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Creating an Independent Organization for Lewiston/Auburn Trails

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Created in collaboration with L/A Trails

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Executive Summary

Maine lends itself to many outdoor activities with its varied geography. Many communities around the state have acknowledged this asset and designed trail systems that allow for people to experience the outdoors. In Maine, many trail organizations are nonprofits as it allows them to provide critical services that contribute to economic stability and mobility in surrounding communities without being dependent on local governments (National Council of Nonprofits 2019a). The nonprofit community in Maine has been successful throughout the years in creating a robust and vibrant community of citizens that help protect the environment, educate children, and inform the government (Maine Association of Nonprofits 2019b).

Lewiston/Auburn Trails (L/A Trails) was founded in 2001 with the goal of providing the community with safe places to enjoy nature. Originally, L/A Trails was an independent nonprofit organization. They raised funds to complete crucial projects such as installing lighting in Railroad Park and Mount Apatite Park. In 2007, L/A Trails joined the Androscoggin Land Trust (ALT) in the hopes of developing an accessible and frequented trail system which would later connect to the Maine Greenway. However, ALT began to focus its time and resources on other projects, causing L/A Trails to separate from ALT and become an independent organization (Androscoggin Land Trust, 2019). Despite this change, their end goal will remain the same: creating green spaces in the L/A area that connects and positively impacts the community. It is their hope that the trails will be seen as an asset and a source of pride for the community. L/A Trails' goal is to provide public green spaces through trail access in Lewiston and Auburn.

In this report we assess five different possible structures for L/A Trails to become an independent organization which include: private foundation, private operating foundation, limited liability company, fiscal sponsorship, and public charity. By synthesizing information from governmental sources and reports from organizations doing similar projects, we identify the different elements that make up each structure and compare and contrast them using a chart and scoring system. After calculating the results, we determine that the best fit for L/A Trails was to become a 501(c)(3) public charity.

For the final part of this report, we explain how the different elements of this structure are intertwined with the goals of L/A Trails and how it can maximize their efforts. We then detail a nine-step comprehensive plan for L/A Trails to become a public charity in the state of Maine. Finally, by interviewing representatives from other small trail organizations we were able to distinguish and organize some recommendations on how to form and ensure the longevity of the new organization.

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Introduction

The layout of a city has a profound impact on what kinds of interactions take place within it (Gehl 149, 2014). Cities with a low amount of compact buildings, accessible outdoor areas, and routes that favor foot traffic lend themselves to more forms of interaction since the physical planning of the space allows for more outdoor activities (Gehl 149, 2014). Areas that allows for foot traffic not only increase social interactions, but also affect the health and well-being of people using public green spaces. This kind of human contact with nature is a basic human need that leads to flourishing (Heerwagen 39, 2009). Studies have shown that ongoing contact with green spaces can have a profound impact on communities as they provide ecosystem services (Wolch et al., 234, 2014). Ecosystem services are the many and varied benefits that humans freely gain from the natural environment and from well-functioning ecosystems. More pointedly, ecosystem services provide protection for native plants and animals, regulation of climate and water systems, and fostering a sense of place (Grunewald 146, 2018). One study by Faber et al. 2001 and Kuo and Faber 2004 found that children who spend time in green spaces show reduced symptoms of Attention Deficit Hyperactivity Disorder (Heerwagen 46, 2009). Another study conducted in the Netherlands by Groenewegen et al. 2006 found that those closer to a public green space had better health overall compared to people not in close proximity to a green space (Heerwagen 46, 2009).

Maine lends itself to many outdoor activities with its varied geography. Many communities around the state have acknowledged this asset and designed trail systems that allow people to experience the outdoors. For example, in Portland, Maine, an organization called Portland Trails, which is part of a nonprofit land trust, has designed a trail system widely used for both recreational purposes but also for transportation around the city. Portland Trails works to make the community healthier and to connect people with a sense of place (Portland Trails 2019). In Maine, several trail organizations are nonprofits as it allows them to provide critical services that contribute to economic stability and mobility in surrounding communities without being dependent on local governments. More generally, nonprofits are known to strengthen communities and engage community members in advocating for values that are important to people in the area (National Council of Nonprofits 2019a). The nonprofit community in Maine has been successful throughout the years in creating a robust and vibrant state with citizens that help protect the environment, educate children, and inform the government (Maine Association of Nonprofits 2019b).

Lewiston/Auburn Trails (L/A Trails) was founded in 2001 with the goal of providing the community with safe places to enjoy nature. The group realized that many people in the Lewiston/Auburn area had previously worked on planning trail systems but needed a larger structure to implement their ideas. Thus L/A Trails became an independent nonprofit organization. They raised funds to complete crucial projects such as installing lighting in Railroad Park and Mount Apatite Park. In 2007, L/A Trails joined the Androscoggin Land Trust (ALT) in the hopes of developing an accessible, well-used trail system which would later connect to the Maine Greenway.

Eventually, ALT began focusing its time and resources on other projects, and it was decided that L/A Trails should become an independent organization (Androscoggin Land Trust, 2019). Despite this change, their end goal will remain the same: creating green spaces in the L/A area that connects and positively impacts every member of the community. It is their hope that the trails will be seen as an asset and a source of pride for the community. L/A Trails' goal is to provide public green spaces through trail access in Lewiston and Auburn.

Research Aim and Objectives

Aim: Generate an organizational structure and strategic plan for L/A Trails to become an independent and successful organization.

Objective 1: Explore how other successful small organizations (both trail organizations and non-trail organizations) generate methods and strategies.

Objective 2: Collaborate with community partners to identify potential legal opportunities and barriers using a comprehensive chart and scoring system.

Objective 3: Develop a strategic plan and recommendations for L/A Trails to transfer into suitable structure.

Methodological Approach

Literature Review

We researched five different organizational structures that could suit L/A Trails which included private foundation, private operating foundation, limited liability company, fiscal sponsorship, and public charity. To gather information, we primarily found sources online which we analyzed, evaluated, and summarized to identify pros and cons. For each organizational structure, we decided to specifically research how finance, board, staffing, limitations, upkeep of structure, tax exemption, liabilities, volunteers, and fundraising are conducted.

In addition to finding information about the nine elements stated above, we also researched other small trail organizations. We looked at why organizations with similar missions used particular structures and what limitations and opportunities they offered.

Chart and Scoring System

Once we collected information about the various structures, we organized it in a chart system so that it could be navigated more easily. The chart was divided into five different elements (finance, board, limitations, upkeep of structure, and fundraising). Originally, we had nine different elements in the chart, but we narrowed it down to five as the other elements were identical between the different structures and therefore did not allow for comparison. For each structure, we summarized the information we had about each element to create an overview of which structure might be the best fit for L/A Trails. For our final report we also created a scoring system for the chart to achieve quantitative data to complement our qualitative data. We scored each element for each organizational structure and came up with a final total score. Whichever organizational structure had the highest total score was the best fit for L/A Trails. Meetings

We aimed to meet with our community partner Josh Nagine every other week to establish goals and continue the trajectory of the project. Whenever our second community partner, Douglas Greene, was available he also attended the meetings. Additionally, throughout the semester we met with the professors of our class, Francis R. Eanes and Carissa F. Aoki, to get feedback and make future plans for our project.

Interviews

In Maine there are many exemplary trail organizations that we were interested in interviewing to understand the strengths and weaknesses of their organizational structure. Josh Nagine, our community partner, provided us with a list of appropriate organizations that he wanted us to examine further. These included, Portland Trails, Poland Trails Group, Waldo County Trail Organization, Bethel Trails, Mahoosuc Pathways, Kingdom Trail Association, The Good Food Council, and Jay Recreation Committee. We reached out to all organizations for interviews but ultimately, we ended up talking to representatives from the Good Food Council, Mahoosuc Pathways, Green Mountain Club, and Waldo County Trails Coalition. Many of our questions centered around asking about how they dealt with the elements from our chart, thus how finance, board, staffing, limitations, upkeep of structure, tax exemption, liabilities, volunteers, and fundraising are managed at each organization. We also made sure to ask about any specific challenges or opportunities they faced under their organizational structure that would be helpful for L/A Trails to know about.

Feasibility

After collecting information about relevant models that L/A Trails could emulate, we met with our community partners to determine which organizational structure would be the most appropriate for L/A Trails. Because a large portion of our work included an extensive literature review, we had a mid-term focus group session with Joshua Nagine and Doug Greene where we received feedback on our findings. We incorporated this mid-term feedback into our final step by step plan and timeline that detail how L/A Trails can transfer into the organizational structure we picked together with our community partners. We made sure that each organizational structure we presented aligned with values that were important to L/A Trails as their own organization:

1. Promotion

   Of the trail system, activities on the trails and stakeholder activities in relation to our trails and use. We aim to be the source for our current and future greenspace and trail resources as well as events on our trails.

