

Canadian Land Trust Standards and Practices



2005

Canadian Land Trust Alliance

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Introduction

The need for standards and practices, for any *land trust*, regardless of where it operates, is imperative. A strong *land trust* community depends on the long-term viability and management of our organizations. By working towards a consistent set of standards and practices, *land trusts* will continue to thrive and be successful in perpetuity.

The US Land Trust Alliance Standards and Practices were first developed over fifteen years ago. Recently, in 2004, the US Land Trust Alliance released their updated version as a result of more than 14 months of consultation, analysis and discussion with their over 1,500 member groups. The Canadian Land Trust Alliance recognized the advantage in using such a rigorously developed set of Standards and Practices as a springboard for the development of our *Canadian Land Trust Standards and Practices* and we are grateful to the US LTA for supporting us in our efforts. In Canada, the development of the *Canadian Land Trust Standards and Practices* has involved consultation with *land trusts* and professionals from across the country resulting in modifications and additions to the US Standards and Practices.

Implementing the *Canadian Land Trust Standards and Practices* helps *land trusts* uphold public trust and build strong and effective land conservation programs. *Land trusts* will be encouraged to sign on to a resolution and commit to progress towards implementation of the *Canadian Land Trust Standards and Practices* (as a requirement of being a member of the Canadian Land Trust Alliance) however; there is no expectation that all standards and practices will have to be implemented right away or all at once. The goal of introducing these standards and practices to *land trusts* in Canada is to encourage a starting point towards continuous improvement in order to achieve increased conservation success for the long-term.

The *Canadian Land Trust Standards and Practices* are organized into 12 standards and supporting practices to advance the standards. The practices are guidelines; there are many ways for a *land trust* to implement the practices, depending on the size and scope of the organization. Accompanying the *Canadian Land Trust Standards and Practices* is the *Background to the Canadian Land Trust Standards and Practices*, which offers a more in-depth look at the development and implementation of each practice.

While the *Canadian Land Trust Standards and Practices* are designed primarily for *land trusts* with charitable status, they also provide important guidance for any organization or government agency that holds land or *conservation agreements* for the benefit of the public.

Land trusts are a respected and integral part of the nation's land conservation work. With this recognition comes responsibility to ensure that all *land trusts* operate effectively and that their conservation efforts are lasting. The *Canadian Land Trust Standards and Practices* are a critical tool in meeting these challenges.

Guiding Principles

Principle A: Integrity. A *land trust* should participate in establishing, maintaining and enforcing, and should observe, high standards of conduct so that the integrity of the *land trust* sector may be preserved. The provisions of these Standards and Practices should be applied to further that objective. *Land trust* practitioners should recognize that the integrity of the individual *land trust* reflects upon the *land trust* community as a whole.

Principle B: Perpetual Responsibility. *Land trusts* should recognize that they have an obligation to protect the lands and properties that they care for in perpetuity. As such, *land trusts* have a responsibility to act in the long-term best interest of both the properties, themselves and their organization.

Principle C: Excellence. *Land trusts* should strive to provide the best service possible and should work towards improving the strengths of individual *land trusts* and the *land trust* community.

Principle D: Good Governance. Governance is a process whereby societies or organizations make their important decisions, determine whom they involve in the process and how they render account. The five good governance principles are¹: legitimacy and voice, direction, performance, accountability and fairness. Good governance exists where those in positions of power are perceived to have acquired this power legitimately, and there is appropriate voice accorded to those whose interests are affected by decisions. Further, the exercise of power results in a sense of overall direction that serves as a guide to action. Governance should result in performance that is responsive to the interests of citizens and stakeholders. In addition, good governance cannot be said to prevail unless there is genuine accountability at play between those in positions of power (agents) and those whose interests they are supposed to be serving (principals). Accountability cannot be effective unless there is transparency and openness in the conduct of the organization's work. Finally, governance should be fair, which implies conformity to the rule of law and principles of equity.

1. Principles of Good Governance provided by the Institute on Governance, 2005

Definitions of Key Terms

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

Conflict of Interest: a *conflict of interest* arises when “*insiders*” are in a position, or perceived to be in a position, to benefit financially (or create a benefit to a family member or other organization with which they are associated) by virtue of their position within the non-profit organization.

Conservation Agreement: a legally binding agreement voluntarily entered into between a landowner and a conservation organization (including a *land trust*, the federal, a provincial or municipal government) to restrict the use of subject real property to protect the heritage values of the property, and may include a servitude for the use and benefit of dominant land, a covenant or an easement.

