



**Excellence · Trust · Permanence**

# Accreditation Requirements Manual

A Land Trust's Guide to Understanding  
Key Elements of Accreditation

Land Trust   
Accreditation Commission  
An independent program of the Land Trust Alliance

36 Phila Street, Suite 2, Saratoga Springs, NY 12866

April 2016

Please Note: This *Requirements Manual* augments and replaces the information previously published in the Commission's *Guidance Documents* and replaces prior editions of the *Requirements Manual*.

## ***Requirements Manual***

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April 2016 Edition

### **Acknowledgements**

The indicator practices for the land trust accreditation program are taken directly from *Land Trust Standards and Practices*, © 2004 Land Trust Alliance, available for purchase or download online at [www.landtrustalliance.org](http://www.landtrustalliance.org), used here under a license agreement with the Land Trust Alliance.

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To inspire excellence, promote public trust, and ensure permanence in the conservation of open lands by recognizing land trust organizations that meet rigorous quality standards and that strive for continuous improvement.

The Land Trust Accreditation Commission is an independent program of the Land Trust Alliance. For more information, visit [www.landtrustaccreditation.org](http://www.landtrustaccreditation.org)

# LAND TRUST ACCREDITATION COMMISSION

An independent program of the Land Trust Alliance

## **LOOKING AHEAD: THE 2018 REQUIREMENTS MANUAL**

In August 2017, the Commission released a [2018 draft Requirements Manual](#) and held a [public comment period](#) on new accreditation requirements. Thank you to all who participated. The 2018 draft does two things: it aligns the requirements with the 2017 edition of *Land Trust Standards and Practices* (Standards), and it presents requirements in a fresh new way to reduce the amount of time land trusts spend applying for accreditation.

The final 2018 *Requirements Manual* will be released in March 2018. The Commission will use the 2018 *Requirements Manual* to evaluate applicants beginning in 2018. You can find what this means for you below. Because many of the core requirements will remain the same, please continue to consult the 2016 version until the 2018 version is published.

## **WHAT DOES THIS MEAN FOR MY LAND TRUST?**

### **2018 First-Time or Renewal Applicants**

Accredited land trusts that are applying or renewing in 2018 will use a modified version of the current first-time and renewal applications. You will see that the modified application includes documentation related to the new requirements and eliminates documentation for requirements that no longer apply.

- [Access the 2018 First-Time Accreditation Application Materials](#)
- [Access the 2018 Accreditation Renewal Application Materials](#)

If your land trust is not yet implementing the new indicator elements and requirements, do not fear! The Commission is phasing in any new requirements over a period of time. Since requirements for new indicator elements do not fully apply yet, you will have the opportunity to address these during the accreditation process. However, it is more likely that you will be given an [Expectation for Improvement](#) to address these during your accredited term.

### **2019 and Beyond Renewal Applicants**

In 2019, the revised Standards will be fully integrated into the accreditation program and the new requirements will apply. Accredited land trusts that are renewing in 2019 onward will use a new application corresponding to the new accreditation indicator elements. A reference copy of this application will be available in summer 2018.

### **2020 and Beyond First-Time Applicants**

In 2019 the Commission will only accept renewal applications due to high volume. If your land trust is interested in the 2020 registration lottery, it can submit an [informal intent](#). In 2020 a new first-time application will be in place corresponding to the new

accreditation indicator elements, and the first-time application process will be entirely online.

Learn more about the [updates to the accreditation requirements and application materials](#). Please [contact Commission staff](#) with any questions or comments.

Land Trust   
Accreditation Commission  
An independent program of the Land Trust Alliance

Dear Colleague,

We are pleased to release this fifth edition of the *Requirements Manual*.

The *Requirements Manual* helps land trusts be successful in the accreditation process. Because a [comprehensive review](#) of the *Requirements Manual* in 2015 reduced the number of requirements by 30%, there are only two major changes this year. These changes incorporate recent information from the Land Trust Alliance in the following practices.

- Practice 10B: Aligning the requirements for the land trust's evaluation of the Form 8283 and supporting appraisal with the Alliance's Advisory on Tax Shelters.
- Practices 11A and 12A: Aligning the defense funding requirements for conservation easements and conservation fee properties with the Alliance's Legal Defense Reserves Calculator.

We welcome [feedback](#) from the land trust community about this document. Please [contact](#) the Commission with any questions, comments, or feedback. Your comments are important to the Commission and will be considered as part of the next annual review of this manual.

Regards,



Tammara Van Ryn

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## OVERVIEW

Land trust accreditation is a mark of distinction in land conservation. Through a rigorous review process, the Land Trust Accreditation Commission follows accepted accreditation practices and verifies an applicant's compliance with [Land Trust Standards and Practices](#) by evaluating a sampling of 26 indicator practices selected by the Land Trust Alliance.

### **Purpose of the *Requirements Manual*: Consistency and Flexibility**

This *Requirements Manual* helps land trusts be successful in the accreditation process and enables the Commission to make fair and consistent decisions while accounting for diversity and flexibility. The requirements are directly linked to the Standards and Practices and describe how the Commission verifies an organization's compliance with the indicator practices.

The manual includes information for first-time applicants and renewal applicants. (Note that here and throughout this manual, "first-time" applies when an applicant has not yet been awarded accreditation; some first-time applicants may have previously applied but were not awarded accreditation.)

### **Annual Review**

To ensure the manual reflects the most current requirements, it is reviewed on an annual basis. If changes are made, a new edition is published in the spring after a public comment period. You can [comment on the requirements](#) and find the most current version on the Commission's [website](#).

### **Related Material**

The manual is integrally linked to other material published by the Commission, including the [Applicant Handbook](#) and [fact sheets](#). The *Applicant Handbook* includes other accreditation policies and requirements, including definitions, eligibility requirements, pre-application requirements, etc. The manual is also linked to the [first-time](#) and [renewal](#) accreditation applications. This manual augments and replaces the information previously published as *Guidance Documents* and previous editions of the *Requirements Manual*.

## **FORMAT AND SCOPE OF THE *REQUIREMENTS MANUAL***

The manual contains information relevant to each of the 26 indicator practices, presented in a standard format. First, the language of the practice directly quoted from *Land Trust Standards and Practices* is provided. The practice is followed by information related to how the Commission evaluates compliance with the indicator practice, organized into the following sections.

**Key Elements of the Indicator Practice** – This section includes the requirements specified in each indicator practice.

- *First-time applicants*: It is expected that the organization will document that its current practice is compliant with these requirements.

- *Renewal applicants:* It is expected that the organization will document that its practice over the five-year accredited term has remained compliant with these requirements.

**Policy/Procedure Elements** – This section provides the required elements of specific policies or procedures. If an applicant’s policy or procedure is found to be missing any of these required elements, it will be required to revise its policy or procedure prior to being awarded or renewed accreditation.

**Additional Elements of Practice Implementation** – This section includes additional requirements for each indicator practice.

- *First-time applicants/First-renewal applicants:* It is expected that the organization will be able to document that its current practice is compliant with these requirements.
- *Subsequent renewal applicants:* It is expected that applicants for second or subsequent renewal will be able to document that its practice over its entire accredited term has remained compliant with these requirements.

**Other Information** – Where applicable, this section contains other information relevant to how the Commission evaluates compliance. This ensures that the requirements are applied consistently to all applicants.

**Land Trust Alliance and Other Related Resources** – This section includes a list of resources available from the Alliance and others. Some links are to the Alliance’s [Learning Center](#), a password-protected website created especially for board, staff and volunteers of Alliance member land trusts and partners.

## **EVALUATING COMPLIANCE WITH THE REQUIREMENTS**

In verifying compliance, we look for the substance of compliance rather than a specific document title or format. The such-as-lists throughout the *Requirements Manual* give examples of how your organization can document it met the requirement.

If an applicant cannot document compliance with all applicable elements of evaluation, it is not necessarily precluded from achieving accreditation.

- *You Can Help:* We encourage organizations to provide additional information at the time of application to fully explain any issues and any relevant facts and circumstances. This additional information is appreciated and, when provided at the time of application, often saves organizations time by avoiding additional information requests during the accreditation review process.
- *Context Matters:* We will review the additional information you submit and evaluate the severity of the issue, whether the issue was isolated and rare, whether the issue relates to a key element of the indicator practice, the ability for the organization to address the issue in a timely manner, and the risk the issue poses to the applicant and the credibility of the accreditation program.



- *Final Decision:* Depending on the facts and circumstances, the Commission may request additional information, require corrective action, issue an [expectation for improvement](#) when it awards or renews accreditation, or not award or renew accreditation. The Commission's policy on [Accreditation Application Final Decisions](#) has more information, including the circumstances when the Commission may decide not to award or renew accreditation (such as if the land trust has not provided sufficient evidence of compliance with *Land Trust Standards and Practices* and program requirements or if the land trust shows a willful disregard for a non-indicator practice that could put the applicant at risk or threaten the credibility of the accreditation program).

## ACCREDITATION INDICATOR PRACTICES

### Practice 1D. Ethics

*“The land trust upholds high standards of ethics in implementing its mission and in its governance and operations.”*

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#### Key Elements of the Indicator Practice<sup>1</sup>

- The organization has high standards of ethics and adheres to them in implementing its mission, in its governance, and in its operations.
- The mission exclusively serves public interest(s).

#### Additional Elements of Practice Implementation<sup>2</sup>

- The organization is free of unresolved ethical questions and concerns as evidenced by public comments and practice implementation.
- For organizations operating through or with a related entity (such as a supporting organization or limited liability company), the primary organization clearly discloses in writing to prospective donors or sellers of land and/or conservation easements which entity will be the ultimate recipient of the property or holder of the conservation easement. The notice is provided early in the transaction process so that the donor or seller can make an informed decision.

#### Land Trust Alliance and Other Related Resources

- [Practice 1D](#)
- Standards and Practices Curriculum course, “[Avoiding Conflicts of Interest and Running an Ethical Land Trust](#)” (chapter 1)

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<sup>1</sup> First-time applicants to demonstrate current practice is compliant. Renewal applicants to demonstrate practice is compliant over entire accredited term.

<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.

## Practice 2A. Compliance with Laws

*"The land trust complies with all applicable federal, state and local laws."*

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### Key Elements of the Indicator Practice<sup>1</sup>

- All required federal and state filings are accurate and current.

### Additional Elements of Practice Implementation<sup>2</sup>

- The organization is not subject to final findings of malfeasance following a governmental investigation that would threaten the organization's ability to be accredited or impair the credibility of the accreditation program.
- If the organization holds conservation easements or fee properties in another state, it complies with out-of-state corporate registration requirements applicable in that state.

### Land Trust Alliance and Other Related Resources

- [Practice 2A](#)
- Standards and Practices Curriculum course, "[Nonprofit Law and Recordkeeping for Land Trusts, Volume I: Complying with Local, State and Federal Law](#)" (chapter 1)

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<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.