2. Advocacy

   For healthy lifestyles involving trail use and the trail systems, our cities and our shared trail resources.

3. Maintenance

   Providing support for trail maintenance and improvement services for our trail system.

4. Expansion

   Of the current trail system, focusing on connecting people to places in our community and environment.

5. Education

   Focusing on respect for and ownership of our health, environment and community.

6. Collaboration

   Encouraging and providing support for individuals, clubs, government, non-profit and corporate interests to collaborate to achieve synchronous goals with L/A Trails for the benefit of our trail system and our community in Lewiston/Auburn.

Final Presentation and Report

We presented our project to our community partners, Josh Nagine and Doug Greene, our professors, Francis Eanes and Carrissa Aoki, as well as other relevant members of the new L/A Trails organization on December 5th, 2019.

The final report was given to Francis Eanes, Carrissa Aoki, Josh Nagine, and Doug Greene on December 13th, 2019.

Results and Discussion

Organization: Elements	Private Foundation	Private Operating Foundation	LLC	Fiscal Sponsorship	Public Charity
Finance	Select donors. Small number of public donors	Select donors. Small number of public donors	LLCs have control over the donated funds, can open its own bank account, and can be in charge of raising funds, as well as preparing annual budgets.	Generated through donors and grants that the fiscal sponsor manages	Can have your own account, tax-exempt from federal taxes, annual budget is approved through board members
Board	General governance	General governance	Not required but may choose to have a board of managers or one manager (does not have to be a member).	Selected by the fiscal sponsor	General governance, external relations, budget
Limitations	-	-	Cannot lobby, participate in political campaigns, or give large personal benefits.	Have more flexibility (depending on the structure of fiscal sponsor)	Cannot lobby, participate in political campaigns, or give large personal benefits.
Upkeep of Structure	-	-	To form an LLC nonprofit, each owner would have to incorporate as a nonprofit corporation. To maintain the tax-exempt status LLC must file a 990 tax form to IRS annually.	Agreement between organization and fiscal sponsor	Achieve structure by filing a 1023 with the IRS. Maintain structure by filing a 990-tax form annually with the IRS.
Fundraising	-	-	Public donations, grants, and host various fundraising events. Cannot come from one source.	Managed through grants and fundraising that the fiscal sponsor applies for/arranges	Public donations, grants, cannot come from one specific person

Figure 1: Chart with written elements of five organizational structures.

Finance

For both Private Foundations and Private Operating Foundations finances are limited because the majority of their money is derived from private funders and not from the public. A majority of what private foundations and private operating foundations do with their funds is to give out grants to other organizations and projects. This is not something L/A Trails are aiming to do therefore they would not benefit from this characteristic.

LLCs are in charge of their own finances and can open bank accounts and create their own budgets which is one of the benefits with the structure. However, managing the finances of an LLC requires specific knowledge in order to file the correct forms and maintain tax-exempt status (Business Law Today, 2017). Without a professional or extensive legal knowledge, managing finances could be difficult which would be a drawback for L/A Trails as an LLC.

For fiscal sponsorship, the funds of the organization are guided by the sponsor and in this case the sponsor would manage L/A Trails' finances. According to Waldo County Trails Coalition who is in a fiscal sponsorship, their sponsor sends financial statements for them and takes a percentage of their funds (O'Herin, Buck 2019). Thus, for L/A trails it could be helpful to have someone else in charge of finances but there is also the drawback of having to essentially pay the fiscal sponsor part of raised funds.

For public charity, finances are rather straightforward and manageable. An organization must comply with the IRS' nonprofit requirements that include keeping records of charitable programs, budgets, tax returns, receipts, and revenues. Additionally, if an organization has employees, they need to complete the Federal Income Tax Withholding and Social Security and Medicare taxes (see Appendix 2). Small nonprofit trail organizations around Maine, for example Mahoosuc Pathways, are able to manage their own finances without help from professionals as long as they are organized (Perkins, Gabe 2019).

Board

A board of directors are those in charge of governance and general management of an organization. Private foundations, private operating foundations, and public charities are required to have a board (Foundation Group, 2019a). The boards have to consist of three board members, and they have to meet at least once annually. During these meetings operational decisions requiring a vote are passed or denied, the budget is voted on, and general discussions of governance are conducted (Foundation Group, 2019a).

LLCs have a more flexible structure when it comes to their board. LLCs can decide whether they wish to have a board or not. Depending on the organization, it could be helpful to have a board to make final decisions about operations and budgets even if it is not required. If an LLC decides not to have a board it is recommended to pass bylaws when the group is funded that states how conflict, voting, budgets, etc. is managed (Business Law Today, 2017).

Finally, choosing a board for a fiscal sponsorship is a collaborative process between the fiscal sponsor and the sponsored organization. It would be a part of the process at the beginning stages to determine who is on the board for the organization. Generally, the fiscal sponsor does have more authority in the decision-making processes. This means that if L/A Trails was to enter into a fiscal sponsorship they would be dependent on the sponsor and therefore it is very encouraged to make sure that both organizations in a fiscal sponsorship have the same goals to avoid conflict.

Limitations

Private operating foundations and private foundations are not directly involved in the community. These organizational structures do not conduct active programs and therefore are not necessarily influencing the community or supporting them (a. Foundation Group, 2019). This would be a major limitation for L/A Trails since two of their goals are to engage community members and increase the use of trails in the area.

LLCs and public charities face the same main limitations: they cannot lobby, support political campaigns, or give out large benefits (Internal Revenue Services, 2018). These restrictions would not interfere with the goals of L/A Trails and therefore they are not necessarily drawbacks. When it comes to limitations applicable to fiscal sponsorship's, it depends upon the status of their sponsor whether or not they can lobby, support political campaigns, or give out grants. This can be viewed as a limitation in itself. To prevent the fiscal sponsor's limitations from restricting the sponsored organization's work it is important to understand what kind of organizational structure the fiscal sponsor is.

Upkeep of Structure

Obtaining and maintaining the structure of a nonprofit LLC is very complicated and navigating the legalities will most likely require hiring a professional. In the nonprofit world LLCs are usually used when smaller organizations join together and form a larger nonprofit LLC in order to keep their own independent structures while also have a broad reach. However, in the case of L/A Trails each member would have to incorporate as a nonprofit corporation and all of the LLC members must be classified as nonprofit organizations themselves, which makes this process more complicated (Northwest Registered Agent, 2019). This also results in the LLC being tied to its members and if a member does not want to be involved in the organization anymore it can create problems that might force the LLC to dissolve. For example, there have been cases where a member went bankrupt or died and the nonprofit LLC had to dissolve because the legal aspects were not handled correctly (Northwest Registered Agent, 2019).

When it comes to fiscal sponsorship, the sponsoring organization manages the formation of the fiscal sponsor as well as making sure that the right forms are filed in order for the smaller organization to maintain its status (Harper, Julia 2019). Hence, obtaining and maintaining the fiscal sponsorship status is easy for the smaller organization if they work with an organized sponsor that is willing to file the correct forms in a timely manner.

Obtaining and maintaining a public charity 501(c)(3) status is relatively easy as well, especially for a smaller organization such as L/A Trails. In order for an organization to obtain 501(c)(3) public charity status a group has to file a 1023 form with the IRS. Form 1023 is a 26-page long document where the organization has to indicate basic background information, structure of organization, activities that will be performed, who will receive benefits, and financial data (Internal Revenue Service, 2019a). However, as of recently the IRS has released a new shorter version of the 1023 form, 1023-EZ, that is only three pages long and makes it easier for small organizations to obtain 501(c)(3) status. Most organizations with gross receipts of $50,000 or less and assets of $250,000 or less are eligible to file this form instead of the 1023 (Internal Revenue Service, 2019 b). Moreover, to maintain a public charity 501(c)(3) status, organizations are required to file annual tax returns with the IRS. Even though most tax-exempt nonprofit organizations do not pay federal taxes, they still have to file an informational return. This annual reporting document is called Form 990 and must be filed by the 15th day of the fifth month after the end of the organization's tax year (National Council of Nonprofits, 2019). If this form is not filed, the organization can be penalized and if it happens three years in a row the organization will lose its 501(c)(3) status. Additionally, many organizations file the 990-tax form online to be transparent and show possible donors that the organization is serious. Donors might want to make sure that the organization is growing and using their funds in a sensible way. Thus, transparency is key and posting a 990-tax form on the website could be an advantage and something that us recommended.

