

NONPROFIT LAW AND RECORDKEEPING FOR LAND TRUSTS

VOLUME II: RECORDKEEPING ESSENTIALS

FOR LAND TRUSTS

Jane Prohaska

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NONPROFIT LAW AND RECORDKEEPING FOR LAND TRUSTS

Volume II: Recordkeeping Essentials for Land Trusts

Practice 2D: Records Policy

Practice 6B: Financial Records

Practice 9G: Recordkeeping

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NONPROFIT LAW AND RECORDKEEPING FOR LAND TRUSTS

Volume II: Recordkeeping Essentials for Land Trusts



Jane Prohaska

LAND TRUST ALLIANCE

THE LAND TRUST ALLIANCE's mission is to save the places people love by strengthening land conservation across America.

Land Trust Alliance course materials are furnished as tools to help land trusts implement *Land Trust Standards and Practices*. They are provided with the understanding that the Land Trust Alliance is not engaged in rendering legal, accounting or other professional counsel. If legal advice or other expert assistance is required, the services of competent professionals should be sought. The Land Trust Alliance makes no assurances that land trusts attending or completing these courses will be granted accredited status by the Land Trust Accreditation Commission. The Land Trust Alliance is solely responsible for the contents of this book.

First Edition

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O

N

T

ACKNOWLEDGMENTS · 5

A NOTE ON THE STANDARDS AND PRACTICES CURRICULUM AND ACCREDITATION · 9

SUMMARY · 11

INTRODUCTION · 15

Recordkeeping for the Future · 15

Content and Organization of This Book · 16

Who Should Take This Course? · 19

Course Length · 19

Prerequisites · 19

How to Use This Student Guide · 19

Resources · 20

Obtaining Independent Advice · 20

Evaluate Your Practices · 21

**CHAPTER ONE • BACKGROUND AND LEGAL OVERVIEW OF
RECORDKEEPING PRINCIPLES**

Learning Objectives · 23

Summary · 23

What Are Records? · 24

Why Maintain Records? · 25

Recordkeeping Rules: A Brief Legal Analysis · 27

Litigation and Liability · 40

Conservation Easements: Requirements of Section 170(h) of the
Internal Revenue Code and Related Regulations · 49

Check Your Progress · 51

E

N

T

S

CHAPTER TWO • LAND TRUST RECORDS

Learning Objectives • 53

Summary • 53

Putting It into Practice Exercise One: What Records Does Your Land Trust Need? • 55

Organizational Records • 58

Putting It into Practice Exercise Two: Approving a Conservation Easement • 65

Real Estate Transaction Records • 85

Check Your Progress • 97

CHAPTER THREE • RECORDS POLICIES AND PROCEDURES

Learning Objectives • 99

Summary • 99

Importance of Records Policies and Procedures • 100

Situational Policy-making • 101

Elements of a Records Management System and a Records Policy • 103

Putting It into Practice Exercise: Creating a Land Trust Records Policy • 116

Check Your Progress • 121

ADDITIONAL RESOURCES AND SAMPLE DOCUMENTS • 122

ACTION PLAN • 272

GLOSSARY • 275

INDEX • 277

A Note on the Standards and Practices Curriculum and Accreditation

Recordkeeping Essentials for Land Trusts is the second in the two-volume course, “Nonprofit Law and Recordkeeping for Land Trusts.” As part of the Land Trust Alliance’s Standards and Practices Curriculum, the first volume will provide guidance and tools to implement Practices 2A, 2B and 2C. This volume covers Practices 2D, 6B and 9G.

This course will:

- Help you understand the practices
- Provide you with tools to implement the practices in your organizations
- Inspire organizational change
- Help you save more land for the long term

The Standards and Practices Curriculum consists of 15 courses that cover the accreditation indicator practices. Indicator practices demonstrate that a land trust is operating in an ethical, legal and technically sound manner and ensure the long-term protection of land in the public interest. Voluntary land trust accreditation will provide independent verification of these practices.

The evaluations contained in this book are for training purposes only. They are not designed or intended to determine if your land trust is ready for accreditation.

Completing a course does not necessarily demonstrate that an organization is actually implementing the practice. Therefore, the Land Trust Accreditation Commission will examine documents and information in project files to verify that each indicator practice is being carried out in the land trust applying for accreditation. This course and others in the curriculum are designed to help your land trust understand how to implement the practices.

Please note:

- The curriculum is *not* required for accreditation
- Completing the curriculum will *not* guarantee accreditation

For more information on accreditation, visit www.landtrustaccreditation.org. To learn more about the Land Trust Alliance’s training and assistance programs, visit www.lta.org.

SYLVIA BATES
Executive Editor, Standards and Practices Curriculum
Director of Standards and Research, Land Trust Alliance

Summary

“Records defy the tooth of time.”
—EDWARD YOUNG, 18th-century poet
Will yours?

In many ways, land trusts *are* their records. Land trusts that hold and manage conservation easements preserve our nation’s important natural and scenic resources not by directly managing the land itself but by monitoring others’ use and management of that land. Much of this monitoring takes place in reviewing records — both paper and, increasingly, electronic versions of those same documents.

However, proper records management is important not only for those land trusts holding conservation easements. It is important for any nonprofit public charity that wants to compete in today’s world. Information truly is power. Records management is all about collecting and managing the records — the information — necessary to sustain a healthy organization intent upon achieving its mission.

This course is intended to help land trusts understand the importance of recordkeeping, not just with respect to their land transaction activities, but also with respect to all aspects of their operations. Documenting the details of completed land transactions is critical, but it is not enough. Land trusts must also attend to the operational and financial workings of their organizations.

Land trusts strive to protect land forever, which requires sound organizations with comprehensive and accessible records that will withstand the test of time. For example, in the event of litigation, land trust records — and the land trust’s ability to document their authenticity — could mean the difference between success and failure.

This course will:

- Illustrate the importance of proper recordkeeping in helping a land trust achieve its land conservation mission
- Provide land trusts with practical information to help manage their records

This course addresses the following practices from *Land Trust Standards and Practices*:

- Practice 2D, recognizing the importance for every land trust to have a written policy governing how the organization collects, maintains and disposes of its records
- Practice 6B, recognizing the importance of a land trust's financial records as a component of managing its finances and assets in a responsible and accountable way
- Practice 9G, recognizing the importance of recordkeeping in ensuring sound real estate transactions

While this course addresses recordkeeping related to financial and transactional matters as outlined in Practices 6B and 9G, other Land Trust Alliance courses cover those topics in more detail, including “Financial Management of Land Trusts” and “Managing Conservation Easements in Perpetuity.”

This course does cover all aspects of recordkeeping. It begins with an evaluation of your organizational practices, to help your land trust focus on its own recordkeeping issues, and then covers the following topics:

- Organizational business reasons to maintain complete and accurate records
- The legal foundation for recordkeeping rules and guidelines, and the applicability of these rules to land trusts
- The types of both organizational and transactional records a land trust should keep
- The components of a good land trust recordkeeping system, including appropriate land trust policies and procedures

You will find sample documents and checklists along with information on where to find additional resources in this book.

Every effort has been made to ensure that the information in this course is current. However, recordkeeping requirements and practices change as legal requirements, technology and business needs and systems change. Change can often come quickly. Therefore, every land trust should consult with professionals with expertise in this area.

Introduction

When a land trust first incorporates and applies for tax exemption or asks a foundation for its first major grant, it rarely thinks about how it will keep track of any restrictions that may come with the money or who might need to see its corporate records in the future.

When a land trust accepts its first perpetual conservation easement, it is focused on the transaction's success. It is difficult for the land trust to be concerned about future violations of the easement. Or whether land trust board members will know why this easement was accepted. Or where it is. Or who the donor was.

When all the information a land trust believes it needs is fresh in its mind, it is hard to think about recording that information for the future. A wise land trust, however, will plan for its future by incorporating recordkeeping policies and practices into its operations right from the start.

Recordkeeping for the Future

Recordkeeping for a land trust in its early stages is relatively easy. But over time, as a land trust grows and changes:

- Its portfolio of preserves or the number of conservation easements it manages may increase. The likelihood of litigation over an easement will escalate.
- Its sources of income may become more complicated.
- It may hire staff or use a more extensive network of volunteers. Eventually those originally involved in early land trust activities will no longer be around.

All of these factors require a land trust to keep a myriad of records about its operations — land transaction project files, financial records, contracts, board minutes, employment files and donor records. To

succeed over the long term, a land trust should maintain and archive all of these records according to established guidelines.

This requirement means that a land trust should construct a records management system to assure that key documents are handled properly and not misplaced. Such a system includes *adopting appropriate board policies*, *creating detailed procedures* to implement those policies, and *assigning personnel* to make sure the policies and procedures are followed.

Developing and maintaining a records management system will:

- Serve as a vehicle for coordination among individuals — particularly important in offices where multiple staff, volunteers and/or board members use the land trust's documents
- Help overcome idiosyncratic filing methods and establish a routine for making backup copies (digital or paper)
- Provide consistency and serve as a guide for newcomers to the organization as the board, volunteers and staff change
- Enhance the land trust's efficiency and effectiveness, and help it meet its conservation mission

In the event of litigation, land trust records — and the land trust's ability to document their authenticity — could be paramount. A well-designed and well-implemented records management system can help.

It is much easier for a land trust to initiate good recordkeeping practices early than to implement them later after a mountain of paper has accumulated. However, it is never too late to start or revise your land trust's recordkeeping system to meet the demands placed upon your organization.

Whatever system it creates, it is important for a land trust to ensure that all staff, volunteers and board members commit to following it. Strict adherence to a recordkeeping system is the only way that system will be meaningful and that a land trust will be able to find the records it needs when it needs them.

Content and Organization of This Book

This course covers what records a land trust should maintain and why. It also covers why a land trust should have a records policy and what that policy should include. Finally, it includes examples of approaches taken by a number of land trusts around the country.

The course is divided into three chapters:

Chapter 1 explores why land trusts need to keep accurate and easily retrievable records — from meeting legal obligations to preparing for anticipated litigation to evaluating the success of its programs.

Chapter 2 identifies the types of organizational and transactional records a land trust might need and how they might be maintained.

Chapter 3 covers why a land trust needs to adopt a policy on record-keeping and what such a policy should include.

Throughout, the materials address the following practices from *Land Trust Standards and Practices*.

Practice 2D: Records Policy

The land trust has adopted a written records policy that governs how organization and transaction records are created, collected, retained, stored and disposed. (See 9G.)

This practice recognizes the importance of a records policy in protecting a land trust's assets from future legal challenges and in meeting reporting requirements. A records policy should address both organizational records, such as board minutes, and transaction records, such as deeds and baseline documentation reports. A policy helps identify the organization's key documents, what documents are needed in what format, how and when to store documents, how long to keep documents, and when to destroy documents, and it establishes business records practices for the organization. A related practice, 9G, guides recordkeeping for transactions. A complete land trust records policy will address document creation, retention and destruction.

—From the *Background to the 2004 revisions of*
Land Trust Standards and Practices

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.

The purpose of financial records is to provide the information necessary for financial reports. The reports are used by the board to guide and ensure the health of the organization, by staff to monitor operations, and by external parties to assess the stability and management of the organization and how wisely it uses its funds. Good recordkeeping, as the foundation for the organization's financial management, is essential. For financial records to be clear and credible, they should conform to Generally Accepted Accounting Principles (GAAP) set forth by the Federal Accounting Standards Board. In the event a small organization does not follow the GAAP standards, it should seek the counsel of an experienced financial advisor for the format of its financial reports.

— From the *Background to the 2004 revisions of*
Land Trust Standards and Practices

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.

A land trust should prepare and maintain complete written documentation of transactions. It needs to have two sets of documents: (1) documents that are accessible and can be used for monitoring or as problems and issues arise (“working” files); and (2) documents that are safely stored in a way that ensures that they will last and be acceptable evidence in the event of a court proceeding (“permanent” files). Originals of important documents (such as legal agreements, critical correspondence, or one-of-a-kind studies) that are part of the permanent file should be kept in a secure place, such as a safe-deposit box or fireproof file cabinet. For additional protection, working files should be kept in one location and permanent files should be kept at a separate location. See also 2D.

— From the *Background to the 2004 revisions of*
Land Trust Standards and Practices

Who Should Take This Course?

This course is designed for all land trust staff, board members and volunteers involved in recordkeeping, from executive directors responsible for implementing appropriate records policies and practices to those who will actually copy and file.

This overview is appropriate for new land trusts looking to the future, as well as more experienced land trusts looking to make sure their policies and practices are appropriate for their current operations.

Course Length

This course is designed as a three-hour, instructor-led workshop. Self-study learners can access the materials online or individually work through the course book. The time required for these approaches will vary depending on the depth of exploration and experience level of the learner.

Prerequisites

There are no prerequisites for this course. The course materials are designed for a wide range of learners, including those new to the subject and those seeking a refresher. It is part of the Land Trust Alliance's Standards and Practices Curriculum — a comprehensive set of materials and courses created by the Land Trust Alliance in response to an identified need and to land trust requests for a coordinated training series to help all land trusts implement *Land Trust Standards and Practices*.

The Standards and Practices Curriculum focuses on those standards and practices that indicate that a land trust is operating in an ethical, legal and technically sound manner. Participating in the training curriculum and adopting the recommended policies and practices will help land trusts ensure the long-term protection of land in the public interest. The training materials also may be useful as a resource to organizations preparing to complete the requirements for land trust accreditation.

How to Use This Student Guide

This course material can be used as part of an instructor-led course, in self-study or review, and as a reference. You can use it at home, in the office, in the boardroom or in a training class.

For those who prefer classroom training, the Land Trust Alliance will deliver this course on a regular basis at conferences. In addition, land trust service providers and coalitions, and other partners will also sponsor training sessions.

You are encouraged to take this book back to your land trust and share the material contained in it with your board, staff and volunteers.

You will get the most out of this guide by evaluating your current recordkeeping practices, studying the materials provided and taking advantage of the additional resources for further study. However, the importance of consulting with local experts and legal counsel with a depth of knowledge on the subjects covered here cannot be overstated.

Resources

This book includes:

- Sample documents used by land trusts around the country
- Checklists that can be used and adapted by a land trust to meet its own needs
- Examples and sample fact situations that demonstrate how the principles discussed are applicable to circumstances a land trust may face in its own activities
- Summaries that you can detach and share with your board or other stakeholders
- References to additional information

Obtaining Independent Advice

The following materials provide only an overview of the legal and operating principles involved in recordkeeping. Many of the legal tenets mentioned will vary from state to state, particularly with regard to issues related to litigation. Recordkeeping requirements and technology will change over time, as will a land trust's business needs. Therefore, a land trust should consult with its own attorney and financial advisor, as well as other knowledgeable experts, for specific guidance in creating its own policies and procedures and in adapting its recordkeeping system to changing circumstances over time.



A land trust should consult with an attorney and financial advisor for guidance in creating or changing records policies and procedures.

Evaluate Your Practices

1. Does your land trust have a written records policy? Does it address what records must be created and collected, what records must be retained, and what records can be destroyed and how? Does it address records storage and protection?
2. Do you follow the policy?
3. Have you identified those in the organization responsible for implementing the policy?
4. Does your land trust protect its irreplaceable documents from damage or loss?
5. Are your confidential records secure?
6. Do you keep financial records according to Generally Accepted Accounting Principles (GAAP) or an alternative reporting method acceptable to a qualified financial professional?
7. Can you find information you need in a reasonable amount of time?
8. Are you keeping the information needed to evaluate whether you are meeting your mission?

To be in full compliance with *Land Trust Standards and Practices* related to recordkeeping, a land trust should answer “yes” to all of the above.

Notes



Chapter One • Background and Legal Overview of Recordkeeping Principles

Learning Objectives

After studying this chapter, you should:

- Know what “records” are
- Understand the importance of keeping records from a land trust’s perspective, particularly when a land trust works with perpetual conservation easements
- Understand how good records can help land trusts in the event of litigation

Summary

No land trust can exist without creating and managing records and files. Land trusts need accurate and easily retrievable records to meet legal obligations, to be prepared for potential litigation and, perhaps most importantly in many respects, to measure and evaluate the success of its programs.

This chapter provides the *background* necessary for a land trust to understand what records it needs to manage and how those records should be maintained. It sets the stage for a land trust to consider how to design its recordkeeping policies, practices and systems.

This chapter includes a discussion of the legal requirements that may directly or indirectly impact land trust recordkeeping systems. It covers the Sarbanes-Oxley Act of 2002, Internal Revenue Code requirements, other federal or state law requirements, and legal requirements associated with charitable gifts or government contracts. It also includes a discussion of recordkeeping requirements related to litigation and liability.



Many recordkeeping requirements relate directly to a land trust’s need to comply with various state and federal laws. For more detail on these requirements, see volume one of this course, “Complying with Federal, State and Local Law.”

Finally, this chapter emphasizes the unique recordkeeping requirements associated with holding and managing conservation easements, particularly those easements which may be tax deductible.

What Are Records?

A land trust's records are any documents, records or data in any format that it uses in conducting its business, including:

- Paper records, such as documents, letters, memoranda, reports and notes, including both informal materials, such as hand-written notes, as well as formal documents, such as executed contracts, recorded deeds or conservation easements. This definition includes the original documents, as well as copies, and final versions of materials, as well as interim drafts.
- Photographs, including negatives or digital discs
- Maps
- Computer records and files
- E-mails, both those sent and those received
- Voicemail

Records include source materials and original data. These are the records that are needed to create other records or reports — such as the invoices supporting the general ledger entries supporting the financial reports or the GPS points behind the digital maps. Records also include the compilations of those original data. These compilations are the databases, lists or reports that a land trust uses to manage its data — such as a donor database or list of major donors created from that database. Finally, records include a land trust's organizational business and program records, as well as those related to its land protection transactions.



Records: Any documents, records or data in any format that a land trust uses in conducting its business.

Although all of these materials are records, they should not all be treated the same way. Those records most critical to a land trust's business should be handled with the greatest care.

For example, most land trusts will copy, file, catalog and archive all records related to its land transactions but do not find it necessary to keep copies or transcripts of voicemail messages.

The size of the organization, the nature of its activities, the geographic

area in which it works, and its own evaluation of its needs and risks will all affect what records are most critical and how they should be treated. Because not all records and not all land trusts are alike, it is essential that every land trust create its own policy on recordkeeping to guide its activities.

Why Maintain Records?

There are several reasons to keep and maintain records:

- *It's the law — or not.* There are few direct legal requirements dictating that a land trust collect data or maintain records. Nevertheless, complying with other legal requirements may require a land trust to maintain records to keep track of its obligations or have data needed to file required reports.
- *Protecting an organization's interests in the event of investigation or litigation.* Most land trusts hope to avoid litigation or official investigation (such as an IRS audit). However, many land trusts, particularly those that hold a number of conservation easements, believe that such events may be inevitable and that it pays to be prepared.
- *Land Trust Standards and Practices and land trust accreditation.* Practices 6B and 9G require attention to recordkeeping. Land trusts committed to following *Land Trust Standards and Practices* will want to meet these practices.

The Land Trust Accreditation Commission has also chosen these practices as “indicator practices” that the Commission will use in evaluating a land trust’s application for accreditation. Therefore, those land trusts seeking accreditation will need to meet these practices.

Additionally, the accreditation process itself requires a land trust to provide *substantial* documentation that it complies with the indicator practices. Interested land trusts should review the Application for Accreditation and the Applicant Handbook for more information on the documents that will be required in the accreditation process, including the comprehensive checklist detailing the documents that must be attached to the application and the materials the commission will look for in project files. For more information on accreditation requirements, see the Land Trust Accreditation Commission website, www.landtrustaccreditation.org.

- *Land trusts = paper.* Land trusts often own and manage land



As land trusts grow, programs and personnel will change. Memories will fade. Its records allow those who follow to carry on the organization's mission.

themselves. Many, however, protect land indirectly by managing the paper — the conservation easement — that restricts the land. While all land transactions require appropriate documentation, special consideration must be paid to the files and records on conservation easements.

- *Organizational effectiveness and efficiency in the face of changing personnel and programs and fading memories.* Perhaps most importantly, a land trust that manages the information — the records — critical to its business will be more effective and efficient in achieving its mission over time. For example, most land trusts track the number of projects they have completed, the acres they have protected and the funds they have raised. This data provides a quick overview of a land trust's activities. However, will these numbers tell a land trust whether it is in fact meeting its mission? Not all land trusts directly protect land. Some may be involved in educational or advocacy activities. Those land trusts should keep track of the number of presentations made or the number of people addressed to help them evaluate their effectiveness.

Whatever its particular mission, the files and records a land trust keeps will allow it to monitor and evaluate how well its programs are doing — whether they are improving or whether changes should be made. The key is to tailor your recordkeeping to the mission and needs of your land trust and local, state and federal law.

Example

Collecting Data to Measure Success

The **Minnesota Land Trust** has long included shoreline protection as part of its mission. Only recently, however, did it begin keeping data on the number of projects that include shoreline and the linear feet of shoreline protected. At the same time, it created a standardized method for describing the types of land it is protecting with each project. While not a perfect measure of success, these additional data have added a great deal of depth to the collective understanding of the impact of the land trust's work over time.

Colorado Open Lands, similarly concerned about measuring its success, recently began categorizing and tracking its projects by the conservation values each protected. The organization can now describe how many projects protect scenic values or how often their projects involve the protection of significant habitat.

Recordkeeping Rules: A Brief Legal Analysis

Federal and state laws contain only a few provisions directly dictating *what* specific files or records a land trust must keep or maintain. Other legal requirements address *how* a land trust must maintain any records it chooses to keep. For example, the federal tax code requires all tax-exempt organizations with income greater than \$25,000 to file an informational tax return and make that return available to the public upon request. Similarly, while the Sarbanes-Oxley Act does not require that a land trust keep records, it does prohibit a land trust from destroying any records it does keep under certain circumstances.

More frequently, federal and state laws require land trusts to file certain reports — reports the land trust cannot complete if it does not keep appropriate records. For example, a land trust that lobbies will need to report how much it spends on those activities. It will need to keep time and expense records to complete its required reports properly.

Additional recordkeeping requirements come from a land trust's need to comply with legal restrictions contained in grants, contracts or other agreements. Without records of the restrictions, compliance may be impossible. For example, many federal grants used to purchase land, such as grants made from the Land and Water Conservation Fund, prohibit changes in the use of the property or its sale without the approval of the federal agency making the grant. Failure to comply with these applicable legal restrictions may expose a land trust to considerable fines or other penalties. Land trusts should pay close attention to the legal requirements related to recordkeeping summarized below.

Sarbanes-Oxley Act of 2002:

An Act to Protect Investors by Improving the Accuracy and Reliability of Corporate Disclosures Made Pursuant to the Securities Law, and for Other Purposes

In 2002, Congress passed the Sarbanes-Oxley Act in response to the scandals and economic catastrophes caused by the financial misdoings and accounting inaccuracies of Enron and Arthur Andersen, WorldCom and others. These fiascos shared a similar set of characteristics: highly questionable accounting practices, involvement or at least acquiescence by top management, and recordkeeping practices designed to hide misdeeds.

To address these abuses, Sarbanes-Oxley created a new set of regulations for publicly traded corporations and enhanced penalties for those interfering with the investigation of improper practices. These federal rules, in turn, have generated increased scrutiny of nonprofit organizations and spawned comparable state legislation applicable to charities.

Overview of Sarbanes-Oxley

The regulations in Sarbanes-Oxley focus on:

- Corporate accountability and responsibility
- Integrity of corporate financial records
- Transparency of corporate financial matters

Fundamentally, Sarbanes-Oxley is about *records* and *governance*, addressing among other things:

- Auditor independence from the company it is auditing
- Specific financial disclosures and certifications

The act also includes broader provisions for:

- Increased protections for internal whistleblowers — those who discover and report financial misdoings
- Enhanced penalties for white-collar crimes

With the exception of the specific penalties for obstruction of justice noted below, the provisions of the Sarbanes-Oxley Act apply only to *publicly traded companies and their auditors*. Most of its provisions do not directly apply to nonprofit organizations. The law does not change the basic rules of fiduciary duty that already apply to the boards and directors of nonprofit corporations. It does not impose new legal standards of liability on directors or officers. Finally, it does not directly impose new recordkeeping requirements. There are, however, implications for nonprofit organizations.

Applicability to Nonprofits

If Sarbanes-Oxley applies only to publicly traded corporations, why should a land trust be concerned about its provisions? Because land trusts, like all corporations both for-profit and nonprofit, are subject to the act's expanded criminal obstruction of justice penalties for:

- The intentional destruction of records related to federal investigations
- The intentional destruction of records related to judicial proceedings
- Retaliation against those who discover document destruction

Sarbanes-Oxley sets out these penalties:

- *Title VIII — Corporate and Criminal Fraud Accountability.* Section 802 of the act adds the following provision to existing federal criminal law regarding document destruction in the course of federal investigations:
Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in retaliation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.
- *Title XI — Corporate Fraud Accountability.* Section 1102 of the act provides further criminal penalties for document destruction related to federal judicial proceedings:
Whoever corruptly — (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.
- *Title XI—Corporate Fraud Accountability.* Section 1107 of the act provides further criminal penalties for those who punish record destruction whistleblowers:
Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.



The law suggests that intentional document destruction should be a process that the land trust monitors, justifies and carefully administers. A records management policy can be critical to providing credibility.

These provisions do not mean a land trust should never destroy any documents. Common sense dictates otherwise. Nor does the law directly require a land trust to create a records policy. However, the law suggests that intentional document destruction should be a process that the land trust monitors, justifies and carefully administers. A records management policy can be critical to providing credibility for a land trust should its actions ever be questioned.

Additional Implications for Nonprofits

Sarbanes-Oxley, and perhaps more importantly the financial and governance abuses it was designed to correct, have other implications for nonprofits as well. The focus on public companies has had a spillover effect on the nonprofit sector. As nonprofit organizations have grown in size and impact, so has the public scrutiny of their programs, financial affairs and governance. There is a public perception that nonprofits are not immune from mismanagement and, therefore, should not be immune from increased scrutiny. The Red Cross, United Way and The Nature Conservancy are examples of public charities that have not fared well following disclosure of how they handled various financial matters. All land trusts now operate in a climate of increased expectations for how nonprofit organizations should be governed.

State Regulation

Many believe that if nonprofits do not step up to the challenge of improving their own management, regulation will follow. In fact, some states are discussing additional regulation for nonprofits, similar to the requirements of Sarbanes-Oxley. In 2004, California passed the Nonprofit Integrity Act, expanding the reporting and registration requirements of nonprofits and requiring audits for all those with revenues of more than \$2 million. New York and Massachusetts have considered such legislation. For those interested in state law on this topic, the National Council of Nonprofit Associations (www.ncna.org) tracks state legislation.

Recommendations for Land Trusts

An excellent article from the Independent Sector and BoardSource (reprinted on page 152) discusses Sarbanes-Oxley and its implications for nonprofit organizations. It includes recommendations for nonprofits wishing to incorporate appropriate management practices into their operations.

These recommendations focus on two important areas:

- *Governance*. It is all about oversight, independence and accountability — particularly with respect to financial matters.
- *Recordkeeping*. It is all about documentation, accuracy and transparency.

The Independent Sector offers a checklist, reprinted on page 163, for nonprofits that wish to comply with its recommendations.

IRS Requirements

Most land trusts are nonprofit, tax-exempt public charities, raising and accepting tax-deductible contributions. They are also small businesses. As such, there are a number of federal tax law provisions that dictate what records they must keep and what records they need to file.

IRS publication 4221, *Compliance Guide for 501(c)(3) Tax-Exempt Organizations*, provides an excellent overview of the variety of record-keeping requirements applicable to these organizations. The following summarizes these tax law requirements.

Requirements for Tax-Exempt Public Charities

As a tax-exempt public charity, a land trust must prepare, file and keep:

- The organization's 501(c)(3) application (IRS Form 1023) and the IRS determination letter
- The annual informational return, IRS Form 990 or IRS Form 990 EZ, including any schedules and attachments or IRS Form 990-N, e-Postcard
- The annual tax return for any land trust reporting unrelated business income and paying unrelated business income tax, IRS Form 990-T

A land trust must keep these documents, including at least the three most recent tax returns, and make them available to the public upon request.

Although a land trust is only legally required to provide a copy of its tax returns upon request, many feel that today's standards of accountability and transparency suggest more full disclosure and post their 990s along with other financial data on their websites.



Every land trust should review the current IRS Form 990, the needed schedules and the instructions with its financial or legal advisor every year.

To complete these required forms, a land trust will also need to collect and maintain financial and programmatic records, which are discussed below. For more information on IRS requirements, see the materials included in volume one of this course, “Complying with Federal, State and Local Law.”

Remember, IRS requirements can change annually. For example, in 2005 and 2006 the IRS added substantial new reporting requirements for land trusts that accept conservation easements. Every land trust should review the current IRS Form 990, the needed schedules and the instructions with its financial or legal advisor every year.

Employment and Payroll-Related Records

If a land trust hires staff, it will also need to make a number of payroll and employment-related filings. A land trust must keep sufficient records to ensure it has the necessary data for these reports and filings. The specific reports a land trust must file and records it must keep are discussed in detail below.

In many areas of the country, payroll service companies can manage this process and prepare the needed documents for a land trust. The land trust, however, remains responsible and cannot shift liability to others on key tax matters.

Land trusts that engage contractors, rather than or in addition to employees, will need to file certain tax information — IRS Form 1099. Completing this form requires less effort than completing employment-related filings, but does require minimal recordkeeping. There are, however, considerable penalties for inappropriately categorizing an “employee” as a “contractor.”

For more detail on employment-related recordkeeping requirements, see the materials in volume one of this course, “Complying with Federal, State and Local Law.”

Charitable Gift Rules

Land trusts that raise and accept charitable donations will need to create and maintain certain records with respect to those gifts. IRS Publication 1771, *Charitable Contributions — Substantiation and Disclosure Requirements*, provides an excellent overview of the rules in this area.

Specific IRS rules governing charitable gifts include:

- *Gifts greater than \$250.* A donor must obtain a “contemporaneous written acknowledgment” from a charity for any single contribution of more than \$250. Without such an acknowledgment, the gift may not be deductible. It is the charity’s responsibility to provide the acknowledgment to protect the deductibility of the gift.

The IRS does not penalize a charity for not providing the acknowledgment; however, no charity would want to put its donors at risk by not acknowledging gifts in a timely manner.

Recent tax law changes suggest that land trusts would be wise to acknowledge all gifts in writing. The law now requires a taxpayer to document a charitable gift by either a bank record or a written communication from the charity showing the name of the charity and the date and amount of the contribution to take a charitable contribution deduction. Note: according to the IRS, an e-mail acknowledgment meets the “written” acknowledgment requirement. To provide the needed acknowledgment, a land trust must keep records with the required information. Additional details on gift acknowledgments are discussed below.

- *Conservation easements.* A gift of a conservation easement to a land trust is a gift that will typically require a landowner to file IRS Form 8283. However, many land trusts accept an easement long before they are presented with an 8283 to sign. In fact, a land trust may not even know whether a landowner is intending to take a tax deduction at the time the gift is completed.

To be safely within the letter of the law, a land trust should acknowledge the gift of the easement at the time it is accepted. Some believe signing the easement itself provides this acknowledgment of receipt. Others prefer to provide the donor with a separate letter. In recent audits, the IRS has asked conservation easement donors to provide the Service with “contemporaneous written substantiation” of their donations from the donee. Even if this additional letter is not technically necessary, it is a good idea — you can never thank a donor enough. Note: additional details on IRS Form 8283 are set out below.

- *Quid pro quo disclosures.* A land trust is required to provide a written disclosure to a donor who contributes more than \$75 and receives goods or services in exchange for the gift

or payment to the land trust. The land trust must inform the donor of the amount of the donation that is deductible and provide a good faith estimate of the goods or services received. To meet these requirements, the land trust must know the value of the goods or services given to the donor, as well as details of the gift.

Here, the burden is on the charity, not the donor, to make the appropriate disclosure and provide the appropriate acknowledgment. A land trust may make the required disclosure in advance as a part of the solicitation or in an acknowledgment letter. If a land trust fails to provide the required information, the IRS may fine it for each gift it fails to acknowledge properly. These provisions apply to bargain sales or any land transaction where the landowner receives something in return for donating land or a conservation easement.

- *Noncash gifts — IRS Forms 8282 and 8283.* A land trust that accepts gifts of land, conservation easements or any other non-cash gifts valued at more than \$500 will also need to acknowledge receipt of the gift by signing IRS Form 8283. If the land trust sells or transfers that property within three years, it will need to file IRS Form 8282 notifying the IRS of the disposition. To do the latter, the land trust must ensure it keeps records of the former.
- *Motor vehicles, boats and airplanes.* There are special rules that apply to the acceptance of gifts of vehicles. These are detailed in a variety of recent IRS rules, announcements and publications, including IRS Publication 4302, *A Charity's Guide to Vehicle Donations*, and Publication 4303, *A Donor's Guide to Vehicle Donations*.

Penalties

The IRS takes failure to comply with federal recordkeeping and filing requirements very seriously. Fines can be extensive. For example, the IRS may assess a land trust that fails to file its Form 990 on time \$20 per day until the return is filed. Individuals, as well as organizations, can be held responsible for penalties in some circumstances.

State Laws Governing Nonprofit Charities

State laws also impose a number of reporting and recordkeeping requirements on nonprofit charities raising money in the state. These vary from state to state but typically include:

- Annual corporate filings to make sure the entity is in good standing as a nonprofit corporation
- Charitable solicitation filings covering organizations that raise funds in the state
- Lobbying filings covering individuals that actively lobby and the organizations they represent
- Sales tax collection for organizations that sell goods (and possibly services)
- Additional employment-related reporting requirements

There are also requirements unique to certain states. For example, California requires all nonprofits that raise funds in that state — whether or not they are engaged in any other activities in the state — to have an audit committee of the board.

A land trust operating or raising funds in more than one state may be subject to the laws of all those states.

To meet these various reporting requirements, a land trust needs to collect and maintain the data needed for each report. Every land trust must understand its own state requirements.

For detailed information on these types of requirements, see the materials related to *Land Trust Standards and Practices*, Standard 2, Compliance with Laws and volume one of this course, “Complying with Federal, State and Local Law.”

Evolving Federal and State Law Requirements

Federal and state laws are continually changing. New requirements are added or even occasionally eliminated. Some laws and requirements may address only nonprofit or charitable organization issues while others may address business practices more generally. Many have recordkeeping implications. For example, in recent years concerns over privacy and identity theft have grown. As a result, the federal government and some state governments now regulate such practices as telephone solicitations, nonprofit list exchange and the use of credit card or other similar sensitive financial information. These regulations, in turn, affect recordkeeping practices:

- Land trusts subject to telephone solicitation rules will need to keep track of “do not call” requests, and those covered by list



A land trust operating or raising funds in more than one state may be subject to the laws of all those states.

exchange rules may need to give notice of such a practice with the right of a donor to “opt out”

- Land trusts that rely on credit cards may have to destroy information or use specially encrypted websites to collect the data

Not all business regulations apply to nonprofit activities, but land trusts should determine whether they are subject to these types of laws and make sure their recordkeeping will enable them to meet any applicable legal requirements.

Local chambers of commerce, nonprofit support centers or a state agency — such as the Secretary of State’s Office or the Attorney General’s Office — may be able to help a land trust remain current on applicable laws.



A land trust that accepts a restricted gift is legally required to comply with the restrictions.

Donor Restrictions on Charitable Gifts

Donors frequently restrict their gifts to charities they support. Typical restrictions on land trust gifts can include:

- Directing the funds to an endowment or a restricted stewardship fund
- Limiting the use of the funds to a given geographic area or for a specific land protection project
- Making a multiyear gift intended to support future land trust activities

A land trust that accepts a restricted gift is legally required to comply with the restrictions. To comply with the gift restrictions, a land trust must, of course, be aware of the restrictions. Therefore, it must keep records, particularly if the land trust may not spend the funds for some time or if the restrictions are permanent.

Generally accepted accounting rules applicable to charitable organizations recognize the impact restricted gifts may have on an organization’s financial picture. These rules require land trusts to recognize gifts in their financial books and records by one of three designations:

- *Unrestricted.* Unrestricted gifts are donations that are not restricted by the donor. These funds can be used by the

land trust however it wishes in carrying out its mission and programs or may be limited through board designation or similar organizational limitation.

- *Temporarily Restricted.* Temporarily restricted gifts are donations that have been restricted by a donor either to specific periods of time or to a specific purpose.
- *Permanently Restricted.* Permanently restricted gifts are donations where the donor has imposed restrictions that will not expire by the passage of time or by the land trust fulfilling a specific purpose. Typically, these are donations placed in true endowments.

To determine and track the appropriate classification and use of a gift, a land trust needs to keep source documents, such as a letter accompanying the gift, foundation proposal or even a notation on a check. For more information on financial principles and rules, see the section on organizational records below.

Government Grants and Contracts

Government funding, an important source of support for many land trusts, typically comes with restrictions. Meeting these restrictions may require extensive recordkeeping. For example, some government grants provide funds for purchasing land or conservation easements but include permanent restrictions that the land trust use the interest acquired according to the conditions of the original grant. Other grants prohibit the sale or transfer of property acquired with grant proceeds without the approval of the agency providing the original funds.

Grants that cover expenses such as personnel may come with complicated recordkeeping requirements regarding time reporting. In addition, almost all government grants require reports on how the organization spent the funds.

A land trust that fails to keep records adequately documenting how it spends government money may be required to return those funds. A land trust that fails to comply with grant restrictions may face even more severe penalties, such as reversion of acquired land to the government.



Unrestricted donations are gifts not restricted by the donor.

Temporarily restricted donations are gifts restricted by the donor either to specific periods of time or to a specific purpose.

Permanently restricted donations have donor-imposed restrictions that will not expire by the passage of time or the land trust fulfilling a specific purpose. Typically, these are donations placed in a true endowment.

Other Grant and Contract Requirements

Private foundation grants and private contracts also frequently include restrictions. Again, depending on the restrictions, these arrangements should be tracked over time, from both financial and programmatic standpoints. A land trust that fails to comply with restrictions may need to refund misspent money.

Example

Tracking Agreements over Time

The Minnesota Land Trust and the Rainy Lake Conservancy

Two conservation organizations, one all-volunteer and one staffed and both working to protect land in Rainy Lake, have entered into a cooperative fundraising agreement. The terms of the agreement cover which organization can solicit which donors. It also covers how the funds can be used and how expenses for fundraising will be allocated.

Five years after the agreement is signed, those who originally negotiated the agreement are no longer with their respective organizations.

A check for \$10,000 arrives in the Minnesota Land Trust office from a donor with few connections to the Land Trust. There is a notation on the bottom “for Rainy Lake.”

How will the land trust know what to do with the money?

Guidance

The Minnesota Land Trust has a set of program files regarding its arrangements with the Rainy Lake Conservancy. Those files include a copy of the written agreement between the two organizations. Additionally, the land trust has created a separate restricted account for Rainy Lake contributions. The financial files and records include a notation of how funds directed to Rainy Lake are to be used.

The contacts database also includes information on people associated with the Rainy Lake Conservancy.

By consulting these resources, the Minnesota Land Trust will know how to handle the donation.

The Complex World of Federal Grants

Farm and Ranchland Protection Program (FRPP)

Many land trusts use the USDA Farm and Ranchland Protection Program to help fund the purchase of conservation easements. An important source of funding, this program includes complex restrictions requiring extensive recordkeeping. Program requirements apply to both the initial acquisition of an easement and the long-term management of FRPP-funded easements.

A sample of these requirements include:

- Documenting title
- Documenting value and the contributions of others
- Obtaining government approval of the proposed conservation easement
- Obtaining government approval of any future easement amendments or termination
- Preparing annual monitoring reports to be submitted to the USDA
- Following specific easement violation procedures

Additionally, federal Freedom of Information Act provisions may apply to information collected by a land trust for an FRPP project.

A land trust that uses these funds will need to collect and maintain more data and create and manage more documents than it might typically need in its other projects. For example, an FRPP-funded easement must contain provisions that give the government a share of any proceeds from an extinguishment of the easement equal to its proportionate share of the purchase price. How will a land trust know what that is?

North American Wetland Conservation Act (NAWCA)

NAWCA grants have funded some of the most important wetland habitat conservation projects in the country. These grants have complicated match requirements.

For example, land protection projects completed before a NAWCA grant is received may often be used to match those federal funds. These projects may have been completed as much as three years earlier. But to document the value of the previously protected lands, the NAWCA grant recipient will need to provide appraisals of those lands. Would your land trust be able to find those appraisals in its files many years later?

Litigation and Liability

Land trusts spend a great deal of time and energy seeking to avoid litigation. Litigation is costly, time consuming and unpredictable. However, sometimes it is inevitable, particularly if a land trust is dealing with perpetual conservation easements. Land trusts concerned about litigation are often also concerned with maintaining their records in the event they need them as evidence.

A number of legal principles govern the use of a land trust's records and documents in court and may have an impact on a land trust's records policy. These include:

- *Statute of frauds.* To avoid questions of fraud, state law typically requires certain agreements to be in writing if they are to be enforceable in a court of law. Most contracts or agreements involving land or ones that cannot be completed within one year must be in writing to be enforceable.
- *Admissibility of evidence in judicial proceedings.* Common evidentiary rules that relate to land trust recordkeeping include the hearsay rule, which requires a witness to have personal knowledge of a fact, and the exceptions to the hearsay rule. The exceptions include public records and records kept by a land trust in the regular course of business. These rules cover issues related to the need for original documents. They address digital records, including maps and photographs, as well as other documents.
- *Statutes of limitation and record retention guidelines.* There are various rules that determine how long a party has to bring a lawsuit. These rules have associated recordkeeping implications.

These principles are discussed in more detail below.

Litigation and Evidence: What Can You Prove and What Is the Risk If You Can't?

The possibility of litigation does not mandate what records a land trust should keep. It sets the parameters on what information might be allowed into a judicial proceeding.

How Real Is the Threat of Conservation Easement Litigation?

In 2004, the Land Trust Alliance analyzed information on state and local land trust experience with litigation. The survey revealed that:

- There were more than 1,500 land trusts in 2003
- These land trusts held and managed approximately 17,800 easements
- Violations were reported on approximately 5 percent of these easements

These reported violations involved:

- 75 major violations
- 52 settled out of court
- 23 resolved through the court (approximately 0.1 percent of all easements)

Does this seem like a lot or a little to your land trust?

For more information on land trusts and litigation, see the *2004 Conservation Easement Violation & Amendment Study* conducted by the Land Trust Alliance and available in The Learning Center's library (<http://learningcenter.lta.org>).

When creating or evaluating a records management system, a land trust should consider:

- What land trust data or records might someday be needed as evidence in court
- The potential consequences to the land trust if the information is unavailable or inadmissible
- The costs of maintaining those records or data

Land trusts face litigation from a number of sources but, most frequently, land trusts worry about going to court over easement violations. They collect and maintain records and files with easement defense in mind. However, other situations may also ultimately lead to litigation, such as contract or personnel disputes.

No land trust keeps *every* document, record or file it has ever created or received. To try to do so would be unrealistic and inappropriate. Moreover, in the end, it will not be helpful.



Statute of frauds: State laws that require certain agreements, such as real estate deeds or long-term contracts, to be in writing to be legally enforceable.



Under state “statutes of frauds,” most contracts or agreements involving land or ones that cannot be completed within one year must be in writing to be enforceable in a court of law.

A land trust concerned about keeping records in the event of litigation must evaluate:

- *The situations most likely to lead to litigation.* As noted above, most land trusts that hold easements consider easement violations to be the most likely source of litigation. However, a land trust with a large number of employees may be more likely to face litigation from personnel-related matters.
- *The importance of that litigation to its mission or institutional survival.* A challenge from the IRS on whether a land trust is a “qualified conservation organization” is likely to be more critical than a contract dispute over whether to pay for an appraisal.
- *The risks of not having certain documents available for evidence in anticipated litigation.* Conservation values associated with protected land may be able to be established by the easement itself, the baseline property report, personal or expert testimony, other file documents, or information from others. Loss of one document may not necessarily leave a land trust completely vulnerable.
- *Its own comfort level with the risk.* This is a matter for organizational discussion. A land trust with more litigation experience may be more comfortable accepting risk than a less experienced one. Alternatively, the converse might be true.

Whether or not they are ever introduced into evidence, a land trust’s records can be invaluable because they provide a land trust with the background, history and context of its projects needed to solve problems. In the end, being able to solve a problem quickly may be as important as the admissibility of specific records.

Statute of Frauds

Some contracts or transactions must be *in writing* to be enforceable in a court of law. Each state has its own law that addresses this issue. Typically, most contracts or agreements involving land or ones that cannot be completed within one year must be in writing to be enforced in a court of law.

Land trusts, like most individuals and many small businesses, often operate through verbal agreements, which can save time in the short term as no one ever seems to have enough time to commit a phone

conversation to a letter of agreement. This practice, however, may be shortsighted if the agreement is not fulfilled.

Even for agreements not covered by the statute of frauds, it makes good business sense to transmit the details of a verbal agreement into writing. Writing out an arrangement in advance can help both sides think through the important details and address solutions if the original terms of an agreement are not met. For example, if a land trust commissions an appraisal by phone and does not confirm the details in writing, it may be quite surprised by a bill that doesn't match its expectations. The land trust may face a number of difficult questions:

- What happens if expected deadlines are not met?
- Can the land trust commission another appraisal without paying for the first?
- What would be the impact to the land trust if it had to pay for both appraisals or if it ends up with no appraisal at all?
- How would the land trust defend its position if the land trust decided not to pay for the first appraisal and the appraiser sued for his fees?

Without a written agreement, a land trust will have little guidance on what to do. Each land trust will need to determine for itself under what circumstances written agreements — that it can find later — will be worth the effort and whether it is comfortable with the financial risks associated with not having such documents. However, in general, written agreements are advantageous for all the reasons land trusts keep records.

Admissibility of Evidence in Judicial Proceedings

Requiring personal knowledge of a fact by the person testifying to that fact is the basis for much evidentiary law. Courts consider personal testimony the most credible because it gives all parties to any litigation an opportunity to ask appropriate questions. In theory, this approach is ideal. However, the world is complicated. Those with personal knowledge are not always available to testify when needed or may simply not remember critical facts. For example, a land trust representative who initially negotiates and completes a conservation easement no doubt personally knows the condition of the protected land and the reasons the land trust accepted the easement. As time goes on, that person may

no longer live in the area or may not remember details of the transaction. If that easement is violated years later, how then will the land trust prove the original condition of the property?

Land trusts, like all businesses today, rely upon their records rather than personal knowledge or memories to manage important information. Courts have created a number of exceptions to the basic personal knowledge rule. They allow into evidence those records that are likely to be accurate and trustworthy while still allowing litigants to challenge the veracity of those records.

While each state court system, as well as the federal court system, has its own rules, the following outlines the typical evidentiary rules applicable to a land trust's records.

Business Records Rule

One exception particularly important to land trusts involves the *business records rule*. The business records rule is an exception to the “hearsay” rule — the rule requiring testimony from witnesses with direct knowledge of the facts. The typical business records rule allows a document or record to be included in evidence in a judicial proceeding under the following conditions:

- The record was created at or near the time (rather than later in anticipation of litigation)
- The record was created by someone with direct knowledge — or who was given the information by someone knowledgeable
- The record was created and kept in the course of *regularly conducted* business
- It is the *regular practice* of the organization to create or maintain such records

The rule covers information in any form. It covers individual reports or memoranda, as well as compilations or databases.

When a business record is introduced into evidence, someone from the land trust may need to “authenticate” the record — to testify that the land trust regularly maintains such records in its course of business, and the particular record in question came from the land trust files. A land trust representative does not need to have personal knowledge about the particular document being introduced, only about the business practice of keeping records.

Establishing and following formal records policies and procedures will enhance a land trust's ability to rely on the business records rule in entering its documents into evidence.

Conversely, a policy that is not consistently applied may reflect poorly on a land trust. A land trust concerned about litigation will want to assess honestly its ability to follow its own policies and procedures before formally committing to those practices.

The business records rule covers only the admissibility of a record. It does not address the credibility of the documents. The more careful and thorough a land trust is in creating its documents and records, the more credible those records may be. While not all land trust records are of equal importance from a litigation perspective, a land trust should pay special attention to those documents and records that are the most important to sustaining and supporting its mission and programs in the event of a lawsuit.



A land trust should pay special attention to those documents and records that are the most important to sustaining and supporting its mission and programs in the event of a lawsuit.

Public Records and Other "Self-Authenticated" Records

The courts consider public records, including documents prepared by government agencies and recorded real estate documents, inherently trustworthy and allow them to be readily entered into evidence. A certified copy of a recorded deed or conservation easement can therefore typically be included in evidence without further testimony. Documents that have been signed and notarized may also be more readily admitted without further evidence regarding the authenticity of the document.

Original or Duplicate Documents

The debate over whether original versus duplicate documents are required for evidentiary purposes has become much less intense in recent years because of advances in technology. Original documents were initially mandated as evidence to guard against fraud and inaccuracy. Today's technologies make reproductions of original documents much less susceptible to alteration. As a result, courts are much more willing to admit copies of documents in place of originals — absent any allegation of forgery or fraud.

Digital Records, Including Photographs and Maps

Courts have long recognized the validity of the technologies behind photography and map making. To introduce a routine photograph,

Preparing Baseline Documentation Reports with Litigation in Mind

- Adopt a policy governing the creation and maintenance of baseline documentation reports.
- Make it a standard business practice to prepare baseline documentation reports in the same manner for every project in accordance with the policy.
- Keep and maintain all baseline reports in the same manner in accordance with the policy.
- Keep the original secure.
- Have the landowner and a land trust representative sign the baseline report, acknowledging that it does represent the condition of the property at the time of the easement. Consider notarizing signatures.
- Identify the number of pages in the report, the number of maps and the number of photographs to guard against allegations of alteration.
- Focus on facts. Keep opinions out.

For more on creating baseline documentation reports, see the Land Trust Alliance course “Conservation Easement Drafting and Documentation.”

courts do not typically require testimony on how cameras work or how photographs are created. At most, courts may require the person who took the photograph to testify as to:

- When was the photograph taken?
- How was the photograph taken?
- Where was the photograph taken?
- Is the photograph an accurate representation of what is shown at the time the photograph was taken?

If the photographer is not available, photographs, like other documents, can also be introduced under the “business records rule.” Of course, the requirements of the business records rule must also be met. Including information in the appropriate file documenting *who* took the photo, *when* it was taken and under *what* circumstances can simplify introducing a photo under the business records exception.

Maps created by public agencies using established techniques are also often easily accepted as evidence.

Recent technological advances, however, have made introducing photographs, maps or other documents more complicated. The technology behind digital photography or Global Positioning Systems (GPS) is less well understood or accepted. Additionally, current technology also makes it easier to alter photographs or maps, calling the accuracy of digitally produced records into question. Nevertheless, digital records can and are accepted by courts. The newer the technology, the greater the likelihood that expert testimony describing the technology will also be needed. Experts may also be necessary to interpret the data.

The process a land trust uses in handling digital photographs may also require additional attention to assure future admissibility.

For more information on the admissibility of digital data, see the recent Land Trust Alliance *Exchange* article “The Legal Efficacy of New Technologies in the Enforcement and Defense of Conservation Easements” (reprinted on page 136). State rules on the admissibility of digital data vary, so a land trust concerned about these issues should consult its attorney.

Credibility

The rules and principles discussed above related primarily to the *admissibility* of documents and records into evidence, not to the *credibility* or *reliability* of those documents or records. Credibility, like admissibility, can be influenced by a land trust’s recordkeeping policies and practices.

What makes documents, data, photographs and maps credible in court? It revolves around accuracy and completeness. Records created, managed and stored in a manner that protects against accidental or intentional alteration or loss are typically viewed as more credible.

Content is, of course, critical. Records and files that include only relevant, objective information also give the appearance of being credible business documents. Accuracy is also essential. Conversely, inaccurate or incomplete records will damage credibility.

Following a carefully constructed records management policy and procedure can help with credibility as well as admissibility.



State rules on the admissibility of digital data vary, so a land trust concerned about these issues should consult its attorney.

Additional Information

The Land Trust Alliance has published a number of articles on evidentiary rules that may be of interest to land trusts in its quarterly magazine, *Exchange*. Several of these articles are provided (see pages 127–44).

Statutes of Limitations and Retention Guidelines

Every state has “statutes of limitation” that restrict the time available for bringing a lawsuit. These rules vary not only from state to state but also among types of legal actions. Federal law also contains various statutes of limitation. Many organizations keep certain files and records only as long as necessary to be able to bring or defend against potential legal actions. Land trusts should consult local counsel on these rules.

When Can You Bring a Lawsuit?

In many states, a lawsuit regarding the breach or violation of a contract must be brought within six years of the problem. Therefore, a land trust may choose to keep records on contracts for only six years following completion or cancellation of the contract on the theory that its records will no longer be necessary after that time.

The IRS typically has three years to review and challenge a tax return. This may influence how long an organization may keep its tax-related records.

A Cautionary Note: A View of Land Trust Records and Records Policies from the Other Side

When a land trust is involved in litigation, the opposing parties will also have access to the land trust’s files. As a result, land trusts should consider how their files might be used against them:

- A clever note written on the margin of an internal memo may look simply foolish later
- An unsubstantiated opinion of a volunteer monitor on a monitoring report may cause credibility problems if it is later contradicted by staff
- Multiple records on the same topic may end up being contradictory and cause a land trust problems

Some attorneys caution a land trust to keep *only* those documents and records that are absolutely essential — rather than keeping as much information as possible in case it might be useful.

Similarly, land trusts should construct policies and procedures with an eye toward the organization's ability to implement them. Policies and procedures that are adopted but not followed may be used as evidence that the land trust is not a credible organization. However, just as there are costs of keeping too much information, there are costs of keeping too little. Data that seems extraneous to some may be useful in providing background helpful in solving a problem.

