

Conservation Capacity and Enforcement Capability

A Research Report



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INTRODUCTION

Background

The Land Trust Alliance conducted this research project in 2006 to develop an understanding of the range of approaches land trusts are using in implementing *Land Trust Standards and Practices* 7A (Capacity), 11A (Funding Easement Stewardship) and 12A (Funding Land Stewardship).

The results of this work will be used by the Land Trust Alliance to help direct future research priorities and training needs. They will also be helpful in assisting land trusts in determining how well they meet 26 CFR §1.170A-14(c)(1) *Eligible Donee*, “To be considered an eligible donee under this section, an organization must be a qualified organization, have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the restrictions.” This report will also be shared with the Land Trust Accreditation Commission and may be used to inform the design of its application process.

Methodology

For the purposes of this project, the Land Trust Alliance evaluated resources in terms of the personnel capacity required to acquire and steward fee-owned lands and conservation easements, and the financial resources necessary to steward and defend these lands. The research project was divided into three categories – acquisition capacity, conservation easement stewardship and fee land stewardship. A discussion paper was prepared for each category that contained a series of research questions. For each question, there was an introduction, a summary of the findings of a background literature review, and a series of discussion options and questions. See the Appendices for a complete set of the discussion papers.

The discussion papers were sent to a random sample of land trusts of differing size and geographic location. Phone interviews were conducted with a total of 27 land trusts (nine for acquisition capacity, nine for conservation easement stewardship and nine for fee land stewardship), representing nine all-volunteer land trusts and 18 staffed land trusts, to gather additional data and solicit feedback on the discussion options. A complete list of the interviewees can be found on page 27. See the Appendices for the collective interview results for each discussion paper.

HIGHLIGHTS OF GUIDING RECOMMENDATIONS

The findings of this research report, presented in detail in the next section, present an opportunity to offer some general guiding recommendations to land trusts. These are summarized below.

Practice 7A, Capacity

1. Land trusts should provide their volunteers and staff with training opportunities, such as attending the National Land Conservation Conference: Rally, Land Trust Alliance regional conferences, or other equivalent training events provided by regional service centers or other conservation organizations and universities, on an ongoing and as-needed basis as appropriate to their organization.
2. As a guide, one trained staff person or volunteer can steward 50-100 easements in a year. However, this figure is highly dependent on the variables and thus should be carefully evaluated on a case-by-case basis.
3. A land trust should ensure that it has a process in place to consider and evaluate all the applicable variables in order to determine staffing for responsible land stewardship.

Practice 11A, Funding Easement Stewardship

1. Use the matrix as a guideline to help land trusts determine if their stewardship endowment is of sufficient size to cover most of their annual easement stewardship costs.

Factors to be considered:	I DESIRABLE	II ACCEPTABLE	III UNACCEPTABLE
A. Endowment	75-100% OR Minimum of \$3,500/CE	Less than 75% (or <\$3,500/CE) but has all of the elements below:	No endowment OR Endowment less than 75% (or <\$3,500/CE)
B. Required annual funding		Dedicated or secure source of funding to make up deficit	AND Missing B, C or D

C. Credible fundraising plan		To bring land trust to level I within 5 years
D. Fundraising test		Annual amount needed in plan under C is less than 50% of annual budget

2. As a guide, if there is no dedicated stewardship fund, a land trust should have:
 - A strong operating reserve;
 - A long history of member contributions to these causes or dedication of special event money to stewardship;
 - Fairly low stewardship expenses compared to the overall budget; and
 - A plan to build a dedicated easement stewardship fund within five years.

Practice 11E, Enforcement of Easements

1. As a guide, in order to fully fund an enforcement action or other litigation, a land trust needs a minimum of \$50,000 in its legal defense/stewardship fund. If the land trust holds more than 15 easements, it needs an additional \$1,500 to \$3,000 per easement in this fund.
2. As a guide, for the majority of land trusts, it is standard practice to plan for major defense funding to come from the principal of the dedicated fund. However, land trusts need to plan for and take action to replenish the fund should it drop below the recommended level.
3. As a guide, if a land trust lacks sufficient funds to fully fund an enforcement action, it needs to demonstrate that it has a fundraising strategy and a board policy committing funds to this purpose. (The defense preparedness options in this report can supplement a land trust’s stewardship funding and serve as an interim step to securing permanent funding.)

Practice 12A, Funding Land Stewardship

1. As a guide, if there is no dedicated stewardship fund, a land trust should have another dedicated source of funds AND
 - A strong operating reserve;
 - A long history of member contributions to these causes or dedication of special event money to stewardship; and
 - Fairly low stewardship expenses compared to the overall budget; OR
 - A strong operating reserve supplemented by income generated from the property or other sources.

The diversification of funding sources for land stewardship is key to meeting this practice if there is no dedicated stewardship fund.

2. Use the matrix as a general guideline to help land trusts determine if their stewardship endowment is of sufficient size to cover most of their annual land stewardship costs. However, lack of an endowment should not be construed as unacceptable if the land trust has other diversified sources for funding its land stewardship program.

Factors to be considered:	I DESIRABLE	II ACCEPTABLE	III UNACCEPTABLE
A. Endowment	75-100%	Less than 75% but has all of the elements below:	No endowment OR Endowment less than 75%
B. Required annual funding		Dedicated or secure source of funding to make up deficit	AND Missing B, C or D
C. Credible fundraising plan		To bring land trust to level I within 10 years	<u>AND</u> No other diversified funding sources
D. Fundraising test		Annual amount needed in plan under C is less than 50% of annual budget	

3. Capital needs should be calculated upfront as part of the land acquisition process. While a stewardship fund that covers routine annual maintenance costs may be ideal, a land trust also need to plan for occasional replacement costs, larger capital improvements or other contingencies, as appropriate to the property. Lack of an endowment should not be construed as unacceptable if there are other sources of funding.

PART I: ACQUISITION CAPACITY

Practice 7A – Capacity

The land trust regularly evaluates its programs, activities and long-term responsibilities and has sufficient volunteers, staff and/or consultants to carry out its work, particularly when managing an active program of easements.

Question 1 – Personnel Capacity

A land trust must have enough knowledgeable and dependable assistance to carry out its programs, no matter what its level of activity. It should regularly evaluate whether it has adequate volunteers, staff and/or consultants to carry out its programs and responsibilities. Often this evaluation is part of the annual budgeting and work planning processes. The first question attempts to evaluate how many transactions a staff person or volunteer can reasonably complete in any given year and when a land trust might need additional assistance to complete its project load in a thorough manner. It was assumed that all projects are completed according to *Land Trust Standards and Practices*.

Discussion option

As a guide, land trusts should plan to have one trained acquisition staff or volunteer available for every 5-15 transactions they complete in a year.

Variables

The 5-15 range is general guidance. An organization's actual ratio may vary depending on:

- The experience of the person
- The complexity of the transaction
- The extent of legal advice or other expertise available

Opinion on discussion option

The interviewees' range of responses to this discussion option varied widely. While one respondent thought 25-30 transactions per year is reasonable, most thought the 5-15 range was high or very high. Many of the smaller land trusts had only completed a handful of transactions. Only three out of the nine land trusts interviewed thought the range was reasonable. One respondent suggested a better gauge might be how many projects one person can manage per year, not necessarily complete.

Additional variables

In addition to those variables listed above, the most frequent ones mentioned included:

- Funding – purchased easements take much more time to complete than donations.
- How many total staff you have and what their other responsibilities are – there was general agreement that it's difficult to define an individual's role as working exclusively on land transactions. Many project staff also attend community

- meetings, work on public relations, visit donors, write grants – these are all part of their duties in completing a given land transaction.
- The extent of back-up support one has for any given project – for example, is someone else creating the baseline documentation, drafting the easement, etc.

Concluding Recommendation: Given the broad range of opinion on this discussion option, the number and extent of the variables, and the belief by many of the interviewees that any figure would be meaningless and artificial, a firm quantitative figure should not be established at this time. Some consideration should be given, however, to a land trust practitioner's overall annual project load and other job responsibilities.

Question 2 – Adequately Trained

A land trust should seek volunteers and staff who have appropriate training or experience to carry out its work or a willingness to learn new skills. Where volunteers and staff are lacking certain skills, the land trust should ensure they gain them by providing access to training and education opportunities. This question attempts to identify the range of acceptable approaches to training land trust personnel.

Sources of training and education

- LTA sponsorship, Rally and publications
- Technical workshops and conferences sponsored by LTA, state and regional land trust service centers, other conservation organizations, and professional organizations
- In-house lectures and seminars that draw on specialized staff or outside expertise
- Educational materials, such as professional publications and newsletters
- Tuition sharing or reimbursement for university or community college courses in topics such as natural resource management and legal issues
- Field trips to project sites, other land trusts, etc.
- Membership in related professional organizations
- Meetings, roundtables or networking with other land conservation professionals
- Participation in a state or regional land trust network

Discussion option

As a guide, land trusts should provide volunteers and staff with a formal training program at the beginning of their tenure with the organization and periodically thereafter. Training can be in-house, or a combination of workshops, reading and/or visiting other land trusts.

Variables

The range of training options is general guidance. An organization's actual training program may vary depending on:

- The number of people being trained
- The ability to have a staff person or volunteer shadow a more experienced person
- The level of experience of the land trust practitioner

Opinion on discussion option

Four of the nine respondents thought the discussion option made sense and sounded reasonable. Two thought that training is so unique to an individual organization's needs that it is difficult to generalize. Given the sophisticated nature of land protection projects, two other interviewees preferred to hire staff who are already qualified and wouldn't need a formal training program. All agreed that on-going training is important.

Additional variables

In addition to those variables listed above, the most frequent one mentioned was:

- Budget and funding available for training.

Formal training program

When asked what constitutes a "formal training program," four of the nine interviewees did not know, and hoped that the Land Trust Alliance could help them define what it is. Other respondents listed a variety of items, such as legal skills, becoming familiar with land trust terminology, shadowing another employee, and other items from the Sources of Training and Education list above.

Requisite to "adequately trained"

When asked what activities are requisite to "adequately trained, given the Sources of Training and Education list, six out of nine of the respondents cited attendance at the National Land Conservation Conference: Rally and/or Land Trust Alliance regional conferences. The other most frequently named items included:

- Meetings, roundtables and networking with other land trusts;
- Ongoing access to LTAnet and *Land Trust Standards and Practices*;
- Shadowing of a more experienced land trust practitioner; and
- Publications, newsletters and other in-house reference materials.

Definition of "periodically"

When asked how often is "periodically," six out of nine respondents stated annually, or at least annually. One respondent preferred the term "ongoing," as opposed to "periodically," citing the importance of general knowledge and keeping up with what's going on in the field. Several said training on an "as needed" basis is equally important, and land trusts should always be on the lookout for opportunities that may be helpful to their personnel.

General comments

One respondent observed that you learn most by doing transactions, and cautioned against the risk of being over-trained and under-experienced. Another acknowledged that really understanding conservation easements takes time. Several commented that more training is important for relatively inexperienced employees. Also, if training is more extensive, it could happen less frequently.

Concluding Recommendation: Land trusts should provide their volunteers and staff with training opportunities, such as attending the National Land Conservation Conference: Rally, Land Trust Alliance regional conferences, or other equivalent training events provided by regional service centers or other conservation organizations and universities, on an ongoing and as-needed basis as appropriate to their organization.

PART II: CONSERVATION EASEMENT STEWARDSHIP

Practice 11A – Funding Easement Stewardship

The land trust determines the long-term stewardship and enforcement expenses of each easement transaction and secures the dedicated or operating funds to cover current and future expenses. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure these funds and has a policy committing the funds to this purpose.

Practice 11E – Enforcement of Easements

The land trust has a written policy and/or procedure detailing how it will respond to a potential violation of an easement, including the role of all parties involved (such as board members, volunteers, staff and partners) in any enforcement action. The land trust takes necessary and consistent steps to see that violations are resolved and has available, or has a strategy to secure, the financial and legal resources for enforcement and defense.

Question 1 – Personnel Capacity

A land trust must have enough knowledgeable and dependable assistance to carry out its programs, no matter what its level of activity. A land trust needs to be sure not only that it can undertake the necessary work of the land trust today, but also that it can sustain its work into the future. With conservation easements in particular, this places obligations on the land trust to develop easement stewardship systems and to implement these systems consistently. The land trust should periodically assess the stewardship obligations it has, determine if more assistance is necessary to fulfill these obligations and plan accordingly. This question attempts to evaluate how many conservation easements a staff person or volunteer can reasonably be expected to manage in any given year and when a land trust might need additional assistance.

Discussion option

As a guide, one trained staff person or dedicated volunteer can steward 60-120 conservation easements in a year.

Variables

The 60-120 range is general guidance. An organization's actual ratio may vary depending on:

- The depth of the relationship the land trust wishes to build with the landowner
- The complexity of the conservation easements
- The travel time between conservation easements
- The size of the properties

Opinion on discussion option

Of the six staffed land trusts interviewed, four felt that the range is reasonable, and two thought that it is probably a good guide, but a bit on the high end. Two of the three all-volunteer land trusts interviewed thought that the figures were high; the other believed that a paid staff person could probably manage 200.

Additional variables

The interviewees suggested a number of different variables in addition to those listed above (see pages 32-34 in the Appendix for a complete record). Those mentioned most frequently include:

- What other responsibilities the stewardship person may have and what else they're working on (a response similar to that for Question 1 of Acquisition Capacity).
- Location of a property in relation to other easement-protected property. Those located in close proximity to one another are much easier to steward.
- Methodology used by the land trust with respect to its stewardship program – how hands-on they, and how much time they spend with the landowner during the monitoring visit.
- Character of the landowner – whether you're dealing with the original landowner/donor or a successor owner.
- Easements with management responsibilities (farming, ranching, forestry) or public access provisions require more time to steward.

Concluding Recommendation: As a guide, one trained staff person or volunteer can steward 50-100 easements in a year. However, this figure is highly dependent on the variables and thus should be carefully evaluated on a case-by-case basis.

Question 2 – How Much of Stewardship Fund Income Should Cover Costs

Land trusts have a perpetual obligation to steward their conservation easements and to defend these conservation lands. The surest way to meet stewardship and defense costs is to set up a dedicated fund that is managed separately from the land trust's operating budget. Most land trusts fund all or a portion of their annual easement stewardship costs from these dedicated funds. This question attempts to evaluate to what degree the income from any easement stewardship fund should cover annual stewardship costs.

Discussion option

As a guide, the following table summarizes what would be desirable, acceptable and unacceptable to ensure that a land trust has a stewardship endowment of a sufficient size to cover most of its annual easement stewardship costs:

Factors to be considered:	I DESIRABLE	II ACCEPTABLE	III UNACCEPTABLE
A. Endowment	75-100% OR Minimum of \$3,000/CE	Less than 75% (or <\$3,000/CE) but has all of the elements below:	No endowment OR Endowment less than 75% (or <\$3,000/CE)
B. Required annual funding		Dedicated or secure source of funding to make up deficit	AND Missing B, C or D
C. Credible fundraising plan		To bring land trust to level I within 10 years	
D. Fundraising test		Annual amount needed in plan under C is less than 50% of annual budget	

I. As a guide, it would be desirable for a land trust to have an endowment (yielding a 5 percent rate of return) sufficient to cover between 75 and 100 percent of its annual stewardship costs; OR

If the land trust does not calculate its annual stewardship costs, to have an endowment sufficient to generate enough income to cover an annual cost of between \$200 and \$500 per easement (equal to an endowment per easement of \$4,000 to \$10,000 – 75 percent of this is \$3,000).

