

## **American Chestnut Land Trust (ACLT) Conflict of Interest Policy**

- I. **Purpose.** The purpose of this Conflict of Interest Policy is to guide ACLT's decision-making process in order that its decisions are made by disinterested members of the Board of Directors, that all transactions and arrangements entered into by ACLT benefit the general public as opposed to private individuals, and that the Board's minutes reflect how any potential conflicts were avoided or managed. The policy defines the persons that are covered by the policy and the types of conduct that raise potential conflict of interest concerns. It explains how conflicts should be disclosed and sets forth procedures for avoiding or managing any conflicts.
  
- II. **Application of Policy.** This policy applies to ACLT insiders, defined to include:
  - A. Members of the ACLT Board of Directors;
  - B. The ACLT Executive Director and Staff;
  - C. Substantial contributors to the ACLT, defined as persons who have contributed or bequeathed an aggregate of more than \$5,000 received by the ACLT before the close of the taxable year [see Internal Revenue Code Sections 507(d)(2) and 4958(f)];
  - D. Related parties to the above persons, defined by the IRS as spouses, siblings, spouses of siblings, ancestors, children, grandchildren, great-grandchildren, and spouses of children, grandchildren, and great-grandchildren; and
  - E. Other persons, such as committee members, contractors, consultants, advisory board members, and other key volunteers who are known by the organization to have an ability to influence decisions of ACLT or to have access to information that is not available to the general public.
  
- III. **Conflict of Interest.** A conflict of interest can arise when the financial or other interests of an ACLT insider may be seen as competing with the interests of the organization.
  - A. Financial Interests. Examples of financial interests where a conflict may exist would be situations where an insider, directly or indirectly benefits or profits as a result of a transaction or arrangement entered into by the ACLT include, but are not limited to, the following:
    1. ACLT contracts to purchase or lease goods, services, or properties from an insider;
    2. ACLT offers employment to an insider;

3. An insider is provided with a gift, gratuity, or favor, of a substantial nature, from a person or entity which does business or seeks to do business with the ACLT; and
4. An insider is gratuitously provided use or benefit of any facilities, property, or services of the ACLT that are not available to any similarly situated member of the general public.

In general, an insider shall not be deemed to derive any direct or indirect advantage from a connection with the ACLT unless their interest is considered to be above and beyond that derived by the general public. For example, an insider who owns property in proximity to a proposed new land trust acquisition should not be deemed to derive a financial benefit beyond that of any other property owners in proximity to the new acquisition as a result of a recreational or open space premium that may accrue to real estate sales in the vicinity.

- B. Non-financial interests. A non-financial conflict may exist in situations where an insider obtains a non-financial benefit or advantage that they would not have obtained absent their relationship with the ACLT, or where their duty or responsibility owed to the organization conflicts with a duty or responsibility owed to another organization. Examples of non-financial interests include, but are not limited to, the following:
  1. An insider seeks to obtain preferential treatment by the ACLT for himself, a relative or business associate;
  2. An insider seeks to make use of confidential information obtained from the ACLT for their own benefit or for the benefit of a relative, business associate or another organization; and
  3. An insider seeks to take advantage of an opportunity, or enable a relative, business associate or other organization to take advantage of an opportunity, which they have reason to believe would be of interest to the ACLT.

#### IV. Protocols to Avoid Conflicts of Interest at Board and Land Acquisition and Preservation Committee (LAPC) Meetings

- A. The most common conflicts arise from land purchases, conservation easements, major purchases, and hiring. When dealing with these types of transactions, the following four findings of fact should be incorporated into the decision-making process.
  1. Finding of Best Interest. The transaction or decision in question should be in the best interest of the organization.
  2. Fairness to the land trust. The transaction or decision in question should be fair to the organization and not offer an advantage to an "Insider" person due to their position in the organization.

