A01. Do You Have the Right Balance of Insurance and Risk Management? CLE RM

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Room 307

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Land Trust Alliance
Together, conserving the places you love
If You Hate Risk Management, then You’re Doing it Wrong
Nonprofit Risk Management Center

By Erin Gloeckner and Melanie Lockwood Herman

Some land trust leaders recently expressed concern to the team at Land Trust Alliance about risk management causing “organizational drag:” impeding or slowing down your work of saving and securing lands in new or creative ways, working in partnership with community organizations, or perhaps hosting non-traditional programs that collectively enhance a love for, and access to, the land for future generations.

We’ll admit that risk management can be a drag… if you’re doing it wrong. Let’s distinguish forms of ineffective, drag-causing risk management from effective, mission-advancing risk management.

Ineffective, drag-causing risk management employs a philosophy of risk-aversion: protect against risk by avoiding risk or by not doing the programs/projects that you want to do. This form of risk management drives a policing mentality and causes team members to feel that risk management holds them back from doing their jobs. It impedes learning; it often stifles organizational development.

Effective, mission-advancing risk management employs a philosophy of risk-taking: address and/or guard against real or perceived threats in order to operate more effectively, thus enabling your organization to take more risk on ventures that offer greater potential to advance your mission. This form of risk management drives a risk-aware culture, which encourages team members to consider risk and uncertainty whenever they make decisions—but not in a manner that stifles creativity or organizational advancement. Rather, it’s based upon informed decision making.

If you consider and anticipate the possible outcomes of any decision or action, then you’re probably making a more informed decision. You’re also preparing to adapt when things turn out differently than you expect. In essence, you’re developing resilience. Resilient organizations can withstand greater stress to their missions and operations, and they can take on more “risky,” innovative programs in order to achieve their objectives and serve their target communities. Risk management = resilience = mission mojo.

If you hate risk management, it’s probably because you’re practicing the risk-averse form described above. How can you transform your risk management efforts into the mission-advancing kind?

A risk-aware workplace conducive to effective risk management is one where:

- All staff and volunteers (including board members) are encouraged to contribute input to develop a shared understanding of the potential (real or perceived) risks facing the
organization, with the understanding that risk is not necessarily bad—it’s something to be managed and addressed

- Staff and volunteers throughout the organization participate in collaborative problem-solving and contingency planning
- Before making decisions, staff and volunteers consider uncertainty and plan for how the consequences of decisions could turn out differently than expected
- Instead of saying “no, that’s too risky,” leaders who truly want to cultivate impact and organizational resilience choose to collaborate with their peers to devise creative solutions that allow for both programmatic innovation/experimentation and thoughtful anticipation of an array of “what ifs”
- All team members feel safe acknowledging failures, errors, and mistakes; everyone embraces a learning culture and the ideal of forwards-looking accountability (collectively learning and reducing the repetition of mistakes) rather than backwards-looking accountability (finding someone to blame)
- Team members are mindful of the effects of risk management policies and practice on their peers, on other departments/committees, and on the whole organization; teams strive to implement risk management practices that are practical, don’t unduly stifle creativity and responsive action, and do not place undue burden on others
- Team members practice an open mindset and are understanding of the varying risk appetites (tolerances for risk-taking) across their diverse teams, peers while keeping in mind the need for continued learning, organizational change, and adaptation to new situations
- Staff and volunteers sensibly scrutinize and embrace the risks that have potential to truly advance the organization’s mission, after considering other possible outcomes
- Team members remain positive during the most negative risk events, and they try to find and augment a silver lining
  - “I always tried to turn every disaster into an opportunity.” – John D. Rockefeller (a risk manager at heart!)

**Applying Risk Awareness to Public Events and Programs**

The land trust community is growing stronger by the day, due in no small part to the innovation and risk-taking leadership of community leaders. At the heart of the innovation in land trusts is outreach beyond the confines of long-time land trust proponents. Yet any program designed to reach a broader, general public is bound to introduce unfamiliar risks. Whether you’re sponsoring or leading walks, welcoming first-time volunteers to work in a community garden, working with schools, or training teams as restoration crews, here are three tips that will help you get past the understandable jitters of your first-time foray with an unfamiliar stakeholder group.

1. **Know Your Audience:** If you’ve ever been to a workshop or talk where the presentation failed to connect with the audience you’ve experienced the painful downside of failing to conduct audience research. Any time your land trust plans a new offering that is open to the public, there are a lot of unknowns. Increase the chance of success by reflecting on what you know about the audience and what you don’t.

   For example, have you put anything in place to help you gauge total attendance at the event, such as monitoring responses to the “attending” or “interested” buttons on your Facebook event? Or requesting text message RSVPs? Are you ready to provide special assistance to
attendees who might need an accommodation or support to enjoy the event or program? Have you factored in weather? Do you have a back-up plan in the event your projections are way off, such as a way to scale back the event for a smaller turnout or safely accommodate a larger group?

2. **Design the Activity with What You Know in Mind:** Rituals (think checklists and safety briefings), rules (always do this, but never that) and reminders (sign here before you go) are a risk professional’s stock-in-trade. A commonly missed risk management opportunity is a component of program design: ensuring that the activity suits the audience. Pitching in on a land trust restoration project doesn’t mean everyone needs to use power tools to be fun and impactful, nor should an informative nature walk test the endurance of first-time visitors.

Ponder the likely skills—and constraints and limitations—of the attendees at your event and make it memorable with enthusiastic leadership and activities that can be safely completed by everyone who attends. For example, before people use power tools, clarify expectations related to safety and your insurance obligations.

3. **Invite Fearless Feedback:** A new program is a wonderful opportunity to gather information you can use to amp up your next offering. Yet some leaders worry that inviting candid feedback could be a downer, or that inviting suggestions might create unrealistic expectations. Resolve to make sharing positive or critical feedback comfortable for your guests and participants and accept all feedback graciously. Ditch a lengthy survey for a simple three to five question survey, such as:

- “what did you like or dislike about the program?”
- “what time of day (or days) work best for you for programs like this?”
- “what’s one thing we could do to make this program more meaningful for you?”
- “what would you do to make this program even more fun and educational?”

Debrief after the event with your team to review the accolades and advice.

A risk-aware culture is one in which *all team members* actively balance risk in order to optimize decisions made about the future of the organization. Why is this important? Woods Bowman, a risk management thought leader and author of *Finance Fundamentals for Nonprofits*, reminds us that: “...the risks of a nonprofit are borne by the people it serves (its clients), who have neither a voice in selecting the organization’s leadership nor the ability to manage the risks.”

As leaders of land trusts, you must steward your missions and assets by managing the risks that your constituents—and would-be constituents—have limited power to manage. Risk management directly aligns with the Land Trust Alliance’s conservation goal of *resilience*: to defend the land trust community from stresses and threats that endanger specific conserved lands and the viability of the entire community. These risks are often viewed as tangible events or actions. You can also strategically address the more intangible risks of apathy or indifference towards conservation and the lands and waters you are working to conserve. As you consider risk management strategies for the land trust community and conserved lands, you will want to also consider your own organization’s risk management philosophy. How else will you ensure that land trusts survive long enough to protect natural places and working lands *forever*?

*Erin Gloeckner is Director of Consulting Services and Melanie Lockwood Herman is Executive Director at the Nonprofit Risk Management Center. Learn more about NRMC at [www.nonprofitrisk.org](http://www.nonprofitrisk.org).*
Five Eye Openers About Nonprofit Insurance

*General Liability:*
Miller Friel PLLC Insurance Recovery Blog

General liability insurance covers a variety of nuisance claims, such as slip and fall cases, and even insurance professionals these days generally don’t get that excited about GL insurance. They should wake up and get excited.

1. GL covers a lot more than you might think such as:
   a. copyright claims;
   b. IP claims;
   c. business torts;
   d. unfair business practices claims; and
   e. many other kinds of business to business claims

2. “Notice” is not as easy as you might think. Providing proper notice is one of the most important things a policyholder can do. If done properly, it can result in coverage. If done improperly, it can lead to an unnecessary denial of coverage.

3. Select your own counsel. If permitted under the policy or the law of your state, it is best to have counsel that knows you, your area and your judges and courts.

4. Insurance companies need to manage costs and avoid excessive charges, but you also want to have qualified counsel and that may necessitate additional fees. So don’t assume anything; it is a process of negotiation.

5. Settle only if it really makes sense. Sometimes you must push on to trial to get what is right.

*Directors & Officers:*
Elizabeth Leontieff Steelbridge Insurance Services
Nonprofit organizations need several types of insurance coverage to protect themselves, their interests, and their volunteers and employees from lawsuits. Some examples include general liability insurance, workers compensation insurance, property insurance, and directors and officers (D&O), and other coverage for specific activities also may be prudent such as special events, non-owned auto and volunteer medical. D&O insurance provides management liability coverage, not general liability coverage, and vice versa, so you really need to have and understand both.

*Understanding D&O for Nonprofits*
This type of coverage offers protection to board members and nonprofit leaders in the event of *wrongful acts* lawsuits. The following are reasons why nonprofits need D&O insurance:

1. Lawsuits can hold anyone who helps manage a nonprofit liable for errors or omissions committed while operating the organization. Directors, employees, and even volunteers can find themselves at the center of such lawsuits.

2. People sue directors and officers for a wide range of issues including failure to achieve the nonprofit’s mission, misuse of donor-restricted funds, improper conduct of volunteers or employees, and more. These lawsuits can decimate a nonprofit without proper insurance.
3. Fees and damages related to D&O claims can exceed the net worth of the nonprofit, inhibiting its ability to compensate directors and officers for their losses.

4. People are more likely to file D&O-related lawsuits against nonprofits than they are for-profit companies. In the past decade, 63% of nonprofits reported a D&O claim compared to 27% of private companies.

5. The Volunteer Protection Act doesn’t provide full coverage for directors and officers. Two exclusions include no compensation for legal fees and no coverage for lawsuits related to damages caused by gross negligence.

Nonprofits are not any more immune to lawsuits than their for-profit counterparts. And nonprofits often have fewer resources and funds, making it that much harder to weather a significant lawsuit. By investing in a quality D&O insurance policy, nonprofits have access to coverage for defense costs and settlements in management liability settings.

August 16, 2018
Articles

Contemplating Coverage: Insurance for Nonprofits

By Melanie Lockwood Herman and Erin Gloeckner

Are you suddenly responsible for buying insurance for your nonprofit? Or perhaps you have been responsible for some time but have just realized that there are a few gaps in your understanding of what you buy, why you buy it and how to evaluate providers, products and the process? Or are you starting a nonprofit and unaware of your insurance needs and options? Although we’ve heard leaders joke that a book on insurance is an instant cure for insomnia, we’ve also heard that worrying about whether a nonprofit’s coverage is adequate may lead to sleepless nights. Paying too much for insurance or buying coverage you don’t need is a waste of precious financial assets, while ignoring the reality of inadequate coverage exposes your nonprofit to costly financial losses. The bottom line is that your organization deserves to pay a fair price for the coverage it needs, and you deserve a good night’s sleep.
Three Categories: A Simple Framework

The commercial insurance policies purchased by nonprofits fall within one of three broad categories: 1. property coverage; 2. liability coverage; and 3. life/health (benefits) coverage.

1. Property Coverage: this category of policies finances the cost to repair or replace property your nonprofit owns, or property in your care, custody and control.

2. Liability Coverage: this category of policies responds to legal claims and demands alleging wrongdoing on the part of your nonprofit. These policies have two components: indemnity coverage to make the victim of harm or loss “whole”; and defense coverage to cover the cost of counsel to represent and defend your nonprofit.

3. Life/Health (Benefits) Coverage: many nonprofit entities offer a wide range of benefits to their employees, which may include health insurance, life insurance, and short-term and long-term disability coverage.

Key Considerations

In the paragraphs below we explore some of the key considerations in purchasing commercial insurance for a nonprofit.

- **Consider a la carte or prix fixe** — Many fine dining restaurants offer the option of a “prix fixe” menu — a full meal designed by the chef for a single price. When you order the prix fixe option, you may wind up eating one or more courses that you don’t necessarily need or want. But
by opting for the prix fixe selection you get a better deal. Insurance can be purchased a la carte or in packages. Savvy and experienced risk managers may prefer to buy separate policies for separate needs. When you do so you probably have greater flexibility when it comes to customizing the coverage to meet your needs. For example, you may be able to negotiate a change in wording on an endorsement, or have an exclusion removed. Yet many buyers prefer the convenience and savings of insurance policy packages. There is no right or wrong way: it’s a matter of choice.

- **Find a worthy partner**— Many first-time insurance buyers are surprised to learn that when it comes to buying insurance for a nonprofit, it generally isn’t possible to buy direct. Buying direct means purchasing coverage from the insurance carrier that will be underwriting the coverage. Purchasing commercial coverage—with rare exceptions—generally requires using a licensed intermediary. These licensed intermediaries are referred to as agents and brokers. Although the essential role of your agent is to “place” the coverage your nonprofit needs with appropriate carriers, it’s important to understand that agents and brokers aren’t just middlemen whose participation increases the cost of what you buy. A knowledgeable agent or broker can help your nonprofit make wise purchasing decisions by:

  "The most important consideration in choosing an agent or broker is finding someone you trust and can depend on. Think of your agent or broker as an extension of your mission, and not a costly ‘middleman.’"
• Pointing out areas of exposure for which coverage is available
• Explaining the terms and conditions contained in the insurance contracts
• Assisting you answer questions contained on coverage applications
• Letting you know about loss control and post-loss assistance available from your carriers

The most important consideration in choosing an agent or broker is finding someone you trust and can depend on. Think of your agent or broker as an extension of your mission, and not a costly “middleman.” A dependable agent or broker will promptly return phone calls, provide thoughtful answers to your questions, and offer coverage options that suit your budget and insurance buying goals. Signs you’re working with someone who isn’t a true business partner include:

• Statements suggesting that no companies want to insure your organization because it is a nonprofit, or because of your unique mission or operations
• Delivery of a single option for coverage, at minutes or hours before your current policies expire, accompanied by a “take it or leave it” attitude
• Repeated mention of the small size and inordinate demands of your nonprofit

• **Give the process the time and attention it deserves**—
  Your right to be frustrated with “last-minuteitis” on the part of your agent is unwarranted if you dragged your feet and only reluctantly provided information needed to
complete the applications for coverage. Start the process of considering the insurance renewal at least 90 days prior to your policy expiration date(s). Wherever possible, meet in person with your agent or broker to discuss:

- **Claims history and experience**— Have you filed claims during the past year? If so, how were they resolved? Were you pleased with the support provided by your carrier, or surprised to receive a declination of coverage letter?

- **Program and organization changes**— Has the organization grown since the last renewal? What key programs or activities have been launched or discontinued? What new services are on the drawing board for the next year?

- **Exposure and marketplace changes**— Have there been changes in the marketplace that warrant consideration of new coverages for your nonprofit? For example, are some carriers now excluding claims that they previously covered under the general liability policy? Have the underwriting appetites of your current carriers changed? Are there any additional companies that would or might be interested in providing coverage for your nonprofit?

### Eight Liability Coverages for Nonprofits

The paragraphs that follow explain the basic purpose of eight of the most commonly purchased liability policies. As you read this section keep in mind that:
• Insurance companies (carriers, “markets” and pools) often develop unique, or somewhat unique names for their custom policies; and

• Commercial insurance policies may be purchased as stand-alone products or grouped together in a package.

1. **Commercial General Liability (CGL)** — Most General Liability policies written in the U.S. use the standardized 16-page form drafted by Insurance Services Office, Inc. (ISO). ISO’s Commercial General Liability Coverage Form is commonly called the CGL. The form is designed to insure a wide range of commercial, industrial, and nonprofit operations and various types of claims. The three major components of the CGL are: bodily injury and property damage liability, medical payments coverage, and personal injury and advertising injury liability. The CGL promises to pay on behalf of the policy’s insured parties their legal liability for damages arising out of unintended injuries to non-employees and damage to the property of others. Usually such claims allege that the insured policyholder, through an employee or independent contractor under the policyholder’s supervision, has been negligent and their negligence has caused the injury or damage. The CGL’s promise includes investigation and defense.

2. **Directors’ & Officers’ Liability (D&O)** — D&O policies cover claims arising out of the management decisions of volunteer board members, officers, employees, and the organization itself. Many public officials view D&O coverage as one of their most important policies. This is not only because D&O insures current and past board members, but also because it is often a prerequisite to
attracting new board members. A further attraction is that many nonprofit D&O policies include coverage for the
direct liability of the corporation, so-called entity coverage.
There are no standard D&O policy forms or applications.
Each insurer writes its own, resulting in substantial
differences among insurers, perhaps greater than in any
other coverage field. Each form must be read closely to
ascertain the scope of insurance provided.

3. Employment Practices Liability (EPL or EPLI) — EPL
policies address claims alleging wrongful employment acts.
Entities with at least one paid employee are at risk of
claims potentially covered under an EPL policy. Some of
the most common claims defended by EPL policies are:
wrongful termination, employment discrimination, sexual
harassment, age discrimination, religious discrimination,
wrongful employment decisions that violate the Americans
with Disabilities Act, and illegal retaliation. EPL may be
purchased as a stand-alone coverage, or as part of a D&O
or other management/ professional liability policy.

4. Professional Liability (PL) — Sometimes called
malpractice insurance or errors and omissions insurance,
professional liability protects a nonprofit against claims
alleging errors and omissions in the delivery of professional
services. A growing number of government organizations
recognize the need for this coverage, including social
services agencies, health clinics, and more.

5. Sexual Abuse and Molestation — Sexual abuse and
molestation is a tragic societal problem that reaches a wide
variety of organizations, including nonprofits. Historically,
until the mid-1980s, coverage for sexual abuse claims who
not always addressed specifically within policies, thus leaving the policies open to interpretation. Policyholders would claim that their general liability policies provided coverage, while insurers disagreed. Today sexual abuse and molestation coverage can be proactively covered in a variety of ways: as a stand-alone policy form developed specifically to address this coverage, as a separate section of a package policy, or as an addon to a professional liability policy. All organizations that work with vulnerable clients should consider purchasing this coverage.

6. **Automobile Liability** — All nonprofits rely on the use of automobiles to some extent and may have legal obligations arising out of their use. Automobile accidents are one of the more obvious sources of liability claims typically from an employee or a volunteer driving an organization-owned vehicle. If employees or volunteers use their own vehicles in furtherance of the nonprofit’s activities, the nonprofit may have some secondary legal responsibility. Automobile liability insurance for nonprofits is provided by commercial policies that are quite straightforward and somewhat similar to personal automobile insurance policies. A complicating factor is that there are substantial differences state-to-state in the liability exposures and insurance requirements. For example, Michigan requires no-fault Personal Injury Protection coverage, while Illinois mandates legal liability coverage with minimal limits.

7. **Cyber Liability** — A growing number of insurers offer different forms of cyber liability coverage, but many policies address similar coverage areas. Cyber liability policies may include third party and first party coverages. Third party coverage protects the insured organization
against claims that arise from losses suffered by third parties, such as donors or clients. First party coverage protects the insured for its own losses. Examples of specific coverages available under a cyber liability policy include: notification expense coverage, crisis management, regulatory investigation expense, data breach liability, content liability, data loss & system damage (data restoration) coverage, and business interruption. For more information on this exposure and available coverage, see: Data Privacy and Cyber Liability: What You Don’t Know Puts Your Mission at Risk at www.nonprofitrisk.org

8. **Umbrella and Excess Liability Coverage** — This category of insurance includes high-limit legal liability policies intended to cover losses that are not fully insured by other policies, either because the dollar amount of the liability incurred exceeds the limits of the other liability policies, or because the nature of the loss is not insured by the underlying or lower limit policy. Umbrella Liability Insurance policies provide legal liability coverage for various types of injuries and property damage arising out of accidents that occur during the policy period. Umbrella policies provide additional dollar limits of coverage over and above the dollar limits of other liability insurance policies that are written with an accident/occurrence trigger. These other policies are often called primary policies and, with respect to the Umbrellas, underlying policies. Three common underlying policies are the CGL, Automobile Liability, and Employers Liability (Part B of the Workers Compensation Insurance policy). In the event that the per occurrence or aggregate limit of an underlying policy has been used-up or exhausted, an Umbrella policy
will effectively drop-down to afford additional limits up to the Umbrella’s maximum limit of liability. Of the three policies noted above, only the CGL has aggregate limits, but all have per occurrence maximum limits.

Excess Liability Insurance policies provide additional limits and drop-down coverage for the underlying policies that are identified in the policy. However, unlike Umbrellas, they can provide excess limits over policies written with a claims-made trigger. Thus, a nonprofit organization may have two policies providing additional limits above its primary policies: an Umbrella and an Excess Liability Insurance policy. Some insurers will provide a combined policy with Umbrella coverage and Excess Liability coverage over the claims-made primary policies.

**Four Property Coverages for Nonprofits**

1. **Building and Contents Coverage** — Nonprofits have many options for insuring owned or leased buildings, their contents, other personal property, and property that belongs to others but is used by the entity. Coverage is also available to offset the consequential financial impact generated by the loss of use of your property. It is important to identify and consider all these options and choose the ones that best fit your needs. It is important to know what you want before you begin. Today most property insurance for nonprofits is written in a package policies that combine property coverage with basic legal liability coverages. Most insurers offer premium credits for package policies. However, stand-alone property policies are still available and they can provide coverage as broad as is
available under package policies. In some cases a stand-alone property policy may be more comprehensive and preferable to a package. In general, the coverage available for nonprofit organizations is the same as that offered to corporate commercial accounts. Standard ISO basic policies describe “covered property” as:

- Buildings, their machinery, maintenance equipment, appliances, outdoor furniture, additions, and construction materials.
- The personal property, including furniture, leased property you are obligated by contract to insure, and, if you lease the premises, your interest in the alterations to the building and other “improvements or betterments,” and personal property of others over which you have control at or near your buildings.

2. Crime Coverage — A crime policy is generally a package of policies that protect an organization against intentional theft by insiders, as well as the theft of assets by third parties. The term fidelity bond is often used interchangeably with crime coverage. Technically, however, a fidelity bond also called an employee dishonesty bond— is actually just one component of a broader crime policy. In addition to the employee dishonesty component, a crime package may include: Forgery or alteration — Coverage for accepting forged documents when the forgery was committed by non-employees, and accepting a check from an imposter. It also provides a defense

"State workers’ compensation statutes typically mandate that the employer provide for the injured employee’s medical expenses,"
to a nonprofit for refusal to honor a document that it thinks is a forgery.

- Theft, disappearance and destruction—Broad theft coverage for any act of stealing committed by non-employees, both on and off the insured’s premises, with few restrictions.
- Robbery and burglary—Coverage for robbery of a night watch person, a custodian, or a courier going to the bank, and burglary from the premises or a safe.
- Computer fraud—Covers unauthorized transfer of money or other property (such as a proprietary mailing list) committed by non-employees from a computer inside the premises to a computer or printer outside the premises.
- Extortion—Covers the kidnap of a person by a non-employee with a threat of bodily harm unless a ransom is paid.
- Liability for another’s property—Offers protection against theft of a client’s property stored in a safe or safety deposit box.

3. **Workers’ Compensation**—When a nonprofit hires employees it takes on many new responsibilities, including potential legal liability for their on-the-job injuries. State workers’ compensation statutes typically mandate that the employer provide for the injured employee’s medical expenses, rehabilitation costs, and a portion of lost wages. While there are federally mandated minimums for these state programs, there is no uniform national law. Every state requires virtually all employers to provide workers’
compensation coverage. Exceptions are sometimes made for very small employers, and for domestic and agricultural workers. For example, Kansas exempts agricultural employers and those with gross annual payrolls of not more than $20,000. Insurance provided by private insurers follows the state law requirements and also provides additional coverage for any common law liability of the employer. Workers’ compensation insurance covers the entire scope of the state statute. Each state administers and oversees its workers’ compensation benefit program through a board or commission. However, most claims are resolved between the insurer’s claims adjuster and the injured worker, health service providers, a third party administrator retained by large employers, and the worker’s attorney, if one is involved. Employees who disagree with the assessment and evaluation of their claim by the claims adjuster can appeal to the state commission that adjudicates or arbitrates claims. Employers and workers can appeal these administrative decisions to state courts, but appeals are infrequent, as they must relate to the arbitrator’s interpretation of the statute and not to the underlying facts in the case.

4. **Business Interruption and Extra Expense** — Business interruption and extra expense policies reimburse an insured for the loss of net income plus expenses during a period when the insured cannot operate normally due to damage or destruction of property. For example, due to a fire at the headquarters building owned by a youth-serving entity, the organization is unable to host an after-school program that generates $10,000 in net income each month. The nonprofit incurs additional expenses to notify
the parents of participants as well as additional expenses to rent office space from which administrative operations can continue. Like other forms of coverage, business interruption coverage is based on the principle of indemnity, which provides that insurance should put the insured or damaged party in the same position as they were prior to the loss no better and no worse. Business interruption claims are somewhat difficult to resolve because they rely on projections of future income streams and expenses. As is true with other forms of property coverage, the insured nonprofit has the burden of substantiating its losses to the insurance carrier.

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Practical Pointers Series
Assessing Insurance for Land Trusts

None of us knows exactly what tomorrow will bring, but most of us — including most managers of nonprofit organizations — expect that tomorrow will be much like today. However, events that we cannot now fully foresee may, occasionally and with little warning, make a nonprofit’s tomorrow much different — much worse or much better — than it is today. Unpredictable events involving each of the four fundamental values of a land trust — its people, its property, its income and, perhaps most importantly, its reputation — may bring near disaster or good fortune.

Unpredictable events involve risk, which is a measure of the possibility that the future may be surprisingly different from what we expect. To fulfill its public service mission, land trust boards, employees and volunteers must manage risks effectively by countering threats of loss and leveraging opportunities for gain. A correctly tailored insurance portfolio is an effective way to help manage risk.

George Moore, president of the Lyme Land Conservation Trust (CT), realized the importance of an insurance portfolio when a dispute over the land trust’s very first easement brought the 44-year-old organization to court for the first time. The land trust practices sound stewardship of its 95 properties—including 64 easements and 400 acres of linked trails — and has the support of the community it serves. About half of the town’s 1,000 households are land trust members. With only a few staff, the organization’s 15 directors and about 40 additional volunteers do the work.

The organization tried engaging the new owner of a sensitive waterfront property to explain the conservation easement it holds on the property—as they had two previous owners. The owner repeatedly rebuffed the land trust and continued to repeatedly violate the easement by altering the property in ways contrary to the restrictions, so the land trust finally filed suit. Concerned that the community might lose faith in the land trust, George reached out publicly and explained its fiduciary responsibility to protect conserved land in perpetuity. That’s when the landowner sued him personally. Luckily, the land trust had directors and officers (D&O) insurance to cover the personal lawsuit. The case continues and costs are mounting. The land trust won decisively at the trial level but expects appeals.

The Lyme Land Conservation Trust joined Terrafirma. “Because of our experience, we are more acutely aware of the need for this program than most land trusts might be,” says George. “We believe this isn’t unique to us and it won’t be going away.” You can be as prepared as the Lyme Land Conservation Trust:

1. **General Liability Insurance.** Most experts recommend a minimum of $1 million in general liability, although $2 million or more may be better for most groups, depending on your exposure. Find a local insurance agent to advise you on the prevailing conditions in your area. Even in rural areas, you can be influenced by urban prices.

2. **Directors and Officers Insurance.** Experts are adamant that every nonprofit, regardless of size or location, must have D&O coverage. Land trust boards make judgment calls all the time, and their liability is commonly not covered by general liability insurance. Another way for individuals to cover the cost of personal lawsuits is to purchase personal liability
insurance as an addendum to a homeowner’s policy. Personal Liability Umbrella Policies (PLUPs) can expand coverages, as well.

3. **Volunteer Coverage and the 1997 Federal Volunteer Protection Act.** Know your rights! If your volunteers act in accordance with an established policy, they may be protected by statute, but a volunteer insurance rider still helps. The Learning Center.

4. **Title Insurance.** We strongly recommend obtaining title insurance for all purchases of fee-owned land and conservation easements.

5. **Terrafirma Risk Retention Group LLC.** The Land Trust Alliance formed Terrafirma Risk Retention Group LLC in 2011 to help land trusts defend their conserved lands from legal challenge. Terrafirma provides a significant protection from risk not covered by other insurance. Learn more at www.terrafirma.org.

6. **Risk Management.** Get an insurance coverage evaluation from your carrier, broker or a consultant. The Non-Profit Risk Management Center also offers this service. Ask for Melanie Herman. http://www.nonprofitrisk.org/consulting/insurance-reviews.shtml.

**RESOURCES**

- **Terrafirma Risk Retention Group LLC**, conservation defense liability insurance only for private land conservation organizations and solely owned by the 476 insured member land trusts from 46 states in America, insuring more than 7.2 million acres of conservation land. www.terrafirma.org
- **Conserv-A-Nation®**: Covers approximately 500 Land Trust Alliance members. Coverage includes a basic program – general liability, non-owned and hired auto liability, volunteer, crime and property. Offered by Alliant Insurance Services, Inc., the package is suited to land trusts at competitive prices to Land Trust Alliance members.
- **Other insurance companies** serve the non-profit sector. You can find a list on the Conserve-A-Nation® page.
- The Land Trust Alliance’s A Guide to Risk Management for Land Trusts has many tips and lists that show how to manage risk. Click on the title to get to The Learning Center where you can download a free PDF.
- **A FREE affiliate membership with the Nonprofit Risk Management Center** for Alliance members. Log on as an Affiliate of the Land Trust Alliance. See directions.
- **Risk management collection on The Learning Center.** This site has a collection of resources specifically chosen to help you manage risk at your land trust. If you haven’t been there in a while, we have posted some new resources, including an emergency succession-planning template.
- **Recordkeeping and document management is key.** A successful nonprofit is a well-managed organization. Learn how to manage risk through good records: Recordkeeping 101.

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Last revised April 8, 2015
Evaluating Your Land Trust’s Insurance Needs and Obtaining Proper Coverage

It is well worth the time required to evaluate an organization’s insurance needs before purchasing coverage. This fact sheet provides insight on key factors in this process, as well as the need to determine the goals of an insurance program at the outset. Examining the factors and establishing goals are important precursors to obtaining appropriate coverage.

The following checklists provide tips and suggestions for purchasing coverage and working with an insurance intermediary.

What to Do When Purchasing Insurance

- Find a competent insurance professional (broker or agent) whom you trust to advise you on insurance matters and act as your advocate in the insurance marketplace
- Ask your insurance agent or broker to disclose how they are compensated and also the amount of compensation he or she receives for work on your behalf
- Take the time to read your insurance policies
- Investigate the financial stability of your insurers
- Ask your broker or agent to respond in writing to your questions
- Consider seeking multiple bids for your insurance coverage at least every four to five years
- Give thoughtful consideration to how much risk your land trust can afford to retain
- Provide your board of directors with a copy of the actual policy language for the land trust’s directors and officers liability policy
- Provide a periodic briefing on your insurance program to the land trust’s board of directors

What Not to Do When Purchasing Insurance

- Delegate responsibility for your insurance program to a junior staff member or new volunteer
- Simply renew your coverages each year without considering whether your coverage needs have changed
- Wait until the last minute to submit completed applications
- Be evasive about your operations and exposures on your application
- By shy about asking questions concerning your coverage or the process
- Regard your insurance coverage as the equivalent to a risk management program

Tips for Working with Your Insurance Professional

- Provide prompt, clear, concise answers to questions
- Expect your quote in a timely manner
- Ask questions and expect understandable answers
- Give your broker at least 30 days notice, if possible, regarding any and all policy changes
- Get important answers in writing
- Don’t withhold information from your broker
- Report claims to your broker immediately and be prepared to give detailed information regarding the claim
Insurance Professional Services/Responsibilities
The following list indicates some of the services an insurance professional might provide to a nonprofit client. The leaders of your land trust must decide which services it requires or views as desirable.

- Provide complete and accurate information to the insurance carrier on behalf of the insured, including signed applications and updated information at renewal.
- Remit down payments and balance payments to the insurance carrier in a timely fashion.
- Arrange financing, if requested by the insured member.
- Help the insured with compliance with safety recommendations.
- Complete Certificates of Insurance and request Additional Insured endorsements, as required by funding sources, landlords and so forth.
- Review all contracts for the insured with respect to insurance requirements. Forward unusual contractual obligations to the insurance carrier for review and comment.
- Be available to answer questions regarding the insurance contract.
- Report claims and coordinate claim adjusting with the insurance carrier.
- Be available to participate in the land trust’s risk management committee, if requested.
- Be available to attend at least one of the land trust’s board meetings per year, if requested.
- Present an appropriate insurance package to the land trust for its review and decision.
- Serve as a source of information for his or her clients in regards to insurance questions.
- Maintain a complete insurance file for the insured nonprofit. As the insured, you should keep a copy as well.
- Maintain continuing education and proper licensing status at all times.

How to Save Money on Purchasing Insurance

1. Exercise caution in claims reporting. Your land trust’s premiums will increase and you will ultimately find it harder to obtain coverage if you have more claims or larger claims than similar organizations. Therefore, it pays to try to limit your claims and manage any claims you do file with care. Make certain you understand the process and requirements for claims reporting. The failure to report a claim or a potential claim can put coverage in jeopardy. Speak with your agent or broker about whether an incident should be reported to one or more carriers. On one hand, reporting incidents ensures that you don’t violate the requirement for timely claims reporting. On the other hand, reporting too many incidents that never evolve into claims for damages could be interpreted as a red flag by your carriers and lead to a nonrenewal of coverage when the policy expires. Be sure you understand the consequences for reporting or failing to report potential claims.

2. Make a positive impression. Complete all applications in full. Ask your agent or broker for assistance, as needed. Be prepared to explain any discrepancies between your land trust website and information included on your applications for coverage. Answer follow-up questions from underwriters as promptly and completely as possible. If applicable, request the opportunity to review your claims history reports before submitting renewal applications. Finally, provide detailed information on loss control initiatives and risk management if your land trust has filed a claim during the five-year period prior to policy renewal. Be knowledgeable about your risks and management plan.

Know what amounts of coverage and deductible to obtain

It is essential to assess your organizational risks and get the proper insurance coverage. Selecting limits and deductibles begins with determining the risk appetite and tolerance of the organization. Each type of insurance has certain coverage amounts that affect your organization. Remember that if you do not have enough coverage, then you will pay the balance of a loss out of the organizational operating funds or you will have to fundraise or (worse) be forced to sell unrestricted assets. The amount of coverage you require under general liability insurance depends on many factors. The most important factors that determine the amount of coverage you need to carry are:
Risk associated with your organization. The higher the perceived risk, the higher the coverage required to meet it.

The type of work your organization does. If you have many volunteers, open your land to school groups, have many special events and use lots of equipment for land management, then your organization may be exposed to more risk and require more and more varied coverage.

The state in which your organization is located. Does the state in which you operate shows a history of awarding high damage amounts to complainants? If the answer is “yes,” then it makes sense for you to carry higher coverage limits. You might also look at current trends of awards in each of the insurance areas you are purchasing. Are most of the awards around $1 million? Much more? Less? In current dollars, $1 million does not often cover both the legal and expert expenses and any damages award.

The value of your property. For property, obtain a professional appraisal of any buildings, equipment and other inventory, then determine the replacement value to arrive at the needed coverage and remember the deductible as you will need that in cash. You should assess this information annually. Be sure to consider your intangibles, as well, such as software for computers and the data in the computers, such as your donor database.

Deductibles are typically used to deter large numbers of trivial claims of which an organization can reasonably be expected to bear the costs. This is also often called the self-insured retention or retained risk. By restricting its coverage to events that are significant enough to incur large costs, the insurance firm expects to pay out slightly smaller amounts much less frequently, incurring much higher savings. Determining the right deductible for your organization requires a clear assessment of the likelihood of the occurrence of a loss plus the magnitude of the loss. Depending on the reason for the insurance, you will not want to pay more in the deductible than the property is worth, which is another reason to revisit coverage annually as you depreciate the value of equipment and vehicles.

Ask for Help
You have a FREE Affiliate membership with the Nonprofit Risk Management Center just for Alliance members. The free and discounted risk and insurance resources available to you are amazing. Take advantage of this Alliance member benefit funded just for you! Log on FREE to the Nonprofit Risk Management Center as an Affiliate of the Land Trust Alliance. See directions

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Last revised April 8, 2014
Practical Pointers Series

Commonly Purchased Insurance

There is no set formula for the amount of insurance coverage for a land trust or an actuarial table for appropriate limits of liability and deductibles. Land trusts frequently purchase these coverages:

- General liability or commercial general liability
- Directors and officers (D&O) liability
- Fidelity or dishonesty coverage
- Employment practices liability
- Professional liability
- Non-owned automobile liability
- Property coverage
- Excess and umbrella liability
- Volunteer accident coverage
- Workers compensation
- Title insurance
- Terrafirma: Conservation Defense Liability Insurance Service

How various insurance coverages fit together

General liability insurance covers claims alleging bodily injury or property damage. Directors and officers insurance covers claims alleging wrongful management decisions by board and staff. Unpaid directors of land trusts may have some coverage under individual homeowners or personal liability umbrella policies, but the protection is limited to the individual and offers no defense and indemnity for the land trust. General liability and D&O often will not cover for losses associated with embezzlement, fraud or other dishonesty.

