

## PREFACE

This Manual of Standards and Practices has been prepared by the staff of the Tennessee Parks and Greenways Foundation with funding and mentoring from the Land Trust Alliance. The Alliance's Standards and Practices form the outline for this Manual, and their guidance has been central to its development.

Legislation and governmental regulations are subject to change, which in turn will affect the guidelines and procedures for various Foundation activities. Also, facts and figures are subject to periodic revision and updating. Therefore, this Manual will be subject to annual review by the Executive Director of the Foundation, who will report to the Board's Executive Committee with recommendations for any needed changes.

Many aspects of our day-to-day operation derive from policy and procedure dictated by documents and procedures previously reviewed by the Board, including the following:

Strategic Plan (most recent)	February 2005
Amended Charter	July 2000
Amended By-Laws	July 2000
Easement Manual	March 2000
Land Trust Alliance Standards & Practices	November 1999
Land Trust Alliance Standards & Practices (most recent)	June 2006
Board Orientation Manual	Reviewed annually

In addition, several processes described are reviewed as part of our annual calendar of board activities (Section III – Board Accountability, item H).

This Manual was prepared by Nora Beck of the Foundation staff with special assistance from Patti Madere, Steve Walsh, and Patricia VornDick; and with oversight from Board member Bob Philp and Board President and Executive Director Kathleen Williams.

It was approved by the Board of Directors on October 19, 2007.

# TABLE OF CONTENTS

## *Organizational Strength*

	<b>Page</b>
<b>I. Mission</b>	<b>1</b>
A. Mission	
B. Planning and Evaluation	
C. Outreach	
D. Ethics	
<b>II. Compliance with Laws</b>	<b>3</b>
A. Compliance with Laws	
B. Nonprofit Incorporation and Bylaws	
C. Tax Exemption	
D. Records Policy	
E. Public Policy	
<b>III. Board Accountability</b>	<b>8</b>
A. Board Responsibility	
B. Board Composition	
C. Board Governance	
D. Preventing Minority Rule	
E. Delegation of Decision-Making Authority	
F. Board Approval of Land Transactions	
G. Approval Authority	
H. Board Activity Calendar	
<b>IV. Conflicts of Interest</b>	<b>11</b>
A. Dealing with Conflicts of Interest	
B. Board Compensation	
C. Transactions with Insiders	
<b>V. Fundraising</b>	<b>14</b>
A. Legal and Ethical Practices	
B. Accountability to Donors	
C. Accurate Representations	
D. Marketing Agreements	
E. Cause-Related Marketing	
<b>VI. Financial and Asset Management</b>	<b>16</b>
A. Annual Budget	
B. Financial Records	
C. Financial Reports and Statements	
D. Independent Audit, Federal and State Reporting	
E. Internal System for Handling Money	
F. Investment and Management of Financial Assets and Dedicated Funds	
G. Funds for Stewardship and Enforcement	
H. Sale or Transfer of Assets (Including Land and Easements)	
I. Risk Management and Insurance	
J. Emergency Land Bank	

<b>VII.</b>	<b>Volunteers, Staff and Consultants</b>	<b>21</b>
	A. Capacity	
	B. Board Members, Advisors, and Volunteers	
	C. Staff	
	D. Availability of Training and Expertise	
	E. Board/Staff Lines of Authority	
	F. Personnel Policies	
	G. Compensation and Benefits	
	H. Working with Consultants	
	I. Executive Committee – Structure and Function	

*Land Transactions*

<b>VIII.</b>	<b>Evaluating and Selecting Conservation Projects</b>	<b>24</b>
	A. Identifying Focus Areas	
	B. Project Selection and Criteria	
	C. Federal and State Regulations	
	D. Public Benefit of Transactions	
	E. Site Inspections	
	F. Documenting Conservation Values	
	G. Project Planning	
	H. Evaluating the Best Conservation Tool	
	I. Evaluating Partnerships	
	J. Partnership Documentation	
	K. Evaluating Risks	
	L. Non conservation Lands	
	M. Public Issues	
<b>IX.</b>	<b>Ensuring Sound Transactions</b>	<b>28</b>
	A. Legal Review and Technical Expertise	
	B. Independent Legal Advice	
	C. Environmental Due Diligence for Hazardous Materials	
	D. Determining Property Boundaries	
	E. Easement Drafting	
	F. Documentation of Purposes and Responsibilities	
	G. Recordkeeping	
	H. Title Investigation and Subordination	
	I. Recording	
	J. Purchasing Land	
	K. Selling Land or Easements	
	L. Transfers and Exchanges of Land	
<b>X.</b>	<b>Tax Benefits</b>	<b>31</b>
	A. Tax Code Requirements	
	B. Appraisals	
	C. No Assurance on Deductibility or Tax Benefits	
	D. Donee Responsibilities – IRS Forms 8282 and 8283	
<b>XI.</b>	<b>Conservation Easement Stewardship</b>	<b>32</b>
	A. Funding Easement Stewardship	
	B. Baseline Documentation Report	
	C. Easement Monitoring	
	D. Landowner Relationships	

- E. Enforcement of Easements
- F. Reserved and Permitted Rights and Approvals
- G. Contingency Plans/Backups
- H. Contingency Plan for Backup Holder
- I. Amendments
- J. Condemnation
- K. Extinguishment

**XII. Fee Land Stewardship**

**36**

- A. Funding Land Stewardship
- B. Stewardship Principles
- C. Land Management
- D. Monitoring Land Trust Properties
- E. Land Stewardship Administration
- F. Community Outreach
- G. Contingency Backup
- H. Nonpermanent Holdings
- I. Condemnation

**ATTACHMENTS**

- Attachment A – Strategic Plan
- Attachment B – Goals
- Attachment C – Annual Report
- Attachment D – Amended and Restated Charter
- Attachment E – Amended and Restated By-Laws
- Attachment F – The Public Support Test
- Attachment G – Records Retention Schedule
- Attachment H – Rules of the Tennessee Ethics Commission
- Attachment I – Board Orientation Manual Table of Contents
- Attachment J – Board Members and Advisors
- Attachment K – Employee Evaluation Form
- Attachment L – Tennessee Conservation Easement Act of 1981
- Attachment M – Project Evaluation Guidelines
- Attachment N – Internal Revenue Code §170 (h)
- Attachment O – Sample Conservation Plan and Resolution
- Attachment P – Site Inspection Report
- Attachment Q – Landowner Fact Sheet
- Attachment R – Policies and Guidelines of Emergency Land Bank
- Attachment S – Disclosure Form
- Attachment T – Application for Conservation Easement
- Attachment U – Personnel Policies
- Attachment V – Easement Checklist
- Attachment W – Basic Baseline Table of Contents
- Attachment X – Easement Monitoring Form
- Attachment Y – Explanation of Monitoring Procedure
- Attachment Z – Change of Ownership information

# *Organizational Strength*

## **I. Mission**

*The Foundation has a clear mission that serves the public interest, and all programs support that mission.*

### **A. Mission**

The mission of the Tennessee Parks and Greenways Foundation is to protect Tennessee's natural treasures.

*--Adopted by the Board February 28, 2005*

Our vision is to create a network of parks, greenways, and wildlife areas from the mighty Mississippi to the Great Smoky Mountains. Our state parks and natural areas, scattered along ridges and rivers, from east to west, available to everyone living or visiting anywhere in Tennessee, will be the destinations in these protected green corridors.

Tennessee is a beautiful green garden, with mile-high mountains in the East, the grand Mississippi River in the West, and 19,000 miles of sparkling rivers in between. Tennessee is dotted with bountiful farms, crisscrossed with scenic back roads and blessed with rolling hills and abundant wildlife. The Tennessee Parks and Greenways Foundation is dedicated to preserving Tennessee's natural treasures.

Tennessee's population increased from 3.9 million in 1970 to 5 million in 1990; it is expected to increase to 6 million by the year 2010. A larger population will need more recreation opportunity.

More residents will accelerate the fragmentation of our landscape into smaller individually owned parcels. Tennessee is 7<sup>th</sup> in the nation in loss of open space, converting more than 80,000 acres each year from open farms and forests to development and sprawl. It is important that the Foundation work now to help conserve the scenic beauty of Tennessee's "garden."

Tourism is the second largest industry in Tennessee, employing 139,000 Tennesseans and contributing \$8 billion to our economy and \$600 million in local and state tax revenues. The top tourist attractions in Tennessee are parks. Tennessee attracts visitors because of its natural beauty.

Tennessee is rich with native plant and animal life, with more than 4,000 species. We are one of the top ten richest states in America for biological diversity, yet, we are ranked among the four most threatened in the nation due to loss of natural areas. Parks and greenways protect natural areas.

The Tennessee Parks and Greenways Foundation works to protect and celebrate our existing state parks and natural areas and conserve new beauty spots for the residents of Tennessee and visitors alike. Parks and greenways create opportunities for wildlife migration and protect the water quality of our streams from the poisons of non-point source run-off while providing close-to-home recreation and protection of our state's scenery. Our mission is ambitious, our cause is worthy and our work is urgent. Large tracts of land will never be more available than they are today.

## **B. Planning and Evaluation**

The Foundation has a strategic plan which was formally approved by its Board of Directors on February 28, 2005. The strategic plan is re-evaluated every three years at a Board Retreat. (See *Attachment A – Strategic Plan.*) Annually, as our Board adopts the fiscal year's budget, they also adopt a work plan for the year based on our strategic plan. (See *Attachment B – Goals.*) For purposes of this Manual, the Goals will be updated annually.