GAAP: the Canadian Institute of Chartered Accountants (CICA) issues *Generally Accepted Accounting Principles (GAAP)*. CICA’s Handbook of Accounting and Auditing Standards provides standards for Financial Statements for Not-for-Profit Organizations.

Fee Simple: the most extensive tenure allowed under the feudal system allowing a tenant to sell or convey by will or transfer to an heir if the owner died intestate. In modern law, almost all land is held in *fee simple* and this is as close as one can get to absolute ownership in common law.

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

Insiders: board and staff members, substantial contributors, parties related to the above, those who have an ability to influence decisions of the organization and those with access to information not available to the general public.

Land Trust: a charitable organization that, as all or part of its mission, actively works to conserve land by undertaking or assisting in land or *conservation agreement*, or by engaging in the stewardship of such land or *conservation agreements*. In Quebec, *land trusts* are non-profit organizations that in some cases do not have charitable status.

Private Benefit: when the net earnings of a charitable organization come to the benefit of any private shareholder or individual.

Qualified Independent Appraisal: an independent appraisal prepared in compliance with the Canadian Uniform Standards of Professional Appraisal Practice by a certified appraiser who has verifiable *conservation agreement* or conservation real estate experience.

Short Narrative: 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 *short narrative* may be used instead of a *qualified independent appraisal* when the economic value of the property is so low as to negate concerns about *private benefits*, or when a full appraisal is not feasible before a public auction. (A *short narrative* is not sufficient in the case of transactions with *insiders*.)

Widely Marketed: announcing the availability of a property for sale to lists of prospective buyers, through web pages, mailings, and listings in newsletters and other publications or media. "Widely marketed" does not require a public listing with a real estate agent.

Part I: Organizational Strength

Standard 1: Mission

The land trust has a clear mission that serves a public interest, and all programs support that mission.

Practices

- A. Mission. The board adopts, and periodically reviews, a mission statement that specifies the public interest(s) served by the organization.
- B. Planning and Evaluation. In implementing its mission, the *land trust* regularly establishes strategic goals for implementing its mission and routinely evaluates programs, goals and activities to be sure they are consistent with the mission.
- C. Outreach. The *land trust* communicates its mission, goals and/or programs to members, donors, landowners, the public, community leaders, conservation organizations and others in its service area and promptly responds to public requests for information about its operations.
- D. Ethics. The *land trust* upholds high ethical standards through being inclusive and through honesty, openness, transparency, fairness, integrity, and the avoidance of any perceived or actual *conflict of interest* in its governance and operations, including implementation of its mission.

Standard 2: Compliance with Laws

The land trust fulfills its legal requirements as a non-profit charitable organization and complies with all relevant laws and statutes.

Practices

- A. Compliance with Laws. The *land trust* complies with all applicable federal, provincial and municipal laws.
- B. Non-profit Incorporation and Bylaws. The *land trust* has incorporated according to the requirements of the appropriate provincial or federal 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.
- C. Charitable Status. The *land trust* has qualified for federal charitable status and complies with requirements for retaining this status, including prohibitions on *private benefits* and political campaign activity. If the *land trust* holds, or intends to hold, *conservation agreements*, it complies with the applicable enabling provincial legislation. *Land trusts* that intend to hold Ecological Gifts must meet the criteria of Environment Canada (see 10C). Where applicable, provincial charitable status requirements are met.
- D. Records Policy. The *land trust* has adopted a written records policy that governs how organization and transaction records, including donor information, property details, baseline documents, and monitoring reports are created, collected, retained, stored and disposed. A privacy policy that addresses the handling of personal information has been developed by the *land trust* in response to federal or provincial privacy legislation. (See 9G.)
- E. Public Policy. The *land trust* may engage in the public policy debate at the federal, provincial and/or municipal level (such as supporting or opposing legislation, advocating for sound land use policy, and/or endorsing public funding of conservation) provided that it complies with federal and provincial lobbying limitations and reporting requirements. All public policy activities must relate to the *land trust's* mandate and field of operations and should comply with the Canada Revenue Agency's limitations. *Land trusts* may not engage in political campaigns or endorse candidates for public office.
- F. Current Information. *Land trusts* are strongly advised to remain up to date with changes in tax law and other legislation that may impact their ability to hold *conservation agreements*, to operate as a registered charity or non-profit corporation, to determine what political activity is and to clarify to what extent they can participate in the development of public policy.

Standard 3: Board Accountability

The land trust board acts responsibly in conducting the affairs of the organization and carries out the board's legal, financial and other responsibilities in an ethical manner.