Title insurance generally excludes issues on the ground, unless the survey exception is removed, and landowner compliance with a conservation easement. Title insurance compensates the land trust if actual title to (ownership of) the conservation easement is challenged or if the legal description is disputed, subject to the survey exception. These insurances will not pay for a land trust to sue someone; traditional insurance only pays to defend the land trust if sued under certain circumstances. Terrafirma Risk Retention Group LLC provides coverage when a land trust must sue or is sued regarding conservation rights.

General Liability and Commercial General Liability

General liability insurance policies typically cover an organization’s exposure for bodily injury and property damage caused by an accident, except for specifically excluded liabilities.

Commercial general liability coverage is an expanded form of general liability that adds:

1. Personal and advertising injury liability (referred to as Section B), which provides coverage for claims that do not involve bodily injury or property damage and are not the result of an accident. This category of coverage refers to claims alleging:
   - False arrest, detention or imprisonment
   - Malicious prosecution
   - Wrongful eviction or entry by a landlord
- Libel, slander or disparagement of an organization
- Invasion of privacy through spoken or written statements
- Unauthorized use of an idea in advertising
- Infringement of copyright, product image or slogan in advertising

2. Medical expense coverage (referred to as Section C).

Regardless of the specific general liability policy, general liability won’t cover:
- Emotional distress, unless arising from bodily injury
- Financial loss, unless arising from bodily injury or property damage
- Property damage to intangible property (such as information stored on a computer network)

Common exclusions in Section B of the commercial general liability policy include:
- Liability of insureds in the business of advertising, broadcasting, publishing, website consulting or internet services. These entities purchase personal and advertising injury coverage in their professional liability coverage. Not an issue for most land trusts, but social media and smart phone applications may trigger a need to consider this coverage.
- Liability for employment practices (personal injury liability for employment practices is included under most nonprofit D&O liability policies).

### Typical Coverage Sections in a Commercial General Liability (CGL) Policy

- **Coverage A – General Liability** - “Bodily Injury and Property Damage.”
- **Coverage B – Personal and Advertising Injury Liability** - Expands CGL coverage beyond bodily injury and property damage, covering common liability exposures.
- **Coverage C – Medical Expense** - Covers accidents arising from the insured’s premises or operations, regardless of the liability. Coverage C reimburses expenses for minor injuries, reducing risk of a lawsuit. The standard limit is $5,000 per person.

### Commercial General Liability Policy Limits

- **General Aggregate Limit (Other than Products-Completed Operations)** – the maximum payable in the policy term for all claims other than Products Liability and Completed Operations Liability
- **Products Liability - Completed Operations Aggregate Limit** – the maximum payable for liability for products the organization manufactures or sells, or liability arising from construction or repair work the organization has completed
- **Personal and Advertising Injury Limit** – the maximum payable for Coverage B under the Commercial General Liability policy
- **Each Occurrence Limit** – the maximum payable for any one claim
- **Fire Damage Limit** – the maximum payable for fire damage to the portion of a landlord’s building that the insured organization occupies
- **Medical Expense Limit** – the maximum payable for Coverage C

All the limits described above are *in addition to* defense costs available under the policy.
**Directors and Officers (D&O) Liability**

These policies cover economic damages resulting from errors or omissions in governance or management. A nonprofit D&O policy covers liability claims, unless specifically excluded. General liability and D&O policies, therefore, are intended to be mutually exclusive — they do not cover the same liabilities.

### Similarities in Commercial General Liability and D&O Policies

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<tr>
<th>Commercial General Liability</th>
<th>Directors &amp; Officers Liability</th>
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<tbody>
<tr>
<td>Covers liabilities common to all nonprofits, including land trusts.</td>
<td>Covers claims alleging wrongful management acts that are common to all nonprofits.</td>
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<tr>
<td>Provides broad catch-all or basic liability coverage. Other liability coverages are more specific and narrower in scope.</td>
<td>Provides broad coverage for wrongful management acts.</td>
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<tr>
<td>Includes all board members, employees and volunteers as insureds.</td>
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### Key Differences between Commercial General Liability and D&O Policies

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<th>Commercial General Liability</th>
<th>Directors &amp; Officers Liability</th>
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<tr>
<td>Covers bodily injury, property damage and personal and advertising injury.</td>
<td>Always excludes bodily injury and property damage.</td>
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<tr>
<td>Covers accidents only. Claims usually arise directly from operations rather than governance (management decisions).</td>
<td>Covers wrongful acts. Claims usually arise from governance or management decisions. Board members, management and the organization itself are often defendants and are listed under a broad definition of insured in the policy.</td>
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<tr>
<td>Most often sold to nonprofits as an “occurrence” policy. The coverage trigger in this policy form is the date of the event, accident or occurrence.</td>
<td>Most often sold to nonprofits as a “claims-made” policy. In a claims-made policy, the coverage trigger is the date the claim was made against the organization. A lawsuit is likely to be filed or “made” many months after the events occurred.</td>
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<td>Standard policy wording. Most insurance carriers use one of the forms issued by the Insurance Services Offices (ISO). The form number and ISO reference appear at the bottom of each page of the policy.</td>
<td>Nonstandard policy wording. Each insurer drafts or “manuscripts” its own D&amp;O policy forms. Differences in wording and policy structure make it difficult to undertake a side-by-side comparison of coverage, a key to determining which provides better or preferable protection for the insured.</td>
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### Crime Coverage or Fidelity Insurance

Fidelity insurance provide coverage for employee theft, forgery, fund transfer fraud, computer fraud, money order and counterfeit currency fraud and credit card fraud, as well as costs to investigate a loss. Fidelity insurance protects organizations from loss of money, securities or inventory resulting from crime. Common claims allege dishonesty, embezzlement, forgery, robbery, computer fraud and wire transfer fraud. Crime-related losses are not typically covered by most property insurance policies, so crime protection insurance is an additional component for any business.
**Employment Practices Liability (EPL) Insurance**
Claims alleging wrongful employment practices may arise from the Civil Rights Act of 1991 and the Americans with Disabilities Act (ADA). Purchasing a D&O policy with coverage for employment-related claims makes sense because the claims risk is high. EPL coverage is available as a stand-alone policy but may not provide the depth of coverage that a nonprofit D&O policy with EPL coverage may include. Many stand-alone EPL policies do not include the organization, all employees or volunteers as insureds, and the definition of covered employment actions may be narrower. Finally, a stand-alone EPL policy may be more expensive and include a large retention or co-insurance provision in which the insured must pay a percentage of the loss.

**Professional Liability Insurance**
Professional liability insurance, also “errors and omissions liability insurance” or “malpractice insurance,” covers liability for the higher standard of care required of professionals providing services in their area of expertise. Professionals must possess and demonstrate the same expertise and competencies common to members in good standing of their profession. A professional liability policy may not cover all your land trust’s professional exposures. Professional liability formats have varying levels of coverage. The policy and its exclusions must be compared with the services provided. Read your policies and seek professional advice. This coverage often is very expensive.

**Non-Owned Automobile Liability**
Non-owned automobile liability insurance covers accidents caused by an employee or volunteer driving a personal vehicle for a nonprofit. Coverage protects the nonprofit—not the employee or volunteer. Coverage applies when liability limits of the owner’s personal auto policy are exhausted.

**Property Coverage**
Most land trusts purchase property insurance. The coverage depends on types of property that may be damaged and causes for the damage. To collect under a property policy, covered property must be damaged by certain causes of loss. Most policies cover all causes, except those specifically excluded (for example, nuclear war), but some policies only cover damage caused by specific causes, such as fire, lightning, wind, water or objects falling from the sky. Many policies do not cover significant catastrophes that affect a wide geographical area, such as floods or earthquakes.

**Excess and Umbrella Liability**
Liability insurance provides either primary or excess coverage. Primary coverage is the first to respond to covered claims. When primary policy limits are exhausted, the excess policy is triggered and provides additional coverage for defense, judgments and settlement expenses. Excess policies follow form, which means that they mirror terms and conditions in the underlying policy. They do not cover claims excluded by the primary policy. Some coverages, such as excess auto liability, include excess in their names and are easy to identify. Excess coverage is often inexpensive.
**Volunteer Accident Coverage**
Although permitted in some states, including volunteers in a land trust’s workers compensation coverage is expensive. Land trusts may purchase volunteer accident coverage, providing medical reimbursement up to a defined limit but not income replacement. A typical policy offers no-fault coverage if a covered individual is injured while serving a nonprofit organization. Accident medical reimbursement coverage (also known simply as *accident coverage*) can also be written to cover volunteers and participants. A volunteer accident policy does not cover the organization itself; however, coverage may dissuade an injured volunteer from suing the land trust.

**Workers Compensation**
Workers compensation covers employees, their survivors and organizations that purchase it for their workers. Coverage A (or Part One) eliminates the need for injured workers to sue their employers to obtain payment of medical costs associated with work-related injuries or illnesses. Coverage reduces, but does not eliminate the risk that the employer will face a liability claim from an injured worker. Coverage B (or Part Two) provides employers with liability protection for liability claims that are narrowly allowed by statute. Workers compensation laws vary widely between states.

**Title Insurance**
Title problems may occur that could not be found in public records or are inadvertently missed in the title search. An owner's policy of title insurance insures against the most unforeseen problems in acquiring conservation easements or fee-owned land. Owner's title insurance, called an *owner's policy*, is usually issued in the purchase amount (or value, if a donation). It is purchased for a one-time fee at closing and lasts as long as you or your successors have an interest in the property.

**Terrafirma: The Conservation Defense Liability Insurance Service**
The Land Trust Alliance formed Terrafirma Risk Retention Group LLC in 2011 to help land trusts defend their conserved lands from legal challenge. Terrafirma provides a significant protection from risk not covered by other insurance. Terrafirma is a charitable risk pool with tax-exempt status under the Internal Revenue Code. Learn more at [www.terrafirma.org](http://www.terrafirma.org).

Adapted from *A Guide to Risk Management for Land Trusts*, The Land Trust Alliance 2014

See the helpful Annual Insurance Analysis Grid on the next page for you to complete with your agent and board.

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Practical Pointers Series
DIRECTORS AND OFFICERS INSURANCE

When someone sues a land trust, sometimes the challenger sues the land trust’s directors and officers too. Everyone may need legal defense even when no one did anything wrong. In most cases, board members will look to the land trust to protect them by paying for their legal defense and for any fines or judgments incurred in the course of serving the land trust.

Directors and officers (D&O) insurance covers liability for actions of the land trust board and staff and protects the land trust, something that an individual board member’s own homeowners insurance will not do even if it has some protection for volunteer service. A good policy covers the corporation and volunteers. Some board members will not serve without D&O insurance, and if a land trust indemnifies its board members from liability, it needs this insurance to cover its potential risk. On the positive side, having good D&O coverage is a great recruitment tool. Finally, many D&O policies may include Employment Practices Litigation (EPL) coverage and that is an important reason for any land trust with employees to have the coverage.

D&O insurance covers liability for “wrongful acts,” such as:
- Poor business judgments
- Errors, omissions and misstatements
- Negligent acts
- Breaches of duty
- Interference with another’s business
- Conflicts of interest
- Fraudulent conduct
- Violations of statutes
- Failure to file statutorily mandated reports
- Financial mismanagement
- Misuse of donated funds
- Co-mingling of special funds
- Discrimination
- Sexual harassment
- Wrongful termination

Coverage Under Homeowners Policies
Unpaid board members of land trusts may have some coverage available under their individual homeowners or personal liability umbrella policies. Personal Liability Umbrella Policies (PLUPs) can expand coverages, as well. These policies generally limit coverage to the individual board member (not the land trust) and are not a substitute for either general liability or D&O insurance for the land trust. Each board member should consult with his or her own insurance company to determine if there are situations in which their individual policies might provide coverage because not every homeowner policy has this coverage.

Insured Versus Insured Exclusions
D&O policies usually have some form of “insured versus insured” exclusion. This means that, with some exceptions, the policy does not cover claims by board members (even former board members)
against other board members, or by the land trust against its board members (past or present). Because all present and former officers and board members are insureds, the “insured v. insured” exclusion can bar coverage of any claim by any former board member against any other board member, even if the claim has nothing to do with the former board member’s period of service.

**Technical Issues with D&O Policies**

The language found in most D&O insurance policies explicitly states that:

- It is your responsibility, not the insurer’s responsibility, to defend the claim
- You must still get approval from the carrier prior to incurring any costs
- The carrier must approve of the law firm you intend to engage even though the insurer has no obligation to provide you a defense

**Reasonable and Necessary**

Most policies define defense expenses as “reasonable and necessary legal fees and expenses.”

- Carriers will usually advise you of the maximum hourly rate they will pay
- Many carriers also will give you guidelines on what they consider reasonable expenses
- Failure to follow payment guidelines may automatically disqualify you from coverage

**Hint:** You can use the insurance company’s payment guidelines when reviewing your attorney’s invoices so that you can challenge inappropriate charges.

**Defense within Limits**

Unlike general liability policies, D&O insurance policies have “defense within limits provisions,” which reduce the policy’s coverage limits. This means that the payment of the attorneys’ fees and other costs reduces the amount available to pay any damages awarded if your land trust loses the case.

**Do Your Homework!**

D&O policies are very different from the standard general liability policy and can vary substantially among carriers. Be sure to understand and follow the policy terms.

**RESOURCES**


Nonprofit Risk Management Center, Affiliate membership through membership in the Land Trust Alliance. Click on the live link in the Conservation Defense Clearinghouse. The link is the Center’s logo:

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Last revised April 8, 2015
Sometimes title problems surprise everyone. Perhaps a defect is not in the public records, or maybe the title examiner accidentally missed a mortgage in the title search. Maybe everyone involved made a simple error with big consequences. Even a typo can do that. An owner’s title insurance policy helps your land trust respond to unforeseen problems and get the transaction details right at the start.

What it is
1. Fraud happens, but the more common reason to get an owner’s policy is to catch the simple and normal errors, such as a recent new second mortgage or a line of credit that isn’t subordinated, or a new estate planning entity that changes the name of the legal owner.
2. A land trust acquiring a conservation easement or land in fee can get an “owner’s policy” for its interest in that property.
3. Only an owner’s policy fully protects you for undiscovered title problems and other errors.
4. An abstract of title is not enough. A title update to cover the time between the last title report and the closing is essential. Title insurance covers that for you and alerts you to late changes.
5. The title company will help pay valid claims and may cover the costs of defense of the title.
6. Possible hidden title problems can include:
   a. Errors or omissions in deeds
   b. Mistakes in examining records during title search
   c. Forgery of a signature on a deed in the chain of title
   d. Mortgage holder fraud, forgery or false information
   e. Undisclosed heirs with a claim to the property
   f. Potential boundary issues, encroachments, adverse possession
   g. Fraud and bankruptcy claims that the deed defrauded creditors

What it costs
7. A one-time premium covers you for as long as you have an interest in the property.
8. Buying a nominal amount rather than the full property value may allow the carrier to pay the value of the policy, releasing the company from the obligation to defend an expensive dispute. You get money, but lose your title. And the money may not be sufficient to offset the lost conservation values, time and costs and public perception of your competence.
9. Receiving an owner’s policy isn’t an automatic part of the closing process; you order and pay a premium for the policy as part of the closing, typically based on the fair market value of the interest insured. You can buy inflationary protection as well.

What it does
10. A standard owner’s policy normally insures the known title as it appears in the public records and such hidden defects as forged documents, conveyances by incompetent grantors, incorrect marital statements and improperly delivered deeds.
11. An owner’s policy will reveal any senior liens or encumbrances that if foreclosed upon, can eliminate your interest; it will guarantee the effectiveness of subordinations.
12. The policy generally does not protect against certain named “uninsurable” losses, listed as exclusions or exceptions.
13. Be sure that the carrier does not list your conservation easement or conservation restrictions on the exceptions to coverage, usually called Schedule B.

14. For an additional premium, title carriers offer hundreds of possible other coverages by endorsement to their policies, which can cover losses from zoning ordinances, restrictive covenants, easements, encroachments, setbacks and other known existing problems. Most carriers exclude water and mineral rights.

15. Investigate what it might cost to buy an enhanced policy, usually an American Land Title Association (ALTA) policy, or even an Owner’s Extended coverage “Eagle” policy. It provides additional (although typically limited) coverages for post policy challenges to title that involve on the ground verification or fraud claims.

Checklist for selecting a title company
1. The title company’s approach to insuring risk is reasonable and they understand conservation
2. References/referrals checked; years in business; fees and premiums
3. Requirements to obtain enhanced coverage
4. Ask what title company services are included: drafting deeds and other legal documents; acting as escrow agent to hold money and documents pending closing; acting as a closing agent; ordering the title commitment or title report

What happened to one land trust
A land trust accepted a conservation easement that the landowner mistakenly signed as an individual instead of as the owner of the limited liability company to which he previously conveyed the property. The landowner owned 99 percent of the limited liability company. His wife owned the other 1 percent. If the land trust had obtained a title insurance policy, the updated title review would have detected the mistake early, and the parties could have corrected the mutual mistake immediately. Even if they missed it then, title insurance would have covered the costs to win the case to invalidate the easement by the successor owner. Fortunately, the court held that a conservation easement that mistakenly referenced an individual, as opposed to a limited liability company created by the individual, as the easement grantor is still valid, but the land trust had to pay the costs to win.

RESOURCES


Nonprofit Risk Management Center affiliate through membership in The Land Trust Alliance. Click on the live link in the Conservation Defense Clearinghouse. The link is the Center’s logo:

DISCLAIMER

The Land Trust Alliance furnishes materials as tools to help land trusts. The Land Trust Alliance is not engaged in rendering legal, accounting or other professional counsel. If a land trust requires legal advice or other expert assistance, seek the services of competent professionals. The Land Trust Alliance is solely responsible for the content of this series.

Last revised April 8, 2015
Data Privacy Risks
Data breach threats come from many sources: an employee falls prey to e-mail phishing; a laptop vanishes from an employee’s car; a disgruntled employee leaves with donor credit card numbers and more. Unintentional privacy breaches, such as information lost, stolen or accessed by an unauthorized source regardless of where the data is stored, can be just as costly as the more notorious hacker data theft. The device—and all the vital data on it—could be damaged, lost forever or fall into unscrupulous hands. These common activities can lead to potential liability:
1. Conducting e-commerce, especially collecting credit card data and processing payments online
2. Storing and transferring employee, client or donor data—both electronic and paper
3. Storing personal information on laptops, smartphones, pads, thumb drives or external portable drives without proper safeguards
4. Remote workers with sensitive data on remote hard drives and mobile devices
5. Allowing partners and/or vendors to access personal information without proper safeguards
6. Storing personal information on cloud servers or systems

Who Do You Call?
Something every leader must know is who to call first if you believe a breach may have occurred. The first call should always be to your attorney; make sure you have one on call. The second call should be to your insurance broker, claims manager or carrier directly. Be careful not to bring in outside assistance until you speak with your attorney and notify the insurance company, or you risk negating coverage. Counsel can assist you in evaluating the risks and the scope of coverage offered under cyber policies as well as risk mitigation.

Cyber Liability Insurance Basics
One strategy to address these risks is cyber insurance. An experienced broker can identify the insurers who offer the product most suited to your company’s needs and help negotiate favorable terms and price. Working together, a team including your broker and outside counsel can ensure that you purchase the right coverage with appropriate terms and conditions. As with any insurance available to your nonprofit, it’s important that you understand what it covers, when coverage is triggered and what proactive or responsive risk management support is available. Most cyber insurance has the option to include six key coverage areas:
1. **Data Loss and System Damage.** Your current property policy covers damage to the computer itself—but not the data stored on it.
2. **Business Interruption.** Loss of revenue from downtime after a hack, denial of service or virus causes a temporary or long-term shutdown in your operations.
3. **Notification Expenses.** Almost every state has notification requirements—your company must disclose any breach to parties whose private information was, or is reasonably believed to have been, acquired by a person without valid authorization.
4. **Perception Management.** You’ve experienced a security breach, been out of business for a week and notified thousands of clients, vendors and others of the breach; now you need to
address the public to minimize the damage to your brand. This is typically wrapped into crisis management expenses (or the carrier equivalent), which may also include cost for breach coach, computer forensics, call center, credit monitoring and so on.

5. **Content Liability.** Anything associated with the content of your website, blog or other web presence from copyright and other IP claims to slander to invasion of privacy.

6. **Regulatory Investigation Expense.** With the new notification laws having been enacted and privacy legislation constantly changing, there is always the chance that you could get a knock on the door from a friendly civil servant. Most traditional policies exclude governmental or regulatory investigation costs. Make sure your cyber policy includes it.

7. **Extortion.** Coverage for extortion is usually offered, so be sure to ask for that option to cover attacks such as ransomware and other acts to extort money or other valuable assets.

First-party coverage protects the insured for its own losses to its own data or lost income or for other harm to the organization’s business resulting from a data breach or cyber attack. Third-party coverage protects the insured organization against claims that arise from losses suffered by third parties, such as donors or clients, from a data breach or cyber attack. This list has some of the coverages that may be available through a cyber liability policy.

Typical first-party coverage available include the following:

- Business interruption covers lost income and related costs where a policyholder is unable to conduct business due to nonphysical covered cause of loss, such as: loss of revenue during the downtime after a hack, denial of service, damage to systems or data caused by a virus.
- Extortion coverage for the costs associated with the investigation of threats to commit cyber attacks against the policyholder’s systems and for payments to extortionists who threaten to disclose sensitive information or who ransom your data, software or hardware.
- Computer data loss and restoration covers physical damage to, or loss of use of, computer-related assets, including the costs of retrieving and restoring data, hardware, software or other information destroyed or damaged as the result of a cyber attack.

Typical third-party coverages concerning a cyber event and the response include the following:

- Crisis management and public relations expenses incurred to educate donors and customers, including the cost of advertising.
- Forensic investigation covers the legal, technical or forensic services necessary to assess whether a cyber attack has occurred, to stop the attack and to assess the impact but is usually covered under crisis management.
- Notification costs for donors, customers, employees or other victims.
- Credit and fraud monitoring or other related services to persons.
- Litigation and regulatory covers the costs associated with civil lawsuits, judgments, settlements or penalties resulting from a cyber event.
- Regulatory response covers the legal, technical or forensic services necessary to assist the policyholder in responding to governmental inquiries and provides coverage for fines, penalties, investigations or other regulatory actions.
- Theft and fraud, destruction or loss of the policyholder’s data and transfer of funds.
- Media liability provides coverage for copyright, trademark or service mark infringement resulting from online publication by the insured.
- Privacy liability coverage for liability to employees or customers for a breach of privacy and to defend your nonprofit against legal claims brought by a stakeholder who suffered, or has the potential to suffer, a significant financial loss after its personal data was compromised.
A typical suit alleges that your nonprofit negligently failed to protect the personal information and that its loss was directly attributable to your negligence.

- Content liability offers financial protection related to the content of your website, blog or social media sites ranging from copyright infringement and intellectual property claims to invasion of privacy or personal media injury (defamation, slander, libel) via electronic content. Some insurers refer to this coverage as “website liability.” Many nonprofits choose to cover content liability exposures under another policy, such as a media liability policy.

- Data loss and system damage (or data restoration coverage) maybe covered under your current property policy and may cover damage to computers you own, but traditional property policies do not cover the cost to restore, rebuild or recover the data stored on computers. Some policies also include coverage for the process used by an expert to assess the scope of the damage, although this is usually covered in crisis management.

These coverages are not equally available and premiums can vary widely. Some carriers have underwriters with knowledge and experience regarding cyber losses, while other carriers do not. The limits of liability purchased by U.S. organizations vary widely. Chubb Group reports that the average policy limits purchased by its clients are between $1 million and $5 million.

Recommendations for Buying Cyber Insurance

Identify Your Unique Risks. The first step is to understand the nature and the extent of the risks facing your organization. For some many nonprofits, the primary concern is the theft of personal financial information. Tailor coverage to the risks that you face.

Understand Your Existing Coverage. Your organization’s standard insurance policies may provide some protection from cyber risks, and it is important to understand what coverage, if any, may be available under your existing policies. Then you can purchase what you need.

Match Your Insurance to Your Risks. After you understand your organization’s risks and what coverage your existing policies provide, the next step is to evaluate the various types of coverage offered in the marketplace. Some types may be essential; other types will be less necessary. Adding to the complexity, more and more carriers are offering cyber insurance as an additional coverage in existing policies, such as professional liability policies. It is important to consider all of the options and buy only what your organization needs.

Buy Enough Coverage. But you still need to assess the value of cyber insurance compared to the anticipated costs of a data breach with limits of liability available and the related costs. The costs of responding to a data breach can be substantial. You should also evaluate the risks you have of being subject to cyber attack or incurring a data breach. If risks are low and costs are high, that may indicate limited need. Estimates vary, but the 2016 Ponemon data breach study reported that the average data breach in the United States cost $158 per record.

Beware of Exclusions and Sublimits. Coverage for a loss or claim may depend on the language in policy exclusion or a sublimit as opposed to the language in the grant of coverage. Policy language is not standardized. Policies may contain exclusions that have been cut and pasted from other insurance forms, and the exclusion may not apply. Negotiate with the insurer, or seek other quotes. Most cyber insurance policies also impose sublimits, such as for crisis-management expenses, notification costs and regulatory investigations. These sublimits are often inadequate, but negotiate the size of the sublimit, and with no increase in premium.
**Negotiate for an Early Retroactive Date.** Because breaches may be undetected for some time, purchase coverage with the earliest possible retroactive date. Cyber policies sometimes restrict coverage to breaches or losses that occur after a specific date. This may be the inception date of the policy so there would be no coverage for breaches that occurred before policy inception.

**Consider Coverage for Acts by Third Parties.** Many organizations outsource data processing or storage to a third-party vendor, so obtain coverage for claims that arise from misconduct, negligence or simple loss by one of your vendors including cloud storage.

**Evaluate Coverage for Data Restoration Costs.** Many cyber insurance policies do not provide coverage for the costs to replace, upgrade or maintain a breached computer system. Data-restoration costs can be high so obtain coverage for the costs of restoring the organization.

**Involve All Stakeholders.** As you consider the purchase of cyber insurance, be certain to involve all the constituencies within the organization, including information technology, finance and risk management, so that you are more likely to purchase the right policy with the right limits.

**Take Advantage of Risk Management Services.** Many insurers offer cyber risk management services; you should consider whether your company needs these services and, if so, whether you should work with a carrier that offers a robust risk-management program.

**Understand what activates coverage under your cyber policy.** Some policies are triggered on the date the loss occurs, while others are triggered on the date that a claim is made against the insured. In order to provide proper notice, you need to understand how coverage applies.

**Consider Coverage for Regulatory Actions.** A data loss may cause not only the loss of information but also could result in regulatory actions against the nonprofit. State and federal agencies have become more active in responding to data and privacy breaches. Your insurance policy should cover regulatory investigation or action.

**Data Privacy Risks and Responsibilities**

**What Is Personally Identifiable Information or PII?**

According to the National Conference of State Legislatures, 47 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands have laws that require organizations to notify individuals of security breaches of information involving personally identifiable information. The definition of personally identifiable information is statutory and can vary by state but generally it means an individual’s first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted:

- Social Security number.
- Driver’s license number or state identification card number.
- Account number or credit or debit card number
- Account number or credit card number in combination with any required security code, access code or password that would permit access to an individual’s financial account.
The FTC commissioner recently made a statement that definition of PII is expanding. To be prepared for this, all potentially identifying information should be protected. In some states, the mere loss of the device with PII is a breach requiring notification to the people whose data was lost. Depending on the state and size of the breach, you may also be required to notify the state’s attorney general, state police and state division of consumer protection or other government agency. Nonprofits will be required to notify each individual according to the laws in that individual’s home state, not necessarily the state of the organization suffering the breach. This often entails expensive and cumbersome navigation of regulations in multiple states.

**Privacy and Data Breach Laws**
Various federal and state privacy regulations require that nonprofits protect PII no matter where it resides: network, stand-alone systems such as databases, remote devices such as laptops or employee-owned cell phones and, of course, on paper. This standard requires organizations to enact information security best practices if they handle major credit cards. The organization may also face separate regulatory actions resulting in fines levied by government agencies. Failure to comply with these standards can result in enormous fines.

**Data Security Strategies**
Nonprofits should know they may be required to have certain security measures in place in order to qualify for coverage. Further, once security measures are in place, they should be maintained and updated properly or the nonprofit could risk negating coverage. To reduce the likelihood and severity of a data breach, consider the following practical strategies.

1. **Ensure Regular Software Updates.** Make certain that IT staff or contractors frequently install security patches and updates to your devices’ operating software and other software. Breaches occur when software is vulnerable due to age or other issues or lack new security measures that will help protect your devices and data against harmful malware and viruses.

2. **Encrypt Sensitive Data.** Consider encrypting sensitive data so thieves who access data can’t use it. Consider the pros and cons of encryption. On the downside, encryption costs money and slows down response time. As a result, some experts suggest that organizations encrypt only data on mobile devices, or strictly prohibit the storage of PII on mobile devices.

3. **Schedule Data Security Training.** Some cyber liability policies offer proactive risk management resources, such as educational materials or access to helpful training on data security. Remember that human error is a major source of cyber liability exposure, an exposure you can mitigate by adopting clear policies and providing appropriate training. Topics you might want to cover in your training include: mobile device policies, network security protocols, encryption instructions, relationships with tech vendors, data breach notification laws, information on the nonprofit’s cyber liability coverage and your insurer’s requirements for filing cyber liability claims. Ensure that your employees recognize how easily a data breach can occur and how detrimental a breach could be to your mission.

4. **Adopt a BYOD Policy.** Implement a bring your own device (BYOD) policy that clarifies whether employees may access PII on their personal devices (laptops, cell phones, etc.). Remember to balance protecting the nonprofit’s data and upholding others’ privacy rights.

**Working with Tech Vendors**
One of the most pervasive misunderstandings by nonprofits is that a cloud service provider would be responsible in the event of a breach. Not true! The nonprofit is legally the data owner even if it stores data on the cloud. Therefore the nonprofit is solely responsible for all costs.
Most contracts will limit the cloud service provider’s liability to an amount equal to the contract amount, and this liability only applies if the cloud provider did not have certain specific security measures.

Remember to establish a process for vetting tech vendors if you hire any IT processes or rely on a vendor for third-party cloud storage. External IT support and/or data storage may be wise if your nonprofit lacks the personnel expertise or resources to manage data internally, but beware of placing too much trust in a tech vendor. Be a discerning consumer so you can distinguish dependable tech vendors. Take the time required to negotiate a contract with your tech vendor that ensures the support or services you need while adequately protecting your nonprofit against harm or loss caused by the vendor’s negligence. Ask these questions:

1. What warranties or protections does the vendor offer in the event of its negligence? Require that your tech vendors carry errors and omissions coverage to protect your nonprofit against claims stemming from the vendor’s negligence. Never sign a tech contract absolving the company for its own negligence.
2. Do I understand my nonprofit’s tech needs and existing IT infrastructure? What must I do (or who must I consult with) to understand these things before I engage a tech vendor?
3. Can this particular vendor meet all of our technical requirements? Can this vendor integrate its services seamlessly with our existing internal IT functions?
4. Does this vendor have a good reputation in the market and among its client base?
5. Is this vendor willing to include a training and/or support package with our contract?
6. What is the vendor’s response time in a data breach emergency?
7. Will my nonprofit still retain full ownership rights to any electronic documents and property that we store with cloud storage vendors? What are our rights and responsibilities?
8. What is the vendor’s dispute resolution process?
9. Are the vendor’s payment terms reasonable and compatible with our process?

Data Privacy and Cyber Liability Resources

- [Risk in the Cloud](http://www.nonprofitrisk.org/library/articles/Risk_in_the_Cloud.shtml)
- [Data Privacy and Cyber Liability](https://www.nonprofitrisk.org/library/articles)
- **A FREE affiliate membership with the Nonprofit Risk Management Center** for Alliance members. Log on as an Affiliate of the Land Trust Alliance. See directions.
- Risk management collection on [The Learning Center](https://www.nonprofitrisk.org/library/articles). This site has a collection of resources specifically chosen to help you manage risk at your land trust.

**DISCLAIMER**

The Land Trust Alliance designed this material to provide accurate, authoritative information about the subject matter covered with the understanding that the Land Trust Alliance is not engaged in rendering legal, accounting or other professional counsel. If a land trust or individual requires legal advice or other expert assistance, they should seek the services of competent professionals. The Land Trust Alliance is solely responsible for the content of this series and edited this content from material provided by the Nonprofit Risk Management Center, Melanie Lockwood Herman, Executive Director. She welcomes your questions at 703.777.3504 and Melanie@nonprofitrisk.org.

Last revised September 29, 2016
Conservation Defense Insurance

Considerations for Board Members
Imagine if it were you: Board members at the Mesa Land Trust discovered that one never knows what is around the corner when it comes to protecting your land trust. Three overlapping violations put an amazing amount of stress on their organization. Board members reported that the challenges were time-consuming and expensive. Fortunately, the board had been preparing for years to meet these challenges and had the resolve and the resources to ensure conservation permanence. They were not lulled into complacency by decades with no problems.

Even so, according to board member Bill Prakken, the land trust was grateful for the creation of the Terrafirma conservation defense insurance program. Bill says, “It gives us and landowners confidence that we have a safety net. Even if you don’t think you’ll ever have to defend land or that you have sufficient resources to effectively self-insure, you still have an interest in seeing Terrafirma flourish. It is a cost effective way to bring solid legal defense and enforcement to as many legal challenges as possible. And that benefits all of us.”

Terrafirma Conservation Defense Liability Insurance
♦ Protect the permanence of conserved land, create favorable, and avoid unfavorable, case law
♦ Cover legal-related expenses for fee land and conservation easement challenges
♦ For all land trusts, for both enforcement and defense, which is not commercially available
♦ Encourage practices that will help to prevent violations and unnecessary litigation
♦ Provide early free assistance with challenges

Endowments for Defense and Stewardship
♦ Every land trust must continue to have endowments for defense and stewardship
♦ Terrafirma is a safety net, not a substitute for sufficient endowments

Common Financial Questions
♦ Base premium of $60 per year per conservation easement or fee-owned land
♦ A maximum limit of $500,000 per claim (which includes defense costs) and aggregate
♦ A $5,000 deductible per claim regardless of policy limits
♦ Discounts available

Crunch the Numbers (Remember: accreditation is not required)

<table>
<thead>
<tr>
<th>Premium</th>
<th>Discounts</th>
<th>Portfolio of 15</th>
<th>Portfolio of 150</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not accredited but qualified for discounts</td>
<td>$5</td>
<td>$825 annual premium</td>
<td>$8,250 annual premium</td>
</tr>
<tr>
<td>Accredited</td>
<td>$12</td>
<td>$720 annual premium</td>
<td>$7,200 annual premium</td>
</tr>
<tr>
<td>Not accredited and no discount</td>
<td>$0</td>
<td>$900 annual premium</td>
<td>$9,000 annual premium</td>
</tr>
</tbody>
</table>

Terrafirma Member-Owner Insured Land Trusts
♦ Owner-members consist of 476 land trusts in 46 states and DC
♦ Insured portfolios include more than 7.2 million acres of conservation land
♦ 24,193 parcels of conserved land currently enrolled, including fee land and easements
Some Examples of Legal Challenges

Midwest

♦ A Michigan land trust timber dispute with an original landowner cost that land trust more than $35,000 and 18 months of time. The trial judge forced a settlement.

West

♦ Mesa Land Trust (CO) had a triple whammy after 27 years without any significant violations or legal challenges. The three cases cost more than $150,000 over two years, and one case is still ongoing at a cost in excess of $100,000 and climbing.
♦ Nevada County Land Trust (CA) spent $150,000 defending against a neighbor’s demand to use ancient roads on the conserved property to serve an adjacent development.
♦ Colorado Open Lands staff defended against a neighbor’s trail construction on conserved land where it was not permitted. Its attorney waived the $125,000 in legal fees.
♦ Center for Natural Lands Management (CA) Form 8283 dispute cost $1,000,000.

East

♦ Society for the Protection of New Hampshire Forests experienced three simultaneous cases. The most costly was a neighbor challenging easement enforcement that cost in excess of $92,000.
♦ Vermont Land Trust neighbor negligence claim cost $45,000 to prevail at trial.
♦ French and Pickering Creek Conservation Trust (PA) enforced removal of a prohibited house cost more than $500,000 and took 12 years to prevail.
♦ Western New York Land Conservancy fee preserve multiple trespass case cost more than $75,000. The neighbor lost one appeal but may pursue the case to higher courts.

