

Standard 2: Compliance with Laws

The land trust fulfills its legal requirements as a nonprofit tax-exempt organization and complies with all laws.

A land trust must comply with applicable laws. A good understanding of and compliance with the basic legal requirements of becoming and remaining a nonprofit, tax-exempt organization is necessary to operate a sound organization. A land trust that fails to comply with these requirements can face financial penalties and fines, and even revocation of its tax-exempt status. A lawyer who understands nonprofit organizations can assist, but ultimately it is the land trust board's responsibility to see that all requirements are met. Requirements include, but are not limited to: filing federal Form 990; retaining tax-exempt status; following charitable solicitation laws; and adhering to federal, state or local regulations on nonprofits or land trusts (such as waiting periods before being able to hold easements in some states).

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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.)

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The land trust may engage in public policy at the federal, state and/or local level (such as supporting or opposing legislation, advocating for sound land use policy, and/or endorsing public funding of conservation) provided that it complies with federal and state lobbying limitations and reporting requirements. Land trusts may not engage in political campaigns or endorse candidates for public office.

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Introduction

A good understanding of and compliance with the basic legal requirements of becoming and remaining a nonprofit, tax-exempt organization are necessary to operate a sound organization. A land trust that fails to comply with these requirements can face financial penalties and fines, and even revocation of its tax-exempt status. Even if a land trust avoids legal penalties, failure to meet the basic legal requirements is a symptom of a weak organization that is not devoting the people, financial resources or attention to functioning at the most basic level. A land trust operating under these conditions may lose credibility with donors, supporters and others in the community. Even if a land trust slips into a period of inactivity, it needs to continue to meet these basic legal requirements. To meet this standard, a land trust needs to:

- Be familiar and comply with federal, state, and local law relating to nonprofit, tax-exempt status.
- Know what forms to file, and when, as required by federal, state and local law.
- Assign one person in the land trust to make sure filing requirements are met.
- Develop a checklist of monthly and yearly reporting requirements.
- Consult experts in nonprofit law, particularly an attorney and an accountant.
- Hold an annual meeting as required under state corporation law.

This standard applies to land trusts that are nonprofit corporations under state law and that are exempt from federal income tax. Such nonprofit, tax-exempt status confers a number of advantages on the land trust and its operations, but it also places a burden on the land trust in record keeping and reporting, and places certain obligations and restrictions on its operations.

Citizens and groups may be able to save land in their communities without forming an incorporated land trust. They may, for example, be able to work with an existing land

trust, form a land trust arm as part of another conservation organization or operate under the umbrella of a government agency. Those interested in establishing land trusts should explore all options before undertaking the substantial work, and great responsibility, of setting up and maintaining a separate organization.

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Practice 2A: Compliance with Laws

- The land trust complies with all applicable federal, state and local laws.
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Federal, state and local agencies establish laws and regulations applicable to nonprofit, tax-exempt organizations. They also establish reporting requirements to monitor compliance with statutes. A few of these requirements are detailed below.

A good understanding of and compliance with the basic legal requirements of becoming and remaining a nonprofit, tax-exempt organization are necessary to operate a sound organization. A land trust that fails to comply with these requirements can face financial penalties and fines, and even revocation of its tax-exempt status. Knowing and following the law is important for all land trusts.

There are many laws that govern land trust activities. The most basic of these are filing requirements for nonprofit and tax-exempt organizations, charitable solicitation laws (see standard 5), and for land trusts with staff, labor laws. There are also provisions in other laws that relate to a nonprofit's work. The [Sarbanes-Oxley Act](#), for instance, requires document destruction policies. Working with experienced attorneys and accountants, and attending workshops offered by the Land Trust Alliance, local nonprofit service entities and others will help a land trust meet this practice.

IRS 990 Tax Returns

Although land trusts (that have received a determination of exemption from the IRS) are exempt from federal income tax, they still generally must file yearly financial information returns ([Form 990](#) or [990EZ](#)) with the IRS. The filing requirement depends on the land trust's annual income.

- **\$25,000 or less (filing not required, but advisable): Form 990EZ.** Organizations with gross receipts not normally more than \$25,000 are not required to file annually with the IRS, but it is still good practice to do so. All the land trust needs to do is check a box to indicate that its gross receipts are below the \$25,000 filing minimum, sign the form and return it. This lets the IRS know that the land trust still is in existence, what its current address is and that its gross receipts are still less than \$25,000.
- **More than \$25,000 up to \$100,000: Form 990EZ.** As long as the land trust's receipts are \$100,000 or less, total assets are \$250,000 or less and it is not required to file the long form for other reasons, it may file this simplified version of Form 990.
- **More than \$100,000: Form 990 and Schedule A.** These larger organizations are

required to make a full, detailed reporting.

Form 990 and 990EZ must be filed by the 15th day of the fifth month after the end of the land trust's annual accounting period (i.e., May 15 for land trusts on a calendar fiscal year). The IRS should send the forms to the land trust at the address on IRS records, but the land trust is responsible for obtaining and filing them on time regardless. The IRS will assess a late fee of \$10 per day for every day a filing is late.

Unrelated business income: [Form 990-T](#)

The land trust must file Form 990-T, "Unrelated Business Income", if it had more than \$1,000 in income from business activities unrelated to its exempt purpose.

IRS Disclosure Requirements

All public charities, which includes most land trusts, are required to make specific tax exemption and return information available for public inspection and to provide copies on site or by mail upon request. This information includes:

- A copy of the annual information returns on Form 990 or Form 990EZ, including Schedule A and salary information but not including Form 990T. Any names and addresses of contributors to the organization given in the return may be omitted from disclosed materials.
- A copy of the application for tax exemption on [Form 1023](#).
- A copy of any supporting materials and IRS response to the tax-exempt application.

Many organizations meet these requirements by posting their Form 990 on a public website, such as [GuideStar](#), a national database of nonprofit organizations.

State and Local Filings

Every state differs in its filing requirements. A land trust should make a thorough search of the filing requirements for its state by contacting the state secretary of state, attorney general and/or other offices with jurisdiction over nonprofit organizations, or by contacting an attorney or accountant familiar with the state's rules.

Many states closely mirror the federal reporting requirements. In many states, for example, public charities must file annual financial reports similar to the federal Form 990. Typical reporting requirements include the following:

- **State and local sales taxes** on items the land trust sells to nonexempt parties.