Practices

- A. Board Responsibility. The board is responsible for establishing the organization's mission, determining strategic direction and setting policies and priorities to carry out the mission, and, as required by law, the oversight of the organization's finances and operations. As well, the board should ensure the prevalence of high ethical standards, effective performance through sound information, and the development of sound relationships. The board is also responsible for managing risk, taking account of the organization, and ensuring the soundness of the governance system. As the *land trust* is a charity, the board has a heightened duty of care with respect to the protection of its charitable property.
- B. Board Composition. The board is of sufficient size to conduct its work effectively. The board is composed of members with relevant and complimentary skills, backgrounds and experiences who are committed to the mission of the *land trust* and to board service. There is a systematic process for recruiting, training and evaluating board members.
- C. Board Decision-making. 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 stay informed, attend a majority of meetings and ensure appropriate oversight of the organization, including its policies and programs, in order to achieve the *land trust's* mission and goals.
- D. Preventing Minority Rule. The *land trust's* governing documents contain policies and procedures (such as provisions for a quorum and adequate meeting notices) that prevent a minority of board members from acting for the organization without proper delegation of authority.
- E. Delegation of Decision-Making Authority. The board may delegate some but not all of its decision-making and management functions to committees, provided that committees have clearly defined roles, the board establishes policies defining the limits to committee authority and the method and frequency for reporting back, the board periodically evaluates the effectiveness of these policies and the board establishes an appropriate time period for each committee. Regardless, the board will remain responsible for all decisions taken pursuant to the delegated authority. If the *land trust* has staff, the board defines the job of, oversees and periodically evaluates the executive director (or chief staff person). (See 3F and 7E.)

- F. Board Approval of Land Transactions. The board reviews and approves every land and *conservation agreement* transaction, and the board is provided 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.

Standard 4: Conflicts of Interest

The land trust has policies and procedures to avoid or manage real or perceived conflicts of interest.

Practices

- A. 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*, 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 provincial conflict disclosure laws are followed.
- B. Board Compensation. Board members do not serve for personal financial interest and are not compensated except for reimbursement of expenses and, in limited circumstances, for professional services that would otherwise be contracted out. Any compensation must be in compliance with charitable trust laws that apply in the jurisdiction the land trust operates in. The board's executive officers are never compensated for professional services. In Ontario, it is the position of the Public Guardian and Trustee that no board members of organizations with charitable status may accept compensation for any form of professional services without first obtaining court approval.
- C. Transaction with Insiders. When engaging in land and *conservation agreement* transactions with *insiders*, the *land trust*: follows its *conflict of interest* policy; documents that the project meets the *land trust's* mission; follows all transaction policies and procedures; and ensures that there is no impermissible *private benefit*. For purchases and sales of property to *insiders*, the *land trust* obtains a *qualified independent appraisal* by a provincially licensed or certified appraiser who has verifiable *conservation agreement* or conservation real estate experience. When selling property to *insiders*, the *land trust* *widely markets* the property in a manner sufficient to ensure that the property is sold at or above fair market value and to avoid the reality or perception that the sale inappropriately benefited an *insider*.

Standard 5: Philanthropy and Fundraising

The land trust conducts philanthropy and fundraising activities in an ethical and responsible manner.

Practices

- A. Legal and Ethical Practices. The *land trust* complies with all charitable solicitation laws, does not engage in commission-based philanthropy and fundraising, and limits costs for philanthropy and fundraising expenditures to a reasonable percentage of overall expenses.
- B. Accountability to Donors. The *land trust* is accountable to its donors and provides written acknowledgement of gifts as required by law, ensures that donor funds are used as specified, keeps accurate records, honours donor privacy concerns, complies with applicable privacy legislation and advises donors to seek independent legal and financial advice for substantial gifts, whether they be land or monetary gifts.
- C. Accurate Representations. All representations made in promotional, fundraising, and other public information materials are accurate and not misleading with respect to the organization's accomplishments, activities and intended use of funds. All funds are spent for the purpose(s) identified in the solicitation or as directed in writing by the donor.
- D. Marketing Agreements. Prior to entering into an agreement to allow commercial entities to use the *land trust's* logo, name or properties, the *land trust* determines that these agreements will not impair the credibility of the *land trust*. The *land trust* and commercial entity publicly discloses how the *land trust* benefits from the sale of the commercial entity's products or services.

Standard 6: Financial and Asset Management

The land trust manages its finances and assets in a responsible and accountable way.