## Practice 2B. Nonprofit Incorporation and Bylaws

*“The land trust has incorporated according to the requirements of state law and maintains its corporate status. It operates under bylaws based on its corporate charter or articles of incorporation. The board periodically reviews the bylaws.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization is incorporated as a nonprofit or formed as a trust in accordance with state law.
- The organization has bylaws based on its articles of incorporation or corporate charter. (If the organization is a trust, it has bylaws or an equivalent document based on the declaration of trust.)
- The organization maintains its corporate status.
- The board reviews its bylaws (or equivalent document) at least once every five years.

### Additional Elements of Practice Implementation<sup>2</sup>

- The organization is in good standing with the state in which it is incorporated.
- The organization’s bylaws contain all significant operational provisions (such as purposes of the corporation, election of board of directors, meetings of the board, voting, etc.).
- The organization operates in accordance with its bylaws (such as types and frequency of meetings including membership meetings, provisions for voting, number of board members, etc.).

### Land Trust Alliance and Other Related Resources

- [Practice 2B](#)
- Standards and Practices Curriculum course, “[Nonprofit Law and Recordkeeping for Land Trusts, Volume I: Complying with Local, State and Federal Law](#)” (chapter 1)
- Standards and Practices Curriculum course, “[Land Trust Boards: Preparing for Perpetuity](#)” (chapter 1)

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## Practice 2C. Tax Exemption

*“The land trust has qualified for federal tax-exempt status and complies with requirements for retaining this status, including prohibitions on private inurement and political campaign activity, and limitations and reporting on lobbying and unrelated business income. If the land trust holds, or intends to hold, conservation easements, it also meets the Internal Revenue Code’s (IRC) public support test for public charities. Where applicable, state tax-exemption requirements are met.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization is recognized as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code or is a quasi-governmental conservation organization.
- The organization annually files a Form 990 with the Internal Revenue Service as required.
- If the organization holds conservation easements, it can demonstrate that at least one-third of its “qualifying support” is broad-based public support or that it meets one of the Internal Revenue Service’s alternative tests for not being classified as a private foundation.
- The organization does not engage in prohibited activities, such as private inurement, excess lobbying, or political campaign activity.

### Additional Elements of Practice Implementation<sup>2</sup>

- The organization’s Form 990 is complete and accurate in accordance with the Internal Revenue Service’s Form 990 instructions, including the following items.
  - The organization’s reported financial information matches or reconciles with the compiled, reviewed, or audited financial information.
  - The organization segregates and reports its fundraising, management and general, and program service expenses (also relates to practice 6B).
  - The organization provides all applicable schedules, including:
    - Schedule A: The organization demonstrates it meets the public support test if it holds conservation easements.
    - Schedule B: The organization discloses required contributions and is registered or is exempt from registering to solicit in all states where contributors are located (see practice 5A).
    - Schedule C: The organization reports its lobbying expenses, even if *de minimis*.

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- Schedule D: The organization reports required information on its conservation easements, fee properties, and endowment funds. (The Schedule D instructions clarify that endowments include permanent endowments [established by donor-restricted gifts], temporarily-restricted “endowments” [donor-restricted funds maintained to provide a source of income for either a specified period of time or until a specific event occurs], and board-designated “endowments” or quasi-endowments [established by the organization over which the organization imposes restrictions on the use].)
- Schedule L: The organization reports financial transactions or arrangements with conflicted parties.
- Schedule M: The organization reports all noncash contributions, including any conservation easement or fee property donations.
- Schedule O: The organization provides the necessary supplemental information, as applicable.
- All other information accurately reflects the organization’s activities.

### **Land Trust Alliance and Other Related Resources**

- [Practice 2C](#)
- Standards and Practices Curriculum course, “[Nonprofit Law and Recordkeeping for Land Trusts, Volume I: Complying with Local, State and Federal Law](#)” (chapter 2)
- Internal Revenue Service
  - [Form 990-N Information](#)
  - [Form 990-EZ Instructions](#)
  - [Form 990 Instructions](#)
  - [Schedule A Instructions \(Form 990 or 990-EZ\)](#)
  - [Schedule C Instructions \(Form 990 or 990-EZ\)](#)
  - [Schedule D Instructions \(Form 990\)](#)
  - [Schedule L Instructions \(Form 990 or 990-EZ\)](#)
  - [Schedule M and Instructions \(Form 990\)](#)

## Practice 3C. Board Governance

*“The land trust provides board members with clear expectations for their service and informs them about the board’s legal and fiduciary responsibilities. The board meets regularly enough to conduct its business and fulfill its duties, with a minimum of three meetings per year. Board members are provided with adequate information to make good decisions. Board members attend a majority of meetings and stay informed about the land trust’s mission, goals, programs and achievements.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization communicates to board members clear expectations for their service as board members and the board’s legal and fiduciary responsibilities as a governing body.
- The board meets frequently enough to conduct its business, no less than three times per year.
- Individual board members receive the information they need to make decisions in the best interests of the organization.

### Additional Elements of Practice Implementation<sup>2</sup>

- The organization has had a quorum for most of its board meetings during the past 12 months.
- If a staff member serves on the board, his/her role as a staff member is clearly defined and his/her role as a board member is limited accordingly.
- The organization has written job descriptions and/or a manual for board members.
- The organization has a process to recruit, train, and orient new board members and to evaluate the board (such as reviewing whether the board is a functional size, assessing whether there is a risk of minority rule, reviewing if board members are engaged in decision-making and financial oversight, etc.).
- The organization evaluates the performance of the executive director or equivalent position (if the organization has staff).
- The board sets strategic direction and evaluates the organization’s progress (also relates to practice 7A).
- Board members are provided with materials in advance of each board meeting (preferably at least three days); the materials generally include a meeting agenda, minutes of the previous meeting, and informational materials for most decision items on the agenda.

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<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.

## Land Trust Alliance and Other Related Resources

- [Practice 3A](#)
- [Practice 3B](#)
- [Practice 3C](#)
- [Practice 3D](#)
- [Practice 3E](#)
- Standards and Practices Curriculum course, "[Land Trust Boards: Preparing for Perpetuity](#)"



## Practice 3F. Board Approval of Land Transactions

*“The board reviews and approves every land and easement transaction, and the land trust provides the board with timely and adequate information prior to final approval. However, the board may delegate decision-making authority on transactions if it establishes policies defining the limits to that authority, the criteria for transactions, the procedures for managing conflicts of interest, and the timely notification of the full board of any completed transactions, and if the board periodically evaluates the effectiveness of these policies.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- Every land and conservation easement transaction is reviewed by the board or by an entity to which the board has directly (via written policy) or indirectly (via committee description or other means) delegated such responsibility.
- Every land and conservation easement transaction is approved by the board. Alternatively, if the board does not approve every land and conservation easement transaction, then the organization has a dated, board-adopted policy or policies (see below) or provisions in its bylaws for delegating decision-making authority.
  - The need for a delegation policy or provisions in the bylaws applies when a committee of the board (such as the executive committee or lands committee) or other designee makes the final decision about a transaction in lieu of full board action. Delegation policies or provisions in the bylaws are required even if delegation only happens on an occasional basis, such as at the end of year.
  - A delegation policy is not needed if the board delegates final-approval authority for a specific project that it has preliminarily approved.

### Policy Elements (if applicable)

*At first-time application and thereafter*

- The policy or policies include all of the following elements.
  - Any limitations on authority to act (such as requiring full board approval if a conflicted party is involved, requiring a committee review before a final decision is made, etc.)
  - Criteria for transactions or reference to the organization’s existing criteria
  - Any provisions for the management of conflicts of interest that are not covered in the conflict of interest policy
  - Requirements for timely notification of any completed land transactions to the full board

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<sup>1</sup> First-time applicants to demonstrate current practice is compliant. Renewal applicants to demonstrate practice is compliant over entire accredited term.

## **Additional Elements of Practice Implementation<sup>2</sup>**

- The organization documents (such as by keeping meeting minutes, retaining records of discussions, etc.) that the board or delegated entity has reviewed the land transaction.
- The organization documents that each project is evaluated to determine whether it meets the organization's criteria and advances the organization's mission (such as via completed criteria worksheets or checklists, site evaluation checklists, project planning sheets, meeting minutes, etc.) (also relates to practice 8B).
- The board or delegated decision-making authority receives sufficient information in writing prior to approval to make an informed decision. (Examples of sufficient information include the project location, project size, analysis of how the conservation values of the project compare to the organization's criteria/mission, public benefits, number and type of reserved rights retained, anticipated stewardship obligations and costs, etc.)
- The organization documents the board or delegated decision-making authority's approval of the land transaction.
- If a project changes substantially from initial review and conceptual approval (such as significant changes in size, restrictions, number and type of reserved rights, etc.), then the organization updates the board or delegated decision-making authority before the project is completed.
- For organizations that delegate review and/or approval authority,
  - There is documentation of the delegated entity's deliberations (such as committee meeting minutes or notes).
  - There is documentation of the delegated entity's reporting back to the board on the entity's actions in a timely manner (preferably at the next board meeting).
  - There is documentation that the board has evaluated the effectiveness of its delegation of transaction approval policy or policies at least once every five years.
- If transaction work is completed by a partner or similar entity, the organization reviews each transaction and documents that the project is consistent with its own project selection criteria and that all required review and approval procedures have been taken prior to approving the project.

## **Land Trust Alliance and Other Related Resources**

- [Practice 3F](#)
- Standards and Practices Curriculum course, "[Land Trust Boards: Preparing for Perpetuity](#)" (chapter 1)
- Standards and Practices Curriculum course, "[Acquiring Land and Conservation Easements](#)" (chapter 1)

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<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.

## Practice 4A. Dealing with Conflicts of Interest

*“The land trust has a written conflict of interest policy to ensure that any conflicts of interest or the appearance thereof are avoided or appropriately managed through disclosure, recusal or other means. The conflict of interest policy applies to insiders (see definitions), including board and staff members, substantial contributors, parties related to the above, those who have an ability to influence decisions of the organization and those with access to information not available to the general public. Federal and state conflict disclosure laws are followed.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization has a board-adopted, written conflict of interest policy (or policies) that applies to insiders (see below).
- The policy addresses how conflicts are avoided or managed.

### Policy Elements

*At first-time application and thereafter*

- The organization has a board-adopted, written conflict of interest policy (or policies) that applies to all of the following insiders.
  - Board members
  - Staff members (if the organization has staff)
  - Substantial contributors
  - Parties related to board members, staff (if the organization has staff), and substantial contributors
  - Those who have an ability to influence decisions of the organization (such as committee members)
  - Those with access to information not available to the general public (such as volunteers, contractors, consultants, advisory board members, etc.)
- The policy must ensure that any conflicts of interest or the appearance thereof are avoided or appropriately managed through disclosure, recusal or other means, including that a conflicted party not be present during the board’s discussion (unless asked to provide information) and vote on an issue where he/she is conflicted.

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<sup>1</sup> First-time applicants to demonstrate current practice is compliant. Renewal applicants to demonstrate practice is compliant over entire accredited term.

