**Policy 1.2 Conflict of Interest, Board Compensation & Insider Transactions**

**Committee Responsible**: Executive Committee

**Adopted**: **[DATE]**

**Amended**: **[DATE]**

**Purpose**The effectiveness of the **Sample Land Trust** depends upon maintaining the highest level of credibility, confidence, and trust with the communities it serves and all parties with whom it works. All persons associated with the Land Trust are reminded that the decisions and activities of the Board and staff, whether or not addressed in this policy, are governed by an overriding requirement of honesty, good faith, and fiduciary responsibility to the organization.

**Policy**

The Land Trust will seek to avoid or disclose and properly manage any conflict of interest that may arise in its operations or transactions by following its corporate By-laws, applicable federal and state law, and the policies and procedures below. Each Director and staff member will be provided a copy of this policy at the time they join the organization. Thereafter, each year each Director and staff member will be requested by the Secretary to confirm in writing that he or she has reviewed and understands this policy.

**I. Conflicts of Interest**

*Definition of Conflict of Interest*

A conflict of interest may arise when Land Trust "insiders," including Directors and staff, substantial contributors and independent contractors, are in a position to benefit financially (or create a benefit to a family member, business or other organization with which they are associated) from decisions made by the organization. An insider may, by virtue of their position or access to information not available to outside parties, exert influence on Land Trust decisions that affect their own financial interests. For example, conflicts of interest may arise when an insider is party to a land or financial transaction of the Land Trust; or owns property encumbered by a conservation easement held by the Land Trust; or serves on the Board or staff of a foundation or corporation that provides substantial funding to the Land Trust.

A conflict of interest may also exist in situations in which there is an appearance that a person is utilizing, for his or her own benefit, inside information that is proprietary to the Land Trust, is acting in his or her own interests rather than the best interests of the Land Trust, or is receiving favorable treatment from the Land Trust because of his or her affiliation with the organization.

The Internal Revenue Code defines persons as having a conflict of interest if they, at any time during a five-year period leading up to a transaction, were in a position to exercise influence over the affairs of the organization. Our non-profit tax exemption requires that the organization be operated exclusively for charitable purposes and that no part of the net income may inure to the benefit of any private shareholder or individual.

**General Guidelines**

All persons shall avoid conflicts of interest involving their duties to the Land Trust and any other interest or organization to which they have a duty, or any other activity in which they are financially or otherwise interested.

It is expected that persons subject to this policy will conduct themselves honestly and fairly in dealing with their other interests. Such persons shall not use their position or knowledge gained during their association with the Land Trust for their private benefit or to obtain an unfair advantage over any aspect of their dealings with the Land Trust.

**Obligations of Insiders**

Each Director or staff member or other insider covered by this policy is obliged:

1. To disclose to the Board, President, or chair of the committee on which he or she serves, the existence of any actual, potential, or perceived conflict of interest,
2. To abstain from discussing with Directors, employees, or committee members any issue, matter, or transaction in which he or she has an actual, potential, or perceived conflict of interest unless specifically asked by the Board or the Executive Committee to give information on the issue, matter, or transaction,
3. To abstain from Board and committee discussions on any issue, matter or transaction involving a conflict of interest, unless requested by the Board or the Executive Committee to give information on the issue, matter, or transaction,
4. To abstain from voting on any such issue, matter, or transaction, and
5. When requested by the Board, to resign from the Board and any affected committee until such time as the matter giving rise to the conflict of interest has been resolved. When, in the opinion of the board president, the matter has been sufficiently resolved, the Director may be invited to rejoin the Board and any affected committee.

**Obligations of the Board**

When a transaction, contract, or project of the Land Trust involves an actual, potential or perceived conflict of interest with an insider:

1. The Board may approve such transaction, contract, or project only if it specifically finds that:
	1. The transaction, contract, or project is fair and benefits the Land Trust and its objectives,
	2. The transaction, contract, or project is approved with the Board's full knowledge of its financial or other benefit to the insider who has the conflict of interest,
	3. When the insider is a Director, the Director did not participate in the vote approving the transaction, contract, or project and was, in fact, absent both during the discussion of the transaction, contract, or project and when the Board voted on it, and
	4. A more advantageous arrangement could not have been obtained with reasonable effort under the circumstances.
2. When warranted by the nature and magnitude of the conflict of interest, the Board shall request that a conflicted member of the Board, advisory board, or other committee resign.

**II. Board Compensation**

**General Guidelines**

Land Trust Directors 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.

No Director shall receive compensation for services rendered to or for the Land Trust in carrying out any of its purposes unless 1) the services are essential and there is no reasonable alternative to them being performed by the Director and 2) the payment is specifically authorized by the Board.¹ The Land trust will not provide loans to Directors, officers, members, trustees or any employee or volunteer.

**Contractual Arrangements**

To avoid the potential for or appearance of private inurement or self-dealing, if a Director is to be compensated for his or her service, then the full Board shall act, in the absence of the member to be compensated, to approve the business arrangements only if the following findings are made and documented in the board minutes:

1. The Board finds that the services are essential under the circumstances;
2. There is no reasonable alternative to them being performed by the Director;
3. The amount of compensation is reasonable (this may be determined 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);
4. The Board approves a written contract outlining the term, compensation and required deliverables;
5. The Board has discussed and approved the contracting arrangement, and is confident in the President’s willingness and ability to exercise independent judgment and ensure timely and quality service, as he or she would with any outside contractor, without regard for the person’s status as a member of the board; and
6. Engaging a member of the board in a professional capacity will not create a perception in the community that will be detrimental to the Land Trust.

