate
  - b) Take photographs of any changes
  - c) Take notes and describe changes
  - d) Mark location and orientation of photographs on property field map

- e) If there are on-site discussions with the landowner, document any important discussions in notes or the monitoring report
- f) Take notes on the changes to neighboring properties (if relevant)
- 13. Monitor the property with "Aerial" fly-over (if not using "On-the-ground" method)
  - a) Create GPS points to identify property location from air
  - b) Take photographs of property during flight and take note of orientation
  - c) Note: the LAND TRUST will not normally use the "Aerial" fly-over method more than two years in a row for any particular property in order to accomplish annual monitoring
- 14. Create the monitoring report
- 15. Add the signed photo pages and signed pointer map as addendums to the monitoring report, as appropriate
- 16. Have the report reviewed by the Executive Director and/or the Chair of the Easement and Stewardship Committee
- 17. Discuss any potential violations listed in the report with the Executive Director and/or Chair of the Easement and Stewardship Committee (if there are violations, see the LAND TRUST Enforcement Policy)
- 18. Send a follow-up letter or note to the landowner if any problems or potential violations have been identified (see the LAND TRUST Enforcement Policy)

**SAMPLE  
LAND TRUST  
Conservation Easement Enforcement Policy Sample (11.E.)**

Adopted by the Board of Directors [DATE]

**INTRODUCTION**

The long-term effectiveness of conservation easements in protecting land depends on the easement holder's ability to enforce its terms. Strong enforcement builds public confidence in easements as a land protection tool. Moreover, in order to accept tax-deductible gifts and qualify for tax-exempt status, IRS regulations require that easement-accepting organizations commit to upholding the terms of an easement and maintaining the financial capability to enforce the restrictions.

Each easement violation represents a unique situation and requires a tailored approach, with the objective of correcting the violation with the greatest degree of cooperation and the least expense. The LAND TRUST considers a minor violation any action requiring enforcement which costs less than \$5,000 to resolve (including human resources and other direct costs), AND any action that does not have a significant detrimental impact on the conservation values protected by the easement. The LAND TRUST considers a major violation any action requiring enforcement that costs more than \$XX to resolve (including human resources and other direct costs) OR any action that has a significant detrimental impact on the conservation values protected by the easement. The following are guidelines to help ensure appropriate actions to document and notify the property owner about the violation, as well as develop a strategy to remedy the situation.

**Overall Guidelines for Violation Response and Enforcement:**

1. Maintain the conservation purpose of the conservation easement.
2. Maintain the LAND TRUST's public image both in its ability to achieve its mission overall and in its ability to enforce specific easements.
3. Protect the LAND TRUST's legal rights and economic value (if any) in the easement.
4. Maintain the most constructive working relationship possible with the landowner.
5. No one person shall make decisions on the LAND TRUST's violation responses.
6. No one person shall give a landowner an on-the-spot opinion about whether or not a violation exists.
7. Maintain professionalism and integrity.
8. Where consistent with the foregoing objectives, balance the harm caused by the violation with the cost/benefit of the selected enforcement response.
9. Use litigation as a last resort and only when there is a meritorious legal basis for judicial action.
10. Maintain consistent responses to similar easement violations.

**Violation Prevention Strategies**

1. Maintain good landowner relations.
2. Conduct annual monitoring and retain a written monitoring report.
3. Provide appropriate training to monitors to enable them to better identify possible violations.
4. Keep up-to-date records of transfers in property ownership.
5. Contact new owners (and real estate agents) to explain the LAND TRUST's mission, the restrictions created by a conservation easement on their property, and the concept and purpose of conservation easements in general.
6. Ensure sound drafting of conservation easements.
7. Maintain good relations with local officials. Notify local land use officers, tax authorities, conservation agents and conservation commissions of properties with conservation easements.

**STEPS TO TAKE IN THE EVENT OF A POSSIBLE VIOLATION**

Possible violations may be discovered in the course of annual monitoring inspections, reported by neighbors or other third parties, or during informal observation. Possible violations should be reported as soon as is practicable to the Chair of the LAND TRUST Stewardship Committee. The Chair is responsible for responding to the possible violation and for documenting the response. The response shall include appropriate feedback to the person(s) who first identified and reported the possible violation.

The Chair shall take the following actions:

**Review the Conservation Restriction Terms.** Review the conservation restriction document, baseline

inventory, and monitoring reports to determine if a violation has occurred, its exact nature, and when it took place. Consult legal counsel for interpretation if necessary.

**Document the Violation.** Visit the site to inspect and carefully document the violation. The violation must be described in detail, including location and extent. Photos keyed to photo points on a map should be taken, signed and dated by the photographer. Quantitative measurements of the violation should be noted as appropriate, e.g. area of impact, number of trees damaged. Field notes should be signed and dated by the person conducting the inspection. The narrative should include an explicit comparison with the baseline document. Note that the site visit may in some instances be more appropriate after or at the same time as meeting with the landowner to discuss the possible violation. If the landowner does not grant the LAND TRUST permission to enter the property, consult with legal counsel on how to proceed.

