

Blue Ridge Land Conservancy Practices

Standard 4: Conflicts of Interest

Land trusts have policies and procedures to avoid or manage real or perceived conflicts of interest.

Practice 4A: Dealing with Conflicts of Interest

- 1. Adopt a written conflict of interest policy that addresses, for all insiders, how conflicts are identified and avoided or managed*
- 2. Document the disclosure and management of actual and potential conflicts*
- 3. When engaging in any transaction with an insider,
 - a. Follow the conflict of interest policy*
 - b. Contemporaneously document that there is no private inurement**

Practice 4A1: Adopt a written conflict of interest policy that addresses, for all insiders, how conflicts are identified and avoided or managed.

The following is adopted as the Conservancy's Conflicts of Interest Policy:

Conflicts of Interest Policy

Preamble:

Board members and staff hold their positions for the benefit of the public and the Conservancy and must always be conscious of public scrutiny and public perception. At the same time, it is predictable that they and other "insiders" may be potential easement donors or participants in, donors to, or beneficiaries of Conservancy programs. The appearance of a conflict of interest, or an actual conflict of interest, can arise in situations in which a duty to act in the Conservancy's interest conflicts with an "insider's" opportunity to advance his/her own interest, or that of a family member, close friend, or business associate. Therefore, it is appropriate for the Conservancy to adopt policies and rules to deal with real or potential conflicts of interest.

Fiduciary Duty of Board and Staff:

All Board members and staff have a duty of fiduciary responsibility to the Conservancy. Such fiduciary duty includes a duty to always serve the best interests of the Conservancy and to avoid actions that may subject the Conservancy to legal liability or public criticism. A Board or staff member who believes his/her participation in a Conservancy action would result in a conflict of interest should not vote or participate in that action, and shall absent him/herself from discussion of the issue, other than to provide objective information, if requested. This includes, but is not limited to, all instances where a Board member or staff, or members of his/her immediate family hold a real property interest or financial interest in a property which is the subject of a proposed Conservancy action.

"Insider" Disclosure to Board: In any situation where there is potential for an actual or apparent conflict of interest, an "insider" has a duty to disclose immediately the situation to the Board, or his/her supervisor

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in the case of staff. This disclosure will be recorded as part of the official Board meeting minutes. This includes, but is not limited to, all instances where an “insider” holds a real property interest or financial interest in a property that legally adjoins the subject of a proposed Conservancy action. The Board shall determine on a case-by-case basis whether an actual or apparent conflict of interest precludes a Board or staff member from participation in the action. If a simple majority of the disinterested Board members present at any meeting, where a quorum is present, determines an actual or apparent conflict should preclude an individual from participation in an action, the conflicted Board or staff member must then absent him/herself from discussion, as well as voting on the issue in the case of a Board member, other than to provide objective information, if requested. In making such determination, the disinterested members of the Board shall exercise their normal fiduciary duty of care to the Conservancy.

Conservancy Disclosure to Other Parties: In addition to internal disclosure, the Conservancy must be aware that public credibility is instrumental for the organization’s longevity. Thus, in all cases where a conflict of interest has been formally discussed in a Board meeting, the Conservancy has a duty to disclose the fact and outcome of such discussion to all parties to the transaction.

Specific Conflicts to be avoided by Board and staff:

In general, members of the Board and Conservancy staff shall avoid the following types of conflicts:

1. **Self-Dealing:** Any situation where a Board member or staff, or any family members, close friends or business associates may appear to benefit financially from an action taken by the Conservancy;
2. **Opposing Loyalties:** Any situation where a Board member or staff has opposing or competing loyalties due to business or personal relationships;
3. **Loss of Public Credibility:** Any situation where a Board member’s or staff member’s actions in professional or personal roles not associated with the Conservancy may cause discomfort or loss of public credibility for the Conservancy.

