



LAND TRUST ACCREDITATION COMMISSION

An independent program of the Land Trust Alliance

Draft 2018 Accreditation Requirements Manual: A Land Trust's Guide to Understanding Key Elements of Accreditation

August 2017 DRAFT

Annotated September 11, 2017 to show where the survey specifically requests feedback; see www.landtrustaccreditation.org/component/content/article/79-accr-stds/962-public-comment-period for more about the survey and public comment period

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

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INTRODUCTION

Welcome to the Draft 2018 *Requirements Manual*

The annual *Requirements Manual* is your key to a successful accreditation application. The draft 2018 manual has a new format that corresponds to the 2017 edition of *Land Trust Standards and Practices* (Standards). Comments on the format of the new manual and on new requirements are being accepted through September 30, 2017. The manual will be revised based on your comments and will be published in the first quarter of 2018.

[Click here](#) for information about phasing in the 2017 Standards for accreditation.

[Click here](#) to participate in the public comment survey.

Standards, Indicator Elements and Requirements

The accreditation seal is a mark of distinction in land conservation. It is awarded to land trusts meeting the highest national standards for excellence and conservation permanence.

Through a rigorous review process, the Land Trust Accreditation Commission verifies a land trust's compliance with the Standards by evaluating a sample of the elements nested within the Standards; these are the accreditation indicator elements.

The *Requirements Manual* provides greater specificity to land trusts about how the indicator elements are verified, and enables commissioners to make decisions that are fair and consistent and that accommodate the diverse nature of land trusts.

[Click here](#) for a graphic explaining the link between the Standards and the requirements.

[Click here](#) for a copy of the 2017 *Land Trust Standards and Practices*.

What is New?

New Accreditation Indicators

You will see that the 2018 *Requirements Manual* incorporates the 2017 Standards. The majority of the requirements are still in place, ensuring that accreditation has ongoing public trust and support. There are several new requirements tied to new indicator elements, helping land trusts address areas where risks may be high. Low-risk or redundant concepts were dropped, keeping the accreditation program cost-effective.

[Click here](#) for the list of indicator elements.

[Click here](#) for a graphic with examples of which indicator elements stayed the same, which were dropped and which are new.

Indicator Elements Organized in Four Groups

The manual organizes the indicator elements into four groups.

- Governance
- Finance
- Transactions
- Stewardship

This new format makes it easier for you to compile the documentation needed for the accreditation application, and addresses feedback from past applicants about redundancy. It also streamlines the Commission's review. Within each of the four groups listed above you will find the following sections: "Indicator Elements," "Required Documents" and "Requirements".

← Opportunity to provide feedback on this new approach, in the survey

New Risk-Based Approach Ties Rigor of Review to Risk

The Commission developed the 2018 draft manual with a risk-based mindset in response to applicant feedback that the accreditation review should focus more on high-risk areas to make the best use of land trusts' time. The new format takes into account risk to an individual land trust and risk to the land trust community. It considers specific types of risk – conservation, financial, operational and reputational – as well as the frequency and impact of the risk. There are two categories of requirements to help you make sure you are spending your time on the highest risk activities: Must Show and If Flagged. See more in the "How to Use this Manual" section below.

How to Use this Manual

First: Read this introduction in its entirety

The introduction explains the format of the *Requirements Manual* and the individual sections.

Second: Review the indicator elements

The indicator elements are found at the beginning of each group: Governance, Finance, Transactions and Stewardship.

Third: Examine the questions and list of required documents

A list of pre-application questions, application questions and required documents is provided for each group of indicator elements. Having all of the documents is essential for demonstrating how your land trust meets the requirements.

Fourth: Examine the accreditation requirements

A list of accreditation requirements is provided for each group of indicator elements. The accreditation requirements specify how the application documents are evaluated. The accreditation requirements for each group are presented in two categories: Must Show and If Flagged.

← Opportunity to provide feedback on "Must Show" and "If Flagged" approach, in the survey

Must Show

← Must Show requirements are verified for every land trust. These requirements correspond to areas where individual land trusts or the land trust community face frequent or high

conservation, financial, operational or reputational risk. Each land trust needs to have documents demonstrating all Must Show requirements are met; if not, corrective action will be required.

For example, in the Governance group "Strategic Goals" section there is a Must Show requirement: "Strategic plan or strategic goals set by board." Each land trust needs to show that its board developed a strategic plan or set strategic goals. If the board has not, it will need to do so before the land trust can be awarded accreditation or have accreditation renewed.

If Flagged

"If Flagged" requirements are additional areas that may be flagged by Commission reviewers. These do not apply to every land trust; these examples occur infrequently, yet the risk may be high when they exist. Think of these as "red flags." If a high-risk area is identified, the land trust may be asked for clarification, additional documentation, or corrective action depending on risk. Examples are provided in each If Flagged section. The examples are not comprehensive; other noncompliances with the requirements may be found that could put the land trust or land trust community at risk.

For example, in the Governance group "Board Structure and Operations" section there is an If Flagged requirement: "Number of board members inconsistent with bylaws." If the application reviewers flag that the number of board members is not consistent with the bylaws, they will look at risk in the context of the rest of the application documents. Let's say the bylaws call for a board of 9-15 members and the land trust has 16 members and shows a highly-functioning board; this is likely low risk and would not require any action. If, however, the land trust only had a board of 4 and appeared to be controlled by a single individual, this would likely be high risk and require corrective action.

Evaluating Land Trusts against the Requirements

Expectations Differ for First Time and Renewal Requirements

- As a first-time applicant for accreditation, a land trust needs to show compliance with the requirements in its current work, except when a longer period is noted.
- As a renewal applicant, a land trust needs to show compliance with the requirements over its entire accredited term.

For example, a first-time applicant is expected to have a complete baseline signed at or before closing for at least its most recent conservation easement. A renewing applicant will need to show that it had a complete baseline signed at or before closing for every easement it accepted over its accredited term.

Some New Requirements for 2019

The 2017 Standards include several new accreditation indicators for which the Commission has developed corresponding requirements. Applicants are expected to meet these requirements in 2019, or as noted. (These are generally noted with a ^ symbol in this manual.) Your land trust does not need to create documentation for activities before 2019.

