

LAND TRUST

Standards and Practices

Interpretation and Application of the 2017 Revisions

**FOR QUASI-GOVERNMENTAL CONSERVATION ORGANIZATIONS
NOT RECOGNIZED AS TAX-EXEMPT ORGANIZATIONS
UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE**

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INTRODUCTION

The Land Trust Alliance designed *Land Trust Standards and Practices* (the Standards) primarily for nonprofit, tax-exempt land trusts. The 2017 Standards consist of 12 standards and 146 practice elements. 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 and Structure](#)), they may be funded by state or local appropriations (Standard 5, [Fundraising](#)), and their budgets may also be set by elected bodies (Practice 6A1, [Fiscal Health](#)).

This document is not a revision of the Standards. 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 the Standards 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 the 2017 edition of the Standards and the background narratives for each practice element found on the [Learning Center](#).

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 the Standards 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 11 percent of the conservation easements in the United States as of 2015. 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 the Standards.

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 the Standards.

DEFINITION

For interpretation and application of the Standards 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 with an independent board that provides oversight of the organization, as described in the next section
- 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 the Standards. Oversight by an independent board 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 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 THE STANDARDS

The following are interpretations or applications of specific standards and practice elements of the Standards that require clarification in order to be relevant to quasi-governmental conservation organizations. Of the 12 standards and 146 practice elements that comprise the Standards, 9 standards and 39 practice elements 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 the Standards. Some groups, however, that meet the definition on page 3 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 the Standards 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,” “governing body” or “commission” should be substituted for “land trust” or “board.”

STANDARD 1: ETHICS, MISSION AND COMMUNITY ENGAGEMENT

Land trusts maintain high ethical standards and have a mission committed to conservation, community service and public benefit.

Practices

A. Ethics

1. Adopt a written code of ethics and/or values statement and adhere to it in implementing the land trust's mission, in its governance and in its operations
2. Adopt a written whistleblower policy that protects individuals who come forward with information on illegal practices or unethical behavior



Both traditional land trusts and quasi-governmental conservation organizations have a responsibility to maintain public trust by upholding a high standard of ethics. Most state and municipal laws govern the ethics of their employees, and many quasi-governmental conservation organizations are already subject to ethics law, including whistleblower protections. In some instances, these laws may govern employees, but not volunteers and board members. To the extent that such laws do not exist or do not cover volunteers and board members, quasi-governmental conservation organizations should develop and adopt such policies that are not inconsistent with state law to cover them.

B. Mission, Planning and Evaluation

1. Adopt a mission that advances conservation and serves the public interest
2. Establish strategic goals for implementing the mission, and then review and update them, as needed, at least once every five years
 - a. Revisit the mission during the strategic review to confirm it is relevant
3. Review programs and activities at least annually to ensure they are advancing the strategic goals and make adjustments, as appropriate



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.

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

Land trusts fulfill their legal requirements as nonprofit tax-exempt organizations and comply 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

1. Incorporate or organize according to the requirements of state law and maintain legal status
2. Operate in accordance with established bylaws
3. Review the bylaws at least once every five years to ensure consistency with current operations, the articles of incorporation and state law



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 as part of its orientation and training.

C. Federal Tax Exemption

1. Maintain status as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code (IRC)
 - a. File a complete and accurate annual information return (Form 990 or equivalent) with the Internal Revenue Service (IRS)
 - c. Comply with federal lobbying limitations and reporting requirements
 - d. Do not engage in political campaigns on behalf of or in opposition to any candidate for public office



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. While quasi-governmental organizations do not file a Form 990 with the IRS, they comply with other state and federal reporting requirements, as appropriate. For some groups, board members are publically elected, but the organization itself does not engage in political campaigns on behalf of or in opposition to any candidate for public office. Where applicable, the organization meets state tax-exemption requirements.

STANDARD 3: BOARD ACCOUNTABILITY

Land trust boards act ethically in conducting the affairs of the organization and carry out their legal and financial responsibilities as required by law.

Practices

A. Board Responsibility

2. The board provides oversight of the land trust's finances and operations by:
 - a. Reviewing and approving an annual budget
 - d. Reviewing the externally prepared financial audit, review or compilation

- e. Adopting written policies or procedures for the responsible and prudent investment, management and use of financial assets



The board has the responsibility for oversight of the organization's finances and operations as determined by law and/or its charter. Regardless of the degree of retention of control of the organization's budget by a government entity, executive or agency, the board itself, at a minimum, reviews a detailed budget to ensure it is consistent with board policy and organizational mission, even if another entity has already approved the budget.

For some quasi-governmental groups, the annual financial audit is consolidated with the other parts of the related governmental unit, making it difficult to discern exactly what portions of the audit relate directly to the land trust program. In these cases, the board is expected to at least receive and review the audit or those portions of the audit that are relevant to the land trust. The board participates in establishing written policies or procedures for the investment and management of its financial assets to the extent allowed by law or as determined by its public charter.

B. Board Composition and Structure

1. Have a board of sufficient size, skills, backgrounds and experiences to conduct its work effectively
3. Have a board development process that includes procedures for recruiting and training board members



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 or nominating government entity, executive or regulator. The board actively supplements individual gaps in skills and experience with new board member orientation and training opportunities. This orientation and training is especially important for boards consisting exclusively of elected officials. The board has a process for identifying, recruiting (as appropriate) and making recommendations on board nominations to the appointing government entity, executive or legislator.

C. Board Governance

5. Adopt procedures for removing board members who are not fulfilling their responsibilities

6. Have governing documents that contain policies and procedures (such as provisions for a quorum and adequate meeting notices) to encourage broad participation and to prevent a minority of board members from acting for the land trust without proper delegation of authority



Where board appointments or nominations are not statutorily mandated, the board should adopt procedures for removing inactive or ineffective board members. 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.

