

Exchange

The Journal of the Land Trust Alliance



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Winter 2000

**Conservation
Easement Violations:
Results from a
National Survey**

**Approaches to
Easements in the
San Francisco Bay Area**



LAND TRUST ALLIANCE

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LAND TRUST ALLIANCE

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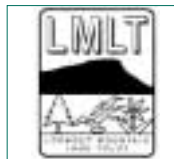
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President's Column



Stewardship is Key to Land Conservation

by Jean Hocker, *President*, Land Trust Alliance

In this issue, we report the results of two important studies of conservation easements: one on easement stewardship practices in California's Bay Area, the other on land trusts' experience nationwide with easement violations. In addition, LTA will soon complete an in-depth analysis of easement practices, based on extensive interviews and site visits with 18 land trusts and public agencies in three New England States.

These studies come at a time when conservation easements are becoming the tool of choice for more and more land trusts and public agencies.

Easements can be ideal tools for protecting productive farm, ranch and forest land; retaining unmarred scenic landscapes; buffering rivers and streams; and protecting wildlife habitat and migration routes. Wherever we want to help landowners protect public conservation values on privately-owned land, easements are a good choice to consider. It seems likely their use will only continue to grow.

Thus, it makes great sense to take stock of how easements are holding up and how all easement holders can improve their easement programs. To do so is the sign of a responsible, maturing land trust movement.

What we're finding is that easements have by and large stood the test of time, so far. Some violations have occurred, but most have been minor, few have gone to litigation, and those have largely been resolved in favor of conservation. But we're also finding that serious violations are usually the work of second or

third-generation owners, or of third parties. So we can anticipate that there will be more violations in the next decade.

To be ready, many easement holders need to tighten up their easement programs. The studies show that many easement holders are not as rigorous as they should be in this area.

Admittedly, the details can seem tedious and time consuming. But sound legal drafting, clear baseline documentation and record keeping, consistent monitoring, and diligent enforcement are all part of holding conservation easements. A land trust or agency that isn't prepared to do that ought to consider whether it should be holding easements at all.

To negotiate, sign, and record a conservation easement and then to neglect its stewardship is a little like working hard to buy a sleek sports car and then abandoning it to rust in the rain. If the owner is not able to take care of it, it was probably a mistake to acquire it in the first place; soon it won't be worth having. Of course, you have the right to neglect your Porsche if you wish, but an easement is different because there's a public trust involved.


With so much pressure to save green space before the opportunity is forever lost, it's easy to see why things fall between the cracks. And resources are never enough, even for large land trusts and agencies. So all easement holders need to work smart, select protection priorities carefully, put systems in place to manage easements as efficiently as possible, learn from others' experience,

and resolve that stewardship will be just as important as the initial agreement with the landowner.

The Land Trust Alliance is prepared to provide guidance and assistance. Our new strategic plan, also described in this issue, calls for a major emphasis on helping all land trusts become more effective, through increased training, Web-accessible information, programs of self assessments and peer assessments, updated publications, grants and scholarships to land trusts, land trust mentoring, and continued research, including analysis of options for easement defense.

Central to everything will be the regional delivery of programs and services. It is only by being close to where land trusts operate that we can understand the specific needs and opportunities facing land trusts and provide guidance and connections to resources. What we're accomplishing through our three current regional programs we want to spread across the country.

Among land trusts, there are many first-rate, effective programs for conserving land, including managing easement programs for the long-term. We will share those lessons and encourage all land trusts to do the best possible job of easement stewardship.

I can't imagine a more rewarding outcome for our movement than knowing that we've taken all the steps we possibly can to ensure that the land we protect today will remain protected at the end of the 21st Century. 



Highlights from 1999, and the Promise of 2000

1999 in Review

Many promising policy steps were taken in support of land conservation last year:

- The Clinton Administration proposed a suite of budget initiatives to provide additional funding for land conservation and to fight sprawl.
- Congress increased funding for grants to buy conservation easements through the Forest Legacy Program from \$7 million to \$30 million.
- For the first time in six years, Congress resumed funding grants to state governments from the Land and Water Conservation Fund (LWCF), with \$40 million appropriated for fiscal year 2000.
- The House Resources Committee approved H.R. 701, a bill that would, if enacted, assure high levels of funding for the LWCF and other important land conservation programs through 2015. (The bill will go to the House for a vote this year.)
- Virginia, Colorado, Delaware and Connecticut enacted new state tax incentives for donations of conservation easements.
- Approximately 100 local jurisdictions voted to create their own public funding for land conservation.