- **Unrelated business income tax** at the state level.
- **State and local property taxes on realty and personal property.** In some states, a land trust may be able to be ruled exempt from certain property taxes, but if not, it must make the required payments.
- **Excise taxes.** Special taxes may be levied on gasoline, telephone service, admissions to events, etc., at the federal, state or local level. Again, a land trust may or may not be exempt from these taxes.
- **Charitable solicitation registration.** Organizations intending to solicit contributions from the public may be required to register and file annual reports with the state.

Most states (usually through the secretary of state or the state attorney general's office) will furnish a "certificate of good standing" to nonprofit organizations that meet all the required state and local filing requirements, and against which no complaints are pending. Grant-making entities and other funders will frequently request a certificate of good standing that attests to the organization's "good standing" in its state.

Payroll/Employment Requirements

If a land trust has staff, it may have a number of required filings related to its employees, including:

- Federal income tax withholding
- Social Security (FICA) tax and withholding
- State income tax withholding
- W-2s
- State unemployment taxes
- State disability benefits taxes (workers compensation)

In addition, certain fees, commissions, payment of rent, and payment of interest may need to be reported on IRS Form 1099.

Links to Helpful Resources and Publications

- [The American Association of Fundraising Counsel publishes a brief annual survey of state solicitation laws.](#)
- [GuideStar](#) – the national database of nonprofit organizations. GuideStar focuses on facilitating access to information about the finances and operations of nonprofit organizations.

- [IRS Form 990](#) – Return of Organization Exempt from Income Tax
 - [IRS Form 990EZ](#) – Short Form Return of Organization Exempt from Income Tax
 - [IRS Form 990-T](#) – Unrelated Business Income Tax Return
 - [IRS Form 1023](#) – Application for Exemption
 - [The Sarbanes-Oxley Act of 2002](#).
 - [The Sarbanes-Oxley Act and Implications for Nonprofit Organizations](#), published jointly by BoardSource and Independent Sector in 2003.
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To Fully Implement this Practice, LTA Recommends...

- That the land trust obtain and retain federal tax-exempt status.
- That IRS Form 990 is filed annually (if applicable) and that the public support test is met.
- That state nonprofit corporation papers and bylaws are complete and up to date.
- That state reporting requirements are met, and a certificate of good standing received, if applicable.

Practice 2B: Nonprofit Incorporation and Bylaws

- The land trust has incorporated according to the requirements of state law and maintains its corporate status. It operates under bylaws based on its corporate charter or articles of incorporation. The board periodically reviews the bylaws.
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A land trust that raises money and holds land and/or easements is advised to incorporate as a nonprofit corporation, following the state's incorporation statute. Incorporation is a prerequisite for obtaining federal (and sometimes state) tax-exempt status and, as dictated by state law, helps shield board members associated with the land trust from liability for land trust actions. Bylaws outline the basic operating procedures of the land trust and should be reviewed regularly to ensure their relevance. Several states post sample bylaws on their web pages.

Benefits of Incorporation

A group of people can undertake some land conservation efforts without incorporating. But a land trust that is going to raise money and hold land and/or easements is advised to incorporate as a nonprofit corporation (or operate under the umbrella of another incorporated organization). Reasons to incorporate include the following:

- Incorporation is a prerequisite for obtaining federal (and sometimes state) tax-exempt status, which exempts the land trust from paying federal income tax and allows it to offer tax benefits to donors.
 - Incorporation helps shield board members and officers associated with the land trust from certain liability for land trust actions.
 - Incorporation can expand the trust's pool of donors. Many individuals, banks and foundations will give only to an incorporated organization.
 - Incorporation gives the land trust a separate existence from the individuals operating it.
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How to Incorporate

Land trusts should consult an attorney familiar with nonprofit incorporation as they work through the state incorporation process. If an attorney does not draft the documents, one should at least review them before they are submitted to ensure that they meet legal

requirements. An attorney's review also helps avoid mistakes, omissions or confusing language that can slow approval.

Incorporation procedures vary from state to state. In brief, to incorporate, a land trust generally needs to take the following steps, although the order may vary depending on state law and the formative process of the land trust:

- 1. Find out the specific requirements for incorporating in the appropriate state.**
Contact the state's office of the secretary of state, which will be located in the state's capital city. Most websites for the secretary of state now contain information on nonprofit incorporation.
- 2. Become familiar with the requirements for state and federal tax-exempt status.**
The document drafted to set up the land trust—the corporate charter (also called articles of incorporation, articles of organization, articles of agreement, certificate of incorporation, etc.)—needs to conform to IRS and state requirements to qualify the organization for tax-exempt status.
- 3. Draft and file the corporate charter or articles of incorporation.** The charter establishes the organizational form of the land trust. The broad purposes and powers of the land trust are stated in the charter. Each state may require additional information in the charter, such as: the location of the corporate office; the establishment of an agent for notice of any action against the land trust; and the names and addresses of the original incorporators of the land trust. The IRS also requires specific items. A land trust that operates in more than one state incorporates in one state only, but may have to qualify as a foreign corporation in the other state(s).
- 4. Establish a board and elect officers.** State law will generally specify the minimum number of board members required.
- 5. Draft and adopt bylaws.** The bylaws outline the basic operating procedures of the land trust. They are primarily an internal document. A thorough review of state law is necessary to draft effective and tailored governing documents for the land trust. State law specifies who (usually the incorporators or the members) may adopt the bylaws.

The Land Trust Alliance may be able to direct you to a publication or organization that provides specific guidelines regarding your state's requirements.

Bylaws

Bylaws are the internal governing document for the organization. State law also governs some of the items contained in bylaws, such as voting rights and processes for dissolution. Many states offer sample bylaws that conform to the state's requirements.

As noted above, it is important for those drafting the bylaws to have an understanding of the state's laws. In general, bylaws will address the following items:

- Organization name;
 - Purposes of the corporation;
 - Office location;
 - Membership, including qualifications, voting rights, termination, and annual meeting;
 - Board of directors (or trustees), including qualifications, quorums, terms, termination, and meetings;
 - Officers;
 - Committees;
 - Fiscal policies, including fiscal year and fiscal controls;
 - Amendment of the bylaws; and
 - Dissolution of the organization.
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Changes in Articles and Bylaws

Amendments to the corporate charter (articles of incorporation) usually need to be approved by a vote of the members; state law usually specifies a minimum percentage required. The bylaws should specify procedures for amending the bylaws, but state law may also set some minimum requirements.

Helpful LTA Publications

- See [*Starting a Land Trust*](#), published by the Land Trust Alliance, for further discussion of incorporation and land trust boards.

Other Helpful Publications

- An excellent publication to help you incorporate is [*How to Form a Nonprofit Corporation*](#), by Anthony Mancuso, Diana Fitzpatrick and Mari Stein, 2004. Published by Nolo Press. It provides forms for articles and bylaws and lists state specific requirements.