For example, there is a new element in the Standards that requires land trusts to visually inspect properties before buying or accepting donations of conservation land or conservation easements. Your land trust will need to have documentation of this activity for projects starting in 2019, but your land trust does not have to go back and create it retroactively for projects before that time.

Facts and Circumstances Matter

Each land trust is different, and the Commission evaluates the documents with your land trust's unique facts and circumstances in mind.

For example, the information provided to the board before it makes a decision to accept a conservation property for an all-volunteer land trust that meets monthly and visits every potential property before acquiring it would likely look very different from the materials provided to a board that meets quarterly and relies on staff to vet conservation acquisitions.

Help Reviewers Understand Your Story

Isolated and Rare Things Happen

Your land trust may have isolated or rare circumstances when it is not able to implement the indicator elements and show compliance with the requirements; this does not necessarily preclude it from being accredited or renewed. Your application review team will review the facts and circumstances and may recommend the Commission make allowances if

- a) It has evidence that your land trust's ordinary practice is compliant,
- b) The situation was an isolated or rare event,
- c) The circumstances were clearly explained by your land trust, and
- d) The non-compliance does not put your land trust or the accreditation program at risk.

Explanations Help

You can help the review team and save your land trust time by providing information at the time of application that explains areas of "Must Show" noncompliance or "If Flagged" challenges. You should include relevant facts, circumstances and explanations. The 2019 electronic application will have a place for you to upload this information. You can reach out to the Commission's [help desk](#) if you have questions about what information would be important to include.

For More Information

The Land Trust Alliance has background information on [The Learning Center](#) for each of the indicator elements. This includes definitions, examples, and links to additional information that can help land trusts be successful in the accreditation process. The final 2018 *Requirements Manual* will also have an appendix with key definitions, examples and links to Alliance resources.

GOVERNANCE

Indicator Elements

<p>1B2. Establish strategic goals for implementing the mission, and then review and update them, as needed, at least once every five years</p> <p>2B1. Incorporate or organize according to the requirements of state law and maintain legal status</p> <p>2B2. Operate in accordance with established bylaws</p> <p>2C1(b). Do not knowingly engage in prohibited activities, such as private inurement or impermissible private benefit</p> <p>3A3. The board hires, oversees and evaluates, at least annually, the performance of any executive director (or chief staff person)</p> <p>3B1. Have a board of sufficient size, skills, backgrounds and experience to conduct its work effectively</p>	<p>3B3. Have a board development process that includes procedures for recruiting and training board members</p> <p>3C2. The board meets a minimum of three times per year and maintains adopted minutes of each meeting</p> <p>3C3. Provide board members with sufficient and timely informational materials prior to each meeting to make informed decisions</p> <p>4A1. Adopt a written conflict of interest policy that addresses, for all insiders, how conflicts are identified and avoided or managed</p> <p>4A2. Document the disclosure and management of actual and potential conflicts</p> <p>9G1. Adopt a written records policy that governs how and when organization and transaction records are created, collected, retained, stored and destroyed</p>
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GOVERNANCE

Required Documents

Pre-application

- Statement describing each land or easement transaction (acquisition, sale, amendment, violation) with an insider over the past five years*, including: [**Over term for renewal*]
 - a. Who the transaction was with and the relationship of the insider to the land trust;
 - b. Date of the transaction;
 - c. Brief description of the transaction; and
 - d. Brief description of how private inurement was avoided
- Statement describing each financial transaction with an insider over the past five years*, including: [**Over term for renewal*]
 - a. Who the transaction was with;
 - b. Relationship of the insider to the land trust;
 - c. Date of the transaction;
 - d. Brief description of the transaction;
 - e. The dollar value and how value determined; and
 - f. Brief description of how private inurement was avoided

Application Question

- Q: Number of board meetings in the last 12 months with quorum.
- Q: Is your land trust in “good standing” in the state it is incorporated?

Application

- G1. Signed and dated Board Resolution
- G2. Articles of incorporation (or equivalent)
- G3. Current bylaws (or equivalent)
- G4. List of board members and board biographies
- G5. Statement describing a) the board's most recent performance evaluation of the executive director or chief staff person (if the land trust has staff), b) the date it occurred, c) who was involved and d) the date of the previous evaluation
- G6. Statement describing the procedures for a) recruiting board members and b) training board members
- G7. For the most recent board meeting, a) meeting materials and b) corresponding minutes
- G8. Strategic plan or strategic goals
- G9. Statement describing a) how the board was involved in establishing the strategic plan or strategic goals and b) the date the board last reviewed them
- G10. Records Policy (ties to Governance and Transactions groups)
- G11. Conflict of Interest Policy

Project Verification

- Targeted (*the Commission may select conflict of interest transaction(s) reported in the pre-application and request documentation showing how the conflict was disclosed and managed*)

GOVERNANCE

Requirements

The Commission will review the required documents and verify that the land trust meets the requirements. Requirements are sorted into two categories: "Must Show" and "If Flagged."

- **"Must Show" requirements** will be verified for each land trust and corrective action will be required prior to accreditation or renewal.
- **"If Flagged" requirements** are additional areas that may be identified by Commission reviewers for which corrective action may be required depending on risk. The examples below are not comprehensive.

At first-time accreditation, an applicant is expected to show compliance in its current work, except when a longer period is noted. At renewal, compliance is expected over the accredited term.

Organizational Documents^{2B1, 2B2}

Must Show

- ☐ In existence for at least two years.

If Flagged (examples)

- Not in good standing.
- Bylaws absent significant operational provisions.
- Does not operate in accordance with the bylaws.

Board Structure and Operations^{3A3, 3B1, 3B3}

Must Show

- ☐ Board recruitment procedures present.
- ☐ Evidence of training new board members present.

If Flagged (examples)

- Number of board members inconsistent with bylaws.
- Board does not adequately oversee and evaluate performance of the chief staff person, if the land trust has staff.
- Board of insufficient size, skills, backgrounds and experience to conduct its work effectively.
- Board members do not have relevant knowledge to effectively fulfill their duties.

Board Meetings^{3C2, 3C3}

Must Show

- ☐ Board meets at least three times per year.

If Flagged (examples)

- Board materials not provided before the meeting and/or insufficient for board to make informed decisions.
- Board meeting minutes not board adopted.
- Board meeting minutes do not adequately document board discussion and action.