Practices

- A. Annual Budget. The *land trust* prepares an annual budget that is reviewed and approved by the board, and is consistent with board policy. The budget is based on programs planned for the year. Annual revenue is greater than or equal to expenses, unless reserves are deliberately drawn upon.
- B. 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)*.
- C. Financial Reports and Statements. The board receives and reviews financial reports and statements in a form and with a frequency appropriate for the scale of the *land trust's* financial activity. At a minimum, small *land trusts* should review financial statements annually; larger *land trusts* should review financial statements quarterly.
- D. 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 federal and/or provincial law.
- E. Internal System for Handling Money. The *land trust* has established a sound system of internal controls and procedures for handling money, in a form appropriate for the scale of the organization.
- F. Investment and Management of Financial Assets and Dedicated Funds. The *land trust* has a system for the responsible and prudent investment and management of its financial assets, and has established policies on allowable uses of dedicated funds and investment of funds.
- G. Funds for Stewardship and Enforcement. The *land trust* has a secure and lasting source of dedicated or operating funds sufficient to cover the costs of stewarding its land and *conservation agreements* over the long term and enforcing its *conservation agreements*, tracks stewardship and enforcement costs, and periodically evaluates the adequacy of its funds. In the event that full funding for these costs is not secure, the board has adopted a policy committing the organization to raising the necessary funds. (See 6F, 11A and 12A.)
- H. Sale or Transfer of Assets (Including land and *conservation agreements*). The *land trust* has established policies and/or procedures on the transfer or sale of assets, including real

property. (See 4C, 9K and 9L.)

- I. Risk Management and Insurance. The *land trust* assesses its risks, develops a written risk management policy and carries liability, property, and other insurance appropriate to its risk exposure and provincial law. The *land trust* exercises caution before using its land to secure debt and in these circumstances takes into account any legal or implied donor restrictions on the land, the *land trust's* mission and protection criteria, and public relations impact.

Standard 7: Volunteers, Staff and Consultants

The land trust has volunteers, staff and/or consultants with appropriate skills and in sufficient numbers to carry out its programs.

Practices

- A. 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 *conservation agreements*. *Land trusts* will not assume more properties or *conservation agreements* than they have the *capacity* to manage.
- B. Volunteers. If the *land trust* uses volunteers, it has a program to recruit, screen, train, supervise and recognize its volunteers.
- C. Staff. If the *land trust* uses staff, each staff member has written goals or job description and periodic performance reviews. Job duties or work procedures for key positions are documented to help provide continuity in the event of staff turnover.
- D. Availability of Training and Expertise. Volunteers and staff have appropriate training and experience for their responsibilities and/or opportunities to gain the necessary knowledge and skills.
- E. Board/Staff Lines of Authority. If the *land trust* has staff, the lines of authority, communication and responsibility between board and staff are clearly understood and documented. If the board hires an executive director (or chief staff person), the board delegates supervisory authority over all other staff to the executive director. (See 3E.)
- F. Personnel Policies. If the *land trust* has staff, it has written personnel policies that conform to federal and provincial law and has appropriate accompanying procedures or guidelines.
- G. Compensation and Benefits. If the *land trust* has staff, it provides fair and equitable compensation and benefits, appropriate to the scale of the organization.
- H. Working with Consultants. Consultant and contractor relationships are clearly defined, are consistent with federal and provincial law, and, if appropriate, are documented in a written contract. Consultants and contractors are familiar with sections of *Canadian Land Trust Standards and Practices* that are relevant to their work.

Part II: Land Transactions

Standard 8: Evaluating and Selecting Conservation Projects

The land trust carefully evaluates and selects its conservation projects.

Practices

- A. Identifying Focus Areas. The *land trust* has identified specific natural, cultural or geographic areas where it will focus its work and may identify priority themes or sites within those focus areas.
- B. Project Selection and Criteria. The *land trust* has a defined process for selecting land and *conservation agreement* projects, including written selection criteria that are consistent with its mission.
- C. Federal and Provincial Requirements. For land and *conservation agreement* projects that may involve federal or provincial tax incentives, the *land trust* ensures that the project meets the applicable federal or provincial requirements. Projects where the donor is seeking Ecological Gift certification must be certified by Environment Canada and must meet any additional provincial requirements (see 10C).
- D. Site Inspection. The *land trust* conducts a physical site inspection before buying or accepting donations of land or *conservation agreements* to be sure, they meet the organization's criteria, to identify the *important conservation values* on the property and to reveal any liabilities or potential threats to those values.
- E. Documenting Conservation Values. The *land trust* documents the condition of each property and the *important conservation values* and public benefit of each property, in a manner appropriate to the individual property and the method of protection.
- F. Project Planning. All land and *conservation agreements* are individually planned so that the property's *important conservation values* are identified protected and restored if necessary. The project furthers the *land trust's* mission and goals, and the project reflects the *capacity* of the organization to meet future stewardship obligations.
- G. Evaluating the Best Conservation Tool. The *land trust* works with the landowner to evaluate and select the best conservation tool for the property and takes care that the chosen method can reasonably protect the property's *important conservation values* over time. This