Southeast

♦ Highlands-Cashiers Land Trust (NC) spent $63,000 to stop a landowner from blocking access to a mountain top trail. The land trust lost in local court but won in the NC Supreme Court.

Comments from Land Trust Leaders

“This is a no-brainer. Having experienced the expensive, unpredictable costs of litigation, I feel defense insurance is an essential safety net for prudent land trusts committed to defending their easements.” Dan Pike, Former President, Colorado Open Lands

“This simply makes economic sense. We will take a very small percentage allocation from our existing defense fund and buy the insurance. The result will be to essentially triple our existing financial resources for conservation easement defense.” Jay Freedman, Treasurer, Coastal Mountains Land Trust (ME)

“Our board of directors is very supportive of joining Terrafirma to help us manage the risk associated with our obligation to defend our conservation easements and lands in perpetuity.” Nicole Byrd, Executive Director, Solano Land Trust (CA)

“I am the sole staff person of a small land trust in Georgia. Terrafirma seems to be a very reasonable, balanced, targeted effort that I think would benefit us.” Steffney Thompson, Executive Director, Oconee River Land Trust (GA)

Learn more at www.terrafirma.org.

Leslie Ratley-Beach, Lorri Barrett and Hannah Flake, Alliance Risk Management Services are available to help with any questions. Write to help@terrafirma.org or call Hannah at 202-800-2248, Lorri at 202-800-2219 or Leslie at 802-262-6051.

April 8, 2015
Insurance for Nonprofit Organizations: What You Need to Know

What to Do and What Not to Do

Although leaders of nonprofit organizations have been purchasing commercial insurance for decades, the process has become only marginally simpler. The insurance world remains a strange and daunting environment for most nonprofit managers.

The Center offers the following do’s and don’ts concerning the purchase of commercial coverage for a nonprofit organization.

Do:

- Take the time to find a competent, trustworthy insurance professional to help you purchase and understand the coverage your nonprofit needs and buys.
- Strive to find an insurance professional with practical experience advising nonprofit organizations.
- Take the time to read your insurance policies.
- Investigate the financial stability of your insurers.
- Ask your broker/agent to respond in writing to your questions.
- Seek multiple bids for your insurance coverage at least every three-five years.
- Give thoughtful consideration to how much risk your nonprofit can afford to retain.
- Provide your board of directors with a copy of your directors' and officers' liability policy.
- Discuss risk management and insurance issues at the board level.

Don’t:

- Delegate responsibility for your insurance program to a junior staff member.
- Simply renew your coverages each year without considering whether your exposures, risk tolerance or circumstances have changed.
- Wait until the last minute to submit completed applications.
- Be evasive about your operations/exposures on your application.
- Be shy about asking questions concerning your coverage or the process.
- Regard your insurance coverage as your risk management program.
What's Appropriate Insurance Coverage?

Nonprofit managers and executives cope with many complex challenges on a regular basis. But one of the perennial questions is whether the nonprofit's insurance program (the collection of coverages you purchase) is adequate. Unfortunately, there are no easy answers to what seems like a simple question. Every nonprofit must evaluate its exposures, risk-taking appetite, risk tolerance and budget constraints in order to determine how much insurance it can and should buy. Some experts urge nonprofits to purchase as much insurance as they can afford. Yet insurance probably makes most sense as a financing method for truly unexpected or catastrophic exposures. Costs that can be readily predicted based on past experience should be financed internally.

Some of the most common property/casualty coverages purchased by nonprofits include:

- General Liability (GL) or Commercial General Liability (may include miscellaneous professional liability and improper sexual conduct)
- Commercial Auto Liability and Physical Damage
- Directors’ and Officers’ Liability (D&O) (generally includes employment practices liability, or EPL, but EPL can be purchased separately)
- Professional Liability (sometimes referred to as “errors and omissions” coverage, or malpractice coverage)
- Improper Sexual Conduct/Sexual Abuse
- Non-owned/Hired Auto
- Property
- Fidelity/Crime
- Umbrella
- Workers Compensation
- Accident Insurance
- Media Liability / Cyber Liability

What Services Should I Expect? Insurance Professional Services/Responsibilities

The following list indicates some of the services an insurance professional might provide to a nonprofit client. Every nonprofit must decide which services it requires or views as desirable.

- Provide complete and accurate information to insurance carrier on behalf of the insured. This includes signed applications and updated information at renewal.
- Remit down payments and balance payments to insurance carrier in a timely fashion.
- Arrange financing if requested by insured member.
- Help insured with compliance with safety recommendations.
- Complete Certificates of Insurance and request Additional Insured endorsements as required by funding sources, landlords, etc.
- Review all contracts for the insured in respect to insurance requirements. Forward unusual contractual obligations to insurance carrier for review and comment.
- Be available to answer questions regarding the insurance contract.
- Report claims and coordinate claim adjusting with insurance carrier.
- Be available to participate in the insured's risk management committee, if requested.
- Be available to attend at least one of the insured's board meetings per year, if requested.
- Present an appropriate insurance package to the insured for its review and decision.
- Serve as a source of information for his/her clients in regards to insurance questions.
- Maintain a complete insurance file for the insured nonprofit. (As the insured, you should keep a copy as well.)
- Maintain continuing education and proper licensing status at all times.

**Liability Insurance for Nonprofits: A Closer Look at Specific Policies**

<table>
<thead>
<tr>
<th>COVERAGE NAME</th>
<th>COVERS LIABILITY FOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMMERCIAL GENERAL LIABILITY (&quot;CGL Insurance&quot;)</td>
<td>Bodily Injury, Property Damage or Personal/Advertising Injury caused by an accident.</td>
</tr>
</tbody>
</table>

**CGL and D&O: Differences and Similarities**

- **DIFFERENCES**

<table>
<thead>
<tr>
<th>Commercial General Liability</th>
<th>Directors’ &amp; Officers’ Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covers Bodily Injury, Property Damage and Personal and Advertising Injury.</td>
<td>Always excludes Bodily Injury and Property Damage.</td>
</tr>
<tr>
<td>Covers accidents only. Claims usually arise directly from operations rather than governance (management decisions).</td>
<td>Covers Wrongful Acts. Claims usually arise from governance or management decisions. Board members, management staff and the organization itself are likely defendants.</td>
</tr>
<tr>
<td>Most often sold to nonprofits as an &quot;Occurrence&quot; policy.</td>
<td>Most often sold to nonprofits as a &quot;Claims-Made&quot; policy. In some cases D&amp;O is available on an &quot;occurrence&quot; form.</td>
</tr>
<tr>
<td>Standardized policy wording. Most carriers use one of the forms issued by the Insurance Services Offices (ISO). The form number and ISO reference appear at the bottom of each page of the policy.</td>
<td>Non-standard policy wording-each insurer writes its own policy, which makes comparing policies more difficult.</td>
</tr>
</tbody>
</table>
**SIMILARITIES**

<table>
<thead>
<tr>
<th>Commercial General Liability</th>
<th>Directors &amp; Officers Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covers liabilities common to all nonprofits.</td>
<td>Covers claims alleging wrongful management acts that are common to all nonprofits.</td>
</tr>
<tr>
<td>Provides broad &quot;catch-all&quot; or basic liability coverage. Other liability coverages are more specific and narrower in scope.</td>
<td>Provides broad coverage for wrongful management acts.</td>
</tr>
<tr>
<td>Includes all board members, employees and volunteers as Insureds.</td>
<td>Same</td>
</tr>
</tbody>
</table>

**CGL COVERAGE SECTIONS**

- **Coverage A - General Liability** - Designated on the policy as "Bodily Injury and Property Damage"
- **Coverage B - Personal And Advertising Injury Liability** - Expands the scope of CGL coverage beyond bodily injury and property damage, strengthening its purpose in covering common liabilities.
- **Coverage C - Medical Expense** - Covers accidents arising from your premises or operations, regardless of your liability. Allows you to promptly compensate for minor injuries, and has the advantage of discouraging lawsuits. The standard limit is $5,000 per person however some policies feature a higher limit for this no-fault accident coverage.

**CGL LIMITS OF LIABILITY**

- **General Aggregate Limit (Other than Products-Completed Operations)** - maximum amount payable during the policy term for all claims other than Products Liability and Completed Operations Liability
- **Products/Completed Operations Aggregate Limit** - maximum amount payable for liability for products you manufacture or sell; or construction or repair work you've completed
- **Personal and Advertising Injury Limit** - maximum amount payable for Coverage B
- **Each Occurrence Limit** - maximum amount payable for any one occurrence
- **Damage To Premises Rented To You Limit** - maximum amount payable for fire damage to the portion of your landlord's building that you occupy
- **Medical Expense Limit** - maximum amount payable for Coverage
What is Personal Injury and Advertising Injury Liability?

Personal Injury and Advertising Injury Liability covers liability for a group of specifically named offenses, which don't involve bodily injury or property damage, and aren't caused by an accident, but nonetheless cover liability exposures common to most organizations. These are liabilities for:

PERSONAL AND ADVERTISING INJURY LIABILITIES

- False Arrest, Detention, or Imprisonment
- Malicious Prosecution
- Wrongful Eviction or Entry by a Landlord
- Libel, Slander, or Disparagement of an Organization
- Invasion of Privacy through Spoken or Written Statements
- Unauthorized Use of an Idea in Advertising
- Infringement of Copyright, Product Image or Slogan in Advertising

Rather than being issued on a stand-alone basis, Personal Injury and Advertising Injury Liability is always written as a component of other types of liability coverage:

COVERAGE UNDER COMMERCIAL GENERAL LIABILITY

In 1986 Personal and Advertising Injury Liability was combined with General Liability and became Section B of the standard Commercial General Liability policy.

Exclusions include:

- Liability of insureds in the business of advertising, broadcasting, publishing, website consulting, or internet services
- Liability for Employment Practices

COVERAGE UNDER NONPROFIT DIRECTORS’ & OFFICERS’ LIABILITY

Personal Injury Liability for Employment Practices is included under most Nonprofit Directors & Officers Liability policies.

COVERAGE UNDER PROFESSIONAL LIABILITY

Personal and Advertising Injury Liability is included under Professional Liability policies designed for organizations in the business of advertising, broadcasting, publishing, website consulting, or internet services.
### Other Liability Coverages

<table>
<thead>
<tr>
<th>COVERAGE NAME</th>
<th>NEEDED IF...</th>
<th>COVERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROFESSIONAL LIABILITY</td>
<td>Your nonprofit provides professional services, including social services, educational services, legal services, medical services, counseling, or referral services. There are at least forty-one categories of &quot;professional services&quot; that can be covered under professional liability policies.</td>
<td>Claims alleging negligence in the delivery of professional services, and liability for injuries caused by failure to adhere to professional standards or duty of care required by a specific profession.</td>
</tr>
<tr>
<td>SEXUAL ABUSE LIABILITY</td>
<td>Your nonprofit provides services to a vulnerable client group: young people, persons with disabilities or the elderly.</td>
<td>Claims alleging sexual abuse of a client of your nonprofit.</td>
</tr>
<tr>
<td>SPECIAL EVENTS LIABILITY</td>
<td>Special events are excluded from your GL policy.</td>
<td>Bodily injury or product damage arising out of your event.</td>
</tr>
<tr>
<td>WORKERS COMPENSATION</td>
<td>Your nonprofit has paid staff. Note: each state determines the minimum number of employees for which coverage is required.</td>
<td>Bodily Injury to employees while working for you. In some cases volunteers can be covered under workers compensation. If volunteers are not covered, purchase a volunteer accident policy.</td>
</tr>
<tr>
<td>AUTOMOBILE LIABILITY</td>
<td>Your nonprofit owns or lease private passenger vehicles, buses, vans or trucks.</td>
<td>Bodily Injury and Property Damage caused by accidents involving vehicles you own or lease.</td>
</tr>
<tr>
<td>NON-OWNED/HIRED AUTOMOBILE LIABILITY</td>
<td>Your employees or volunteers use their own vehicles on your behalf or your employees or volunteers rent vehicles on a short-term basis.</td>
<td>Bodily Injury or Property Damage caused by accidents involving vehicles owned by or rented by employees or volunteers while driving on your behalf, but only when the limits on the vehicle being driven are insufficient to cover the cost of injury or damage.</td>
</tr>
</tbody>
</table>
### EMPLOYMENT PRACTICES LIABILITY
Your nonprofit has employees. Economic Injury to employees due to wrongful termination, sexual harassment, wrongful failure to hire or promote, wrongful demotion, illegal discrimination, retaliation or economic injury stemming from any employment action that is illegal under state or federal law. Almost all carriers exclude FLSA claims under the EPL policy; some provide a very moderate ($50,000 to $150,000) sublimit for defense costs only.

### EMPLOYEE BENEFITS LIABILITY
Your nonprofit provides health insurance, life insurance or similar benefits to employees. Financial injury to employees resulting from negligent administration of employee benefit plans.

### FIDUCIARY LIABILITY

### LIQUOR LIABILITY
Your nonprofit sells liquor at fundraising or social events. Bodily Injury and Property Damage that results from your negligence in contributing to intoxication of guests or participants.

### WATERCRAFT LIABILITY
Your nonprofit owns watercraft, or rents or operates a watercraft more than 25 feet long. Bodily Injury or Property Damage caused by accidents involving watercraft your nonprofit owns, leases or rents.

### CYBER LIABILITY
Your nonprofit has a website, publishes online, stores confidential data on cloud servers or that is accessible online, etc. First- and third-party claims from e-business, Internet use, networks and informational assets. May cover claims alleging violation of privacy, the infringement of intellectual property, virus transmission, or any other losses from online activity.

### Expansive Liability Coverages

<table>
<thead>
<tr>
<th>COVERAGE NAME</th>
<th>COVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>UMBRELLA / EXCESS LIABILITY</td>
<td>Provides additional limit of liability above the policy limits of other liability coverages. Coverage is triggered if underlying policy limits are exhausted by claim payments.</td>
</tr>
</tbody>
</table>
FOREIGN LIABILITY
Provides coverage for claims made outside the territorial limits of other liability policies. Coverage is usually needed only for regular or permanent operations outside of the US, its territories or Canada.

TERRORISM LIABILITY
Adds coverage to other liability policies coverage against claims alleging failure to take adequate precautions for terrorist attacks.

How Much Liability Insurance Does a Nonprofit Need?

Unless it has the financial resources to survive uninsured lawsuits, a nonprofit arguably needs coverage for all its insurable liability exposures. This almost always includes Commercial General Liability and Directors’ & Officers’ Liability, and might include more specific types of liability depending upon the nature of a particular nonprofit's operations.

A nonprofit may also need liability insurance to comply with the requirements of contracts with funders, landlords or partner organizations or statutes.

LIABILITY INSURANCE REQUIRED BY STATUTE

Workers Compensation

Required for employers in all 50 states. Exemptions - Some states exempt very small employers (including nonprofits) from the requirement to purchase Workers Compensation coverage. Pennsylvania provides no numerical exception, which means that all employers must purchase this coverage.

Penalties for non-compliance, depending on the state, include fines, criminal prosecution, revocation of corporate charter, and / or imprisonment.

Automobile Liability

Required for vehicle owners in 45 states, including Pennsylvania. Exception states - New Hampshire, Virginia, South Carolina, Wisconsin and Tennessee.

When is Liability Insurance Required by Contract?

<table>
<thead>
<tr>
<th>Type of Contract</th>
<th>Coverage Usually Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government Funding</td>
<td>General Liability, Workers Compensation, Automobile Liability and Professional Liability</td>
</tr>
<tr>
<td>Mortgages</td>
<td>General Liability</td>
</tr>
</tbody>
</table>
What is General Liability?

General Liability insurance covers liability for bodily injury and property damage caused by an accident, except for liabilities specifically excluded. Coverage applies at your premises, or anywhere else in the United States, its territories, or Canada.

Prior to the 1960's the liability exposures of almost any organization could be covered completely by the combination of General Liability, Automobile Liability, and Workers Compensation. Today other types of liability coverage are needed because changes in the law have created new liability exposures beyond the scope of the traditional General Liability policy.

GENERAL LIABILITY CLAIMS EXAMPLE

No one at the small nonprofit drug rehab in rural Pennsylvania knew that their nearest neighbor, a ranch owner two miles away, had purchased a $200,000 racehorse. Even if they had known, they'd hardly have considered the horse a liability exposure. The exposure became apparent when one of their resident patients 'escaped' from the center, stole the horse, and while galloping across a highway was hit by a car. The horse was killed and the resident was severely injured. This event led to two separate lawsuits against the rehab center. The first lawsuit was brought by the resident's parents for bodily injury caused by alleged negligent supervision, and the second suit was brought by the rancher for the loss of his horse.

Not surprisingly, none of the rehab's liability policies provided specific coverage for injuries caused by riding a horse, or for horse mortality, but the rehab was covered for both lawsuits under its General Liability policy. With General Liability it's not necessary to anticipate whether you have a liability exposure for stolen race horses; you need only anticipate whether you have exposures that are specifically excluded under your policy.
**EXCLUSIONS UNDER THE STANDARD GENERAL LIABILITY POLICY**

- **EXPOSURES CONSIDERED UNINSURABLE**
  - expected or intended injury
  - contractual liability
  - liability due to war
  - damage to products you manufacture or repair, caused by faulty workmanship
  - damage to the particular part of any real property that you or your subcontractors have worked on, caused by faulty workmanship

- **EXPOSURES THAT SHOULD BE COVERED UNDER ANOTHER LIABILITY POLICY**
  - auto, watercraft and aircraft liability
  - injury to employees
  - liquor liability
  - pollution liability
  - liability due to transporting or racing mobile equipment

- **EXPOSURES THAT SHOULD BE COVERED UNDER A PROPERTY POLICY**
  - damage to property owned by you
  - damage to property in your care, custody or control

Underwriters generally add "endorsements" to all General Liability policies. An endorsement either excludes or expands coverage. The scope of coverage under any General Liability policy will depend upon the particular exclusions and enhancements added to the standard policy.

**CLAIMS CATEGORIES**

**TYPICAL GENERAL LIABILITY CLAIMS CATEGORIES**

- injuries arising from your premises
- injuries to clients under your supervision
- injuries to volunteers while working for you
- injuries to guests at special events
- injury caused by products you sell or manufacture
- fire damage to your landlord's building
- damage to property not owned by you or in your possession
What is Nonprofit Directors' and Officers' (D&O) Liability Insurance?

Directors’ & Officers’ Liability (also known as D&O insurance) covers liability for economic damages resulting from errors or omissions in the governance or management of an organization.

The first D&O policies were introduced in the 1960's and marketed to for-profit corporations to cover shareholder lawsuits. By the 1970's nonprofits began to purchase D&O coverage. At first nonprofit and for-profit D&O policies were identical, but over time underwriters improved nonprofit coverage in several stages, expanding the definition of insured and deleting policy limitations and exclusions. The motivation for improving nonprofit coverage wasn't any special nonprofit liability exposure, but rather just the opposite: there were almost no nonprofit claims, so underwriters saw little risk in broadening coverage in order to sell more coverage and increase “market share”.

The policies started to be very useful in the 1980's with the emergence of employment practices litigation, which still accounts for an estimated 80% of all nonprofit D&O claims.

Similar to General Liability, Nonprofit D&O covers all liabilities except those specifically excluded. The difference is that General Liability covers bodily injury and property damage only, and D&O Liability covers Wrongful Acts ("wrongful management decisions"), always excluding bodily injury and property damage.

NONPROFIT D&O EXCLUSIONS

Each insurance company uses its own unique policy wording, and coverage can vary significantly. Nonetheless there are common exclusions in Nonprofit D&O policies:

EXCLUSIONS COMMON TO NONPROFIT D&O POLICIES

- Bodily Injury
- Property Damage
- Theft
- Criminal acts
- Deliberately fraudulent acts
- Pollution
- Nuclear reaction or radiation
- Litigation pending prior to the original inception date of the policy

Many other exclusions can be built into or added by endorsement to Nonprofit D&O policies.

Employment-related claims that often trigger coverage under the EPL section of a D&O policy include claims alleging: wrongful termination, sexual harassment, discrimination based on a protected class under federal or state law, and breach of an employment contract, illegal retaliation.
NON-EMPLOYMENT D&O CLAIMS EXAMPLES

- Misallocation of Funds
- Breach of Fiduciary Responsibilities
- Self-Dealing / Conflict of Interest
- Anti-trust or Restraint of Trade Violations
- Third Party Discrimination, Defamation, or Invasion of Privacy
- Negligent Financial Advice to Third Parties
- Failure to Maintain Insurance
- Tortious Interference with Contract
- Competition between Associations
- Breach of Contract
- Failure to Accredit or Certify
- Infringement of Trademark, Patent or Copyright
- Opposition to Rule-Setting

What is Professional Liability Insurance?

Professional Liability Insurance, also known as Errors & Omissions Liability Insurance or Malpractice Insurance, covers liability for the higher standard of care required of professionals when providing services in their area of expertise. The higher standard of care required of professionals is that they must have the same expertise and competencies common to members in good-standing of their profession.

Traditionally professional liability was limited almost exclusively to the legal and medical professions, but starting in the 1960's courts began to hold a much wider range of service providers to a professional standard of care. Insurance companies responded to these new exposures by adding professional liability exclusions to General Liability and Directors & Officers Liability policies, and by developing separate Professional Liability policies on a variety of formats.

THE NEED FOR PROFESSIONAL LIABILITY

Today almost any class of service provider can be held to a professional standard of care. For example, does a plumber need professional liability? If a plumber were to accidentally flood your home you might feel entitled to compensation based on your expectation that a plumber, rather than being merely reasonable, should have knowledge and skills similar to other plumbers. In other words you might feel entitled to hold the plumber to a professional standard of care.

Whether a particular service provider in a particular situation can be held to a professional standard of care is a legal question that can only be answered definitively in a court of law, but answering that question usually isn't necessary for insurance purposes.
The relevant question for insurance purposes is -

*Does your nonprofit client provide services that are excluded under your General Liability and Directors & Officers Liability policies?*

If the answer is ‘yes’ your nonprofit may need a Professional Liability policy.

**SOME ADDITIONAL CONSIDERATIONS**

- Regardless of policy exclusions General Liability won't cover: 1) emotional distress unless arising from bodily injury 2) financial loss unless arising from bodily injury or property damage or 3) property damage to intangible property (such as information stored in a computer). These exposures usually need to be covered under a Professional Liability policy.

- Directors & Officers Liability can sometimes cover incidental Professional Liability (for example for volunteer accountants or lawyers) but policy exclusions need to be examined closely.

Never assume that because you have a Professional Liability policy you're covered for all your Professional exposures. There are a great many Professional Liability formats with varying levels of coverage. The scope of your policy and its exclusions must be compared with the services you provide. As is the case for all coverages, seek the advice of a specialist insurance agent or broker.

**EXAMPLES OF PROFESSIONAL LIABILITY EXPOSURES FOR COUNSELORS AND SOCIAL WORKERS**

Allegations of:

- Breach of Confidentiality
- Failure to Warn Third Parties
- Failure to Prevent Suicide
- Failure to Diagnose
- Improper Child Placement or Removal
- Failure to Protect
- Negligent Counseling
- Negligent Referral
- Wrongful Abandonment
- Negligent Supervision
- Failure to Receive Informed Consent
What is Non-Owned Auto Liability Insurance?

Non-Owned Auto Liability Insurance covers liability for accidents caused by an employee or volunteer driving their own vehicle on a nonprofit's behalf. The coverage is designed to protect only the nonprofit organization, not the employee or volunteer. Coverage applies above the liability limits of the vehicle owner's personal automobile policy. There's no coverage for damage to the employee or volunteer's vehicle.

All personal automobile liability policies automatically cover anyone named in a covered lawsuit, including the vehicle owner's employer. Non-Owned Auto Liability therefore is excess coverage, designed to cover only when the nonprofit is named in a lawsuit and the damages are higher than the vehicle owner's policy limits, or when the vehicle owner has no personal auto liability in force.

ADDITIONAL CONSIDERATIONS:

- **‘For Hire’ Exclusion** - Personal automobile policies exclude vehicles being used as a "public or livery conveyance". To avoid the possible enforcement of this exclusion, fees should never be charged for the use of employee or volunteer-owned vehicles.

- **Increased Personal Auto Premiums** - There's a possibility that a 'Business Use' classification could be applied to the personal auto policies of employees or volunteers driving their vehicles on your behalf, resulting in a premium increase. Usually the Business Use rate is charged only if the vehicle is used on a "regular basis" on your behalf.

- **Underwriting Requirements** - As a condition of coverage, underwriters may require all vehicles driven on your behalf to have personal auto liability limits of at least $300,000, or higher. Underwriters may also require an annual review of Motor Vehicle Records for all drivers.

The Nonprofit Risk Management Center is deeply grateful to David Szerlip for his invaluable assistance developing these materials.
ABOUT THIS DOCUMENT

This example can be used as a starting point to create a policy or other document for your own land trust, but should be altered as necessary to reflect your organization’s unique circumstances.

If you are using this material for accreditation purposes, see the Land Trust Accreditation Commission website for additional information.

To search for policies from accredited land trusts on the Learning Center, include the word “accredited” along with your search terms (e.g., conflict interest policy accredited).

QUESTIONS?

Email tlc@lta.org or click the blue circle on any Learning Center page to chat with us.
<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Types of Risk</td>
<td>Examples</td>
<td>Potential Mitigants</td>
<td>Status</td>
<td>Recommendations</td>
<td>Staff/board lead</td>
</tr>
<tr>
<td>2</td>
<td>Volunteer Risk</td>
<td>Injury to</td>
<td>Waivers signed, in-hand before event/ Insurance/Signage</td>
<td>Volunteers waivers exist, general liability insurance covers injury to volunteers, Orientations/training on proper use of tools and safety provided</td>
<td>Add signage to trails, make sure waivers are signed prior to every event.</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>Injury caused by</td>
<td>Insurance</td>
<td>General Liability insurance covers</td>
<td>Increase to $2m/$3m at a cost of $618, educate Board on individual umbrella policies</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>Damage to reputation</td>
<td>Training/handbook, Volunteer monitoring</td>
<td>orientation &amp; Volunteer Handbook provided, Code of Ethics signed when volunteer begins service.</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Employment Practices Risk</td>
<td>Safety</td>
<td>Training/handbook</td>
<td>Nothing mentioned in employee handbook re:safety.</td>
<td>Update employee handbook at next revision to include info on safety. Possibly implement annual fire drill/minimal disaster recovery plan.</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Wrongful termination</td>
<td>Training, corrective action process, performance evaluations</td>
<td>Probation employment period described in handbook which all new employees sign. Performance evaluations in place.</td>
<td>Do managers need formal training?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Recruitment/hiring</td>
<td>Training</td>
<td>Equal opportunity practices described in employee handbook.</td>
<td>Makes sure the employees are aware of employers responsibility to employee, periodic review of current laws and handbook.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Sexual Harassment</td>
<td>Training</td>
<td>Non-tolerance of sexual harassment described in employee handbook.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Succession Planning</td>
<td>Succession plan in place</td>
<td>No formal succession plan.</td>
<td>Implement succession plan.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Special Event Risk</td>
<td>Safety/Emergency Planning</td>
<td>Training</td>
<td>Hikes: scouted ahead of time for safety issues, hike committee members trained in first aid, 5k Run: Rescue Squad on site, first aid certified members on bikes doing sweeps, race marshals have whistles to alert. Celebration: first aid certified members participate.</td>
<td>Ensure first aid trained attendee</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
<td>Liability</td>
<td>Insurance</td>
<td>Hikes: general liability covers, waivers signed. 5k Run: Fletcher Park insurance policy covers, waivers signed, Celebration: general liability insurance covers, waivers signed for pre-event activities, Boat Party: no waivers signed. New Eco Tours</td>
<td>Have Boat Party attendees sign waivers and obtain special water event coverage. For Eco Tours, obtain full coverage from van rental company.</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Technology Risk</td>
<td>Data Loss</td>
<td>Back up process, surge protection (server and all peripherals are on a UPS)</td>
<td>Originals of easement records stored in safes offsite. Server backed to external drives - full backup M-F. One external drive with full back up is rotated out once per month and stored in separate location locked in safe.</td>
<td>It would be more appropriate to store the monthly rotated drive in an external location. A safety deposit box would be ideal.</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Employee/ Volunteer/Staff Privacy</td>
<td></td>
<td>Training, restricted access</td>
<td>Employee personnel files kept locked. HR, Finance, Capital Campaign server files require specialized access.</td>
<td>Implement policy of &quot;no private info on desk tops&quot; at the end of each day.</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Regulatory Risk</td>
<td>IRS 501c3 Status</td>
<td>Monitoring, Recordkeeping</td>
<td>Create conservation easement amendment policy to ensure it 1. is conservation neutral 2. can have no impermissible private benefit; update recordkeeping policy and review to ensure implementation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>E</td>
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<tr>
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<td>Examples</td>
<td>Potential Mitigants</td>
<td>Status</td>
<td>Recommendations</td>
<td>Staff/board lead</td>
</tr>
<tr>
<td>19</td>
<td>State Budget Changes</td>
<td>Fundraising</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Financial Risk</td>
<td>Internal Fraud</td>
<td>External/internal audits, dual controls, insurance</td>
<td>External audits performed, dual control in place</td>
<td>Change auditors every 3-5 years</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td></td>
<td>Investment</td>
<td>Oversight, risk reward analysis</td>
<td>Financial Committee Review and audits.</td>
<td>Change auditors every 3-5 years</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td></td>
<td>Fundraising</td>
<td></td>
<td>Know the donor, etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td></td>
<td>Trustee/Officer error</td>
<td>Insurance</td>
<td>Insurance policy covers</td>
<td>Need to develop a back-up plan for Management and Funding of Fee Simple Properties if transfer is not immediate. Need a strategic decision to determine if Public Access projects are a priority.</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td></td>
<td>Holding Land for perpetuity</td>
<td>LLC or other alternative</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td></td>
<td>lack of capital reserve fund</td>
<td>capital reserve fund</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Legal Risk</td>
<td>Breach of Contract</td>
<td>Contract Review</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td></td>
<td>Disputes with donor/easement holders</td>
<td>Standard Engagement Letter reviewed annually</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td></td>
<td>Employee Conduct</td>
<td>Employee handbook signed by employee contains info on conduct. Ethics policy also signed by employees</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>31</td>
<td></td>
<td>Employee Conduct</td>
<td>Employee handbook contains info on conduct. Ethics Policy also signed by employee.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>32</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>Americorps Program</td>
<td>financial</td>
<td>Staff members involved with administering Project Conserve have developed a clear understanding of programmatic and financial requirements. We maintain detailed files for administration of Americorps Project Conserve positively influences our reputation in the</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>34</td>
<td></td>
<td>reputation/PR</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td></td>
<td>Employee Conduct</td>
<td>Project Conserve has policies in place to address any situations that arise related to</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>36</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>Public Relations</td>
<td>reputation of sponsor</td>
<td>due diligence, vetting process to ID sponsor business practices, business sponsor agreements</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>38</td>
<td></td>
<td>disgruntled neighbors/public</td>
<td>crisis management plan, staff training on first response</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td></td>
<td>active restoration projects</td>
<td>active management policy, policy for what happens after receiving gift</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
STANDARD 6. FINANCIAL OVERSIGHT

E. Risk Management and Insurance

1. Routinely assess and manage risks so that they do not jeopardize the land trust’s financial health and its ability to carry out its mission and legal responsibilities

INTRODUCTION

Many staff and volunteer leaders of land trusts operate with a sense of fear about the legal claims that could be filed against their organizations. This fear is well-founded because there are a number of risks facing land trusts, including an array of lawsuits resulting from those risks, such as bodily injury, breach of contract, conservation easement violations, violations of environmental laws and personal injury claims. However, fear can be debilitating and prevent a land trust from fulfilling its mission. That is where risk management comes into play. A good risk management plan will help relieve anxiety and allow your land trust to move forward confidently. From time to time, every organization engages in activities that could produce potentially devastating or surprisingly beneficial results. Risk-aware land trust leaders will train their sights to look for and to understand these mission-impacting risks.

Although legal risks represent an important category of risks facing a land trust, there are other risks to consider. The discipline of risk management offers principles, tools, frameworks and strategies that land trust boards can employ to fulfill their responsibilities. The discipline also offers guidance that can be helpful to landowners and community leaders who share the board’s desire and commitment to protect the mission and assets of the land trust.

Formulating practical risk management plans and strategies suited to a land trust’s circumstances, current operations and long-term goals is critical. Spending time laying the
groundwork for a risk management program is a wise investment that will pay dividends over time. The dividends you can anticipate include:

- Staff and volunteers who feel confident moving ahead with ambitious projects because they know that contingencies have been considered
- Board members who have a high level of confidence in paid and volunteer staff, yet are interested and engaged in the organization-wide effort to examine upside and downside risks as the organization embraces change
- Insurance providers who view the land trust as a valuable business partner
- Funders who are eager to invest in the organization because they view it as a wise investment
- Staff and volunteers throughout the organization who believe that the safety of the land trust’s assets and resources—including its people—is an important, shared responsibility

For detailed guidance on creating a risk management plan unique to your land trust, see the online course, A Common Sense Guide to Risk Management for Land Trusts.

**WHAT IS RISK?**

Risk is the threat or possibility that a future event or action may be substantially different from what the leaders of an organization expect and may adversely or beneficially affect an organization’s ability to achieve its mission and objectives. While often used to describe negative consequences, risk refers to the possibility of a loss or the possibility of gain. The hallmark of the term *risk* is that it represents a substantial difference, good or bad, from what the organization expects as a result of its operations and activities. For example, placing a conservation easement on property owned by another conservation organization involves less risk because the owner is committed to the same values as the easement holder. In contrast, upholding a conservation easement with a landowner who is in violation may be fraught with risk. The land trust board that anticipates a drawn-out legal proceeding could be pleasantly surprised when the landowner quickly agrees to the land trust’s requests. Or, the land trust board could be dismayed when the landowner files a costly, preemptive suit or produces a petition signed by prominent land trust members or donors requesting that enforcement cease. There could be little or no fallout from the legal action or significant, costly fallout—that is the risk.
Dimensions of Risk

To really understand risk, begin by looking at the three dimensions of risk (direction, probability or likelihood and magnitude) in the context of the land trust’s mission and operations. By taking a look at these three dimensions, we can start to imagine the types of risks that a land trust faces every day.

1. *Future events may be much worse or much better than expected.* This aspect is the *directional*-positive or negative—dimension of risk.

2. *Future events may happen much more often, or much less often, than you expect.* This aspect is the *probability*-more or less likely to happen—dimension. The probability dimension is sometimes referred to as *likelihood*.

3. *Future events may generate results that are much larger, or much smaller, than we expect.* This is the *magnitude* or size—major or minor—dimension.

Generally speaking, each of the three dimensions can be found in every risk a land trust faces. In some instances, it is easy to see one or two dimensions, but harder to appreciate all three. For example, an employee or volunteer injury is often perceived as producing only negative results. So with respect to direction, we think of worker injuries having only a negative direction. Yet, it is possible that an organization’s efforts to adapt to the temporary absence of a worker with a sprained ankle may result in more efficient ways of doing things, help unearth a previously hidden or poorly understood danger before it causes serious consequences or showcase the heretofore hidden talents of another employee. In addition, the experience may make the organization better prepared to cope with a future, unplanned employee absence.

When planning for possible downside risk, it is important to look at all of the dimensions of risk to plan responses appropriately calibrated. For example, if a risk is unlikely to occur and will cause limited impact, a land trust may wish to spend few resources developing plans to mitigate it. However, if something is unlikely but if it does occur may threaten the very existence of the organization, the land trust may want to create plans for that eventuality. The key is to understand your organization’s tolerance for risk (which will change over time as new people join the organization and others leave). For more on determining your land trust’s risk tolerance, see *A Common Sense Guide to Risk Management for Land Trusts.*
COMMON RISKS FOR LAND TRUSTS

While there is no definitive list of all risks for every organization, there are risks that tend to be common to land trusts. The following section summarizes some of the most common risks facing land trusts and introduces some practical approaches to managing these risks.

Governance

A land trust that has an insufficient organizational structure or a board lacking in relevant skills is at risk of organizational instability. Even though it may not be obvious to stakeholders that there are critical internal problems, weak governance structures and practices will cause a land trust to founder when struck by the inevitable storms of organizational life. Focusing on strengthening governance is an important step in fortifying a land trust’s mission for the long term. Examples of ineffective governance that put an organization in a weak position include:

- Difficulty recruiting leaders to serve on the board because of perceptions regarding the inefficiency of the board or the burden of service
- Disruption of board meetings caused by board members who are unaware of the organization’s governance practices
- Unhealthy conflict between the executive director and the board or between the board chair and other board members, which leads to the erosion of trust within the leadership team
- Failure to follow the governance policies outlined in the bylaws, thereby calling into question the validity or enforceability of the land trust’s actions or board policies

Land trust boards are fundamentally accountable for the success of their organization and have a responsibility to fulfill the promises made to the community when it incorporated. Some of the basic written governance policies and documents necessary to do so and to manage the attendant risk at the board level include:

- Conflict of interest policy
- Board member position descriptions
- Board committee descriptions and responsibilities
- Financial accountability procedures
- Lines of authority and accountability
- Strategic goals or a strategic plan
- Compliance with IRS Requirements
For more on managing governance risks, see Practice 3C.

