

CHECKLIST OF ANNUAL FILINGS

February 4, 2010

Prepared for the land trusts of the Portland North Land Trust Collaborative: Chebeague & Cumberland Land Trust, Falmouth Land Trust and Oceanside Conservation Trust of Casco Bay

Schedule of filings

Required Annual Filings:

- JANUARY** **Conflict of Interest Policy Annual Disclosure Forms** (not legal requirement but it is a requirement for an accredited land trust)

- MARCH 1** **Maine Conservation Easement Registry Annual Statement** (prior calendar year) <http://www.maine.gov/online/spo/cer>

- MARCH 31** **Maine Annual Report** (current information as of date of report)
www.informe.org/aro/index_on.html

- APRIL 15** **IRS Form 990 or 990-EZ or 990-N and Schedule D** (prior fiscal –calendar Year) for more information visit [Detailed Guide to the New 990](#) on the Land Trust Alliance website.
 - For instructions about completing Form 990: <http://www.irs.gov/pub/irs-pdf/i990.pdf>
 - For a copy of Form 990: <http://www.irs.gov/pub/irs-pdf/f990.pdf>
 - For instructions about completing Form 990-EZ:
<http://www.irs.gov/pub/irs-pdf/i990ez.pdf>
 - For a copy of Form 990-EZ: <http://www.irs.gov/pub/irs-pdf/f990ez.pdf>
 - For information about filing Form 990-N:
<http://www.irs.gov/charities/article/0,,id=169250,00.html>
 - For instructions on Schedule D: <http://www.irs.gov/pub/irs-pdf/i990sd.pdf>.
 - Schedule D can be downloaded from <http://www.irs.gov/pub/irs-pdf/f990sd.pdf>

- SEPTEMBER 30** **Maine Annual Fundraising Activity Report** (if revenue over \$10,000) (for prior calendar year)
<http://www.maine.gov/pfr/professionallicensing/professions/charitable/organization.htm>

- NOVEMBER 30** **Maine Charitable Solicitation Registration** (if revenue over \$10,000) or an annual **Charitable Registration Exemption** (if revenue under \$10,000) (for prior calendar year)
http://www.maine.gov/pfr/professionallicensing/professions/charitable/exempt_organization.htm

Additionally: In the case of *paying a consultant \$600 or more in one calendar year* (for prior calendar year)

- JANUARY 31** **IRS Form 1099-MISC to payee** in the case of paying an independent contractor \$600 or more in one calendar year
- FEBRUARY 28** **IRS Form 1099- MISC** in the case above

Additionally: In the case of *employees* please see section the follows for forms and links

Background Information and Definition of Terms

After General description, the information is presented in order of schedule of filings above

Generally Applicable Federal and Maine Laws

The *Principles and Practices* program of The Maine Association of Nonprofits (MANP) includes a Basic Infrastructure Checklist for 501(c)(3) nonprofits in Maine that “outlines the documentation, systems and support mechanisms that nonprofit organizations should have in place to function in a manner that is effective, sustainable and accountable.” Federal and Maine laws applicable to 501(c)(3) nonprofit corporations are included as part of this checklist which is available for free online at http://www.nonprofitmaine.org/pandp_printables.asp. This is a valuable resource and should be referred to regularly. The checklist is usually updated once every two years, so land trusts should be sure to check back periodically for the most updated version.

Sales Tax Exemption Requirements

Contrary to popular belief, land trusts are not exempt from the Maine sales and use tax. Other kinds of nonprofit corporations are exempt, but not land trusts. Therefore, there are no sales and use tax filing requirements outlined in this documents with which the land trusts need to comply. In the case of the land trust participating in commercial activities, there may be filings that will need to be complied with.

Gift Substantiation Requirements

Depending on the amount and the kind of gift, 501(c)(3) corporations must meet various federal substantiation requirements. In addition, donors must make certain disclosures on their tax returns. A very useful summary of the substantiation and disclosure requirements for both nonprofits and donors can be found in IRS Publication 1771 (available online www.irs.gov/pub/irs-pdf/p1771.pdf). In the case of a donated easement, Form 8283 must be signed and the land trusts must acknowledge the gift donation of an easement with an acknowledgement letter to the donor. For more information, please visit http://learningcenter.lta.org/attached-files/0/69/6968/Form_8283_2008_PUBLIC.pdf.