**Contact the Landowner.** Meet with the landowner in person if possible to discuss the violation. Listen to the landowner's explanation, ask questions, take notes, and ask the landowner to voluntarily correct the violation, or at least to cease any further work until the matter can be further reviewed and discussed. If the landowner cannot be contacted by telephone, send a certified letter that specifies the violation and requests a personal meeting to resolve the situation. A copy of the certified letter should also be sent by first class mail. Specify a time frame for contact in the letter. If a response is not received in the time period identified, re-evaluate the situation. If there is no success with repeated attempts at contact and it is a major violation, have the letter served upon the landowner.

Document all meetings and write a follow-up letter to the landowner, recording the discussion and confirming any agreements made. In many circumstances it may be appropriate to send this letter by certified mail so there will be proof of receipt.

**Note: Third Party Violations**

The LAND TRUST views its relationships with owners of conserved land as partnerships, based on the belief that we share a common interest in good stewardship of the conserved land. When third persons trespass on the conserved land and damage the resources that both the owner and the LAND TRUST have conserved, the LAND TRUST seeks to engage the cooperation of the landowner in working collaboratively to stop the trespass and have the trespasser repair any damage caused.

The LAND TRUST reviews each third party violation of a conservation easement on a case-by-case basis when deciding what responses and remedies are necessary. If the trespasser is unwilling to cooperate with the owner and the LAND TRUST, then the LAND TRUST may explore judicial remedies for the situation.

**ENFORCEMENT RESPONSE STRATEGIES AND REMEDIES**

**Voluntary Reparation by the Landowner.** A voluntary, negotiated resolution to a violation is the most common, and highly preferred, solution. Conservation restriction violations may be caused unintentionally by landowners, abutters or other parties who were unaware of or did not understand the conservation restriction. Violators are often willing voluntarily to make reparations. The LAND TRUST will pursue this route until it is clear that it will be ineffective.

If the landowner agrees to make reparations, the LAND TRUST shall send a follow up letter as soon as possible reflecting the nature and extent of the reparation work and the agreed-upon timetable for completion. The site should be revisited on the deadline date, and the reparation should be documented with photographs, narrative description, and quantitative measurements. The LAND TRUST shall send the landowner a follow-up letter attesting to the satisfactory completion of the work, or otherwise as appropriate.

**Discretionary Approval or Amendment**

In limited circumstances, the LAND TRUST may consider the use of discretionary approval to resolve the violation: In all cases, the violation must not substantially change the baseline documentation information (e.g., adding a permanent structure or causing permanent or lasting change to the parcel's topography or habitat), and the violation must not substantially change the parcel so as to nullify or render impracticable or meaningless the purpose, permitted uses, reserved rights, Grantee rights, or any other material provision within the easement agreement.

In limited circumstances, the LAND TRUST may consider an amendment to the easement agreement, provided that any amendment must strictly conform to the LAND TRUST's Conservation Restriction Amendment policy.

Discretionary approval or amendment may only be considered if there is no significant adverse impact to the conservation values, if the approval or amendment will not terminate the perpetual nature of the easement, and if the economic value of the easement is not reduced by the change. Any amendment used to cure a violation which results in an increase in the amount of land under easement must not be used by the owner to justify a charitable contribution tax deduction. The LAND TRUST must also consider whether the approval or amendment would be controversial within the community or incite negative public reaction.

**Litigation.** Court enforcement is expensive and time consuming, may produce an undesirable outcome, and will likely irreparably damage the relationship between the landowner and the LAND TRUST. As such, it should be pursued as a last resort. Nevertheless, court enforcement may be necessary to defend a conservation restriction, prevent or stop damaging activities, or obtain restoration. In such instances the LAND TRUST shall retain counsel to prepare and present the strongest possible case.

#### **BOARD REPORTS AND APPROVALS**

The Stewardship Committee reports to the Board of Directors at each regular Board meeting, reviewing the status of current violation investigations and enforcement matters and actions taken in response. For all major violations the Board of Directors must affirm the proposed remedy or response before it is implemented.

#### **LTA NOTIFICATION OF MAJOR VIOLATION**

In the interest of sharing information on enforcement outcomes, the LAND TRUST may, at its sole discretion, inform Land Trust staff of major conservation easement violations that may require litigation or assist other land trusts to manage violations.

**[ADD NOTIFICATION OF TERRAFIRMA AND/OR CO-HOLDER WHERE APPROPRIATE]**



**SAMPLE  
LAND TRUST  
Letters of Interpretation Policy (11.F.)**

Approved [DATE]

**Issue:** The LAND TRUST frequently receives requests from landowners and third parties (e.g., prospective purchasers) for interpretation of easement terms (e.g., with regard to whether the easement allows particular uses or activities), and from landowners seeking approval to take particular actions where the easement requires the LAND TRUST approval for doing so. the LAND TRUST has developed a procedure for responding to such requests, and now needs to develop a policy to guide staff and the Board of Directors in doing so.