**Laws and Regulatory Requirements**

**IRS and Treasury Regulations**

Multiple Internal Revenue Service requirements exist with which land trust leaders should be conversant. A land trust’s legal counsel may be helpful in addressing particular areas of compliance, such as the filing of an accurate annual information return (the IRS Form 990), understanding an organization’s responsibilities in executing IRS Form 8283 and ensuring that tax-deductible gifts of land and conservation easements meet IRS requirements (see Practice 2C1 and Standard 10). Land trusts must also notify potential land or easement donors who may claim a federal or state income tax deduction (or state tax credit) that their gifts must comply with the requirements of IRC §170 and the accompanying Treasury regulations, as well as any other federal or state requirements (see Practice 10A1).

Another area of potential risk arises from the need for land trusts to comply with requirements for retaining federal tax-exempt status, including prohibitions on private inurement, impermissible private benefit and political campaign activity, public support and limitations and reporting on lobbying and unrelated business income (see Practice 2C).

**Other Laws and Regulatory Requirements**

In addition to IRS requirements, there are a plethora of additional laws and requirements with which land trusts must comply (see Practice 2A). There is no single approach to ensure compliance with all applicable laws and regulations. In some cases, legal compliance is a key responsibility of a paid staff member or board member; in other cases, the land trust will rely on the advice of outside legal counsel.

At a minimum, every land trust should develop an ongoing relationship with an attorney licensed in the state where the organization operates to guide it on compliance matters.

**Conflicts of Interest**

A land trust that operates as a tax-exempt organization must work in the public interest—not for the private benefit of any one individual. Both actual conflicts and perceived conflicts of interest can damage a land trust’s credibility and have potentially serious consequence (see Standard 4). Keys to managing conflicts include adopting and following a written conflict of interest policy and set of procedures that include disclosure and recusal from meetings where conflicts are discussed.
Reputation and Public Perception

A land trust’s reputation is arguably the key to all of its other values and assets. With an excellent reputation, a land trust can attract public donations, private grants, eager board members and dedicated paid and volunteer staff. With a poor reputation, a land trust is in danger of losing everything. Managing reputational risks requires leaders to avoid any conduct that, if it came to public attention, would reflect badly on the organization. Similarly, in cases where the land trust is unable to prevent incidents that threaten the land trust’s image, the leadership team is prepared to respond effectively.

Financial Assets

Successful land conservation cannot take place without sound financial management. Protecting land is costly and requires effective financial planning and the careful stewardship of financial resources. Failing to plan or account for funds exposes a land trust to the loss of public and stakeholder confidence, possible fines and penalties for inaccurate or late tax filings and increases the likelihood of mission-draining internal stress.

Many land trusts will experience a period of financial instability at some point. Financial instability may be due to national economic conditions, loss of a primary funding source or unexpected expenses. Take the time to think through what may happen to your land trust and how much you will need to keep your organization afloat during the inevitable financial rough patches. Then create a plan for setting aside the money and determining under what conditions you will tap into the reserve. While there is no one correct approach, many financial managers recommend a minimum of three months of operating expenses (leaving some flexibility to adjust for pass-through or highly discretionary expenditures). For more information on maintaining good fiscal health, see Practice 6A.

Recordkeeping

Land trusts need accurate and easily retrievable records to meet their legal obligations, to be prepared for potential litigation and to measure and evaluate the success of programs. Legal requirements that may directly or indirectly impact land trust recordkeeping systems include the Sarbanes-Oxley Act of 2002, Internal Revenue Code requirements, other federal or state law requirements and legal requirements associated with charitable gifts or government contracts. As a tax-exempt public charity, a land trust must prepare, file and keep:

- The organization’s 501(c)(3) application (IRS Form 1023) and the IRS determination letter
• The annual information return, IRS Form 990 or IRS Form 990 EZ, including any schedules and attachments, or IRS Form 990-N, the e-Postcard
• The annual tax return reporting unrelated business income, IRS Form 990-T, if applicable

In order to comply with these requirements, as well as to demonstrate best practices, land trusts should have a records policy that includes a procedure for keeping the original, critical documents in secure locations apart from the office or working copies and keeping written documentation of all transactions.

Recordkeeping involves risk management. A land trust must choose which documents to keep and which ones to destroy. The risk arises from the fact that an organization may find that, despite its best efforts, it made the wrong decisions about the documents it retains and those it destroys. Although choosing which records a land trust should retain may seem simple, sometimes the decisions about what records to keep and what records should be destroyed can be complicated and difficult (see Practice 9G).

**Contracts**

There are myriad business agreements and decisions that can give rise to contract, fiduciary and other trust violations for land trusts. From land contracts to land management agreements to contracts for the purchase of goods and services, contracts are important risk management tools that can also sometimes lead to lawsuits.

Negotiating appropriate contracts and adhering to best practices in contracting can require more time and attention than managing an organization’s financial resources. Common mistakes in contracting include:

• Signing a contract that contains inappropriate, vague or incomprehensible terms and provisions
• Failing to limit contracting authority to designated persons in the organization
• Neglecting to consider the possibility of termination, breach or circumstances that make the relationship insupportable
• Overlooking the fact that the organization has entered into a contract in the first place
• Failing to assign responsibility for harm and the costs of harm
• Failing to protect the organization’s valuable assets, such as copyrights, trademarks or other types of intellectual property
• Failing to determine a strategy for dealing with unexpected costs or a disagreement about each party’s responsibility for project expenses
Neglecting to note important deadlines, such as expiration date, termination dates, notice requirements prior to termination and automatic renewal provisions

**Employees, Volunteers and Contractors**

There are many risks that arise from the recruitment, deployment and supervision of paid and volunteer staff, as well as the hiring of independent contractors. Screening, classification, supervision and discipline are each risky aspects of an organization’s relationship with the people who bring the land trust’s mission to life. For more information, see Standard 7.

**Fundraising**

Fundraising risks include those arising from the solicitation of funds from individual and institutional donors, as well as risks related to the tracking and use of funds to advance a land trust’s mission. Every land trust that raises funds to deliver its mission encounters risks related to fundraising. A thorough understanding of ethical fundraising practices and charitable solicitation laws in states where the land trust raises money, as well as written gift acceptance policies and procedures, are key to managing fundraising risks (see Standard 5).

**Land and Easement Acquisition**

Acquiring land or easements is one of the riskiest aspects of land trust work. Promising to protect a piece of property forever for the public benefit means the land trust must be careful to ensure that any project it undertakes fulfills its mission, meets written protection criteria and the land trust’s strategic conservation plan (if there is one) and is approved by the board (see Practice 3D and Standards 8 and 9). To mitigate risk, land trusts should follow best practices, including thoroughly inspecting the property, assessing future stewardship obligations and conducting due diligence.

**Stewardship Administration**

A land trust that accepts and holds conservation easements commits itself to their annual stewardship in perpetuity, to enforcement of their terms and to building positive landowner and community relationships to support the land trust’s conservation programs and enforcement actions. The risks associated with failing to fulfill this obligation include loss of credibility, invalidation of easements, IRS fines, loss of gift deductibility and erosion of public confidence in the land trust’s mission and operations (see Standard 11).
Similarly, with respect to fee-owned 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 (see Standard 12).

Land trusts should have principles to guide easement and land stewardship decision-making—from the management of easements to the consideration of amendments and from the development of management plans to the allowable uses of land trust properties. Land trusts need to be transparent, fair and equitable. Stewardship principles can be useful in guiding board decisions on land management and easement stewardship and can help explain those decisions to the public.

**Property Damage**

A land trust that owns real estate faces the risk of property damage to its offices, other buildings and structures, equipment, data and the land itself. Losses may range from complete destruction of a building or equipment to temporary loss of use. A land trust that owns personal property, such as furniture, lawnmowers or computers, faces the risk of theft, damage and destruction to that property. No risk management strategy can guarantee the safety of the real estate and personal property owned and used by a land trust, but it can help the organization regain its footing if it suffers such a loss.

One way to approach property risk management is to think of it as a cyclical process. Such a process may include the following steps:

**Step 1:** *Determine the property needs of the land trust.* What land, buildings and equipment are needed to fulfill the mission of the land trust?

**Step 2:** *Articulate a long-term plan for land and building acquisitions.* What land and buildings are likely to be acquired as part of the land trust’s vision for the future? What conservation properties will be sought to advance the mission of the land trust?

**Step 3:** *Inventory property values and replacement costs.* What is the value of the land trust’s holdings? What is the likely cost to repair or replace property that may be damaged or destroyed? What will it cost to replant a timber stand decimated by fire or pests or crops destroyed by drought or other property features (trails, recreation structures, fences, water, electric, septic) damaged by severe weather?

**Step 4:** *Establish a regular schedule of monitoring land and inspecting and maintaining buildings and equipment.* Doing so will ensure that all property is protected and maintained.
as required by the management plan, contract, regulation or for land trust use. Who will undertake inspections and maintenance on the land trust’s behalf?

Step 5: Secure appropriate property insurance to cover the cost of repair and replacement of property deemed necessary to mission fulfillment/mission advancement. Be sure that you have sufficient coverage to actually replace the lost property, including buildings, timber and agricultural products. Also, have a cash reserve to pay all deductibles in full. Frequently update all property values.

Step 6: Monitor adherence to the land trust’s maintenance, upkeep and insurance program goals and make adjustments as necessary. A person or a team should be charged with responsibility for maintenance activities, as well as making necessary adjustments and communicating them to other land trust personnel.

**Personal Injury**

In the legal world, *personal injury* refers to bodily injury, emotional injury and claims involving injuries to reputation, business disparagement and civil rights violations. In the insurance world, personal injury does not include bodily injury, so be sure to understand which usage is intended when considering risks.

Personal injury also includes an evolving area of the law called SLAPP (Strategic Lawsuit Against Public Participation), where land trusts and public interest groups are sued in order to punish or prevent political opposition. A well-funded entity may file a frivolous claim against a land trust as a way of intimidating the organization from acquiring land or a conservation easement or for advocating on a public issue. Land trusts often compete against commercial interests in their attempts to acquire a property or to pursue their land-saving mission. A SLAPP suit is intended to scare opponents into abandoning their public position by filing expensive lawsuits.

The good news is that the overwhelming majority of SLAPPs are dismissed. The bad news is that even an unsuccessful lawsuit extracts time, dollars, energy and emotion from the parties—organizations often think twice about engaging in a project or speaking out if they feel threatened by a lawsuit. This is the ultimate goal of a SLAPP suit. Because of this stifling effect, many states have passed anti-SLAPP laws.
RELATIONSHIP BETWEEN INSURANCE AND RISK MANAGEMENT

A land trust can fund the losses it is unable to avoid either by using its own funds to pay for losses and legal defense costs or by purchasing insurance. Purchasing insurance from commercial insurers is a popular technique for financing insurable risks. For many nonprofits, insurance is the primary answer to the question: How will you pay for harm or loss caused by your operations?

The role of insurance within your land trust’s risk management program depends in large part on the goals and resources of the organization. Insurance is essentially a means to an end, and its role will depend on what a land trust seeks to accomplish, the availability of financial resources to fund an insurance program, the board’s appetite for uncertainty and the scope of the organization’s risk management activities. These factors are sometimes referred to as pre-loss goals. One factor that affects the insurance-purchasing decision is how much uncertainty the organization and its board can tolerate. In this context, uncertainty refers to the financial consequences of risk. A comprehensive insurance program offers stability and certainty through the fixed costs of premiums and knowledge that insurance will pay for most, but not all, losses.

The role of insurance in a nonprofit’s risk management program varies with each organization. A land trust’s pre- and post-loss goals are likely to affect the amount of insurance it purchases. The greater the need for financial certainty and continuation of operations, the more insurance the organization will likely purchase. The more risk the land trust’s leaders are willing to accept, the less they will rely on insurance to fund any accidental losses. For more insurance, see Practice 6E2.

THE BOARD’S ROLE IN RISK OVERSIGHT

Risk oversight refers to understanding the risks an organization faces and ensuring that the land trust takes reasonable precautions and other actions in the face of risk. Risk oversight is about stepping back and considering the adequacy of risk management activity, as opposed to hands-on risk management, which is typically coordinated and performed by a board committee, staff (if the organization has staff), volunteers and contractors. The land trust board is ultimately responsible for risk oversight. And, while few would disagree that the board is a leading stakeholder group, many leaders—board members included—continue to view risk management activities as falling within the exclusive domain of staff or lawyers.

Risk oversight should be an explicit responsibility of a land trust board. The risks facing an organization affect its ability to pursue the organization’s mission and the overall health and sustainability of the organization. As stewards of the organization’s mission and trustees of its financial and other assets, the board has an indispensable role to play in making certain that risks
are appropriately identified, considered and addressed. Yet, there is no single appropriate way in which to ensure that a board exercises appropriate risk oversight. For newer or more hands-on boards, the topic of risk management may arise throughout the year as the board reviews and acts on proposals to purchase property, enters into partnerships and provides a range of services in the community. In more mature organizations, a board may try to limit its involvement to policy-setting. However, even a mature governing board must recognize its ultimate responsibility for the welfare of the land trust and the potential for risk oversight to enable and support the discharge of that responsibility. For more on the board’s role in risk management, see A Guide to Risk Management for Land Trusts (note that the book contains references to practices from the 2004 edition of Land Trust Standards and Practices).

ADDITIONAL RESOURCES

A Common Sense Guide to Risk Management for Land Trusts, an online course created by the Land Trust Alliance.

Nonprofit Risk Management Center. Login as an affiliate to access all the available resources. Affiliate membership is complimentary for Land Trust Alliance members.
0STANDARD 6 FINANCIAL OVERSIGHT

E. Risk Management and Insurance

2. 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

Accreditation indicator elements located at www.landtrustaccreditation.org

IMPORTANCE OF INSURANCES

None of us knows exactly what tomorrow will bring, but most of us — including most managers of nonprofit organizations — expect that tomorrow will be much like today. However, events that we cannot now fully foresee may, occasionally and with little warning, make a nonprofit’s tomorrow much different — much worse or much better — than it is today. Unpredictable events involving each of the four fundamental values of a land trust — its people, its property, its income and its reputation — may bring near disaster or good fortune.

Unpredictable events involve risk, which is a measure of the possibility that the future may be surprisingly different from what we expect. To fulfill its public service mission, land trust boards, employees and volunteers must manage risks effectively by countering threats of loss and leveraging opportunities for gain. A correctly tailored insurance portfolio is an effective way to help manage risk.
What will you do if the unthinkable happens? Fire, flood, damaging encroachment on a preserve, a landowner who refuses to abide by an easement or a tree that crushes a car? That is where insurance comes in. Most land trusts do not keep enough money in reserve to cover such losses, so they purchase insurance to insulate them from the financial consequences of the unthinkable. The role of insurance and other strategies within a land trust’s risk management program depends upon the goals and resources of the organization. Insurance is one means to an end, and its role will depend on what your land trust seeks to accomplish.

Some of the most common goals related to insurance include:

- Ensuring a source of financial recovery should an individual suffer bodily harm or property damage while visiting the land trust’s property or while participating in a program sponsored by the land trust
- Ensuring the availability of funds to cover the cost of defending claims filed against the land trust, including its directors and officers
- Reducing the risk that the land trust’s cash on hand will be exhausted by costly property or liability claims
- Giving peace of mind to the land trust’s leaders with respect to the organization’s ability to survive a property loss or liability claim
- Helping land trusts defend their conserved lands from violations or legal challenges

Insurance can be a significant expense for a cash-strapped organization. Land trusts can also find themselves insurance rich and coverage poor when their insurance program does not address insurable risks properly. The role of insurance often depends on a nonprofit’s financial resources, appetite for risk taking and uncertainty, and risk management activities.

Purchasing insurance with a high deductible may free up financial resources to be spent on mission-related activities in the short term, although a prudent organization choosing a high deductible will also choose to set aside funds to pay that deductible in the event it becomes necessary to do so. High-deductible coverages usually have a moderate premium and, generally, insurance coverage helps the land trust spread risk so that it does not need to have as much cash in reserves for contingencies. Careful analysis of the policy terms and your land trust’s risk and risk tolerance is essential to understand the limits and implications of such plans so that the organization has adequate reserves for the deductible and uncovered events.
The role of insurance in a land trust’s risk management program will vary from one land trust to the next. In some organizations, the portfolio of insurance purchased from commercial carriers is the primary source of funding for losses and claims. In other organizations, the same set of coverages is a safety net, to be tapped in emergencies only. Regardless of the perspective that land trust leaders hold with respect to the proper role of insurance, all leaders can benefit from gaining a better understanding of the types of risks addressed in commonly purchased coverages.

For accreditation, a land trust must carry general liability insurance, and the policy must cover significant risks. In addition, the board or other delegated entity must evaluate insurance needs at least every five years to determine risk exposure and needs for directors and officers liability insurance, property insurance and other insurance required by law (such as workers’ compensation insurance).

TYPICAL INSURANCE PRODUCTS FOR LAND TRUSTS

Land trusts typically purchase a number of different insurance products (summarized in Table 1). Before looking at each type of insurance individually, let’s consider how the various insurance coverages fit together. General liability insurance covers claims alleging bodily injury or property damage. Directors and officers (D&O) insurance covers claims alleging wrongful management decisions by the land trust board and staff. Unpaid directors of nonprofits, such as a land trust, may have some coverage available under their individual homeowners or personal liability umbrella policies, but the protection, when it is available, is limited to the individual and does not offer defense and indemnity for the land trust where the board member volunteers. Title insurance generally excludes items on the ground, unless the survey exception is deleted, and usually excludes landowner compliance with the conservation easement. Title insurance does compensate the land trust if the actual title to (ownership of) the conservation easement is challenged or if there is a dispute about the legal description of the property, provided that it is not excluded by the survey exception. Terrafirma fills gaps in coverage that these other insurance products do not cover and provides coverage for the costs of upholding conservation easements and owned lands held for conservation purposes when they have been violated or are under legal attack.
### Table 1: Common Insurance Products for Land Trusts

<table>
<thead>
<tr>
<th>Coverage Type</th>
<th>Purpose</th>
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<tbody>
<tr>
<td>General liability</td>
<td>Bodily injury</td>
</tr>
<tr>
<td>Cyber risk insurance</td>
<td>Data loss and system damage, business interruption, notification expenses for victims of data breach, strategies to repair damaged reputation, content liability, regulatory investigation expense, extortion</td>
</tr>
<tr>
<td>Directors and officers</td>
<td>Wrongful management acts</td>
</tr>
<tr>
<td>Property</td>
<td>Damage or destruction to real property, such as buildings, conservation land and personal property; embezzlement of funds</td>
</tr>
<tr>
<td>Conservation defense liability: Terrafirma</td>
<td>Cost of a lawsuit to protect a land trust’s easements and conservation properties</td>
</tr>
<tr>
<td>Employment practices liability</td>
<td>Wrongful discrimination or harassment of employees</td>
</tr>
<tr>
<td>Professional liability</td>
<td>Errors or omissions in the delivery of professional services</td>
</tr>
<tr>
<td>Non-owned auto</td>
<td>Accidents involving vehicles used on the land trust’s behalf, but not owned by the land trust</td>
</tr>
<tr>
<td>Umbrella/excess liability</td>
<td>Catastrophic claims</td>
</tr>
<tr>
<td>Volunteer accident</td>
<td>Medical payments for accidents suffered by volunteers</td>
</tr>
<tr>
<td>Crime/fidelity coverage</td>
<td>Theft, forgery or other fraud, including computer fraud</td>
</tr>
<tr>
<td>Workers compensation</td>
<td>Medical costs and income replacement for staff who suffer injuries or illness at work</td>
</tr>
<tr>
<td>Title insurance</td>
<td>Defense of title impairment or failure (for fee-owned land and easements)</td>
</tr>
</tbody>
</table>
Tips for Assessing Your Insurance Needs

- **Document the land trust’s goals for its insurance program.** The role of insurance and other strategies within a land trust’s risk management program depends upon the goals and resources of the organization. Insurance is one means to an end, and its role will depend on what your land trust seeks to accomplish. Therefore, you need to document your goals for your insurance program.

- **Obtain an updated schedule of insurance at least annually from the land trust’s agent or broker.** An annual review of all insurance coverage is an essential risk management activity because circumstances change. For example, property values may have changed dramatically resulting in insufficient coverage to fully replace a total loss. Without an annual review of your insurance, you may find you have less coverage than you need or you are wasting money on unnecessary coverage.

- **Request that your agent or broker disclose the method and amount of compensation associated with your account.** In order to not overpay for insurance, you must understand both how and how much your agent or broker is compensated for your account.

- **Schedule and convene an annual meeting with your agent or broker.** Your annual insurance review should include an annual meeting with your agent or broker to review your insurable exposures and to determine the need for changes in your insurance program in order to stay current with changes in values, property acquisitions and advances in risk management planning.

- **Provide each member of the board with a copy of the land trust’s directors and officers (D&O) liability coverage.** Because the land trust’s D&O liability coverage benefits board members in particular, it is important that they have a copy of the current D&O policy.

- **Have written documentation on the differences in coverage provided by your commercial general liability, D&O liability and property policies.** Having written documentation on the differences in coverage will help you know in the event of a claim whom to notify and what is covered and what isn’t and will assist your attorney, as well, in coordinating with the insurers.

- **Assign responsibility for coordinating the insurance buying process to a senior manager in the land trust.** The insurance-buying process is a serious matter and should be managed by a senior leader in the land trust, not by junior staff or inexperienced or uninformed volunteers. This person will need to make many judgment calls and must be well informed about the land trust risks and programs.
- **Have a board member or other personnel carefully review your insurance options and needs on an annual basis.** High-level staff or volunteers must conduct a careful annual review of your insurance options, which are influenced by your current program activities and risk management needs.

- **Resist the temptation to simply renew all existing policies at the same limits and with the same providers.** While it can be expedient to merely renew all existing policies at the same limits and with the same providers rather than undertaking a meaningful annual review, it will benefit the land trust in the long run to be confident that it has adequate insurance all the time to ensure a smooth resumption of operations after a loss with a minimum of disruption to mission-critical activities.

- **Work with an agent or broker who specializes in nonprofit organizations, including environmental organizations or land trusts.** Nonprofits and particularly land trusts have specific, unique needs and risks. You need to work with an agent or broker who specializes in nonprofit organizations, including environmental organizations or land trusts, to be certain that your coverage is adequate and appropriate for your activities.

- **Follow the requirements for prompt reporting of claims and incidents and take steps to ensure compliance with the claims-reporting requirements of your various insurers.** When you have a claim, unless you follow the requirements for prompt reporting of claims and incidents and take steps to ensure compliance with the claims-reporting requirements of your various insurers, you may find that the insurer denies all coverage of the claim or imposes greater limits. You may also seriously undermine the effective early resolution of your claim. Be sure to notify the insurance carrier and your insurance agent, as well as your board and attorney, in the event of a claim or incident.

### General Liability

*General liability* insurance policies typically cover an organization’s exposure for bodily injury and property damage caused by an accident, except for liabilities that are specifically excluded. Coverage applies at your premises or anywhere else in the United States, its territories or Canada. This insurance is extremely important for land trusts to acquire as one bad accident could lead to financial ruin. You may also be surprised how often general liability will cover the land trust in a trespass or enforcement lawsuit where the neighbors or successor owners sue the land trust.
Insurance underwriters—the professionals who determine the terms, conditions and pricing of coverage offered to your land trust—generally add endorsements to general liability policies. An endorsement either excludes or expands coverage. The scope of coverage under any general liability policy will depend upon the particular exclusions and enhancements added to the standard policy.

Common categories of claims under a general liability policy include:

- Injuries arising from your premises
- Injuries to visitors on land trust properties
- Injuries to volunteers, employees or consultants working for you
- Injuries to guests at special events
- Injury caused by products you sell or manufacture
- Fire damage to your or your landlord’s building
- Damage to property not owned by you or in your possession

Regardless of the specific general liability policy, general liability won’t cover:

- Emotional distress, unless arising from bodily injury
- Financial loss, unless arising from bodily injury or property damage
- Property damage to intangible property (such as information stored on a computer network)

Commercial general liability coverage refers to an expanded form of general liability that includes two additional categories of coverage: personal (non-bodily, property) and advertising injury liability and medical expense coverage.
**Cyber Risk Insurance**

General liability won’t cover losses from a cyberattack or data breach. Good computer protocols, relentless information technology hygiene and repeated volunteer and employee training can reduce the threat of cyberattack. Data breach threats come from many sources: an employee falls prey to email phishing; a laptop vanishes from an employee’s car; a disgruntled employee leaves with donor credit card numbers and more. Unintentional privacy breaches, such as information lost, stolen or accessed by an unauthorized source, regardless of where the data is stored, can be just as costly as the more notorious hacker data theft. The device—and all the vital data on it—could be damaged, lost forever or fall into unscrupulous hands. These common activities can lead to potential liability:

1. Conducting e-commerce, especially collecting credit card data and processing payments online
2. Storing and transferring employee, client or donor data—both electronic and paper
3. Storing personal information on laptops, smartphones, pads, thumb drives or external portable drives without proper safeguards
4. Remote workers with sensitive data on remote hard drives and mobile devices
5. Allowing partners or vendors to access personal information without proper safeguards
6. Storing personal information on cloud servers or systems

An experienced broker can identify the insurers who offer the product most suited to your company’s needs and help negotiate favorable terms and price. Working together, a team including your broker and outside counsel can ensure that you purchase the right coverage with appropriate terms and conditions.
Directors and Officers Liability

Directors and officers (D&O) liability policies cover liability for economic damages resulting from poor judgement, breaches of duty, conflicts of interest, errors or omissions in the governance or management of an organization. Similar to the structure of a general liability policy, a nonprofit D&O policy covers liability claims, except those that are specifically excluded. The two policies, therefore, are intended to be mutually exclusive, meaning that they do not cover the same liabilities; in fact, they specifically exclude the events that the other covers. See Tables 2 and 3 for an overview of differences and similarities in the policies. The principal difference between general liability and D&O is that the general liability form covers claims alleging bodily injury and property damage only. D&O liability covers wrongful acts (wrongful management decisions) and always excludes bodily injury and property damage. D&O insurance is important for land trusts because board members may be targeted in lawsuits and need to defend themselves (state and federal volunteer protection laws may be inadequate in such situations).
### Table 2: Key Differences between Commercial General Liability and D&O Policies

<table>
<thead>
<tr>
<th>Commercial General Liability</th>
<th>Directors and Officers Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covers bodily injury, property damage and personal and advertising injury.</td>
<td>Always excludes bodily injury and property damage.</td>
</tr>
<tr>
<td>Covers accidents only. Claims usually arise directly from operations rather than governance (management decisions).</td>
<td>Covers wrongful acts. Claims usually arise from governance or management decisions. Board members, management personnel and the organization itself are often defendants in these claims and are listed under a broad definition of insured in the policy.</td>
</tr>
<tr>
<td>Most often sold to nonprofits as an occurrence policy. The coverage trigger in this policy form is the date of the event, accident or occurrence.</td>
<td>Most often sold to nonprofits as a claims-made policy. In some cases, D&amp;O is available on an occurrence form. In a claims-made policy, the coverage trigger is the date the claim was made against the organization. For example, a lawsuit alleging sexual harassment is likely to be filed or made many months after the alleged incident or incidents of harassment occurred.</td>
</tr>
<tr>
<td>Standard policy wording. Most insurance carriers use one of the forms issued by the Insurance Services Offices (ISO). The form number and ISO reference appear at the bottom of each page of the policy.</td>
<td>Nonstandard policy wording. Each insurer drafts or “manuscripts” its own D&amp;O policy forms. Differences in wording and policy structure make it more difficult to undertake a side-by-side comparison of coverage, which is key to determining which provides better or preferable protection for the insured.</td>
</tr>
</tbody>
</table>
Table 3: Similarities in Commercial General Liability and D&O Policies

<table>
<thead>
<tr>
<th>Commercial General Liability</th>
<th>Directors and Officers Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covers liabilities common to all nonprofits, including land trusts.</td>
<td>Covers claims alleging wrongful management acts that are common to all nonprofits.</td>
</tr>
<tr>
<td>Provides broad catch-all or basic liability coverage. Other liability coverages are more specific and narrower in scope.</td>
<td>Provides broad coverage for wrongful management acts.</td>
</tr>
<tr>
<td>Includes all board members, employees and volunteers as insureds.</td>
<td>Includes all board members, employees and volunteers as insureds.</td>
</tr>
</tbody>
</table>

Claims typically covered by nonprofit D&O policies that include employment practices coverage include those alleging:

- Wrongful termination
- Breach of employment contract
- Discriminatory hiring practices
- Failure to promote
- Negligent evaluation (an assertion that an employee’s performance evaluation was excessively negative, unfairly low or otherwise inaccurate and therefore did not reflect the employee’s actual, higher level of performance)
- Retaliation
- Wrongful discipline
- Failure to grant tenure
- Invasion of privacy
- Employment-related defamation
- Employment-related infliction of emotional distress
The majority of claims filed under nonprofit D&O policies allege wrongful employment practices, but not every covered D&O claim is related to human resource matters. Land trusts should note the many areas are subject to risks of negligence. Examples of non-employment claims alleging wrongful management acts typically defended by D&O policies include:

- Misallocation of funds
- Breach of fiduciary responsibilities
- Self-dealing/conflict of interest
- Antitrust or restraint of trade violations
- Third-party discrimination, defamation or invasion of privacy
- Negligent financial advice to third parties
- Failure to maintain insurance
- Tortious interference with contract
- Breach of contract
- Failure to accredit or certify
- Infringement of trademark, patent or copyright

**Exclusions Common to Nonprofit D&O Policies**

Each insurance company offering D&O coverage develops and uses its own, somewhat unique, policy wording. As a result, the coverage offered by two competing companies can vary significantly. Nonetheless, there are exclusions common to all nonprofit D&O policies. These include:

- Bodily injury
- Property damage
- Theft
- Criminal acts
- Sexual abuse and harassment
- Deliberately fraudulent acts
- Pollution
- Nuclear reaction or radiation
- Litigation pending prior to the original inception date of the policy
- Claims involving retirement plans, employment disputes or security laws

**Property Coverage**

Most land trusts purchase some type of property insurance. The scope of coverage depends upon the type of property that may be damaged and what caused the damage to occur. Common property policies protect the following types of property against damage or destruction:

- Real estate/buildings
- Valuable papers
- Money and securities
- Computer equipment
- Boilers and machinery
- Lost income/extra expense
- Personal property
- Fine arts (owned and non-owned; transit and exhibition)
- Accounts receivables
- Contractors’ equipment or buildings under construction or renovation
- Property while it is in transit
- Property belonging to others
To collect under a property policy, the covered property must be damaged by certain causes of loss. Most policies cover every type of cause, except those specifically excluded in the policy (for example, nuclear war), but some policies only cover damage caused by specific causes, such as fire, lightning, wind, water or objects falling from the sky. Many policies do not cover significant catastrophes that affect a wide geographical area, such as floods or earthquakes.

**Conservation Defense Liability Insurance: Terrafirma**

Although land trusts have had relatively few legal challenges, conservation easements and preserved lands are increasingly under attack across America. As population and development pressures increase, so does the value of conserved properties, making them vulnerable. Eventually, every land trust will face legal challenge even if they don’t end up in court. Experts to help you resolve and document any legal challenge are just as expensive as lawyers, so insurance to protect conserved land is important for all land trusts to consider.

The Land Trust Alliance created Terrafirma to offer a significant layer of protection from risk exposure not covered by other insurance products. To the extent that other insurance policies do provide coverage, those resources are to be used first to address claims. Terrafirma is owned by the participating member land trusts as a safety net for the costs of upholding conservation easements and protecting fee lands held for conservation purposes when they have been violated or are under legal attack and to provide information to those land trusts on risk management. Terrafirma is the first far-reaching, national service to ensure the permanence of conservation undertaken by the land conservation community. The insurance program is a risk retention group, a mutual insurance arrangement whose business is limited to insuring its members, all of whom are members of the Land Trust Alliance. Terrafirma is a charitable risk pool with tax-exempt status under the Internal Revenue Code. Learn more at [www.terrafirma.org](http://www.terrafirma.org).

**Employment Practices Liability Insurance**

Most nonprofits that purchase D&O coverage purchase employment practices liability (EPL) coverage as part of the D&O policy, but EPL coverage is also available as a standalone. A separate EPL policy may not provide a nonprofit with the depth of coverage that a nonprofit D&O policy with EPL coverage may include. Many stand-alone EPL policies do not include the organization, all employees or volunteers as insureds. The definition of covered employment actions may be narrower in a stand-alone EPL policy than a nonprofit D&O policy with included EPL coverage. Finally, a stand-alone EPL policy may be more expensive and include a large retention or possible coinsurance provision in which the insured must pay a certain percentage of the loss.
Purchasing employment practices coverage as part of a D&O policy has one clear disadvantage. A policy with both D&O and EPL coverage addresses two very distinct exposures with one policy limit. The inclusion of EPL coverage, therefore, could erode the amount of funds available to protect the directors’ and officers’ personal assets and to protect the nonprofit and its employees and volunteers from other claims. The defense and resolution of an employment-related claim will reduce and could possibly exhaust the D&O policy limits, thereby leaving limited or no funds for any additional non-EPL claims. The majority of nonprofit D&O policies provide no separate limit for EPL coverage. However, some companies are introducing either a sublimit or separate limit for EPL coverage. Therefore, a land trust should carefully evaluate the adequacy of its D&O policy limit when it purchases a D&O policy that includes employment practices liability coverage. At the same time, it is important to keep in mind that some nonprofits, including land trusts, will never face a non-employment-related claim, and therefore, a D&O policy with employment practices liability coverage may represent an affordable and appropriate option.

**Professional Liability Insurance**

Professional liability insurance, also known as *errors and omissions liability insurance* or *malpractice insurance*, covers liability for the higher standard of care required of professionals when providing services within their area of expertise. Professionals subject to this higher standard of care must possess and demonstrate the same expertise and competencies common to members in good standing of their profession. Land trusts do not typically purchase professional liability coverage because their customary liability exposures are covered under commercial general liability or D&O or other typical coverage (but not always).

Does your land trust need professional liability insurance? Whether a particular service provider in a particular situation can be held to a professional standard of care is a legal question that can only be answered definitively in a court of law. The relevant question for insurance purposes is: does your land trust provide services that are specifically excluded under your general liability and D&O policies? If the answer is “yes,” you probably need a professional liability policy. Ask your insurance agent if your land trust’s activities are covered or not. You should also compare the scope of your policy and its exclusions with the services you provide.
Non-Owned Automobile Liability

Non-owned automobile liability insurance covers liability for accidents caused by an employee or volunteer driving their own vehicle on a nonprofit’s behalf. The coverage is designed to protect only the nonprofit organization—not the employee or volunteer. Coverage applies when the liability limits of the vehicle owner’s personal automobile policy have been exhausted. This policy form does not provide coverage for damage to the employee or volunteer’s vehicle.

Non-owned auto liability is *excess coverage*, designed to cover the nonprofit only when it is specifically named in a lawsuit and the damages are higher than the vehicle owner’s policy limits or when the vehicle owner has no personal auto liability in force. Obviously, if a land trust does not rely on employees’ or volunteers’ personal cars, this insurance is unneeded.

Excess and Umbrella Liability

Liability insurance policies provide either *primary* or *excess* coverage. Primary coverage is the first to apply or respond to covered claims. When the limits of a primary policy have been exhausted, the excess policy will be triggered and provide additional limits of liability for defense costs, judgments and settlement expenses. Excess policies *follow form*, which means that they mirror the terms and conditions of the underlying policy. They do not cover claims that would be excluded by the primary policy. Some of these coverages, such as excess auto liability, include the label *excess* in their names and are, therefore, easy to identify. Excess coverage is often inexpensive due to the low probability that it will be needed.

Umbrella insurance policies generally provide broader protection than excess policies. Why? In addition to providing excess coverage over underlying limits, an umbrella policy will “drop down” to cover losses not covered under a land trust’s primary insurance policies. This coverage is subject to a large deductible, which is called a *self-insured retention*. The standard self-insured retention amount is $10,000.
Umbrella policies supplement the coverage a land trust has through its other liability policies. If an organization does not have sufficient liability coverage to resolve a claim or a lawsuit, the person bringing the action might go after the organization’s property assets to pay for damage. Umbrella policies cover the excess liability of damage claims against an organization or its employees and volunteers. Generally, umbrella policies provide coverage only when the limits of other policies have been exhausted. In determining if your land trusts needs an umbrella policy, take a look at your activities, the amount of insurance coverage you hold and the communities in which you operate (are they particularly litigious with high awards common?). It may make more sense to increase your insurance coverages across the board. Most land trusts that reach a staff size of more than five full-time equivalents usually start considering umbrella coverage merely due to the extent of the organization’s activities and obligations.