## Additional Elements of Practice Implementation<sup>2</sup>

- The organization appropriately documents the disclosure and management of actual and potential conflicts, including reflecting in minutes or meeting notes that the conflicted party was not present for the discussion (unless asked to provide information) and was not present for the vote.
- If the organization conducts financial transactions with insiders (such as compensating a board member for legal services), the organization contemporaneously documents how it determines that there is no private inurement for all but *de minimis* transactions. (Examples of documentation include data supporting the rate of compensation paid [such as comparable data of hourly or flat rates paid for similar services, competitive bid results received in response to a solicitation for services, other market analysis of the going rate for the scope of services provided, etc.], minutes from the board meeting showing discussion of how the rate was determined, a memo to file documenting that the research and analysis was conducted, etc. Documentation of how the rate was established need not be provided when 1) the rate paid for services is very low and/or is a small amount that clearly would not have resulted in private inurement [such as a land trust paying an insider a small amount to mow grass at a land trust's property, provide cleaning services, etc.] and 2) the organization is able to explain how it came to that determination.)
- The organization does not compensate the board's presiding officer and treasurer and/or firms, companies, or entities for whom they work for professional services (the Internal Revenue Service's Form 1099-MISC indicates that professional services are provided by attorneys, accountants, architects, contractors, engineers, etc.) if the individual's compensation from that firm, company, or entity is based in whole or in part on distributions of its profits. The presiding officer and treasurer and/or firms, companies, or entities for whom they work shall never be retained to conduct a financial compilation, review, or audit of the land trust's financial records.
- The organization either avoids or appropriately manages (such as with disclosure statements; waivers between the attorney board member and the organization acknowledging the board member's dual role; meeting minutes that reflect that the conflicted party fully disclosed the conflict, was not present for the discussion [unless asked to provide information], and was not present for the vote; etc.) potential conflicts arising from attorney board members who represent landowners in land transactions with the organization.
- When engaging in a land or conservation easement transaction with an insider, the organization ensures that there is no private inurement by implementing the steps below.
  - Documenting that the project meets the organization's land protection criteria
  - Following all its standard transaction policies and procedures

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<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.

- o For sales and purchases, obtaining an independent appraisal from a qualified appraiser
- o For sales, marketing a property widely before selling it to an insider

### **Land Trust Alliance and Other Related Resources**

- [Practice 4A](#)
- Standards and Practices Curriculum course, "[Avoiding Conflicts of Interest and Running an Ethical Land Trust](#)" (chapters 2 and 3)
- Internal Revenue Service: [Form 1099-MISC Instructions](#)

## Practice 5A. Legal and Ethical Practices

*“The land trust complies with all charitable solicitation laws, does not engage in commission-based fundraising, and limits fundraising costs to a reasonable percentage of overall expenses.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization does not engage in commission-based fundraising.
- Fundraising costs do not exceed a reasonable percentage of overall expenses. (For example, the organization generally limits its fundraising expenses to 35 percent or less of related contributions, in keeping with the generally accepted Wise Giving Alliance’s standards.)

### Additional Elements of Practice Implementation<sup>2</sup>

- The organization complies with all applicable state charitable solicitation laws (see below).
- For gifts greater than \$250, including gifts of land and conservation easements (including bargain sale transactions), the organization issues a contemporaneous written gift acknowledgement letter compliant with the Internal Revenue Code (§170(f)(8)) and the Treasury Department Regulations (§1.170A-13). The letter should be contemporaneous to the gift but must be sent by the time the donor files the tax return for the year of the donation and include the following items.
  - Name of the organization
  - Date of the donation (for conservation easements, the date of recording; for fee properties, when the delivery of the gift is effective under state law, as indicated by the Internal Revenue Service)
  - Amount of cash contribution (if applicable)
  - Description (but not the value) of noncash contribution (if applicable) (such as size, location, donation type [i.e., fee property, conservation easement])
  - One of the following
    - Statement that no goods or services were provided by the organization in return for the contribution, or
    - Description and good faith estimate of the value of goods or services, if any, that the organization provided in return for the contribution (The statement may indicate that the amount of the contribution that is deductible for federal income tax purposes is limited to the portion of the gift contributed by the

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donor that is in excess of the value of goods or services provided by the organization.)

- The organization uses gifts only for their intended purposes.
- Solicitations are clear about any restrictions on the use of moneys received as well as when and if the organization reserves the right to expend the principal of the donation.
- If the organization solicits gifts using the term “endowment” in its communications with donors, the funds are either permanently restricted or temporarily restricted (if the donor is aware that the principal of the funds could be spent) (also relates to practice 6B).

### **Information on Compliance with State Charitable Solicitation Laws**

The organization complies with charitable solicitation registration requirements in all states/jurisdictions in which it operates; to which it actively directs substantial numbers of solicitations, whether via mail, email, or telephone; or where fundraising solicitations are physically conducted via in-person meetings or events.

The organization has analyzed the number of solicitations it sends to jurisdictions and the total amount raised from such solicitations and has evaluated whether registering in those jurisdictions is required. An applicant must be able to describe its analysis and indicate it is registered or is taking steps to register where the analysis indicated it must or would be prudent to do so.

The evaluation may be based on the National Association of State Charity Officials’ position paper, *The Charleston Principles, Guidelines on Charitable Solicitations Using the Internet*, or may be a similar analysis done under the guidance of experienced professionals. While written specifically for internet solicitations and not directly applicable to other methods of fundraising solicitations, the “Charleston Principles” provide a guide for the purposes of completing the accreditation application. Applicants should be aware that the “Charleston Principles” do not have the force of law in all jurisdictions and that reliance on them for the purposes of accreditation may not ensure compliance with each jurisdiction’s legal requirements.

### **Land Trust Alliance and Other Related Resources**

#### *General*

- [Practice 5A](#)
- Standards and Practices Curriculum course, “[Building the Foundation for Fundraising Success](#)” (chapter 2)
- Standards and Practices Curriculum course, “[Nonprofit Law and Recordkeeping for Land Trusts, Volume I: Complying with Local, State and Federal Law](#)” (chapter 3)

*State Charitable Solicitation Laws*

- Putting it into Practice: [Accreditation and Complying with State Charitable Solicitation Laws](#)
- Internal Revenue Service: [Charitable Solicitation – State Requirements](#)
- National Association of State Charity Officials: [US Charity Offices](#)
- National Association of State Charity Officials: [Charleston Principles](#)
- [Uniform Registration Statement: The Multi-State Filer Project](#)

*Contemporaneous Written Gift Acknowledgements*

- Practical Pointers: [Contemporaneous Written Acknowledgement](#)
- Internal Revenue Service: [Charitable Contributions: Substantiation and Disclosure Requirements](#)



## Practice 6B. Financial Records

*“The land trust keeps accurate financial records, in a form appropriate to its scale of operations and in accordance with Generally Accepted Accounting Principles (GAAP) or alternative reporting method acceptable to a qualified financial advisor.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization keeps accurate financial records.
- Financial records are kept with a GAAP-compliant system or an alternative reporting method that is acceptable to the organization’s qualified financial advisor.

### Additional Elements of Practice Implementation<sup>2</sup>

- The board provides oversight of the organization’s finances.
- The organization has accounting procedures and/or other internal controls to prevent misuse or loss of funds that are appropriate to the scale of the organization.
- The organization appropriately tracks unrestricted, temporarily restricted, and permanently restricted funds.
- The organization prepares a budget annually.
- The organization’s budgets and financial statements show income exceeding expenses. If there is a deficit, it is not a trend, and the organization has a specific strategy to address the deficit.

### Land Trust Alliance and Other Related Resources

- [Practice 6B](#)
- Standards and Practices Curriculum course, “[Financial Management of Land Trusts](#)” (chapters 1 and 2)
- Land Trust Alliance Webinar: Restricted Gifts: [Accounting and Recording Challenges](#)

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## Practice 6D. Financial Review or Audit

*“The land trust has an annual financial review or audit, by a qualified financial advisor, in a manner appropriate for the scale of the organization and consistent with state law.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization obtains the expected level of annual financial audit, review, or compilation (see below).
- The person conducting the annual financial audit, review, or compilation is independent and qualified.

### Additional Elements of Practice Implementation<sup>2</sup>

- The board reviews the annual financial audit, review, or compilation.

### Information on Expected Level of External Financial Evaluation

At first-time application, it is expected that the organization obtains an external evaluation for its most recent fiscal year that is in keeping with the table below. At renewal, it is expected that the organization will have the appropriate level of evaluation from 2011 onwards. (The Commission first published these requirements in 2010 with the stated expectation that these requirements would apply to all groups starting in 2011.) For the purposes of accreditation, the thresholds are based on an organization’s total annual support and revenue without including the value of donated conservation fee properties or conservation easements.

Total Annual Support/Revenue without the value of donated conservation fee properties or conservation easements	Minimum Level of Evaluation
< \$100,000	Annual compilation by an independent certified public accountant (CPA) or independent qualified accountant
\$100,000-\$500,000	Annual financial review by an independent CPA
> \$500,000	Annual audit by an independent CPA

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- An independent CPA or independent qualified accountant is one who has no financial or other interest in the organization.
- If state law requirements are stricter than the guidelines given above, the organization must follow state law.
- If an organization has income levels that only occasionally or modestly exceed the \$500,000 audit threshold, is located in a state that does not have audit requirements at or below the \$500,000 level under state law, and has consistently had financial reviews, the Commission may evaluate the applicant's compliance with this practice on a case-by-case basis and accept a procedure that relies on annual reviews with periodic audits.

### **Land Trust Alliance and Other Related Resources**

- [Practice 6D](#)
- Standards and Practices Curriculum course, "[Financial Management of Land Trusts](#)" (chapter 3)

## Practice 7A. Capacity

*“The land trust regularly evaluates its programs, activities and long-term responsibilities and has sufficient volunteers, staff and/or consultants to carry out its work, particularly when managing an active program of easements.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization regularly evaluates its programs, activities, and long-term responsibilities.
- The organization has sufficient human resources to carry out its work (evidenced by the ability to monitor its conservation easements, inspect its fee properties, prepare baseline documentation reports and management plans, fulfill its stewardship requirements, etc.).

### Additional Elements of Practice Implementation<sup>2</sup>

- The organization has sufficient financial resources to support its work.

### Land Trust Alliance and Other Related Resources

- [Practice 7A](#)
- Standards and Practices Curriculum course, “[Mission, Planning and Capacity](#)” (chapters 2 and 3)
- [Conservation Capacity and Enforcement Capability](#)

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## Practice 8B. Project Selection and Criteria

*“The land trust has a defined process for selecting land and easement projects, including written selection criteria that are consistent with its mission. For each project, the land trust evaluates its capacity to perform any perpetual stewardship responsibilities.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization has a defined process for selecting land and conservation easement projects (also relates to practice 3F).
- The organization has written project selection criteria that are consistent with its mission.
- For each project, the organization evaluates its capacity to perform any perpetual stewardship responsibilities.

### Land Trust Alliance and Other Related Resources

- [Practice 8B](#)
- Standards and Practices Curriculum course, “[Evaluating and Selecting Conservation Projects](#)” (chapter 1)

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## Practice 8D. Public Benefit of Transactions

*“The land trust evaluates and clearly documents the public benefit of every land and easement transaction and how the benefits are consistent with the mission of the organization. All projects conform to applicable federal and state charitable trust laws. If the transaction involves public purchase or tax incentive programs, the land trust satisfies any federal, state or local requirements for public benefit.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization identifies and documents the public benefit(s) of every land and conservation easement transaction.
- All land and conservation easement transactions conform to applicable federal and state charitable trust laws.
- Pertinent federal, state, and local requirements for public benefit are met.