Fundraising

When it comes to fundraising, it looks very similar under a nonprofit LLC structure and a public charity structure. LLCs and public charities can raise funds in many different ways - they can apply for grants, accept donations, and host events such as dinners/dances, door-to-door sales of merchandise, concerts, carnivals, sports events, and auctions (The Balance Small Business, 2019). When talking to other trail organizations we found that a common way to raise money was to create a membership program. Trail organizations would offer memberships for around $50 annually and members would receive things such as free parking, t-shirts, etc. (Perkin, Gabe 2019). However, there are some limitations as to how LLCs and public charities can fundraise. For these organizational structures, the IRS says that to remain tax-exempt, an organization must meet the public support test which essentially means that a public charity must receive a substantial part of its income from the general public. This can include contributions from individuals or gifts and grants from other publicly supported organizations or government agencies. Additionally, public charities and LLCs cannot get the bulk of its donations from one donor; if this happens the IRS might change the nonprofit's status from a public charity or LLC to a private foundation (Grantspace, 2019). Additionally, fundraising events and strategies must be related to the mission of the nonprofit. If the fundraiser is too far removed from the nonprofit's regular activities the income might be considered "unrelated business income" and this income is taxable (Internal Revenue Service, 2019).

Fundraising under a fiscal sponsorship is a collaborative process between the fiscal sponsor and the smaller organization. The fiscal sponsor applies for grants on behalf of the organization and manages the funds. After interviewing Julia Harper at the Good Food Council of Lewiston, it became clear that this structure could potentially limit the kinds of grants the organization could apply for. For example, the Good Food Council can only apply for certain grants since their fiscal sponsor is not a typical 501(c)(3) (Harper, Julia 2019). This limits sources of funding, but this should not be a problem if the organization is being fiscally sponsored by a larger organization. Additionally, after interviewing Waldo County Trails Coalition, we learned that often times grants are usually only given to organizations in their first few years of formation. Buck O'Herin, the Stewardship Coordinator for Waldo County Trails Coalition, mentioned that because portions of L/A Trails' trails are in a city and are used for transportation, that there may be more opportunities for community funding than for a more rural trails organization like Waldo County Trails Coalition (O'Herin, Buck 2019).

Scoring Chart

In order to quantify what the best organization is for L/A Trails, we created a scoring system. This way the different criteria we looked into could be properly assessed and compared to the other structures. Below are five of the nine different elements of an organization that we have looked at: finance, board, limitations, upkeep of structure, and fundraising. Each has their own criteria for the different scores listed which range from 0 to 2, 0 being the worst and two the best. There is also a chart with all of the scores and the total of each organization. The second chart is for the use of a visual presentation with symbols for each score rather than numbers. Following the chart will be a short explanation of why each of the organizations received their scores.

Organization: Elements	Private Foundation	Private Operating Foundation	LLC	Fiscal Sponsorship	Public Charity
Finance	1	1	0	1	1
Board	2	2	2	1	2
Limitations	0	0	2	2	2
Upkeep of Structure	1	1	0	2	1
Fundraising	1	1	2	1	2
Total Score	**5**	**5**	**6**	**7**	**8**

Figure 2: Chart quantifying the different elements of the five organizational structures.

Organizational Structure Quantification Scale

Finance
0 - Restrictive, difficult to manage without help from professional
1 - Less restrictive, can be completed without professional
2 - Not restrictive

Board
0 - Not flexible
1 - Limited Flexibility
2 - Flexible

Limitations
0 - Many limitations that will hinder work of L/A trails
1 - Some limitations that will hinder the work of L/A trails
2 - Little to no limitations that will hinder the work of L/A trails

Upkeep of Structure
0 - Extra work
1 - Intermediate amount of work
2 - Limited amount of work

Fundraising
0 - Cannot do fundraising
1 - Can do some fundraising
2 - Fundraising is easy

Figure 3: Legend for scoring system of different organizational structures.

Scores Discussion

When quantifying our information and scoring the different organizational structures we researched public charity scored the highest, 8 points, followed by fiscal sponsorship, 7 points, LLC, 6 points, and finally private foundations and private operating foundation, 5 points.

Public charity received the highest score for all elements except for finance and upkeep of structure. For public charities, it is possible to manage finances and maintain the structure without hiring a professional. However, it can be somewhat complicated for people with no previous experience in this area and requires that board members research and organize forms and documents which is why the structure received a lower score for these elements.

LLCs received lower scores for finance and upkeep of structure as well, lower than public charities. This is because if L/A Trails was to become a nonprofit LLC, it would almost certainly require the help of a legal professional. Navigating the legal processes surrounding nonprofit LLCs is almost impossible as it is complicated and there is limited information online. Thus, we did not think that it was suitable for L/A Trails to transfer into this structure specifically considering these two elements.

Fiscal sponsorship received the second highest score after public charity. The organizational structure received lower scores for finance, board, and fundraising. When it comes to finance, L/A Trails would be in charge of raising funds, preparing annual budgets, and designing and carrying out their programs. However, at the end of the day the fiscal sponsor would be in charge of the donated funds and this could limit the agency of the organization which is why it only received a score of 1. For similar reasons fiscal sponsorship received a lower score for board. The board is a collaborative process between the sponsor and the sponsored organization but at the end of the day the fiscal sponsor has the final say which could potentially be limiting for L/A Trails as a sponsored organization. Finally, for fundraising, fiscal sponsorship received a lower score because as Julia Harper of Good Food Council informed us, there are many grants that fiscal sponsors cannot apply for and we think that this would be limiting for L/A Trails and prevent them from effectively achieving their goals (Harper, Julia 2019).

When it comes to private foundations and private operating foundations, they received low scores in almost all areas simply because, as we have previously mentioned, these structures are not suitable for L/A Trails at all. Private foundations and private operating foundations cannot conduct active programs or public fundraising which is why they were ruled out immediately.

L/A Trails as a Public Charity

Public charity would be the best organizational structure for L/A Trails. Throughout the research process we made sure to consider L/A Trails' six original goals which includes: promotion, advocacy, maintenance, expansion, education, and collaboration. It is evident that these goals would be best suited within the nonprofit structure. We have also developed six reasons why we think nonprofits would be the best fit for L/A Trails. These include active programs, use of volunteers and employees, agency, fundraising, tax exemption, and financial independence. Public charities have the best use of active programs since, unlike private foundation and private operating foundation, they are able to establish their own projects and have more jurisdiction over programs they take on. Public charities also are able to utilize volunteers and employees more freely than other structures. This is especially important for L/A Trails as they will rely heavily on volunteers. Furthermore, public charities lend themselves to having more agency as an organization, especially compared to fiscal sponsorships, where a lot of the decisions are a collaborative process between the smaller organization and the fiscal sponsor. For a public charity, there is more power when it comes to decision making. Even though L/A Trails would get funds from various grants, fundraising would also be important for L/A Trails. Fundraising in the public charity model is simple and allows for many opportunities whether it is a membership program or trail walks. Public charities are also tax-exempt which is appealing to donors and is beneficial for the organization as it means they are exempt from federal taxes. Finally, public charities are more financially independent when compared to fiscal sponsorships. There are more grants available and it is easier to make decisions about how the organization uses its finances.

To sum up, because of the reasons previously listed we recommend that L/A Trails transfer into a public charity structure. In the next, section of this paper a step-by-step plan and recommendations will outline how to most efficiently transfer into this structure.

Recommendations and Next Steps

We recommend that L/A Trails becomes a 501(c)(3) public charity. Due to the overall compatibility of L/A Trails' goals and aspirations, a public charity structure will allow them to achieve these goals and aspirations.

Step-by-Step Plan

We created a comprehensive step-by-step plan for L/A Trails to follow when transferring into the organizational structure we picked (see appendix 3 for more detailed plan). The plan also gives an ideal timeline for each of these steps to be completed, however these are flexible and are to be used to help the organization with time management. The board members and staff members are those who will be responsible for carrying out the outlined plan within the next few months.

Plan for L/A Trails to Become a 501(c)(3) Public Charity:

- Step 1: Define the Nonprofit *(1 week)*
- Step 2: Create a Board of Directors *(1 month)*
- Step 3: IRS Compliance *(N/A)*
- Step 4: File articles of Incorporation *(2-4 weeks)*
- Step 5: Create Bylaws *(N/A)*
- Step 6: Hold a Board Meeting *(N/A)*
- Step 7: Set up corporate records binder *(1 week)*
- Step 8: File Form 1023 *(1 week to fill out, 2-4 for IRS to process)*
- Step 9: Obtain Maine State Income Tax Exemption *(N/A)*

<u>Board</u>

In a 501(c)(3) public charity, shared governance is required by law. It is best if the particular board members are a diverse group of people with different backgrounds but share a similar desire to see the organization grow and prosper. Differing perspectives lead to more ideas and can help develop the organization in the future. Under the public charity structure boards are only legally required to meet once a year (Foundation group, 2019a). However, many boards make sure to meet more often than that, at least twice a year, according to Mahoosuc Pathways (Perkins, Gabe 2019). Meeting multiple times a year can help keep the organization stay active and on track to meet its goal. Furthermore, it makes it easier to discuss the organization's agenda, ideas, and make votes on crucial decisions. Especially for new public charities, it is beneficial for the board to meet often to make sure that the organization starts off in the right direction.

