

# Standard 12: Fee Land Stewardship

*The land trust has a program of responsible stewardship for the land it holds in fee for conservation purposes.*

Many land trusts own land in fee for a variety of conservation purposes, and must take care of these properties. Failure to manage and monitor the property could lead to loss of or damage to the property's conservation values, injury to visitors, or even loss of the property itself. A land trust that does not care for its holdings will lose credibility. A land trust should also make contingency provisions for its land in the event it can no longer fulfill its stewardship obligations.

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The land trust determines the immediate and long-term financial and management implications of each land transaction and secures the dedicated and/or operating funds needed to manage the property, including funds for liability insurance, maintenance, improvements, monitoring, enforcement and other costs. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure these funds and has a policy committing the funds to this purpose. (See 6G.)

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

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The land trust has a contingency plan for all of its conservation land in the event the land trust ceases to exist or can no longer manage the property. To ensure that a contingency holder will accept the land, the land trust has complete and accurate files and stewardship funds available for transfer.

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The land trust is aware of the potential for condemnation, understands its rights and obligations under condemnation, and works diligently to prevent a net loss in conservation values.

Condemnation for Public Purposes

#### Introduction

A land trust must be a responsible steward of its lands. All the work and resources invested in acquiring the land are wasted if the property is not defended against encroachment and misuse or if its resources are not managed to maintain their conservation values. Unless the land trust is prepared and has the capability to undertake the many responsibilities of managing a property in perpetuity, it should not take on its permanent ownership.

Good stewardship produces many positive benefits for the land trust, including the following:

- It protects and enhances the conservation values of the property;
- It creates a sound, responsible public image for the land trust and enhances support for its efforts;

- It encourages others to give funds, land and conservation easements; and
- It maintains a good relationship with the grantor and may result in additional gifts.

Failure to be a responsible steward can damage a land trust's reputation, cause liability and management problems, leave a land trust open to lawsuits from donors, and even cause a land trust to lose its land. The practices and discussion that follow outline the basic elements of a sound program of stewardship for land owned in fee.

### Links to Other LTA Resources

- [Introduction to Stewardship & Land Management – Rally 2004 workshop.](#)

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## Practice 12A: Funding Land Stewardship

- The land trust determines the immediate and long-term financial and management implications of each land transaction and secures the dedicated and/or operating funds needed to manage the property, including funds for liability insurance, maintenance, improvements, monitoring, enforcement and other costs. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure these funds and has a policy committing the funds to this purpose. (See 6G.)
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This practice emphasizes the need to review immediate and long-term costs of holding land and to secure operating and/or dedicated funds to carry out the land trust's responsibilities. A land trust should determine the amount of funds it will need to properly care for the land over time. The land trust should then secure these funds, or ensure that it has a steady source of operating income to cover these costs. Specifically restricted funds should be placed in a designated fund or funds (see 6G.) If a land trust does not have adequate funds for the stewardship of its land it should have a fundraising strategy and a board policy committing the funds for this purpose, and be able to demonstrate progress toward meeting the goals of the strategy.

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### Financing Land Stewardship

A land trust has many factors to consider before deciding to take on property ownership: Does the property meet the land trust's acquisition criteria? Does it contain significant conservation resources and serve the public benefit? Does it contain hazards, pose significant management problems, or is it hampered by limitations such as difficult public access, rights-of-way or unclear title? Is ownership the best way to protect the property, and is the land trust the best owner? These considerations, addressed in previous practices, take the land trust to the point of deciding whether or not to acquire a property.

If all these factors point to a decision to acquire, the land trust must answer one last critical question: Does it have, or can it raise, the financial resources to meet its management responsibilities for the property in perpetuity?

Property that the land trust holds for conservation purposes is a permanent financial liability. It costs the land trust money up front to initiate management, and it takes money every year to monitor, maintain and manage it. Even a land trust that depends heavily on volunteers to manage its property has costs for signs, insurance, any required taxes, etc. Inflation means that it takes *more* money every year to get the work done.

The amount of money required to manage a property varies depending on its size, intensity of management, public use, and other factors. Each land trust must make a commitment to determine what management is needed and to fund the necessary management as long as it holds the property.

Owning land without having the money to manage it not only leaves the individual land trust unable to fulfill its responsibilities, but also can damage the land trust community as a whole. Conservationist Russ Van Herik explains:

Deeds and easements are pieces of paper that confer responsibility. Your paper is only as effective as your financial ability to quickly and thoroughly prosecute the legal rights granted in the paper. That means you must not buy or accept ownership of property unless you have the means to care for it and fulfill the obligations of ownership. Precedents are crucial—a system of land trusts that gets caught bluffing is dead. (“Financial and Legal Aspects of Land Management,” *Exchange*, published by the Land Trust Alliance, Fall 1989.)

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## **Establishing a Dedicated Stewardship Fund**

A land trust needs to plan for a permanent, ongoing source of funds for land management. The land trust cannot risk being caught short if it has a bad year or unexpected expenses. Generally, land trusts should not count on raising money for management year-by-year; such money is hard to raise and it is too easy to forgo management funds to acquire another parcel.

The surest way to fund land management over time is with a dedicated fund that is segregated from the operating budget. Some land trusts have separate funds for individual properties; many pool management money for all their properties into a single fund. Usually the principal is not considered expendable; only the interest or income earned can be spent for stewardship. Managed wisely, a dedicated fund provides an ever-increasing flow of money guaranteeing that annual management responsibilities can be met.

The stewardship fund may not be the sole source of funding for management, and it may not actually be managed by the land trust as a separate account. The Little Traverse Conservancy in Michigan, for example, relies on funds from its general endowment fund (of \$2 million) and income from some of its properties, along with a small stewardship endowment, to fund its annual management costs. One way or another, however, every land trust needs to know the money will be there, every year and over time, to cover the costs of managing its holdings.

(See practice 6F for a discussion of management of dedicated funds. See also practice 11A, which discusses dedicated funds in terms of easement stewardship.)

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## **Raising Stewardship Funds**

Land trusts raise money for stewardship funds in several ways, depending on their circumstances. The methods sometimes vary from project to project.

**Asking donors of the land**

Often the best source of management funds is the owner, who loves the land most. Land trusts commonly ask donors of land or conservation easements to endow their gifts. Jim Lentowski of the Nantucket Conservation Foundation in Massachusetts says, “Being comfortable with asking people for financial help for land management is a skill that comes with experience and the organization’s maturity. Although we’re not insistent, we ask some land donors to consider endowing their gifts.” Giving the landowner a written policy explaining the land trust’s stewardship fund early in the negotiation process often facilitates discussion. Most landowners appreciate knowing up front what is expected from them. If they are unable to contribute to the fund, they might identify other funding sources.

**Fundraising at acquisition**

In situations where the land trust is paying for the property, it should add an appropriate amount to the total fundraising goal to cover a dedicated fund for long-term management costs. Otherwise, the land trust risks making what Russ Van Herik calls “the ultimate error”: raising enough money to buy the land but not enough to take care of it. A well-thought-out, long-term project budget that includes management costs can enhance the land trust’s fundraising effort. Increasingly, sophisticated donors (private or governmental) insist on seeing management costs in a budget.

When property is donated and no fundraising is involved, the land trust can still try to raise management costs before the land is given. Russ Van Herik notes:

When lovely land gets too expensive to own, it is donated. Never accept a gift of land without conditioning its acceptance upon successful identification of a dedicated management fund, perhaps even within a specific number of months...It is the time between the announcement of the willingness to donate and the date of acceptance that stewardship fundraising is compelling and possible: “By giving \$500 to the management fund, you will be responsible for causing a \$500,000 gift of land.”