How will your files hold up under such scrutiny?

Conservation Easements: Requirements of Section 170(h) of the Internal Revenue Code and Related Regulations

The Internal Revenue Code clearly states that a conservation easement must meet three criteria to be tax deductible. It must be:

- A “qualified real property interest” — a perpetual conservation easement valid under state law — conveyed to a “qualified conservation organization” — a public charity committed to protecting the conservation purposes of the gift and with resources to enforce the restrictions — and made “exclusively for conservation purposes.”

A land trust can help demonstrate that the easements it accepts meet these criteria by:

- Documenting conservation values
- Documenting government conservation policies
- Documenting public benefits
- Documenting the land trust's ability to monitor and enforce the easement

For this documentation, a land trust can use:

- The conservation easement itself
- The baseline documentation report (also required by the IRS)
- Land trust program and project files



Land trusts should construct policies and procedures that they have the capacity to implement. Policies and procedures adopted but not followed may provide evidence that the land trust is not a credible organization.

Many land trusts believe that the conservation easement itself should be the sole source for most information. The conservation easement should describe in some detail the property's conservation attributes and the values of the protected land, along with public benefits achieved from protection. The easement should also list supporting statutes or ordinances.

The baseline documentation report for each conservation easement should supplement the information found in the easement with more detail, along with appropriate maps and photographs.

A land trust may also collect and maintain additional information in its project files to support the deductibility conclusion. This information might include the land trust's own materials evaluating and approving the project, as well as any third-party ecological evaluations or other assessments of the site. A land trust might also want to keep copies of any statutes or ordinances supporting the easement, particularly local ordinances that may be difficult to find in the future.

To document its ability to monitor and enforce its easements, a land trust will want to adopt appropriate policies and procedures and maintain records demonstrating that it follows those policies.

For more information on this topic, see the Land Trust Alliance course "Conservation Easement Drafting and Documentation."

Does the IRS Really Look at the Land Trust When Evaluating the Deductibility of an Easement?

YES. The IRS has made it clear that it intends to evaluate whether a land trust meets the criteria for being a "qualified holder" in examining any particular easement. And it has certainly done so in Colorado. There, the IRS has been looking at literally hundreds of easements held by dozens of land trusts.

The IRS is not limiting its focus on the value of the easement or the amount deducted, as it has often done in the past. It is reviewing the entire transaction, including the conservation values of the land protected by the easement and the qualifications of the easement holder.

Land trusts in other states are beginning to have similar experiences.

Conservation easements are unique in terms of the attention given to their deductibility by the IRS. There are no similar legal requirements for owning or managing land for conservation purposes. The IRS jurisdiction over an easement donation may be limited to the statute of limitations governing tax returns *but* the IRS also has jurisdiction over the land trust so long as it wishes to maintain its 501(c)(3) status.

Check Your Progress

Before moving on to the next chapter, you should check that you are able to:

- ☐ Know what “records” are
- ☐ Understand the importance of keeping records from a land trust’s perspective, particularly when a land trust works with perpetual conservation easements
- ☐ Understand how good records can help land trusts in the event of litigation



The IRS jurisdiction over an easement donation may be limited to the statute of limitations governing tax returns, but the IRS also has jurisdiction over the land trust so long as it wishes to maintain its 501(c)(3) status.

Notes



Chapter Two • Land Trust Records

Learning Objectives

After studying this chapter, you should:

- Be able to identify the types of records a land trust should keep, including organizational records, financial records and transactional records
- Know when and where to keep these records, including options for safekeeping original documents and working with duplicates

Summary

All land trusts must keep a wide variety of records. Every land trust will need to keep:

- Organizational records related to its formal corporate structure — articles of incorporation, bylaws, tax exemption records, meeting minutes, policies, procedures
- Financial records including budgets, annual reports and audits
- Fundraising records such as donor files, foundation grants or even a donor database
- Program files for both land conservation projects and other activities

Land trusts with staff will also need to keep personnel and employment-related files.

Land trusts that accept conservation easements or own land will have additional and more complex recordkeeping needs to keep track of the information related to their real estate transactions.

Each land trust's program will determine what records it needs, but there are commonalities in organizational and transactional records across all organizations. The specific organizational and transactional records common to many land trusts are discussed in this chapter.

Notes

[illegible]

What Records Does Your Land Trust Need?

This exercise may be completed in a training or through self-study.

Read the scenario below and determine what records your land trust will need to cope with the following situations and why. Guidance on the exercise follows.

Greenacres Land Trust has just hired you as its new executive director. It is your second week on the job and three issues arise.

1. The land protection specialist has just left for a doctor's appointment after telling you she is expecting a baby in seven months.
2. Your stewardship director calls. He is in the field with a volunteer crew removing buckthorn from a land trust preserve. A tree cut by a volunteer has just landed on a boundary fence. The neighbor is furious.
3. At the end of the day, a landowner calls and leaves this message:

Hi, I'm John Kingman, and you have an easement on my land. I'm putting up a new barn on my property, and I just wanted you to know. I don't know what the easement says but that nice young land trust man who visited last year told me it would be okay. Or maybe he said it would be okay if the old shed came down. I can't remember. Anyway, I'm sure the board won't care. I was on the board when we took this easement; I'm sure the board said this sort of thing would be fine. I guess my neighbors aren't too happy though. They say the barn will block their view. They have an easement, too, and you told them they couldn't put up a barn. Oh, well. And by the way, the contractor will start work tomorrow. Bye.

What a day! In deciding what to do next, think about what records you hope the land trust has that will help you know how to handle these issues. Why are they important?

Guidance

There is, of course, no “right” answer to this exercise. The situations described are intended to challenge you to think broadly about the range of records a land trust might need in various aspects of its operations and programs.

The following are suggestions only.

1. With respect to the pregnant employee, a land trust will want to consult a number of personnel records and files. You should locate basic information about the employee — name, contact information, status of employment, etc. — as well as information on benefits, insurance and human resource policies. You may also need to have access to legal information covering issues such as family and medical leave. All of this information will be necessary to formalize the term of her eventual maternity leave so that you protect your organization and provide a valuable staff member with appropriate accommodation.

You may also want to think about how her work will be covered in her absence. Reviewing her job description would be a good place to start. Reviewing records on volunteers or other staff members might also be useful to find a short-term replacement.

2. In dealing with the land management situation on your preserve, you will want to have good property records including legal descriptions, maps and perhaps title evidence. This information may help to determine property boundaries and the location of the fence and even to verify who actually owns the fence. Land management plans may also be helpful in determining whether the tree cutting was appropriate and authorized. This information may make a difference if it becomes important to assess responsibility. Personnel records for both your stewardship director and the volunteer, including perhaps not only contact information but also job descriptions and even performance reviews, may also provide you with some background on those representing your land trust in the field if the situation does not easily resolve itself.

You will also want to have insurance records to determine what coverage might be available in this type of situation.

3. There are any number of documents and records you will want to have in this kind of a situation to determine whether the landowner can legally build the barn under the terms of his easement, whether he has been given proper permission to build the barn and whether the organization has acted properly. These might include:
- Contact information for the landowner so you can get back in touch
 - The conservation easement itself, the baseline property report and project correspondence
 - Monitoring records, including information on the monitor if you need to find him
 - Board files, minutes and resolutions, including information on whether the landowner was a board member at one time (conflicts of interest, private inurement, etc.)
 - Land trust policies or procedures on topics such as conservation easement interpretations, amendments and conflicts of interest to determine, among other things, the process to follow in resolving the situation and who has authority to resolve the situation
 - Records on interpretations or approvals in similar situations if issues of equity or fairness become important
 - Contact information for the neighbors



Each land trust must examine its own programs and needs in creating its own filing structure.

Organizational Records

For a land trust that raises money, hires staff or is concerned about meeting its legal obligations or its mission, organizational records are as important as its real estate transaction records.

There are several types of organizational records that might be required, necessary or useful to a land trust, including:

- Corporate organizational records
- Board records
- Policies and procedures
- Financial records
- Fundraising and donor records
- Personnel records
- Program files

This is not a complete list of all the organizational documents or records a land trust may need or wish to keep. Each land trust will have its own unique recordkeeping needs depending upon its own circumstances and programs. The following suggests categories of records to consider but does not suggest any specific structure or system that a land trust should use to organize its organizational records. There are an endless number of appropriate ways a land trust might create its own filing system or structure.

The organization of this section suggests one basic outline for a filing system. The various land trust policies and procedures included at the end of these materials provide further guidance. Much of the detail is based on the Minnesota Land Trust and how that group has chosen to organize its documents and files. This approach will not be appropriate for all land trusts but may provide some ideas for further thought.

Each land trust must examine its own programs and needs in creating its own filing structure.

Corporate Organizational Records

All land trusts will need to keep records related to their corporate structure and organization, including:

- Corporate status records, including articles of incorporation and any amendments and bylaws, current and past
- IRS records related to 501(c)(3) public charity status including the initial application and supporting documents, IRS determination letter and related correspondence, and annual IRS returns
- State charitable organization and nonprofit corporation records and reports

Corporate Status Records: Articles of Incorporation and Bylaws

As a nonprofit organization, a land trust is created and governed by its basic corporate documents — its articles of incorporation and bylaws. Articles of incorporation, along with any amendments, are filed with the Secretary of State. This corporate document is a public record.

Land trust corporate bylaws, on the other hand, are internal documents. They set out the detail for how a land trust must conduct its business. Bylaws are not typically filed or recorded, and a land trust can choose how and when to make them available to the public.

A land trust should keep and refer to these documents to make sure that it is properly conducting its own affairs. A land trust should also *document* that it follows its own procedures.

A land trust's corporate documents will dictate the types of records it must keep to demonstrate that the organization acted properly. For example, if a land trust's articles of incorporation require that its members elect the board of directors, the land trust must keep careful records of who are members. It should also keep records of how it sends notice to members and how the membership votes.

IRS Records

As a tax-exempt public charity, a land trust must prepare, file and keep:

- 501(c)(3) status records — its initial application (IRS Form 1023) and supporting documents, the IRS determination letter and related correspondence
- Annual informational returns, IRS Form 990 or IRS Form 990-EZ or IRS Form 990-N e-Postcard, including any schedules and attachments

- Annual tax returns for any land trust reporting unrelated business income and paying unrelated business income tax, IRS Form 990-T

To complete the current required IRS returns, a land trust will need to keep financial and programmatic information and records documenting:

- Sources and amounts of income (including information that will demonstrate that it meets the public support test)
- Types and amounts of expenditures, including how much an organization spends on program, fundraising and management
- Net assets and changes in those assets, including whether they are unrestricted, permanently restricted or temporarily restricted
- Types of programs, including any lobbying and how much is spent on direct and grassroots lobbying
- Any excess benefit transactions or self-dealing
- The organization's officers, directors or trustees, key employees and contractors, including salaries and payments for the highest paid

On December 20, 2007, the IRS unveiled its updated Form 990 with the first major changes made since 1979. The new forms will be used for the 2008 tax year starting in April 2009. Among other changes, the IRS modified and clarified recently added questions regarding conservation easements. Land trusts accepting or holding conservation easements are subject to additional reporting requirements regarding those easement holdings. Providing the needed information will require substantial recordkeeping.

A land trust must keep all of the above IRS documents, including the most recent three tax returns, and make them available to the public upon request. In making its tax returns public, a land trust does not need to disclose certain information about its donors included in its Form 990. Required salary information, however, cannot be excluded.

Many land trusts go further in disclosing this information and post their 990s along with other financial data on their websites.

IRS Form 990 Conservation Easement Reporting Requirements for 2006–2007

In 2006, the IRS added extensive information-reporting requirements for those land trusts that hold conservation easements. A provision included in Schedule A to IRS Form 990 requires that a land trust holding or accepting new conservation easements provide the IRS with extensive information regarding the organization's easement holdings. These requirements include providing information on:

- The number and acreage of easement holdings
- Whether any easements have been amended, transferred or terminated
- The relationship of conservation easements to residential developments, including golf course developments
- Easements acquired through what the IRS considers conservation buyer transactions as defined in Internal Revenue Notice 2004-41
- Easement monitoring and enforcement, including staff hours and expenses devoted to these activities

These reporting requirements have been modified slightly for the 2008 tax year. All land trusts holding and accepting easements should refer to the IRS website (www.irs.gov) for the most recent information and current forms.

State-Required Records and Reports

As noted above, state laws require land trusts to complete and file a number of reports. These might include:

- Annual corporate filings to make sure the entity is in good standing as a nonprofit corporation
- Charitable solicitation filings covering organizations that raise funds in the state
- Lobbying filings covering individuals that actively lobby and the organizations they represent
- Sales tax collection for organizations that sell goods (and possibly services)

To meet these various reporting requirements, a land trust will need to collect and maintain the data needed for each report, including financial and programmatic data. For example, a land trust that lobbies will need to keep track of direct costs it incurs in lobbying, such as expenses for printing and mailing materials and time spent by employees on lobbying activity. This in turn requires the land trust to keep time sheets or some other record of time spent on lobbying.

Information needed to comply with sales tax collection and payment will require very different records. The land trust will need to track types and numbers of items sold and the amount of tax collected.

Every land trust needs to understand its own state reporting requirements and related recordkeeping needs. For more detailed information on these requirements, see Standard 2, Compliance with Laws, of *Land Trust Standards and Practices* and volume one of this course, “Complying with Federal, State and Local Law.”

Land trusts should keep copies of the reports it files. While not legally required in most instances, it is nevertheless a good idea. Should a state agency ever challenge a land trust over a required filing, the land trust will have its own evidence of its compliance. Additionally, prior reports may be useful — and in some situations even necessary — in completing later ones.

Board Records

As a corporate entity, a land trust acts through its board of directors — and its members, if members have voting rights. Therefore, it will need to keep records to document its actions. Records related to a land trust, its board of directors and its official actions include:

- Membership lists for organizations with voting members
- Lists of board members and officers, current and past
- Meeting notices
- Meeting minutes
- Resolutions
- Delegations of authority to staff

Documenting Process

A nonprofit board must follow its own designated processes and procedures if its decisions are to be lawful. A land trust’s corporate documents will determine what processes it must follow. The processes, in turn, will dictate what information it will need to collect and maintain to ensure that it is acting properly.

Documenting Decisions

Board minutes are the primary mechanism by which most nonprofit organizations document their business decisions. Land trusts typically

keep board minutes chronologically, often by calendar or fiscal year. Some organizations use separate resolutions rather than the minutes themselves to document board decisions. For example, most land trusts require board approval of real estate transactions. In some instances, a land trust will document a project decision in the minutes of the meeting at which the project was discussed. Others may use a separate resolution to document the board decision. The resolution will be attached to the minutes but a copy can also be placed in the project file for easy reference.

There are no hard and fast rules regarding how much detail a land trust should include in its minutes. There should be sufficient information in sufficient detail to demonstrate that the land trust has acted properly. The complexity of an issue before the board and the seriousness of the issue to the organization may dictate the level of detail included in documenting a board decision.

How Does Your Land Trust Make Decisions?

A land trust must document its corporate decisions — including the process followed to reach those decisions. To do this, a land trust needs to first review how its decisions are to be made. It should consider such questions as:

- On what issues do members vote? How many members are needed to vote? How many votes are needed to decide an issue?
- When can the board of directors make decisions? What constitutes a quorum of the board? Can the board meet by phone? Vote by e-mail? How many votes are needed for a board decision?
- How is the land trust required to give notice of a board meeting? By mail? E-mail? When?

What documents or records a land trust needs depends upon the process it must follow to make a decision. For example, if members need to vote, the land trust will need good membership records. If e-mail voting is allowed, copies of e-mails will need to be attached to board minutes.

Delegating Authority to Staff

Many land trusts, especially more experienced ones, delegate various levels of authority to staff. The actual board decision delegating the authority should of course be documented.

Additionally, the land trust should document each staff decision made pursuant to the delegated authority by signature of a contract or document or by a memo or other note in an appropriate file. Whatever mechanism it uses, the land trust should follow the chain of authority from the approved action to its source.

Information on Board Members

A land trust needs to keep names, addresses and other contact information for its board members. It will also want to keep track of each member's term of office and eligibility for reelection. If a land trust has board committees, it will also want to keep track of committee assignments.

In addition to this basic information, a land trust will want to gather information on each board member's interests, background and affiliations with other organizations. This data will help the land trust gauge whether the board collectively has the skills needed to guide the organization, and assess any potential conflicts of interest.

Some land trusts collect this information on biographical sheets completed by each board member. Some use an internal matrix to identify the backgrounds, skills and interests it desires and to track those its board members bring. For more information and a sample board matrix, see the Land Trust Alliance course "Land Trust Boards: Preparing for Perpetuity."

Many organizations require each board member to sign a statement annually identifying any potential conflict of interest or declaring that none exist. For more information on conflicts of interest, see the Land Trust Alliance course "Avoiding Conflicts of Interest and Running an Ethical Land Trust."

This information should be kept and referred to as needed by the land trust as issues arise.

Access to Board Records

Board records are typically made available to land trust board members, staff and key volunteers. If a land trust has voting members, those members may also have the right to see certain documents.

A land trust will typically make names of board members available to the public, although personal contact information may be limited depending upon the desires of the board.

Approving a Conservation Easement

This exercise may be completed either in a training or through self-study. Read the fictional scenario and answer the questions below. Guidance on answering the questions follows.

The Greenacres Land Trust is considering its first conservation easement project, and this is a big decision for the land trust. The Greenacres's board of directors must approve all real estate projects.

The newly hired executive director wants to make sure that the land trust board fully discusses the project, follows the proper process in making its decision and properly documents its decision.

1. What does the executive director need to know regarding the board's decision-making process?
2. Where should she look?
3. How should the land trust document the decision?

[illegible]

Guidance

1. The executive director will need to know how the board makes decisions.
 - Is a meeting necessary? How much notice is necessary? How is notice given?
 - Do board members need to be present? Can they participate by phone?
 - How many board members need to be present for a quorum? How many votes are needed to support a decision?
 - What are Greenacres's criteria for selecting projects?
2. The executive director should check the Greenacres's bylaws, as well as any board policies and procedures. She should also consult Greenacres's written project selection criteria.
3. The executive director and the board should keep the following records:
 - *Meeting notice.* Keep a copy of the notice, indicating when the notice was sent and to whom. This of course will require having records on who constitutes the current board.
 - *Board meeting.* Keep minutes of the meeting, noting who is present and making sure that there is a quorum before conducting any business. Again, this will require knowing how many current land trust board members there are to calculate a quorum.
 - *Discussion.* Minutes should reflect the content of the discussion, particularly if it is controversial. Copies of any documents, reports or maps presented might also be attached to the agenda or to the minutes.
 - *Vote.* Minutes, or a separate resolution, should reflect the details of any vote on the project, including noting particulars of the project that were important to the board's decision. The minutes should also include how specific board members voted if the vote was not unanimous.
 - *Project decision.* A copy of a board resolution or a copy of the meeting minutes should be placed in the project file for easy reference as to what has been approved.

[illegible]

Policies and Procedures

A land trust will need to adopt policies and procedures applicable to many aspects of its programs and activities. Land trusts should pay particular attention to the policies and procedures suggested by *Land Trust Standards and Practices* and to those required for land trusts seeking accreditation.

These policies and procedures will govern a land trust's actions. They include both board-approved policies and staff-implemented procedures. A land trust should keep these policies so that they can be easily located, referred to and followed. Land trusts often find it useful to collect all policies in a policy notebook or binder. That way, all important policies are kept together for easy reference.

As they grow and their policies and related procedures become more complicated, many land trusts begin to create manuals for separate program areas.

With the assistance of the Land Trust Alliance, Colorado Open Lands created a comprehensive Conservation Easement Program Manual documenting in detail its policies and procedures for accepting and managing conservation easements. The entire manual is available to others on disc. The table of contents and recordkeeping components of this manual can be found on pages 185–202.

The Minnesota Land Trust also has separate binders for components of its conservation programs (including a conservation easement drafting manual, a project guide, a baseline property report guide and a monitoring guide), as well as manuals covering development activities and financial matters — each a collection of documents and memoranda related to that specific program area.

The Teton Regional Land Trust has a separate manual for its stewardship program.

Many land trusts also create board manuals, collecting important policies from various areas along with program materials for easy reference by board members.

All policies and procedures, however maintained, should be dated because they may be amended over time. To avoid confusion, it is

important to know which particular version is current. Land trusts referring to specific policies in their conservation easements should pay particular attention to retaining copies of referenced policies.

Financial Records

All land trusts keep some financial records. Accordingly, they need to understand a number of accounting principles. These principles will dictate how a land trust should keep and maintain its financial records, as well as what supporting documentation it should keep.

Financial accounting and reporting requirements for land trusts are governed by:

- Generally accepted accounting principles (GAAP)
- Financial Accounting Standards Board (FASB) rules
- IRS rules for 501(c)(3) public charities
- Government accounting rules for land trusts that accept government money

Historically, the accounting industry has created its own guidelines known as “generally accepted accounting principles” or GAAP. Today, FASB is responsible for reviewing and establishing standards of financial accounting and reporting for the private sector, including nonprofit organizations. The Governmental Accounting Standards Board creates standards for state and local government accounting practices.

Accounting standards are essential because donors and the public rely on *credible*, *transparent* and *comparable* financial information. Therefore, to be credible, a land trust should follow GAAP. Additionally, the IRS requires certain financial disclosures.

Finally, land trusts working with public money will need to follow additional and sometimes quite complicated accounting and financial reporting rules.

The Alliance for Nonprofit Management, a professional association devoted to improving the management and governance capacity of nonprofits, has created an easy-to-use website to help answer frequently asked accounting questions. The questions posed and answered by the Alliance for Nonprofit Management are included on page 179. *All land trusts should be familiar with these questions and their answers.*



Each land trust should consult with a knowledgeable accountant and lawyer to determine what accounting rules apply to its operations. The land trust should make sure to document the advice given and the conclusions reached.

This section covers just a few key finance and accounting topics. For more information on financial management of land trusts, see the Land Trust Alliance course “Financial Management of Land Trusts.”

Each land trust should consult with its own knowledgeable accountant and lawyer to determine what rules apply to its operations. The land trust should make sure to document the advice given and the conclusions reached.

When Is a Checkbook Enough?

A land trust’s accounting system will change as the organization’s needs and resources change. A new, small land trust may not need to follow GAAP completely but may only need a checkbook to keep an accurate record of activity and prepare monthly income and expense reports.

As the number of transactions grows and becomes more complex, or the land trust acquires assets other than cash, it will need a full general ledger system.

As volume and complexity grow, financial management will also require increasingly sophisticated staffing — whether by paid or volunteer staff, or a combination of staff and outside service providers. An accounting system is only as good as the land trust’s ability to put it into practice and should be designed with its users in mind.

Basic GAAP Principles

GAAP consists of four basic concepts.

- The historical cost principle
- The revenue recognition principle
- The matching principle
- The full disclosure principle

The “historical cost” principle requires most assets to be reported at cost rather than at fair market value. A fair market value estimate may be needed, however, if a land trust accepts a gift of land or other asset.

Conservation easement donations present particularly difficult issues for land trust accounting. See the Land Trust Alliance fact sheet “Easements as Public Support: The ‘Zero-Value’ Approach,” for more detail on accounting principles related to conservation easements.

The “revenue recognition” principle requires accrual accounting — reporting revenue when realized or committed, not when cash is received. While cash-based accounting is simpler, accrual accounting is considered more accurate, particularly as programs become more complex.

Examples of Cash versus Accrual Accounting

1. A land trust incurs a financial obligation when it sends its newsletter to the printer. Under cash accounting, the expense is not recorded until the bill is paid. In contrast, under accrual-based accounting, the expense of the printing is recorded as a liability at the time the commitment is made.
2. A foundation unconditionally funds a proposal for a two-year general operating grant, with one-half of the funds to be paid each of the two years. Under cash accounting, the land trust records the income when it receives each check. Under accrual accounting, the land trust records the entire amount as income as soon it receives formal notice of the grant.

The “matching” principle is an extension of the revenue recognition convention. The matching principle states that each expense item related to revenue earned must be recorded in the same accounting period as the revenue it helped to earn. Otherwise, the financial statements will not measure the results of operations fairly.

The final principle, “full disclosure,” requires a land trust to disclose clear and credible information sufficient for knowledgeable people to interpret the organization’s financial reports accurately. The amount and detail of information necessary will depend upon the complexity of the organization’s finances and will take into account the cost of preparing the reports.

These principles govern the content of all nonprofit accounting systems and financial reports.

Fund Accounting Principles

In addition to basic GAAP rules, land trusts may follow fund accounting principles. These principles require land trusts to identify any restricted gifts and allow land trusts to segregate funds by use.



A land trust must be sure to keep records of its own fund accounting rules, including documentation of any donor-restricted funds.

As discussed earlier (see pages 36–37), the most basic fund accounting principles require land trusts to categorize all gifts in one of three ways:

- Unrestricted — funds that can be used by the land trust however it wishes in carrying out its mission and program
- Temporarily restricted — restricted for a particular use or for a particular time period
- Permanently restricted — such as endowment

A land trust may *choose* to designate portions of its unrestricted revenue and net assets for particular uses. Typical funds might be an operating fund, a land acquisition fund, a stewardship fund or a legal defense fund.

A land trust must be sure to keep records on its own fund accounting rules, including documentation of any donor-restricted funds.



IRS and FASB standards define two primary functional classifications for reportable expenses: *program services* and *supporting activities*. Supporting activities are further categorized as either *management and general activities* or *fundraising and membership development*.

Functional Expense Allocation

The Internal Revenue Service and FASB standards require land trusts to report expenses by their functional classification. The two primary functional classifications are *program services* and *supporting activities*. Supporting activities are further categorized as *management and general activities*, or *fundraising and membership development*.

FASB rules define these classifications as follows:

- *Program services* are activities that result in goods and services being distributed to beneficiaries, customers or members that fulfill the purposes or mission for which the organization exists.
- *Supporting activities* are all activities of a not-for-profit organization other than program services.
 - *Management and general activities* include oversight, business management, general recordkeeping, budgeting, financing and related administrative activities, and all management and administration except for direct conduct of program services or fundraising activities.
 - *Fundraising activities* include publicizing and conducting fundraising campaigns; maintaining donor mailing lists; conducting special fundraising events; preparing and distributing fundraising manuals, instructions and other materials; and conducting other activities involved with so-

liciting contributions from individuals, foundations, government agencies and others.

- *Membership development activities* include soliciting for prospective members and membership dues, membership relations and similar activities.

This system helps assess how efficiently an organization is meeting its mission.

Land trusts track or allocate expenses to these categories in different ways. Some land trusts create separate functional expense budget centers and charge expenses directly to those centers. Others use estimates to allocate expenses.

A land trust should consult with its own accountant or financial advisor in selecting its methodology. Whatever approach it chooses, a land trust should document its decisions.



A number of watchdog groups alert donors to be cautious if a charity spends less than 60–70 percent of its budget directly on its charitable programs.

How Should a Land Trust Spend Its Money?

There are no rules governing how a land trust should allocate between programs and supporting activities.

However, a number of watchdog groups suggest appropriate levels — alerting donors to be cautious if a charity spends less than 60–70 percent of its budget directly on its charitable programs.

Components of an Accounting System

A land trust maintains its financial records through bookkeeping into a series of accounting journals and ledgers. Now typically completed through computer software, the process has become easier to manage.

An accounting system consists of:

- The general ledger, which organizes information by account
- The chart of accounts, which acts as the table of contents to the general ledger (each account is given an identifying number for use within the accounting system)
- Separate journals, which record specific financial transactions chronologically



A land trust that keeps its general ledger electronically must pay particular attention to computer security.

The detail recorded in the general ledger will vary with the size and complexity of a land trust's financial affairs. A small land trust with few donors may record each gift separately in the general ledger. A larger land trust may track such gifts through its donor records but combine receipts in the general ledger.

The records retention materials on pages 181–2 suggest how and for how long a land trust might keep and maintain its general ledger and the supporting documents discussed below. *Note:* A land trust that keeps its general ledger electronically must pay particular attention to computer security.

Documentation for Accounting Entries

Each general ledger entry should be supported by documentation, such as:

- Canceled and voided checks for payments made by the organization
- Invoices indicating items or services purchased
- Employee or volunteer expense requests for reimbursement
- Credit card receipts
- Contracts or leases supporting land trust obligations
- Grant agreements or correspondence from donors indicating the nature of a contribution and its intended use

A land trust should also keep bank and investment records and general ledger reconciliations.

For information on the types of records or documents a land trust should keep and the suggested retention time periods for those records, see the sample land trust policies and records retention materials on pages 181–271.

Budgets and Financial Reports

In addition to the general ledger itself, a land trust will want to create a variety of financial reports to manage and understand its financial data and status.

Annual budget. Every land trust needs an annual budget, identifying sources and uses of income. It may wish to keep these budgets for a number of years to allow it to complete multiyear analyses. Many foundations request prior year budgets as part of a funding proposal.

Monthly reports. Monthly financial reports are also essential. Typical reports include information on operating income and expenses to date, as well as compared to the budget and the prior year. A balance sheet setting out assets and liabilities or other fund reports may also be useful.

Other reports. A land trust may need other reports, monthly or periodically, such as investment reports, restricted fund reports, cash flow analyses or any other reports needed to track income and expenses properly during the year.

While these reports are most useful during the fiscal year, a land trust may want to keep at least the final reports of prior years for comparison purposes.

Audits

An audit involves an external review of a land trust's books and records to test the accuracy and completeness of information presented in its financial statements.

As an alternative to an audit, a small land trust may request a more limited examination of its financial statements by a certified public accountant. During such a review, the CPA asks questions of management and conducts some analysis but does not undertake the extensive testing required for an audit. As a result, the review provides only limited assurance that the financial picture is fairly presented.

The IRS does not require an audit. However, state law may mandate that a land trust obtain one. Whether an audit is mandatory or not often depends upon the level of support received from contributions or whether the organization uses a paid, professional fundraiser. A land trust should check with the Secretary of State or Office of the Attorney General for regulations in this area. In addition, nonprofits that receive \$500,000 or more in federal funding during a single fiscal year are usually required to have an audit.

Foundations and other funders commonly request audited financial statements. In some cases, they may accept internally prepared statements or a less formal external review. A land trust should check with its major funders to determine their preferences.



If a land trust's annual expenses and income reach \$25,000 or more, it should seriously consider a yearly audit.

In addition to these external requirements, a board may seek reassurance that the financial information it is considering as part of its oversight function is accurate and complete. When financial problems or irregularities in the financial system have occurred, the board and the public may look to an audit to provide assurance that these problems have been resolved.

Even if not required, most land trusts consider an annual audit or other external financial review to be a sound financial practice. Deciding whether to incur the expense of an audit rather than relying on a less extensive (and less expensive) review is often a function of the size and complexity of a land trust's budget and financial situation. Many believe that an audit is appropriate when annual expenses and *income* reach \$25,000 or more.

IRS Filings and Records

As noted in more detail above, the IRS imposes a number of record-keeping requirements on tax-exempt charities, including filing annual informational returns for those whose annual income exceeds \$25,000. It imposes further requirements on those who hire employees. These are identified in "Employment and Personnel Records" (page 83).

A land trust may want to keep some of these records indefinitely. Others may choose to keep certain records only as long as the IRS has jurisdiction over the matter involved.

Credit Card Information

Land trusts often use business credit cards to manage land trust expenses. Not only are credit cards convenient, but monthly and yearly credit card reports can provide a land trust with useful information in understanding its annual expenses. A land trust should keep credit card receipts for individual transactions to reconcile and verify expenses on the monthly statement.

Land trusts are also increasingly using credit cards to accept donations. A common practice allows the donor to charge a donation by including personal credit card information in a land trust return envelope.

With the heightened awareness and concern about identity theft, land trusts should pay particular attention to any credit card information in its possession. Many land trusts immediately destroy such informa-

tion (shredding is a particularly good idea here) after the transaction is recorded on the land trust's general ledger.

Some states have enacted legislation in this area, mandating certain credit card practices. A land trust should be sure to check into any local requirements.

Insurance Policies

All land trusts should have appropriate insurance coverage, which may include general liability coverage, directors and officers liability coverage, or limited coverage for volunteers. A land trust should consult with insurance advisors or others on the types and amount of coverage that might be appropriate for its own circumstances.

A land trust should keep copies not only of its insurance policies but also of its application and any other information it has supplied the insurer to obtain the coverage. In the event of a contested claim, applications may play a role in determining what a land trust disclosed about its activities and practices.

Fundraising and Donor Records

All land trusts maintain records on their fundraising efforts and the donors who support them. These records can be as important to a land trust as any of its real estate records. What land trust can continue without financial support?

As noted above, tax laws mandate some donor recordkeeping practices. Others are necessary to keep track of data needed for required reports. Most are simply good business practice.

Donor Databases versus Individual Donor Files

Land trusts increasingly rely on databases to keep track of donor contact information and giving history. For some, the database is the primary source of information, with paper files used to collect supplementary information. Other, typically smaller, land trusts prefer to use paper files as the primary source of information.

Fundraising databases range in complexity, sophistication . . . and price. Many land trusts use nationally known programs such as Raiser's Edge, one of the most sophisticated off-the-shelf fundraising database



A land trust should check its state's laws on handling credit card information to ensure it complies with any requirements.

What Information Should a Land Trust Track?

Land trusts frequently track the following information on individual and prospective donors in their databases. Some land trusts also include information on volunteers, foundations, businesses and landowners who have sold or donated property interests to the land trust. Databases that are more sophisticated will track more detail and information.

- ☐ Full name
- ☐ Title
- ☐ Spouse/cohabitant name
- ☐ Special salutation
- ☐ Mailing address
- ☐ Home address (if different from mailing address)
- ☐ Seasonal address
- ☐ Telephone number(s)
- ☐ E-mail address
- ☐ Amount and date of each gift/donation
- ☐ Source of donation (mailed solicitation, personal phone call, event, etc.)
- ☐ Type of donation (cash/check, stock gift, land gift, conservation easement, etc.)
- ☐ Additional involvement in the organization (e.g., board member, vendor, volunteer)
- ☐ Willingness to volunteer and areas of interest
- ☐ Whether permission has been given or withheld to exchange or rent a donor's name/address (Many land trusts have policies against releasing donor names.)
- ☐ Special programmatic interests (land protection within a specific area, field trips, events)
- ☐ Requests for limited mailings (e.g., "Please solicit only once a year," option to remove donor from newsletter mailing list)
- ☐ Likes or dislikes that affect raising money from this donor (e.g., vegetarian, likes/dislikes hunting)
- ☐ Other organizations the donor supports with notes on amount of outside donations
- ☐ Names of people in the land trust who know or can contact the donor personally
- ☐ History of contact with donor (calls to/from staff or board members, attendance at an event, etc.)
- ☐ Target giving goals for major donors (short term and long term)
- ☐ Planned giving by donor (bequest or charitable, remainder trust, etc.)
- ☐ Helpful contacts the donor has with others
- ☐ Pledges
- ☐ Gift memberships
- ☐ Memorials/honoraria

programs on the market, or ebase, software for nonprofit organizations that can be downloaded free from the Web. Larger land trusts may create donor databases that link to a land projects database or general ledger. Others use simple spreadsheets they have created themselves.

For more information on databases, see the Land Trust Alliance's *Exchange* article "Fundraising Databases: Finding Software that Fits," reprinted on page 145. Although some software and programs have changed since the Alliance published this article, it still provides an excellent overview of issues land trusts should consider in evaluating their fundraising database needs.

Maintaining individual files on individual donors may provide a land trust with the most detail and information. Over time, however, the amount of information a land trust accumulates may become unwieldy.

Databases make creating needed reports much easier, but only the most sophisticated programs can manage the depth of data that can be accommodated in paper files.

No one practice or approach will work for all land trusts. Each will need to evaluate its own information needs and its own comfort level with the data it wants to collect, manage and maintain. A policy addressing fundraising recordkeeping will help guide a land trust through this analysis.

Solicitation Letters

Some land trusts keep copies of *all* individual solicitation letters they send. Others only record the fact that a solicitation letter was sent in their donor database, a practice more commonly followed as the number of individuals solicited increases. While yet other land trusts follow a middle course, keeping all letters and correspondence with its larger donors or prospects files but not with all.

Land trusts that do not keep copies of individual letters may want to keep samples of its solicitation letters. Some code solicitation letters with a number or special mark on an accompanying return envelope to evaluate the success of various campaigns or letters.

Additionally, the current instructions to IRS Form 990 suggests that 501(c)(3) public charities are required to keep sample copies of their



The IRS has very specific rules regarding when a land trust must disclose the value of goods or services received by a donor in exchange for a gift. Land trusts considering offering membership gifts or otherwise providing items or services of value should consult IRS Publication 1771 for more information.

fundraising solicitation materials such as dues statements, fundraising letters, event tickets, advertising copy, transcripts of telephone solicitations, scripts of radio or television solicitations, and receipts or other evidence of payments received in connection with fundraising activities.

Gift Receipts and Acknowledgments

Land trusts will also want to pay special attention to how they acknowledge or thank donors for their gifts. As noted above, the IRS has specific requirements on documenting gifts. These rules cover:

- Gifts exceeding \$250
- Noncash gifts, including gifts of conservation easements
- Quid pro quo disclosures

These rules are discussed above and are detailed in IRS Publication 1771, *Charitable Contributions — Substantiation and Disclosure Requirements*

The IRS rules cover *what* should be included in a land trust acknowledgment, which will dictate what information a land trust must collect. Therefore, at a *minimum*, a land trust will need to track information on the:

- Name of the donor
- Date of the gift
- Amount of the gift
- Description (but not the value) of any noncash gift

In some circumstances — including bargain sales — this also requires a land trust to document the value of goods or services given to the donor as well as details of the gift.

The IRS has very specific rules regarding when a land trust must disclose the value of goods or services received by a donor in exchange for a gift. There are exceptions for goods or services of “insubstantial” value, a term defined by the IRS, and gifts given as a thank-you rather than as an inducement for a gift. Insubstantial gifts include items with the land trust’s name or logo that cost a small amount — an amount scheduled to increase over time. Land trusts considering offering membership gifts or otherwise providing items or services of value should consult IRS Publication 1771 for more information.

Keeping IRS Form 8283

However a land trust manages its other charitable gift information, it will want to keep a copy of any IRS Form 8283 that it signs. This is particularly true for gifts of conservation easements.

- Conservation easements typically include provisions that refer to the proportionate value that the easement bears to the fee at the time of the gift. The only evidence of this value may be from the 8283 and any attachments.
- Under some circumstances, a land trust that sells or transfers property subject to an 8283 it has signed will need to report that sale or transfer to the IRS. It must have an 8283 on hand to know that it must make the required report.

Land trusts use a number of approaches to document that they have met their acknowledgment obligations, including:

- *Keeping copies of all individual acknowledgment letters they send.* In addition to the letter, some land trusts also keep copies of all checks and even the envelopes in which checks arrive, at least temporarily. These checks and envelopes can help establish when a gift was made. While not all land trusts keep copies of donation checks, a land trust should keep a copy of any check that contains gift restrictions. It may also wish to keep copies of larger checks to document the receipt of the gift — just in case.
- *Recording gift and acknowledgment information in a fundraising database.* A land trust relying on its database to document that it has received and acknowledged a gift will want to make sure that it has detailed data entry protocols and that it follows those protocols consistently.
- *Maintaining hard copies of acknowledgment letters for gifts where specific IRS acknowledgment requirements apply* — gifts greater than \$250, or gifts of conservation easements and other noncash items. With this intermediate approach, a land trust keeps more documentation on its larger gifts than it does on smaller donations.

A land trust that relies on its database to record gift information will also want to keep samples of letters it sends to document its business practices. The IRS may require copies of the letters.

Foundation Grants and Files

A land trust should keep foundation proposals, grant agreements and reports, typically with a file for each foundation and each separate funding request if necessary. A land trust may also want to create a calendar noting proposal and reporting requirements. Keeping sample foundation proposals can often assist in later proposal writing.

Fundraising Reports

A land trust should also create and keep copies of monthly or at least annual fundraising reports to help it analyze its fundraising activities and the success of its fundraising program. These reports, in conjunction with other financial reports, should also track the use of any restricted funds.

Confidentiality

A land trust should pay special attention to the sensitive and confidential nature of data in its development files. For example, it should never reuse letters containing donor information, even for internal purposes. Access to donor databases should be password protected and possibly limited to certain personnel to avoid accidental alteration of donor data.

As a matter of law in some instances, and as a matter of integrity in all instances, a land trust should also keep track of donor requests and instructions such as:

- “Do not solicit” requests or other solicitation limitations (no phone calls, one letter per year, etc.).
- “Do not publish” requests regarding public gift recognitions.
- Requests to eliminate e-mail communication. Land trusts that engage in advocacy work using e-mail should pay particular attention to any such request.
- Requests regarding the sale or exchange of donor or member names.

Land trusts should consider creating policies addressing these issues in advance to guide data collection and use. For example, a land trust with a policy that prohibits the sale or exchange of donor or member lists will not need to create a mechanism for tracking individual requests. A land trust without such a policy will have to keep track of the donors' wishes.

Employment and Personnel Records

Whether a land trust hires staff or relies entirely on volunteers, it should keep certain personnel records. Records required for land trusts with *employees* cover:

- Federal income tax withholding
- Social Security (FICA) and Medicare tax and withholding
- State (and occasionally local) income tax withholding
- State unemployment tax (501(c)(3) organizations do not need to pay federal unemployment tax)
- Workers compensation or disability benefits tax
- W-4s and W-2s
- Immigration status verification, I-9s

Employment related records might include:

- Resumes and job applications
- Individual staff files (current and past) including job descriptions, performance reviews, salary information, time and leave records, benefits information and IRS required information (W-4, W-2, I-9)

A land trust should also keep information on key *volunteers*, particularly if it uses volunteers for conservation easement monitoring. This



If a land trust uses volunteers for positions where it would otherwise hire staff, it may need to keep time records for IRS Form 990 reporting purposes.

Do All Employees Need to Keep Time Sheets?

Not necessarily. Time sheets may be needed for:

- Hourly workers
- Some government contracts
- Tracking time spent on restricted grants
- Time spent by category
- Programmatic tracking

Even if not necessary, time sheets can be useful to understand how staff — or volunteers — spend their time. It is hard to budget if you don't know how much time certain activities take. Timekeeping can also provide valuable information to support project cost estimates or stewardship funding needs. Consider temporary timekeeping as an alternative to help provide time estimates.

data may include contact information (including emergency contact information in case of an accident), as well as background information documenting the volunteer's skills and abilities.

Many land trusts have training programs for their volunteers. These land trusts should keep records of their training programs and the participation of their volunteers. If a land trust uses volunteers for positions where it would otherwise hire staff, it may need to keep time records for IRS Form 990 reporting purposes.

Program Files

Every land trust, of course, should keep records and files related to its core programs, including such operational files as:

- Annual plans
- Strategic plans
- Program protocols

Program files may also include communications information such as:

- Copies of newsletters, annual reports and other publications
- Press releases and copies of news stories

Publicity Releases

It's a great project, and excellent example of how to protect land with a conservation easement.

But before you write that press release and send it to the local paper or talk to the local reporter who is calling about the deal, make sure the landowner is as enthusiastic about publicity as you are.

Consider obtaining a signed press release from the landowner as a part of every project you close.

That way you won't have to wonder how the landowner feels, and you won't need to be concerned if you can't find him or her at a critical time.

Other records will be more directly linked to its conservation programs such as:

- Grants and contracts files
- Information on land management practices
- Background on government conservation programs
- Information on other conservation organizations or collaborations
- Information on outreach or educational activities, such as a list of completed presentations and names of those in attendance

Even administrative matters require recordkeeping. Land trusts may want to keep:

- Standard office forms
- Equipment information
- Office leases

The list could be endless. A land trust must determine for itself what information it needs to support its program activities. It should also collect enough information to analyze its progress in meeting its mission and conservation goals. The *information* a land trust needs will determine *what files and records* it keeps.

Program files can often be the hardest to organize as they can take so many forms. Land trust programs and activities change over time, and information can quickly become irrelevant or out of date.

With the expanded ability of any land trust to find information over the Internet, it may not be as necessary as it once was for organizations to keep background information. In any event, land trusts should review these files periodically and discard information that is no longer current or useful.

Real Estate Transaction Records

Land trusts that engage in real estate transactions, particularly those that accept permanent conservation easements, must pay special attention to recordkeeping.

Conservation easements are forever — and so are the related recordkeeping requirements.



A land trust must determine for itself what information it needs to support its program activities. It should also collect enough information to analyze its progress in meeting its mission and conservation goals.



Conservation easements are forever — and so are the related recordkeeping requirements.

This section presents the different types of information a land trust might collect in analyzing and completing real estate transactions, particularly conservation easements. It also provides suggestions for how to organize the needed documents and information.

Data, Data, Data — An Overview

Land trust data collection and recordkeeping begin long before a land trust completes a real estate transaction. First, a land trust must:

- *Decide what types of real estate projects — if any — it wants to engage in. This strategy might require:*
 - Adopting appropriate policies and procedures outlining project selection criteria
 - Analyzing selected geographic areas — collecting, reviewing and mapping natural resource information or land ownership data
 - Collecting information on local conservation policies or programs
- *Determine the specific information it needs to analyze a project and how to collect and keep that information.*
- *Determine how a real estate transaction may affect its financial situation. This decision might require:*
 - Collecting information on what a project will cost, including anticipated stewardship costs
 - Analyzing how a land trust will pay for or cover the anticipated project costs
 - Understanding the terms of any grants or contracts that might be used to cover costs
 - Evaluating the land trust's financial records to determine what effect a donated conservation easement may have on its "public support" analysis

A land trust engaged in real estate transactions should consider how it will document the process and procedures it follows, including:

- Establishing standard procedures governing real estate transactions
- Creating standard checklists to track activities or forms to collect data
- Creating standard fact sheets to ensure the consistent delivery of its land protection policies

By the time a land trust is ready to consider a *specific real estate project*, it will already have collected substantial amounts of data. And there will be more to come. For each project, the land trust should collect, among other things:

- Landowner information
- Site analysis data
- Natural resource information
- Scenic analysis data
- Public policy statements supporting a conservation easement
- Title work
- Surveys or maps

As time goes on, the land trust's files will grow and its information management needs will become more complex. Land protected with conservation easements will need to be monitored annually. Land ownership will change. Violations will occur — and will be corrected. Land management plans will be approved, later amended and approved again. To meet these challenges, a land trust must be able to find the records it needs — originals if necessary — and correlate those records to *particular tracts of land* and *particular landowners*.

It may also need to use those records in litigation.

The Land Trust Accreditation Commission has created a checklist outlining all of the information it will want to see from project files as it reviews a land trust in the accreditation process. The checklist covers only the accreditation indicator practices and is not an exhaustive list of what a land trust's project files should contain. A land trust considering applying for accreditation will want to review the checklist in detail. See the Land Trust Accreditation website to download a copy of the checklist (www.landtrustaccreditation.org).

Organizing Real Estate Transactional Information

This section summarizes basic principles land trusts often follow in creating and maintaining real estate transaction files and records, particularly as they relate to conservation easements.

Overall Filing Structure

Land trusts should keep track of potential projects they are working on, as well as projects they have completed. It may also be useful to keep track of projects the land trust has declined or is no longer pursuing.

In organizing projects, land trusts often use:

- The landowner's name
- The project's location (county, township, etc.)
- A unique identifying number
- Some combination of the above

In creating a tracking and filing system, a land trust will want to ensure that files can be easily found as the portfolio of projects grows.

Paper versus Electronic Files

Many land trusts now use both paper files and electronic systems to manage and maintain project data; each has its own advantages and disadvantages.

Computer-based systems provide for relatively easy access (even from remote locations) and can easily accommodate changing or updating files and data. They also require consistent, rigid protocols for greatest efficiencies and credibility. What is easily created can also be easily lost.

Creating an entire system can seem overwhelming and expensive. However, there are relatively inexpensive off-the-shelf products available to assist a land trust in creating a computer structure of its files. Two such products include:

- *Erler's LandSteward*. Developed with the support of the Land Trust Alliance, this relatively inexpensive and easy-to-use software was designed to help smaller land trusts store and access project and stewardship data. It includes a suggested structure for organizing files, including the ability to track single properties or multiple properties in a project. It also includes the ability to link digital maps with other project files. Additional information on this software is included on page 166 and on the Land Trust Alliance website (www.lta.org).
- *Conservation Connections*. Created for the Society for the Protection of New Hampshire Forests, this database is a more expansive system for land trusts with more extensive ease-

ment holdings. The database is structured around and links land parcels and individual and organizational contacts. It is designed to accommodate parcels with multiple contacts, and contacts associated with multiple parcels. Additional information on this software is included on page 170.

Paper, however, is still a trusted and often essential part of most land trust project recordkeeping systems. It is still the most common format in which to create most documents and records. In fact, paper documents are required to complete most real estate transactions. Paper files and filing systems are often easier to change or expand than computer systems and may be less expensive to create and maintain than sophisticated databases. Paper also takes up a lot of space.

Most land trusts inevitably use a combination of recordkeeping processes. Your land trust should decide what approach best meets your informational needs.

Identifying Individual Projects

Land trusts should identify all projects in a manner that will allow the organization to track the project into perpetuity recognizing:

- There will be new landowners of land protected by conservation easement
- Land protected by an easement may be divided into multiple parcels with different owners
- The land trust may need to transfer its land or conservation easements to another organization in the future

Providing files with a distinct name and number, and using that name and number on all correspondence and documents, will help keep files in order.

Working Files

“Working” files are those project files that are used daily by land trust personnel. They should be accessible to land trust board and/or staff members who are responsible for completing the transaction or conducting ongoing stewardship activities, such as annual monitoring or responding to landowner inquiries. Contents of the working file may include duplicates of the documents needed to implement the project’s management and/or monitoring plan in the field.



Providing files with a distinct name and number, and using that name and number on all correspondence and documents, will help keep files in order.

The file may also have a document summary or checklist that serves as a transaction chronology and an index of what is in the permanent file. Many land trusts summarize key information for the working file rather than include entire documents. For example, it is common for land trusts to prepare an easement abstract that includes key information on location, restrictions, reserved rights, etc. — the kind of information needed for monitoring — and to have the easement itself on file elsewhere.

Some land trusts maintain working files on an ongoing basis, making copies of important records or documents as they are created or received for both a working file and a permanent file. Others review files on a more periodic basis — perhaps annually or at the time a project is completed — archiving or securing original documents at that time and making copies for a working file as needed.

For example, the Minnesota Land Trust creates a monitoring workbook — in essence a “working file” of each conservation easement it accepts — in conjunction with creating the baseline documentation report for the project. The staff updates the monitoring workbook annually with respect to monitoring reports and related documents. The workbook is updated immediately with copies of documents or correspondence with respect to other conservation easement stewardship activities such as approvals or amendments. The original stewardship documents are kept in the permanent file.

Permanent Files: Safe Storage

The permanent file includes those documents and records that constitute the essential and irreplaceable record of a transaction and any subsequent activity related to that project. This includes easement monitoring, approval and enforcement data, as well as data related to the initial transaction.

Ideally, permanent files are protected from fire, flood and from tampering by individuals. A land trust’s records policy will guide overall records retention and storage, including which documents a land trust considers part of the permanent record for a transaction.

Land trusts use several approaches for safe storage of records, including:

- *Fireproof file cabinet in office.* While having one set of files in one location and another in a separate location is best, at a minimum, permanent files should be protected from fire or other disaster.
- *Fireproof file cabinet in another location.* Some land trusts keep their permanent files in a fireproof cabinet in a separate location, such as an attorney's office (used by some groups in Colorado) or town hall (used by the Harding Land Trust in New Jersey).
- *Safe deposit box.* Other land trusts choose to keep their files in a bank safe deposit box (used by some groups in Montana, for example).
- *Formal archive facility.* Several land trusts choose the convenience and safety of a formal archival facility (including the Columbia Land Conservancy in New York).
- *Digital systems.* Land trusts increasingly digitize information and documents. They also use a variety of systems to protect that data, including off-site storage of discs or backup data and online backup systems.

Choosing the Right Recordkeeping System

There is no single, correct method or system used by land trusts to manage real estate project information. The system a land trust adopts will depend upon the size of the organization, the nature of its real estate transactions and the scope of its activity. For example, a multi-county land trust may organize its project files by county. The Vermont Land Trust, with an extensive portfolio of easements, uses townships. A land trust with only a few easements, on the other hand, may simply alphabetize its projects using an informal name for each. The following land trusts have adopted various recordkeeping solutions appropriate to their size and scope of operations.

Example

Colorado Open Lands has done an excellent job of documenting the process it follows throughout its course of accepting, monitoring, managing and enforcing a conservation easement. Its *Conservation Easement Program Manual* is available on disc. The table of contents to the manual, along with portions of the manual directly relating to recordkeeping, is included in this book on page 185. This manual demonstrates how extensive good data collection, analysis and recordkeeping can be and how important it is to do it well.

The **Minnesota Land Trust**, a statewide organization that now manages more than 300 conservation easements, follows a regional structure with distinct names and numbers attached to each new project. Its filing protocols are included on page 210. In addition, the Minnesota Land Trust has created a series of worksheets — described on page 203 — to track its work collectively.

Guided by its recently developed records policy and procedures, the **Teton Regional Land Trust's** (TRLT) filing system is highly organized. It includes off-site storage for most original documents and digital records. The TRLT filing system consists of:

- Stewardship files — working project files with separate colored folders for copies of all documentation, including correspondence and internal checklists
- Digital files — working project files with much of the identical information as the stewardship files
- Permanent files — off-site storage for all original legal documents, baseline documentation and digital backups

Information on the recordkeeping systems of these land trusts can be found on pages 185–267.

Collecting Data for Project Planning

All land trusts must make choices about the projects they decide to pursue. All land trusts should also document the choices they make, including the projects they choose not to pursue.