evaluation may include informing the landowner of appropriate conservation tools and partnership opportunities, even those that may not involve the *land trust*, including Ecological Gifts and split-receipt sales. *Land trusts* that do not intend to hold Ecological Gifts should inform landowners about the Ecological Gifts Program and, if necessary, direct interested landowners to other qualified conservation organizations.

- H. Evaluating Partnerships. The *land trust* evaluates whether it has the skills and resources to protect the *important conservation values* on the property effectively, or whether it should refer the project to, or engage in a partnership with, another qualified conservation organization.
- I. Partnership Documentation. If engaging in a partnership on a joint acquisition or long-term stewardship project, agreements are documented in writing to clarify, as appropriate, the goals of the project, roles and responsibilities of each party, legal and financial arrangements, communications to the public and between parties, and public acknowledgement of each partner's role in the project.
- J. Evaluating Risks. The *land trust* examines the project for risks to the protection of *important conservation values* (such as hazardous waste and mineral rights issues, surrounding land uses, extraction leases or other encumbrances, water rights, potential credibility issues or other threats) and evaluates whether it can reduce or manage the risks. The *land trust* modifies the project or turns it down if the risks outweigh the benefits.
- K. Non-conservation Lands. A *land trust* may receive land that does not meet its project selection criteria (see 8B) with the intent of using the proceeds from the sale of the property to advance its mission. If the *land trust* intends to sell the land, it provides clear documentation to the donor of its intent and has a plan to manage community expectations. Practices 4C, 9K and 9L are followed.
- L. Public Issues. A *land trust* engaging in projects beyond direct land protection (such as public policy, regulatory matters or education programs) has criteria or other standard evaluation methods to guide its selection of and engagement in these projects. The criteria or evaluation methods consider mission, *capacity* and credibility.

Standard 9: Ensuring Sound Transactions

The land trust works diligently to see that every land and conservation agreement transaction is legally, ethically and technically sound.

Practices

- A. Legal Review and Technical Expertise. The *land trust* obtains a legal review of every land and *conservation agreement* transaction, appropriate to its complexity, by a lawyer or notary experienced with real estate law. As dictated by the project, the *land trust* secures appropriate expertise in financial, real estate, tax, scientific, and land and water management matters.
- B. Independent Legal, Financial and Tax Advice. The *land trust* refrains from giving specific legal, financial and tax advice and recommends in writing that each party to a land or *conservation agreement* transaction obtain independent legal, financial and tax advice.
- C. Environmental Due Diligence for Hazardous Materials. The *land trust* takes steps, as appropriate to the project, before the land or *conservation agreement* transaction is, complete, to identify and document whether there are hazardous or toxic materials on or near the property that could create future liabilities for the *land trust*.
- D. Determining Property Boundaries. The *land trust* determines the boundaries of every protected property through legal property descriptions, accurately marked boundary corners or, if appropriate, a survey. If a *conservation agreement* contains restrictions that are specific to certain zones or areas within the property, the locations of these areas are clearly described in the *conservation agreement* and supporting materials and can be identified in the field.
- E. Conservation Agreement Drafting. Every *conservation agreement* is tailored for the property according to project planning (see 8F) and: identifies the *important conservation values* protected; 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.
- F. Documentation of Purposes and Responsibilities. The *land trust* documents the intended purposes of each land and *conservation agreement* transaction, the intended uses of the property and the roles, rights and responsibilities of all parties involved in the acquisition and future management of the land or *conservation agreement*.
- G. Recordkeeping. Pursuant to its records policy (see 2D), the *land trust* keeps originals of all irreplaceable documents essential to the defence of each transaction (such as legal agreements, critical correspondence, surveys, appraisals, and baseline documents) 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. (See 2D).