It is required by law to have at least three board members (Foundation Group, 2019a). However, in many cases it could be helpful to have more than that as this allows for more people to contribute with thoughts and ideas. For example, one might be familiar with the legal aspects of public charities while another knows how to engage and manage volunteers. However, having too many board members can cause issues and make it hard to pass votes. Green Mountain Club has over 300 board members (DeBonis, Michael 2019). While this means that more people from the community are involved in the trail system, it might also make it difficult to reach a final decision and could make the voting process less effective. Thus, we recommend that L/A Trails have between 6-8 board members which seems to be the most common number based on our research.

Liabilities

Staff, members of the board, and other people related to the public charity are offered limited liability and thus can generally not be personally named in lawsuits. However, to further protect the public charity from getting named in lawsuits and having to pay a large amount of money to settle there are steps to take and insurances to buy (A. NOLO, 2019).

First off, most nonprofits have and need a general liability insurance. A general liability insurance covers against claims made by third parties for bodily injury and property damage that occurs in the course of the nonprofit's operations. Moreover, in a public charity employees need to have have workers' compensation insurance which provides medical expenses and wages if an employee gets injured during working hours. This type of insurance is mandatory in most states. However, depending on the number of employees and the organization's jurisdiction, the nonprofit might be exempt from this requirement (C. NOLO, 2019).

A nonprofit's board of directors and officers could be personally named in a lawsuit against the nonprofit alleging fraud or financial mismanagement. For example, if a board member invests the nonprofit's assets unwisely and loses everything, a creditor might sue the nonprofit as well as its directors and officers. In this case, you would want a directors and officers insurance to cover the cost of defending members in court and pay any resulting money damages (B. NOLO, 2019).

Among nonprofits, the most frequent allegation involving board liability is employment practices – wrongful termination or discrimination in hiring or promotion processes. There are insurances that cover against claims such as these ones, the most common one being professional liability insurance. A professional liability insurance protects the organization against lawsuits stemming from mismanagement of the workplace for example, discrimination or sexual harassment. It covers not only directors and officers but also staff, volunteers, and the nonprofit organization itself. (A. NOLO, 2019).

To further protect the organization, Mahoosuc Pathways use waivers when working with volunteers. They will have volunteers sign agreements stating that the work is unpaid, related risks, etc. This is not only helpful from a legal perspective but also makes the volunteers aware of risks which increases caution (Perkins, Gabe 2019).

<u>Staffing</u>

Many small trail organizations in Maine do not have staff employed, but all work is volunteer based. This is something we recommend for L/A Trails at the beginning because according to Mahoosuc Pathways, one employee can get expensive as they need to be paid and, in most cases, insured (Perkins, Gabe 2019). Once a group is more established many organizations, for example Androscoggin Land Trust, move to hiring one employee part time. An employee will be able to focus more time towards the organization and work to raise money more effectively. When hiring an employee, the public charity is in charge of creating an employee handbook and an employee contract (Foundation Group, 2019a). An employee handbook is created by the organization and clearly states the benefits, workplace rules, policies, and any other relevant human resource matters. The contract states items such as responsibility, compensation, and termination (see appendix 2 for more information about handbooks and contracts).

<u>Volunteers</u>

Volunteers are a great resource for public charities and are widely used by smaller trail organizations around Maine. L/A Trails could use volunteers to keep the trails maintained, fundraise, spread information about the organization, lead walks on the trails, clean up the trails, and create posters. Mahoosuc Pathways focused on developing an effective volunteer program from the very beginning so that they would have an engaged community to rely on for projects or events. To find volunteers they hosted information sessions, visited schools, and reached out to people with experience in nonprofit work outdoors (Perkins, Gabe 2019).

When working with volunteers it is also important to remember that they cannot receive large monetary compensations. They can however receive items such as t-shirts, coffee, holiday gifts, tickets as well as smaller stipends (Ernst Wintter & Associates LLP, 2019) (see appendix 2). Moreover, as previously touched upon many organizations use waivers when working with volunteers according to Mahoosuc Pathways (Perkins, Gabe 2019). Waivers are signed by volunteers before starting work and state that the volunteer is aware of the work they are doing and the dangers, responsibilities, and compensation that comes with it. Organizations can write these themselves, but prewritten examples can also easily be found online.

<u>Tax Exemption</u>

Each year, 501(c)(3) organizations must complete some version of IRS Form 990 in order to maintain tax-exempt status (Internal Revenue Service, 2018). One recommendation for L/A Trails as a smaller public charity is to file a form 990-N online instead of the longer 990 form. Form 990-N is applicable to organizations with under $50,000 gross revenue and does not require extensive financial data. Among other things, the 990-N form asks about the organization's income, expenses, program accomplishments, board members, and other operational information. It is important to know that failing to file Form 990-N will result in $20 fee everyday it late and failure to file a form for three consecutive years will result in the revocation of the 501(c)(3) status (Internal Revenue Service, 2018).

<u>Cautions and Common Issues with New Nonprofits</u>

When starting a public charity, it is important to make sure that no one person will privately benefit from the work done by the organization. This is called inurnment. Inurnment is when an insider of a nonprofit unfairly benefits from the organization's resources because of their position. In order to avoid inurement, it is recommended that the organization sets clear and concise conflict of interest policies. Other small public charities often have all board members disclose any potential conflicts of interest before even filing form 1023 with the IRS. By doing this, they can have board members who this is applicable for be exempt from voting on issues where they have a personal stake. If you suspect that many board members have potential benefit to gain from the work of the organization it can be helpful to have a third-party objective party assess the voting sessions (A. Foundation Group, 2019).

Another common type of inurnment that a new nonprofit would want to make sure that they avoid is excessive compensation in salary or wages deemed above what the IRS considers reasonable for the job. In order to lose tax-exempt status over inurnment issues such as this one, organizations often do research before hiring an employee to determine what people are usually paid for similar work. The IRS and labor unions have information when it comes to appropriate salary and wages. In this case it can also be helpful to have a third party determine salaries as they have no stake in the question (A. Foundation Group, 2019).

The final recommendation and caution that kept appearing during our research was record keeping. It is very important to keep all financial and legal documents related to the public charity so that it can be evaluated by the IRS or other governmental departments. When talking to trail organizations in the area, there were some common categories of documents that they organized and kept for future use. First, keeping records of when the organization receives donations is important for two reasons. You will need them for the tax return (form 990) and it also makes it easier to solicit further contributions from those supporters. Second, keeping records related to the organizations activity and structure are important to track that money and resources are going toward the mission of the organization. Examples of these include articles of incorporation, bylaws, corporate annual reports, board meeting notes, and notes on what the organization has been doing in terms of fundraisers and other activities. Organizing these documents from the beginning and having a system for keeping these records is vital for a public charity as if they cannot be transparent with the IRS they might lose their tax-exempt status ("Successfully Starting a Non-Profit", 2019).

Conclusion

To sum up, greenspaces offer great mental and physical benefits to communities. In the Lewiston/Auburn community, L/A Trails could be a great resource when it comes to activating and engaging community members in the outdoors. By transferring into a public charity structure, L/A Trails could, within a year, be working to improve the local trail system and achieving their goals: collaboration, education, promotion, advocacy, expansion, and maintenance.

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Appendices

Appendix 1: Contact Persons

Francis Eanes - Bates College professor of Environmental Studies *Lewiston, ME*

Carrissa Aoki - Bates College professor of Environmental Studies *Lewiston, ME*

Joshua Nagine - Organization Separation Liaison for L/A Trails *Lewiston, ME*

Douglas Greene - City Planner, Deputy Director of Planning and Code Enforcement *Lewiston, ME*

Julia Harper - Coordinator of Good Food Council *Lewiston, ME*

Buck O'Herin - Waldo County Trails Stewardship Coordinator *Unity, ME*

Gabe Perkins - Executive Director of Mahoosuc Pathways *Bethel, ME*

Michael DeBonis - Executive Director of Green Mountain Club Inc. *Waterbury Center, VT*

Appendix 2: Organizational Structure Research Packet

Recommended Structures for L/A Trails

By: Ava Gulino, Nelly Junesand, and Kassie Wilson

6 November 2019

This is a comprehensive packet on the five different structures we researched for L/A Trails. The chart below shows what these structures are and what elements we researched. Some of the following structures were obviously a poor fit for L/A Trails and therefore, we did not go into great detail about them; these were private foundation, private operating foundation, and fiscal sponsorship. We encourage you to think about what structure would best fit L/A Trails before the presentation, where we will make our recommendation.