Land trusts should collect and maintain files and records that include:

- Conservation plans for specific landscapes or resources that they are interested in protecting
- The process and criteria for selecting individual projects, including documentation for how the land trust's process was followed for specific transactions
- Documentation of each project's potential public benefits, and its connection to the land trust's mission and goals

Land Trust Standards and Practices Standard 8, Evaluating and Selecting Conservation Projects, details the policies and procedures a land trust should create regarding evaluating and selecting projects. A land trust's own policies and procedures will then determine what information it should collect to document that it follows these procedures and meets its criteria. For more information on how to evaluate and select conservation projects, see the Land Trust Alliance course "Evaluating and Selecting Conservation Projects."

Contents of Transactional Files

Contents required for specific project files vary among land trusts, depending upon the land trust's program and the nature of its transactions. However, project files typically consist of:

Pre-closing files. Data collected before a project is closed might include:

- Project or site analysis information, including materials documenting conservation values and public benefit
- Project plan or analysis, including information on financial considerations
- Environmental assessment
- Project tracking sheet, documenting that the land trust has followed its own procedures with respect to the project
- Conservation easement drafts and related documents
- Correspondence, including letters or other information sent to landowners suggesting they obtain independent legal and financial advice
- Preliminary title work
- Attorney notes or comments upon review of the transaction

Final documents. Final closing documents might include:

- Conservation easement (and any later amendments)
- Deed
- Final title information
- Surveys, maps and/or aerial photographs
- IRS Form 8283 and appraisal information
- Funding information or contracts
- Board resolution or other evidence of corporate project approval
- Other legal or project documents

Projects that are more complex will have more complex files with more documents and records.

Conservation easement stewardship files. As important as closing documents, the easement stewardship files must track stewardship issues to the land and the landowner. These files might include:

- Baseline documentation reports (the link between completing the easement and perpetual stewardship)
- Additional photographs and maps
- Monitoring workbooks (taking the stewardship file into the field)
- Monitoring plan and maps
- Monitoring reports and related correspondence
- Management plans and approvals
- Approvals, requests for interpretations, etc.
- Information on violations and resolutions of violations
- Additional correspondence with landowners, prospective new owners, neighbors, government officials, etc.

Fee ownership files. Land trusts that own land in fee will need additional information such as:

- Management plans
- Natural resource inventories
- Monitoring reports
- Lease agreements or other use arrangements
- Property tax payments and filings
- Insurance
- Correspondence

Your land trust will need to decide which of these files and documents it will keep — for how long and in what format. For examples of different approaches, see the sample policies and procedures at the end of this book.

Lists, Reports and Other Compilations: Tracking and Understanding the Cumulative Impact of Your Work

A land trust should also maintain compiled master files, lists or a project database to keep track of its cumulative work. *At a minimum*, a land trust should keep a list or master file of its completed projects, with pertinent identifying and location data.

A cumulative map can also be helpful for project planning as well as for communications purposes. The Land Trust Accreditation Commission also requires a map showing the approximate location of all projects.

Many land trusts keep separate master lists or reports for tracking ongoing transactions and for tracking completed land protection projects. Many also separately track other easement or land related activity such as:

- Monitoring assignments and status
- Easement amendments
- Requests for interpretations or approvals
- Violations and resolutions

Every land trust should consider in advance what information would be of use if collected on all projects. It is easier to collect information at the time a project is being completed or an action is taken than to go back and later review every file for that piece of data.

Databases

Databases are becoming increasingly popular as land trusts manage more complex project information. Before investing in a database, a land trust should consider the following questions:

- When is a spreadsheet not enough?
- Will the database supplement or replace paper files?
- Should the database include geospatial data?
- What information do you want to collect? (Decide this *before* you build a database. Know how you will use the information you want to collect.)
- Do you want an independent project database or one that integrates with other land trust systems?
- How much will it cost to create the database and enter the data?

Check Your Progress

Before moving on to the next chapter, check that you are able to:

- ☐ Identify the types of records a land trust should keep, including organizational records, financial records and transactional records
- ☐ Know when and where to keep these records, including options for safekeeping original documents and working with duplicates

[illegible]



Chapter Three • Records Policies and Procedures

Learning Objectives

After studying this chapter, you should:

- Understand the value of a records policy and be able to describe its important elements
- Understand when and how to destroy records
- Be able to compile and begin drafting a records policy for your land trust

Summary

Isn't it enough for a land trust to keep all of its important files and records?

No. Just keeping records is not enough. A land trust should have specific policies and procedures that guide its recordkeeping.

Equally important, a land trust should follow its policies. A policy that is not followed is certainly not worth much and may harm the noncompliant land trust's credibility in a legal proceeding.

There are a number of benefits for a land trust that creates formal policies and procedures. Each land trust, of course, will want to make sure its policies reflect its own situation. However, there are certain elements or components of a recordkeeping policy that every land trust will want to incorporate and certain issues it will want to make sure to consider.

These issues are all addressed in more detail in this chapter.

Importance of Records Policies and Procedures

A records policy and related procedures can assist a land trust in a number of ways.

Records management as risk management: an opportunity for a land trust to assess its approach to risk. Creating a records policy provides a land trust with an opportunity to evaluate what records, files or data are necessary for each of its programs and the risks of destroying or losing records.

Risk, of course, is not just the legal risk of not being able to prove a position or not having the documents needed for litigation. Risk may include not being able to demonstrate to the public or donors the success of a certain program.

Policies, Procedures and Personnel = A Records Management System

To succeed over the long term, a land trust should construct a records management system that includes:

- Adopting appropriate board *policies*
- Creating detailed *procedures* to implement those policies
- Assigning *personnel* to make sure the policies and procedures are followed

Typically, *policy* refers to issues dealt with by the board, while *procedure* refers to matters handled by staff in implementing policy. There is no hard and fast distinction between what should constitute policy and what should be procedure — and land trust practices vary widely. All-volunteer land trusts tend to rely more on board policy, while larger land trusts delegate more authority to staff.

In recognition of the range of land trust approaches to governance, these materials often use *policy* and *procedure* interchangeably. The emphasis is on *what* issues should be addressed — whether by policy or procedure.

However its policies and procedures are created, a land trust must make sure that all land trust personnel — volunteer or staff — understand their responsibilities with respect to ensuring that recordkeeping rules are followed.

In assessing risk, a land trust should ask:

- Would losing certain records be an inconvenience or legal nightmare?
- Could the records be found elsewhere?
- Have the records currently being kept ever been needed?
- How much time is currently being spent maintaining records?
- How much time is spent finding information when it is needed?

The process of creating a policy will help a land trust assess its current level of risk and whether that is acceptable.

Organizational consistency and continuity. A records policy will provide consistency for the land trust over time, no matter who is working with the data and records. This issue becomes increasingly important as a land trust grows and adds or changes personnel, whether volunteer or paid staff.

Efficiency. Hours, if not days, can be wasted looking for information kept but not organized. A well-designed and implemented record-keeping system can change that.

Situational Policy-making

A land trust's policy should reflect its own situation. *Not all land trusts are the same.* A land trust's records policy will be influenced by a number of factors including:

- Nature of the land trust's mission and work
- Age and maturity of the organization
- Size of the staff and budget
- Complexity of its finances
- Number and types of real estate projects it completes (if any)

Even the location of a land trust office may play a role in determining what records policy will be appropriate. For example, a land trust with an office in an area prone to flooding will certainly not want to keep records in a basement storage room. A land trust with multiple offices will have more complicated issues around access and location of documents and files.

Not all records are created equally. Different types of records require different policies and procedures.

- Human resource records require heightened awareness of confidentiality issues
- Finance records require specific attention to detail and accuracy
- Conservation easement project files need to be maintained with an eye toward perpetuity



Thinking ahead and considering future information needs will help a land trust build a system that can accommodate growth.

Build a system for growth. In considering a records policy, a land trust should be thinking about its future needs as well as its current situation. Systems that seem overly complex for an organization at its current size may be perfectly appropriate for a larger organization. It may be much easier to institute a more complex system when fewer files or records are involved and grow into it than it will be to retrofit a system later. For example, a land trust that has completed only a few conservation easement projects can quickly reorganize those files if it needs to. It can easily retrieve information from each file in response to an outside request for information. However, as the portfolio of easements grows, this task becomes increasingly difficult. Thinking ahead and considering what information it may need in the future will help a land trust build a system that can accommodate growth.

Review policies over time. A land trust should review all of its policies and practices periodically, including those related to recordkeeping.

How often?

Every few years is probably adequate. However, changes in land trust personnel often present a great opportunity for the organization to review its operating procedures and consider whether adjustments are needed.

Keep records on recordkeeping. Whatever policy and procedures it adopts, a land trust should document that it has followed its policies, including documenting any policy or procedure reviews.

Elements of a Records Management System and a Records Policy

Land trust policies and procedures on recordkeeping take a variety of forms. The size of each land trust and the scope of its activities dictate how it approaches recordkeeping, including whether the process is managed by the board or staff, the complexity of its records management system, the level of detail needed and other similar matters.

Regardless of its size or program, however, every land trust's record management system and its recordkeeping policies and procedures should include at least the following elements:

- Purpose or philosophy of recordkeeping
- Document and data creation
- Document retention and storage
- Document destruction
- Recordkeeping responsibility

To demonstrate the range of approaches to recordkeeping, there are a number of land trust policies and procedures included at the end of this book and referenced in part below. These documents, which demonstrate each land trust's individualized approach to recordkeeping, include samples from the Bethany Land Trust, Colorado Open Lands, Minnesota Land Trust, Teton Regional Land Trust and the Vermont Land Trust. Descriptions of these land trusts accompany their policies and procedures. Land trusts should look to the samples that most represent their current size and capacity, while also studying the policies of larger organizations to plan their policies for the future.

Each of these elements of recordkeeping systems is discussed below.

Purpose or Philosophy of Recordkeeping

Before addressing details, a land trust should examine and clarify its own philosophy or approach to recordkeeping. That approach will then govern specific details of the policy. For example, one land trust

may choose to focus on potential litigation, and state that one of the purposes of its records policy is to “create and maintain records in anticipation of litigation.” A land trust with this approach may focus on the formalities of complying with the business records rule. It may also either keep substantial amounts of data or very little, depending upon its view of litigation.

Another land trust may identify its purpose is to “collect and keep the minimum amount of information necessary to prepare required reports and meet internal problem-solving needs.” This land trust may rely more on electronic databases than extensive paper files. It may be willing to accept the consequences of not having as complete a file as another land trust might maintain.

The philosophy or recordkeeping approach identified in a land trust’s records policy determines what direction the land trust should take in deciding what material to keep and how.

The following examples of specific land trust recordkeeping philosophies demonstrate a range of approaches.

Example

Vermont Land Trust

Philosophy:

The Vermont Land Trust’s Conservation Stewardship Office is the repository of all the completed conservation work of the organization. Our paper and electronic records serve the organization’s legal and information needs regarding all conserved land and its owners. We also exist to serve owners of conserved land and maintain records in order to answer inquiries promptly regarding their conserved land. Our records must exist in perpetuity to fulfill our conservation easement stewardship responsibilities as well as legal needs. We keep only those records that are essential to these functions in paper and electronic form.

Principles:

1. All paper files are stored in one-hour fire-safe four-drawer file cabinets.
2. All paper files remain in the stewardship office except copies designated for field use.

3. All files are organized for completeness of pertinent information only, ease of use and compact storage.
4. Only essential information is stored. Essential information is determined by reference to our guiding philosophy and to the conservation easement or other conservation document.
5. No drafts are kept as the conservation easement and supporting documentation must stand or fall based on the four corners of the documents. If we have made an error, then we take responsibility for the error and learn for the future to do better work.

Example

Minnesota Land Trust

The goals of the Minnesota Land Trust's filing and record management procedures for its *land conservation project files* are to make sure that:

- The Minnesota Land Trust has the information necessary to complete its conservation projects and to manage and monitor its ongoing conservation easement obligations
- All documents and important materials related to conservation easement projects are securely kept and relatively easily retrieved or reproduced when necessary
- Anyone unfamiliar with a project or file can understand the history and status of the project

The Minnesota Land Trust has more extensive goals for its entire recordkeeping system, focusing on: legal compliance, transparency, accountability, confidentiality, accuracy, accessibility and efficiency.

Example

Teton Regional Land Trust (TRLT)

The Mission of the Teton Regional Land Trust is to conserve agricultural and natural lands and to encourage land stewardship in the Upper Snake River Watershed for the benefit of today's communities and as a legacy for future generations. The Teton Regional Land Trust (TRLT) recognizes that maintenance of consistent, complete, secure and authentic records is essential to achievement of its conservation mission. The TRLT Records Policy is developed to ensure compliance with the intentions of TRLT donors, including conservation easement donors, to

document and sustain the conservation values of protected lands under conservation easement or in fee ownership, and to secure TRLT's public charity status. The TRLT Records Policy supports and is integral to other TRLT policies. All Teton Regional Land Trust files are the property of TRLT, not members of the staff or Board of Directors.

Not only will different land trusts have different approaches to record-keeping, different philosophies or approaches may apply to different types of land trust records. For example, real estate project records may require a different recordkeeping system than programmatic or personnel records.

Document and Data Creation

A land trust records policy or procedure should address *what* information a land trust will collect and keep.

A land trust should consider the following questions and issues with respect to all elements of its programs and operations in drafting this component of its policy:

- *What are your key documents and records? What other documents are important? Why are they important?* A land trust should ask these questions of all of its programs and operations, not just its real estate transactions.
- *How much information is enough? How much is too much?* Time is money, and time spent creating and maintaining unnecessary information essentially costs a land trust money.
- *What documents need to be signed and by whom?* A land trust should remember to maintain documentation on whoever has authority to sign documents on the organization's behalf.
- *When do you need originals and when copies? How many copies are necessary?* Original copies of documents may need additional protection if copies are not acceptable alternatives. Copies can provide for efficient access but can also cause confusion if it is not clear whether a document is a final or a draft.
- *When are paper files necessary? When are they useful? When should you keep electronic or digital records and files? When should you keep both?* There are no right answers to these questions. Today, land trusts keep both electronic and paper documents. Policies must address issues related to both types of documents.

Paper versus Electronic Files

Many land trusts now use both paper files and electronic systems to manage and maintain project data.

Computer-based systems have a number of advantages:

- Relatively easy access, even from remote locations
- Limited space requirements
- Ability to link data among databases
- Ease of changing or updating files and data

Computer-based data collection and management systems also:

- Require consistent, rigid protocols for greatest efficiencies and credibility
- Demand additional attention to security (because documents and files are so easy to access, change or even accidentally delete)
- May be less well accepted in judicial proceedings (although that is rapidly changing)

Paper is still a trusted part of most land trust project recordkeeping systems. In fact, many documents *must* be created and signed in paper format, at least initially. Additionally, paper files and filing systems are:

- Comfortable for most to work with; computer comfort is still more variable
- May be easier to change or expand than computer systems in some circumstances
- May be less expensive to create and maintain than sophisticated databases
- Paper also takes up a lot of space

Most land trusts inevitably use a combination of recordkeeping processes. For example: Colorado Open Lands now considers its electronic files the primary files for completed projects. The Minnesota Land Trust, which also relies on both paper and electronic files, considers its paper files the “official” organizational file. However, it is increasingly relying on electronic files for archival purposes.

Every land trust will need to decide for itself what approach to take.

In addressing what data to collect, the policy should address collecting data for *compilations, reports and analysis* as well as for individual projects or purposes. Compilations of data become increasingly important as a land trust grows and, correspondingly, the amount of data it

collects and manages. The following clearly illustrate the benefits of such recordkeeping.

- A land trust with a simple list of all its conservation easements that includes associated location information could obtain copies of all easements from the official land records office if a disaster destroyed original copies.
- The IRS Form 990 requires substantial information about a land trust's existing conservation easement portfolio. A land trust without a list of its easements with associated acreage data will have difficulty completing the required informational schedule.
- A land trust without a compilation of data on its easement holdings cannot evaluate or analyze how its activities have expanded or changed over the years. It may not be able to show success over time or explain why additional resources are necessary for its programs.

The policy or procedure should also address protocols of document creation.

Paper document protocols might address details such as:

- How to handle copies versus originals
- Naming files
- Labeling documents
- Identifying author
- Dating all records and files
- Reusing paper (or not)
- Securing papers within a file

Computer protocols might address:

- Naming and labeling files and folders
- Consistency of organization with paper files
- Identifying author
- Dating all documents
- Eliminating the visibility of "changes" or "comments" that may have been tracked while a document went through various drafts

Word Processing Special Concerns

Today's computer software is designed to make document creation more efficient and effective. But there can be issues with these documents:

- **Beware: The Automatic Date Function**

It often seems like a good idea to save time by using the automatic date function in creating documents. But what happens the next time you open the file? The date is updated. The original date is eliminated, as is the integrity of the document.

- **Tracking Changes and Comments While Negotiating a Conservation Easement**

Land trusts rarely complete conservation easements in a single draft. Today's word processing programs allow parties easily to compare changes to an earlier version of a document or add comments and various suggestions.

In most instances, these changes — and particularly internal comments not intended for external review — should not be kept “hidden” in a final document. Land trusts that keep or share electronic versions of documents should electronically eliminate any comments or notations they do not wish to keep.

Document Retention and Storage

Records policies and procedures should also address how information should be kept and organized and where.

Issues to consider include:

Who needs access to records — board, staff, volunteers, the public? Which records? How quickly? How often? The need for access can often be contradictory to the need for confidentiality or security. It is more difficult for larger land trusts to balance these competing concerns as more staff have need for access to more data. Each land trust must examine its own situation. Internal computer networks and external websites can make access easier but require additional attention to security and confidentiality.

Confidentiality. When should access be limited? How should access be limited? All land trusts collect sensitive data. Addressing

confidentiality in advance can help avoid embarrassing disclosure of inappropriate information.

How will files or records be organized? Again, time is money. Creating a system for organizing files and records will save time in filing and in retrieving information.

Safety and security. What are the risks of loss, destruction or unauthorized access, and what are the consequences? Fire? Theft? Flood? Malicious mischief? Other? What can you do to limit the likelihood of loss? What will happen if you lose certain data? The list of threats may seem endless, but for each land trust some will be more likely than others. For example, a land trust in an office with lots of sprinklers may be more concerned about water damage than fire. An urban office may have a greater risk of unauthorized entry, and additional physical security may be necessary.

Laptop Computers: Easy to Use and Easy to Lose

Land trusts use laptop computers with increasing frequency. Their convenience is hard to beat.

Because they are so lightweight and portable, they are also easy targets for theft and more susceptible to damage or loss. When a laptop computer is lost, so is the data on the computer — including any confidential or private data or information critical to a land trust's program.

Many land trusts use laptops to supplement office desktop computers or an office network system. A land trust that relies entirely on laptop computers needs to be particularly thoughtful about security. Backing up the computer daily is essential, as is keeping paper files for important matters. Particular attention should be paid to confidential data — use passwords or consider removing confidential data from the computer all together.

How long should information be kept, including legal concerns and practical concerns? As noted above, the relevant statutes of limitations may help land trusts make decisions in this regard. If space or volume is not a concern, a land trust may choose to keep files longer than those with extensive recordkeeping needs.

Where will records be located — on-site, off-site, fireproof safe, safe deposit box, etc.? If the land trust does not have an office, who will keep its documents? Land trusts need to address access and security issues.

When should you archive? Why? What? Where? How? Land trusts archive documents for two reasons: space and security.

- *Archiving for space.* When space is an issue, archiving documents no longer needed on a daily basis can be as simple as removing files from the file cabinet (or computer drive) and boxing them in an office storage closet (or placing discs in a disc file). Following a records retention and destruction procedure can also help provide for needed space.
- *Archiving for security.* Not all archiving systems provide the security needed for a land trust's most important and irreplaceable documents.

To archive these documents, a land trust should consider off-site storage in addition to having office copies of documents and computer files. Storage can be as simple as a bank safe deposit box or involve the services of a company whose business is archiving documents.

In archiving paper documents, land trusts should also pay attention to the materials used: paper, ink and even the plastic sleeves often used for storing documents need to be carefully chosen. These materials may fade or deteriorate or even damage documents.

Many businesses are increasingly using computer scanning as part of their document storage process. PDF (Portable Document Files) are created and stored off-site (or in a fireproof safe) on nonrewriteable discs or with an online archiving service. This technique saves space but requires time to scan documents.

Archiving computer discs requires additional attention. Over time, discs may degrade or technology may change, making stored discs difficult if not impossible to read. Land trusts using electronic storage should consider this eventuality in their policies or procedures.

Irreplaceable original documents still require secure storage, although — as noted above in the section on admissibility of documents in evidence — copies of documents are often adequate. As technology continues to change, electronic data storage is likely to become an even more standard business practice.

What will it cost to keep information, considering time, money and space? Every filing and recordkeeping option has a cost. Costs of various



Insurance: a hedge against loss. No matter how careful a land trust is, accidents — even disasters — happen. Every land trust should make sure that it has adequate insurance to help it replace important documents if necessary.

options must be balanced against their benefits. Land trusts should carefully evaluate how much to invest in recordkeeping so as not to shortchange their programmatic activities.

When should computer files be backed up? When should files be left on the network or hard drive, and when should discs be created? Where should discs be stored? Separate location in the office, office fireproof safe, off-site? As noted above, electronic files require different handling than paper files.

Simple Steps for Protecting Files and Data

Use passwords.

Back up the computer daily.

Create “read only” documents to limit accidental change or deletion.

Buy a fireproof safe or fireproof file cabinet for the office.

Have at least one locking file cabinet — with a key!

Don’t leave files lying around. Put files back in file cabinets at the end of the day. Close file cabinet doors.

Close internal office doors. (Even a closed door can limit fire.)

Make sure your office has sprinklers — water damage is bad but fire damage can be worse.

Don’t store documents in a damp basement.

Keep a list of your preserves or conservation easements.

Know what you have.

Don’t take original files home or use them in the field. Use copies.



Simply deleting an electronic file may not completely “destroy” or eliminate the file.

Document Destruction

Your records policy should also address how long you keep records, as well as when and how you should destroy them. Destruction in this context refers to both paper and electronic documents and files. Remember, simply deleting an electronic file may not completely “destroy” or eliminate the file.

Issues to consider:

What are the risks or costs of keeping documents forever versus the risks or costs of destroying documents? It costs time and money to keep documents forever. They take up space — somewhere. However, once destroyed a document may be lost forever. Does it matter? How much?

Are the land trust's documents also kept by others? How easy would it be to get those documents? The conservation easement itself may be the most important document in an easement transaction file. However, it may also be the most easily replaced by obtaining a copy from the official land records — assuming the land trust knows where it has easements and where to look for official copies. In contrast, a letter sent to a landowner noting an easement violation may be impossible to reproduce if the land trust has not kept a copy in its file.

For how long is a land trust required to keep certain records? For how long might the records be useful? How often is the land trust likely to need the records? Records needed daily at one point in a land trust's history may later become less important and eventually unnecessary. For example, prior years' budgets may provide useful perspective for a time, but after five or more years may become less relevant. Monitoring records indicating easement compliance may become less important once the land transfers ownership and the land trust has certified to the new owner that there are no problems.

How should records be destroyed? Shredding, recycling, the garbage? Confidential or sensitive documents may require greater care in destruction.

Document destruction is typically governed by record retention policies, guidelines and schedules. Some documents, such as voicemails or internal e-mails, may be destroyed immediately. Other documents will be maintained for a given period of time according to a preordained retention schedule. Retention schedules will differ for different documents, as illustrated by the following examples:

- The IRS requires tax-exempt public charities to keep and make available to the public at least the three most recent IRS Form 990s
- A multiyear grant agreement should be kept for at least the length of the grant



A land trust should consult with its own attorney, accountant, auditor or other advisor in creating its retention schedule.

- A grant agreement with ongoing restrictions should be kept for as long as the restrictions are valid
- Certain conservation easement-related documents should be kept for as long as the easement exists

The policy or procedure should address specifically what documents should be kept for what length of time (including e-mail and voice-mail communications) and when and how they will be destroyed.

Even in its early stages, a land trust will not want to keep every piece of data collected or every piece of paper created.

For example, land trusts rarely decide to keep copies of *voicemails*. Typically, only important *e-mails* are copied and kept. Every day a land trust receives mail that it immediately tosses as unneeded for its programs. A young land trust may decide to keep all of its financial records, using on-site “archiving” when file cabinet space becomes limited. After more experience, it may select an appropriate time period after which to destroy some records.

A land trust may need to work with its records for a while before it fully understands what it will need over time. An early policy can be later amended to reflect organizational growth and maturity.

A sample generic records retention schedule suggested by a Minnesota certified accounting firm suitable for both for-profit and nonprofit organizations is provided on page 181. Retention guidelines are included in other attached land trust policies.

A land trust should consult with its own attorney, accountant, auditor or other advisor in creating its retention schedule.

Recordkeeping Responsibilities

Recordkeeping is an organization-wide issue. It requires involvement by the board in setting policy and direction. The executive director or board chair will set the tone on whether he or she considers this an important issue for the land trust. Without support from the top, a land trust is unlikely to follow or take its records policy seriously.

The records policy or procedure should assign record creation, maintenance and destruction responsibilities to designated staff or volunteers.

Responsibilities can be spread among various personnel, but assignments should be clear. For example, larger land trusts may spread this responsibility among a number of people with responsibilities for different types of records: the accountant may be responsible for financial records, while the development associate is responsible for donor files. On the other hand, an all-volunteer land trust may assign this responsibility to a particular officer, such as to the board secretary.

All-volunteer organizations without an office have special recordkeeping challenges. Rather than transferring files from person to person, the land trust may want to consider using an attorney's office or a bank safety deposit box. Another conservation organization or a public agency may allow the land trust to use its office for safekeeping its important records.

Land trusts needing advice in setting up recordkeeping systems should consider consulting with a local information systems company or even a local librarian. Auditors and board members can also be sources of information and assistance.

Like all other aspects of a land trust's program, its filing and recordkeeping activities do not come without cost. Those creating the budget or making staff assignments need to take the costs of recordkeeping and the time it takes into account. Remember, a land trust that sets up a good recordkeeping system from the very beginning will *absolutely* save time and money in the end.



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Board Involvement in Recordkeeping

Recordkeeping is important. It warrants board attention.

A land trust's corporate existence and the permanence of its obligations alone mandate board involvement. The expense associated with certain recordkeeping approaches or needs also suggests board engagement on the issue.

Larger or more experienced land trusts with more complicated recordkeeping needs will find that the level of detail will require more staff than board involvement.

Board policy statements and staff procedural rules will reflect the differences in responsibilities.

Creating a Land Trust Records Policy

This exercise can be completed in a training session but may be most useful as a board/staff/volunteer exercise at your land trust. The purpose is to help you begin to develop a written records policy that meets the unique needs and situation of your land trust. If your land trust already has a records policy, use this exercise as a tool to evaluate its effectiveness.

Keep in Mind

Not all land trusts are the same. In creating a records policy, a land trust must reflect its own situation. Every land trust's records policy will be influenced by a number of factors including:

- Nature of the land trust's mission and work
- Age and maturity of the organization
- Size of the staff and budget
- Complexity of its finances
- Number and types of real estate projects it completes (if any)

A records policy will also recognize that all records are not created equally. Different types of records require different policies and procedures.

Take time to review the sample policies at the end of this book. Pick a land trust that has a similar size and capacity as your own to use as a model. Remember, however, that each land trust's policy reflects its own unique situation, so "cutting and pasting" its language into your policy without considering all the steps in this exercise may well produce a document that is unsuitable for your organization.

With this in mind, the following are general guidelines to consider in creating a records policy and procedure.

Beginning the Process

To begin the process of creating a records policy, consider and answer the following questions:

EXERCISE ONE

1. What records does your land trust need to keep?

2. What records is your land trust currently keeping and how are they organized?

3. Describe your land trust's values around recordkeeping. (Include the purpose or goals of the policy.)

4. Describe any legal considerations specific to your organization.

5. Describe any unique circumstances or situations your land trust is likely to encounter regarding recordkeeping.

6. What are the risks of the land trust's records being damaged or destroyed?

PUTTING IT INTO PRACTICE

With the answers to the previous questions at hand, begin designing a records policy for your land trust, which includes at least the following elements:

Purpose or philosophy of recordkeeping. To start, a land trust must identify *why* it is keeping records. This purpose or philosophy will guide policy details.

[Enter information on the purpose or philosophy of recordkeeping here.]

Document and data creation and collection. Key to a records policy is identifying *what* information the land trust needs to create or collect. You should ask and the policy should answer questions such as:

What are your key documents and records? What other documents are important?
How much information is enough? How much is too much?
What documents need to be signed and by whom?
When do you need originals and when copies, and how many?
Will you create and keep documents as paper or computer files or both?

[Enter information concerning data creation and collection here.]

Document retention and storage. Records policies and procedures should also address how information should be kept and organized and where:

- How will files or records be organized?
- Where will records be located?
- How will they be protected from loss, fire and other hazards?
- Who is the custodian of records?
- Who can have access to the records and files?
- When will you archive? What? Where? How?
- How will computer files be handled?

[Enter information concerning document retention and storage here. Address both short-term and long-term records storage.]

Document destruction. Your records policy should also address *how long* you keep records, as well as when and *how* you should destroy them.

[Enter information concerning document destruction here.]

PUTTING IT INTO PRACTICE

Recordkeeping responsibility. The records policy should assign record creation, maintenance and destruction responsibilities to designated staff or volunteers. Responsibilities can be spread among various personnel, but assignments should be clear.

[Enter information concerning recordkeeping responsibilities here.]

Policy review. The records policy should be reviewed and updated periodically to ensure that it complies with current law and meets the land trust's needs.

[Enter information concerning records policy review here.]

Check Your Progress

Before finishing this chapter, you should check that you are able to:

- ☐ Understand the value of a records policy and be able to describe its important elements
- ☐ Understand when and how to destroy records
- ☐ Be able to compile and begin drafting a records management policy

[illegible]

Additional Resources and Sample Documents

There are numerous sources of information for those interested in recordkeeping. A variety of articles and documents follow to help further explain the material covered by this course. There are also references to sources of additional information. A number of land trust records policies and materials are included, but more can be found on The Learning Center, the Land Trust Alliance's online learning center (<http://learningcenter.lta.org>).

Land Trust Alliance *Exchange* Articles

These articles discuss a variety of issues related to recordkeeping, particularly as it relates to litigation.

"Records Policy And Management: A Key Aspect of Protecting Land in 'Perpetuity,'" by Darla Guenzler, Fall 2000 (page 127)

"Digitally Documenting Baseline and Stewardship Data," by Eric Erler, Fall 2000 (page 132)

"The Legal Efficacy of New Technologies in the Enforcement and Defense of Conservation Easements," by Melissa K. Thompson, Summer 2004 (page 136)

"Preparing for Future Litigation of Conservation Easements," by Elizabeth L. Wroblecka, Winter 2005 (page 141)

"Fundraising Databases: Finding Software that Fits," by Kendall Slee and Dale Bonar, Winter 2001 (page 145)

Sarbanes-Oxley

Those interested in understanding more about Sarbanes-Oxley should read the article "The Sarbanes-Oxley Act and Implications for Nonprofit Organizations" (page 152), prepared by Independent Sector and BoardSource, nonprofit organizations focused on nonprofit organizational structure and governance.

Independent Sector has also prepared a summary document "Learning from Sarbanes-Oxley: A Checklist for Charities and Foundations" (page 163).

Independent Sector and BoardSource have excellent materials, particularly for land trusts interested in accountability and governance and related recordkeeping issues. Visit their websites, www.independentsector.org and www.boardsource.org.

Project Database Information

Land trusts around the country are using a variety of databases to manage land project information. Two such databases include:

- Erler's LandSteward, a database suitable for smaller land trusts (page 166)
- Conservation Connections, a more sophisticated database created for larger land trusts with more extensive holdings (page 170)

The materials included here on these databases have been adapted from the Land Trust Alliance website, www.lta.org, and the Land Trust Alliance digital library.

Financial Materials

Related to the section on financial records are two documents:

- A reproduction of materials from the Alliance for Nonprofit Management website (www.allianceonline.org) on frequently asked accounting and finance questions (page 179)
- A sample record retention schedule prepared by a Minnesota accounting firm that works with a number of for-profit and nonprofit organizations, Wilkerson Associates (page 181)

For additional information on financial recordkeeping, a land trust may want to contact the American Institute of Certified Public Accountants — the national, professional organization for all certified public accountants. Local auditors and accountants can also help.

Many states also have nonprofit support organizations that can help a land trust having difficulty locating local accounting and financial expertise.

Internal Revenue Service

The Internal Revenue Service has a wealth of additional information for nonprofit tax-exempt public charities. Much of this information is available on its website, www.irs.gov. The site is updated frequently and contains links to other useful sites as well.

The IRS has produced a number of publications related to nonprofit recordkeeping. Two excellent publications include:

- *Compliance Guide for 501(c)(3) Tax-Exempt Organizations*, IRS Publication 4221
- *Charitable Contributions—Substantiation and Disclosure Requirements*, IRS Publication 1771

Additional publications you may wish to consult include:

- *A Charity's Guide to Vehicle Donation*, IRS Publication 4302
- *A Donor's Guide to Vehicle Donations*, IRS Publication 4303

These are available from the IRS or through its website.

Land Trust Alliance

The Land Trust Alliance has a wealth of information of interest to land trusts. Much can be accessed through its website, www.lta.org. Members can access additional information on the digital library housed on The Learning Center (<http://learningcenter.lta.org>).

Sample Land Trust Policies, Procedures and Practices

Land trusts vary greatly in program, size, location and organizational complexity. Included are materials from a variety of land trusts to help describe the range of options available in creating and maintaining a recordkeeping system.

Bethany Land Trust, Connecticut

The Bethany Land Trust is an all-volunteer land trust serving the local community of Bethany, Connecticut, that owns 14 parcels of land and holds 13 conservation easements, bringing the total acreage under its protection to approximately 420 acres.

Records Policy (page 183)

This land trust's records policy describes the organization's most critical records, where they are kept and for how long.

Colorado Open Lands

Colorado Open Lands is a statewide land trust holding more than 100 easements, protecting more than 179,000 acres of productive agricultural lands, threatened viewsheds and critical habitat.

Conservation Easement Program Manual, Table of Contents
(page 185)

This document outlines how Colorado Open Lands organizes information on its policies and procedures related to its conservation easement program.

Conservation Easement Program Manual: Filing and Storage
(page 187)

This detailed document describes Colorado Open Lands' comprehensive conservation easement data management system, which consists of a Microsoft Access database, an electronic filing system, a GIS spatial database for maps, a hard filing system and a system for long-term archiving and storage.

Minnesota Land Trust

The Minnesota Land Trust is a statewide land trust managing a portfolio of more than 300 conservation easements, protecting 27,000 acres of land.

Project Information Reports and Lists (page 203)

This document describes how the Minnesota Land Trust tracks and maintains information on its land protection activities. The system includes a project tracking worksheet, a completed projects list, monitoring worksheets, a statewide map and a methodology for tracking other land protection activities.

Land Protection Project Files — Structure and Content (page 210)

This document describes the organization's land protection projects filing and record management procedures. It includes sections on archiving, filing structure, project file components and protocols for paper and electronic files.

Recordkeeping and Filing and Rules and “Map” of Electronic Files
(page 230)

These documents outline the rules for the Minnesota Land Trust’s overall recordkeeping and filing systems. It describes what records the organization keeps, where they are located, who is responsible for their maintenance and their retention period.

Teton Regional Land Trust, Idaho

The Teton Regional Land Trust is a regional land trust serving seven counties in eastern Idaho and protecting almost 25,000 acres of land through more than 100 transactions.

Records Policy (page 250)

This land trust’s policy document includes procedures for its conservation project development and stewardship records, financial records, personnel records and off-site records storage.

Records Procedures (page 255)

The procedures document outlines guidelines and standards specific to the Teton Regional Land Trust’s core work in land protection and stewardship.

Vermont Land Trust

The Vermont Land Trust is a mature, experienced land trust that has protected almost 500,000 acres of land through more than 1,200 real estate transactions.

Conservation Stewardship Program Records Philosophy (page 268)

This document describes the land trust’s overall principles of records management for its stewardship program and how records are organized.

Vermont Land Trust Electronic and Paper Records Retention Schedule
(page 270)

This schedule is an internal reference document that guides staff in determining what records to retain, in what format (paper, electronic or both) and for how long. Using the schedule, any staff is able to determine how to handle any document appropriately. This system allows document retention to be relatively uniform with a large staff. While the Vermont Land Trust has one primary document manager, its 10-person stewardship staff routinely makes decisions about document retention. The schedule guides those decisions and documents periodic document review and destruction.

Records Policy And Management: A Key Aspect of Protecting Land “in Perpetuity”

by Darla Guenzler

YOU KNOW THOSE FILES STACKED ON

top of your file cabinet that you are going to file some day? It is hard to spend time filing when you are completing a transaction, writing a funding proposal and mailing membership solicitations, but some of those files are more important than you may realize. Your records are critical for financial audits, easement defense and board requests, among other demands. Particularly in the event of litigation, your records, and your ability to document their authenticity, could be paramount.

Consider conservation easements. In the coming years, some easements will encounter challenges and/or violations that engender litigation. So far, only 21 of the 7,400 conservation easements held by local and regional land trusts have involved litigation over violations, and all but six were settled out of court, according to LTA's 1999 Violation and Amendment Study. In the Bay Area, the Open Space Council's 1999 easement study found that 14 percent of the region's 315 easements have experienced violations of varying severity. *[Both studies were covered in the Winter 2000 Exchange.]* Challenges and violations are expected to increase as easements mature and property passes out of the hands of the original grantors.

Through easement stewardship activities such as monitoring, land trusts strive to document the condition and



Julian Meisler, conservation planner for Solano County Farmlands and Open Space Foundation (CA), organizes files.

Darla Guenzler

features of the property, identify problems and violations, and build a relationship with the landowner. For some easements that encounter challenges, the stewardship records will be used in legal proceedings. Attorney Karin Marchetti in Maine encourages land trusts to draft easements that will stand on their own without reference to external records of the land's condition. However, she

emphasized that “there will always be situations that will rely on land trusts' records.”

To succeed over the long term, a land trust needs to construct a records management system, adopt a records policy and ensure that staff, volunteers and board members are all committed to maintaining the system. (*Records* include documents, photographs and other materials that serve to perpetuate knowledge of acts, events or conditions. *Records management* is the manner of treating, handling and controlling records. A *records policy* is a policy adopted by the land trust that delineates its records management system.)

An Easement Litigation Scenario

At some point, a case will arise in which the land trust's records are a critical part of the evidence. Consider the following hypothetical scenario:

It is 2020. A road has been constructed parallel to a creek

within a forest, threatening to damage the creek through increased sedimentation and light. The easement does not allow the creation of new roads. The landowner is claiming that the road existed when he purchased the property, but it had fallen into disrepair and was overgrown. He had merely cleared vegetation from an existing road.

Negotiations fail and the land trust is forced to file suit. To support its claim that no road existed, the land trust is relying upon the baseline document report completed soon after the easement was signed 20 years earlier, and upon annual monitoring reports and associated photos. The baseline and other materials show roads in other locations, but not the "road" in question.

The land trust's attorney wants to introduce these materials as evidence in court. Normally, she would call the creators of the documents to the witness stand to verify the documents' authenticity. Unfortunately, she cannot. A long-time board member, who has since passed away, created the baseline report. The former staff member who performed most of the monitoring cannot be located. No one can claim to have first-hand knowledge of the information in the written materials except for the last five years of monitoring reports. However, the court needs to ensure that any introduced documents are legitimate and unaltered.

To introduce the materials in court, the attorney needs to gain an exception from the court, specifically, the "business records exception to hearsay." (The rule against hearsay prohibits the admission into evidence of statements not made first-hand on the witness stand. There are many exceptions, such as for bona fide business records.) She will call a staff member of the land trust to the stand. The staff member will testify that during her five-year tenure, "the land trust's practices has been to do 'x,' and 'y' is how I've always kept the records." She may go

into detail about how monitoring records are created and stored, and that the original baseline documents are kept in long-term storage with a working copy in the office files.

In the foregoing scenario, the staff member's oral testimony would likely be sufficient to secure an exception to the hearsay rule for the past five years of monitoring records, but the existence of a records policy would substantially enhance the records' admissibility.

The land trust's attorney is still faced with the problem of getting the baseline report and the first 15 years of monitoring records admitted. Unfortunately, the staff person could only testify about record-keeping practices during her tenure. For documents that pre-date the current staff, the attorney is faced with the impossibility of locating and bringing in the former staff member. Again, a records policy might well obviate the need for "historical" witnesses.

Elements of a Records Policy

A records policy should:

1. state that the document embodies the functional principles of the organization's record policy;
2. describe how records are created, collected and stored; and
3. be dated.

The policy should explain what information is collected, when, how many copies are made, how and where the original and copies are stored, and so forth. If a previous records policy existed, the updated version should note that, explicitly state any significant differences from the previous version and whether it supersedes all previous versions.

In most circumstances, it is preferable for the board of

Maintaining Digital Records

For digital information, two kinds of maintenance are necessary. First, digital media use a magnetic process to store information. Over time, the quality of the information degrades and may eventually become unreadable. The land trust needs to periodically recopy zip disks, floppy disks, hard drives or tapes.

Second, as important changes in software or hardware are made, the organization needs to simultaneously convert its back-up and historical information so that it continues to be accessible if needed. Inevitably, new technology will replace any medium and format used. While there will be a gradual transition (as there was from 5-1/4 to 3-1/2 inch disks), it will be difficult to access the older technology eventually. (When was the last time you saw a 5-1/4 inch drive?) The land trust needs to be aware of these changes and make the appropriate adjustments.

A good time to make comprehensive assessments and conversions is when new computers are acquired. That often brings a variety of changes in both software and hardware, and is the juncture at which conversion of archival information to new media should be considered. These days, for example, many organizations are migrating floppy and zip disk storage to CD-ROMs. If stored properly, this medium is more secure and less vulnerable to degradation. It also saves a great deal of space and is very inexpensive. When converting to new technology, take a few moments to document the conversion procedure. "Such a conversion," attorney Andrew Dana notes, "if not done and documented properly, may cause a court to reject admission of the evidence because the data will no longer be the original data."

—Daria Guenzler

directors to adopt the records policy. For land trusts with multiple professional staff, the executive director can develop and promulgate the policy statement as an inter-office memorandum. The land trust should also check with a litigation attorney to determine if the proposed policy would meet state legal requirements and evidentiary practices.

In addition to the value for potential litigation, a records management system and policy have other benefits. Developing a records policy helps assure that key documents are handled properly and not misplaced. It also serves as a vehicle for coordination among individuals. This is particularly important in offices where multiple staff, volunteers and/or board members use the organization's documents.

Developing and maintaining a system can help overcome idiosyncratic filing methods, and establish a routine for making back-up copies (digital or paper). As the board and staff change, a records policy helps provide consistency and serves as a guide for newcomers to the organization.

A Collection of Policies

Some land trusts may find that they need to develop more than one document to describe their records management. For example, one document may be devoted to general administrative records, such as board materials and financial records. Another document may describe the creation and management of easement stewardship records.

Land trusts should delineate each of these documents as part of the records policy, as described in the three steps above. Then list the individual documents (such as the easement stewardship records management policy) that comprise the whole system and attach a copy of each. If necessary, address any larger questions about how the individual documents interrelate. Again, check your effort with a litigation attorney in your area.

Columbia Land Conservancy (NY), for example, has developed three documents. The first describes the content and organization of the land trust's office record for each of its conservation easements. The second, "Archive File Procedure and Listing," describes the process and content for archiving easement records. It covers the topics of materials, temporary storage before archiving, organization of archives, and so forth, including driving directions to the off-site storage facility. The third document is a Baseline Document Checklist. "Using these three documents, we are now developing a Conservation Easement Records and Stewardship Policy that will interface with each of these documents," said Judy Anderson, executive director of the land trust.

Questions to Consider

There is no single correct way for records to be created and organized. However, there are a variety of issues for a land trust to consider in developing a records management system and policy:

■ What are the organization's key documents?

The original Articles of Incorporation, IRS designation, minutes of board meetings, conservation easements and baseline documents are all key documents. In fact, most "legal documents" need to be protected. Original documents should be stored in a secure, off-site location.

■ **What other documents and information should the organization maintain?** These would include easement monitoring reports, real property appraisals, annual financial audits and membership and donor information. Some of these, such as easement monitoring reports, should be stored off-site; others can be stored in-house.

■ **How is information stored?** For its most important documents, the land trust will need off-site storage in addition to having office copies of documents and computer files. Off-site storage is important in the event of damage to the land trust office.

Tailor your policy to address the most likely threats. Earthquakes are a problem in California, but not in many other areas. Fire, insects, flood, mold, dust, wear or tampering may pose different levels of threat to different land trusts. "Records management is, in part, risk management," said Andrew Dana, an attorney in Montana. "The risks to records should be explicitly identified, and policies developed to minimize these individual, site-specific risks."

Safety deposit boxes protect against some threats, but they are not particularly well suited for volume storage of documents. A better option might be to contract with a document storage company. Document storage facilities are better suited to long-term document storage, address more of the concerns noted above, and are usually more cost effective than safety deposit boxes. You may want to find a company some distance from your local area (for example, one that is out of the flood zone you are in). There are also firms and consultants that specialize in document and records maintenance and can assist the land trust in creating a system.

Your land trust's records policy might also address practices to preserve documents as long as possible (such as maintaining certain levels of humidity or restricting light and using acid-free, conservation-quality paper).

■ How many copies of documents will be retained?

The land trust will need different numbers of copies for different types of documents. For example, the original incorporation papers may be kept at a document storage facility, but the land trust must have copies in the office. For easement stewardship, some land trusts have three sets of all relevant documents: one for the office staff, one to take in the field, and one archive set. Single copies of many types of financial records are typically sufficient, but annual audits may be archived and an office copy maintained.

■ **How often will files be backed up?** This is relevant for any information kept in a digital format, such as donor information. Copies can have two different purposes: (1) to

Digital Images as Legal Evidence

There has been much debate about the use of digital cameras for record-keeping, and the admissibility of digital photographs in court. Some are concerned digital photographs will not be admissible, but digital photographs have already been admitted in litigation, and their acceptance will increase, particularly when accompanied by a written record identifying the photo and describing its contents. (There were once similar questions about tape from video cameras because it was not "photographic." It is now widely accepted.)

Both traditional 35mm and digital photos are vulnerable to manipulation. A 35mm print or negative can be scanned and then manipulated digitally, just as a digital image can be manipulated. There is no guarantee against manipulation, but there are processes for investigating and proving whether an image has been manipulated. Also, some digital cameras have watermarks or other mechanisms for establishing authenticity. These techniques are worth exploring.

When a photo is presented for consideration as legal evidence, typically, a witness — usually the photographer — identifies the photograph, testifies that it has not been altered, and that it accurately depicts the subject matter. This testimony establishes the authenticity of the image, and that is grounds for its admission. Admission into evidence is more problematic if the photographer cannot testify because he or she is unknown, unavailable or dead. However, images can still be admitted based on authenticating context.

The best way to prove that your land trust's images have not been manipulated is to carefully document and store photos in accordance with a records policy. The land trust should think in terms of building the context for each image. In our hypothetical scenario *[see page 10]*, the land trust has a good baseline with relevant descriptions and photographs that show the existing roads. The land trust has 20 years of written annual monitoring reports with photographs taken each year. If an opponent were to come in with a single picture that has been manipulated to show a road previously existed, as the landowner claimed, the image would be overwhelmingly countered by the organization's photographic and written history.

There are, however, reasons not to use digital cameras at the present time. First, there is an issue of resolution. Currently, digital cameras under \$1,000 do not have more than a 3.5 megapixel resolution—less than half the resolution of 35mm. Resolution becomes very critical when photographs have to be enlarged or cropped. "In a litigation case, it is often desirable to enlarge a photograph to a poster size for easy viewing by jurors," stated California attorney Michael Roquemore. "Depending upon the enlargement size, a low-resolution or poorly-focused image will become blurred." In many cases, a photographer may choose not to use the maximum resolution possible on his digital camera because the image doesn't require it and larger resolution photos take more disk space, time to download, and so forth. However, in a courtroom setting, a clear enlargement can be very valuable.

Agfa, a manufacturer of digital cameras, offers the following maximum recommended print sizes for different minimum resolution settings (for high-quality color prints):

- 800,000 pixels — 4 by 6 inches
- 1 megapixel — 5 by 7 inches (8 by 10 inches results will vary)
- 2 megapixel and larger — 8 by 10 inches

A second current limitation of digital cameras is that only the more expensive cameras (costing more than \$1,000) accommodate different lenses. Depending on what you are trying to photograph, you may not be able to get a close-up or wide enough photograph without a specific lens.

Like many technologies, digital cameras are rapidly improving. For example, the press reported in late September that the Foveon Company had designed a chip "capable of capturing digital images with a resolution of 4,096 by 4,096 pixels per square inch—roughly twice the resolution of regular 35mm film—at a fraction of the cost." Of course, it may be some time before this chip is developed as a consumer item.

An alternative to buying a digital camera is to have 35mm photographs scanned. When developing film, pay an additional \$10 to \$20 to have the images burned onto a CD-ROM. Ask for high resolution. (Avoid floppy disks; their low capacity requires images to be compressed at low resolution.) In this way, the land trust will have both prints and a digital version that can be stored on a computer or archived. If all of the photos on the CD-ROM are not used, such as in a baseline, note which ones are used. (The CD-ROM may have to be copied periodically to ensure the data are not lost.)

—Darla Guenzler

backup recent work in the event of a computer problem, building fire, or so forth, and (2) as a copy for historical or archival purposes. Records management should address both of these purposes.

■ **How long are records maintained?** This will vary with the type of document. On some points, the land trust has external guidance. For example, the IRS has regulations concerning how long tax-related information must be kept, and some grants or contracts require that records be kept for various periods of time. Easement-related documents should be kept for as long as the easement exists. The land trust decides how long to keep other kinds of records, such as general correspondence or old mailing lists.

■ **Maintenance and Inspections.** As a land trust ages, so will its documents, digital information and photographs. Assure that there is space and proper attention to storing the materials in a way that doesn't further damage them. For example, throwing copies of baseline documents in a drawer is simply unacceptable; the pages will be torn and bent, and maps or photos will fall out. As a result, the documentation might become legally inadmissible. A system must be in place for baselines to be properly stored, for instance, in binders on shelves or in secure files.

Inspect your materials periodically. Is everything present? Are the materials stored properly? When was the last time a new set of disks was copied? [See box on *Maintaining Digital Records*, page 11.] Early detection of problems provides the opportunity to repair damage and prevent further damage or loss of materials. Board members should inspect all files and documents if their land trust operates out of volunteers' homes. The loss of entire boxes of important files has sometimes been uncovered only when those files were needed.

■ **Identification.** Label your materials. It may seem obvious that a photograph is of so-and-so's northwest field, but it may not be obvious to your successor. If a field is paved over, the best way to prove its former condition is an authenticated photograph and written description. [See box, page 13.]

From a legal defense viewpoint, accurate identification is critical. It will also save time. For instance, labeling your back-up disks with the general contents and date will relieve you in the future from searching for a document by reading each disk directory in a stack of disks.

■ **Document Tracking.** Individuals need to remove and use documents from the office files on a periodic basis. It may be necessary to track the location of some critical files, particularly in a large office. One simple method is to tape a sign-out sheet—with the file name, borrower's name, and date of removal and return—on the file cabinet drawer. Unless it is an exceptional circumstance, such as litigation, archival materials should not be removed. If they are removed temporarily, they should be tracked.

■ **Be Realistic.** Create a system for managing your records that the organization can actually sustain—both in terms of cost and staff time. It is important to be able to maintain the system you've described in the records policy. Records management does not have to be expensive or enormously time-consuming. However, it does require some resources, which should be viewed as an investment in the long-term success of your organization. If necessary, it is better to take sound, incremental steps than do nothing.

The Big Picture

Remember that it isn't enough just to maintain records—the content needs to be there. Your records need to document the land trust's actions, findings or concerns. Preston Bristow, of Vermont Land Trust, notes that one of the land trust's motivation in creating and maintaining well-documented records is institutional loss of memory. "We've simply had too much staff turnover in the 20 years we've been holding easements to be able to expect to find a person who from personal memory can recollect the circumstances and terms surrounding any particular action or decision."

Next Steps

The Bay Area Open Space Council has a project underway to create a model easement stewardship program, and is assembling a team of attorneys and land trust professionals to help develop model procedures and policies, including a records policy. The Open Space Council will then work with three land trusts to implement the models. The resulting model records policy and several examples of policies and record management systems will be available in late 2001. This model will be broadly distributed.

With a thoughtfully constructed system, a records policy that explains the system, and with continued training to maintain the system, records management doesn't have to be an overwhelming job. If a land trust's primary work—land conservation—is to be enduring, we need to ensure that we have the documentation to back it up. 🌱

The author wishes to thank those who reviewed this article: Judy Anderson, Preston Bristow, Elizabeth Byers, Andrew Dana, Karin Marchetti and Michael Roquemore.

Darla Guenzler, associate director of the Bay Area Open Space Council, directs the organization's research initiative on conservation easements. The Council is a collaborative effort of public and non-profit agencies, providing regional leadership for the preservation and professional management of open spaces in the San Francisco Bay Area.

Digitally Documenting Baseline and Stewardship Data

by Eric Erler

IF A LAND TRUST IS TO SUCCEED in its most fundamental goal, the permanent protection of open space, it must systematically document baseline and stewardship information for properties on which it holds conservation easements and fee title. A number of land trusts are exploring ways to store and access this documentation digitally. A digital system provides quick access to information, improves consistency in record keeping, simplifies organization and reduces the need for file space.

This article discusses techniques for creating a baseline and stewardship documentation system that links baseline documentation reports, conservation easement documents, maps, photographs, monitoring reports, scientific and financial data, database files and maps through a simple Web page interface on a desktop computer. While this system uses Web page software, the information is stored internally and is not accessible over the Internet.