## **C. Outreach**

The Foundation communicates its goals to members, donors, the general public, and to other conservation organizations within its service area through our web site ([www.tenngreen.org](http://www.tenngreen.org)); our annual report (mailed to members, donors, state and community leaders, elected and appointed officials, and leaders of other conservation organizations); publicized events including hikes and land dedications; fundraising appeals; press releases; and presence at events promoting land conservation. (See *Attachment C – Annual Report.*)

## **D. Ethics**

The Foundation upholds high standards for ethics in implementing its mission and in its governance and operations. **Our ethics statement:**

The Tennessee Parks and Greenways Foundation is pledged to conduct all land protection activities and organizational functions according to the highest professional standards and in accordance with the Standards and Practices of the Land Trust Alliance. The Foundation acknowledges the trust placed upon it by its donors, the public, and its partnering landowners, public agencies, and fellow conservation nonprofits, by conducting all business in ways that are fiscally and environmentally responsible and sustainable over time in keeping with its mission and stewardship commitments.

**Note:** Facts and figures used in this section from the current Strategic Plan.

## II. Compliance with Laws

*The Foundation fulfills its legal requirements as a nonprofit tax-exempt organization and complies with all laws.*

### A. Compliance with Laws

The Foundation complies with all applicable federal, state, and local laws and regulations.

### B. Nonprofit Incorporation and Bylaws

The Foundation is incorporated under Tennessee law and maintains its corporate status. (See *Attachment D – Amended and Restated Charter*; and *Attachment E – Amended and Restated By-Laws*.) The Board is given copies of the Charter and By-Laws for annual review.

### C. Tax Exemption

The Foundation qualifies for federal and state tax exempt status and is fully compliant with requirements for maintaining this status, including prohibitions on private inurement and political campaign activity; and limitations and reporting on lobbying and unrelated business income. (See *Attachment D – Amended and Restated Charter*.) When the Foundation holds conservation easements, it meets the Internal Revenue Code’s public support test for public charities. (See *Attachment F – “The Public Support Test.”*)

### D. Records Policy

The Foundation recognizes that complete, secure, authentic and consistent records are essential to daily operation and adherence to our mission. Our records policy is developed to ensure compliance with the needs of donors, including donors of conservation easements and land gifts, to document and thereby aid in protecting the conservation values of all protected lands, and to secure our nonprofit status. All Foundation files belong to the Foundation, not to members of the staff or Board of Directors.

The Executive Director and an appointed committee review the Records Policy when appropriate, to ensure compliance with stated policies and to ensure that policies remain appropriate for the best interests of the Foundation.

#### (1) Financial records

The Foundation manages its finances and assets in a responsible and accountable manner. Thus, it is the policy of the Foundation to maintain complete, credible, and accurate documentation of its financial activity.

The Foundation follows generally accepted accounting principles (GAAP) to ensure clear and credible financial records. The Foundation follows an established internal control system for handling funds, as detailed in Standard VI-E of this Manual. An audit is conducted annually by an independent certified public accountant, or, if

permitted by law, by the Tennessee Comptroller of the Treasury. (See *Attachment D – Amended and Restated Charter.*)

The financial records maintained by the Director of Operations, under supervision of the Executive Director, include the Foundation’s accounting software; monthly, quarterly, and annual financial reports; balance sheets; budgets; reconciliation reports and cancelled checks; invoices and receipts; and copies of deposited checks, donor and grantor restrictions, payroll records, tax returns, and all other federal and state applications. Access to these records is limited to the Director of Operations, the Executive Director, the Office Manager, and our volunteer Bookkeeper. The accounting software is password protected.

#### (2) Personnel Records

The Foundation establishes and maintains personnel records which meet legal requirements for its applicants and employees. Appropriate safeguards are established to ensure security and confidentiality. All personnel records are maintained by the Director of Operations. Each employee may review his/her personnel file upon request. Personnel files may not be removed from the office by any employee.

#### (3) Fundraising Records

As a non-profit organization, the Foundation abides by all relevant ethical and accountability guidelines. We adhere to the fundraising policies described in Standard V (Fundraising) of this Manual. All donation records are kept in compliance with charitable solicitation laws, showing use of funds in accordance with restrictions requested by donors and grantors.

#### (4) Outreach Records

Records of events and activities of the Foundation are maintained so that future staff members and Board members may use them as resources for planning future events. These records are maintained by the Office Manager. Outreach records include records of Board meetings, land dedications, hikes and other outings, and educational and informational presentations.

#### (5) Administrative Records

Records of all Board business are kept on file in a secure manner, by date of Board activity and by category: Board meetings, executive Board meetings; and resolutions. It is the Foundation’s policy to back up all electronic files on a routine basis so that no single computer malfunction can cause loss of documents.

#### (6) Land Project Files

The Foundation creates and maintains records for each land conservation project as both electronic and physical files. The Land Conservation Coordinators work with the Executive Director to see that all relevant information for each individual project is appropriately filed for rapid access and reference.

##### a. Prospective Land Project Files

*Physical* files associated with prospective land projects are maintained by the Executive Director and are filed by project name under a county-name heading based on the project's location. These files contain notes from initial contacts, maps, and other information. As a cross-reference to the prospective project file, the names and contact information for prospective easement or land donors are filed alphabetically in a separate 3" x 5" card file, also secured by the Executive Director.

*Electronic files* for prospective land projects are a part of the Foundation's shared computer network, in the Executive Director's shared files, and are filed by project name under the appropriate heading: Easements or Land Gifts.

b. Active Land Project Files

When a landowner indicates readiness to proceed with a conservation easement or land gift, a land project checklist is added to the file and it is moved to an active-file location in the office of the Executive Director. A notebook is created for that project, with separate sections for a project checklist, notes, maps, communications, and documents appropriate to the type of land project.

As conservation easement projects progress to the point of preparation of a baseline documentation report, three notebooks are created. One notebook is prepared for the landowner, containing the baseline documentation report. An exact duplicate of the baseline documentation information, signed by the easement donor, is maintained securely at an off-site location for archival storage. The third copy is kept at the Foundation's office for future stewardship reference and the filing of monitoring reports.

c. Completed Land Project Files

Physical files of completed projects, in addition to baseline documentation reports, are kept in alphabetical order by name of land project within the appropriate category: lands owned in fee, conservation easements, and land transferred to other ownership. This file contains correspondence and notes not included in the baseline documentation report.

The originals of all legal documents associated with land projects are kept in off-site archival storage. A Land Conservation Coordinator maintains a current inventory of all documents maintained in archival storage.

(7) Grant Records

a. Grant applications

Grant applications to other institutions, all associated correspondence and related records are maintained by the Director of Operations.

b. State Park Connections records

Grant applications to the Foundation to participate in the State Park Connections grant program are maintained by the Office Manager.

(8) General Information Files

Some information is used as reference in addition to the files named above. Information maintained by the office staff includes files for resources used on a routine basis, including pre-printed copies of routinely requested information, information on current and pending legislation, maps, and subject files.

(9) Document Retention Policy

The Foundation shall retain records while they are of current use and need, unless a longer retention period is needed for reference or legal requirements. Records include paper and electronic files.

The purpose of this policy is to ensure that necessary records and documents are adequately protected and maintained by the Foundation and to ensure that records that are no longer needed or are of no value are discarded at the proper time. This policy is also for the purpose of aiding employees of the Foundation in understanding their obligations in retaining electronic documents - including e-mail, Web files, text files, sound and movie files, PDF documents, and all Microsoft Office or other formatted files. A Records Retention Schedule (see *Attachment G – Records Retention Schedule*) serves as the retention and disposal schedule for both physical records and electronic documents of the Foundation. The Director of Operations will ensure that the Record Retention Schedule is followed; and is authorized to make modifications to the Record Retention Schedule to ensure that it complies with local, state and federal laws. Electronic files are stored on a central server that is backed up by the Office Manager on a regular schedule to alternating 80 GB external hard drives.

In some instances the Foundation may wish to store records away from the office location. This may occur when available on-site storage is inadequate for the protection and integrity of the records. If this situation is demonstrated to exist, the Director of Operations will arrange for off-site storage of the records.

a) Permanent Archived Files

Each conservation easement has its own clearly marked file of original materials maintained and archived in fire-proof, off-site storage and a duplicate of originals kept in the Foundation office. These two files, at a minimum, include originals of the executed conservation easement and the original baseline documentation report. See list of contents below. One person is designated as having the responsibility of accessing the off-site storage. Files taken from or to this off-site storage must be signed in and out.

Off-site storage makes the documents fire protected and temperature regulated; provides a record of when and by whom files have been accessed; and makes the files less likely to be pilfered for photographs or other items, which might otherwise not be returned. Off-site storage establishes that the Foundation

recognizes the importance of these files and the need for their permanent protection.

b) Permanent Archive File Contents

Baseline Documentation Report with original signatures (archive copy), recorded conservation easement with original signatures, negatives or digital discs of photographs, deeds, mortgage subordination agreements with original signatures (if applicable), relevant correspondence, appraisal, and copy of Form 8283 (if applicable), minutes from Board meetings where approval was given.

Monitoring of properties including easements occurs annually. The reports generated from site visits are signed by the staff member conducting the monitoring visit, the landowner, and the Executive Director. At year's end, all monitoring reports are moved to archival storage.