Strategic Goals^{1B2}

Must Show

- ☐ Strategic plan or strategic goals set by board.

If Flagged (examples)

- Strategic plan or strategic goals not reviewed by board within past five years.

Conflicts of Interest and Other Policies^{2C1(b), 4A2, 4A1, 9G12}

Must Show

- ☐ Records policy covers organization and transaction records.
- ☐ Conflict of interest policy applies to all insiders.
- ☐ Conflict of interest policy addresses how conflicts are identified and avoided or managed.

If Flagged (examples)

- Records policy not commensurate with scale or scope of the land trust's operations.
- Application identifies a conflict not disclosed in the pre-application statements.
- Transaction resulted in private inurement or impermissible private benefit.
- Insufficient management of transaction with high potential for private inurement or impermissible private benefit.
- Conflicted party present for the vote.

FINANCE

Indicator Elements

2C1(a). File a complete and accurate annual information return (Form 990 or equivalent) with the Internal Revenue Service

3A2. The board provides oversight of the land trust's finances and operations by:
(a) Reviewing and approving an annual budget, (b) Working to ensure that sufficient financial resources are available, (c) Receiving and reviewing financial reports and statements in a form and with a frequency appropriate for the scale of the land trust's financial activity, (d) Reviewing the externally prepared financial audit, review or compilation

5B2. Provide timely written acknowledgment of all gifts, including land and conservation easements, in keeping with IRS charitable contribution substantiation requirements

5B3. Maintain financial and other systems to document and comply with any donor restrictions on gifts

6A2. Develop and implement a strategy to address any deficit-spending trends

6A3. Assess the nature and variability of revenue and seek to diversify funding sources

6A4. Build and maintain sufficient operating reserves to sustain operations

6A5. Build and maintain dedicated or restricted funds sufficient to cover the long-term costs of stewarding and defending the land trust's land and conservation easements; (a) If funds are insufficient, adopt a plan to secure these funds and a policy committing the funds to this purpose

6C1. Obtain an annual financial audit, review or compilation by an independent certified public accountant or a qualified accounting professional, in a manner appropriate for the scale of the land trust

6D1. Establish written internal controls and accounting procedures, including segregation of duties, in a form appropriate for the scale of the land trust, to prevent the misuse or loss of funds

6E2. Carry general liability, directors and officers liability, property and other insurance, all as appropriate to the land trust's risk exposure or as required by law

Opportunity to provide feedback in the survey on 3A2 required documents and requirements

Opportunity to provide feedback in the survey on 5B3 required documents and requirements

Opportunity to provide feedback in the survey on 6D1 required documents and requirements

Opportunity to provide feedback in the survey on 6A4 required documents and requirements

Opportunity to provide feedback in the survey on 6E2 required documents and requirements

FINANCE

Required Documents

Pre-application

- Schedule of Dedicated and Restricted Funds (SDRF)
- Legal Defense Fund Reserves Calculator
- Q: What are your land trust's total anticipated expenses for its current fiscal year:
\$ _____

Application Questions

- Q: Did your land trust have an operating deficit at the end of the last fiscal year? If yes, include F15.
- Q: Did your land trust have sufficient operating reserves at the end of the last fiscal year to cover at least three months of operating expenses? If no, include F16.
- Q: Using the results from your land trust's completed Legal Defense Fund Reserves Calculator, does your land trust have the necessary board-designated or restricted defense funding? If no, include F17.
- Q: Does your land trust have the required board-designated or restricted conservation easement stewardship funding? If no, include F17. *[First-time applicants only]*
- Q: Did your land trust expend more than \$750,000 in federal dollars and obtain a "Single Audit" for any of the last three fiscal years? If yes, include F4. *[Over term for renewal]*
- Q: *[Renewal applicants will complete a chart showing revenue, expenses and level of audit, review or compilation each year of accredited term]*

Application

- F1. Most recent Form 990 (or Form 990-EZ or Form 990-N)
- F2. Audited, reviewed or compiled financial statement for last three fiscal years (First-time applicants that did not complete a formal audit, review or compilation must provide a GAAP-compliant balance sheet and statement of activities for each year)
- F3. Management letter and related correspondence that accompanied the most recent audit, review or compilation
 - a. If the management letter indicates significant changes should be made to your land trust's financial procedures, describe the actions taken to address the recommended changes
 - b. If the board designated and restricted net asset account classifications in the audit, review or compilation do not reconcile with the account classifications on the SDRF, provide an annotated balance sheet or document reconciling the two
- F4. Schedule of Findings from most recent federal "Single Audit" (if applicable)
 - a. If the findings indicate significant changes should be made to your land trust's financial procedures, describe the actions taken to address the recommended changes
- F5. Budget for current fiscal year

- F6. Most recent financial reports provided to the board including a budget-to-actual report, balance sheet and information on restricted funds
- F7. Minutes from the following board meetings
 - a. When the budget submitted in F5 was approved
 - b. When the financial reports submitted in F6 were discussed
 - c. When the results of the audit, review or compilation were presented
- F8. A policy or procedure your land trust follows when a) soliciting and accepting restricted gifts/grants, b) documenting donor restrictions and c) tracking receipt of and expenditures from restricted gifts/grants to comply with donor restrictions
- F9. For a recent stewardship or defense gift/grant, provide the following
 - a. Solicitation
 - b. Signed acknowledgement
- F10. For a recent restricted gift/grant (such as a property acquisition, special project, capital campaign), provide the following
 - a. Solicitation
 - b. Signed acknowledgement
- F11. Completed internal control questionnaire (See next page)
- F12. Completed internal control certification (See next page)
- F13. Certificate of general liability insurance or equivalent documentation (such as premium summary, declarations page or other summary page)
- F14. Dated board evaluation of insurance needs
- F15. Statement from a board officer or executive director explaining the reason for the deficit (if applicable)
- F16. Report from the board of its evaluation of operating reserve needs and its plan to address the needs (if applicable)
- F17. Stewardship and/or defense funding plan (if applicable)

Project Verification

- Complete Documentation for selected projects (*similar to current project documentation checklist items*)

Internal Controls Questions and Certification

Please note that the questions below must be answered by someone knowledgeable about your land trust's financial and accounting practices.

The certification must be completed by a board officer or the executive director.