### Additional Elements of Practice Implementation<sup>2</sup>

- The organization complies with the donor’s wishes in protecting the property (thus complying with state charitable trust laws).

### Land Trust Alliance and Other Related Resources

- [Practice 8D](#)
- Standards and Practices Curriculum course, “[Evaluating and Selecting Conservation Projects](#)” (chapter 2)

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## Practice 9E. Easement Drafting

*“Every easement is tailored for the property according to project planning (see 8G) and: identifies the important conservation values protected and public benefit served; allows only permitted uses and/or reserved rights that will not significantly impair the important conservation values; contains only restrictions that the land trust is capable of monitoring; and is enforceable.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- Conservation easements are individually tailored to the specific property according to a project plan or process.
- Conservation easements only permit uses and reserved rights that will not significantly impair the important conservation values.
- Conservation easement restrictions are within the capacity of the organization to monitor. (For example, if the organization includes complex forestry restrictions in its conservation easements, it has or can obtain from knowledgeable parties the information and expertise to monitor them.)
- Conservation easements are enforceable.

### Additional Elements of Practice Implementation<sup>2</sup>

- The person responsible for drafting the organization’s conservation easements has the necessary knowledge and experience or the organization obtains legal review of its conservation easements.
- The conservation easement contains all basic elements (see below).
- If the organization’s standard conservation easements include a broad discretionary consent clause, then the organization has conservation easement provisions, discretionary consent policies, procedures, or guidelines, and/or amendment policies or procedures (also relates to practice 11I) that address discretionary consent.
- If the landowner intends to take a tax deduction for a conservation easement donation or bargain sale of a conservation easement, then the conservation easement must meet the requirements of the Internal Revenue Code and Treasury Department Regulations.

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## Information on Basic Elements of a Conservation Easement

The most recent conservation easement recorded by the applicant or its most recent conservation easement template includes at least the following elements.

- Deed form
  - Identification of the parties (such as property owner, grantee/holder, etc.)
  - Legal description of the property to be conserved
  - Required words of conveyance
  - Statement of the duration of the conservation easement
  - Statement of whether any consideration (such as a purchase payment or bargain sale payment) was given in exchange for the conveyance of the conservation easement
- Purposes clause and/or recitals
  - Identification of the property's conservation values
  - Description of the public benefit served by the conservation easement
- Restrictions and reserved rights
  - Restrictions that are appropriate for the type(s) of conservation easement it is (such as agricultural, mitigation, scenic, open space, etc.) and that protect the property's conservation values
  - Measurable standards for conservation easement terms or clear definitions
    - In determining which terms need further definition, the organization should consider whether the term is central to protecting the conservation values of the conservation easement and, if so, whether the term can be defined to provide an objective metric to aid in enforcement
  - Reserved rights need to be specific and not so broad as to allow the ability to negate the terms of the conservation easement
  - Clear definitions of special use areas, building envelopes and other such areas so that they can be identified on the ground (such as by identifying the location of permitted building areas, by identifying special protection areas where buildings are not permitted and/or by including the criteria for the review and approval of future building areas, etc.)
  - Control over the future exercise of reserved rights sufficient for the grantee to meet its obligations in the conservation easement, including clear designation of when grantee review or approval of the exercise of permitted and reserved rights or other activities is required and how review or approval is obtained
- Conservation easement holder's rights
  - Right-of-entry and inspection to monitor the conservation easement and inspect the property for conservation easement violations
    - The conservation easement cannot unduly limit the grantee's right to access the property to monitor or prohibit or unduly burden annual monitoring
  - Right to enforce the conservation easement, including
    - To access the property without prior notice in the event of an emergency or if the grantee believes a potential violation is occurring
    - To take immediate action (in other words, secure an injunction from a court)
    - To require restoration of the land to its condition at the time of the donation



- Other provisions
  - Termination and proceeds provisions
  - Reference to the baseline documentation report
- If the landowner intends on taking a tax deduction, the conservation easement also must include the following elements required by the Treasury Department Regulations (U.S.C. §1.170A-14)
  - Statement that the conservation easement is perpetual
  - Identification of one or more conservation purposes as defined in the Treasury Department Regulations
  - Prohibition on the surface extraction of minerals
  - Provision that the conservation easement is transferrable only to another qualified organization that agrees to carry out the original conservation purposes of the conservation easement
  - Extinguishment provisions that include the following
    - In the event of termination or condemnation, the organization is entitled to proceeds in proportion to the value of the conservation easement at the time of the gift and must use those proceeds in a manner consistent with the conservation purposes of the original conservation easement
    - Extinguishment for unexpected changes that make continued use of the property impossible or impractical for conservation purposes can only be accomplished by judicial proceedings
  - The conservation easement must give rise to an immediately vested property right

### **Land Trust Alliance and Other Related Resources**

- [Practice 9E](#)
- Standards and Practices Curriculum course, "[Conservation Easement Drafting and Documentation](#)" (chapters 1 and 2)
- "[The Conservation Easement Handbook](#)"

## Practice 9G. Recordkeeping

*“Pursuant to its records policy (see 2D), the land trust keeps originals of all irreplaceable documents essential to the defense of each transaction (such as legal agreements, critical correspondence and appraisals) in one location, and copies in a separate location. Original documents are protected from daily use and are secure from fire, floods and other damage.”*

### Key Elements of the Indicator Practice<sup>1</sup>

- The organization has a board-adopted records policy that governs how organization and transaction records are created, collected, retained, stored, and disposed of.
- The organization has originals and duplicates of the following irreplaceable documents essential to the defense of each conservation easement and fee property still owned by the organization. (Note: The organization is also expected to have the documentation requested in the application and the project documentation checklist; however, unless identified in the chart below, the organization does not need to meet the storage and duplication requirements for these documents.)

Irreplaceable Document	Original Required	Duplicate Required
Legal agreements, deeds, conservation easements, amendments, etc.	yes	yes
Critical correspondence (such as correspondence with the landowner related to project goals, tax and legal matters, notifications, approvals, enforcement, other key matters the organization determines essential to the defense of the transaction, etc.)	yes	yes
Baseline documentation reports for conservation easements	yes	yes
Title insurance policies or evidence of title investigation	yes	yes
Surveys, if any*	yes	yes*
Full appraisals (or summary appraisals if full appraisals are not available) used to substantiate the purchase price or used by the landowner to substantiate the tax deduction	yes	no
Forms 8283 for projects where the landowner claimed a federal tax deduction (The organization’s “original” can be a copy of the landowner’s signed original)	yes	no
Conservation easement monitoring reports	yes	no

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Irreplaceable Document	Original Required	Duplicate Required
Fee property inspection records essential to the stewardship and defense of the property	yes	no
Contracts and leases relative to long-term land management activities (Original retained only for as long as it and applicable statute of limitations is in effect)	yes	no

\*First-time applicants in 2017 and beyond will be expected to have duplicates of any surveys at the time of application. All renewal applicants are expected to have duplicates of any surveys at the time of application.

- The organization’s originals of irreplaceable documents (either paper or electronic) are kept secure in keeping with the following requirements.

*At first-time application*

- The organization demonstrates that it has taken steps to ensure that original documents are protected from daily use and are reasonably secure from fire, floods or other foreseeable hazards (such as a fireproof safe that is protected from daily use, an archive facility or bank that has reasonable protections against damage from fire and/or floods, the registry of deeds, an office protected with sprinklers that is not at risk of flooding, or in other reasonably secure locations).

*At renewal application and thereafter*

- All original documents are protected from daily use and are reasonably secure from fire, floods or other foreseeable hazards (such as a fireproof safe that is protected from daily use, an archive facility or bank that has reasonable protections against damage from fire and/or floods, the registry of deeds, an office protected with sprinklers that is not at risk of flooding, or in other reasonably secure locations).

- The organization’s duplicates of irreplaceable documents are stored in a separate location from the original (such as a storage facility, bank safe deposit box, office of the organization’s attorney, local historical society, other location where the organization has control over the retention of the document, electronic file storage, cloud-based electronic file storage, etc.).

**Additional Elements of Practice Implementation<sup>2</sup>**

- If the organization stores its originals in an electronic format, the organization can describe how these originals meet the requirements of applicable federal and state law with respect to rules of evidence regarding electronic originals.

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- If an organization stores its duplicates in an electronic format, documentation in the application shows that electronic duplicates are replicas of the signed originals with all exhibits and attachments in a format that cannot be altered (not draft or unsigned versions of documents).
- If originals are stored in an individual's home, the organization has a written agreement with the individual that guarantees that other representatives of the organization (such as officers, key employees, etc.) can access the records.

### **Land Trust Alliance and Other Related Resources**

- [Practice 9G](#)
- [Practice 2D](#)
- Standards and Practices Curriculum course, "[Nonprofit Law and Recordkeeping for Land Trusts, Volume II: Recordkeeping Essentials for Land Trusts](#)"
- Standards and Practices Curriculum course, "[Acquiring Land and Conservation Easements](#)" (chapter 5)
- Standards and Practices Curriculum course, "[Managing Conservation Easements in Perpetuity](#)" (chapter 1)

## **Practice 9H. Title Investigation and Subordination**

*“The land trust investigates title to each property for which it intends to acquire title or an easement to be sure that it is negotiating with the legal owner(s) and to uncover liens, mortgages, mineral or other leases, water rights and/or other encumbrances or matters of record that may affect the transaction. Mortgages, liens and other encumbrances that could result in extinguishment of the easement or significantly undermine the important conservation values on the property are discharged or properly subordinated to the easement.”*

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### **Key Elements of the Indicator Practice<sup>1</sup>**

- The organization investigates title to each property or conservation easement it intends to acquire to confirm the legal description and the owner and to uncover liens, mortgages, reserved mineral rights, mineral or other leases, water rights and/or other encumbrances or matters of record that may affect the transaction (see below).
- The organization addresses mortgages, liens, and other encumbrances so that they will not result in the extinguishment of the conservation easement or significantly undermine the conservation values (see below).

### **Additional Elements of Practice Implementation<sup>2</sup>**

- The organization investigates title as part of its due diligence when accepting the transfer of land or conservation easements from an affiliate or other conservation entity.
  - If the organization works with a non-profit partner that has a similar mission and the partner completed a full title investigation that is satisfactory and meets the Commission’s requirements, it is acceptable for the organization to obtain a copy of the partner’s past title investigation and to bring it current prior to closing rather than completing another full title investigation.
- The organization ensures that there are no gaps in title by legally recording deeds and conservation easements in a timely manner at the appropriate records office in accordance with local and state law.
- A professional title company or attorney conducts the title investigation.
- If the organization conducts initial title investigation early in the transaction process, it documents that it has final title investigation just prior to or at closing to ensure no additional encumbrances have been placed on the property since the initial title

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investigation. (For purposes of accreditation, the organization may provide evidence of the title being brought current within 30 days of closing [such as with an updated title search or title insurance commitment, a title insurance policy, a written communication from an attorney or title examiner that the title investigation was brought current at closing, written escrow or closing instructions requiring the closing agent or title company to bring the title investigation current, etc.]..)