Limited funding and increasing demands for services often compel land trusts to focus on getting the easement signed.

Yet, because it is impossible to retroactively document property conditions, it is imperative that a land trust establish good documentation procedures, digital or otherwise, as early as possible. This documentation system evolved as a result of the frustration some land trust staff and volunteers have experienced in accessing stewardship records. Some lacked a clear system for data storage. And, even when there was a system, paper records were all-too-easily removed or misplaced.

When the Teton Regional Land Trust (TRLT) implemented a digital system of storing stewardship records in 1999, it helped the organization gain a better overview of its records, as well as faster access to them, according to Executive Director Michael Whitfield. "We needed a system that tied all our records together in an easily viewed format, one that would allow us to track projects carefully and identify any gaps in our documentation. We also had greatly upgraded our policy regarding easement stewardship and wanted a system that clearly demonstrates how well we are complying with that policy."

Figure 1:

Example Documentation Checklist

- | | | |
|---------------------------------|---|--|
| • Baseline Documentation Report | • Wetland Delineation Report | Shoreline Buffers Map |
| • Conservation Easement | • Environmental Site Investigation Report | • Wetlands Map |
| • Easement Summary/Abstract | • Conservation Buyer's Package | • Hydrology Map |
| • Annual Monitoring Reports | • Board Property Profile | • Soils Map |
| • Landowner Contact Record | • Aerial Photograph of Property | • Contour or Elevation Map |
| • Site Management Plan | • Photo-Point Location Map | • Vicinity Map |
| • Project Checklist | • Photographs Documenting Property from Specific Photo-Points | • Pasture and Fence Map |
| • Landowner's Stewardship Goals | • Wetlands, Stream and | • Geology Map |
| • Stewardship Finances | | • Reserved Building Sites Map |
| • Property Appraisal Report | | • Dominant Vegetation Identification Map |

Figure 2:
Example Computer Folder Structure



Checklists: A Good Start

Checklists are a good starting point in establishing consistent stewardship practices. A *Project Checklist* serves as a flow chart for each project, identifying every step necessary for its completion, from initial donor contact to easement signing. As each step is completed, the completion date and initials of the person responsible are recorded. A *Documentation Checklist* [see Figure 1] then specifies the documentation necessary for stewardship.

The specific items on these checklists may vary, depending on the con-

servation goals of the land trust and the characteristics of the property or easement. Nevertheless, these lists provide a crucial outline for project management and stewardship documentation, helping the land trust identify and rectify any omissions or failures to complete a task. The more detailed the checklists, the fewer the opportunities for oversights or errors.

Structuring Digital Files

Before arranging the items listed in the Documentation Checklist on your computer, careful thought should be

given to the process of naming, storing and accessing files. An organization is often able to improve its stewardship efforts significantly by being consistent in the naming and storage of files.

A separate folder should be created for each property on the computer's hard drive or network. It is easy to underestimate the volume of data that will be needed for adequate baseline and stewardship documentation.

Typically, folders used for storing data related to a specific property will be given the name of the property owner or easement donor. Within each of the property folders, additional folders are created to hold all files associated with that property. As with the *Project* and *Documentation Checklists*, the purpose of developing a system of naming folders is to ensure consistency, and to minimize opportunities for misplacing or omitting data. As shown in the *Example Computer Folder Structure* [Figure 2], when someone needs to view the *Byrne Property Hydrology Map* contained in the *Baseline Documentation Report*, or annual monitoring photographs of the Byrne Property from 1999, there is no doubt where these files will be found.

This same consistency should be applied when naming files. Files should be given a name that will make sense to anyone looking at the list of data files. Instead of naming the second draft of the Byrne conservation easement *draft easement*, name it *Byrne Conservation Easement 2nd Draft*. Instead of the name *buffers* for a map that shows wetland, stream and shoreline buffer areas on the Byrne property, name the map *Byrne Property Wetland, Stream and Shoreline Buffers Map*. File names can be up to 255 characters on a Microsoft Windows operating system (Windows 95, 97, 98, 2000 or NT). Macintosh operating systems may require shorter file names.

James MacDougall, land manager for Essex County Greenbelt Association (MA), set up a digital documentation system for his land trust after seeing a

Exchange: Digitally Documenting Baseline and Stewardship Data

Rally demonstration. With a clear file structure, finding information has never been faster, he said. "The time required to access information on a CD is much less than any type of paper file."

Acquiring Digital Documents

Much stewardship data are already created in digital format, including baseline reports, conservation easement documents, and other text files created using a word-processing program, photographs taken with a digital camera or returned from the developer on a CD-ROM disk, maps created using a computer graphics program, GIS layouts, etc. Most maps, photographs and other data not originally created in digital format can be scanned and saved as digital files.

The cost of high-quality scanners has dropped dramatically in recent years. A high-resolution (2,400 dots per inch) scanner, capable of scanning an 8 1/2 by 11-inch document, can be purchased for less than \$200. The cost of a scanner typically includes software for using the scanner and working with images.

Certain documents cannot be converted to digital format. For example, an appraisal report or wetland delineation report prepared for the land trust by an outside consultant are the property of the consultant hired to prepare them, and the length of the reports would make scanning impractical, even with permission. These and any other documents not in digital format should be indexed in your digital records. The index should include the document's title, date created, brief description and storage location. If a hard-copy document is moved or superseded, update the index information. A land trust should decide which documents to retain in hard copy. For example, a hard copy of a signed conservation easement and a baseline documentation report should be stored in a safe place.

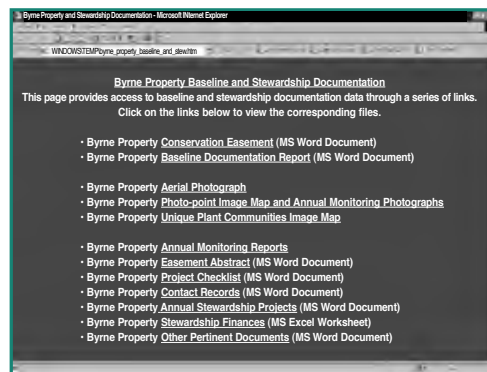
Linking Documents

One of the most effective ways to access all of the data related to a specific property is to create a series of links to each file from a simple Web page. This can be done using Microsoft FrontPage, Adobe PageMill, or other off-the-shelf Web page editing software. The Web pages for each property link all data associated with that property, regardless of file type or storage location. (As previously noted, the Web page links discussed in this article point to files on an office computer or network and are not accessible over the Internet.)

Because baseline and stewardship documentation data consist of many file types, a Web browser program, such as Microsoft Internet Explorer or Netscape Navigator, may be the most efficient method of accessing these files. Whether a Web page links to a text document or a spreadsheet, clicking on the link will cause the word processing program or spreadsheet program to open automatically to display the desired file. Photographs, GIS layouts, maps and other images are usually saved in ".jpg" or ".bmp" format. Links to

images and maps trigger a Web page to be displayed containing the image.

Figure 3: Example of Web Page Links to Baseline and Stewardship Documentation Data



Once a series of Web pages are created for one property, the whole series of pages can be used as a template and duplicated for other properties, changing only the property name and adding or removing links to specific files, if necessary. Each property's data files are in the folder labeled with the property or donor name, and all the data on one property can easily be backed up by copying the contents of that folder (such as the Byrne Property folder in Figure 2) onto a Zip disk or CD-ROM. Back-up disks can be stored off-site, and updated at regular intervals. [For more information on backing up digital records, see page 11.]

Maps and Photos

Another key advantage of using a Web page interface for linking to files is the ability to access related data by clicking on points on a map or photograph. This is known as an *image map* [see Figure 4]. Any photograph or map—including aerial photographs, GIS layouts, and hand-drawn line maps—can be converted to an image map using Web page editing software. For example, points on an aerial photograph or map can be linked directly to annual monitoring photographs taken from those specific points on the ground. When someone clicks on a "photo point," a new page displays all of the photographs taken from that point.

Photos should be labeled by date for quick comparison. More data associated with each photograph such as compass heading, and descriptive information can also be linked from each photograph.

Image map technology can also be used to link an area on a photograph or map to text documents. For instance, if a baseline study found unique plant communities located on the property, lines representing the boundaries of the

various plant communities could be drawn on a photograph or map. When someone clicks within these boundaries, a text document could be displayed describing the plant community along with photographs and any other desired data.

Figure 4: Example of Image Map Technology



By clicking on a photo-point on the aerial photograph at left, a page is displayed with all annual monitoring photographs taken from that point on the ground. Additional data such as compass heading, date of photograph, and descriptive information can be recorded with each photograph.

Linking data to images, and images to each other, helps put photos in context and makes them a useful reference for future comparisons. Photographs taken with standard 35mm film can be developed and returned on CD-ROM as high-resolution digital images. These images can then be integrated with the maps and other documentation data.

Of course, the easiest way to acquire digital images is with a digital camera. While digital cameras may range in price from a few hundred to a few thousand dollars, a land trust should consider factors such as resolution, storage capacity, zoom capability and other features in addition to cost. Digital cameras operate on rechargeable batteries and require no film or development. Aside from the cost savings of bypassing development, the cameras allow someone in the field to view images as they are recorded, ensuring adequate documentation. Undesired images can be erased immediately.

Digital Concerns

Despite these important benefits, some land trusts have resisted the use of digital cameras and other computer technology for documentation purposes. Concerns surrounding digital technology most often relate to the potential to alter or manipulate images. Before an organization forsakes the extraordinary benefits of this technology, careful consideration should be given to the justification for concerns surrounding its use.

While any data—including hard-copy documents, text files, and 35mm or digital photographs—could be altered, keep in mind that photographic documentation is only one facet of a comprehensive stewardship program. An organi-

zation that has a consistent record of adequate and timely documentation, digital or otherwise, supported by accurate reports, first-hand testimony and a good records policy is in a strong position to defend an easement in court. [For more on records as legal evidence, see page 10.]

Costs of Implementation

The expense of implementing a digital documentation system varies. While some land trusts may already have the equipment and software to implement this system, others may need to invest in computers with more memory, as well as equipment such as a scanner, digital camera and software. Some will need training to set up the system or to use with new software.

Because the transition to a digital baseline and stewardship documentation system may involve significant changes in procedure, an organization should recognize that it will also require a commitment of time. Some time will be required to learn the new digital system and become familiar with new software, but the majority of time may well be spent accounting for and acquiring data. When a land trust begins using project and documentation checklists and implements a system for obtaining and storing data, any significant lapses in data will quickly become apparent.

"The ability to easily review the entirety of our stewardship records for a given property also allowed us to tighten up our documentation standards," noted Mr. Whitfield of Teton Regional Land Trust.

It took two staff members two weeks to launch the land trust's new digital system. "Once operational, the time savings in obtaining and monitoring stewardship documentation easily compensates for what we spent for the system," he said. Nevertheless, he added, staff training and review to see that the system is properly implemented should be an ongoing effort.

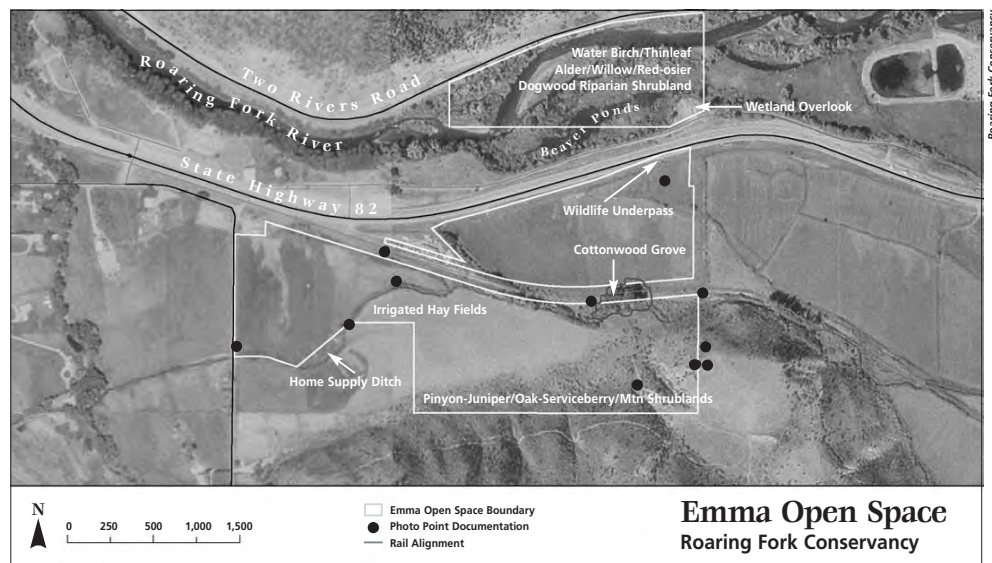
Teton Regional Land Trust did not need to buy new computers; it paid about \$2,600 for software and consulting in setting up the system.

Nearly all land trusts rely on digital technology to some extent. Making an effort to understand this technology and how to use it effectively can benefit land trusts by streamlining their systems for baseline and stewardship records storage, and ensuring that important stewardship data is accessible. With accurate documentation of property features, periodic monitoring, and the ability to efficiently access all pertinent data, a land trust is in a position to enforce the terms of a conservation easement, prevent easement violations, and act as a permanent steward of the land. 🌿

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The Legal Efficacy of New Technologies in the Enforcement and Defense of Conservation Easements

by Melissa K. Thompson



AERIAL PHOTOGRAPHS ARE ESSENTIAL TO UNDERSTAND THE NATURE OF A CONSERVATION EASEMENT—whether it's for mapping where to take baseline photo point documentation, or to understand the conservation easement's place in the surrounding environment. For this aerial of the Emma Open Space, the Roaring Fork Conservancy (CO) delineated the major features on the easement and surrounding areas, giving a perspective that cannot be captured on land. The admittance and relevance of aerial photographs in litigation is well established.

New technologies for stewards of land subject to conservation easements are the topic of much debate. Some of the most popular include aerial photography, photogrammetry, digital photography, geographic information systems and global positioning systems.¹ These technologies can assist in creating baseline reports, monitoring activities and conditions on land subject to conservation easements, formulating and implementing management plans, and engaging in litigation to enforce or defend conservation easements.

In addition to expense, which will not be addressed in this article, an important consideration for land trusts and public agencies debating whether to invest in new technologies is whether the information resulting from their use will be of evidentiary value in litigation. The purpose of this article, therefore, is to define each of these technologies, and to analyze, through case law focused on land-related issues, their usefulness in producing credible evidence admissible

in the courtroom for the purpose of enforcing or defending conservation easements.

Aerial Photography

The admittance and relevance of aerial photographs in litigation is well established. What is of interest in the case law to date for the purposes of conservation easement enforcement and defense is the extent and scope of the use of such photographs. In published court opinions, parties have utilized aerial photographs to demonstrate, for example, the absence of structures at a particular point in time, illegal grading, the presence and extent of wetlands and lakes, the historical delineation of tidelands, the history and extent of flooding, the deterioration of marshland, and the nature and type of vegetation in a specific location.²

Aerial photography is a form of remote sensing technology, which is defined as "the science and art of obtaining information about an object, area or phenomenon through

the analysis of data acquired by a device not in contact with the object, area or phenomenon under investigation."³ Uses for such technology are extensive. For example, remote sensing technology can serve forestry applications like tree species surveys, monitoring clear cutting operations, planning and observing burn areas and studying forest growth. It can be applied to agricultural uses like identifying soil properties, evaluating crop productivity and providing crop simulation models, and to water resources and fishery applications like monitoring and tracking turbidity, sediment load and transport, management of coral reefs, and monitoring pollution and evaluating fish habitat. Additionally, remote sensing technology can help to monitor wetlands and watersheds for tidal and seasonal patterns, climate, hydrology, vegetation and soil type, and it can assist with land use planning.⁴

Evolving case law shows that experts have developed more sophisticated methods of analyzing aerial photographs and, consequently, that litigants are utilizing aerial photographs in increasingly complex factual disputes. Cases involving violations of the Clean Water Act (CWA) and of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) exemplify this trend.⁵

In a relatively early case involving violations of the CWA, *United States v. Larkins*, the federal district court admitted testimony from an expert witness concerning aerial photographs indicating a prevalence of wetland vegetation on a 110-acre site later subjected to the defendants' construction activities. The court noted that "[a]lthough the experts conceded that conclusive identification of particular plant species could not be made on the basis of the aerial photographs, they informed the court that the 'signature' of the vegetation in the photos—its color, shading, tint and texture—indicated a prevalence of wetland vegetation on the site."⁶ The court admitted into evidence expert testimony identifying "an area of black willow, button bush and several species of herbaceous aquatic and semi-aquatic plants" in aerial photographs of the property at issue.⁷ The court considered evidence derived from site and soil inspections by the experts as well,⁸ and concluded that the defendants had violated the CWA.⁹

In the same way that experts in *Larkins* established a historical record with respect to wetlands on the property at issue, in *NutraSweet Company v. X-L Engineering Co.*, the plaintiffs presented evidence through aerial photographs of a history of chemical dumping on their land by a neighboring company.¹⁰ The appellate court affirmed the lower court's determination that the plaintiffs' expert testimony based upon the aerial photographs was reliable.

Of note for the future use of aerial photographs in litigation

are the appellate court's other findings. First, it concluded that the lower court did not abuse its discretion in admitting the evidence because photographic analysis is a well-accepted technique in environmental cases.¹¹ Second, it opined that the trial court did not abuse its discretion in allowing the expert to interpret the aerial photographs.¹² The court cited the expert's testimony that he had been interpreting aerial photographs for 20 years, that aerial photographs are an accepted tool in his field, and that the Environmental Protection Agency requires historical analysis of such photographs in its own work.¹³ Finally, the appellate court noted that the trial court had evaluated the aerial photographs in conjunction with other evidence, namely soil and site analysis, in reaching its conclusion that the defendant had dumped hazardous wastes.¹⁴

Photogrammetry

Put simply, photogrammetry is the science of mapping using aerial photography.¹⁵ Experts explain in recent case law that photogrammetry is "the science of obtaining reliable spatial measurements from three-dimensional photography

... by obtaining (preferably) stereoscopic pairs of photographs of the subject location."¹⁶ A stereoscope is "an instrument for obtaining, from two pictures (usually photographs) of an object, taken from slightly different points of view (corresponding to the positions of the two eyes), a single image giving the impression of solidity or relief, as in ordinary vision of the object itself."¹⁷

The science of photogrammetry evolves in the case law addressing the evidentiary value of aerial photographs. Litigants have employed experts in photogrammetry to testify concerning their interpretations of photographs evidencing the movement and volume of pollutants, and the locations and dimensions of objects, to name two examples.¹⁸

In *New York v. Westwood-Squibb Pharma Co.*, a CERCLA case, the plaintiffs intended to present an expert in photogrammetry at trial to testify concerning

the volume of fill deposited in a creek bed over the course of 25 years.¹⁹ Using highly specialized computer equipment to outline, color-code, label and map each feature of the site, the expert had analyzed aerial photographs taken in four different years during the 25-year time frame.²⁰ One of the defendants filed a motion before trial seeking to exclude the expert's testimony from the proceedings.²¹

The court agreed that the expert should be allowed to testify concerning evidence of fill during the 25-year time frame, but that the plaintiffs would have to cure a deficiency in the expert's testimony at trial by having the expert testify in more detail concerning the principles and methodology underlying some of his factual assumptions.²² The court

Experts in photogrammetry can play an important role in disputes . . . Before and after photographs depicting an area containing a violation of the terms of a conservation easement can be clearer and more persuasive than testimony by a land steward or other witness regarding what he or she saw on a particular day or over the course of time.

determined, even though the expert acknowledged a margin of error from 20 to 40 percent, that the expert's volume estimates were not unreliable *per se* simply by virtue of those margins.²³ It noted the expert's 22 years of experience in interpreting aerial photographs.²⁴

Experts in photogrammetry can play an important role in disputes concerning activities documented in aerial photographs of land subject to conservation easements. A land trust can retain such an expert to testify concerning the content and meaning of aerial photos and thereby help to establish their admissibility and meaning. Before and after photographs depicting an area containing a violation of the terms of a conservation easement can be clearer and more persuasive than testimony by a land steward or other witness regarding what he or she saw on a particular day or over the course of time.

Digital Photography

Digital photographs differ from traditional photographs in two important respects: quality of initial image and compression.²⁵ Traditional film images contain as much as 16 times the information as digital images.²⁶ As a result, traditional photographs make better enlargements for use in a courtroom.²⁷ Some experts opine that digital photographs do not depict color accurately.²⁸ Also, digital cameras can store more images through "compression," which is a process by which the camera discards some of the information contained in the original digital images.²⁹ When a user views or prints these compressed images, the decompression process fills in the discarded information via a "guesswork" process.³⁰ These characteristics raise evidentiary issues in the context of litigation.

Of particular note with respect to creating credible evidence admissible in a court of law, digital photographs are easier to manipulate than traditional photographs, and such manipulation is harder to detect in digital images.³¹ Manipulation of digital images involves "re-sampling" of the series of dots known as pixels.³² Mathematical enhancements of digital photographs include magnification, color substitution or removal of items from an image.³³ Artistic enhancements range from selectively lightening and darkening areas within an image to placing objects in an image.³⁴

There is a dearth of case law to date addressing the evidentiary issues presented by digital photography. One appellate court, however, found that the evidence in the record supported the trial court's determination that testimony by an expert based upon digital photographs had a reliability factor of 100 and a zero percent margin of error [emphasis added].³⁵

In *State v. Hayden*, the court recited the expert's testimony at length:

The advantage of digital photographs rather than analogue film photographs is that digital photogra-

phy can capture approximately 16 million different colors and can differentiate between 256 shades of gray. Digital photographs work with light sensitivity, just like film photographs, except the computer uses a chip and a hard drive in place of the camera's film. The digital photographs are enhanced using software that improves sharpness and image contrast. In addition, pattern and color isolation filters remove interfering colors and background patterns. This is a subtractive process in which elements are removed or reduced; nothing is added.³⁶

Of importance to the court was the fact that at trial the expert testified that the software he used prevented him from "adding to, changing or destroying the original image."³⁷ The court noted the expert's comment that there was no subjectivity in the process, although interestingly the court accepted enhancement of the images.³⁸ Citing a forensic evidence journal, the court explained, "In contrast with 'image restoration,' a process in which things that are not there are added based upon preconceived ideas about what the end result should look like, 'image enhancement' merely makes what is there more usable."³⁹ *Hayden* involved the appeal of a felony murder conviction. The evidence examined by the expert was a latent print taken from fabric.⁴⁰

The emergence of digital photography raises new issues for the creation, discovery, authentication and presentation of evidence.⁴¹ James Keane, a litigation systems specialist, suggests that "the best practice is to keep the source media intact showing the original directory with dates, file sizes and file names automatically generated by the digital camera."⁴² For highly sensitive photos, argues Keane, this might entail keeping the original floppy or compact flash card as the "best evidence," complete with all surrounding shots.⁴³

More and more land trusts are using digital photography to establish records for baseline and monitoring reports. *Hayden* indicates that digital images will serve a land trust well in litigation if certain steps are taken to protect the integrity of the photographs. Establishing a chain of custody for the images is critical.⁴⁴

A chain of custody accounts for a photograph from its inception through its introduction in a courtroom. To present a chain of custody for a digital photograph, a party should begin with the digital camera used to produce the image. Ideally, the camera should contain enough memory to store the image without compressing it, thereby avoiding questions concerning its accuracy and completeness. Second, a party should maintain an "original" copy of the digital image, which can be accomplished by preserving the original memory chip, as Keane suggests, or by copying an unopened image file directly to an archiveable, unalterable storage medium.⁴⁵

As in *Hayden*, it is important for an expert to be able to



testify that the original image has not been added to, changed or destroyed. An expert working with the digital image and software that prevents alteration altogether may be the most effective means of preserving a digital photograph and using it as evidence.

Geographic Information Systems and Global Positioning Systems

Geographic information systems (GIS) are an organized collection of computer hardware, software, geographic data and trained personnel that is designed to efficiently capture, store, update, manipulate, analyze and display all forms of geographically referenced information.⁴⁶ Similar to remote sensing applications like aerial photography, the opportunity for errors and manipulation exists in GIS at the collection of information stage, the input process, during storage, at the points of data transformation and output, and during use.⁴⁷ In addition to establishing that evidence derived from GIS is relevant and reliable under standards set forth in federal and state case law and rules, attorneys seeking to admit evidence produced through GIS must be prepared to address issues regarding authentication, hearsay, data characterization and constitutional issues related to rights of privacy.⁴⁸

Although little case law exists to date, in *Surfrider Foundation v. Dalton*, the court admitted information derived from GIS into evidence and found it persuasive.⁴⁹ In *Surfrider*, a nonprofit conservation organization sued the Secretary of the Navy and the U.S. Marine Corps on the grounds that the defendants allegedly failed to prepare an environmental impact statement.⁵⁰ The organization was trying to protect a 32-acre site from development.⁵¹ The court explained that the maps presented in the case were based upon a Master Plan, GIS surveys and an analysis by the U.S. Fish & Wildlife Service.⁵² The court stated:

In the context of litigation, a land trust or public agency defending or enforcing a conservation easement may rely upon a computer-generated engineering map to depict the location, size and/or extent of a violation.

The GIS surveys are digitized documents that draw from 60 years of aerial photographs, 70 years of water resource data, and 25 years of natural and cultural resource data. Upon this record, and upon its own evaluation of these maps, the Court is satisfied that the United States Marine Corp's rejection of the east park was not unreasonable. Therefore, the Corps satisfied NEPA's [National Environmental Policy Act] alternatives analysis requirement.⁵³

In a Comment titled "The Legal Implications of Geographical Information Systems," Jeremy Speich notes that the court in *Surfrider* appeared to be "dazzled" by the data.⁵⁴ He makes the point in his article that a dazzling display of data does not necessarily result in a sound legal decision.⁵⁵ Evidence derived from GIS and other technologies may sway judicial decision-making because of its depth, but reliance on such systems may be to the exclusion of other factors and values like aesthetics, superior alternative uses, public enjoy-

ment⁵⁶ and, to the point for those in the business of land conservation, values focused on wildlife, wilderness, and cultural and spiritual perspectives tied to land.

Another case instructive on the use and admissibility of GIS, although it does not concern a land dispute, is *Connecticut v. Wright*.⁵⁷ There, a defendant convicted of drug possession with an intent to sell within 1,500 feet of a school challenged the admissibility of a computer-generated engineering map showing the distance between streets.⁵⁸ The state presented the testimony of a city GIS technician to authenticate the map.⁵⁹ The appellate court affirmed the admissibility of the evidence.⁶⁰ The court pointed out that the city technician had inspected the actual locations depicted on the map and then entered the data into the computer to generate the map.⁶¹ Also, it noted that the state of Connecticut and private engineering companies had verified the coordination method for the entire system.⁶²

The *Wright* case is relevant to this discussion because of the importance of maps in the creation and stewardship of conservation easements. In the context of litigation, a land trust or public agency defending or enforcing a conservation easement may rely upon a computer-generated engineering map to depict the location, size and/or extent of a violation. Based on *Surfrider* and *Wright*, the critical factors for admitting GIS-driven maps into evidence include the underlying sources of the data and testimony from an expert concerning the GIS and the physical site itself.

As with GIS, there is little case law addressing the usefulness and credibility of evidence based upon global positioning systems (GPS). The case law that exists concerns primarily criminal matters.⁶³ GPS consist of three main components: a space-based component comprised of a network of at least 24 satellites that continuously send out radio signals transmitting their locations, a control component operated by the U.S. Air Force made up of tracking facilities that monitor and correct the positions of the satellites, and a receiver.⁶⁴ A GPS receiver on earth can triangulate its three-dimensional position using the information received from at least four of the satellites.⁶⁵ The system is accurate anywhere on earth to within 100 feet.⁶⁶ Using a technique called differential GPS, users can obtain accuracies of within several feet.⁶⁷ The Department of Defense developed GPS originally during the Cold War to navigate submarines and missiles.⁶⁸

In case law that mentions evidence derived from GPS, frequently the courts refer to the technology in a matter of fact way, and its admissibility is not an issue separate from rights of privacy claims or search and seizure laws. Courts' general acceptance of information based upon GPS may be a result of the technology's many years in service and its relatively ubiquitous commercial nature. Land trusts and public agencies that hold conservation easements can rely on GPS

technology with a fair degree of confidence in the usefulness of the information it produces and its admissibility in a court of law.

Conclusion

Case law to date makes clear that courts routinely determine that aerial photography and photogrammetry, as explained and presented by expert witnesses, can be used to produce reliable evidence. The case law demonstrates some of the ways in which such technologies may be useful for the enforcement and defense of conservation easements.

At least one court has highlighted the advantages of digital photography and noted that the risks of alteration can be limited by software as well as testimony concerning the handling and processing of the images. Finally, although little discussion exists in court opinions to date, both GIS and GPS appear in case law as accepted methodologies.

If and when a land trust or government agency participates in the enforcement or defense of a conservation easement, and relies upon aerial photographs, photogrammetry,

or maps or surveys created by GIS or GPS, for example, that prove the extent and location of encroachments that violate the terms of a conservation easement, the land trust or agency can anticipate the need for one or more experts to explain the technology. The litigation may involve a "battle of the experts" over interpretation of the data, but a court is likely to find evidence based upon the current and new technologies discussed in this article to be both persuasive and admissible, and find expert testimony based upon them to be reliable. Current and new technologies provide stewards of conservation easements with powerful evidentiary tools that will stand the test of time. ☛

Melissa K. Thompson is a senior attorney for Qwest Services Corporation and drafted an initial memorandum on this topic for Colorado Open Lands, Colorado's largest nonprofit land trust. She will present a seminar with Elizabeth Wroblecka called "Advanced Legal Roundtable on Conservation Easement Evidentiary Issues" at the National Land Conservation Conference, Rally 2004. Go to www.lta.org for information.

ENDNOTES

- 1 This article does not discuss satellite imagery or infrared photography because of space limitations and because these technologies are less prevalent than the others listed here. But see *United States v. Larry Reed & Sons Partnership*, 280 F.3d 1212 (8th Cir. 2002)(expert interpreted satellite images to testify regarding soil preparation); *United States v. Fullwood*, 342 F.3d 409 (5th Cir. 2003)(expert interpreted satellite images to testify concerning crop cultivation).
- 2 *Airway Homes v. Boe*, 140 So. 2d 264 (La. Ct. App. 1962)(structures and other improvements); *City of Yucaipa v. Sessions*, 2002 Cal. App. LEXIS 10225 (grading); *Downer v. United States*, 97 F.3d 999 (8th Cir. 1996)(wetlands); *Parks v. Cooper*, 2004 S.D. LEXIS 28 (2004)(lakes); *Lowcountry Open Land Trust v. South Carolina*, 552 S.E.2d 778 (S.C. Ct. App. 2001)(tidelands); *Gasser v. United States*, 14 Cl. Ct. 476 (1988)(flooding); *St. Martin v. Mobil Expl. & Prod. U.S.*, 224 F.3d 402 (5th Cir.2000)(marshland); *United States v. Larkins*, 657 F. Supp. 76 (W.D. Ky. 1987)(vegetation).
- 3 Kenneth J. Markowitz, *Legal Challenges and Market Rewards to the Use and Acceptance of Remote Sensing and Digital Information as Evidence*, 12 Duke Env. L. & Pol'y F. 219, 221 (2002).
- 4 *Id.* at 230-233.
- 5 *Larkins*, 657 F. Supp. at 76, (CWA); *NutraSweet Company v. X-L Engineering Co.*, 227 F.3d 776 (7th Cir. 2000)(CERCLA).

- 6 *Larkins*, 657 F. Supp. at 82-83.
- 7 *Id.* at 83.
- 8 *Id.*
- 9 *Id.* at 85.
- 10 *NutraSweet Company*, 227 F.3d at 788-790.
- 11 *Id.*
- 12 *Id.*
- 13 *Id.*
- 14 *Id.* at 788.
- 15 *Norfolk Southern Corp. v. Chevron U.S.A., Inc.*, 279 F. Supp. 2d 1250, 1269 (D.Fla. 2003).
- 16 *New York v. Westwood-Squib Pharm. Co., Inc.*, 2001 U.S. Dist. LEXIS 11765 *32 (W.D.N.Y. 2001); see also *Chapman v. Bernard's Inc.*, 167 F. Supp. 2d 406 (D. Mass. 2001) (finding photogrammetry to be reasonable and not "junk science").
- 17 *New York*, 2001 U.S. Dist. LEXIS 11765 *32.
- 18 *United States v. Ciampitti*, 615 F. Supp. 116 (D.N.J. 1984)(CWA); *McDowell v. Evey*, 2000 U.S. Dist. LEXIS 13957 (D.N.J. 1984) (collision); *Chapman*, 167 F. Supp. 2d at 406 (product defect).
- 19 *New York*, 2001 U.S. Dist. LEXIS 11765 *33-34.
- 20 *Id.* at *36-37.
- 21 *Id.* at *32.
- 22 *Id.* at *55-56.
- 23 *Id.* at *44-45.
- 24 *Id.* at *33.
- 25 Jill Witowski, *Can Juries Really Believe What They See? New Foundational Requirements for the Authentication of Digital*

- Images*, 10 Wash. U. J. L. & Pol'y 267, 269 (2002).
- 26 *Id.* at 269-270.
- 27 *Id.* at 270.
- 28 Michael Cherry, *Reasons to Challenge Digital Evidence and Electronic Photography*, 27 *Champion* 42 (July 2003).
- 29 Witowski, *supra*, at 270.
- 30 *Id.*
- 31 *Id.* at 271.
- 32 James I. Keane, *Predigitalization: Magic, Evidence and Ethics in Forensic Digital Photography*, 25 *Ohio N.U.L. Rev.* 585, 590 (1999).
- 33 Cherry, *supra*, at 42.
- 34 *Id.*
- 35 *State v. Hayden*, 950 P.2d 1024 (Wash. Ct. App. 1998).
- 36 *Id.* at 1028.
- 37 *Id.*
- 38 *Id.*
- 39 *Id.*
- 40 *Id.*
- 41 Keane, *supra*, at 585.
- 42 *Id.* at 591.
- 43 *Id.*
- 44 Witowski, *supra*, at 291.
- 45 *Id.*
- 46 Markowitz, *supra*, at 240.
- 47 *Id.*
- 48 Rights of privacy are of less concern when evaluating the use of new technologies for matters related to conservation easements because of the express right to monitor and inspect the land granted as part of the easements. For extended discussion of rights of privacy and the use of GIS,

- see Peter M. Flannery, *How to Pry With Maps: the Fourth Amendment Privacy Implications of Governmental Wetland Geographic Information Systems*, 29 *Rutgers Computer & Tech. L. J.* 447 (2003).
- 49 989 F. Supp. 1309 (S.D. Cal. 1998).
- 50 *Id.* at 1315.
- 51 *Id.*
- 52 *Id.* at 1329.
- 53 *Id.*
- 54 Jeremy Speich, *The Legal Implications of Geographical Information Systems*, 11 *Alb. L. J. Sci. & Tech.* 359, 365 (2001).
- 55 *Id.*
- 56 *Id.*
- 57 752 A.2d 1147 (Conn. App. Ct. 2000).
- 58 *Id.*
- 59 *Id.* at 1156.
- 60 *Id.* at 1157.
- 61 *Id.*
- 62 *Id.*
- 63 See *State v. Jackson*, 46 P.3d 257 (Wash. Ct. App. 2002)(installation and use of GPS to track suspect's vehicle); *United States v. Lopez-Lopez*, 282 F.3d 1 (1st Cir. 2002)(expert testimony admitted regarding GPS and GPS coordinates found on boat involved in drug smuggling).
- 64 Speich, *supra*, at 360-361; Aaron Renenger, *Satellite Tracking and the Right to Privacy*, 53 *Hastings L. J.* 549, 550 (2002).
- 65 Renenger, *supra*, at 550.
- 66 *Id.*
- 67 *Id.*
- 68 *Id.*

Preparing for Future Litigation of Conservation Easements

by Elizabeth L. Wroblicka, Esq.

Conservation easements ("CE") present a unique challenge to those who seek to uphold them in court. Given the nature of perpetuity, it is possible that the individuals involved in preparing and negotiating a CE will be deceased when it comes time to enforce its provisions at a trial many years from now. The CE deed may not contain terms that adequately define or describe the original intent of the parties or the condition of the land. The land trust and public agency (collectively, "holder") seeking to defend or enforce a CE in court will need to introduce evidence in the form of supporting documents such as photographs, maps, monitoring reports and correspondence to establish the critical elements of its case.

To afford the best possible chance of success in court, every CE holder should consider today how its documents are created and maintained to minimize challenges to their admissibility as evidence in future legal proceedings. This article will discuss the rules of evidence most relevant to the admission of the particular documents that will likely be involved in CE litigation, and will highlight current best practices by holders in their administration of CE records. The Federal Rules of Evidence are referenced, as many states' evidentiary rules are modeled after the federal rules to some degree. Of course, the practitioner should also be versed in the state and local laws that govern CE litigation and real estate transactions in his or her region.

Several of the recommendations contained in this article were informed by a gathering of approximately 40 attorneys and experienced land trust professionals at a seminar on evidence at the 2004 National Land Conservation Conference last fall. While helpful in highlighting the issues that may be at play in litigation, none of the recommendations given should be adopted as a policy by a holder without thorough consideration by the board of directors and advice of counsel.

I. Exceptions to the Hearsay Rule for Documentary Evidence

"Hearsay is a statement, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted." (*See Rule 801 of the Federal Rules of Evidence.*) A statement may be oral or written, or nonverbal conduct by an individual who intends it as an assertion. Hearsay is not admissible except as provided by law. (*See Rule 802 of same.*)

A typical land conservation transaction involves many documents, including the CE deed, baseline documentation and monitoring reports. Admitting the content of these docu-

ments will often be critical to establishing the purpose of why the land was conserved, as well as the scope of reserved rights and prohibited uses that will no doubt be at issue in CE litigation in the future. Absent an exception to the hearsay rule, the contents of these documents would not be admissible as evidence to prove the truth of what they say.

If the individual who prepared the document to be admitted is available to testify and be cross-examined, then hearsay is not an issue. The more likely scenario is that the "declarant" of the written statements will no longer be employed by the holder, or even be alive, as easement-encumbered land is conveyed many times over to successive owners. Hence, the written statements would be subject to the hearsay rule.

Considering the three main categories of documents involved in a conservation land transaction—the deed, baseline documentation and monitoring reports—one or more of the following exceptions to the hearsay rule may apply, thus allowing the content of the document into evidence to prove the truth of what it states. There are many more exceptions to the hearsay rule than are discussed in this article, and the practitioner should not rely on the following as a comprehensive list. The applicable rules for authentication are also discussed. Not addressed in this article are the broader issues of relevancy and weight to be given the evidence, which, of course, will apply to the admissibility and probative value of the document regardless of whether it falls under an exception to the hearsay rule or not.

A. Records of Documents Affecting an Interest in Property.

Rule 803.14 of the Federal Rules of Evidence provides that the record of a document purporting to establish or affect an interest in property is not excluded by the hearsay rule if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office. This hearsay exception allows admission of a record of a title document to prove not only the contents of the document, but also its due execution and delivery by each person by whom it purports to have been executed. When the record is offered for the purpose of proving execution and delivery, a problem of lack of first-hand knowledge by the recorder is presented. This problem is solved by local statute qualifying for recording only those documents complying with a specified procedure, such as acknowledgment by a notary public of proper execution. In addition, a presumption exists as to delivery of an executed and recorded docu-

Exchange: Preparing for Future Litigation

ment. (See, generally, 5 Wigmore, *Evidence* §§1647-1651.)

Clearly, the contents of the CE deed will fall under this exception. The more challenging practice question is whether the CE holder should attempt to record reports that it generates, such as baseline documentation reports, at the registry of deeds along with the CE to avoid hearsay issues in future litigation.

The pros and cons of recording baseline reports were discussed at the Rally seminar on evidence. In addition to the obvious reason for not recording—some registries of deeds will not accept appendices to deeds, especially lengthy reports with photographs and maps—the following reasons for not recording were offered. A baseline report is a critical document to a conservation transaction and to subsequent monitoring, with the primary purpose of documenting the condition of the land at closing. A holder should not diminish the effectiveness or contents of a baseline report solely with an eye toward avoiding the hearsay rule. Better to create a comprehensive baseline report including maps and photographs and as many pages as necessary, rather than creating a baseline with the primary purpose of meeting local recording statutes.

Two other very good points were made at the seminar that holders should keep in mind when considering whether to attempt to record a baseline report: 1) the report may contain information about a parcel that a landowner does not want to become a public record, such as the location of endangered species; and 2) if the property contains unregulated amounts of hazardous wastes as documented in the baseline report, recording the baseline report and placing it in the chain of title may have an unintended complicating effect on a landowner's ability to sell his or her land or obtain financing and title insurance. On balance, it seems better not to undermine the utility of a baseline report by seeking to comply with the recording statute in an attempt to avoid the hearsay rule.

B. Public Records and Reports.

Another hearsay exception that is similar to the recorded document rule and likely to be of use in land conservation litigation is the public records exception. Rule 803.8 of the Federal Rules of Evidence provides that unless there is some indication of lack of trustworthiness, records, reports, statements or other data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities are not excluded by the hearsay rule.

The reliability of a public record stems from the premise that a public employee has a duty to produce accurate records, and that records open to public inspection are more likely to be correct. A duty to record facts, however, is ordinarily not construed to include expressions of opinion, conclusions or statements as to causes and effects. So when seeking to admit a public record into evidence, it is important to first

establish the duty to prepare the report or record, and then make sure the record speaks to fact and not just opinion.

An environmental agency's report of an environmental assessment and condition of the land, tax assessor maps and property valuation records, historical artifacts data such as the location of ancient remains, and U.S. Geological Survey (USGS) aerial photos and maps are a few examples of public records and reports that would fall under this exception to the hearsay rule. The land trust need only keep track of which public office has the document on file, how to properly request the document, and how to comply with the certification requirements for that type of record as specified by state statute. Usually the keeper of the records of the public agency must subscribe under the penalties of perjury that the records are true and correct.

To qualify for this exception the holder might consider compiling its baseline and monitoring report from maps and surveys and photographs that are existing public records and admissible by virtue of the fact that they are on file with a public office. Once properly certified, for example, a USGS topographical map should be admissible.

At the seminar on evidence, participants pointed out that many public agency records are outdated and therefore not useful for documenting the current condition of the land. In addition, public agencies frequently hire private consultants to prepare the agency's records. This practice should not be fatal to meeting the public records exception because the exception is not premised on the individual who prepares the record, but rather on the duty of the particular public agency to prepare the record. As long as the record is prepared pursuant to the public agency's guidelines and oversight, once accepted by the agency, it becomes part of the public record.

Land trusts should note that a privately authored report that is later filed with a public agency does not meet the criteria of a public record. When the public agency is the holder of a CE, its reports and appendices should be admissible as a public record. But what about the private nonprofit land trust as holder? Even if a land trust could compile the attachments to its baseline and monitoring report from duly certified public records and thus qualify them for admission into evidence in the future, the privately authored report produced by the land trust, which is the meat of a baseline or monitoring report, would still be inadmissible as hearsay unless it meets another exception to the hearsay rule.

C. Business Records.

A third exception to the hearsay rule that will perhaps be the most useful to a land trust when litigating a CE is the business records rule. Rule 803.6 of the Federal Rules of Evidence provides in pertinent part that a memorandum, report, record or data compilation, in any form, made by a person with knowledge, is admissible if kept in the course of a regu-



Rebecca Ornt

larly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, etc. To satisfy this exception, the custodian of the records or other qualified witness must testify to the creation and record-keeping activities of the business entity. "Business" includes a nonprofit corporation, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

The crux of the business records exception is its requirement that writings be made in the "regular course of business." The reliability of a business record is based on the premise that the records are routinely made by those charged with the responsibility of making accurate entries and are relied on in the course of doing business.

Judicial opinions, which vary from jurisdiction to jurisdiction, shed some light on what documents will and will not be admissible under the business records exception to the hearsay rule. In a Texas Court of Civil Appeals case involving the contested admission of an aerial photograph prepared by the U.S. Department of Agriculture Soil Conservation Service (SCS), the photograph was admitted under the business records exception. (*Kaufman Northwest, Inc. v. Bi-Stone Fuel Company*, 529S.W.2d 281 (Tex.Civ.App., 1975).) Texas's business records statute, which is similar to the Federal Rule of Evidence 803.6, allows for admission of a document that was made a) in the regular course of business; b) by an employee with personal knowledge whose regular course of business is to make such record; and c) at or near the time of the act, event, or condition or reasonably soon thereafter. (Art. 3737e, Section 1, V.A.T.S.)

An employee of SCS testified that 1) SCS keeps and maintains aerial maps of the entire county and that such records are within his custody and control; 2) that aerial maps with soil notations are regularly made and kept by the SCS; 3) that the maps are regularly used by SCS employees in developing conservation plans with landowners; 4) that the maps are kept in the regular course of business of SCS; 5) that the maps are prepared by a soil scientist after first-hand investigation and soil testing; and 6) that the particular map offered into evidence was made soon after the time the soil scientist investigated appellant's land. The court held that the map was admissible as a business record. (*Kaufman*, at 285.)

As stated at the outset, frequently more than one hearsay exception will apply to the same document. The Texas Court of Civil Appeals also held that the photograph would be admissible under Texas statute Article 3731a, V.A.T.S. which provides that any written instrument which is permitted or required by law to be made, filed or kept by an officer or clerk of the United States or his deputy or employee, shall, so far as relevant, be admitted as evidence of the matters stated therein. This is similar to the public records and reports exception discussed previously. The SCS photograph,

being a United States government report, was thus found also admissible under the Texas public records statute. (*Id.*)

Conversely, the Massachusetts Appeals Court did not allow a memorandum which it viewed as having been made in anticipation of litigation to be admitted into evidence under the business records exception. In *Heavey v. Board of Appeals of Chatham*, 58 MassApp.Ct. 401, 79 N.E. 2d 651 (2003), the Chatham assistant zoning officer authored a one-page memorandum addressed to the Chatham Conservation Commission which offered comment on a parcel and the opinion that the parcel did not have the required 20,000 square feet of buildable upland. The court held that the memorandum was not a business record, nor a public record, and was therefore inadmissible. (*Heavey*, at 406.) The memorandum was not prepared in the normal course of business; it was an opinion of an employee made in anticipation of litigation.



Fort Bend County Courthouse

What is the "Regular Course of Business" for CE Holders?

The Internal Revenue Service requires documentation of the property's condition at the time of closing for certain easement donations. *Land Trust Standards and Practices* require a baseline report for all easements, whether purchased or donated, and annual monitoring. The existence of these industry standards increase the likelihood that a land trust's reports will be considered a business record—but only if the standards are adhered to. The accepted land trust practice is to prepare a baseline documentation report for all of its easements. In the past, this practice has not always been followed and some holders have CE's without a baseline report. In addition, while the majority of land trusts monitor annually, there are holders who monitor less frequently and/or do not document consistently.

A CE holder's inconsistencies in preparing baseline and monitoring reports and its failure to meet industry, or its own, standards could prove troublesome to a future argument that baseline and monitoring reports are the holder's business record. As one attendee of the Rally seminar stated, "Being in the easement business is serious business. If a land trust can't meet its obligations, it shouldn't be accepting easements."

To meet the business records exception, a land trust should have written policies regarding the preparation of baseline and monitoring reports that are consistent with the industry standard. The land trust should strive to comply with these standards. As a precautionary measure, the CE deed should contain a provision that clearly states that failure to discover a violation or initiate an action to enforce shall not be deemed a waiver of the holder's right to do so at a later time.

Additional recommendations garnered at the seminar on evidence for the creation and maintenance of records in order to satisfy the business records exception include:

- Do not leave multiple blank spaces on baseline or

monitoring reports because it appears that the preparer did not undertake due diligence. Either customize the report form by eliminating blank spaces or write in "not applicable."

- The landowner and the person who prepared the baseline report should sign and date it as being a true and accurate representation of the condition of the property.

- The report should contain factual entries, as opposed to opinions, that may be relied on by experts testifying at trial.

- At the time the property changes hands, the holder should prepare a report of the current condition of the land. The new landowner should sign this updated "baseline" as being true and accurate; this document may also serve as the basis for an estoppel certificate for the outgoing landowner.

- All reports should be produced in multiple copies with one set being properly stored and not tampered with.

Worth mentioning is Rule 801(d) of the Federal Rules of Evidence, which sets forth statements that are not hearsay, and thus admissible. A statement by a party-opponent that is offered against a party is deemed trustworthy enough to be admitted into evidence, regardless of the availability of the declarant to testify. In the context of CE litigation, a baseline or monitoring report that is signed by the landowner as an accurate representation of the condition of the land might later be used against that landowner, his heirs or assigns, by the holder. There are many imaginable instances when a holder will want to admit a baseline or monitoring report into evidence to use against the landowner. Having the landowner sign the report will eliminate the need for the report to come in under one of the hearsay exceptions discussed above. Holders should be forewarned, however, that their signature on the report means that the report may be used against them (the holders) as well.

II. Authentication

Even if a document is admissible under an exception to the hearsay rule, it still needs to be authenticated. Holders should bear in mind the rules of authentication when developing their policies on record storage and maintenance. Generally, Rule 901 of the Federal Rules of Evidence states that authentication or identification is a condition precedent to admissibility. A document is authenticated if there is sufficient evidence to support a finding that the document in question is what its proponent claims. Authentication is an aspect of relevancy; it is only logical that if a document is not what it purports to be, it is not relevant.

A document may be authenticated by the following methods, chosen by the author for their applicability to CE litigation and not intended to represent a complete list: 1) testimony of a witness with knowledge; 2) public records or reports are regularly authenticated simply by proof of custody; 3) evidence that a document is at least 20 years old, is in such condition as to create no suspicion concerning its authenticity, and is in a place where it would likely be if authentic. (See Rule 901(b) of the Federal Rules of Evidence.)

Testimony from a witness with personal knowledge of the matter at issue is probably the most common way to authenticate a document. The witness's testimony may be based

upon either knowledge acquired years before trial or knowledge *specifically acquired to testify*. This acceptance of being in anticipation of litigation is rare in the rules of evidence.

Using a monitoring report as an example, the land trust stewardship staff person who prepared the report would certainly be a credible witness for authentication. What if the preparer of the report was not available to testify? Would the current stewardship staff member who regularly prepares monitoring reports for the land trust be able to authenticate an old monitoring report? Probably, but it would be helpful if there were some indication that this was the holder's report, such as letterhead, signature of an employee, and proper storage in the holder's files.

The public records and ancient documents examples of authentication are self-explanatory. Note that both the public records and ancient documents examples extend the principle to include data stored in computers and by similar methods. This expansion is necessary in view of the widespread use of methods of storing data in forms other than conventional written records.

Photographs are often used in litigation as an aid to the jury to help them understand the issue at trial. To authenticate a photograph, a holder would need to establish that the photograph depicts an accurate representation of the property. Again, having the landowner and the preparer of the baseline and monitoring report sign and date the photographs will go a long way to establishing the photograph's authenticity years from now. Authentication will also require a showing that the chain of custody was not broken and the photograph was not tampered with. Some holders use a photograph affidavit for proof of when the photograph was taken and the chain of custody of the photograph from creation to the time of trial. [For more information, see *The Legal Efficacy of New Technologies in the Enforcement and Defense of Conservation Easements*, Exchange, Summer 2004.]

III. Conclusion

Drafters of conservation easements, preparers of baseline and monitoring reports, and those who are responsible for maintenance and storage of these documents should take heed of the rules of evidence in their state governing admissibility of these documents into evidence. They should also adopt organizational standards for document preparation, maintenance and storage, and abide by these standards. Finally, everything should be done with an eye toward litigation far into the future because perpetuity is a long time in coming. 📌

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Fundraising Databases: Finding Software that Fits

by Kendall Slee and Dale Bonar

WHEN KIERAN ROE BECAME THE FIRST EXECUTIVE DIRECTOR

of the Carolina Mountain Land Conservancy (NC) in spring 1999, one of his first projects was to update the land trust's member database—kept in a ClarisWorks spreadsheet. “There were about 10 fields in the database,” he recalled. “It wasn’t tracking members’ giving histories. When a new donation came in, it would replace the last recorded donation” rather than keeping a record of the donor’s giving history.

Within two months, Mr. Roe had converted the database to ebase, software for nonprofit environmental organizations that can be downloaded free from the Web [see box, page 23]. The land trust purchased FileMaker Pro, the software “platform” on which ebase operates, giving it greater ability to make changes to the database and customize reports. The new software helps the land trust record a broader range of information, including members’ giving histories and the skills and interests of its volunteers. It can also produce a variety of reports, such as one that identifies board members who know the recipients of member solicitations and can add personal notes.

For land trusts large and small, an effective database of donors and potential donors is a key element of successful fundraising. LTA interviewed 26 land trusts of various sizes across the country to learn about the database software they use to track members and supporters and the lessons they’ve learned about database management.

Like Carolina Mountain Conservancy, Natural Lands Trust



(PA), a land trust with a staff of 50, was looking to improve its fundraising program when it upgraded its database in 1998 from one staff had built using FileMaker Pro. The land trust chose Raiser's Edge, one of the most sophisticated off-the-shelf fundraising database programs on the market.

“We were investing substantially in growing our membership,” said Director of Marketing and Communications Oliver Bass. “We wanted to track more information, particularly on major donors.

“The new database allows us to customize our contact with donors a lot more. For example, it sends automated reminders to staff to assure that when we get a gift of \$500 or more, the board is informed and the donor gets special acknowledgement,” he explained.

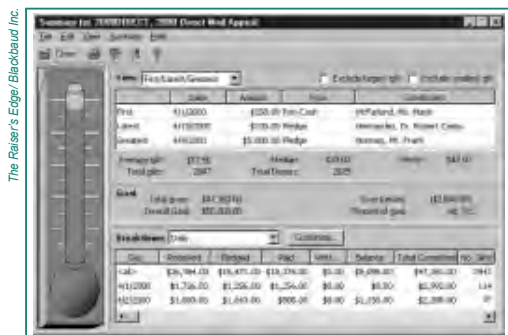
The software also allows the land trust to track each of its fundraising campaigns, Mr. Bass added. “With a couple clicks of a button, I can see how that campaign’s progressing, and I can keep track of the expenses.”