II. It would be acceptable for a land trust to have an endowment that covers less than 75 percent of its annual stewardship costs (or that has less than a minimum of \$3,000 per easement) IF

B. There is some other dedicated and secure source of income (see question 3, below); AND

C. A credible fundraising plan that enables the land trust to raise the desirable funds within 10 years; AND

D. The funds required to be raised each year do not exceed 50 percent of the land trust's annual budget.

III. It would be unacceptable for a land trust to have no stewardship endowment OR For a land trust to have an endowment that covers less than 75 percent of its annual stewardship costs (or that has less than a minimum of \$3,000 per easement) AND the land trust is lacking either B, C or D, above.

Opinion on discussion option

All but one of the interviewees (who admitted little experience in analyzing stewardship costs) – from both all-volunteer and staffed land trusts – felt that the chart was a reasonable guide, made sense and was a good way to get land trusts thinking about this issue. The majority felt that a land trust should always strive to have enough funding to cover 100 percent of its costs. Two experienced respondents thought the minimal figure of \$3,000 per easement was too low; one thought it may be too high. Another interviewee suggested that the amount of time to bring the land trust to level I from level II be reduced to 5 years.

Is it unacceptable for a land trust to have no stewardship endowment?

Six out of nine interviewees felt it would be unacceptable for a land trust to have no easement stewardship endowment. Two weren't sure, but agreed that it was risky and a land trust should at least be thinking about having one. One respondent thought it would be acceptable if the land trust had the money elsewhere.

Variables

The respondents suggested a number of different variables (see pages 60-61 in the Appendix for a complete record), including:

- Being able to raise the stewardship endowment;
- Land trusts with huge annual operating budgets funding all of their costs from the operating budget;
- How funds are invested; and
- The draw on the endowment.

Concluding Recommendation: Use the matrix as a guideline to help land trusts determine if their stewardship endowment is of sufficient size to cover most of their annual easement stewardship costs. Increase average minimum per easement to \$3,500 for those land trusts who do not calculate their actual costs, with the understanding that these costs will vary by organization. Decrease the length of time for the fundraising plan in level II to 5 years.

Question 3 – Other Dedicated and Secure Funds

There are a handful of land trusts that have made the deliberate decision not to create a separate stewardship or enforcement fund. The Catskill Center for Conservation and

Development (NY), with a large endowment of more than \$1 million, relies on general operating dollars to fund all of its stewardship actions. Similarly, the Civil War Preservation Trust, the nation's largest nonprofit organization devoted to the preservation of Civil War battlefields, funds both its routine stewardship activities and all enforcement expenses directly from its operating funds and membership income.

Possible sources of dedicated and secure annual income

- Membership income
- Funding from state legislatures, including a solid history of such funding

Discussion option

As a guide, if there is no dedicated stewardship fund, a land trust should have:

- A strong operating reserve;
- A long history of member contributions to these causes or dedication of special event money to stewardship; and
- Fairly low stewardship expenses compared to the overall budget.

Opinion on discussion option

Two of the three all-volunteer land trusts and two of the six staffed land trusts agreed that this would be an acceptable alternative. Three of the staffed land trusts also agreed that this would be acceptable, but a stewardship endowment would be preferable and a land trust should still be working to build a stewardship fund at the same time. As one respondent said, "If a land trust can raise the money every year to cover these costs, it should be able to raise the money for a stewardship endowment." Two interviewees, one from an all-volunteer land trust and one from a staffed land trust, felt that only an endowment fund would be acceptable.

Variables

Only one respondent cited any possible variables – that of "donor fatigue." Too many land trusts in the same region competing for the same donors.

Other possible sources of dedicated and secure annual income

The interviewees suggested a number of possibilities in addition to those in the list above (see pages 62-63 in the Appendix for a complete record). Those mentioned most frequently include:

- Grant money – may be difficult to secure but there are opportunities to tie to education, outreach and contract monitoring
- Government funding through dedication of tax revenue to land trust (e.g., Maine, Pennsylvania)
- Payments/fees from the landowner for monitoring and stewardship, especially from the original easement donor
- Bequests

Concluding Recommendation: Revise the discussion option to include one additional bullet:

- *A plan to build a dedicated easement stewardship fund within 5 years.*

Question 4 – Rate of Litigated Easement Violations and Enforcement Actions

Experienced easement holders recommend that land trusts consider judicial proceedings a last resort. Going to court is costly both in time and money. Nevertheless, sometimes a land trust must go to court. Although these expenses are extremely difficult to predict, this question attempts to evaluate the rate of litigated violations and their projected costs so that a land trust can better prepare for these events.

Discussion option

As a guide, a land trust can expect 1 litigated easement violation over a 10-year period for every 300 easements it holds. A land trust can also expect 1 easement enforcement action (not necessarily litigated) costing more than \$2,500 to resolve, over a 10-year period, for every 100 easements it holds.

Opinion on discussion option

Three of the nine interviewees agreed with the statement and thought it was a reasonable guide. Two thought the figures were modest, and four respondents had no opinion. One interviewee commented, “Maybe the rate is so low because we haven’t been aggressive in pursuing violations.” The majority agreed that the rate will most likely increase, especially as easement lands change hands.

Variables

The interviewees suggested a number of variables (see pages 64-65 in the Appendix for a complete record). Those mentioned most frequently include:

- Dealing with next-generation landowners – the further time and generations in ownership past the initial donor, the greater the chance that your violation rate will increase
- The quality of your conservation easements – how well-drafted they are, how many older easements you have in the mix, how complex they are
- The quality of your easement stewardship program – good recordkeeping, good baseline monitoring report, good landowner relations

Concluding Recommendation: More experience and research is needed to test this discussion option. However, it seems likely that the rate of violations will increase in the future.

Question 5 – Funding Enforcement Actions

Most land trusts expect to invade fund principal for major enforcement expenses, such as legal defense. Some, in contrast, view the fund principal as a true endowment that can never be touched, and plan to raise enforcement funds elsewhere. Some build a separate legal enforcement fund, in addition to the monitoring fund. Land trusts should be able to fund their annual stewardship costs and have enough funding in place to at least initiate an enforcement action, if not pay for it completely. This question attempts to evaluate how much money a land trust needs to have in its stewardship and/or enforcement fund to defend its easements.

To Fully Fund an Enforcement Action or Other Litigation

Discussion option

As a guide, in order to fully fund an enforcement action or other litigation, a land trust needs to have a minimum of \$50,000 in its legal defense/stewardship fund. If the land trust holds more than 15 easements, it needs an additional \$1,500 to \$3,000 per easement in this fund.

Opinion on discussion option

Six of the nine interviewees felt this was a reasonable number and a good rule of thumb. Two had no opinion, and one respondent thought the \$50,000 figure was too low. Several felt that the costs would likely increase over time.

Variables

The interviewees suggested a number of variables (see pages 66-67 in the Appendix for a complete record). Several of the variables were identical to those for Question 4. One respondent suggested that for those land trusts operating in multiple states or in places where attorneys traditionally charge higher fees, the costs would also be higher. Those variables mentioned most frequently include:

- The quality of the easement – a bullet-proof easement would cost less to defend
- Mediation or arbitration provisions in the easement language – should keep the cost down

Concluding Recommendation: As a guide, in order to fully fund an enforcement action or other litigation, a land trust needs a minimum of \$50,000 in its legal defense/stewardship fund. If the land trust holds more than 15 easements, it needs an additional \$1,500 to \$3,000 per easement in this fund.

To Initiate an Enforcement Action

Discussion option

As a guide, in order to initiate an enforcement action or other litigation, a land trust needs to have a minimum of \$5,000 in its legal defense/stewardship fund. If the land trust holds more than 15 easements, it needs an additional \$150-300 per easement.

AND

The land trust needs a credible plan OR some other type of defense preparedness (see Question 6, below) to ensure that the dispute is resolved.

Opinion on discussion option

Only one respondent agreed that the discussion option was a reasonable. Four thought it was acceptable, but a minimal approach. Two interviewees had no opinion, one thought that the \$5,000 figure was low, and another felt that the entire discussion option was inappropriate. The majority was uncomfortable with this approach and expressed concern about the ability of the land trust to complete the enforcement action.

“Something is better than nothing, but I’m worried about initiating a legal action that you’re not financially prepared to follow through.” Another interviewee commented, “We’re all going to be looking for help for the bigger cases.”

Variables

Only a few respondents reported any variables, and one respondent suggested the variables are the same as for the preceding section (To Fully Fund an Enforcement Action or Other Litigation). The other variables mentioned are:

- The nature of the violation – if it is critical and damaging the resource you need to be able to resolve the problem immediately
- Those landowners who have deep pockets that can challenge an easement and run the organization into the ground
- As land trusts get better at the job they do (i.e., easement stewardship), the need for legal intervention will become less

Concluding Recommendation: It may not be appropriate to encourage land trusts to initiate an enforcement action when they do not have the funding in place or a solid plan to take it to its conclusion. This discussion option should not be pursued further. Rather, land trusts should be encouraged to secure enough funding to fully fund an enforcement action, as per the previous section.

Does Defense Funding Come from the Principal or the Interest?

Discussion option

As a guide, for the majority of land trusts, it is standard practice to plan for major defense funding to come from the principal of the dedicated fund.

Opinion on discussion option

All the respondents agreed with the discussion option and use (or would use) that approach. One staffed land trust’s annual budget includes legal fees, so enforcement costs first come from the general fund and then from its dedicated stewardship fund, if necessary.

Variables

Only one interviewee from a staffed land trust suggested any variables. They are:

- The land trust's endowment policy – does the endowment earn more than you are withdrawing? (should always be putting money back into the endowment)
- Income sources – whether your endowment consists of public or private dollars, and any restrictions on use

Where would funding come from to rebuild the endowment?

The interviewees cited a number of different possible sources for rebuilding the endowment. Most indicated that they would pursue some kind of specific fundraising effort, including a special appeal to a pre-identified group of “angels” or “sugar daddies,” fundraising through their memberships, and targeting major donors. Other frequently mentioned sources include:

- Settlement of the case or through court action – clause in easement requires the landowner to cover the land trust's costs
- Continuing to build up the easement stewardship fund as new projects come in, perhaps at a higher rate

Concluding Recommendation: As a guide, for the majority of land trusts, it is standard practice to plan for major defense funding to come from the principal of the dedicated fund. However, land trusts need to plan for and take action to replenish the fund should it drop below the recommended level (see previous section).

Question 6 – Other Types of Defense Preparedness

If a land trust does not have adequate funds for stewardship and enforcement it should have a fundraising strategy and a board policy committing the funds for this purpose, and be able to demonstrate progress toward meeting the goals of the strategy. This question attempts to evaluate what other types of defense preparedness would be acceptable.

Possible types of defense preparedness

- Letter of commitment of pro bono legal services
- Attorney General support and involvement and proof thereof
- Fundraising plan with actual pledges of specific amounts
- In-house litigation/legal defense counsel on staff
- Shared litigation/legal defense counsel or access to an attorney pool/regional attorney network
- Conservation easement co-holding arrangement
- Third-party and back-up grantee enforcement of easements
- Fundraising – charitable pledges from members/donors in the event there is a violation
- Title insurance for all easement acquisitions (not just purchases) – provides protection against some easement challenges

Discussion option

As a guide, if a land trust lacks sufficient funds to initiate an enforcement action, it needs to demonstrate that it has a fundraising strategy and a board policy committing funds to this purpose or can demonstrate its defense preparedness in other ways.

Opinion on discussion option

Only one respondent thought that the discussion option was acceptable. The majority of the interviewees were skeptical that any of these approaches were realistic and would be an appropriate substitute for having a stewardship fund over the long-term. One respondent likened the process to retirement planning:

There are alternatives to planning for retirement – you can get a roommate or a part-time job – but ideally, you want a retirement fund. We take a lot of pride in the fact that we can say we have both a stewardship fund and a legal defense fund. It instills a lot of trust and credibility in our organization.

Variables

Only one respondent offered any variables, suggesting that the defense preparedness options might be suitable for a small land trust with only one or two easements, but not for larger land trusts with more active easement programs.

Which types of defense preparedness would be acceptable?

The majority of respondents were skeptical that any of the options presented in the list above would be acceptable over the long-term. Each is problematic and presents its own unique set of challenges. However, three interviews reacted positively to the use of third-party interests and back-up grantees, particularly if the back-up is a regulatory agency with a strong record of enforcement authority. Other options supported by more than one respondent included:

- Co-holding arrangements; and
- Shared litigation/legal defense counsel on staff or access to an attorney pool/regional attorney network.

Other options

Some other ideas suggested by the interviewees included:

- Creation of peer interest groups to file amicus briefs in the event of litigation
- Easement insurance
- Mediation should be a standard practice to mitigate some of the expense
- Pooled legal defense fund managed by the Land Trust Alliance to which land trusts can apply for assistance

Concluding Recommendation: As a guide, if a land trust lacks sufficient funds to fully fund an enforcement action (see Question 5), it needs to demonstrate that it has a fundraising strategy and a board policy committing funds to this purpose. The defense preparedness options in this report can supplement a land trust's stewardship funding and serve as an interim step to securing permanent funding.

PART III: FEE LAND STEWARDSHIP

Practice 12A – Funding Land Stewardship

The land trust determines the immediate and long-term financial and management implications of each land transaction and secures the dedicated and/or operating funds needed to manage the property, including funds for liability insurance, maintenance, improvements, monitoring, enforcement and other costs. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure these funds and has a policy committing the funds to this purpose.

Question 1 – Personnel Capacity

A land trust must be a responsible steward of its lands. All the work and resources invested in acquiring the land are wasted if the property is not defended against encroachment and misuse or if its resources are not managed to maintain their conservation values. Unless the land trust is prepared and has the capability to undertake the many responsibilities of managing a property in perpetuity, it should not take on its permanent ownership. The land trust should periodically assess the stewardship obligations it has, determine if more assistance is necessary to fulfill these obligations and plan accordingly. This question attempts to evaluate how much land a staff person or volunteer can reasonably be expected to manage in any given year and when a land trust might need additional assistance.

Discussion option

As a guide, one trained staff person or dedicated volunteer can manage up to 25,000 acres in a year.