### **Information on Documenting Title Investigation and Addressing Encumbrances**

Acceptable documentation of title investigation includes one of the following provided by a professional title company or attorney.

- Title insurance policy
- Title insurance commitment
- Title opinion
- Title report or title abstract
- Copy of the above title investigation from a non-profit or government partner

At first-time application, the Commission may accredit an organization that has not been in the practice of investigating title through a professional title company or attorney if the organization has documentation that it investigated title in other ways (such as with trained staff, etc.).

Examples of acceptable documentation of addressing encumbrances include the following items.

- Mortgage subordination agreement (if there is a mortgage)
- Mineral remoteness report from a qualified geologist or similar professional (if the mineral rights have been severed from the fee title estate)
- Water rights due diligence report from water attorney, qualified water engineer, or qualified individual coupled with a description of those rights in the deed or conservation easement (if water rights are applicable to the project and could affect the conservation values)
- Copies of rights-of-way or access easements or a memo to the project file with an analysis of how such easements could affect the organization's interest in the land or the protection of the conservation values in a conservation easement

### **Land Trust Alliance and Other Related Resources**

- [Practice 9H](#)
- Standards and Practices Curriculum course, "[Acquiring Land and Conservation Easements](#)" (chapter 3)

## Practice 9J. Purchasing Land

*“If the land trust buys land, easements or other real property, it obtains a qualified independent appraisal to justify the purchase price. However, the land trust may choose to obtain a letter of opinion (see definitions) from a qualified real estate professional in the limited circumstances when a property has a very low economic value or a full appraisal is not feasible before a public auction. In limited circumstances where acquiring above the appraised value is warranted, the land trust documents the justification for the purchase price and that there is no private inurement or impermissible private benefit. If negotiating for a purchase below the appraised value, the land trust ensures that its communications with the landowner are honest and forthright.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization obtains a qualified independent appraisal in advance of closing on the transaction to justify the purchase price for land, conservation easements, or other real property it buys; in limited circumstances as specified in the practice, it can rely on a letter of opinion from a qualified real estate professional (see below).
- The organization contemporaneously documents justification for any purchase at a price above appraised value and that there was no private inurement or impermissible private benefit (such as with trend data for market appreciation, range of values of similar purchases, market factors not covered in the appraisal, etc.).
- The organization has honest and forthright communications with landowners when purchasing land and conservation easements for a price below appraised value.

### Information on Independent Appraisals<sup>2</sup>

*Land Trust Standards and Practices* defines a “qualified independent appraisal” as an independent appraisal prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) by a state-licensed or state-certified appraiser who has verifiable conservation easement or conservation real estate experience.

The organization has at least one of the following to document the purchase price of land or conservation easements.

- An appraisal commissioned by the organization
- An appraisal commissioned by a public agency

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- An appraisal commissioned by a nonprofit partner (if the nonprofit partner has a mission similar to that of the organization and requires its funds to be spent responsibly)
- An appraisal commissioned jointly by the organization and the landowner
- A review appraisal of the landowner's appraisal that is commissioned by the organization
- An appraisal commissioned by the landowner with the land trust listed as an intended user

### *Bargain Sales*

The exception to obtaining an independent appraisal for a bargain sale is when the amount paid by the organization is *de minimis*. *De minimis* generally means that there was a very low dollar value paid. The Commission may also consider an exception to the independent appraisal requirement if the applicant paid only a small fraction of the value substantiated in an appraisal commissioned by the landowner, provided that the applicant has clear documentation of how it determined the value it paid and how it determined that the amount paid did not result in private inurement or impermissible private benefit.

### *Letters of Opinion*

As specified in the practice, in the limited circumstances when the economic value of the property is so low as to negate concerns about impermissible private benefit or an appraisal is not feasible before a public auction, the organization may choose to obtain a letter of opinion from a qualified real estate professional. (If the organization demonstrates that it is unable to obtain a letter of opinion before a public auction and demonstrates that the assessed value reflects the current market value of the property [such as evidence that the property was recently assessed, recent comparable sales data, etc.], then the organization may base the purchase price on an analysis of tax-assessment values.) An organization may also rely on a letter of opinion when it purchases land or conservation easements from another non-profit or governmental agency at a price below the tax-assessment value. A letter of opinion is not sufficient in the case of transactions with insiders.

According to the Land Trust Alliance's Standards and Practices Curriculum, a letter of opinion is a written estimation of a property's value, most often prepared by a qualified appraiser and occasionally prepared by a highly experienced real estate professional. (A licensed or certified appraiser may only be able to provide an opinion of value in one of three formats: restricted use appraisal report, summary appraisal report, or a complete appraisal.)

### *Area-Wide Appraisals for Uniform, Low-Value Parcels*

An applicant may use an area-wide report containing all sales of certain types of property within a specific area, compiled by a qualified independent appraiser or other real estate professional, when the applicant purchases land or conservation easements



in an area where the parcels are generally uniform in their size and/or characteristics and the properties have a low economic value.

#### *Residential Appraisals for Fee Properties*

An applicant may use a residential appraisal report to support the purchase price for a fee property when the property is similar to other residential properties or house lots in the area and the residential appraisal report meets USPAP standards (as attested to by the appraiser in the report). This applies to fee properties, not conservation easements.

#### *Use of Staff or Board Member Appraisers*

If a property or conservation easement is purchased, it is acceptable to use staff or board members who are certified appraisers that are considered to be independent under USPAP.

#### *Unacceptable Documentation*

The following are generally not acceptable documentation of an independent appraisal. In most cases, the documentation listed below would require a review appraisal commissioned by the organization to be acceptable.

- Relying on the landowner's appraisal or a price set by the landowner
- Relying on an appraisal of an adjacent property
- Basing value on tax assessments (unless the organization can demonstrate, as noted above, that a letter of opinion is not feasible before a public auction and that the tax assessments reflect the current market value of the property)
- Basing value on summaries of comparable sales or experience with similar sales compiled by staff, volunteers or other individuals who are not qualified appraisers
- Relying on a public agency estimate of value that was not derived from an appraisal

### **Land Trust Alliance and Other Related Resources**

- [Practice 9J](#)
- Standards and Practices Curriculum course, "[Acquiring Land and Conservation Easements](#)" (chapter 4)

## Practice 10B. Appraisals

*“The land trust informs potential land or easement donors (preferably in writing) of the following: Internal Revenue Code appraisal requirements for a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$5,000, including information on the timing of the appraisal; that the donor is responsible for any determination of the value of the donation; that the donor should use a qualified appraiser who follows Uniform Standards of Professional Appraisal Practice; that the land trust will request a copy of the completed appraisal; and that the land trust will not knowingly participate in projects where it has significant concerns about the tax deduction.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization notifies potential land or easement donors, including those knowingly engaging in a bargain sale transaction, of the items below.
  - That the donor is responsible for determining the value of the donation
  - That the Internal Revenue Code requires a qualified appraisal for gifts of property valued at more than \$5,000
  - That the donor should obtain a qualified appraisal as per the Treasury Department Regulations, including information on the timing of the appraisal (not earlier than 60 days prior to the date of contribution and before the due date for the tax return on which the deduction is first claimed; if the appraisal is after the donation, it must reflect the value of the conservation easement or fee property on the date of the gift)
  - That the donor should use a qualified appraiser who follows USPAP
  - That the organization will request a copy of the appraisal
  - That the organization will not knowingly participate in a project if it has significant concerns about the tax deduction (Only stating that the organization will not sign the Form 8283 if it has concerns about the tax deduction is not sufficient to meet this requirement.)

### Additional Elements of Practice Implementation<sup>2</sup>

- The organization furnishes the required notification to potential donors as early as possible in the negotiations but before the closing of each project so that the donor can make an informed decision.

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<sup>1</sup> First-time applicants to demonstrate current practice is compliant. Renewal applicants to demonstrate practice is compliant over entire accredited term.

<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.

- The preferred format is written communication specific to the individual landowner and/or standard written materials that are provided to the donor.
- In limited circumstances, if the organization has a written policy or checklist that requires verbal rather than written notification and the organization is able to provide evidence (such as internal memoranda documenting a meeting or phone call) that this notification occurred along with a copy of its policy, this combination may be used to provide evidence of donor notification.
- The organization only signs a Form 8283 when it is complete and is an accurate representation of the gift (see below).
- The organization evaluates the Form 8283, the supporting appraisal, and the title investigation to determine whether it has significant concerns about a landowner's tax deduction. [According to the Land Trust Alliance, one or more of the following may trigger the organization to have significant concerns:
  - The appraised value does not appear to be defensible in light of the organization's knowledge of local land values
  - The deduction claimed is significantly in excess of the donor's cost or adjusted basis (if recent)
  - Multiple unrelated parties are owners of the property using a pass-through entity and may be passing through deductions disproportionate to their respective interests in the property
  - The land has been recently acquired by a pass-through entity
  - Donors are being advised or managed by a "promoter" (A "promoter" is a person or entity that is being paid to help facilitate the proposed contribution and/or is being paid to otherwise promote, organize or secure the transaction (other than the entity's formal legal counsel.))
- The organization checks the appraisal supporting the Form 8283 to see that it meets basic Treasury Department Regulation requirements for a qualified appraisal (see below).
- The organization documents that it takes appropriate action to resolve any concerns it has with the landowner's tax deduction or the appraisal supporting the Form 8283. (If the organization has never experienced this situation, it is prepared for how it would respond.) [According to the Land Trust Alliance, the appropriate action can include one or more of the following:
  - Sharing the concerns regarding the appraisal in writing with the landowner
  - Seeking additional substantiation of value
  - Seeking expert legal and tax counsel and relying on the counsel's advice
  - Withdrawing from the transaction prior to closing
  - Refusing to sign the Form 8283 if the organization believes it has not received the gift described on the Form or if the Form or appraisal appear to support an abusive or fraudulent tax deduction]

## Information on Complete and Accurate Forms 8283 and Supporting Appraisals

As part of practice 10B, the Commission uses the checklists below to evaluate whether an organization is completing its due diligence regarding not knowingly participating in a transaction where it has concerns about the tax deduction by confirming that a) the Form 8283 is complete and is an accurate representation of the gift and b) the appraisal supporting the Form 8283 meets basic Treasury Department Regulation requirements for a qualified appraisal. Organizations should be aware that reliance on these checklists for purposes of accreditation does not ensure a landowner's compliance with the Internal Revenue Service requirements.

In evaluating the Form 8283 for purposes of accreditation, the Commission expects the following:

- The Form 8283 includes the name(s) of the landowner(s).
- The correct gift type is checked (in other words, "Qualified Conservation Contribution" for conservation easements or "Other Real Estate" for fee lands).
- There is either a sufficient gift description to confirm what was donated or a supplemental statement that does so.
- The fair market value stated on the Form 8283 corresponds to the appraised value.
- The Form 8283 includes any bargain sale payments made to the landowner. (If the organization paid for the supporting appraisal or provided other payments, the payment is reflected on the Form 8283 or other tax forms.)
- The Form 8283 includes the signature(s) of the appraiser(s).
- The date of the gift is accurate. (For conservation easements, the date of donation is the date of recording. For fee properties, the date of donation is the date of delivery under state law.)
- The unrelated use box is checked "no." If checked "yes," the organization notifies the landowner that this may impact the deduction.
- The organization signs the Form 8283 after the appraiser.