Collective land trust experience shows it is easiest to raise stewardship funds in conjunction with raising acquisition monies, when trusts can ride the wave of urgency for protection. It is much more difficult to raise money for land management after an acquisition is completed. If the land trust plans to fundraise for stewardship money, it should do so at the time of the acquisition; otherwise the land trust builds a growing time bomb of deferred responsibilities.

**Allocating unrestricted funds**

Some land trusts have a policy of allocating a portion of all unrestricted donations to the stewardship fund, even if it is only one dollar per gift. Some set aside a percentage of their annual budget every year. These both provide ways to start or supplement an dedicated stewardship fund.

**Generating income from the property**

Occasionally, stewardship funds can be generated from income-producing activities on

the property itself. Buildings on the property may provide an opportunity for generating income (although they may also constitute a substantial liability as discussed later). Income realized from a rental home may more than pay for its upkeep; the tenant may also provide a dedicated full-time monitor for the property. Tom Bailey of the Little Traverse Conservancy in Michigan, which has several buildings that generate income for property management, says, "Rental of real estate by a land trust can be a good business proposition. Don't be afraid of a good deal!"

The land trust may also be able to lease property for farming or forest management that is consistent with or beneficial to a property's conservation goals. These practices may preserve grassland or woodland habitat necessary for the survival of specific plant or animal species or may maintain open scenic views. Cooperative extension staff and other land management professionals can help the trust determine what uses are appropriate for the land. Charging fees for public access for active recreation, such as boating or biking, also may be a source of income. (See practice 9F for a brief discussion of management and lease agreements.)

On the other hand, some land managers caution that depending on income from the property can cause a land trust to focus its attention more on the income-producing activity than on the property's conservation resources. Also, a land trust should not be so dependent on such income that it cannot afford to halt the income-producing activity if necessary.

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## Determining Stewardship Costs

A land trust should have clear objectives for a property before its acquisition. Ideally, it should have determined if any adjacent lands need to be acquired to assure protection of the property's resources, and should have outlined a management plan. This plan identifies the resources and processes on the land that are to be protected and promoted, determines what actions to take or avoid, and designates who shall accomplish those objectives.

The management plan provides the basis for creating an income and expense budget for taking care of the parcel in perpetuity. If the land trust does not have a management plan before acquisition, it still may be able to make some good cost estimates. At first, the costs will be an educated guess. As a land trust gains more experience, the accuracy of the projections will improve. (See practice 12C for further discussion of land management plans.)

Land trusts should be hardheaded in calculating stewardship expenses and should not cut the estimate too close. A great strength of land trusts is their ability to get assistance volunteered. But in calculating costs, land trusts should try not to underestimate their need to pay for staff or consulting time on management responsibilities. Coordinating volunteers can take substantial time. Unforeseen needs may arise for specialized consulting help. Even a land trust that has no paid staff may find the administrative

burden of stewardship requires some paid assistance. Finally, any land trust may incur unexpected costs, such as legal fees incurred as part of a boundary dispute.

Land trusts must plan for three types of management costs:

- Start-up costs;
- Annual costs; and
- Occasional replacement costs.

### **Start-up costs**

When the land trust first acquires a property, it needs to take some actions immediately. Possible start-up activities include the following:

- Holding a dedication ceremony;
- Contacting neighbors;
- Payment of back taxes and the remainder of current-year taxes (if not exempt);
- Preparing leases;
- Surveying and posting boundaries and hazards;
- Garbage cleanup;
- Conducting natural and cultural resources inventories;
- Locating rare species;
- Fencing;
- Installing gates at trailheads or to block roads;
- Trail and parking area construction;
- Removal of buildings or known hazards;
- Erecting entrance signs;
- Purchasing or preparing maps and aerial photographs;
- Preparing a management plan; and
- Preparing a preserve brochure.

These start-up costs are expenditures that begin transforming the property into a protected area. They may be one-time costs, or occasional costs when gates need reinstalling or management plans need updating.

### **Annual costs**

Most of the land trust's stewardship costs are annual expenses for monitoring and managing the property. In calculating the amount needed for its stewardship fund, the land trust must keep in mind that it needs to generate enough money from interest on its fund to cover these annual costs (as well as additional interest to put back into the fund to at least keep the principal even with inflation). Annual costs might include the following:

- **Monitoring.** The land trust's property should be monitored regularly, according to the needs of a particular site. At a minimum, properties should be monitored annually for trespass or overuse, hazards, vandalism, etc. Most land trusts will want to budget for staff or a consultant's time to do at least annual monitoring and/or periodic aerial

photography. Supplemental monitoring may be done by staff or volunteers. Some land trusts may have all monitoring done by well-trained and conscientious volunteers.

- **Maintenance.** Signs, buildings, trails, roads, dams, bridges, walkways, docks, fences, gates, boundaries, registration boxes, and parking areas need to be maintained. Costs may include capital expenses and staff or consultant time.
- **Equipment.** The costs of purchasing or renting and maintaining equipment used in management should be considered.
- **Resource maintenance or restoration.** Depending on the land trust's conservation objectives for the property, a variety of resource management activities may be needed on a recurring basis. These might include control of noxious weeds, removal of exotic species, mowing, prescribed burning, plantings, forest management, maintenance of scenic views, pest control, pond construction, water quality monitoring, farming, or installing nesting platforms.
- **Administration.** There are a number of administrative activities the land trust must undertake as part of its overall stewardship program. These may not be attributable to a particular property, but should be funded by the stewardship fund. These include staff time (if there is a staff) and other miscellaneous costs associated with program oversight, developing stewardship policies, public relations activities that are part of stewardship, maintaining records, annual budgeting, filing tax forms, hiring interns, coordinating volunteers, and costs associated with computerized database management, if applicable.
- **Property taxes.** Each state has different laws on the payment of property taxes by nonprofit organizations. In some states, land trusts have the option of applying for current use classification under farmland, tree growth or open space programs, which greatly reduces their tax burden. Enrollment under these programs often keeps the land on the tax rolls at an equitable level of assessment.

Some states provide a property tax exemption for land held by land trusts. (Land trusts should seek advice from their counsel about the laws in their state.) In states where such exemption is allowed, land trusts need to determine whether they wish to take advantage of it. Property taxes are often a sensitive issue. Local citizens may see taking property off the tax rolls as a good argument against land conservation. One alternative for the land trust would be to claim exemption and offer the town a donation in lieu of taxes. Such donations may be particularly appropriate where property owned by the land trust benefits from town services such as police and fire protection or waste removal. On the other hand, some land trust board members believe payment of taxes that are not required is a poor use of their charitable funds. Establishing a written policy for payment of property taxes ensures a consistent approach and often facilitates negotiations with local jurisdictions.

- **Insurance.** To protect itself from liability, every land trust should carry liability insurance, called “commercial general liability,” covering each and every property and its structures. The cost of liability insurance varies substantially depending on the use of the property and other factors and may change over time. A land trust should consult its insurance agent to estimate costs. (Land trusts should investigate the group liability insurance offered through the Land Trust Alliance. It is specifically designed for land trusts and is generally less costly than other policies.) (See practice 6I for further discussion of liability and insurance.)
- **Review of leases.** If land or structures are leased by the land trust, the cost of having counsel review and renew the leases periodically should be considered.