Sample Bylaws

- [Land Trust Alliance](#)
- [Lowcountry Open Land Trust \(SC\)](#)
- [Maine Coast Heritage Trust](#)
- [Orange County Land Trust \(NY\)](#)
- [Society for the Protection of New Hampshire Forests](#)

Practice 2C: Tax Exemption

- The land trust has qualified for federal tax-exempt status and complies with requirements for retaining this status, including prohibitions on private inurement and political campaign activity, and limitations and reporting on lobbying and unrelated business income. If the land trust holds, or intends to hold, conservation easements, it also meets the Internal Revenue Code's (IRC) public support test for public charities. Where applicable, state tax-exemption requirements are met.
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Federal and most state governments provide an exemption from income tax for qualified nonprofit organizations and allow the deductibility of contributions to them. This subsidy of the nonprofit organization is offered in return for the organization's operation in the public interest. The Internal Revenue Service (IRS) requires that tax-exempt organizations operating as public charities meet certain tests both at the time of application for tax-exempt status and on a continuing basis. These include avoiding private inurement and excess private benefit, a prohibition on political campaign activity, complying with limitations on lobbying, paying tax on unrelated business income, and meeting the public support test.

Benefits of Federal Tax Exemption

Applying for and maintaining federal tax-exempt status under [Section 501\(c\)\(3\)](#) places special operating burdens and filing requirements on a land trust. But the benefits are great. They include

- **Exemption from federal taxes.** Tax-exempt organizations are exempt from paying federal income tax on most types of income, as well as from certain federal excise and unemployment taxes.
- **Assistance with state and local tax exemptions.** Most states and localities mirror the federal statute and also exempt qualifying organizations from income tax and often from state sales tax. Federal tax-exempt status also can help in establishing the organization's charitable intent and operation in applying for local property tax exemption.
- **Deductibility of donations.** Donations of cash, securities or interests in property to tax-exempt organizations are deductible on the donor's federal (and state) income tax returns.
- **Eligibility for grants.** Tax-exempt organizations that are public charities are eligible for grants from private foundations and government agencies.

- **Potential eligibility to receive tax-deductible donations of conservation easements.** In addition to other requirements, an organization must be a tax-exempt organization to qualify as a donee for tax-deductible easements.

Types of Federal Tax-Exempt Status

Land trusts file for tax exemption under Section 501(c)(3) of the Internal Revenue Code, which provides exemption for nonprofit corporations organized and operated exclusively for one or more of several listed purposes, including charitable, religious, educational, and scientific. The IRS has ruled that the purposes of a typical conservation land trust are “charitable.”

A land trust exempt from federal taxes under Section 501(c)(3) is either a private foundation or public charity. A land trust generally wants to avoid classification as a private foundation because private foundations are subject to an elaborate set of restrictions and reporting requirements, there are significant limitations on their ability to offer tax deductions to donors, and they do not qualify to hold conservation easements. The IRS *presumes* a 501(c)(3) organization is a private foundation *unless* it demonstrates that it should be excluded from this definition and is, instead, a public charity.

Almost all land trusts choose to qualify as public charities under one of two basic approaches described below.

Publicly supported organizations

The vast majority of land trusts seek public charity status by qualifying as publicly supported organizations. To qualify for and maintain this status, a land trust must receive a substantial part of its income from the general public, that is, it must meet the so-called public support test. This status offers flexibility in a land trust’s operations and qualifies a land trust to receive tax-deductible donations of conservation easements (as long as it meets certain other IRS requirements).

Publicly supported organizations are described in [Sections 509\(a\)\(1\)](#) and [509\(a\)\(2\)](#) of the Internal Revenue Code. The difference between 509(a)(1) and 509(a)(2) organizations is in the requirements of the public support test. Most land trusts qualify under 509(a)(1).

Supporting organizations

A few land trusts seek public charity status by qualifying as supporting organizations. Supporting organizations are organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations. The advantage to being a supporting organization is that the organization *does not* have to receive a substantial part of its income from the general public, that is, it does not have to meet the public support test. Certain types of supporting organizations (those that meet the IRS test of being “controlled by” one other organization) also qualify to receive tax-deductible donations of conservation easements if they meet other IRS requirements. A possible disadvantage is that it must be operated, supervised or

controlled by the supported agency or organization. The Nature Conservancy and the Open Space Institute in New York have in the past helped facilitate the start-up and operation of land trusts by making them their supporting organizations. This is also a mechanism for establishing a land trust “arm” of a more advocacy-oriented conservation organization. (See more later in this practice on calculating public support.)

Applying for Federal Tax Exemption

The basic steps in applying for federal tax exemption are listed here. This is a brief summary discussion only. Land trusts should consult [IRS Publication 557, *Tax-Exempt Status for Your Organization*](#), and their attorney for further information and more specific details.

- 1. File within 15 months of formation.** A land trust must file for federal tax exemption within 15 months of its formation for the IRS to grant tax-exempt status retroactively to the organization’s beginning. If the organization files more than 15 months after its formation, tax-exempt status will extend from the date of application, but not from the date of organization.
- 2. Obtain IRS Publication 557, *Tax-Exempt Status for Your Organization*.** This publication details both the initial application procedures and the continuing filing requirements for charitable organizations.
- 3. Be sure the land trust’s corporate charter and bylaws meet IRS requirements.** See IRS Publication 557 for required provisions and suggested language. This includes a clause in the charter that ensures the land trust’s assets will be distributed for tax-exempt purposes if the land trust dissolves.
- 4. Obtain and complete [IRS Package 1023, *Application for Recognition of Exemption under Section 501\(c\)\(3\) of the Internal Revenue Code*](#).** Revised by the IRS in October 2004, this package contains the necessary forms and instructions for applying for tax-exempt status. The recent revision was designed to accelerate the application process and obtain information about potentially abusive transactions.
- 5. Consider applying for an advance ruling.** Organizations applying as publicly supported organizations need to provide income and expense information to show that the land trust normally receives a substantial part of its support from the general public. However, rather than meeting the public support test immediately, most land trusts apply for an advance ruling, which gives the organization a five-year period over which it can prove it meets the public support test. During the advance ruling period, the land trust can offer the maximum tax deduction to donors, and, except in certain limited circumstances, the tax deductions remain valid even if the land trust is determined to be a private foundation after the expiration of the advance ruling period. Within 90 days of the end of the advance-ruling period, the land trust must submit information to the Internal Revenue Service demonstrating that it is a publicly

supported organization.