Structures Chart:

Organization: Elements	Private Foundation	Private Operating Foundation	LLC	Fiscal Sponsorship	Public Charity
Finance					
Board					
Staffing					
Limitations (What they can't do in the community)					
Upkeep of Structure					
Tax Exemption					
Liabilities					
Volunteers					
Fundraising					

Organization Structures:

LLC:

A limited liability company (LLC) is a legal form of enterprise, owned by one or more members, that may be organized and operated for a wide variety of purposes, including charitable purposes. One of the major advantages of an LLC is the limited liability protection it offers to its members (Business Law Today, 2017). Additionally, it is possible for an LLC to gain tax-exempt status in some states, Maine being one where it is possible (Northwest Registered Agent, 2019).

Finance: The LLC has control over the donated funds and can open its own bank account. L/A Trails as an LLC would be in charge of raising funds, preparing annual budgets, and designing and carrying out their programs.

Board: LLCs are not required to have a board of directors but may choose to have a board of managers or one manager. In any LLC, a designated manager does not have to be one of the LLC's members. States recommend that LLCs draw up operating agreements to establish the relationships among the members.

Staffing: Members of the LLC can hire employees to work for the organization. However, employees cannot make excessive personal profit and if they do the LLC can risk losing its tax-exempt status.

Limitations: Similar to a public charity an LLC cannot lobby, participate in political campaigns, or give large personal benefits.

Upkeep of Structure: To form as an LLC nonprofit, each owner would have to incorporate as a nonprofit corporation, and all of the LLC members must in effect be classified as nonprofit organizations themselves, which makes this process more complicated. This also results in the LLC being tied to its members and if a member dies or goes bankrupt it can create problems that might force the LLC to dissolve. To maintain the tax-exempt status throughout the years an LLC must file a 990 tax form to IRS annually stating its incomes.

Tax Exemption: An LLC can apply for federal tax-exempt status through the IRS. However, whether an LLC can be tax-exempt on the state level varies from state to state. In Maine, it is rather simple for an LLC to achieve tax-exempt status as Maine grants all organizations that have tax-exempt status on the federal level tax exemption status.

Liabilities: One of the major advantages of an LLC is the limited liability protection it offers to its members. Hence, members cannot personally be named in lawsuits other than if they are personally financially or physically involved. To further protect the LLC, there are insurances that cover members in lawsuits and also the LLC from having to pay large amounts in medical costs, etc. if something happened during working hours.

Volunteers: If an LLC attains tax-exempt status, working as a nonprofit, they are allowed to have volunteers working for them.

Fundraising: An LLC can, just like a 501(c)(3), apply for grants, accept public donations, and host various fundraising events such as races and bake sales. However, the majority of all donations cannot come from one source.

Fiscal Sponsorship:
A fiscal sponsorship is a partnership between a larger organization and a smaller organization. Often, the fiscal sponsor is used to help guide a smaller organization in the beginning stages of their formation. The fiscal sponsor manages most of the organization's elements listed below. However, the organizational structure of the fiscal sponsor determines certain actions. For example, if the fiscal sponsor is not a 501(c)(3), the smaller organization could participate in legislative actions such as lobbying. Fiscal sponsorships are good for organizations that are just starting out and that need guidance, except it seems as though L/A Trails is trying to break away from this and trying to gain independence as its own organization with its own initiatives. One positive that could come out of a fiscal sponsorship for L/A Trails is if L/A Trails' internal structure is primarily volunteers, which in this case, having the fiscal sponsor do the back-office functions and being the overseer could be helpful. This structure would not work for L/A Trails unless they feel as though they need a lot of guidance in their first few years or if they feel as though there is an organization that could help them as their sponsor.

Finance: The fiscal sponsor lends credibility of of 501(c)(3) status to the sponsored project if the fiscal sponsor is also a 501(c)(3). The fiscal sponsor has control over the donated funds. This model is usually appealing to new organizations that want to raise money before they are recognized as tax-exempt. L/A Trails would be in charge of raising funds, preparing annual budgets, and designing and carrying out their programs.

Board: Would be a collaborative process between the fiscal sponsor and the sponsored project (outlined in a written agreement).

Staffing: Would be a collaborative process between the fiscal sponsor and the sponsored project (outlined in a written agreement).

Actions/Limitations: Can lobby depending on the status of the fiscal sponsor. For example, Good Food Council can lobby at a municipal level because their fiscal sponsors are not 501(c)(3)s.

Upkeep of Structure: The fiscal sponsor would have a bigger role in the decision-making process.

Tax Exemption: L/A Trails has to disclose to donors that it does not have a tax-exempt status. The tax code was changed recently so that any donation under ~$600 does not need a tax-deductible receipt to deduct if you are doing itemized deductions.

Liabilities: Depends on the fiscal sponsor. For example, the Good Food Council does not have waivers that volunteers must sign since their work is not dangerous and because they usually have the same volunteers and never any children volunteering (Harper, Julia, 2019).

Volunteers: A fiscal sponsorship is usually most appealing to all-volunteer organizations.

Fundraising: This is a collaborative process between the fiscal sponsor and the organization. The fiscal sponsor applies for grants on behalf of the organization and manages the funds.

501(c)(3) Private Foundation:

Private foundations, also known as non-operating foundations, rarely have active programs. Instead, these organizations focus on supporting public charity work through grants. Private foundations are not required to be publicly supported and donations often come from a small number of individuals (Foundation Group, 2019). This would not be a compatible structure with the L/A Trails organization. This is due to the private foundation not having an active program within the community and lack of public monetary support. L/A Trails would not be a good candidate for a private foundation as the organization is not interested in providing help for other foundations.

501(c)(3) Private Operating Foundation:

Private operating foundations are the least common 501(c)(3) and often referred to as a hybrid of the first two types. They have active programs and donation deductibility like a public charity. However, they also maintain a close governing body such as with a private foundation. Furthermore, most of the earnings must go to the program's activities (Foundation Group, 2019). As stated previously, a private foundation structure would not be a good fit for L/A Trails and therefore neither is a private operating foundation which incorporates aspects of the former. Although private operating foundations are similar to public charities, L/A Trails would not thrive as an organization whose structure is uncommon and could not use outside examples to model after. L/A Trails is not going to be primarily a supporting organization that spends its time and money helping other foundations through grants and the like.

501(c)(3) Public Charity:

Public charities are organizations with active programs who receive a large portion of their funding from the public or the government. Some of the most common examples of public charities are churches, animal welfare agencies, educational organizations, etc. In order to qualify as a public charity and not a private foundation; these organizations must collect at least ⅓ of its donations from the general public. However, they are also allowed to receive monetary support from companies or individuals. Finally, a public charity must have a governing body which is made up of independent and unrelated people (Foundation Group, 2019).

Board

A board's main responsibilities are to help with funding, create and maintain external relations, and governance of the nonprofit. The board is in part responsible for the organizations programs and keeping the integrity of their funds (Hurwit & Associates).

In a public charity nonprofit, shared governance of a 501(c)(3) is required by law. It is best if the particular board members are a diverse group of people with different backgrounds but share a similar desire to see the NGO grow and prosper. The board is legally responsible for the finances, governance, and management of the organization. It is important to note that board members are different from employees; those who see to the day to day actions of the nonprofit. The IRS requires a minimum of three board members per nonprofit but does not detail the term length. Therefore, the bylaws of terms of service on the board needs to be detailed in the beginning of nonprofit's creation and should focus on promoting sustainability and longevity of the organization rather than the individual wants of the board.

The IRS and usually state law, requires that the board meets one a year at minimum. During these meetings operational decisions requiring a vote are passed or denied, the budget is passed, and general discussions of governance are conducted (Foundation Group).

It is important for both board members and employees to avoid inurnment. Inurnment is when an insider of a nonprofit unfairly benefits from the organization's resources because of their position. Some of the most common types of inurnment are "Excessive compensation in salary or wages deemed above what the IRS considers reasonable for the job in question." In order to avoid inurement, the organization needs to set clear and concise conflict of interest policies. The best practice to implement is have all board members disclose any potential conflicts of interest. If they do have a personal stake in a matter, have them rescued from voting on that item (Foundation Group).

General Responsibilities:

- Governance
  - Manage and monitor the organization
  - Review the general workings and evaluate if anything needs to be addressed
- Leadership
  - Guide organization towards goals
  - Work with president and management
- Stewardship
  - Ensure that use of assets and dedication is for the public

Specific Responsibilities

- Hire and monitor management
- Review and approve annual budget
- Review and approve major organizational commitments, decisions, and plans that involve major finances
- Evaluate progress towards set goals
- Ensure the organization's future by recruiting executive staff
- Ensure transition of leadership is smooth and clear
- Board development and effectiveness

Meeting specific responsibilities through:

- Board orientation
- Information flow
  - Planning, financial statements, and reporting about programs and operations
- Each director is informed and makes independent judgments
- Board organization and continuity
- Meetings, minutes, agendas, records
- Committee structure
- Protecting integrity and assets of the organization

Supporting Functions:

- Fundraising

- Planning
- Public and community relations

Office of the Maine Attorney General states; “The law imposes two primary duties on board members: the duty of care and the duty of loyalty. The duty of care means that you must act with such care as an ordinarily prudent person would employ in your position. The duty of loyalty means that you must act in the best interests of the organization”.