Risk and Control Questions

1. What do you think your land trust's greatest risks are related to misuse of funds (theft, fraud, misappropriation)?
 - a. What internal controls or accounting procedures are in place to prevent and/or detect the misuse of funds?*
2. What do you think your land trust's greatest risks are related to misstatement of funds (errors in reporting or presentation of financial statements)?
 - a. What internal controls or accounting procedures are in place to prevent and/or detect the misstatement of funds?*
3. What do you think your land trust's greatest risks are related to the making sure board-designated and donor-restricted funds are used appropriately?
 - a. What internal controls or accounting procedures are in place to prevent and/or detect diversion or depletion of board-designated or donor-restricted funds for other uses?*
4. How do your land trust's internal controls or accounting procedures* manage risks associated with the payment of expenses for individuals who have access to checkbooks, bank accounts or investment accounts?
5. If your land trust has staff, how does the board manage risks associated with setting compensation for its executive director or chief staff officer?

Questionnaire completed by NAME_____, TITLE _____, on DATE _____.

*You may upload policies, procedures or other documents and reference them in your response;. you do not need to copy or repeat the text.

Internal Controls Certification

I, NAME_____, TITLE _____, on DATE _____ certify that LAND TRUST NAME _____ has written internal financial controls and accounting procedures in place and that these controls are periodically verified to ensure they are effective.

FINANCE

Requirements

The Commission will review the required documents and verify that the land trust meets the requirements. Requirements are sorted into two categories: "Must Show" and "If Flagged."

- **"Must Show" requirements** will be verified for each land trust and corrective action will be required prior to accreditation or renewal.
- **"If Flagged" requirements** are additional areas that may be identified by Commission reviewers for which corrective action may be required depending on risk. The examples below are not comprehensive.

At first-time accreditation, an applicant is expected to show compliance in its current work, except when a longer period is noted. At renewal, compliance is expected over the accredited term.

Financial Records and Financial Health^{2C1(a), 3A2(b), 6A2, 6A3, 6A4, 6C1}

Must Show

- ☐ Meets public support test, unless a quasi-governmental organization.
- ☐ Annually obtains the following based on annual support and revenue (excluding value of donated properties/easements):
 - >\$750,000: Audit by independent CPA
 - \$100,000 - \$750,000: Review by independent CPA
 - <\$100,000: Compilation by CPA; if not using a CPA, the compilation must be prepared by an independent qualified accountant
- ☐ Audited, reviewed or compiled statements include footnotes and disclosures and show unrestricted, board-designated and restricted net assets.
- ☐ Operating surplus* at the end of the last fiscal year, unless there is a statement from a board officer explaining the reason for the deficit. (*Unrestricted net assets, excluding land, property and equipment, show an increase at the end of the fiscal year.)
- ☐ Operating reserves** at the end of the last fiscal year sufficient to cover three months of operating expenses, unless there is a specific board evaluation of operating reserve needs and a plan to address the needs. (**Unrestricted net assets at end of fiscal year, excluding land, property and equipment, and including any restricted net assets or board-designated funds specifically restricted or dedicated to an operating reserve.)

If Flagged (examples)

- Form 990 and audit, review or compilation do not reconcile.
- Form 990 does not segregate fundraising, management and general, and program service expenses.
- Form 990 does not report insider transactions and/or family or business relationships between board members.
- Relevant Form 990 schedules substantially incomplete.
- Financial records not accurate.
- Deficit spending trend.
- Overreliance on a "concentrated" or sole source of funding.
- Inability to cover debt or lease payment obligations.
- Extreme investment deviations not in keeping with market.

- “Going Concern” statement in audit.

Board Oversight^{3A2}

Must Show

- ☐ Board approval of annual budget.
- ☐ Board review of periodic financial reports.
- ☐ Board review of the annual audit, review or compilation.
- ☐ Periodic financial reports provided to the board show the following:
 - Unrestricted, board-designated and restricted net assets
 - Comparison of actual revenue and expenses against budget
 - Information about sources and uses of money restricted to specific purposes received or expended during the reporting period

If Flagged (examples)

- Board not provided with sufficient information before meetings to provide financial oversight.
- Financial reports do not provide an accurate representation of funds available for operations.
- Board does not provide financial oversight by working to ensure sufficient financial resources are available.

Gift Acknowledgement and Donor Restrictions^{5B2, 5B3}

Must Show

- ☐ Gift acknowledgement letters contain the following:
 - Description of the gift
 - Statement that no goods or services were provided and/or good faith estimate of the value of goods and services provided, if any
- ☐ Business process for tracking receipt, use and acknowledgement of restricted gifts/grants present.
- ☐ Gifts/grants solicited using the term “endowment” or solicited for other specific purposes are classified in accordance with the solicitation materials.

If Flagged (examples)

- Acknowledgement letter not provided contemporaneous to the gift.
- Gifts/grants solicited or received for a specific purpose not restricted, tracked and used accordingly.
- Solicitations and/or acknowledgements not clear about restrictions on the use of moneys received.
- SDRF does not correspond to fund classifications in audit, review or compilation.
- Application indicates land trust has board-designated or restricted net assets, and financial documents do not show them.

Internal Controls^{6D1}

Must Show

- ☐ Internal control questionnaire present.
- ☐ Internal control certification present.

If Flagged (examples)

- Action not being taken to address a significant control issue.
- Internal controls do not detect or prevent misuse or misstatement of funds.
- Internal controls do not prevent or detect significant risks associated with the scale or scope of the land trust's operations.
- No evidence of written internal controls.

Stewardship and Defense Funding^{6A5}**Must Show**

- ☐ Enough board-designated or restricted defense funding to meet the amount specified in the Legal Defense Reserves Calculator. If an applicant does not have the full amount by 2019, it must have at least half of the required funds and a plan with specific funding targets and timelines to raise the remaining funds before its next renewal.
- ☐ At least \$3,500 per conservation easement in board-designated or restricted stewardship funding. If a first-time applicant does not have the required funding, there is a plan with specific funding targets and timelines to raise the remaining funds before its first renewal.

If Flagged (examples)

- Insufficient financial resources to cover conservation property stewardship.