Variables

The 25,000 acre figure is general guidance. An organization's actual ratio may vary depending on:

- The intensity of public use
- The extent of management necessary to protect the natural resource values
- Any lease arrangements for farm and/or forest land

Opinion on discussion option

This discussion option generated the most disagreement and lively discussion from the interviewees. None of the respondents thought the figure was accurate, and the majority thought it was exceedingly high. Several thought that this topic is difficult to quantify and any number would be arbitrary and not a relevant or useful gauge of a land trust's stewardship capacity. There was agreement that there are many variables that could impact this figure and much depends on the land trust's specific management goals for any given property. As one respondent put it, "Whether it's one acre or 1,000 acres, it doesn't really make a difference. It depends on your management objectives."

Variables

The interviewees cited numerous variables expanding on the list above. One respondent suggested developing a checklist for land trusts of all the variables that they can then use to evaluate how much personnel and associated costs would be required for the management of any given property. A complete list of the variables suggested by the interviewees can be found on pages 79-81 of the Appendix. Those mentioned most frequently include:

- The extent of invasives and the amount of restoration work needed
- The number of immediate neighbors, shape of the property – the more boundaries you have the more possible problems
- Size of the properties – a lot of smaller pieces are more difficult to manage than one large parcel
- Intensity of use – active management of property, educational programs, etc. v. just leaving the property in its natural state
- Purpose of owning the property – the land trust’s mission and its overall stewardship goals
- The number and condition of infrastructure, particularly any historic buildings

Acreage or number of properties

When pushed, most respondents felt that the number of properties is a more accurate gauge than acres in assessing personnel capacity. However, the majority agreed that neither is a good gauge on its own and that a land trust must consider the variables in order to determine staffing for responsible land stewardship.

Concluding Recommendation: Given the difficulty of quantifying this topic, the broad range and extent of the variables, and the belief by the majority of the interviewees that any number would be arbitrary and not a useful gauge of a land trust’s stewardship capacity, a firm quantitative figure should not be established at this time. Rather, a land trust should ensure that it has a process in place to consider and evaluate all the applicable variables in order to determine staffing for responsible land stewardship.

Question 2 – Other Dedicated and Secure Funds

A stewardship fund may not be the sole source of funding for land management, and it may not actually be managed by the land trust as a separate account. The Little Traverse Conservancy (MI), for example, relies on funds from its general endowment fund (of \$2 million) and income from some of its properties, along with a small stewardship endowment, to fund its annual management costs.

Possible sources of dedicated and secure annual income

- Income from properties, including agriculture, forestry, recreation and rental incomes

Discussion option

As a guide, if there is no dedicated stewardship fund, a land trust should have another dedicated source of funds AND

- A strong operating reserve;
- A long history of member contributions to these causes or dedication of special event money to stewardship; and
- Fairly low stewardship expenses compared to the overall budget; OR
- A strong operating reserve supplemented by income generated from the property or other sources.

Opinion on discussion option

Seven of the nine interviewees agreed with the discussion option, although two respondents said they would still prefer a stewardship endowment. Several felt having a strong operating reserve is important, but even more critical is a diverse program for funding stewardship and not relying exclusively on a single source of funding. One respondent suggested looking at the overall financial sustainability of the organization as an indicator of the land trust's capacity to fund its land stewardship program.

Variables

Not many of the interviewees reported any variables. Only a handful was suggested:

- Age of organization – a new organization should be given time to establish a stewardship fund or the other items listed in the discussion option
- Organizational mission – if the mission of the land trust is to preserve land in its natural state, it will not be able to generate income from its properties
- Volunteer program – if a land trust has a very strong volunteer component, the same amount of funds may not be necessary

Other possible sources of dedicated and secure annual income

The interviewees suggested a number of possibilities in addition to that noted above (see pages 83-84 in the Appendix for a complete record). Those mentioned most frequently include:

- Income from the operating endowment
- Mitigation funds

Concluding Recommendation: Accept discussion option as a guide, but stress the importance of diversification of funding sources for land stewardship.

Question 3 - How Much of Stewardship Fund Income Should Cover Costs

A land trust needs to plan for a permanent, ongoing source of funds for land management. The surest way to fund land management over time is with a dedicated fund that is segregated from the operating budget. Some land trusts have separate funds for individual properties; many pool management money for all their properties into a single fund. Managed wisely, a dedicated fund provides an ever-increasing flow of

money guaranteeing that annual management responsibilities can be met. This question attempts to evaluate to what degree the income from any stewardship fund should cover annual stewardship costs.

Discussion option

As a guide, the following table summarizes what would be desirable, acceptable and unacceptable to ensure that a land trust has a stewardship endowment(s) of a sufficient size to cover most of its annual land management/stewardship costs:

Factors to be considered:	I DESIRABLE	II ACCEPTABLE	III UNACCEPTABLE
A. Endowment	75-100%	Less than 75% but has all of the elements below:	No endowment OR Endowment less than 75% AND Missing B, C or D
B. Required annual funding		Dedicated or secure source of funding to make up deficit	
C. Credible fundraising plan		To bring land trust to level I within 10 years	
D. Fundraising test		Annual amount needed in plan under C is less than 50% of annual budget	

I. As a guide, it would be desirable for a land trust to have an endowment (yielding a 5 percent rate of return) sufficient to cover between 75 and 100 percent of its annual stewardship costs; OR

II. It would be acceptable for a land trust to have an endowment that covers less than 75 percent of its annual stewardship costs IF

B. There is some other dedicated and secure source of income (see question 2, above) AND

- C. A credible fundraising plan that enables the land trust to raise the desirable funds within 10 years AND
- D. The funds required to be raised each year do not exceed 50 percent of the land trust's annual budget.

III. It would be unacceptable for a land trust to have no stewardship endowment OR For a land trust to have an endowment that covers less than 75 percent of its annual stewardship costs AND the land trust is lacking either B, C or D, above.

Opinion on discussion option

Three of the four volunteer land trusts interviewed felt the matrix was a reasonable framework, although a bit daunting. The majority of the staffed land trusts interviewed also thought the parameters provided good overall guidance for land trusts, although there was less agreement about the utility of C and D. One respondent thought that the 75 percent figure may be difficult for smaller land trusts to meet. Another thought it may take a land trust longer than 10 years to reach the desirable level.

Is it unacceptable for a land trust to have no stewardship endowment?

While the majority of the land trusts interviewed responded “yes” to this question, there was general agreement that this is not absolute and needs to be conditional. Most felt that an organization should have a plan for an endowment. As one respondent put it, “The future viability of your organization depends upon your reputation. If you don't have a stewardship fund, you don't have a long-term plan. You can't build your organization as a credible organization without a long-term plan.” However, others recognized the value of preserving flexibility for the land trust and favored “donor accountability” over “donor-restricted” funding. In those instances, it is important to look at whether or not the land trust has other diversified funding sources.

Variables

Only a few variables were mentioned by the interviewees:

- An active membership that can step up to the plate if you experience a serious problem
- For strategic acquisitions, it may be acceptable to acquire a property without an endowment
- Duration of property ownership – is this a permanent preserve or will the property be transferred to another organization or agency?

Concluding Recommendation: Use the matrix as a general guideline to help land trusts determine if their stewardship endowment is of sufficient size to cover most of their annual land stewardship costs. However, lack of an endowment should not be construed as unacceptable if the land trust has other diversified sources for funding its land stewardship program. Further research may be needed to make additional refinements to the matrix, especially as they relate to the proposed figures.

Question 4 – Rate of Litigation on Fee-Owned Properties

Going to court is costly both in time and money. Nevertheless, sometimes a land trust must go to court to resolve trespass or encroachment issues or other problems and defend its conservation properties. Although these expenses are extremely difficult to predict, this question will attempt to evaluate the rate of litigation on fee-owned properties and how a land trust can best prepare for these events.

Types of violations

Seven out of the nine interviewees reported that they had experienced violations on fee-owned properties. The complete list is on page 88 of the Appendix. The most commonly reported violations were boundary encroachment issues and unauthorized use.

Litigation

None of the respondents reported any litigation. However, one land trust settled a lease violation, resulting in a tenant eviction, out of court.

Costs

Three land trusts reported costs associated with staff time. Two of the interviewees reported attorneys' fees. Other costs included replacing signs and fences, property cleanup, and erosion control. One land trust reported a pending encroachment, where a neighbor had built a house partially on the land trust property, with costs of \$5,000 to date. The lease violation, mentioned above, cost the land trust \$24,000 to resolve.

How were the costs covered?

In two cases reported by the volunteer land trusts, one land trust had its costs covered by the state attorney's office, the other by the township. For those violations reported by the staffed land trusts, two stated that the costs came out of the general operating fund. Another land trust used pro bono legal services.

Concluding Recommendation: Given the small sample size of this study (nine land trusts) and the fact that only one land trust experienced any court costs, more research is needed before a reasonable rate of litigation can be projected for fee-owned properties and how land trusts should best prepare for this possibility..

Question 5 – Capital Needs

Stewardship costs can escalate quickly when the land trust accepts properties that require constant or complex management. Properties with buildings, historic structures or other improvements can be particularly costly. This question attempts to understand how land trusts address those needs and plan for capital costs.

How does the land trust ensure it has enough funds for capital costs?

There was a wide range of responses to this question. Two volunteer land trusts reported that this is not an issue for them because they either do not have such costs or transfer the property to another entity. Two staffed land trusts include the anticipated capital costs in their capital campaigns to purchase property, and one of these respondents suggested that it should be a “best practice” to include an endowment component for maintenance as part of any such capital campaign. Other land trusts budget for these costs on a case-by-case basis as part of their annual operating budgets. For one land trust, the money for bigger projects comes from separate fundraising, primarily grant sources. One interviewee observed, “If you have a separate stewardship fund, it does give you the opportunity to build up the money for these capital costs. This may be a more disciplined approach for boards to funding these costs rather than trying to budget for them on an annual basis.”

Are sources of these funds different from those in Questions 2 and 3?

None of the land trusts interviewed reported any different funding sources from those previously mentioned.

Concluding Recommendation: Capital needs should be calculated upfront as part of the land acquisition process. While a stewardship fund that covers routine annual maintenance costs may be ideal, a land trust also need to plan for occasional replacement costs, larger capital improvements or other contingencies, as appropriate to the property. As with Question 3, lack of an endowment should not be construed as unacceptable if there are other sources of funding. Given the wide range of approaches, further research may be needed in this area to identify best practices.

LIST OF INTERVIEWEES

Acquisition Capacity

All-volunteer land trusts

- Chris Craig, President, Goshen Land Trust (CT)
- Peter Labombarde, Chairman, Bedford Land Trust (NH)

Staffed land trusts

- Julie Bruser, former Executive Director, Jo Daviess Conservation Foundation (IL)
- Karen Budd, Tincum Conservancy (PA)
- Alane Chinian, Executive Director, and Laura Welles, Protection Specialist, Saratoga PLAN (NY)
- Craig Edgerton, Executive Director, Silicon Valley Land Conservancy (CA)
- Dexter Mead, Executive Director, Dartmouth Natural Resources Trust (MA)
- Wendy Nintman, Executive Director, Five Valleys Land Trust (MT)
- Jedd Sondergard, Executive Director, Black Canyon Land Trust (CO)

Conservation Easement Stewardship

All-volunteer land trusts

- Gene Connolley, Vice-President, Redding Land Trust (CT)
- Jennifer Fish, Hilltown Land Trust (MA)
- Bob Whitney, Golden State Land Conservancy (CA)

Staffed land trusts

- Ernie Atencio, Executive Director, Taos Land Trust (NM)
- Diane Garcia, Executive Director, Southern Oregon Land Conservancy
- Melissa Hansen, Stewardship Director, Little Traverse Conservancy (MI)
- Don Leuchs, Director of Stewardship, York Land Trust (ME)
- Dan Lobbes, Director of Land Protection, The Conservation Foundation (IL)
- David Shields, Director of Stewardship, Brandywine Conservancy (PA)

Fee Land Stewardship

All-volunteer land trusts

- Tom Cleveland, Vice President and Co-Chair of Property Management Committee, Branford Land Trust (CT)
- Gail Kenney, President, Humboldt North Coast Land Trust (CA)

- Kathy Merner, Volunteer Executive Director, Macon County Conservation Foundation (IL)
- Fred Pepper, Chair of Stewardship Committee, Grosse Ile Nature and Land Conservancy (MI)

Staffed land trusts

- Chris DeForest, Executive Director, and Lena Septimo, Stewardship Coordinator, Inland Northwest Land Trust (WA)
- Kate Giese, Director of Conservation, Wood River Land Trust (ID)
- Kim Hayes, Land Manager, Elkhorn Slough Foundation (CA)
- Doug Koop, Executive Director, Little Forks Conservancy (MI)
- Nathan Moyer, Land Stewardship Director, and Gordon Maupin, Executive Director, The Wilderness Center (OH)

APPENDICES

CONSERVATION CAPACITY AND ENFORCEMENT CAPABILITY RESEARCH PROJECT

Discussion Paper 1 Acquisition Capacity

Practice 7A – Capacity

The land trust regularly evaluates its programs, activities and long-term responsibilities and has sufficient volunteers, staff and/or consultants to carry out its work, particularly when managing an active program of easements.

1. Determine the average number or reasonable range of land and easement acquisitions one (1) adequately trained FTE volunteer/staff/consultant can complete per year / or a reasonable range of the number of volunteer/staff/consultant hours needed to complete a single transaction. Assume that projects are completed according to *Land Trust Standards and Practices*.

Introduction

A land trust must have enough knowledgeable and dependable assistance to carry out its programs, no matter what its level of activity. It should regularly evaluate whether it has adequate volunteers, staff and/or consultants to carry out its programs and responsibilities. Often this evaluation is part of the annual budgeting and work planning processes. This question attempts to evaluate how many transactions a staff person or volunteer can reasonably complete in any given year and when a land trust might need additional assistance to complete its project load in a thorough manner.

Literature Review Findings

- 5-15 transactions per year

Nationwide a trained and experienced program staff person can typically complete anywhere from 5 to 15 transactions annually.¹

Discussion Option

As a guide, land trusts should plan to have one trained acquisition staff or volunteer available for every 5-15 transactions they complete in a year.

¹ Planning for a Successful Future: Stewardship Program Structure and Capacity Planning for Agricultural Land Trusts, July 2005, p. 31

Variables

The 5-15 range is general guidance. An organization's actual ratio may vary depending on:

- The experience of the person
- The complexity of the transaction
- The extent of legal advice or other expertise available

Discussion Questions

1. What is your opinion on the discussion option?
2. What additional variables would factor into your answer to the question?

2. Determine what elements would be useful to evaluate "adequately trained". For this it would be acceptable to list a range of activities that land trusts employ to train their volunteers/staff/consultants in land and easement acquisition.

Introduction

A land trust should seek volunteers and staff who have appropriate training or experience to carry out its work or a willingness to learn new skills. Where volunteers and staff are lacking certain skills, the land trust should ensure they gain them by providing access to training and education opportunities. This question attempts to identify the range of acceptable approaches to training land trust personnel.