### **Replacement costs**

Finally, the land trust needs to consider replacement costs that occur on a periodic (but not annual) basis. These costs might include replacement, repair or maintenance of the following:

- Brochures;
- Trailhead or road barriers;
- Equipment purchase and maintenance;
- Signs and registration box;
- Boundary signs/brushing out boundaries;
- Bridges and walkways; and
- Buildings and other structures.

Replacement costs should be calculated and extrapolated to an annual cost. A sufficient amount should be added to the property’s stewardship fund to generate the required annual return.

### **Formulas for estimating management costs**

Ideally, a land trust completes a management plan for each property before its acquisition and calculates the stewardship costs based on this plan. But sometimes this is not possible. As an alternate or supplemental approach, a land trust may adopt a policy establishing that a standard amount or percentage of the market value be set aside for each property in cases where actual costs cannot be estimated.

Experienced land stewards suggest a standard set-aside might range from 15 to 25 percent of the property’s fair market value. For a property with intensive management, this may not cover all costs. “Twenty-five percent might be adequate for a wooded preserve with little visitation,” says conservationist Peg Kohring. “However, a Minnesota prairie preserve requires active, costly management, and the set-aside for the management fund may be two or three times the amount set aside for acquisition.” On the other hand, for properties with very high market values and few management requirements, these percentages could be high. A land trust might use 20 percent as a baseline set-aside amount, raising or reducing the amount depending on the property’s value and the intensity of management needs.

Fifteen to 25 percent of the market value of a property may seem like a lot of money for basic stewardship, but only the interest from the fund is used to cover stewardship costs, and the land trust must return some of the interest to the principal to keep the fund even with inflation. Land trusts also need to have some buffer in case of special management or legal problems.

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## Potential High-Cost Management Situations

Stewardship costs can escalate quickly when the land trust accepts properties that require constant or complex management. In such situations, a land trust may decide not to acquire the property. If it does acquire the property, it should plan for the additional management costs. Potentially costly situations include the following:

- **Hazards.** A land trust may confront high costs for initial cleanup, ongoing maintenance and high-risk liability situations if the property has substantial hazards. Situations to watch for include waste dumping, underground storage tanks, uncapped wells, sheer cliffs, caves, and dams.
- **Pre-existing uses.** A land trust may find it costly to control public use or vandalism on properties that have long been used for camping, hunting, all-terrain vehicle use, or high school hangouts.
- **Unclear property rights.** A land trust can become mired in expensive litigation over rights-of-ways, prescriptive uses or town roads that have not been abandoned if it has not done its title work carefully and in advance of acquiring the property.
- **Adjacent land uses.** Difficult management situations or threats to conservation resources may also come from surrounding lands. Troublesome impacts from adjacent lands may include hazardous wastes, incompatible public uses, plans for extensive development, and undesirable commercial land uses, such as mining, intensive forestry or pesticide and chemical use. The land trust may have to go to court to resolve such problems. Securing access to landlocked parcels also may be costly.

### Buildings and historic structures

Buildings and historic structures may be assets or liabilities to the trust, depending on their type and condition, and the land trust's abilities to deal with them.

The Connecticut Land Trust Service Bureau, suggests considering the following questions before accepting land with a structure:

- How much repair and maintenance does the structure require? This affects the trust's operational costs, including maintenance and insurance.

- Does the building come with a fund for its maintenance?
- Can the building be rented or sold, with the proceeds going toward stewardship or future land acquisitions? (If the property is donated in the landowner's will, it is a good idea to have the devise language reviewed by the land trust's attorney to be sure the trust is legally able to have the flexibility it wants or needs in the future.)
- Who in the land trust will be responsible for maintaining the building? Will volunteers be relied on for maintenance or will hired services be used?
- Can the building be demolished?
- Can the building be rented or given to another organization that can use and maintain it?
- Can the building be eliminated from the transaction without adversely affecting the negotiations?

Land trusts can cite horror stories about dealing with buildings, but they also have found them beneficial, providing caretaker residences, nature centers and offices. In all instances, land trusts should determine the historic significance of existing structures before making a decision to demolish them. Wesley Ward of The Trustees of Reservations in Massachusetts cautions that uninformed demolition of a significant historic building may harm the land trust's credibility in the community and among its colleagues in preservation. Whether an asset or a liability, a structure involves associated costs that the land trust should carefully weigh before making a commitment to the project.

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### **Links to Other LTA Resources**

- [Contact the Land Trust Alliance for information on its group liability insurance program, info@lta.org.](mailto:info@lta.org)

### **Links to Other Helpful Resources**

- [Center for Natural Lands Management – The Property Analysis Record: Paying for Perpetuity](#)

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## Practice 12B: Stewardship Principles

- The land trust establishes general principles to guide the stewardship of its fee-owned properties, including determining what uses are and are not appropriate on its properties, the types of improvements it might make and any land management practices it will follow.
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Many land trusts find it useful to develop general stewardship policies or principles to guide the management and use of their properties. These general policies or philosophic principles may be adapted in individual management plans to address the specific needs for a particular property. Stewardship policies or principles might address such items as public access, use of properties for research and environmental education, habitat manipulation, and standards for improvements. The more consistency in the types of properties a land trust owns, the more specific a set of general policies may be. The stewardship principles can be useful in guiding board decisions on land management and can help explain land management decisions to the public.

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### Establishing Stewardship Policies and Principles

Many land trusts find it useful to develop general stewardship policies and principles to guide the management and use of their properties. These general policies may be adapted in individual management plans to address the specific needs for a particular property. The more consistency in the types of properties a land trust owns, the more helpful a set of general policies may be. Stewardship policies might address items such as:

- Public access—whether and under what general circumstances it will be allowed;
- Property taxes—whether the land trust seeks exemption, seeks current use assessment, etc.;
- Contributions to the stewardship fund—where they come from, how to calculate how much is required;
- Frequency and procedures for monitoring—who monitors and when;
- Habitat manipulation—what type is allowed, under what circumstances;
- Use of properties for research;
- Use of properties for environmental education;
- Prohibited activities on land trust properties; and
- Standards for improvements.

This last issue is frequently neglected. The land trust should consider issues such as: Does the land trust have specific guidelines for properly building and repairing trails, parking areas and signs? Are improvements maintained on a regular basis to ensure the safety of the public and protection of the property? Are they designed in an environmentally sensitive manner?

A land trust's stewardship policies demonstrate to public officials, local citizens and future board members the organization's commitment to responsible stewardship. They

function as a public relations tool, in addition to directing administration of the land trust and its properties.

The land trust may also adopt an overarching philosophy toward its land management, particularly if the organization is involved in active farm, ranch or forest management. The Society for the Protection of New Hampshire Forests, for example, has a statement of philosophy that it uses to guide the management of the more than 37,500 acres of land it owns.

The Columbia Land Conservancy (NY) establishes public conservation areas for the benefit and use of the general public. It manages its lands to:

- Foster a land ethic by protecting community treasures and providing outdoor classrooms, environmental education opportunities and places for the citizens of Columbia County—school-age children in particular—to reconnect to nature.
- Protect the diverse natural resources and wildlife habitat of the Conservation Area, while providing permanent opportunities for the public to enjoy the area's diverse natural resources. CLC establishes permanent stewardship endowments for each public conservation area where the proceeds will allow for the annual payments in lieu of taxes, payments toward fire and rescue squads that operate in the town in which the conservation area is located, and allows for annual maintenance and special projects such as habitat restoration.
- Provide gathering areas, trails and places for appropriate passive recreation (cross-country skiing, snow-shoeing, wildlife tracking, picnicking, canoeing, bird watching, walking, and fishing) to instill a greater appreciation for, and understanding of, the rural lands of Columbia County and their role in maintaining each community's rural character and quality of life.
- To the extent possible, given CLC's limited resources, to manage each site, enhance and restore habitat for biological communities that occur on the property, utilizing volunteers, and funding whenever possible.