6. File other required forms. Three other forms may be filed with [Form 1023](#).

- [Form SS-4, “Application for Employer Identification Number”](#). This form must be filed if the land trust does not already have an employer identification number and has not already applied for one.
- [Form 2848, “Power of Attorney and Declaration of Representative”](#). This form must be filed if the land trust is represented by someone who is not a director, officer or trustee of the land trust.
- [Form 8718, “User Fee for Exempt Organization Determination Letter Request”](#). This form must be filed with the required application fee.

State and Local Tax Exemptions

A land trust should take advantage of tax exemption opportunities at the state and local level, including (if available) income tax and sales tax. Land trusts in some areas may also be eligible for property tax exemption, although land trusts don’t always seek this exemption even if it is available (see standard 12 for further discussion). Land trusts should investigate the opportunities and restrictions in their own locales.

Retaining Tax-Exempt Status

The IRS requires that public charities meet certain operating tests both at the time of application for public charity status and on a continuing basis. They include:

- **Avoiding private inurement.** Among the key conditions of tax-exempt status is that the land trust be “organized and operated exclusively for [charitable] purposes...no part of the net earnings of which inures to the benefit of any private shareholder or individual.” What is key here is the proscription against private inurement.
- **Prohibition on political campaign activity.** The land trust may not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. See practice 2E.
- **Complying with limitations on lobbying.** Lobbying may constitute only an “insubstantial part” of a land trust’s activities. This can be as much as 20 percent of annual exempt purpose expenditures if the land trust has elected to have the provisions of [Section 501\(h\)](#) apply to it. See practice 2E.

- **Paying tax on unrelated business income.** The land trust must report and pay unrelated business income tax on any unrelated business taxable income in excess of \$1,000.
- **Meeting the public support test.** The land trust must continue to show that it meets the public support test if it intends to qualify for public charity status as a publicly supported organization.

Avoiding Private Inurement/Private Benefit

The statutory ban on inurement is a considerable threat to the tax-exempt status of any charitable organization, like a land trust, that is engaged in financial transactions with individuals and/or for-profit entities. Taken at its most obvious meaning, the statute bars participation in profits by any officer, board member or member of the organization—not often a serious temptation with regard to land trusts. But it also *generally* prohibits the following:

- The payment of excessive compensation.
- The disposition or rental of property, other than to another nonprofit or government entity, at less than fair market value.
- The provision of services by the land trust to individuals and nonexempt organizations without a fair return.

Situations that a land trust is likely to run into that could raise the issue of private inurement or private benefit include the following:

- Allowing the free use of its office space or staff support for a nonexempt lobbying organization.
- Paying excessive fees for professional services.
- Giving away equipment the land trust no longer needs to individuals.
- Selling land or renting a house on a property the land trust owns at less than fair market value.

Some private benefit may be tolerated where it is incidental to the accomplishment of the land trust's charitable purposes and insiders to the organization are not involved. The amount of private benefit that the courts have allowed has depended on the *magnitude* of the private benefit in relation to the public benefit derived from the organization's activities, and whether the private benefit is necessary in order to effectuate the organization's exempt purpose. For example, a land trust may be able to lease property to a farmer at less than what a summer resident might pay if one of the trust's exempt

purposes is to protect agricultural land. Or it may be able to provide conservation services free of charge or at below market price in the course of a land protection project, such as developing a land-use plan for a property on which the owner is donating a conservation easement.

Private inurement can result in fines on the members of the board or senior staff that allowed it to happen and may even cause the organization to lose its tax-exempt status. Land trusts should be very wary of any situation that might involve private inurement or excess private benefit and seek the advice of counsel. (Most court findings of inurement have been limited to transactions involving insiders such as board members, officers or members. See standard 4 on conflict of interest for further discussion.)

Unrelated Business Income Tax

A land trust must be careful about any business activities in which it engages. To qualify as an exempt organization under Section 501(c)(3), a land trust must be organized and operated exclusively for exempt purposes. Any business activities it operates that are not primarily in furtherance of its exempt purpose must not be a substantial part of its operations. In addition, it must pay tax, at standard corporate income tax rates, on any net income after the first \$1,000 from unrelated business activities. The tax is intended to eliminate unfair competition with taxable businesses.

Unrelated business income is reported on [Form 990-T, "Exempt Organization Business Income Tax Return"](#). [Internal Revenue Service Publication 598, Tax on Unrelated Business Income of Exempt Organizations](#), details the regulations regarding unrelated business income.

What is unrelated business income?

There are three criteria for determining an unrelated trade or business.

1. The activity must be a trade or business.
2. The activity must be conducted on a regular basis.
3. It must not be substantially related to the purpose of the tax-exempt organization.

Some trade and business activities are excluded from the unrelated business income tax. These include:

- Businesses that are conducted by volunteers who work without compensation;
- Thrift shops in which merchandise is received by the organization as a gift;
- Qualified trade shows;
- Qualified public entertainment;
- Bingo games; and
- Income from the distribution of certain low-cost items.

Some examples of activities land trusts might undertake that might yield unrelated

business income include rental of their mailing lists to commercial retailers and sale of advertising in the land trust's magazine. Activities that probably would not be considered as yielding unrelated business income include resale of a restricted property or consulting on land use plans for conservation easements. There are extensive rules governing what qualifies as unrelated business income. If a land trust is uncertain whether an activity might fall in this category, and the activity will generate more than \$1,000 annually, it should consult an attorney familiar with nonprofit law. The land trust also should keep in mind that a large amount of unrelated business income might indicate to the IRS that the trust is engaging in nonexempt activities to a substantial degree and thus jeopardize the land trust's tax-exempt status.

Meeting the Public Support Test

A land trust that qualifies for public charity status as a publicly supported organization under Section 509(a)(1) or 509(a)(2) of the Internal Revenue Code—which includes most land trusts—must show that a certain proportion of its receipts comes from the general public. This includes grants from government agencies and other public charities, and contributions from individuals and nonexempt organizations. This requirement is often called the “public support test”.

Land trusts must pay close attention to meeting this test. Failing to meet the public support test can cause a land trust to lose its public charity status. If that happens, the land trust will become a private foundation, which can effectively eliminate its ability to carry out its land protection mission. It is vital that someone associated with the land trust (a board member, staff person or outside financial advisor) be assigned the responsibility for understanding the public support test, monitoring the land trust's performance against it and alerting the land trust if it appears to be running the risk of falling short of its requirements. This allows the land trust time to fundraise to meet the test's requirements.