Not all news was good. Congress failed to enact any improvements in

tax incentives for land conservation. It did not fund the Farmland Protection Program, leaving it an empty shell for the second year in a row. And the Senate failed to make any significant progress on its version of the legislation to provide long-term funding for the LWCF. Despite the widespread popularity of protecting land in local elections, some local initiatives to fund land conservation lost. And of course, there were very few of us who did not see some piece of valuable open space in our community lost to development.

But stepping back from the details, we see an increased interest in conservation of open space in government at all levels. There is a growing understanding among political leaders that open space protection is an issue the voting public cares about.

The Year Ahead


The land trust community's challenge for 2000 is to turn that understanding into action. Our toughest test will be to convince the House and Senate to pass H.R. 701, which would provide \$1 billion of federal funding for land conservation each year (most of it in grants to state and local governments), and would prevent those funds from being redirected to other uses, as routinely happens in annual appropriations.

Land trust staff and volunteers played a key role in convincing several

members of the House Resources Committee to support this bill. To improve this bill, win a vote of the whole House and win passage by the Senate, we will need the help of the land trust community from all parts of the country.

LTA will also be working to increase the federal funds available for land conservation in the FY 2001 budget and appropriations bills, for Forest Legacy, farmland protection, state grants from the LWCF, North American Wetlands Conservation Act grants, and for the National Fish and Wildlife Foundation. We will continue to help educate policy leaders about the work land trusts are doing, and ways government can help. And we will continue to keep you informed on what state and local governments are doing to promote land conservation.

We have a great opportunity in 2000. Won't you help us make the most of it?

Please help by becoming a Land Trust ADVOCATE, and we'll send you timely updates on public policy developments and alert you to key opportunities to influence public support for land trusts and their work. To join, fill out the online form on LTA's Web site (www.lta.org/pubmain.html), or call Lynn Scherer at 202-638-4725. 

—Russell Shay

Director of Public Policy, LTA

Conservation Easement Violations: Results from a Study of Land Trusts

by Melissa Danskin



THE OVERWHELMING MAJORITY OF

the more than 7,400 conservation easements held by local and regional land trusts have not experienced violations, according to a study by the Land

Trust Alliance. LTA's 1999 Conservation Easement Study reveals that less than 7 percent of the easements held by land trusts have experienced violations, and land trusts considered most violations to be minor. Nevertheless, it also shows that some land trusts have incurred substantial costs in defending easements from violations committed by second generation landowners.

While lawsuits were filed in 21 cases of easement violations, most of these cases were settled prior to going to trial, and only six cases have been adjudicated by a court. The courts did not overturn any conservation easements in these violations cases. However, one land trust did report a court ruling that seriously eroded certain terms of its easement.

The study was conducted to gain an understanding of nationwide trends in easement violations and amendments and to identify problem areas to help minimize future violations. This article focuses on the study's violations component. Information on amendments will be included in a future issue of *Exchange*.

Among the study's key findings:

- A total of 498 violations were reported by local and regional land trusts; the vast majority—383—were

considered “minor” by the land trusts and were corrected without a significant commitment of resources.

