

Date: November 22, 2022

To: COLT Member Organizations

From: Kelley Beamer, Nancy Duhnkrack and Anna-Liza Victory

Re: Oregon Land Justice Project – Recommended Revisions to COLT’s Articles of Incorporation and Bylaws

Background: The purpose of the Oregon Land Justice Project (OLJP) is to learn how to partner with Indigenous people in their efforts to reclaim and reconnect to their traditional landscapes and first foods. The Oregon Land Justice Project is an effort to organize all land trusts to use our individual organizational strengths and assets *collectively* in service to Indigenous people and communities in Oregon. We do this because it’s good for conservation, good for Indigenous people, good for all of Oregon.

As a participant and convener of the Oregon Land Justice Project, the Coalition of Oregon Land Trusts (COLT) has committed to review and revise its Articles of Incorporation and Bylaws to ensure their compatibility with COLT’s work to increase tribal access to land and first foods. As part of this work, COLT will likely administer an Indigenous Land Relationship Fund to distribute for tribal priority projects.

This memo provides general guidance for review and revision of land trust Articles and Bylaws and provides specific recommendations for COLT’s Articles and Bylaws. The memo was developed in consultation with attorneys from other states who are working with land trusts on similar Tribal land access projects.

Review for compatibility with OLJP work is relatively straightforward and, usually only includes the purposes and dissolution sections of an organization’s Articles and Bylaws. Previous revisions generally are intended to eliminate narrow purpose language that is incompatible with OLJP work and to expand purposes to include historic, cultural, and archeological purposes.

Revisions to the dissolution clause are simply to add federally recognized Indian Tribes as potential recipients on dissolution. (In January 2020 revisions to the Oregon Non-Profit Statute went into effect so some land trusts may want to undertake a more comprehensive review of their organizational documents. This is beyond the scope of this memo).

Significance of expanding purpose statements to include historic, cultural and archeological:

OLJP work encompasses more than just the protection of natural resources; It requires the protection of all resources that help to perpetuate Indigenous cultures. The purpose of including “historic, cultural, and archeological resources” is to expand the protection of, and guaranteed access to, these resources *in conjunction with* the natural resources and other landscape features that land trusts already protect.

Tribes and Indigenous people(s) may have interest in accessing, stewarding, and/or owning a property for more than just the natural resources that may exist on that site. Certain properties may have a combination of first foods and medicines; sacred and ceremonial sites; ancestral villages and traditional hunting and fishing sites; graves; pictographs and petroglyphs; and many other characteristics with cultural and spiritual importance to Indigenous peoples.

Here in Oregon, Tribal elders have faced a [difficult legal battle to protect a sacred site, Ana Kwna Nchi Nchi Patat from further destruction](#). As part of an expansion project on Highway 26, ODOT disturbed graves by removing burial cairns (stacked rocks) and cutting down the site’s namesake large trees. Access is further complicated by the highway and a fence, which hinders the elders’ ability to hold ceremonies.

Even worse, interpretive signs in the area continue the erasure of Indigenous people by not acknowledging the cultural significance of the site.

Further south [is Juristac, a sacred site for the Amah Mutsun Tribe in California](#). The area includes important ceremonial sites, archaeological resources, and oak savannas. The Tribe is working to protect (and steward) the land from mining and development that would destroy the landscape and harm their culture and lifeways.

Another example is the site of the Bear River Massacre in Idaho. The Northwestern Band of the Shoshone Nation [purchased the 650-acre property in order to preserve the massacre site](#), revegetate the landscape with native plants, and [develop an interpretive center](#) that would teach the true history of the site to both tribal members and visitors.

In these cases, the protection of natural, historic, and cultural resources are of equal importance. Often, these resources are inseparable.

Amending the bylaws to include historic, cultural, and archeological purposes ensures they are treated equally on the land trust side as well. In the event that a Tribe or Indigenous community expresses interest in accessing, stewarding, and/or owning a property for its cultural value, land trusts can be sure that this aligns with their purpose statements and guidance documents.

GUIDANCE ON REVIEWING AND CHANGING ARTICLES

1. A. Articles of Incorporation – Purpose Section

A land trust’s purpose statement as articulated in its Articles of Incorporation may include only a broad reference to general charitable purposes. This provides a great deal of flexibility and is enough to provide legal authority for the land trust to engage in OLJP work. If this is the only statement of purpose in the Articles of Incorporation, no revisions are necessary.

1. B. COLT’s Articles of Incorporation:

COLT filed its Articles of Incorporation in 2011 and has not amended them. The Articles contain two provisions establishing COLT’s purposes:

Article 4

General Purpose

This corporation is organized exclusively for one or more of the purposes outlined in Section 501(c)(3) of the Internal Revenue [Code] of 1986, as amended (the “Code”).

ARTICLE 5

Primary Purpose

The primary purpose of the Corporation is to promote the long-term protection of natural lands, recreational lands, and open space lands (including farmland and forestlands) in the State of Oregon for conservation purposes and the use and enjoyment of the general public through public outreach, education and support of the conservation activities of land trusts in the State of Oregon.