- H. Title Investigation and Subordination. The *land trust* investigates title to each property for which it intends to acquire title or a *conservation agreement* 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 *conservation agreement* or significantly undermine the *important conservation values* on the property are discharged or properly subordinated to the *conservation agreement*.
- I. Registration. All land and *conservation agreement* transactions are legally recorded at the appropriate records office according to municipal and provincial law.
- J. Purchasing Land. When the *land trust* buys land, *conservation agreements* or other real property, it obtains a *qualified independent appraisal* to justify the purchase price. However, the *land trust* may choose to obtain a *short narrative* 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 impermissible *private benefit*. If negotiating for a purchase below the appraised value, the *land trust* ensures that its communications with the landowner are honest, forthright and recorded.
- K. Selling Land or Conservation Agreements. When the *land trust* sells land or *conservation agreements*, it first documents the *important conservation values*, plans the project according to practice 8G, and drafts protection agreements as appropriate to the property. The *land trust* obtains a *qualified independent appraisal* that reflects the plans for the project and protection agreements and justifies the selling price. (The *land trust* may choose to obtain a *short narrative* from a qualified real estate professional in the limited circumstance when a property has a very low economic value.) The *land trust* markets the property and selects buyers in a manner that avoids any appearance of impropriety and preserves the public's confidence in the *land trust*, and in the case of selling to an *insider* follows practice 4C. Land held under the Ecological Gifts Program requires special permission from Environment Canada prior to any changes in status. (Also, see 6H for sales of other assets.)
- L. Transfers and Exchanges of Land. If the *land trust* transfers or exchanges conservation land or *conservation agreements*, the *land trust* considers whether the new holder can fulfill the long-term stewardship and enforcement responsibilities, ensures that the transaction does not result in a net loss of *important conservation values* and, for donated properties, ensures that the transfer is in keeping with the donor's intent. If transferring to a party other than another non-profit organization or public agency, the consideration is based on a *qualified independent appraisal* (or short narrative when the property has a very low economic value)

in order to prevent impermissible *private benefit*. Lands held under the Ecological Gifts Program require special permission from Environment Canada prior to any changes in status.

- M. Split Receipting. The *land trust* should be familiar with the CRA's guidelines for split receipting and how it relates to property transactions, including Ecological Gifts. If necessary, the *land trust* should obtain outside expertise to assist them with any split receipting transactions.
- N. Subsurface Rights. The *land trust* investigates the ownership of subsurface rights for all property transactions and where possible, works to mitigate the impacts the future development of those rights may have on the conservation values of the property.

Standard 10: Tax Consequences

The land trust works diligently to see that every charitable gift of land or conservation agreements meets federal and provincial tax law requirements.

Practices

- A. Independent Legal and Tax Advice. The *land trust* advises (in writing) potential land or *conservation agreement* donors to get independent legal, financial and tax advice before completing any transactions. The *land trust* notifies potential donors that there may be negative tax consequences to their donation including capital gains or pension claw backs that should be investigated by the donor's lawyer and accountant.
- B. Appraisals. The *land trust* informs potential land or *conservation agreement* donors, in writing, of the following: Canada Revenue Agency (CRA) appraisal requirements for a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$1,000, including information on the timing of the appraisal; as the beneficiary of the tax receipt the donor has the primary responsibility for any determination of the value of the donation (even in the case where the appraisal has been arranged for or commissioned by the *land trust*); that the donor/*land trust* should use an independent qualified appraiser who is certified by the Appraisal Institute of Canada and who follows the Canadian 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. Appraisals of Ecological Gifts must be done in a manner that meets the criteria of Environment Canada and will be reviewed independently by the Appraisal Review Panel.
- C. Ecological Gifts Program. Where appropriate, the *land trust* informs potential donors about the Ecological Gifts Program including the increased tax benefits associated with making a gift under the program. *Land trusts* are aware of, and where necessary, advise potential donors about, the consequences of unauthorized disposal or change in land use of Ecological Gifts. The *land trust* ensures that properties donated under the Ecological Gifts Program are appraised and certified according to the standards of Environment Canada and, where applicable, provincial standards.
- D. No Assurances on Deductibility or Tax Benefits. The *land trust* does not make assurances as to whether a particular land or *conservation agreement* donation will be deductible, what monetary value of the gift the CRA and/or province will accept, what the resulting tax benefits of the deduction will be, or whether the donor's appraisal is accurate.

Standard 11: Conservation Agreement Stewardship

The land trust has a program of responsible stewardship for its conservation agreements.

