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*The Commission awards the accreditation seal to land conservation organizations that meet national standards for excellence, uphold the public trust and ensure that conservation efforts are permanent.*

# Guidance Document

## Required Policies for Accreditation: Related to Indicator Practices 4A, 9G, 11E, 11I, and 3F\*

*The Land Trust Accreditation Commission occasionally publishes Guidance Documents to help applicants interpret specific indicator practices drawn from Land Trust Standards and Practices. These documents may be amended from time to time. Guidance Documents are intended as just that – guidance for applicants. They complement information provided by the Land Trust Alliance on how to implement the practices that can be found at <http://learningcenter.lta.org>.*

### **Scope of Guidance Document**

This *Guidance Document* focuses on how the Commission evaluates the policies that are specifically required by the accreditation indicator practices. It does not offer comprehensive guidance on all aspects of the indicator practices that require policies.

### **Evaluating Required Policies**

The Commission reviews a variety of documents from applicants including the specific policies required by the accreditation indicator practices. Each required policy is reviewed for compliance with the indicator practice and to see that it is tailored to the applicant organization. The Commission also looks at evidence the applicant provides to show that the policies are being implemented. Examples of the types of documentation an applicant might submit are shown on the following pages.

If your organization has recently adopted new policies, you should make sure that you can provide evidence of implementation before you apply. You may either provide documentation that your practices were in place before being formalized in a policy or show documentation of how the new policy has been implemented.

### **Definitions from the *Applicant Handbook***

**Policy:** a specific course of action to guide and determine present and future decisions. In this context, refers to a written, board-adopted policy.

**Procedure:** a series of steps followed in a regular order. As used in accreditation, procedures are written steps for the board, staff and/or volunteers to follow and may or may not be approved by the board. This written series of steps may go by various names in different organizations but all are considered procedures for the purposes of accreditation.

\*when applicable

## Indicator Practice 4A. Dealing with Conflicts of Interest

Practice, Excerpted from *Land Trust Standards and Practices*

*The land trust has a written conflict of interest policy to ensure that any conflicts of interest or the appearance thereof are avoided or appropriately managed through disclosure, recusal or other means. The conflict of interest policy applies to insiders (see definitions), including board and staff members, substantial contributors, parties related to the above, those who have an ability to influence decisions of the organization and those with access to information not available to the general public. Federal and state conflict disclosure laws are followed.*

### Required Policy Elements, Practice 4A

The Commission will evaluate the applicant's policy as follows.

- The land trust must have a dated, written, conflict of interest policy.
- The policy must apply to all of the following insiders:
  - Board and staff members;
  - Substantial contributors;
  - Parties related to the above;
  - Those who have an ability to influence decisions of the organization;\* and
  - Those with access to information not available to the general public.\*
- The policy must ensure that any conflicts of interest or the appearance thereof are avoided or appropriately managed through disclosure, recusal or other means, including
  - that a conflicted party not be present during the discussion (unless asked to provide information) and vote on an issue where he/she is conflicted.\*
- The policy must help the land trust meet the requirements of federal and state conflict disclosure laws.

\*If the applicant's policy does not contain these items at the time of application, the Commission may, at the time that it awards accreditation to an applicant, include an expectation that the land trust will amend its policy to include these items. If the accredited land trust submits an application for renewal of its accredited status, the Commission may evaluate the land trust's policy relative to these elements at that time.

### Examples of How to Document Implementation, Practice 4A

The Commission will review the applicant's supporting materials – in the application and in the project documentation – for evidence that the conflict of interest policy is being followed. Below are examples of the types of documentation an applicant can provide; the Commission does not expect every applicant to have every document. Applicants should include materials that best show how they implement the practice. See the *Applicant Handbook* and application for accreditation for more about required documents.

- Minutes from a meeting that involved a conflict of interest, showing that the conflicted party left the meeting during substantive discussions and any vote on a project.
- Minutes from a meeting when the conflict of interest policy was discussed, approved or revised.
- Documentation that fees paid for services provided by insiders were determined to be fair to the land trust and did not result in private inurement.
- Evidence that if an attorney represented both the land trust and a landowner he/she disclosed his or her dual role to all parties to the transaction and secured appropriate waivers, and that the land trust had appropriate, independent advice.
- Examples of recently completed conflict disclosure forms.
- Other information to help the Commission understand how the land trust manages conflicts of interest.

### For More Information, Practice 4A

Visit the Land Trust Alliance's complete online resource, The Learning Center, at <http://learningcenter.lta.org> for more information on implementing this practice. See especially the Alliance course "Avoiding Conflicts of Interest and Running an Ethical Land Trust."

