

## POLICY 02

### CONFLICT OF INTEREST POLICY

#### UPPER PENINSULA LAND CONSERVANCY

Accepted on the 12th day of January, 2010

#### Policy:

It is the policy of the Upper Peninsula Land Conservancy (the "Conservancy") to disclose real or perceived conflicts of interest involving the Conservancy and related parties and to address such conflicts in a manner that will fully protect the integrity and reputation of the Conservancy as well as related parties.

#### Purpose:

The Conservancy's effectiveness depends upon maintaining the highest level of confidence with all parties with whom it works. Both the perception and reality of entering into transactions that create conflicts of interest can be damaging to the integrity and reputation of the Conservancy. For that reason, it is imperative that the Board have a well-developed and consistently implemented conflict of interest policy.

A conflict of interest policy will help the Conservancy comply with charitable practice standards. In addition, this policy will help assure compliance with the Internal Revenue Service rules against private inurement and private benefit and with state statutes addressing conflict transactions.

#### Understanding Conflict Concepts and Definitions:

1. Conflict of Interest: A conflict exists when a covered person (as defined below) proposes to act on any issue, matter or transaction in which the Conservancy has an interest, and/or the covered person may have an interest separate from the Conservancy. A conflict of interest also exists in situations in which there is an appearance that a covered person is utilizing inside information (as defined below) that is proprietary to the Conservancy for his or her benefit, is acting in his or her own interests rather than the best interests of the Conservancy, has the ability to exercise undue influence over the Conservancy decisions, or is receiving favorable treatment by the Conservancy because of his or her status as a covered person.
2. Covered Persons: All employees, Directors, and, as defined below, close relatives, major donors, related organizations, and other insiders.
3. Close Relative: Spouse, child, (natural and adopted), parent, and step parent, in-laws, grandchild, grandparent, brother or sister of a covered person, and any person with whom a covered person shares living quarters under circumstances that closely resemble a marital relationship or who is financially dependent upon the covered person.
4. Inside Information: Any material information that is identified as confidential and proprietary, pertaining to the business and affairs of the Conservancy, whether related to a specific transaction or to matters pertaining to the Conservancy's interests, activities and policies.

5. Major Donor: An individual, corporation or foundation that makes a gift or a pledge of \$25,000 or more at any one time or cumulatively \$50,000 within a 5 year period prior to the occurrence of the conflict.

6. Other Insiders: Individuals such as volunteers or former employees who, by virtue of their continued involvement with the Conservancy, either have access to inside information that could place them within a conflict situation or could give the appearance of such persons having the ability to unduly influence the Conservancy. Depending on the facts and circumstances, an independent contractor may be an "other insider" where that person has access to inside information.

7. Related Organizations: Any organization, corporation, partnership, trust, estate, joint venture and unincorporated affiliation of any kind as well as public boards and commissions and not-for-profit entities in which a covered person directly or indirectly:

a. owns or controls 5% or more of any voting security; or

b. is a Director, Officer, executor, administrator, trustee, beneficiary, controlling partner, otherwise serves in a fiduciary capacity or holds a substantial interest; or

c. has legal or de facto power to control the election of a majority of Directors; or

d. has legal or de facto power to exercise a controlling influence over the management or policies.

8. The employees and Directors will be held accountable to read, understand and fully comply with this policy.

#### How to Handle Conflicts

1. The President shall annually appoint a Conflicts Audit Committee.

2. In the event of a potential conflict involving a Director, it is the obligation of the involved Director to bring the matter to the attention of the President of the Conservancy who will refer the matter to the Conflicts Audit Committee of the Board that will review, make recommendations and disclose actions taken at the next Board meeting.

3. Staff with potential conflicts will disclose them in writing to the Conservancy President who will review them, take appropriate actions and report substantive conflict issues to the Conflicts Audit Committee of the Board.

4. While it is always best to avoid conflicts, there may be occasions in which the conflict is unavoidable. In such instances, the Conflicts Audit Committee or President, will document the following information in writing: the facts and circumstances surrounding the potential conflict, justification for proceeding with the potential conflict and the recommended course of action to be taken to mitigate the Conservancy's participation in the conflict. At a minimum the mitigation actions should include asking the individual involved in the potential conflict to recuse and absent himself or herself from any involvement in discussions or decisions pertaining to the potential conflict.

#### Disclosure of Potential Conflicts

Each Director and employee shall complete, sign, and file a Conflicts Disclosure form, which shall disclose his/her and his/her spouse's occupation, employer, address, hobbies, and

participation on other Boards of Directors. The Conflict Disclosure form shall be filed by each new Director and employee before serving and thereafter by each Director and employee at the beginning of each fiscal year of the Conservancy. At each Board Meeting, each Director will be asked to disclose any changes to his/her Conflict Disclosure form. Each Board Meeting's agenda shall include "Disclosure of Changes in Annual Conflicts Disclosure". The Conflicts Audit Committee shall review the disclosures and conduct an annual audit of any real or apparent conflicts regarding the Conservancy.