(10) Document Destruction Policy

The Foundation staff will be responsible for shredding and disposal (or recycling, in the case of non-confidential material) of all records once their retention terms have expired. Periodic review of materials on file is conducted to eliminate duplication of information. The Operations Manager will be responsible for removing all financial records for disposal.

**E. Public Policy**

When approval has been duly received from its Board, the Foundation may engage in public policy at the federal, state, and local levels, to include supporting or opposing legislation, advocating for sound land use policy, and/or endorsing public funding for conservation, provided these activities fall within the federal and state lobbying guidelines, with expenditures not to exceed 20% of the Foundation's budget. The Foundation may not engage in political campaigns or endorse candidates for political office.

Procedure for participating in public policy activities will begin with the Foundation's Executive Director informing the Board of the issue and its relevance to the Foundation's mission; and recommending a position. Following an affirmative vote by the Board, Foundation staff may proceed with participation in the issue as directed by the Executive Director.

Whenever Board policy determines active advocacy or lobbying that will exceed ten days of time per year, the Executive Director will register with the Tennessee Registry of Election Finance. (See *Attachment H – Rules of the Tennessee Ethics Commission.*)

### **III. Board Accountability**

*The Foundation's Board acts ethically in conducting the affairs of the organization and carries out the Board's legal and financial responsibilities as required by law.*

#### **A. Board Responsibility**

The Board acts responsibly to establish our mission, determine strategic direction, and set policies to carry out our mission, and, as required by law, oversee the Foundation's finances.

#### **B. Board Composition**

The Foundation's Board is of sufficient size to conduct its work effectively. It is composed of members with diverse skills, backgrounds, and experiences who are committed to the Foundation's mission and to service on the Board. It is composed of not fewer than 15 (fifteen) nor more than 25 (twenty-five) members, as per our Charter. (See *Attachment D – Amended and Restated Charter.*) Gender and geographic diversity are achieved with male and female members and representation from the east, middle, and western sections of the state. Professional legal assistance and oversight is represented on the elected Board.

Annually at the initial Board meeting of the year, the full Board is elected and an orientation is conducted for elected Board members and appointed Board advisors. Orientation is conducted by distribution of a printed manual with Board roster, strategic plan, Charter and By-Laws, meeting schedule, budget, and minutes. See (*I – Board Manual Table of Contents.*)

Prior to the final Board meeting of the calendar year, the executive committee, as the nominating committee, reviews the expiring terms (three years, staggered), evaluates advisors, and develops strategy to fill vacancies or expiring terms. We strive for 100% financial participation by our Board members.

#### **C. Board Governance**

The Foundation provides its Board members with clear expectations for their service and informs them about the Board's legal and fiduciary responsibilities. The Board meets quarterly to conduct its business and fulfill its duties. The Board members are provided with an agenda and packets of information prior to each meeting, with adequate information for making decisions on matters that will be on the agenda.

New Board members are provided with a manual of information to help them understand their responsibilities so that they may fulfill their roles as Board members. (See *Attachment I - Board Orientation Manual Table of Contents.*)

Minutes are kept of each executive committee and Board meeting. Minutes of each meeting are sent prior to the next Board meeting.

A quorum is assured at each meeting and an average of 13 elected Board members are in attendance. No policy has been set to limit Board terms, though that may take place in the future.

#### **D. Preventing Minority Rule**

The Foundation's By-Laws provides for a quorum or one third of the voting members of the Board. All Board members are given a minimum of three weeks' written notice of the Board meeting; and all Board members receive a meeting schedule at the beginning of each calendar year. (See *Attachment E – Amended and Restated By-Laws.*)

All Board actions are documented in the minutes of Board meetings; and all Board members receive complete copies of the minutes before the regular meeting. All executive Board members receive copies of minutes of executive Board meetings as well.

#### **E. Delegation of Decision-Making Authority**

The Foundation's Board may delegate decision making and management functions to committees, provided committees have clearly defined roles and report to the Board or staff. The Board defines the job of, oversees, and periodically evaluates the executive director. (See *Attachment K – Employee Evaluation.*)

The Foundation has a functional committee structure. The Chairman is an ex officio member of all committees, per *Attachment E – Amended and Restated Bylaws.* Board adopted resolutions include statements of delegation, if applicable.

#### **F. Board Approval of Land Transactions**

The Board reviews and approves every land and easement project, and Foundation staff provides the Board with timely and adequate information prior to final approval.

Following its meeting with a landowner or community representative, and a site inspection or investigation, the staff presents to the Board a conservation plan and a resolution detailing the conservation values of the land project under consideration. This information includes a description of the proposed project, including the acreage, location, field observations, and the Foundation's endowment obligation and efforts to secure the endowment. We report on significance of the property, connectivity, threat to resources on nearby lands, and restrictive particulars. If business needs to be transacted more quickly than at a regularly scheduled Board meeting, the information is transmitted electronically; or, in the case of members who do not use e-mail, telephone calls backed up by faxed or mailed documentation.

#### **G. Approval Authority**

On rare occasions with specific deadlines, the Board may allow the Executive Committee to give final approval for a project with endorsement by the Board at its next meeting.

## Considerations When Reviewing Land Transactions for Approval:

- a) Project Selection Criteria for Land and Conservation Easement Acquisitions. (See *Attachment M – Project Evaluation Report.*)
- b) Compliance of the transaction with all federal and state laws. See Attachments D, E, F, H, L, P, and Q.
- c) The results of the Site Inspection. (See *Attachment P – Site Inspection Form.*)
- d) The transaction complies with all applicable Foundation policies and procedures for Ensuring Sound Transactions in Standard IX of this Manual.
- e) The ramifications of the reserved rights, including environmental ramifications.
- f) A finding is made by the Foundation as to the conservation values and purposes served by accepting the conservation easement or other transaction.
- g) An agreement is reached with the landowner concerning the associated costs of acceptance and stewardship and as to whether the landowner will participate in the funding or the funds are to be raised by the community.

## H. Board Activity Calendar

<b>First Quarter</b>	Approve Annual Budget Approve Goals Review Charter and By-Laws Review recommendations for Manual of Standards and Practices Elect Board Members Board Orientation for new members
<b>Fourth Quarter</b>	Executive Committee reviews expiring board terms, evaluates advisors, and develops strategy to fill vacancies and expiring terms.
<b>As needed in any quarter</b>	Board approves justifications for land projects with resolution, conservation plan, funding and oversight.
<b>Every third year</b>	Adopt new Strategic Plan

## IV. Conflicts of Interest

*The Foundation has policies and procedures to avoid or manage real or perceived conflicts of interest.*

### A. Dealing with Conflicts of Interest

The Foundation's policy ensures that conflicts of interest or the appearance thereof are avoided or appropriately managed through disclosure, recusal, or other means. The conflict of interest policy applies to insiders (defined below), including Board and staff members, major donors, parties related to the above, those who have an ability to influence decisions of the organization, and those with access to information not available to the general public. Federal and state conflict disclosure laws are followed. The Foundation has developed a disclosure statement (see *Attachment S – Disclosure Statement*) which is to be signed by each Board member, staff member, and volunteer, acknowledging their understanding of the policy and making the appropriate disclosures of affiliations and associations to the President and Executive Director and to the Chairman of the Board of Directors.

#### (1) Definitions

The Foundation defines an "insider" for the purpose of these guidelines as any employee, volunteer, Board member, or major donor of the Foundation; any family member of a Board member or employee (to include spouse, siblings, parents, children, or any other relative residing in the household); or any organization with which an employee or Board member is affiliated. A major donor, for the purpose of these guidelines, is any person, couple, family, partnership, or corporation which has donated \$500 or more to the Foundation in the form of cash, stock, land, or another asset, in a single transaction and not as a cumulative total, during the history of the Foundation.

#### (2) Disclosure of conflicts

The potential conflict of interest may include the following:

- a. A Board member, staff member, volunteer, or major donor (or his/her spouse, siblings, parents, or children) has a material financial interest in real property which is the subject of a transaction or project under consideration by the Board
- b. A Board member, staff member, volunteer, or major donor (or his/her spouse, siblings, parents, or children) has a material financial interest in a business entity having a financial interest in the real property which is the subject of a transaction or project under consideration by the Board
- c. A Board member, staff member, volunteer, or major donor (or his/her spouse, siblings, parents, or children) has a material financial interest in any business entity which is representing a client who has a financial interest in real property which is the subject of a transaction or project under consideration by the Board.

(3) Obligations regarding conflicts of interest

- a. Board members shall disclose to the Board the existence of any potential conflict of interest. They shall abstain from participation in Board discussions concerning the transaction or project giving rise to the conflict of interest or the perception of such, unless information is requested by the Board or one of its committees concerning the transaction or project. They shall, if requested by the Board, take a temporary leave of absence from the Board until the conclusion of the transaction or project in question has been concluded.
- b. Any employee or volunteer affected by a potential conflict of interest shall have the following responsibilities and obligations:
  - To disclose to the Executive Director the existence of any potential conflict of interest
  - To abstain from participation in the Foundation's discussions concerning the transaction or project that gives rise to a conflict of interest concern, unless information is requested by the Board or a Board committee
  - To abstain from working on the transaction or project in question
  - If requested to do so by the Board, to take a temporary leave of absence from the Foundation until the transaction or project giving rise to the conflict of interest has been concluded.
- c. The Board as a body shall approve a transaction or project in which there is a potential conflict of interest only if the following specific findings are made:
  - That the transaction or project is in the best interests the Foundation and is consistent with its conservations purposes and mission.
  - That the transaction or project has been considered on its merits after full and complete disclosure of the conflict or interest by a Board member or members, volunteer(s), or staff member(s); and
  - That any Board member, volunteer, or staff member affected by such conflict of interest has not participated in either the Board's discussion or vote concerning the transaction or project giving rise to the conflict of interest.