The following discussion, adapted from an article in *The Back Forty* by William T. Hutton, gives a detailed overview of how the public support test works. The test is somewhat difficult and complex, and has a number of special provisions for specific situations. Land trusts should consult their accountant and IRS Publication 557, *Tax-Exempt Status for Your Organization*, for a more thorough and specific discussion. (The following discussion applies to 509(a)(1) organizations, which includes most land trusts. The rules for what counts as support are slightly different for 509(a)(2) organizations.)

What period is the public support test based on?

A new land trust must show that it meets the test over its first five years of operation, i.e., the advance-ruling period. Subsequently, the test is applied in four-year “moving average” increments; e.g., 2000 through 2003, 2004 through 2007, etc. Satisfaction of the test for any such four-year period ensures continuation as a public charity for the succeeding two years. Thus a land trust that satisfied the public support test for the years 2000 through 2003 would be deemed to be a public charity for 2004 and 2005, even if it

did not meet the test for the 2001 through 2004 period.

How much public support is required?

Generally an organization meets the public support test if it:

- 1. Normally receives at least one-third of its total support** from government agencies and the general public (“favorable” support); **or**
- 2. Receives at least 10 percent of its support** from these sources and meets an “attraction of public support” requirement. This is often called the facts and circumstances test.

Facts and circumstances test

If the land trust fails to meet the one-third support test, it may still qualify under the more flexible facts and circumstances test. To qualify under this test, the land trust *must meet* the following two requirements:

- 1. Ten percent of support.** The organization must receive *at least* 10 percent of its support from government agencies and the general public. Favorable support is calculated in the same way as it is for the one-third test; however, the lower percentage of public support required makes meeting the standard easier. If the organization’s favorable support is less than 10 percent, it will not qualify.
- 2. Attraction of public support.** To meet this requirement, the land trust must show that it has a continuous and bona fide program of solicitation of funds from the public, government or other charitable organizations. A land trust seeking to meet this test may find it especially advantageous to have a large and broad membership.

In addition to these two primary requirements, the IRS will consider the following secondary factors as indications of public support. Not all of these factors need to be met, but weakness in one factor means the land trust must be stronger in the others.

- **The percent of public support.** Obviously this figure will lie somewhere between 10 percent (the non-qualifying level) and 33 1/3 percent (the level sufficient by itself for public charity status). The lower the percentage, the stronger the combination of remaining factors must be. If a large portion of income derives from endowment interest (which is not considered public support), the origin of the endowment will be considered.
- **Sources of support.** Broad support, a variety of potential donors and significant governmental contributions work in the land trust’s favor.
- **Representative governing body.** A governing body (e.g., a land trust board) that includes a cross section of interests such as public officials, experts and community leaders weighs in the land trust’s favor.

- **Public facilities or services.** Benefiting the public directly through programs or services is considered evidence of public support.
- **Miscellaneous factors.** Breadth of solicitation, restrictiveness of dues and broad appeal of activities are also considered.

Calculating public support

To calculate the percentage of public support, the IRS instructs the organization to set up a mathematical equation with public support in the numerator and total support in the denominator. To do this, the land trust must understand what types of income, and how much of each, are to be included in each category. See Figures 4.1 and 4.2.

- 1. Total support: the denominator.** Total support includes most of the land trust's income but *does not include* the following:
 - Exempt income—Income from a function or activity that advances the trust's exempt purposes (e.g., fees for land planning or consulting, sales of conservation publications, income from seminars).
 - Capital gains.
 - Private donations of services—The general rule of thumb is that only those in-kind forms of support that are tax deductible to the donor should be considered in the land trust's total support calculation.
 - Unusual grants—Unusual grants from disinterested parties may be excluded from the support calculation under certain conditions (see discussion below).
- 2. General public (“favorable”) support: the numerator.** Public support can be broken down into two categories.
 - One hundred percent. Government grants, government donations of services or facilities, and grants from public charities count 100 percent toward public support.

FIGURE 4.1

What Counts as Support

	Total Support	"Favorable" Support
Government grants	yes	yes
Public charity grants	yes	yes
Gov't donation of services/ facilities	yes	yes
Land (fair market value)	yes	2% limit
Easements*	yes	2% limit
Private donations (cash, goods)	yes	2% limit
Unrelated income	yes	no
Investment income	yes	no
Capital gains	no	no
Exempt-function income (including fees from govt. agencies for services provided)	no	no
Unusual grants	no	no
Private donations of services	no	no

*Some land trusts value easements at zero and therefore do not include them in the support calculation at all.

- Two percent limit. Grants from private individuals, private foundations and other organizations count toward public support also, but not more than an amount equal to 2 percent of total support may count as public support from any single source. For this purpose, all contributions made by a donor and any related person or persons are aggregated.

Note that investment income (such as interest from an endowment or revolving fund) is included in total support, but does not count toward public support.

Unusual grants: dealing with large gifts

Large gifts from private sources, such as donations of valuable land, easements or a large bequest, can make it difficult for a land trust to meet the public support test. Such gifts count 100 percent toward total support, but are limited in their application toward public support to 2 percent of total support.

However, such grants may be completely eliminated from the support calculations if they meet certain requirements. Under IRS regulations, "unusual grants" from "disinterested parties" may be excluded from the support calculation if they (1) are attracted by reason of the publicly supported nature of the land trust; (2) are unusual or unexpected with respect to the amount of the contribution; and (3) would, if required to be included, adversely affect the status of the land trust. Generally speaking, "all pertinent facts and circumstances" are taken into consideration in determining whether the exclusionary circumstances are present.

The IRS has published guidance ([Revenue Procedure 81-7, 1981-1 C.B. 621](#)) listing six factors that taken together qualify a grant as “unusual.”

1. A person other than a creator of the organization or a person who had attained “substantial contributor” status prior to the contribution makes the contribution. (A “substantial contributor” is a person who, as of the end of any year, has made total [historical] contributions in excess of \$5,000 and whose total contributions exceed 2 percent of the land trust’s total [historical] support to that date.) Persons related to creators and substantial contributors, within the meaning of certain detailed attribution rules, are also disqualified.

Because a land trust may wish to exclude donations of land or easements from the support calculation by classifying them as unusual grants, it may wish to discourage such potential donors from participating in the land trust’s creation and from making other substantial contributions prior to protecting their land.

2. The contribution is not made by a manager of the nonprofit (e.g., a board member or officer) or by anyone who otherwise is able to exercise control over the organization, nor by a person who attains such a position of authority on account of the contribution itself. The same related-party proscription mentioned in paragraph 1 applies here.
3. The contribution is in the form of cash, readily marketable securities or assets that directly further the exempt purposes of the organization. (The IRS has ruled privately that a conservation easement donation to a land trust satisfies this factor.)