The declarations page (“dec page”) for your umbrella policy will typically indicate the relevant underlying policies. In order for the umbrella coverage to apply, the scheduled underlying policies must be in force at the time of loss.

**Volunteer Accident Coverage**

Although permitted in some states, including volunteers in a land trust’s workers compensation coverage is an expensive proposition. As an alternative, land trusts that use volunteers extensively may elect to purchase volunteer accident coverage. This coverage provides medical reimbursement up to a defined limit, but it does not provide income replacement. A typical policy offers no-fault coverage that is available if a covered individual suffers an injury while serving a nonprofit organization. Accident medical reimbursement coverage (also known simply as *accident coverage*) can also be written to cover volunteers and participants. A volunteer accident policy does not provide coverage for the organization itself; however, the availability of the coverage may dissuade an injured volunteer from bringing a legal claim against the land trust.

Accident coverage provides reimbursement for medical treatment, hospitalization and licensed nursing care, for dental care or repair and replacement of dentures and for repair and replacement of eyeglasses. It also includes benefits for accidental death and loss of limb and sight. Limits of up to $25,000 per covered accident are generally available.
Most accident policies are available with no deductible. Accident policies are written on an excess basis, which means that they are excess over Medicare, Medicaid or any supplemental insurance the volunteer may have in place. If there is no such insurance, the coverage becomes primary.

Common exclusions for this policy include sickness, injuries occurring while performing fire or rescue duties or playing sports or accidents incurred while under the influence of controlled substances.

**Crime/Fidelity Coverage**

A crime policy is generally a package of policies that protect an organization against intentional theft by insiders as well as theft of assets by third parties. A fidelity bond is often used interchangeably with crime coverage; however, a fidelity bond or employee dishonesty bond is actually just one component of a broader crime policy. The coverage can be purchased separately or as a stand-alone policy.

A fidelity or employee dishonesty bond addresses a single type of exposure that is theft and embezzlement committed by a staff member. It also covers claims concerning mishandling of retirement plans and frequently is provided by the D&O carrier. If a client, contractor or a third party, such as a burglar, steals anything, the fidelity bond does not apply. Most nonprofits purchase blanket position bonds rather than only coverage for specific persons on the policy so that the organization has coverage for all of a person’s acts associated with the organization. In determining whether you need this type of insurance, review your land trust’s activities and financial systems to see if makes sense to purchase. If the organization handles large amounts of funds, has complex financial arrangements, works with donors outside of the state in which your land trust is organized, has a significant payroll and certainly if it manages a pension plan or other retirement funds, then you may be wise to buffer the organization from this type of loss. Risk balancing through excellent financial management systems of course is the first critical step. It is also important to remember that this type of insurance protects the honest employees, board, volunteers and your reputation from suffering effects of dishonest actions.

Common claims allege employee dishonesty, embezzlement, forgery, robbery, safe burglary, computer fraud, wire transfer fraud, counterfeiting and other criminal acts. Because dishonesty-related losses are not typically covered by most property insurance policies, fidelity insurance is an additional component for many businesses.
Workers Compensation

Coverage A (or Part One) of the policy provides reimbursement for medical claims and income replacement for workers unable to work due to illness or injury. The coverage, therefore, reduces, but does not eliminate the risk that the employer will face a liability claim from an injured worker. Coverage B (or Part Two) provides employers with liability protection for liability claims that are narrowly allowed by statute.

Today, every state requires that employers who meet defined thresholds (based on number of employees or type of activity) carry workers compensation coverage. Workers compensation is governed at the state level through state statutes (no fault). Employers’ liability is governed through the legal system and tort law (common law and negligence). The only named insured of a workers compensation policy is an employer of at least one full-time employee. The employer must have a federal employer’s identification number (EIN) to obtain coverage. Most states require confirmation that workers compensation coverage is in place on unemployment tax forms.

Title Insurance

Sometimes title problems occur that could not be found in the public records or are inadvertently missed in the title search process (see Practice 9F). To help protect your land trust in these events, consider obtaining an owner’s policy of title insurance to insure you against the most unforeseen problems when you acquire conservation easements or fee-owned land. Owner’s title insurance, called an owner’s policy, is usually issued in the amount of the real estate purchase (or its value, if a donation). It is purchased for a one-time fee at closing and lasts for as long as you or your heirs have an interest in the property. Only an owner’s policy fully protects the land trust should a covered title problem arise that was not discovered during the title search. Possible hidden title problems can include:

- Errors or omissions in deeds
- Mistakes in examining records
- Forgery
- Mortgage holder fraud, forgery or false information
- Undisclosed heirs
- Potential boundary issues if not excepted from coverage
An owner’s policy provides assurance that your title company will stand behind you—monetarily and with legal defense, if needed—if a covered title problem arises after you acquire land or a conservation easement. The title company will help pay valid claims and cover the costs of defending an attack on the title. Receiving an owner’s policy isn’t an automatic part of the closing process, and it is paid for by different parties in different parts of the country. For more on title insurance and when your land trust needs to purchase it, see Practice 9F and this Practical Pointer.

**INSURANCE TRIAGE QUESTIONS**

The kinds and amounts of insurance will depend on your organization’s size, risk profile, property and legal structure. Use the following questions to determine your land trust risk categories, which should help you select the proper types of insurance.

- **Do you own real estate?**
  - If yes, consider property, general liability

- **Do you have employees?**
  - If yes, consider D&O (with employee practices liability or as a separate policy), general liability, non-owned auto (if employees use their personals cars for land trust business), crime/fidelity coverage, workers compensation (required in all states), harassment and sexual abuse

- **Do you hold conservation easements?**
  - If yes, consider Terrafirma, title insurance, volunteer accident (if your volunteer’s monitor easements) and also carry general liability and D&O because all these coverages provide defenses when unhappy successor owners or neighbors sue the land trust

- **Do you employ licensed professionals?**
  - If yes, consider D&O, general liability, professional liability

- **Do you buy or sell land?**
  - If yes, consider Terrafirma, title insurance, general liability, property, umbrella/excess liability and D&O (you will be surprised how often disgruntled persons will sue a land trust for bad faith, misrepresentation or fraud in the context
of a failed real estate transaction, or even a successful one, where negotiations were aggressive)

☐ Do you have volunteers?
  □ If yes, consider D&O, general liability, volunteer accident, crime/fidelity, non-owned auto, harassment and sexual abuse

☐ Do you have events?
  □ If yes, consider property, general liability, crime/fidelity

☐ Do you own a company vehicle?
  □ If yes, consider auto, general liability, property, umbrella/excess liability

☐ Do you use power equipment or hand tools likely to cause injury?
  □ If yes, consider property, general liability, volunteer accident, workers compensation (required in all states)

☐ Do you use or are personnel exposed to chemicals?
  □ If yes, consider property, general liability, volunteer accident, workers compensation (required in all states)

☐ Do you conduct children’s programs or events?
  □ If yes, consider D&O, general liability property, crime/fidelity and, sadly, land trusts must also now have harassment and sexual abuse protection

☐ Do you lease office space?
  □ If yes, consider general liability, renter’s insurance

☐ Do you lease equipment?
  □ If yes, consider general liability, volunteer accident, workers compensation (required in all states)

☐ Are you in a litigious area of the state?
  □ If yes, consider D&O, general liability, Terrafirma, volunteer accident, umbrella/excess liability
☐ Are attorney fees generally high in your region?
  ☐ If yes, consider Terrafirma and umbrella/excess liability

☐ Is your area of the state subject to severe weather or flooding?
  ☐ If yes, consider general liability, property, umbrella/excess liability

☐ If your office was forced to shut down for one or more months, would it cause operations to cease?
  ☐ If yes, consider general liability, property, umbrella/excess liability, business interruption

☐ Does your area have heavy media coverage?
  ☐ If yes, consider commercial general liability and D&O should a land trust decision result in a lawsuit or adverse media campaign

☐ Do you use computers and the Internet to conduct fundraising and your operations?
  ☐ If yes, evaluate your cyber risks and consider purchasing an appropriately sized cyber policy
### Table 4: Insurance Coverage Matrix

<table>
<thead>
<tr>
<th>Coverage Type</th>
<th>Purpose</th>
<th>Do We Have This Exposure?</th>
<th>Coverage in Place</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Liability</td>
<td>Bodily injury</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D&amp;O</td>
<td>Wrongful management acts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EPL</td>
<td>Wrongful discrimination or harassment of employees</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Professional Liability</td>
<td>Errors or omissions in the delivery of professional services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-owned Auto</td>
<td>Accidents involving vehicles used on our behalf, but not owned by the land trust</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property</td>
<td>Damage or destruction to real property, such as buildings, conservation land and personal property, embezzlement of funds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Umbrella/Excess Liability</td>
<td>Catastrophic claims</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Volunteer Accident</td>
<td>Medical payments for accidents suffered by volunteers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crime/Fidelity Coverage</td>
<td>Provides coverage for theft, forgery or other fraud, including computer fraud</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workers Compensation</td>
<td>Medical costs and income replacement for staff who suffer injuries or illness at work</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Title Insurance</td>
<td>Defense of title impairment or failure (for fee-owned land and easements)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TerraFirma: Conservation Defense</td>
<td>Funds to cover the cost of a lawsuit to protect a land trust's easements and conservation properties</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
What to Do When Purchasing Insurance

- Find a competent insurance professional (broker or agent) whom you trust to advise you on insurance matters and act as your advocate in the insurance marketplace
- Ask your insurance agent or broker to disclose how they are compensated and also the amount of compensation they receive for work on your behalf
- Have a senior staff person or board member purchase insurance and annually review the policies
- Take the time to read your insurance policies annually
- Investigate the financial stability of your insurers
- Ask your broker or agent to respond in writing to your questions
- Consider seeking multiple bids for your insurance coverage at least every four to five years
- Give thoughtful consideration to how much risk your land trust can afford to retain
- Provide your board of directors with a copy of the actual policy wording for the land trust’s D&O liability policy
- Provide a periodic briefing on your insurance program to the land trust’s board of directors
- Review your risks annually

What Not to Do When Purchasing Insurance

- Delegate responsibility for your insurance program to a junior staff member or new volunteer
- Simply renew your coverages each year without considering whether your coverage needs have changed
- Wait until the last minute to submit completed applications
- Be evasive about your operations and exposures on your application
- Be shy about asking questions concerning your coverage or the process
- Regard your insurance coverage as the equivalent to a risk management program
Tips for Working with Your Insurance Professional

- Provide prompt, clear, concise answers to questions
- Expect your quote in a timely manner
- Ask questions and expect understandable answers
- Get important answers in writing
- Don’t withhold information from your broker
- Report claims to your broker immediately and be prepared to give detailed information regarding the claim
- Meet with your broker annually to review your policies

Insurance Professional Services/Responsibilities

The following list indicates some of the services an insurance professional might provide to a land trust. The leaders of your land trust must decide which services it requires or views as desirable.

- Provide complete and accurate information to the insurance carrier on behalf of the insured, including signed applications and updated information at renewal.
- Remit down payments and balance payments to the insurance carrier in a timely fashion.
- Arrange financing, if requested by the insured member.
- Help insured with compliance with safety recommendations.
- Complete certificates of insurance and request additional insured endorsements, as required by funding sources, landlords and so forth.
- Review all contracts for the insured with respect to insurance requirements. Forward unusual contractual obligations to the insurance carrier for review and comment.
- Be available to answer questions regarding the insurance contract.
- Report claims and coordinate claim adjusting with the insurance carrier.
- Be available to participate in the land trust’s risk management committee, if requested.
- Be available to attend at least one of the land trust’s board meetings per year, if requested.
• Present an appropriate insurance package to the land trust for its review and action.
• Serve as a source of information with respect to insurance questions.
• Maintain a complete insurance file for the insured nonprofit (as the insured, you should keep a copy, as well).
• Maintain continuing education and proper licensing status at all times.

ADDITIONAL RESOURCES

Online
• A Guide to Risk Management for Land Trusts, an online course offered by the Land Trust Alliance.
• Nonprofit Risk Management Center. Complimentary for Land Trust Alliance members. Click on “Affiliate Login,” and first-time users need create an account (be sure you indicate you are a member of the Land Trust Alliance to receive free access).

Publications
• Head, George L. “The ‘Additional Insured.’”
• ___ and Erin Gloeckner. “Contemplating Coverage: Insurance for Nonprofits.”
• Stumhofer, Emily. “How to Read an Insurance Policy.”
ABOUT THIS DOCUMENT

This example can be used as a starting point to create a policy or other document for your own land trust, but should be altered as necessary to reflect your organization’s unique circumstances.

If you are using this material for accreditation purposes, see the Land Trust Accreditation Commission website for additional information.

To search for policies from accredited land trusts on the Learning Center, include the word “accredited” along with your search terms (e.g., conflict interest policy accredited).

QUESTIONS?

Email tlc@lta.org or click the blue circle on any Learning Center page to chat with us.
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1.0 Introduction and Objectives

Columbia Land Trust endeavors to maintain a safe and healthful workplace, with an objective to minimize injuries, illnesses, and hazards to employees, volunteers, donors, event participants, contractors, and any other associated parties.

To accomplish this, the Land Trust has developed this Safety, Health, and Risk Management Manual (hereby referred to as the “Safety Manual”). This document articulates Columbia Land Trust’s Safety, Health, and Risk Management Program (hereby referred to as the “Safety Program”) and contains procedures that are designed to assist employees with moderating workplace risks to maximize the safety and well-being of all involved parties.

Sections 1-4 of the Safety Manual provide an overview of the Safety Program and address its implementation. Sections 5-7 provide general safety information pertinent to the daily activities of all employees. Sections 8-11 include safety information specific to particular workplace activities and responsibilities. The Appendices include all relevant forms and detailed safety references.

Employees are expected to read and be familiar with sections 1-7 of the Safety Manual, in addition to all other sections pertinent to their particular workplace responsibilities. All Columbia Land Trust employees are required to read and agree to the terms set forth in Columbia Land Trust’s Safety Manual.
2.0 Policy Statement

Columbia Land Trust’s organizational objective is to manage a health, safety, and risk management program that will keep injuries, illnesses, hazards, and liabilities to a minimum. To achieve this, health, safety, and risk management must be a part of every workplace operation. It is every employee’s responsibility at all levels. As the employer, Columbia Land Trust accepts responsibility for the effectiveness and improvement of the health, safety, and risk management program. Employees are responsible for compliance with all rules and regulations and for continuously practicing risk management while performing their duties.
3.0 Program Implementation Overview

Below is an overview of the means by which Columbia Land Trust will implement its Safety Program.

LEADERSHIP COMMITMENT

Columbia Land Trust leadership is committed to ensuring that organizational health, safety, and risk management practices are followed, evaluated, and regularly improved upon. Land Trust management acknowledges health, safety, and risk management as a high priority, and will allocate the necessary time and resources to this end.

SAFETY COMMITTEE

Columbia Land Trust’s Safety Committee is responsible for overseeing the implementation of the health, safety, and risk policy. The Safety Committee includes management and employee representatives from across program areas. See the Appendices for more information on the Safety Committee, including the Safety Charter.

SAFETY MANUAL

Columbia Land Trust’s Safety Manual is intended to be the guiding tool for employees to identify, prevent, and mitigate hazards. The Safety Manual is an adaptable, living document that will be reviewed annually and may be revised as needed, contingent upon the approval of the Safety Committee and Land Trust management. Employees are encouraged to suggest revisions and improvements to the Safety Committee.

JOB SAFETY ASSESSMENT

Job Safety Assessments provide supervisors and employees regular opportunities to identify hazardous conditions and develop best practices to reduce or eliminate these hazards. Supervisors will perform a Job Safety Assessment with each employee when hired and as duties change. The supervisor and employee will identify work tasks, associated hazards, and means to reduce risks through training and personal protective equipment. Employees are responsible for reviewing and updating their Job Safety Assessment with their supervisor at least annually to discuss any newly identified hazards, concerns, and/or equipment changes. Job Safety Assessment forms are located in the Appendices.
HEALTH, SAFETY, AND RISK MANAGEMENT TRAINING

All Land Trust employees and volunteers will receive the health, safety, and risk management training necessary to perform their essential job functions. Employees, volunteers, and supervisors will work together to identify and ensure appropriate trainings. Employees are encouraged to pursue any training that will facilitate the goals of the Safety Program, and should bring these opportunities to the attention of their supervisor. Information relevant to determining, tracking, and documenting training needs is featured throughout the Safety Manual.

PERSONAL PROTECTIVE EQUIPMENT

Personal protective equipment (PPE) serves to minimize exposure to workplace hazards. Columbia Land Trust will provide the supplies and resources to responsibly promote the proper use of PPE. Information relevant to PPE selection, maintenance, evaluation, and training is featured throughout the Safety Manual.

SAFETY INSPECTION PROCESS

Workplace inspections will be conducted to help prevent injuries and illnesses. Columbia Land Trust will conduct regular safety inspections of all relevant Columbia Land Trust facilities and equipment. Designated employees will conduct these inspections, and the Safety Committee will review and facilitate any improvements. Additional information about workplace inspections is located in the Safety Committee section of the Appendices.

SAFETY REPORTING

Land Trust employees will support organizational health, safety, and risk management by participating in a safety reporting process. Employees are required to report safety issues and are strongly encouraged to report safety concerns. Information about safety reporting is featured throughout the Safety Manual.

EMERGENCY PREPARDNESS AND RESPONSE

The Land Trust is committed and prepared to deal with workplace emergencies at a variety of scales. The Land Trust maintains an Emergency Response Team composed of designated Land Trust employees that will mobilize to provide emergency support whenever need dictates. Additional information is located in the Emergency Response section of the Safety Manual.
EMPLOYEE ACCOUNTABILITY

All Columbia Land Trust employees have an obligation to ensure safe work practices. Supervisors will evaluate employees’ safety performance at least once annually during the employee annual review. Reviews will examine safety practices, performance expectations, and additional safety needs. Employees who disregard health, safety, and risk management responsibilities will be held accountable. Information about employee accountability is featured throughout the Safety Manual and within the Appendices.

SAFETY PROGRAM EVALUATION

The goals, objectives, and elements of the Safety Program will be evaluated annually to determine if they are meeting their intended purpose. An evaluation of the Safety Program will be conducted by the Safety Committee. The Safety Committee will provide an annual report to the management team regarding the Safety Program. If deficiencies are discovered, Columbia Land Trust will develop and implement corrective procedures.
4.0 Employee Roles and Responsibilities

Safety is a fundamental responsibility of each employee. The following is a list of roles and responsibilities for Land Trust employees:

All Employees
• Maintain familiarity with all health, safety, and risk management policies.
• Assume responsibility for personal conduct and actions.
• Conduct and review individual Job Safety Assessment.
• Analyze hazards and exercise good judgment.
• Use all safety equipment provided for protection.
• Identify and attend all necessary trainings.
• Ask questions when unsure of safe work procedures.
• Report unsafe conditions, activities, or equipment.
• Immediately report all safety issues, incidents, injuries, or near misses.
• Evaluate personal safety performance during the annual review process.
• Demonstrate a positive example for other employees to follow.

Supervisors
• Maintain a safe work environment and implement safe work practices.
• Stay knowledgeable and up to date on safety and health requirements.
• Conduct and review Job Safety Assessments with employees annually.
• Correct all immediate hazards.
• Address any identified performance issues of supervised employees.
• Ensure employees receive proper training for their job duties.
• Ensure employees receive proper safety equipment for their job duties.
• Support emergency response when necessary.
• Provide feedback for employees regarding their safety practices during the annual review process.

Management Team
• Assume accountability for preventing workplace safety, health, and risk management issues.
• Ensure that the Safety Program has all necessary funding and resources.
• Provide input and support for to the Safety Committee as requested or whenever appropriate.
• Support and oversee supervisors in the implementation of health, safety, and risk management procedures within their programs.
• Annually review the Safety Program and provide feedback to the Safety Committee.

Safety Committee
• Track and oversee implementation of the Land Trust safety program, ensuring compliance with health and safety regulations and Land Trust standards.
• Serve as an advisory group to management on health and safety issues; provide suggestions and recommendations for resolution of health and safety concerns.
• Identify unsafe work practices and conditions and suggest appropriate remedies.
• Assist in the development and implementation of effective health, safety, and risk management awareness activities.
• Review health and safety inspections of all facilities to identify safety hazards and recommend corrective measures.
• Review reported incidents and safety concerns, identifying types of issues, causes, and trends as well as appropriate corrective action.
• Encourage feedback from all individuals with regard to health and safety related ideas, problems, and solutions.
• Schedule and develop an agenda for meetings based on member and employee input.

**Land Trust Administrator**
• Keep current on health, safety, and risk management regulations and practices.
• Maintain health, safety, and risk management records.
• Report health, safety, and risk management concerns to the Safety Committee and management team.
• Support the Emergency Response Team when needed.
5.0 General Health and Safety

SAFETY REPORTING

Employees are required to report safety issues and are strongly encouraged to report safety concerns. Employees should report all safety incidents and safety concerns requiring immediate action to a supervisor as soon as possible. All safety incidents should subsequently be formally documented by submitting an Incident Report Form. All safety concerns should be documented by submitting a Safety Concern Form. Forms should be submitted to the employee supervisor and the Safety Committee within 48 hours of the observation or occurrence. Issues of a serious nature should be reported immediately to the Emergency Response Team.

Incident Report Form
Any of the following constitute a workplace safety incident that must be reported:

- Equipment or property damage, theft or loss over $500;
- Personal injury requiring more than a Band-Aid;
- A legal citation, including traffic violations;
- Intervention or participation by law enforcement or medical professionals;
- Connection to or involvement in legal or criminal activity;
- The realization that the outcome could have been much worse (i.e. near miss).

Safety Concern Form
Safety concerns may include, but are not limited to the following:

- The observation of unsafe practices that are serious in nature or reoccurring despite corrective actions;
- The observation of environmental hazards that cannot be easily and immediately corrected;
- Safety needs or concerns that have not been satisfactorily addressed after consulting a supervisor;
- Feedback to improve the Safety Program;
- Any other safety concerns or feedback best directed to the Safety Committee.

WORKERS’ COMPENSATION

Employee injuries must be reported immediately to the Workers Compensation carrier to be eligible for Workers Compensation benefits. All Columbia Land Trust employees are eligible to receive Workers’ Compensation benefits. Volunteers and contractors are not eligible to receive these benefits. Even if an employee chooses not to seek medical care, all workplace injuries should be reported using the Incident Report Form. Consult Columbia Land Trust’s Administrator to report a worker’s compensation claim.
SAFETY VIOLATIONS AND DISCIPLINARY ACTIONS

All employees have a primary responsibility to continually promote safe work practices and follow all safety protocols. A Safety Violation Notice may be issued by a supervisor to any employee violating the safety protocols. Disciplinary action may include reassignment, demotion, suspension, or dismissal and may be triggered by willful, serious, or repeated safety violations.

FIRST AID PROGRAM

The purpose of Columbia Land Trust’s first aid program is to ensure that medical attention can be administered immediately after an injury occurs and at the location where it occurred. Columbia Land Trust will provide the necessary first aid supplies needed for all types of injuries that may occur in the work environment. These supplies will be stored in areas where they will be readily available for emergency access.

As directed by OSHA’s first aid standard, Columbia Land Trust will ensure that trained first aid providers are present at workplaces of any size if there is no “infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees.” Any employees who take on the role of first-aid provider as part of their job responsibilities should be aware of the duty of care to render first aid in the workplace.

SAFE VEHICLE USE

Driver Qualifications

Employees should consult the Land Trust Administrator to ensure that they have the proper approval to drive an agency-owned vehicle, a rental vehicle, or a personal vehicle for business purposes. Employees who drive for business purposes must maintain a valid driver’s license for their state of residency. A review of each individual’s vehicle record is conducted prior to hiring, and may be obtained and reviewed as need dictates. Employees who use their personal vehicles are required to furnish and maintain proof of automobile liability insurance as required by law. Columbia Land Trust recommends that personal insurance policies include a minimum coverage of $300,000 as defined by the State of Washington. Columbia Land Trust requires employees who drive personal vehicles for business to provide Columbia Land Trust with proof of insurance coverage.

Use of a Company Vehicle

Company vehicles are provided to support business activities and are only to be used by authorized employees. Company vehicles are not to be used for personal purposes. Authorized drivers operating
company vehicles are protected under Columbia Land Trust’s automobile insurance. Columbia Land Trust is responsible for maintaining all company vehicles. Drivers are responsible for reporting vehicle safety issues.

**Use of Short-Term Rental Vehicle**

Employees can utilize short-term rental services for business purposes. Columbia Land Trust will cover the associated costs of the vehicle rental. Short-term rentals used for business purposes are insured under Columbia Land Trust’s automobile insurance. It is not necessary to purchase insurance offered by the rental agency. The insurance coverage provided by Columbia Land Trust is only available on vehicles rented or leased in Columbia Land Trust’s name.

**Use of Personal Vehicle**

Employees may utilize their personal vehicle for company business. When this occurs, the employee’s automobile insurance provides the primary coverage. Employees who use their personal vehicles on company business are responsible for the liability costs resulting from use of their vehicles, including the cost of deductibles. Columbia Land Trust’s auto insurance may provide additional liability protections when liability costs exceed the insured’s maximum. It is the employees’ responsibility to ensure that they are adequately protected to operate a personal vehicle for business purposes by their personal auto insurance. This may require insuring a vehicle for business use.

**Driving with Non-Employee Passengers**

On occasion, employees may have reason to drive with non-employee passengers. Because of the inherent risk involved, employees should evaluate risk factors to determine whether, and under what circumstances, they should drive with non-employee passengers. When possible, the best course of action is to hire a professional transportation service or have the potential passenger arrange his or her own transportation. If this not feasible, then employees can transport non-employee passengers in a company vehicle, a rental vehicle, or a personal vehicle. If an employee utilizes a personal vehicle for this purpose, it is imperative that the vehicle and the driver comply with safety standards.

**Traffic Violations**

Fines for parking, moving violations, towing, storage, or impoundment are the personal responsibility of the driver. Drivers are required to report all moving violations. This requirement applies to violations involving the use of any vehicle (company, personal, rental, other) while on company business. Supervisors will determine if a traffic violation warrants any corrective or disciplinary action.
Columbia Land Trust is committed to maintaining safety and risk prevention standards when working with external entities, including contractors and organizational partners. Supervisors and employees should evaluate risks before engaging in work with external entities. When significant risk is present, Columbia Land Trust may require these entities to exchange legal agreements that address issues of safety, responsibility, and liability. While working with external entities, Columbia Land Trust supervisors and employees are responsible for fostering, evaluating, and implementing safety and risk prevention practices.
6.0 Office Health and Safety

FIRE, EARTHQUAKE, AND NATURAL DISASTERS

Building Evacuation Plan

An evacuation map for the Vancouver office shows the location of exits, fire extinguishers, rope ladders, first aid kits, emergency supply kits, and where to assemble outside. An evacuation map for the Vancouver office is posted in the workplace and is located in the Safety Resources section of the Appendix.

FIRE EMERGENCY

In the case of fire employees must follow these procedures:

- Report outside the building when the smoke detector sounds.
- Leave the building immediately even if you do not see the fire.
- Assume all fires are real.
- Go to the Columbia Land Trust parking lot and stay there unless it becomes unsafe.
- Do not re-enter the building until the all clear signal is given by the emergency coordinator.

If you discover a small fire:

- Tell another person immediately. Call 911 or be sure someone calls 911.
- If the fire is small (such as a wastebasket fire) and there is minimal smoke, you may try to put it out with a fire extinguisher (if you have been trained on how to use fire extinguishers).
- If the fire grows or there is thick smoke, do not continue to fight the fire.
- Tell other employees in the area to evacuate. Go to the assembly point outside the building.

EARTHQUAKE EMERGENCY

During an earthquake if you are inside a building:

- Drop under a desk or table. Cover your head and neck with your arms to protect yourself from falling debris. Hold on. Stay away from windows, heavy cabinets, bookcases, glass dividers, outside doors and walls, and anything that could fall.
- If getting safely to the floor to take cover won’t be possible, identify an inside corner of the room away from windows and objects that could fall on you, getting as low as possible to the floor.
- Stay where you are until the shaking stops. Do not run outside. Do not get in a doorway.
when the shaking stops, look around for a clear path to safety. Leave the building and go to an open space away from damaged areas.

During an earthquake if you are outside a building:

- If you are outdoors when the shaking starts, move away from buildings, streetlights, and utility wires. Once in the open, “Drop, Cover, and Hold on.” Stay there until the shaking stops.

**Office Emergency Supply Kit**

Columbia Land Trust has an emergency supply kit available in its Vancouver office. The kit is intended to provide basic necessities for a variety of circumstances. The kit features drinking water, water purification means, non-perishable food, lighting, and other identified safety supplies. The kit locations are identified on the evacuation map.

**OFFICE WORK STATIONS**

Columbia Land Trust encourages employees to provide feedback to their supervisor or a member of the Safety Committee when they are experiencing ergonomic discomfort at their work station. Appropriate steps will be taken to assess the problem and develop a solution. A reimbursement program has been established for stand-up desks. For employees interested in information about ergonomic resources, please contact the Land Trust Administrator. For tips on correct work station layout and posture, refer to the Safety Resources section of the Appendix.

Adapting tasks to work stations and equipment to fit workers can reduce physical stress on a worker’s body and eliminate many potential serious work-related disorders. Awkward and uncomfortable positions can be eliminated by:

- Adjusting the height of working surfaces
- Providing telephone headsets
- Supplying anti-fatigue mats
- Providing short breaks or varying tasks
- Putting supplies and equipment within easy reach
- Providing ergonomic chairs or stools or desks.
7.0 Emergency Response

EMERGENCY RESPONSE PROTOCOL

All of the following constitute an emergency and should automatically initiate a call to the Emergency Response Team:

- Serious injury
- Fatality
- Lost person
- Attendance by law enforcement
- Involvement in criminal activity
- Significant damage to property or equipment
- Situations likely to attract media attention
- Situations which require significant assistance

DEFINITIONS

On-site Emergency Responder
The On-site Emergency Responder is responsible for handling the immediate emergency response. This role should be filled by the person who is most qualified to manage the event, and will most likely be the on-site supervising employee.

Emergency Response Team
Columbia Land Trust’s Emergency Response team is an organizational resource dedicated to responding to and recovering from emergencies. The emergency notification list below features Emergency Response Team members, roles, and the priority order of contact.

ONSITE EMERGENCY RESPONDER PROTOCOL

1. Treat the Emergency
   Treat the immediate emergency, whether by managing hazards, seeing to the administration of First Aid, contacting emergency responders, or acting on best judgment.

2. Manage the Scene
   Take care to manage the safety of all individuals onsite.

3. Contact the Emergency Response Team
   Contact the Emergency Response Team as soon as safely possible. If the Primary Emergency Response Team member cannot be reached, contact the Secondary and then Tertiary Contact Persons at the office, at home or by cell phone. As soon as possible, establish one sole contact
person to communicate with the Emergency Response Team. When an Emergency Response Team member is contacted, he/she will contact or leave a message with the other members of the Emergency Response Team to advise them of who and how to coordinate the emergency response.

4. **Follow the Best Course of Action**
   Follow the guidance of emergency responders and the Emergency Response Team whenever possible. If no such guidance is available, rely on best judgment.

**EMERGENCY RESPONSE TEAM PROTOCOL**

1. **Be Prepared for an Emergency**
   Emergency Response Team members should be clearly designated, with contact information easily accessible for all employees. Members should be clear about their assigned responsibilities in advance of an emergency.

2. **Notify all Emergency Team Members**
   The primary Emergency Response Team member is responsible for making sure all members of the team are notified of the emergency.

3. **Determine Best Course of Action**
   Members should jointly determine a best course of action and relay that information to involved actors, including the On-site Emergency Responder.

4. **Complete Duties and Maintain Communication**
   Each member will be responsible for conducting assigned duties and informing the team of any new information that is forthcoming during the response.

**TALKING TO THE MEDIA**

No one except the designated spokesperson will speak to the media about emergency situations. In some instances, members of the media may arrive on site, often before emergency services. All media inquiries should be directed to the Emergency Media Manager.

**Emergency Response Team Members and Roles**

<table>
<thead>
<tr>
<th>Primary Contact:</th>
<th>Steve Cook 360-213-1208 (w) 503-307-4651 (c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secondary Contact:</td>
<td>Ian Sinks 360-213-1206 (w) 503-799-9505 (c)</td>
</tr>
<tr>
<td>Tertiary Contact:</td>
<td>TBD</td>
</tr>
</tbody>
</table>

Depending on the emergency scenario, the following roles may be filled by Columbia Land Trust employees. As emergency circumstances dictate, other qualified employees may be called upon to fill these roles.
**Incident Director: Steve Cook**
The Incident Director oversees the emergency response process and is responsible for tracking and ensuring that all necessary elements are successfully completed by the appropriate employee. All significant decisions should be approved by the Incident Director.

**Emergency Communications Manager: Ian Sinks**
The Emergency Communications Manager is responsible for coordinating, tracking, and reporting communications between the Emergency Response Team, emergency services, land agencies, partners, family members, and other entities. When appropriate, the Emergency Communications Manager should be designated as the primary contact person for all communications. Depending on the emergency, this role may be best filled by the Incident Director, Emergency Administrator, Acting Emergency Supervisor, or other appropriate employee.

**Emergency Administrator: TBD**
The Emergency Administrator is responsible for supporting all administrative functions required by the emergency. This includes notifying insurance companies, ensuring appropriate documentation, supporting research and information-gathering needs, and supporting emergency communications.

**Emergency Media Manager: Jay Kosa**
The Emergency Media Manager is responsible for managing any potential media interest or public communications that the emergency may necessitate. Unless otherwise directed, all public communications should be directed to the Emergency Media Manager.
8.0 Tour Health and Safety

The information below provides guidance to employees on how to best manage the risk of working with tour participants.

ASSOCIATED RISKS

Tours present an organizational risk. Risks include harm to the participant(s), tour leaders, and to the organization. Supervisors and persons working with tour groups should be aware of some of the factors that influence this risk:

- Tour participants are often unfamiliar individuals, who may have unknown medical conditions, healthcare coverage, financial resources, and other personality quirks.
- Tour participants may be unfamiliar with the environmental conditions of the tour location.
- Tour participants may be unfamiliar with the skills or physical demands necessary for tour participation.

RISK MANAGEMENT PRACTICES

In order to mitigate risk, Columbia Land Trust requires directors and supervisors to follow outlined risk management practices. The practices outlined in the Safety Manual may utilize one or more of the following risk management methods: avoiding the risk, controlling the risk, financing the risk, and/or transferring the risk. Supervisors should understand that it is important to uphold the highest safety and risk management standards when working with tour groups.

Participant Release Forms

All Columbia Land Trust tour participants are asked to complete a release form. Tour participants may be able to sue in instances other than physical injury. A tour participant executing a release form agrees to forgo any claims against the organization in the event the participant is physically injured while on the tour. Be aware that participants may not be willing to agree to such a form and that all forms may not be enforceable. A release form is more likely to be enforced by a court if it is specific and reasonable given the participant’s activity. A completed release form offers a limited risk management tool that should be used in conjunction with the application of a strong safety and risk management program.

- Tour participants should complete a participant release form at the beginning of each tour.
• Release forms should be collected and stored for recordkeeping purposes. The release form contains health and contact information that should be reviewed by the tour leader prior to the tour. Copies of the volunteer release form should remain accessible in case of emergency.
• Information about the tour should include details about difficulty level, skills required, and possible safety hazards. This information should be included in written tour descriptions and should be reiterated in advance of the tour.
• Transportation will be provided to and from the tours by a licensed operator, who is insured and bonded.

Tour Transportation
• When a tour requires the use of a bus or motor vehicle, this service is to be contracted with a reliable professional transportation service.

Supervision
• Tour leader should plan in advance to have an adequate number of support staff present for all activities. In order to better manage quality control and be able to respond to emergencies, a trained first aid staff member should accompany all tours.
• Before commencing the tour, the tour guide should share important information on the nature of the tour activities, required skills, safety hazards, and safety practices.
• Tour leaders should reinforce the notion that every person’s safety is important and all participation contributes to the success of the day – encourage tour participants to speak up at any point if they are feeling uncomfortable.
• Tour leaders should be aware that some participants will be reluctant to share information about health conditions and comfort levels, and should regularly monitor for signs of safety concerns.
• Tour guides should provide opportunities for individuals to speak one-on-one if they have concerns about their capacity to complete the tour.
• Tour guides can pair less experienced participants with those with more experience. Some participants may require extra guidance and supervision depending on their experience.
• Tour leaders should model best safety practices while working with tour groups.