In evaluating the landowner's appraisal for purposes of accreditation (when the appraisal is received by the organization), the Commission expects the following. Note that for the elements marked with an asterisk (\*) below, the Commission only expects that the organization will confirm that the elements are present; it does not expect that the organization will assess whether the data presented in the appraisal are accurate and/or valid.

- The effective date of valuation listed in the appraisal is not more than 60 days prior to the date of the gift and is not after the date of the gift.
- The appraisal does not indicate that the appraiser's fee was based on a percentage of the value of the property or property interest.
- The appraisal contains:
  - A description of the property (including any extraordinary assumptions made in the appraisal) in sufficient detail to determine that the property or property interest appraised was the property or property interest donated

- The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor that relates to the use, sale or other disposition of the donated property (such as a conservation easement)
- The qualifications of the appraiser\*
- A statement that the appraisal was prepared for income tax purposes
- The appraised fair market value of the contribution (This does not mean that the organization needs to determine or concur with the value of the donation or to obtain a formal review of the appraisal. However, it does require the organization to use its general knowledge of local land values to make a general assessment about whether the appraised value is credible.)
- The method of valuation used to determine fair market value, such as the comparable sales approach or income approach\*
- The specific basis for the valuation, such as inclusion of comparable sales transactions\*
- For conservation easements, when the organization has information that the donor or family member (as defined by the Treasury Department Regulations) owns contiguous property, the Commission expects that an organization will confirm that the entire contiguous property has been addressed in the qualified appraisal.\*
- For conservation easements, when the organization has information that the donor or a related person (as defined by the Treasury Department Regulations) owns any property that has increased in value by granting of the conservation easement (known as enhancement), the Commission expects that an organization will confirm that the non-easement property has been addressed in the qualified appraisal or Form 8283 supplemental statement.\*
- The appraisal is prepared, signed and dated by an appraiser.

### **Land Trust Alliance and Other Resources**

- [Practice 10B](#)
- Standards and Practices Curriculum course, "[Tax Benefits and Appraisals of Conservation Projects](#)" (chapter 3)
- Practical Pointers: [Form 8283](#)
- Practical Pointers: [Qualified Appraisal Checklist](#)
- Internal Revenue Service: [Conservation Easement Audit Techniques Guide](#)
- [Form 8283](#)
- Form 8283 [Instructions](#)
- Land Trust Alliance Webinar: [Advanced Appraisal Issues](#)
- [Land Trust Alliance Advisory on Tax Shelters](#)

## Practice 11A. Funding Easement Stewardship

*“The land trust determines the long-term stewardship and enforcement expenses of each easement transaction and secures the dedicated or operating funds to cover current and future expenses. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure these funds and has a policy committing the funds to this purpose.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization determines the stewardship, enforcement, and other long-term expenses of each conservation easement transaction.
- The organization has a dedicated or restricted fund or funds to cover long-term stewardship and enforcement costs.

### Additional Elements of Practice Implementation<sup>2</sup>

- The organization meets the funding requirements for conservation easement defense (see below).
- The organization meets the stewardship funding requirements (see below).

### Information on Minimum Defense Funding Requirements

In September 2015, the Land Trust Alliance published a Legal Defense Reserves Calculator (Calculator) for an organization to use to determine the minimum defense funding needs for its conservation easements and fee properties based on the organization’s individual risk profile. Because the new minimum defense funding requirements may be higher for some organizations, the new funding requirements will be phased-in as follows.

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<sup>1</sup> First-time applicants to demonstrate current practice is compliant. Renewal applicants to demonstrate practice is compliant over entire accredited term.

<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.

*Applicants in 2016*

<b>Number of Conservation Easements <u>and</u> Conservation Fee Properties</b>	<b>At first-time application</b>	<b>At renewal application</b>
1-15	Either: a) Amount generated by the Calculator, or b) \$3,000 per conservation easement and a plan and commitment to reach the amount generated by the Calculator by the time of renewal	The lower of: a) \$50,000, or b) Amount generated by the Calculator
More than 15	The lower of: a) \$50,000 for first 15 conservation easements, plus a minimum of \$1,500 for each additional conservation easement, or b) Amount generated by the Calculator	

*Applicants in 2017 and beyond*

<b>Number of Conservation Easements <u>and</u> Conservation Fee Properties</b>	<b>At first-time application</b>	<b>At renewal application and thereafter</b>
1-15	Either: a) Amount generated by the Calculator, or b) \$3,000 per conservation easement and a plan and commitment to reach the amount generated by the Calculator by the time of renewal	Either: a) Amount generated by the Calculator, or b) \$50,000 and a plan and commitment to reach the amount generated by the Calculator by the time of next renewal
More than 15	Either: a) Amount generated by the Calculator, or b) \$50,000 for first 15 conservation easements, plus a minimum of \$1,500 for each additional conservation easement <u>and</u> a plan and commitment to reach the amount generated by the Calculator for conservation easements and fee properties by the time of next application	

## Information on Conservation Easement Stewardship Funding Requirements

The Commission requires the below stewardship funding levels based on recommendations from the Land Trust Alliance in its Conservation Capacity and Enforcement Capability report.

At first-time application	At renewal application and thereafter
Either: <ul style="list-style-type: none"> <li>a) A minimum of \$3,500 per conservation easement, or</li> <li>b) Ability to cover current expenses with operating revenues and a plan and commitment to reach \$3,500 per conservation easement by the time of renewal</li> </ul>	A minimum of \$3,500 per conservation easement*

\* If an applicant for renewal is unable to show that it meets the stewardship funding requirements but has made significant progress towards them, then the Commission may consider an exception to these funding requirements. In evaluating such an exception, the Commission will assess what steps were taken to meet the requirements, an explanation of the inability to meet the requirements, and documentation of how the organization plans to meet the requirements by the time of next renewal.

## Information on Fundraising Plans

As described above, there are specific instances in which the Commission accepts a fundraising plan as part of meeting the funding requirements. The Commission will evaluate the applicant's plan and will consider whether the organization can demonstrate the capacity and intent to implement it over the next five years. Evidence of a plan and a commitment to implement the plan include all of the following elements.

- A target goal for the amount of stewardship and additional enforcement funding the organization needs and the amount that it intends to raise over the next five years toward its goal, along with a description of how the target goal was determined
- A set of specific strategies with timelines for raising the target goal by the time of renewal
- A description of any new policies or procedures that will be implemented to help carry out the plan (such as a stewardship funding policy, expanded investment policy, changes to stewardship and enforcement calculations and requested amounts, etc.)
- A board resolution committing the organization to implementation of the funding plan and to dedicating funds raised via the plan to stewardship and enforcement of its conservation easements



## Land Trust Alliance and Other Related Resources

- [Practice 11A](#)
- Standards and Practices Curriculum course, "[Determining Stewardship Costs and Raising and Managing Dedicated Funds](#)" (chapter 1)
- Stewardship Funding Levels: [Conservation Capacity and Enforcement Capability](#)
- Defense Funding Levels: [Legal Defense Reserves Calculator](#)

## Practice 11B. Baseline Documentation Report

*“For every easement, the land trust has a baseline documentation report (that includes a baseline map) prepared prior to closing and signed by the landowner at closing. The report documents the important conservation values protected by the easement and the relevant conditions of the property as necessary to monitor and enforce the easement. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulations §1.170A-14(g)(5)(i)] are signed by the landowner at closing.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization has a baseline documentation report for every conservation easement it holds (or a current condition report\* for older conservation easements [see below]). (This applies to every conservation easement, not just those conservation easements for which a landowner took a tax deduction.)
- Baseline documentation reports (or interim data and a schedule for finalizing the full baseline documentation report as detailed in the practice) are prepared prior to closing and signed by the landowner at or before closing.
- Each baseline documentation report documents the important conservation values and relevant conditions of the property as necessary to monitor and enforce the conservation easement.

### Additional Elements of Practice Implementation<sup>2</sup>

- Every baseline documentation report (or current condition report\*) includes the required contents (see below).
- The baseline documentation report is a distinct document that represents the condition of the property at the time the conservation easement was granted and is clearly identified as such.
- The organization completes a baseline documentation supplemental report or similar document concurrent with significant conservation easement amendments (such as amendments that change the conservation easement boundaries, authorize additional improvements, etc.). The supplemental report should include the date of completion, the organization’s signature, and the current landowner’s signature (or documented attempt to obtain the signature).

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<sup>1</sup> First-time applicants to demonstrate current practice is compliant. Renewal applicants to demonstrate practice is compliant over entire accredited term.

<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.

## Information on Required Contents of a Baseline Documentation Report

### *At first-time application and thereafter*

- Date of completion
- Information on the location of the conservation easement
- Property description
- Documentation of the conservation values and public benefits, including written descriptions along with related maps and photographs
- Documentation of existing conditions that relate to the conservation easement's restrictions and reserved rights, including written descriptions along with related maps and photographs (such as the location and condition of any manmade improvements, data that would influence the exercise of reserved rights, pre-existing conditions that are otherwise prohibited by the conservation easement, other features that may threaten the conservation values, etc.)
- Dated signatures of the landowner and organization acknowledging that both attest to the accuracy of the information contained in the report
  - If the landowner is receiving tax benefits for a donated conservation easement, the acknowledgement must be compliant with the Treasury Department Regulations [§1.170A-14(g)(5)(i)(D)].

### *At renewal application and thereafter*

- The authorship and qualifications and/or experience of the baseline preparer
- Other acknowledgements or information that would make the material admissible as a business record in court (such as an indication that the record was created at or near the time of the event rather than later in anticipation of litigation, that the record was created by someone with direct knowledge or who was given the information by someone knowledgeable, that the record was created and kept in the course of the organization's regularly conducted business, and that it is the organization's regular practice to create or maintain such records)
- One or more maps that 1) clearly show the property, such as by containing property boundaries, north arrow, scale, date the map was created, etc. and 2) contain features relevant to the enforcement of the conservation easement, such as a) existing manmade improvements or incursions, such as roads, buildings, fences or gravel pits; b) vegetation and identification of flora and fauna, such as rare species locations, natural habitat, animal breeding and roosting areas, and migration routes; c) land use history, including present uses and recent past disturbances; d) distinct natural features, such as large trees and aquatic areas, etc.; and e) special use areas, such as building envelopes, protected riparian zones, forest management zones, etc.

## **Information on Evaluation of and Requirements for Upgrading Old, Non-Compliant Baseline Documentation Reports**

The Commission will expect that a first-time applicant's baselines for its newest projects meet or exceed the contents identified as being required at first-time application. If an applicant's older baselines do not have all of the contents required at first-time application, the Commission may nevertheless accredit the organization if its older baselines have enough information to defend the conservation easement and contain (within a single report and/or by explicit reference to other identifiable documents, including the applicable conservation easement) the items below.