Conflict of Interest Policy Annual Disclosure Forms

Although it is not a legal requirement, more and more land trusts are enacting a Conflict of Interest Policy that entails an annual disclosure requirement for board directors and key employees. The disclosure forms are not filed with any government agency but are kept in the organization’s official records book for internal use. Incidentally, a conflicts policy is now a specific Land Trust Alliance Standard and Practice requirement.

Maine Conservation Easement Laws (33 MRS§ 477)

Maine has certain additional statutory requirements that are particular to conservation easement holders. The statute should be used as a reference for all conservation easements. Some of the requirements are as follows:

- 33 MRS § 477(5) -- A conservation easement must provide in what manner and at what times representatives of the holder of a conservation easement or of any person having a 3rd-party right of enforcement shall be entitled to enter the land to assure compliance. This part of the statute can be found at:
<http://www.mainelegislature.org/legis/statutes/33/title33sec477.html>
- 33 MRS § 477-A(1) – As of September 2007, any newly executed conservation easements must include a statement of the conservation purposes of the easement, the conservation attributes associated with the

real property and the benefit to the general public intended to be served by the restriction on uses of the real property subject to the conservation easement. This part of the statute can be found at:

<http://www.mainelegislature.org/legis/statutes/33/title33sec477-A.html>

- 33 MRS § 477-A(2) – Strict limits on amendment and termination of conservation easements. Required language in conservation easements executed as of September 1, 2007. This part of the statute can be found at:
<http://www.mainelegislature.org/legis/statutes/33/title33sec477-A.html>
- 33 MRS § 477-A(3) – A holder of a conservation easement shall monitor the real property subject to the conservation easement at least every 3 years and shall prepare and retain a written monitoring report in its permanent records. The holder shall make available to the landowner, upon request, a copy of the monitoring report. This part of the statute can be found at:
<http://www.mainelegislature.org/legis/statutes/33/title33sec477-A.html>
- 33 MRS § 479-C – Conservation easement holders must file an annual statement with the Conservation Easement Registry. This part of the statute can be found at:
<http://www.mainelegislature.org/legis/statutes/33/title33sec479-C.html>
The Registry website is located at <http://www.maine.gov/online/spo/cer>.

State of Maine Annual Report

Every Maine nonprofit corporation is required to file an Annual Report with the Secretary of State. The Report is due June 1, although the Secretary of State requests that they be filed by April 1. There is a \$20 filing fee, as well as a late fee for filings received after June 1. The Annual Report may be filed online at www.informe.org/aro/index_on.html. The Annual Report is a very simple document that asks for a list of officers and directors. There is no financial component to this form. Call (207) 624-7752 if you have questions.

Registered Agent

Every Maine nonprofit corporation must maintain an active Registered Agent at all times. The Registered Agent is a Maine resident individual whose role is to accept service of process if the organization is ever sued. If your current Registered Agent has moved out of state, passed away, or is no longer with the organization, then the land trust should file a Change of Registered Agent/Office form with the Maine Secretary of State, downloadable at www.maine.gov/sos/cec/corp/formsnew/npcforms.htm. Call (207) 624-7752 if you have questions.

IRS Form 990

Federal law requires certain 501(c)(3) organizations to file an annual informational return with the Internal Revenue Service. This annual return is either Form 990, Form 990-EZ or the new Form 990-N.

- For instructions about completing Form 990: <http://www.irs.gov/pub/irs-pdf/i990.pdf>
- For a copy of Form 990: <http://www.irs.gov/pub/irs-pdf/f990.pdf>
- For instructions about completing Form 990-EZ: <http://www.irs.gov/pub/irs-pdf/i990ez.pdf>
- For a copy of Form 990-EZ: <http://www.irs.gov/pub/irs-pdf/f990ez.pdf>
- For information about filing Form 990-N: <http://www.irs.gov/charities/article/0,,id=169250,00.html>

Your organization's 990 is due four and one-half months after the close of your fiscal year. The IRS recommends that the board chair review and sign the 990 and that copies be given to each board member.