Insurance^{6E2}**Must Show**

- ☐ Current general liability insurance policy.
- ☐ Board review, at least every five years, of insurance needs appropriate to risk exposure including evaluation of the following:
 - Insurance required by law
 - Directors and officers liability insurance
 - Property insurance

If Flagged (examples)

- General liability insurance coverage and policy terms grossly insufficient.
- Board evaluation of insurance needs shows the land trust does not have legally required insurance.

TRANSACTIONS

Indicator Elements

For all conservation land or conservation easement transactions:

1A3. Do not knowingly participate in transactions that are potentially fraudulent or abusive

3D1. The board reviews and approves every land and conservation easement transaction; (a) However, the board may delegate decision-making authority on transactions if: (i) It establishes written policies or has bylaws provisions that define the limits to the authority given to the delegated entity and (ii) The delegated entity provides timely notification in writing to the full board of any completed transactions [Also related to 3C3 in Governance]

8B2. Develop and apply written project-selection criteria that are consistent with the land trust's conservation priorities

8C1. Visually inspect properties before buying or accepting donations of conservation land or conservation easements to determine and document whether: (a) There are important conservation values on the property, (b) The project meets the land trust's project-selection criteria

9F1. Prior to closing and preferably early in the process, have a title company or attorney investigate title for each property or conservation easement the land trust intends to acquire

9F1(a). Update the title at or just prior to closing

9F2. Evaluate the title exceptions and document how the land trust addressed mortgages, liens, severed mineral rights and other encumbrances prior to closing so that they will not result in extinguishment of the conservation easement or significantly undermine the property's important conservation values

9F3. Promptly record land and conservation easement transaction documents at the appropriate records office

9G2. Keep originals of all documents essential to the defense of each real property transaction in a secure manner and protected from damage or loss

9G3. Create and keep copies of these documents in a manner such that both originals and copies are not destroyed in a single calamity

9H1. When buying land, conservation easements or other real property interests, obtain an independent appraisal by a qualified appraiser in advance of closing to support the purchase price; (a) However, a letter of opinion from a qualified real estate professional may be obtained in the limited circumstances when: (i) A property has a very low economic value, (ii) A full appraisal is not feasible before a public auction, (iii) Or the amount paid is significantly below market value

9H2. In limited circumstances where acquiring land, conservation easements or other real property interests above the appraised value is warranted, contemporaneously document: (a) The justification for the purchase price, (b) That there is no private inurement or impermissible private benefit

Opportunity to provide feedback in the survey on 8C1 required documents and requirements

TRANSACTIONS

Indicator Elements (cont.)

In addition, if a tax-deductible transaction:

- 9E2.** Review, on the land trust's own behalf, each potentially tax-deductible conservation easement for consistency with the Treasury Department regulations (U.S.C. §1.170A-14), especially the conservation purposes test of IRC §170(h)
- 10A1.** Inform potential land or conservation easement donors who may claim a federal or state income tax deduction (or state tax credit), in writing and early in project discussions, that: (a) The project must meet the requirements of IRC §170 and the accompanying Treasury Department regulations and any other federal or state requirements, (b) The donor is responsible for any determination of the value of the donation, (c) The Treasury Department regulations require the donor to obtain a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$5,000, (d) Prior to making the decision to sign the IRS Form 8283, the land trust will request a copy of the completed appraisal, (e) The land trust is not providing individualized legal or tax advice
- 10B2.** Sign the Form 8283 only if the information in Section B, Part I, "Information on Donated Property," is complete and is an accurate representation of the gift; (a) Refuse to sign the Form 8283 if the land trust believes no gift has been made or the property has not been accurately described

- 10C2.** Evaluate the Form 8283 and any appraisal to determine whether the land trust has substantial concerns about the appraised value or the appraisal
- 10C3.** Discuss substantial concerns about the appraisal, the appraised value or other terms of the transaction with legal counsel and take appropriate action, such as: (a) Documenting that the land trust has shared those concerns with the donor, (b) Seeking additional substantiation of value, (c) Withdrawing from the transaction prior to closing, (d) Or refusing to sign the Form 8283
- 10C4.** When engaging in transactions with pass-through entities of unrelated parties, particularly those offered or assembled by a third party or described as a syndication by the IRS: (a) Require a copy of the appraisal prior to closing, (b) Decline to participate in the transaction if the appraisal indicates an increase in value of more than 2.5 times the basis in the property within 36 months of the pass-through entity's acquisition of the property, the value of the donation is \$1 million or greater and the terms of the transaction do not satisfy the Land Trust Alliance Tax Shelter Advisory

Opportunity to provide feedback in the survey on 10C4 required documents and requirements

TRANSACTIONS

Indicator Elements (cont.)

In addition, if a conservation easement:

- 9D2.** If a conservation easement contains restrictions or permitted rights that are specific to certain zones or areas within the property, include the locations of these areas in the easement document so that they can be identified in the field
- 9E1.** For every conservation easement, (a) Individually tailor it to the specific property, (b) Identify the conservation values being protected, (c) Allow only uses and permitted rights that are not inconsistent with the conservation purposes and that will not significantly impair the protected conservation values (d) Avoid restrictions and permitted rights that the land trust cannot monitor and enforce, (e) Include all necessary and appropriate provisions to ensure it is legally enforceable

- 11B1.** For each conservation easement, have a baseline documentation report, with written descriptions, maps and photographs, that documents: (a) The conservation values protected by the easement, (b) The relevant conditions of the property as necessary to monitor and enforce the easement

- 11B2.** Prepare the report prior to closing and have it signed by the landowner and land trust at or prior to closing; (a) In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, the landowner and land trust sign a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulations §1.170A-14(g)(5)(i)] at closing

TRANSACTIONS

Required Documents

Pre-application

- Land Conservation Project List
- Acknowledgements
 - Baseline documentation reports have required contents (If not, include T10)

Application Questions

- Q: Does your land trust delegate final conservation project approval? If yes, include T1.
- Q: Does your land trust currently* investigate title for every conservation easement and fee property? If no, include T2 and T3. [**Over entire term, if renewal*]
- Q: Has your land trust purchased a conservation easement or fee property in the past five years? If yes, include T4. [*Since accredited, for renewal*]
- Q: Does your land trust currently* secure an appraisal (or letter of opinion) for every purchased or bargain-sale fee property and conservation easement? If no, include T5. [**Over term for renewal*]
- Q: Has your land trust paid more than appraised value when purchasing a fee property or conservation easement in the past five years*? If yes, how many times? If yes, include T6. [**Over term for renewal*]
- Q: Does your land trust have and use a conservation easement template? If yes, include T7.
- Q: In the past five years*, has your land trust had projects where the landowner took a tax deduction? If yes, include T8. [**Over term for renewal*]
- Q: Does your land trust plan to close on one or more conservation easements or conservation property transactions in the next year?