If the Board determines that the nature and magnitude of the conflict of interest warrant action to avoid an appearance of impropriety, the Board shall request that the Board member, staff member, or volunteer affected by such conflict of interest take a leave of absence from the Board until the transaction or project giving rise to the conflict of interest has been concluded.

## **B. Board Compensation**

The Foundation's Executive Director serves as President at the request of the Board and receives a salary as an employee of the Foundation. Other Board members do not serve for personal financial interest and are not compensated except for reimbursement of expenses and, in limited circumstances, for professional services that would otherwise be contracted out. Any compensation

is in compliance with laws and regulations that apply to charitable organizations. The Board's presiding officer and treasurer are never compensated for professional services.

**C. Transactions with Insiders**

When engaging in land and easement transactions dealing with insiders (see *Definitions* on page 11), The Foundation follows its conflict of interest policy, documents that the project meets the Foundation's mission; follows all transaction policies and procedures; and ensures that there is no private inurement or impermissible private benefit. For purchases and sales of property to insiders, The Foundation obtains a qualified independent appraisal prepared in compliance with guidelines set forth in the Foundation's appraisal policy as set forth in Standard X of this Manual. When selling property to any party, including insiders, the Foundation markets the property in a manner sufficient to ensure that the property is sold at or above fair market value and to avoid the reality or perception that the sale inappropriately benefited an insider.

## V. Fundraising

*The Foundation conducts fundraising activities in an ethical and responsible manner.*

### A. Legal and Ethical Practices

The Foundation complies with all charitable solicitation laws, does not engage in commission-based fundraising, and limits fundraising costs to a reasonable percentage of overall expenses.

The Foundation's rate of expenditure for fundraising activities is determined by the Board based on project demands, and is set within budgetary guidelines that do not exceed 20% of combined overall expenses on Management/General and Fundraising as listed in the IRS Form 990 Part II –Statement of Functional Expenses.

### B. Accountability to Donors

The Foundation is accountable to its donors and provides written acknowledgement of gifts as required by law (see Section VI, Item 9), ensures that donor funds are used as specified, keeps accurate records, honors donor privacy concerns, and advises donors to seek independent legal and financial advice for substantial gifts. The Foundation will not sell or trade a donor's personal information to any other entity without express written permission. Information obtained about prospective donors in the course of considering charitable gifts or planned gift options including their names, beneficiaries, gift amounts, personal assets, or other financial and estate information, is kept strictly confidential, except when a donor grants permission to use selected information for purposes of referral, testimonial, or example. The Foundation honors donor requests for greater confidentiality, including requests for anonymity, and requests that one's name not be used, exchanged, or rented.

### C. Accurate Representations

All representations made in promotional, fundraising, and other public information materials are accurate and not misleading with respect to the organization's accomplishments, activities, and intended use of funds. All funds are spent for the purpose(s) identified in the solicitation or as directed in writing by the donor.

### D. Marketing Agreements

Prior to entering into an agreement to allow commercial entities to use the Foundation's logo, name, or properties, The Foundation determines that these agreements will not impair the credibility of the Foundation. Each proposal for such an agreement is brought before the Board for discussion and approval. The Foundation and the commercial entity publicly disclose how the Foundation benefits from the sale of the commercial entity's products or services.

The Foundation's name and/or logo may not be used by outside parties without property authorization and without adequate consideration or compensation. The Foundation must grant formal written permission for all uses by outside parties

through enforceable agreements. All agreements must be signed by the Executive Director.

**E. Cause-Related Marketing**

Cause-related marketing is defined as a commercial activity by which businesses and charities form a partnership with each other to market an image, product, or service for mutual benefit. It provides a business the means to publicly demonstrate a commitment to conservation by providing resources and funding to the Foundation while addressing their business marketing objectives. All cause-related marketing agreements must be approved by the Executive Committee of the Foundation.

The Foundation complies with all federal and state laws as well as its Conflicts of Interest, Board Compensation, and Transactions with Insiders policies when contemplating or entering into any agreements with Insiders (as defined in Standard IV-C), including members of the Board or their related organizations. Written agreements approved by the Executive Director are required for all cause-related marketing relationships regardless of the organizational level managing the agreement.

The Executive Committee shall establish fair market value for the use of trademarks and the Executive Director shall be responsible for ensuring fairness and consistency in the Foundation's dealings with outside parties in such matters.

The Executive Committee is responsible for reviewing all potential cause-related marketing agreements for both its alignment with the Foundation's image, mission and values, as well as the potential benefits it could provide to the Foundation. The Executive Committee also evaluates potential agreements to ensure that benefits are maximized and unnecessary risks are avoided.

The Foundation shall identify marketing partners that have a logical synergy with the Foundation and provide appropriate vehicles to communicate Foundation's benefits and values. The Foundation does not endorse its cause-related marketing partners and does not endorse, advertise or promote their products and services. Whenever feasible, the Foundation seeks to include some form of the previous statement on the marketing materials that bear the Foundation's name or logo.

## **VI. Financial and Asset Management**

*The Foundation manages its finances and assets in a responsible and accountable way.*

The Foundation's Fiscal Operations Policies have been developed to offer general guidelines about financial controls and procedures of the organization.

It is the policy of the Foundation that employees and others acting on the Foundation's behalf have a responsibility for the accuracy, thoroughness and timeliness of actual and forecasted financial information and for compliance with the Foundation's internal controls over accurate recording of donated materials, pledges and other revenues, financial reporting, disclosure, compliance with other government regulations, and auditing policies. We ensure compliance with these policies through an annual independent audit and by monitoring the integrity of our financial management and reporting systems.

The Executive Director is responsible for the preparation of complete and accurate financial statements in accordance with generally accepted accounting principles and for maintaining appropriate accounting and financial reporting principles and policies and internal controls designed to assure compliance with accounting standards, laws and regulations.

Employees are encouraged to consult the Executive Director for additional information regarding operational controls and procedures described in this Manual.

### **A. Annual Budget**

The Executive Director develops and prepares preliminary program budgets and work plans in accordance with the Foundation's Strategic Plan on an annual basis. The Executive Director reviews the preliminary budget and work plans with the Executive Committee. The Treasurer then presents the proposed budget to the Board of Directors for adoption.

### **B. Financial Records**

The Foundation will utilize a double entry system for accounting for all funds in accordance with Generally Accepted Accounting Principles (GAAP). Adequate documentation will be maintained to support all general entries.

### **C. Financial Reports and Statements**

Each month, the Bookkeeper reconciles all bank account statements and prepares a printed report for each account. The Director of Operations will prepare a financial report monthly (balance sheet, profit and loss, year to date budget) that will be reviewed by the Executive Director. The Board receives and reviews financial reports and statements on a quarterly basis.

#### **D. Independent Audit, Federal and State Reporting**

The Foundation conducts an annual independent audit. The Director of Operations coordinates activities of the audit with the Auditor and the staff. The Auditor presents the audit to the Board of Directors for approval at the first Board meeting after the completion of the audit.

With the assistance of the Auditor, the Director of Operations ensures the auditor's preparation, completion, and submission of other federal and state financial reports as required by law.

The Director of Operations retains the audit, all background information and other federal and state reports in the appropriate files. Financial information is retained for no less than 7 years.

#### **E. Internal System for Handling Money**

##### **(1) Bank and Other Financial Accounts**

The Executive Director has Board authority to open and/or close all bank and other corporate financial accounts (e.g. credit, certificates of deposits) on behalf of the Foundation.

The Executive Director, Director of Operations, Chairman, President, Executive Vice President, Secretary/Treasurer, or other Board designated Board members have signature authority on the operational (checking) account, as well as other financial instruments.

The Executive Director and the Director of Operations have the authority to deposit, withdraw and transfer funds for organizational purposes. Bank and other corporate financial information (e.g. rules, and regulations, account numbers) are retained, maintained, and updated by the Director of Operations.

##### **(2) Cash Disbursements**

All check requests and invoices will be forwarded to the Director of Operations for approval. Disbursement requests must be in the form of an invoice, applicable receipt, or other written/financial documentation. All invoices require review prior to check processing.

Checks are processed on a weekly or bi-monthly basis, according to the due date of specific payments. The Bookkeeper prepares the check and forwards it to the Executive Director for approval and signature. The Office Manager is responsible for mailing all signed checks.

Checks for more than \$5,000 require two signatures.

All processed payments and voided checks are retained with appropriate backup paperwork and are maintained by the Bookkeeper in the monthly financial file.

### (3) Cash Receipts

All funds received by the Foundation are deposited within five business days to a Foundation account. The Office Manager receives, date-stamps, copies checks, and forwards all funds to be deposited to the Executive Director. Checks will be endorsed with a rubber endorsement stamp which specifies which organization account (checking, investment) the deposit will be made.

The Director of Operations prepares the bank deposit slip (in duplicate) and the Office Manager makes the deposit. The Bookkeeper posts all deposits in the appropriate accounts. All checks and cash shall be locked in a secure location until ready for deposit.

Once the deposit is made, the bank receipt, deposit slip, and copies of the deposited checks are stapled together and filed in the monthly financial file.

### (4) Withdrawal and/or Transfer of Funds

The Executive Director approves withdrawals and transfers of bank funds for redeposit into other accounts. All banking transactions along with appropriate financial documentation are processed, retained, and maintained by the Bookkeeper.