Practices

- A. Funding Conservation Agreement Stewardship. The *land trust* determines the long-term stewardship and enforcement expenses of each *conservation agreement* 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. (See 6G.)
- B. Baseline Documentation Report. For every *conservation agreement*, the *land trust* has a baseline documentation report (that includes a baseline map and photographs) prepared prior to closing and signed by the landowner at closing. Both the landowner and the land trust should hold at least one original copy. The report documents the *important conservation values* protected by the *conservation agreement* and the relevant conditions of the property as necessary to monitor and enforce the *conservation agreement*. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, the baseline documentation report may include an interim baseline documentation report and an acknowledgement it will be replaced by a full report. This interim report and acknowledgement will be signed by the landowner at closing.
- C. Conservation Agreement Monitoring. The *land trust* monitors its *conservation agreement* properties regularly, at least annually, except in exceptional and remote circumstances, in a manner appropriate to the size, restrictions and threats to the conservation values of each property. The *land trust* keeps written documentation (such as reports, updated photographs and maps) of each monitoring activity to confirm that the present use of the property is consistent with that at the time of donation or acquisition. Monitoring of Ecological Gifts will include confirmation that the present use of the property is consistent with that at the time of the donation and monitoring documentation relating to Ecological Gifts will be made available to Environment Canada upon request. The *land trust* will determine the capabilities (both human and financial) of its organization to fulfill the short and long-term monitoring responsibilities and will not accept *conservation agreements* it cannot monitor effectively. If *conservation agreements* are monitored by volunteers, the *land trust* shall ensure that, they are trained, tailoring the monitoring techniques and requirements to the specific property.
- D. Landowner Relationships. The *land trust* maintains regular contact with owners of properties with *conservation agreements*. When possible, it offers landowners information on property management and/or referrals to resource managers. The *land trust* enlists a contact staff or volunteer assigned to respond to landowner requests or inquiries. These staff or volunteers will be trained on how to work with landowners. The *land trust* strives to build

promptly a positive working relationship with new owners of properties with *conservation agreements* and informs them about the *conservation agreements* existence and restrictions and the *land trust's* stewardship policies and procedures. The *land trust* establishes and implements systems to track changes in land ownership. *Land trusts* should offer the new landowners a copy of the *conservation agreement* and baseline documentation as well as any information about its work in general.

- E. Enforcement of Conservation Agreements. The *land trust* has a written policy and/or procedure detailing how it will respond to potential violations of a *conservation agreement*, including the role of all parties involved (such as board members, volunteers, staff and partners) in any enforcement action. Policies and procedures should ensure that all discussions and actions taken are recorded and that all copies of correspondence and documents are retained and kept in a safe location. 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 defence. (See 6G and 11A.)
- F. Reserved and Permitted Rights and Approvals. The *land trust* has an established procedure for responding to landowner required notices or requests for approvals in a timely and consistent manner, and has a system to track notices, approvals and the exercise of any significant reserved or permitted rights.
- G. Contingency Plans/Backups. The *land trust* has a contingency plan for all of its *conservation agreements* in the event the *land trust* ceases to exist or can no longer steward and administer them. If a backup grantee organization is to be named in the *conservation agreement*, the *land trust* secures prior written consent of the backup grantee to accept the *conservation agreement*. To ensure that a backup or contingency holder will accept a *conservation agreement*, the *land trust* has complete and accurate files and stewardship and enforcement funds available for transfer. (See 11H.)
- H. Contingency Plans for Backup Holder. If a *land trust* regularly consents to being named as a backup or contingency holder, it has a policy or procedure for accepting *conservation agreements* from other *land trusts* and has a plan for how it will obtain the financial resources and organizational *capacity* for *conservation agreements* it may receive at a future date. (See 11G.)
- I. Amendments. The *land trust* recognizes that amendments are not routine, but can serve to strengthen a *conservation agreement*, recognize a boundary, clarify its language or improve its enforceability. The *land trust* has a written policy or procedure guiding amendment requests that includes a prohibition against *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. For Ecological Gifts, *land trusts* should be aware of the authorization requirements of Environment Canada and the potential for penalties under section 207.31 of the Income Tax Act. *Land trusts* should also be aware of the implications of completing amendments that could lower the receipted value of a gift. In addition, amendments should only be completed in a manner consistent with applicable provincial legislation.

- J. Expropriation. The *land trust* is aware of the potential for expropriation, understands its rights and obligations under expropriation, and has appropriate documentation of the *important conservation values* and of the percentage of the full value of the property represented by the *conservation agreement*. The *land trust* works diligently to prevent a net loss of conservation values.
- K. Extinguishment. In rare cases, it may be necessary to extinguish, or a court may order the extinguishment of, a *conservation agreement* in whole or in part. In these cases, the *land trust* notifies any project partners and works diligently to see that the extinguishment will not result in impermissible *private benefit* and to prevent a net loss of *important conservation values* or impairment of public confidence in the *land trust* or in *conservation agreements*. In addition, any extinguishment of a *conservation agreement* should only be completed in a manner consistent with any applicable provincial or federal legislation.
- L. Plans and Agreements. Some *land trusts* and landowners may consider entering into agreements that set out how the land protected by the *conservation agreement* will be managed over the long term. These agreements set out what management activities will be undertaken and by whom. It is preferable that these agreements be established at the same time the *conservation agreement* is being established or shortly thereafter. In some cases, the provision of a management agreement may be included in the *conservation agreement*.

