

Land Camp 2015

Organizational Risk Assessment session

Governance and Personnel: (Konrad Liegel and Steve Cook)

CONTEXT FOR DISCUSSION

- ***Land Trusts are Publicly-Supported 501c3 Charities***
 - ***A Privilege; Not a Right***
 - Legal requirement: Must be organized and operate in furtherance of its exempt (conservation) purposes
 - Avoid public campaign activity
 - Avoid substantial lobbying activity
 - Meet the public support test
 - Avoid substantial unrelated business income (UBI)
 - Avoid inurement and more than an incidental amount of public benefit
 - Comply with substantiation requirements for charitable contributions
 - Comply with disclosure requirements
 - Ethical necessity: ***Maintain public trust***

- ***Last Trusts are Community-Based Organizations***
 - Community: The service area of the Land Trust
 - Land Trust mission: Envision and protect the landscape that will continue to feed and nurture the community
 - ***Ethical necessity: Reflect, and be responsive to, your community***

- ***The Inevitable Fork In the Road*** – What is Legally Required and What is Ethically Right

- ***Some big picture thinking about risk:***
 - There are two ways to view what we're talking about when we talk about "risk":
 - One is the traditional dictionary definition, which focuses on the possibility of negative outcomes: "the possibility that something bad or unpleasant (such as an injury or a loss) will happen."
 - The other is the way risk is thought about in investing: The chance that an investment's actual return will be different than expected.
 - The point is to realize that "risk" can include both "bad risk," which you want to try to avoid, and "good risk" that you might want to be exposed to. Another way to look at it is how risk is considered in investing: that there is usually a positive relationship between risk and reward. A land trust might have to take some risk in order to have a chance at a significant reward.

- So, the point is not always simply to avoid risk. Instead, the point is to:
 - Recognize the risk (positive and negative) something may entail, so that you can plan for it.
 - Do a cost/benefit analysis to evaluate whether a risk is worth taking.
 - Consider your organization's risk tolerance. A land trust may decide it should be more risk averse than another kind of entity might be; land trusts shouldn't take "bet the company" risks.
 - Many negative risks can be avoided, or managed, without sacrificing potential positive risk. Much of what we're discussing here is the avoidance or management of negative risk.

GOOD GOVERNANCE IS THE FOUNDATION FOR MANAGING RISK

- IRS Point of View:
 - A well-governed charity is more likely to obey the tax laws, safeguard charitable assets, and serve charitable interests than one with poor or lax governance
 - A charity that has clearly articulated purposes that describe its mission, a knowledgeable and committed governing body and management team, and sound management practices is more likely to operate effectively and consistent with tax law requirements
- **Mission:**
 - Adopted?
 - Current?
 - **Forward-Looking:** Serve to explain why the LT exists, popularize what it hopes to accomplish, and guide what activities it will undertake, where, and for whom?
- Bylaws:
 - Clear as to board and officer composition, duties, qualification and voting rights?
 - Current copy provided to all board members and made available to general public?
- Governing Body and Organizational Control:
 - Size, composition, expertise and *diversity of viewpoints* consistent with land trust mission and needs?
 - Independent?
 - Meet regularly?
 - Have clear lines of authority (board, executive director, staff, volunteers and counsel) **with everyone involved being risk alert and participating in risk management?**
 - Operate consistent with Bylaws?

- Governance and Management Descriptions and Policies:
 - Board member position description?
 - Board committee descriptions and responsibilities?
 - Executive compensation?
 - *Conflicts of interest?*
 - Investments?
 - Fundraising?
 - Minutes and records?
 - Documentation retention and destruction?
 - Ethics and whistleblower policy?