<u>Employees</u>

A 501(c)(3) must uphold the Maine State Employment Discrimination Law and all acts that go into it. This means that employers may not discriminate against potential workers because of their gender, race, religious affiliation, age, disability, or nation of origin.

The nonprofit is in charge of creating an employee handbook and an employee contract. An employee handbook is created by the organization and clearly states the benefits, workplace rules, policies, and any other relevant human resource matters. Each manual will be different due to the nature of each organization and will have to comply with individual state laws. Here are some general elements of an employee handbook or manual provided by Hurwit & Associates:

- “Employers should clearly communicate with their employees, other than those working under an employment contract, the at-will nature of their employment. This is usually done in an offer letter or in the Manual.
- Statement that the Manual is not a contract, and may be changed by the employer at any time:
    - An express statement to this effect is important, as a Manual can be mischaracterized as a contract, putting employers at a disadvantage when needing to let an employee go.
- Employee acknowledgement of receipt and signature:
    - Employees should be asked to sign a statement indicating that they have received a copy of the Manual, and that they have read and understood its contents. Employers should maintain copies of these signature pages with their employment files.
- Nondiscrimination and Sexual Harassment Policies:
    - Employee Manuals should indicate that the employer complies with all laws and regulations that prohibit discrimination in hiring, advancement, firing and other terms and conditions of employment, and does not tolerate sexual harassment. The parameters of the non-discrimination policy may be informed by state law (some states protect more categories than others - e.g., some prohibit discrimination based on gender identity while others do not), though employers are always free to exceed the required minimum. The Sexual Harassment Policy should set forth appropriate steps employers will take in dealing with complaints. Such policies may be helpful in minimizing potential claims and/or liability.
- Employee Grievance and Discipline Procedures:
    - This section may also include a list of rules and regulations and the consequences of violation, including and up to termination. It may also describe progressive

discipline requirements, and steps to be followed in the event of employee complaints.

- Workers Compensation Policy:
    - Some states require employers to provide a written description of their workers compensation policy to employees. The Manual is an appropriate place to do so.
- Pay Policies:
    - The Manual should note whether certain positions are classified as exempt or non-exempt from minimum wage and overtime policies, and should address frequency, timing and manner of regular paychecks and final pay.
- Benefits:
    - The Manual should include a section describing the employment benefits offered by the employer, such as vacation time, retirement plans, group health insurance, long or short-term disability insurance, etc., and set forth criteria for eligibility and participation.
- Leave Allowances:
    - The Manual should describe the circumstances under which employees will be permitted time off, either paid or unpaid, for sick days, family leave, military leave, bereavement leave, jury duty leave, personal days, etc. This provision should reflect state and federal requirements as well as employer policy.
- Expense Reimbursement:
    - This section may describe the circumstances under which business-related expenditures will be reimbursed, the type of documentation required to support reimbursement, and business travel guidelines in general."

Each employee contract will be different depending on the organization and position, but here is a list of what a typical nonprofit employee contract includes provided by Hurwit & Associates:

- "Term of Agreement:
  Stating the start and end date of the employment relationship and indicating whether and under what circumstances the contract may be renewed.
- Position and Responsibilities:
  Designating the employee's position and describing his/her responsibilities, including to whom he/she will report.
- Definition of "Cause" for Termination:
  Describing the conditions under which the employer may terminate the relationship - usually for failure to satisfactorily perform
- Evaluation:
  Setting forth the timing and process for periodic performance review.
- Compensation:
  Setting base salary and indicating whether a mandatory or discretionary bonus will be paid, and if discretionary, the bonus triggers.
- Benefits:
  Describing all employer-sponsored benefits to which the employee will be entitled, including eligibility requirements and enrollment windows.

- Severance:
  Stating whether the employer will offer severance in the event of termination, under what circumstances, and how much.
- Intellectual Property:
  Indicating that materials created by the employee in the course of performing his or her responsibilities are "works for hire" and the property of the employer.
- Confidentiality:
  Prohibiting the employee from disclosing certain private and sensitive information about the employer and its business the employee will have access to in performing his/her responsibilities.
- Arbitration:
  Requiring disputes under the employment contract to be resolved through arbitration rather than litigation."

Before deciding what to pay the nonprofits employees, you must first determine "the market value of the services the job requires". The IRS has a subjective standard on what a "reasonable" salary is. Therefore, extra work needs to go into comparing the salaries for similar jobs that have been posted by companies of similar sizes. You may also gather information from public sources such as local labor unions and city census data. However, even before all the employee salaries can be created, a budget for the organization as a whole must be created. Setting compensation for nonprofit executives should almost always be done by an impartial, unbiased third party.

<u>Volunteers:</u>

Nonprofits are free to choose whether or not to give volunteers a stipend for their work. However, organizations must be careful when determining the amount to offer in order to avoid the volunteer being considered an employee. "This is because pay that is tied to productivity or to the amount of time spent working may be considered indicative of an employment relationship, as is anything more than "nominal" compensation" (Hurwit & Associates, 2019). The Department of Labor declares that if a volunteer is paid over $500 a year or 20% more than what an employee would be paid, they will be treated as an employee under the law. Once a volunteer has extended the legal amount for a stipend, they are no longer protected by the Federal Volunteer Protection Act for liability claims (Johnson, 2013).

It is perfectly legal for nonprofits to use unpaid volunteers, but it is important that each of these volunteers be properly assessed to see if they are a fit for the work. Furthermore, "It is recommended that nonprofits use written agreements when engaging volunteers to make sure there is no mistake about expectations, as well as for liability protection" (Hurwit & Associates, 2019).

Gift giving can be a great way for an organization to show its appreciation for its hard-working volunteers, however what can be given and how frequently is where the law becomes complicated. Gift cards or cash can be given to employees but if a volunteer receives one, they are considered an employee or an independent contractor, no matter how small the amount is. What can be given to volunteers without changing their legal standing in the organization is called *de minimis* (Ernst Wintter & Associates LLP). Some examples of de minimis are:

- "Holiday gifts, other than cash or gift card equivalents, with a low fair market value.
  - Such as an ornament or mug, etc.

- Occasional parties or picnics for staff and their guests.
  - Such as a holiday luncheon.
- Occasional coffee, doughnuts, or soft drinks.
- Flowers or fruit for special circumstances.
- Occasional tickets for theater or sporting events.
  - Such as a discounted movie ticket as a token of appreciation."

The value and frequency of gifts is what determines whether or not it is *de minimis.* It is also the circumstances about when the gift is being given that can determine its legitimacy. Ernst Wintter & Associates LLP encourages anyone with questions about nonprofit gift giving to contact them at 925-933-2626 or email them at info@winttercpa.com (Ernst Wintter & Associates LLP).

<u>Limitations:</u>

- Private Benefits
  - If a public charity provides an economic benefit to any person who is able to exercise substantial influence over its affairs (that exceeds the value of any goods or services provided in consideration), the organization has engaged in an excess benefit transaction. A public charity that engages in an excess benefit transaction must report it to the IRS. Excise taxes are imposed on any person who engages in an excess benefit transaction with a public charity, and on any organization manager who knowingly approves the transaction (Internal Revenue Service, 2018).
- Political Campaign Intervention
  - Public charities are prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of, or in opposition to, any candidate for public office clearly violate the prohibition against political campaign activity. Violation of this prohibition may result in revocation of tax-exempt status and/or imposition of certain excise taxes (Internal Revenue Service, 2018).
- Legislative Activities (Lobbying)
  - A public charity is not permitted to engage in substantial legislative activities (commonly known as lobbying). An organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for purposes of proposing, supporting or opposing legislation, or advocates the adoption or rejection of legislation (Internal Revenue Service, 2018).

<u>Upkeep of Structure:</u>

When first obtaining 501(c)(3) status a group has to file a 1023 to the IRS. Form 1023 is a 26 page long document where the organization has to indicate basic background information, structure of organization, activities that will be performed, who will receive benefits, and financial data (Internal Revenue Service. 2019 a). However, as of recently the IRS has released a new shorter version of the 1023 form, 1023-EZ, that is only three pages long and makes it easier for small organizations to obtain 501(c)(3) status. Most organizations with gross receipts of

$50,000 or less and assets of $250,000 or less are eligible to file this form instead of the 1023 (Internal Revenue Service. 2019 b).