Application

- T1. Delegation of Transaction Approval Policy (if applicable)
- T2. Policy for meeting title investigation requirements (if applicable)
- T3. Statement indicating whether any retroactive title investigation has been completed for recent* projects (if applicable) [**Over term for renewal*]
- T4. For the most recent land or conservation easement purchase or bargain sale: (if applicable)
 - a. Independent appraisal (or letter of opinion) used to substantiate the purchase price
 - b. Purchase and sale agreement (or other documentation showing the purchase price)
- T5. Policy for meeting requirements for appraisals for purchase and bargain sale transactions (if applicable)
- T6. Evidence contemporaneously justifying the purchase price and documentation that there was no private inurement or impermissible private benefit; if not contemporaneous, provide retroactive documentation (if applicable)
- T7. Conservation easement template (if applicable)
- T8. Template for written donor notification of tax code requirements (if applicable)
- T9. Statement describing your land trust's recordkeeping practices including:

- a. How originals (paper or electronic) are kept in a secure manner
- b. How originals (paper or electronic) are protected from damage or loss
- c. How originals and copies are stored in a way so both are not destroyed in a single calamity

T10. Plan for updating baseline documentation reports to meet requirements (if applicable)

Project Verification

- Complete Documentation for selected projects (*similar to current project documentation checklist items*)
- Targeted (*the Land Conservation Project List submitted at pre-application will require land trusts to indicate if transactions in the last five years involved a pass-through entity of unrelated individuals, the land was held for less than 36 months before the donation, and the value increased more than 2.5 times the basis in the property and, if so, to state the value of the donation; the Commission may select one or more of these transactions and request the Form 8283, appraisal, and other information*)

TRANSACTIONS

Requirements

The Commission will review the required documents and verify that the land trust meets the requirements. Requirements are sorted into two categories: "Must Show" and "If Flagged."

- **"Must Show" requirements** will be verified for each land trust and corrective action will be required prior to accreditation or renewal.
- **"If Flagged" requirements** are additional areas that may be identified by Commission reviewers for which corrective action may be required depending on risk. The examples below are not comprehensive.

At first-time accreditation, an applicant is expected to show compliance in its current work, except when a longer period is noted. At renewal, compliance is expected over the accredited term.

Project Due Diligence^{8B2, 8C1, 9F1, 9F1(A), 9F2, 9F3, 9H1, 9H2}

Must Show

- ☐ Project-selection criteria present.
- ☐ Title investigation by attorney or title company for each conservation property and conservation easement acquisition. If acquiring from a nonprofit partner and there is no new title investigation, there is a copy of the partner's title investigation and evidence of bringing the partner's title current.
- ☐ Independent appraisal by qualified appraiser for purchased or bargain sale conservation property or conservation easement. If the property has a very low economic value, a full appraisal is not feasible before a public auction, or the amount paid is significantly below market value, a letter of opinion can be obtained.
- ☐ Option 1 (visual inspection): Evidence of visual inspection of the property before closing includes the following:
 - Inspection date
 - Property inspected
 - Who did the inspection
 - Identification of property's conservation values[^]Required for projects starting in 2019.
- ☐ Option 2 (visual inspection): Evidence of visual inspection of the property before closing present. [^]Required for projects starting in 2019.
- ☐ Option 1 (project selection criteria): Documentation the project meets the project-selection criteria present.

If Flagged (examples)

- Option 2 (project selection criteria): Projects inconsistent with the project-selection criteria.
- Title investigation does not address ownership and encumbrances.
- Title update absent when initial title investigation more than 30 days before closing.
- Encumbrances not addressed.
- Mortgage subordination not recorded before or contemporaneous with conservation easement.

- For purchases, independent appraisal or letters of opinion not obtained in advance of closing.
- For purchases, relying on the landowner's appraisal, unless the land trust is listed as an intended user.
- For purchases, relying on an appraisal for an adjacent property, tax assessment, or summaries of comparable sales by individuals other than qualified appraisers.
- If purchased substantially above value, no documentation to justify the purchase price and lack of private inurement or impermissible private benefit.
- Visual inspection of the property insufficient to identify risks on the property.

Project Review and Approval^{3D1}

Must Show

- ☐ Project review by board or other entity present.
- ☐ Board or delegated entity receives materials describing the project in advance of the decision-making meeting.
- ☐ Project approval by board or delegated entity present.
- ☐ If decision-making authority delegated, delegation policy or bylaws provisions define limits given to delegated entity.

If Flagged (examples)

- Information provided to the board about the project are insufficient.
- Completed project substantially different from approved project without notice to board or delegated entity.
- If decision-making authority delegated, no timely notification of completed transactions to the board.

Conservation Easement and Fee Title Deeds^{9D2, 9E1, 9E2, 9F3}

Must Show

- ☐ Conservation easements are perpetual and contain the following:
 - Name of grantor and grantee
 - Legal description
 - Identification of conservation values
 - Locations of specific zones or areas, if restrictions or permitted rights are specific to such areas
 - Designation of when grantee review or approval is required and how review or approval is obtained
 - Right of entry that does not unduly limit access to monitor
 - Right to enforce and to take immediate action
 - Termination and proceeds provisions
 - Reference to baseline documentation report

If Flagged (examples)

- Conservation easement not individually tailored.

- Rights in conservation easement inconsistent with conservation purposes or significantly impair protected conservation values.
- Rights in conservation easement so broad as to be invalid.
- Conservation easement contains restrictions and rights that cannot be monitored or enforced.
- Tax-deductible conservation easement inconsistent with Treasury Regulations by lacking the following.
 - Identification of conservation purposes
 - Prohibition on surface mining
 - Limitations on assignment
 - Compliant extinguishment and proceeds provisions
 - Confirm the easement is an immediately vested property right
- Conservation easements and fee title deeds filed for recording more than a week after the final signature(s). ^Required starting in 2019.