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## Sample Materials from Land Trusts

- [Society for the Protection of New Hampshire Forests  
Land Management Philosophy Overview  
Land Use Policies for SPNHF Forest Reservations](#)
- [Southwest Michigan Land Conservancy – Stewardship Policy](#)
- [Westchester Land Trust \(NY\) – Managing Land Held in Fee Simple](#)

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## Practice 12C: Land Management

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

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Land trusts may engage in resource management activities on lands they own, including forest management, farming and ranching, and other activities. This practice clarifies that land management activities should follow some form of management plan. Management activities should conform to the organization's mission and stewardship principles. Management activities should advance learning and demonstration or restore degraded habitat, not impair important conservation values on the site.

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### Land Management Plan

A written management plan is essential for each land trust property, no matter how small. A management plan identifies the resources and processes on the land that are to be protected and promoted, determines what actions to take or avoid, and designates who shall accomplish those objectives. A management plan is needed for the following reasons:

- **To protect resources.** The land trust needs to know what resources are on the property and determine how to manage them: scenic views may need to be maintained, rare plants may require special protection, or wildlife habitat may require active management. Failure to locate these resources may mean not only that they are not adequately managed, but that the trust may inadvertently damage them.
- **To communicate management objectives within the land trust and to future managers.** If the land trust does not have an overall management philosophy and a well-thought-out plan, the care of the properties may be subject to the whims of a few energetic board members. One land trust had an over-enthusiastic board member who took it upon himself to bulldoze a new road on a property! Another land trust started forestry projects that were later abandoned—now it has lots of overgrown Christmas tree plantations. Without strategic planning, a land trust may waste critical resources, create problems for future managers and threaten the integrity of a property. The plan is an essential long-range guide for ever-changing land trust boards, staff and professional land managers.
- **To control damaging uses.** The management plan must address public use. If the

land trust does not manage for public use, the public will continue its traditional uses of the property. People may create their own parking areas. One land trust had people blaze trails without the trust's permission. Another had difficulty making trespass accusations stick because it had never determined permissible uses for the property.

- **To build public support and credibility.** A management plan also helps build public support for a land trust property. Town officials are certain to ask how a property is to be used when considering property tax exemptions; a well-considered response based on the plan will enhance the land trust's credibility.
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## When to Prepare the Plan

A management plan should be prepared as soon as possible, ideally before the property is acquired. Sometimes, however, this is impractical or impossible. A realistic goal is to complete a management plan within the first year of ownership, although it may make sense to delay preparing the plan if an adjacent property is soon to be acquired.

At a minimum, however, the land trust should have a general written statement about its management goals for the property at the time of closing. It should implement start-up stewardship practices such as marking boundaries, dealing with serious hazards, erecting signs, and monitoring the new property before inviting the public to use the land. Other activities on the property should generally be delayed until the plan is prepared. Owning a new property generates enthusiasm for ways to use it, but it is important to identify the natural and cultural resources thoroughly, and their protection needs, before adding improvements such as trails, parking areas or kiosks.

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## Who Prepares the Plan

Proper stewardship of its properties is a basic responsibility of a land trust. The land trust board sets policies and satisfies itself that appropriate experts have been consulted when necessary. The board has the final responsibility for overseeing the management plan, but in cases where a land trust has staff, the staff oversees the actual stewardship activities and management plan implementation in accordance with board policy. A wide array of people, however, can help the land trust develop and carry out the stewardship policies and individual plans.

- **Stewardship committees.** Many land trusts have a stewardship committee that helps set stewardship policies and oversee their implementation. A stewardship committee usually includes knowledgeable persons such as lawyers, scientists, foresters, government agency personnel, and informed community members who can provide valuable skills. Committee members may be drawn from the board, general membership, staff, and/or conservation professionals. Members of the stewardship

committee should be knowledgeable about the purposes and policies of the land trust.

Statewide or regional land trusts with dispersed properties may form local stewardship committees to assist in preparing management plans, developing yearly work plans and budgets, and monitoring. Such committees can also help supervise improvements and restoration projects on the property.

- **College students/classes.** The Roxbury Land Trust in Connecticut has had success using graduate students, who can sometimes write a management plan as a thesis or term project. Developing a plan may also serve as an excellent project for a university class on resource management.
- **Public agencies.** The [Natural Resources Conservation Service](#), U.S. Department of Agriculture, has prepared conservation plans for some land trust properties, especially agricultural lands. The Cooperative Extension Service in Rockland, Maine, not only launched the local land trust, but coordinated and housed college interns who conducted an extensive natural and cultural resources inventory for the trust.
- **Consultants.** The land trust might hire a qualified consultant to prepare the plan, or parts of it, especially if it involves special resource management, such as rare plant protection, ambitious habitat restoration or forestry management.
- **Specific volunteer help.** Land trusts have been successful in getting volunteer help with developing or implementing their management plans. Foresters have often done boundary marking and plant inventories. Local orienteering clubs may make trail maps for local preserves. Boy Scouts, especially Eagle Scouts, have done some work for the Steep Rock Association in Connecticut over the years. Hiking groups are often willing to do trail work. The Roxbury Land Trust in Connecticut has a group of senior citizens that re-blazes trails. The Nature Conservancy uses volunteers to implement biological management, such as protecting bird nesting sites or cutting back invasive, nonnative plants. This work is done under the supervision of trained scientific staff.

Other possibilities include hiring summer interns or part-time, year-round help to do the legwork or help write the plan.

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## What Goes in the Plan

The amount of detail in the plan depends on the complexity of the resource, public use issues and future management for the property. Plans may range from a three-page narrative summary to a 100-page document with technical data and detail. When preparing a management plan, land trusts should keep in mind the following guidelines:

- Schedule the management actions to occur in the order of their priority.
- Be sure the plan complies with all local and state planning, zoning and wetland

- regulations.
- Ask for assistance from professionals whenever needed.
  - Do not reinvent the wheel—consult state and federal land managers for advice on specifics such as how to word a sign or build a trail.
  - Avoid negatively affecting ecological resources when designing improvements.

Whatever its format, the plan should be easy to use, easy to update, and organized in a way that encourages use by those involved with the organization.

Every management plan should include three elements.

- **Site information.** It should identify the important features of the property.
- **Management objectives.** It should establish management policies, objectives and an action plan. These may be drawn from the organization’s stewardship philosophy (see practice 12B).
- **Implementation.** It should include a work plan, budget and a system for monitoring progress.

### Site information

The management plan should contain a variety of information about the site, including the following:

- **Identification of the property.** The plan should begin with a title page that includes the property name and location. This may be followed by a one-page summary that includes the following:
  - The property name and location;
  - Directions to the property;
  - The land trust name, address, phone number;
  - Previous owner name, address, phone number;
  - Names, addresses and phone numbers of all stewardship committee members, or name of the preparer of the plan;
  - Date of donation or purchase;
  - Pertinent management information; and
  - Brief description of use restrictions, such as “day use only.”

Regional topographic, nautical, road, and location maps are usually included in this section.