Most nonprofit tax-exempt organizations are required to file annual tax returns with the IRS to maintain 501(c)(3) status. Even though most tax-exempt nonprofit organizations do not pay federal taxes, they still have to file an informational return with the IRS. This annual reporting return is called Form 990. If this form is not filed, the organization can be penalized and if it is not filed on time three years in a row the organization will lose its 501(c)(3) status. Forms 990, 990-EZ and 990-N must be filed by the 15th day of the fifth month after the end of the organization's tax year. The due date for the Forms 990 and 990-EZ may be automatically extended for six months by filing Form 8868, *Application for Automatic Extension of Time To File an Exempt Organization Retu*rn, before the due date (National Council of Nonprofits, 2019).

<u>Liabilities:</u>

There are cases where the nonprofit is liable for volunteers, workers, and other individuals associated with the nonprofit. Therefore, it is recommended and, in some cases, required that a nonprofit is insured (NOLO, 2019). First off, most nonprofits have and need general liability insurance. A general liability insurance covers against claims made by third parties for bodily injury and property damage that occurs in the course of the nonprofit's operations. Additionally, workers' compensation will provide for medical expenses and wages if an employee gets injured while working for the nonprofit. This type of insurance is mandatory in most states. However, depending on your number of employees and your jurisdiction, the nonprofit might be exempt from this requirement. When it comes to liability issues staff and the board of directors do not generally have personal liability. However, a nonprofit's board of directors and officers could be personally named in a lawsuit against the nonprofit alleging fraud or financial mismanagement. For example, if a board member invests the nonprofit's assets unwisely and loses everything, a creditor might sue the nonprofit as well as its directors and officers. In such a case, you'd want directors and officers insurance to cover the cost of defending the directors and officers and pay any resulting money damages. Additionally, if staff personally injure other participants they can get named in lawsuits. Among nonprofits, the most frequent allegation involving board liability is employment practices – wrongful termination, for example, or discrimination in hiring or promotion practices. There are also other less common insurances such as the professional liability insurance protecting against liabilities resulting from mismanagement of the organization, as well as workplace-related claims such as discrimination or sexual harassment. It covers not only directors and officers but also staff, volunteers, and the nonprofit organization itself. Insuring auto vehicles and property is common to insure but is mostly addressed case to case (NOLO, 2019)

<u>Finance:</u>

In order to maintain the 501(c)(3) status, the organization must keep records to "evaluate charitable programs, monitor budgetary results, prepare financial statements, prepare annual information and tax returns, identify sources of receipts, substantive revenues, expenses and deductions for unrelated business income tax purposes, [and] comply with grant-making procedures." Additionally, the 501(c)(3) needs to be aware of records management which includes "gross receipts, purchases including accounting for inventory, expenses, employment taxes, assets and liability." If tax-exempt organizations have employees, you must complete the

Federal Income Tax Withholding and Social Security and Medicare taxes. The board of the non-profit sets standards for how much the organization pays its workers.

Tax Exemption:
In order to maintain the 501(c)(3) status and remain tax-exempt, the organization has to ensure that their goals benefit the public. Earnings cannot benefit one person within the organization and if a financial extreme occurs it must be reported to the IRS.

Fundraising:
The IRS says that to be a tax-exempt public charity, an organization must meet the public support test. To be more specific, a public charity must receive a substantial part of its income from the general public. That can include contributions from individuals or gifts and grants from other publicly supported organizations or government agencies. Some typical fundraising events might include dinners/dances, door-to-door sales of merchandise, concerts, carnivals, sports events, and auctions (The Balance Small Business, 2019). There are two main things a public charity cannot do when it comes to fundraising. First, a public charity cannot get the bulk of its donations from one donor; if this happens the IRS might change the nonprofit's status from a public charity to a private foundation (Grantspace, 2019). Additionally, fundraising events and strategies must be related to the mission of the nonprofit. If the fundraiser is too far removed from the nonprofit's regular activities the income might be considered "unrelated business income" and this income is taxable (Internal Revenue Service, 2019).

Completed Chart:

Organization: Elements:	Private Foundation	Private Operating Foundation	LLC	Fiscal Sponsorship	Public Charity
Finance	Select donors	Select donors/ small number of public	LLCs have control over the donated funds, can open its own bank account, and can be in charge of raising funds, as well as preparing annual budgets.	Generated through donors and grants that the fiscal sponsor manages	Can have your own account, tax-exempt from federal taxes, annual budget is approved through board members
Board	General governance	General governance	Not required but may choose to have a board of managers or one manager (does not have to be a member).	Selected by the fiscal sponsor	General governance, external relations, budget

Staffing	-Support through grants -Non-active programs	-Support through grants -Semi-active programs	Can hire staff but important that they do not make excessive personal profit because the LLC can risk losing its tax-exempt status.	Selected by fiscal sponsor/board	Staff: day to day work Volunteers: unpaid workers
Limitations (What they can't do in the community)	-	-	Cannot lobby, participate in political campaigns, or give large personal benefits.	Have more flexibility (depending on the structure of fiscal sponsor)	Cannot lobby, participate in political campaigns, or give large personal benefits.
Upkeep of Structure	-	-	To form an LLC nonprofit, each owner would have to incorporate as a nonprofit corporation. To maintain the tax exempt status LLC must file a 990 tax form to IRS annually.	Agreement between organization and fiscal sponsor	Achieve structure by filing a 1023 with the IRS. Maintain structure by filing a 990 tax form annually with the IRS.
Tax Exemption	Tax-exempt	Tax-exempt	Can attain tax exemption in certain states, Maine being one of them.	Depends on fiscal sponsor's status	Tax-exempt
Liabilities	-	-	An LLC offers its members limited liability. To further protect the LLC there are additional insurance opportunities.	Through fiscal sponsor	Board members and other members are generally not personally liable. Certain insurances are recommended to further protect the nonprofit.
Volunteers	-	-	Unpaid volunteers is a possibility for LLCs but recommended that they are insured.	Managed through fiscal sponsor	Unpaid volunteers is a possibility. Can receive smaller stipends.
Fundraising	-	-	Public donations, grants, and host various fundraising events. Cannot come from one source.	Managed through grants and fundraising that the fiscal sponsor applies for/arranges	Public donations, grants, cannot come from one specific person

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Appendix 3: Strategic Plan for L/A Trails to Become a 501(c)(3) Public Charity

501(c)(3) Public Charity Plan for L/A Trails

By: Ava Gulino, Nelly Junesand, and Kassie Wilson

A nonprofit organization is an association that is exempt from taxes in the United States. These groups are characterized by their inability to pay profits meaning; “no part of the organization’s net earnings can inure to the benefit of any private shareholder or individual” (Maine Association of Nonprofits, 2019). Nonprofits include a variety of organizations ranging from social welfare and child care organizations, to labor unions and chambers of commerce (National Council of Nonprofits, 2019). Each type of nonprofit falls under a variety of different sections of the tax code ranging from 501(c)(1) to 501(c)(29) (Foundation Group, 2019). The most applicable of these to L/A Trails is a 501(c)(3) nonprofit. A 501(c)(3) non profit is either a public charity, private foundation, or a private operating foundation (Foundation Group, 2019).

Public charities are organizations with active programs who receive a large portion of their funding from the public or the government. Some of the most common examples of public charities are churches, animal welfare agencies, educational organizations, etc. In order to qualify as a public charity and not a private foundation; these organizations must collect at least ⅓ of its donations from the general public. However, they are also allowed to receive monetary support from companies or individuals. Finally, a public charity must have a governing body which is made up of independent and unrelated people (Foundation Group, 2019).

Steps to Creating a Maine 501(c)(3) Public Charity

Step 1: Define your NGO (1 week)

Start by defining the nonprofit and what its purpose is, then decide whether or not this is feasible. Some things to consider when creating the outline of a nonprofit are; humane resources needed, costs, fundraising goals. A name and a mission also need to be agreed upon for the nonprofit. Outline the goals of your nonprofit and the core values it has (Foundation Group, 2019).

Step 2: Create a board of directors (1 month)

In a public charity nonprofit, shared governance of a 501(c)(3) is required by law. It is best if the particular board members are a diverse group of people with different backgrounds but share a similar desire to see the NGO grow and prosper. The board is legally responsible for the finances, governance, and oversight of the organization. It is important to note that board members are different from employees; those who see to the day to day actions of the nonprofit. The IRS requires a minimum of three board members per nonprofit but does not detail the term length. Therefore, the bylaws of terms of service on the board needs to be detailed in the beginning of NGO making process and should focus on promoting sustainability and longevity of the organization rather than the individual wants of the board.

The IRS and usually state law, requires that the board meets at least once a year. During these meetings operational decisions requiring a vote are passed or denied, the budget is passed, and general discussions of governance are conducted (Foundation Group, 2019).