### (5) Petty Cash

No petty cash is maintained by the organization.

### (6) Bank and Other Financial Account Reconciliations

The Office Manager receives, date-stamps, and forwards all Tennessee Parks and Greenways Foundation bank account statements to the Executive Director. After review, they are returned to the Bookkeeper for reconciliation.

Each month, the Bookkeeper reconciles all bank account statements and prepares a printed report for each account. The Director of Operations shall verify the reconciliation of the bank accounts on at least a quarterly basis. All reconciled bank account statements are filed in the monthly financial file.

### (7) Accounts Receivable and Pledges

Documentation will be maintained for all accounts receivable and will be collected on a timely basis. To complete accounts receivable process, the Director of Operations and the Executive Director follow the appropriate steps as stipulated under "Cash Receipts." The Foundation does not charge a fee for checks returned due to lack of funds.

### (8) Accounts Payable

The Office Manager receives, reviews, and processes all accounts payable in accordance with written contractual agreement within 30 days of receipt. Invoices are date-stamped when received. To complete the accounts payable process, the Director of Operations and Executive Director follow the appropriate steps as stipulated under "Cash Disbursements."

(9) Donor Contributions, Grants, and Other Income

To complete the process for contributions, grants, and other income, the Office Manager and Executive Director, will follow the appropriate steps as stipulated under “Cash Receipts.”

For donor contributions, the Office Manager prepares a Thank You Letter to the donor to be signed by the Executive Director, acknowledging receipt of the donation and the amount. A copy of the Thank-you letter is retained in the “Membership” file.

For donor contributions over \$500, the Director of Membership will retain the acknowledgement with other documentation in the “Major Donor” file.

For grant awards, the Office Manager will forward a copy of the award letter and check to the Director of Operations. The Director of Operations will prepare a thank you letter to the funder, acknowledging receipt and amount of the grant. A copy of the thank you letter and the award letter are retained in the grantor’s file.

**F. Investment and Management of Financial Assets and Dedicated Funds**

(1) Appreciated Assets

It is the intent of the Foundation to sell donated stocks, bonds, notes or other securities (“Securities”) immediately. However, we reserve the right not to sell based on the instructions of our financial advisors.

The Chairman, President, Vice President, or Secretary/Treasurer are authorized and empowered to purchase, acquire, receive, sell, assign, transfer, and/or deliver any and all Securities on behalf of the Foundation.

(2) Fixed Assets and Capital Depreciation: the Foundation maintains a capital depreciation account for office equipment and furnishings valued above \$500. The Executive Director approves all purchases for office equipment and furnishings.

Property assets in excess of \$500 are depreciated over their useful lives, normally considered to be three years for office equipment and five years for office furnishings. The depreciation of property assets acquired by sale, loan or gift requires written documentation and approval by the Executive Director.

The Director of Operations will review the office equipment and furnishings inventory prior to the annual audit.

**G. Funds for Stewardship and Enforcement**

The Foundation has a secure and lasting source of easement endowment and stewardship funds sufficient to cover the costs of stewarding its land and easements over the long term and enforcing its easements. The Foundation tracks its stewardship and enforcement costs, and periodically evaluates the adequacy of its funds. In the event that full funding for these costs is not secure, the Board has adopted a policy committing the organization to raising the necessary funds.

The Foundation's Endowment Fund is restricted and interest generated supports the Foundation's operating budget.

#### **H. Sale or Transfer of Assets (Including Land and Easements)**

When the Foundation determines that the sale or transfer of a non-real property asset is warranted, then it considers IRS requirements and complies with the policy for Transactions with Insiders in Section IV of this Manual. For the sale or transfer of a real property, see Sections VI and XII of this Manual.

#### **I. Risk Management and Insurance**

The Foundation assesses and manages its risks and carries liability, property, and other insurance appropriate to its risk exposure and state law. The Foundation refrains from using its conservation lands to secure debt and exercises extreme caution before using its non-conservation lands for such purposes. In contemplating the use of non-conservation lands to secure debt, the Foundation takes into account any legal or implied donor restrictions on the land, the Foundation's mission and protection criteria, and the public relations impact. The Foundation periodically inventories potential hazards on, and potential uses of, its property, reviews state liability and protective laws, and has set up a procedure to document and review every injury or potential claim and if necessary, decides what steps need to be taken to avoid similar events in the future.

#### **J. Emergency Land Bank**

The Tennessee Parks and Greenways Foundation provides working capital for critical land conservation projects throughout the state of Tennessee. The Foundation uses the revolving fund to advance dollars to secure an option or, if necessary, acquire important property. The Foundation is then repaid by either local fundraising or through resale of the property to a public agency or a private conservation buyer. Borrowers would repay the full amount with interest over a predetermined period of time through a capital fundraising drive or through other methods. The money is then available for the next project. Interest generated from the Emergency Land Bank will provide sustainable support for the Foundation.

The Foundation charges an interest rate equivalent to one percentage point below the prime lending rate. The actual rate will be fixed by the executive committee at the time of the loan and adjusted quarterly thereafter, if necessary. Generally, loans will be made for a period not to exceed one year.

Loans are approved at the discretion of the executive committee and with the recommendation of the Executive Director. Additionally, Board members, with a specialty in real estate law, will serve as volunteer advisors to the executive committee for the purpose of loan review. (See *Attachment R – Policy and Guidelines of Emergency Land Bank.*)

## **VII. Volunteers, Staff and Consultants**

*The Foundation has advisors, staff, and consultants with appropriate skills and in sufficient numbers to carry out its program.*

### **A. Capacity**

The Foundation regularly evaluates its programs, activities, and long-term responsibilities, and has sufficient volunteers, staff and consultants to carry out its work, particularly when managing an active program of easements. The evaluation policies and procedures for Foundation staff and their capacity can be found in the Personnel Policies (*Attachment U*).

### **B. Board Members, Advisors and Volunteers**

Board members and advisors to the Board are recruited according to their areas of interest and expertise. Board training is provided annually to both voting Board members and advisors, in keeping with the Foundation's mission and goals.

In-kind contributions to the work of the Foundation by advisors, Board members who serve as consultants, and other Foundation members who volunteer are documented, and contributors are thanked by letter, in the Foundation's Annual Report, and in meetings of the Board.

### **C. Staff**

Each staff member has written goals as well as job descriptions and annual performance reviews. Each staff member is expected to report on individual activities at biweekly staff meetings, and to update fellow staff members on the status of projects. Each regular staff member (See Personnel Policies – Employee Classification) is required to compile a list of annual goals to be reviewed with the Executive Director.

See *Attachment U – Personnel Policies* for detailed job descriptions, procedures for performance review, and other employee policies.

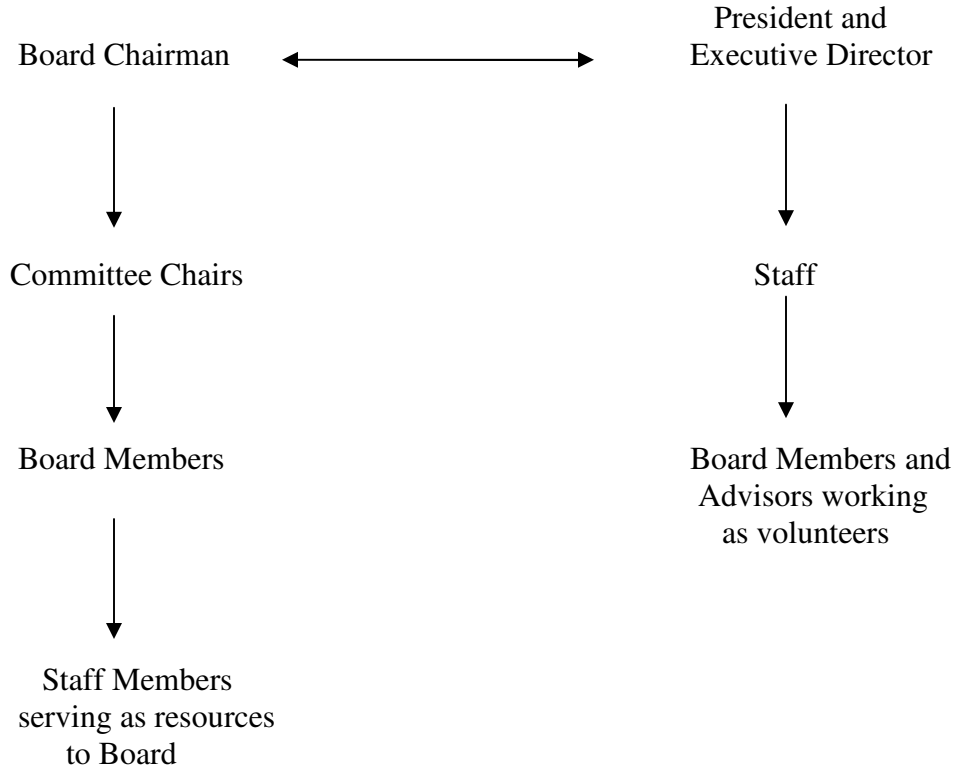
### **D. Availability of Training and Expertise**

Staff members and volunteers have appropriate training and experience for their responsibilities, and opportunities are made available as needed to for them to gain the necessary knowledge and skills required for optimum job performance.

