

To: Kristin Kovalik, Trust for Public Land

From: Nancy Duhnkrack and Kelley Beamer, Coalition of Oregon Land Trusts

Re: Creating and Sustaining a nonprofit, tax exempt Native American Lead Land Trust

Date: June 15, 2023

Trust for Public Land requested a memo describing the steps necessary to create and sustain a nonprofit Native American led land trust in Oregon. This memo briefly describes the legal steps involved in forming a land trust and applying for tax exempt, 501(c)(3) status and the organizational requirements for sustaining the land trust in perpetuity. This material is specific to Oregon and is designed to further efforts by land trusts to increase Tribal access to their historic land base. Sample organizational documents and additional resources are appended to this memo and are designed to supplement the memo with more specific information.

Legal Steps

Almost all land trusts take the legal form of a nonprofit, public benefit corporation and we assume this form is also the goal of the Native American lead land trust. There are two essential legal processes to forming an Oregon nonprofit corporation, one at the state level and the other at the federal level, specifically with the IRS.

Oregon. All nonprofit corporations in Oregon must operate in accordance with the requirements of the Oregon Nonprofit Corporations Act, found in Chapter 65 of the Oregon Revised Statutes. The entity must choose a name and file Articles of Incorporation with the Corporation Division of the Oregon Secretary of State. The Secretary of State's website provides a blank form to use. The filed Articles govern all other corporate documents and contain some important provisions, two of which, the purposes and dissolution clauses, must conform to the IRS's required language to obtain tax exempt status. The appended Articles contain the requisite language. In addition, you will be asked whether your organization will have "members." This term has a specific meaning under Oregon law. When used in this context, the term "members" refers to people who have a right to vote on certain matters relating to the corporation's operation, in addition to the board of directors. Unless you intend to allow people other than directors to vote on certain issues, you should choose to be a "nonmember" corporation. In 2023 the fee for filing the Articles of Incorporation was \$50.

After you have filed the Articles of Incorporation, it's time to create a board of directors and develop bylaws. There are many non-legal considerations in selecting the board of directors, but legally the members of the board have a duty of loyalty to the organization and must manage the affairs of the corporation in accordance with the adopted bylaws. The bylaws contain the rules and procedures governing how the organization is run, for example, the organization's officers, terms of office, duties, required meetings, and quorum for decision making. The bylaws are usually adopted by the Board of Directors at the organizational

meeting. The bylaws must be consistent with the Oregon Nonprofit Corporation Act and other laws, but need not be filed with the Oregon Secretary of State. When you apply for tax exempt status, the bylaws will be filed with the IRS.

Finally, all Oregon nonprofit public benefit corporations must register with the Oregon Department of Justice, and annual reports must be filed with both the Oregon Secretary of State and the Department of Justice.

Federal – Internal Revenue Service. Once these organizational steps have been taken at the state level, the nonprofit can then apply for federal tax-exempt status with the IRS.

Organizations eligible for tax exempt status may be organized for a variety of purposes, including religious, educational, scientific or charitable. The vast majority of land trusts, including existing Native American controlled land trusts, qualify for an exemption under the charitable organization category, and the IRS has ruled that the acquiring and preserving of ecologically significant undeveloped land advances purposes that are charitable.

Before you submit your organization's application, you will need to request an Employer Identification Number (EIN) from the IRS, even if the organization does not have any employees. Once you have the EIN, use a Form 1023-series application to apply for recognition by the IRS. This application must be accompanied by a \$600 (in 2023) fee. The Form 1023-EZ is available for organizations that project annual gross receipts of less than \$50,000 in the next three years. The application fee is reduced to \$275. Among other items, the applicant must choose up to three National Taxonomy of Exempt Entity activity codes on Form 1023. These are codes that reflect the organization's purposes and activities. Most Native American led land trusts choose a Land Resources Conservation code.

In addition to demonstrating that the organization will be organized and operated for charitable purposes, to qualify for recognition as a public charity, the organization must demonstrate that it is publicly supported. The IRS uses a complicated test to determine public support, but, in general, public charities are required to receive at least one-third of their support from the general public, including governmental grants and public charities.

The Form 1023 is long and asks for many organizational details. The good news is that, if you file within 27 months from the date of organization, recognition is usually retroactive to the date you were incorporated.

Steps to Creating a Durable and Long-Lasting Land Trust

Nationally, there are more than 1,300 nonprofit land trusts that have conserved 56 million acres of land (as of 2015). The continued success of land trusts depends on public confidence in our community as we build conservation programs that endure. The following is a high-level guide to the most important steps in starting a land trust and links to important resources.

The land trust movement has evolved to respond to the unique opportunities and risks that come along with conserving and managing land in perpetuity. As entities that own and manage land (and interests in land) there are unique challenges that land trusts face including the duty

to deliver on public grant programs, to manage land for access and safety and to prevent the violation of conservation easements. The National Land Trust Alliance maintains a robust set of [standards and practices](#) that provide a step-by-step guide to starting a land trust and building internal operations that follow state and federal ethical guidelines.