Sources of Training and Education

- LTA sponsorship, Rally and publications
- Technical workshops and conferences sponsored by LTA, state and regional land trust service centers, other conservation organizations, and professional organizations
- In-house lectures and seminars that draw on specialized staff or outside expertise
- Educational materials, such as professional publications and newsletters
- Tuition sharing or reimbursement for university or community college courses in topics such as natural resource management and legal issues
- Field trips to project sites, other land trusts, etc.
- Membership in related professional organizations
- Meetings, roundtables or networking with other land conservation professionals
- Participation in a state or regional land trust network

Discussion Option

As a guide, land trusts should provide volunteers and staff with a formal training program at the beginning of their tenure with the organization and periodically thereafter.

Training can be in-house, or a combination of workshops, reading and/or visiting other land trusts.

Variables

The range of training options is general guidance. An organization's actual training program may vary depending on:

- The number of people being trained
- The ability to have a staff person or volunteer shadow a more experienced person
- The level of experience of the land trust practitioner

Discussion Questions

1. What is your opinion on the discussion option?
2. What additional variables would factor into your answer to the question?
3. What constitutes a "formal training program"?
4. Given the list above, what activities are requisite to "adequately trained"?
 - a. Is it more than one of the above activities? If so, which ones?
5. How often is "periodically"?

**CONSERVATION CAPACITY AND ENFORCEMENT CAPABILITY
RESEARCH PROJECT**

**Interview Results
Acquisition Capacity**

1. Determine the average number or reasonable range of land and easement acquisitions one (1) adequately trained FTE volunteer/staff/consultant can complete per year / or a reasonable range of the number of volunteer/staff/consultant hours needed to complete a single transaction. Assume that projects are completed according to *Land Trust Standards and Practices*.

Discussion Option

As a guide, land trusts should plan to have one trained acquisition staff or volunteer available for every 5-15 transactions they complete in a year.

Variables

The 5-15 range is general guidance. An organization’s actual ratio may vary depending on:

- The experience of the person
- The complexity of the transaction
- The extent of legal advice or other expertise available

All-Volunteer Land Trusts

Opinion on discussion option	Reasonable – range is probably not out of hand for a staffed organization - 2 ² Our organization is doing 1 transaction every 1-2 years Expect a volunteer could do 5-8/year Doing 11 CEs/year as an all-volunteer group
Additional variables	<ul style="list-style-type: none"> • Geographic area being covered – town v. state • Whether the land trust has an office or operates out of someone’s briefcase • Nature of the transaction – person who is eager to make a donation v. those who you need to negotiate

² Highlighted figures indicate number of interviewees who responded similarly to the discussion option or question posed.

	<p>with</p> <ul style="list-style-type: none"> • Availability of pro bono people who can help with the transaction – amount of work a volunteer can accomplish depends on this kind of support • Publicity about your land trust and cultivation of landowners – if people know your organization and what you’re trying to accomplish, people come to you • Financial resources – if you have enough money to buy these parcels, it makes it easier to do the transactions
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Staffed Land Trusts

<p>Opinion on discussion option</p>	<p>25-30 transactions per year are reasonable</p> <p>Sounds good – probably a reasonable range</p> <p>1-10 is more likely</p> <p>Hard to say – most ever done is 7 transactions/year</p> <p>Seems high – have only done 2-4 each year</p> <p>Very high</p> <p>For that level of activity, it would be more realistic to have 1½ people doing the work</p> <p>Meaningless – in 8 years, have acquired 4 easements; 1/year for 4 years</p>
<p>Additional variables</p>	<ul style="list-style-type: none"> • Funding – purchased easements take much more time; huge difference between purchased v. donated easements - 4 • How many total staff you have and what their other responsibilities are - 4 • Organizational mission – project staff attend many community meetings because we do “community” conservation; are working with communities to help <i>them</i> acquire land/easements - 2 • Motivation of the donor; how quickly they want to complete the project; timing of completion – always a year-end rush – 2

	<ul style="list-style-type: none"> • Extent of back-up support and project assistance – someone helping with baselines, paperwork, etc. - 2 • Favorable state tax credit driving the process • Property values – when property values are high, more of an incentive for donating an easement • Flow of projects – if plenty are coming in, you can pick the best ones • The experience and infrastructure of the organization; good systems and procedures help get the work done quicker • Non-predictability of land deals and “dead” deals • Size of geographic area that the land trust or individual is covering
General comments	Perhaps a better question would be how many ongoing projects one person can <u>handle/manage</u> , not necessarily complete

2. Determine what elements would be useful to evaluate “adequately trained”. For this it would be acceptable to list a range of activities that land trusts employ to train their volunteers/staff/consultants in land and easement acquisition.

Discussion Option

As a guide, land trusts should provide volunteers and staff with a formal training program at the beginning of their tenure with the organization and periodically thereafter. Training can be in-house, or a combination of workshops, reading and/or visiting other land trusts.

Variables

The range of training options is general guidance. An organization’s actual training program may vary depending on:

- The number of people being trained
- The ability to have a staff person or volunteer shadow a more experienced person
- The level of experience of the land trust practitioner

All Volunteer Land Trusts

Opinion on discussion option	<p>Makes sense – similar to any business; need upfront information to do the job well, then periodic training</p> <p>Have tried to encourage directors to attend conferences and seminars; depends on location – don’t have money to send people to Rally; have left it up to individual board members</p>
Additional variables	<ul style="list-style-type: none"> • Need different level of training for staff than a volunteer because staff are holding themselves out as professionals, volunteers are just volunteers
Formal training program	<ol style="list-style-type: none"> 1. Legal 2. Financial knowledge – tax rules and benefits 3. General negotiation skills <p>Classes at educational institutions (like Yale Forestry) Seminars at Rally or statewide conferences are more random – not formalized; leave gaps in your understanding of topic</p>
Requisite to “adequately trained”	<ul style="list-style-type: none"> • Partner with organizations and go to organizations who have the knowledge • Joint trainings with other land trusts (important not

	<p>to try to be too self-sufficient)</p> <ul style="list-style-type: none"> • Newsletter, publications, other reference materials that land trusts should have in-house • Roundtables, regional networking (if they're more than just trading war stories) • Experience working with someone in the field • Field trips to project sites and other land trusts
Definition of “periodically”	<p>At least annually, but not more than once or twice a year (depends on level of activity)</p> <p>Annually – in the case of Rally and statewide conference</p> <p>More frequently on an informal basis – during board discussions, problem-solving on projects, etc.</p>
General comments	<p>You learn most by doing the transactions – risk of being over-trained and under-experienced</p>

Staffed Land Trusts

Opinion on discussion option	<p>OK; pretty close; sounds good - 3</p> <p>So unique to every organization - 2</p> <p>Need to hire people who are already qualified – projects are extremely sophisticated, have to be very careful - 2</p> <p>If people are already trained, may not need a formal training program</p> <p>Formal training program should happen at beginning Should also include boards in the discussion option (but not a formal training on how to do a transaction) Address organizational commitment to providing the training – there should be money in the budget</p> <p>We send staff to training every chance we get Don't train our volunteers upfront – bring them on to do a specific task, then trained as they go along Board members get a handbook</p>
Additional variables	<ul style="list-style-type: none"> • Budget; additional funding - 2 • Location and timing of training workshops guides

	<p>when and where we send people</p> <ul style="list-style-type: none"> • Organizational commitment to training • Local climate/culture of how transactions are done in your region – each situation is unique • Ability of land trust to develop its own training program • What additional programs/courses could become available for this field that aren't currently available • Use of outside consultants – have used the same person over and over
<p>Formal training program</p>	<p>???? – don't have; can LTA help us define? Something more formalized is good idea – 4</p> <ol style="list-style-type: none"> 1. Become familiar with land trust terminology, ins and outs of the organization 2. CE Handbook 3. List given <ol style="list-style-type: none"> 1. Shadowing 2. Networking with other colleagues 3. All employees attend all board meetings <p>For smaller land trusts, LTA courses or courses developed in conjunction with a university A “baseline” course that establishes/covers the basic land protection concepts for anyone new to land protection Thereafter, similar continuing education courses (more extensive than can be offered at Rally)</p> <ol style="list-style-type: none"> 1. Start with highest priority things – land protection, easements, Steve Small's books 2. Going around looking at properties, meeting with landowners
<p>Requisite to “adequately trained”</p>	<ul style="list-style-type: none"> • Attendance at LTA Rally and/or regional conferences - 6 • Ongoing access to LTAnet and S&P - 3 • Meetings, roundtables, networking with other land trusts - 3 • Ability of person to shadow another more experienced person - 2 • Publications – CE Handbook, Exchange - 2 • Participation in state or regional land trust network • Prerequisite – land trust should have clear policies

	<p>and procedures in one place</p> <ul style="list-style-type: none"> • Formal in-house training program • Hands-on experience actually doing projects • Field trips to other land trusts • Local training opportunities • Providing “baseline” training • Staying up to date in the field • Going out to properties • Learning from people at the land trust
<p>Definition of “periodically”</p>	<p>Annually, or at least annually; would be ideal (not always possible) - 5</p> <p>At least biennial, for continuing education</p> <p>Prefer term “ongoing” as opposed to “periodically” (e.g., accessing LTAnet and S&Ps online as necessary); importance of general knowledge and keeping up with what’s going on in the field</p> <p>Informally – you should always keep your eyes out for what may be helpful to you or one of your staff members</p> <p>As needed – could be once every 5 years or once/year</p>
<p>General comments</p>	<p>Really understanding conservation easements takes time</p> <p>TNC has internal land protection training – establishes “baseline” of knowledge that staff are expected to have/acquire</p> <p>If training is more extensive, it could happen less frequently</p> <p>More training is important for relatively inexperienced employees</p>

CONSERVATION CAPACITY AND ENFORCEMENT CAPABILITY RESEARCH PROJECT

Discussion Paper 2 Conservation Easement Stewardship

For clarity of presentation and ease of review, the summary of the findings of the background literature review for most of these questions is appended at the end of this document.

Practice 7A – Capacity

The land trust regularly evaluates its programs, activities and long-term responsibilities and has sufficient volunteers, staff and/or consultants to carry out its work, particularly when managing an active program of easements.

Practice 11A – Funding Easement Stewardship

The land trust determines the long-term stewardship and enforcement expenses of each easement transaction and secures the dedicated or operating funds to cover current and future expenses. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure these funds and has a policy committing the funds to this purpose.

Practice 11E – Enforcement of Easements

The land trust has a written policy and/or procedure detailing how it will respond to a potential violation of an easement, including the role of all parties involved (such as board members, volunteers, staff and partners) in any enforcement action. The land trust takes necessary and consistent steps to see that violations are resolved and has available, or has a strategy to secure, the financial and legal resources for enforcement and defense.

1. Determine the average number or reasonable range of conservation easements (or acres) one (1) adequately trained FTE stewardship volunteer/staff/consultant can manage per year.

Introduction

A land trust must have enough knowledgeable and dependable assistance to carry out its programs, no matter what its level of activity. A land trust needs to be sure not only that it can undertake the necessary work of the land trust today, but also that it can sustain its work into the future. With conservation easements in particular, this places obligations on the land trust to develop easement stewardship systems and to implement these systems consistently. The land trust should periodically assess the stewardship obligations it has, determine if more assistance is necessary to fulfill these obligations

and plan accordingly. This question attempts to evaluate how many conservation easements a staff person or volunteer can reasonably be expected to manage in any given year and when a land trust might need additional assistance.

Discussion Option

As a guide, one trained staff person or dedicated volunteer can steward 60-120 conservation easements in a year.

Variables

The 60-120 range is general guidance. An organization's actual ratio may vary depending on:

- The depth of the relationship the land trust wishes to build with the landowner
- The complexity of the conservation easements
- The travel time between conservation easements
- The size of the properties

Discussion Questions

1. What is your opinion on the discussion option?
2. What additional variables would factor into your answer to the question?

2. Determine what is desirable, acceptable and unacceptable for the percentage of annual stewardship costs that should be covered by income from any dedicated stewardship fund.

Introduction

Land trusts have a perpetual obligation to steward conservation easements and manage lands they hold in fee for conservation purposes, and to defend these conservation lands. The surest way to meet stewardship and defense costs is to set up a dedicated fund that is managed separately from the trust's operating budget. Most land trusts fund all or a portion of their annual stewardship costs from these dedicated funds. This question attempts to evaluate to what degree the income from any stewardship fund should cover annual stewardship costs.

Discussion Options

As a guide, the following table summarizes what would be desirable, acceptable and unacceptable to ensure that a land trust has a stewardship endowment of a sufficient size to cover most of its annual stewardship costs:

Factors to be considered:	I DESIRABLE	II ACCEPTABLE	III UNACCEPTABLE
A. Endowment	75-100% OR Minimum of \$3,000/CE	Less than 75% (or <\$3,000/CE) but has all of the elements below:	No endowment OR Endowment less than 75% (or <\$3,000/CE)
B. Required annual funding		Dedicated or secure source of funding to make up deficit	AND Missing B, C or D
C. Credible fundraising plan		To bring land trust to level I within 10 years	
D. Fundraising test		Annual amount needed in plan under C is less than 50% of annual budget	

I. As a guide, it would be desirable for a land trust to have an endowment (yielding a 5 percent rate of return) sufficient to cover between 75 and 100 percent of its annual stewardship costs; OR

If the land trust does not calculate its annual stewardship costs, to have an endowment sufficient to generate enough income to cover an annual cost of between \$200 and \$500 per easement (equal to an endowment per easement of \$4,000 to \$10,000 – 75 percent of this is \$3,000).

II. It would be acceptable for a land trust to have an endowment that covers less than 75 percent of its annual stewardship costs (or that has less than a minimum of \$3,000 per easement) IF

B. There is some other dedicated and secure source of income (see question 3, below); AND

C. A credible fundraising plan that enables the land trust to raise the desirable funds within 10 years; AND

D. The funds required to be raised each year do not exceed 50 percent of the land trust's annual budget.

III. It would be unacceptable for a land trust to have no stewardship endowment OR For a land trust to have an endowment that covers less than 75 percent of its annual stewardship costs (or that has less than a minimum of \$3,000 per easement) AND the land trust is lacking either B, C or D, above.

Discussion Questions

1. What is your opinion on what is desirable, acceptable and unacceptable?
 - a. Is it unacceptable for a land trust to have no stewardship endowment?
2. Are there any variables that would factor into your answer to the question?

3. If no dedicated stewardship fund, then what sort of annual dedicated and secure source of annual operating income would be acceptable?

Introduction

There are a handful of land trusts that have made the deliberate decision not to create a separate stewardship or enforcement fund. The Catskill Center for Conservation and Development (NY), with a large endowment of more than \$1 million, relies on general operating dollars to fund all of its stewardship actions. Similarly, the Civil War Preservation Trust, the nation's largest nonprofit organization devoted to the preservation of Civil War battlefields, funds both its routine stewardship activities and all enforcement expenses directly from its operating funds and membership income.³

See also, question 1 literature review findings, appended (How Stewardship Costs Are Covered – General Findings), items 1 and 2.

Possible Sources of Dedicated and Secure Annual Income

- Membership income
- Funding from state legislatures⁴, including a solid history of such funding

Discussion Option

As a guide, if there is no dedicated stewardship fund, a land trust should have:

- A strong operating reserve;
- A long history of member contributions to these causes or dedication of special event money to stewardship; and
- Fairly low stewardship expenses compared to the overall budget.