A Wide Range of Software

While some land trusts design their databases from scratch in FileMaker Pro or Microsoft Access, others use and adapt one of the many “off-the-shelf” software packages—such as ebase or Raiser's Edge—made for nonprofit organizations to track donors and their gifts.

Off-the-shelf database software comes with pre-formulated fields and standardized reports such as lists of donors at specified giving levels, or donors by city or zip code. Some have

Exchange: Fundraising Databases



specialized features that track such items as pledges that need to be collected, or membership renewals that need to be mailed. Some also provide reminders to individual database users on "tasks" to complete such as phone calls, reports or letters. Off-the-shelf member/donor database software used by the land trusts interviewed generally fall into three price ranges: low (less than \$3,000), mid-range (starting at \$3,000) and high (starting at \$5,000) [see box, page 23].

While generic database software such as Microsoft Access or Filemaker Pro can be purchased for \$200 to \$350, the greatest expense comes in designing and programming the database. (The structure of the database, its fields, tables, entry forms, queries and reports that draw on the data must essentially be programmed from scratch.) Estimates for professionally custom-built databases from MS Access vary with the complexity of the database. A basic, custom-designed member/donor database requires at least 100 hours to develop, and costs from \$10,000 to \$20,000, according to some database developers and land trusts who have hired database designers.

Some land trusts with databases built pro bono by professionals or volunteers reported that they are dependent on the database's creators, particularly if documentation has not been kept about how the database was set up. "While I feel fortunate to have the services of this volunteer, I am concerned about the fate of such important information resting in the hands of one person who gives his time out of goodwill," noted a staff member of one land trust whose MS Access database was created and continues to be maintained by one volunteer. Even with basic training in the program, "I still don't think that would address the need for ongoing consultation with someone who has very specialized, technical knowledge about programming," she added.

Particularly for those unfamiliar with databases, general database programs (such as MSAccess, FileMaker Pro or Paradox) tend to be less "user friendly" than off-the-shelf packages that requires less customization, reported a number of database developers and land trust users. "It has taken a large amount of work to get everything working right—queries, reports, labels, etc.," said Cindy Southway, co-executive direc-

tor of Grand County Land Conservancy (CO), which developed its database in MS Access. The conservancy, like a number of other land trusts that work with MS Access, hires a consultant to help with major changes to the database.

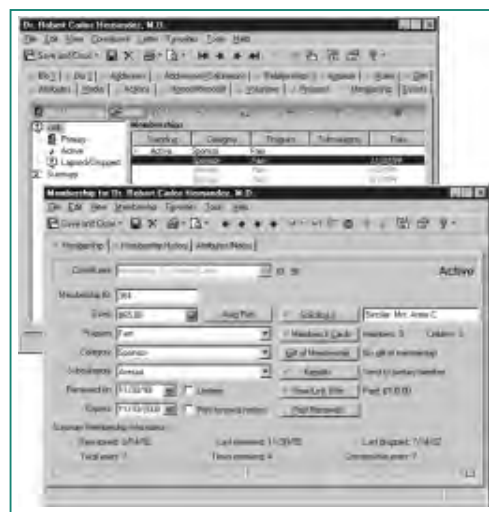
On the positive side, technical support is widely available for well-known database programs such as MS Access or FileMaker Pro. In addition, generic database software offers a great deal of flexibility for an organization seeking a database tailored to its needs.

Jackson Hole Land Trust (JHLT) (WY) is generally satisfied with its self-designed 10-year-old database in FileMaker Pro, reported Director of Development Julie Jones. The database is used for "tracking donations and progress with capital campaign prospects, managing field trips, conservation buyers and gift acknowledgments, among other things," she said. The staff handles the database's ongoing customization for the land trust's changing information needs such as tracking new events and new fiscal years, Ms. Jones added.

Minnesota Land Trust opted to build a database from scratch in MS Access in 1997 after it decided that off-the-shelf software couldn't meet its needs. The land trust hired a part-time programmer at a discounted fee and then found a pro bono programmer to finish the project after the first programmer quit before the database was completed.

"It's easy to underestimate the time involved," noted Beth Hayden, administrative coordinator for Minnesota Land Trust. "There was a lot of time spent talking to the programmers about what we wanted the program to do. There was a lot of time testing the database, working out glitches and doing follow up correspondence with programmers."

The result has been a system tailored to the statewide land





Giftmaker Pro Campaign Associates

trust. The database can track information by Minnesota Land Trust's 10 chapter areas. It also can categorize all types of donations, whether planned gifts, annual membership contributions or stewardship donations related to a specific conservation easement, said Ms. Hayden. "So far it's really allowed us a lot of flexibility."

MLT is seeking to hire a programmer to build the second component of the database, which will track its land protection projects, including projects in negotiation. [See box, page 22.]

Shopping Around

Before looking at specific software, land trusts should care-

fully evaluate their database requirements—include input from all the potential users of your database—and try to anticipate future needs. This requires a careful analysis, not only of the data you intend to collect, but of the queries and reports you will need.

Susan Hemmeyer, director of development for the Vermont Land Trust (VLT), helped New Jersey Conservation Foundation select new database software before joining the staff of VLT and guiding it through a similar selection process.

She advises land trusts try anticipating their information needs 10 years out before they invest in major changes to their database or database software. For example, when VLT changed databases in 2000, it looked for one that allowed remote access and could potentially be used by the land trust's field offices. "It's not something we use right now, but it's something I can see we might need in the future," Ms. Hemmeyer said.

Here are some other important considerations:

- **Conversion and compatibility.** How compatible is the database software with the data that you already have, and the other software that you use? How can you convert your current data to the new database? Do your computers have capacity to run the software, or will equipment need to be upgraded?

What Land Trusts are Tracking

Land trusts reported tracking the following information in their databases about donors and prospective donors. (Many also reported tracking this information on volunteers, foundations, businesses and landowners who have sold or donated property interests to the land trust.)

- Full Name
- Title
- Spouse/Co-habitant name
- Special salutation (if President prefers to address donor by first name, etc.)
- Mailing address
- Home address (if different from mailing address)
- Seasonal address (e.g. for vacation homes)
- Telephone number(s)
- E-mail address
- Amount and date of gift/donation
- Source of donation (e.g. mailed solicitation, personal phone call, event, etc.)
- Additional involvement in your organization (e.g. board member, vendor, volunteer)
- Willingness to volunteer and areas of volunteer interests/professional skills
- Whether permission has been given or withheld to exchange or rent a donor's name/address (Many land trusts said they have policies against releasing donor names.)
- Special programmatic interests (land protection within a specific area, field trips and events)*
- Fields to accommodate donor requests for limited mailings (e.g., 'Please solicit only once a year,' option to remove donor from newsletter mailing list)
- Likes or dislikes that affect raising money from this donor (e.g., vegetarian, likes/dislikes hunting)
- Other organizations the donor supports; notes on amount of outside donations*
- Names of people in your organization who know or can contact the donor personally*
- History of contact with donor (calls to/from staff or board members, attendance at an event, etc.)
- Target giving goals for major donors (this may be a medium-term goal for the next few years)*
- Any known planned giving by donor to your organization (bequest or charitable remainder trust)
- Helpful contacts the donor has *
- Pledges
- Gift memberships
- Memorials/honoraria

*These items were frequently cited as information the land trust doesn't track, but would like to track.

- **Access to training/customer support.** When Grand Traverse Regional Land Conservancy (MI) reviewed a number of similarly priced database software, it found its top choices had very similar capabilities. The deciding factor that prompted the land trust to install Donor Perfect was service and support, said Comptroller Birgit Yetter, noting that the Donor Perfect vendor was the only one they spoke with that offered to convert the data from their previous database onto the new system.

(On the other hand, a West Coast land trust reported that it is disappointed with the quality of the Donor Perfect manuals and has had difficulty getting timely technical support.)

Many off-the-shelf software vendors have an annual fee for customer support; others may charge by the hour for support. Training and support options range from courses on CD-ROM, to individual consultation by telephone, to classroom instructions.

When Columbia Land Conservancy (NY) purchased JCI Paradigm, it opted to hire a local consultant rather than send staff long distance to classroom training. "We decided it would be more cost effective to use someone local who was admittedly not a Paradigm expert but could help get us going. It worked very well. She would come in for two to three-hour sessions and train three of us in the office," said Membership and Outreach Coordinator Kristina Kwacz.

- **Outside opinions.** "Talk to people who use the software,"

advised Ms. Hemmeter of VLT. When she was researching software for the New Jersey Conservation Foundation, she spent some time observing how another nonprofit used the program. She recommends going beyond the usual short list of references provided by the software vendor and asking for a list of all the organizations in your area that use the software.

Once you have selected your software, prepare for a great deal of work and time to convert data from your old database, advised Ms. Hemmeter. "Make it at a time of year that is the least busy for your fundraising staff. If you don't spend time cleaning up data and planning the conversion, then you'll spend time afterwards on implementation and cleanup."

Depending on the amount of data, the conversion process can range from just a few days to a few months, land trusts reported. Either way, there is an additional adjustment period, as organizations familiarize themselves with the new software and work out glitches.

Managing Your Database

"Databases are never perfect because the information is always changing; it's an ongoing part of our management," observed Ms. Kwacz of Columbia Land Conservancy. Here are some tips land trusts shared on keeping your database as near-perfect as possible:

- **One person should be in charge of managing the database,**

Integrating the Future

The dream database of the future? For many land trusts, it's one that integrates a wider range of the information they track, so they don't have duplicate or related information in segregated databases (landowners of property under conservation easement in one, donors in another, for example). Some envision integrating GIS data, which would allow them to map land protection priorities, identify donors and potential donors near protected lands, or better track and plan for annual monitoring visits to protected properties, for example.

Land trusts looking to expand their database to track the full range of activities are hard-pressed to find an off-the-shelf software that meets their needs. Software designed for typical nonprofit organizations does not include such land trust-specific features as a system for tracking land protection projects, landowners, easement donors, stewardship and monitoring. Nevertheless, a few software packages that target land trusts are being developed:

- **Superior Software Training & Development**, based in Kalamazoo, MI, has developed a database module to track protected lands ("Protect IT") that integrates with the Conserve IT software it developed for tracking members and donors [see box, page 23].
- **Grand Traverse Regional Land Conservancy (MI)** has contracted development of an MS Access-based land protection database to better organize and track the many conservation projects in the negotiation process, as well as those it has completed. The model is in Beta testing and the developer (Serussell Consulting of Kalkaska, MI, 231-258-8442; srussell@torchlake.com) plans to market the program to other land trusts starting early this year.
- **Newburyport Computer Associates, Inc.**, in Haverhill, MA, (987-373-9646; susan@nca-corp.com) has developed an MS Access-based land management database in conjunction with a local land trust, and is developing a membership management module that can be integrated with the lands module.

Meanwhile, Eastern Shore Land Conservancy (MD) is already linking documents such as conservation easements and monitoring reports to its database using Paradigm software. What kind of database is next on ESLC Director of Administration Nina White's wish list? "One that would do data entry for us," she laughed.

“Off-the-Shelf” Database Software

There are a number of software packages designed to help nonprofit organizations cultivate individual donors. While few are specifically designed for land trusts, here is a sampling of the software land trusts are using.

For a more comprehensive list of fundraising software for nonprofits and further information on software selection, visit these Web sites:

- The Nonprofit Software Index catalogs 45 fundraising software packages, many of which are member/donor databases, www.npinfotech.org/TNOPSIS/fundrais/frindex.htm
- The New York Foundation for the Arts “Nonprofit Toolkit,” www.nptoolkit.org/forum.html

Please note that LTA has not reviewed any of the following database software, nor does LTA endorse any specific software package or vendor.

Low Cost Member/Donor Database Software • (less than \$3,000)

Conserve IT

Price: \$999 “network ready” for unlimited users

By: Superior Software Training & Development, www.sstraining.com; 616-375-9700.

This software is specifically designed for land trusts, using Microsoft Access as a base. The database was developed for a Michigan land trust, and is now being marketed to other land trusts. A new land tracking module, Protect IT, has been developed to fully integrate with the membership module.

Some land trusts that use it: Little Forks Conservancy (MI), Seacoast Land Trust (NH), Southwest Michigan Land Conservancy has a prototype version.

Technical support/Training: Comes with 30 days of free support.

Comments: “If I had no knowledge of MS Access, I would still find this software very easy to use. It’s all menu-driven,” said Doug Koop of Little Forks Conservancy.

ebase

Price: No charge

By: Created for nonprofit environmental/activist organizations by Desktop Assistance (now TechRocks, a subsidiary of the Rockefeller Fund) with funding by several major national funders. Written with FileMaker Pro, ebase is a “stand alone” database that can be downloaded for free from the Web site, www.ebase.org. Most users purchase FileMaker Pro so that they can better manipulate data and customize their database and reports.

Some land trusts that use it: Deschutes Basin Land Trust (OR), Gallatin Valley Land Trust (MT), Skagit Land Trust (WA), Legacy Land Trust (TX), Eagle Valley Land Trust (CO), Carolina Mountain Land Conservancy (NC).

Technical support/Training: Offered primarily through user listserves, monitored and supported by TechRocks staff. Regional trainers are available around the U.S.

Comments: “It’s got features that, in a prepackaged software, you would be paying several thousand dollars for,” said Kieran Roe of Carolina Mountain Land Conservancy. A number of land trusts report that they installed the software and converted their existing data on their own (but not without some trial and error).

Mid-Range “Off-the-Shelf” Member/Donor Database Software • (Starting at about \$3,000)

JSI Paradigm

Price: \$2,900 for a single-user version; optional 12-month Technical Support Agreement for single-user system is \$825 (includes toll-free telephone access and software upgrades). Charges increase for multi-user versions.

By: JSI FundRaising Systems, <http://frs.jsi.com/>; 800-521-0132. Design is modeled after index cards, with fields that can be placed and named according to preference. Documents in other formats can be directly linked to the database.

Some land trusts that use it: Eastern Shore Land Conservancy (MD), Swaner Memorial Park Foundation (UT), Columbia Land Conservancy (NY)

Technical support/Training: After installation, technical support can be purchased. JSI FundRaising Systems also offers classes.

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Comments: Two land trusts that recently selected the software said they found it to be the best match for their needs and most user friendly in this price range. Eastern Shore Land Conservancy (ESLC) uses it to track land protection as well as member/donor development. ESLC Administrative Director Nina White said the software is particularly flexible because it can link to documents in other formats, including conservation easement documents and ArcView (GIS) maps.

Donor Perfect

Price: \$2,995 for a single user; \$4,495 a network version with two users. Each additional user is \$500. Annual technical support fees vary from \$695-\$1,200, and are renewable every year.

By: SofterWare, Inc., 800-220-8111; www.donorperfect.com. In addition to storing member-donor data, and allowing users to make customized reports, features include grant-tracking, volunteer management, special events coordination, and "contact management" with reminders for individual users to complete tasks such as letter-writing, phone calls, etc.

Some land trusts that use it: Grand Traverse Regional Land Conservancy (MI), Wetlands Conservancy (OR)

Technical support/Training: Seminars offered at locations around the country; one-on-one phone training is also available. Annual technical support fees cover software upgrades, support by phone and e-mail, training and data transfer.

Comments: Grand Traverse Regional Land Conservancy implemented this software this year, after an extensive search. Comptroller Birgit Yetter said the software appeared to have similar capabilities as a number of others in the price range; the decision was based primarily on the support and service offered. Two other land trusts expressed dissatisfaction with the technical support and manuals.

Giftmaker Pro

Price: Single user version is \$2,990; three-user version \$3,990; six-user version is \$4,990. Typical systems that include software, support, training and data conversion range from \$5,000-\$8,000, according to the producers.

By: Campagne Associates, 800-582-3489; www.campagne.com. Includes prospect-tracking system, with "tasks" assigned to users for donor cultivation.

Some land trust that use it: Conservation Trust for North Carolina

Technical support/Training: Telephone training, on-site training and classroom training available. Support by phone and e-mail.

Comments: The one land trust user we spoke with had recently implemented the software, and was pleased thus far.

High-End "Off-the-Shelf" Member/Donor Database Software • (starting at \$5,000)

Raiser's Edge

Price: Starts at \$5,000 for a single-user system. Land trusts report that they paid closer to \$20,000 for multi-user systems. Optional additional modules for volunteers, special events and more start at \$1,000. The annual maintenance fee—including technical support, software upgrades, training discounts—is 20 percent of the software's list price.

By: Blackbaud Inc., 800-443-9441; www.blackbaud.com. Users describe this as one of the most sophisticated database software packages for nonprofits, with the capacity to record and sort detailed information. Features include a prospect tracking system that can generate task lists and "reminders" for specific staff or board members. Optional modules include a program that allows donors to give directly through a Web site, a module for planning, organizing and tracking fund-raising events, and increased capacity for tracking and analyzing individual donors, as well as a module for presorting envelopes and address labels.

Some land trust that use it: Natural Lands Trust (PA), Vermont Land Trust, New Jersey Conservation Foundation, The Trustees of Reservations (MA), Society for the Protection of New Hampshire Forests

Technical support/Training: Blackbaud requires its customers to acquire training—either locally, through a CD-Rom training session, or at one of its classes. The software's annual maintenance fee can be several thousand dollars. It covers toll-free telephone and e-mail support, a limited-access Web site and updated versions of the software.

Comments: "It's a very comprehensive system, so it takes a lot of training and getting used to. We're still figuring out how to use it," said Oliver Bass of Natural Lands Trust (PA), which installed the system in 1998. "Getting such a powerful database revealed holes in our internal process for dealing with how you enter data and track people, and how you acknowledge people. It's given us the opportunity to customize our contact with donors a lot more."

and only a few well-trained people should enter data. This was the most frequent advice land trusts had to offer. "Nothing turns people off more than getting duplicates or misspelled names," said Tim Lagerstrom, associate director of Little Traverse Conservancy (MI). "We put a lot of time in making sure people who enter names are well-trained. The care has paid off."

Interns once entered data for Jackson Hole Land Trust, but "a lot of avoidable mistakes" prompted the decision that two regular development staff members should handle data entry, said Ms. Jones. "Database mistakes can cost a lot of money—either by irritating donors and causing them to stop supporting your organization, or by creating a good deal of extra work for staff members who have to fix the mistakes."


Nevertheless, it's important to capture information from a variety of sources within the organization. To do this, staff members at Natural Lands Trust (PA) fill out "contact information sheets" when they receive new information, and pass it to the person who updates the database.

- **Establish protocols for organizing and entering data; clearly define fields.** "We've learned that when we create a new field, we should make sure it will be obvious to everyone what the field represents," said JHLT's Ms. Jones. "Many of the fields that were created by previous staff are now useless because they used random codes and acronyms, and we have no idea what they mean. Too

bad—it might have been useful information, and I'm sure the person who created the field spent a good deal of time entering the data."

- **Keep a record of how your database is structured.**

Maintain all the lists, diagrams and other materials you used to set up your database, particularly if it's custom designed. This is vital information should the database structure need to be modified in the future, noted author Michael J. Hernandez in his book *Database Design for Mere Mortals: A Hands On Guide to Relational Database Design* published by Addison-Wesley Developers Press.

- **Back it up!** One designated staff member of The Trustees of Reservations (MA) takes a back-up copy of the database home every evening—a lesson learned after two days of work was lost due to a computer system crash. While the organization had a policy to back up the database, "it wasn't clearly defined whose role it was," said Heather Wager, director of major gifts. Now it is. (Depending on the size of the database, and how frequently it is updated, backing up material weekly or monthly may suffice.) Storing a copy off-site helps ensure that the organization's vital records won't be lost in the event of fire, flooding or other such disasters. 

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The Sarbanes-Oxley Act and Implications for Nonprofit Organizations

BoardSource and INDEPENDENT SECTOR wish to thank Dan Moore, Vice President for Public Affairs, GuideStar; Tom Hyatt, Principal, Ober Kaler; and Paul Nelson, President, Evangelical Council for Financial Accountability for sharing their professional insights and expertise on this document.

Information and guidance in this document is provided with the understanding that BoardSource and INDEPENDENT SECTOR are not engaged in rendering professional opinions. If such opinions are required, the services of a certified public accountant or an attorney should be sought.

The Sarbanes-Oxley Act and Implications for Nonprofit Organizations

The American Competitiveness and Corporate Accountability Act of 2002, commonly known as the Sarbanes-Oxley Act, was signed into law on July 30, 2002. Passed in response to the corporate and accounting scandals of Enron, Arthur Andersen, and others of 2001 and 2002, the law's purpose is to rebuild public trust in America's corporate sector. The law requires that publicly traded companies adhere to significant new governance standards that broaden board members' roles in overseeing financial transactions and auditing procedures.

While nearly all of the provisions of the bill apply only to publicly traded corporations, the passage of this bill should serve as a wake-up call to the entire nonprofit community. If nonprofit leaders do not ensure effective governance of their organizations, the government may step forward and also regulate nonprofit governance. Indeed, some state attorneys general are already proposing that elements of the Sarbanes-Oxley Act be applied to nonprofit organizations.

Nonprofit leaders should look carefully at the provisions of Sarbanes-Oxley and determine whether their organizations ought to voluntarily adopt particular governance practices. This report will review those provisions and assess their relevance to nonprofit organizations.

Finally, it is important to note that two provisions of Sarbanes-Oxley apply to all corporate entities, including nonprofit organizations. This report will also review those features of the bill that require immediate nonprofit compliance.

MAIN PROVISIONS OF THE SARBANES-OXLEY ACT

With two notable exceptions, the Sarbanes-Oxley Act affects only American publicly traded companies and regulates what boards must do to ensure auditors' independence from their clients. The Act also creates and defines the role of the Public Company Accounting Oversight Board, a new entity empowered to enforce standards for audits of public companies. The Act explains processes for electing competent audit committee members and for ensuring that adequate reporting procedures are in place. In addition, it calls for regulations, and closes most of the loopholes, for all enterprises — for-profit and nonprofit — relating to document destruction and whistle-blower protection.

The following sections cover each of the major provisions of the new law and discuss their relevance to nonprofit organizations. In addition, BoardSource and INDEPENDENT SECTOR offer recommendations for how nonprofit leaders should implement various provisions of the new law.

INDEPENDENT AND COMPETENT AUDIT COMMITTEE

SUMMARY OF SARBANES-OXLEY PROVISION

The Sarbanes-Oxley Act requires that each member of a company's audit committee be a member of the board of directors and be independent. "Independence" in the Act is defined as not being part of the management team and not receiving any

The Sarbanes-Oxley Act and Implications for Nonprofit Organizations

compensation (either directly or indirectly) from the company as a consultant for other professional services, though board service may be compensated.

In addition, companies must disclose whether they have at least one “financial expert” serving on the audit committee. If they do not have such an expert, they must disclose the rationale behind that decision. Who qualifies as a “financial expert” is still being debated. The Securities and Exchange Commission (SEC) proposes a definition that relies on an individual’s education and experience as a public accountant, auditor, or principal accounting officer. At present, however, the company’s board seems to retain the final right to establish specific qualifications for a financial expert.

The audit committee is directly responsible for hiring, setting compensation, and overseeing the auditor’s activities. It sets rules and processes for complaints concerning accounting and internal control practices.

RELEVANCE TO NONPROFIT BOARDS

While not all nonprofits conduct outside audits, most nonprofit boards have established one or more financial committees (e.g., finance, audit, and/or investment). In those organizations that undertake annual audits, particularly medium to large nonprofit organizations, the board is likely to have a separate audit committee or subcommittee. It is good practice for nonprofit organizations to take steps to ensure the independence of the audit committee. While most nonprofit board members serve as volunteers without any compensation and staff members do not participate as voting members, all nonprofit organizations should review their practices to ensure the independence of the audit committee. Also, many states provide additional liability protection for volunteer directors that may be lost if the directors are compensated for their service.

Because of recruitment priorities to create a well-balanced and diverse board, financial savvy may be challenging for nonprofit boards. Nonprofit organizations need to ensure that board members of the audit committee have the financial competency to understand financial statements, evaluate accounting company bids to undertake auditing, and make sound financial decisions as part of their fiduciary responsibilities. A nonprofit that has a limited number of financial experts on its board may struggle with filling the treasurer’s position, a finance committee, and an audit committee.

RECOMMENDATIONS

While no standard guidelines mandate when a nonprofit organization should undertake a full audit, the board is responsible for assessing the potential benefits and costs of an audit. Generally, nonprofits that have budgets of more than \$500,000 and that receive federal funds are required to conduct an annual audit. Some state laws have lower thresholds. In addition, participating in the Combined Federal Campaign requires an audit at \$100,000. Smaller nonprofits, for whom an audit would be an unreasonable financial burden, should choose a review or at least have their financial statements compiled by a professional accountant. The boards of nonprofit organizations that forego an audit should evaluate that decision periodically.

The Sarbanes-Oxley Act and Implications for Nonprofit Organizations

All nonprofit organizations that conduct outside audits, particularly medium to large organizations, should have an audit committee and should separate the audit committee from the finance committee.

The audit committee should be composed of board members who are not compensated for their service on this committee and do not have a financial interest in or any other conflict of interest with any entity doing business with the organization. Most nonprofit organizations have volunteer board members. Nonprofit organizations that do compensate board members should not compensate audit committee members for their additional service. In addition, all nonprofits should ensure that no members of staff, including the chief executive, serve on the audit committee, although it is reasonable to have the chief financial officer provide staff support to the audit committee.

The audit committee should ensure that the auditing firm has the requisite skills and experience to carry out the auditing function for the organization and that its performance is carefully reviewed.

The audit committee should meet with the auditor, review the annual audit, and recommend its approval or modification to the full board. The full board should review the annual audit and the audit committee's report and recommendations. Ideally the full board meets with the auditor before formally accepting or rejecting the audit.

At least one member of the audit committee should meet the criteria of financial expert and have adequate financial savvy to understand, analyze, and reasonably assess the financial statements of the organization and the competency of the auditing firm.

Orientation of board members should include financial literacy training.

To support the accounting field and help ensure that nonprofit boards have available financial expertise, professional accreditation and membership organizations of accountants should require CPAs to participate in a pro bono nonprofit board service program.

RESPONSIBILITIES OF AUDITORS

SUMMARY OF SARBANES-OXLEY PROVISIONS

The Sarbanes-Oxley Act requires that the lead and reviewing partner of the auditing firm rotate off of the audit every five years. This does not necessarily mean that the auditing firm must be changed, although that may be the most direct way to comply with this requirement.

In addition, the Act prohibits the auditing firm from providing any non-audit services to the company concurrent with auditing services. This prohibition applies to book-keeping, financial information systems, appraisal services, actuarial services, management or human resource services, investment advice, legal services, and other expert services unrelated to the audit. The board's audit committee may, however, pre-approve

The Sarbanes-Oxley Act and Implications for Nonprofit Organizations

certain services (not included in the above categories), such as tax preparation, which can then be carried out by the auditing firm. In addition, the pre-approval requirement is waived for non-auditing services if the value of the non-auditing services is less than five percent of the total amount paid by the organization to the auditing firm for auditing services.

The Act also requires that the auditing firm report to the audit committee all “critical accounting policies and practices” that are used by the organization, discussed with management, and represent the preferred way management wants these policies and practices treated. These critical accounting practices include methods, assumptions, and judgments underlying the preparation of financial statements according to generally accepted accounting principles (GAAP) and assurance that any results would be disclosed in case of changed assumptions.

RELEVANCE TO NONPROFIT BOARDS

Changing auditors (partner or firm) every five years is presently considered good practice for all organizations, nonprofit and for-profit alike. The rationale: Auditing firms may grow accustomed to the financial procedures within one organization after a certain number of years, and bringing in a new firm helps ensure that all proper financial practices are closely examined.

Nonprofit organizations would be well served to adopt the Sarbanes-Oxley rule of preventing auditing firms from providing non-auditing services. This provision precludes a conflict of interest between the auditing firm and the client. At a minimum, the application of the rule should be considered in each case. At the same time, certain services can be pre-approved by the audit committee, and there is no reason why tax services and preparation of the Form 990 or 990-PF (for private foundations), for example, could not and should not be undertaken by a nonprofit's auditing firm. This can also ensure that certain economies are achieved for the nonprofit client organization.

Finally, the provisions about disclosure to the audit committee of critical accounting policies and discussions with management also seem to fall well within the bounds of good practice. Greater disclosure of these internal control practices and management's views on them will foster more informed judgments by the audit committee, enhanced oversight by the board, and greater transparency. The critical accounting practices would include, among other things, processes for segregation of duties, policies to use restricted funds for intended purposes, processes to review off-balance sheet transactions, and procedures for monitoring inventory fluctuations. In addition, the audit committee may be an effective committee for overseeing implementation and enforcement of the governing body's conflict of interest policy.

RECOMMENDATIONS

Nonprofits should ensure that the auditor or auditing firm, or at least the lead and reviewing partners, are rotated every five years.

Nonprofit organizations should be cautious when using their auditing firms to provide

non-auditing services except for tax preparation, which should be approved in advance, while the firm is contracted to provide auditing services.

Audit committees should require auditing firms to disclose to the audit committee all critical accounting policies and practices used within the organization as well as share with the audit committee any discussions with management about such policies and practices.

CERTIFIED FINANCIAL STATEMENTS

SUMMARY OF SARBANES-OXLEY PROVISIONS

The chief executive and the chief financial officers must certify the appropriateness of financial statements and that they fairly present the financial condition and operations of the company. There are criminal sanctions for false certification, but violations of this statute must be knowing and intentional to give rise to liability.

In addition, to avoid conflicts of interest, the CEO, CFO, controller, and chief accounting officer cannot have worked for the auditing firm for one year preceding the audit.

RELEVANCE TO NONPROFIT ORGANIZATIONS

Any CFO who is responsible for generating timely and accurate financial statements for the company or organization should feel comfortable about certifying document integrity.

In a for-profit company, a positive bottom line is the CEO's responsibility. Business acumen, capacity to interpret financial statements in detail, and skillfulness in convincing the board and shareholders that the corporation is meeting all expectations are obvious characteristics in a manager. Likewise, a nonprofit chief executive may be handicapped without adequate financial skills. He or she may be hired, however, primarily for other qualities. Nonprofit CEOs may excel in fundraising, knowledge of the organization's field of interest, or a variety of other skills. Lack of superior financial prowess must be complemented by a skillful financial officer; without it, the organization cannot convince donors and funders that their money is properly managed. Nevertheless, it is still the responsibility of the CEO to ensure good stewardship of the organization's resources.

Under Sarbanes-Oxley, CEO and CFO certification carries with it the weight of the law, but part of the underlying rationale is to ensure that both the CEO and CFO know and understand the financial statements. For a nonprofit organization, CEO and CFO sign-off on financial statements would not carry the weight of law, but it would signal the importance that the CEO, in particular, attaches to understanding the nonprofit's financial condition.

For nonprofit organizations, a key financial document is the Form 990 or 990-PF. The form requires a signature from an officer of the organization. Research from a number of studies reveals that the accuracy of these forms leaves much to be desired.

The Sarbanes-Oxley Act and Implications for Nonprofit Organizations

Many of the errors in the Form 990 relate to failures to complete all forms, including Schedule A. Other problems include presenting an inaccurate report on fundraising costs, therefore distorting the financial picture of the organization's operations. Thus, it is critical that nonprofit organizations examine their financial systems, policies, and reporting to help improve the accuracy and completeness of these forms.

There is, in all likelihood, considerably less staff movement in the nonprofit world between accounting firms and client organizations than there is in the for-profit world. Furthermore, because nonprofit executives do not receive lucrative stock options, the relevance of possible conflicts of interest from an auditor joining the executive staff of a nonprofit client is correspondingly less.

RECOMMENDATIONS

CEOs and CFOs, while they need not sign off on the financial statements of the organization, do need to fully understand such reports and make sure they are accurate and complete. Signing off on the financial statements provides formal assurance, however, that both the CEO and the CFO have reviewed them carefully and stand by them.

The CEO and CFO should review the Form 990 or 990-PF before it is submitted to ensure that it is accurate, complete, and filed on time.

Regardless of whether the CEO and CFO certify the financial report, the board has the ultimate fiduciary responsibility for approving financial reports. Just as the financial and audit reports are reviewed and approved by the audit committee and the board, the Form 990 or 990-PF should also be reviewed and approved.

INSIDER TRANSACTIONS AND CONFLICTS OF INTEREST

SUMMARY OF SARBANES-OXLEY PROVISION

The Act generally prohibits loans to any directors or executives of the company.

RELEVANCE TO NONPROFIT ORGANIZATIONS

Nonprofits are currently highly regulated with respect to financial transactions that take place within the organization. Private inurement, excessive personal benefit, and self-dealing all cause serious penalties for any nonprofit that steps out of line. "Intermediate sanctions" laws specifically address compensation and excess benefit transactions with "disqualified" individuals, generally meaning board members and executive staff.

Providing private loans to insiders — the specific item included in the Sarbanes-Oxley Act — is not a common practice in the nonprofit sector. However, when it has occurred, it has caused problems either from the perception of a conflict of interest or because it has not been appropriately documented as part of executive compensation. In addition, in some states, nonprofit law expressly prohibits loans to directors and officers.

RECOMMENDATIONS

Because the practice of providing loans to nonprofit executives has been a source of trouble in the past and because this practice is specifically prohibited under Sarbanes-Oxley and in some states, it is strongly recommended that nonprofit organizations not provide personal loans to directors or executives.

If such loans are provided, they should be formally approved by the board, the process for providing the loan should be documented, and the value and terms of the loan should be disclosed.

To guide the board and staff in independent decision making, the organization must have a conflict of interest policy with disclosure and this policy must be enforced without fail.

DISCLOSURE

SUMMARY OF SARBANES-OXLEY PROVISION

The Sarbanes-Oxley Act requires a number of disclosures, including information on internal control mechanisms, corrections to past financial statements, and material off-balance sheet transactions (adjustments). The Act also requires companies to disclose information on material changes in the operations or financial situation of the company on a rapid and current basis.

RELEVANCE TO NONPROFIT ORGANIZATIONS

While many of the transactions the new law requires publicly traded companies to disclose do not apply to nonprofit organizations, they should nevertheless provide their donors, clients, public officials, the media, and others with an accurate picture of their financial condition. Current law already requires tax-exempt organizations to make their Forms 990 or 990-PF freely available to anyone who requests them. These informational reports, as mentioned before, need improvements both in accuracy and in timeliness of disclosure. One way to achieve that objective is through electronic filing, something the Internal Revenue Service is currently pursuing and the nonprofit community generally endorses.

RECOMMENDATIONS

The Internal Revenue Service should ensure that — as planned — it is prepared to receive electronically filed Forms 990 and 990-PF by FY2005.

Nonprofit organizations should improve the timeliness, accuracy, and completeness of the Forms 990 or 990-PF by filing electronically when that is available to them.

Nonprofits should not rely on automatic extensions for filing Forms 990 and 990-PF without cause.

Audited financial statements should be easily accessible for review.

The Sarbanes-Oxley Act and Implications for Nonprofit Organizations

Two provisions of the Sarbanes-Oxley Act apply to all corporations be they nonprofit or for-profit. Thus, all nonprofit organizations need to understand these two provisions and comply with them.

WHISTLE-BLOWER PROTECTION

SUMMARY OF SARBANES-OXLEY PROVISION

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

RELEVANCE TO NONPROFIT ORGANIZATIONS

Nonprofits must start by protecting themselves. They must eliminate careless and irresponsible accounting practices. A nonprofit organization would benefit from an internal audit that brings to light weak spots and installs processes that are not vulnerable to fraud and abuse. Written policies that are vigorously enforced by executive staff and the board send a message that misconduct is not tolerated.

An organization must develop procedures for handling employee complaints. A nonprofit must establish a confidential and anonymous mechanism to encourage employees to report any inappropriateness within the entity's financial management. No punishment for reporting problems — including firing, demotion, suspension, harassment, failure to consider the employee for promotion, or any other kind of discrimination — is allowed. Even if the claims are unfounded, the nonprofit may not reprimand the employee. The law does not force the employee to demonstrate misconduct; a reasonable belief or suspicion that a fraud exists is enough to create a protected status for the employee.

RECOMMENDATIONS

Nonprofits must develop, adopt, and disclose a formal process to deal with complaints and prevent retaliation.

Nonprofit leaders must take any employee complaints seriously, investigate the situation, and fix any problems or justify why corrections are not necessary.

DOCUMENT DESTRUCTION

SUMMARY OF SARBANES-OXLEY PROVISION

The Sarbanes-Oxley Act addresses destruction of litigation-related documents. The law makes it a crime to alter, cover up, falsify, or destroy any document (or persuade someone else to do so) to prevent its use in an official proceeding (e.g., federal investigation or bankruptcy proceedings). The Act turns intentional document destruction into a process that must be monitored, justified, and carefully administered.

RELEVANCE TO NONPROFIT ORGANIZATIONS

Common sense dictates that individuals, nonprofit organizations, and companies regularly need to shred or otherwise dispose of unnecessary and outdated documents and files. Like their for-profit counterparts, nonprofit organizations need to maintain appropriate records about their operations. For example, financial records, significant contracts, real estate and other major transactions, employment files, and fundraising obligations should be archived according to guidelines established by the organization. Because of current technology, electronic files and voicemail can be complicated as we come to understand the relevance of the delete button as a permanent method of file removal.

RECOMMENDATIONS

A nonprofit organization should have a written, mandatory document retention and periodic destruction policy. Such a policy also helps limit accidental or innocent destruction.

The document retention policy should include guidelines for handling electronic files and voicemail. Electronic documents and voicemail messages have the same status as paper files in litigation-related cases. The policy should also cover back-up procedures, archiving of documents, and regular check-ups of the reliability of the system.

If an official investigation is underway or even suspected, nonprofit management must stop any document purging in order to avoid criminal obstruction charges.

CONCLUSION

The Sarbanes-Oxley Act has now been in force for over a year. During these months of intense corporate governance scrutiny, the Act has also forced the nonprofit sector to analyze its board practices and methods of operation. Individual organizations have begun to identify loopholes — and figure out how to eliminate them. Watch-dog agencies and other nonprofit field-building organizations are reconsidering assumptions and standard operating procedures in an effort to identify guidelines, standards, and best practices in the sector.

Regardless of whether this critical self-analysis is prompted by a set of potential laws that could ultimately govern the actions of nonprofit organizations, we have heard the wake-up call. For all of us in the sector, the Sarbanes-Oxley Act has caused a renewed realization that nonprofit organizations rely on — and must protect — the indispensable and unequivocal confidence and trust of our constituents. Self-regulation and proactive behavior will always prove more powerful than compulsory respect of laws.

ADDITIONAL RESOURCES

Press Release from the Office of New York State Attorney General
www.oag.state.ny.us/press/2003/mar/mar12a_03.html.

Summary of the Sarbanes-Oxley Act
www.aicpa.org/sarbanes/index.asp.

The Sarbanes-Oxley Act and Implications for Nonprofit Organizations

Recommendations from the National Association of Corporate Directors
Concerning Reforms in the Aftermath of the Enron Bankruptcy
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INDEPENDENT SECTOR

A vital voice for us all

Learning from Sarbanes-Oxley: A Checklist for Charities and Foundations

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Learning from Sarbanes-Oxley A Checklist for Charities and Foundations

Created to rebuild public trust in the corporate community in the wake of corporate and accounting scandals, the Sarbanes-Oxley Act, requires that publicly traded companies conform to new standards in governance, financial transactions, and audit procedures. BoardSource and Independent Sector have made recommendations on how charities and foundations can voluntarily incorporate certain provisions of the Act into their operations in their publication, *The Sarbanes-Oxley Act and Implications for Nonprofits*, www.IndependentSector.org.

A checklist for charities and foundations includes:

1. Insider Transactions and Conflicts of Interest

- ✓ Understand and fully comply with all laws regarding compensation and benefits provided to directors and executives (including “intermediate sanctions” and “self-dealing” laws).
- ✓ Do not provide personal loans to directors and executives.
- ✓ In cases in which the board feels it is necessary to provide a loan, however, all terms should be disclosed and formally approved by the board, the process should be documented, and the terms and the value of the loan should be publicly disclosed.
- ✓ Establish a conflict of interest policy and a regular and rigorous means of enforcing it.

2. Independent and Competent Audit Committee

- ✓ Conduct an annual external financial audit (the boards of very small organizations, for whom the cost of an external audit may be too burdensome, should at least evaluate carefully whether an audit would be valuable).
- ✓ Establish a separate audit committee of the board.
- ✓ Board members on the audit committee should be free from conflicts of interest and should not receive any compensation for their service on the committee.
- ✓ Include at least one “financial expert” on the audit committee.
- ✓ The audit committee should select and oversee the auditing company and review the audit.
- ✓ Require full board to approve audit results.
- ✓ Provide financial literacy training to all board members.

3. Responsibilities of Auditors

- ✓ Rotate auditor or lead partner at least every five years.
- ✓ Avoid any conflict of interest in staff exchange between audit firm and organization.
- ✓ Do not use auditing firm for non-auditing services except tax form preparation with preapproval from audit committee.
- ✓ Require disclosure to audit committee of critical accounting policies and practices.
- ✓ Use audit committee to oversee and enforce conflict-of-interest policy.

4. Certified Financial Statements

- ✓ CEO and CFO should sign off on all financial statements (either formally or in practice), including Form 990 tax returns, to ensure they are accurate, complete, and filed on time.
- ✓ The board should review and approve financial statements and Form 990 tax returns for completeness and accuracy.

5. Disclosure

- ✓ Disclose Form 990 990-PF, and 990-T in a current and easily accessible way (also required of all nonprofit organizations by IRS law).
- ✓ File 990 and 990-PF Forms in a timely manner, without use of extensions unless required by unusual circumstances.
- ✓ Disclose audited financial statements.
- ✓ Move to electronic filing of Form 990 and 990-PF.

6. Whistle-Blower Protection

- ✓ Develop, adopt, and disclose a formal process to deal with complaints and prevent retaliation.
- ✓ Investigate employee complaints and correct any problems or explain why corrections are not necessary.

7. Document Destruction

- ✓ Have a written, mandatory document retention and periodic destruction policy, which includes guidelines for electronic files and voicemail.
- ✓ If an official investigation is underway or even suspected, stop any document purging in order to avoid criminal obstruction.

Note: This is an abbreviated list. For a discussion of the law and recommendations for charities and foundations, see the BoardSource-Independent Sector publication, *The Sarbanes-Oxley Act and Implications for Nonprofit Organizations*, www.independentsector.org/issues/SarbanesOxley.html.



Erler's LandSteward

Erler's LandSteward (ELS) is a browser-based database program designed to enable land conservation organizations to easily organize, store and access project and stewardship data for protected properties. This includes new data entered directly into the program, links to existing digital data files such as text documents, graphic files, e-mail correspondence, spreadsheets or audio and files, and information about where relevant hard-copy materials are stored.

ELS Features:

- ☐ Menu-guided data entry forms that make it easy to enter new data or link to existing files.
- ☐ Allow creation of maps that link to digital graphic files using ESRI's MapObjects™
- ☐ Track project related e-mail.
- ☐ Secure data files that can only be modified by approved personnel.
- ☐ Tickler files that announce upcoming monitoring dates.
- ☐ Track single or multiple properties in a project.

System Requirements:

- ☐ Windows 2000, Service Pack II or higher
- ☐ MS Internet Explorer 6.0 or higher
- ☐ Pentium III (or equivalent) processor
- ☐ 2.12 MB hard disc space

NOTE: This is a stand-alone software that may be installed only on one computer. The data cannot be shared over a network or with remote locations.

Cost:

- ☐ \$99 for LTA Member Land Trusts
- ☐ \$199 for all others

Support

- ☐ Free Topica listserv (see <http://www.topica.com/lists/erlerslandsteward/> for complete information and instructions on how to join); this is only for discussion of ELS issues.
- ☐ Camtasia movies (no special viewing software needed) demonstrating general ELS functions and specific details of the photo point map features.
- ☐ Basic tutorial with screen shots and brief explanations on how to input and view data.
- ☐ Frequently Asked Questions (FAQ) posted on the LTA public web site and included with the software package.
- ☐ Webinars to be scheduled on setting up and using ELS in your land trust. A webinar is a distance-learning tool where a user calls a toll free number and logs on to a Web site to listen to a presenter while viewing a demonstration through their browser.

Why was ELS Developed?

LTA-supported research has shown that stewardship is a critical issue with conserved properties. Many land trusts do not adequately steward their properties, and as the transfer of land under easement increases, there is an increasing likelihood that CE violations will occur.

Erler's LandSteward is VERY simple. It uses browser technology, which almost everyone is familiar with (that's what you use to surf the Internet) so that you don't have to learn a new program. The purpose of LandSteward is to prompt users to obtain and file documents necessary for basic land stewardship.

This software streamlines entry of new data, creates links to existing digital files - including text documents, graphic files and spreadsheets - and speeds access to information when needed. The program can be used for existing properties as well as new projects, and enables users to adopt consistent data acquisition, file naming and storage practices. Because access to data is quick and easy, staff and volunteers can use the system and view all records with little instruction.

There are many and various types of documents that a land trust may want to have on just one property. If a land trust has multiple properties, keeping track of this amount of documentation may be a challenge.

ELS helps land trusts manage the documents they have, as well as identify gaps in their documentation that they should have.

Original documents should still be kept in a safe location. ELS allows land trust staff and volunteers to access and use the information they have about their properties on a daily basis without worrying about destroying, losing or defacing the documents.

The photopoint maps allow a user to go to the same latitude and longitude year after year and take a picture of important resource areas. Either before they go out, or while in the field, they can call up past images to compare them to what they are seeing.

Also, a scheduling feature sets dates for future tasks. These tasks will pop up on the screen upon login.

Suggested File Structure

In order to use this data management system, a land trust must first establish a consistent system for naming and storing files and folders on its computer.

Erler's LandSteward system suggests the following organizational structure:

- Create a single folder on the hard drive that will hold all data for all properties. This will help ensure accuracy and ease in locating and backing-up data.
- Within the main property folder, create a separate folder for each specific property. Use a consistent naming convention.

- Within each specific project folder, create a set of additional folders to hold all files. A simple approach may include the following folders: documents, email, and images.
- Create additional subfolders as necessary. For example, the “images” folder might include subfolders for maps or aerial photographs. The “documents” folder might include subfolders for the conservation easement or baseline property report.
- Create consistent names for all files for each project. Names should allow anyone looking at the file to know what information is included.

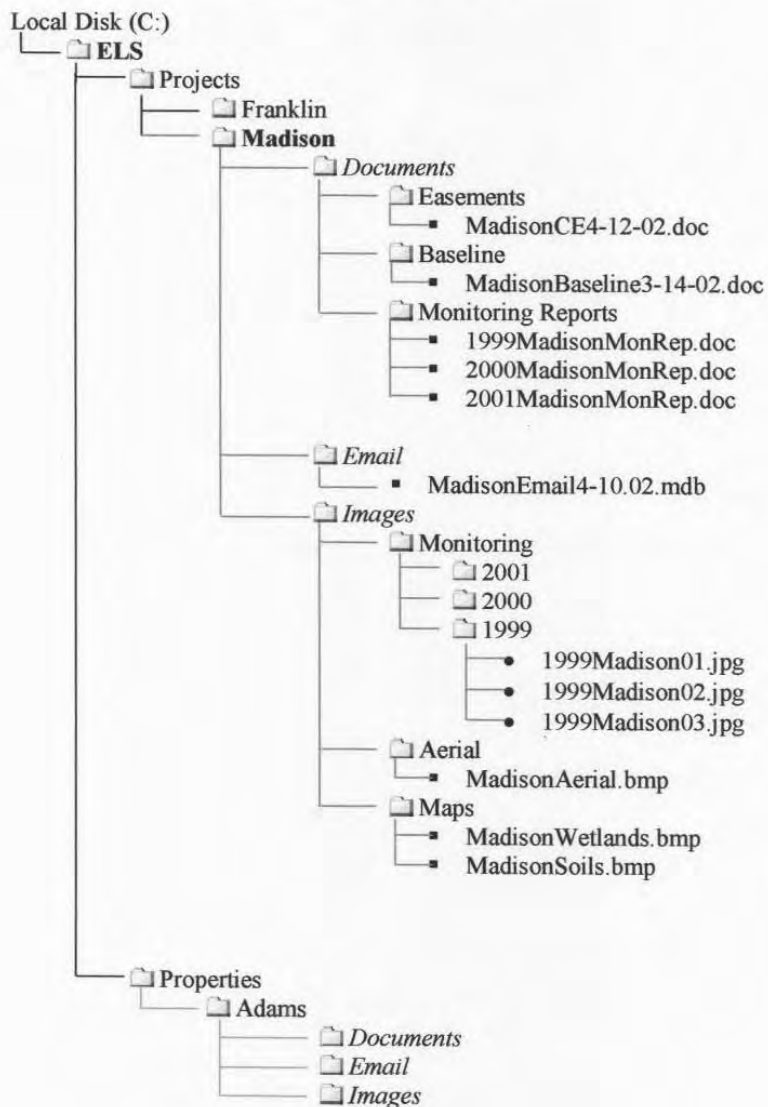
A suggested overall file structure is set out on the attached page.

NOTE: Erler's LandSteward software has limitations on the size of project files and names that it can accommodate. Land trusts considering this software should review information on the Erler's system in detail.

More information on Erler's LandSteward Software is available on the Land Trust Alliance website at www.lta.org under “Resources for Land Trusts.”



The following is a folder/file structure example:



Conservation Connections™

An advanced information management system for land trusts

Conservation Connections™ is an integrated relational database created by Ewarenow.com LLC and the Society for the Preservation of New Hampshire Forests.

It is an application that allows people with various computer skills to access and retrieve information on protected properties for an organization in an easy and rapid manner. The application is a complete package that runs on Microsoft Access and does not require any specialized computer or software.

Purposes

Conservation Connections was created to:

- Facilitate the storage and retrieval of large amounts of data on multiple properties and people in an easy and efficient manner.
- Save time and money in managing an easement stewardship or other land related program.
- Allow multiple users to access and update common data.
- Ease the transition between departing and arriving staff for land trusts by allowing departing staff to store relevant information and facilitating the learning process for new staff.
- Allow land trusts to grow from small to medium to large easily and seamlessly.

The Challenge – How much can we remember?

Many properties (Parcels) - Each Parcel has many attributes.

A land trust may be responsible for stewardship of anywhere from a few dozen to many hundreds of properties. Each property has many attributes relating to natural features, conservation purposes, use limitations and reserved rights.

Many people (Contacts) – Each Contact has many attributes.

There are landowners, property managers, foresters, attorneys, stewards, grantors and grantees. Each one has a name, several phone numbers, and addresses and potentially multiple properties they are associated with.

Rapid access to information for entire organization

As an organization grows, there are many people who may have a need to learn more about a property or a person. The list-search capability allows anyone within the land trust to quickly and easily learn about a property. This is especially

valuable when the phone rings and you need to learn about a property quickly or when a key person is out in the field or away from the office.

Multiple Staff and rotating staff

For small land trusts with one or two staff and a handful of properties, one person could remember each property and each owner. As the number of properties and staff grow, no one person can remember everything. When a key person leaves, the knowledge they have gained is hopefully documented in the files but is not easily transferred to new staff in a timely way. As a land trust grows and there are several people monitoring easements, it is important for the organization to keep track of the overall progress. One centralized database allows this to happen without extra work.

Many site visits, phone calls and issues to track

Each property is monitored annually. There may be several additional visits and telephone calls if there is an issue with a property. Conservation Connections® provides a quick and easy means of seeing who had an activity relating to a property, when the activity occurred and what transpired. This can all be done at the desk without searching through the paper files. This capability allows anyone within the land trust to track monitoring progress through time and ensures that issues in need of follow-up are not forgotten. There is also the capability to establish a return visit schedule for whatever reason.

The Approach

Contacts and Parcels

Conservation Connections separates all information into two main categories, Contacts and Parcels. Contacts include all information relative to a person or organization including names, addresses, phone numbers, and affiliations. Parcels include all information relative to a particular property including size, location, easement terms, and monitoring history. Contacts and Parcels are linked. This allows the user to go back and forth between contacts and parcels seamlessly.

List-Search

Conservation Connections has two approaches to locating data that operate similarly. Whether looking for a Contact or a Parcel, the first screen is a List-Search function that allows the user to identify particular search criteria to locate the Contact or Parcel. For Parcels, this might include the Property Name, Town, Acreage, or Date Protected. For Contacts, this usually starts with last name. The List-Search function allows any user to locate the information they seek in seconds.

One Person with Many Properties and One Property with Many People.

One of the great strengths of the approach used to manage data is avoiding the necessity for repetitive data entry. By example lets say that Jane Fernleaf owns several properties. Traditionally her personal information would be stored separately for each property. If she should change her phone number, you would need to locate it at each individual property where she may have an interest. By using Conservation Connections, her personal information will be entered only once in the Contact table. If she changes her mailing address or phone number, it is only changed in that one location. This greatly simplifies keeping track of personal information in our rapidly changing world.

Editing Data

Data can be added and modified instantaneously at the keyboard. This can be a real time saver when entering notes from a telephone call or recording your observations after a field-monitoring visit. The ability to control who has access to change data can be controlled through staff assignment of privileges based upon who the user is.

Output – Reports

Output of information can be obtained in three primary means. For listing functions, all of the sorted data can be printed as it appears on the screen. There is a complete report that reproduces all information about a property. Of greatest utility is a grouping of three individualized easement stewardship reports. One is for complete ground monitoring visits, one is an abbreviated form for specific task visits and the third is for telephone calls. The stewardship visit reports are stored within the system and also printed for hard copy storage in traditional files.