**Background:** The Land Trust Alliance (LTA) guide on *Managing Easements in Perpetuity* defines a letter of interpretation as “a land trust response to a landowner as to whether particular uses or activities would be allowed under the terms of an easement, and that is generally not recorded in real property records.” The guide suggests that land trusts use a “letter of interpretation” to address these types of questions and explain the land trust’s reasoning for its response. The guide gives an example of a farmer who has contacted the land trust to confirm that charging for hayrides on his property is allowable under the terms of the easement on his property.

The LAND TRUST has now adopted a formal procedure for processing requests for interpretation and approvals. That procedure requires that decisions by the LAND TRUST “be made based on, and in conformance with the LAND TRUST Policy for Interpretations Of, and Approvals Under, Easements.” The following policy sets out the process for making decisions on interpretations and approvals. The LAND TRUST Policy Regarding Interpretations of, and Approvals under, Easements

When interpreting easements and acting on requested approvals under their terms, the LAND TRUST will consider the specific facts and circumstances of each case. In each case, the LAND TRUST will be guided by the terms and conditions of the easement, its purposes, and the requirement that the conservation values protected by the easement must not be impaired or adversely affected. Formal requests for easement interpretations and requests for approvals under an easement must be submitted in writing, normally with regard to a specific contemplated activity. The LAND TRUST answers will normally be provided in writing. The LAND TRUST will not normally issue interpretations to any person or entity other than the landowner.

When interpretations, or approvals, are requested by the owner of land protected by an the LAND TRUST conservation easement (the “landowner”), the LAND TRUST will advise the landowner that the LAND TRUST must ensure that the conservation values on the property, as listed and protected in the conservation easement, are protected in perpetuity. The LAND TRUST will also advise the landowner that the LAND TRUST is obligated to uphold the terms and conditions of the easement, and that the LAND TRUST holds this responsibility in trust to the donor, the public, the state, and the Internal Revenue Service.

The LAND TRUST interpretations or approvals with regard to a specific contemplated activity must be consistent with the terms, conditions and purposes of the conservation easement for a property, and must enhance, or at least have a neutral effect on, the property’s conservation values. More specifically, the following questions will be considered by the LAND TRUST (either in a response to a request for a letter of interpretation or a request for approval):

- 1) Is the contemplated activity consistent with the specific terms and conditions of the easement?
- 2) Is the contemplated activity consistent with the purposes of the conservation easement?
- 3) Will the contemplated activity enhance the easement’s protected conservation values?
- 4) Will the contemplated activity have a neutral effect on the easement’s conservation values?
- 5) Is the contemplated activity consistent with IRS and state laws and regulations pertaining to conservation easements and non-profit organizations (e.g., IRS requirements relating to “private inurement” or “impermissible private benefit”)?
- 6) Is the LAND TRUST interpretation or approval of the contemplated activity consistent with other policies of the LAND TRUST (e.g., the LAND TRUST Conflict of Interest Policy)?

Any interpretation or approval must be consistent with previous the LAND TRUST interpretations of approvals in similar circumstances, recognizing that the facts and circumstances for each property, and each property’s conservation values, are unique to that property. Any interpretation or approval must normally be consistent with that of any co-holding entity (if the easement is held as a co-hold).

**SAMPLE  
LAND TRUST  
Conservation Easement Amendment Policy (11.H.)**

**Approved [DATE]**

**Preamble**

Under exceptional circumstances, the LAND TRUST will consider a request to amend an existing conservation easement if such request is made in writing by the landowner. The LAND TRUST itself may also propose an amendment to an existing conservation easement by making a written request to the landowner. The LAND TRUST recognizes that amendments to conservation easements are not routine but can serve to strengthen an easement or improve its enforceability.

**Article I: Amendment Considerations**

The Board of Directors will not consider a proposed amendment to an existing conservation easement unless the Board finds that the proposed amendment:

1. will have either a net beneficial or neutral effect on the conservation values of the conservation easement or improve its enforceability;
2. will uphold the intent of the original grantor and the fiduciary obligations of the LAND TRUST to protect the eased property for the benefit of the public in perpetuity;
3. will not result in private inurement;
4. will not result in impermissible private benefit;
5. complies with the LAND TRUST's conflict of interest policy;
6. complies with any funding requirements;
7. complies with the amendment paragraph (if any) in the existing conservation easement;
8. is consistent with the LAND TRUST's mission; and
9. does not make stewardship more difficult.

