



## Gallatin Valley Land Trust Conflict of Interest and Ethics Policy

### I. Purpose.

The effectiveness of the Gallatin Valley Land Trust depends on maintaining the highest level of credibility, confidence, accountability, and trust with the communities it serves and all parties with whom it works. The decisions and activities of the Board of Directors, committees, and staff, whether or not addressed in this policy, are governed by an overriding requirement of honesty, good faith, and fiduciary responsibility to the organization.

The Gallatin Valley Land Trust seeks to avoid or to disclose and properly manage any conflict of interest that may arise in its operations or transactions, by following its bylaws, applicable federal and state law, and the policies and procedures below. Each board, committee, and staff member will be provided a copy of this policy at the time they join the organization and shall acknowledge in writing their receipt and understanding of this policy. It is expected that all persons subject to this policy will conduct themselves honestly and fairly in dealings with the Gallatin Valley Land Trust, and that they will not use their position or knowledge gained through their association with the Gallatin Valley Land Trust, nor engage in any transaction with the Gallatin Valley Land Trust for private benefit, except as permitted under this Policy.

### II. Definitions.

**Conflict of Interest.** A conflict of interest arises when an “insider” (as defined below) is in a position, or is perceived to be in a position, to benefit financially from a project, transaction or other action of the organization – whether the benefit is to himself or herself, to a family member or to another organization with which the insider is associated.<sup>1</sup> Under Montana law, a member of the Board of Directors might have either a *direct* or an *indirect* conflict of interest.<sup>2</sup> An indirect conflict of interest is present when another entity is a party to a transaction with the Gallatin Valley Land Trust and a member of the Board of Directors has a material interest in the other entity or is a director, officer, trustee, or general partner in the other entity.<sup>3</sup>

**Insiders.** This Policy applies to all “insiders.” Insiders include board members, committee members, staff members, substantial contributors, family members of the above, those who have the ability to influence decisions of the organization and those with access to information not available to the general public (including volunteers). This definition is broader than the IRS requires; however, it should be noted that under federal law, conflicts of interest with certain insiders can still occur up to five years after the insider leaves the organization. Under Internal Revenue Code Section 4958, an insider (referred to as a “disqualified person”) is a person who at any time during the five-year period ending on the date of the transaction in question was in a position to exercise substantial influence over the affairs of the organization, including members of such a person’s family and entities controlled by such persons.

**Compensation of Board Members.** Board members may not serve for personal financial interest and are not compensated except for reimbursement of expenses and, in limited circumstances, for professional services that would otherwise be contracted out. Any compensation will be in compliance with charitable trust laws. Neither the Chair, nor the Secretary and Treasurer shall be compensated for professional services.

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<sup>1</sup> Land Trust Alliance, Land Trust Standards and Practices, Practice 4A: Dealing with Conflicts of Interest (2007), available at <http://s3.amazonaws.com/landtrustalliance.org/LandTrustStandardsandPractices.pdf>.

<sup>2</sup> Montana Code Ann. Section 35-2-418 (2017).

<sup>3</sup> Montana Code Ann. Section 35-2-418(4) (2017). The Official Comments on this code section state that an interested member of the Board of Directors must never obtain a profit from his or her dealings with the nonprofit corporation.

### III. Obligations of Conflicted Party.

If an insider knows or discovers that he or she has a potential or actual conflict of interest, he or she shall be obligated to:

- a. Disclose the existence of the potential or actual conflict of interest to the Board of Directors and to the Executive Director by signing an Acknowledgment and Disclosure agreement on an annual or semi-annual basis.
- b. Disclose all material facts of the conflict and the transaction known to the insider to the Board of Directors and the Executive Director.<sup>4</sup>
- c. Abstain from discussing the potential conflict of interest with other insiders unless specifically requested by the Board of Directors.
- d. Recuse him or herself from participating in Board and/or Committee deliberation related to the conflicted transaction or project, unless information is requested by the Board/Committee from the conflicted party. The conflicted party shall not vote on the matter, and shall leave the room during discussions related to the transaction or project.
- e. If requested, to take a temporary leave of absence from the Board/Committee until the conflicted transaction or project has been concluded.

**IV. Obligations of the Board of Directors.** When a conflict of interest is disclosed to the Board of Directors, they shall be obligated to:

- a. Review the conflicted transaction or project for its compliance with this Policy. The Board may approve the transaction or project only if all of the following conditions are met:
  - i. The transaction or project is in the best interests of the Gallatin Valley Land Trust and is consistent with its conservation purposes and mission.
  - ii. The transaction or project has been considered on its merits after full and complete disclosure of the conflict of interest by the insider as required by this Policy.
  - iii. Apart from the disclosures required by this Policy, any insider affected by such conflict of interest has not participated in the Board's discussion or vote concerning the transaction or project and was, in fact, absent during both the discussion and vote.
  - iv. The Board of Directors, acting in good faith, reasonably concludes that the transaction or project is fair to the Gallatin Valley Land Trust.<sup>5</sup>
  - v. The Board of Directors votes on the transaction or project and a majority of the non-conflicted members of the Board of Directors approves the transaction.<sup>6</sup>
  - vi. No such transaction may be approved by the vote of a single Director.<sup>7</sup>

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<sup>4</sup> Mont. Code Ann. Section 35-2-418(2) (2017). This disclosure is required by law.

<sup>5</sup> See Mont. Code Ann. Section 35-2-418(2) (2017).

<sup>6</sup> Mont. Code Ann. Section 35-2-418(5) (2017).

<sup>7</sup> *Id.*

- b. Review the nature and magnitude of the conflict of interest to determine if it warrants action to avoid the appearance of impropriety. If found to warrant action, the Board shall request that the insider affected by the conflict of interest take a leave of absence from the Gallatin Valley Land Trust activities until the transaction or project is concluded.
- c. Document the existence of the conflict, the disclosures provided, and the Board's compliance with this Policy.

**V. Transactions with Insiders.** The Gallatin Valley Land Trust may occasionally decide to conduct transactions with insiders.

- a. In these cases, the Gallatin Valley Land Trust shall:
  - i. Follow all of its standard policies and procedures for such a transaction or project, including this Policy.
  - ii. Ensure that the Board of Directors has followed and documented its compliance with the procedures outlined in this Policy.
  - iii. If the transaction or project involves the purchase of a conservation easement or property, the Gallatin Valley Land Trust will first obtain a qualified independent appraisal prepared in compliance with the Uniform Standards of Professional Appraisal Practice by a Montana certified appraiser with verifiable conservation easement or conservation real estate experience. The Gallatin Valley Land Trust will document that it is not paying more than fair market value for the property interest.
  - iv. If the transaction or project involves the sale of property by the Gallatin Valley Land Trust to insiders, the Gallatin Valley Land Trust will ensure that the property is widely marketed in a manner sufficient to ensure that the property is sold at or above fair market value and to avoid the reality or perception that the sale inappropriately benefited an insider.
- b. In no case may the Gallatin Valley Land Trust lend money to an insider or guarantee the obligation of an insider.<sup>8</sup>

This policy is intended to ensure compliance with **Standard 4: Conflicts of Interest** of the Land Trust Standards and Practices and the Montana Nonprofit Corporation Act.

*Adopted by GVLT Board of Directors June 21, 2018*

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<sup>8</sup> Mont. Code Ann. Section 35-2-435 (2017).