Basic concepts – Fields, Tables and Linked Tables

A field is the smallest quantity of information stored. Examples of fields include:

- For a person, individual fields might include; first name, last name, middle initial
- For an address, individual fields might include; street number, street name, town, state, zip code

A table is a collection related fields. Using the above example:

- One table might be Name
- Another table might be Address

Linked Tables - One to many relationships

Life gets complicated when one person may have several phone numbers, addresses or properties they are associated with. Linked Tables allow the database to accommodate the many complexities of managing the vast amount of data associated with a person or a property. Following the same example:

- Name
- Home Address
- Work Address
- Camp Address

Data organization – Tabs and Go buttons, Double click

There are approximately 100 data fields relating to Contacts and 150 data fields relating to Parcels. In order to avoid clutter on the screen and facilitate locating the information you need quickly, Conservation Connections uses a combination of Tabs, Go buttons and double click functions. These are evident in the screen images shown throughout this document.

Status – Active, inactive, pending...never lose old data

Both parcels and contacts can be coded as active, inactive, cancelled or void. In addition parcels can be coded as pending and contacts can be coded as deceased. This combination allows Land Agents to begin using the database starting with leads for pending projects that may take months or years to be completed. It allows the land trust to retain information on original grantors who are now deceased. For both parcels and contacts that become inactive, the data can be retained out of sight but available for easy retrieval.

What was it called? File name and Local name

There are two fields dedicated to the name of the property to make it easier to find a particular property. The naming convention of the Forest Society uses a file name that begins with the name of the original grantor followed by the name of the current owner, if different. The local name field allows for a name such as "Windswept Farm" to be retained as a separate searchable field.

Security

Depending upon the software package purchased and the size of your organization, the ability to make changes to the database can be controlled. For small organizations, the package allows all users to make changes to the data. For larger organizations there is the potential to limit the ability to make changes to a

select few users while allowing the whole organization to view the information.

The software also has a behind the scenes way of keeping track of who has changed data. This can greatly help the system administrator track down who has revised data. Hopefully this is for benign reasons however if errors start showing up in the data, this provision can identify further training needs and support quality control efforts.

It is essential that the computer be backed up regularly. Once your organization moves to electronic easement stewardship, you should also have confidence that all of your records are secured to a back up every night, preferably off site.

Customization, changing field names...for a fee

There are a number of fields with uses specific to the Society for the Protection of New Hampshire Forests. It is possible to reassign these fields to different purposes more suitable to the needs of the specific land trust. For example, there are check boxes for particular funding sources that have specific stewardship requirements. Further customization is possible but it gets more complicated. If a land trust has specific needs, a new tab can be established with additional fields. The existing database is not designed for large ranches or agricultural operations that may have unique needs. Ewarenow can customize the application if needed. The fee for such services is based upon the complexity of the process and would be negotiated individually with the land trust.

Data Conversion Service...for a fee

If you are a small land trust with fewer than 50 properties, it may be easier to enter your existing data property-by-property and person-by-person directly into Conservation Connections. If on the other hand you have several hundred properties with data already in some form of computer software system, it may be more efficient to have Ewarenow write custom computer code to automate the data conversion. This task is very user specific and depends upon how your existing data is stored. There will always remain some data clean up tasks once the conversion is complete. This is a one-time task that will save large amounts of time as the years go by. Contact Ewarenow directly to discuss this service. For Ewarenow contact information please see the last page of this document

The Data – Fields and Organization

Contacts

Individual fields of data available for use. (Consolidated list)

- . Unique identifier- hidden field essential for data base functionality.
- . Membership Number – user specified
- . Last Name, First Name, Middle Initial, Prefix, Suffix, Salutation
- . Spouse/Relationship
- . Address (multiples)
- . Telephone (multiples)
- . Links to all Parcels associated with the contact
- . Contact Status (Active, inactive, etc)
- . Role – Grantor, Grantee, Steward, etc.
- . Skill – Attorney, Surveyor, Forester, etc.
- . Organizations, Affiliations
- . Properties associated with the Contact
- . Newsletter check box
- . Returned mail check box
- . Comments- open text field

Parcels

Individual fields of data available for use.

General Data

- . Unique identifier – Hidden field essential for data base functionality.
- . Parcel identification number – user specified
- . Parcel Type – Fee, Easement Grantee, Easement Executory, etc.
- . Parcel Name
- . Local Name
- . Date Protected
- . Date last transferred
- . Parcel Status – Active, inactive, pending, etc.
- . Acres
- . Road, Town, County
- . Amendment date and comment
- . Comment – open text field

Parcel Tab

- . Purposes
- . Use Limitations
- . Reserved Rights – Subdivide, No. of Lots, Withdrawal, Withdrawal comments, Cabin, Cabin Comments, Residence

Conservation Connections

- Acquisition History – date, acres with potential for multiples
- Forestry Information – Forester name, Forest management plan & date
- Tree Farm, Tree farm number
- Rare, Threatened or Endangered species
- Exemplary natural community
- Deed restriction type
- Baseline data, baseline photo
- Affirmed public access
- NH specific check boxes for funding sources, LCIP, LCHIP (may be changed for your state)

Contact Tab

- All people (contacts) associated with the parcel
- Includes phone number and role
- Double click on name for complete contact information
- Links to all parcels associated with the contact
- Ability to limit view to active contacts or all contacts

Stewardship Tab

- List of all visits
- Site visit check box
- Visit type
- Date of visit, Visit by
- Primary contact, type of contact (in person, phone, etc)
- Topic
- Return visit priority and date
- Click on Go button to access detailed stewardship data. (see next form)

Stewardship Details

List of all visits

- Site visit check box
- Visit type
- Date of visit, Visit by
- Primary contact, type of contact (in person, phone, etc)
- Secondary contact, type of contact
- Topic
- Comment

- Follow up
- Return visit priority and date
- Next monitoring date
- Boundary Data – Date checked, Checked by, Marked status, Tag status, Comment
- Executory interest holder – Last response date, Send

Land Agent Tab

- Land Agent Name
- Property description
- Condition of property at closing
- Buildings Structures and Improvements
- Nearby Protected lands
- Directions to property
- Frontage – Road name, road type, length, Water name, water type, length
- Appraisal – Appraiser name, date, value of fee, value of easement
- Title opinion
- Soils information – 10 categories
- Land use information – 10 categories

Deeds and Maps Tab

- Deed recording information (multiples allowed)
- Deed type, book, page, recorded date, county, plan number
- Town tax map information (multiples allowed) – Map number, Lot number, Date of map
- Survey information – Survey date, Quality, Boundary condition
- Subdivision date, plan
- Landmark
- USGS topo map number
- New Hampshire specific GIS map number

History or Stories Tab

- Date of story
- Story by
- Topic
- Detailed history or story

Fee Property Tab

- Project or Block name
- Block number
- Deed number

Easement Endowment Tab

- Amount requested
- Requested by
- Requested via
- Request made to
- Amount received
- Date received
- Received from
- Follow up action
- Follow up date
- Follow up note

Contact information

For further information on Conservation Connections software, please contact.

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THE ALLIANCE FOR NONPROFIT MANAGEMENT

The Alliance for Nonprofit Management (www.allianceonline.org) has suggested and answered the following frequently asked accounting and finance questions on their web site referenced above.

Every land trust should understand these questions. If it does not, the land trust should find financial advisors that do.

1. What are the elements of an accounting system?
2. What are the differences between nonprofit and for-profit accounting?
3. How do we develop functional expense classifications?
4. How can we allocate indirect costs to programs?
5. What is the difference between cash basis and accrual basis accounting?
6. What should our chart of accounts include?
7. What is depreciation?
8. What is the unrelated business income tax?
9. What accounting software package should we buy?
10. What is an audit?
11. Should we get an audit?
12. What is an A-133 audit?
13. How do we prepare for an audit?
14. What is tax deductible for membership dues, special events, and other fundraisers?
15. What information are we required to provide to individual donors?
16. How do we account for pledges?
17. How should we invest our short-term cash balances?
18. What is the board's responsibility in investment?
19. What is cash flow and how should we manage it?
20. How much cash should we hold in reserve?

Finance Questions

21. How do we prepare a budget?
22. What internal controls are needed for cash disbursement?
23. What is petty cash and how should we handle it?
24. What internal controls are needed for payroll?
25. What is an internal accounting control system and how can we make ours effective?
26. What financial statements are nonprofits required to issue?
27. What financial reports do management and the board need?
28. How do we interpret our financial statements?
29. Is there a way to just show a figure for “net fundraising events” rather than listing each event under both income and expense?

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WILKERSON GUTHMANN + JOHNSON
CERTIFIED PUBLIC ACCOUNTANTS
St. Paul Minnesota

SAMPLE RECORDS RETENTION SCHEDULE

Accident reports/ claims (settled cases)	7 years
Accounts payable, ledgers and schedules	7 years
Accounts receivable, ledgers and schedules	7 years
Audit reports	Permanently
Bank reconciliation's	2 years
Bank statements	3 years
Capital stock and bond records: transfer registers, stubs showing issues, record of interest coupons, option, etc.	Permanently
Cash books	Permanently
Charts of accounts	Permanently
Checks (canceled - see exception below)	2 years
Checks (canceled for important payments, i.e. taxes, purchase of property, special contracts, etc. Checks should be filed with the papers pertaining to the underlying transaction.)	7 years
Contracts, mortgages, notes, and leases: (expired)	7 years
(still in effect)	Permanently
Correspondence (general)	2 years
Correspondence (legal and important matters only)	Permanently
Correspondence (routine) with customers/vendors	2 years
Deeds, mortgages, and bills of sale	Permanently
Depreciation schedules	Permanently
Duplicate deposit slips	2 years
Employment applications	3 years
Expense analyses/ expense distribution schedules	7 years
Financial statements (year -end, other optional)	Permanently
Garnishments	7 years
General/ private ledgers, year - end trial balance	Permanently
Insurance policies	3 years
Insurance records, current accident reports, claims, policies, etc.	Permanently
Internal audit reports (longer retention periods may be desirable)	3 years
Internal reports (miscellaneous)	3 years
Inventories of Products , materials, and supplies	7 years
Invoices (to customer, from vendors)	7 years
Journals	Permanently
Magnetic tape and tab cards	1 year
Minute books of directors, stockholders, bylaws and charter	Permanently
Notes receivables ledgers and schedules	7 years

Sample Records Retention Schedule

Option records (expired)	7 years
Patents and related papers	Permanently
Payroll records and summaries	7 years
Personnel files (terminated)	7 years
Petty cash vouchers	3 years
Physical inventory tags	3 years
Plant cost ledgers	7 years
Property appraisals by outside appraisers	Permanently
Property records , including costs, depreciation reserves, year - end trial balances, depreciation schedules, blueprints, and plans	Permanently
Purchase orders (except purchasing department copy)	1 year
Purchase orders (purchasing department copy)	7 years
Receiving sheets	1 year
Retirement and pension records	Permanently
Requisitions	1 year
Sales commission reports	3 years
Sales records	7 years
Scrap and salvage records (inventories, sales, etc.)	7 years
Stenographers' notebooks	1 year
Stock and bond certificates (cancelled)	7 years
Stockroom withdrawal forms	1 year
Subsidiary ledgers	7 years
Tax returns and worksheets, revenue agents' reports, and other documents relating to determination of income tax liability	Permanently
Time books/cards	7 years
Trademark registrations and copyrights	Permanently
Training manuals	Permanently
Union agreements	Permanently
Voucher register and schedules	7 years
Vouchers for payments to vendors, employees, etc. (includes allowances and reimbursements of employees, officers, etc. for travel and entertainment expenses)	7 years
Withholding tax statements	7 years

Bethany Land Trust Records Policy

1. CORPORATE RECORDS

A. Minutes of each Board meeting shall be kept in the minutes book of the land trust and signed by the Secretary or Acting Secretary. It will be the responsibility of the Secretary to keep the current minutes book.

B. Older minute books, shall be kept in the archives of the land trust or in the offices of the President of the land trust.

2. TAX RECORDS

The President and the Treasurer shall each keep a copy of at least the last three years of State, Federal, and municipal tax returns and filings. Older filings shall be kept in the archives of the land trust.

3. CORPORATE FILINGS

The President shall keep a copy of corporate filings and an additional copy shall be kept in the archives of the trust.

4. TREASURERS REPORTS

The President and the Treasurer shall each keep a copy of the last three years of treasurer's reports. Older reports shall be kept in the archives of the land trust.

5. MEMBERSHIP/DUES RECORDS

The President and the Treasurer shall each keep a copy of the last three years of membership records including name, address, date and amount of payment. Older reports shall be kept in the archives of the land trust.

6. PROPERTY FILES

A. The trust will endeavor to prepare or acquire baseline documentation on all easements.

B. All property files shall contain a copy of

- The original deed or easement
- Surveys
- Assessors maps
- Donor instructions if any have been received

C. The files on properties and easements held by the Trust shall at the minimum be kept as follows:

- 1 copy in the offices of the President
- 1 copy in the offices of the Land Management Chair.













7. STEWARDSHIP

The Stewardship Chair shall have a monitors' list and a file on each property or easement. This file shall contain:









- Copies of all monitoring reports
- A copy of the deed or easement
- Sample monitoring forms and instructions
- Relevant maps

Adopted 2/10/05

COLORADO OPEN LANDS
CONSERVATION EASEMENT PROGRAM MANUAL
TABLE OF CONTENTS

- I.  Principles of Conservation Easements
 - A.  Introduction
 - 1. Introduction
 - B.  Conservation Values
 - 1. History of Internal Revenue Code Section 170
 - 2. Conservation Values – Definitions/Interpretations
- II.  Conservation Easement Process
 - A.  Intake and Selection
 - 1. Project Intake and Selection Guidelines
 - 2. Project Process Checklist
 - 3. Project Information Form
 - 4. Project Selection Criteria
 - 5.  Engagement Letters
 - a. Engagement Letter (before site visit)
 - b. Engagement Letter (after site visit)
 - (1). with Project Coordination Agreement
 - (2). no Project Coordination Agreement
 - B.  Conservation Easement
 - 1. Conservation Easement Drafting Guidelines
 - 2. Current COL Model Conservation Easement
 - C.  Acquisition Due Diligence
 - 1. Due Diligence Guidelines
 - 2. Subordination Agreement Order
 - 3. Subordination Agreement
 - 4. Appraisal Checklist
 - 5. Appraisal Guidelines for Conservation Easements
 - 6. Present Condition Report Introduction
 - 7. Present Condition Report Checklist
 - 8. Acknowledgement of Present Condition Report
 - 9. Purchased Easements – Option Contract
 - 10. COL Project Coordination Agreement
 - D.  Application of Digital Technology
 - 1. Digital Technology and the CE Process
 - 2. Evaluation of Digital Technology in the CE Process
 - 3. Use of Current or New Technology in Easement Defense and Litigation
 - 4. Importing Field Data from Garmin GPS12 to ArcView
 - 5. Importing Topographical Maps from AllTopo to ArcView
 - 6. USGS Map Accuracy
 - E.  Stewardship Endowment
 - 1. Stewardship Endowment Guidelines
 - 2. Endowment Investment Policy
 - 3.  Calculating CE Endowments
 - a. Explanation of Spreadsheet
 - b. Updating the CPI and 30 Year T-bill Interest Rate
 - c. CPI from BLS Statistics
 - d. Model CE Costs Spreadsheet
 - 4. Endowment Report
 - F.  Acceptance of Conservation Easement
 - 1. Acceptance Guidelines

Colorado Open Lands: Conservation Easement Program Manual: Contents

2. CE Acceptance Board Resolution
3. CE Acceptance Letter
4. COL Tax Exempt Letter
5. IRS Form 8283 Instructions
6. IRS Form 8283
7. Co Tax Credit Overview
8. Colorado Dept. of Revenue Form 1305
9. COL Due Diligence Affidavit
10. Stewardship Endowment TY Letter
- G.  Post-closing Documentation
 1. Post Closing Documentation Guidelines
 2. Easement Document Checklist
 3. Ownership Log and History
 4. Monitoring Procedures
- H.  Stewardship Monitoring
 1. Stewardship Monitoring Guidelines
 2. Monitoring for Conservation Values
 3.  Field Monitoring Documents
 - a. Property Purpose and History
 - b. Easement Purpose and History
 - c. Easement Contacts
 - d. Monitoring Procedures
 - e. Monitoring Checklist
 - f. Photo Point Map
 - g. Photo Point Page
 4.  Reporting Documents
 - a. Notice of Monitoring Letter
 - b. Site Visit Memo
 - c. Annual Monitoring Report
 - d. Compliance Letter
 - e. Exercise of Reserved Rights
 - f. Summary of Violation
 - g. Summary of Amendments
 5.  Microsoft Access Database
 - a. Landtrust Database Guidelines
 - b. Backing Up The Landtrust Database
 - c. Creating a New Monitoring Checklist
 - d. Landtrust (the database itself)
- I.  Filing and Storage
 1.  Working Filing System
 - a. Data Management
 - b. Electronic Filing System
 - c. Hard Files
 2. Long Term Storage and Preservation
 - a. Archiving Documents
- J.  Amendment
 1. Amendment Policy
 2. Amendment to CE
 3. Amendment and Restatement
 4. Summary of Amendment Form

Colorado Open Lands Land Trust

Conservation Easement Program Manual: Filing and Storage

Data Management

The data management system used at Colorado Open Lands consists of four elements:

1. A Microsoft Access database that holds and updates information about each easement;
2. An electronic filing system that stores documents, such as conservation easements, annual monitoring reports and ongoing correspondence;
3. A GIS spatial database that maintains spatial data (maps) on each easement; and
4. A hard filing system that stores various data reports from the database, the documents from the computer filing systems and other documents, such as maps, photographs, present condition reports and management plans.
5. A system for the proper archiving and long-term storage of documents.

Landtrust Database

The Microsoft Access database, “Landtrust”, is designed to manage data on all easements. It has tables that contain the following data:

1. The “Contacts Table” maintains contact information on all present and past landowners, original grantors, land managers and other contacts.
2. The “Property Table” maintains information on each property.
3. The “Easement Table” stores a variety of data, such as easement ownership and history, title insurance, acreage, subordination agreements, covenants, appraisal values, conservation values, donated endowments, procedures for monitoring the easement and so forth.
4. The “Monitor Data Table” some summary information on the monitoring status of each easement annually. It tracks time spent on each easement, expenses, who the monitor met with, date and time of monitoring and so forth.

Several forms streamline the data entry process while assuring that data is entered in a standardized format. It includes the following forms:

1. Enter/Edit Contact Data
2. Enter/Edit Property Data
3. Enter/Edit Easement Data
4. Enter/Edit Monitoring Procedures
5. Enter/Edit Annual Monitoring Data
6. Enter/Edit Monitoring Status

The Landtrust database produces a variety of reports from these forms. The first five reports (The Property Purpose and History, the Easement Purpose and History, Easement Contacts List, Monitoring Procedures and Monitoring Checklist) are forms that make up the bulk of the Annual Monitoring Plans, which are field forms used to monitor each easement.

Introduction to Data Management
Last Updated 3/14/05

Colorado Open Lands: Conservation Easement Program Manual: Filing and Storage

The “Easement Document Checklist” report has about 80 fields that contain information on each easement such as property and easement names, acres protected, conservation values and descriptions, contacts, title commitment information, title insurance policy numbers and amounts, information on minerals ownership, hazardous materials, covenants, boundary surveys, appraisals and checklists on updating and filing various reports and forms. This report is printed and filed in the hard files and also is archived with the conservation easement and Present Conditions Report.

The “Monitoring Status Report” is a printed version of the monitoring status form and shows the status of the monitoring process on each easement. It includes the date of monitoring visits and the status of written reports or other “things to do”.

The database also can produce a variety of other useful reports.

1. Newsletter mailing lists;
2. Number of acres protected sorted in a variety of ways, such as by county, city or year;
3. Total amount of stewardship endowments collected;
4. Lists and descriptions of water rights for each easement;
5. Total value of appraised lands;
6. Inventory of Archived Documents;
7. Total number of hours spent on monitoring broken out by pre-, post-, and on-site monitoring hours; and
8. Total travel costs for monitoring broken out by rental car, hotel, meals, photo developing, etc.

The Electronic Filing System

The computerized filing system is a filing structure that holds primarily Microsoft Word documents and digital photographs from the easement negotiation process and the annual stewardship monitoring process. These are primarily long documents that are not maintained in the Access database. The structure and content of this filing system is outlined in the following section, “Electronic Filing System”.

The GIS Spatial Database

The GIS spatial database contains mapping and spatial information on each easement. COL is currently in the process of upgrading all our digital maps from Arc View 3.3 to Arc9. Information from each easement is mapped in Arc View on topographic base maps generated from a computer program called “All Topo Maps V7 Professional Map Topos”. All Topo generates seamless, geo-referenced topographic maps, which can be quickly and efficiently imported into Arc View. All spatial data collected or created for each easement is then projected on these topographic maps.

There is an endless amount of GIS data that can be maintained on conservation easements. However, since the management of GIS data is a time consuming and therefore an expensive process, COL only maintains data that is considered essential to the effective monitoring of each easement.

Introduction to Data Management
Last Updated 3/14/05

There are certain types of spatial data that are essential for the stewardship monitoring of all easements and other types of data relevant only on certain types of easements. The following is a partial list of data layers that are used in the conservation easement exhibit maps and monitoring process of easements.

1. Property boundaries are maintained on each easement. The associated attribute tables include property names and number of acres in each property. One Arc View polygon shapefile for easement boundaries is created for each easement and is filed in that easement's GIS folder.
2. Easement boundaries are maintained for all easements using an Arc View polygon shapefile. The associated attribute table contains the name of each easement (sometimes there are multiple easements on one property), the property name, and the number of acres in the easement.
3. In addition to the individual easement boundary file, COL maintains a statewide shapefile for COL easements. This is a point file indicating the center point of each easement. This shapefile is used to create maps showing the location of all managed easements. By downloading state, county and town/city boundaries, maps and tables can be produced that indicate the location of the properties by state, county or other political boundaries.
4. If an easement allows for the property to be split into one or more parcels, data on individual parcel boundaries may be maintained. In other cases, the easement may prescribe different resource protection provisions for different parts of the easement. This parcel or area specific data is maintained in an Arc View polygon shapefile with an attribute table that contains the name, type and acreage of the parcel and the name of the easement. The "type" field indicates the purpose of the parcel.
5. Building envelopes are maintained on certain easements using a polygon shapefile. The associated attribute table contains the name of the easement, the name of the building envelope, the type of building envelope (existing residence, proposed residence, agricultural, etc.) and the acreage.

The boundaries of all of the preceding shapefiles are generated from legal descriptions whenever possible. Since many building envelopes do not have legal descriptions, they are otherwise located on the property using GPS units (or a survey, if necessary) and the data is downloaded into Arc View. Please see the section of this Manual titled, "Evaluation of Digital Technology in the CE Process" for a discussion on when a survey may be necessary.

6. Improvements (residential and agricultural buildings, wells, horse loafing sheds, etc.) that are specified in conservation easements are maintained in a polygon or point shapefiles. The associated attribute table contains the name of the improvement, the type of improvement, and the easement name. Most existing buildings and some other improvements can be digitized off of topographic base maps, but if they are not located on them, they can be located using a GPS unit with the location loaded into Arc View.

7. For easements that control the building, maintenance or location of roads or trails, the location and type of these are maintained in a line shapefile. The attribute table contains the name of the road, the type (trail, ORV trail, 2-track, dirt, paved, etc.), whether it is in or outside of the easement, and the length. Roads outside the easement may be mapped in order to show access to the property.
Many roads will appear on the topographic map and can be hand digitized. Others will have to be located using a GPS unit and all will have to be identified by their type. It is only necessary to map roads that are specifically referred to in the easement.
8. For easements that control the construction of new utility lines (for example, requiring that they be installed underground), a line shapefile is used. The attribute table contains the easement name and the type of utility line. Many of the existing high-tension utility wires are identified on topographic maps, but local ones must be located using GPS.
9. For easements that require the mapping of riparian area locations for special management or prohibitions, a polygon shapefile maintains this data. The attribute table contains at a minimum, the name of the riparian area, the type, and the acreage. Many states have extremely detailed riparian data in Arc View format that can be used for this purpose and modified as necessary.
10. For easements that contain special habitat types, plant communities, or wildlife areas that require special management or protection as specified in the easement, a polygon shapefile is used. The attribute table contains the habitat/special area name, the type, and the acreage.
11. COL has created permanent photo points for each easement that are used for ongoing stewardship management. All photo points are maintained in a point shapefile. The attribute table contains the photo point number, and a description field to identify the photo point. Sometimes the photo point is generated by a GPS location taken in the field. If this is done the table includes all of the fields generated by the GPS unit.
12. For easements that are so large or complicated that all areas cannot be viewed on each annual visit, the Monitoring Plan designates certain routes that should be traveled each year. A line shapefile is maintained to record these routes. The attribute table contains the name of the route and its length. Routes may also be laid out for normal easements to indicate the location of certain roads or trails that provide the best access for efficiently monitoring the easement.

The Hard Filing System

The hard filing system is predominantly a back up system for the computerized files and for backup storage of certain database information. It contains some relevant documents from the easement negotiation process and documents relating to the ongoing annual monitoring process. Detailed information on violations, amendments and exercise of reserved rights are also filed here.

Introduction to Data Management
Last Updated 3/14/05

The hard files also contains maps from the Arc View database, important information from the Access database or computer files, and the Annual Monitoring Plan for each easement. Its structure and content is outlined in part iii of this Section of the Manual, “Hard Files”.

Electronic Filing System

Setting up Operation Files

Upon initiating a conservation easement project, a subdirectory for the project should be created under the Operations file.

For example:

E: \ 05 Operations \ Current - Boulder \ Heil Ranch

A set of electronic project folders are created for the project by copying them from e:\05: Operations \ “A model set of project folders”. These folders are:

- Conservation Easement
- Due Diligence
- Intake Forms
- Negotiations and Correspondence
- Purchase Contract, Acceptance Letters, and Closing

Other folders may be created as necessary during the course of the conservation easement project.

- Upon the successful completion of the project, the project subdirectory files are moved to the “Successfully completed” directory:
E:\ 05 Operations \ Successfully Completed Easements and Projects

And rename the “Heil Ranch” subdirectory indicating the type of easement by inserting the appropriate initials at the beginning of the directory name:

CE: Conservation Easement

DR: Deed Restriction

PJ: Project in which we assisted with an easement that is held by another entity. For example: “CE Boulder – Heil Ranch”.

If a project is unsuccessful, move the folders and associated documents to the following directory:

E:\Operations\ Unsuccessful Easements and Projects

Introduction to Data Management
Last Updated 3/14/05

Colorado Open Lands: Conservation Easement Program Manual: Filing and Storage

Although the project is not completed, COL maintains the files for the following reasons:

- to maintain a historical documentation,
- to retain documents in case the project begins again, and
- for cases in which COL has rejected the project, to have a record that we implement our project selection criteria.

Y For these projects, add “COL rejected” to the directory name.

Setting up Stewardship Files

In some cases properties may have multiple easements on them. In these cases, the first step in the filing process is to determine whether the new easement will be set up in its own file or included in a pre-existing file. The following procedure should be followed to determine whether or not to set up a separate file:

1. If a subsequent easement on a property is owned by the same grantor as the first, the new easement information should be included in the first easement files and the easement directory name for the stewardship files should be changed to reflect the addition of the new easement (i.e., ER Ranch should be changed to ER Ranch I & II). This policy is the same whether the new easement is an amendment of the first easement or not.
2. If the new easement on a property is owned by a different grantor than the first easement, then a separate set of files should be created for each easement.
3. If an easement is subdivided and one parcel is sold to a new owner, then a separate set of stewardship files should be created for each parcel. However, as long as there is only one owner, it is filed as one set of electronic files.
4. If a single easement covers multiple (usually adjacent, but not necessarily so) properties with different owners, a separate complete set of files must be set up for each owner.

(Note: this filing system only applies to the stewardship files. Operation files will always be separate for each easement.)

Once this first step is completed, a similar process is used to set up the stewardship files as was used for the operation files. Create a new set of directories for stewardship documents in:

E:\06 Stewardship \ Easements

The directory for the new easement should be titled “county name– easement name”

For example: “Boulder – Heil Ranch”

Within this directory, create the following folders (These can be copied from e:\Stewardship\Easements\ 1 MODEL SET OF STEWARDSHIP FOLDERS:

- Amendments
- Checklists, Forms & Summaries
- Correspondence & Related Issues
- Exercise of Reserved Rights

Introduction to Data Management
Last Updated 3/14/05

Colorado Open Lands: Conservation Easement Program Manual: Filing and Storage

- Letters and Memos
- Maps and Photos
- Monitoring
- Violations

Organizing Documents in the Files

COL has developed a procedure to establish consistency in the naming of files. The format we use is *[Name of recipient][subject of document][type of document][date: year month day]*. For example, a letter to Mr. Jones about title insurance would be named “*Jones Title Insurance letter 04 12 23*”.

Examples of the types of documents that are to be filed in the model operation folders are:

Conservation Easement Directory

Selected drafts of the conservation easements should be filed here, including any appendices or exhibits. The final form of easement should be labeled “Final ce.” If an electronic copy of the recorded easement is available (typically a pdf file) it should be filed here.

A PDF copy of the recorded easement document

Negotiations and Correspondence Directory

Contains any letters, copies of emails, etc. that were made during the acquisition phase.

Due Diligence Directory

Contains any documents related to the acquisition due diligence. Examples include the following:

CE Costs Spreadsheet

Title commitments

Appraisal information

CE Subordination Agreement

Drafts of the Present Conditions Report

Intake Forms Directory

CE Project Process Checklist

Property Information Form

Project Selection Criteria Form

Purchase Contract, Acceptance Letters, and Closing

Contains any purchase or option contracts, easement acceptance letter, endowment acceptance letter, and any closing documents.

Examples of types of documents to be filed in the stewardship files are:

Amendments Directory

All correspondence regarding amendments

Exercise of Reserved Rights

Any correspondence regarding the reserved rights, including construction plans or COL approvals.

Introduction to Data Management

Last Updated 3/14/05

Colorado Open Lands: Conservation Easement Program Manual: Filing and Storage

Letters and Memos

Contains any non-monitoring related correspondence, issues affecting the easement, and internal memos.

Maps and Photos

Contains any maps and photos.

Monitoring Directory

Contains Subdirectories organized by year. Then within each year:

Compliance Letter

Monitoring Report
Notice of Monitoring
Site Visit Memo

Violations Directory

Contains all letters, memos, correspondence, reports etc regarding each violation.

Arc View GIS Files

All Arc View GIS Data is kept in a GIS folder on a special GIS Server, which has a RAID Drive that replicates data on a back-up drive as it is created. This server is accessed by other computers in the office using the following address:

\\gis-printer\gis

This address is set up in Arc9 and allows users to preserve the pathnames in Arc9 regardless of which computer accesses previously created GIS data.

All easement data is stored in the “ce prop” folder by county. The “ce_prop” folder includes GIS data organized in sub-folders by project name for both on-going and completed easements and projects. If the project is unsuccessful, the GIS data is deleted (unlike for the Operation documents described above).

Within each property folder there are five subfolders which organize the GIS data into related categories (outlined below). Thus the GIS easement and project subfolders appear as follows:

Gis\ce_prop

 \Adams [County]

 \Bromley

 \Base – topographic maps, georeferenced aerial and satellite photos, etc.

 \Bound – Shapefiles for property, easement and building envelope boundaries

 \GPS – Any GPS data collected in the field, permanent photo points

 \Improv – Shapefiles for roads, buildings, fences, utility lines etc.

 \Resource – Shapefiles for riparian areas, special ecological areas etc

 \Frazier

 \Maul

 \Reffel

Introduction to Data Management

Last Updated 3/14/05

Colorado Open Lands: Conservation Easement Program Manual: Filing and Storage

General GIS data is stored in a directory called “gis\data”. Within this directory, data is stored in three sub-directories, one for County Data, one for Statewide data and one for US data:

Gis\data\Colorado
 \County
 \USA

Within that directory all statewide data is filed in the “Colorado” folder: gis\colorado

In the “Colorado” folder data is subdivided into subfolders:

\COL CEs
 \cultural [archeological, etc.]
 \demographic [population, political etc.]
 \earth-resources [elevation, hydrology, geology, etc.]
 \infrastructure [highways, railroads, utility lines, etc.]
 \new data [a temporary folder]
 \ownership [land ownership data]
 \political [cities, county, state borders etc.]
 \priorities [priority planning areas data]
 \temp

All County-wide data is stored in the specific county folder:

e:\gis\adams_co
 \huerfano_co
 \park_co
 \etc.

Hard Files

Introduction

To be able to locate documents quickly, the hard files are set up in a uniform manner. However, it is necessary to be flexible and, in special cases, files may be added if required.

The following tables list the suggested files and their sequence that need to be created for each project. With this sequence in mind, the files, and therefore the tabs, are organized from left to right. The tables also indicate which documents should be stored in off-site in a locked fireproof file cabinet (see Section III., below).

All Easement Files

1. Use legal size file folders (3 cut for tabs)
2. Print the information on the tab in pencil for individual files.
3. Make the Plastic Tab Label (5/8” x 3.5”) for each conservation easement:
 - a. Type in the name of the Conservation Easement in this font:
CG Times **bold** 25 point scalable type (see document called Large Labels for each

Introduction to Data Management
Last Updated 3/14/05

Colorado Open Lands: Conservation Easement Program Manual: Filing and Storage

CE File under Labels OR use worksaver5 tab-custom in label options in Microsoft Word.

- b. Print on cream colored card stock
- c. Cut to fit

e.g.

Locust Flats

I. Operations (Acquisition) Files

OPERATION FILES	
Name of File	Fireproofed Archive
Closing Documents*	No
Title	Original title policy only
Contracts and Purchase Agreements*	No
Appraisal	No
Mineral Potential Assessment*	No
Environmental Hazards Assessment*	No
Negotiations and Correspondence (1 folder for each phase if amended and restated)	No
Project Funding*	No

* These are optional file categories to be used when necessary

Documents in Operations Files

When the easement is completed, the following documents should be filed in the following Operations file folders:

Closing Documents: Generally this file would only be created for bargain fee-purchase or bargain sale conservation easement transactions, and may include such items as:

- Signed buyers and sellers settlement statements
- Closing instructions from attorneys, funders, etc
- Executed purchase and sale contract
- Copies of dispersal checks, etc.

Title: This file should be created for all transactions and should include:

- Copy of title policy or final commitment (original goes to Permanent Fireproof Archive)
- Early versions of the title work
- Title exception documents
- Property ownership deeds
- Water right deeds
- Due diligence items such as off record matters, etc.

Contracts and Purchase Agreements: This file should only be necessary when purchasing conservation easements or fee interest. This folder should hold:

- Drafts of purchase contracts or sales agreements
- The final, executed purchase and sale contract

Introduction to Data Management
Last Updated 3/14/05

Appraisal: Consistent with LTA's Standards and Practices, Colorado Open Lands keeps a copy of the appraisal for each conservation easement or land interest we hold. In addition to the final copy of the appraisal this folder should include:

- A copy of the donor's executed IRS Form 8283
- Correspondence, preliminary appraisal work, and corrections/modifications

Mineral Potential Assessment: This folder should include:

- Completed mineral potential assessment report
- Minerals remoteness letter

Environmental Hazards Assessment: This folder should include:

- Signed environmental hazards assessment
- Updates, revisions

Negotiations and Correspondence: This folder(s) contains one copy of the final easement. All prior drafts of the easement should be purged. If any changes were made from the drafts that are important to keep for historical purposes, these changes should be explained in a memo to the file.

Whenever possible, clip related correspondence and documents together, and label them. In all cases, documents should be placed in chronological order. In some cases correspondence may be voluminous enough to require separate correspondence files for different parties to the transaction. Some examples of documents in this folder include:

- Correspondence, including emails, to the landowner, funders, lawyers, title company, etc.
- Notes from site visits, negotiations, etc.
- Intake Forms, such as Project Selection Criteria
- Background information, such as articles and maps that aren't appropriate for filing with stewardship materials
- Easement and endowment donation thank you letters, copies of checks

Project Funding: Again, this is an optional folder that may only be necessary in cases where project funding is provided by third parties and certain due diligence steps are required by a funding entity. Different grantors have different project work flow processes but it is advisable that records of all grant agreements, special approvals, or unique due diligence requirements be kept here. This might include:

- Grant agreements and drafts
- Project budgets
- Records of special waivers or approvals
- Required notices, etc.

II. Stewardship Files

STEWARDSHIP FILES	
Name of File	Fireproofed Archive
Signed Easement Document	Original only (stapled)
Master Monitoring Materials	No
Maps and Photos	No
Related Issues & Correspondence	No
Exercise of Reserved Rights	No
Violations	No
Amendments [separate files for each]	Original only (stapled)
THE NEXT FILE IS TO BE CREATED ONLY IF IT IS NEEDED	
Covenants, Conditions, and Restrictions	Yes

Multiple Easements on a Property

Properties may have multiple easements on them for a number of reasons. In these cases, the first step in the filing process is to determine whether the new easement will be set up in its own file or included in a pre-existing file. The same procedures should be followed as that outlined in the “Computer Files” document.

Documents in Stewardship Files

In addition to the eight file folders listed above, one file folder is created to hold those documents in the fire-proofed archive. When the easement is completed, the following documents should be filed according to the following:

Signed Easement Document: The easement should be placed in its own hanging file at the front of all stewardship files.

- Executed and recorded Easement (unstapled and one sided)
- Executed and recorded Amendments (unstapled and one-sided)

Master Monitoring Materials: These materials are used by stewardship program staff for property site visits, and will be regularly removed from the files and brought into the field. This file should hold:

- Copy of executed and recorded easement (stapled and 2-sided)
- Acknowledged Present Conditions Report
- Master map on which to locate photo points or a notation on where to print one out from the computer
- Covenants etc. (if appropriate)
- Current management plan (if appropriate)

Introduction to Data Management
Last Updated 3/14/05

Colorado Open Lands: Conservation Easement Program Manual: Filing and Storage

- Any aerial photos (Scan them in and print them. Keep the originals in the Maps and Photos file)
- Document checklist
- Easement reserved rights report (generated from Landtrust database)
- Easement violations report (generated from Landtrust database)
- Easement amendments report (generated from Landtrust database)
- The Annual Monitoring Plan Booklet (Includes property background, easement background, contact list, monitoring & reporting procedures, and monitoring checklist generated from the Landtrust Database; and destination maps, property photo point maps, and photo point pages).
- Leases (if appropriate)

[Year] Monitoring: As land stewardship proceeds over the years, individual file folders are created to house each year's monitoring materials, labeled by year. Each year's monitoring file should hold the following documents after monitoring is complete:

- Monitoring notice letters
- Completed monitoring report
- Site visit memo
- Compliance letter
- Photos (in archival plastic covers)
- Photo point map
- Any correspondence since last monitoring visit

Maps & Photos: Maps and photos can be helpful for stewardship purposes. If available, the following should be kept on file:

- Surveys and Survey Maps
- Other Maps
- Legal Descriptions
- Aerial Photos
- Other Miscellaneous Photos

Related Issues and Correspondence: Records of negotiations and correspondence can be useful to track relationships with landowners.

- Correspondence, memos not related to monitoring
- Newspaper clippings, magazine articles, etc.

Exercise of Reserved Rights: Most Colorado Open Lands conservation easements allow landowners some reserved rights, whether it is the ability to harvest timber, or to build an additional house on preserved property. Outlined with these rights is an approval or notification process between the landowner and COL when rights are exercised. It is extremely important that documentation of this notification or review process, as well as the outcome, is kept on file. The exercise of reserved rights files might include:

- Correspondence, memos, maps, or documents related to exercise of reserved rights
- Colorado Open Lands approval letters
- Include documents for reserved rights discussed but not exercised

Violations: One of Colorado Open Lands primary responsibilities as an easement holder is to

Introduction to Data Management
Last Updated 3/14/05

Colorado Open Lands: Conservation Easement Program Manual: Filing and Storage

defend the property against violations of the terms of each conservation easement. The importance of properly documenting violations cannot be understated.

- Correspondence, memos, and documents related to potential or actual violations
- Photos of potential or actual violations
- A summary of the outcome of the enforcement process.
- A separate file should be created for each violation

Amendments, Deed Corrections, Letters of Agreement: Colorado Open Lands will only amend conservation easements on a case by case basis, as governed by our conservation easement amendment policy. This folder should contain documentation of any easement amendment activity, including:

- Correspondence, memos or documents related to amendments
- Requested amendments that are not granted
- Recorded deed corrections and related documents
- Letters of agreement about interpretation of easement terms

Covenants, Conditions & Restrictions: This file is only required in situations where home owners association or other covenants, conditions, or deed restrictions effect the property under conservation easement. Documents to keep on file include:

- Homeowner's association covenants if easement owned by HOA
- Any conditions, covenants, and restrictions impacting the easement

III. Documents for off-site, fireproof storage

It is Colorado Open Lands policy to store basic irreplaceable project documentation off-site to ensure that the most primary and essential information will be recoverable in case of a catastrophic event that affects our in-office filing system. In the case of a transfer of a conservation easement to another land trust or agency, *copies* of each of these files should continue to be kept in off-site, fireproof storage. All original documents, stewardship files and documents, and operations files and documents are handed over to the transferee. A single acid-free archival quality legal sized file folder is created for each conservation easement, and labeled with pencil.

File Folder with Easement Name:

- Original executed and recorded easement (stapled)
- Original executed and recorded amendment(s) (stapled)
- Title insurance commitment or original title insurance policy
- Original, acknowledged Present Conditions Report
- Original executed and recorded mortgage subordination or release of deed of trust
- Documents checklist report (from Landtrust database)
- If appropriate, executed and recorded transfer documentation and records of transfer of stewardship endowment

Easement Monitoring File Folders – One for each year

Introduction to Data Management
Last Updated 3/14/05

Archiving Documents

Introduction

Since a conservation easement is held in perpetuity, it is important to have a system for the storage of documents and background information so they will last for an indefinite period of time. This system requires that documents and photographs that are stored in the off-site archives be produced on specific paper and archived in specific storage units. Although these methods may be more expensive and time consuming, they will help preserve the necessary documents. The following is a brief outline of the system that COL currently uses for our documents.

Off-site Archive

Selected files are archived and maintained off site at Public Storage at 305 S Union Blvd, Lakewood, CO. Keys and access numbers are located in the Office Manager's Desk. The storage site is fireproof, waterproof, temperature controlled, and dust-free. The following documents are stored off site in this manner on acid free archival paper in acid free folders and envelopes:

- Conservation Easements, original signed copies
- Amendments, original signed copies
- Present Conditions Reports, original signed copies
- Document Checklists (maintained in Database: lists all documents in office & archive)
- Title Insurance Documents (Title Commitment or Title Policy)
- Subordination Document or Release of Deed of Trust
- Annual Monitoring Reports

All archived files are placed on 100% cotton, acid-free paper and kept away from ultraviolet light. Related, all folder, covers, or dividers that come in contact with documents are 100% cotton, acid-free paper. The ink from laser printers will not fade, but ink from pens will. If notations are hand-written, pencil should be used to prevent fading.

Monitoring Computer Files

All of the computerized annual monitoring data (one file for each easement) is copied on to one CD for each year and stored in the off-site location. This data includes:

- Annual Monitoring Reports
- Site Visit Memos
- Compliance Letters
- GPS points in .txt files
- Digitized photographs

Introduction to Data Management
Last Updated 3/14/05

On-site Photographs

COL often uses digital photographs, which are maintained on our database, as well as backed up on a CD if they are monitoring photos. However, if there are traditional photographs, a specific system is used to preserve them for as long as possible. To present loose photographs and negatives, a polypropylene sleeve is used. Each photograph is labeled with the date and location using a pen suitable for marking photographs. COL uses archival photo pens for permeable surfaces for photographs and non-permeable for the photograph sleeves.

Ordering Information

Order polypropylene sleeves and pens with archival ink from University Products Company, 517 Main Street, P.O. Box 101, Holyoke, MA 01040-0101, Telephone Number (800) 628-1912. We have a catalog on hand in the photo supply file cabinet.

We use: Pigma Pens, .38mm wide black ink to mark the back of photographs
Print File Photo Storage plastic polypropylene pages to hold the photos (University's item number is 525-4660B for a Bulk Pack of 500)

MINNESOTA LAND TRUST
PROJECT INFORMATION REPORTS AND LISTS
SEPTEMBER 2006

In order to keep accurate and consistent records, the Minnesota Land Trust will track and maintain information regarding its land protection activity on the lists or reports described below. Additional reports will be created as needed.

All reports will include the title and purpose of the report and the date it was created or last updated. Whenever appropriate, projects will be identified by project identification number as well as by site and tract.

Reports are maintained electronically; paper copies are created as needed and for archival purposes.

The Land Trust keeps extensive information on each project in individual project files as well. Whenever possible, the same organizing structure and terminology is used for project files, project lists, and electronic files. For additional information on project file see: *Land Conservation Project Files--Structure and Content*.

PROJECT STATUS TRACKING WORKSHEETS

In order to keep track of current workloads and ongoing projects, information is collected for all projects requiring attention, action or monitoring (other than routine stewardship monitoring) on regional *project status tracking worksheets*.

One worksheet is maintained for each Land Trust region. Projects for that region are listed and sorted by status: potential (projects being pursued by the Land Trust but where the easement is not yet completed) or active (projects where the easement is completed but where there are details of the project not yet completed or there are new concerns.)

Additional status information should be included for each project.

- Active projects should be identified by whether the project involves an amendment, approval, interpretation or problem.
- Potential projects should be identified as on hold if they require monitoring but not current involvement.

Projects that are no longer being pursued by the Land Trust or that are unlikely to be completed in the near future should be classified as inactive and dropped from the list.

Other information collected includes:

- county
- site/tract name (and project ID # if an active file)

Minnesota Land Trust: Project Information Reports and Lists

- acreage
- lead staff assigned to the project
- board approval status and date of approval
- LCMR or other program or project status (if applicable.)

Comments will be included for each project indicating the project's status, next steps or other information to generally describe actions needed.

Regional conservation directors (or other lead staff on a project) are responsible for keeping the *project status tracking worksheets* up to date.

COMPLETED PROJECTS LIST

All new protection projects completed by the Minnesota Land Trust are captured chronologically on the "official" *completed projects list*. This allows us to keep track of individual projects and track the cumulative impact of our protection work.

Projects are added to the list by the conservation program assistant as soon as the project is closed. Unless information needs to be corrected, once information on a project is added to the completed projects list it will not be changed.

NOTE: A "working copy" of the *completed projects list* will be maintained so that information can be sorted as needed for other purposes. Yearly lists of all projects completed during a given year are also created for reference purposes.

Information captured on the *completed projects list* includes:

- Minnesota Land Trust region
- month/year of completion
- project ID number (assigned when the project is added to the list)
- site/tract
- critical landscape (if appropriate)
- county
- acreage of land protected
- land description (forest, woodland, grasslands/meadows, wetlands, agricultural lands, or other with the land type with most coverage listed first)
- water feature (identify)
- scenic feature (designated features only such as a scenic byway, wild and scenic river, etc.)
- shoreline protected
- project type (new CE, addition to CE, fee title, etc.)
- transaction type (gift, purchase, bargain purchase, ordinance/required, etc.)
- easement value (if known)
- tax deduction status (x = deduction taken)
- stewardship funding commitment (amount and source, if needed)

Brief comments will also be included as necessary to explain unusual transactions or details. In the comments section a notation will be made if the project involves a conservation development or if the project involves public ownership of the land. Special project or program funding, such as LCMR or McKnight Blufflands grant, will also be noted.

For information on land descriptions and measurements, see: *Property Descriptions, Classification and Measurements*.

For more information of project type and transaction type, see: *Project Definitions and Terms*.

MONITORING WORKSHEETS

The Minnesota Land Trust keeps track of its ongoing monitoring activity and responsibilities for all of its conservation easements through regional *monitoring worksheets*.

The *monitoring worksheets* include summary information for the most recent five years. Information on monitoring activity regarding each project is also kept with the project file and in the monitoring workbook.

Monitoring worksheets are kept by region. Each project in each region is included separately on the list, alphabetically by site. Information on the worksheets includes:

- project ID # (assigned when the project is added to the completed project list)
- site name
- tract name
- county
- current owner or current contact (include full name, even if still original owner)
- owner # (degree of distance of current owner from original transaction, with original owner who conveyed the CE as #1)
- co-holder (if any)
- external reporting requirements (if any)
- monitor and monitoring results for the previous four years (full name of monitor with "staff" attached as appropriate)
- current year's monitor and monitoring status
- comments (included as necessary to aid in monitoring, note problems, etc.)

Monitoring worksheets are kept on a calendar year basis, reviewed at the beginning of each monitoring season (early spring), updated throughout the year to track activity (spring, summer, fall), and reviewed again at year's end to determine what additional follow-up is necessary.

Projects requiring future monitoring are added to the monitoring worksheets by the conservation programs assistant as they are completed. "New" projects not yet needing monitoring are identified as such in the "monitor field," rather than having a monitor identified. If a 5 year staff review is needed in a given year, that is also indicated in the "monitor" field.

The monitor field is also temporarily color-coded during the monitoring year: **grey** = monitoring not yet completed, **yellow** = monitoring completed.

Minnesota Land Trust: Project Information Reports and Lists

Additional information is temporarily tracked during each monitoring year regarding:

- whether the monitoring workbook has been returned to the Land Trust office (workbook returned?)
- whether the volunteer monitor has been notified of receipt of workbook and thanked for monitoring (card to volunteer monitor?)
- whether the landowner has been notified of the monitoring results (letter to landowner?)
- whether co-holders or others requiring notice have been sent monitoring results (reporting requirements met?)

For these fields: "x" = yes, blank = no or not applicable

Possible violations are also initially noted under "letter to landowner?" with comments added in the "comments" field as necessary.

At the beginning of each new monitoring season, temporary information from the prior year is deleted. For prior years' monitoring, the monitor's name in the year's "monitor" field identifies that the project was in fact monitored and by whom, with "not monitored" added if the project did not get monitored that year.

TRACKING OTHER LAND TRUST ACTIVITIES

For ease of reference and to better understand the cumulative nature and scope of Land Trust activities, the Minnesota Land Trust maintains a variety of other lists to keep track of ongoing and historical activity. These lists are described below.

PROJECT DENIALS LIST

The Minnesota Land Trust completes only those conservation easement projects that meet its internal criteria. As a result, it must occasionally formally decline to pursue a project.

All requests from landowners for protection of their property by the Minnesota Land Trust that are formally denied by the Land Trust are tracked with information on: Minnesota Land Trust region, county, site/tract name, or landowner name, date of denial and the reason the Land Trust chose not to proceed.

This list does not include projects where the Land Trust remains interested in the project but the landowner has chosen not to proceed. It also does not include those projects where the Land Trust may have suggested a project might not be a high priority but where it did not formally decline to pursue the project.

This data has been collected only since the beginning of fiscal year 2002 and so this list is not complete.

LANDOWNER REQUESTS FOR APPROVALS AND INTERPRETATIONS LIST

Many conservation easements held by the Minnesota Land Trust allow the landowner to undertake certain activities with prior Land Trust approval. In other circumstances, landowners are unclear as to whether an activity is allowed under the terms of an easement. In order to better understand the frequency and scope of these types of request, the Land Trust collects information on:

- Requests from landowners for approvals for activities requiring approval from the Minnesota Land Trust under a conservation easement.
- Requests from landowners for formal interpretations of a conservation easement to allow a given activity.

Requests are listed chronologically, along with information identifying the project involved (Minnesota Land Trust region, county, site/tract name and project ID #.) Results of requests for approvals of activities are categorized as either "approved" or "denied." Results or requests for interpretations allowing an activity are categorized as either "allowed" or "not allowed."

Requests for amendments that are granted are captured on the *Conservation Easement Amendments List*. Requests for amendments that are NOT granted are captured here.

This data has been collected only since the beginning of fiscal year 2002 so this list is not complete.

CONSERVATION EASEMENT AMENDMENTS LIST

Any conservation easements held by the Minnesota Land Trust that have been amended or have been extinguished in whole or in part (other than easements that are amended solely to add land to the easement) are identified on this list.

Amendments are added to the list chronologically as they are completed.

In addition to identifying information on the specific conservation easement being amended (Minnesota Land Trust region, county, site/tract name and project ID #), amendments are categorized by one of the four purposes for which an easement can be amended under current Minnesota Land Trust policy:

- prior agreement
- technical correction of an error or ambiguity
- settlement of condemnation or other legal settlement
- modifications consistent with original conservation purpose

If none of these applies, the amendment is categorized as "other."

Explanations for the amendments are included. Amendment requests that are denied are included on the landowner requests lists.

Minnesota Land Trust: Project Information Reports and Lists

CONSERVATION EASEMENT VIOLATIONS LIST

All problems or violations of Minnesota Land Trust easements are captured on the conservation easement violations list. In addition to identifying information on the specific conservation easement involved (Minnesota Land Trust region, county, site/tract name and project ID #), information collected on each problem or concern includes:

- owner at time of violation
- owner # (degree of distance of current owner from original transaction, with original owner who conveyed the CE as #1)
- how the violation was discovered (monitor, landowner, third party, random staff observation)
- date violation discovered
- party responsible for the problem
- nature of the problem (dumping, tree cutting, construction without approval, or notice, sale without notice, etc.) including seriousness of activity (minor or major violation, see definitions below)
- whether the issue was resolved
- comments, including action taken, results, cost of investigations and correction, etc.

Violations are added to the list as they are discovered. An attempt has been made to capture all historic violations but the list may not be complete.

Violations are categorized as "minor" or "major" violations.

- A minor violation is a technical violation of an easement's terms or an activity expressly prohibited by a conservation easement but the activity does not cause substantial harm or diminishment of the conservation values of the property being protected by the easement.

Examples include failure to give notice of selling the property, failure to seek approval of where to place an authorized building but the building is nevertheless in an appropriate site, minor tree cutting or vegetation removal, minor brush or trash accumulation.