The Board of Directors may amend a conservation easement in one or more of the following circumstances:

1. To fulfill agreements specified in the conservation easement;
2. To correct an error in original drafting; for example:
  - a. To correct a legal description (survey description),
  - b. To correct errors in conservation easement exhibits,
  - c. To include exhibits inadvertently omitted,
3. To clarify an ambiguity in the conservation easement;
4. To adjust a conservation easement to acknowledge a condemnation by a public agency;
5. To add new provisions that strengthen the preservation and protection of conservation values;
6. for other reasons, provided they have a net beneficial or neutral effect on the conservation values protected by the conservation easement.

**Article II: Procedure**

A. In advance of the LAND TRUST's consideration of a proposed amendment, the landowner shall pay an amendment fee (minimum of \$750) to cover the LAND TRUST staff time, legal review and (should such proposed amendment be approved) recordation fees. The LAND TRUST reserves the right to increase the fee above the stated minimum in cases where extensive staff or legal work is needed to review and, if approved, complete an amendment. As to amendments initiated by the LAND TRUST or to correct an error or omission made by the LAND TRUST, no fee is required. In addition to such fee, the landowner will be responsible for providing -- or reimbursing the LAND TRUST for its direct costs of providing -- necessary updated exhibit maps, legal descriptions, appraisals, surveys, etc. Before considering a proposed amendment, The LAND TRUST staff will estimate such costs and secure the landowner's agreement to cover such costs.

B. All requests for amendment must be in writing and include a detailed description of the change being requested, a rationale explaining why the request is warranted, and, if appropriate, a map of the property clearly depicting areas that would be affected by the proposed amendment.

C. The LAND TRUST staff will conduct a preliminary review of the request for amendment, conduct a site visit if appropriate, and make a written report and recommendation to the Board.

D. Staff will update title information to assure that the requestor is in title to the property and that the correct parties are engaged in negotiating the potential amendment.

E. The LAND TRUST staff shall present the request in writing to the Board of Directors, highlighting all relevant issues and including the presenter's recommendation to approve, reject or modify the proposed amendment.

F. The LAND TRUST will consider the public relations aspects of amending an easement. In its sole discretion, The LAND TRUST may inform its donors advisors, grantors, partner organizations, co-holders, neighbors of the property, etc., of the proposed amendment before such proposed amendment is considered by the Board. Third-party opinions about the propriety of granting or denying an amendment request shall be advisory only. Unless the source of funds for the original acquisition of easement provides the funder with approval authority, the LAND TRUST retains exclusive authority to grant or deny a request for an amendment.

G. The Board of Directors shall take action on each request for approval of an amendment. No amendment shall be executed without the prior approval of the Board of Directors. Subordination of pre-existing liens is required. The Board of Directors shall review the amendment request and supporting documentation using the criteria set forth in Article I above and consider the following:

- a. Does the conservation easement require that another party be notified of a proposed amendment or have the right to consider whether to approve a proposed amendment? If so, have these requirements been addressed?
- b. Will this amendment undermine the public's confidence in the LAND TRUST?
- c. Will the granting or denial of the amendment request create a bad precedent for future amendment requests?
- d. Should the amendment be reflected via an amended and restated conservation easement, or via an amendment to the conservation easement?

H. The presenting staff member shall notify the landowner in writing of any action taken by the Board of Directors to approve, reject or modify the proposed amendment.

I. Staff will coordinate with co-holders, funders or individuals as required in the original conservation easement.

J. The Board of Directors may require, as a condition of approving an amendment, that the owner notify the Internal Revenue Service and state Comptroller once the amended conservation easement has been executed.

K. If the proposed amendment is approved, staff will review the status of title to the property to determine whether additional title insurance and/or subordination of lender(s) is required, in order to ensure that the amended conservation easement will be covered by any policy and any liens will be subordinate to the easement as amended, respectively.

L. All amendments will take the form of a legal deed and will be recorded in the land records of the local jurisdiction(s) in which the affected property is located.

### **Article III: Policy Review**

The LAND TRUST will evaluate the adequacy of its amendment policy on a periodic basis and make adjustments as needed to ensure that the goals/philosophy outlined in this policy are met. To this end, the Board of Directors shall review this policy no less frequently than every three (3) years. Changes in law, best practices, industry standards and other practices of the LAND TRUST may require more frequent adjustments to this policy.

**SAMPLE  
LAND TRUST  
Basic Fee Property Management Plan Outline for a Preserve (12.B.1.)**

Date and Signature of Preparer

Description of the Property:

Woodland Preserve consists of X acres on X Road, Town, State (latitude X, longitude X). The property was [donated/purchased/other] to the LAND TRUST on [DATE]. The property borders X. Directions to the property are... A complete property description is found in the deed and there is a survey in the property file. A property map is attached.

1. Parcel E1: x acres
2. Parcel E2: x acres

Description of the Conservation Values:

Woodland Preserve's primary conservation values are its undisturbed wooded nature. There is also a small riparian area in the southwest portion of the property with some unique plant communities. A full inventory of the plants found on the property can be found in the property file, the attached map shows the riparian area.