**III. Transactions with Insiders**

**General Guidelines**

The Land Trust may decide to engage in land, easement, or other financial transactions with insiders, defined as board, staff, substantial contributors, or with a family member, business or other organization with which they are associated. Examples of such transactions include purchasing or accepting donation of land or a conservation easement on an insider's property; or the resale of real property or another marketable asset such as a vehicle or work of art to an insider.

In any such case, the Land Trust shall follow its conflict of interest policy: document that the proposed project or transaction is consistent with the Land Trust's mission; follow its standard project approval and transaction procedures; and ensure that no impermissible private benefit or private inurement occurs.

*Definition of Private Benefit and Inurement*

"Private inurement" and “private benefit" are intertwined concepts. “Private inurement” is the improper transfer of the assets or funds of a charitable organization to someone in a control position. The Internal Revenue Code defines “control persons” as "persons having a personal and private interest in the activities of the organization.” ² Section 501(c)(3) prohibits private inurement by control persons. Private inurement does not include receipt of a charitable benefit enjoyed by the whole community on the same terms – for example, a board member of a charitable hospital could be a patient in the hospital (assuming he or she paid on the same basis as the general public). Private inurement also doesn’t include a transaction for which there is an adequate *quid pro* *quo*. For example, the CEO of a non-profit could be paid fair market value for services and a board member could sell property to a charity for fair market value. The Intermediate Sanctions rules in the Internal Revenue Code and Treasury Regulations impose steep penalties on excess benefits paid to control persons. These penalties may be applied to the control person, the charity, and those responsible for the payment. As far as property transfers are concerned, it is the safer course for an organization to avoid buying property from an insider.³

“Private benefit” is a broader concept than private inurement, encompassing both inurement in favor of an insider or affiliate and, in addition, any other private benefit to entities or individuals. It stems from the concept that charities must be operated for a public not a private purpose. Private benefit that is not inurement to an insider or close affiliate is permissible where the benefit is "incidental." In evaluating whether private benefit is merely incidental, the IRS looks at two things. First, it looks at whether the benefit to the public could be achieved without necessarily benefiting private individuals. If not, the benefit to the individuals is incidental (i.e., a qualitative incidental benefit). Second, whether the private benefit is substantial after considering the overall public benefit from the activity. If not, the benefit is incidental (i.e., a quantitative private benefit). An example would be a fair market value (FMV) transaction with an individual who is not a “control person,” i.e. an insider. If a charitable organization pays FMV for a conservation property, that is an “incidental” benefit to the private landowner – because the conservation objective could not be achieved without the purchase (qualitatively incidental) and the payment was not excessive (quantitatively incidental). Conversely, if a charitable organization pays in excess of FMV, that is an impermissible private benefit. Normally, if protecting land benefits other land owned by a donor or seller, that is an incidental benefit. However, such situations require a factual analysis. For instance, if the sold property had restricted access so that only the donor and family might enjoy it, private benefit could be present. Another example of an incidental benefit would be the benefit to a donor who is granted naming rights after donating land for a nature preserve.

**Procedure and Approval**

The Board must be fully informed of the nature and terms of proposed transactions with an insider before any binding commitment is made by the Land Trust, and the transaction may proceed only if the following findings are made and documented in the board minutes:

1. The nature of the transaction is consistent with the mission and adopted policies of the Land Trust and supports the organization's objectives.
2. If the transaction involves the purchase, donation or sale of land or a conservation easement, the public conservation benefit of the transaction is clear and significant, and the project has been evaluated by the Preservation Committee using the customary project selection criteria.
3. The Land Trust is paying no more than fair market value if acquiring land or a conservation easement or is receiving at least FMV when selling land or another marketable asset to an insider. For all land transactions, and for the sale of any marketable asset valued at $5,000 or more, an independent appraisal by a qualified appraiser has been prepared and reviewed by the Preservation Committee.
4. For the sale of any real property, or any marketable asset with an estimated value of $5,000 or more, the Land Trust has marketed the property or asset widely to prospective buyers and finds that the insider’s offer is the most advantageous to the organization.
5. For the purchase or donation of a conservation easement, the terms of the easement are substantially similar to other easements the Land Trust holds on similar land, and there is no significant deviation from the Land Trust's standard easement provisions related to monitoring, enforcement or other treatment of the landowner or recourse available to the Land Trust.
6. The payment of project expenses, which typically are shared by the Land Trust and the landowner, including an adequate Stewardship Fund contribution, are being handled in a manner similar to other comparable Land Trust transactions.

*¹ in accordance with* ***Sample Land Trust*** *By-laws, Article VIII*

*² Treasury Reg. § 1.501(a)-1(c). In this policy, “control persons” are referred to as “insiders.”*

*³ Note that as regards purchases from insiders, this policy and, in many cases state law, requires a board of directors to treat insider transactions as conflict of interest transactions and to handle them in a specific way. Among other requirements, normally, the insider should not vote or participate in discussions on the issue. This includes “side bar” discussions.*