³ Land Trust Standards and Practices, Practice 11A: Funding Easement Stewardship, 2004

⁴ Two statewide organizations obtain funding from their state legislatures. Planning for a Successful Future: Stewardship Program Structure and Capacity Planning for Agricultural Land Trusts, July 2005, p. 26

Discussion Questions

1. What is your opinion on the discussion option?
2. Are there any variables that would factor into your answer to the question?
3. Are there other possible sources of “dedicated and secure annual income”?

4. Determine a reasonable average anticipated rate of litigated easement violations per 100 easements, and a reasonable estimate of the number of enforcement actions that will cost the land trust more than \$2,500 to resolve. This question should attempt to evaluate how a land trust should be prepared for either a major litigated violation or other enforcement scenario where the cost of enforcement would exceed the annual operating budget for stewardship.

Introduction

Experienced easement holders recommend that land trusts consider judicial proceedings a last resort. Going to court is costly both in time and money. Nevertheless, sometimes a land trust must go to court. Although these expenses are extremely difficult to predict, this question attempts to evaluate the rate of litigated violations and their projected costs so that a land trust can better prepare for these events.

Discussion Option

As a guide, a land trust can expect 1 litigated easement violation over a 10-year period for every 300 easements it holds. A land trust can also expect 1 easement enforcement action (not necessarily litigated) costing more than \$2,500 to resolve, over a 10-year period, for every 100 easements it holds.

Variables

The 1 in 300 and 1 in 100 ranges are general guidance. An organization’s actual ratio may vary depending on:

-

Discussion Questions

1. What is your opinion on the discussion option?
2. What variables would factor into your answer to the question?

5. Develop a formula for determining how much money a land trust needs to have in its legal defense/stewardship fund per easement to fully fund an enforcement action or other litigation, and determine on average how much money a land trust needs to have in its legal defense/stewardship fund per easement to initiate an enforcement

action. As part of this question, determine if it is standard practice to plan for major violation funding to come from the principal of the dedicated fund or the interest.

Introduction

Most land trusts expect to invade fund principal for major enforcement expenses, such as legal defense. Some, in contrast, view the fund principal as a true endowment that can never be touched, and plan to raise enforcement funds elsewhere. Some build a separate legal enforcement fund, in addition to the monitoring fund. Land trusts should be able to fund their annual stewardship costs and have enough funding in place to at least initiate an enforcement action, if not pay for it completely. This question attempts to evaluate how much money a land trust needs to have in its stewardship and/or enforcement fund to defend its easements.

To Fully Fund an Enforcement Action or Other Litigation

Discussion Option

As a guide, in order to fully fund an enforcement action or other litigation, a land trust needs to have a minimum of \$50,000 in its legal defense/stewardship fund. If the land trust holds more than 15 easements, it needs an additional \$1,500 to \$3,000 per easement in this fund.

Variables

The \$1,500 to \$3,000 range is general guidance. An organization's actual ratio may vary depending on:

-

Discussion Questions

1. What is your opinion on the discussion option?
2. What variables would factor into your answer to the question?

To Initiate an Enforcement Action

Discussion Option

As a guide, in order to initiate an enforcement action or other litigation, a land trust needs to have a minimum of \$5,000 in its legal defense/stewardship fund. If the land trust holds more than 15 easements, it needs an additional \$150-300 per easement.

AND

The land trust needs a credible plan OR some other type of defense preparedness (see question 6, below) to ensure that the dispute is resolved.

Variables

The \$150-300 range is general guidance. An organization's actual ratio may vary depending on:

-

Discussion Questions

1. What is your opinion on the discussion option?
2. What variables would factor into your answer to the question?

Does Defense Funding Come from the Principal or the Interest?

Discussion Option

As a guide, for the majority of land trusts, it is standard practice to plan for major defense funding to come from the principal of the dedicated fund.

Variables

This is general guidance. An organization's actual practice may vary depending on:

-

Discussion Questions

1. What is your opinion on the discussion option?
2. What variables would factor into your answer to the question?
3. Where would funds come from to rebuild the endowment after an enforcement action?

6. In the absence of sufficient funds to initiate an enforcement action, provide a description of the type of defense preparedness (such as a letter of commitment of pro bono legal services, a way to demonstrate the commitment of an Attorney General, a fundraising plan with actual pledges of specific amounts) that would be acceptable.

Introduction

If a land trust does not have adequate funds for stewardship and enforcement it should have a fundraising strategy and a board policy committing the funds for this purpose, and be able to demonstrate progress toward meeting the goals of the strategy. This question attempts to evaluate what other types of defense preparedness would be acceptable.

Possible Types of Defense Preparedness

- Letter of commitment of pro bono legal services
- Attorney General support and involvement and proof thereof
- Fundraising plan with actual pledges of specific amounts
- In-house litigation/legal defense counsel on staff
- Shared litigation/legal defense counsel or access to an attorney pool/regional attorney network
- Conservation easement co-holding arrangement
- Third-party and back-up grantee enforcement of easements

- Fundraising – charitable pledges from members/donors in the event there is a violation
- Title insurance for all easement acquisitions (not just purchases) – provides protection against some easement challenges

Discussion Option

As a guide, if a land trust lacks sufficient funds to initiate an enforcement action, it needs to demonstrate that it has a fundraising strategy and a board policy committing funds to this purpose or can demonstrate its defense preparedness in other ways.

Discussion Questions

1. What is your opinion on the discussion option?
2. Are there any variables that would factor into your answer to the question?
3. Given the list above, which would be acceptable and how could they be demonstrated?
4. Are there other possible types of defense preparedness?

LITERATURE REVIEW FINDINGS

Question 1 – Land Trust Personnel

General Findings

- 25-35 conservation easements
(This might be considered an outlier.)

The average number of monitoring staff is 1.72 full-time and 0.73 part-time. The median is 1 full-time monitoring staff. The average number of easements held per land trust is 71 (the median is 25).⁵

- 60-70 conservation easements

In investigating how other land trusts with similar easement holdings managed their programs, a land trust found that at least one stewardship staff person was needed to manage 60-70 easements.⁶

- 60-100 conservation easements

The Society for the Protection of New Hampshire Forests holds more than 500 easements and uses staff for all stewardship activities. Easements are inspected aurally every year, and visited on the ground at three to five year intervals. By rough estimate, one staff person can monitor 60 to 100 easements annually.⁷

- 70-200 conservation easements
(The 200 figure might also be considered an outlier.)

The size of the easements held by an organization does not seem to have much effect on the size of the stewardship staff or the organizational structure of the land trust. For statewide organizations, the range of easement responsibilities per full-time staff person ranged from 70 to 200.⁸

- 80-120 conservation easements

For those organizations that had a positive response to the question of whether or not the current organizational structure is working and those that monitor each easement themselves every year, the number of easements or responsibilities per full-time staff person ranged between 80 and 120. This appears to be the nationwide average load that can reasonably be handled by one staff person and includes not only monitoring responsibilities, but also file management, information requests, amendments, and enforcement, if needed.⁹

⁵ Coordinated Conservation Easement Defense in the Heart of the Rockies, May 2004

⁶ Land Trust Standards and Practices, Practice 7A: Capacity, 2004

⁷ Ibid., Practice 11A: Funding Easement Stewardship, 2004

⁸ Planning for a Successful Future: Stewardship Program Structure and Capacity Planning for Agricultural Land Trusts, July 2005, p. 14

⁹ Ibid., p. 14

- 95-140 conservation easements

Local organizations have similar responsibilities but with the advantage of greatly reduced travel time and expense. This allows staff people with local groups to handle a slightly larger load of projects, on the order of 10 to 20 percent. Most of these trusts have service areas that do not require more than 2 hours of travel time from the organizations' headquarters and rarely require overnight travel for easement monitoring.¹⁰

Other Considerations

1. Some statewide and national groups use contract monitoring – specialized work completed by an outside expert.
2. Seasonal staff – one larger western organization has developed this approach to the point where it employs more than 6 permanent, seasonal employees spread around their statewide service area. These employees monitor the same easements from year to year and use the part-time work as a supplement to other seasonal employment (such as teaching school) or as a part-time job to supplement retirement benefits.
3. Volunteer monitoring programs – Several land trusts have established extensive volunteer monitoring programs.

¹⁰ Ibid., p. 14

LITERATURE REVIEW FINDINGS
Question 2 – Costs Covered by Stewardship Fund

Annual Stewardship Costs

Total annual budget for easement monitoring

\$47,398 (average)/\$9,250 (median)	Heart of the Rockies land trusts ¹¹
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Average cost of annual monitoring per easement

\$166-365 (may consider \$166 an outlier)	Vermont Land Trust ¹²
\$205	Seacoast Land Trust (NH) ¹³
\$267	San Francisco Bay organizations ¹⁴
\$500	Society for the Protection of NH Forests ¹⁵
\$626 (may consider this figure an outlier)	Heart of the Rockies land trusts

How Stewardship Costs Are Covered – General Findings

1. A few organizations were able to claim that the earnings from their endowment funds completely covered all of the costs of their stewardship activities. Many more organizations stated that their endowments were falling slightly to considerably short of meeting the expenses of their programs. A number of organizations are funding their stewardship activities out of operating revenues at this time, leaving their stewardship endowments intact in order to let them grow and help to provide the organization with more resources in the future should they be needed.¹⁶
2. In a couple of cases, participants noted they were not using any of their endowment fund (principal or interest) and instead covered these costs through their general operating budget to help to continue to grow the endowment.¹⁷
3. Most organizations that used staff for monitoring supported part or all of the program’s costs with earning (only) of the stewardship fund.¹⁸

¹¹ Coordinated Conservation Easement Defense in the Heart of the Rockies, May 2004

¹² Vermont Land Trust Reevaluates the Costs of Easement Stewardship and How to Cover Them, *Exchange*, Fall 2002

¹³ The Seacoast Land Trust uses volunteer easement monitors with staff overseeing volunteers and the stewardship program. Land Trust Standards and Practices, Practice 11A: Funding Easement Stewardship, 2004

¹⁴ Ensuring the Promise of Conservation Easements: Report on the Use and Management of Conservation Easements by San Francisco Bay Area Organizations, May 1999, p. 19

¹⁵ Land Trust Standards and Practices, Practice 11A: Funding Easement Stewardship, 2004

¹⁶ Planning for a Successful Future: Stewardship Program Structure and Capacity Planning for Agricultural Land Trusts, July 2005, pp. 25-26

¹⁷ Planning for Perpetuity: A Study of Colorado Conservation Easement Practices, November 2001, p. 27

4. At this time, most groups subsidize stewardship costs from the operating budget, for several reasons:¹⁹
- Many groups have small stewardship funds and choose to reinvest all earnings to grow the fund, instead of withdrawing earnings.
 - Some groups that do withdraw earnings to support monitoring activities have experienced reduced income in recent years due to the performance of the stock market. Therefore, they have relied more on the operating budget to support stewardship.
 - With experience and increased easement numbers, many groups have found that actual stewardship program costs are higher than initially anticipated.
 - As easement numbers grow, most easement holders find that increased paid staff or contractor support of the stewardship program is necessary.

¹⁸ How Strong Are Our Defenses: The Results of the Land Trust Alliance's Northern New England Conservation Easement Quality Research Project, April 2000, p. 28

¹⁹ Conservation Easement Stewardship Costs and Funding, Center for Land Conservation Assistance (NH), November 2004

LITERATURE REVIEW FINDINGS
Question 4 – Rate of Litigation

Rate of Litigated Easement Violations

Source	Total Number of Easements	Number of Litigated Violations	Rate of Litigated Violations per 100 Easements
Heart of the Rockies land trusts ²⁰	1,060	3	0.28
LTA – 1999 study ²¹	7,400	21	0.28
LTA – 2004 study ²²	17,850	52	0.29
The Nature Conservancy ²³	1,600	5 or 6	0.37 or 0.31

Other Considerations

- The rate of litigated easement violations will likely increase over time as more easements change hands.

Number of Easement Defense Cases That Will Cost the Land Trust More Than \$2,500 to Resolve

Source	Total Number of Easements	Major Violations	Rate of Major Violations per 100 Easements
LTA – 1999 study	7,400	115	1.6
LTA – 2004 study	17,850	75 ²⁴	0.42

Assumptions

- All litigated cases will cost the land trust more than \$2,500 to resolve.
- Although both LTA studies used a threshold of \$1,000 to differentiate major v. minor violations, it is not unreasonable to substitute the \$2,500 figure for the purpose of this analysis.
- The cost of major violations will likely increase over time.

²⁰ Coordinated Conservation Easement Defense in the Heart of the Rockies, May 2004

²¹ 1999 Conservation Easement Study, Land Trust Alliance

²² 2004 Conservation Easement Violation & Amendment Study, Land Trust Alliance

²³ Preliminary data from Mike Dennis (TNC) to John Bernstein (LTA)

²⁴ Although the same criteria were used to define a major v. minor violation in 2004 as in 1999, the fact that the number of major violations *decreased* indicates a problem with the data, most likely as relates to which land trusts responded to the survey.

Other Projections

- Based on figures from the Bay Area Open Space Council – suggest that about a quarter of 315 easements studied have had a violation (reported frequency = 14%, but only about half the easements were being monitored). The median time the 315 easement had been held was about 7 years. If we say that 25% of all easements will have a violation over a 7-year period, this gives us an expectation that any one easement will suffer a violation every 28 years. There will be about 1 major violation for every 3 minor violations (LTA figures of 115 major v. 383 minor – based on 1999 study). Minor violation cost approximately \$1,000, major violation cost approximately \$75,000. (The latter is for a litigated case involving a real estate lawyer, a litigator and expert witnesses, but also assuming some pro bono work.)²⁵

²⁵ Conservancy: The Land Trust Movement in America, 2003, p. 137

LITERATURE REVIEW FINDINGS
Question 5 – Fully Fund/Initiate Enforcement Action

Enforcement Costs – General Findings

Heart of the Rockies land trusts

- Two cases in the last decade exceeded \$200,000
- Projected cost of major litigation = \$300,000
- The study cites a modest violation, but with court involvement, at a cost of \$3,000²⁶
- Median actual legal expenditure/year/land trust = \$5,600
 - Average per easement = \$665 (includes those with in-house legal counsel)
 - Average per easement = \$67 (for those that rely on outside legal counsel)
- Average cost/year/land trust for in-house legal services = \$217,333
 - Average annual cost/easement = \$787
- Average cost/year for land trusts using outside legal counsel = \$5,750
 - (Average cost/year without pro bono counsel = \$6,714)
 - Average annual cost/easement = \$8

LTA – 2006 Easement Violation and Litigation Research Data²⁷

- Litigated and resolved
 - Average = \$55,528
 - Median = \$10,400
- Litigated, but settled out of court
 - Average = \$65,011
 - Median = \$1,110
- Settled, did not go to court
 - Average = \$4,282
 - Median = \$2,125
- Litigation ongoing or case unresolved
 - Average = \$13,302
 - Median = \$33,375

LTA – 1999 Study

- Legal fees for major easement violations
 - Range = \$100 to \$100,000
 - Average = \$10,000
- Legal fees for litigated violations
 - Range = \$5,000 to \$100,000
 - Average = \$35,000
- Range of staff costs = \$100 to \$28,000
- Range of associated costs = \$100 to \$4,000

²⁶ Coordinated Conservation Easement Defense in the Heart of the Rockies, May 2004, p. 14

²⁷ Preliminary data from John Bernstein (LTA)

Results from Other Studies and Sources

1. Costs ranged from \$0 (due to donated board and attorney time) to \$25,000²⁸
1. Amount spent on selected violation cases – range of \$5,000 to \$284,000+²⁹
2. There was also considerable variation in the expense and time the violations consumed. The maximum expense exceeded \$30,000 for a protracted legal action (which did not go to court), but the average expense was \$2,500.³⁰
3. Typical estimate is \$20,000 to \$60,000 in legal costs.³¹
4. Vermont Land Trust anticipates \$50,000 to \$70,000 per litigated case.³²

Existing Funds – General Findings

LTA 2003 Census

- Total monitoring and stewardship endowment funds = \$17.6 million
- Median endowment = \$27,750
- 25 land trusts reported an endowment that included monitoring, stewardship and legal defense. The total for this type is \$5.5 million with a median of almost \$200,000.