- There were 115 major easement violations that

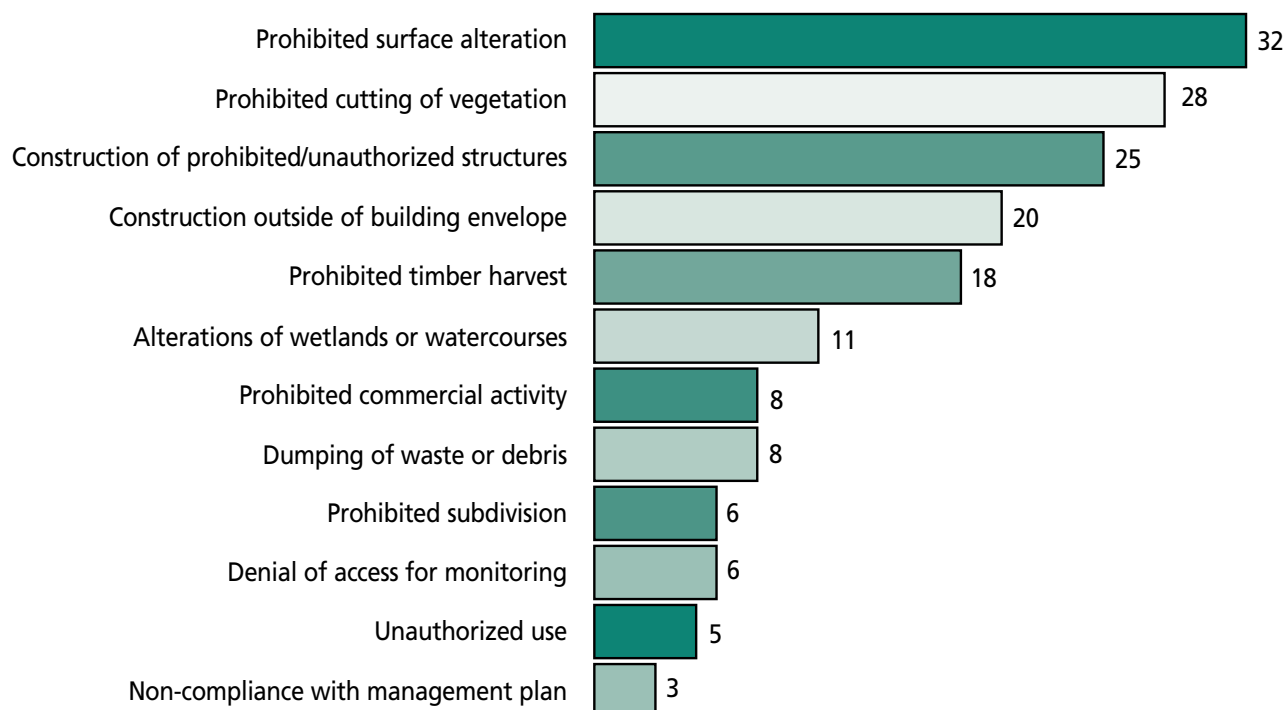
required what the land trusts considered to be a significant commitment of resources to resolve. Lawsuits were filed in 21 cases; the other 94 major violations were resolved without litigation.

- In each case that was litigated, violations were not committed by the original grantors of the easements, but by subsequent landowners and, in two instances, by third parties.
- The most common major violations involved prohibited surface alterations, such as leveling ground for roads and digging drainage ditches, reported in 32 cases. The next most frequent violation was the prohibited cutting of vegetation, with 28 such violations reported. The third most frequent was the construction of prohibited or unauthorized structures, with 25 reported occurrences [see Figure 1, page 6].

Survey Methodology

The Conservation Easement Study was compiled through a series of surveys completed in summer 1999. An initial survey was sent to the 209 land trusts that indicated in LTA's 1998 National Land Trust Census that they either had expe-

FIGURE 1: Prohibited surface alteration was the most common type of major violation reported by land trusts in LTA's 1999 Conservation Easement Study. Note that some violations included more than one of these violation types.



rienced one or more easement violations or had amended a conservation easement. The response rate was more than 70 percent. A follow-up survey was sent to 34 land trusts that LTA either knew or suspected had experienced major, litigated violations.

Major, Litigated Violations

LTA was able to obtain detailed information on 15 of the litigated cases.

Nearly all of the analyzed, litigated violations occurred in the 1990s; one dated back to 1989. None were committed by the original grantor of the conservation easement. Thirteen were committed by subsequent landowners. Two were committed by third parties: one by a neighbor who contracted with a woodcutter to cut trees on the easement-protected property; and one by a camp operator who trespassed and developed campsites on easement-protected property.

Many of the litigated violations occurred even though land trust representatives had met with the landowners to explain the easements' terms. In a majority of cases, the land trusts reported meeting with landowners prior to the violations and that the landowner appeared to knowingly violate the easement.

In nine of the litigated cases, the land trust initiated litigation against the violator. In one case, the land trust and the state attorney general co-initiated litigation. In two cases, the landowner filed a lawsuit against the land trust, asking for relief from the terms of an easement or a declaratory judgment of the terms in their favor. [See Napa

County Land Trust case study, page 8, and *Exchange*, Winter 1997, page 5.]

Easement Monitoring

Of the 12 litigated cases for which monitoring data were provided, nine were monitored annually, one was monitored more than once a year, and two were monitored less than once a year. Violations were experienced by land trusts that used staff to monitor easements as well as those that used volunteers.

Information on how soon violations were discovered after they were committed was provided on 11 cases. All but one of the violations were discovered within a year; most were discovered within three months.

While most of the land trusts indicated that they discovered the violations through site monitoring, at least four violations were reported to the land trust by a neighbor or local resident. Zad Leavy, executive director of The Big Sur Land Trust (CA), said that while his land trust has not discovered any major violations this way, neighbors often report questionable activities on protected land. "Neighbors are good monitors," he observed. "We visit conservation easement-protected properties once a year, on a typical inspection routine. If other people are there and know about the easement, then they help keep an eye on it."

