

Land Trust Standards and Practices:

Interpretation and Application of the 2004 Revisions
for Quasi-Governmental Conservation Organizations
not Recognized as a Tax-Exempt Organization
Under Section 501(C)(3) of the Internal Revenue Code

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This document is for informational and instructional purposes only and is not a formal part of *Land Trust Standards and Practices*

Land Trust Standards and Practices: Interpretation and Application of the 2004 Revisions for Quasi-Governmental Conservation Organizations not Recognized as a Tax-Exempt Organization Under Section 501(C)(3) of the Internal Revenue Code

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INTRODUCTION

The Land Trust Alliance designed the 2004 revisions to *Land Trust Standards and Practices* primarily for nonprofit, tax-exempt land trusts. *Land Trust Standards and Practices* consists of 12 standards and 88 practices. Some of these practices need interpretation or further clarification so that they adequately address the unique circumstances of quasi-governmental entities that hold conservation easements or own land for conservation purposes. For example, quasi-governmental boards may be appointed by a governor or other elected official (Practice 3B, Board Composition), they may be funded by state or local appropriations (Standard 5, Fundraising) and their budgets may also be set by elected bodies (Practice 6A, Annual Budget).

This document is not a revision of *Land Trust Standards and Practices*. We designed this interpretive document to assist “quasi-governmental conservation organizations” (see definition, next page) with how to interpret and apply the standards and practices to their unique organizational structure, specifically clarifying those standards and practices that were written for traditional nonprofit land trusts operating as tax-exempt 501(c)(3) organizations, rather than for government entities. This interpretive document is not intended to provide an alternative to *Land Trust Standards and Practices* for a land trust that is recognized as a 501(c)(3) organization by the Internal Revenue Service, even if the organization has contractual or other close relationships with government entities. All 501(c)(3) organizations should refer to *Land Trust Standards and Practices* and the Background to the 2004 Revisions of *Land Trust Standards and Practices* for background information on and explanations of each practice.

Quasi-governmental conservation organizations include some of the largest conservation easement holders in the country – the Maryland Environmental Trust and the Virginia Outdoors Foundation, for example – and also include small, single-town land trusts, such as those common in Rhode Island. Many of these organizations are members of the Land Trust Alliance, have adopted *Land Trust Standards and Practices* and implement them to the best of their abilities given their unique legal and structural constraints. We estimate that quasi-governmental conservation organizations hold approximately 13 percent of the conservation easements in the United States as of 2007. This is a substantial number and it is only appropriate that we address the particular legal constraints of these organizations as they relate to the implementation of *Land Trust Standards and Practices*.

This interpretive document addresses the application of *Land Trust Standards and Practices* only for quasi-governmental conservation entities that are not 501(c)(3) tax-exempt organizations. This document is for informational and instructional purposes only and is not a formal part of *Land Trust Standards and Practices*.

DEFINITION

For interpretation and application of *Land Trust Standards and Practices* to quasi-governmental conservation entities that are not 501(c)(3) tax-exempt organizations, the definition of a quasi-governmental conservation organization is an organization that:

- Has a primary mission of land conservation
- Has a governance structure that provides independent oversight with a board independent of government
- Is a unit of government, rather than a private corporation, and is not recognized by the Internal Revenue Service as a 501(c)(3) organization

OVERVIEW OF INTERPRETIVE PHILOSOPHY

For quasi-governmental conservation organizations, independent oversight is a critical concept in implementing *Land Trust Standards and Practices*. Oversight by a board independent of government implies a different level of accountability than a government agency that is implementing instructions from a higher level of government. In practice, a quasi-governmental conservation organization operates with the same structure as a traditional nonprofit land trust with a board that has primary responsibility and oversight for the land conservation program and/or organization. This structure entails collective oversight by a board rather than executive oversight by a governor, town council or county government. It also demands public oversight and accountability, rather than oversight by a primarily political appointee. Boards of quasi-governmental conservation organizations embody a balance of powers between governmental executive functions and conservation programmatic functions. This feature distinguishes quasi-governmental conservation organizations from both governmental entities and traditional nonprofit land trusts.