### **E. Board/Staff Lines of Authority**

Lines of authority, communication, and responsibility between the Board and staff are clearly understood and documented. The Executive Director hires all staff and contractors within the annual budget limitations. The Executive Director maintains supervisory authority over the staff to carry out the Board-approved mission and goals. The Board of Directors acts through the persons it has authorized to take specific actions, including the officers of the Foundation. Led by the Executive

Director, the staff is responsible for the implementation of the policies and directions of the Board. The Foundation uses the following flow chart and Personnel Policies (*Attachment U*) as guidelines for the roles of the staff, Board members and advisors in the execution of the Foundation’s mission and goals.



**F. Personnel Policies**

The staff has written personnel policies which conform to federal and state law and have appropriate accompanying procedures and guidelines. The Foundation adheres to all federal and state laws and regulations related to employment practices, including hiring, wage and hour regulations, tax withholding and reporting regulations, and dismissal. Complete personnel policies are included as *Attachment U* to this Manual.

**G. Compensation and Benefits**

The Foundation provides fair and equitable compensation and benefits, appropriate to the scale of the organization. The Foundation periodically reviews the salaries and benefits offered by other similar organizations in the region. The Executive Committee serves as the personnel committee to review salary structure and benefits.

**H. Working with Consultants**

Consultant and contractor relationships are clearly defined, consistent with federal and state law, and, where appropriate, are documented in a written contract.

Consultants and contractors are familiar with sections of *Land Trust Standards and Practices* that are relevant to their work.

At the discretion of the Executive Director, the Foundation may prepare a written description of the work to be performed and solicit bids from several contractors regarding this scope of work. The Foundation then evaluates the findings and compares costs. Contracts should specify the work to be completed, the completion dates and payment schedules. Contracts may contain language that allows the right to withhold payment until the job has been completed to the Foundation's satisfaction. An attorney's review of contract language may be obtained. If a contractor assumes a role similar to that of a staff person, the Foundation clarifies the contractor versus employee status, and consults the appropriate federal and state labor and employment statutes.

#### **I. Executive Committee – Structure and Function**

The Foundation's Executive Committee is composed of Board officers: the Chairman, President, Executive Vice-President, West, Middle, and East Tennessee Vice Presidents, Secretary, and Treasurer. When no attorney is holding any of the previous listed officers, a Legal Counsel position is named to serve on the Executive Committee. The function of the Executive Committee is to nominate Board members, approve land project decisions and public policy participation, and to guide organization goals to fulfill the Foundation's mission.

## *Land Transactions*

### **VIII. Evaluating and Selecting Conservation Projects**

*The Foundation works diligently to see that every land and easement transaction is legally, ethically, and technically sound.*

#### **A. Identifying Focus Areas**

The Foundation operates according to a strategic plan that identifies high priority land conservation project areas. The strategic plan incorporates critical conservation needs, opportunities and partnerships and ability to expand or create conservation corridors. Focus areas include Tennessee Treasures, including waterfalls and in-holdings and boundary properties important for existing parks. With multiple partners we adopted a plan and conservation strategy for the Mississippi River Natural and Recreational Corridor. Through State Park Connections (a small grants program through which we fund trail and greenway projects), we foster connections literally between on-the-ground communities and nearby state parks or natural areas. Additionally, the board adopts project corridors connecting large landscape-scale opportunities. Most projects involve multiple partners.

#### **B. Project Selection and Criteria**

The Foundation has a defined process for selecting land and easement projects, including written selection criteria that are consistent with its mission. For each project, the Foundation evaluates its capacity to perform any perpetual stewardship responsibilities. The project selection criteria are detailed on the Project Evaluation Form (see *Attachment M – Project Evaluation Form*). These criteria address consistency significance of property, the public benefit of the project, Foundation priorities and vision for Connectivity, resource threat, protection afforded, size, cost of project and monitoring requirements, and partnerships. This determines the Foundation’s capacity and ability to fulfill perpetual stewardship responsibilities. If projects do not meet these criteria satisfactorily, they are declined.

In the case of the Emergency Land Bank, the Foundation will require potential borrowers to furnish information on the conservation purpose of the property, a fundraising plan or other “take-out” mechanism, evidence of clear title and the legal authorization of the borrower, and a plan for future stewardship or other management of the subject property. (See *Attachment R – Policy and Guidelines of Emergency Land Bank*.)

#### **C. Federal and State Requirements**

For land and easement projects that may involve federal or state tax incentives, the Foundation works closely with potential donors to determine that the project meets the applicable federal and state requirements, particularly the conservation purposes test of IRC § 170(h). The Foundation complies with the Tennessee Conservation

Easement Act of 1981 in all its land and easement projects. (See *Attachment N – IRC § 170 (h).*)

#### **D. Public Benefit of Transactions**

The Foundation evaluates and clearly documents the public benefit of each land or easement transaction and shows that the benefits are consistent with our mission. All projects conform to applicable federal and state charitable trust laws. When the transaction involves public purchase or tax incentive programs, the Foundation satisfies any federal, state, or local requirements for public benefit. (See *Attachment O – Sample Conservation Plan and Resolution.*)

#### **E. Site Inspection**

The Foundation inspects properties before purchasing or accepting a donation of land or conservation easement, to ascertain they meet the Foundation’s criteria, identify the conservation values on the land, determine any potential threats to those values, and identify any potential management problems. A site inspection form (*Attachment P – Site Inspection Form*) is used to record findings. From this, a board resolution and a conservation plan are prepared for board review and approval. The public benefits are also included in the conservation easement agreement.

#### **F. Documenting Conservation Values**

The Foundation documents the condition of the important conservation values and public benefit of each property, in a manner appropriate to the individual property and its location with respect to nearby public lands and other protected properties and conservation assets. The conservation values are presented to the Board in a Board Resolution. Once the decision is made to accept the land project, the information on conservation values is incorporated into the conservation easement document and the baseline documentation for the property.

#### **G. Project Planning**

All fee land and easement projects are individually planned so that the property’s important conservation values are identified and protected, the project furthers the Foundation’s mission and goals, and the project reflects the capacity of the Foundation to meet future stewardship obligations. A conservation plan is presented for Board approval with the Board Resolution before a project is accepted, and that plan is incorporated into the Foundation’s stewardship obligations and monitoring calendar. The Foundation uses the process as outlined in the included attachments which form the core of the Foundation’s Easement Handbook:

Attachment Q – Landowner Fact Sheet: Conservation Easement from Start to Finish

Attachment T – Application for Conservation Easement

Attachment P – Site Inspection Report

Attachment O – Conservation Plan and Board Resolution

Attachment V – Easement Checklist, including Hazardous Materials Site Evaluation

Attachment W – Basic Baseline Table of Contents

## **H. Evaluating the Best Conservation Tool**

The Foundation works with the landowner to evaluate and select the best conservation tool for the property and takes care that the chosen method can reasonably protect the property's important conservation values over time. This evaluation may include informing the landowner of appropriate conservation tools and partnership opportunities, including those that may not involve the Foundation. All prospective easement donors are given an easement application and information on the easement process, including the Foundation's publication *Landowners' Options* and supplemental information on tax incentives. *Landowners' Options* identifies state, regional and local land trusts and national trusts, as well as options for conservation including conservation easements. A copy is located in the back pocket of this Manual.

## **I. Evaluating Partnerships**

The Foundation evaluates whether it has the skills and resources to protect the important conservation values on the property effectively, or whether it should refer the project to, or engage in a partnership with, another qualified conservation organization or agency. The criteria address this scenario and the Foundation routinely partners or refers projects to partnering organizations. All conservation easements include provisions for back-up grantees or assignment of easements.

## **J. Partnership Documentation**

If engaging in a partnership on a joint acquisition or long-term stewardship project, agreements are documented in writing to clarify, as appropriate, the goals of the project, roles and responsibilities of each party, legal and financial arrangements, communications to the public and between parties, and public acknowledgement of each partner's role in the project. Before embarking on such a partnership, the Foundation weighs extra management obligations, risks, and financial responsibilities of such a partnership against the value of the land project to the community.

## **K. Evaluating Risks**

The Foundation examines the project for risks to the protection of important conservation values (such as surrounding land uses, extraction leases or other encumbrances, water rights, potential credibility issues, or other threats) and evaluates whether it can reduce the risks. The Foundation modifies the project or turns it down if the risks outweigh the benefits. The Foundation uses the information gathered in completion of the project selection criteria (See *Attachment I – Project Selection Criteria*) to assist in these determinations.

## **L. Non-conservation Lands**

The Foundation may receive land that does not meet its project selection criteria, or may accept land best protected by re-selling to a conservation buyer, with the intent of using proceeds from the sale of the property to further its mission. If the Board determines that the Foundation will sell the land, it provides clear documentation to the donor of its intent before accepting the property.

**M. Public Issues**

When a public issue arises that has potential impact on the Foundation's mission or organizational function, the issue is presented to the Board with an action plan. The Foundation supports land conservation initiatives in partnership with other conservation entities. Where strong advocacy partnership is needed, we seek leadership from other advocacy groups. However, when our conservation mission is challenged, we provide leadership. When the Board deliberates on decisions for advocacy, consideration is made concerning mission, capacity of the organization to accept the time demands of the challenge, and any credibility concerns such advocacy might present. The Foundation takes care to remain within guidelines for staff time spent on advocacy activities.