1. Swamp Pond
2. Perennial and intermittent streams
3. Wetlands and riparian habitat adjoining Swamp Pond and streams
4. Eastern Hardwood Forest
5. To be continued

Summary of Legal Restrictions

The property was donated with the following restrictions from the donor: that the land be managed as a nature preserve. See the attached deed for the specific language of the restrictions.

1. From the deed of conveyance
2. Public access
3. Third-party rights
4. Leases, access rights-of-way, utility rights-of-way, other rights to the property from the title policy

Description of Potential Threats to Conservation Values

The biggest threat to the Woodland Preserve is encroachment by neighbors or trespassers. There is also a threat from invasive species.

1. Encroachment
2. Invasive Species
3. Other

Overall Management Objectives

The primary management objective is to manage the property as a nature preserve. To address the threats, the land trust needs to post signs indicating it is a land trust property along some boundaries. The land trust also needs to develop ways to direct neighbors to use the property in a responsible fashion that reduces the land trust's risks. In order to provide for safe access, the access point on the public road must be maintained.

1. Maintain the property as a nature preserve
2. Provide for non-motorized public access and use
3. Deter adverse uses (dumping, ORV use, dogs off leases, other)
4. Work with neighboring landowners to minimize or eliminate intrusions and trespass

### Actions Necessary to Achieve Goals

The actions necessary to achieve the management goals for this property are encompassed by the management activity and timeline chart below.

<b>Management Activity</b>	<b>Timeline (goal date, frequency, season)</b>
Property inspection	At least once annually
Cut vegetation to maintain sight distance at road boundary	As needed, at least two times each summer
Post signs indicating this is land trust property along borders where encroachment is likely	By August 2023
Find a community partner to create and maintain a trail that can be used by neighbors	By December 2024
Meet with nature center to plan cooperative activities	Annually
Evaluate if there are feasible ways to address invasive plants, especially along nature center boundary	Evaluate options at least once a year, ideally in cooperation with the nearby nature center
Other activities as opportunities are presented	As needed

### Attachments

- Property Map
- Map of Conservation Values
- Aerial Photo
- Deed of Conveyance
- Survey
- Plant Inventory (if available)

**SAMPLE  
LAND TRUST  
Fee Property Management Policy and Principles (12.B.1.)**

**Section I. The LAND TRUST Stewardship Principles**

The LAND TRUST's mission statement serves as the starting point for a discussion of the LAND TRUST's philosophy and values as they relate to land management:

*"We promote land conservation and preservation throughout X Maryland. We preserve and conserve the natural and cultural resources of the watersheds for the benefit of this and future generations. We provide environmentally sustainable public access to managed properties for educational, scientific, recreational and cultural purposes."*

The LAND TRUST developed a succinct, general philosophy for land use of LAND TRUST properties that remains valid today:

*"The LAND TRUST shall primarily manage its land to preserve and enhance the natural and cultural resources of its properties and, when compatible with this goal, to promote responsible scientific, educational, charitable, and recreational uses of its land by the public."*

These two general statements, the LAND TRUST's mission statement and its philosophy of land use, have stood the test of time and do not require change. To provide more specific guidance for the development of this Plan and individual property land management plans, the LAND TRUST has identified two overarching land management approaches and four primary stewardship principles with associated land management goals.

**Overarching Land Management Approaches:**

- 1) Precautionary approach.** The LAND TRUST should utilize a precautionary approach that is derived from Principle 6 of the Forest Stewardship Council's US Forest Management Standard (Appendix) which states:

"Forest management shall conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and integrity of the forest."

Given the inherent complexity of natural systems and the ecological processes that sustain them, the uncertainties in our scientific understanding of those systems and processes, and the difficulties inherent in mitigation and restoration, this precautionary approach is warranted particularly with respect to decisions to undertake any land management activities that involve land disturbance or large scale application of toxicants. Prior to undertaking any such activities, the Land Manager should provide a written assessment of any known potential short and long-term ecological impacts of the planned land management activity to the Land Management and Science Committees and recommend methods that avoid or minimize negative environmental impacts. Subsequently, the Land Manager should document methods utilized, including a map of the disturbance or treatment area. Care must be taken to ascertain whether rare, threatened, and endangered species or other habitats and species of management concern are present in the area where the activity is proposed. If surveys are not economically feasible, the LAND TRUST will consult with MD DNR or other experts regarding the area in question.

- 2) Adaptive management approach.** The precautionary approach should be combined with an adaptive management approach. Adaptive management entails monitoring the effectiveness of key management recommendations in a time-frame that is appropriate for each action. If it is determined that land management objectives are not being met, then adjustments to the recommended management actions should be made as necessary.
- 3) Science-based approach.** The LAND TRUST will use management and scientific advice provided by the Land Management and Science Committees to identify needs and strategies best suited for managing the LAND TRUST lands. These committees will assist the Land Manager with meeting the LAND TRUST's preservation, conservation, and outreach goals while protecting ecological resources and the integrity of the preserve's ecosystems.