Baseline Documentation Report^{11B1, 11B2}

Must Show

- ☐ Every conservation easement has a baseline documentation report that contains the following:

- Date of completion
- Documentation of the conservation values protected by the easement with written descriptions, maps and photographs
- Documentation of the relevant conditions of the property necessary to monitor and enforce the easement with written descriptions, maps and photographs
- Land trust signature
- Landowner signature (or documented attempt to obtain signature), unless the baseline was prior to 2004

If a first-time applicant's older baseline documentation reports are present but are missing some of the required content, there is a plan to upgrade them before its first renewal.

- ☐ Baseline documentation reports are complete and signed by the land trust and landowner at or before closing. If seasonal conditions prevent this, there is interim data and a schedule for finalizing the full report that is signed by the land trust and landowner.

If Flagged (examples)

- Baseline documentation report is not a distinct document that represents the property condition at a point in time.

Tax Deduction^{1A3, 9E2, 10A1, 10B2, 10C2, 10C3, 10C4}

Must Show

- ☐ Notification to potential donors includes the equivalent of the following:
 - The project must meet the requirements of Internal Revenue Code §170 and the

accompanying Treasury Department regulations and any other federal or state requirements

- The donor is required to obtain a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$5,000
- The land trust will request a copy of the completed appraisal
- Landowner's appraisal supporting the Form 8283 present. If landowner would not provide appraisal, there is documentation of a request for the appraisal and a statement explaining how the land trust confirmed that it did not have concerns about the appraised value when it signed the Form 8283.
- Comprehensive due diligence and analysis of transactions with pass-through entities of unrelated parties is conducted to determine if transaction is potentially fraudulent or abusive.
- The terms of any transaction since 2016 satisfy the Land Trust Alliance Tax Shelter Advisory if there is a pass-through entity of unrelated parties where a) the appraisal indicates an increase in value of more than 2.5 times the basis in the property within 36 months of the pass-through entity's acquisition of the property and b) the value of the donation is \$1 million or greater.

If Flagged (examples)

- Notification of tax code requirements to potential donors clearly after closing.
- The land trust is providing individualized legal or tax advice.
- If the land trust pays for the appraisal, payment to landowner not acknowledged.
- Knowingly participating in potentially fraudulent or abusive transactions.
- Not taking appropriate action to resolve substantial concerns with appraised value or appraisal.
- Legal counsel not appropriately involved in potentially fraudulent or abusive transactions.
- Form 8283 does not include the following:
 - Name of the landowner(s) matches the landowner in the title investigation
 - Gift description
 - Fair market value of donation matches appraised value
 - Any bargain sale payments
 - Donor's cost or adjusted basis[^]
 - Date of gift
- [^]Required on Forms starting in 2019.
- Year of the gift on the Form 8283 does not match year conservation easement recorded.
- Form 8283 signed when no gift was received.
- Landowner's appraisal clearly not a qualified appraisal as evidenced by the following.
 - Not for gift that was donated
 - Effective date substantially more than 60 days before the donation
 - Entire contiguous parcel not addressed if clearly applicable
 - Enhancement not addressed if clearly applicable

Recordkeeping^{9G2, 9G3}

Must Show

- ☐ Originals retained of the following:
 - Legal agreements, deeds, conservation easements, amendments
 - Critical correspondence, including those related to project goals, tax and legal matters, notifications, approvals, enforcement, other key matters the land trust determines essential to the defense of the transaction
 - Baseline documentation reports
 - Title insurance policies or evidence of title investigation
 - Surveys, if any
 - Appraisals used to substantiate the purchase price or used by the landowner to substantiate value on the Form 8283
 - Forms 8283
 - Conservation easement monitoring reports
 - Fee property inspection reports
 - Contracts and leases relative to long-term land management activities
- ☐ Copies retained of the following:
 - Critical correspondence (see above)
 - Baseline documentation reports
 - Title insurance policies, if any
 - Unrecorded surveys, if any
- ☐ Originals and copies are stored in locations that could not be destroyed in a single calamity.

If Flagged (examples)

- Application documents not replicas of signed originals.
- Originals not kept in a secure manner.
- Originals not protected from damage or loss.

STEWARDSHIP

Indicator Elements

<p>11B3. When there are significant changes to the land or the conservation easement (such as a result of an amendment or the exercise of a permitted right), document those changes in an appropriate manner, such as through monitoring reports, a baseline supplement or current conditions report</p>	<p>obtain judicial or regulatory review when required by law or specified in the easement deed, (b) Ensure there is no private inurement or impermissible private benefit, (c) Take steps to avoid or mitigate harm to conservation values and/or use any proceeds in a manner consistent with the conservation easement deed, (d) Consider the land trust's actions in the context of its reputation and the impact on the land conservation community at large</p>
<p>11C2. Monitor each conservation easement property at least once per calendar year; (a) If the land trust uses aerial monitoring, conduct on-the-ground monitoring at least once every five years, (b) Promptly document the annual monitoring activities for each conservation easement</p>	<p>12B1. Develop a written land management plan for each conservation property within 12 months after acquiring the land to: (a) Identify the property's conservation values, including any significant cultural and natural features or those that have significant community value, (b) Identify the overall management goals for the property, (c) Identify activities to achieve the goals and to reduce any risks or threats to the conservation values, (d) Specify the uses that are appropriate for the property, in keeping with the property's conservation values, any restrictions and donor or funder requirements</p>
<p>11E1. Adopt a written policy and develop written procedures for documenting and responding to potential conservation easement violations</p>	
<p>11E2. Investigate potential violations in a timely manner and promptly document all actions taken</p>	
<p>11F3. Maintain a permanent record of all notices, approvals, denials, interpretations, and the exercise of any significant permitted rights</p>	
<p>11H1. Adopt and follow a written policy or procedure addressing conservation easement amendments that is consistent with the Land Trust Alliance Amendment Principles</p>	<p>12C2. Inspect properties at least once per calendar year for potential management problems and promptly document the inspection</p>
<p>11J1. In the rare case that it is necessary to extinguish a conservation easement, in whole or in part, (a) Follow the terms of the conservation easement with respect to taking appropriate action and</p>	<p>12C3. Address management problems, including encroachments, trespass and other ownership challenges, in an appropriate and timely manner and document the actions taken</p>