## **IX. Ensuring Sound Transactions**

*The Foundation works diligently to see that every land and easement transaction is legally, ethically, and technically sound*

### **A. Legal Review and Technical Expertise**

The Foundation obtains a legal review of every land and easement transaction, appropriate to its unique character, by an attorney experienced with real estate law. As dictated by the project, the Foundation secures appropriate expertise in financial, real estate, tax, scientific, and land and water management matters. The Foundation uses a standard easement template and has conservation values, restrictions and rights reviewed by an attorney. This template is reviewed annually at a minimum.

### **B. Independent Legal Advice**

The Foundation refrains from giving specific legal, financial, and tax advice and recommends in writing that each party to a land or easement transaction obtain independent legal and tax advice. The Foundation's information sheet on the easement process as well as correspondence and communications with the landowner, underscore these recommendations.

### **C. Environmental Due Diligence for Hazardous Materials**

The Foundation takes steps to identify and document whether there are hazardous or toxic materials on or near the property that could create future liabilities for the Foundation. Following visual inspection of a prospective property, a request is made in writing to the regional environmental field office of the Tennessee Department of Environment and Conservation, detailing the location of the property and conveying observations made on it. A request is made for a report of any hazardous or toxic materials concerns on or near the subject property. A historical review of land use and a site assessment are made (See *Attachment P – Site Inspection Report; and Attachment V – Easement Checklist.*) When questions arise about prior use on a subject property, our procedure is to contract for an environmental assessment.

### **D. Determining Property Boundaries**

The Foundation determines the boundaries of every protected property through legal property descriptions, accurately marked boundary corners, or, if appropriate, a survey. If an easement contains restrictions that are specific to certain zones or areas within the property, the locations of these areas are clearly described in the easement and supporting materials and can be identified in the field. For specific locations identified in reserved rights and/or restrictions, GPS readings, with compass directions and photo documentation is recorded as part of the baseline documentation. For some easement that have boundaries clearly identified by natural features or the built environment, a survey is not required.

#### **E. Easement Drafting**

Each easement is tailored for the property according to project planning guidelines and is thoroughly reviewed by staff, landowner, landowner representation and Foundation attorney. The easement agreement identifies the important conservation values protected and public benefits served. The agreement allows only permitted uses and/or reserved rights that will not significantly impair the important conservation values and contains only restrictions that the Foundation is capable of monitoring; and that are enforceable.

#### **F. Documentation of Purposes and Responsibilities**

The Foundation documents the intended purposes of each land and easement transaction in the Conservation Plan and Resolution and ultimately in the easement agreement and baseline documentation. The model easement includes the intended uses of the property, and the roles, rights and responsibilities of all parties involved in the acquisition and future management of the land or easement.

#### **G. Recordkeeping**

Pursuant to its records policy (see II - D), the Foundation keeps originals of all irreplaceable documents essential to the defense of each transaction (including legal agreements, critical correspondence, and appraisals) in one location, and copies in a separate location.

#### **H. Title Investigations and Subordination**

The Foundation investigates title to each property for which it intends to acquire title or an easement to be sure that it is negotiating with the legal owner(s) and to uncover liens, mortgages, mineral or other leases, water rights and/or other encumbrances, or matters of record that may affect the transaction. Mortgages, liens and other encumbrances that could result in extinguishment of the easement or significantly undermine the important conservation values on the property are discharged or properly subordinated to the easement. Title insurance is obtained for all purchases of land but is not purchased for conservation easements.

#### **I. Recording**

All land and easement transactions are legally recorded at the appropriate County Register of Deeds office according to state and local law. Evidence is assured by requiring the Receipt of Recordation.

#### **J. Purchasing Land**

If the Foundation buys land, easements or other real property, it obtains a qualified independent appraisal to justify the purchase price. However, the Foundation may choose to obtain a letter of opinion from a qualified real estate professional in the limited circumstances when a property has a very low economic value or a full appraisal is not feasible before a public auction. In limited circumstances, where acquiring above appraised value is warranted, the Foundation will document the justification for the purchase price and that there is no private inurement or

impermissible private benefit. If negotiating for a purchase below the appraised value, the Foundation ensures that its communications with the landowner are honest and forthright.

#### **K. Selling Land or Easements**

Should the Foundation decide to sell land or easements, it first documents the important conservation values, plans the project according to practice VIII – G, and drafts protection agreements as appropriate to the property. The Foundation obtains a qualified independent appraisal that reflects the plans for the project and protection agreements and justifies the selling price or the Foundation may choose to obtain a letter of opinion from a qualified real estate professional in the limited circumstance when a property has a very low economic value.) Once a plan is approved by the Board, the Foundation markets the property and selects buyers in a manner that avoids any appearance of impropriety and preserves the public’s confidence in the Foundation; and in the case of selling to an insider (see Definitions, Section IV-A-[1]), follows practice IV - C. (See VI – H for sales of other assets.)

#### **L. Transfers and Exchanges of Land**

If the Foundation transfers or exchanges conservation land or easements, the organization considers whether the new holder can fulfill the long-term stewardship and enforcement responsibilities, ensures that the transaction does not result in a net loss of important conservation values, and, for donated properties, ensures that the transfer is in keeping with the donor’s intent. If the Foundation transfers land to a party other than another nonprofit organization or public agency, the consideration is based on a qualified independent appraisal (or letter of opinion when the property has a very low economic value) in order to prevent private inurement or impermissible private benefit. The Foundation considers the stewardship capabilities of the entity receiving the property.

## **X. Tax Benefits**

*The Foundation works diligently to see that every charitable gift of land or easement meets federal and state tax law requirements.*

### **A. Tax Code Requirements**

The Foundation writes a letter to each potential land or easement donor who may claim a federal or state income tax deduction, or tax credit, that the project must meet the requirements of IRC § 170 and the accompanying Treasury Department regulations and/or any other federal or state requirements. The Foundation, on its own behalf, reviews each transaction for consistency with these requirements.

### **B. Appraisals**

The Foundation informs potential land or easement donors by letter or “Landowner Fact Sheet: Conservation Easements from Start to Finish” of the following: IRC appraisal requirements for a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$5,000, including information on the timing of the appraisal; that the donor is responsible for any determination of the value of the donation; that the donor should use a qualified appraiser who follows Uniform Standards of Professional Appraisal Practice; that the Foundation will request a copy of the completed appraisal; and that the Foundation will not knowingly participate in projects where it has significant concerns about the legality of the tax deduction.

### **C. No Assurances on Deductibility or Tax Benefits**

The Foundation does not make assurances as to whether a particular land or easement donation will be deductible, what monetary value of the gift the Internal Revenue Service (IRS) and/or state will accept, what the resulting tax benefits of the deduction will be, or whether the donor’s appraisal is accurate. All potential land or easement donors are encouraged to seek the advice of a tax professional in order to make fully informed decisions about land or easement donation.

### **D. Donee Responsibilities**

The Foundation understands and complies with its responsibilities to sign the donor’s Appraisal Summary Form 8283 and Form 8282 regarding resale of donated property when applicable. The Foundation signs Form 8283 only if the information in Section B, Part 1, “Information on Donated Property,” and Part 3, “Declaration of Appraiser,” is complete. If the Foundation believes no gift has been made or the property has not been accurately described, it declines to sign the form. If the Foundation has significant reservations about the value of the gift, particularly as it may impact the Foundation’s credibility, it may seek additional substantiation of value or may disclose its reservations to the donor.

## **XI. Conservation Easement Stewardship**

*The Foundation has a program of responsible stewardship for its easements.*

### **A. Funding Easement Stewardship**

The Foundation determines the long-term stewardship and enforcement expenses of each easement transaction and secures the dedicated or operating funds to cover current and future expenses. If endowment funds are not secured at or before the completion of the transaction, the Foundation has a plan to secure these funds and has a policy committing the funds to this purpose. When a landowner cannot provide stewardship endowment in a single lump sum, arrangements are made to accept pledges or bequests to cover the endowment requirement. Through our budgeting process each year, stewardship and endowment funding is evaluated and discussed. Restricted accounts are established for each easement and reflected on our monthly balance sheet and reported to the board. The board adopted a goal of \$10,000 per easement property at inception of this program in 1999. This goal is evaluated with the acceptance of each easement on a case-by-case basis. Stewardship goals for contiguous properties or small acreage properties adjacent to road access are discounted on a case by case basis but not below a minimum of \$5,000 per easement project. Contribution to an endowment fund is not required from the easement donor. The land gift is the real gift to conservation and stewardship funding is sought from general membership or bequests. The Foundation does not have a litigation fund (1999 estimate \$35,000) but has a goal to establish in as part of our next three (3) year strategic plan.

### **B. Baseline Documentation Report**

For every conservation easement we hold, the Foundation prepares a baseline documentation report which includes a baseline map, prepared using data gathered prior to closing on the easement and signed by the landowner. The report documents the important conservation values protected by the easement, and the relevant conditions of the property as necessary to monitor and enforce the easement. In the event that seasonal conditions or time constraints prevent the completion of a full baseline documentation report by closing, a schedule for finalizing the full report and an acknowledgement of interim data [which for donations and bargain sales meets Treasury Regulations § 1.170-A-14(g)(5)(i) ] are signed by the landowner at closing.