Financial Durability and Fundraising:

The most financially sound land trusts develop a diversified income model that includes revenue from:

- Foundation grants- Typically restricted to a project or program.
- Individual donations- From private donors, typically unrestricted and ideal for covering operating costs. These gifts come from individual relationships and also through Donor Advised Funds at community foundations. Donors can get a charitable tax deduction for making a gift to a 501c3.
- Government grants- There are several public funding programs in Oregon and nationally that support land acquisition, easements, restoration, and management for wildlife and habitat protection.
- Fee for service: Some land trusts are hired by partners and act as contractors or sub-awardees to fulfill a portion of another grant, or to help implement large-landscape restoration grants.
- Interest revenue: A land trust should establish a stewardship endowment for every property they acquire to ensure they can take care of the land in perpetuity. This fund is highly restricted and generates interest to support ongoing stewardship.
- Business support: This is a difficult area to secure, but some land trusts recruit business sponsorship for fundraising events.

Foundation support to launch a land trust

A land trust begins with a board of directors then develops into an organization with paid staff. An effective strategy to fundraise for a staff position is to create a 3-year tiered proposal for one or more foundations to support. There are several foundations that are willing to support a multi-year proposal, including Collins Foundation and Meyer Memorial Trust. Example:

Year 1: \$100k -one or more foundations cover 100%

Year 2: \$75k- foundations cover 75% while land trust builds up other revenue streams

Year 3: \$50k – decreases as other revenue streams are established

There are several foundations that are interested in supporting Native-led land trusts, including: Indian Land Tenure Fund, Kalliopeia Foundation, Mosaic, and Native Americans in Philanthropy.

Land protection: Evaluating and Selecting Conservation Projects

The Land Trust Alliance Standards and Practices offer a very helpful framework for setting up a strategy for land acquisition, including how to evaluate and select conservation projects. Land trusts should work to make sure every land and conservation easement transaction they complete is legally, ethically and technically sound and they should obtain a legal review of every transaction by an attorney experienced in real estate law. For every transaction, a land

trust should conduct a preliminary environmental investigation to identify whether there are any conditions that pose environmental risks, and take steps to address any significant concerns.

Management and Stewardship

The Land Trust Alliance Standards and Practices provide a step-by-step guide to the best practices for managing and stewarding land. Land trusts, for example, should create a written land management plan for each conserved property within 12 months of the acquisition. The trust should manage each conservation property in accordance with the plan and in a manner that retains the land trust's public credibility, manages community expectations and minimizes risk.

Funding Stewardship and Perpetual Protection

A land trust is provided with a 501(c)(3) status because they are entrusted with protecting 'public' values on private lands- on their own lands or on other private lands through an easement. There are unfortunate cases when land trusts have NOT maintained those 'public' values, and lost their non-profit status or even faced litigation. A critical step that goes along with the perpetual protection of land is setting up a stewardship fund to support ongoing stewardship and monitoring. When land trusts build a capital campaign to fundraise for a land purchase, they should always include the cost of setting up a stewardship fund in the overall campaign goal (\$5M capital campaign = \$4M land acquisition + \$1M stewardship). Stewardship funding is typically generated through ongoing interest yielded from an endowment. Most public funding sources do not fund stewardship funds (ongoing O&M) but funding for restoration activities is readily available.

IMPORTANT RESOURCES

This guide provides a high-level overview of the key steps to establishing a sound land trust. The following resources provide a deeper-dive into each of these steps and should be explored.

Land Trust Alliance Standards and Practices: Land Trust Standards and Practices are the ethical and technical guidelines for the responsible operation of a land trust. The Land Trust Alliance drafted the first Standards in 1989 at the urging of land trusts and to affirm certain best practices as the surest way to secure lasting conservation. To maintain the land trust community's strength, credibility and effectiveness, the Standards were updated in 1993, 2001, 2004 and 2017

<https://a.storyblok.com/f/120093/x/d55c13297e/landtruststandardsandpractices.pdf>

Accreditation: Accreditation is a voluntary program administered by the Land Trust Accreditation Commission. Achieving accreditation demonstrates that a land trust has successfully implemented Land Trust Standards and Practices. Accredited land trusts range from all-volunteer organizations to national groups and protect more than 81% of all land and easements held by land trusts in America.

<https://landtrustalliance.org/resources/learn/topics/organizational-management/land-trust-accreditation>

Terra Firma: Terrafirma was formed by the Land Trust Alliance in 2011 to help land trusts defend their conserved lands from legal challenge. Terrafirma is organized as a "risk retention group" consisting exclusively of Alliance member land trusts, all of which are tax-exempt organizations described in Section 501(c)(3) of the Internal Revenue Code ("Members"). Terrafirma minimizes this risk and uncertainty by reducing a land trust's exposure to potentially high litigation fees.

<https://terrafirma.org/about>