- **Acquisition history.** The plan should document the property’s acquisition history. Information such as the following will provide an understanding of the property’s history to successive land trust members.
  - Was there a land donor?

- Why was the property given?
- What are the donor's expectations for the property?
- Were there any restrictions placed on the property at the time of the gift?

The history should note if there was one individual who led the charge to acquire the property or gave a major donation (and thus might have a continuing interest in the property) and any particular quirks in the acquisition negotiation that might be of interest to future land managers.

- **Natural resource inventory.** An inventory of the physical and biological resources is essential to protecting and maintaining a conservation property. The extent of an inventory depends on the type of resources the property contains and the intensity of proposed management activities. A natural resources inventory may include plant and animal species lists, plant community descriptions, wildlife habitat limitations and boundaries, geologic and hydrologic features, soils descriptions, forestry surveys, aquatic or marine resources, and climate data.

Inventories generally should be conducted soon after acquisition so that changes can be measured accurately in the future. Some land trusts conduct regional inventories, prior to any acquisition, to identify important conservation properties. If such inventories exist, they may provide most of the information needed for the management plan. (See practice 8F for further discussion of inventories and baseline data.

- **Cultural resources inventory.** Cultural features of the property should also be documented. Structures or special sites should be evaluated for their historical or archeological significance. To document structures or sites, a land trust should locate them on a property map, take measurements, describe their condition, and photograph exteriors or interiors that need to be protected. If the contents of a barn or house are historically significant, they should be listed. A land trust should pay particular attention to the type of construction and special hazards, such as asbestos shingles or insulation, uncapped wells and underground storage tanks. Other cultural features to document include roads, trails, bridges, cultivated fields, etc.
- **Land use history.** If the previous owner is still living, or if there are neighbors or a town historian who remembers uses of the land, it is helpful to write a land use history. Documenting changes such as when roads, fences and buildings were built and what types of farming practices were used provides an understanding of the historic values of the property and indicates what hazards might be found.
- **Legal documentation.** It is useful to keep a copy of relevant legal documents with the management plan, including the title policy, the survey, the deed, and any other legal documents pertinent to the transaction. It is also helpful to note the current zoning classification and any special federal, state or local regulations that apply to the property. Special assessments against the property along with the payment schedule should be recorded. Documentation of legal access and any legal

restrictions for the property should also be included.

### **Management objectives**

The plan should state management objectives or goals, and make clear the priorities among them. These goals and priorities serve as a guide to future decisions and the development of annual work plans.

Although a property may be given to or sought by the land trust because of some particular attribute, the land trust should consider all possible uses for each parcel. The land trust should take the donor's wishes into consideration, but its own goals should prevail as it strives to meet the needs of the community and provide broad public benefit.

Typical management objectives are described below. Specific objectives may vary depending on the property, but the following considerations are common to all properties.

- **Resource protection.** The first management objective should be to carry out the conservation purposes for which the property was acquired. An objective may be to preserve and protect the natural ecosystem of the property. Various actions needed to achieve this objective, such as controlling off-road vehicle use or undertaking prescribed burning, may be specified.
- **Extended protection plans.** A second objective may involve taking a look at the big picture: Do surrounding properties need to be protected in order to protect the target resources over the long term?
- **Public use.** The plan should identify public use objectives. The land trust should take a careful look at each property to see what type and amount of public use is appropriate so that over the long term the quality and significance of the property will not be damaged. A bat cave, for example, might be closed to the public, while a Civil War battlefield might have visitation limited to daylight hours.

Many land trust personnel feel it is important to their mission, and the long-term success of land trusts, to open land trust properties to the public. Tom Bailey of the Little Traverse Conservancy comments:

The whole idea of passive recreation seems to portray all land as fragile when in fact much of it is not—it's alive, it's dynamic, and it's resilient. Let's recognize the adaptability and tenacity of natural systems and, while giving fragile features their due, recognize that the land can and should withstand a certain amount of use by those people for whom we're saving it.

- **Productive uses.** Land trusts may be responsible for properties that include productive lands—lands that have some type of income-generating asset such as farmland, gravel deposits, oil reserves, or forestland. Allowing such productive uses may be consistent with or beneficial to the land trust's conservation goals; they may help maintain an ecosystem or successional state, control deer populations, maintain a desired viewshed, or serve as a demonstration area for model farm or forestry

practices. In other instances, such activities may interfere with the conservation values of a property. Land trusts should consult with appropriate professionals to determine the effect of such activities before making them a part of the management scheme. Land trusts should also be aware that income from such activities could be subject to unrelated business income tax.

- **Annual obligations.** It should be a management objective for all land trusts to meet their annual obligations in a timely fashion. Such obligations include payment of taxes and liability insurance, filing federal tax forms, budgeting, developing yearly work plans, keeping accurate records, and monitoring their properties.
- **Enforcing stewardship policies.** If the land trust has established a set of stewardship policies that apply to all of its properties, such as any general policies it has on public use, property taxes, fire control, or plant collection, these should be referenced in the plan and adapted as necessary to the special circumstances of each property.

### Implementing the plan

A written management plan is useful only when the objectives are implemented. The last section of a plan lists the actions necessary to accomplish those goals. The actions should be prioritized and assigned completion dates. Some management activities will be repeated yearly, others may occur in successive order, and a few may be executed after a period of years. This section of the management plan will probably need to be updated as yearly accomplishments and subsequent timetables unfold.

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### Links to Other LTA Resources

- [“Ask an Expert: Buffer Zones, Invasive Species and More”](#), *Exchange*, Spring 2003 (Vol. 22 No. 2)
- [Introduction to Stewardship & Land Management](#) – Rally 2004 workshop.

### Links to Other Helpful Resources

- [Natural Resources Conservation Service](#) – the federal agency that works in partnership with the American people to conserve and sustain natural resources.

### Sample Materials from Land Trusts and Other Organizations

- [Center for Natural Lands Management \(CA\) – Annotated Outline of Standard Format Management Plan for Resource and Habitat Conservation Areas](#)
- [Connecticut Land Trust Service Bureau – Management Plan Outline](#)
- [Connemara Conservancy \(TX\) – sample management plan outline](#)
- [Southwest Michigan Land Conservancy  
Hultmark Preserve Management Plan](#)

[Management Plan Format](#)

[Mark's Marsh Preserve Management Plan](#)

[Paw Paw River Preserve Management Plan](#)

[Policy for Reviewing and Adopting Management Plans](#)

- [Upper Valley Land Trust \(NH\) – Conservation Plan Template](#)
- [Vermont Housing and Conservation Board – Guide for Interim Management Plans: Issues to Consider](#)

## Practice 12D: Monitoring Land Trust Properties

- The land trust marks its boundaries and regularly monitors its properties for potential management problems (such as trespass, misuse or overuse, vandalism or safety hazards) and takes action to rectify such problems.
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A land trust that holds property also takes on a responsibility to the public and has certain legal liabilities for injuries that occur on the land. Thus, at a minimum, a land trust needs to monitor each property to ensure it is not damaged by malicious or negligent acts, that people are not endangered by safety hazards and that continuous encroachment or unauthorized use do not cause the land trust to lose the property or parts of it altogether. Such problems usually can be prevented if the land trust marks and maintains its boundaries and regularly monitors its properties.

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### **The Importance of Monitoring Fee-Owned Land**

A land trust that holds property also takes on a responsibility to the public and has certain legal liabilities for injuries that occur on the land. Thus, at a minimum, a land trust needs to monitor each property to ensure it is not damaged by malicious or negligent acts, that people are not endangered by safety hazards and that continuous encroachment or unauthorized use do not cause the land trust to lose the property or parts of it altogether.

