

To: All concerned
From: Board of Directors of the Pennsylvania Land Trust Association
Date: September 13, 2016
Subject: Revision of Land Trust Standards and Practices

The board of directors of the Pennsylvania Land Trust Association, acting on the unanimous recommendation of the Association's policy advisory committee,¹ voted unanimously on September 13, 2016 to submit the following comment concerning the revision of Land Trust Standards and Practices.

How does a board's exercise of judgment intersect with Standards & Practices?

Previously adopted organizational policies, Land Trust Standards and Practices² (S&P), and other codes of behavior are no substitute for board judgment as applied to specific circumstances. These policies and codes provide crucial guidance to boards and often reflect decades of collective wisdom applicable to most situations. However, a board may reasonably—and sometimes must—act contrary to these adopted policies and other rules in order to responsibly direct the land trust. Land trust board members and staff should understand that in adopting organizational policies, including commitments to follow S&P, the Accreditation Commission's Requirements Manual, or other codes, they must not cede their ultimate decision-making responsibility as applied to specific circumstances.

This is not to say that deviating from adopted policies and codes is a trivial matter; it most certainly is not. Before a board or staff chooses to act contrary to adopted policies or codes of behavior, they should first deliberate whether to do so. They should consider whether short-lived benefits, wishful thinking, or groupthink might be clouding their judgment; they should consider undesirable precedents they might inadvertently be setting; they should consider whether consultation with someone outside the organization is desirable.

If ultimately, a decision is made to deviate, the board or staff should (in most situations) document the reasons for the decision—to ensure rigor in the analysis and help future boards and staff understand the organization's past actions. (This may also be necessary in regards to indicator practices if the land trust is accredited or will seek accreditation.)

The Problem

The revised S&P, as presently drafted, does not address the question posed above, leaving it to users to infer what is and isn't permissible regarding deviations. Some will take the view presented above; some will see S&P as written in stone, never to be diverged from; others will view S&P as a very loose guide. These differing views lead to negative consequences:

- Not perceiving a need to engage in substantial deliberation or document their reasoning, some land trusts will deviate from S&P with great frequency and intensity and view their actions as being entirely consistent with S&P. The result is that S&P fails to reduce undue risky behavior by these organizations.
- Not wanting to be the person who caused their land trust to lose its accredited status, some individuals will choose to err on the side of strict readings of and absolute conformance with S&P (and the Accreditation Requirements). Since they can never be sure whether the slightest deviation will cause the loss of accreditation,

they will work in a perpetual state of low-level fear. The results are that: (1) initiative, creativity, and independent thinking are inadvertently stifled; (2) actions suboptimal to conservation are taken, wasting donor dollars, etc.); and (3) the land trust movement shifts from land trust, Alliance, and Accreditation Commission people working in prosperous partnership to a fear-based hierarchical relationship with land trust people acting more to avoid getting in trouble with the Commission than doing the right thing by conservation.

These opposing negatives aren't theoretical. Here and there, they are evident now. The question is whether this S&P revision can constructively minimize these phenomena going forward.

A Solution

To address this problem, the Pennsylvania Land Trust Association offers the following draft text as a new first practice under Standard 1:

AA. Responsible Exercise of Judgment

1. In taking actions, the board attends to the organizational policies, Land Trust Standards and Practices, and other codes of behavior it has adopted.
2. The board deviates from its adopted policies and codes if and when, after deliberation, it determines that deviation is ethically sound in the particular circumstance and necessary or desirable to optimize conservation in the long run.
3. The board contemporaneously documents the reasons for deviations from its policies and other codes of behavior.
4. In its strategic planning, the board reviews its past and ongoing deviations from Standards and Practices.

A less desirable alternative would be to address this matter solely in a preamble to S&P. Another alternative would be to address the matter in general form in a preamble and with specificity in a practice under Standard 1. Establishing a new practice is the preferred route because:

- People don't read preambles or, if they do, they do it once, and seldom return.
- The matter can be addressed in a practice that is both operable and measurable.
- Addressing the matter is crucial to healthy land trusts and a healthy land trust movement.

¹ The Association's 29-member policy advisory committee is made up mainly of executive directors and senior staff of Pennsylvania's land trusts.

² Like the previous editions of S&P, the present draft contains a mix of practices addressing different issues: ethics, legalities, running an effective organization, supporting the land trust movement as a whole, optimizing public relations, etc. The practices include items that everyone can agree are absolutely crucial to being a responsible land trust; items that everyone aspires to but can't necessarily achieve; items that people disagree as to whether they are black and white or aspirational; and items that some disagree with altogether—that it's not appropriate for some or any organization. Ideally, the practices would be sorted to reflect these categories but a strategy is elusive as how exactly to sort the practices and, in any case, consensus might be difficult as to what items fit into what categories. This state of affairs reinforces the need for land trusts to exercise discretion within defined bounds.