Specific Implementation Policies:

The following policies shall apply to the specific situations identified therein:

- If the Conservancy conducts financial transactions with “insiders” (such as compensating a Board member for legal services), the Conservancy shall contemporaneously document how it determined that there is no private inurement for all but *de minimis* transactions. (Examples of documentation include data supporting the rate of compensation paid [such as comparable data of hourly or flat rates paid for similar services, competitive bid results received in response to a solicitation for services, other market analysis of the going rate for the scope of services provided, etc.]; minutes from the Board meeting showing discussion of how the rate was determined; or a memo to file documenting that the research and analysis was conducted, etc. Documentation of how the rate was established need not be provided when 1) the rate paid for services is very low and/or is a small amount that clearly would not have resulted in private inurement [such as paying an “insider” a small amount to mow grass on a Conservancy property, provide cleaning services, etc.] and 2) the Conservancy is able to explain how it came to that determination.).

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- The Conservancy shall not compensate its President or Treasurer and/or firms, companies, or entities for whom they work for professional services if the individual's compensation from that firm, company, or entity is based in whole or in part on distributions of its profits. (Internal Revenue Service Form 1099-MISC provides that professional services are those provided by attorneys, accountants, architects, contractors, engineers, etc.) The President and Treasurer and/or firms, companies, or entities for whom they work shall never be retained to conduct a financial compilation, review, or audit of the Conservancy's financial records.
- The Conservancy shall either avoid or appropriately manages potential conflicts arising from attorney Board members who represent landowners in land transactions with the organization (such as with disclosure statements; waivers between the attorney Board member and the Conservancy acknowledging the Board member's dual role; meeting minutes that reflect that the conflicted party fully disclosed the conflict, was not present for the discussion [unless asked to provide information], and was not present for the vote; etc.).
- When engaging in a land or conservation easement transaction with an "insider", the Conservancy shall ensure that there is no private inurement by implementing the steps below.
 - Documenting that the project meets the Conservancy's land protection criteria
 - Following all its standard transaction policies and procedures
 - For sales and purchases, obtaining an independent appraisal from a qualified appraiser
 - For sales, marketing a property widely before selling it to an "insider"

Penalties for violating this policy:

If the Board determines that a Board member has violated this policy, the Board may remove the Board member from the Board, in accordance with the provisions of Conservancy Bylaws Article III, Section 4(b). In a case involving the Executive Director, the Board may exercise its authority to discipline or dismiss the Executive Director. In cases involving staff under the Executive Director's supervision, the Executive Director shall be responsible for carrying out corrective or disciplinary measures as appropriate.

All Board members and staff shall receive a copy of this policy at the beginning of their terms or dates of hire. They shall have the policy explained for their benefit as needed, and they shall sign a copy of this policy attesting to their understanding of and adherence to the Conservancy's Conflicts of Interest Policy. Subsequently, each employee and Board member shall review and sign a copy of this policy each fiscal year.

As a member of the Board or staff member of the Blue Ridge Land Conservancy for the fiscal year _____, by signing below I agree to abide by both the spirit and specific terms and conditions of the above described conflict of interest policy.

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Name _____

Title _____

Date _____

Signature _____

Practice 4A2: Document the disclosure and management of actual and potential conflicts

The Conservancy’s Conflict of Interests Policy requires the documentation of the disclosure and management of actual and potential conflicts.

Practice 4A3: When engaging in any transaction with an insider,

- a. Follow the conflict of interest policy
- b. Contemporaneously document that there is no private inurement

The Conservancy’s Conflicts of Interest Policy requires that when engaging in any transaction with an insider, it will follow such policy and shall contemporaneously document that there is no private inurement.

Adopted 04/04/07; amended and readopted 10/04/09, 9/2/15, 5/4/16, 4/4/2018

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Land trusts have policies and procedures to avoid or manage real or perceived conflicts of interest.