## Indicator Practice 9G. Recordkeeping

Applicants must have a written records policy that addresses how organization and transaction records are created, collected, retained, stored and disposed. Please refer to the Commission's *Guidance Document* on this practice for more information.

## Indicator Practice 11E. Enforcement of Easements

Practice, Excerpted from *Land Trust Standards and Practices*

*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.)*

### Required Policy Elements, Practice 11E

The Commission will evaluate the applicant's policy and/or procedure as follows.

- The land trust must have a dated, written, easement enforcement policy and/or procedure.
- The policy and/or procedure must include the following:
  - Details on how the applicant will respond to a potential violation of an easement, including –
    - ◆ How the applicant will identify, review, and make decisions to resolve a suspected violation, and
    - ◆ The timing and nature of communications with the landowner; and
  - The role of each party (such as board members, volunteers, staff and partners) in the enforcement process.

### Additional Policy Considerations, Practice 11E

The Commission recommends that land trusts also consider including the following elements, while not required at the time of application, in their enforcement policies and/or procedures.

- If a land trust has different procedures for how it responds to minor violations and to major violations, clear descriptions of these differences.
- The steps the land trust will take to document its enforcement actions.

### Examples of How to Document Implementation, Practice 11E

In the event that a land trust has faced an easement enforcement action, the Commission may review the applicant's supporting documentation for evidence that the enforcement policy and/or procedure was followed. Below are examples of the types of documentation an applicant can provide; the Commission does not expect every applicant to have every document. Applicants should include materials that best show how they implement the practice. See the *Applicant Handbook* and application for accreditation for more about required documents.

- Minutes from the meeting when the enforcement policy was discussed, approved or revised.
- Evidence that each step in the policy and/or procedure was followed appropriately given the nature of the violation (such as meeting minutes, memos to the file, correspondence, etc.).
- Correspondence with the landowner concerning the potential violation or relative to enforcement actions.
- Evidence of engagement of legal counsel and involvement of experts and individuals, as needed, depending on the scope of the potential violation.
- Documentation secured during visits to the property to evaluate the violation or monitor enforcement actions.
- Minutes from board or committee meetings when the violation and/or enforcement action was discussed.

- Materials that demonstrate that the land trust carefully considered the resolution of the violation in the context of its ethical obligations to the donor, the public and the land conservation community.
- Evidence of the final resolution of the matter or that the land trust is actively pursuing resolution.
- Other information to help the Commission understand how the land trust responds to easement violations.

Applicants should note that the indicator practice also requires that the applicant have (or have a strategy to secure) the financial and legal resources for enforcement and defense. This requirement is evaluated along with the requirements of 11A. Funding Easement Stewardship. See the Commission's *Guidance Document* on 11A. Funding Easement Stewardship and 12A. Funding Land Stewardship for more information.

#### For More Information, Practice 11E

Visit the Land Trust Alliance's complete online resource, The Learning Center, at <http://learningcenter.lta.org> for more information on implementing this practice. See especially the Alliance course "Managing Conservation Easements in Perpetuity."

### **Indicator Practice 11I. Amendments**

Practice, Excerpted from *Land Trust Standards and Practices*

*The land trust recognizes that amendments are not routine, but can serve to strengthen an easement or improve its enforceability. The land trust has a written policy or procedure guiding amendment requests that: includes a prohibition against private inurement and impermissible private benefit; requires compliance with the land trust's conflict of interest policy; requires compliance with any funding requirements; addresses the role of the board; and contains a requirement that all amendments result in either a positive or not less than neutral conservation outcome and are consistent with the organization's mission.*

#### Required Policy Elements, Practice 11I

The Commission will evaluate the applicant's policy and/or procedure as follows.

- The land trust must have a dated, written, easement amendment policy and/or procedure.
- The policy and/or procedure must include the following:
  - A prohibition against private inurement and/or impermissible private benefit;
  - Any provisions for the management of conflicts of interest that are not covered in the conflict of interest policy;
  - A requirement for compliance with any funder requirements;\*
  - A description of the role of the board (and any committees) in addressing amendments;\*
  - A provision that all amendments must result in positive or not-less-than neutral conservation outcomes; and
  - A provision that amendments must be consistent with the applicant's mission.\*

\*See page 2.

#### Additional Policy Considerations, Practice 11I

The Commission recommends that land trusts also consider including the following elements, while not required at the time of application, in their amendment policy and/or procedure.

- Inclusion of the "Amendment Principles" recommended by the Land Trust Alliance in its 2007 report, "Amending Conservation Easements: Evolving Practices and Legal Principles."
- A description of the circumstances under which the land trust would consider an amendment and how its procedures may vary depending on the type of amendment being considered.