Managing Challenges

Tour leaders may encounter challenging situations when leading a tour group. Common issues include ignoring safety recommendations, ignoring activity directions, or engaging in poor behavior. There is rarely a single correct solution for dealing with challenges; the key is to address the situation as early as possible and use common sense and discretion. The following recommendations can help manage challenging situations:
• Tour leader should determine if the situation is caused by health/medical issues or by other circumstances. Follow appropriate first aid treatment, if applicable.
• Tour leader should take the participant aside and explain the issue and the impact of their actions. Often the individual causing the issue is unaware of his or her actions or their impact.
• Tour leader should ensure the participant understands the risk and proper safety practices.
• If a problem with a participant persists, a tour leader has the authority to terminate the individual's active participation. In this situation, firmness and tact are required.
9.0 Working with Volunteers

The information below provides guidance to employees on how to best manage the risk of working with volunteers.

ASSOCIATED RISKS

Volunteers present a high organizational risk. Risks include harm to the volunteer, to colleagues, to the organization, and to other parties. Supervisors and persons working with volunteers should be aware of some of the factors that influence this risk:

- Volunteers are often unfamiliar individuals, who may have unknown medical conditions, healthcare coverage, financial resources, criminal histories, and personality quirks.
- Volunteers are often unfamiliar with the realities of working conditions and project tasks.
- Volunteers are not offered the same protections as staff persons, such as workers compensation insurance, disability insurance, and paid sick days.
- Volunteer may not have the same understanding or incentive to mitigate risk as paid staff persons.

RISK MANAGEMENT PRACTICES

In order to mitigate risk, Columbia Land Trust requires directors and supervisors to follow outlined risk management practices. The practices outlined in the Safety Manual may utilize one or more of the following risk management methods: avoiding the risk, controlling the risk, financing the risk (i.e. maximizing insurance coverage), and/or transferring the risk (i.e. utilizing contractors). Supervisors should understand that it is important to uphold the highest safety and risk management standards when working with volunteers.

Liability Protections

Columbia Land Trust volunteers are unpaid agents of the organization. Columbia Land Trust carries general liability insurance that provides volunteer protection in case of physical harm when acting within the scope of volunteer activities. Oregon and Washington state statutes also provide volunteers legal liability protection against claims when volunteers are acting in good faith without gross negligence. Volunteers are not protected under the Land Trust’s Workers’ Compensation insurance.

To be acting in official capacity as a Columbia Land Trust volunteer, one must:
1) Be an active volunteer
2) Be acting in good faith in accordance with Columbia Land Trust volunteer guidelines
3) Be engaged in activities or project that are planned, approved, or carried out through Columbia Land Trust

**Participant Release Forms**

All Columbia Land Trust volunteers are asked to complete a participant release form. When a volunteer is injured while providing services, the organization for which he or she was working may be liable. Volunteers may be also able to sue in instances other than physical injury. A volunteer executing a release form agrees to forgo any claims against the organization in the event the volunteer is physically injured while providing services. Be aware that volunteers and participants may not be willing to agree to complete such a form and that all release forms may not be enforceable. A release form is more likely to be enforced by a court if it is *specific* and *reasonable* given the volunteer’s activities. A completed release form offers a limited risk management tool that should be used in conjunction with the application of a strong safety and risk management program.

- Interns and long-term volunteers should complete a participant release form at the beginning of their service and update it each year.
- Short-term volunteers should complete the volunteer release form prior to each new activity.

The release form contains health and contact information that should be reviewed by the volunteer’s supervisor(s) prior to the initiation of any work. Copies of the volunteer release form should remain accessible in case of emergency. Release forms should be collected and stored for recordkeeping purposes.

**Recruitment & Screening**

- Information about volunteer opportunities should include details about difficulty level, skills required, and possible safety hazards. This information should be included in written task descriptions and should be reiterated in advance of work.
- Supervisors should determine if a task requires any screening measures. Screening measures should be appropriate to the task, and many include phone interviews, in-person interviews, group interviews, reference checks, trial volunteer periods, and/or criminal background checks.

**Participation in High-Risk Activities**

Volunteers are not to participate in high-risk activities unless given explicit permission to do so by the volunteer program manager or appropriate department director. These activities include, but are not limited to, chain-saw use, working with hazardous chemicals, boat operation, ATV operation, working from high ladders, and prescribed burn assistance. Additional information about volunteer participation...
in high-risk activities is included in the corresponding “Activity Specific Safety Protocols”. There may be additional certification, training and/or paperwork required for volunteers participating in these activities.

Supervision

- Staff should plan in advance to have an adequate number of activity supervisors present for all activities. In order to better manage quality control and be able to respond to emergencies, a ratio of one activity supervisor to maximum eight volunteers (1:8) is advised. Supervisors may consist of staff or trained volunteers.
- Before commencing work, an activity supervisor should share important information on the nature of the tasks, required skills, safety hazards, and safety practices.
- Before commencing work, an activity supervisor should ensure that all participants are appropriately trained for the task at hand.
- Activity supervisors should reinforce the notion that every person’s safety is important and all participation contributes to the success of the day – even if it means a staff member, intern, or volunteer takes on less demanding work.
- Activity supervisors should be aware that some participants will reluctant to share information about health conditions and comfort levels, and should regularly monitor for signs of safety concerns.
- Activity supervisors should provide opportunities for individuals to speak one-on-one if they have concerns about their capacity to perform an activity.
- Activity supervisors can pair less experienced volunteers or interns with those with more experience. Some volunteers and interns will also require extra guidance and supervision depending on their experience with a task or tool.
- Activity supervisors should model best safety practices while working with volunteers.

Managing Challenges

Activity supervisors may encounter challenging situations when working with volunteers. Common issues include ignoring safety recommendations, ignoring activity directions, or engaging in poor behavior. There is rarely a single correct solution for dealing with challenges; the key is to address the situation as early as possible and use common sense and discretion. The following recommendations can help manage challenging situations:

- Activity supervisors should determine if the situation is caused by health/medical issues or by other circumstances. Follow appropriate first aid treatment, if applicable.
- Activity supervisors should take the volunteer aside and explain the issue and the impact of their actions. Often the individual causing the issue is unaware of his or her actions or their impact;
- Activity supervisors should ensure the volunteer understands the task and/or proper safety practices.
• If a volunteer continues to ignore direction, an activity supervisor may revise the task or reassign the volunteer to a new task;
• If a problem with a volunteer persists, an activity supervisor has the authority to terminate the volunteer’s active participation. In this situation, firmness and tact are required.
10.0 Field Health, Safety & Risk Management

Updated 3/8/2016

Employees whose job duties require that they regularly visit natural lands on behalf of Columbia Land Trust are required to read and follow the protocols outlined below.

ACTIVITY SPECIFIC FIELD SAFETY PROTOCOLS

The Field Safety Activity Specific Protocols are to be followed by all Land Trust employees and volunteers working in the field, and are intended to maximize the safety of all participants and minimize organizational risk. Employees are expected to be familiar with all activity specific protocols pertinent to their position.

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Job Safety Assessment – Demonstrated Safe Use

Participation in a few activities requires formal documentation of demonstrated safe use by means of a Job Safety Assessment. Any individual that has met all of the requirements to engage in a specific task can perform the role of an assessor. The assessor is responsible for observing an individual perform a specific task to ensure that all proper safety procedures are followed. An employee may contest an accessor’s findings by taking the issue to their direct supervisor.

RISK CONTROL MEASURES

Field staff should be familiar with these generally accepted control measures, listed below in order of preference:
• Eliminate the hazard by:
  o Choosing a different process;
  o Modifying the existing process;
  o Substituting with a less hazardous process;
  o Improving the environment (e.g. provide a route that ensures stable footing);
  o Modifying or changing equipment.

• Revise work procedures: This can be accomplished by changing times, procedures or equipment.
• Contain the hazard: If the identified hazard cannot be eliminated, consider ways to reduce exposure and risk. Equipment guards, additional monitoring and outside services may be utilized.
• Reduce the exposure: This approach is the least desirable since a degree of hazard and risk remain. Consider limiting exposure time if the atmosphere is hazardous or if working temperatures are extreme. Personal protective equipment can play a role if the hazard has only been reduced and not eliminated.
• Communicate the risk: Identified risks should be communicated to employees, volunteers, and contractors.
• In all cases, be prepared to address or respond to potential issues or injury.

CHEMICAL SAFETY: HAZARD COMMUNICATION

Hazard communication ensures that workers who may be exposed to hazardous chemicals know about the chemicals’ hazards and understand how to protect themselves from exposure.

Material Safety Data Sheets (MSDS)

MSDS are used to communicate chemical hazard information from the manufacturer to the employee. This is the information needed to inform and train employees on the safe use of hazardous chemicals. As required by OSHA, Columbia Land Trust has MSDS information available for each hazardous chemicals found in the workplace. MSDS information is located the stewardship storage, the Land Trust truck and electronically on the Z: drive. Each employee is responsible for ensuring that they are readily able to access MSDS information, especially when working in the field. Staff should consider downloading the MSDS information onto a mobile devise for field accessibility. If exposure to a chemical occurs, consult the MSDS (or chemical label) for proper first aid procedures. Secure appropriate medical treatment if necessary and report the injury. Columbia Land Trust is required to keep a record for at least 30 years of the chemicals’ identity, locations, and the years it was used in the workplace.

Chemical Labeling & Storage
All hazardous chemical containers used at this workplace will clearly identify the chemical on the label, and include an appropriate hazard warning and the manufacturer’s name and address. No container will be released for use until this information is verified. Employees will ensure that all containers are labeled with a copy of the original manufacturer’s label or a label that has the appropriate identification and hazard warning. A warning label may not be required if the chemical is transferred into a portable container for immediate use (during the work shift in which it was transferred) but the name of the chemical should be written on the portable container.

All hazardous materials are kept in a locked storage facility away from the main office building. These materials must also be kept away from all sources of ignition such as sparks or open flame.
# FIELD HAZARDS & RISKS ANALYSIS

<table>
<thead>
<tr>
<th>Site Hazards</th>
<th>Risk (to people, equipment, environment)</th>
<th>Example ways to minimize risk (with people, equipment, training)</th>
</tr>
</thead>
</table>
| **Transportation** (automobile, boat, ATV, helicopter) | 1. Injury  
2. Getting stranded  
3. Property damage | • Ensure proper safety training before use (First aid, ATV operation, boaters education, defensive driving);  
• Supply and use personal protective gear (life jacket, helmet, seat belt, etc.);  
• Follow all safety use guidelines set by Columbia Land Trust protocols, |
| **Physical Exertion** | 1. Collapse  
2. Injury from improper tool use  
3. Falling | • Provide First aid training for staff and select volunteers;  
• Anticipate likely exertion levels;  
• Manage exertion levels with breaks, food, shade, water;  
• Monitor for signs of fatigue;  
• Save lighter work for the end of the day;  
• Carry First aid kit. |
| **Difficult Terrain** (steep, slippery, uneven) | 1. Physical injury and illness | • Identify the risk of injury and precaution(s)  
• Pre-define safe walking path and off-limit areas;  
• Wear appropriate footwear;  
• Encourage safe procession;  
• Cancel or re-route activities if participant cannot pass without harm. |
| **Sun/Heat/Cold Exposure** | 1. Physical injury and illness | • Identify the risks, symptoms and precautions in advance;  
• Carry extra clothing, hats, sunscreen, water;  
• Make water available all day and monitor consumption;  
• Establish frequent breaks;  
• Monitor for signs of sun/heat/cold exposure; |
| **Disorientation/Getting Lost** | 1. Emotional distress  
2. Exposure to the elements  
3. Untreated injuries | • Identify specific activities/locations with a high risk for getting lost;  
• Provide navigation training for staff and volunteers;  
• Follow Out-of-office Itinerary procedures;  
• Carry cell phone, GPS unit, PLB, compass and maps of the property; |
| **Insects** | 1. Minor-major allergic reaction  
2. Annoying, distracting  
3. Disease infection | • Identify the insect(s) and precaution(s) in advance;  
• Be aware of severe allergies;  
• Carry first aid kit equipment – antihistamines, Epi-pen;  
• Carry insecticide or insect repellent;  
• Wear appropriate clothing. |
| **Wildlife & Domestic Animals** | 1. Aggressive interaction | • Know last sighting area(s)/time – avoid those areas;  
• Identify the species, precaution and emergency reaction in advance;  
• Set minimum distance from wildlife and domestic animals;  
• Consider cancelling activities if the area cannot be avoided or the precautions would likely be insignificant to the risk. |
|-----------------------------|----------------------|--------------------------------------------------------------------------------------------------|
| **Hostile Confrontation**   | 1. Physical Injury   | • Be aware of local activity on site;  
• Communicate the potential issue and what to do if confronted;  
• Do not engage an aggressor in the conflict;  
• Consider holding the event at another site if conflict is likely. |
| 2. Emotional distress        |                      |                                                                                                 |
| **Fire** (controlled, brush, forest, structure) | 1. Damage to landscape | • Identify the fire risk and precaution(s) in advance;  
• Be aware if fires are burning in the area;  
• Have emergency responder contacts in case of fire;  
• Ensure controlled burns are managed by skilled professionals and are held in adherence with the law;  
• Consider appropriate scheduling; |
| 2. Property damage           |                      |                                                                                                 |
| 3. Injury to people          |                      |                                                                                                 |
| **Construction or Deconstruction** | 1. Dilapidated buildings pose collapse danger | • Identify hazards by examining condition of structure;  
• Use proper personal protective gear (helmets, boots, glasses, gloves);  
• Identify the tools and proper use in advance. |
| 2. Building or deconstructing structures have a risk of injury |                      |                                                                                                 |
| **Working with Hand Tools & Power Tools** (chainsaws, weedwackers, shovels, saws, hammers, etc.) | 1. Minor-major injuries and death | • Ensure proper training in tool use  
• Supply and utilize personal protective gear  
• Identify risks of use and precautions in advance  
• Monitor for proper safety use and revise practices as needed |
| 2. Property damage           |                      |                                                                                                 |
| **Heavy Machinery & Equipment** (mowers, excavators, dozers, loaders, harvesters) | 1. Minor-major injuries and death | • Establish safety operations with all site personnel before work;  
• Establish a perimeter between staff/volunteers and heavy equipment operations prior to work beginning;  
• Wear safety vests;  
• Establish a method of communication with the operator;  
• Establish eye contact with operator before approaching equipment;  
• Avoid working near heavy equipment if possible. |
| 2. Being visible to the equipment operator |                      |                                                                                                 |
| 3. Damage to expensive equipment or property |                      |                                                                                                 |
| **Working with Chemicals**   | 1. Physical contact with harmful chemicals | • Ensure chemical applicators are properly trained;  
• Ensure proper utilization of personal protective gear;  
• Ensure chemicals are properly stored. |
| 2. Chemical spill            |                      |                                                                                                 |
Elements of General Field Preparedness:
1. Out Of Office Itinerary
2. Working Alone
3. Basic Field Gear
4. First Aid
5. Emergency Communication
6. Navigation & Orientation
7. Environmental Features & Conditions
8. Wildlife & Domestic Animals
9. Working On Hunting Lands
10. Potentially Hostile Confrontation

1. Out Of Office Itinerary

Purpose: To ensure that supervisors are aware of field staff and volunteers expected location and itinerary in the event Columbia Land Trust needs to respond to an emergency.

Guidelines:
- Staff should maintain an up-to-date calendar with the relevant field information that includes the following: destination(s), departure and return times, activity, other participants, and vehicle (if not driving person’s regular vehicle).
- Staff should ensure that at least one other Land Trust employee (the Point of Contact), preferably a supervisor, is aware of trip plans and itinerary.
- Staff should carry a charged cell phone on their person while in the field and should promptly inform their Point of Contact via telephone, text, or email if plans have significantly changed.
- As need dictates, staff may arrange to inform their supervisor or appropriate staff that they have departed for and returned from the field via telephone, text message, email or other agreed upon methods. Parties should set an agreed upon time and method for follow-up, which if not met, will immediately prompt notification of the missing staff person’s Director. The Director will determine next steps.
- If working alone, staff should follow the additional protocol outlined in the “Working Alone” section of this guide.

2. Working Alone
Purpose: To ensure Columbia Land Trust staff and volunteers are able to minimize the health and safety risks of working in the field alone.

Background: While it is not always hazardous to work alone, it can be depending on circumstances such as location, type of work, interaction with the public, or the consequences of an emergency, accident, injury, etc. This wide variety of circumstances makes it important to assess each situation individually.

Guidelines:
- Staff and volunteers will determine whether it’s appropriate to work alone by consulting the “Activity Specific Safety Protocols”, assessing risk and personal comfort level, and consulting supervisors on an as-needed basis.
- To assess the personal risk of working alone, persons will consider the following risk factors:
  - Tasks and hazards involved in the work to be performed.
  - Consequences resulting from a “worst case” scenario.
  - Possibility that a critical injury or incident could prevent the employee from calling for help or leaving the workplace.
  - Emergency response time.
  - Worker’s training and experience.
  - Whether the individual is accustomed to working alone.
  - Worker’s physical handicaps or any preexisting medical conditions.
  - The time or shift when the job is to be done.
  - Likelihood for other persons to be in the area.
- Staff and volunteers working alone should make sure to follow the “Out of Office” guidelines such that an appropriate person is aware of a departure, return, and any relevant safety information.

3. Basic Field Gear

Purpose: To ensure that Columbia Land Trust staff and volunteers are outfitted with the appropriate clothing, tools, and supplies to safely engage in any outdoor activities.

Background: Basic field gear is necessary for all activities that involve hiking on or off designated roads or trails, within dense vegetation canopy, through small bodies of water or in the vicinity of wildlife. Staff and volunteers should consult the “Activity Specific Guidelines” to determine what additional gear and supplies are necessary for specific field activities.

Guidelines:

Communication:
- If at all possible, keep a fully charged cell phone on your person. Carry an extra battery as a back-up measure.
• Have a method for quickly locating and calling emergency phone numbers.
• Request and/or secure other communication devices such as a personal locator beacon, radio, or satellite phone as needed.

Clothing:
• Bring and wear clothing appropriate for all possible weather conditions, including strong sun, extreme temperatures, rain, wind and, if working on the water, water immersion.
• Bring and wear clothing appropriate for all environmental hazards, including snakes, ticks, mosquitos, stinging insects, vegetation, and water bodies.

Footwear:
• Bring and wear footwear appropriate for walking long distances off trail, through a variety of terrain. Appropriate footwear may include hiking boots, work boots, muck boots, or other thick soled shoe. Choose footwear wisely based on safety, functionality, and comfort.

Navigation:
• Bring an aerial map of the area, preferably printed.
• Utilize GPS navigation as helpful and appropriate.
• Bring a compass and a printed map.
• Carry a Personal Locator Beacon if appropriate.

Protection:
• Consider bringing or wearing protective gloves, sunscreen, sunglasses, hat, bug spray, bear spray, and emergency whistle.

Health:
• Carry a fully stocked personal First Aid Kit and locate any additional First Aid Kits nearby (vehicle, boats, other participants, nearby facilities)
• Carry any personal medications or personal medical equipment that may need to be accessed in the field.
• Carry enough food and water to last beyond the duration of your planned activities. Consider if there’s a possibility that you’ll need to share supplies with others.

4. First Aid

Purpose: To ensure that Columbia Land Trust staff and volunteers have the appropriate First Aid training and supplies needed in case of emergency.

Guidelines:
• Activity supervisors, staff responsible for a group of people, are encouraged to identify persons in the party who are First Aid trained, and if possible, should have at least one person trained in wilderness medicine present.
• Persons working alone or activity supervisors are responsible for making sure First Aid kits are well stocked and are quickly and easily accessible in case of emergency.
• Activity supervisors or persons working alone should obtain a personal First Aid Kit or loaner kit as need dictates.
• Activity supervisors or persons working alone should be aware of locations and routes to nearby urgent care medical facilities.
• Activity supervisors should invite participants to inform them of any known medical issues, medications or emergency procedures indicated by those issues before engaging in the activity.

Resources:
Permanently stationed First Aid Kits are located in the following places:
• Vancouver Office (Standard Full Kit)
• Portland Office (Standard Full Kit)
• Hood River Office (Standard Full Kit)
• Astoria Office (Standard Full Kit)
• Land Trust Truck (Standard Full Kit, including Logger’s First Aid Kit)
• Land Trust Boats (Standard Full Kit, including Logger’s First Aid Kit)
• Vancouver Stewardship Storage (Standard Full Kit, including Chainsaw Kit)

Periodic safety audits will identify any needs for re-stocking and replacement.

5. Emergency Communication

Purpose: To ensure that Columbia Land Trust staff and volunteers are able to communicate to medical care providers, emergency responders, supervisors, and relevant persons in case of emergency.

Guidelines:
• If at all possible, carry a charged cell phone on your person.
• Have a method for quickly locating and calling emergency phone numbers.
• Inquire in advance about the quality of cell phone reception in the area. See below for Columbia Land Trust properties with no or limited cell phone reception.
• Staff with registered personal locator beacons should carry them whenever working in the field. Staff and volunteers without personal PLBs should consider whether to carry a loaner PLB. Anyone considering using a PLB should become familiar with how to operate the device before carrying it into the field. Users of PLB’s should regularly review and update emergency contact information to ensure potential contacts will be able to help locate the missing person AND who can communicate with personal contacts of the missing person.
• Request and/or locate other communication devices such as a radio or satellite phone as needed.

6. Navigation & Orientation

Purpose: To ensure that staff and volunteers are able to safely navigate within area that may be large, complex, and difficult to traverse.

Guidelines:
• Maintain or develop necessary navigation skills, including the ability to read a compass and read a topographic map.
• Consult property maps and persons familiar with property prior to property visit.
• Determine risk level for getting lost or disoriented prior to visit and plan appropriately.
• Carry a GPS enabled device, such as a smart phone, tablet, Garmin or Trimble unit, and ensure knowledge and use of the device.
• Carry a handheld compass.
• Carry a detailed topographic map of the property, preferably overlaid on an aerial photograph.
• Clearly mark vehicle location and access infrastructure via map or GPS waypoint before setting off on the property.
• If arranged in advance, follow call-in procedures with supervisors.

7. Environmental Features & Conditions

Purpose: To protect staff and volunteers from being exposed to potentially harmful environmental conditions such as extreme weather, swift flowing water bodies, harmful flora and fauna, and failing infrastructure.

Weather:
• Adjust your work schedule to avoid being outside for prolonged periods of time if temperature and/or humidity index exceed 95° or are below 20°. At a minimum review forecast and be prepared for possible work conditions.
• Be aware of how the accumulation of snow or ice may hamper travel or work safety.
• Be aware of impending lightning storms and cancel all field activities if lightening is imminent, expected or observed. Pay attention to early signs of thunderstorms: high winds, dark clouds, rain, distant thunder or lightning. If lightening is observed leave the area or get to the safest location possible (in metal roofed vehicle with windows closed, away from hilltops and large trees, etc). If storm is passing and no further sign of potential lightening is observed for 30 minutes it is possible to return to work activities.
• Minimize sun exposure by wearing appropriate clothing and utilizing sunscreen.
• Avoid working outside in hazardous locations when strong winds are forecasted.

Flora & Fauna:
• Be aware when working within tick habitats and be prepared to utilize methods for tick bite prevention such as bug spray application, wearing long-sleeved shirts and pants, and regularly checking for ticks.
• Be aware when working within poison oak habitat and be prepared to utilize methods to prevent reactions by wearing long-sleeved shirts and pants and having access to products to remove poisonous oils from skin and clothes. Be prepared to remove contaminated clothing in the field before entering your car to prevent accidental contact with oils from your clothes and other surfaces (equipment, etc).
• Be aware when working within areas that may be inhabited by bees, hornets, or wasps and have a treatment plan in case of one or multiple stings. Check with co-workers and volunteers before entering the field about severe insect allergies and whether they carry an epi-pen.
• Be aware when working within areas with strong mosquito populations and be prepared to manage personal comfort with items such as bug repellant, long-sleeved shirts and pants, and a mosquito head net.
• Be prepared when working in areas with thorny or stinging foliage by wearing appropriate footwear and long pants.

Natural Features:
• Take caution when working next to fast moving water bodies; avoid working close to fast moving water bodies if possible.
• Take caution when working on steep, rocky, or uneven terrain; avoid treacherous terrain when possible. Weather conditions can destabilize otherwise traversable slopes.
• Be vigilant for falling rocks and tree limbs.
• Be aware of fire risk index and any fires burning in the area.

Manmade Features:
• Avoid contacting any potentially dangerous trash such as drugs, needles, and chemicals.
• Be aware of potentially dangerous obstacles such as downed barbwire fencing.
• Avoid entering or altering any structures that appear unstable.

8. Wildlife & Domestic Animals

Purpose: To ensure Columbia Land Trust staff and volunteers are aware of risks related to wildlife and domestic animals, and are prepared to avoid and respond to potential encounters.

Background: Columbia Land Trust’s service region contains mountain lions, black bear, coyotes, bobcats, rattlesnakes, elk, deer, ticks, stinging insects, and mosquitos. Employees or volunteers may also encounter domestic animals that pose a risk of harm such as dogs, cows, and horses.

Guidelines:
• Consult staff persons or management reports in advance of visit to identify potential threats.
• Wear and carry appropriate safety gear for identified potential threats, such as long pants, bear spray, bug spray, and whistle.
• Take appropriate behavioral precautions, such as making noise, being alert, and keeping distance from threats.
• Consider visiting properties with a partner or with a group.

9. Working on Hunting Lands

Purpose: To ensure staff and volunteers are able to avoid or manage risks associated with working on hunting lands.
Background: Hunting occurs on and around many of Columbia Land Trust lands. Columbia Land Trust allows hunting by permission on a handful of properties. Hunting may also occur on Land Trust land without permission, or on neighboring lands. Hunters may use modern firearms, bows, or muzzleloaders to hunt game that includes but is not limited to elk, deer, duck, and turkey.

Guidelines:

• Supervisors will help ensure that staff and volunteers are aware of which lands present safety risks due to hunting. This information can also be gathered by consulting the appropriate land managers. Volunteers and staff should review the Land Trusts’ hunting permissions calendar and relevant WDFW/ODFW hunting regulations (season schedule) in advance of visiting properties particularly where seasonal hunting is permitted on Land Trust land.
• Staff and volunteers who may want to visit lands where hunting is likely should evaluate timing and risk before planning a visit.
• Staff and volunteers should wear blaze orange when visiting properties where hunting is likely to occur. Persons are required to wear a minimum of 400 square inches of fluorescent hunter orange exterior clothing, worn above the waist and visible from 360 degrees. A hat, by itself, does not meet this requirement. Source: http://wdfw.wa.gov/hunting/regulations/hunter_orange/
• Exercise particular caution where vegetation is dense and sight distance is limited.

10. Potentially Hostile Confrontation

Purpose: To ensure staff and volunteers are able to avoid or manage potentially personal hostile confrontations.

Background: On occasion staff may encounter aggressive or insubordinate individuals. These individuals may be from the general public, neighbors, tenants, hunters, campers, trespassers or volunteers. There is a possibility of encountering illegal activity occurring on or nearby Land Trust lands, including marijuana and methamphetamine operations. Homeless or unpermitted recreational camps may also be located on or near Land Trust property.

Guidelines:

Observing Prohibited Activities

• Staff or volunteers who observe prohibited activities should evaluate whether it’s safe and appropriate to confront person(s) about said activities.
• Staff or volunteers who determine it is appropriate to confront individuals about prohibited activities, should identify themselves as a Land Trust staff or volunteer and diplomatically request that the individual discontinue the activity.
• Staff and volunteers should closely evaluate the situation and disengage well before interactions become hostile or unsafe.
• Staff and volunteers should report all prohibited activities and related communications with the appropriate supervisor and/or land manager.

Homeless Camps & Campers
• Staff and volunteers should not confront individuals found camping on Land Trust lands.
• Planned interactions with campers should not be conducted alone, and where possible, law enforcement should be engaged. At a minimum, staff and volunteers should carry a phone number for the appropriate local law enforcement in the event that they should encounter an unsafe situation while interacting with campers.
• When approaching a campsite that appears unoccupied, staff and volunteers should make friendly noise (talk, whistle/sing) to alert campers to their presence. Approach campsites at a safe distance until it has been determined that that campers are not present or are unlikely to make their presence known.
• If possible, record observations about persons or campsites, including location, number of individuals, and camp setup.
• Staff and volunteers should share this information with the appropriate Land Trust land manager or supervisor.

Hostile Individuals
• Staff and volunteers should leave the property immediately if a person becomes verbally abusive, threatens physical violence or brandishes a weapon.
  o When possible, record relevant information about the person and the interaction. Consider recording names, locations, time, and vehicle information.
  o Contact the appropriate supervisor and be prepared to provide the police with a statement including any pertinent details.

Criminal or Suspicious Activity
• If staff or volunteers observe criminal or suspicious activity, they should:
  • Leave immediately. Do not attempt to investigate or take individual action.
  • Make as little noise as possible on retreat.
  • Note the area or location and mark it as best as possible.
  • Call 911 if you feel that you are in immediate danger and communications allow.
  • Inform the appropriate Land Trust supervisor as soon as possible.
  • Evaluate whether the situation warrants contacting law enforcement, and who might be the best person to make this call (possibly supervisor or land manager).
DRIVING FOR FIELDWORK
Activity Specific Safety Protocols
Updated 3/8/2016

Risk Level: Low - High

Identified Risks: Death, Major Injury, Minor Injury, Property Damage, Stranded or Stuck Vehicle, Damage to Vehicle

Permitted Users: Columbia Land Trust Staff

Conditions of Approval: Approved operators are those who are adhering to the Land Trust’s driving policy and have confirmed with the Land Trust’s Administrator that they are approved to drive a personal vehicle, rental vehicle, or company vehicle for Land Trust business.

Licensing & Formal Training:
- Must have a valid driver’s license from a state DMV office.
- Must maintain current insurance on any private vehicle being used for work duties.

On-the-Job Training:
- Operators may undergo on-the-job training for pulling and backing up trailers by a knowledgeable operator.
- All Land Trust truck users should undergo an on-the-job training for replacing a flat tire and safe usage of the winch.

Equipment:

All field vehicles should carry safety equipment provided by the Land Trust:
- Spare tire, jack and tire wrench
- First Aid Kit
  Emergency Supplies (includes emergency blanket, matches, multipurpose knife, flashlight, shovel, handsaw, fire extinguisher, flares)
- Extra drinking water

In addition to the above, the Columbia Land Trust truck should also contain:
- Winch Kit
- Shovel
- Straps to secure load
- Jumper Box
- Jumper cables
- Tool kit
• Emergency food supplies

Personal Protective Equipment:
Seat belts must be worn by everyone in the vehicle at all times.

Required Operations:
• Operators should not carry more passengers than there are seatbelts in the vehicle.
• Operators should never drive with individuals standing in a truck bed or anywhere in a trailer.
• Operators should only haul loads with weights that do not exceed the tire rating on all vehicle and trailer tires.
• Operators are responsible for all loads to be strapped down for security and safety.
• Operators should report any damage or mechanical failures to the appropriate staff person(s) immediately so that repairs can be made.
• Operators must make sure that proper insurance cards and registrations are in the vehicle for both the vehicle and the trailer.
• Operators must not handle a cell phone while the vehicle is in motion.

Preferred Practices:
• Operators should inquire in advance about site-specific hazards, such as excavations, trenches, soft spots and areas where truck/trailer use is prohibited or unwise. This includes checking weather and road conditions when there is a chance of hazardous driving conditions.
• Operators should conduct a pre-ride inspection for the Land Trust owned truck and trailer that involves checking the tire condition and pressure; ensuring that headlight(s) and taillight(s) are working properly and all loads are strapped down securely and safely.

Go Ahead Checklist:
- Operator is approved to operate truck and trailer, documented within the Job Safety Assessment.
- Operator has conducted a pre-ride inspection and is confident the vehicle is in good working order, including a trailer as appropriate.
- Operator has checked that all loads are secured safely and that the trailer is connected correctly with safety mechanisms in place (chains, trailer-brakes).
- Vehicle is properly fueled.
- Seatbelts for everybody in the vehicle are in working order and being worn.
- Operator is trained and comfortable operating the vehicle and any associated trailers.
- Operator is comfortable and capable of performing all duties specific to the task (pulling and towing a trailer, carrying a load, navigating obstacles, driving on public and private roads in varying degrees of upkeep made out of various materials).

Additional Resources:
Tripcheck.com for both Oregon and Washington

Source:
MOTORIZED WATERCRAFT OPERATION
Activity Specific Safety Protocols
Updated 3/8/2016

Risk Level: High

Identified Risks: Death, major injury, minor injury, property damage

Permitted Users: Approved Columbia Land Trust staff

Conditions of Use: Approved operators are those staff who have all the necessary licensing and training outlined below, and who have demonstrated safe usage.

Licensing & Formal Training:
- All motorized watercraft operators must have a current state issued Boater Education Card.
- It’s recommended that all employees operating watercraft attend a boating safety course. Trained employees may retake the course as needed.

On-the-Job Training:
- Operators may undergo on-the-job training if instructed by a knowledgeable operator.

Demonstrated Safe Use:
- It’s required that employees participate in an equipment specific orientation and a supervised test run prior to approval. An employee should demonstrate proficiency with boat trailering and transport, boat handling, an understanding of emergency procedures, and safe and responsible maneuvering and navigating.

Equipment:
Operators are required to follow all equipment regulations dictated by state and federal law. Equipment requirements are located at http://www.oregon.gov/OSMB/library/docs/ExperienceORBoatingWeb.pdf. Also see checklist below.

Personal Protective Equipment:
- See equipment requirements above.

Required Operations:
- Follow all federal and state regulations.
- Prior to use, inspect boat condition, check fuel level, locate and evaluate required or recommended equipment.
- Ensure all passengers wear a life jacket.
- Keep passengers seated in designated areas.
• Ensure weight is spread evenly and loads are properly fastened.
• Follow the boat manufacturer’s specifications, including capacity limit.
• Ensure boat and boat trailer are properly fastened.
• Operator must be comfortable in conditions worse or more complicated than expected; i.e. crowded launch, high winds, docking around unexpected boats, running aground

Preferred Practices:
• Consult weather, river flow and tide (if applicable) conditions and plan accordingly.
• Follow proper loading and unloading etiquette.
• Use just enough power to maintain control.
• Be aware of navigational hazards. Consult tide charts as needed.

Go Ahead Check List:
□ Operator is approved to operate motorized watercraft, documented within the Job Safety Assessment
□ Operator has current state-issued Boaters Education Card
□ Watercraft is well maintained and meets all state & federal regulations (refer to Oregon State Marine Board guidelines)
□ Watercraft contains all necessary safety equipment
  o Boaters Education Card
  o Boat registration
  o Life jacket suitable for each person on board is worn while in the boat
  o Throwable floatation aid immediately available
  o Fire extinguishers conveniently placed, fully charged, and in good condition
  o Visual distress signals (with current expiration dates for pyrotechnics)
  o Working horn or whistle
  o Anchor and anchor line appropriate to area, depth, conditions
  o Compass, properly adjusted
  o Boat hook
  o Mooring lines and fenders in good condition
  o Paddles or oars and oar locks
  o Oil, tool kit, and spare parts (including light bulbs, fuses)
  o Flashlight + charger
  o Bucket or bailing device
  o Radio or cell phone + charger
  o First-aid kit
□ Operator or associate is able to safely transport, load, and unload motorized watercraft via trailer
□ Watercraft is properly fueled
□ Operator is trained and comfortable operating motorized watercraft
- Weather, tidal, and environmental conditions allow for safe boat operation.
- Operator is comfortable and capable of performing all duties specific to the task (navigating tidal channels, carrying passengers, transporting a heavy load, traveling a long distance, etc.)
- Operator is trained and capable of responding to emergencies

**Additional Resources:**
Washington Boater’s Education Card - [http://www.parks.wa.gov/442/Mandatory-Boater-Education](http://www.parks.wa.gov/442/Mandatory-Boater-Education)

**Source/Reference:**
NON-MOTORIZED WATERCRAFT OPERATION
Activity Specific Safety Protocols
Updated 3/8/2016

Risk Level: Low-High

Identified Risks: Death, major injury, minor injury, property damage

Permitted Users: Approved Columbia Land Trust employees and volunteers

Conditions of Approval: Approved operators are those who have confirmation from the appropriate supervisor that they are able to safely operate non-motorized watercraft.

Training:
• Training will be provided whenever a supervisor deems it necessary or as requested by the operator.

Equipment:
Operators are required to follow all equipment regulations dictated by state and federal law. Equipment requirements are located at http://www.oregon.gov/OSMB/library/docs/ExperienceORBoatingWeb.pdf

Personal Protective Equipment:
• Life jacket
• Extra water
• Whistle or horn
• Throw bag or tow rope
• First-Aid Kit
• Spare paddle
• Patch kit (if boat is inflatable)
• Other PPE may be needed depending on the specific type of boat and activity, paddling destination, length of trip, or local rules and regulations. Additional PPE may include: spray skirt, extra boat flotation, paddle floats, compass, map, nautical charts, carabineers, flares, two-way radio, portage yoke, knee pads, insect repellant, dry bag, sunscreen, bilge pump, food, Personal Locator Beacon (PLB), and lights.