With only a few exceptions, however, most quasi-governmental conservation organizations are very similar to typical land trusts with regard to how they conduct land transactions, their financial accountability and their approach to stewardship. The similarities among quasi-governmental conservation organizations and traditional land trusts are greater than their differences, and most have comparable qualities and practices.

For example, all quasi-governmental conservation organizations have separate boards of directors. Most have bylaws. Some boards are more active than others, as is the case in the traditional land trust community. Some boards are more closely aligned with or controlled by the governor or an agency head than others, which is not usually the case with traditional land trusts. Traditional land trusts, however, especially those based in single towns, often similarly struggle with tacit control by those influential in the community or by a few major donors.

For quasi-governmental conservation organizations, the leadership skills and strength of each organization largely determine its success and ability to negotiate the obstacles inherent in close government cooperation. This capability parallels that of traditional land trusts that make a practice of co-holding conservation easements with government agencies. These organizations experience the same challenges and must accommodate the special needs of government decision making.

INTERPRETATION AND APPLICATION OF *Land Trust Standards and Practices*

The following are interpretations/applications of specific standards and practices of *Land Trust Standards and Practices* that require clarification in order to be relevant to quasi-governmental conservation organizations. Of the 12 standards and 88 practices that comprise *Land Trust Standards and Practices*, eight standards and 14 practices are interpreted in this document. These reflect those standards and practices that present unique legal or structural obstacles to implementation by quasi-governmental conservation organizations. We expect that a quasi-governmental conservation organization can meet the remaining standards and practices not noted below without additional interpretation.

Most quasi-governmental conservation organizations consider themselves “land trusts,” so no confusion should arise through the use of the all-inclusive term “land trust” throughout *Land Trust Standards and Practices*. Some groups, however, that meet the definition on page 2 might be more comfortable substituting the term “quasi-governmental conservation organization” for “land trust.”

All quasi-governmental conservation organizations have boards, either elected, appointed or some combination of both. The use of the word “board” throughout *Land Trust Standards and Practices* should not cause any confusion for quasi-governmental conservation organizations. Occasionally, a designated government body fulfills some of the traditional functions of either the land trust or the board. In those cases, as appropriate, the phrase “government entity” or “governing body” should be substituted for “land trust” or “board.”

Part I: Organizational Strength

Standard 1: Mission

The land trust has a clear mission that serves a public interest, and all programs support that mission.

Practices

A. Mission. The board adopts, and periodically reviews, a mission statement that specifies the public interest(s) served by the organization.



Both traditional land trusts and quasi-governmental conservation organizations have a responsibility to act in ways that benefit public rather than private interests. Everyone connected with a land trust's governance should have a similar understanding of the organization's mission in the event the group is asked to take on programs and transactions that further individual interests but that do not advance the public purposes for which the land trust was organized. Boards of quasi-governmental conservation organizations operate under a mission that may be determined by a state legislature or other public body. The board is responsible, however, for reviewing and making recommendations on the organization's mission as appropriate to reflect the needs and priorities of its constituency. The organization's mission statement must specify the public interest(s) served by the organization's conservation program.

B. Planning and Evaluation. The land trust regularly establishes strategic goals for implementing its mission and routinely evaluates programs, goals and activities to be sure they are consistent with the mission.



Broad strategic goals for the organization may be established by a government agency, governing body, the public or legislatively, but the board still has the responsibility to determine specific organizational strategies for meeting these goals. How complicated this process is, how long it takes and what it encompasses depend on the particular circumstances of each quasi-governmental conservation organization. The board must also evaluate programs, goals and activities and implement changes as appropriate and necessary to serve the organizational mission.

Standard 2: Compliance with Laws

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



Both traditional land trusts and quasi-governmental conservation organizations must comply with applicable laws. The quasi-governmental conservation organization fulfills all statutory and/or legal requirements of its public charter and complies with all other applicable laws.

Practices

B. Nonprofit Incorporation and Bylaws. The land trust has incorporated according to the requirements of state law and maintains its corporate status. It operates under bylaws based on its corporate charter or articles of incorporation. The board periodically reviews the bylaws.