These are not idle concerns. A number of land trusts have experienced serious problems on their properties.

- One land trust found that the developer of an adjacent property had cut almost an acre of hardwoods and dredged two ponds along a right-of-way through the trust's preserve. The developer made restoration as a result of an out-of-court settlement.
- Another land trust discovered the town had dug test pits for a septic system on trust property.
- In a third case, an adjacent developer had cleared half an acre, chipped the trees into a huge pile, and dug 10 test pits on land trust property.

Such problems usually can be prevented if the land trust marks and maintains its boundaries and regularly monitors its properties.

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### **Identifying and Marking Boundaries**

It is critical to locate, mark, and maintain the boundaries of each land trust property.

**Identifying boundaries**

Boundaries should be identified before a land trust acquires a property so that it knows exactly what it is acquiring. Land trust personnel may be able to find and mark boundaries or they may require assistance from a professional surveyor. The task and associated costs depend on the quality of existing deeds, maps and plats, and the existence of evidence in the field (stone walls, steel rods, etc.).

A survey is expensive, but is often well worth the cost, especially if there are threats of encroachment. It may be possible to ask adjacent landowners to share the cost. The surveyor should mark corners and changes in direction.

(See practice 9D for further discussion of boundary identification.)

**Marking boundaries**

The boundary of the property should be physically cleared or marked to indicate its location. The boundary lines and corners can be marked by blazing, by painting rings on trees, or by posting boundary signs. Boundary signs come in many varieties and sizes. Some just say "Boundary," while others identify the property and/or list prohibited activities. They may serve to mark the boundary as well as to post against trespass. Sign materials can be paper, plastic, metal, or wood. Often the most economical source is a local sign-making company.

**Posting land for trespass or hazards**

Each state government has regulations on the requirements for legally posting a property against trespass. Often it is the state department of fish and wildlife that publishes these rules. Many states also have recreational use statutes that limit property owners' liability if they open their land for recreational use in accordance with the provisions of the statute. Before posting signs regarding use, a land trust should consult its legal counsel about such laws. (See practice 6I for a discussion of recreational use statutes and liability).

A land trust should place signs strategically along boundaries and at access points to inform the public about its ownership, purposes and permitted or prohibited uses. Many land trusts find it more effective to list what can be done on the property rather than what is not allowed. An attractive entrance sign not only proclaims the land trust's responsibility for its holding, but can serve as a tribute to a donor and a source of local pride.

The land trust also should post signs or place barriers to alert visitors to natural or man-made hazards on the property, such as deer ticks, poisonous snakes, poor trail footing, or steep cliffs.

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## **Regular Monitoring**

A land trust must monitor its properties regularly—at least once a year and often more frequently. Properties open to the public or adjacent to densely populated areas may require daily or weekly monitoring, or even an on-site presence by the land trust. In other circumstances, such as where timber harvesting is occurring on adjacent land, the land trust may need to check the property several times a week while the harvest is occurring. The circumstances for each land trust property dictate the frequency of monitoring necessary.

Monitoring involves checking boundaries, noting trespass and associated problems, noting numbers and dates of visitor use, checking the condition of structures or hazards, and checking uses of adjacent property. Monitoring of important biological features may be needed for certain plant species or communities, as required by the management plan. Whether the monitoring is done on foot, by plane or by boat, a well-run monitoring program can document existing conditions and identify problems before they become serious.

A member of the land trust's stewardship committee, a volunteer or a staff person can do the monitoring. This person should be thoroughly familiar with the site information, management plan and yearly work plan; be committed to upholding the trust's stewardship policies; and be trained to recognize change, violations and possible management or acquisition opportunities on the property or adjacent lands. A form or checklist makes it easier for the monitor to report promptly to the board or staff.

The monitor's reports, combined with the management plan, can help the land trust develop the following year's work plan and budget for the property. Monitors should indicate what future actions should be taken on the property and provide suggestions about their implementation.

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## **Dealing with Encroachment**

Land trusts should deal immediately and forthrightly with any encroachment on their property. Encroachment problems may include timber harvesting, road building, dumping, construction, digging of septic systems or wells, dredging, or planting of gardens.

It is important to act upon discovering any encroachment in order to avoid "adverse possession" claims, which can cause the land trust to lose part or all of the property. Generally, to obtain adverse possession, a neighboring owner must maintain open, visible, continuous, and sometimes exclusive possession of the property under a claim of right without the permission of the owner. The number of years this activity must continue in order to qualify as adverse possession depends on state law. It also may vary according to the type of property (e.g., wilderness versus a public access site).

Land trusts should seek the advice of legal counsel when acting against encroachments. Legal counsel can help ensure the land trust follows appropriate steps and procedures in the event it needs to go to court. It is usually preferable to negotiate restoration and/or compensation with the encroacher rather than take the encroacher to court. Going to court is expensive and time-consuming and should be avoided if possible. However, if a satisfactory settlement cannot be obtained without litigation, then the land trust may have to go to court to assert its position publicly.

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### **Sample Materials from Land Trusts**

- [Southwest Michigan Land Conservancy – Stewardship Work Day Report Form](#)
- [The Nature Conservancy \(Connecticut Chapter\) – Annual Monitoring Report \(Fee Preserve\)](#)

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## Practice 12E: Land Stewardship Administration

- ❑ The land trust performs administrative duties in a timely and responsible manner. This includes establishing policies and procedures, keeping essential records, filing forms, paying insurance, paying any taxes and/or securing appropriate tax exemptions, budgeting, and maintaining files.

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Good recordkeeping and administration ensure that stewardship responsibilities are met, and are essential to provide continuity as the board or staff changes. A land trust needs to anticipate the time necessary to accomplish administrative obligations and make them regular practices. The practice gives a general idea of the types of records that must be maintained for fee properties. The records policy of 2D should also be followed.

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### **Budgeting**

Annual budgeting is an important administrative function of the trust. Prudent management of scarce protection and stewardship dollars often attracts donors and is essential to maintaining the land trust's tax-exempt status. (See practice 12A for an extensive discussion of stewardship costs.)

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### **Keeping Records**

The importance of recordkeeping cannot be stressed enough. Paperwork is a favorite task to postpone, but failure to do it can lead to information gaps and loss of vital records as land trust boards or staff turn over. Written documentation of all legal agreements, inventories or studies, appraisals, memoranda of understanding, monitoring or management reports, and pertinent correspondence should be kept in duplicate files with one set in safe-keeping (a fireproof or safe deposit box). Whether the files are kept in a notebook, filing cabinet or on computer disk, they should be in a form that is easy to update. (See practice 9G for further discussion of recordkeeping.)

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### **Taxes, Tax Filings and Insurance**

A land trust must keep up-to-date on the variety of tasks associated with property taxes—whether it pays taxes or not. Caroline Norden, formerly of the Maine Coast Heritage Trust, reports that MCHT spends considerable time each year on tax issues—setting policies, meeting with town officials, applying for tax exemption or current-use tax status, filing for abatements when incorrectly billed, and documenting public benefit.

She comments, “If we overlooked this responsibility, we could be faced with enormous tax bills and spend a property’s entire stewardship endowment within a few years.”

Land trusts also need to obtain and keep current their liability insurance policy. A land trust should inform its insurance agency of any new land acquisition (this could be owned, under management contract or leased) or the onset of construction of any structures on its property. (See practice 6I for further discussion of insurance.)