The Foundation's baseline documentation reports include baseline maps showing topographical features, elements of the built environment, and location of elements of particular conservation value. Photographs, accompanied by latitude/longitude and magnetic bearing information, are taken at established waypoints in order that future monitors may go to those locations to observe change over time. Data for baseline documentation reports is gathered prior to closing and signed by the land donor. (See *Attachment V – Basic Baseline Table of Contents.*)

### **C. Easement Monitoring**

The Foundation monitors all its easement properties at least annually, in a manner appropriate to the size and restrictions of each property, and keeps documentation, including reports of each monitoring visit and when possible has these signed by the landowner. The Foundation documents monitoring visits in writing and, when changes are observed, photographs are taken. The baseline documentation report given to each easement donor contains an information sheet detailing the Foundation's monitoring procedure, and a sample monitoring form accompanies that information. Monitoring of easements is conducted by Foundation staff. Easement right and restrictions accompany the monitoring form and are reviewed with the landowner. (See *Attachment X – Monitoring Report Form and Attachment Y Explanation of Monitoring Procedure.*)

### **D. Landowner Relationships**

The Foundation maintains regular contact with owners of easement properties (at minimum annually) at monitoring visits. Easement donors are inducted as lifetime members in the William R. Bruce Society and as such are invited to donor events and dedications. When relevant, the Foundation provides landowners with information on property management and referrals to resource managers. The Foundation strives to promptly build a positive working relationship with new owners of easement property, and sees that they are informed about the easement's existence and restrictions and about the Foundation's policies and procedures. The Foundation has prepared information for easement owners, explaining their responsibilities should the property transfer to different ownership. (See *Attachment Z – Change of Ownership Information.*)

### **E. Enforcement of Easements**

The Foundation has a policy and procedure detailing how it will respond to a potential violation of an easement, including the roles of all parties involved in any enforcement action. Our policy includes these provisions outlined in our model easement.

In the event of a disagreement between the Foundation and the easement donor, arbitration will be conducted by a committee made up of three individuals who have reasonable experience with conservation easements and land-use of similar properties. One individual will be selected by the easement donors. One will be selected by the Foundation. The third will be selected by these two individuals. The three member arbitration committee will determine by majority vote the issue. The committee shall follow the procedural rules of the American Arbitration Association. The decision of the committee will be binding on the Foundation and the donors.

When the Foundation determines that an easement grantor is in violation of the terms and conditions of the easement, the Foundation will give written notice of the violation(s) to the grantor and request corrective action. If the grantor fails to correct the violation within thirty days, or the violation cannot be reasonably

corrected within 30 days, or has not begun the process of correction within thirty days, the Foundation may then commence legal action to enforce the easement terms.

When circumstances mandate, the Foundation will take necessary and consistent steps to see that violations are resolved. The Foundation does not have a litigation fund (1999 estimate \$35,000) but has a goal to establish one as part of our next three (3) year strategic plan. The Foundation has a strategy to secure the financial and legal resources for enforcement and defense, through the use of its Endowment Fund.

#### **F. Reserved and Permitted Rights and Approvals**

The Foundation has an established procedure for responding to landowner required notices or requests for approvals in a timely and consistent manner, and has a system to track notices, approvals, and the exercise of any significant reserved rights. As an integral part of the conservation easement document, grantors of easements are required to contact the Foundation in writing at least sixty days in advance of any proposed activity that requires approval according to the individual easement document. The grantor is required to notify the Foundation of the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Foundation to make an informed judgment as to its consistency with the purpose of the easement. The Foundation is to respond in a timely manner, granting or withholding its approval in writing within sixty days of receipt of the grantor's written request. All correspondence, including hard copies of electronic communications, is to be filed with the baseline documentation along with photographs of material alteration to the easement property.

#### **G. Contingency Plans/Backups**

In each easement owned, a contingency plan is adopted that includes an assignment to a conservation non-profit 501c-3 and IRC 170 (h)(3) organization as part of the easement agreement or the organization is named in the easement agreement. Approval by the named organization is secured in advance with responsibilities outlined. Baseline and monitoring reports are available for each easement owned, should contingency transfers be required. Stewardship funds are restricted for enforcing each specific easement and are available for long-term stewardship.

#### **H. Contingency Plans for Backup Holder**

While the Foundation is not regularly named as a backup or contingency holder, it reviews requests on a case by case basis and budgets for this responsibility accordingly.

#### **I. Amendments**

The Foundation recognizes that amendments are not routine, but can serve to strengthen an easement or improve its enforceability. The Foundation's model conservation easement includes a provision: "Amendments – The easement shall not be amended, modified, or terminated except in writing in a document signed by the grantor and the Foundation. No amendment shall be allowed that would adversely affect the qualifications of this easement as a charitable gift or the status of the

Foundation under any applicable laws, including Section 170 (h) of the Code or the laws of the State of Tennessee. Any such amendment shall be consistent with the purpose of the easement, shall not affect its perpetual donation, shall not permit additional development other than development permitted by this Easement on its effective date, and shall not permit any impairment of the significant conservation values of the Protected Property. Any such amendment shall be recorded in the land records of the Register of Deeds of \_\_\_\_\_ County, Tennessee.”

The Foundation will not approve amendments that violate the Foundation’s policy against private inurement and impermissible private benefit. Amendments must comply with the Foundation’s conflict of interest policy. Amendments must be approved by the elected board of directors if these provisions are adequately addressed. There may be no loss of conservation value and amendments must be consistent with the Foundation’s mission.

**J. Condemnation**

The Foundation is aware of the potential for condemnation, understands its rights and obligations under condemnation and the Internal Revenue Code, and has appropriate documentation of the important conservation values. The Foundation will determine the percentage of the full value of the property represented by the easement. The Foundation works diligently to prevent a net loss of conservation values.

**K. Extinguishments**

In rare cases, there may arise a necessity to extinguish, or a court may order the extinguishment of, an easement in whole or in part. In these cases, the Foundation will notify any project partners and will work diligently to see that the extinguishment will not result in private inurement or impermissible private benefit; and will work to prevent a net loss of important conservation values or impairment of public confidence in the Foundation or in easements.

## **XII. Fee Land Stewardship**

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

### **A. Fee Land Stewardship**

The Foundation determines the immediate and long-term financial and management implications of each land transaction and secures the dedicated and operating funds needed to manage the property, including funds for liability insurance, maintenance, improvements, monitoring, enforcement, and other costs. If funds are not secured at or before the completion of the transaction, the Foundation secures these funds in future budget cycles or through pledges or bequests. At the initial board meeting each year, when the annual budget is set, stewardship funding is reviewed and goals set to fund property expenses through operating revenues. In the case of fee-owned land, expenses are annually budgeted and a schedule is reviewed to divest fee-owned property to other entities as the conservation values dictate.

### **B. Stewardship Principles**

The Foundation mission guides our principles to conserve and protect lands owned. The board establishes guidance for stewardship of its fee-owned properties, including determining what uses are and are not appropriate on its properties, the types of improvements it might make, and land management practices it will follow on a case by case basis. Board minutes reflect board action.

### **C. Land Management**

The Foundation develops a conservation plan for each property owned in fee. Disposition of lands owned in fee is approved by the board of directors. The Foundation has a goal to limit land owned in fee to avoid overhead and management expense. Permitted activities occur only when the activity poses no significant threat to the important conservation values, reduces threats or restores ecological processes, and/or advances learning and demonstration opportunities.

### **D. Monitoring Land Trust Properties**

The Foundation does not mark its boundaries but regularly monitors properties for potential management problems (including trespass, misuse or overuse, vandalism, or safety hazards) and takes action to rectify such problems. Fee owned property is monitored annually. Insurance coverage for each fee-owned property is purchased. We allow public access on one public trail and the local trail committee is the volunteer monitor.

#### **E. Land Stewardship Administration**

The Foundation performs administrative duties in a timely and responsible manner. This includes establishing policies and procedures, keeping essential records, filing forms, paying insurance, paying property taxes, and securing appropriate tax exemptions, budgeting, and maintaining files. Bi-monthly staff meetings are conducted to check progress. An annual monitoring calendar is maintained and updated. The executive director supervises a land conservation coordinator to maintain efficient and complete records for all transactions. Our Director of Operations oversees financial statements and budgeting for project stewardship.

#### **F. Community Outreach**

The Foundation keeps neighbors and community leaders informed about its ownership and management of conservation properties. Neighbors and community leaders are invited and encouraged to take part in land dedications and are provided with information about the work of the Foundation and ways that they can be involved in it. Press releases are provided and the press invited to Foundation events and activities. When lands are owned in fee, and prior to events, neighbors are introduced to our work and plans.

#### **G. Contingency Backup**

The Foundation will transfer property which is owned in fee to the nearest organization with jurisdiction or a conservation mission for the location of the property. Consideration will be given to the capability of the new entity to manage the conservation values of the property and/or fulfill the intended uses or goals of the conservation land, in the event that the Foundation ceases to exist. Permanent files for fee land include maps, deeds, and reports that document conservation values.

#### **H. Nonpermanent Holdings**

When the Foundation holds fee land with the intention to sell or transfer the land, the Foundation is open about its plans with the public and manages and maintains the property in a manner that retains the Foundation's credibility. (See Section VIII – L.)

#### **I. Condemnation**

The Foundation is aware of the potential for condemnation, understands its rights and obligations under condemnation, and works diligently to prevent a net loss in conservation values. Our model conservation easement agreement states: "Whenever all or part of the Protected Property is taken in exercise of eminent domain by a public, corporate or other authority so as to abrogate the restrictions imposed by the easement, the grantor shall take appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. The net proceeds (including, for the purposes of his paragraph, proceeds from any lawful sale of the protected property unencumbered by the restrictions hereunder) will be distributed between the grantor and the /Foundation in shares in proportion to the fair market value of their interests in the Protected Property on the date of the execution of this easement. The Foundation shall use its share of the net proceeds for conservation purposes."