Standard 12: Land Stewardship

The land trust has a program of responsible stewardship for the land it holds other than through a conservation agreement for conservation purposes.

Practices

- A. Funding Land Stewardship. The *land trust* determines and documents 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. The *land trust* sets priorities, ensuring first and foremost that the values for which the property was acquired are at least maintained or preferably strengthened. 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. (See 6G.)
- B. Stewardship Principles. The *land trust* establishes general principles to guide the stewardship of its fee-owned properties, including determining what uses are and are not appropriate on its properties, the types of improvements it might make and any land management practices it will follow. Principles should be clearly stated in all management plans and all public relations material.
- C. 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* and reduces threats or restores ecological processes.
- D. Monitoring Land Trust Properties. The *land trust* regularly monitors its properties and property boundaries for potential management problems such as trespass, misuse or overuse, vandalism or safety hazards or other activities as listed in the management plan and takes actions to rectify such problems. The *land trust* should mark the property boundaries or have *capacity* to establish the boundaries in the event of encroachments. *Land trusts* should record monitoring information and quickly respond to any problems. Monitoring of Ecological Gifts will include confirmation that the present use of the property is consistent with that at the time of the donation and monitoring documentation relating to Ecological Gifts will be made available to Environment Canada upon request.
- E. Land Stewardship Administration. The *land trust* performs administrative duties in a timely and responsible manner. This includes establishing policies and procedures, keeping

essential records, filing forms, paying insurance, paying any taxes and/or securing appropriate tax exemptions, budgeting, and maintaining files. Staff and volunteers responsible for administrative duties and responsibilities will be adequately trained.

- F. Community Outreach. The *land trust* keeps neighbours and community leaders informed about its ownership and management of conservation properties.
- G. Contingency Backup. The *land trust* has a contingency plan for all its conservation land in the event the *land trust* ceases to exist or can no longer manage the property. To ensure that a contingency holder will accept the land, the *land trust* has complete and accurate files and stewardship funds available for transfer.
- H. Non-permanent Holdings. When a *land trust* holds fee land with the intention to sell or transfer the land, the *land trust* is open about its plans with the public and manages and maintains the property in a manner that retains the *land trust's* public credibility (see 8L). The ability to resell or transfer property should be explicitly identified within the *land trust's* land securement policies. Before a property is sold and while the land is in the *land trust's* ownership, it should be managed or maintained in such a way that liability risks are minimized and the *land trust's* credibility is maintained.
- I. Expropriation. The *land trust* is aware of the potential for expropriation, understands its rights and obligations under expropriation, and works diligently to prevent a net loss in conservation values. Donors should be made aware that expropriation is an action, which is beyond the *land trust's* ability to control.

Appendix 1: Sample Board Adoption Resolution

The Canadian Land Trust Alliance (CLTA) requires that all members of the CLTA accept the *Canadian Land Trust Standards and Practices* as their guiding principles. Some public or private funders also ask for such a statement. Below is a sample resolution.

WHEREAS, the [organization] has reviewed *Canadian Land Trust Standards and Practices* published by the Canadian Land Trust Alliance in 2005; and,

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

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Directors of the [organization], hereby accepts *Canadian Land Trust Standards and Practices* as guidelines for the organization's operations and commits to making continual progress toward implementation of these standards and practices.

_____ Date adopted

_____ Board Member _____ Position

_____ Board Member _____ Position

Appendix 2: Addendum - British Columbia

The following practices apply to land trusts within British Columbia only:

9O. Protected Lands Catalogue. All fee simple land and conservation covenants should be registered with the Land Trust Alliance of British Columbia through the Protected Lands Catalogue and the BC Lands in Trust Registry. Due diligence should be taken to ensure that information submitted to the Protected Lands Catalogue does not violate provincial privacy act legislation (see 2D).

11L. Joint Covenants. In most cases, conservation covenants should be jointly held by at least two land trusts (ideally, one local organization and one provincial or national organization) and there should be a clear written agreement between the covenant holders regarding their respective obligations and responsibilities.