Heart of the Rockies land trusts³³

- Largest endowment fund = \$4.8 million, with 2 other land trusts having \$2 million each (these 3 land trusts hold 67% of the easements and account for 80% of easement defense funds in the region)
- Median endowment fund for enforcement = \$192,500
 - Average = \$801,567
- Average per easement = \$7,700 with a range of \$25,000+/CE to \$667/CE
 - At present, the smaller Heart of the Rockies land trusts appear to be significantly under-insured, with the lowest average defense fund per easement in the region only \$667. These land trusts risk disaster in the courts. By contrast, richer land trusts are almost certainly over-insured, with the highest endowment per easement totaling over \$25,000. These excess funds could perhaps be dedicated to more land conservation.

Colorado land trusts³⁴

- Range of endowment principals = \$68,000 to \$750,000
- Endowment per easement ranged from \$7,400 to \$16,923
 - Average per easement = \$10,620

²⁸ Planning for Perpetuity: A Study of Colorado Conservation Easement Practices, November 2001, p. 32

²⁹ Creating Collective Easement Defense Resources, May 2002, p. 5

³⁰ Ensuring the Promise of Conservation Easements: Report on the Use and Management of Conservation Easements by San Francisco Bay Area Organizations, May 1999, p. 24

³¹ Rally 2005 workshop materials from Brenda Lind; figure also found in spring 2003 *Exchange* article

³² Fall 2002 *Exchange* article

³³ Coordinated Conservation Easement Defense in the Heart of the Rockies, May 2004, p. 57

³⁴ Planning for Perpetuity: A Study of Colorado Conservation Easement Practices, November 2001, pp. 27-28

San Francisco Bay area organizations³⁵

- Median per easement = \$26,611
 - This figure is problematic because of some of the disproportionate endowments. For example, several nonprofits have built endowments far in excess of their current holdings in anticipation of their eventual holdings.

Northern New England land trusts³⁶

- Range of endowment principals
 - \$7,000 to \$18,000 unstaffed land trusts
 - \$20,000 to \$1 million staffed regional land trusts
 - \$1 million to \$2+ million statewide land trusts
 - Some of the organizations use these funds to support both their fee ownerships and conservation easements
 - One regional and one statewide land trust maintained separate legal defense funds as well, at \$6,000 and \$250,000 respectively.
- (Amounts requested per easement = \$1,000 to \$7,000)

Other Projections

1. [Building on the projections made on page 8 re rate of violations] – A land trust with 10 easements will expect a violation every 3-4 years; every 12 years (or a little more) this will be a major violation. This land trust would want to have a defense fund from which it could withdraw \$78,000 in any given 12-year period. An endowment that would generate this amount, chopped into yearly expenditures, would be about \$325,000. If the land trust had 20 easements, it would need an endowment of \$650,000.³⁷
2. Enforcement funds are currently recommended to fund 3 court cases (national average is \$50,000 per case).³⁸

Other Considerations

- The survey revealed that over 50% of the land trusts believed that they would find it difficult or impossible to finance from their dedicated defense funds two concurrent court cases with attorneys' fees exceeding \$50,000, and most admitted that the demands on the organizations' staff and boards of two simultaneous violation cases would severely curtail their easement acquisition, stewardship and other programs.³⁹
- Many land trusts are relying on easement language that requires payment of all the land trust's costs and attorney's fees if the land trust prevails in litigation to ameliorate the financial risk of legal defense and replenish their stewardship/enforcement funds

³⁵ Ensuring the Promise of Conservation Easements: Report on the Use and Management of Conservation Easements by San Francisco Bay Area Organizations, May 1999, p. 8

³⁶ How Strong Are Our Defenses: The Results of the Land Trust Alliance's Northern New England Conservation Easement Quality Research Project, April 2000, pp. 25-27

³⁷ Conservancy: The Land Trust Movement in America, 2003, p. 137

³⁸ Rally 2003 daylong workshop materials from Judy Anderson and Jane Ellen Hamilton

³⁹ Coordinated Conservation Easement Defense in the Heart of the Rockies, May 2004, pp. 16-17

Source of Defense Funding – Principal or Interest

General Findings

- Gallatin Valley Land Trust (MT) – withdrawal of principal for defense are at the sole discretion of the board of directors⁴⁰
- Land Trust for Tennessee – same approach⁴¹

Heart of the Rockies land trusts

- Only 1 land trust (out of 17) has an annual budget (\$2,607) for legal enforcement

Most easement holders establish a separate, dedicated fund similar to one of the following models:

- “Stewardship Fund.” Generally, earnings (or growth) only are available to support the stewardship program, but principal may be invaded for easement defense or, under defined circumstances, annual monitoring.
- “Stewardship Endowment.” Only the earnings (or growth) can be used, and the principal is left untouched. Some groups allow the principal to be “borrowed” for specific purposes, such as legal defense, but it must be replenished.
- “Legal Defense Fund.” A separate fund dedicated for enforcement action only. (Monitoring and routine stewardship is supported through other means.)

⁴⁰ Land Trust Listserv communication re question on stewardship endowment funds, Feb 22 2006

⁴¹ Ibid.

CONSERVATION CAPACITY AND ENFORCEMENT CAPABILITY RESEARCH PROJECT

Interview Results Conservation Easement Stewardship

1. Determine the average number or reasonable range of conservation easements (or acres) one (1) adequately trained FTE stewardship volunteer/staff/consultant can manage per year.

Discussion Option

As a guide, one trained staff person or dedicated volunteer can steward 60-120 conservation easements in a year.

Variables

The 60-120 range is general guidance. An organization's actual ratio may vary depending on:

- The depth of the relationship the land trust wishes to build with the landowner
- The complexity of the conservation easements
- The travel time between conservation easements
- The size of the properties

All-Volunteer Land Trusts

Opinion on discussion option	<p>120 seems high – in our land trust, each person handles 4; would need staff to get to 60-120 range</p> <p>Too many – we do 50-60 for actively managed properties, and that's stretching it</p> <p>Seems low – a paid staff person could do 200</p>
Additional variables	<ul style="list-style-type: none"> • Ownership – how often there is turnover; subsequent owners may not have same land ethic or understanding as the original donor • Cooperation, attitude of landowner • If properties are actively managed (farming, ranching, forestry) or public access, would take more time • Mitigation easements also take more time – monitoring for endangered species, dealing with homeowner's associations, etc.

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Staffed Land Trusts

Opinion on discussion option	<p>Generally seems reasonable; about right - 4⁴²</p> <p>Probably a good guide, but on the high end – 2</p>
Additional variables	<ul style="list-style-type: none"> • What other responsibilities the stewardship person may have; what else they’re working on - 3 • Is the property located next to another CE property – if so, easier to steward - 2 • Methodology used by the land trust with respect to its stewardship program – how hands on they are, how much time they spend with the landowner - 2 • The nature and extent of your outreach program for easement landowners; how many events you host, newsletters, etc. – this can add to the time dramatically • Climate and location – many properties can only be reached May-September • How much time is spent doing a monitoring report and any additional follow-up; nature of monitoring protocol • Easements with management responsibilities or public access provisions take much longer • Character of the landowner – original donor or successor • If the easement permits subdivision – now you are dealing with 3-4 owners but still one easement • Rural v. suburban v. urban areas – character of the surrounding community and how much encroachment from neighbors • Volunteer training of stewards – takes less financial capacity • Available technology – much faster with GIS and GPS; able to document change much more quickly and accurately

⁴² Highlighted figures indicate number of interviewees who responded similarly to the discussion option or question posed.

2. Determine what is desirable, acceptable and unacceptable for the percentage of annual stewardship costs that should be covered by income from any dedicated stewardship fund.

Discussion Options

As a guide, the following table summarizes what would be desirable, acceptable and unacceptable to ensure that a land trust has a stewardship endowment of a sufficient size to cover most of its annual stewardship costs:

Factors to be considered:	I DESIRABLE	II ACCEPTABLE	III UNACCEPTABLE
A. Endowment	75-100% OR Minimum of \$3,000/CE	Less than 75% (or <\$3,000/CE) but has all of the elements below:	No endowment OR Endowment less than 75% (or <\$3,000/CE) AND Missing B, C or D
B. Required annual funding		Dedicated or secure source of funding to make up deficit	
C. Credible fundraising plan		To bring land trust to level I within 10 years	
D. Fundraising test		Annual amount needed in plan under C is less than 50% of annual budget	

All-Volunteer Land Trusts

Opinion on discussion option	Overall logic makes sense – good guideline to start people thinking - 2
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	<p>Should always shoot for 100% II may be acceptable, but is <u>not</u> reliable \$3,000/CE may be high</p> <p>We ask for \$4,000/CE (so fall within the guide) However, cover annual stewardship costs through fundraising as part of the annual budget – minimal</p> <p>No opinion – little experience analyzing costs Probably not more than \$3,000</p>
Unacceptable for a land trust to have no stewardship endowment?	<p>Agree</p> <ul style="list-style-type: none"> • How can you call yourself a land trust if you don't <p>Not sure</p> <ul style="list-style-type: none"> • Definitely unacceptable for a land trust not to be thinking about this <p>Disagree</p> <ul style="list-style-type: none"> • Is acceptable if you have the money elsewhere
Variables	<ul style="list-style-type: none"> • Geographic spread • Education of landowners • Degree to which landowners “buy in” to easement

Staffed Land Trusts

Opinion on discussion option	<p>Desirable (I)</p> <ul style="list-style-type: none"> • Makes a lot of sense – 3 • \$3,000/CE is low – 2 • In an ideal world we would always want 100% <p>Acceptable (II)</p> <ul style="list-style-type: none"> • Also reasonable • Push to have fundraising plan within 5 years <p>Difficult to raise operating funds, so important to have stewardship fund to cover these costs</p>
Unacceptable for a land trust to have no stewardship endowment?	<p>Agree - 5</p> <ul style="list-style-type: none"> • Too much risk that you won't be able to fund the costs

	<ul style="list-style-type: none"> • Talking about continuity, in perpetuity <p>Not sure</p> <ul style="list-style-type: none"> • It's more risky; ideally you want an endowment
<p>Variables</p>	<ul style="list-style-type: none"> • Working with volunteers reduces costs • Clustered easements reduces costs • Draw on endowment should be looked at each year – may vary from 4-5 percent • Nature of easement – forever wild v. very complex • Nature of how complicated stewardship process is • Land trusts that have huge annual operating budgets and are able to fund all their costs from the operating budget • How funds are invested • Being able to raise the stewardship endowment

3. If no dedicated stewardship fund, then what sort of annual dedicated and secure source of annual operating income would be acceptable?

Discussion Option

As a guide, if there is no dedicated stewardship fund, a land trust should have:

- A strong operating reserve;
- A long history of member contributions to these causes or dedication of special event money to stewardship; and
- Fairly low stewardship expenses compared to the overall budget.

All-Volunteer Land Trusts

Opinion on discussion option	<p>Agree – must have some kind of financial backing - 2</p> <ul style="list-style-type: none"> • We operate this way <p>No real opinion – endowment fund is the only insurance; all land trusts should have endowment; goal should be self-sufficiency</p>
Variables	<i>None reported</i>
Other sources of “dedicated and secure annual income”	<ul style="list-style-type: none"> • Bequests

Staffed Land Trusts

Opinion on discussion option	<p>Agree, seems to make sense, reasonable, fair – 2</p> <ul style="list-style-type: none"> • Operating reserve and history very important – need to establish it for several years, have a sustained membership that’s increasing • Keeping stewardship expenses low is critical • Long history of member contributions makes sense <p>Acceptable, but should also be building their endowment at the same time; endowment is preferred - 3</p> <ul style="list-style-type: none"> • Strong operating reserve may not be reliable • Still risky
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	<ul style="list-style-type: none"> • If a land trust can raise the money every year, it seems like they could raise money for an endowment <p>Very problematic – if there’s no stewardship reserve and the easements need to be transferred, there is no money to go with them</p>
Variables	<ul style="list-style-type: none"> • Number of land trusts in region competing for same donors (“donor fatigue”)
Other sources of “dedicated and secure annual income”	<ul style="list-style-type: none"> • Grant money – may be tough to get, but can be tied to education and outreach opportunities; grant funding for contract monitoring - 3 • Town warrant – minor dedication of tax income to land trust • Tax revenue – township-based land trusts in PA • “Sugar daddy,” benefactor – someone in the community that you can go to - 2 • Collection – payment for monitoring and stewardship from landowner; involving landowner on a matching basis - 2 • Transfer fees • Bequests • Events

4. Determine a reasonable average anticipated rate of litigated easement violations per 100 easements, and a reasonable estimate of the number of enforcement actions that will cost the land trust more than \$2,500 to resolve. This question should attempt to evaluate how a land trust should be prepared for either a major litigated violation or other enforcement scenario where the cost of enforcement would exceed the annual operating budget for stewardship.

Discussion Option

As a guide, a land trust can expect 1 litigated easement violation over a 10-year period for every 300 easements it holds. A land trust can also expect 1 easement enforcement action (not necessarily litigated) costing more than \$2,500 to resolve, over a 10-year period, for every 100 easements it holds.