FIGURE 4.2

Hypothetical Support Calculation			
	Income	Total Support	Public Support
Board of directors gifts			
Steve Zeisel	\$5,400	\$5,400	\$5,400
Rick Maurer	3,000	3,000	3,000
Sally Johnstone	1,500	1,500	1,500
Steve Tilson	10,000	10,000	5,500 **
Kate Bryer	6,500	6,500	5,500 **
	26,400	26,400	20,900
Other cash donations (none over \$500)			
	24,300	24,300	24,300
Cash bequest			
Estate of Edwin Maurer	30,000	30,000	2,500 ***
Foundation grants			
Kate Bryer Family Fund	10,000	10,000	5,500 ****
Sondheim Foundation	5,000	5,000	5,000
	15,000	15,000	10,500
Government grant			
	20,000	20,000	20,000
Investment income			
Savings account interest	2,300	2,300	0
Capital gains	18,000	0	0
	20,300	2,300	0
Exempt-function revenues			
Seminar fees	2,800	0	0
Camping permits	5,600	0	0
	8,400	0	0
Donations of land			
Carp Pond (from Dorothy Jenkins by outright gift)	42,000	42,000	5,500 **
Antelope Ridge (from Kate Bryer, bargain purchase for \$35,000; fair market value \$60,000)	25,000	25,000	0 ***
	67,000	67,000	5,500
Donations of easements			
Rick and Kathy Maurer	80,000	80,000	0 ***
Susan Barton	415,000	0 *	0
Marlene Arnese	150,000	0 *	0
Bill O'Neil	225,000	0 *	0
Alan Dickman	270,000	0 *	0
	1,140,000	80,000	0
Use of office space (donated by town of Arlington)			
	10,000	10,000	10,000
Totals	\$1,361,400	\$275,000	\$93,700
\$93,700/275,000 = 34 percent			
Public support test met under one-third test.			

*Excluded as unusual grant. **Favorable support from a single source is limited to 2 percent of total support (\$275,000 x .02 = \$5,500). ***Portion counted toward public support limited or zeroed out because related person's contribution has already been counted. Two percent limit applies to gifts from single source or related persons. ****This foundation is not considered to be related to Kate Bryer, and the contribution counts as favorable support up to the 2 percent limit.

4. The land trust has received either an advance or final ruling classifying it as a public charity and, once beyond its advance-ruling period, is “actively engaged” in a program of activities in pursuit of its exempt purposes.
5. No material restrictions or conditions have been imposed by the contributor upon the land trust in connection with the grant or contribution. (The attributes of ownership retained by the donor of a conservation easement are not deemed to be restrictions or conditions on the easement gift.)
6. If the contribution is intended to underwrite operating expenses, as opposed to financing capital expenditures, the contribution covers no more than one year’s operations.

Zero valuation of easements

Many easements can be excluded from the support calculation under the provisions for unusual gifts. But some land trusts exclude all easements from the public support calculation by valuing their easements at zero. They reason that the transfer of a conservation easement cannot reasonably be said to demonstrate any disinterested generosity towards the land trust, nor to increase its true support. In fact, the typical easement provides the land trust no affirmative rights except to monitor and enforce the easement, and thus constitutes a *liability*. Apparently certain IRS examiners have accepted the zero-value approach in audit situations, but there is no published IRS guidance or ruling on this issue.

Fundraising to meet the support test

A land trust may be able to fundraise to meet the test without too much trouble, as long as it plans ahead. For example, a land trust with total support of \$200,000 over four years could raise \$2,000 each (which is below the 2 percent limit) from 34 people over that period and automatically meet the test ($\$68,000/\$200,000 = 34$ percent).

State Tax-Exemption Requirements

A land trust that is tax exempt under state law must be sure to understand and comply with the requirements of that law. Land trusts should consult with appropriate advisors on the tax law that governs their state.

Links to Other LTA Resources

- [“Easements as Public Support: The ‘Zero-Value’ Approach”, by William T. Hutton. Chapter 12 of *The Conservation Easement Handbook*, 1988. Published by the Land Trust Alliance.](#)
- [“Law Update: Staying Within the Bounds of the Income Tax Code and Public](#)

[Perception: Private Inurement and Private Benefit](#)”, *Exchange*, Spring 1999 (Vol. 18 No. 2)

Other Helpful LTA Publications

- For a detailed description of public charity status, see [Starting a Land Trust](#), 1990. Published by the Land Trust Alliance.

Links to Other Helpful Resources

- [The Public Support Test: What a Grant Seeker Should Know](#) – memorandum prepared by LaVerne Woods, Esq.

Links to Helpful IRS Resources

- [Form 990-T](#) – Exempt Organization Business Income Tax Return
- [Form 2848](#) – Power of Attorney and Declaration of Representative
- [Form 8718](#) – User Fee for Exempt Organization Determination Letter Request
- [Form SS-4](#) – Employer Identification Number
- [Section 501\(c\)\(3\)](#)
- [Section 501\(h\)](#)
- [Section 509\(a\)\(1\)](#)
- [Section 509\(a\)\(2\)](#)
- [Package 1023](#) – *Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code*
- [Publication 557](#) – *Tax-Exempt Status for Your Organization*
- [Publication 598](#) – *Tax on Unrelated Business Income of Exempt Organizations*
- [Revenue Procedure 81-7, 1981-1 C.B. 621](#)

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.

Value of a Records Policy

Land trusts need to maintain appropriate records about their operations. For example, financial records, contracts, land transaction project files, board minutes, employment files, and fundraising obligations should be maintained and archived according to guidelines established by the organization. Particularly in the event of litigation, land trust records—and the land trust's ability to document their authenticity—could be paramount.

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 land trust's documents.

Developing and maintaining a records management system can also 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.

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 Policies and the Sarbanes-Oxley Act

One of the provisions of the 2002 [Sarbanes-Oxley Act](#) addresses the destruction of litigation-related documents. The law makes it a crime to alter, cover up, falsify, or destroy any document to prevent its use in a federal official proceeding. The Act turns intentional document destruction into a process that should be monitored, justified and carefully administered. While, strictly speaking, the requirements and prohibitions contained in Sarbanes-Oxley do not impact nonprofit entities in the same manner that they impact for-profit entities, land trusts would be wise to follow some of the Act's requirements for publicly traded corporations.