Practice 4B: Payments to Board Members

1. *Do not financially compensate board members for board service, except for reimbursement of expenses interest*
2. *If, in limited circumstances, the land trust compensates a board member for professional services that would otherwise be contracted out:*
 - a. *Document the circumstances surrounding the decision to do so*
 - b. *Document how the land trust uses appropriate comparability data to determine the amount to be paid and to confirm that there is no private inurement*
 - c. *Do not compensate the board's presiding officer or treasurer for professional services*
3. *Do not provide loans to directors, officers or trustees*

Practice 4B1: Do not financially compensate board members for board service, except for reimbursement of expenses

It is the policy of the Blue Ridge Land Conservancy that members of the Board serve as volunteers and are not compensated for their service. They may be reimbursed upon written request for their out-of-pocket expenses made in furthering the purposes of the organization, such as travel and lodging, conference registration fees, and purchase of items used for fundraising or other events.

Practice 4B2: If, in limited circumstances, the land trust compensates a board member for professional services that would otherwise be contracted out:

- a. Document the circumstances surrounding the decision to do so
- b. Document how the land trust uses appropriate comparability data to determine the amount to be paid and to confirm that there is no private inurement
- c. Do not compensate the board's presiding officer or treasurer for professional services

From time to time, the Conservancy may find it advantageous to engage members of the Board, their firms, their family members, or members of the same household, as paid professional contractors or consultants. If such a situation arises, the Board will be fully informed, evaluate the potential for conflict of interest, and approve the contract in advance.

In accordance with the Conservancy's Conflict of Interest Policy, the President and Treasurer shall not be compensated for professional services.

To avoid the potential for or appearance of private inurement or self-dealing, if a member of the Board, his/her firm, his/her family members or members of the same household, is to be compensated for his/her service, then the full Board shall act, in the absence of the member to be compensated, to

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approve the business arrangement only if the following findings are made and documented in the Board minutes:

- The Board finds that an arrangement more advantageous to the Conservancy cannot be obtained with reasonable effort under the circumstances. This may be done by seeking multiple bids or quotes for the same work from qualified individuals or companies providing similar service; or by thoroughly investigating the hourly or daily rates for similar service available in the local market.
- The Board approves a written contract outlining the term, compensation and required deliverables, following the Conservancy's standard business procedures.
- The Board has discussed and approved the contracting arrangement and is confident with the Executive Director's willingness and ability to exercise independent judgment and ensure timely and quality service, as he/she would with any outside contractor, without regard for the person or firm's status.
- Engaging a member of the Board, their firm, their family members, or members of the same household in a professional capacity will not create a perception in the community that will be detrimental to the Conservancy.

Family members shall include spouses, brothers and sisters, spouses of brothers and sisters, ancestors, children, grandchildren, great-grandchildren and spouses of children, grandchildren, and great-grandchildren.

Practice 4B3: Do not provide loans to directors, officers or trustees

It shall be the policy of the Conservancy not to provide loans to members of the Board of officers.

Adopted 10/7/2009; revised 9/2/2015; revised 4/4/2018

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Practice 4C: Land and Conservation Easement Transactions with Insiders

1. *When engaging in land and conservation easement transactions with insiders,*
 - a. *Follow all transaction policies and procedures*
 - b. *For purchases from and sales of property to insiders, obtain an independent appraisal by a qualified appraiser to justify the purchase or sales price*

- Practice 4C1:** When engaging in land and conservation easement transactions with insiders,
- a. Follow all transaction policies and procedures
 - b. For purchases from and sales of property to insiders, obtain an independent appraisal by a qualified appraiser to justify the purchase or sales price

It is the policy of the Conservancy, when engaging in land and easement transactions with insiders, to:

- follow its Conflict of Interests policy;
- document that the project meets the Conservancy's mission;
- follow all transaction policies and procedures;
- and ensure there is no private inurement or impermissible private benefit.

For purchases and sales of property to insiders, the Conservancy shall obtain a qualified independent appraisal prepared in compliance with the Uniform Standards of Professional Appraisal Practice by a Virginia state-licensed appraiser who has verifiable conservation easement or conservation real estate experience. When selling property to insiders, the Conservancy shall widely market the property in a manner sufficient to ensure that the property is sold at or above fair market value, and to avoid the reality or perception that the sale inappropriately benefited an insider.

“Insiders” shall be as defined in the Definitions of Key Terms incorporated into these Standards.

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