- 4) **Minimize negative environmental impacts.** Subsequently, the Land Manager should document methods utilized, including a map of the disturbance or treatment area. Care must be taken to ascertain whether rare, threatened, and endangered species or other habitats and species of management concern are present in the area where the activity is proposed. If surveys are not economically feasible, the LAND TRUST will consult with MD DNR or other experts regarding the area in question.

**Stewardship Principles:**

- 1) **Restore, maintain, and protect the ecological functions and habitat values of the natural areas The LAND TRUST manages.** This comprehensive stewardship principle addresses the protection and conservation of the LAND TRUST's natural resources. It entails sustaining native species and communities, protecting rare, threatened, and endangered species, and protecting and restoring diverse habitats as well as maintaining the current landscape mosaic including the preserved shoreline.
  - a) **Assure The LAND TRUST natural areas are protected from major land use changes.** This goal entails securing and maintaining legal restrictions to prohibit conversion to other (developed) land uses. Associated land management activities in support of this goal include boundary posting, monitoring, and enforcement. The LAND TRUST's properties are all permanently preserved either through the \_\_\_\_\_ County Agricultural Preservation Program, with transferable development rights severed from the properties and covenants recorded in the land records, or through a conservation easement. To date, the LAND TRUST has donated conservation easements on XX% of its present acreage to the Maryland Environmental Trust and an additional XX% of its present acreage is protected by a Maryland Rural Legacy Easement. Thus XX% of the LAND TRUST property is permanently protected from major land use change by a conservation easement. Donation of conservation easements on the remaining fee simple acreage (and holdings that may be acquired in the future) should be considered to ensure that these property tracts are free from development and preserved in perpetuity. However, the LAND TRUST may be able to receive compensation for carbon credits if it elects not to harvest timber on properties that do not have a conservation easement that restricts timber harvests. Once a property has an easement restricting timber harvesting, the property may no longer be eligible to participate in the carbon credit program. Thus, the LAND TRUST should consider the potential financial gain of the carbon credit program when determining whether or not to donate a conservation easement on a fee-simple property.
  - b) **Preserve and enhance biodiversity of native species.** This goal entails identifying and protecting rare, threatened, and endangered plant and animal habitats as well as sustaining all native species and communities. Associated land management activities in support of this goal include invasive plant species control, the establishment of rare habitat types and structures (such as meadows or snag trees and nest boxes for cavity nesters), and utilizing only native species where re-planting occurs.
  - c) **Maintain the existing landscape mosaic.** This goal entails maintaining the primary habitat types, historic structures, and cultural land uses present on the LAND TRUST lands. This includes maintaining existing forest, fields, cliffs, beaches, and wetlands as well as historically-significant barns and home sites and continuing cultural land uses such as deer hunting and farming. Associated land management activities in support of this goal might include the stabilization of historically significant structures, farming in areas where cultivation has historically taken place, mowing or removing regenerating trees within open fields to maintain a meadow habitat, and maintaining a deer herd management program.
  - d) **Manage towards a late successional, old growth, forest condition.** The LAND TRUST has established a "let grow" policy for The LAND TRUST's forests which is intended to allow for natural succession toward an old growth, or climax, forest condition. MD DNR defines old growth as having the following characteristics (Appendix): 1) shade tolerant species are present in all age/size classes; 2) randomly distributed canopy gaps; 3) a high degree of structural diversity characterized by multiple growth layers (canopy, understory trees, shrub, herbaceous, ground layers) that reflect a broad spectrum of ages; 4) an accumulation of dead wood of varying sizes and stages of

decomposition, standing and down, accompanied by decadence in live dominant trees; and 5) pit and mount micro-topography can be observed, if soil conditions permit. Associated land management activities in support of this goal include working with state foresters to develop, implement, and revise Forest Stewardship Plans for all the LAND TRUST fee simple properties (see individual fee simple property land management plans).

e) **To help monitor and track the growth, health, and threats to the forest ecosystem, the LAND TRUST began a forest diversity survey in 2017.** This survey records the species, diameter at breast height (DBH), and health of every tree greater than 1" in diameter in ¼-acre plots spread throughout the LAND TRUST-owned properties. The plots are located so as to represent a diversity of soil types, hydrology, and historical land uses. Each tree within the plots is tagged with a unique code so that individual trees can be tracked overtime.