The quasi-governmental conservation organization was established and exists as a legal entity according to the requirements of state or local law and maintains and fulfills its legal requirements. It operates under bylaws, or equivalent rules and regulations, based on its public charter or statutory requirements. The board periodically reviews these bylaws or rules.

C. Tax Exemption. The land trust has qualified for federal tax-exempt status and complies with requirements for retaining this status, including prohibitions on private inurement and political campaign activity, and limitations and reporting on lobbying and unrelated business income. If the land trust holds, or intends to hold, conservation easements, it also meets the Internal Revenue Code's (IRC) public support test for public charities. Where applicable, state tax-exemption requirements are met.



The quasi-governmental conservation organization is qualified for federal tax-exempt status under Section 170(c)(1) of the Internal Revenue Code and ensures that all contributions or gifts to it are used exclusively for public purposes. If the organization holds, or intends to hold, qualified conservation easements under Section 170(h) of the Internal Revenue Code, it also meets the Internal Revenue Code's requirements for a qualified holder. Where applicable, the organization meets state tax-exemption requirements.

Standard 3: Board Accountability

The land trust board acts ethically in conducting the affairs of the organization and carries out the board's legal and financial responsibilities as required by law.

Practices

A. Board Responsibility. The board is responsible for establishing the organization's mission, determining strategic direction and setting policies to carry out the mission, and, as required by law, the oversight of the organization's finances and operations.



The board is responsible for reviewing the organization's mission, ensuring that the organization operates according to the mission, determining strategic direction at an appropriate level, and setting policies to carry out the mission. The board also has the responsibility for oversight of the organization's finances and operations as determined by law and/or its charter.

B. Board Composition. The board is of sufficient size to conduct its work effectively. The board is composed of members with diverse skills, backgrounds and experiences who are committed to board service. There is a systematic process for recruiting, training and evaluating board members.



The board has a process for identifying, recruiting and making recommendations on board nominations to the appointing government entity or executive. While the size of the board and some of its membership may be set by governing law, the board is responsible for using its best efforts to ensure that the board is composed of members with diverse skills, backgrounds and experiences who are committed to board service and desire to uphold the organization's mission. To the extent legal constraints prohibit the board from addressing its composition, then the board will endeavor to provide recommendations about board composition to the appointing government entity or executive.

D. Preventing Minority Rule. The land trust's governing documents contain policies and procedures (such as provisions for a quorum and adequate meeting notices) that prevent a minority of board members from acting for the organization without proper delegation of authority.



If an appointing government body or executive retains control of board decisions (for example, by having a majority of agency heads on the board, maintaining veto power over board decisions or otherwise limiting the independence of the board), then the organization's policies and procedures clearly describe the circumstances when government entity or executive control can be exercised and how the organization preserves the public interest and its mission in these situations.

F. Board Approval of Land Transactions. The board reviews and approves every land and easement transaction, and the land trust provides the board with timely and adequate information prior to final approval. However, the board may delegate decision-making authority on transactions if it establishes policies defining the limits to that authority, the criteria for transactions, the procedures for managing conflicts of interest, and the timely notification of the full board of any completed transactions, and if the board periodically evaluates the effectiveness of these policies.



If an appointing government body or executive retains control of decisions regarding land or easement transactions, then the organization's written policies and procedures clearly describe the circumstances when the government body or executive can exercise control of decisions, how the organization preserves the public interest and its mission in these situations, and the timely notification of any such decisions to the full board.

Standard 4: Conflicts of Interest

The land trust has policies and procedures to avoid or manage real or perceived conflicts of interest.

Practices

B. Board Compensation. Board members do not serve for personal financial interest and are not compensated except for reimbursement of expenses and, in limited circumstances, for professional services that would otherwise be contracted out. Any compensation must be in compliance with charitable trust laws. The board's presiding officer and treasurer are never compensated for professional services.



Board members are not compensated by the organization, except for reimbursement of expenses. Board members may be paid public employees, agency heads or otherwise serve on the board as part of their official duties of another organization or government entity so long as the quasi-governmental conservation organization itself does not compensate board members.