All-Volunteer Land Trusts

Opinion on discussion option	<p>Agrees with statement; correct; a good guide</p> <p>Doesn't sound like very many; would think it's modest</p> <ul style="list-style-type: none"> • Maybe the rate is so low because we haven't been aggressive in pursuing these violations <p>No opinion</p> <p>Have never litigated – 2</p> <p>Have experienced enforcement action – 2</p> <p>No problems to date – 1</p>
Variables	<ul style="list-style-type: none"> • The number of easements that will change hands – turnovers may increase litigation rate (whether you're dealing with first or second generation landowners) – 2 • Quality of baseline data, monitoring

Staffed Land Trusts

Opinion on discussion option	<p>In the ballpark – 2</p> <ul style="list-style-type: none"> • Probably a fair assessment now, but thinks it
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	<p>will change</p> <p>No opinion – 3</p> <ul style="list-style-type: none"> • No experience - 2 • No way to make that judgment <p>Figure is low</p>
<p>Variables</p>	<ul style="list-style-type: none"> • Second-generation landowners – rate of violations may increase – 4 • Well-drafted, bullet-proof easements - 2 • How old some of the easements are and how well drafted • Complexity of conservation easements • Quality of stewardship – good records, good landowner relationships • Good solid recordkeeping • Strength of relationships with landowners • Consistent program of meeting with new landowners when properties change hands • Quality of communications in general • Mediation clause in easement language • As land conservation evolves, our practices get better • Real estate values – as property values rise, more incentive to break easement

5. Develop a formula for determining how much money a land trust needs to have in its legal defense/stewardship fund per easement to fully fund an enforcement action or other litigation, and determine on average how much money a land trust needs to have in its legal defense/stewardship fund per easement to initiate an enforcement action. As part of this question, determine if it is standard practice to plan for major violation funding to come from the principal of the dedicated fund or the interest.

To Fully Fund an Enforcement Action or Other Litigation

Discussion Option

As a guide, in order to fully fund an enforcement action or other litigation, a land trust needs to have a minimum of \$50,000 in its legal defense/stewardship fund. If the land trust holds more than 15 easements, it needs an additional \$1,500 to \$3,000 per easement in this fund.

All-Volunteer Land Trusts

Opinion on discussion option	Within the range; seems to make sense; good rule of thumb – 3
Variables	<ul style="list-style-type: none"> • Mediation and arbitration provisions in the easement document should keep the cost down

Staffed Land Trusts

Opinion on discussion option	<p>Sounds reasonable, fair number, about right – 3</p> <ul style="list-style-type: none"> • Why 15? • \$50,000 may be hard for small groups, but realistic • May creep up over time with inflation, attorney’s costs, etc. <p>No opinion, hard to judge – 2</p> <p>Very minimum – probably wouldn’t hurt to increase to \$75,000-100,000</p>
Variables	<ul style="list-style-type: none"> • Bullet-proof easement that’s easy to defend, as opposed to one that is drafted by a land trust volunteer; quality of the easement - 2

	<ul style="list-style-type: none"> • Attorney on staff – would charge a reduced rate for litigation • Pro bono legal counsel • The type of litigation • Push for mediation • Multi-state program – if you are a land trust that deals with easements in different states, involves different attorneys, different state laws, etc. • Are you in a particularly expensive place for lawyers? • Are you in a place with supportive case law? • Original v. successor owners • Real estate values – as property values rise, more incentive to break the easement • Quality of stewardship – good records, good landowner relationships
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To Initiate an Enforcement Action

Discussion Option

As a guide, in order to initiate an enforcement action or other litigation, a land trust needs to have a minimum of \$5,000 in its legal defense/stewardship fund. If the land trust holds more than 15 easements, it needs an additional \$150-300 per easement.

AND

The land trust needs a credible plan OR some other type of defense preparedness (see question 6, below) to ensure that the dispute is resolved.

All-Volunteer Land Trusts

Opinion on discussion option	<p>Agree – 2</p> <ul style="list-style-type: none"> • Is minimal, and may be too modest • Need to have money available <p>OK, but</p> <ul style="list-style-type: none"> • Should also have an attorney on their board • Should also include a mediation/arbitration provision in their easement language
Variables	<ul style="list-style-type: none"> • The nature of the violation – if it is critical and damaging the resource, you need to get it right

Staffed Land Trusts

<p>Opinion on discussion option</p>	<p>Seems reasonable</p> <p>No opinion – 2</p> <ul style="list-style-type: none"> Seems like if you're going to initiate an action, you need to have a plan to finish it <p>Something is better than nothing, but worried about initiating a legal action that you're not prepared to follow through</p> <p>If you have a solid plan, it would be OK</p> <p>Don't go there – if you don't have the money, don't hold the easement</p> <p>Timing – even if you get it started, now you have to scramble to find funds; not good for the organization</p> <p>For bigger cases, we're all going to be looking for help</p> <p>Seems a little low – a survey almost costs that much! Plus attorneys fees add up fast</p> <p>Should probably be higher; still need to be able to follow up</p>
<p>Variables</p>	<ul style="list-style-type: none"> As we get better at the job we do, the need for outside intervention (legal action) becomes less Need to keep in mind those landowners who have deep pockets that can challenge an easement and run the organization into the ground Same as above

Does Defense Funding Come from the Principal or the Interest?

Discussion Option

As a guide, for the majority of land trusts, it is standard practice to plan for major defense funding to come from the principal of the dedicated fund.

All-Volunteer Land Trusts

This question only had 2 responses.

<p>Opinion on discussion option</p>	<p>Correct</p>
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	Both principal and interest
Variables	<i>None reported</i>
Funds to rebuild endowment	<ul style="list-style-type: none"> • Might not have to rebuild to where we were without new projects coming in • Settlement • May consider charging new CE projects at a higher rate (especially if it's a mitigation project) • Fundraisers during the litigation period • We have a group we call "angels" – would do a special appeal

Staffed Land Trusts

Opinion on discussion option	<p>Correct, have done so in past, true - 6</p> <ul style="list-style-type: none"> • Annual budget includes legal costs, so enforcement costs initially come from general fund; can tap into endowment if we need to
Variables	<ul style="list-style-type: none"> • Endowment policy – does it earn more than you're withdrawing? Should always be putting money back into the endowment • Income sources – public v. private funding
Funds to rebuild endowment	<ul style="list-style-type: none"> • Specific fundraising - 2 • "Sugar daddy" – big wealthy board member • Fundraising through membership • Have endowment drive once every 5 years – if depleted, would probably do it in less than 5 years or target some major donors • Defendant – legal fees and expenses always get paid; staff time is negotiable • Insurance • Continue to build fund by accepting new easements on an ongoing basis • Through additional stewardship asks • Could possibility be rebuilt from the operating endowment if it is large enough • Have no plan for that

6. In the absence of sufficient funds to initiate an enforcement action, provide a description of the type of defense preparedness (such as a letter of commitment of pro bono legal services, a way to demonstrate the commitment of an Attorney General, a fundraising plan with actual pledges of specific amounts) that would be acceptable.

Discussion Option

As a guide, if a land trust lacks sufficient funds to initiate an enforcement action, it needs to demonstrate that it has a fundraising strategy and a board policy committing funds to this purpose or can demonstrate its defense preparedness in other ways.

All-Volunteer Land Trusts

Opinion on discussion option	No alternative for having funds – not realistic - 2 <ul style="list-style-type: none"> Some options OK for back-up, but shouldn't rely on it <p>Definitely agree that you need to demonstrate some kind of preparedness if no funding</p> <ul style="list-style-type: none"> Fundraising strategy? Unsure
Variables	<i>None reported</i>
Which would be acceptable?	<ul style="list-style-type: none"> Third-party and back-up grantees – if it is a regulatory agency (e.g., USFWS), that can be very beneficial, especially in regard to violations of the Endangered Species Act or wetlands violations
Other options	<ul style="list-style-type: none"> Boston-based pro-bono fund through the MA Land Trust Coalition State land trust service center should have a fund and individual land trusts should be able to apply for assistance Go to the town and have the town help fund or provide legal assistance

Staffed Land Trusts

Opinion on discussion option	Pretty fair
	Must also have an A-1 stewardship program in place –

	<p>are you at risk of losing because of sloppy stewardship work? People will back a winner</p> <p>Lot of risk involved with all these items, not guaranteed for the long-term – ideally, the land trust should have a stewardship fund</p> <p>We take a lot of pride in the fact that we can say we have both a stewardship fund and legal defense fund – instills a lot of trust and credibility in the organization</p> <p>Analogy to retirement planning – alternatives may be that you have a roommate, get a part-time job, but ideally you want a retirement fund</p> <p>Not sure that there is other type of defense preparedness that should be acceptable – need the funding</p> <p>Overall, its problematic</p>
Variables	<ul style="list-style-type: none"> • May be alternatives for smaller land trusts with 1-2 easements, but not for larger land trusts with more active programs (may want to categorize)
Which would be acceptable?	<ul style="list-style-type: none"> • Shared litigation/legal defense counsel on staff or access to an attorney pool/regional attorney network - 2 • Co-holding - 2 • Third-party, back-up - 2 • Fundraising with charitable pledges • Having a lawyer on staff or on the board who could provide pro bono services • Title insurance
Other options	<ul style="list-style-type: none"> • Peer interest group – filing of an amicus brief • Easement insurance • Mediation should be a standard practice to mitigate some of the expense • Pooled legal defense fund managed by Land Trust Alliance that land trusts can apply to
General comments	<p>Key is preventing violations in the first place</p> <p>Need good stewardship systems</p> <p>Having an enforcement policy in place is key for consistency</p>

	Land trusts are getting better at drafting their easements and improving practices over time
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CONSERVATION CAPACITY AND ENFORCEMENT CAPABILITY RESEARCH PROJECT

Discussion Paper 3 Fee Land Stewardship

Practice 7A – Capacity

The land trust regularly evaluates its programs, activities and long-term responsibilities and has sufficient volunteers, staff and/or consultants to carry out its work, particularly when managing an active program of easements.

Practice 12A – Funding Land Stewardship

The land trust determines the immediate and long-term financial and management implications of each land transaction and secures the dedicated and/or operating funds needed to manage the property, including funds for liability insurance, maintenance, improvements, monitoring, enforcement and other costs. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure these funds and has a policy committing the funds to this purpose.

1. Determine the average number or reasonable range of fee ownerships (preserves, sanctuaries, etc.) (or acres) one (1) adequately trained FTE stewardship volunteer/staff/consultant can manage per year.

Introduction

A land trust must be a responsible steward of its lands. All the work and resources invested in acquiring the land are wasted if the property is not defended against encroachment and misuse or if its resources are not managed to maintain their conservation values. Unless the land trust is prepared and has the capability to undertake the many responsibilities of managing a property in perpetuity, it should not take on its permanent ownership. The land trust should periodically assess the stewardship obligations it has, determine if more assistance is necessary to fulfill these obligations and plan accordingly. This question attempts to evaluate how much land a staff person or volunteer can reasonably be expected to manage in any given year and when a land trust might need additional assistance.

Literature Review Findings

- In 1995-96, the Society for the Protection of New Hampshire Forests determined that it needed one forest manager for every 25,000 acres it owns.⁴³

⁴³ Personal communication between Tammara Van Ryn (Land Trust Accreditation Commission) and Geoff Jones (SPNHF)

Discussion Option

As a guide, one trained staff person or dedicated volunteer can manage up to 25,000 acres in a year.

Variables

The 25,000 acre figure is general guidance. An organization's actual ratio may vary depending on:

- The intensity of public use
- The extent of management necessary to protect the natural resource values
- Any lease arrangements for farm and/or forest land

Discussion Questions

1. What is your opinion on the discussion option?
2. What additional variables would factor into your answer to the question?
3. Is acreage or number of properties a better gauge?

2. If there is no dedicated stewardship fund(s) for land management, then what sort of dedicated and secure source of annual operating income would be acceptable?

Introduction

A stewardship fund may not be the sole source of funding for land management, and it may not actually be managed by the land trust as a separate account. The Little Traverse Conservancy (MI), for example, relies on funds from its general endowment fund (of \$2 million) and income from some of its properties, along with a small stewardship endowment, to fund its annual management costs.⁴⁴

Possible Sources of Dedicated and Secure Annual Income

- Income from properties, including agriculture, forestry, recreation and rental incomes

Discussion Option

As a guide, if there is no dedicated stewardship fund, a land trust should have another dedicated source of funds AND

- A strong operating reserve;
- A long history of member contributions to these causes or dedication of special event money to stewardship; and
- Fairly low stewardship expenses compared to the overall budget; OR
- A strong operating reserve supplemented by income generated from the property or other sources.

⁴⁴ Land Trust Standards and Practices, 12A: Funding Land Stewardship, 2004

Discussion Questions

1. What is your opinion on the discussion option?
2. Are there any variables that would factor into your answer to the question?
3. Are there other possible sources of “dedicated and secure annual income”?

3. Determine what is desirable, acceptable and unacceptable for the percentage of annual stewardship costs that should be covered by income from any dedicated stewardship fund.

Introduction

A land trust needs to plan for a permanent, ongoing source of funds for land management. The surest way to fund land management over time is with a dedicated fund that is segregated from the operating budget. Some land trusts have separate funds for individual properties; many pool management money for all their properties into a single fund. Managed wisely, a dedicated fund provides an ever-increasing flow of money guaranteeing that annual management responsibilities can be met. This question attempts to evaluate to what degree the income from any stewardship fund should cover annual stewardship costs.

Literature Review Findings

Annual Stewardship Costs – General Findings

For 28 properties in Arizona, California and Oregon⁴⁵

- Average = \$51/acre
- Median = \$122/acre
- Range = \$6/acre to more than \$2,100/acre
- Therefore, for a 100-acre preserve, the cost could range from as little as \$600 to as much as \$210,000 per year

Discussion Options

As a guide, the following table summarizes what would be desirable, acceptable and unacceptable to ensure that a land trust has a stewardship endowment(s) of a sufficient size to cover most of its annual land management/stewardship costs:

⁴⁵ Natural Lands Management Cost Analysis: 28 Case Studies, Center for Natural Lands Management, October 2004

Factors to be considered:	I DESIRABLE	II ACCEPTABLE	III UNACCEPTABLE
A. Endowment	75-100%	Less than 75% but has all of the elements below:	No endowment OR Endowment less than 75% AND Missing B, C or D
B. Required annual funding		Dedicated or secure source of funding to make up deficit	
C. Credible fundraising plan		To bring land trust to level I within 10 years	
D. Fundraising test		Annual amount needed in plan under C is less than 50% of annual budget	

I. As a guide, it would be desirable for a land trust to have an endowment (yielding a 5 percent rate of return) sufficient to cover between 75 and 100 percent of its annual stewardship costs; OR

II. It would be acceptable for a land trust to have an endowment that covers less than 75 percent of its annual stewardship costs IF

B. There is some other dedicated and secure source of income (see question 2, above) AND

C. A credible fundraising plan that enables the land trust to raise the desirable funds within 10 years AND

D. The funds required to be raised each year do not exceed 50 percent of the land trust's annual budget.

III. It would be unacceptable for a land trust to have no stewardship endowment OR For a land trust to have an endowment that covers less than 75 percent of its annual stewardship costs AND the land trust is lacking either B, C or D, above.

Discussion Questions

1. What is your opinion on what is desirable, acceptable and unacceptable?
 - a. Is it unacceptable for a land trust to have no stewardship endowment?
2. Are there any variables that would factor into your answer to the question?

4. Determine a reasonable rate of litigation incurred by land trusts on fee-owned properties; and suggest how land trusts should prepare for this possibility with either a range of liability insurance coverage amounts or dedicated fund.