2) **Protect and interpret archaeological and historical sites on the LAND TRUST properties; maintain and optimize the LAND TRUST's facilities, both structural and interpretive, to support our land management and outreach activities.** Home sites, fields, cemeteries and other important cultural sites are found on The LAND TRUST's properties. The LAND TRUST seeks to protect, understand, and interpret examples of historical land use (where feasible and appropriate) for the benefit of enhancing public understanding of the County's cultural heritage. In addition, the LAND TRUST has adopted a Master Plan for Facilities and Interpretation (Facilities Plan, Appendix ) which describes present plans for existing and new structures and interpretive facilities to be utilized by the LAND TRUST to accomplish its mission.

a) **Maintain an inventory of the LAND TRUST's archaeological, historical, and cultural resources and establish priorities for stabilization and/or restoration, as appropriate.** This goal entails protecting the resources included in The LAND TRUST's existing inventory of Cultural Resources on the LAND TRUST-Managed Land (Appendix ), implementing its recommendations, to the extent feasible, and updating that inventory on a periodic basis. Associated land management activities in support of this goal include monitoring, maintaining, and restoring historic or culturally significant buildings and sites.

b) **Optimize The LAND TRUST facilities, both structural and interpretive, to support our land management and outreach activities.** This goal entails both maintaining the LAND TRUST's existing structures and interpretive features and implementing the recommendations of the LAND TRUST's Master Plan for Facilities and Interpretation, to the extent feasible, while seeking to incorporate energy efficiency and environmental sustainability into the design of any new or remodeled buildings. Associated land management activities in support of this goal include maintaining all the LAND TRUST buildings and grounds that are in active use, researching and implementing energy conservation measures, and assisting in the design of new facilities.

3) **Provide environmentally sustainable public access in a manner that is supportive of learning, volunteer opportunities, scientific research, and safe access to the LAND TRUST properties to encourage people to connect with the land.** This principle contains two aspects – ensuring that public access is environmentally sustainable and ensuring that the public has a positive experience. Connecting people to the land is an important aspect of The LAND TRUST's mission. The LAND TRUST recognizes that the properties it owns have had a long history of human use and can continue to be used by current visitors in many ways while still safeguarding the land and waterways for future generations. Public education is also essential in providing for continued support of land preservation and land stewardship initiatives. The more individuals know about their natural environment, the more they will see evidence that such areas are precious and in need of sound management and protection. Moreover, by being educated through hands-on stewardship, the public contributes to the cause and learns the techniques involved in preserving and managing the land. In this way, it is hoped that they will be in an informed position to educate others and to implement land management techniques on their own in other areas, allowing some of the concepts of land stewardship to spread.

a) **Establish public access land use policies that are environmentally sustainable and monitor the resources regularly to ensure impacts are minimized.** Perhaps the most challenging land management goal is to determine how best to reconcile the public's recreational use to the preservation of this unique natural area. Recreational use of any area leaves it vulnerable to varying



degrees of degradation. The LAND TRUST's general land management philosophy adopted in 1999 recognizes that preservation of the resource is paramount and that public access is to be encouraged when compatible with this goal. The very essence of environmental sustainability goes to the need to utilize, manage, and enjoy our natural resources today in a manner that will allow future generations to enjoy the same benefits. Therefore, it is implied that there must be a mutual respect involving the property itself, those that are responsible for managing the property, and members of the public that utilize it. Associated land management activities in support of this objective include monitoring areas that might be susceptible to overuse and adapting to changing conditions.

- b) **Ensure all trails and roads are well marked, free of encroaching vegetation, protected from erosion and flooding, and safe from hazards.** Re-evaluate all trail networks annually to determine any trail closures, necessary repairs, maintenance, re-routing, or additions required. Utilize volunteer trail stewards to provide more frequent monitoring of the trails and identify immediate trail maintenance and repair needs. Develop interpretive trails where recommended in the Master Plan for Facilities and Interpretation.
  - c) **Ensure that Trailhead Information Centers are welcoming and provide clear orientation for the trail user.** Promote hiking, photography, birding, nature study, biking (where permitted), and other permitted recreational uses, while also explaining disallowed uses such as motorized and horseback access with clearly stated rules.
  - d) **Maintain and preserve viewpoints to enhance the natural area experience.** Given the heavily-forested nature of the majority of the LAND TRUST properties, the most expansive viewshed of The LAND TRUST's protected properties is by way of the LAND TRUST's guided canoe trips. To a lesser extent, the overlooks at the end of the Prince Frederick to Bay Trail provide a viewshed of the preserved land within the Parkers Creek watershed. Another possible viewpoint is a beaver dam and overlook on the Trail which could be developed, when practicable. The open agricultural and meadow habitat areas also provide open space and an opportunity for visitors to experience inspiring viewsheds. Since such open areas are rare among the LAND TRUST's primarily heavily-forested landscape, the maintenance of these viewpoints should be a priority.
  - f) **Maintain a thriving volunteer land stewardship program.** The LAND TRUST has an active volunteer program that is responsible for accomplishing the majority of its land management objectives. Volunteer activities include (but are not limited to) invasive species control, help with the LAND TRUST's agricultural program, water quality monitoring, public education, fund raising, scientific research, trail maintenance, property monitoring, cultural site restoration, and committee participation. Planning, scheduling, and execution of action-based objectives are discussed at length in relevant committees (also run by volunteers) to maximize efficiency and to keep management principles and objectives in check. The Maryland Master Naturalist program has been hosted annually by the LAND TRUST since 2013 and this program has provided a large proportion of the current volunteer base. Another substantial portion of the LAND TRUST volunteers consists of the LAND TRUST hunters (Conservation Society members) which complete 20 volunteer hours annually for the privilege of hunting on the LAND TRUST-owned property. In addition to these two major groups of volunteers, many other individuals who are not Conservation Society members or Maryland Master Naturalists volunteer on the farm, in the office, at special events, or at weekly Wednesday Woods Workers and Thursday Trail Adventurer work days. The LAND TRUST would cease to function effectively if it were not for the support, dedication, and hard work freely given by this group of exceptional individuals. As such, the LAND TRUST should maintain its existing volunteer land management programs that foster a land stewardship ethic and expand these programs when possible. The continuation of the Maryland Master Naturalist program is a key component to recruiting new, highly-trained volunteers to assist with the LAND TRUST land management operations.
- 4) **Maintain and improve the water quality within Parkers Creek and Governor's Run watersheds.** Improving the water quality will contribute to improving water quality in the Chesapeake Bay. Since waterway health is affected by the land-use practices in place over the entire watershed, improving water quality requires a watershed-wide land stewardship focus. It is well established that two important factors that help to determine water quality are the percentage of impervious surface and the percentage of forest cover in the watershed. The LAND TRUST-owned and managed lands are primarily forested and