Common sense dictates that land trusts regularly need to shred or otherwise dispose of unnecessary and outdated documents and files. [The Sarbanes-Oxley Act and Implications for Nonprofit Organizations](#), published jointly by BoardSource and Independent Sector, recommends that all nonprofit organizations have a written, mandatory document retention and periodic destruction policy. The policy should also include guidelines for handling electronic files and voicemail. (Electronic documents and voicemail messages may have the same status as paper files in litigation-related cases.) If an official investigation is underway or even suspected, a land trust should stop any document destruction and contact an attorney for specific advice.

Elements of a Records Policy

A land trust should create a records policy that contains at least the following elements.

- **Document creation.** The policy should explain what information is collected, when and how many copies are made. It should also include what documents must have what signatures.
- **Document retention and storage.** 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. The policy should address such items as daily records storage; long-term records storage; who is the custodian of records; and how records will be protected from loss, fire and other hazards, and access by unauthorized persons.
- **Document destruction.** The question of how long records are maintained will vary with the type of document. 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 policy should address specifically what documents should be kept for what length of time (including email and voicemail communications), and when and how they will be destroyed.

A records policy may be created by a board committee, staff or with the guidance of outside legal counsel. In most circumstances, it is preferable for the board to adopt the records policy. For land trusts with multiple professional staff, the executive director can

develop and promulgate the policy statement as an interoffice 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.

(See also the related practice 9G on recordkeeping for land transactions.)

Links to Other LTA Resources

- [“Records Policy and Management: A Key Aspect of Protecting Land ‘in Perpetuity’”, *Exchange*, Fall 2000 \(Vol. 19 No. 4\)](#)

Links to Other Helpful Resources and Publications

- [Record Keeping Essentials for Conservation – Jane Prohaska, Minnesota Land Trust, 2005 \(workshop outline\)](#)
- [The Sarbanes-Oxley Act of 2002.](#)
- [*The Sarbanes-Oxley Act and Implications for Nonprofit Organizations*, published jointly by BoardSource and Independent Sector in 2003.](#)

Sample Land Trust Records Policies

- Colorado Open Lands
[Archiving Documents](#)
[Introduction to the Data Management System](#)
[Policies and Procedures: Computer Filing System](#)
- Teton Regional Land Trust – Policy Document: Records Policy
- Vermont Land Trust – Stewardship Program Records Philosophy

Practice 2E: Public Policy

- The land trust may engage in public policy at the federal, state and/or local level (such as supporting or opposing legislation, advocating for sound land use policy, and/or endorsing public funding of conservation) provided that it complies with federal and state lobbying limitations and reporting requirements. Land trusts may not engage in political campaigns or endorse candidates for public office.
-

Many land trusts engage in public policy at some level, even if they are not primarily advocacy organizations. While some land trusts deliberately avoid all policy discussion, feeling it would interfere with their ability to protect land, most land trusts have some interest in policymaking at the local, federal or state level. Land trusts may wish to seek support for the enactment of a bond issue, appropriations or other funding for land acquisition at the local, state or federal level; seek sound tax policies for land conservation; forestall threats to tax deductions for charitable contributions to nonprofit organizations; and become involved in a host of positive open space initiatives. This practice clarifies that land trusts may engage in advocacy work or lobbying, but must always follow federal limitations on lobbying for tax-exempt charities. State filing and reporting requirements must also be met. Land trusts with federal tax-exempt status may not endorse political candidates. While lobbying activity is only limited by the rules governing tax-exempt organizations, prohibitions on political endorsements are absolute.

Lobbying Limitations

Land trusts can, do and should lobby. Land trusts generally are not primarily advocacy organizations, and many land trusts deliberately avoid getting embroiled in political controversies that they feel would interfere with their ability to protect land. But all land trusts *do* have an interest in some lobbying. Land trusts may wish to seek support for the enactment of bond issues, appropriations or other funding for land acquisition at the local, state or federal level; seek sound tax policies for land conservation; forestall threats to tax deductions for charitable contributions to nonprofit organizations; and become involved in a host of positive open space initiatives.

Land trusts that engage in lobbying will want to choose their issues and projects as carefully as they choose their land protection projects. See practice 8M for guidance on developing criteria for public issue project selection.

The law on lobbying

Until 1976, tax-exempt organizations had very little guidance on how much they could lobby, what constituted lobbying, etc. The law stated that lobbying could constitute “no substantial part” of a tax-exempt organization’s activities. In 1976, Congress passed more definitive legislation—commonly referred to as the 1976 lobby law and codified in

[Section 501\(h\) of the Internal Revenue Code](#). An organization can elect to operate under the 1976 lobby law by filing [IRS Form 5768, “Election/Revocation of Election by an Eligible Section 501\(c\)\(3\) Organization to Make Expenditures to Influence Legislation”](#). Otherwise, the organization is subject to the “no substantial part” limitation (discussed further below).

In addition to these stipulations in the tax code, the 1995 Lobbying Disclosure Act requires separate registration and reporting of federal lobbying. However, the act applies only to organizations that (1) have an employee devoting at least 20 percent of his or her time to federal lobbying activities and (2) spend at least \$20,000 every six months on lobbying activities. The law provides a reporting option to simplify recordkeeping for organizations that meet these criteria and that have elected to report for tax purposes under Section 501(h).

What constitutes lobbying?

Lobbying is generally defined in Section 501(h) of the Internal Revenue Code—the portion of the law that allows nonprofit organizations to make the lobbying election using Form 5768. (It seems reasonable to assume that these definitions would apply to organizations that do not choose to elect as well.) The IRS breaks lobbying into direct lobbying and grassroots lobbying, and generally defines them as follows:

- 1. Direct lobbying.** Attempting to influence legislation by contacting members of a legislative body, their staffs or other government officials who may participate in the formulation of legislation (whether at the local, state or federal level).
- 2. Grassroots lobbying.** Attempting to influence legislation by trying to affect the opinions of the general public or any segment thereof.

Many activities that deal with government policy are not lobbying—for example:

- Making available the results of nonpartisan analysis, study or research;
- Providing technical advice or assistance (where the advice would otherwise constitute the influencing of legislation) to a governmental body or committee at its written request;
- Communicating with a legislative body on matters that might affect the existence of the organization, its tax-exempt status or the deduction of contributions to the organization; or
- Communicating with non-legislative officials unless the principal purpose is to influence legislation.

Generally, a land trust’s communications with its own members about legislation of direct interest to the land trust is not considered lobbying, provided that the communication does not urge members themselves to lobby or encourage nonmembers to

lobby.

IRS regulations issued in 1990 further define these terms, particularly the difference between direct and grassroots lobbying.

How much lobbying is allowed?