- Fiduciary Oversight (Extent and Responsibilities)
 - *Systems in place to make sure assets are properly used, consistent with organization's mission*
 - Financial statements
 - Prepared internally?
 - How often considered by board?
 - Audit committee and/or outside auditor?
 - Form 990
 - Disclosure document
 - Reviewed and approved by board?
 - Public transparency
 - Form 1023 exemption application and IRS determination letter
 - Form 990
 - Annual corporate report
 - Annual financial report

ASSESSING AND MANAGING SPECIFIC KINDS OF RISK

- *Planning* is a good tool for recognizing and managing risk.
 - During strategic planning and conservation planning a land trust can identify risks, and decide how to reduce or manage negative risk.
 - Consider conducting a "risk audit" or "risk assessment" during planning exercises and from time to time (annually?) first to identify risk, and then to decide which risks to take and how best to manage them.

- Many risks can be managed using *insurance*. Key risks and types of insurance include:
 - Risks associated with title in land transactions/title insurance
 - "Legal risk" (of disputes with owners of land subject to conservation easements, encroachments, etc.)/Terra Firma.
 - Liability:
 - Injury to persons and property of others/general liability.
 - Property/property loss.
 - Vehicles/auto and vessel coverage.

- Volunteers/volunteer coverage.
 - Directors and officers/D&O coverage.
 - Employees/employment practices liability.
 - Excess liability/umbrella coverage.
 - Contractors: require insurance coverage, proof of insurance (a certificate) and being added as an additional insured.
 - Tip: investigate "Conserve-a-Nation" coverage--Chubb Insurance through Alliance, sponsored by LTA.
- A variety of *legal tools* can help reduce negative risk:
 - "Recreational Use Statutes" in Oregon and Washington. ORS § 105.682¹ and RCW 4.24.210.
 - Waivers and releases: signed, written waivers and releases from volunteers, visitors, etc.--"better than nothing".
 - Good contractual provisions. In addition to requiring contractors to have insurance, you can (i) obtain a release or waiver from a contractor; and (ii) require a contractor to defend, indemnify and hold harmless the Land Trust.
- *Personnel* (Employment).
 - Risks include turnover, morale and effectiveness, dishonesty, liability claims.
 - Management tools include:
 - Solid hiring practices: "casting a wide net," thorough interviewing and background checks (criminal, driving, etc.), hiring for both skills and cultural "fit", buy-in from other staff.
 - Good "on-boarding". Orientation, inclusion, training.
 - Policies and employee handbook.
 - Competitive pay and benefits package.
 - Job description, regular and quality evaluations.
 - Supervision.
 - Addressing problems: don't avoid, don't procrastinate, communicate directly and clearly, document, support and follow up.
 - Comply with employment laws (wage and hours, anti-discrimination, etc.).
 - Ensure there is no discrimination, harassment, etc.
 - Open lines of communication.
 - Human resources/employment law expertise.
- *Succession* (Managing Effectively for Organizational Transitions). Issues of succession, whether it is your E.D., your conservation director, or your receptionist/administrative assistant, pose risks.
 - Solid job descriptions.
 - Make sure everyone has a backup.
 - "Distribute" key responsibilities.

- The power of vacations and sabbaticals.
- Plan for succession, and ask your staff to plan for their succession.
- Other risks and Other Tools:
 - Risk to reputation. Questionable transactions, accidents, other crises.
 - Of course, try to avoid.
 - Do some thinking in advance re how to respond.
 - Identify resources you would use--legal, public relations.
 - LTA Standards and Practices and Accreditation--a powerful tool.
 - Investment risk. Sure, stocks involve a certain kind and degree of risk. But so does holding your assets in cash, or fixed income securities. If you have endowment funds in invest, consider both kinds of risk. To manage risk, involve knowledgeable individuals, consider hiring professional help.

Some resources to consult:

- <http://www.landtrustalliance.org/training/sp/land-trust-standards-and-practices>
- <http://www.landtrustalliance.org/conservation/conservation-defense/risk-management-planning>
- The Conservation Defense Center. <http://tlc.lta.org/clearinghouse>
- Good materials available on the LTA Learning Center website if you search "risk management" including a really solid book, and presentations from Rally.

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