restrict development thereby greatly assisting in the protection of water quality in these two watersheds. Additionally, the LAND TRUST should incorporate the following activities to monitor and improve water quality:

- a) **Regularly monitor and assess the water quality on the property.** The LAND TRUST volunteers and staff have monitored the water quality in the main stem since 1998. In 2018, the LAND TRUST began conducting a "water quality blitz" to test nitrogen levels at approximately 30 sites within the watersheds each spring. Additionally, macroinvertebrate sampling has taken place in multiple locations throughout the watershed and in various locations on the property in 2018, 2019, and 2021. Each of these monitoring efforts should be continued in order to assess water quality, identify threats, and target areas where restoration practices may be needed. Monitoring data are valuable when regularly analyzed and compared against appropriate reference conditions. Quality control, analysis, and interpretation should be a component of each annual monitoring effort.
- b) **Use best management practices on the LAND TRUST-owned properties to avoid introducing sediment, pesticides or other chemical contaminants and excess nutrient loadings to waterways.** The LAND TRUST will limit herbicide and pesticide use to the extent possible and will use it exclusively for invasive species or pest control or for projects that have a net positive benefit on the ultimate diversity and health of the ecosystem. Additionally, the LAND TRUST will avoid large-scale disturbances and work to minimize the potential for sediment from its hiking trails to enter the waterways. Lastly, as mentioned above, the LAND TRUST will work towards implementing best management practices on its agricultural fields, such as cover cropping, no-till, and planting native vegetation buffers, to reduce the runoff of sediments and chemical contaminants into the surrounding waterways.
- c) **Ensure that all toxicants used by the LAND TRUST to control pests and combat invasive vegetation are used only when and where non-chemical management practices are either not available or not effective.** In general, the LAND TRUST will attempt to utilize non-chemical methods to control pests and invasive species. However, due to the large scale landscape being managed by the LAND TRUST, the multitude and tenacity of most invasive plant species, and the limited resources we have to control them, the use of herbicides may sometimes be the only feasible option.
- d) **Advocate for strong watershed protection policies.** Policies that protect watersheds are integral to safeguarding water quality and healthy, resilient ecosystems. Thus, the LAND TRUST will advocate for county and state policies that enable and incentivize the protection of natural and working landscapes in the Southern Maryland region. The LAND TRUST will also collaborate with other land preservation-focused organizations throughout the region to showcase unified, broad support for land and watershed protection policies.



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### **References for Further Reading Stewardship**

1. *Land Trust Standards and Practices - Stewardship Guidance Compiled*. Land Trust Alliance, 2021. <https://tlc.lta.org/topclass/uploads/documents/398110/Stewardship-guidance-compiled.pdf>
2. *Building Trust: Avoid Violations by Reaching Out to Successor Landowners*. Saving Land magazine, Land Trust Alliance, 2011. <https://www.landtrustalliance.org/news/building-trust-avoid-violations-reaching-out-successor-landowners>
3. *Baseline Documentation Reports, Practical Pointer Series*. Land Trust Alliance, 2011. [https://tlc.lta.org/topclass/uploads/documents/9843/Baseline\\_Documentation\\_Reports\\_Prac\\_Point\\_final.pdf](https://tlc.lta.org/topclass/uploads/documents/9843/Baseline_Documentation_Reports_Prac_Point_final.pdf)
4. *When to Shift Gears on Problem Resolution*. Land Trust Alliance, 2020. <https://tlc.lta.org/topclass/uploads/documents/3403/KnowingWhenToShiftGears%206-12-20%20final.pdf>