- A major violation is an activity that is expressly prohibited by the terms of a conservation easement and has or will, if allowed to continue, substantially impair or diminish the conservation values of the property protected by the easement.

Examples include unauthorized construction of buildings or improvements, major timbering, alteration of shoreline that impacts aquatic habitat or water quality.

CONSERVATION EASEMENT CO-HOLDERS LIST

A list is maintained on all conservation easement co-holders, including site/tract names of easements co-held, specific co-holding arrangements, details on any reporting requirements, and

contact information. This list is updated as projects with co-holding arrangements are completed.

CONSERVATION DEVELOPMENTS LIST

The Minnesota Land Trust maintains a list of all conservation developments in which the Land Trust has been involved. Information collected about each development includes:

- name and location of development
- developer and any associated parties (architect/landscape architect/designer/engineer/etc.)
- size of site
- nature and size of protected area
- number of houses in development
- whether the easement is required
- involvement of a homeowners' association
- ultimate ownership of land
- fees and funding arrangements

Additional information will be collected when known regarding economic and sales factors such as price range of lots, price range of homes, timing of sales, etc.

NOTE: This list is currently under construction at this time.

STATEWIDE MAP

The general locations of all conservation easements or other protection projects completed by the Minnesota Land Trust are noted on a statewide map. Locations are noted by GPS coordinates or by section/township/range or similar approximation if more accurate coordinates are not known.

Current plans are to update the map annually at the end of each fiscal year.

MINNESOTA LAND TRUST
LAND PROTECTION PROJECT FILES—STRUCTURE AND CONTENT
FEBRUARY 2007

GOALS:

The goals of the Minnesota Land Trust's land protection projects filing and record management procedures are to make sure that:

- The Minnesota Land Trust has the information necessary to evaluate and complete its land protection projects and to manage and monitor its ongoing conservation easement obligations.
- All documents and important materials related to conservation easement and other land protection projects are securely kept and relatively easily retrieved or reproduced when necessary.
- Anyone unfamiliar with a project or file can understand the history and status of the project from information in the files.

To meet this goal, information on Minnesota Land Trust land protection projects is kept in both paper and electronic/digital files. Paper files are kept in both the regional and St. Paul offices. Electronic files are kept as shared files—with remote access availability—on the network. Separate computer discs are created for some components of each project file.

The Minnesota Land Trust considers the paper file on each project to be the official organizational record for all conservation easements or other land protection project activity.

The St. Paul office will keep the official file, including all original legal documents and the original baseline property report. Regional offices will maintain their own files with information on all projects sufficient to meet their needs. This includes the monitoring workbook for each completed easement—which includes a copy of the completed easement and baseline property report along with pertinent easement stewardship and monitoring information.

In addition to individual files on conservation projects, information is kept on various project lists and compilations. For more information see: *Project Information Reports and Lists*.

The following outlines the Land Trust's filing policies and protocols.

Minnesota Land Trust: Land Protection Project Files: Structure and Content

ORGANIZATION AND FILING STRUCTURE:

All land protection project files are organized or identified by Minnesota Land Trust region, project status, and name (site and tract.) Whenever possible, all information on projects is also maintained according to this structure.

REGION:

The Minnesota Land Trust is organized into three regions: South, Central and North. Regions follow county lines as shown on the Minnesota Land Trust Regional Organization map.

PROJECT STATUS:

Conservation easement projects, and any other land protection projects, are organized and filed by status: prospective, potential, active or inactive:

- Prospective projects: *Prospective* projects include all initial inquiries from landowners, preliminary contacts by Land Trust staff, and other initial suggestions for land protection.

Once a project is being actively pursued or reviewed by the Land Trust, it becomes a *potential* project.

- Potential projects: *Potential* projects are those projects actively being pursued or reviewed by the Land Trust. The conservation programs assistant will reclassify a project as *potential* when the Land Trust receives a completed Landowner Questionnaire. Other protection projects in their early stages are classified as *potential* at the decision of the regional conservation director.

A project remains a *potential* project until it is completed and becomes *active* or until it is no longer being pursued and becomes *inactive*. Some *potential* projects are also further identified as *on hold* for tracking purposes. These are projects that are important to the Land Trust but are not being actively pursued for any number of reasons.

Projects formally approved by the Board of Directors remain *potential* until actually completed but are separately identified as *board approved*.

All *potential* projects should be listed on each region's *project status tracking worksheet*. See: *Project Information Reports and Lists* for more information on these worksheets.

- Active projects: *Active* projects are all completed conservation easements and other protection projects. Once a conservation easement is completed, it will remain "active" forever.

NOTE: A conservation easement is typically considered completed on the date it is formally accepted by the Land Trust. That is when it is reclassified as *active* even if some components of the project are not yet completed.

All *active* projects remain on the *project status tracking worksheet* until fully completed.

Minnesota Land Trust: Land Protection Project Files: Structure and Content

- Inactive projects: *Inactive* projects are projects that the Land Trust formally declines to pursue or those that appear unlikely to be completed in the near future and will not be monitored or pursued by the Land Trust. An *inactive* file may be re-activated in the future.

Inactive projects are dropped from the *project status tracking worksheet*.

NAMES:

Land protection projects will be identified by site and tract.

The site name will generally reflect geographic, ecological, locational or other features of the site being protected. Site names should be assigned to a project as soon as possible and must be assigned before a project is presented to the Board of Directors for approval. Generally, once assigned site names will not change.

Site names allow the Land Trust to relate its projects to its conservation objectives. A site name helps emphasize the conservation purpose or values behind a project. Site names also encourage the Land Trust to consider whether additional protection work is necessary at the same site.

SEE the attached guide to naming sites for examples.

The tract name is always the name of the fee title owner who is conveying the easement (or other interest in land) to the Land Trust. Tract names remain the same, even though ownership of the land will change over time. New ownership or contact information will be tracked in the monitoring workbooks and monitoring files.

Each new transaction that adds land to a site will be a new tract and a new project. An amendment to an easement that changes the terms but does not add new land will remain with the original transaction.

Examples: New project = Rum River (Jensen)
 New project adding land with same owner = Rum River (Jensen 2)
 New project adding land with new owner = Rum River (Jones)

PROJECT ID NUMBERS:

As each project is completed, a formal project ID number will be assigned to specifically identify the project in addition to the site (tract) name. The project ID number WILL NOT CHANGE (except as set out below when tracts are divided into separate ownerships.)

Project ID numbers are assigned chronologically as projects are completed and are a combination of the year in which the project was completed and the sequential number of the completed project.

Example: Rum River (Jensen) = 1999-139
 Fish Lake (Gould) = 1999-140

Minnesota Land Trust: Land Protection Project Files: Structure and Content

Once assigned, these numbers will be added to the file folder labels and written on the recorded easement (in pencil).

If an original tract of land is divided, the new parcels will retain the original name but all parcels will receive a new file number with an alphabetical identifier. One parcel of the original tract of land will be designated as "A" and the other parcels alphabetically identified as they are created.

Example: Original tract = Rum River (Jensen) 1999-139

Original tract is divided into two parcels = Rum River (Jensen) 1999-139A (the parcel remaining in the original ownership) and Rum River (Jensen) 1999-139B (the parcel in new ownership)

One of the new parcels is further divided = Rum River (Jensen) 1999-139A and Rum River (Jensen) 1999-139B and Rum River (Jensen) 1999-139C

NOTE: Once established, the full project name and project ID number should be used on all correspondence and documents regarding that particular project.

FILE COMPONENTS AND MANAGEMENT:

The complexity of a project ultimately determines how information will be filed. But typically, projects at different stages will have information kept as set out below. A sample file structure for projects files maintained in the St. Paul office is attached.

PROSPECTIVE PROJECTS—INITIAL INQUIRIES:

Initial inquiries from landowners are kept together by region in a "hanging file" as prospective projects. Inquires received in St. Paul are copied and sent to the regional director responsible for the project (or routed past the Central Region conservation director).

Landowner's inquiring about land protection are also entered into the donor database and identified as *prospective* landowners.

Prospective files should be reviewed periodically and moved to *potential* or *inactive* status as appropriate.

Inactive initial inquiries can be discarded or kept at the project manager's discretion. However, a file is kept on every project once it has been approved by the Board OR if the project has been specifically declined by the Land Trust.

The landowner's status is changed in the database as the status of the project changes.

Minnesota Land Trust: Land Protection Project Files: Structure and Content

POTENTIAL PROJECTS—INDIVIDUAL PROJECTS:

Once a Landowner Questionnaire is returned or a conservation director otherwise wants to move a project forward, the project is added to the regional *project status tracking* worksheet and an individual file (with its own hanging file and file label) is made for that project.

A copy of the Questionnaire is sent to the regional director for follow-up.

The landowner's status is changed to *potential* in the database.

When needed, a more complete set of files can be created for any *potential* project or set of projects. These will be organized by site and tract (or other temporary project name if full details are not available.).

General information on *potential project areas* can also be kept with *potential project files*

Example: Maps or ownership data on Burntside Lake can be kept together in a Burntside Lake potential file.

Information on specific Minnesota Land Trust conservation *programs*, rather than on specific land transactions, is kept with the conservation program files.

POTENTIAL PROJECTS—BOARD APPROVED PROJECTS:

Once a project has been approved by the Board of Directors, an individual set of files (see below) will be created for the project with a formal site/tract name assigned. Each approved project not yet completed will get a yellow hanging file label.

Once a project is completed, it will be moved to the active file section.

ACTIVE PROJECTS:

Once a conservation easement is accepted by the Land Trust or a real estate project is otherwise completed, the project (and the landowner) is reclassified as *active*.

Generally, each active — completed — land project will have its own set of files.

Projects which are additions to existing projects may be given an entire new set of files or kept with the original project depending upon the circumstances.

For example, some projects at the same site may have all the maps or background information together in a site file but have separate tract files for each specific transaction. Others may need an entire new set of files.

Example: Maps and general information on the Rum River may all go in a Rum River maps file. Each separate easement transaction may have its own separate set of project files, track by track.

Minnesota Land Trust: Land Protection Project Files: Structure and Content

Separate file folders should be created as necessary to organize and keep track of information and all folders should have typed labels with the site/tract name, project ID number (if assigned) and content of the file.

Examples: **Rum River (hanging file label)**

Rum River
Maps

Rum River (Jensen) (hanging file label)

Rum River (Jensen) 1999-139
Project Information

Rum River (Jensen) 1999-139
Conservation Easement

Rum River (Jensen) 1999-139A
Stewardship: Monitoring

Rum River (Jensen) 1999-139B
Stewardship: Monitoring

Rum River (Jones)

Rum River (Jones) 2001-178
Project Information

Rum River (Jones 2) 2002-236
Project Information

Rum River (Jones) 2001-178 and Rum River (Jones 2) 2002-236
Conservation Easement and Amendment

Rum River (Jones) 2001-178 and Rum River (Jones 2) 2002-236
Stewardship: Monitoring

All *active* conservation easement files will have the files identified below as appropriate. More complicated projects will require additional files.

Files will be coded and organized so that it is easy to distinguish between information collected before the project was completed and information related to ongoing stewardship monitoring and management of the project.

- Pre-closing and general project information files=manila folders
- Signed, original conservation easement file=blue folders
- Stewardship files=green folders

Minnesota Land Trust: Land Protection Project Files: Structure and Content

Typical files will include:

Project Information

Any general information on the project goes in this file including:

- Landowner Questionnaire
- Preliminary project summary with related maps presented to the board conservation committee (materials are also kept in the committee binder)
- Dated, approved board project resolution (resolutions on all projects are also kept with minutes of the related board meeting)
- Environmental assessment
- Biological information or other external support for the project
- Copies of policies supporting the project (if not otherwise easily located)
- Mineral rights analysis (if completed)
- Property tax information
- Administrative materials (insurance information, invoices, etc.)
- Landowner post-closing evaluation (also kept in separate file with other evaluations)

These materials should be left loose in the file as they do not need to be kept in chronological order. If other information on a project is not very extensive (maps, title work, administrative information, etc.), this file should be used as the place to capture all of the miscellaneous information.

Additional files should be created whenever necessary to organize complicated information on a project.

Correspondence

All correspondence relating to the initial acquisition or completion of the project is kept together in reverse chronological order including:

- All letters with any attachments, including correspondence related to title
- Copies of e-mails
- Memos to file
- Easement drafts, dated and attached to related correspondence if needed.

NOTE: It is rarely necessary to keep all CE drafts. Drafts may be kept in a separate "drafts" file until the project is completed. If drafts are kept, make sure they are "clean" copies. Drafts will typically be tossed when the project is completed.

Correspondence will be two-holed punched and attached to the file.

Separate correspondence files may be created on a particular subject or issue if helpful.

All correspondence or materials relating to stewardship or other activities occurring after the project is completed go in separate green stewardship files. See below.

Title Work

This file will include whatever title work is obtained on a project. That might include:

- Title insurance commitment or final title insurance policy
- Attorney's opinion of title
- Copies of deed by which landowner took title
- Copies of other documents effecting title (other easements, mortgage subordination, etc.)
- Abstract
- O& E

Most correspondence related to obtaining title work will go in the correspondence file. If there is not a great deal of title information, this information can go in the project information file.

NOTE: Only the final title documents will be kept once the project is completed.

Legal Documents

If needed, a separate legal documents file should be created for those more complex or complicated projects. This might include a purchase agreement, deed, notice of restrictions, etc.

Final conservation easements are filed in their own files. See below.

Only final versions of documents are kept.

Maps, Surveys

All paper maps, including Map Request Forms and surveys will be kept here. . A note should be made in the file if larger maps are kept elsewhere in the office (map file cabinet, library, etc.) Maps may be filed with the project information if not extensive.

Draft maps or unnecessary duplicate maps should be thrown away when final maps are created and the project is completed.

NOTE FOR COMMUNITY GIS CREATED MAPS: At the completion of each project, Community GIS will send the Land Trust a disc containing the spatial data used to create the project maps along with a PDF version of the maps. This disc will be kept in the maps file of the related project file. This data may be used to create the Statewide Map (see *Project Information Reports and Lists*) and transferred to appropriate electronic map folders for that purpose.

Photos

Most photographs will not be in the project file but will be filed with the property report or in general photo binders or scanned into the electronic public files.

Negatives of photos are kept in the Minnesota Land Trust library.

Minnesota Land Trust: Land Protection Project Files: Structure and Content

Photos should be identified by subject, location, date and photographer.

NOTE: 35mm photographs are currently being used by the Land Trust for official project photos. Digital photographs are used for project planning or communications purposes but not for official purposes at this time.

Publicity

This file includes:

- Copy of publicity permission form (original in publicity release book)
- Press articles on the project

Appraisals, IRS Form 8283

Information on the value of an easement will be filed here including:

- Copy of any appraisal or other information on the property's value
- IRS 8283 form (a copy of every 8283 is also filed in tax files in executive director's office)

Fundraising/Funding

For projects involving substantial fundraising or funding from external grants or contracts, a separate funding or fundraising file should be created.

NOTE: All government grants and contracts are kept together with other conservation program files. Copies on any contracts or grant agreements may be kept with the project file or cross-referenced as needed. Donor information will also be kept with the donor files.

Notes

Miscellaneous information that just doesn't fit anywhere else including informal notes to the file should be kept in a separate file. Most "notes" files will be tossed as the project is completed.

Final (recorded) Conservation Easement with any amendments -- blue folder

The final, recorded easement is kept in its own, easily identifiable file.

The original recorded easement stays in the file with a copy being sent to the regional conservation director and a copy included in the monitoring workbook. The recorded easement will also be scanned and kept as a PDF file on the Land Trust computer network. A copy of the PDF file, along with a PDF copy of the baseline property report, will be copied to a non-rewritable disk. Disks will be kept off-site.

Any easement amendments are filed on top of the original easement.

The easement will be two-holed punched and attached to the file.

Minnesota Land Trust: Land Protection Project Files: Structure and Content

Other legal documents directly related to the transaction should be in another appropriate legal documents file.

Property Report: – conference room

All original baseline property reports and all updated property reports are kept separately in the Minnesota Land Trust conference room. See *Property Report Guidelines* for more information on creating property reports.

Original property reports are never destroyed, even though they may be replaced for practical purposes with updated reports.

The final, certified property report will also be scanned and kept as a PDF file on the Land Trust computer network. A copy of the PDF file, along with a PDF copy of the recorded conservation easement, will be copied to a disk. Disks will be kept off-site.

Monitoring Workbook – conference room and regional offices

Monitoring workbooks are created for all Minnesota Land Trust projects and, when not in use, are kept either in the regional office or in the Minnesota Land Trust conference room.

Monitoring workbooks include:

- Current contact information
- A copy of the current monitoring plan
- A current monitoring map
- Copies of monitoring reports and related documents
- A copy of the original or updated property report
- A copy of the original recorded conservation easement with any amendments
- Copies of any approvals or interpretations of the easement
- Appendices, if any
- Updated maps and photos if needed

See *Property Report Guidelines* for more information on creating monitoring workbooks.

Monitors take monitoring workbooks to the field and so these workbooks should NOT contain any original documents.

Stewardship: Funding – green folder

This file includes stewardship funding information including:

- Copy of pledge form (original pledge form goes in pledge book)
- LCMR funding memos or information
- Other stewardship funding information
- Copies of stewardship related invoices, payments

Minnesota Land Trust: Land Protection Project Files: Structure and Content

Stewardship contribution information is also kept with the donor files and recorded in the donor data base.

Stewardship: Monitoring -- green folder

New files are needed to track ongoing monitoring and related issues occurring after the easement is completed. A new monitoring file should be created for each successive owner and for each parcel, if the original easement parcel is divided

Examples:

Rum River (Jensen)

Rum River (Jensen) 1999-139A

Stewardship: Monitoring—Jensen

Rum River (Jensen) 1999-139A

Stewardship: Monitoring—Harris

Rum River (Jensen) 1999-139B

Stewardship: Monitoring—Smith

Monitoring reports, correspondence, and similar materials will be two-hole punched in reverse chronological order.

A monitoring file should include:

- Monitoring reports
- Correspondence related to monitoring
- Memos related to monitoring or the state of a land (example: resolution of violation or "status" upon ownership changing hands)
- The current monitoring plan (loose)
- The current monitoring map (loose)

NOTE: Information on serious violations should be filed in separate files, although correspondence or memos on matters resolved relatively simply can go here.

For quick reference, a monitoring chronology is located on the inside front cover of the monitoring folder.

For LCMR funded projects: a notation should be made on the inside front cover of the monitoring file folder noting the funding source and the requirement that LCMR staff must be sent an annual monitoring report.

Copies of monitoring reports and related material should also be placed in the monitoring workbook.

Minnesota Land Trust: Land Protection Project Files: Structure and Content

Stewardship: Approvals or Interpretations -- green folder

Information on approvals or requests for interpretations should be filed in reverse chronological order in a separate file with information such as the following:

- Correspondence relating to approvals
- Any board resolutions or actions
- Documents and maps supporting requests

Separate files may be needed for each request if the requests are complicated. Copies of approvals should also be placed in the monitoring workbook.

For quick reference, an approvals chronology is located on the inside front cover of the approvals file folder

Stewardship: Violations -- green folder

Information on serious or complicated violations should be filed in reverse chronological order in a separate file with information such as the following:

- Correspondence relating to violations
- Any board resolutions or actions
- Documents outlining the Land Trust response

Separate files may be needed for each violation.

Information on violations should also be placed in the monitoring workbook.

Other

Additional folders should be used whenever necessary to help organize information.

Other important documents or information such as homeowners' covenants or managements plans (with approvals attached) might be filed in their own folders.

PROTOCOLS-PAPER FILES:

The following rules apply to all paper project files:

- For correspondence, memos, maps and other appropriate documents on all projects, identify by:
 - Site (Tract)
 - County, MN
 - Our file project ID # (if available)
- Keep copies of all correspondence including e-mails (from and to) + attachments. Staple attachments to the appropriate correspondence.
- Type up memos summarizing information from important phone calls or visits.

Minnesota Land Trust: Land Protection Project Files: Structure and Content

- Do NOT reuse paper for documents that will be kept.
- In most cases, do NOT copy double sided.
- DATE all letters, memos, maps, documents, etc.
- Identify the author on all letters, documents, etc. with name and title (if appropriate.)
- Cross-file (e.g. with development records) whenever necessary or useful.
- Correspondence and documents that need to be kept in order or securely should be two-hole punched and attached to the file. This includes the original recorded easement. This limits the possibility of documents being removed from the file and lost.
- Do NOT two-hole punch maps and other project materials that need to be removed from the file for easy use.
- Clean out files when a project (or an issue) is completed. Throw away all unnecessary drafts and duplicate documents, illegible hand written notes, etc.

PROTOCOLS-ELECTRONIC FILES:

Electronic copies of some project materials and documents are kept on land protection projects. Electronic files are not as extensive as paper files and at this time do not typically replace the paper files.

Consistent naming and organizational protocols or conventions should be used for paper and electronic files

Electronic files are kept as shared files—with remote access available—on the network. All specific project files will be kept in the CONSERVATION PROJECTS folder.

Within the CONSERVATION PROJECTS folder, project information will be organized into subfolders in the same manner as the paper files:

- Region: north, central, south
- Status: potential projects, active projects, inactive projects
- Name: site(tract)

Individual projects will be moved to the appropriate folder as the status of the project changes.

Subfolders may be created for specific projects if needed to collect and organize a number of files. Different subfolder may be necessary depending upon whether the project is *potential* or *active*.

Subfolders might include:

- CE (with copies of drafts of conservation easements)
- Email (for copies of emails)
- Letters
- Maps
- Photographs
- Property Report
- Stewardship-Approvals
- Stewardship-Monitoring

All files will be named and organized for easy identification and retrieval.

SEE the attached example of an electronic file structure and naming conventions.

For potential projects, electronic versions of documents should be kept only when electronic versions will be useful. For example, drafts of easements might be kept for reference until the project is completed. More often, only the most recent draft of an easement will be kept.

Electronic project files should be cleaned out when the project is completed (easement recorded and property report complete). Following completion of the project only the following documents should be kept electronically:

- CE final (word version, saved as read-only, for convenience if needed in the future.)
- CE final-recorded copy (PDF file)
- Property report final (PDF file)
- Project description
- Property photos for communications purposes
- OTHER??
- Monitoring plan
- Contact Sheet

Other materials should be moved, deleted or paper copies created as appropriate.

As issues come up following completion of a project, electronic files and documents should be kept under the "active projects" section as needed.

Inactive projects can be moved to active projects as appropriate. Only core documents that might be useful in the future should be kept.

NO electronic documents should be kept in a format where dates are automatically updated when the file is opened.

Minnesota Land Trust: Land Protection Project Files: Structure and Content

“Read only” protections should be applied to final documents intended to be kept in tact to avoid JPEG or similar format saving TIF format (which takes up more space) for photos of communications-level quality.

FILE SECURITY AND ARCHIVING:

Security *and* accessibility of land protection project documents and files is important.

To meet these dual objectives, the Land Trust maintains duplicate paper and electronic copies of the most important components of each file in separate locations.

Original documents are stored securely in the St. Paul office in file cabinets well –protected from fire by an extensive sprinkler system.

Paper copies of the original recorded conservation easement (and any amendments) and the original base line property report (and any updated property report) for each project are maintained both in the St. Paul Office and in each regional office.

Additionally, scanned copies of these original documents are stored electronically on the Land Trust server as Portable Document Files (PDF), or with other software that will not allow the document to be altered or changed once it is copied. The Land Trust does back-up the server daily by creating and protecting duplicate electronic files of everything on the server.

Copies of the scanned conservation easement and baseline property report for each project (and for any easement amendments or formal property report updates) will also be stored on separate non-rewritable computer discs kept off-site.

For active conservation easement projects, duplicate copies of any documents noting approvals or easement interpretations as well as duplicate copies of all monitoring reports and information related to any easement problems or violations are kept in both the St. Paul office and the regional offices.

This system will allow us to reconstruct important information needed on Land Trust projects in the event of a disaster such as fire.

The documents and materials typically found in Minnesota Land Trust conservation project files are identified below. Except as set out in these guidelines, these materials are currently kept indefinitely. At this time, almost all of the Minnesota Land Trust's conservation easements are less than 10 years old. Over time, further document retention and destruction rules may be useful and necessary.

PAPER FILE STRUCTURE OVERVIEW

REGION

PROJECTS-POTENTIAL: *Hanging File Label*

- Initial Inquiries :*Hanging File Label*
- Site (Tract): *Hanging File Label*
 - Project Information
 - Correspondence
 - Etc.
- Site (Tract): *Hanging File Label*

Etc.

PROJECTS-ACTIVE: *Hanging File Label*

- Site 1: *Hanging File Label*
 - Maps
 - Miscellaneous information
- Site 1(Tract 1): #0000-001: *Hanging File Label*
 - Project Information
 - Correspondence
 - Title Work
 - Maps/surveys
 - Publicity
 - Photos
 - Appraisal/8283

Final Recorded Easement --BLUE file

Stewardship: Funding – GREEN file

Stewardship: Monitoring – GREEN file

Stewardship: Approval-building site – GREEN file

Etc.
- Site 1(Tract 2):#0000-002: *Hanging File Label*
 - Project Information
 - Correspondence
 - Etc.
- Site 1(Tract 2)—Parcel A: #0000-002A

Minnesota Land Trust: Land Protection Project Files: Structure and Content

Monitoring-Owner 1
Monitoring-Owner 2
Approval—new building

- Site 1(Tract 2)—Parcel B: #0000-002BMonitoring
Etc.
- Site 2 (Tract): #0000-003: *Hanging File Label*
Project Information
Etc.
- Site 3 (Tract): #0000-004: *Hanging File Label*
- Etc.

PROJECTS-INACTIVE: *Hanging File Label*

- Site (Tract): *Hanging File Label*
- Site (Tract): *Hanging File Label*
Project Information
Etc.

ELECTRONIC FILE STRUCTURE OVERVIEW

CONSERVATION PROJECTS: FOLDER

REGION: FOLDER

PROJECTS- ACTIVE: FOLDER

SITE (TRACT): FOLDER

- CE final (word version, read-only)
- CE final-recorded copy (PDF file)
- Property report final (PDF file)

Project description

- Stewardship-monitoring plan
- Stewardship-monitoring map
- Stewardship-monitoring contact information

(Any new correspondence or documents needed to deal with ongoing problem or issue until resolved)

- Stewardship-approvals
- Stewardship-monitoring photos
 - Photo-monitoring 2006-brush pile
 - Photo-monitoring 2006-house 1
 - Photo-monitoring 2006-house 2

PROJECTS-INACTIVE: FOLDER

PROJECTS-POTENTIAL: FOLDER

SITE (TRACT): FOLDER

- CEs (folder if needed)
 - CE draft 1
 - CE draft 2
 - CE draft donor
 - etc.

Emails (folder if necessary)

- Project summary
- Project resolution

- Letters (folders if necessary)
 - Letter-attorney
 - Letter-appraiser

Minnesota Land Trust: Land Protection Project Files: Structure and Content

Letter-landowner
Etc.

Maps (folder if needed)
Map-base
Map-building envelope
Etc.

Photos (folder if necessary)
Photo-house
Photo-shoreline
Etc.

Property report (folder if necessary)
Table of contents
Overview
Etc.

Minnesota Land Trust: Land Protection Project Files: Structure and Content

GUIDE TO NAMING PROJECT FILES

The Minnesota Land Trust uses site names to help better organize, understand and describe our work.

We will identify projects within critical landscapes in other ways so the landscape does not necessarily need to be in the name.

In creating site names, use geographic, topographic or ecological features actually related to the conversation values on the property. Use more than one "descriptor" if necessary to narrow the field of a large feature. Examples:

Mississippi River
Lake Vermillion - Pine Island
Coon Hill
Kasota Prairie
Glacial Ridge
Apple Blossom Drive – Eagle Bluff Park

If the land is adjacent to or helps protect an already protected area or other public area, use that for the site name. Examples:

Afton State Park
Chippewa National Forest

Consider a family name or historic family if appropriate and generally with the family's approval. Examples:

Goetz Prairie
Baird Farm

If you choose to use a municipality for your site name, go only as large as a township and make sure to note “township” in order to distinguish the name from a town. Example:

Springvale Township

If the property is *near a river* but does not abut it, consider referring to a “watershed” for the site. Example:

Spunky Creek Watershed

**MINNESOTA LAND TRUST
RECORDKEEPING AND FILING**
February 2007

Overview

The Minnesota Land Trust keeps extensive records and files for all aspects of its programs. The Land Trust recognizes that maintenance of consistent, complete, secure, and authentic records is essential to achieving its conservation mission. The Land Trust creates specific filing rules and protocols for specific types of files with the following in mind:

- Legal compliance: The Land Trust will collect and maintain all the information needed to meet its legal recordkeeping and reporting requirements.
- Transparency: The Land Trust will create and maintain records in a manner that will provide Board members, staff, volunteers, and the public a full, accurate, and easily understood picture of Land Trust activities and programs.
- Accountability: The Land Trust will keep those records necessary to allow it to be held accountable for its activities.
- Confidentiality: All Land Trust files and records that contain confidential information will be maintained in a manner that complies with the Board of Directors policy with respect to confidential data:

It is the policy of the Minnesota Land Trust to maintain the confidentiality of sensitive information and to protect its proprietary data. In particular, employees, volunteers and members of the Board of Directors are not to discuss or disclose confidential or proprietary information with anyone within or outside of the organization who is not authorized to receive such information.

- Accuracy: All Land Trust records and files will be as accurate and complete as possible. Where needed, files will be protected from accidental damage, alteration or change.
- Accessibility: Land Trust files will be maintained in a manner that will provide ready access to those staff, volunteers, board members and the public needing or entitled to access to specific records or files but that will also provide for protection from theft, destruction, or accidental loss as appropriate.
- Efficiency: Files and records will be organized and maintained in manner that will allow information to be relatively easily found and used whenever necessary.

All Minnesota Land Trust files and records are the property of the Land Trust and do not belong to members of the staff or Board of Directors.

NOTE: Additional rules and procedures applicable to land protection project files can be found in *LAND PROTECTION PROJECT FILES—STRUCTURE AND CONTENT*.

File format

Many records are kept both as paper and computer files. In most instances, the paper copies are considered the official files with the following exceptions: the general ledger, donor database, and some project information compilations.

Increasingly, the electronic files are becoming the “official” files on a practical basis. In some cases, the electronic file will serve as a backup file to the paper file. Computer discs may also be prepared for some files as additional backup.

Location and security

All of the Minnesota Land Trust’s official files are kept in the Land Trust’s main office in St. Paul. Duplicates are often maintained in other offices

Electronic files are generally stored on the public drive on the system-wide computer network. Off-site staff have access to the network when secure computer connections can be established.

All files of general interest and use to Land Trust staff should be saved in the public files.

Each staff member also has his or her own drive on the server. Work files of individual staff members of importance only to that staff member should be maintained in the individual’s own network drive.

Files on the network server are copied on a tape at the end of every workday; the tapes are kept in the fireproof office safe.

Staff are discouraged from keeping any work on the hard drive of their computers, as individual workstations are not protected by an automatic backup system. If it is necessary to keep files on a hard drive, the individual staff member must back it up manually.

If any off-site staff do not have access to the main server—even temporarily—they should back up their own computers each day.

Paper files are located in various file cabinets placed around the office depending upon the needs of various staff for access. Off-site regional staff have copies of files or portions of files, particularly project files, necessary for their work.

While file cabinets are not fireproof, the office has an extensive sprinkler system. The main concern in the event of fire is water damage to those files not in a file cabinet or cabinets with open drawers. Staff are encouraged to keep files in the file cabinets. The last person to leave the office each day should make sure all drawers are closed.

File cabinets with critical and sensitive financial information are locked at the end of the day. Particularly confidential information, such as personnel data, is kept in the President’s office.

Minnesota Land Trust: Recordkeeping and Filing

The Land Trust has a fireproof safe in the St. Paul office. All checks, the computer backup tapes, and any particularly valuable items such as abstracts are kept in the safe. Only the office manager and the development associate have routine access to the safe.

Archived files are currently stored in the storage room.

Access

It is the policy of the Minnesota Land Trust to maintain the confidentiality of sensitive information and to protect its proprietary data. In particular, employees, volunteers and members of the Board of Directors are not to discuss or disclose confidential or proprietary information with anyone within or outside of the organization who is not authorized to receive such information. See the Minnesota Land Trust *Confidentiality Policy*.

All staff generally have access to all files and records kept by the Land Trust with a few exceptions: personnel records, certain donor records, and certain financial records.

Board members may also have access to all board related files and records, including board minutes, and to other Land Trust files upon request.

Access by others to Land Trust documents and files is handled on a case by case basis, taking into account the confidential and sensitive nature of much of the information collected by the Land Trust.

The following covers certain Land Trust records:

- Corporate records: Certain corporate records—including the annual IRS 990 information returns and the annual audit—are available to the public on the Land Trust’s web site and upon request.

Newsletters, annual reports, facts sheets and other similar materials are also generally available upon request.

- Land protection project data: The Land Trust will inform all landowners that certain land protection project data may be used and made available to the public in summary form or in a format that does not specifically identify the landowner or the project location.

The Land Trust will also inform landowners if any grants funding their particular project include further disclosure requirements.

The Land Trust will obtain (and maintain) publicity releases from landowners before creating press releases or otherwise publicizing any particular land protection project.

- Fundraising and Donor Data: The Land Trust’s use of donor data is governed by the Land Trust policy on *Fundraising And Donor Relations*. Specifically, it is the policy of the Minnesota Land Trust to respect the wishes of its donors and prospective

donors and the often confidential and sensitive nature of charitable giving. Additional details are set out in the policy.

Document protocols

All documents – paper and electronic – created by the Minnesota Land Trust should be identified ON THE DOCUMENT by author, date, and subject. The author should include the person's position or title if appropriate. This includes memos to the file.

All files and file folders should be clearly labeled.

The computerized automatic date function should NOT be used in documents that are to be kept electronically.

Reused paper can be used in creating drafts of documents BUT should not be used for final file copies. Financial or development materials should NEVER be re-used.

Typically, only final versions of documents, letters, reports, etc. will be saved.

All staff should routinely review files they are responsible for and toss or delete any material no longer needed. Additional, full review of electronic files is to be undertaken at least annually. This includes eliminating any temporary files or unnecessary drafts after later or final drafts of documents are completed. In instances where paper files are the official documents (rather than electronic versions), documents should be deleted when no longer necessary.

Electronic documents that should be protected from accidental alteration, including formal Land Trust policies and procedures, should be saved as "read only" documents or in PDF format for additional security.

Specific files and records

The following outlines which records are currently maintained by the Minnesota Land Trust and summarizes various specific recordkeeping practices. The list includes the most important Land Trust documents as well as those that it routinely deals with, however, not all documents created and maintained by the Land Trust are identified.

Attached is a memorandum mapping the electronic files on the Land Trust's computer network in more detail.

Minnesota Land Trust: Recordkeeping and Filing

1. Organizational Records

The Minnesota Land Trust maintains the following corporate files and records:

- Articles of Incorporation, including any amendments
- Bylaws, including any revisions or amendments
- IRS documents
 - 501(c)(3) application and determination letter
 - 990 annual information return
 - 8283/8282 forms
 - other IRS documents as needed
- Corporate filings
 - Secretary of State—annual report
 - Campaign Finance—lobbying reports
 - Attorney General’s Office—charitable solicitation annual reports
(NOTE: Reports are typically filed electronically. A paper copy of the report should be created and placed in the file.)
- Board of Director’s information
 - Current lists
 - Biographical information
 - Historic board lists
 - Committees
 - Board agendas and minutes with related documents
- Chapter information
- Corporate documents and records of related organizations (Washington County Land Trust, Eden Prairie Land Trust, etc.)

Responsibility: President and Development Associate
Paper file location: President’s office, except board minutes=library
Electronic file issues: A PDF will be created and kept for important IRS documents—
IRS public charity determination status letter and IRS Form 990s.
Archive?: Not at this time, except for chapter information and corporate
documents and files of related organizations
Retention: Permanent

NOTE ON PUBLIC ACCESS TO CORPORATE DOCUMENTS: The Land Trust will make copies of its 501(c)(3) application and determination letter, its IRS 990 annual information returns, and its annual audits available to the public upon request. Donor information will be removed from the 990 before disclosure. These documents may also be posted on the Land Trust’s web site.

Other corporate documents may be released at the discretion of the President.

2. Financial Records

The Minnesota Land Trust maintains the following files and records related to its finance, accounting, and business affairs.

NOTE: See the Land Trust's Finance Manual for additional detail on these files and records.

- Accounting software: Peachtree Complete Accounting
The electronic general ledger is the official financial record for the Land Trust. A paper copy (or computer disc) of the entire general ledger is created annually, following the audit.
- Budgets
- Financial reports
 - Monthly operating fund reports
 - Restricted funds reports
 - Stewardship, Endowment and Acquisition Fund reports
 - Other reports as needed
- Restricted fund budget center information with a separate file for each restricted account
- Vendors, with separate files for all major vendors
- Contracts, including government grants and contracts, with a separate file for each contract including the contract, invoices, and evidence of payment
- Office leases
- Expense reports and reimbursements for staff and volunteers, with required receipts
- Accounts payable, with appropriate invoices and packing slips
- Accounts receivable, with appropriate documentation if necessary
- Bank and investment accounts, including Minnesota Land Trust credit card records:
 - Contracts, signature cards, corporate resolutions or other appropriate account information
 - Monthly account statements and reconciliations
 - Void checks
 - Stock receipt and sales confirmations
 - NOTE: Park Midway Bank no longer returns cancelled checks. Small photocopies, several to a page, are included and filed with the bank statements.
 - Deposit records for all accounts, including credit card donations (which are deposited directly into our checking account) and electronic fund transfers. (See also the section on development records.)
- Insurance policies and claim information

Minnesota Land Trust: Recordkeeping and Filing

- Audit reports and related information

Responsibility: President and Office Manager
Paper file location: Office Manager's file cabinet, except: audit =President's office; monthly financial reports, bank and investment account statements, deposit reports, invoices, and insurance policies=binders; government grants and contracts=contract file cabinet
Electronic file issues: A PDF will be prepared for each audit. Access on the network to most finance and accounting files will be limited to the office manager and the President.
Archive?: Yes, by fiscal year.

Financial records of the immediately preceding fiscal year are frequently needed for reference in the current year. Many files are moved from the active drawer to the inactive drawer in the Office Manager's filing cabinet in July and moved into archival storage at the end of the following June. Binders with the immediately preceding year's data are kept with the current year.

Binders with budgets and financial reports are kept for several years before being archived.

Retention: Multi-year grants or contracts (with related information) are filed with the fiscal year in which the grant or contract completed. As long as active plus 10 years, except for audit = permanent.

EXCEPTION: Credit card information from donors and others is immediately destroyed after the donation or payment is processed.

Extra care will be taken to destroy financial records in a way that prohibits private or confidential information from being made inadvertently accessible or available to others.

3. Development Records

The Minnesota Land Trust maintains the following files and records related to fundraising activities.

NOTE: See the Land Trust Development Manual for additional detail on the Federation database on donor records and record keeping.

- Database: Federation.
The database is the primary source for donor contact information and donor giving history. Paper files contain copies of proposals, letters, and other donor

information. A paper (or computer disc) copy of the database will be created annually at the end of the fiscal year.

- Individual donor records with a file for each major donor (a single gift of \$250 or more or similar prospects) or other donors as needed. Electronic folders/files may also be created for individual major donors as needed.
- Foundation files including general information, proposals, grants and reports with a file or set of for each foundation. Each separate funding request should have its own file—proposal, grant agreement or letter, reports, etc. Electronic files are also typically created for each foundation.
- Pledges: handled through the database, individual donor records and the pledge binder. A paper copy of any pledge should be kept with the donor's individual file or collectively for any special project fundraising. Copies of pledge payment request letters or acknowledgment letters should be kept as they would for other solicitations.
- “Do not solicit” requests: handled through the database.
- “Do not publish” requests: handled through the database.
- Other donor requests: handled through the database.
- Planned giving information such as copies of wills in which the Land Trust has been named a beneficiary by donor.
- Samples of all standard materials related to each fundraising appeal including copies of letters, enclosures, etc. and samples of all standard acknowledgment letters.
- Fundraising administrative files: reports, background information, etc.
- Events: Information on each fundraising or other similar event is kept with files organized chronologically and identified by event. Information to be kept after the event is concluded: copies of invitations and materials (3 copies), invitation lists, attendance lists, summary reports, detail of the event itself (food, entertainment, costs, etc.)

NOTE: Copies of individual solicitation and acknowledgement letters are not routinely kept except for the following:

- Acknowledgment letters for donors of \$250 or more.
- Solicitation and acknowledgments for donors of \$1000 or more.
- All correspondence with current board members.
- Any personalized solicitation or acknowledgment letters for major donors.

Minnesota Land Trust: Recordkeeping and Filing

Copies of other letters are kept at the discretion of the Director of Development and Communications or the Development Associate.

NOTE: Copies of gift envelopes are no longer routinely kept. Any envelope that contains unique and important information should be kept with the donor's file.

Copies of checks received during the fiscal year are kept chronologically together in a single file. Checks are kept only for four fiscal years. NOTE: Any check that contains unique and important information—such as a notation restricting the use of the funds—should be kept with the donor's file.

Responsibility:	Director of Development and Communications and Development Associate
Paper file location:	Development department file cabinets. Copies of solicitation letters, other materials=binders
Electronic file issues:	Sensitive or confidential information should not be kept on the public files on the network.
Archive?:	Not at this time.
Retention:	With the exceptions noted above, as long as needed, with most records being kept permanently at this time. The database is a <i>permanent</i> record of all gifts to the Land Trust.

4. Communication Files

The Minnesota Land Trust maintains the following files and records related to its communications and outreach activities:

- FACTS: Interesting facts to support proposals, solicitations, etc. Updated continually.
- Quotes: Famous people and landowners
- Logos and graphics
- Publications
 - Newsletters
 - Brochures
 - Annual reports
 - Fact sheets
- Publication administrative information (quotes, details on vendors, etc.)
- Publicity release forms
- Press releases, kept by year and collectively
- Press coverage, kept collectively and lists kept by fiscal year
- Presentations

- Sample presentations kept electronically and in paper as needed
- Record of presentations made by Land Trust staff maintained electronically by fiscal year

- Photographs

NOTE: Photographs for communications purposes are kept together on the network (with photographs for land projects kept with land project files.) Photographs are organized by a photographs key. Some paper copies of photographs are kept by the “design” station.

- Sample documents from other organizations

Responsibility:	Director of Development and Communications
Paper file location:	Development and communications filing cabinets Publication quotes=binder Publicity release forms=binders in library with copies in related project files (and LCCMR files as appropriate) Press releases and coverage=binders with copies in related project files (and LCCMR files as appropriate)
Electronic file issues:	Electronic files are kept of the most recent publications (documents in use or no older than 2 years) PDF files may be kept for some publications for easy reproduction or additional archiving. Photos and graphics are kept on the network with computer disc backups as necessary.
Archive?:	Yes=5 copies of each recent publication and 3 copies of older publications. Other files=no
Retention:	As long as in use with copies of publications archived permanently at this time as noted above.

5. Personnel Records

The Minnesota Land Trust maintains the following payroll and employment related records and files.

NOTE: Because of the relationship between the Minnesota Land Trust and Doherty Employer Services, Doherty is responsible for all federal and state employment related filings and keeps those records.

- Individual personnel files (current and past employees):
 - Resume, hiring documents

Minnesota Land Trust: Recordkeeping and Filing

- Job description
- Timesheets
- Performance reviews
- Leave information
- Other personnel records as necessary
- Unsolicited resumes
- Recruitment files and records: resumes, letters, etc.
- Salary and payroll records
- Benefits information
- Employee handbook and personnel policies
- Health insurance and other benefits information
- Volunteer information

Responsibility:	Doherty Employer Services (PEO), President and Office Manager Conservation Programs Assistant for volunteer records
Paper file locations:	President's office Payroll records (by calendar year) = binder in President's office Volunteer records= Conservation Programs Assistant's files.
Electronic file issues:	Because of the sensitive nature of personnel data, limited information is kept on the network. Doherty PEO is increasingly using electronic data reporting and collection with a secure system.
Archive?:	Yes=payroll records and timesheets on a fiscal year basis. (NOTE: participation in LCMR grants requires that original, signed timesheets be available for review for at least 6 years.) Other personnel records=not at this time.
Retention:	Permanent at this time, except recruitment files=1 year following the hiring, unsolicited resumes=discretionary

6. Conservation Program Files

The Minnesota Land Trust maintains a wide variety of paper and electronic files on its conservation programs.

It also maintains program administrative files related to how the Land Trust internally manages its conservation work.

NOTE: See the Conservation Programs Project Guide for detail on project-related administrative matters.

Responsibility:	Conservation staff
Paper file location:	Conservation programs file cabinets
Archive?:	Not at this time
Retention:	As long as needed

7. Administrative and Operations Files

The Minnesota Land Trust maintains a number of miscellaneous administrative records and files.

- Plans
 - Strategic plan
 - Annual plans
- Policies and procedures, including
- Standard office forms
- Office equipment records
- Miscellaneous administrative files

Responsibility: President and Office Manager

Paper file location: Office Manager's file cabinet, administrative files area in program file cabinet

Archive?: No

Retention: As long as needed
Policies and plans =permanent

8. Research Files, Reports, Maps and Books

The Land Trust continually receives, collects and maintains a range of materials to support all of its programs.

Responsibility: Appropriate staff

Paper file location: Library and programs file cabinets

Archive?: No

Retention: As long as needed

9. Conservation Easement and other Land Project Files

These files are addressed in a separate memorandum, *Land Protection Project Files—Structure and Content*.

**MINNESOTA LAND TRUST
RULES AND "MAP" OF ELECTRONIC FILES**

February 2007

The following outlines the public filing structure on the Minnesota Land Trust's computer network. All primary folders are included for major topics. Some sub-folders and some files are included under each topic as well to demonstrate the types of information included in each category.

Not all folders and files are listed as they change as ongoing needs change.

The Office Manager is the overall network administrator. Responsibility for folders or files is assigned to various staff as noted below.

Primary folders can only be created by the Office Manager or the President. Sub-folders can be created by the staff assigned responsibility for the category. Files can be created by any staff member as appropriate.

Generally, all files on the public files system can be accessed by all staff. However, where confidentiality or data security dictates otherwise, access by staff to folders or files can be limited by the network administrator (currently the Office Manager) and/or the President.

NOTE ON OFFICIAL FORMS AND FILES: A designation of "mlt" before a document name means it is an approved version of a document that is not to be changed without permission of the staff member responsible for the file.

NOTE ON ARCHIVING TO DISCS: In order to save space, some files may be copied to a disc and stored by the "design station." Unless this is part of a formal archiving process, a "file" placeholder should be created noting that the data has been transferred to disc.

- = folders
- = files

PUBLIC

- Accounting and Finance (Office Manager/President. Access is limited to some files)
 - Budget (folder for each fiscal year)
 - Financial reports
 - LCMR bills
 - Procedures

■ Administration (Office Manager)

- Computers
- Equipment
- Insurance
- Mail
- Miscellaneous
- Phones
- Regional structure
- Software info and help
- Standard forms
- Standard labels
- Stationery
- Public Folders Map
- Recordkeeping and Filing
- While I am gone

■ Board (Development/President)

- Board Book
- Calendars
- Committees
 - Conservation Committee
 - Committee membership-FY 04
 - Etc.
 - Board Committee Descriptions
- Governance documents
 - mlt-bylaws 2006
 - mlt-board-individual responsibilities
 - mlt-board-role of the board
 - old bylaws
 - old chapter materials
- Members
 - Biographies
 - Board member lists
 - Giving history
 - Name tags
 - Potential board members
- Minutes (folders by fiscal year).
 - Filing Minutes Instructions
- Miscellaneous

■ Communications (Development)

- Communications procedures
- Displays
- Embrace Open Space
- FACTS
- Media

Minnesota Land Trust: Rules and “Map” of Electronic Files

- Media contacts
 - Media coverage (spreadsheets by fiscal year)
 - Press releases (copies by fiscal year)
- QUOTES
 - Landowner quotes
 - Famous people quotes
- Conservation Administration (Conservation Staff)
- Conservation Documents (Conservation Staff)
 - Miscellaneous
 - Sample CEs
 - Sample letters
 - Landowner inquiry letters
 - Landowner thank you letters
 - 8283 Letters
 - Other general letters
 - Standard CE
 - Standard CE
 - Standard CE development
 - CE amendment
 - CE mortgage consent
 - CE alternative language
- Conservation Forms (Conservation Staff)
 - mlt-environmental assessment
 - mlt-landowner evaluation
 - mlt-landowner questionnaire
 - mlt-preliminary project summary
 - mlt-preliminary project summary-instructions
 - mlt-project resolution template
 - mlt-publicity permission form
 - mlt-stewardship pledge form
 - mlt-tracking sheet
- Conservation manuals (Conservation programs assistant only)
- Conservation Materials (Conservation Staff)
 - Acre by Acre article
 - Conservation fact sheets
 - Land Protection Options Handbook
 - CE drafting – jp 2006
 - CE overview – jp 2006
 - CEs and federal tax law – jp 2006
 - Conservation Easement Checklist
 - Standard materials – property reports and monitoring books
 - Table of Contents CE manual

- Table of Contents project guide
- Etc.

■ Conservation Programs (Conservation Staff)

- Blufflands Alliance
- CE workshop
- Critical Landscapes
- Ducks Unlimited
- Land management information
- LCMR
 - Metro corridors
 - Wildlife corridors
 - LCMR Acquisition Reports
 - Miscellaneous letters
- Legislative stuff
- Local Ordinances
- LSLTP
- Miscellaneous
- Project Cost Analysis
 - 2002 cost analysis
 - mlt-cost analysis overview-updated 2004
 - mlt-cost analysis worksheet—with data
 - mlt-cost analysis worksheet
 - LTA project cost article
- Property reports
 - mlt-property reports-annotated
 - mlt-property reports-templates
 - mlt-monitoring workbooks
 - mlt-property report guidelines
 - property report inventory
- QUICK REFERENCE LISTS
- Rainy Lake
- Ramsey
- RGC
- Scenic Byways
- Stewardship
 - Monitoring
 - Annual monitoring summaries
 - Annual training sessions
 - Sample letters
 - Volunteers
 - Volunteer forms
 - Volunteer lists and contact info
 - mlt-Guide to Monitoring
 - mlt-Monitoring Procedure Summary
 - mlt-monitoring report form
 - monitoring training outline
 - Official Monitoring Worksheet

Minnesota Land Trust: Rules and “Map” of Electronic Files

- Monitoring Calendar
 - Monitoring Report Form
 - Volunteer Certification Program
 - mlt-approval chron form
 - mlt-monitoring chron form
 - mlt-Stewardship Overview
- Conservation Projects (Conservation Staff/Conservation Programs Assistant)
 - Project Information
 - Statistics (by fiscal year)
 - Completed project summaries
 - Project definitions and terms
 - Property descriptions, definitions and measurements
 - Project Lists
 - Official project lists
 - CE amendments
 - CE violations
 - CE co-holders
 - Completed projects
 - Completed projects-working copy
 - Conservation developments
 - Landowner requests
 - Projects denials
 - Project status tracking worksheets (by region)
 - Projects (by region)
 - Projects-active
 - Projects-inactive
 - Projects potential
- Development (Development)
 - Annual plans
 - Complete Fundraiser Program
 - Development audit
 - Development committee
 - Development policies
 - Forms
 - Foundation and corporate giving
 - Funder files (by funder)
 - Proposals (generic)
 - organizational donor list (for each fiscal year)
 - Individual giving
 - Direct mail
 - Donor letters
 - Major donors
 - Membership
 - Prospects
 - Recognition lists

Minnesota Land Trust: Rules and “Map” of Electronic Files

- FY06 0-100
 - FY06 100-500
 - Etc.
- Miscellaneous
- Planned giving
- Reports (by fiscal year)
- Special project fundraising
 - Oberholtzer
 - Church Island
 - Etc.
- Federation (Development) Access is limited for input, available to all for lookup
 - FedFe
 - Mail merge templates
 - Rules and definitions
 - Tables
 - Updates
- Graphics (Development)
 - Logos
 - MLT graphics
- Human Resources (Office Manager/President) Access to some files is limited.
 - Benefits
 - Forms
 - Job descriptions
 - Payroll (by year)
 - Recruiting
 - Advertising
 - Standard letters
 - Staff Lists
 - Employee handbook-Doherty
 - Employee handbook –MLT addendum
 - New employee checklist
- Maps (Conservation Staff/Conservation Programs Assistant.) Access to some files is limited.
 - General Minnesota maps
 - Map coordinates
 - Miscellaneous maps
 - Projects by year maps
 - Regional structure maps
 - Rowemap
 - The Big Map

Minnesota Land Trust: Rules and “Map” of Electronic Files

- CGIS map procedure
 - CGIS map form
 - CGIS shape file list
 - County biological surveys
 - Plat maps
- Peachtree (Office Manager) Access is limited.
- Photographs (Development and Communications)
 - aa new pics-events etc
 - development
 - information or other
 - people
 - prairie or field
 - water
 - wildlife
 - woods
 - Photograph Library Database
 - Photograph Library Key
- Plans & Planning (President)
 - planning 2005
 - Annual Plan (by fiscal year)
 - Strategic Plan-2001
 - Strategic Plan-2001 short version
- Pledges (President/Conservation Programs Assistant)
 - Pledge letters
 - Project pledge status (by fiscal year)
 - mlt-pledge procedure
 - mlt-pledge summary statement
 - pledge status FY02
 - pledge status FY03
 - Etc.
- Policies (President)
 - Old policies
 - mlt-authority to approve CE activities
 - mlt-bequest
 - mlt-CE amendment
 - mlt-condemnation proceeds
 - mlt-confidentiality
 - mlt-finance-internal funds description
 - mlt-finance-investment
 - mlt-finance-spending

- mlt-IRS forms
- mlt-presidential authority
- mlt-project funding
- mlt-standards and practices
- mlt-stock authority
- mlt--Project Approval Policy 1
- mlt--Project Approval Policy 2
- Presentations (Development and Communications)
 - Completed Presentations (by fiscal year)
 - General presentation
 - CE basics
 - Etc.
- Publications (Development)
 - Annual reports (by fiscal year)
 - Landowner newsletters (by year)
 - Newsletters (by fiscal year)
- Special Events (Development)
 - 2002 August Burntside Lake Event
 - 2003 Birding event
 - 2003 Landowner Event
 - 2004 Birding Events
 - 2004 Mondale event
 - 2004 Spring Landowner Get-Together
 - 2005 Bell Museum event
 - 2005 birding event
 - 2005 Central MN chapter event
 - 2005 Ely office grand opening
 - 2005 fly fishing expo
 - 2005 Landowner event
- ZZRestore (Office Manager)

RECORDS POLICY

As Adopted by Teton Regional Land Trust Board of Directors February 10, 2005

The Mission of the Teton Regional Land Trust is to conserve agricultural and natural lands and to encourage land stewardship in the Upper Snake River Watershed for the benefit of today's communities and as a legacy for future generations. The Teton Regional Land Trust (TRLT) recognizes that maintenance of consistent, complete, secure, and authentic records is essential to achievement of its conservation mission. The TRLT Records Policy is developed to ensure compliance with the intentions of TRLT donors, including conservation easement donors, to document and sustain the conservation values of protected lands under conservation easement or in fee ownership, and to secure TRLT's public charitable status. The TRLT Records Policy supports and is integral to other TRLT policies. All Teton Regional Land Trust files are the property of TRLT, not members of the staff or Board of Directors.