Some crucial roles for a board of directors are:

- President or Chair
- Treasurer
- Secretary

Examples of boards from other trails organizations:

Portland Trails
"http://trails.org/who-we-are/board/"

Mahoosuc Pathways, Inc
"https://www.mahoosucpathways.org/Board-Members"

Step 3: The program needs to be IRS compliant (*This can be done during first board meeting*)

This means that you will need to prove that the organization is "not conducting commercial activity for private gain, including potential private benefits to founders". This is best done during the formation of a board because you want to ensure that all members understand and will abide by these laws (Foundation Group, 2019).

Step 4: Create and file your nonprofit articles of incorporation *(2- 4 weeks)*

In order to have a nonprofit, you must file nonprofit articles of incorporation with the Maine Secretary of State office. The form can be found on the Maine Secretary of State Website at the URL:"https://www.maine.gov/sos/cec/corp/nonprofit.html." The forms must include:

- The corporation's name
- Whether the corporation is a public benefit or mutual benefit corporation
- Its purpose
- The name and address of the corporation's registered agent as required by Title 5, Section 105 of Maine Revised Statutes
- The number of initial directors if they have been chosen,
- The maximum and minimum number (not less than three) of directors if different than the initial board
- The name and address of each incorporator

In order to receive 501(c)(3) status from the IRS, these specific items must be put in the articles of incorporation:

- a statement of purpose that meets IRS requirements
- statements that your nonprofit will not engage in prohibited political or legislative activity, and
- a dissolution of assets provision dedicating your assets to another 501(c)(3) organization upon dissolution.

For more information on IRS requirements for tax exemption, see IRS Publication 557, *Tax-Exempt Status for Your Organization,* available on the IRS website at the URL: "https://www.irs.gov/pub/irs-pdf/p557.pdf." Make sure to include the federal tax-exempt required items in the articles you create (NOLO, 2019).

Step 5: Prepare bylaws for your Maine nonprofit corporation *(Before applying as a 501(c)(3), establish bylaws for the organization amongst relevant members)*

You will need to prepare bylaws that comply with Maine law. The bylaws will outline how the organization functions and will discuss roles for members. It will contain the rules and procedures your nonprofit will follow for holding meetings, electing officers and directors, and taking care of other corporate formalities required in Maine. Your bylaws do not need to be filed with the Maine Secretary of State -- they are your internal operating manual.

For more information, see these two articles: Nonprofit Formation Documents: Articles of Incorporation, Bylaws, and Organizational Minutes: "https://www.nolo.com/legal-encyclopedia/nonprofit-formation-documents-articles-incorporation-bylaws-minutes-30311.html and *How to Form a Nonprofit Corporation*" for help on creating bylaws: "https://store.nolo.com/products/how-to-form-a-nonprofit-corporation-nnp.html" (Nolo).

The National Council of Nonprofits has a link to this resource for things to consider when starting a nonprofit: "https://grantspace.org/resources/knowledge-base/nonprofit-bylaws/"

The relevant elements that are outlined on this website are:

- Size of board and how it will function
- Roles and duties of board and directors
    - The state of Maine requires 3 board members
- Rules and procedures for holding meetings, electing officers, and appointing officers
- Conflict of interest policies and procedures
- How grant monies will be distributed
- Other essential corporate governance matters

Additionally, bylaws are not public, but it is good to have them readily available to maintain transparency.

Examples of bylaws from other organizations:

Poland Trails:

"https://www.polandtownoffice.org/trail-committee/pages/trail-committee-bylaws"

Oregon California Trails Organization:

"https://www.octa-trails.org/wp-content/uploads/2018/03/1213_OCTA-Bylaws-adopted-8-8-2017.pdf"

Green Mountain Club, Inc.:

"https://www.greenmountainclub.org/about/thegreenmountainclub/bylaws/"

Step 6: Hold a board of director's meeting

The first board meeting is referred to as the organizational meeting of the board. The board should discuss and approve:

- The bylaws
- Appointing officers
- Setting an accounting period and tax year
- Approving initial transactions of the corporation, such as the opening of a corporate bank account

Remember it is important to keep minutes of the board meetings (NOLO, 2019).

Step 7: Set up a corporate records binder *(1 week)*

A binder containing important documents concerning how the nonprofit should be made. These documents include articles of incorporation, bylaws, and minutes of meetings. For more information on minute forms, consent forms, and other resolutions: "https://store.nolo.com/products/nonprofit-meetings-minutes-and-records-norm.html." for Anthony Mancusco's electronic book with all these resources. (NOLO, 2019).

Step 8: File Form 1023 for Tax Exemption *(1 week to fill out, 2-4 Weeks for IRS to process)*

To obtain federal tax-exempt status from the IRS, you will need to complete and file IRS Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. This long and detailed form asks for information about your organization, including its history, finances, organizational structure, governance policies, operations, activities, and more. Smaller nonprofits may be eligible to file Form 1023-EZ, *Streamlined Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code.* This is a much simpler, shorter form that is filed online. Only smaller nonprofits, those with projected annual gross receipts of less than $50,000 and total assets of less than $250,000, are eligible to use the streamlined 1023-EZ application. There are line by line guides helping applicants when it comes to filling out the 1023 form. Here are instructions from the IRS how to fill out the 1023-EZ form: "https://www.irs.gov/pub/irs-pdf/i1023ez.pdf".

Step 9: Obtain Maine State Income Tax Exemption (N/A)

Once you have your federal tax exemption, you are automatically exempt from Maine income tax. Check with Maine's tax revenue agency for any filing requirements and to see whether you qualify for any other state tax exemptions, like sales or property taxes.

Annual Goals:

- Form I-990 filed each year
- Elections for Board
- Annual board meeting

Common Issues and Tips for New Nonprofits

Avoiding Inurement:

Inurnment is when an insider of a nonprofit unfairly benefits from the organization's resources because of their position. Some of the most common types of inurnment are "Excessive compensation in salary or wages deemed above what the IRS considers reasonable for the job in question." In order to avoid inurement, the organization needs to set clear and concise conflict of interest policies. The best practice to implement is have all board members disclose any potential conflicts of interest. If they do have a personal stake in a matter, have them rescued from voting on that item.

Fundraising Basics:

Funding for a nonprofit comes from donations, grants and program revenue. Program revenue is defined as the revenue that is directly related to programs that drive the organizations tax-exempt status. Examples for this are "tickets sold by non-profit theatre, or tuition and fees generated by a school." Program revenue is nontaxable like donations because it is tied directly to the nonprofits purpose. The best way to raise money for a new nonprofit is to start by "building a broad donor base of individuals that can give at a variety of levels is the best way to sustainably grow your organization's programming resources."

Executive Compensation

Before deciding what to pay the nonprofits employees, you must first determine "the market value of the services the job requires." The IRS has a subjective standard on what a "reasonable" salary is. Therefore, extra work needs to go into comparing the salaries for similar jobs that have been posted by companies of similar sizes. You may also gather information from public sources such as local labor unions and city census data. However, even before all the employee salaries can be created, a budget for the organization as a whole must be created.

Setting compensation for nonprofit executives should almost always be done by an impartial, unbiased third party.

Record Keeping:

Accounting:

It is extremely important to keep and manage the nonprofits records. The board is required by both state and federal law to keep financial records that are accurate, complete, and also abide by the Generally Accepted Accounting Principles, also known as GAAP. The "Foundation Group" recommends using a third party such as themselves to oversee recording keeping and "prepare you annual IRS form 990 and related filings."

Contributions:

When the organization receives donations, the IRS requires you to keep accurate records of who gave what and when. This is required for both cash and non-cash donations which will be detailed on the IRS Form 990. By keeping records of donations, it is then easier to solicit further contributions from those supporters.

Corporate Records:

Copies of all corporate documents need to be retained. These include but are not limited to; Articles of Incorporation, bylaws, corporate annual reports, and board meeting notes. If the IRS decides to investigate the nonprofit, they will most likely ask for records of the board's decisions.

Activity Records:

These records are basically a log of what the organization has been doing. Activity records range from fundraisers to specific activities. They need to document what happened, how much money was raised, and the overall cost of the program.

Nonprofit Compliance Basics

Each year, 501(c)(3) organizations must complete some version of IRS Form 990. Smaller public charities with under $50,000 gross revenue can actually file a smaller, online form called Form 990-N. Each of these forms asks about the organizations income, expenses, program accomplishments, board members, and other operational information. It is important to know that failing to file Form 990 will result in $20 fee everyday it late and failure to file a form for three consecutive years will result in the revocation of the 501(c)(3) status.

In order to be compliant in the state of Maine, nonprofits must register with the Division of Charities prior to accepting donations. The state also requires a corporate annual report for each nonprofit. Depending on the state in which you operate, the nonprofit may be responsible for employment taxes, workers compensation, and unemployment tax.

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