Standard 5: Fundraising

The land trust conducts fundraising activities in an ethical and responsible manner.

Practices

B. Accountability to Donors. The land trust is accountable to its donors and provides written acknowledgement of gifts as required by law, ensures that donor funds are used as specified, keeps accurate records, honors donor privacy concerns and advises donors to seek independent legal and financial advice for substantial gifts.

i *Quasi-governmental conservation organizations are accountable to public taxpayers as well as to their donors for how funds are spent. Thorough recordkeeping practices are integral to donor accountability. Solicitations must specify for what purposes funds are being raised, and both private and public funds must be used for the specified purposes. The organization honors donor privacy concerns within the constraints of applicable law.*

Standard 6: Financial and Asset Management

The land trust manages its finances and assets in a responsible and accountable way.

Practices

A. Annual Budget. The land trust prepares an annual budget that is reviewed and approved by the board, or is consistent with board policy. The budget is based on programs planned for the year. Annual revenue is greater than or equal to expenses, unless reserves are deliberately drawn upon.

i *If a government entity, executive or agency retains approval of the budget or is fully responsible for developing the organization's budget, the board communicates its budget needs to the government entity, executive or agency. The board allocates the resources budgeted to the organization according to its program plans for the budget year, within the constraints established by any government appropriation. The organization prepares a budget within these limitations including any imposed budget cycle constraints. Regardless of the degree of retention of control of the organization's budget by the government entity, executive or agency, the board itself reviews and approves or adopts a detailed budget that is consistent with board policy and organizational mission, even if the budget has already been approved by another entity. Operating at a deficit or tapping into any reserves should be a careful decision made by the board (or government entity, executive or agency) during the budgeting process.*

H. Sale or Transfer of Assets (Including Land and Easements). The land trust has established policies or procedures on the transfer or sale of assets, including real property. (See 4C, 9K and 9L.)

i *Even if the organization's governing statute requires other legislative or executive action, the organization's policies and procedures must include, without limitation, that any decision to transfer or sell assets must also have the approval of the board. All such decisions by the board must be consistent with the organization's mission and the original grantor's intent, generally serve the organization's conservation program, be in the public interest and comply with all applicable laws.*

Part II: Land Transactions

Standard 11: Conservation Easement Stewardship

The land trust has a program of responsible stewardship for its easements.

Practices

E. Enforcement of Easements. The land trust has a written policy and/or procedure detailing how it will respond to a potential violation of an easement, including the role of all parties involved (such as board members, volunteers, staff and partners) in any enforcement action. The land trust takes necessary and consistent steps to see that violations are resolved and has available, or has a strategy to secure, the financial and legal resources for enforcement and defense. (See 6G and 11A.)



When a traditional land trust or quasi-governmental conservation organization accepts an easement, it also accepts the responsibility to enforce that easement in the event it is violated, and to defend it from challenges. This practice calls for all easement-holding organizations to develop a policy or procedure detailing how the organization will respond to a potential easement violation. The policy or procedure should address the various roles of board members, volunteers, staff, partners and the government entity, agency or executive that exercises control (if any) over the board's decisions regarding the pursuit of enforcement actions. In addition, organizations must be prepared for enforcement actions and have access to appropriate legal counsel and the financial resources to defend its easements. All attorneys, experts and other professionals must act solely at the direction of the board to pursue the appropriate enforcement and defense remedies and not be subject to countervailing direction of a government entity, executive or agency.

Standard 12: Fee Land Stewardship

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

Practices

B. Stewardship Principles. The land trust establishes general principles to guide the stewardship of its fee-owned properties, including determining what uses are and are not appropriate on its properties, the types of improvements it might make and any land management practices it will follow.



All land trusts, including quasi-governmental conservation organizations, should have general principles to guide the management and use of their properties. These principles may be established by a government entity, executive or agency as might be required by the charter or statute creating the organization, or by the board. If the board does not establish these principles, it is responsible, however, for their review and for making recommendations as to appropriate changes.