Required Operations:
• Follow all federal and state regulations.
• Prior to use, inspect boat condition, locate and evaluate required or recommended equipment.
• Ensure all passengers wear a life jacket.
• Ensure weight is spread evenly and loads are properly fastened.
• Follow the boat manufacturer’s specifications.

Preferred Practices:
• When traveling tidal waterways, check tide charts in advance of trip.
• If visiting an unfamiliar area, bring along an individual familiar with local navigation.
• Avoid traveling alone whenever possible.

Go Ahead Check List:
☐ Operator has supervisor approval to operate non-motorized watercraft, documented within the Job Safety Assessment or Volunteer Activity Approval Form
☐ Watercraft is well maintained and meets all state & federal regulations (refer to Oregon State Marine Board guidelines)
☐ Watercraft contains all necessary safety equipment
☐ Operator or associate is able to safely transport, load, and unload watercraft
☐ Operator is trained and comfortable operating watercraft
☐ Operator is comfortable and capable of performing all duties specific to the task (navigating tidal channels, carrying passengers, transporting a heavy load, traveling a long distance, etc.)
☐ Operator is trained and capable of responding to emergencies

Additional Resources:

Source/Reference:
ALL-TERRAIN VEHICLES (ATV)
Activity Specific Safety Protocols
Updated 3/8/2016

Risk Level: High

Identified Risks: Death, major injury, minor injury, property damage, stranded or stuck vehicle

Permitted Users: Approved Columbia Land Trust staff

Conditions of Use: Approved operators are those staff who have all the necessary licensing and training outlined below, and who have demonstrated safe usage.

Licensing & Formal Training:
• If a project necessitates ATV use on Oregon public lands, operators are required to have an Oregon ATV Safety Education Card.
• It’s recommended that all staff operating an ATV attend an ATV safety course.

On-the-Job Training:
• Operators may undergo on-the-job training conducted by a knowledgeable operator.

Demonstrated Safe Use:
• It’s required that employees operating ATVs participate in an equipment specific orientation and a supervised test run prior to approval. Staff must demonstrate proficiency with basic ATV maintenance, inspection, maneuvering and navigating.

Equipment:

Featured Equipment: ATV; may include trailer, herbicide applicator, water tank, or other significant equipment.

Equipment Requirements: ATV must be maintained in good working order.

Personal Protective Equipment:
• Helmets must be worn when travelling at speeds of 10 miles per hour or higher, and when driving on an incline of 15 degrees or greater or rough terrain.
• As conditions dictate, passengers should wear boots, goggles, gloves, and long pants.

Required Operations:
• Operators should not carry passengers unless allowed within manufacture’s specifications.
• Operators should drive at speeds appropriate for the type of terrain (e.g., mud, snow, ditches, gravel, etc.) and at speeds that allow for avoidance of potential hazards.
• Operators should not drive on steep slopes with inclines that present high risk of ATV rollover, see manufacture’s guidelines.
• Operators should haul items on the ATV in accordance with the manufacturer’s specifications and never exceed the weight limit. Operators should ensure loads are evenly distributed.
• Operator should not modify ATV without approval from the manufacturer.
• Operators should report any damage or mechanical failures to the appropriate staff person(s) so that repairs can be made.

Preferred Practices:
• Operators should inquire in advance about site-specific hazards, such as excavations, trenches, and areas where ATV use is prohibited.
• Operators should conduct a pre-ride inspection that involves checking the tire condition and pressure; ensuring that the throttle, brakes, and other controls are working properly; ensuring that headlight(s) and taillight(s) are working properly; testing the steering before starting; testing the suspension system. This should include checking for material caught in the ATV undercarriage for both fire risk as well as weed spread risk. Material should be cleared out and the ATV cleaned between site visits.
• Operators should avoid driving on paved or public roads and in areas with high vehicular or heavy equipment traffic.

Go Ahead Check List:
- Operator is approved to operate ATV, documented within the Job Safety Assessment
- If operating on Oregon public lands, operator has a current ATV Safety Education Card
- Operator has reviewed and is familiar with manufacturers specifications
- Operator has conducted a pre-ride inspection and is confident the vehicle is in good working order
- Check and clean ATV to prevent weed spread.
- ATV is properly fueled.
- Operator has all appropriate PPE
  - Helmet
  - Eye protection
  - Gloves
  - Boots
  - Long sleeve pants and shirt
- Operator or associate is able to safely transport, load, and unload ATV via truck or trailer
- Operator is trained and comfortable operating an ATV
Operator is comfortable and capable of performing all duties specific to the task (traversing steep slopes, carrying a load, navigating obstacles, driving on public roads)
Operator is trained and capable of responding to emergencies

Additional Resources:

Source/Reference:
Risk Level: Low-Moderate

Identified Risks: Major injury, minor injury, property damage

Permitted Users: Columbia Land Trust employees and volunteers

Conditions of Use: Employees and volunteers must demonstrate safe tool use.

Training:
• Training will be provided whenever a supervisor deems it necessary or as requested by an individual.

Demonstrated Safe Use:
• When working with unfamiliar volunteers, it’s advisable to demonstrate and observe proper tool use.

Equipment:
Featured Equipment: hammers, screwdrivers, loppers, picks, mattocks, weed wrenches, hand saws, rakes, axes, chisels, punches, mallets, wrecking bars, crow bars, spades, knives, wrenches, pliers, post pounders, and ladders

Equipment Requirements: Tools must be maintained in good working order.

Personal Protective Equipment:
PPE for specific tool use may require or recommend any of the following:
• Gloves
• Boots
• Long sleeves and pants
• Eye protection
• Ear protection
• Hard hat

Required Operations:
• Ensure tools are functioning properly. Inspect all tools carefully prior to use.
• Keep work areas clean, well lit and uncluttered.
• Keep bystanders and co-workers at a safe distance.
Preferred Practices:
• Stretch or warm up before performing strenuous tasks.
• Use the right sized tool for the job, and the proper tool for the job. Tools should be sharp (as appropriate) for best, safe use.
• Ensure good footing and body positioning.
• When stopping or taking a rest, place sharp, pointed or long-handled tools so they cannot be stepped on or tripped over. Keep sharp point away from the body. Never rest a sharp tool on its blade (i.e. sticking loppers in the ground using the tips, standing a shovel up right with the blade in the ground), this dulls the tools and can be hazardous.
• Make sure sharp, large, or heavy tools are carried to minimize risk to self or others.
• Properly clean and store tools after use.

Go Ahead Check List:
☐ User has conducted a tool inspection and is confident the tool is in good working order (tool is sharp, well assembled, does not show signs of significant wear, etc.).
☐ User has all appropriate PPE
☐ User is trained and comfortable handling tool
☐ User is comfortable and capable of performing all duties specific to the task (planting trees, installing fence, deconstructing buildings, automobile maintenance, etc.)

Additional Resources:

Source/Reference:
POWER TOOL OPERATION (NOT INCLUDING CHAINSAWS)

Activity Specific Safety Protocols

Updated 3/8/2016

Risk Level: High-Low

Identified Risks: Death, major injury, minor injury, property damage

Permitted Users:
Low Risk Power Tools: Columbia Land Trust employees and volunteers
High Risk Power Tools: Approved Columbia Land Trust employees and volunteers

Conditions of Use: Employees and volunteers must demonstrate safe tool use.

Training:
• Training will be provided whenever a supervisor deems it necessary or as requested by the operator.

Demonstrated Safe Use:
• It’s required that employees and volunteers operating high risk power tools participate in a tool specific orientation and a supervised test run prior to approval. Operators should demonstrate proficiency with tool maintenance and inspection and safe operation techniques.

Equipment:
Featured Equipment:
• Low Risk: cordless drills, disc sander, drill press, air compressor
• High Risk: power augers, weed eaters, brush cutters, impact wrenches, welder, sawzall and power saws, bench grinder

Equipment Requirements:
• Tools must be maintained in good working order.
• Safety guards must be utilized.

Personal Protective Equipment:
Consult the tool’s Instruction Manual and/or the resources below:


Required Operations:
Comply with relevant Industrial Fire Precaution Level restrictions when applicable
Consult the tool’s Instruction Manual and/or the resources below:
Preferred Practices:

- Never use power tools if you are tired, sick, distracted, or under the influence of drugs or alcohol.
- Read the tool’s nameplate information and follow the warning labels on the tool itself.
- Make sure your work area is neat and clean and free of any debris that might get in your way or be ignited by hot tools, chips or sparks.
- Make sure your work area has plenty of bright, shadow-free light.
- Always turn off and unplug the tool before you make any adjustments or change accessories.
- Never overreach when using a power tool. Stay firmly planted on both feet.
- Never rush what you are doing. Always pay close attention. Think ahead.
- When using hand-held power tools, always keep a firm grip with both hands. Losing control creates a hazardous situation. Do not use any tool that is too heavy for you to easily control.
- Always use the right tool for the right job. Tools and blades should be sharp for safe operation.
- Always unplug, clean and store the tool in a safe, dry place when you are finished using it.

Go Ahead Check List:

- Operators using high risk power tools are approved for use, documented within the Job Safety Assessment
- Operator has reviewed and is familiar with manufacturer’s instruction manual
- Operator has conducted a tool inspection and is confident the tool is in good working order (guards are on, blades are clean and sharp, ignition is off, properly lubricated and fueled, power cords appropriately connected, etc.)
- Operator has all appropriate PPE
- Operator is trained and comfortable operating tool
- Operator is comfortable and capable of performing all duties specific to the task

Additional Resources:


Source/Reference:

CHAINSAW USE
Activity Specific Safety Protocols
Updated 3/8/2016

Risk Level: High

Identified Risks: Death, major injury, minor injury, property damage

Permitted Users: Approved Columbia Land Trust staff and volunteers

Conditions of Use: Approved operators are those staff and volunteers who have all the necessary licensing and training outlined below, who have demonstrated safe usage, and who have documented approval in the form of a Job Safety Assessment.

Formal Training:
• It’s recommended that all employees operating a chainsaw attend a chainsaw safety course that provides instruction for felling trees of less than 12 inch diameter. Employees may take more advanced training as directed by a supervisor. Trained employees may retake the course as needed.

On-the-Job Training:
• Operators may undergo on-the-job training instructed by a knowledgeable operator.

Demonstrated Safe Use:
• It’s required that employees and volunteers operating chainsaws participate in a tool specific orientation and a supervised test run prior to approval. Operators should demonstrate proficiency with chainsaw maintenance and inspection and safe operation techniques.

Equipment:

Featured Equipment: Chainsaws of various makes and models

Equipment Requirements:

Personal Protective Equipment:
• Safety helmets: Must be an ANSI Z89.1-2003 approved Type I hard hat.
• Safety glasses and face shields: Must use either protective goggles/glasses, or a full-face shield/screen attached to a safety helmet, that meet ANSI Standard Z87.1-2003; using BOTH protective goggles/glasses AND a face shield/screen will provide the most optimal eye protection.
• Hearing protection: Ear muffs or ear plugs that meet ANSI S3.1974 Noise Reduction standards.
• Safety chaps: Cut resistant logger chaps made with Kevlar or ballistic nylon; chaps must cover the full length of the thigh to the top of the boot on each leg (no gaps between the top of the boot and the chaps), and provide ¾ coverage (leg front and sides). Chaps must be UL® Certified and meet ASTM F1897, ANSI Z133.1 and OSHA Regulation 1910-266 standards. Chaps damaged beyond US Forest Service standards (see resources link below) should not be worn.
• Boots: Must be heavy-duty leather work boots, slip-resistant soles, adequate tread, and are high enough to cover the ankles (8-inch or higher preferred). Steel toed boots or attachable steel toe guards are strongly recommended. OSHA standards require that foot protection be constructed with cut-resistant material which will protect the employee against contact with a running chain saw. Hiking boots are NOT acceptable.
• Gloves: Must be leather work gloves, or certain synthetic gloves designed for protective use.
• Logger’s First-Aid Kit: Must meet OSHA standard 1910.266A

Required Operations:

Prior to Use:
• Volunteer operators must notify Columbia Land Trust ahead of use and gain approval prior to use, contingent upon demonstrating safe use and receiving documented approval.
• Operators should avoid working alone if possible. If operators are working alone, they must notify a Columbia Land Trust staff person of their work plans.
• Operators should ensure that a comprehensive First Aid Kit is onsite and quickly accessible from work area.
• Operators should make sure they are comfortable working with the tools and conditions at hand, and should cease work if unsure.
• Unless specifically trained, operators should not plan to fell trees greater than 12 inches in diameter or buck trees with diameters greater than those specified by the chainsaw and bar manufacturer’s guidelines. Operators working alone should avoid falling trees greater than 6” in diameter.
• Operators must check controls, chain tension, and all fasteners and handles to ensure that they are functioning properly and that they are adjusted according to the manufacturer’s instructions.
• Operators should ensure that the chain is always sharp and the lubrication reservoir is full.
• Operators should ensure that the chainsaw is equipped with all protective devices.

When Fueling:
• Operators must use approved containers for transporting fuel to the saw.
• Operators must dispense fuel at least 10 feet away from any sources of ignition; No smoking during fueling.
• Operators must use a funnel or a flexible hose or a no-spill nozzle when pouring fuel into the saw.
• Operators should never attempt to fuel a running saw.
• Operators should always fill lubrication reservoir when fueling.
During Use:
• Operators must start the saw at least 10 feet from the fueling area, with the chain's brake engaged.
• Operators must start the saw on the ground or on another firm support. Drop starting is never allowed.
• Operators must shut off the saw or engage its chain brake when carrying the saw on rough or uneven terrain.
• Operators must keep hands on the saw's handles, and maintain secure footing while operating the saw.
• Operators should clear away dirt, debris, small tree limbs and rocks from the saw's chain path. Look for nails, spikes or other metal in the tree before cutting.
• Operators should ensure that no bystanders are located within two tree lengths of the tree being cut.
• Operators are required by law to take a minimum 10 minute break every 4 hours.
• Avoid resting the saw on thighs during operation (i.e. when taking a step or climbing over brush), with or without the chain break engaged.

Preferred Practices:
• See additional resources below for complete list of best practices.

Go Ahead Check List:
☐ Operator is approved to operate a chainsaw, documented within the Job Safety Assessment
☐ Operator has chosen the right chainsaw and bar for the task
☐ Operator has reviewed and is familiar with OSHA equipment standards and chainsaw manufacturers specifications
☐ Operator has conducted a chainsaw inspection and is confident that it’s in good working order
  o Properly functioning controls
  o No signs of significant wear, warping, splintering, loose assembly etc.
  o Sharp chains
  o Proper chain tension
  o Bar in good condition
  o Fueled and oiled
☐ Operator has all necessary supplies
  o Chainsaw dismantling, cleaning, assembling tools
  o Fuel mix and bar oil
  o Extra chains
☐ Operator has all appropriate PPE
  o A helmet with a built in facemask
  o Ear protection
  o Safety chaps without significant rips or tears (see reference below)
  o Work gloves
  o Protective boots
  o Logger’s First-Aid Kit
— Operator is trained and comfortable operating chainsaw
— Operator is working with or near at least one person who can administer care in an emergency, or has alternatively notified supervisor of plans
— Operator is comfortable and capable of performing all duties specific to the task (felling small diameter trees less than 12 inches diameter, felling large diameter trees greater than 12 inches diameter, working in dense canopies, working around obstacles etc.)
— Operator is trained and capable of responding to emergencies

**Additional Resources:**
Chainsaw Safety Health and Safety Education for Forest Workers:

**Source/Reference:**
Guidance on inspection, repair and retirement of chain saw chaps:
Risk Level: High

Identified Risks: Death, major injury, minor injury, property damage

Permitted Users: Approved Columbia Land Trust staff

Conditions of Use: Approved operators are those staff who have all the necessary licensing and training outlined below, and who have demonstrated safe usage.

Licensing & Formal Training:
• Employees and supervisors will work together to ensure that the operator has all necessary training and licensing prior to approval.

Supervised Test Run:
• Under certain circumstances, it may be advisable to have staff conduct a supervised test run prior to approval. Operators should demonstrate the ability to meet and follow all safety guidelines.

Equipment:
Featured Equipment: Wood chippers, stump grinders, tractors, bulldozers, small excavators, skid steer

Equipment Requirements: All equipment should be in good working order. Consult specific equipment manual for details.

Personal Protective Equipment:
• Follow manufacturer instructions, OSHA Standards, and federal, state, and local laws.

Required Operations:
• Follow manufacturer instructions, OSHA Standards, and federal, state, and local laws.

Preferred Practices:
• Consult manufacturer instructions and training materials relevant to equipment operation.

Go Ahead Check List:
☐ Operator is approved to operate the equipment, documented within the Job Safety Assessment
☐ Operator has any required licensing
☐ Equipment is well maintained (refer to manufacturer’s operations manual)
☐ Equipment is properly fueled.
- Operator has all necessary PPE
- Operator is trained and comfortable operating equipment
- Operator is comfortable and capable of performing all duties specific to the task
- Operator is trained and capable of responding to emergencies

Additional Resources:

Source/Reference:
PESTICIDE & HERBICIDE APPLICATION
Activity Specific Safety Protocols
Updated 3/8/2016

Risk Level: High-Low

Identified Risks: Major injury, minor injury, property damage

Permitted Users: Columbia Land Trust staff and volunteers with proper licensing or oversight, and training

Conditions of Use: Staff and volunteers will require a Washington and/or Oregon Pesticide Applicator’s License to perform some activities, highlighted below. Under all conditions, unlicensed staff and volunteers must be supervised by a licensed staff person or within a phone call of a licensed applicator. At a minimum, employees and volunteers that are not licensed must receive basic safety training prior to commencing work and should demonstrate safe usage.

Licensing & Formal Training:
When Licensing Is Needed:
• Buying, applying or supervising the use of Restricted Use Pesticides (RUPs).
  ▪ An Oregon license is required when applying the use of RUPs, even on land trust property.
  ▪ A Washington license with aquatic endorsement is required when applying ALL herbicide in an aquatic environment or the purchase of RUPs.

Supervisors, staff, and volunteers will work together to ensure that training is received on the hazard communication plan that covers the following topics:

On-the-Job Training:
• Operators may undergo on-the-job training if instructed by a knowledgeable operator.

Demonstrated Safe Use:
• It’s recommended that employees and volunteers who have not undergone formal training participate in a supervised test run prior to approval. Operators should demonstrate proficiency with safe chemical application.

Equipment:
Featured Equipment: Boom sprayers, backpack sprayers, spray bottles

Equipment Requirements: Equipment must be maintained in good working order.
Personal Protective Equipment:
- Consult herbicide or chemical label to determine specific PPE requirements. Common PPE includes long shirts, long pants, closed toed shoes, gloves, respirator, goggles, face shield, or safety glasses, hat, and portable eye wash.

Required Operations:
- If working in Oregon, employees and volunteers who will be applying pesticides must follow the Oregon law provided by Oregon Department of Agriculture (DOA) Pesticides Division. In Washington it is the Department of Ecology.
- People with health conditions that make exposure to chemicals a particular health risk should avoid application as well as sites with recently applied chemicals in accordance with label recommendations.

The following training is required to be provided when supervising or working with volunteers or unlicensed individuals:
- How to read labels and review material safety data sheets.
- Physical and health effects of the hazardous chemicals.
- How to reduce or prevent exposure to these hazardous chemicals through use of exposure control, work practices, and personal protective equipment.
- Emergency procedures to follow if spills occur or workers are exposed to these chemicals.

Preferred Practices:

Mixing products
- Be aware of all mixing requirements and procedures indicated on the product labels.
- Keep containers below eye level when opening and pouring.
- Keep fill hoses above water level in the spray tank to prevent back-siphoning.
- Be aware of wind direction before pouring to minimize exposure downwind.

Applying products
- Determine wind direction to avoid drift.
- Check equipment for loose connections or cracked hoses.
- Test equipment to ensure proper function. Make necessary repairs before each use.
- Minimize overhead spraying.

Cleaning up after an application
- Use a nozzle brush or other device to clear clogged nozzles.
- Follow storage and disposal instructions found on the label based on the herbicide container size used.
Triple rinse and puncture all storage containers before disposal.

- Be sure to thoroughly clean (triple rinse) spray equipment before using to apply any other herbicides.
- Wash clothes after use. When washing clothes, be sure to wash PPE separately from other laundry.

Go Ahead Check List:
- Staff applicators are approved to apply pesticides and herbicides, documented within the Job Safety Assessment
- Applicator has appropriate license, or if appropriate to the task, is being overseen by a licensed individual
- Applicator has reviewed chemical safety information, is aware of risks and safety procedures
- Applicator has readily available access to label and MSDS information
- Applicator is trained and comfortable applying the chemical
- Applicator has all appropriate PPE
- Applicator has conducted a tool inspection and is confident the tool is in good working order
- Applicator or overseeing supervisor has ensured that all enforcement rules are being followed (weather conditions, timing, riparian limitations, etc.)
- Operator is comfortable and capable of performing all duties specific to the task (carrying heavy loads, traversing difficult terrain)

Additional Resources:
Oregon Pesticide licensing -
http://www.oregon.gov/oda/programs/Pesticides/Licensing/Pages/PesticideLicensing.aspx
Washington Pesticide Licensing – http://agr.wa.gov/PestFert/LicensingEd/

Sources:
Oregon Pesticide licensing -
http://www.oregon.gov/oda/programs/Pesticides/Licensing/Pages/PesticideLicensing.aspx
Washington Pesticide Licensing – http://agr.wa.gov/PestFert/LicensingEd/
WADING AND CROSSING WATERBODIES
Activity Specific Safety Protocols
Updated 3/8/2016

Risk Level: High-Low

Identified Risks: Death, major injury, minor injury

Permitted Users: Approved Columbia Land Trust employees and volunteers

Conditions of Use: Staff and volunteers must demonstrate safe wading practices.

Training:
- Training will be provided whenever a supervisor deems it necessary or as requested by an individual.

Personal Protective Equipment:
- Hip waders or chest waders with wading boots and belt, in good condition without leaks or holes
- Appropriate soles on wading boots; i.e. vibram for muddy terrain and ‘Svelt’ or non-felt alternative soles for cobble terrain
- Other PPE may be needed depending on the specific task and waterbody and may include: life jacket, floating aids, throw rope, wading stick, and emergency blanket

Required Operations:
- When appropriate, check water levels, tides, water velocity, and temperature in advance of activity
- Develop an emergency safety plan for all moderate-high risk activities (wading above waist depth, crossing strong currents, and wading in cold waters).

Preferred Practices:
- Conduct wading activities when conditions present the least amount of risk (water levels, water velocity, water temperatures, and weather conditions).
- Have at least one person who is experienced with wading or crossing the specific waterbody accompany the activity.
- Whenever possible, at least two individuals should be present for all wading activities.
- Use a wading stick for stability while crossing.
- Higher flow velocity and/or depth crossings may require additional safety equipment and procedures. Staff should find alternate routes if possible under these conditions.

Go Ahead Check List:
- Individual(s) have all appropriate PPE. PPE has been checked and in good working order.
• Hip waders or chest waders with wading boots and belt, in good condition without leaks or holes
• Other PPE may be needed depending on the specific task and waterbody and may include: life jacket, floating aids, throw rope, wading stick, and emergency blanket

☐ Individuals(s) have factored useful information into the activity plan (water levels, temperature, weather, water velocity, etc.).
☐ Individual(s) have supervisor approval if engaging in moderate-high risk activities.
☐ There is an emergency safety plan if engaging in moderate-high risk activities.
☐ Individual(s) are comfortable and capable of performing all duties specific to the task (crossing waterbodies, installing or retrieving loggers, collecting data, wading alone, etc.).

Additional Resources:
Safe wading practices:
http://www.orvis.com/s/safe-wading-tips/2846
https://www.uvm.edu/~streams/PDFFiles/safety/Wading_Safety.pdf

Source:
CONTROLLED BURNS & WORKING WITH FIRE
Activity Specific Safety Protocols
Updated 3/8/2016

Risk Level: High-Low

Identified Risks: Death, major injury, minor injury, property damage

Permitted Users: Approved Columbia Land Trust employees and volunteers

Conditions of Use: Each controlled burn must have at least one approved burn leader. Approved burn leaders may be Columbia Land Trust staff, volunteers, contractors, or partners. A burn leader must be able to safely manage and conduct a prescribed burn. A Burn Plan is required and will detail specific requirements for burn activities.

Training:
• Training will be provided to staff and volunteers whenever a supervisor deems it necessary or as requested by an individual.

Demonstrated Safe Use:
• It’s required that burn leaders participate in a supervised test run prior to approval. The purpose of this test is to see how fire carries, understand fire conditions and review safety operations on a small scale before ignition on a larger scale. Operators should demonstrate proper fire safety practices.
• Individuals participating in controlled burns should demonstrate proper fire safety practices.

Equipment:

Featured Equipment: Drip torches, propane torches, axes, shovels, rakes, ATV, water tank, hoses

Equipment Requirements:
• Tools must be maintained in good working order.
• Torches must be properly fueled.
• Fuels must be properly mixed, labeled, transported, and contained.
• Communication device capable of alerting fire response team and providing details as to location, direction of spread, size of fire, fuels, etc.
• Pocket weather station as required by burn plan.

Personal Protective Equipment:
• Leather boots
• Leather gloves
• Fire resistant clothing that covers arms, legs, feet, head. Nomex is required according to burn plan.
• Glasses or goggles, as needed
• First Aid Kit with burn treatments

**Required Operations:**
• Obtain and comply with all necessary permits.
• Prepare burn plan for approval by Stewardship Director.
• Sufficiently trained burn boss responsible to manage activities safely.
• Notify entities in advance of burn (permit issuer, fire district, law enforcement, neighbors) as required by the law, the permit, or best practice standards.
• Plan according to weather conditions and fire danger index. Monitor conditions throughout the burn and manage accordingly.
• Ensure that there is a reliable means of contacting emergency services from the site.
• Have an ample water supply, tools, equipment and manpower to control or extinguish the fire as needed.
• Ensure that all accompanying staff and volunteers are aware of the safety risks (including inhalation, poison oak, etc), are trained in how to properly use equipment and work with fire, and are able to respond to emergencies.
• Burn a minimum of 50 feet from any structure and away from overhead obstructions or trees.
• Do not leave fire unattended. Have a plan to monitor burned piles.
• Burn plan requires at a minimum the formal re-evaluation of weather conditions and burn behavior every hour, or as required by volatility of conditions.

**Preferred Practices:**
• Consult Additional Resources below.

**Go Ahead Check List:**
- The project is approved by the appropriate Land Manager
- The project is managed by an experienced burn leader
- The project is properly permitted
- Weather conditions and fire danger index have been checked and are within acceptable limits to safely manage a prescribed burn (wind, humidity, cloud cover, temperature, forecast).
- All required entities have been notified in advance of burn
- Operator has conducted an equipment inspection and is confident equipment is in good working order (torches are properly fueled, tools are sharp, fuels are properly mixed and contained)
- Participant(s) are have the all appropriate PPE
  - Leather boots
  - Leather gloves
  - Fire resistant clothing that covers arms, legs, head
  - Glasses or goggles
  - First Aid Kit with burn treatments
- Participant(s) are trained and comfortable operating equipment and working with fire
• Burn leader has emergency controls in place and the ability to contact emergency services if needed
• Burn leader and any participants are comfortable and capable of performing all duties specific to the task

Additional Resources:
Burn permits:

Prescribed fire:
http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Wildland-Fire/Prescribed-Fire/Certified-Prescribed-Fire-Acreage
http://www.blm.gov/or/resources/fire/prescribedburns/burn_terminology.php
http://www.swcleanair.org/burntips.asp

Source/Reference:

Fire fighting:
http://www.nwcg.gov/publications
Acknowledgment of Safety Policy
Columbia Land Trust

I state that I have received and read a copy of Columbia Land Trust’s Safety Policy.

I further state that I understand these safety policies and rules and acknowledge that compliance with these safety policies and rules is a condition of employment. If I violate these safety rules or fail to report an injury to my supervisor or the Deputy Director and General Counsel immediately, I understand that I am subject to disciplinary action, in accordance with company policy.

__________________________________________
EMPLOYEE NAME (PRINT)

__________________________________________
EMPLOYEE SIGNATURE

______________
DATE

cc: Deputy Director & General Counsel

Updated 10/30/2015
Incident Report Form
Columbia Land Trust

This form contains fillable fields and can be completed digitally or by hand.

Employee:

Date of incident:

Location of incident:

Type of Incident (Check all that apply):
☐ Injury/Illness    ☐ Automobile Related    ☐ Property Damage    ☐ Theft
☐ Near Miss        ☐ Legal/criminal       ☐ Lost persons        ☐ Facility Related

Details of incident:

Actions taken:

Additional comments:
Witness Reports

Complete this section if it might be beneficial to document witness information.

Witnesses present?  ☐ Yes  ☐ No  ☐ N/A

Witness name:

Address:

Phone Number(s):

Injury Reporting

Complete this section if an injury occurred. Document the name, address, and phone number for each injured person.

Name of injured person:

Address(s):

Phone Number(s):

Treatment:  ☐ None  ☐ First Aid  ☐ Doctor  ☐ Hospital

Name of physician/hospital:

Physician/hospital address:

Physician/hospital phone number:

Incident Factors

Can you suggest counter measures or best practices to prevent the occurrence?:

Employee Signature (initial for digital signature)        Date

Return this form to Safety Committee within 48 hours of incident.
|FOR SUPERVISOR & SAFETY COMMITTEE USE ONLY|

<table>
<thead>
<tr>
<th>Reviewed by Safety Committee</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reviewed by Supervisor</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
<td>Date</td>
</tr>
</tbody>
</table>

**Recommended Corrective Actions:**
---

**Job Safety Assessment – General Staff Template**  
*Columbia Land Trust*

<table>
<thead>
<tr>
<th>Employee Activity (write NA if task is not applicable)</th>
<th>Employee Aware Of Hazards &amp; Controls?</th>
<th>Use Restrictions/Provisions/Concerns/Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Office Work</td>
<td>Yes / No</td>
<td></td>
</tr>
<tr>
<td>Driving for Business</td>
<td>Yes / No</td>
<td></td>
</tr>
<tr>
<td>Field Visits</td>
<td>Yes / No</td>
<td></td>
</tr>
<tr>
<td>First Aid Administration</td>
<td>Yes / No</td>
<td>Training:</td>
</tr>
<tr>
<td>Other:</td>
<td>Yes / No</td>
<td></td>
</tr>
<tr>
<td>Other:</td>
<td>Yes / No</td>
<td></td>
</tr>
<tr>
<td>Other:</td>
<td>Yes / No</td>
<td></td>
</tr>
</tbody>
</table>

*Updated 10/30/2015*
<table>
<thead>
<tr>
<th>Other:</th>
<th>Yes / No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other:</td>
<td>Yes / No</td>
</tr>
</tbody>
</table>

**Employee Has Access To All Necessary Personal Protective Equipment (PPE)?**

Yes / No  Additional PPE Needed:

**Existing Trainings & Certifications with Commencement and Expiration Dates:**

**Required/Recommended Trainings:**

__________________________  __________________________
Employee Signature           Supervisor Signature

__________  __________
Date          Date

*Updated 10/30/2015*
Consult the Safety Manual, notably the Field Health and Safety section and pertinent Activity Specific Safety Protocols, to complete this form.

<table>
<thead>
<tr>
<th>Employee Activity (delete if not applicable)</th>
<th>Employee Aware Of Hazards &amp; Controls?</th>
<th>Employee Comfortable with Task?</th>
<th>Employee Demonstrated Proper Safety?</th>
<th>Use Restrictions/Provisions/Concerns/Actions (review activity specific safety protocols)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Office Work</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Not required</td>
<td></td>
</tr>
<tr>
<td>Driving For Business</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Not required</td>
<td></td>
</tr>
<tr>
<td>Field Visits</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Not required</td>
<td></td>
</tr>
<tr>
<td>First Aid Administration</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Not required</td>
<td></td>
</tr>
<tr>
<td>Wading and Crossing Waterbodies</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Not required</td>
<td></td>
</tr>
<tr>
<td>Hand Tool Operation</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Not required</td>
<td></td>
</tr>
<tr>
<td>Power Tool Operation</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Not required</td>
<td></td>
</tr>
<tr>
<td>Activity</td>
<td>Low Risk</td>
<td>medium risk</td>
<td>High Risk</td>
<td>Training/Certification</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>----------</td>
<td>-------------</td>
<td>-----------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Power Tool Operation, High Risk</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td></td>
</tr>
<tr>
<td>Pesticide &amp; Herbicide Application</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td></td>
</tr>
<tr>
<td><em>not required if licensed or supervised by a licensed applicator</em></td>
<td></td>
<td></td>
<td></td>
<td>Training/Certification:</td>
</tr>
<tr>
<td>Motorized Watercraft Operation</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td></td>
</tr>
<tr>
<td>Non-Motorized Watercraft Operation</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Not required</td>
<td>Training/Certification:</td>
</tr>
<tr>
<td>Transporting Trailers, Boats, Heavy Loads</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td></td>
</tr>
<tr>
<td>Chainsaw Operation</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td></td>
</tr>
<tr>
<td>ATV Operation</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td></td>
</tr>
</tbody>
</table>

*Updated 10/30/2015*
<table>
<thead>
<tr>
<th>Controlled Burns and Flaming</th>
<th>Yes / No</th>
<th>Yes / No</th>
<th>Yes / No</th>
<th>observer sign off</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>*only required for burn leaders</td>
</tr>
<tr>
<td>Other:</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>observer sign off</td>
</tr>
<tr>
<td>Other:</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>Yes / No</td>
<td>observer sign off</td>
</tr>
</tbody>
</table>

**Employee Has Access To All Necessary PPE?:**

Yes / No  Additional PPE Needed:

**Existing Trainings & Certifications with Commencement and Expiration Dates:**

**Required/Recommended Trainings:**

__________________________________________  
Employee Signature  
____________  
Date

__________________________________________  
Supervisor Signature  
____________  
Date

*Updated 10/30/2015*
Participant Release Form
Columbia Land Trust

The Activity: ________________________________________________________________

I, the undersigned, agree to this Liability Release and Waiver (“Agreement”) on behalf of myself, my personal representatives, next of kin, heirs, successors, and assigns. I make this Agreement for the benefit of Columbia Land Trust, other individual tour participants, tour coordinators, sponsors, suppliers, supporters, and all private and public land owners on whose property the tour described above may be located (collectively the “Released Parties), including, without limitation, all Released Parties’ employees, officers, directors, agents, personal representatives, next of kin, heirs, successors and assigns. This Agreement also applies to any future Columbia Land Trust tours in which I participate.

I make this Agreement in consideration of the Released Parties inviting me to participate in this tour. My participation in this tour is completely voluntary and I have neither received nor expect to receive any compensation for my participation in it.

I understand that the tour may include dangerous or hazardous activities and that the tour may take place on a location or under conditions that may be dangerous to me. The dangers that I may encounter include, by way of example only and without limitation: risk of drowning, physical injury associated with exertion and rough terrain, limited access to emergency services, inclement weather, and dangerous wildlife (bees, ticks, snakes, etc). I accept full personal responsibility for all risks arising from or relating to this tour.

I agree to read, listen to and follow all safety instructions and procedures presented in conjunction with this tour and to use my best judgment based upon my physical and mental abilities at all times, and to immediately terminate participation in this tour if activities become too strenuous, difficult or hazardous for me. I agree that the activities necessary to complete the tour have been fully and adequately explained to me and that I am physically and mentally capable of participating in the tour without injuring myself in any manner.

I agree to waive all liability of the Released Parties, discharge them, and covenant not to sue them for any liability, claims, sums, costs, or other expenses on my account that may be caused in whole or in part by my participation in the tour.

I agree that this Agreement shall act as a complete bar against all actions or claims that I might otherwise bring against the Released Parties, including negligence claims, arising from or related to this tour.

I have read this Agreement, fully understand its terms, understand that I have given up substantial rights by signing it, and have signed it freely and without any inducement or assurance of any nature. I intend this Agreement to be a complete and unconditional release of all liability to the greatest extent allowed by law, and I further agree that if any portion of this Agreement is held invalid, then the balance of the Agreement shall continue in full force and effect.

I understand that a photographer may be present and that I may be photographed while participating in the tour. I agree that I will contact the photographer if I do not wish to be photographed. I hereby grant Columbia Land Trust the irrevocable and unrestricted right to use and publish photographs of me, or in which I may be included. I hereby release Photographer and his/her legal representatives and assigns and Columbia Land Trust from all claims and liability relating to any such photographs.