The purpose statement in Article 5 should be revised because (1) it does not mention historic, archeological, or cultural values and (2) ties the goal of long-term protection to public use and enjoyment.

Recommendation: Change Article 5, Primary Purpose, to read:

The primary purpose of the Corporation is to promote the long-term protection of natural lands, lands of historic, cultural, or archeological value, recreational lands, and open space lands (including farmland and forestlands) in the State of Oregon for conservation purposes and the benefit of the general public through public outreach, education and support of the conservation activities of land trusts in the State of Oregon.

2.A. Bylaws – Purpose Section

A land trust’s purpose statement in its Bylaws may be more narrowly stated than in its Articles of Incorporation and may need revision to encompass OLJP work. For example, the purposes may only include conservation of ecologically significant lands, fish and wildlife habitat, and open space. ***These purposes should be expanded to include conservation of historical, cultural and archeological resources.***

2. B. COLT’s bylaws: COLT’s bylaws were recently amended and became effective December 3, 2020. The bylaws provide:

Article II. Purpose

This Corporation may engage in any lawful activity within the scope of its purposes as set forth in its Articles of Incorporation.

Recommendation: If the Articles of Incorporation are amended as recommended, there is no need to alter the bylaws.

GUIDANCE ON DISSOLUTION CLAUSE REVISION:

A non-profit must include a dissolution clause in its Articles of Incorporation and may include such a clause in its Bylaws. Usually, this clause is modeled on the sample language provided by the IRS:

“Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.”

If this is the language used, it arguably includes federally recognized Tribes. Under I.R.C. §7871, any Federally Recognized Tribe is treated as a state government for most income tax purposes, and that treatment extends to being eligible to serve as a grantee of a dissolving 501(c)(3) organization’s assets in the event of dissolution. However, if a land trust wants to specifically include federally recognized Tribes, the clause could be revised accordingly:

“Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a Federally Recognized Tribal government or state or local government, for a public purpose.”

3. B. COLT's Dissolution Clause

COLT's Articles of Incorporation contain the following dissolution clause:

"No director, officer or other private person shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the Corporation or winding up of its affairs. Upon the dissolution or winding up of the corporation, the assets of the Corporation remaining after payment of, or provision for the payment of, all debts and liabilities of the Corporation, shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding provision of any future federal tax law or shall be distributed to a governmental unit within the meaning of Sections 170(b)(1)(A)(v) and 170(c)(1) of the Code or corresponding provisions of any future federal tax law for a public purpose."

Although this clause could arguably encompass federally recognized Tribes it should be amended to specifically include federally recognized Tribes.

COLT's Bylaws do not contain a dissolution provision.

Process for Amending:

A non-profit may make amendments to its Articles and Bylaws at any time. Generally speaking, a land trust's Articles or Bylaws will specify procedures for amendment. Once amendments have been adopted to the Articles, the amended Articles of Incorporation are filed with the Secretary of State using the form for Articles of Amendment.

4. B. COLT Process for Amending Articles and Bylaws:

Amendment of Articles. Neither COLT's Bylaws nor its Articles of Incorporation specify a process for amending the Articles of Incorporation. Under the Bylaws, COLT's members have the right to vote on Bylaw amendments. Members also have the right to vote on "such additional matters as may be brought before them by the board of directors." Although the Oregon statute governing amendments to Articles of Incorporation (ORS 65.37(1)(a)) does not require a vote of the members for this type of amendment, I recommend that the COLT board bring any proposed amendment to the Articles of Incorporation to the members for approval in accordance with the process set forth in the Bylaws for amending the Bylaws.

Amendment of Bylaws. Article XI of COLT's Bylaws provides:

"The Bylaws may be amended, altered, repealed, or restated by a majority vote of the Members present at an Annual Meeting or Special Meeting called for that purpose. The Board of Directors shall have no power to amend, alter, repeal or restate the Bylaws."

Thus, COLT's Article of Incorporation and Bylaws may be amended by a majority vote of COLT members at the Annual Meeting.

Proposed motion 1: Vote to expand the Change Article 5, Primary Purpose, to read:

The primary purpose of the Corporation is to promote the long-term protection of natural lands, **lands of historic, cultural, or archeological value**, recreational lands, and open space lands (including farmland and forestlands) in the State of Oregon for conservation purposes and **the benefit of the general public** through public outreach, education and support of the conservation activities of land trusts in the State of Oregon.

Proposed motion 2: Amend COLT's Articles of Incorporation contain the following dissolution clause:

Upon the dissolution or winding up of the corporation, the assets of the Corporation . . . shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding provision of any future federal tax law or shall be distributed **to a federally recognized Tribe** or governmental unit within the meaning of Sections 170(b)(1)(A)(v) and 170(c)(1) of the Code or corresponding provisions of any future federal tax law for a public purpose."