- Date of completion
- Documentation of the conservation values and public benefits, which can be written descriptions and/or appropriate photographs and maps
- Documentation of existing conditions that relate to the conservation easement's restrictions and reserved rights, which can be written descriptions and/or appropriate photographs and maps

In this situation, the Commission will also evaluate the organization's plans to upgrade substandard baseline information or create current condition reports\* over the five-year accreditation term and may request to see a sample upgraded report during the review process. The baseline updates, supplements, or current condition reports must at least meet the "at first-time application" requirements. The baseline updates should include the date of completion, the organization's signature, and the current landowner's signature (or documented attempt to obtain the signature). Similarly, if the organization did not secure landowner signatures on the original baselines, it will need to document its attempt to secure them from original or subsequent landowners. The Commission will expect that these upgrades and attempts to secure signatures will be completed by the time the organization applies for renewal and that at renewal the organization's baselines for its newest projects contain the "at renewal" contents. It is further expected that at renewal, all the organization's baselines will contain the contents identified as being required at first-time application.

\*According to the Standards and Practices Curriculum, a baseline documentation report prepared to support an older conservation easement should document the property in its current condition. It is extremely difficult to document a property in its past condition, and it is questionable whether a baseline that attempted to document past conditions would be admissible in court.

### **Land Trust Alliance and Other Related Resources**

- [Practice 11B](#)
- Standards and Practices Curriculum course, "[Conservation Easement Drafting and Documentation](#)" (chapter 3)
- Putting it into Practice: [Accreditation and Signatures on Older Baseline Documentation Reports](#)

## Practice 11C. Easement Monitoring

*“The land trust monitors its easement properties regularly, at least annually, in a manner appropriate to the size and restrictions of each property, and keeps documentation (such as reports, updated photographs and maps) of each monitoring activity.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization monitors its conservation easements at least annually (see below).

*At first-time application (required at time of pre-application)*

- A monitoring frequency that meets one of the following evaluation methods.
  - There is at least one monitoring inspection each calendar year for a minimum of three years (or annually since date the conservation easement was acquired). (Beginning in 2017, the Commission will expect all first-time applicants to show three years of monitoring. The second option listed below will no longer be acceptable.)
  - The last two consecutive monitoring inspections are approximately 12 months apart. (In defining “approximately 12 months apart,” occasional intervals up to 15 months apart are acceptable. Under no circumstances are intervals of greater than 15 months acceptable if relying on this method for evidence.)

*At renewal application and thereafter*

- At least one monitoring inspection each calendar year during the entire five year accredited term (or annually since date the conservation easement was acquired).
- The organization documents its annual monitoring activities in writing for each conservation easement (see below).

### Additional Elements of Practice Implementation<sup>2</sup>

- The organization’s monitoring reports contain the required elements.

*At first-time application and thereafter*

- Identification of the specific conservation easement being monitored

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<sup>1</sup> First-time applicants to demonstrate current practice is compliant. Renewal applicants to demonstrate practice is compliant over entire accredited term.

<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.

- o Date of the inspection
- o Identification of the monitor
- o Observations relative to the restrictions, reserved rights and conservation values recorded during the inspection

*At renewal application and thereafter*

- o Information to substantiate the specific monitoring visit, such as
  - Description of the area that was observed during the inspection (such as the entire property, eastern boundaries and south road, etc.)
  - Information that helps substantiate the monitor's observations (including substantiation of "no change observed")
  - Observation of the conditions and context of the inspection (such as weather or ground conditions, routes of travel, means of travel, etc.)
- o A notation of the presence or absence of the landowner or other party

### **Information on Annual Monitoring and Documenting Monitoring**

Conservation easement monitoring is defined by the Commission as annual documented visual inspection of a conservation easement-protected property to ensure that the terms of the conservation easement are being upheld with on-the-ground physical inspections as the site warrants. The organization must maintain written, annual documentation of the condition of the property, even if the organization drives or walks by or otherwise inspects the property on a regular basis. The documentation must be contemporaneous to when the inspection occurred.

If the organization closed on a conservation easement at the end of one year, the organization needs to monitor the conservation easement by the end of the next year. (For example, if a conservation easement closed in October 2011, the first monitoring visit must be before the end of 2012.)

If a conservation easement is on a property that is owned in fee by a public agency or another conservation organization, the organization still needs a record of annual monitoring. If the applicant shares its monitoring responsibilities with, or delegates them to, another entity (such as a public agency, a co-holder, other partner, etc.), the organization will need to have documentation of its own annual monitoring or will need to provide evidence of the annual monitoring inspections conducted by the other entity. Failure of one co-holder to monitor does not release the other co-holder from the responsibility.

If there is an isolated and rare gap in monitoring a conservation easement annually, the Commission will review any explanation of the circumstances resulting in the gap in monitoring and will also consider the organization's monitoring history in its evaluation of this practice. The Commission will also consider modest variations to calendar-year monitoring if the organization routinely monitors its conservation easements at year-end and/or within a specific season that results in monitoring falling outside the

calendar year. (For example, the following pattern would be acceptable for a renewal applicant even though the calendar-year 2012 visit occurred in 2013: December 2010, December 2011, January 2013, December 2013, and December 2014.)

### **Information on Aerial Monitoring**

If the organization relies on aerial photography or imagery as part of its conservation easement monitoring protocol, the Commission will evaluate the organization's monitoring practice based on the scale of the project, the type of conservation easement, whether the organization's monitoring protocol was developed by a qualified professional, the quality of the data documented for the visual inspection, and whether the organization's use of technology is appropriate to its capacity.

It is acceptable for an organization to aerially monitor its conservation easements annually, if the organization does all of the following:

- Supplements the aerial monitoring with on-the-ground monitoring generally at least once every three years (depending on each conservation easement's particular circumstances)
- Has aerial photographs verifiable to a specific date
- Has aerial photographs that provide sufficient information to monitor the properties (including easily identifiable boundaries and restrictions appropriate to aerial monitoring)
- Keeps documentation of the monitoring
- Immediately follows up on any potential violations with an on-the-ground inspection

### **Land Trust Alliance and Other Related Resources**

- [Practice 11C](#)
- Standards and Practices Curriculum course, "[Conservation Easement Stewardship](#)" (chapters 3 and 4)

## Practice 11E. Enforcement of Easements

*“The land trust has a written policy and/or procedure detailing how it will respond to a potential violation of an easement, including the role of all parties involved (such as board members, volunteers, staff and partners) in any enforcement action. The land trust takes necessary and consistent steps to see that violations are resolved and has available, or has a strategy to secure, the financial and legal resources for enforcement and defense.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization has a board-adopted policy or procedure describing how it responds to a potential conservation easement violation (see below).
- The organization takes necessary and consistent steps to resolve violations.

### Policy/Procedure Elements

*At first-time application and thereafter*

- The policy or procedure must include all of the following items.
  - Details on how the applicant will respond to a potential violation of a conservation easement, including
    - How the applicant will identify, review and make decisions to resolve a suspected violation
    - The timing and nature of communications with the landowner
  - The role of each party (such as board members, volunteers, staff, partners, etc.) in the enforcement process

### Additional Elements of Practice Implementation<sup>2</sup>

- All conservation easement violations have been or are being resolved in a timely manner appropriate to the nature of the violation.
- The organization follows its policy or procedure in addressing all potential violations.
- The organization has legal involvement appropriate to the violation.

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<sup>1</sup> First-time applicants to demonstrate current practice is compliant. Renewal applicants to demonstrate practice is compliant over entire accredited term.

<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.



## Land Trust Alliance and Other Related Resources

- [Practice 11E](#)
- Standards and Practices Curriculum course, "[Managing Conservation Easements in Perpetuity](#)" (chapter 3)

## Practice 11I. Amendments

*“The land trust recognizes that amendments are not routine but can serve to strengthen an easement or improve its enforceability. The land trust has a written policy or procedure guiding amendment requests that: includes a prohibition against private inurement and impermissible private benefit; requires compliance with the land trust’s conflict of interest policy; requires compliance with any funding requirements; addresses the role of the board; and contains a requirement that all amendments result in either a positive or not less than neutral conservation outcome and are consistent with the organization’s mission.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization does not routinely amend its conservation easements for purposes other than strengthening the conservation easement, improving enforceability, or adding area to the conservation easement.
- The organization has a board-adopted policy or procedure that addresses conservation easement amendments (see below).

### Policy/Procedure Elements

*At first-time application and thereafter*

- The policy or procedure must include all of the following items.
  - Amendments must satisfy the following provisions (see “Amending Conservation Easements: Evolving Practices and Legal Principles”)
    - Clearly serve the public interest and be consistent with the organization’s mission
    - Comply with all federal, state, and local laws
    - Not jeopardize the organization’s tax-exempt status or status as a charitable organization under federal or state law
    - Not result in private inurement or confer impermissible private benefit
    - Be consistent with conservation purpose(s) and intent of the conservation easement
    - Be consistent with the documented intent of the donor, grantor, and any direct funding source
    - Have a net beneficial or neutral effect on the relevant conservation values protected by the conservation easement
  - A description of the circumstances under which the organization would consider an amendment
  - A description of the role of the board (and any committees) in addressing an amendment

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<sup>1</sup> First-time applicants to demonstrate current practice is compliant. Renewal applicants to demonstrate practice is compliant over entire accredited term.

- o A description of how the procedures vary depending on the type of amendment considered (if there are variations)

### **Additional Elements of Practice Implementation<sup>2</sup>**

- Amendments accepted by the organization are developed and approved in accordance with the organization's written policy and/or procedure, including that parties are involved in a manner and at a time consistent with the policy and/or procedure and that the amendment results in positive or not-less-than neutral conservation outcomes.
- Appraisals or other contemporaneous evidence (such as a letter of opinion from a qualified real estate professional, correspondence with an attorney, board materials, memo to the file, etc.) appropriate to the scale of the amendment document that no private inurement or impermissible private benefit resulted from the conservation easement amendment.
- Amendments are not inconsistent with donor intent.

### **Information on Release of Land from Conservation Easement Restrictions: Full or Partial Extinguishment**

This section provides information on how the Commission will evaluate an organization that has released restrictions on all or a portion of conservation easement-protected land in exchange for conservation easement restrictions on land not previously protected. The Commission considers the results of actions rather than the label placed on them by the organization and will review such actions by evaluating whether the applicant was following its amendment policy or procedures and other applicable policies, whether the applicant complied with the conservation easement language, and whether the amendment is in compliance with state and federal laws. Reliance on this evaluation approach for the purposes of accreditation may not ensure compliance with applicable funder, state, or federal requirements.

#### *Elements of Evaluation for Release of Land from Conservation Easement Restrictions*

- The organization documented that it followed all of its stated procedures for project review and approval and, if applicable, its amendment policy or procedures and conflict of interest policy.
- The organization documented that it followed the terms of the conservation easement with respect to taking appropriate action (such as following the terms of any amendment and/or extinguishment clauses, securing judicial review if the conservation easement's extinguishment clause requires a judicial order, etc.).
- The organization documented that the release/exchange resulted in no net loss of conservation values.

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<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.