D. Board Approval of Transactions

1. The board reviews and approves every land and conservation easement transaction
 - a. However, the board may delegate decision-making authority on transactions if:
 - i. It establishes written policies or has bylaws provisions that define the limits to the authority given to the delegated entity
 - ii. The delegated entity provides timely notification in writing to the full board of any completed transactions



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

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

Practices

A. 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



State or local law dictates the conflict management process for some quasi-governmental entities, particularly in identifying who is an insider and how organizations need to manage disclosures. For example, state law may mandate open meetings, with very narrow situations where the board can go into a closed session. Therefore, conflicted parties may not be able to leave the room while the board deliberates the issue. In these circumstances, the quasi-governmental entity should ensure that the disclosure of the conflict is well-documented. Where state or local law governs how conflicts are to be addressed for employees but not other insiders, quasi-governmental conservation organization should adopt a supplemental policy that is not in conflict with state law to cover those other insiders.

B. Payments to Board Members

1. Do not financially compensate board members for board service, except for reimbursement of expenses



Board members are not compensated by the organization, except for reimbursement of expenses. In limited circumstances, such as per organizing statute, board members may be allowed a small payment for each meeting they attend. 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.

STANDARD 5: FUNDRAISING

Land trusts conduct fundraising activities in a lawful, ethical and responsible manner.

Practices

B. Accountability to Donors

1. Provide accurate solicitation materials and other communications to donors and the public
2. Provide timely written acknowledgment of all gifts, including land and conservation easements, in keeping with IRS charitable contribution substantiation requirements
3. Maintain financial and other systems to document and comply with any donor restrictions on gifts
4. Have a written policy or procedure to ensure donor privacy concerns are honored



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 the organization is raising funds, 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 OVERSIGHT

Land trusts are responsible and accountable for how they manage their finances and assets.

Practices

A. Fiscal Health

1. Develop an annual budget that reflects the land trust's annual programs and activities
2. Develop and implement a strategy to address any deficit-spending trends
3. Assess the nature and variability of revenue and seek to diversify funding sources
4. Build and maintain sufficient operating reserves to sustain operations

5. Build and maintain dedicated or restricted funds sufficient to cover the long-term costs of stewarding and defending the land trust's land and conservation easements
 - a. If funds are insufficient, adopt a plan to secure these funds and a policy committing the funds to this purpose



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. 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. While diversifying funding sources is always desirable, some quasi-governmental entities are reliant on limited funding sources. Others are unable to hold an operating reserve, due to existing government rules and practices.

For some quasi-governmental organizations, there is a statutory obligation for the government to provide legal representation at the organization's discretion. In these circumstances – and especially where there is a history of the organization receiving qualified counsel at its request and at no cost – the organization may choose to forgo having dedicated or restricted defense funds. However, all quasi-governmental organizations must have dedicated or restricted stewardship funds or have a plan to secure these funds.

C. External Financial Evaluation

1. Obtain an annual financial audit, review or compilation by an independent certified public accountant or a qualified accounting professional, in a manner appropriate for the scale of the land trust



For some quasi-governmental groups, the annual financial audit is consolidated with the other parts of the related governmental unit. However, if the organization receives non-state or non-municipal funds (moneys outside of the state or local process or private funds) that are not included in the government financial audit, the organization must obtain a separate audit, review or compilation, as applicable, for those funds.

D. Written Internal Controls

1. Establish written internal controls and accounting procedures, including segregation of duties, in a form appropriate for the scale of the land trust, to prevent the misuse or loss of funds



Proper internal controls are crucial, not only to help protect the organization against theft, fraud and loss due to unethical or illegal behavior, but also to inspire confidence in donors, regulators, other board members and the public. While most quasi-governmental organizations have the authority to establish independent systems, some rely exclusively on government accounting systems and thus have limited ability to influence how these procedures are established.

E. Risk Management and Insurance

2. Carry general liability, directors and officers liability, property and other insurance, all as appropriate to the land trust's risk exposure or as required by law



While a correctly tailored insurance portfolio is an effective way to help manage risk for traditional land trusts, many quasi-governmental conservation organizations are self-insured.

STANDARD 7: HUMAN RESOURCES

Land trusts have sufficient skilled personnel to carry out their programs, whether volunteers, staff and/or consultants/contractors.

Practices

E. Staff

4. Adopt written personnel policies that conform to federal and state law



A sound set of personnel policies is essential for all land trusts with staff. Some quasi-governmental conservation organizations may not be able to adopt their own personnel policies because these may be set by state or local law for their employees.

STANDARD 10: TAX BENEFITS AND APPRAISALS

Land trusts work diligently to see that every charitable gift of land or conservation easement meets federal and state tax law requirements, to avoid fraudulent or abusive transactions and to uphold public confidence in land conservation.

Practices

B. Legal Requirements: Land Trust Responsibilities

3. File IRS Form 8282 when conveying a donated real property interest within three years of the date the land trust received the property



The IRS does not require quasi-governmental conservation organizations (or any government entity) to file Form 8282.

STANDARD 11: CONSERVATION EASEMENT STEWARDSHIP

Land trusts have a program of responsible stewardship for their conservation easements.

Practices

E. Conservation Easement Enforcement

1. Adopt a written policy and develop written procedures for documenting and responding to potential conservation easement violations
2. Investigate potential violations in a timely manner and promptly document all actions taken



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 and procedures detailing how the organization will respond to a potential easement violation. The policy and procedures 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.

E. Conservation Easement Enforcement

3. Involve legal counsel as appropriate to the severity of the violation and the nature of the proposed resolution



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 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.