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## **Correspondence**

Land management involves an array of correspondence: writing letters to previous and adjacent landowners to notify them of monitoring or management activities, contracting with volunteer groups or professional consultants, and writing press releases for local papers. Correspondence with landowners, town officials and the press is important: it establishes and builds the organization’s reputation and role in the community. (See practice 12F for further discussion of community relations.)

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## **Sample Materials from Land Trusts**

- [Society for the Protection of New Hampshire Forests – Post-Closing Checklist for Fee Acquisitions](#)

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## Practice 12F: Community Outreach

- The land trust keeps neighbors and community leaders informed about its ownership and management of conservation properties.
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Good public relations, especially with adjacent landowners and community leaders who have a special interest in the property, can aid immeasurably in a land trust's stewardship program and benefit the land trust in many other ways. Offering tours of conservation lands, maintaining trail networks or having field days can help encourage community support for the land trust's work. Community support for land trust properties can help build strong local relationships and help prevent damage to the land.

The Wildlands Trust in Massachusetts explains some of the benefits in its stewardship policy:

A good public information program, developed by the stewards in conjunction with other members of the Trust, can simultaneously encourage public use of the preserve and aid in its protection. Public respect, which has been won through enjoyment of and education about the property, is one of the best defenses against abuse of the Trust's land. Demonstrating that the preserve is an asset to the community can help also in fundraising. It is important to keep community officials informed of Trust activities, and it is beneficial for stewards to make themselves known as local representatives of the Trust with special responsibilities for our holdings in the area.

(For more on land trust outreach activities, see also practice 1C.)

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### **Relations with Neighbors**

Ideally, adjacent landowners should be contacted annually, perhaps during monitoring visits, to inform them of management activities and enlist their involvement in protecting the property. Neighbors can provide important information about possible threats to the property and may be potential donors or sellers of adjacent lands needed to complete the land trust's conservation goals. Neighbors who are aware of the land trust's ownership, management policies and commitment to protecting the property are less likely to encroach on the property—inadvertently or otherwise. The land trust can encourage neighbors' interest by inviting them to preserve events, requesting their input in the management plan and annual work plans, or asking them to join the land trust's stewardship committee for the property, if one exists.

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## Enlisting Community Support

Encouraging community support for the property is a wise investment. If local officials recognize favorable public sentiment toward good management and land protection, they are more apt to accept loss of property from the tax rolls and provide assistance where necessary. Community involvement can be particularly useful in solving problems or threats to the property such as trespass by all-terrain vehicles, vandalism or dumping. If, for example, the problems are coming from high school students, the land trust might have the school shop class make the signs, fences or structures needed for the property. People who help protect a property are unlikely to undertake, or tolerate, its abuse.

A great way to build public support is to use land trust properties for environmental education. A one-time class visit to observe nature can result in lifelong curiosity and dedication. Encouraging appreciation of the natural environment and its stewardship is the heart of the land trust movement. Other activities that can help involve the community include dedication ceremonies, field trips, work parties, research projects, and bird-a-thons. For example, the Finger Lakes Land Trust in upstate New York offers nature walks, cruises, bird watching, luncheons, and other events throughout the year on its preserves and throughout the Finger Lakes region. The Southeast Michigan Land Conservancy sponsors about 24 such events, including nature tours and campfires, on its properties each year.

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## Cultivating Government Support

The land trust should cultivate an ongoing relationship with governmental agencies whose actions might affect the trust's property—such as town boards, city councils, county boards, state agencies, and departments of the federal government. Exchanging planning and management information on a regular basis not only fosters support for the land trust, but should help ensure that agencies notify and consult the land trust prior to building roads, dredging channels, siting landfills, or granting zoning variances that may affect the property.

Land trusts also should monitor their state legislatures for laws that could affect management of their properties, such as exotic species control and property tax levies. In Minnesota, the legislature passed a law that mandated control of grasshoppers on all private land. Landowners were responsible for spraying their lands with insecticide. The Minnesota Chapter of The Nature Conservancy narrowly avoided having to spray a preserve that was habitat for a population of nationally significant butterflies.

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## Links to Other LTA Resources

- [“Partnerships Are Key to Stewarding Preserves with Public Access”](#), *Exchange*, Summer 2002 (Vol. 21 No. 3)

## **Links to Land Trusts with Active Outings Programs**

- [Finger Lakes Land Trust \(NY\) – Upcoming Events](#)
- [Land Trust of Napa Valley \(CA\) – Calendar: Hikes & Field Trips](#)
- [Little Traverse Conservancy \(MI\) – Field Trips](#)
- [Scenic Hudson \(NY\) – Events](#)
- [Society for the Protection of New Hampshire Forests – Things to Do: Field Trips](#)
- [Sudbury Valley Trustees \(MA\) – Participate: Activities and Outings](#)
- [Southeast Michigan Land Conservancy – Events Calendar](#)
- [Wildlands Trust \(MA\) – Upcoming Events](#)

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## Practice 12G: Contingency Backup

- The land trust has a contingency plan for all of its conservation land in the event the land trust ceases to exist or can no longer manage the property. To ensure that a contingency holder will accept the land, the land trust has complete and accurate files and stewardship funds available for transfer.

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It is vital that every land trust consider what will happen to its assets if the organization ceases to exist, and plan accordingly. A land trust may evaluate other potential conservation owners in its area and discuss with them the potential to transfer its conservation lands if the land trust is ever unable to carry out its ownership responsibilities. In planning for a future transfer of conservation lands the land trust should have a complete file for each property it holds (that contains deeds, maps, management plans, and other documents important to the property) and stewardship funds available to transfer to a new conservation owner.

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### Three Contingency Approaches

When a land trust takes on a perpetual land management responsibility, it must do its best to assure that it can and does manage the land forever. But things can change. The organization may accomplish most of the needed land protection in its region and become less active, or may lose good leadership and begin to fail. It may be forced into bankruptcy by unexpected circumstances or a lawsuit. For various reasons, the land trust may go out of business or find itself without the money, people or will to protect its holdings.

While there is no absolute, permanent assurance of protection of a land trust's holdings in such circumstances, a land trust must take reasonable steps to provide for the continuing protection of its properties in the event it can no longer do so. Several approaches used by land trusts are described here.

#### **Dissolution provisions**

A land trust that is a 501(c)(3) organization is required by the IRS to have a dissolution clause in its incorporation papers. This clause must specify that in the event of dissolution, the organization's assets will be distributed for tax-exempt purposes or to a governmental arm for public purposes. It is advisable for a land trust's dissolution clause to be more specific and state that its assets are to be distributed to another 501(c)(3) organization with similar purposes. (If the land trust holds conservation easements, it should also specify that the recipient organization be a "qualified conservation organization" within the meaning of Section 170(h) of the Internal Revenue Code—that is, an organization qualified to receive tax-deductible gifts of conservation easements.) (For a discussion of backups for conservation easements, see practices 11G and 11H.)

Such provisions, however, provide only limited protection. If, for example, the land

trust's property is transferred to a government agency, it could be used for a variety of public purposes, including a landfill, sewage treatment plant, school, etc. If the land trust has debts to pay, the property could be sold, without restriction on its future use, to pay those debts. There are, however, additional steps a land trust can take to protect its land in the event of such sale or transfer.

### **Conservation easement overlays**

Conservation easements can be used to provide an extra layer of protection for a land trust's holdings. The easement holder can enforce conservation restrictions and legally uphold the easement even if the fee owner dissolves.