- The organization documented that the release/exchange did not result in any private inurement or impermissible private benefit to the landowner. (Generally, this should have been documented through appraisals and reviewed by legal counsel.)
- The organization documented that it considered the size of the area released from the conservation easement's restrictions, its conservation values, and its relationship to the remaining conserved property.
- The organization documented that it considered other feasible alternatives.
- The organization documented that it acted reasonably and in good faith with respect to the donor's original intent and funder's requirements, if any, for the property.
- The organization documented that it considered its actions in the context of its reputation and the impact on the conservation community at large.
- Legal counsel evaluated the project in light of state and federal laws and documented the following items.
  - Determined that the release/exchange action was legally permissible and followed all applicable laws
  - Determined that there was not a legal obligation to require a judicial order and the reason for this determination (Alternatively, if there was a legal obligation to do so, the organization obtained a judicial order.)
- The organization recorded the appropriate documents (such as deeds, amended deeds, etc.) to effectuate the release/exchange action.

### **Land Trust Alliance and Other Related Resources**

- [Practice 111](#)
- Standards and Practices Curriculum course, "[Managing Conservation Easements in Perpetuity](#)" (chapter 2)
- [Amending Conservation Easements: Evolving Practices and Legal Principles](#)
- Internal Revenue Service: [Instructions for Form 990 for Schedule D](#)
- Internal Revenue Service: [General Information Letter on "Swaps"](#)

## Practice 12A. Funding Land Stewardship

*“The land trust determines the immediate and long-term financial and management implications of each land transaction and secures the dedicated and/or operating funds needed to manage the property, including funds for liability insurance, maintenance, improvements, monitoring, enforcement and other costs. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure these funds and has a policy committing the funds to this purpose.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization determines the immediate and long-term financial and management implications of each conservation fee property transaction.

### Additional Elements of Practice Implementation<sup>2</sup>

#### *At first-time application*

- The organization demonstrates one of the following items for its conservation fee properties.
  - It has sufficient resources to cover its annual fee land stewardship operating expenses through income from dedicated funds.
  - It a) has dedicated funds to cover at least emergency fee land management needs, issues related to title disputes, and legal defense or enforcement costs\* and b) covers its current annual fee land stewardship operating expenses through diverse and secure sources of annual income (such as lease income, earned income, reserve fund income, a history of success with annual appeals for stewardship, etc.).
  - A credible funding plan (see below) that shows that the organization will obtain the necessary dedicated funds as well as the diverse and secure sources of income it will rely on during its accredited term.

#### *At renewal application and thereafter*

- The organization demonstrates one of the following items for its conservation fee properties.
  - It has sufficient resources to cover its annual fee land stewardship operating expenses through income from dedicated funds.
  - It a) has dedicated funds to cover at least emergency fee land management needs, issues related to title disputes and legal defense or enforcement costs\*

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<sup>1</sup> First-time applicants to demonstrate current practice is compliant. Renewal applicants to demonstrate practice is compliant over entire accredited term.

<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.

and b) covers its current annual fee land stewardship operating expenses through diverse and secure sources of annual income (such as lease income, earned income, reserve fund income, a history of success with annual appeals for stewardship, etc.).

\*Applicants in 2017 and beyond will be expected to have the minimum defense funds for conservation easements and conservation fee properties as specified by the Land Trust Alliance's Legal Defense Fund Reserves Calculator. More information on this requirement and when a plan to raise additional funds is acceptable is provided in practice 11A.

### **Information on Stewardship Funding Plans**

As fee land stewardship expenses for every organization vary, the plan should include a calculation of what the organization needs to cover emergency expenses and the amount needed to cover the annual operating costs of its conservation fee land stewardship program. Operating expenses include liability insurance, periodic inspections, general management and maintenance costs, etc. For the purposes of accreditation, operating costs do not include costs associated with funding-dependent capital improvements or restoration projects. Evidence of a plan and a commitment to implement the plan include all of the following elements.

- A target goal for the amount of funding the organization needs and the amount that it intends to raise over the next five years toward its goal, along with a description of how the target goal was determined
- A set of specific strategies with timelines for raising the amount of the target goal by the time of renewal
- A description of any new policies or procedures that will be implemented to help carry out the plan (such as a stewardship funding policy, expanded investment policy, changes to stewardship and enforcement calculations and requested amounts, etc.)
- A board resolution committing the organization to implementation of the funding plan and to dedicating funds raised via the plan to cover emergency fee land management needs, issues related to title disputes, and legal defense or enforcement costs.

### **Land Trust Alliance and Other Related Resources**

- [Practice 12A](#)
- Standards and Practices Curriculum course, "[Determining Stewardship Costs and Raising and Managing Dedicated Funds](#)" (chapter 1)
- [Conservation Capacity and Enforcement Capability](#)
- Defense Funding Levels: [Legal Defense Reserves Calculator](#)

## Practice 12C. Land Management

*“The land trust inventories the natural and cultural features of each property prior to developing a management plan that identifies its conservation goals for the property and how it plans to achieve them. Permitted activities are compatible with the conservation goals, stewardship principles and public benefit mission of the organization. Permitted activities occur only when the activity poses no significant threat to the important conservation values, reduces threats or restores ecological processes, and/or advances learning and demonstration opportunities.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization has a written land management plan for each conservation fee property.
- Every management plan includes the required contents (see below).

### Additional Elements of Practice Implementation<sup>2</sup>

- At closing, the organization has at least a general written statement about its management goals and/or near-term management needs for the conservation fee property. Land management plans are completed within 12 months of the date the conservation fee property was acquired.
- Land management plans are updated as needed to reflect parcel additions (see below), external threats, or changes in management activities as necessary to ensure safety and appropriate management of the properties.

### Information on Required Contents of a Land Management Plan

There is no prescribed length or format for a land management plan. However, every management plan must at least contain all of the items below.

- A description of the property (such as size, location, etc.)
- A description of any conservation values or attributes and/or the reasons why the organization protected the property
- A summary of the restrictions that came with the property or that were placed on the property after the organization took ownership, if any (such as leases, severed mineral rights, right-of-ways, easements, etc.)

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- A description of potential threats to the conservation values or areas of special concern (such as invasive species, neighbor encroachment, unauthorized access, etc.)
- Overall management goals (including identification of permitted activities) and actions necessary to achieve the goals (If the organization is waiting to complete a detailed management plan, this may include interim actions until the final management plan is complete.)\*
  - Permitted activities are compatible with the organization's conservation goals for its fee properties (such as appropriate recreational activities in protected habitats, limited or no resource extraction in ecologically sensitive areas, etc.).
  - Permitted and restricted activities are consistent with donor intent and funder requirements.

\*If, at first-time accreditation, an organization's management plans are missing the overall management goals, then the organization will be required to provide a plan outlining how it will upgrade its management plans over its five-year accreditation term to include this element.

### **Information on Management Plans for Specific Types of Properties**

The Commission expects the organization to have a management plan for every fee property it holds for conservation purposes. Conservation properties include a) conservation lands held in fee for perpetuity, b) conservation lands held in fee for donation, transfer, or sale to a government agency or other conservation group, and c) conservation lands held for sale subject to a conservation easement. An exception is a property where the landowner retains a life estate. The following provides additional information for management plans on some specific types of properties.

- *Wilderness properties or those that are not actively managed:* The management plan would indicate the organization's intent to keep a property forever wild or its choice to undertake no management.
- *Properties the organization intends to transfer (such as to a public agency or other conservation holder):* The management plan would indicate what actions the organization must carry out while the property is in its ownership.
- *Appurtenant fee parcel created in the event that common law principles were used to create a conservation easement:* The need for a management plan on the appurtenant fee parcel will depend on the management of the conservation easement-protected property. If the appurtenant fee parcel is managed as a separate parcel from the property under conservation easement, then a management plan will likely be required. If the appurtenant fee parcel is managed as part of the conservation easement-protected land, a management plan will generally not be needed.
- *Properties under lease:* A lease can serve as part of a management plan if supplemented with additional material as needed to meet the required contents.



## Information on Management Plans for Related Parcels

- An organization may have a master management plan for contiguous parcels if there is a clear identification of which parcels are addressed by the plan.
- If specific parcels have unique conservation values or parcel-specific restrictions, then these should be identified in the master management plan.
- If the organization adds land to a property covered under a master management plan, the organization should also have documentation, until the master management plan is updated, (such as a short summary, printout of a database record, plan amendment, etc.) for the new parcel that at least meets the minimum management plan contents, including all of the following:
  - A description of the added parcel (size, location, etc.)
  - Notation of any conservation values unique to the new parcel
  - A summary of restrictions, if any, that came with the property
  - Any specific threats or management actions that are not covered in the master plan
- If the new parcel substantively changes the management needs of the whole property, a revised plan is required (such as if the new parcel substantially changes the acreage under management so that it may require increased staff or volunteers, adds new natural resources to be managed, etc.).
- Properties that are not physically connected may fall under a master management plan if the landscape is relatively uniform and there are no significant threats on the intervening parcels.

## Land Trust Alliance and Other Related Resources

- [Practice 12C](#)
- Standards and Practices Curriculum course, "[Caring for Land Trust Properties](#)" (chapters 1 and 2)

## Practice 12D. Monitoring Land Trust Properties

*“The land trust marks its boundaries and regularly monitors its properties for potential management problems (such as trespass, misuse or overuse, vandalism or safety hazards) and takes action to rectify such problems.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization can locate the boundaries of its conservation properties.
  - If the organization does not mark the boundaries of its conservation fee properties, it has surveys, maps, photos, written descriptions, or other on-the-ground indicators (such as roads, rivers, fences, etc.) of the boundaries that would enable a person to find the boundaries using GPS or other means.
- The organization annually inspects all its conservation properties (see below).

*At first-time application (required at time of pre-application)*

- At least one inspection in the calendar year prior to the application. (For example, a January 2015 or later inspection date would be acceptable for a 2016 application.)

*At renewal application and thereafter*

- At least one inspection per calendar year since 2014 (or over the entire accredited term if accredited in 2014 or later).

- The organization takes action to rectify management problems.

### Additional Elements of Practice Implementation<sup>2</sup>

- The organization documents inspection of its conservation fee properties (see below).
- The organization resolves management problems on its conservation fee properties in a timely manner or is taking action to resolve them.

### Information on Annual Inspections and Documenting Inspections

Acceptable forms of documentation may vary based on the nature of the property and frequency of inspections. The following list provides some examples of acceptable documentation.

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<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.

- A written and signed inspection report indicating the date of the inspection and findings
- For properties that are routinely inspected by staff or volunteers with on-going oversight of the property, a staff or volunteer report to the board, memo to file on activities and findings, etc.
- For properties where there is an on-site manager, a job description identifying the responsibilities of the individual to inspect the property, to address issues, and to report.

If there is an isolated and rare gap in the inspection date not being within a year of the application date, the Commission will review any explanation of the circumstances resulting in the gaps in inspections and also consider the organization's inspection history in its evaluation of this practice.

### **Land Trust Alliance and Other Related Resources**

- [Practice 12D](#)
- Standards and Practices Curriculum course, "[Caring for Land Trust Properties](#)" (chapter 4)