Conservation Easement Holder Disclosure Requirements

Starting in tax year 2008 (filings due in 2009), the IRS will be using a redesigned Form 990, the annual information return for 501(c)(3) organizations. The redesigned form reflects the IRS' continuing interest in conservation easements. In particular, Schedule D of the form devotes an entire section to easement holders, asking many detailed questions. The Schedule D can be downloaded from <http://www.irs.gov/pub/irs-pdf/f990sd.pdf>, and the instructions are at <http://www.irs.gov/pub/irs-pdf/i990sd.pdf>.

State of Maine Charitable Solicitation Registration

Land Trust Accreditation and the new IRS Form 990 have brought increased attention to the issue of charitable solicitation registration and to the need for land trusts to develop a systematic approach to addressing the requirements

Maine land trusts must file either an annual Charitable Solicitation Registration (\$25) or an annual Charitable Registration Exemption (\$10) with the Maine Department of Professional and Financial Regulation by November 30 of every year. Unless it files the exemption, a land trust must also file an Annual Fundraising Activity Report by September 30. These forms may be downloaded from the Department's website at www.state.me.us/pfr/olr/categories/cat10.htm. If the land trust solicits and/or accepts contributions from a critical mass of people in a state other than Maine, then I recommend completing the Unified Registration Statement (URS) and filing it with those states as well. Land trusts qualify for the Maine exemption if they: (a) raise less than \$10,000 annually; (b) solicit fewer than 10 individuals annually; or (c) solicit funds primarily within their membership, with solicitation activities being conducted by the members. For further assistance, call the Department's Licensure Division at 207-624-8624.

For a short introduction to this issue, see an article entitled "State Charity Registration Laws: You Can't Ignore Them Any Longer" by Tony Martignetti, available from *onPhilanthropy*: <http://www.onphilanthropy.com/site/News2?page=NewsArticle&id=7893>

For a summary of state charity registration requirements, see the spreadsheet created by Barb Welch and available at her website: <http://www.barbwelch.com/tools/>.

The topic is also addressed in the Land Trust Alliance curriculum: *Building the Foundation for Fundraising Success* by Marc Smiley which can be found and downloaded at: <http://learningcenter.lta.org/attached-files/0/83/8306/Fundraising-web.pdf> (See especially pp.51 – 52.)

Also MANP summary: http://www.nonprofitmaine.org/blob_view.asp?blob=108

Independent Contractor Filing Requirements

If your land trust pays \$600 or more in any calendar year to an independent contractor (e.g., an attorney, an accountant, web designer, marketing consultant, etc.), it must file an IRS Form 1099-MISC with the payee by January 31 and with the IRS by February 28.

Employment-Related Requirements

If a land trust has one or more employees, it will need to comply with a variety of different requirements, including:

- IRS Form W4
- Annual IRS Form W2/3
- Quarterly IRS and Maine Form 941's (All Maine tax forms can be downloaded from www.maine.gov/revenue)
- Employment Eligibility Verification Form I-9 (Available at www.uscis.gov/graphics/formsfee/forms/i-9.htm)
- Purchasing Workers Compensation Insurance for every employee
- Reporting all hires to Maine Department of Health and Human Services (to improve enforcement of child support obligations)(More details at www.maine.gov/dhhs/bfi/dser/Employers_Page.htm)
- Maine Unemployment Tax Filings (If 4 or more employees) (More details at www.maine.gov/labor/unemployment/index.html)

Note: It is important to remember that state and federal legal requirements and recommended practices for nonprofits change over time. Always verify that you are using the most up-to-date information and obtain professional advice as appropriate.

This document was prepared with reference to the MLTN Advisory for Standard 2A, dated 8_17_09, and A Primer on Land Trust Filing Requirements by Rob Levin, Esq., an article that appeared in the MLTN Newsletter in January 2006.