3. Arms-length transactions. The organization's standard business practices should be followed when negotiating the specifics of the transaction "as if the insider had no history with the organization and as the land trust would proceed with a non-conflicted party." [See Land Trust Standards and Practices, Standard 4.A.]
  4. No private inurement. There should be no private benefit to any interested ACLT insider party.
- B. Standard procedure for recommendations/motions for land purchases, conservation easements, and major purchases coming before the Board for decision. These procedures primarily impact the Land Acquisition and Preservation Committee (LAPC), but it is a practice that should be followed generally.
1. If a committee or person wishes to make a motion for Board action, it should be submitted in writing in advance of the Board meeting. A description of the transaction/action should be included as well as an explanation of the steps taken to address the four findings above. This information will be included in the package of materials provided to the Board prior to its meeting.
  2. If, as a result of Board discussion, a motion is made during a Board meeting which must be acted upon at that meeting, the motion should affirm that the four findings cited above are satisfied.
  3. Note that this procedure applies only to final Board approvals. It does not apply to primary or exploratory actions (e.g., asking the Board whether it wants to explore the possibility of purchasing a parcel of land).
- C. Notice and Recusal Requirements.
1. At each Board meeting, LAPC or other committee meeting, if there is an agenda item involving property easements, land purchases, or major expenditures, the agenda will note that ethics requirements apply and there will be an attachment to the agenda that reminds members of ACLT's Conflict of Interest Policy.
  2. Before the agenda item involving easements, land purchases, or major expenditures is discussed, either the Committee Chair or the President of the Board of Directors will ask if anyone has a conflict, as per the Conflict of Interest Policy. Any person with a conflict of interest will be asked to leave the room/leave the call while the item is being discussed.

**V. Disclosure of Actual or Potential Conflicts of Interest.**

- A. Education. The ACLT will use all practical means to educate its staff, contributors, volunteers, and others who might be considered ACLT insiders about the ACLT Conflict of Interest Policy. For example, the ACLT will maintain a copy of this Policy on its website, include the Policy in the new Board member orientation packet, and use other reasonable means of dissemination in order to raise awareness that this Policy places ACLT insiders under a continuing obligation to disclose potential conflicts of interest to the ACLT.
  - B. Annual Affirmation of Compliance and Disclosure Statement. The ACLT will require each member of the Board, the Executive Director, and each member of the ACLT's Land Acquisition and Preservation Committee to file an Annual Affirmation of Compliance and Disclosure Statement, in the form attached hereto (Appendix A). This affirmation provides for the full and complete disclosure of the material facts of any actual or potential conflicts of interest. The disclosure statement shall be completed upon an insider's initial association with the ACLT (or upon being considered an insider) and shall be updated annually thereafter. An additional disclosure statement shall be filed at such time as any actual or potential new conflict arises. Copies of the disclosure statements shall be maintained in the ACLT files by the Executive Director.
  - C. Employees. ACLT staff members other than the Executive Director are required to disclose any actual or potential conflict of interest in writing to the Executive Director as soon as it is known or reasonably should be known. Other insiders who have an ability to influence the decisions of the organization or who have access to confidential information not available to the public but who are not in a direct decision-making role, are required to disclose any actual or potential conflict of interest in writing to the ACLT President of the Board of Directors as soon as it is known or reasonably should be known.
- VI. **Procedures for Review of Actual or Potential Conflicts.** Whenever there is reason to believe that an actual or potential conflict of interest exists between the ACLT and an insider, the Board of Directors shall refrain from entering into the proposed transaction or arrangement until such time as the proposed transaction or arrangement has been approved by the disinterested members of the Board in accordance with the following procedures.
- A. An insider who has an actual or potential conflict of interest shall abstain from discussing the issue or proposed action involved unless requested by the Board to answer questions or provide material factual information on the issue or proposed action.
  - B. An insider who has an actual or potential conflict of interest shall not participate in any way in, or be present during, the deliberations and decision making of the ACLT with respect to such transaction or arrangement.

- C. Approval of the transaction or arrangement by the disinterested members of the Board of Directors shall be by vote of a majority of Directors in attendance at the meeting at which a quorum is present. An insider shall not be counted for purposes of determining whether a quorum is present nor for purposes of determining a majority vote of the Directors in attendance.
  - D. The minutes of the meeting shall reflect that the conflict disclosure was made, that the insider was not present and did not participate in any way in the deliberations or vote, and that the Board determined that the decision it reached satisfied the four basic findings of fact. (i.e., it was in the best interests of the ACLT; it was fair; it was an arms-length transaction; and there was no private inurement).
  - E. If the Board determines that the nature and magnitude of the conflict of interest warrants, the Board shall request that the insider take a leave of absence from their association with the ACLT until such time as the matter giving rise to the conflict of interest has been resolved. In the event that an individual is likely to have a serious ongoing conflict, they should not continue to serve on the Board or staff.
- VII. **Failure to Disclose an Actual or Potential Conflict of Interest.** If the Board of Directors has reason to believe that an insider has failed to disclose an actual or potential conflict of interest, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose. If, after hearing the response of the insider and making any further investigation as may be warranted in the circumstances, the Board determines that the insider has in fact failed to disclose an actual or potential conflict of interest, it shall take appropriate corrective action. Appropriate action would depend on the nature/degree of the conflict; corrective action could include up to and including requesting a Board or committee member to resign.

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