First Name                Last Name        (Nick Name)                Phone Number    ☐ Home ☐ Work ☐ Cell

Home Address

________________________________________________________  ___________/__________/___________

Email

Date of Birth

Emergency Contact

Phone Number

Relation

Any health conditions we should be aware of? (Such as severe allergies, asthma, diabetes, heart conditions, mobility issues, etc.)

Participant Signature (or Signature of Parent/Guardian if Under 18)    Date

If signing on behalf of a minor: I, as parent or guardian of the minor named above, give my permission to my child or ward to participate in this tour, and also agree, individually and on behalf of my child or ward, to all the terms of this Agreement.
If you have a safety concern, please complete the form below. This form will be reviewed by the Safety Committee, as well as the employee supervisor as appropriate. Submit this form to a supervisor, the Land Trust administrator, or a member of the Safety Committee. Forms should be submitted within 48 hours of the observation, occurrence, or realization of the concern.

| Employee name (leave blank to remain anonymous): |
| Date: |
| Description of safety/health concern. (Be as specific as possible): |

| For Safety Committee Use Only |
| Action taken: |
| Follow-up action: |
| Completion date: |

*Updated 10/30/2015*
Instructions: This form shall be filled out by the appropriate Columbia Land Trust supervisor, when it is required as per Columbia Land Trust’s Safety Policy that an official notification be presented to a given party or employee for violating Columbia Land Trust Safety Policy. When complete file in Columbia Land Trust’s permanent safety files.

Date: ______________

Work Site or Project: ___________________________________________________________________

Issuing Official: _______________________________ _______________________________________

Name      Title/Position

Offending Party: ______________________________ _______________________________________

Name      Title/Position

Brief Description of Violation:
_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________ 
_____________________________________________________________________________________

Action to be taken (reprimand, training, work adjustments, etc.):
_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________

Offending Party’s Initial Response:
____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

Acknowledgement of Receipt: (Please read, sign, and return to issuing official)

Offending Party _________________________________________ _________________

Signature     Date

Updated 10/30/2015
EMERGENCY PHONE NUMBER

911

Non-Emergency Phone Numbers

Police- 360-696-446
Ambulance- 360-750-4679
Hospital- 360-256-2000
Fire Dept.- 360-487-7212
Poison Control- 360-254-8436
1. **Elbows**
   - Above the desk, at 90-110 degrees
2. **Shoulders**
   - Relaxed as opposed to hunched
3. **Wrist**
   - In line with forearms
4. **Hips, Knees, Ankles**
   - At 90 degrees whilst seated
5. **Feet**
   - Flat on the ground or footrest
   - For prolonged standing, consider a mat
6. **Head**
   - Upright with ears aligned with shoulders
7. **Eyes**
   - Looking at the top third of the screen.
   - Consider the use of a laptop raiser with your laptop
8. **Seat length**
   - Should be long enough to provide support beneath thighs
9. **Backrest**
   - Angled at 90-110 degrees with adequate lumbar support in line with lower back
10. **Keyboard and Mouse**
    - G and H of keyboard aligned with your nose. Mouse gripped loosely
11. **Laptop**
    - Used with a riser, external keyboard and external mouse
Introduction

How is your computer workstation treating you?

How do you feel after spending a day working in front of a computer? Do you have sore eyes or headaches? Do your wrists, arms, shoulders, back, legs, or neck feel stiff or uncomfortable? You probably suspect computer work as the culprit but don’t know how to prevent the discomfort — or you just accept it as part of the job.

The aches and pains that can result from working at a computer take days, weeks, or months to develop. They may eventually fade away or they may develop into chronic conditions such as carpal tunnel syndrome (injury to nerves in the wrist); tendinitis (swelling of the tendons) in the wrist or elbow; or tenosynovitis (swelling of the sheath around a tendon). Computer work that makes you feel sore, stiff, or uncomfortable has one or more of the following causes:

Repetitive movements — for example, you type for long periods without rest.

Awkward postures — for example, your neck is bent too far forward or your wrists are bent too far back.

Static posture — you sit for long periods without getting up or stretching.

Working at a computer may not always be exciting, but it doesn't have to be uncomfortable. This guide helps you set up and use a computer workstation so that you're comfortable and productive.

---

Do you have some of the aches and pains described below? Proper workstation layout and correct posture can prevent them.

- **Upper back and neck discomfort.** Adjust your chair, monitor, the position of your documents, or use a phone headset.
- **Eyestrain, burning eyes, and headache.** Task lighting, viewing distance, monitor brightness, contrast level, or font size may need adjusting.
- **Wrist and hand discomfort.** Straighten your wrists when you are typing or using a pointing device. Adjust keyboard slant or use a wrist rest.
- **Shoulder or elbow discomfort.** You may be reaching too far for your pointing device or it may not be at the proper height.
- **Muscle cramps, aches, or numbness in your legs.** Adjust your chair or seat-back angle. You may need a footrest or more leg room.
Office Safety Inspection Checklist
Columbia Land Trust

**Instructions:** This checklist addresses responsibilities and possible safety hazards which may be present in a Columbia Land Trust office. This form is to be completed by employees who have been trained to perform safety inspections. Upon completion, the form should be provided to the Safety Committee. For any items checked "Unsatisfactory", an explanation must be provided in the comments section.

<table>
<thead>
<tr>
<th>Inspection Location</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inspector Name</td>
<td></td>
</tr>
</tbody>
</table>

### Housekeeping

<table>
<thead>
<tr>
<th>Satisfactory</th>
<th>Unsatisfactory</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Floor and aisles are free of litter and spilled liquids (water, pens, paper, etc.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Aisles are free of cords, boxes, chairs and other tripping hazards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Housekeeping is being adequately maintained</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. MSDS are available for office and housekeeping chemicals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. OSHA posters are prominently displayed</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Ergonomics

<table>
<thead>
<tr>
<th>Satisfactory</th>
<th>Unsatisfactory</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. All office equipment is being used correctly</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Employees are properly positioned at their desk and maintain good neutral posture</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Employees are using their workstation efficiently and avoiding stretching or reaching for objects placed far away</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Electrical

<table>
<thead>
<tr>
<th>Satisfactory</th>
<th>Unsatisfactory</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. All extension cords are in good condition and are not frayed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Extension cords are not being used as permanent wiring</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Cords or cables are not causing a trip hazard</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Access to electrical panels or electrical room is unobstructed (at least 36&quot;)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Outlets are not overloaded</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Electrical equipment is in good working condition</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Evacuation/Fire

<table>
<thead>
<tr>
<th>Satisfactory</th>
<th>Unsatisfactory</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. An evacuation plan is posted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. All aisles are at least 36 inches wide</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Doors are not locked such as to prevent exit from the building</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Fire alarms are present and are in good working order</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Fire extinguishers and pull stations are in the locations noted on the evacuation plan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Fire extinguishers are identified with signs and not blocked</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Fire extinguishers appear to be in good condition and have been inspected</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Maintenance

<table>
<thead>
<tr>
<th>Satisfactory</th>
<th>Unsatisfactory</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Doors and locks are in good working order</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2. Windows are unbroken and free from any type of damage
3. All areas are well lit and lights are functioning properly
4. There are no observable drips, water damage, or signs of mold
5. Flooring is in good condition and the carpets are not ripped and tiles are not broken or uneven
6. Stairways are in good repair with handrails and non-slip tread.
7. The exterior of the building present no safety concern

<table>
<thead>
<tr>
<th>Other Inspection Items</th>
<th>Satisfactory</th>
<th>Unsatisfactory</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. First Aid Kits are located in the designated areas and are fully stocked.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Office equipment is kept at least 18 inches from functioning radiators</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. The parking lot area is free of any safety concern (i.e. overgrown landscaping, uneven pavement, traffic hazards)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Comments:

Inspector Signature

Date
Safety Committee Charter
Columbia Land Trust

Safety Committee Mission Statement

The mission of Columbia Land Trust’s Safety Committee is to provide support to enhance the organization’s safety program, and to promote a healthy and safe environment. The committee encourages employees to participate in the safety process through education, communication, and safe work practices.

Safety Committee Members as of 1/16/15

Patti Allen
Mitch Attig
Sam Schongalla
Ian Sinks
John LaRose

Safety Committee Activities

The health and safety activities of the committee will include, but are not limited to, the following:

• Track and oversee implementation of the Land Trust safety program, ensuring compliance with health and safety regulations and Land Trust standards.
• Serve as an advisory group to management on health and safety issues; provide suggestions and recommendations for resolution of health and safety concerns.
• Identify unsafe work practices and conditions and suggest appropriate remedies.
• Assist in the development and implementation of effective health, safety, and risk management awareness activities.
• Review health and safety inspections of all facilities to identify safety hazards and recommend corrective measures.
• Review reported incidents and safety concerns, identifying types of issues, causes, and trends as well as appropriate corrective action.
• Encourage feedback from all individuals with regard to health and safety related ideas, problems, and solutions.
• Schedule and develop an agenda for meetings based on member and employee input.

Safety Committee Chairperson's Responsibilities

• Schedule and develop an agenda for meetings based on member and employee input.
• Facilitate the health and safety committee meetings.
• Coordinate the assignment of activities to committee members.
• Follow up on assigned responsibilities.
• Prepare an annual report of the committee's accomplishments.
• Prepare a report of the committee's objectives for next calendar year.
• Introduce new members.
• Serve as an example by following all safety rules and work practices.

Safety Committee Members Responsibilities

• Attend all health and safety meetings or arrange for an alternate to attend.
• Participate in meetings by providing information and feedback.
• Take on safety project assignments, as appropriate.
• Communicate committee activities to coworkers.
• Assist with the development of the agenda; bring safety or health concerns to committee meetings.
• Serve as an example by following all safety rules and work practices.

Members

The Safety Committee will consist of 4-6 members. Meetings must have at least 3 members present. The number of employee-elected members must equal or exceed the number of employer-selected. The term of employee-elected members must be a maximum of one year.

Meetings

Meetings will initially be held monthly. After six (6) months, regular meetings of the committee will be held quarterly. Special meetings of the committee may be called by Chairperson upon his/her initiative, or upon the request of any committee member.
Safety Committee Agenda
Columbia Land Trust

Date_________________ Meeting Start Time:_______ Meeting End Time:_______

Attendees:

Minutes taken by:

Next meeting date:

Review of minutes of last meeting:    Approved? ___ Yes ___No
Corrections:

1. Unfinished business from last meeting:

2. Any hazards reported during this time period?

3. Describe any accident investigations conducted since last meeting. Did you identify and correct the cause of the unsafe condition(s)?

4. Is our accident and illness prevention program working? ___Yes ___No
   If no, describe any recommendations to improve it.

5. What other safety-related topics need to be discussed?

Updated 1/13/2016
TO DO:

Each Meeting:
- Review any safety incidents and provide suggestions for corrective action.
- Review any safety concerns and provide suggestions for improvement or corrective action.
- Consider opportunities for facilitating safety awareness amongst employees.

Quarterly (January, March, June, September):
- Confirm that all necessary safety documentation is properly captured, stored, and filed.
- Support, track, and correspond with the Emergency Response Team.

Annually (January):
- Confirm that all employees have completed, reviewed, or revised a Job Safety Assessment with their supervisor at least once annually.
- Confirm that a safety evaluation is incorporated into employee performance reviews.
- Track and review workplace inspections.
- Provide an annual safety report to Management Team.
- Review the Safety Manual and incorporate improvements.
Safety Investigations Guidelines
Columbia Land Trust

The investigation procedure will include the following 5 components:

- **Gather information:** The investigation team learns the facts about the accident, violation, or safety concern by reviewing the submitted documentation, interviewing appropriate individuals, and collecting relevant information.

- **Analyze facts:** The investigation team identifies the causes and contributing factors, and determines how the accident, safety violation, or concern could have been prevented.

- **Report findings:** The Safety Committee will report on findings and recommendations for corrective action, to be documented within the Safety Committee Meeting Agenda. These findings will be shared with the appropriate identified individuals, and may include the Deputy Director, Management Team, or an employee supervisor.

- **Act on recommendations:** The Deputy Director, Management Team, or an employee supervisor is responsible for leading or supporting the implementation of corrective action measures.

- **Follow up:** The Safety Committee member will coordinate and check-in with the identified individuals to ensure corrective actions were taken.

*Updated 10/30/2015*
These summaries have been prepared by Robert H. Levin, Esq. under contract with the Land Trust Alliance. The *Bear Yuba* case summary below which did not go to trial and a decision was summarized by Leslie Ratley-Beach, conservation defense director of the Land Trust Alliance.

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**CASE SUMMARIES**

  - State: California
  - Date: 2018
  - Procedural Status: Case active. On appeal to 9th Circuit.
  - Keywords: Commercial uses; duty to defend; insurance; notice; private conservation easement; restoration; road; timber harvest; trespass; violation.
  - Summary of Facts and Issues: Hentooth Ranch LLC (Hentooth) owns property adjacent to a property in Sonoma County over which the Sonoma Land Trust (SLT) held a conservation easement. Hentooth had a commercial general liability insurance policy purchased from the Burlington Insurance Company (Burlington). SLT filed suit to enforce its conservation easement in 2015, naming the owners of the property subject to the conservation easement and Hentooth, alleging that the owners and Hentooth (the individual owners are the officers of Hentooth) violated the conservation easement by, among other things, relocating mature oak trees to the Hentooth property and undertaking their own unsuccessful restoration efforts. Hentooth tendered the underlying action to Burlington and Burlington denied coverage. Hentooth filed suit in state court, and Burlington removed to federal court. As with most such policies, this one defined an occurrence as an “accident,” distinguished from an intentional act. Hentooth apparently conceded that the underlying tree removal and road construction were intentional, but asserted that their unilateral restoration efforts and the problems resulting therefrom were accidental, thus triggering Burlington’s duty to defend.
  - Holding: The district court held on summary judgement for Burlington, finding that Hentooth’s flawed restoration efforts were intentional and not accidental. The court found it irrelevant that Hentooth didn’t intend to cause further harm by its restoration efforts, because it acted intentionally in undertaking those efforts.
  - Notes and Analysis: The outcome of this case is satisfying insofar as it doesn’t compensate Hentooth and the individual owners for their easement violations. That said, having an insurance company on the hook for damages can often provide a source of funds for a settlement, and so the decision here ultimately might not be beneficial to SLT. SLT’s underlying violations action is still pending.
• **Bear Yuba Land Trust vs. Michael Nudelman et al**, Case No. CU15-081153, Nevada County Superior Court of California.

A Grant Deed (donation) from Saving Special Places, LLC to BYLT dated December 20, 1999 conveyed 28.23 acres total to BYLT that constitutes the Woodpecker Wildlife Preserve. A portion of Woodpecker Wildlife Preserve is a high elevation and steep sloped forest heavily used by the residents of the neighboring developments for pedestrian recreation. The Preserve is of a mixed forest largely dominated by Ponderosa Pine, incense cedar, Douglas Fir, maple and black oak. Dogwood and a few isolated madrone are also found on the Preserve.

Above and to the south of the Cascade Canal on the Preserve, there are many five to 12 foot high Douglas Fir that will eventually transition the current mixed forest ecology into a Douglas Fir late succession forest. The Preserve provides essential habitat to Pileated Woodpeckers and many other species and is within the winter range for the Nevada City deer herd. Steep erosion cuts are a continual challenge with the site. The slipping land and erosion require continued monitoring and some investment to repair and stabilize.

One of the neighboring house owners, Michael Nudelman, appears to have authorized the cutting of a swath of trees from his house down a steep slope to the seasonal creek gully. The area cut was about .25 acres. The BYLT stewardship team visited the Woodpecker Wildlife Preserve on July 29, 2014 for annual monitoring and discovered several large trees cut down. The fallen trees, left lying in the ravine and clogging the natural stream runoff route, may also be jeopardizing slope stability.

BYLT staff by an exchange of emails dating from July 22, 2013 through December 12, 2013 had previously denied permission to Michael Nudelman to cut down these same trees. These emails are now part of the pleadings. BYLT investigation to date shows that Mr. Nudelman contracted a local tree removal company to fell trees to create a better view for his home. He appears to have cut four large trees (one Douglas Fir and three incense cedar) and knocked down another during the apparent trespass. The trees ranged in age from 110 to 159 years and in diameter at breast height from 14 to 46 inches. The largest was a Douglas Fir that measured 140 feet high with a stump diameter of 50 inches and 13 feet in circumference weighing an estimated three to four tons. All the trees will have to be removed to stabilize the vertical and near-vertical slope. BYLT filed a report with the County Sheriff's office on advice of counsel. The land trust filed a Complaint, answers and cross motions ensued. Mediation was attempted and failed before the first meeting. Extensive discovery, negotiations, multiple mediation, settlement agreements all ensued over almost three years before finally a court ordered transcript settlement was entered and the land trust received a damage payment.

• **Mount Aldie, LLC v. Land Trust of Virginia, Inc.**, No. 160305, -- A.2d --, 2017 WL 830484 (Va. 2017)
  - State: Virginia
  - Date: 2017
  - Procedural Status: Case active. On remand to trial court.
Keywords: Affirmative management rights; approval provision; clearcutting; liberal construction provision; notice provision; private conservation easement; reasonable; road; surface alteration; timber cutting; trail easement; vegetation; violation.

Summary of Facts and Issues: In 2008, a previous landowner gifted a conservation easement over a 60-acre wooded parcel to the Land Trust of Virginia (LTV). The easement established a 100-foot buffer area along the Little River, and granted LTV rights to establish and maintain a footpath in this area. Mount Aldie (MA) purchased the property in 2009 and in 2013 conducted tree removal and grading activities within the buffer area. In particular, MA substantially widened and improved 1,100 feet of a historic footpath known as the Indian Spring Trail, leaving it more akin to a woods road or skid trail. LTV filed suit, seeking an injunction to restore the disturbed area. At issue on summary judgment was the interplay between two different sections of the easement. Section 3(ii) prohibited all “earth disturbing activity” in the buffer area except as “reasonably necessary” for “removal of individual trees presenting a danger to persons or property and removal of diseased, dead or invasive trees, shrubs or plants” or “creation and maintenance of foot or horse trails with unimproved surfaces.” There was no notice or consent requirement attendant to these activities, and MA claimed that its actions were permitted forest management activities to remove diseased or dead trees and to create and maintain foot or horse trails. Meanwhile, Section 5(i) allowed limited non-commercial forest management activities anywhere on the protected property, to wit: “No more than one new opening or clearing, and no new opening or clearings greater than 1,000 square feet, in the forest are permitted for noncommercial purposes, unless approved in advance and in writing by [LTV].” LTV contended, and the trial court agreed, that Section 5(i) controlled, and that MA violated the easement by not seeking or obtaining LTV’s approval. MA appealed.

Holding: The Supreme Court reversed and remanded, holding that Section 3(ii) and not Section 5(i) was the applicable provision. The Supreme Court found that MA’s actions did not constitute a “new opening or clearing” under Section 5(i), but rather was a selective cutting of the existing clearing or opening that was the Indian Springs Trail. Along these lines, the fact that expanding the trail entailed “earth disturbing activity” did not render that activity a “new opening or clearing.” And the appellate court interpreted 3(ii) as a stand-alone provision that contained restrictions in the buffer area distinct from the remainder of the protected property. Furthermore, the Supreme Court held that the provision granting LTV rights to establish and maintain a footpath within the buffer area was not exclusive of MA maintaining the Indian Springs Trail.

Analysis and Notes: This case is an unfortunate example of the perils of conservation easement drafting. LTV’s attempt to create an overlay zone of tighter restrictions on the buffer area backfired, as the appellate court interpreted them as alternate restrictions. In hindsight, it appears that this easement would have benefitted from more precise language regarding the trail exception, such as specifying a maximum width. Furthermore, this case demonstrates that vegetation management terms such as “clearing” and “opening” (as well as “clearcutting”) are not terms of art and require precise definitions. To be sure, LTV can still prevail in this case; for example, one key issue for the trial court to address upon remand is whether MA’s tree cutting and grading activities fell within the “reasonably necessary” limitation in Section 3(ii). Fortunately, LTV does have Terrafirma insurance to help with its defense.

State: Ohio
Procedural Status: Case concluded.
Date: 2015
Keywords: Municipal fee land; open meetings law; private conservation easement; public fee land; statute of limitations.

Summary of Facts and Issues: In May 2011 an employee of the Western Reserve Land Conservancy (WRLC) sent an e-mail to the Chester Township Zoning Inspector. The e-mail requested separate one-on-one meetings with three of the Township’s Trustees in order to discuss a proposed conservation easement that the Township might convey to WRLC. The meetings took place on the same day in June 2011, and the WRLC employee later sent an e-mail to all of the Trustees in which he summarized the various conversations. In December 2011 the Township Board of Trustees held a formal meeting at which it voted to approve the grant of a conservation easement to WRLC. Kenneth Radtke was elected as a new member of the Township Board in 2012, and the following year he filed suit against two other members, the Township and WRLC, alleging violations of Ohio’s Open Meetings law, which requires notice and an opportunity to be heard for any meetings of public agencies. In particular, Radtke claimed that the one-on-one meetings and the e-mail communications between WRLC representatives and Township Board members and staff violated the law. The suit sought the rescission of the conservation easement. Both the Township and WRLC filed motions to dismiss, based in part on the statute of limitations and in part on the lack of any violation of the Open Meetings law.

Holding: The trial court dismissed the suit, holding that there was no violation of the Open Meetings law because the meeting between WRLC’s representative and the Township Board members was for information gathering purposes, and there was no intent to deliberate on the easement. Furthermore, e-mails were not covered by the statute. The court also found WRLC’s and the Township’s statute of limitations argument compelling, but declined to rule on these grounds.

November 2015 Update: An intermediate appellate court affirmed the trial court’s ruling, finding that e-mails do not constitute meetings for the purposes of the Open Meetings statute, and that the one-one-one meetings with the Township Trustees were not “meetings” within the definition of the statute because they did not involve a majority of the Township Board. Moreover, these meetings were for information-gathering purposes and not for deliberation purposes. Finally, the court found that the three separate meetings could not be construed as a single meeting.

March 2016 Update: The Ohio Supreme Court denied review of the intermediate appellate court’s decision.

states, a typical private nonprofit corporation such as a land trust is not subject to state open meeting and freedom of information laws.

  - State: Maryland
  - Procedural Status: Case concluded.
  - Date: 2002
  - Keywords: Amicus curiae; fraud; public conservation easement; rescission; state conservation easement; subdivision.
  - Summary of Facts and Issues: In 1989, the Gaynors contacted the Maryland Environmental Trust (MET), a state agency, to inquire about donating a conservation easement on their 25-acre property. MET informed them that it normally accepts easements on property of fifty acres or larger. The Gaynors then contacted several of their neighbors about donating easements simultaneously so that the aggregate acreage of the properties donated would qualify them for conservation easements. Two neighbors expressed interest in donating conservation easements to MET, and negotiations began. During these negotiations, the issue of whether the easements should include a subdivision prohibition arose. The board agreed to accept all three easements without the subdivision prohibition, but instructed the project manager to seek such a prohibition. The project manager then spoke by telephone with the Gaynors, informing them that MET “wanted” the no-subdivision provision and “felt strongly” about the matter. The project manager then sent a letter “requesting” the subdivision prohibition. The Gaynors ultimately agreed to the subdivision prohibit, but the two other easement donors did not. All three easements were executed and recorded in late 1989. Years later, Kevin Gaynor, an environmental attorney, had joined the board of MET. In 1997, Gaynor learned that his neighbor’s easements did not include the subdivision prohibition. He filed suit against MET, claiming fraud and ultra vires action. The trial court dismissed the ultra vires action but granted summary judgment to the Gaynors on the fraud claim, and ordered a rescission of the easement. The intermediate appellate court affirmed, holding that the project manager’s failure to state expressly that the no-subdivision provision was optional constituted fraud.
  - Holding: Maryland’s high court reversed the two lower court rulings, holding that MET did not commit fraud.
  - Analysis and Notes: This case demonstrates the careful line that land trust staff and volunteers must walk in negotiating for a conservation easement. The trial attorney chosen by MET’s insurance company disappointed many land trust advocates who followed the case closely, pointing to the need for land trust control over choice of attorney. The Land Trust Alliance wrote an *amicus curiae* brief in support of MET.

  - State: California
  - Procedural Status: Case concluded.
  - Date: 2013
  - Keywords: Contract law; duty to defend; public conservation easement; title; violation.
• Summary of Facts and Issues: In 1983, the developers of a subdivision granted an open space easement to the County of San Diego. In 2005, Iraj Ghezeli purchased a lot in the subdivision, a portion of which was subject to the open space easement and all of which was subject to the subdivision’s covenants, conditions and restrictions instrument. Covered Risk 4 of Ghezeli’s title insurance policy provided coverage for easements, while Covered Risk 12 provided coverage for a “violation of any covenant, condition or restriction affecting the Land, even if the covenant, condition or restriction is excepted in Schedule B.” Meanwhile, Exception 14 was a specific exception for the open space easement. In 2006, the County brought an enforcement action against Ghezeli based on a violation of the open space easement by an abutting landowner. Ghezeli eventually settled and tendered his defense to First American Title Insurance Company (First American). First American denied coverage, citing to the specific open space easement exception. Ghezeli filed suit, claiming that Covered Risk 12 superseded the open space easement exception, because the easement was a restriction affecting the property.

• Holding: The trial court and the appellate court held for First American, concluding that because Covered Risk 4 expressly applied to easements, the more general term “covenant, condition or restriction” in Covered Risk 12 did not apply to the open space easement. Moreover, the appellate court ruled that even if Covered Risk 12 did apply to the open space easement, the more specific nature of Exception 14 trumped the more general language of Covered Risk 12.

• Analysis and Notes: Violations of conservation easements generally are not covered by title policies, as they are listed as specific exceptions.

  • State: Colorado
  • Procedural Status: Case concluded.
  • Date: 2015
  • Keywords: Contract law; enabling statute; laches; mutual mistake; notice; private conservation easement; recording; reformation; rescission; scrivener’s error; title; unclean hands violation; wild deed.
  • Summary of Facts and Issues: (Based on summary provided by Larry Kueter) In 1998, an individual landowner donated a conservation easement to the Colorado Cattlemen’s Agricultural Land Trust (CCALT). However, at the time of the donation, the property was actually owned by a limited liability company owned 99% by the landowner and 1% by his wife. The original landowner sold the property in 2011 to Ranch O, LLC and at the request of CCALT (and in conformance with the requirement of the conservation easement) included in the deed that the conveyance was subject to the terms of the 1998 conservation easement. The purchaser had also had previous discussions with CCALT about the conservation easement with regard to the possibility of a utility easement through the conserved property. Following purchase of the property, Ranch O sent a letter to CCALT asking it to release the conservation easement, alleging that the conservation easement was invalid because it was a “wild deed” and because it did not satisfy the statutory requirement that a conservation easement must be granted by the owner of the property. CCALT refused to release the conservation easement and Ranch
O filed an action in 2012 requesting that the court declare the conservation easement invalid. After consultation with the original grantor, CCALT named him as an additional defendant in the case, counterclaimed for a declaration that the conservation easement was valid and for the court to use its equitable powers to reform the conservation easement, claiming a mutual mistake. The original grantor consented to such reformation. Discovery confirmed that the original grantor fully intended to grant the conservation easement and that a mistake was made as to the identity of the grantor. Because he was the 99% owner of the limited liability company that was the actual owner, CCALT asserted that his individual intention could not be any different than the intention of a limited liability company of which he was the 99% owner. Discovery also confirmed that the facts of the case were not in dispute. Ranch O then filed a summary judgment motion asserting that the court could not use its equitable powers to overturn the statutory requirement that the conservation easement had to be signed by the owner. CCALT filed a cross motion for summary judgment that asserted, based on 125 years of Colorado case law, that the mistake was a scrivener’s error and a mutual mistake by the original grantor and by CCALT, and that the court should exercise its equitable powers to reform the conservation easement.

Holding: In an opinion issued ten days before the trial was scheduled to begin, the trial court ruled strongly in CCALT’s favor. The court granted CCALT’s summary judgment motion to reform the deed, thus both declaring the conservation easement valid and allowing its reformation as to future owners of the property, and denied Ranch O’s motion for summary judgment. The trial court also rejected Ranch O’s defenses of laches, unclean hands, and equity follows the law.

March 2015 Update: The Colorado Court of appeals affirmed. In particular, the appellate court noted that for the doctrine of mutual mistake to apply, the mistakes do not have to be identical for each party. That is, even though CCALT was ignorant of the existence of the LLC at the time of the original conveyance and the individual donor was not, there could still be a mutual mistake in substituting the individual for the LLC. Moreover, the appellate court rejected the argument that because Colorado’s conservation easement enabling statute requires that an easement can only be granted by the record owners of the property, that the holder of an easement has an especial duty to confirm the record owners. Finally, the appellate court held that reformation of the easement did not violate the policies and purposes of Colorado’s race-notice statute because Ranch O clearly had actual notice of the easement when it purchased the property.

Analysis and Notes: (Based on summary provided by Larry Kueter (CO attorney)) This case speaks to the importance of a basic level of title research for every conservation acquisition. It was not the policy of CCALT to require a title policy for donated conservation easements until 2003. During the course of the proceedings, Ranch O denied CCALT access to the property to conduct its annual monitoring. CCALT filed a motion, granted by the trial court, to require Ranch O to allow access for the limited purpose of monitoring. Key factors in prevailing at the trial and appellate court levels: (i) bringing the original grantor into the case and having him consent to CCALT’s request for reformation; (ii) characterizing the error in 1998 as a mutual mistake of the original grantor and CCALT so that the principles of equity would apply; (iii) Ranch O’s inability to assert, because of the conservation easement reference in the deed and because of Ranch O’s actual knowledge of the conservation easement, that it was harmed, unlike
the claim that might have been made if Ranch O was a bona fide purchaser without knowledge of the existence of the conservation easement; and (iv) bringing in an experienced and talented litigation team.

  - State: Connecticut
  - Procedural Status: Case concluded.
  - Date: 2013
  - Keywords: Negligence; premises liability; recreational use statute; volunteer immunity.
  - Summary of Facts and Issues: In January 2010, Friends of Hammonasset (Friends), a private nonprofit corporation supporting Hammonasset State Park, invited the public to a nighttime owling hike at the Park. The hike was publicized by, although not formally sponsored or hosted by, Friends. Members of Friends also provided support for the event by greeting, signing in and organizing visitors. Michael Sweeney attended and slipped and fell on some ice, breaking his wrist. Sweeney then filed suit against Friends and its volunteer Board president. Count one of the complaint alleged negligence against Friends and the president for failing to inspect, provide alternatives to, remedy and/or warn about the icy conditions at the Park. Count two was against the president and alleges that she was negligent in her supervising, training and oversight duties in that she failed to set up a walk-through of the path to determine if safety hazards existed, failed to assign a member of Friends to do a walk-through, and failed to notify or assign a volunteer to notify the state to plow or sand the area. Friends and its president filed motions for summary judgment, contending that they did not have possession and control over the Park and therefore had no duty to keep it safe. The president also invoked Connecticut’s volunteer immunity statute as a defense to count two.
  - Holding: The appellate court upheld the trial court in ruling for Friends and the president on summary judgment. As for count one, premises liability (as opposed to general negligence) was the only plausible theory of liability, and the Friends could not be liable because they did not have possession and control over the Park. As for count two, the appellate court held that Connecticut’s volunteer immunity statute (which provides complete immunity) applied and was not preempted by the federal volunteer immunity statute (which provides immunity only for economic losses and not non-economic losses such as pain and suffering). The court pointed to the federal statute’s section on preemption, which provides that any state law extending additional protection from liability relating to volunteers would not be preempted by the federal statute. The court also broadly interpreted a director’s “policy or decision-making responsibilities” to include supervision, oversight, and training matters, the crux of plaintiff’s allegations against the president.
  - Analysis and Notes: It is comforting to see an appellate court issue a broad interpretation of a state volunteer immunity statute. Note that a typical commercial general liability (CGL) insurance policy would provide defense and liability coverage for both Friends and the president in this kind of litigation, as both the corporation and its officers and directors are generally named insureds. In contrast, a typical directors and officers (D&O) policy would not be of any use here because that sort of policy generally excludes bodily injury and property damage claims. This case is somewhat similar to
Berman v. Sitrin, below, in that a nonprofit organization was sued for an injury that did not occur on its property, but rather because the public had been invited on that land by the organization.

- **Dhillon v. Oak Alley Foundation**, NO. 11-3064 (E.D. Louisiana 2012)
  - State: Louisiana
  - Procedural Status: Case concluded.
  - Date: 2012
  - Keywords: Commercial uses; negligence; premises liability; recreational use statute; volunteer immunity.
  - Summary of Facts and Issues: In 2011, Darla Dhillon tripped and broke both of her ankles while visiting Oak Alley Plantation, a national historic landmark owned and operated by the Oak Alley Foundation (“Foundation”), a Louisiana nonprofit corporation with 501(c)(3) status. While walking from the mansion’s entrance through an opening between the pillars of the veranda to the front of the house to view the alley of oak trees, Dhillon lost her balance, allegedly because of a difference in height between the veranda and the surrounding ground. Because Dhillon was a California citizen, she filed suit in federal court via diversity jurisdiction. The Foundation moved for summary judgment under the Louisiana Recreational Use Immunity Statutes.
  - Holding: The District Court held that the Recreational Use Immunity Statutes did apply so as to grant the Foundation immunity. The Court dismissed Dhillon’s arguments based on earlier case law interpreting a previous version of the statutes to not apply to urban or developed lands.
  - Analysis and Notes: This was a rather straightforward recreational use statute case. Note that Louisiana’s statute only grants immunity to landowners who allow the public onto their land for non-commercial recreational activities, but the plaintiff here did not dispute that the Foundation was operating for non-commercial purposes.

  - State: Rhode Island
  - Procedural Status: Case concluded.
  - Date: 2010
  - Keywords: Liability; negligence; private fee land; public access; recreational use statute; trespass.
  - Summary of Facts and Issues: In 2000, 23-year-old newlywed Simcha Berman and his wife paid an admission fee to visit the Breakers, an historic mansion in the City of Newport (City) owned and operated by the Preservation Society of Newport (Society), a nonprofit corporation. Their tour guide encouraged them to visit the nearby Cliff Walk, a famous tourist attraction, after the tour of the Breakers. The Cliff Walk is a footpath that runs across several private properties, including the Society’s. The City was responsible for maintaining the Cliff Walk, and it is a public easement, much like a municipal street. Tragically, Berman fell from the Cliff Walk and suffered severe and permanent injuries, rendering him a quadriplegic. Berman fell after stepping onto what appeared to be a side footpath but in fact was an erosion washout. When Berman fell, he was on a section of the Cliff Walk that was owned by the Society. Rhode Island has a recreational use statute that provides immunity for landowners or land managers who do not charge the public to use their property for recreational purposes. Although the
statute originally applied only to private landowners, it was amended in 1996 to extend to public landowners such as the City. Like many recreational use statutes, Rhode Island’s statute includes an exception for the “willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity...” Prior to 2000, there had been several other serious accidents leading to death or severe injuries on the Cliff Walk, and numerous documents published by national or state agencies recognized its hazards. Berman sued the State, the City and the Society. The trial court granted summary judgment in favor of the City and the Society, finding the recreational use statute fully effective in shielding them from tort liability. Berman appealed, raising several issues. He contended that the Society’s tour guide had invited him onto the Cliff Walk, thus invoking an “invitee” exception to the recreational use statute. He also claimed that the Society and the City were engaged in joint management of the Cliff Walk, rendering them both liable under the “malicious and willful” exception. Finally, he argued that the Society’s charge for admission to the Breakers also included admission to the Cliff Walk.

**Holding:** First, the Supreme Court held that the Society cannot be liable under the recreational use statute, rejecting each of the arguments put forth by Berman. Second, the Court found that even without the application of the recreational use statute, under basic negligence common law the Society owed no duty of care because the Cliff Walk is a public easement, much like a street, for which it bears no responsibility. Finally, the Court reversed the trial court and held that the suit against the City could proceed because the City’s knowledge of previous accidents on the Cliff Walk were substantial enough to invoke the “willful or malicious failure to guard or warn” standard. In particular, the Court held that “malicious” in the context of the statute means “[s]ubstantially certain to cause injury,” and was not akin to the criminal common law definition connoting evil intent. The case was remanded for further proceedings against the State and the City.

- **March 2015 Update:** In 2011, after a trial a jury found that the State was not negligent in maintain the Cliff Walk. In *Berman v. Sitrin*, 101 A.3d 1251 (R.I. 2014), the Rhode Island Supreme Court affirmed.

- **Analysis and Notes:** This is an interesting case that bears reading for all land trusts and their risk management teams. The opinion is instructive in discussing both why the Society was not held liable and why the City could indeed be held liable. On a basic level, the case is a reminder that even strongly worded recreational use statutes do not guarantee immunity. The Court’s broad interpretation of the word “malicious” is especially noteworthy, and could have widespread implications for landowners if adopted in other jurisdictions.