This policy, as adopted by the TRLT Board of Directors, embodies the functional principles of TRLT's records policy. Additionally, the TRLT Executive Director is empowered to develop and amend procedural documents as needed to implement the Records Policy. Records Policy Procedures have been developed for each section of this policy as of the date of Records Policy adoption indicated below, and will be amended as necessary.

Records Policy Review

At a minimum, the Executive Director and a committee or subcommittee of the Board will review this Records Policy every five years to ensure compliance and to ensure that the policies stated herein continue to serve the best interests of TRLT. At a minimum, the Executive Director will review the Records Procedures noted above every three years to ensure organizational compliance and to ensure that the procedures therein set forth continue to serve the best interests of TRLT.

Section 1 - Conservation Project Development and Stewardship Records

As outlined in the TRLT Conservation Project Development and Stewardship Policy, it is crucial that the TRLT Board of Directors and legal counsel have ample opportunity to review all proposed conservation projects and to maintain those that are approved and implemented. For this purpose, TRLT staff will create and maintain files for each conservation project in both digital and physical form, according to the *Conservation Project Development and Stewardship Records Procedure*. TRLT staff will provide preliminary project information in a timely manner to the Board of Directors. Formal project files will be initiated when the Board of Directors provides initial approval for a conservation project. TRLT Staff will carefully document all steps in the development of conservation projects as they progress according to TRLT policies and procedures. For

all projects to be facilitated by funding from an agency outside of TRLT (e.g. LWCF projects funded by the Bureau of Land Management), TRLT staff shall obtain a documented commitment from the relevant funding agency. Original, signed documents and contact records and a digital backup for each conservation project are to be permanently stored and protected in an offsite archive, as described in Section 2 below.

Stewardship Records Audits

Each year, the TRLT stewardship staff will complete a file audit to ensure that conservation project documentation is complete, in order, and in the right location, and to be sure that documentary evidence, including photographic records and original documentation is not deteriorating beyond the point of usefulness. Also, every three years, a committee of the TRLT Board of Directors completes an audit of the Stewardship Program, including records management. An external audit of the conservation program and its records is encouraged once every five years.

Section 2 – Off-site Records Storage

As outlined in the Project Development and Stewardship Policy, it is essential that the Teton Regional Land Trust maintain secure and authentic records. To that end, it is the policy of the Teton Regional Land Trust to store original conservation project documents, as well as original business documents and digital back-ups of the office network, at an off-site facility. Additionally, removal of documents from the off-site facility will be allowed only under circumstances as outlined in the Records Policy Procedures, Section 2, Off-site Records Storage, and as approved by the Executive Director.

Conservation easements are perpetual. As holders of the easement, TRLT assumes a perpetual responsibility to ensure the existence, authenticity and integrity of the original legal document and supporting records, such as the Baseline Documentation Report. As a public charity, TRLT also assumes the responsibility of adhering to sound business practices, thus ensuring protection of the organization's business documents.

Original conservation easement documents must be stored in a secure storage facility that is protected from natural disasters. Access to the documents stored in this facility is restricted to the Executive Director, Board President, and Director of Operations.

Original documents placed in the off-site archive facility shall include:

- Articles of Incorporation
- IRS designation
- Conservation Easements, Easement Amendments
- Baseline Reports & Photo/Video Documentation
- Option Agreements, Leases, and other original documents related to interests in real property
- Gift Deeds, Warranty Deeds, Transfer Agreements, Access Easements
- Automobile Titles
- Promissory Notes, mortgages and other security instruments
- Reserved Rights Documentation
- Annual conservation easement monitoring reports and photo/video documentation

Teton Regional Land Trust: Records Policy

Other items to be included in the off-site archive facility:

- Annual Digital Back-ups of Computer Network Data Files
- Annual Digital Back-ups of QuickBooks Financial Records
- Annual Financial Audit Reports

Digital Document Back-up System

In addition to the off-site archive storage of physical documents described below, TRLT maintains a back-up system for all digital data. The purpose of this system is two-fold: (1) to create reliable, retrievable data in the case of computer malfunctions, (2) to create copies for historical purposes, since it is physically unmanageable to archive every document, and (3) to preserve digital copies of physical documents and photographs that may deteriorate over time. Data is backed up nightly utilizing two different mediums. A tape-back-up or external hard drive back up of the server is stored off-site on a weekly basis. A digital back up is archived at the off-site storage facility on an annual basis.

Section 3 – Financial Records

As a public charity and an organization responsible for easement defense in perpetuity, the Teton Regional Land Trust must manage its finances and assets in a responsible and accountable manner. To that end, it is the policy of the Teton Regional Land Trust to maintain complete, accurate and credible documentation of its financial management activities.

TRLT staff will follow generally accepted non-for-profit accounting principles to ensure clear and credible financial records. Additionally, it is crucial that an internal control system is established and followed to prevent misappropriations and to inspire confidence. Also, to that end, an annual independent audit by a certified public accountant will be performed. The auditor's report will be made available to funders, members, and donors.

The types of financial records maintained by the Director of Operations under the supervision of the Executive Director include TRLT's accounting software; monthly, quarterly, and annual reports; balance sheets; budgets; reconciliations and cancelled checks; invoices and receipts of payables; copies of checks deposited; copies of donor restrictions.

Access to these records is limited to the Director of Operations, the Executive Director and Board of Directors, due to the confidential nature of certain contents (i.e. payroll). Specific reports that do not contain confidential information will be made available to staff and volunteers as needed (e.g. past event expenses). The accounting software is password protected, as are certain digital financial reports.

Section 4 – Personnel Records

Personnel files contain each employee's personal information and work-related information. As outlined in the Teton Regional Land Trust Personnel Policy, personnel

records are maintained for each employee and will be held confidential. To that end, access to personnel files is limited to the Executive Director, except as provided immediately below. Employees will be given access to their individual files, except that some password-protected documents may be restricted to the Executive Director. The Director of Operations, due to the nature of the position, will have very limited access to certain staff information, such as payroll and emergency medical information. Physical personnel records will be stored in the office of the Executive Director in a locking file cabinet. The digital copies of confidential personnel records are available only to the Executive Director under password protection.

Section 5 – Fundraising Records

As a public-supported charitable organization, the Teton Regional Land Trust is committed to raising funds in an ethical and accountable manner. Quality recordkeeping of the fundraising program will demonstrate that TRLT complies with charitable solicitation laws, accurately represents its claims and intended use of funds, and uses restricted funds as specified by donors. To that end, it is the policy of TRLT to maintain accurate and complete records regarding fundraising activities.

Section 6 – Outreach Records

Outreach records are kept so that there is continuity in our outreach efforts from year to year. Outreach records are a resource for educating volunteers, staff and coordinators of events so that they adhere to the TRLT vision and to communicate to our members and the public in general. Outreach records are to be maintained by TRLT staff and volunteers.

Section 7 – Administrative Records Management

In order to practice sound business procedures, it is the policy of the Teton Regional Land Trust to maintain records of its business activities, board meetings, and office administration, and to carefully maintain these records in a secure manner. It is also TRLT policy to diligently protect and secure all digital records and the organization's computer system through use of current and complete security tools and equipment.

Section 8 - Record Retention Schedule

It is the policy of TRLT to retain files as follows:

Indefinitely

- Audit reports by accountants
- Cancelled checks for major items and taxes
- Capital stock and bond records
- Chart of Accounts
- Conservation Easements (drafts and final)
- Baseline Assessment and Photo Documentation
- Reserved Rights Documentation
- Monitoring Reports
- Contact Records, easement correspondence
- Restoration Project Files and Photo Documentation

Teton Regional Land Trust: Records Policy

- Contracts and leases
- Correspondence: legal and important subjects
- Deeds, mortgages, option agreements
- Financial Statements, year-end
- General and private ledgers
- Insurance records
- Journals
- Minute books and by-laws
- Certificates of Incorporation
- Property appraisals
- Tax returns and supporting documentation
- Bills of Sale and personal property and vehicle titles

For Seven Years

- Accident reports and claims for settled cases
- Accounts payable and receivable ledgers
- Cancelled checks, unimportant items
- Cancelled stock and bond certificates
- Contracts and leases that have expired
- Employee W-4 forms
- Expired option records
- Notes receivable ledgers
- Payroll and related records
- Time books

For Five Years

- Internal audit reports

For Three Years

- Correspondence, except that correspondence between the Land Trust and landowners relevant to recorded conservation easements shall be kept indefinitely.
- Employment applications
- Employment personnel records (after termination)
- Expired Insurance policies
- Internal reports

For One Year

- Bank Reconciliations
- Duplicate Deposit Slips

Destruction of business records after the prescribed holding periods expire shall be completed by the Operations Director under the direct supervision of the Executive Director, but only after explicit, written approval by the Executive Committee of the Board of Directors. Said expired business records shall be burned or shredded to ensure the privacy of records.

RECORDS PROCEDURES

Teton Regional Land Trust

SECTION 1

CONSERVATION PROJECT DEVELOPMENT & STEWARDSHIP RECORDS

This section of the records procedures outlines guidelines and standards for the Teton Regional Land Trust's (TRLT) record keeping related to the organization's core work in land protection and stewardship. The Executive Director is empowered by the Records Policy to amend this procedure document as needed to implement said Records Policy.

Documentation of Conservation Projects

Each conservation project will be documented carefully in the TRLT office working files. Typically the assigned Land Protection Staff member will initiate a project file in both digital and paper formats, and will maintain these files until the land protection phase of the project is complete. At this juncture, the project files will be turned over to Stewardship Staff for review and organization into the Stewardship Files. All the project digital files are initiated in the Data: Land Protection folder under, Easements in Process. Paper files for each project are filed in the office hanging file system under Projects in Process. These files are transferred to Project Stewardship files at completion. In all cases, project documentation should include reference to the date of the activity, the names of activity participants, and the full name of the staff member who is completing the documentation. Below is a discussion of procedures to be followed by land protection and stewardship staff in the documentation of conservation projects and stewardship. (Disclaimer: In some cases as necessary for the completion of projects, and with documented permission from the Board of Directors, a project may proceed in departure from these procedures. For example, completion of portions of a Baseline Documentation Report is sometimes deferred until after signing of a conservation easement when the timing does not allow complete evaluation of a property's resources.)

Early on in each project, the assigned Land Protection Staff member will initiate the following TRLT records documents: a) the ***Conservation Project Development Checklist***, in the form attached hereto as Exhibit A, to be used throughout the conservation project to document when each step in the project was taken and by whom, b) the ***Conservation Project Information Form***, in the form attached hereto as Exhibit B, to document discussion of conservation strategies, c) a ***Contact Record*** to include landowner contact information and reference to each encounter with the landowners, and d) a ***Project Proposal***. The Project Proposal should be informed by a letter or in other written form from the landowners to document their property goals and their conservation interests. The Project Proposal is prepared with a narrative on conservation values and tie in to conservation priorities, recommendations for a conservation strategy, and a map of the property. This proposal will be provided to the TRLT Board for initial project

Records Policy Procedures, Final Draft Adopted February 10, 2005

Teton Regional Land Trust: Records Procedures

approval at the Board meeting following initial contact, and the Board discussion and decision will be included in the project record.

Once the Board has provided initial project approval, the assigned Land Protection Staff and Stewardship Staff members will prepare a **Conservation Project Information Form** (Exhibit B) in consultation with the landowners. Land Protection staff will ensure that property surveys, mortgage subordinations, appraisals, and other agreements, as appropriate to the transaction and reasonably available, are filed in both digital and paper formats in the appropriate files. At the appropriate point in the project negotiation with the landowners, stewardship staff will be asked to prepare a **Stewardship Cost Spreadsheet**, in the Form attached hereto as Exhibit C, based upon the terms of the Project. This calculation of projected stewardship costs will then be discussed with the landowners and the discussion will be documented. A copy of each draft of a conservation easement or other agreements will be saved in both the digital and paper files, and the sequence of drafts will be clearly documented. Once a project is ready for completion, Land Protection staff will prepare a recommendation for final Board approval of the project, and will record a copy of the Board meeting notes in the project files.

For all conservation easements, Stewardship staff will also initiate the **Baseline Documentation Report (BDR)** following the Baseline Documentation Procedures and Outline under the Stewardship Policy with a target completion date at the completion of the land protection phase of the project. The Stewardship staff will also document in writing all field visits and conversations with the landowners in the Contact Record. At completion of the project, and after documented landowner review of the BDR (or, for projects in which the final BDR is not completed at the date of project completion, after documented landowner review of the data that is to be included in a final BDR within a reasonable time thereafter), the signed and notarized Owner Acknowledgement of Condition form is recorded as an exhibit within the conservation easement and archived. For lands acquired in fee, and for landscape-scaled restoration projects, a management plan with photo documentation will be filed to sustain the conservation project. A “read-only” copy of the Baseline Documentation Report (or Management Plan) and photo documentation is stored in archival digital format and archived.

When a Conservation Project is complete, Stewardship Staff will organize the physical Stewardship Records as follows: 1) a hanging file of conservation project documentation and 2) a field file of stewardship documentation.

The hanging file is labeled with the Assigned Project Code*, Landowner Name, and Property Name. The **conservation project file** contains the following relevant folders and accompanying documents:

- 1a. **Contact Record, Project Checklist and Project Information Form** (includes all pre-easement contact information, a copy of the Conservation Project Development Checklist and Conservation Project Information form plus updates of contacts made post easement on an annual basis).

Records Policy Procedures, Final Draft Adopted February 10, 2005

- 1b. **Easement Drafts & Transactional communications-** (includes all easement Drafts with authors' names, discussion participants, and dates; all pre-easement landowner correspondence and documentation of landowner approvals)
- 1c. **Final Easement and Stewardship Costs** (includes copy of the final recorded easement and stewardship costs spreadsheet)
- 1d. **Survey's, Deeds, Title Reports** (includes all warranty deeds, deeds, surveys, title reports)
- 1e. **Other Agreements** (includes options, amendments, and all other agreements. Drafts should include comments with authors name and date)
- 1f. **Baseline Materials** (contains any materials collected in the preparation of baseline materials and printed copies of all field visit reports)
- 1g. **Easement Amendments** (includes easement amendment form)
- 1h. **Miscellaneous Materials**
- 1i. **Grazing, Conservation and Forest Mgt. Plans and Related Materials**
- 1k. **Appraisals & tax forms** (includes all appraisals, appraisal reviews, tax forms)
- 1l. **Natural Resource Data** (includes all resource information compiled after baseline complete, study assessments, delineations).

The Stewardship field file contains the following:

- **Monitoring Reports and Letters**
- **Final Easement** (Copy of final recorded easement)
- **Stewardship Correspondence**
- **Reserved Rights Documentation**
- **Baseline Report**

Stewardship Staff will organize the digital files for completed projects. The digital filing protocol for each project is given in the following example (• signifies a folder, e.g. T15 signifies the assigned county/project code):

•**Land Protection**

•**Easement Stewardship**

•**T15-Klausmann Two Forks**

•**Agreements T15- Two Forks**

Final Easement T15 (Read Only)
Draft Easements T15 (Read Only)

•**Baseline T15- Two Forks**

Final Baseline T15 (Read Only)

•**Communications T15- Two Forks**

Contact Record T15

•**GIS Data T15- Two Forks**

ArcView shape files
Boundary T15
Building area T15

•**Images T15- Two Forks**

•T15 Photo Documentation (folder)
T15 Photos 10-12-2002
T15 Photos 11-12-2002
Vicinity Map T15

Records Policy Procedures, Final Draft Adopted February 10, 2005

Teton Regional Land Trust: Records Procedures

- Property Map T15
- Man-Made Features Map T15
- Geologic Features Map T15
- Soils Map T15
- Wetlands Map T15
- Hydrologic Features Map T15
- Natural Communities Map T15
- Visual Resources Map T15*

- **Stewardship T15- Two Forks**

- Stewardship Cost T15
- T15 Monitoring Reports and Letters (folder)
 - 03 Monitoring Report T15
 - 03 Monitoring Letter T15
 - 04 Monitoring Report T15
 - 04 Monitoring Letter T15
 - Stewardship Visit Map T15

*Upon project completion, each project is assigned a project code to use for filing and tracking. The code is based on the name of the county the project is located in, such as “T” for Teton County or “F” for Fremont County, and then a number based on chronology of project completion, for example T1, T2, T3 or F1, F2, F3.

**Photo documentation for each baseline report is done digitally. The original photos are stored in the Property Name Images/Photo Documentation folder. A color printout with labels describing the location, subject, direction, date, and photographer are included in the original physical baseline document and archived. In the past, 35mm film has been used for photo documentation. In this case, original photographs and negatives (when available) are stored in the archive.

SECTION 2 OFF-SITE RECORDS STORAGE

This section of the records procedures outlines the location of the off-site storage facility, and the archiving and chronicling procedures related to the archive contents. The Executive Director is empowered by the Records Policy to amend this procedure document as needed to implement said Records Policy.

Location

Original key documents are permanently stored off-site in fire-proof and disaster proof facilities. Currently, original documents are stored in safety deposit boxes at Key Bank in Driggs, Idaho, located at 15 North Main Street. Keys to the safety deposit boxes are in the possession of the Executive Director and Director of Operations. Access to the deposit boxes is granted to the Executive Director, Director of Operations, and Board President.

Records Policy Procedures, Final Draft Adopted February 10, 2005

Archiving Procedure

The archiving procedure for land protection documents is as follows:

- (1) The Deed of Conservation Easement, Option Agreement, and/or Baseline Owner Acknowledgment of Condition and Report is signed and notarized by the landowners and TRLT representatives,
- (2) the documents are recorded at appropriate county courthouse,
- (3) copies are made for the landowner, TRLT, and any associated party (e.g. US Bureau of Land Management),
- (4) The Director of Operations places the original document in off-site storage.

Other important documents to be archived, such as Warranty Deeds, Reserved Rights forms, and Annual Financial Audits, will first be copied, in order to have a working document for the office files, then the original will be given to the Director of Operations to be placed in the archive.

Management of Archived Records

The Director of Operations is responsible for ongoing maintenance of an inventory of all records stored in the off-site archives. Once annually the Executive Director and Director of Operations shall review the inventory to make certain that the archive is in order.

Chronicling Procedures

Removal of documents from archival storage is allowed under very limited circumstances: in case of legal proceedings in which original documents must be produced or to make additional copies of the original when no other copies exist. This limitation is designed to ensure the integrity and authenticity of the original document. For each instance that a document is removed from storage, the date, name of person removing it, reason for removal, and date of return is documented on a "Chain of Custody" form, the original of which shall be maintained with the archived records by the Director of Operations. A list of the contents of each safety deposit box and a master list for all archived material are maintained by the Director of Operations.

SECTION 3 FINANCIAL RECORDS

This section of the records procedures outlines the financial records management procedures of the Teton Regional Land Trust. These procedures are in place to ensure complete, accurate and credible financial records.

Cash Deposits

The procedure for depositing cash donations is dictated by an internal control system designed to prevent mishandling of funds and create credibility. An independent accountant has approved of this procedure, and periodic reviews of the design of, and compliance with, the internal control system shall occur every year during the annual financial audit. Incoming funds are first logged into a receipt form as they are received by the Office Manager and one other staff member, and are then given to the

Teton Regional Land Trust: Records Procedures

Development Director, who prepares a deposit. The Executive Director makes the deposit. The Director of Operations or Office Manager logs the deposit into the accounting program.

Monthly deposit reports are created from Quickbooks software, bound with the copies of checks, deposit slips, and deposit receipts, and filed in the Finances drawer of the file cabinet in the Director of Operations' office.

Cash Disbursements

The procedure for disbursing cash is dictated by an internal control system designed to prevent misappropriation of funds. An independent accountant also approved this procedure, and periodic reviews of the design of, and compliance with, the internal control system shall occur every year during the financial audit. Cash disbursements are made in two ways: checks and credit card transactions. The Director of Operations writes checks from the general checking account and signs them. A second signature is required, either by the Executive Director or an authorized Board member. For disbursements from the short-term savings account, the Director of Operations writes the check, but only the Executive Director or an authorized Board member can sign it. Staff can make credit card transactions under \$100 with the approval of the Director of Operations. Any credit card transaction over \$100 requires the approval of the Executive Director.

All disbursements require supporting documentation. Monthly expense reports are created from Quickbooks, bound with receipts and invoices, and filed in the Finances drawer of the file cabinet in the Director of Operations' office.

Reconciliations

Monthly reconciliation reports are created from Quickbooks for the general checking account and the short-term and long-term savings funds. The reports are bound with cancelled checks and statements from the bank, and filed in the Finances drawer of the file cabinet in the office of the Director of Operations.

Federal 990 Tax Return

Federal 990 Filings are completed by TRLT's independent certified public accountant and filed in the Finances drawer of the filing cabinet located in the office of the Director of Operations.

Payroll

Payroll records are filed on a pay period basis. These files include time sheets, Payroll Summary report, Employee Earnings Detail report, and pay stubs. On the second pay period of the month, monthly reports of the Payroll Summary and Employee Earnings Detail are also included.

Payroll liability records include copies of semi-monthly Federal 941 deposits, monthly State Income Tax deposits, quarterly State Unemployment Tax payments, and monthly transmittal reports for retirement contributions. Payroll and payroll liability records are

Records Policy Procedures, Final Draft Adopted February 10, 2005

filed in the Finances drawer of the filing cabinet located in the office of the Director of Operations.

Donor-restricted funds

Income and disbursements of donor-restricted funds are tracked within the Quickbooks accounting software. Complicated grant programs that require match funds may also be tracked in digital spreadsheets. These reports are printed and filed with copies of checks, donor letters, grant agreements, invoices and receipts. If these reports are related to a grant, they are filed in the appropriate file in the Grants drawer of the filing cabinet located in the office of the Development Director. If these reports are related to a donor-restricted fund, such as the Hollingshead Homestead Restoration fund, they are filed in the Finances drawer of the filing cabinet located in the office of the Director of Operations.

Fund Transfers

Transfer of funds between the general checking account and the short-term and long-term savings accounts are tracked within Quickbooks in an account called “transfers.” Copies of all checks written, supporting calculations, and transfer reports are filed in the Finances drawer of the filing cabinet located in the office of the Director of Operations. No fund transfers are permitted between general TRLT accounts and Donor restricted or other restricted accounts without Board approval.

Financial Audits

The annual independent auditor’s report is archived in the off-site storage. Copies are filed in the Finances drawer of the filing cabinet located in the office of the Director of Operations. A digital backup of the Quickbooks records for each year are also stored in the off-site storage.

Financial records are maintained on-site in the foregoing files for the current fiscal year and the immediately preceding year. The Director of Operations shall be responsible for moving older financial records to TRLT’s long-term storage facility and for keeping documentary evidence of the location of this facility and the financial records housed within it.

SECTION 4 PERSONNEL RECORDS

This section of the records procedures outlines the procedure for creation and maintenance of personnel records for employees of the Teton Regional Land Trust. Due to the confidentiality of personnel information, general access is limited to the Executive Director, and on a very limited basis as set forth below, the Director of Operations.

Upon official hiring of an employee, the Director of Operations will create a classification folder that will include the following documents: resume, offer letter, acceptance letter, emergency contact information, W-4, I-9, job description and

Records Policy Procedures, Final Draft Adopted February 10, 2005

Teton Regional Land Trust: Records Procedures

performance standards, direct deposit authorization, and SIMPLE IRA application. Once this file folder is created, the Director of Operations will transfer the file to the Executive Director, who will keep it in a secure file in the Executive Director's office. The Executive Director will add performance reviews, exit reviews, and any other pertinent communications as needed.

Sensitive digital personnel files, including the offer letter, performance reviews, and exit reviews, will be password protected, with access allowed only to the Executive Director and the involved employee.

The security and confidentiality of monthly payroll information is addressed in the Financial Records Procedure document.

SECTION 5 FUNDRAISING RECORDS

This section of the records procedures outlines procedures related to management of TRLT's fundraising records. The Executive Director is empowered by the Records Policy to amend this procedure document as needed to implement said Records Policy.

All grant and donor information is kept **confidential** by TRLT and is not shared with other organizations or entities or individuals, other than staff and the Board of Directors.

Grants

Grant files, both for Federal Grants and grants from Private Foundations, are kept in a filing cabinet located in the office of the Development Director.

Grantor files are kept in five categories:

- Grant Research – Private Foundations and Federal Funding
- Federal Grants – Current
- Federal Grants – Closed
- Private Foundation Grants – Current
- Private Foundation Grants - Closed

Grant Research – Private Foundations and Federal Funding files contain information and research on potential funding sources. Files include information on a grantor's areas of interest, funding programs, geographic focus, funding availability, grant guidelines and deadlines.

Once a Private Foundation or Federal Grant Program is determined a match for an application, a Grantor hanging folder is created and the file is moved to the appropriate section.

Records Policy Procedures, Final Draft Adopted February 10, 2005

Each current or closed Grantor hanging file is labeled with the name of the Grantor and the year(s) of the grant funding, and contains the following relevant folders and accompanying documents:

- 1. Coversheet**
Includes important dates, grant report tracking, report deadlines, etc.
- 2. General Information**
Includes names of contacts at the foundation, funding areas, geographic reach, grant guidelines, and application deadlines.
- 3. Contact Record**
Includes any correspondences, conversations, or contacts made between the Foundation and TRLT.
- 4. Grant Proposal**
Includes a copy of the final grant proposal submitted for review by the Grantor.
- 5. Grant Agreement**
Includes a copy of grant award, any grant agreements and copies of payments
- 6. Reports**
Includes copies of any reports made to the Grantor.

Electronic copies of guidelines, grant proposals and reports are also retained and are kept on TRLT's server in the Fundraising folder under grants. Grant income and disbursement is tracked within the Quickbooks accounting software as well as recorded in the fundraising database, ebase.

Membership

Donations made by members are recorded in the fundraising database, ebase. Ebase retains, at a minimum, the following information on each membership donor: Name of donor, Salutation, Mailing address, Alternate address (if applicable), Telephone numbers, Email address, Year joined, Member status, Member level, Renewal date, Donations, Types of donations, Post date of each donation, Source of each payment, Amount of each payment.

Ebase is backed up, along with all TRLT electronic files, on a regular basis. Original copies of solicitation letters, remittance envelopes and correspondence are kept in files in the office of the Development Director. Historical membership information is kept for three years in storage boxes retained in the office of the Development Director. Copies of solicitation letters and acknowledgements are kept electronically on TRLT's server in the Fundraising folder.

Records of donations made by Large Donors are also kept in the fundraising database, ebase. Files for Large Donor Prospects are kept in a file cabinet in the office of the Development Director.

Large Donor Prospect Files are labeled with the name of the Prospect, and Spouse or Partner (if appropriate), and contain the following relevant folders and accompanying documents:

Records Policy Procedures, Final Draft Adopted February 10, 2005

Teton Regional Land Trust: Records Procedures

- 1. Contact Information**

Includes biographical information, addresses, phone numbers, family information

- 2. Plan of Action**

Includes planned activities for cultivating or engaging the prospect.

- 3. Contact Record**

Includes copies of any solicitations, contact records for face-to-face meetings, cultivation activities, thank you letters and other contacts made.

- 4. Donation Record**

Includes copies of any donations made.

Files may also include a completed “Prospect Research Form” that has been completed by TRLT staff or volunteers. The Prospect Research Form includes more detailed information about the prospect.

SECTION 6 OUTREACH RECORDS

This section of the records procedures outlines procedures related to management of TRLT’s outreach records. Outreach records are kept to enhance the consistency of our message with our mission and vision. The Executive Director is empowered by the Records Policy to amend this procedure document as needed to implement said Records Policy.

Annual Report

An Annual Report is sent to all members as soon as possible after the independent audit is completed and approved by the Board of Directors. An Annual Report binder is kept in the office of the Director of Operations. Copies of all reports dating back to the beginning of the corporation are available to everyone. The report gives a summary of our land protection activities for the year, stewardship, events, awards and fundraising. It also lists the donors who supported us during the year. A Statement of Financial Activities from the Independent Auditor’s Report is included in the report.

Events

Throughout the year, TRLT hosts events for the membership and the public. Volunteers are used to the greatest extent possible in planning and executing these events. The events are publicized in newspapers, radio and TV. A record is kept of the names and addresses of the volunteers and donors who participated in the event for the benefit of the organizers of the event in future years. These records are kept digitally and in the outreach file cabinet in the office of the Development Director.

News releases

In accordance with our vision to educate and communicate to landowners, news releases are sent to newspapers, radio and TV for the following reasons:

Records Policy Procedures, Final Draft Adopted February 10, 2005

Easements – highlighting landowner partnerships and reporting our successes.

Grants – to foster relations with foundations and donors.

Special events and awards such as High Country Shoot, Stories from the Land, Taste of the Tetons, Ed Hill Conservation Award.

Capital Campaign – outreach and fundraising

Copies of all news releases are kept in the file cabinet in the office of the Development Director.

Newsletter

A newsletter is published three times a year and sent to members and easement donors. In each issue we publish our lands protected to date, awards, interesting habitat stories, donations made during that period and any staff and board changes. A record is kept of the names and contact numbers for the designer, printer, photographers, and distribution lists so that we will have that information when the next newsletter is published. Records are kept in the outreach file drawer in the office of the Development Director.

Education

Several times a year, TRLT provides an educational outreach to the valley's residents and school children. Volunteers and board members are used extensively in producing these educational events. Records of volunteer names, teachers and parents who helped with the event are kept in the outreach files. Teacher Trunks used in the event are inventoried and kept in the TRLT offices. Records are kept in the outreach file drawer in the office of the Development Director. Teacher trunks are kept in storage at the TRLT offices. In addition, a fee-owned property is managed as an Outdoor Classroom, with displays and a kiosk. Kiosk signs are stored in the TRLT office during the winter.

SECTION 7 ADMINISTRATIVE RECORDS

This document outlines procedures related to management of TRLT's administrative records. The Executive Director is empowered by the Records Policy to amend this procedure document as needed to implement said Records Policy.

Security Measures

Computer security is addressed in three ways:

1. The server operating system is locked down with most services disabled by default. We have two network interface cards (NICs) installed, with one dedicated to the local network and the other dedicated to the DSL Internet connection. The firewall included is enabled on the Internet NIC so that all wild-side traffic is screened before entering the network.
2. Zone Alarm, a personal firewall, is installed on each of our PCs.
3. Anti-Virus protection is handled on a client basis with Norton Anti-Virus 2003 installed on each PC and set to automatically update the virus definitions. The staff has been instructed on proper email procedures so that no one opens an email or an attachment from an unknown source.
4. Adware and Spyware

Records Policy Procedures, Final Draft Adopted February 10, 2005

Teton Regional Land Trust: Records Procedures

Network Access

The network administrator, Director of Operations, and Office Manager have administrator access to the network and data files. The network administrator maintains the network and monitors it daily for 1) successful data backup 2) connectivity problems 3) unauthorized access and 4) other errors in the event log. Permissions for all files are reviewed regularly, and will be updated after analysis. Currently, permissions for files are handled via individual files or from programs like Quickbooks.

Remote access

Remote access via Virtual Private Networking (VPN), Terminal Services and Remote Desktop allows our network administrator to monitor the system and take care of problems as they develop. Remote access for all other accounts is disabled until a stricter password policy for the other users is implemented.

Up-to-date computer systems and software

TRLT's system consists of 10 PCs connected to a Windows 2003 Small Business Server. The software on the system that is available to the staff is as follows:
FileMaker Pro5; Micromedia Freehand 10; Adobe Photoshop 6.0; ArcView GIS;
QuickBooks 2002; FrontPage 2000; Microsoft Office 2000 (Word, Excel, PowerPoint, Outlook, Internet Explorer, Publisher)

Filing of Board Meeting and Staff Meeting Notes

Board of Director's meetings are held approximately 7 times per year. There is a facilitator and recorder at each meeting. The Board Agenda, backup documentation, financials and Board Meeting Notes are filed in a binder and kept in the Office Manager's office.

Staff Meetings are held every other Monday morning. There is a facilitator and recorder at each meeting. Staff Meeting Notes are kept in a binder in the Office Manager's office.

Board Manuals

The Board Directors Manual consists of TRLT Policies and Procedures, Purpose and Goals, Financial and Asset Management information, Land Protection, Stewardship, Staff, Consultant and Volunteer information and any other information pertinent to the role of a board member. A copy is made for and forwarded to, each new Director, and the original is maintained in the Office Manager's office.

Digital Data Backup:

The TRLT computer system consists of a Windows 2003 Small Business Server and 10 PCs connected to the server. All of the TRLT data is centrally stored on the server. The server has two identical 80GB internal hard drives with the second drive set up as a mirror of the primary drive for real-time backup. All data is written simultaneously to both the main drive and the mirrored drive. If the primary drive fails, the second drive, which contains identical data, takes over.

The TRLT Office Manager is responsible for ensuring a frequent and regular digital backup for all the data files through several means, as follows:

Records Policy Procedures, Final Draft Adopted February 10, 2005

- For offsite backup, the system uses a pair of 160GB Maxtor external hard drives. These drives are rotated off-site each week.
- Two separate backup utilities, copied to the external drive, are run every night.
 - The Windows 2003 server Backup utility backs up both the operating system and data to the external drive. Backup is set to retain two copies of the backup file with the older one deleted when a new one is created.
 - An additional backup utility, Second Copy, creates an exact copy of the Data folder on the external hard drive. This gives two types of backups and three copies of the data on the external drive.

In addition, Shadow Copy, a new feature of Windows 2003 server, creates a backup of all documents that individuals work on. Space allocated on the server allows for about 2 weeks of these temporary backups. Shadow Copy allows individual users to revert back to an earlier version of a document, on their own, from their own PC.



Vermont Land Trust Conservation Stewardship Program Records Philosophy

Philosophy. VLT's Conservation Stewardship Office is the repository of all the completed conservation work of the organization. Our paper and electronic records serve the organization's legal and information needs regarding all conserved land and its owners. We also exist to serve owners of conserved land and maintain records in order to answer inquiries promptly regarding their conserved land. Our records must exist in perpetuity to fulfill our conservation easement stewardship responsibilities as well as legal needs. We keep only those records that are essential to these functions in paper and electronic form.

Principles

1. All paper files are stored in one-hour fire-safe four-drawer file cabinets
2. All paper files remain in the stewardship office except copies designated for field use.
3. All files are organized for completeness of pertinent information only, ease of use and compact storage.
4. Only essential information is stored. Essential information is determined by reference to our guiding philosophy and to the conservation easement or other conservation document.
5. No drafts are kept as the conservation easement and supporting documentation must stand or fall based on the four corners of the documents. If we have made an error, then we take responsibility for the error and learn for the future to do better work.

Records Organization and Considerations:

Paper Files are organized into Legal Files and Monitoring Files alphabetically by Town and within Towns by the conserving landowner name. Electronic data is organized in a relational database with the Project Cost Code as the unique identifier and has three sections of tables: budget tables, parcel tables and stewardship tables. The database is backed-up and is stored off-site in a secure network. Fully electronic files and secure archiving are the challenges we are working on now. Our goal is to have all current work in electronic form for ease of transmission to field offices and to allow original paper files to be stored in permanently secure storage. All archived paper documents are accessible within a few days of request. The detailed organization of the paper files and database has been important in order to serve our internal and external customers and so is here in list form.

Legal File: Legal size hanging folder with file name on tab at right front corner; holds legal size manila folder (with two-prong fasteners front and back)

Front: Original recorded or legal documents or copies of originals, as appropriate, for waivers and subordinations only. Approvals, permissions, key correspondence, etc. go in monitoring.

Back: Recorded originals with recording stamps (or copies of recorded originals); includes: conservation easement, transfer return, title policy, partial release of mortgage, etc.

Monitoring File: Letter size hanging folder with file name on tab at right front corner; holds letter size classification folder (six sections with two-prong fasteners and two pockets) and green vinyl protector (for use by monitors in the field)

Section 1: Monitoring forms – each annual report added

Section 2: FIS, Grand List Description, Project summary, news clippings, key letters; personal

information about owner

Section 3: Conservation Easement copy plus any amendments

Section 4: Approvals, permissions, appraisal summary

Section 5: Management Plans (forest, agricultural, recreation)

Section 6: Baseline Documentation Report (BDR) – original

Pockets: Folded maps

Protector: Copies of portions of BDR, approvals and plans; for use by monitors in the field

Last revised February 2003

Vermont Land Trust: Records Retention Schedule

REVISED 7/20/07			
DOCUMENT	SAVED AS PDF Y/N	PAPER RANKING	SAVE SOURCE DOC. Y/N
ACT 250 Disclosure Statement	NO	0, 8 for fee	
Administrator's Deed	YES	F	
Affidavit of Abandonment	NO	2	
Agricultural Easement (<i>if freestanding</i>)	YES	F	YES
Appraisals	NO	8	
Approvals	YES	0	
Assignment of Purchase and Sale Contract	NO	8	
Barn Design Restrictions	YES	F	
Baseline Documentation Report	YES	F	YES
Amended or Updated BDR	YES	F	YES
Budget	NO	0	
Buffer Easement (<i>if freestanding</i>)	YES	F	YES
Certificate of Good Standing	NO	2	
Check Stubs	NO	8	
Closing Checklists	NO	2	
Closing Summary	NO	8 for fee, 2 for others	
Conservation Agreements if no CE	YES	F	YES
Conservation Easements	YES	F	YES
Amended Easement	YES	F	YES
Other Easements-ROW, utility, water	YES	F	YES
Conservation Easement Map-signed	YES	F	YES
Corrective Deeds	YES	F	YES-if we draft
Corrective Discharge	NO	2	
Corporate Resolutions	NO	8	
Court Orders	YES	F	
Covenants	YES	F	YES
Current Use Application	NO	0	
Current Use Transfer Form	NO	0	
Death Certificate	NO	2	
Declaration of Corrected Land Description	YES	F	YES
Decree of Distribution	YES	F	YES-if we draft
Deed of Partition	YES	F	YES-if we draft
Emails	NO	8	
Executory Interest	YES	F	YES-if we draft
Executor's/Executrix Deed	YES	F	
Farm Leases	YES	F	YES
File Notes	NO	0	
Financials	NO	0	
FIS	NO	0	
Fish and Wildlife Restoration Agreement	NO	term of contract	
Forestry Easement (<i>if freestanding</i>)	YES	F	YES
Forest Management Plans	YES	F	YES-if we draft
FMP Approval Letters	YES	0	
Freeman App-text only	YES		YES
Governor's Acceptance	YES	F	
Guardian Deed	YES	F	
Hazardous Material Search/Inspections	YES-for fee only	0, unless for fee	
Historic Pres. or Façade Easement	YES	F	YES
HUD Statements	NO	8	
Inspection Reports	NO	8, for fee only	
Invoices	NO	8	
Legal Services Request	NO	2	
Letters of Agreement	NO	8	
Letters from LO's re: requests	YES-only if req. approved	0	
Letters to LO's re: requests	YES-only if req. approved	0	YES
Letters to Partners re: Approvals	NO	0	
Letters-miscellaneous i.e. to selectboard	NO	0	
License to Sell	NO	2	
Limited Warranty Deed	YES	F	YES
Litigation Documents	YES-final settlements only	F	YES-if we draft
Management Plans	YES	F	YES
Memo to File on complex projects	Pre-'05= YES, Post '05=NO	0	YES
Memo to Partners	NO	0	
Miscellaneous Corres.	NO	0	
Monitoring Easement (<i>if freestanding</i>)	YES	F	YES
Monitoring Report	YES	0	
Mortgage Deeds	NO	discharge plus 8	
Mortgage Discharge	NO	2	
Newspaper/Press Clippings	YES	0	
Notice of Conservation Agreement	NO	2	
Notice of Perpetual Option to Purchase	NO	2	
NRCS (Conservation) Agreement	YES	F	
NRCS Notice of Agreement	NO	2	
Option to Purchase	YES	F	YES
Option to Purchase at Ag Value	YES	F	YES
Option to Purchase Subordination Agreement	NO	2	
Partial Release of Mortgage	NO	2	
Permits	YES	F	YES
Pledge Agreements	NO	8	
Pledges for \$	NO	term plus 2	
Power of Attorneys	NO	2	
Priority Agreement	NO	2	
Probate Docs for acquiring land	YES	F	YES-if we draft
Probate Docs for Mortgage Information	NO	0	
Project Summary	YES	0	
Promissory Notes	NO	term plus 8	
Property Transfer Tax Return	YES	F	
PSA	NO	8	
Quitclaim Deed from VLT	YES	F	YES
Quitclaim Deed to VLT	YES	F	YES
Release of Conservation Agreement	NO	2	
Release of Development Rights Restrictions	YES	F	YES
Release of Mortgage	NO	2	

Vermont Land Trust: Records Retention Schedule

Request for Cost Code	NO	0	
Restrictive Covenants	YES	F	YES
Right of Entry	YES	F	YES
Right of First Refusal	YES	F	
Right of First Refusal Subordination Agreement	NO	2	
Selectboard Memo/Letters	NO	2	
Shared Equity Agreements	YES	F	YES
Site Assessment	NO	0	
Special Warranty Deed	YES	F	YES
Surveys and other source maps	YES	F	
Tax Certification	YES	0	
Tax Forms-example 8283	NO	8	
Title Certificate	YES	F	
Title Change Endorsement	YES	F	
Title Clearing Documents	NO	2	
Title Commitment	NO	0	
Title Insurance Policy	YES	F	
Title Update	YES	F	
Title Work-record owner deeds etc.	YES	8	
Trail Easement (if freestanding)	YES	F	YES
Trustees Certificate	NO	8	
Trustees Deed	YES	F	
Utility Easement	YES	F	
VHCB Award Letter	NO	0	
VHCB Dispersment Letter	NO	0	
VHCB Full-App	NO	2	
VHCB Grant Agreement	NO	8	
VHCB Pre-App	NO	0	
VHCH Pre-Close Memo	NO	2	
VHCB Stewardship Delegation	YES	F	YES-if we draft
Waiver of ROFR	NO	0	
Warranty Deed into VLT	YES	F	YES
Warranty Deed from VLT	YES	F	YES
Warranty Deed with Restrictions	YES	F	YES
Wills that distribute property to VLT	NO	2	
Working Farm Tax Abatement Application	NO	0	

Action Plan

Next Steps

Follow-up to this training is essential! The purpose of the information contained in this book is to help land trusts become more effective. Undertake these steps, if you have not done so already, to apply what you've learned from this training to improve your recordkeeping.

- Consult with an attorney, accountant and/or other professionals as to your state's laws and regulations pertaining to nonprofit charities and recordkeeping.
- Review with a qualified attorney, accountant and/or other professionals the federal law regarding nonprofit charities, tax law, charitable donations and related recordkeeping requirements.
- If you have a records policy, use the materials in the Putting It into Practice exercise in chapter 3 (page 116) to assess whether or not it meets your needs.
- If you do not have a records policy, review the sample documents included in this book to obtain ideas for your policy. Choose a land trust that is of similar size or just a bit larger than yours. Once you have a good idea of what a policy looks like, work through the materials in the Putting It into Practice exercise in chapter 3 (page 116) to help design your own policy.
- Once you have created a draft policy, including who has responsibility for what tasks, circulate it among the appropriate land trust personnel for their input. Remember, if the people charged with implementing the policy don't have a say in its design, your plan may not be implemented as you would like!
- Consider whether legal counsel should review the draft policy.
- Once the key players endorse the plan, submit the policy to the full board for its formal approval and adoption.
- Upon approval by the board, implement your policy.
- At the six- and twelve-month marks, check whether the policy is being implemented properly and meets the needs of your land trust.
- Share your policy with the Land Trust Alliance so that others can learn from your success!

To Do Sheet

As a result of studying the material in this course, there are many things that you will want to share with the rest of your land trust. The following To Do Sheet will help you plan your strategy.

Use this sheet to record any “to-do’s” that occur to you during the course. Be specific with the action item and date by which you hope to accomplish this task.

Notes

Chapter One

To Do	Who Is Involved	By When

Chapter Two

To Do	Who Is Involved	By When

Chapter Three

To Do	Who Is Involved	By When

Glossary

Business records rule: The business records rule allows a record (in any form) to be included in evidence in a judicial proceeding under the following conditions: (1) the record was created at or near the time of the event (rather than later in anticipation of litigation); (2) the record was created by someone with direct knowledge — or who was given the information by someone knowledgeable; (3) the record was created and kept in the course of the organization's *regularly conducted* business; and (4) it is the *regular practice* of the organization to create or maintain such records.

Federal Accounting Standards Board (FASB): Establishes and improves standards of financial accounting and reporting for the guidance and education of the public, including issuers, auditors and users of financial information.

General ledger: Part of an accounting system that summarizes all the financial transactions that occur in an organization.

Generally accepted accounting principles (GAAP): The Federal Accounting Standards Board (FASB) issues Generally Accepted Accounting Principles (GAAP). FASB's Statement of Account Standards 116 and 117 provide standards for "Financial Statements for Not-for-Profit Organizations."

IRS Form 8283: The form attached to a donor's income tax return to report noncash charitable contributions of more than \$500.

IRS Form 990: Form 990 and Form 990-EZ are used by tax-exempt organizations, nonexempt charitable trusts and section 527 political organizations to provide the IRS with the annual financial information required by section 6033. Organizations with gross receipts of less than \$100,000 and assets of less than \$25,000 at the end of the year can use the EZ form.

Permanently restricted gifts: Donations or grants that are made to a land trust for a specific purpose, often with reporting requirements to the donor/grantor.

Quid pro quo contribution: In legal usage, *quid pro quo* indicates that an item or a favor has been traded in return for something of value. In this context, a quid pro quo contribution is a payment a donor makes to a charity where he or she receives something of more than minimal value in return. For example, if a donor gives a charity \$100 and

receives a concert ticket valued at \$40, the donor has made a quid pro quo contribution.

Quid pro quo disclosure: A statement made by the organization to a donor who has made a quid pro quo contribution that includes information as to the amount of the contribution that is deductible for federal income tax purposes and a good faith estimate of the fair market value of the goods or services received by the donor.

Records management: The methods and procedures by which a land trust creates, maintains and destroys records.

Records policy: A written, board-approved policy that governs how organization and transaction records are created, collected, retained, stored and disposed.

Records: A land trust's records are any documents, records or data in any format that it uses in conducting its business, including: paper records, such as documents, letters, memoranda, reports and notes; photographs, including negatives or digital discs; maps; computer records and files; e-mails; and voicemails.

Sarbanes-Oxley: A federal law passed in 2002 that created a new set of regulations for publicly traded corporations and enhanced penalties for those interfering with the investigation of improper practices.

Statute of frauds: State laws that require certain agreements, such as real estate deeds or long-term contracts, to be in writing to be legally enforceable.

Statute of limitations: The maximum period of time after an event that one can initiate legal proceedings.

Temporarily restricted gifts: Donations that are made to a land trust, the use of which has been restricted by donors either to specific periods of time or a specific purpose.

Unrestricted gifts: Donations that are made to a land trust, the use of which are not restricted by donors.

Index

- accounting system 70–1, 73, 179, 275
- archiving 90, 111, 114, 125
- articles of incorporation 53, 59
- audit 25, 30, 35, 75–6, 179

- baseline documentation report 49–50, 90
- business records rule 44–6, 104, 275
- bylaws 53, 59, 66

- charitable gifts 23, 33
 - donor records 15, 58, 74
 - donor restrictions 36
 - gift receipts 80
- Colorado Open Lands 26, 68, 91, 103, 107, 125, 186, 188–202
- conservation easement 15, 26, 33–4, 39, 43, 45, 46–7, 49–51, 57, 60–61, 65, 68, 78, 81, 83–7, 89–91, 92–4, 102, 104–6, 108–9, 113–4, 125

- document
 - creation 17, 108–9
 - destruction 29–30, 103, 112
 - retention 103, 119
 - storage 111

- Farm and Ranchland Protection Program 39
- Federal Accounting Standards Board (FASB) 69, 72, 275
- functional expense allocation 72
- Fund Accounting 71–2

- general ledger 24, 70, 73–4, 77, 79, 275
- Generally accepted accounting principles 17–18, 69, 70–1, 275

- Internal Revenue Service
 - Form 8283 33–4, 81, 93, 275
 - Form 990 31–2, 34, 59–61, 79, 83–4, 108, 113, 275
 - penalties 27–9, 32, 34, 37, 276
 - Section 170(h) 49

- Land Trust Standards and Practices* 12, 17–9, 21, 25, 35, 62, 68, 92
- liability 23, 28, 32, 71, 77

- litigation 11, 15–7, 20, 23, 25, 40–6, 48, 51, 87, 100, 104, 122, 275
 - admissibility of evidence 40, 43–8

- Minnesota Land Trust 26, 38, 58, 68, 90, 92, 103, 105, 107, 125–6, 204–9, 211–29, 231–41, 243–9

- North American Wetlands Conservation Act (NAWCA) 39

- public charities 30–1, 69, 79, 113, 124

- quid pro quo 33, 80, 275–6

- records
 - board 58, 62–4
 - digital 40, 45–7, 92, 106
 - duplicate 53, 89, 97
 - employment 15, 29, 32, 35, 53, 56, 83
 - federal law 26, 272, 276
 - financial 53, 58, 69, 72
 - management 11, 100, 276
 - organizational 58
 - original 18, 45, 87, 106, 108, 118
 - philosophy 103–5, 118
 - policy 16–8, 21, 30, 40, 90, 92, 99–2, 104, 106, 112, 114, 116, 118–21, 125, 272
 - program files 38
 - project/transactional files 9, 15, 25, 49, 50, 87–9, 91–3, 102, 105
 - self-authenticated 45
 - state law 23, 30, 40, 49, 75

- Sarbanes-Oxley 23, 27–30, 122, 153–61, 162, 164–5, 276
- statute of frauds 40, 42–3, 276
- statute of limitations 51

- Teton Regional Land Trust 68, 92, 103, 105–6, 126, 251–67
- The Nature Conservancy 30

- Vermont Land Trust 91, 103–4, 126, 270–1

Land Trust Standards and Practices Courses

Governance

MISSION, PLANNING AND CAPACITY
NONPROFIT LAW AND RECORDKEEPING
FOR LAND TRUSTS
LAND TRUST BOARDS: PREPARING FOR
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Jane Prohaska has been the president and executive director of the Minnesota Land Trust since 2000, responsible for providing programmatic leadership and operational oversight for all of the land trust's programs.

Previously, she worked for The Nature Conservancy for almost 18 years, most recently as vice president and Midwest Regional Director. In that capacity she worked with Conservancy programs in 12 midwestern states and helped launch several multi-state conservation initiatives. Prior to that, she served as the Conservancy's Regional Counsel, overseeing the legal and real estate work for the Midwest Region and supervising the regional legal department.

An attorney, Jane worked in the Office of the Minnesota Attorney General for several years under Attorney General Warren Spannaus.

She has a law degree from the University of Minnesota, where she graduated magna cum laude. She is also a cum laude graduate of Carleton College in Northfield, Minnesota, where she received an undergraduate degree in history.

Through her work with the Minnesota Land Trust, Jane has worked extensively with conservation easements. The Minnesota Land Trust is the only private conservation organization in the state working extensively with conservation easements, holding and managing more than 340 easements protecting more than 30,000 acres of land and more than one half million feet of shoreline throughout the state.

Leslie Ratley-Beach is the Land Trust Alliance's Conservation Defense Director. Prior to joining the Alliance in 2007, Leslie was with the Vermont Land Trust for almost 13 years, most recently as director of stewardship, leading a program with more than 1,430 easements on more than 470,000 acres. She served on the 2004 Standards and Practices revision and stewardship excellence committees and is a frequent instructor for the Land Trust Alliance. She is the author of the Standards and Practices Curriculum course "Managing Conservation Easements in Perpetuity."

Leslie holds a law degree from Boston University and bachelor's degrees in journalism and political science from the University of Oregon.

Michael Whitfield has been the executive director of the Teton Regional Land Trust since 1995. Prior to joining TRLT's staff, he was the founding board president of the land trust. As of 2007, TRLT has partnered with 100 families to protect more than 25,000 acres. Michael also serves on the Land Trust Accreditation Commission.

He holds a bachelor's degree in biology from the University of Utah, a master's degree in biology from Idaho State University and completed doctoral work at Montana State University. He continues to conduct research in conservation biology. He has been a lecturer in wildlife ecology for several universities, and is a frequent instructor for the Land Trust Alliance.



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