### Examples of How to Document Implementation, Practice 11I

In the event that a land trust has amended a conservation easement, the Commission will review the applicant's most recent amendment and may review additional supporting documentation for evidence that the amendment policy and/or procedure was followed. Below are examples of the types of documentation an applicant can provide; the Commission does not expect every applicant to have every document. Applicants should include materials that best show how they implement the practice. See the *Applicant Handbook* and application for accreditation for more about required documents.

- Minutes from the meeting when the amendment policy was discussed, approved or revised.
- A copy of an amended conservation easement before it was amended and the amended document (and if the amended easement varies significantly from the original one, information that will help reviewers understand the changes made, such as highlighting amended sections or detailing how changes made clauses either more permissive or more restrictive, etc.).
- Evidence that each step in the policy and/or procedure was followed appropriately given the nature of the amendment (such as meeting minutes, notes to the file, correspondence, etc.).
- Evidence of engagement of legal counsel and involvement of other parties, as needed, relative to the scope of the amendment.
- Minutes from board or committee meetings when the proposed amendment was discussed and when, if applicable, it was approved.
- Evidence that the amendment conformed to any requirements specified in the conservation easement or state law.
- Evidence that the land trust carefully considered the impact of the amendment on the conservation values protected by the easement.
- Evidence that the land trust carefully evaluated any potential fiscal impact of the amendment (such as via appraisals or other means) to ensure that the

amendment did not result in any private inurement or impermissible private benefit.

- Materials demonstrating that the land trust considered the amendment in the context of its ethical obligations to the donor, the public and the land conservation community.
- Other information to help the Commission understand how the land trust manages easement amendments.

In addition to documenting compliance with the practice, the application must be free of evidence that would indicate state or federal laws have been violated, that the land trust has taken money for, or otherwise benefitted improperly from, an amendment that impaired conservation values, or that it provided private inurement or impermissible private benefit.

### For More Information, Practice 11I

Visit the Land Trust Alliance's complete online resource, The Learning Center, at <http://learningcenter.lta.org> for more information on implementing this practice. See especially the Alliance course "Managing Conservation Easements in Perpetuity" and the 2007 report, "Amending Conservation Easements: Evolving Practices and Legal Principles."

### **Indicator Practice 3F. Board Approval of Land Transactions (when applicable)**

This policy is not required of every applicant. It is only required when a land trust board does not approve each land or easement transaction, and has instead delegated this important responsibility to another party.

### Practice, Excerpted from *Land Trust Standards and Practices*

*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.*

#### Required Policy Elements, Practice 3F

If the full board of the applicant organization does not approve every transaction, then the applicant must have the required delegation policy. This applies when a committee of the board (such as the executive committee or lands committee) or other designee makes the final decision about a transaction in lieu of full board action. A delegation policy is required even if delegation only happens on an occasional basis, such as at the end of year. The Commission will evaluate the applicant's policy as follows.

- The land trust must have a dated, written, delegation of transaction approval policy.
- The policy must include the following:
  - Any limitations on authority to act (such as requiring full board approval if a conflicted party is involved, or requiring a committee review before a final decision is made, etc.);
  - Criteria for transactions;
  - Any provisions for the management of conflicts of interest that are not covered in the conflict of interest policy;
  - Requirements for timely notification of the full board; and
  - Requirements for periodic evaluation of the policy.\*

\*See page 2.

#### Examples of How to Document Implementation, Practice 3F

The Commission will review the applicant's supporting materials – in the application and in the project documentation – for evidence that its delegation of land transaction approval policies are being followed. Below are examples of the types of documentation an applicant can provide; the Commission does not expect every applicant to have every document. Applicants should include materials that best show how they implement the practice. See the *Applicant Handbook* and application for accreditation for more about required documents.

- Minutes from the meeting when the delegation of transaction approval policy was discussed, approved or revised.
- Documentation that a delegated transaction had the appropriate level of review prior to approval.
- Documentation (such as meeting minutes, resolutions, memos to the file, etc.) that indicates the date the transaction was approved and who approved it.
- Evidence that the full board was notified of the transaction and its approval in a timely manner.
- Evidence of periodic review of the delegation policy.
- Other information to help the Commission understand how the land trust implements its policy to delegate transaction approval.

#### For More Information, Practice 3F

Visit the Land Trust Alliance's complete online resource, The Learning Center, at <http://learningcenter.lta.org> for more information on implementing this practice. See especially the Alliance course "Land Trust Boards: Preparing for Perpetuity."