#### General Standard in Evaluating a Conflict

In evaluating a transaction, contract, or project which involves a real potential or perceived conflict of interest with a covered person, the Board and Conflicts Audit Committee may approve the transaction, contract or project only if it finds that it is fair and benefits the Conservancy and the affected covered party did not vote on the matter.

#### Compensation and Reimbursement for Directors and Volunteers

The provisions which apply to the compensation and reimbursement of Directors are covered in the By-Laws of the Conservancy.

#### Questions To Help Evaluate Conflicts and Potential Conflicts:

There are many difficult and ambiguous issues associated with the types of conflict issues that confront the Conservancy. In order to help those involved with the Conservancy activities to understand and evaluate those actual and potential conflicts, the following are typical categories of situations where the potential for conflict might arise. While not all inclusive, the following represent some of the types of conflict situations that may be confronted by the Conservancy. Key questions and issues that must be addressed for each of these types of conflicts are set out below.

1. In evaluating conflict situations, the Conservancy shall be guided by the following and considerations in order to determine an appropriate course of action:

- ☐ Compliance with the letter and the spirit of all applicable laws relevant to all parties to the transaction;
- ☐ Adherence to the Conservancy Policies and Procedures;
- ☐ Ability to act within the scope of the Conservancy's values, such as "Integrity beyond Reproach;"
- ☐ Avoidance of private benefit and inurement;
- ☐ Transparency;
- ☐ Conservation benefits likely to be achieved;
- ☐ Financial or other benefit to the Conservancy;
- ☐ Nature and extent of risk to the Conservancy's reputation;
- ☐ Availability of other alternatives;
- ☐ Ability to mitigate reputational risks;
- ☐ Financial or other benefits to the other party.

2. Hiring individuals who are close relatives of the Conservancy employees, Directors and other parties having access to inside information.

Can this position be structured so that the conflicted party has no supervisory responsibilities with the employee without disrupting the Conservancy's business practices?

Will the conflicted party play any role in the hiring process?

Has the Conservancy accessed the local public relations and political environment to be sure that this hire will not damage the Conservancy's reputation?

Does this person have a unique expertise/situation that the service cannot be obtained anywhere else?

What are the alternatives if this person is not employed by the Conservancy?

Has the Board balanced the financial benefits to the Conservancy with the reputational risk to the Conservancy of the hire?

How will this appear in the eyes of the public when tested against the value of integrity beyond reproach?

3. Contracting for products or services with covered persons.

Is this product or service integral to the success of the Conservancy?

Has the Conservancy explored the local market value for such product or service or employed a formal bid solicitation to ensure that the Conservancy obtains the best market price for the work or services?

Has the Board received information from parties other than the conflicted party that address the quality of the service or products being acquired or provided?

Has the Conservancy accessed the local public relations and political environment to be sure that this hire will not damage the Conservancy's reputation?

Will the management of the delivery of the service or product within the Conservancy be done by someone other than the conflicted party or other than someone who is supervised by the conflicted party?

How will this appear in the eyes of the public when tested against the value of integrity beyond reproach?

4. Serving on boards or councils transacting business with the Conservancy or in which there may be potential adverse interest.

Is the person serving on the Board of that entity as part of their job responsibility for the Conservancy?

Was there an advance disclosure and have both parties agreed that in cases of conflict or where there was a direct and adverse interest/competition, that there would be a mechanism for recusal, disclosure or any other safeguards to protect the Conservancy?

Is there a plan in place for how staff will conduct themselves when serving on other Boards?

☒ Will the individual's time spent working issues for the other Board take away from their ability to perform their job for the Conservancy? What is the benefit to the Conservancy?

☒ What impact will this service have on the Conservancy's being able to do its business? To the Conservancy's reputation?

☒ Will any decisions made by the individual working for the other organization be made with regard to the Conservancy's best interest?

☒ What are the costs and benefits to the Conservancy?

☒ What are the alternatives, if any?

☒ How will this appear in the eyes of the public when tested beyond the value of integrity beyond reproach?

Examples – Potential Conflicts:

1. Inside Information: A conflict or perceived conflict exists when inside information is used by a covered person either for the purpose of gaining advantage for the covered person, or for any other purpose not specifically approved by the Conservancy.

2. Accepting of Gifts: A conflict or perceived conflict exists when a covered person accepts from any individual or organization that has an interest in any issue, matter or transaction in which the Conservancy also has an interest, any personal gift, benefit, service, loan, discount, concession or other item of more than nominal value. For the purpose of this document, nominal value shall mean less than \$100.

3. Employment of Close Relatives. A conflict or perceived conflict exists when an employee and close relative will have the same supervisor or manager. Likewise, a conflict or perceived conflict will exist when an employee will be placed in a position where he or she will report either directly or indirectly to a close relative.

4. Fees for Advisory Services. A conflict or perceived conflict exists when a covered person provides advisory or consulting services to an individual or organization that has an interest in any issue, matter or transaction in which the Conservancy has an interest.

5. Outside Work: A conflict or perceived conflict exists if an employee or Director engages in any employment or activity outside the Conservancy that:

a. competes with Conservancy business or takes away an opportunity from the Conservancy to do business; or

b. implies Conservancy sponsorship or support of the outside employment or activity that may adversely affect the public image of the Conservancy.