Introduction

Going to court is costly both in time and money. Nevertheless, sometimes a land trust must go to court to resolve trespass or encroachment issues or other problems and defend its conservation properties. Although these expenses are extremely difficult to predict, this question will attempt to evaluate the rate of litigation on fee-owned properties and how a land trust can best prepare for these events.

Literature Review Findings

- Center for Natural Lands Management (CA/OR) – when they set up an endowment for a property, they also establish an additional amount in a legal fund that can be drawn on for legal needs of any property⁴⁶

Discussion Questions

1. What types of violations of fee-owned properties has the land trust experienced and of what magnitude?
2. Have any of these resulted in litigation?
3. What have been the costs?
4. How were they covered?

5. Consider how to address capital needed to maintain certain property features or structures.

Introduction

Stewardship costs can escalate quickly when the land trust accepts properties that require constant or complex management. Properties with buildings, historic structures or other improvements can be particularly costly. This question attempts to understand how land trusts address those needs and plan for capital costs.

⁴⁶ Land Trust Listserv communication re question on stewardship endowment funds, Feb 22 2006

Discussion Questions

1. How does the land trust ensure it has enough funds for capital costs, including the repair and maintenance of buildings or other property features?
2. Are sources of these funds different from those in questions 2 and 3, above?

**CONSERVATION CAPACITY AND ENFORCEMENT CAPABILITY
RESEARCH PROJECT**

**Interview Results
Fee Land Stewardship**

1. Determine the average number or reasonable range of fee ownerships (preserves, sanctuaries, etc.) (or acres) one (1) adequately trained FTE stewardship volunteer/staff/consultant can manage per year.

Discussion Option

As a guide, one trained staff person or dedicated volunteer can manage up to 25,000 acres in a year.

Variables

The 25,000 acre figure is general guidance. An organization’s actual ratio may vary depending on:

- The intensity of public use
- The extent of management necessary to protect the natural resource values
- Any lease arrangements for farm and/or forest land

All-Volunteer Land Trusts

Opinion on discussion option	<p>Seems like a huge amount, very high - 2⁴⁷</p> <ul style="list-style-type: none"> • May work if raw land • Depends on how you define management <p>A good, motivated volunteer can handle about four 5-acre properties</p> <p>118 properties/25 land stewards</p> <p>A committed volunteer generally is only there 3 hours/week</p> <p>One property, only 2-3 acres, is taking up a huge amount of time and money</p>
Additional variables	<ul style="list-style-type: none"> • The extent of invasives • Transportation to monitor the property

⁴⁷ Highlighted figures indicate number of interviewees who responded similarly to the discussion option or question posed.

	<ul style="list-style-type: none"> • Accessibility of properties • Historical buildings (demand a huge amount of upkeep) • Restoration • The extent of ATV use • Trails v. just conservation • Proximity to urbanization • Any lease arrangements with other organizations • Availability of volunteers
Acreage or number of properties	<p>Number of properties - 3</p> <ul style="list-style-type: none"> • Especially when smaller parcels • The more boundaries you have the more issues you have • And the activities thereon – rank the ones that have more intensive use and the ones that are more self-sustaining requiring less hours <p>Acreage</p> <ul style="list-style-type: none"> • Harder to steward multiple properties <p>Some combination?</p>

Staffed Land Trusts

Opinion on discussion option	<p>Laugh – that’s huge!</p> <p>Once you have a preserve management plan implemented, the maintenance needs drop</p> <p>Obviously, the more preserves you bring on, the more help you need</p> <p>If your management goals are to leave the property as is, then you can handle more</p> <p>Difference between annual stewardship, monitoring, maintenance v. special projects, restoration work, etc.</p> <p>Whether it’s 1 acre or 1,000 acres, it doesn’t really make a difference – depends on management objectives</p> <p>Depends on organizational mission and stewardship goals for that particular tract – perhaps of you have a “do nothing” approach, maybe 25,000 acres would be possible, but it still seems like a lot</p> <p>Difficult to clarify – seems arbitrary, not relevant or</p>
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	<p>useful - 3</p> <p>One full-time person and 4 part-timers were able to manage 1.4 million acres over a 4-month time period Need to figure out first how much management the property is going to take, then go to the cost/capacity issue</p> <p>Acreage is not a good measure of staff time</p>
<p>Additional variables</p>	<ul style="list-style-type: none"> • Size of the property – a lot of smaller pieces are harder to manage than one large parcel – 2 • Intensity of use – active management and run programs v. natural state - 2 • Purpose of owning the property – land trust mission and stewardship goals - 2 • Extent of invasives and restoration work - 2 • Number of immediate neighbors, shape of property - 2 • How long you’re going to own the property – permanent ownership or pre-acquisition? • Inherited problems – funky neighbors, weed control • What type of funding is available – can you contract out the work • Neighborhood of property – developed v. undeveloped area • Intensity of human interaction with the land • Intensive education programs • Geographic range of your service area – one county v. an entire state • Are land trust parcels contiguous? • The extent to which you want your community, neighbors and volunteers involved in your properties • Community expectations/issues/constraints • Short season – heavy workload in the summer, nothing to do in the winter • Miles and condition of trails and roads • Acres of gullies or otherwise disturbed land • Number and condition of infrastructure, any historic buildings • Presence and condition of rare resources (plant, animal, archaeological, geological) • Proximity to county/state roads • Type of ecosystem – tall grass prairie v. bog v. deciduous forest

<p>Acreage or number of properties</p>	<p>Look more at the number of properties, more accurate - 4</p> <ul style="list-style-type: none"> • 3-10 per person, depending on the variables • 30-50 properties might be a reasonable range • Depends on expectations and stewardship goals for the property <p>Neither one is a good gauge on its own – must consider the variables in order to gauge staffing for responsible stewardship</p> <p>One organization could have 35,000 acres over 15 parcels that would be easier to manage than another organization's 200 acres on 3 parcels</p>
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2. If there is no dedicated stewardship fund(s) for land management, then what sort of dedicated and secure source of annual operating income would be acceptable?

Discussion Option

As a guide, if there is no dedicated stewardship fund, a land trust should have another dedicated source of funds AND

- A strong operating reserve;
- A long history of member contributions to these causes or dedication of special event money to stewardship; and
- Fairly low stewardship expenses compared to the overall budget; OR
- A strong operating reserve supplemented by income generated from the property or other sources.

All-Volunteer Land Trusts

Opinion on discussion option	Agree - 2 <ul style="list-style-type: none"> • Strong operating reserve is fabulous • Don't like to depend on one source Should be a dedicated stewardship fund <ul style="list-style-type: none"> • Often what looks like a dedicated source disappears No opinion
Variables	<ul style="list-style-type: none"> • New organization should be given some time to establish a fund • Mission – to preserve in natural state, do not harvest timber or do agriculture
Other sources of “dedicated and secure annual income”	<ul style="list-style-type: none"> • Day camps, nature camp • Bequests • Partnership program for restoration • Public relations campaign

Staffed Land Trusts

Opinion on discussion option	Makes sense - 5 <ul style="list-style-type: none"> • Need to be financially sustainable
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	<ul style="list-style-type: none"> • Need to be looking at overall financial sustainability of the organization as a measure • Lays out a <u>diverse</u> program for funding stewardship, not relying on one source • “Or” is not necessary • One of those 4 bullets would not be enough • Don’t necessarily have to have an endowment if you have other sources; preserves flexibility – but don’t rely exclusively on annual fundraising - 2 <p>Likes idea of endowment</p> <ul style="list-style-type: none"> • Future is uncertain • If your management objective is natural area – then you probably need an endowment <p>Difference between overall organizational endowment and stewardship endowment. Having the organizational endowment gives you flexibility – you can budget for annual stewardship costs</p> <p>Sustainable forestry every XX years is a secure endowment</p>
<p>Variables</p>	<ul style="list-style-type: none"> • If land trust has a very strong volunteer component those funds might not be necessary
<p>Other sources of “dedicated and secure annual income”</p>	<ul style="list-style-type: none"> • Look at operating endowment and whether or not there’s a sustained effort to increase the endowment over time – 2 • Endowment held at a community foundation • Mitigation funds • Fee for services for managing property (like mitigation) • Oil and gas development – outstanding mineral rights and leases • Size of membership • Overall fundraising capacity, diversity of income • Grants – risky, but if you have a really solid plan for your acquisition and management, the potential for grants is higher • Lease to farmer or rancher

3. Determine what is desirable, acceptable and unacceptable for the percentage of annual stewardship costs that should be covered by income from any dedicated stewardship fund.

Discussion Options

As a guide, the following table summarizes what would be desirable, acceptable and unacceptable to ensure that a land trust has a stewardship endowment(s) of a sufficient size to cover most of its annual land management/stewardship costs:

Factors to be considered:	I DESIRABLE	II ACCEPTABLE	III UNACCEPTABLE
A. Endowment	75-100%	Less than 75% but has all of the elements below:	No endowment OR Endowment less than 75% AND Missing B, C or D
B. Required annual funding		Dedicated or secure source of funding to make up deficit	
C. Credible fundraising plan		To bring land trust to level I within 10 years	
D. Fundraising test		Annual amount needed in plan under C is less than 50% of annual budget	

I. As a guide, it would be desirable for a land trust to have an endowment (yielding a 5 percent rate of return) sufficient to cover between 75 and 100 percent of its annual stewardship costs; OR

II. It would be acceptable for a land trust to have an endowment that covers less than 75 percent of its annual stewardship costs IF

- B. There is some other dedicated and secure source of income (see question 2, above) AND
- C. A credible fundraising plan that enables the land trust to raise the desirable funds within 10 years AND
- D. The funds required to be raised each year do not exceed 50 percent of the land trust’s annual budget.

III. It would be unacceptable for a land trust to have no stewardship endowment OR For a land trust to have an endowment that covers less than 75 percent of its annual stewardship costs AND the land trust is lacking either B, C or D, above.

All-Volunteer Land Trusts

Opinion on discussion option	Seems like a pretty reasonable framework - 3 <ul style="list-style-type: none"> • Suggests changing 5 percent to “going interest rate” • The more you have in place the better off you are • Need to further define what is meant by credible fundraising plan • Kind of daunting at first No opinion
Unacceptable for a land trust to have no stewardship endowment?	Yes - 3 <ul style="list-style-type: none"> • If missing B,C, D • But “unacceptable” too strong – need commitment to get there • Future viability of organization depends upon your reputation – if you don’t have a stewardship fund, you don’t have a long-term plan; you can’t build your organization as a credible organization without a long-term plan Ideal, but not sure how realistic it is
Variables	<ul style="list-style-type: none"> • Active membership that can step up to the plate if you have a serious problem

Staffed Land Trusts

Opinion on discussion option	Not a bad stab at putting this all together; good structure overall; parameters are good overall guidance
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	<p>for most land trusts - 4</p> <ul style="list-style-type: none"> • 75% may be asking a lot from smaller land trusts • Trying to get as close to desirable should always be the goal, but may be more than 10 years • Desirable is good for basic maintenance • B is OK, C may not be necessary, not sure how to evaluate D • Probably 98% of land trusts would be leaning toward dedicated funds <p>???Matrix may be too restrictive and regimented Focus on telling them what the costs are; more emphasis on identifying the costs</p>
<p>Unacceptable for a land trust to have no stewardship endowment?</p>	<p>In general, yes - 2</p> <ul style="list-style-type: none"> • Needs to be conditional – if they have really diversified funding, can be a bit more flexible, but should be working toward table • Need to have a plan for an endowment – just as important as for easements <p>No, not absolute – 3</p> <ul style="list-style-type: none"> • Not if there's an overall organizational endowment • Need to keep options open – favor donor accountability v. restricted funding • If you just had B it would be acceptable – e.g., if you're running your program off the trees, hay and corn and that's acting as an endowment • Depends – where there's a strong volunteer presence and capabilities
<p>Variables</p>	<ul style="list-style-type: none"> • For strategic acquisitions, may be acceptable to accept a property without an endowment • Duration of property ownership

4. Determine a reasonable rate of litigation incurred by land trusts on fee-owned properties; and suggest how land trusts should prepare for this possibility with either a range of liability insurance coverage amounts or dedicated fund.

All-Volunteer Land Trusts

Types of violations	None on fee-owned properties <ul style="list-style-type: none"> • Dumping • Cutting phragmites in a salt marsh for a view • Encroachment problem with heavy-duty equipment coming on property from neighboring parcel; are in the process of restoring damage
Litigation	No litigation - 4
Costs	<i>None reported</i>
How costs were covered	<ul style="list-style-type: none"> • Costs handled by state attorney's office • Township can step in and help support the conservancy

Staffed Land Trusts

Types of violations	No violations <ul style="list-style-type: none"> • Unauthorized use • Trespassing longhorn cattle • Hunting and fishing trespass • Paintball • Litter • Weeds • Off-road vehicle use • Boundary encroachment issues - 2 <ul style="list-style-type: none"> ○ Neighbor partially built house on land trust property • Agricultural lease terms broken
Litigation	No litigation - 4

	Settled out of court (lease violation)
Costs	<ul style="list-style-type: none"> • Staff time – 3 • Attorneys fees - 2 • Signs, fences • Property cleanup • Erosion control <p>\$5,000 (encroachment) – still pending \$24,000 (lease violation)</p>
How costs were covered	<ul style="list-style-type: none"> • General operating – 2 • Pro bono legal services

5. Consider how to address capital needed to maintain certain property features or structures.

All-Volunteer Land Trusts

<p>How to ensure enough funds for capital costs</p>	<p>Not an issue - 2</p> <ul style="list-style-type: none"> • Long-term goal is to transfer properties to conservation district <p>Project-by-project basis</p> <ul style="list-style-type: none"> • Clearly a weakness; hope to build a larger operating endowment <p>Have agreement with the city and friends group to raise the money to build the building; triple net-lease – the tenants will be responsible for maintenance and upkeep</p>
<p>Sources of funding</p>	<p>No different - 4</p>

Staffed Land Trusts

<p>How to ensure enough funds for capital costs</p>	<p>Have included anticipated capital costs in our initial capital campaign to purchase property, even if 2-3 years out; should be a best practice to include an endowment component for maintenance - 2</p> <p>Calculate needs upfront for each property as part of the due diligence process</p> <ul style="list-style-type: none"> • Allows land trust to seek out specialized funding <p>Holds aside a certain percentage of annual revenue for future capital costs</p> <p>Don't feel strongly about an endowment fund for capital improvements (unless historic building)</p> <p>Bigger projects come from separate fundraising – mostly grant sources</p> <p>Small capital items (under \$10,000) would be</p>
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	<p>budgeted as part of the annual budget</p> <p>Have no way to ensure that we have enough – capital costs compete with all other expenses Maintenance costs are part of what we do and should be funded as part of the annual budget</p> <p>If you have a separate stewardship fund, it does give you the opportunity to build up the money for these capital costs – may be a more disciplined approach for boards to funding these costs rather than trying to budget for them on an annual basis</p> <p>Have a maintenance endowment Have also, in the past, saved money to pay for those costs</p>
Sources of funding	No different – 5