Opportunity to provide feedback in the survey on 11B3 required documents and requirements

Opportunity to provide feedback in the survey on 11F3 required documents and requirements

STEWARDSHIP

Required Documents

Pre-application

- Land Conservation Project List
- Acknowledgements
 - Management plans have required contents (If not, include S4.)
- Statements
 - Statement briefly describing each violation over the last five years and how it was resolved or is being resolved. *[Over term for renewal]*
 - Statement briefly describing each property ownership challenge over the last five years and how it was resolved or is being resolved. *[Over term for renewal]*
 - Statement briefly describing each conservation easement amendment completed over the last five years. *[Over term for renewal]*
 - Statement briefly describing each conservation easement extinguished in whole or in part over the last five years. *[Over term for renewal]*

Application

- S1. Violation Policy and/or Procedures
- S2. Amendment Policy and/or Procedures
- S3. Example of how your land trust documented a significant change to the land covered by a conservation easement or a significant change resulting from a conservation easement amendment or exercise of a permitted right
- S4. Plan for updating management plans to meet requirements (if applicable)

Project Verification

- Complete Documentation for selected projects (*similar to current project documentation checklist items*)
- Targeted (*the Commission may select one or more of the violations, property ownership challenges, amendments and/or extinguishments identified in the pre-application and request documentation showing the requirements were met; the Commission will also verify the contents of one or more older baseline documentation reports*)

STEWARDSHIP

Requirements

The Commission will review the required documents and verify that the land trust meets the requirements. Requirements are sorted into two categories: "Must Show" and "If Flagged."

- **"Must Show" requirements** will be verified for each land trust and corrective action will be required prior to accreditation or renewal.
- **"If Flagged" requirements** are additional areas that may be identified by Commission reviewers for which corrective action may be required depending on risk. The examples below are not comprehensive.

At first-time accreditation, an applicant is expected to show compliance in its current work, except when a longer period is noted. At renewal, compliance is expected over the accredited term.

Conservation Easement Monitoring^{11C2} and Conservation Property Inspections^{12C2}

Must Show

- ☐ Annual conservation easement monitoring (3 years at first-time; over accredited term at renewal).
 - ☐ Annual conservation property inspections (3 years at first-time by 2021; over accredited term at renewal).
 - ☐ Reports include the following:[^]
 - Inspection date
 - Property inspected
 - Who did the inspection
 - Observations related to property's condition and conservation values
 - Observations related to potential conservation easement violations or conservation property ownership challenges
- [^]Fee inspection report contents will be verified starting in 2020.

If Flagged (examples)

- Monitoring or inspection report identifies a potential violation or management challenge not disclosed in pre-application statements.
- Monitoring or inspection methodology insufficient to identify major conservation easement violations or conservation property ownership challenges.
- If aerially monitoring conservation easements, reports show on-the-ground monitoring not occurring at least every five years.
- Monitoring or inspection reports routinely completed significantly after the inspection or monitoring event.

Conservation Property Management Plans^{12B1}

Must Show

- ☐ Every conservation property has a management plan that contains the items listed below. If a first-time applicant's management plans are present but are missing some of the required content, there is a plan to upgrade them before its first renewal.

- Identification of the conservation values
- Management goals
- Activities to achieve management goals

If Flagged (examples)

- Management plans routinely not completed within 12 months of acquisition.
- Management plan allows uses that adversely impact the conservation values and/or violate restrictions on the property.
- Management plan grossly outdated or does not reflect conditions after significant natural or human-caused changes.
- Management plan not updated after new parcels added to property.

Conservation Easement Enforcement^{11E1} and Amendment^{11H1} Policies

Must Show

- ☐ Violation policy and/or procedures present.
- ☐ Amendment policy and/or procedures:
 - Prohibit impermissible private benefit and private inurement
 - Require amendments to have a net beneficial or neutral effect on the protected conservation values

Conservation Easement Amendments^{11H1} and Extinguishments^{11J1}

Must Show

- ☐ Extinguishment followed terms of the conservation easement with respect to judicial review.
- ☐ Steps were taken to avoid and/or mitigate harm to conservation values as part of the extinguishment.

If Flagged (examples)

- Amendment or extinguishment resulted in private inurement or impermissible private benefit.
- Amendment had negative effect on conservation values.
- Amendment clearly inconsistent with the Land Trust Alliance's Amendment Principles.
- Board not informed or not involved as appropriate to scale of amendment or extinguishment.
- If co-held, co-holder not involved in accordance with terms of easement or other agreement.
- Extinguishment actions put land trust's reputation in jeopardy and have high potential to impact land conservation community.
- Proceeds from extinguishment used inappropriately.

Conservation Easement Enforcement^{11E2} and Conservation Property Ownership Challenges^{12C3}

If Flagged (examples)

- Land trust enforcement actions or actions taken to address ownership challenges show the following:
 - Not timely
 - Not documented
 - Resulted in private inurement or impermissible private benefit
 - Inconsistent with conservation values and/or restrictions
- Board not informed or not involved in resolution as appropriate to scale of violation or ownership challenge.
- If co-held, co-holder not involved in accordance with deed terms or other agreement.

Conservation Easement Stewardship Records^{11B3, 11F3}

Must Show

- **Option 1 (stewardship records):** Records policy or procedure specifies permanent retention of the following records:
 - Notices
 - Approvals
 - Denials
 - Interpretations
 - Exercise of significant permitted rights
- **Option 1 (documenting significant change):** Documentation of significant changes to the land or changes to the conservation easement (resulting from an amendment or exercise of a permitted right) includes the following:
 - Date
 - Written descriptions
 - Photographs and/or maps

^Required for significant change occurring in 2019 or later.

If Flagged (examples)

- Option 2 (stewardship records):
 - Does not have records of notices, approvals, denials, interpretations and exercise of significant permitted rights.
 - Records of notices, approvals, denials, interpretations, or exercise of significant permitted rights incomplete or not timely.
- Option 2 (documenting significant change): Insufficient documentation of significant changes to the land or changes to the conservation easement (resulting from an amendment or exercise of a permitted right). ^Required for significant change occurring in 2019 or later.
- Approved activities inconsistent with conservation easement purposes and terms.
- Approved activities resulted in private inurement or impermissible private benefit.