The easement/fee combination can be undertaken in two ways. When the property is first donated to the land trust, the donor can grant a conservation easement to one conservation organization, and then grant the restricted property to another. (If the easement and fee are both donated and meet IRS requirements, the donor may qualify for deductions for both donations.) Or the landowner can simply donate the unrestricted property to the land trust, which then could grant a conservation easement to another conservation organization or government conservation agency.

### **Deed restrictions**

Another approach is for the landowner to impose restrictions in the deed before transferring a fee simple interest to a land trust. For example, a landowner may state in the deed that the grantee may never sell or develop the land. Further, the deed may state that if the grantee ceases to exist or ceases to uphold the restrictions, the land shall pass to another specified organization or agency.

There are two problems with deed restrictions. Deed restrictions may provide little protection under common law unless the parcel in question is adjacent to land owned by the land trust. Another problem is that the IRS has ruled that burdening donated property with deed restrictions reduces the amount of tax deduction. (However, the landowner should be able to qualify for a deduction of the full value of the property if he donates the land unrestricted to one tax-exempt conservation organization, which then independently negotiates restrictions with the land trust and transfers the property to it subject to the restrictions.)

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## **Making the Transfer Easier**

The land trust should be prepared for transferring its properties by making sure that there are complete project files and stewardship funds available to transfer to the new conservation owner. Without these precautions, it may be difficult to find a conservation organization or agency willing to accept the land trust's property. This entails planning ahead for a transfer, even if a transfer is not imminent.

- **Complete up-to-date files.** The land trust should practice good recordkeeping according to practices 2D and 9G. A new owner will want to have background on the

original land transaction and, more importantly, up-to-date records of any land management activities. These documents should be provided to the new owner.

- **Stewardship funds.** Practice 12A provides detail on how to calculate and secure stewardship funds. In the case of transferring conservation land, the land trust should determine how it could also transfer funds for stewardship to the new owner. The land trust should carefully review any restrictions placed on the original stewardship contributions.
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## Cautions and Limitations

Some land trusts may question the effectiveness of restricting land trust holdings with either a conservation easement or deed restrictions. Placing a conservation easement on land trust property means two organizations are spending limited resources of time and money to steward a property.

While a land trust cannot be expected to predict the future, it should address the reasonably foreseeable threats to each of its properties, and strengthen its legal protections whenever advisable. Ultimately, the best assurance of protection for a land trust's conservation lands is for the trust to maintain a cohesive and informed board to carry out its obligations, build and maintain adequate stewardship funds, operate in a legal, ethical, and prudent manner, and develop and retain strong support from the community in which it operates.

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## Practice 12H: Nonpermanent Holdings

- When a land trust holds fee land with the intention to sell or transfer the land, the land trust is open about its plans with the public and manages and maintains the property in a manner that retains the land trust's public credibility. (See 8L.)
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Many land trusts accept non-conservation land with the express intention of reselling or transferring the property. As long as the land is in the land trust's ownership, it should be managed or maintained in such a way that liability risks are minimized and the land trust's credibility is maintained. Neighbors and community leaders should be aware of the land trust's plans to sell the properties and not hold them for permanent conservation. Properties that are sold should reflect the property donor's intentions. Practices 6H and 8L also contain information on how to address nonpermanent holdings.

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### Holding Land Temporarily

A land trust holds land for many reasons. On occasion, a land trust accepts and temporarily holds property that it intends to resell or transfer to another party. The land trust's reputation in its community is partly defined by the land it holds, even if the property does not become one of the land trust's permanent preserves.

In order to make its best efforts to care for the land and uphold its credibility in the community, there are a few simple steps a land trust can follow in managing its nonpermanent holdings. These include:

- **Minimizing hazards.** Even if the property is not open to the public, the land trust should ensure that there are no obvious hazards that could expose the land trust to liability or cause public relations problems. Collect garbage, remove hazardous trees, cover old wells, and address any other evident liability concerns. The land trust should use its best efforts to maintain its temporary holdings as it would its permanent preserves.
- **Notifying community leaders and neighbors.** Often community leaders or neighbors may only hear that a land trust has acquired a property. They may then be shocked upon learning that the land trust has sold or transferred the land to another owner. Notifying the parties in advance that might be most affected by the subsequent sale or transfer of the land can help maintain favorable relationships.
- **Reflecting the donor's intentions.** As public charitable organizations, land trusts need to uphold a donor's intent. This means being clear upfront with a donor if the land trust plans to transfer a property to another owner, and including any appropriate protections prior to transfer.

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## Practice 12I: Condemnation

- The land trust is aware of the potential for condemnation, understands its rights and obligations under condemnation, and works diligently to prevent a net loss in conservation values.

Conservation lands may be subject to acts of condemnation. In these instances, a land trust should be prepared for the condemnation action, including having an understanding of the value of the interests being condemned. A land trust should evaluate the impact of the condemnation action on the conservation values and, to the extent possible, work with the condemning authority to craft remedies that reduce these impacts or allow for additional conservation action.

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### **Condemnation for Public Purposes**

If property is needed for a public purpose, such as a school road or sewage treatment plant, it may be taken by a government agency, even against the wishes of the private owner (including a land trust). Some utilities also have the power to condemn property, such as for the installation of a gas pipeline. If the property is restricted by a conservation easement that prevents the proposed use, the restrictions may also be terminated by condemnation.

Conservation properties may be particularly attractive to government takings: they are ready open space and the land trust may be perceived as being easier to deal with than other (or multiple) property owners. The land trust has a duty to defend its conservation properties and should not readily succumb to the threat of condemnation; the realization that the land trust will resist condemnation may be sufficient to cause the condemning authority to look elsewhere. On the other hand, the land trust may determine it is impossible or undesirable for it to defeat the condemnation, and may decide that negotiation will yield the best results.

Two situations illustrate both approaches. A preserve held by a Massachusetts land trust was threatened with condemnation by the local government for a sewage treatment facility. The organization successfully fought the proposal by contracting for studies that showed the preserve was not the best location for the facility and by waging a public relations and national letter-writing campaign against the condemnation of conservation land. In a different circumstance, a rural community in New Hampshire approached a land trust with a request to install a municipal well on the land trust's property. After some analysis, it was determined that the well would not significantly impact the property's conservation values. The community and the land trust negotiated a compromise solution whereby the land trust conveyed a small portion of its land to the municipality for the well and, in turn, received a conservation easement over other municipally owned land as compensation.

Regardless of the approach, a land trust faced with condemnation should consult with its

legal counsel and carefully deliberate how to proceed. A decision to transfer any conservation property in response to the condemnation should be made following written transfer of assets policies: the land trust should require a two-thirds majority vote by the board to proceed and should ensure it is fairly compensated by the condemning authority.

The land trust, through its legal counsel, should also closely consider state law. Some states limit the ability to condemn properties in which an agency of the state has an interest, including a partial interest such as a conservation easement. It may be possible to negotiate a transfer or assignment of a conservation easement to a state agency to forestall condemnation.

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### Links to Other LTA Resources

- [“When Eminent Domain Comes Knocking”](#), *Exchange*, Spring 2001 (Vol. 20 No. 2)

### Links to Other Publications

- [“When Forever Proves Fleeting: The Condemnation and Conversion of Conservation Land”](#), Robert H. Levin, *New York University Environmental Law Journal*, 2001.

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<sup>o</sup> 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.