- 1. The “no substantial part” restriction.** If a land trust does not make the lobbying election, it falls under the restriction that “no substantial part” of its activities may include lobbying. At various times it has been suggested that “no substantial part” means “less than 5 percent of expenditures.” But it could mean no substantial *effort* rather than substantial *expenditures*, for instance. An organization found to violate this “no substantial part” restriction would lose its tax-exempt status.
- 2. The lobbying election.** An organization that makes the lobbying election can spend up to a fixed amount of money on lobbying according to the following sliding scale: 20 percent of the first \$500,000 of its total exempt-purpose expenditures; 15 percent of the next \$500,000; 10 percent of the next \$500,000; and 5 percent of anything above that. There is an absolute ceiling of \$1 million. However, no more than 25 percent of its total lobbying expenses can be for grassroots lobbying (influencing members of the general public). Thus, an electing organization with annual exempt-purpose expenses of \$100,000 can spend up to \$20,000 on total lobbying activities, but only \$5,000 of that can be for grassroots lobbying.

An electing organization must keep records of both direct and grassroots lobbying expenditures—staff time, printing, postage costs, etc.—to be able to show that it is not exceeding the allowed limits. Of course, non-electing organizations that lobby also need to keep records to prove that their lobbying is insubstantial.

Should land trusts make the lobbying election?

There are advantages to making the lobbying election if the land trust plans to do more than a very small amount of lobbying. The “no substantial part” provision has a history of subjective and selective enforcement by the U.S. Treasury in terms of the extreme penalty of revoking tax-exempt status. An electing organization, in contrast, has clear guidelines to follow, and does not automatically lose its exemption if it exceeds its lobbying expenditure limit. It loses its exemption only if it exceeds its expenditure limit by more than 50 percent for the four years immediately preceding the current year. However, everything over its limit is subject to a 25 percent tax.

With the issuance in 1990 of very favorable IRS lobbying regulations implementing the 1976 lobby law, many are advocating that tax-exempt organizations make the lobbying election. This includes the Independent Sector, a national umbrella organization for tax-exempt organizations. The Internal Revenue Service manual for auditors explicitly declares that the fact that an organization has elected is no reason to audit it and, indeed, advises agents that lobbying problems are more likely to arise with non-electing groups. Furthermore, in 1993 the IRS began using a new lobbying reporting form (as part of IRS Form 990) that requires non-electing groups to provide much more detailed information

on their lobbying activities than those who elect.

Provided that the election is signed and postmarked before the end of the tax year to which it applies, a land trust may wait until near the end of the year to file its election.

Lobbying: [Form 990, Schedule A](#)

All charities must report on their annual Form 990 the total amount of their lobbying expenditures. Organizations that have not made the lobbying election by filing Form 5768 must complete Part IV of Form 990, Schedule A.

Electing organizations must complete Part VI, “Lobbying Expenditures by Public Charities,” of Form 990, Schedule A, which lists the amount spent on grassroots and direct lobbying. Electing organizations do not have to file a detailed description of their legislative activities.

Prohibition on Political Campaign Activity

The Internal Revenue Code specifies that Section 501(c)(3) organizations may not “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” Land trusts are prohibited from making any expenditures that are directly related to and support the process of influencing or attempting to influence selection, nomination, election, or appointment of any individual to public office or office in a political organization. The prohibition includes the following examples:

- Giving endorsements—either explicit or implicit.
- Making contributions to campaigns, including in-kind contributions of services, publicity, paid staff time, or use of facilities or assets.
- Evaluating candidate positions.
- Setting up, funding or managing a political action committee (PAC).
- Coordinating any activities with a campaign.

Land trusts may undertake certain nonpartisan activities, but the IRS may closely scrutinize even these activities for any bias. Inviting a politician to speak and paying an honorarium may be a prohibited activity if the intent may be to influence voters. Any activity in any way related to a political campaign should be undertaken only after consulting with an attorney very familiar with nonprofit law. *A land trust risks losing its tax-exempt status if it engages in political campaign activities.* The IRS may also impose financial penalties on the organization and its board members and officers.

Links to Other LTA Resources

- [Advocacy: An Ounce of Prevention](#). Fact sheet by Russell Shay, LTA's Director of Public Policy.
- [Building Advocacy Partnerships with Legislators](#). Fact sheet by Henrietta Jordan, LTA Northeast Program, 2003.
- [Can Land Trust's Lobby?](#) LTA web page on land trusts and lobbying.
- ["Land Trusts' Role in Procuring Public Funding for Conservation"](#), *Exchange*, Spring 2004 (Vol. 23 No. 2)
- ["Law Update: Can Land Trusts Lobby?"](#), *Exchange*, Spring 2004 (Vol. 23 No. 2)
- [Lobbying Limits Primer for Land Trusts](#) – Rally 2004 Workshop.
- [LTA Advocates](#) – an email alert network that lets land trusts know what the federal government is doing that may affect land conservation work and what land trusts can do.

Links to IRS Resources

- [Form 990](#) – Return of Organization Exempt from Income Tax
- [Form 5768](#) – Election/Revocation of Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation
- [IRC Section 501\(h\)](#)
- [Letter to Independent Sector Regarding Charities and Political Activities](#), 2000.

Links to Other Helpful Resources and Publications

- [Charity Lobbying in the Public Interest](#) – educating charities about the important role lobbying can play in achieving their missions.
- [Election Activities of Individuals Associated with 501\(c\)\(3\) Organizations](#) – Alliance for Justice fact sheet.
- [Lobby? You? Yes, Your Nonprofit Organization Can! It Should!](#), Charity Lobbying in the Public Interest.
- [Permissible Election Activities Checklist](#) – Alliance for Justice.
- [Worry-Free Lobbying for Nonprofits: How to Use the 501\(h\) Election to Maximize Effectiveness](#), Alliance for Justice, 2003.

Other Helpful Publications

- [*The Nonprofit Lobbying Guide*, by Bob Smucker, 1999. Published by Independent Sector. This publication demonstrates the many ways nonprofits can use lobbying to advance their causes in federal, state and local legislatures.](#)

Samples from Land Trusts

- [Tall Timbers Research Station \(Red Hills Conservation Program\) \(FL\) – Advocacy Policy](#)
- [Vermont Land Trust – Public Advocacy Guidelines](#)

° This example can be used as a starting point to create a policy or other document for your own land trust, but should be altered as necessary to reflect your organization’s unique circumstances using guidance found in the *Land Trust Standards and Practices Guidebook* text and corresponding Standards and Practices Curriculum. This material is designed to provide accurate, authoritative information in regard to the subject matter covered. It is 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.