Costs of Resolving Violations

Reported legal fees for major easement violations ran the gamut, from \$100,000 to \$100; average legal costs of major

Lessons Learned

The results of LTA's 1999 Conservation Easement Study and the experiences of seasoned land trust professionals and volunteers provide guidance on how to avoid violations and how to deal with them if they do occur:

1. **Easements must be carefully and clearly drafted.** Land trusts should pay particular attention to their easements' prohibited uses sections, which are most frequently violated. Land trusts must carefully consider each restriction and consider how it might be interpreted (or misinterpreted) by a future landowner.
2. **Have policies and procedures in place before a violation occurs.** Having a board-approved policy and procedures in place will guide land trusts in the event of an easement violation. This allows land trusts to focus on defending an easement—rather than having to develop procedures—when faced with a violation. Policies should address such questions as who is authorized to contact the landowner about a suspected violation, who will negotiate a resolution, how and when legal counsel should be consulted, and how a suspected violation should be documented.
3. **Regular, structured monitoring is essential, and contact with the landowner during monitoring visits is recommended.** Monitoring inspection reports should be clearly documented, with a copy given to the landowner and a secure copy kept in the land trust files. Potential violations should be addressed immediately and properly documented on the assumption that any documentation could end up as evidence in a court of law. "Keep detailed, accurate notes from the very beginning of dealing with a violation, or potential violation," advised David Shields, Brandywine Conservancy's (PA) associate director of land protection. "This includes notes of phone calls, meetings, correspondences, and any actions taken regarding the situation in question."
4. **Good landowner and community relations are critical.** Extra effort should be made to track when properties change hands and to acquaint new landowners with the land trust, the terms and significance of the easement, and the land trust's commitment to steward and uphold the easement. Good relations with neighbors of easement-protected properties can also help minimize third party violations and enforce a positive message about the land trust.
5. **Land trusts should have the financial resources to monitor, enforce and defend easements against violations.** Land trusts should develop and maintain stewardship endowments and legal defense funds to uphold their easements. Attorney William Hutton of Coblenz, Patch, Duffy, & Bass (CA) maintains that all too often "land trusts have been satisfied with smaller stewardship funds than they should be." Stewardship funding can come from a variety of sources, notes LTA Vice President for Programs Andrew Zepp: "Whether endowments are solicited from conservation easement donors, or raised in some other manner, it is essential that money is set aside for each and every conservation easement a land trust commits to own and uphold."
6. **Land trusts should consult experienced legal counsel as soon as a violation is discovered or suspected.** According to Karin Marchetti, general counsel to Maine Coast Heritage Trust, initial legal consultation should take place very early in a suspected violation case. If the situation is determined to be a violation, then the land trust should engage a litigator, preferably one familiar with conservation easements.

violations were about \$10,000. The legal costs reported for the litigated violations ranged from \$5,000 to \$100,000, and averaged \$35,000.

The legal costs of defending conservation easements were fully recovered in about half of the litigated cases for which information was available. For a variety of reasons, land trusts did not always seek recovery of costs. For example, in cases where an older easement document was difficult to interpret, some land trusts thought it would not be feasible to obtain reimbursement for legal costs. Additionally, some older easements do not specifically provide that the land trust can obtain monetary damages for violations.

Staff time devoted to the resolution of all major violations ranged from one hour to 200 hours. Estimated staff costs ranged from \$100 to \$28,000. Associated costs for resolving easement violations (including travel, supplies, etc.) ranged from \$100 to \$4,000.

Policy Changes as a Result of Violations

Forty percent of the 105 land trusts that responded to questions about policy changes said that they changed their easement drafting, monitoring, or violation policies after experiencing a major violation [see Figure 2, page 9]. The most common change was clarification of easement documents.

Land trusts also reported increasing their efforts to notify new landowners of easements, to maintain good relationships with all landowners, and to conduct more frequent and thorough monitoring inspections. Staff members at one land trust that experienced two litigated violations believe that better relations with the landowners might have prevented the violations.

Less frequently reported changes included implementing stronger monitoring policies, refining easement acquisition programs and policies, creating violation policies and resolution procedures, and creating an amendment policy.

Resolutions

The vast majority of conservation easement violations were settled without litigation. Of the 115 major easement

violations, only 21 lawsuits were filed. Most of the litigated cases were settled prior to a court trial.

No conservation easement has been overturned in a final court ruling. Of the six easement violations cases that were decided by a court, the terms of the conservation easements were upheld in all but one case. In this case, the judge was convinced that the landowner (who was not the original grantor of the easement) did not fully understand the terms of the easement and had acted in good faith when building outside a designated building envelope. The prohibited structure and associated septic drain field were permitted to stay. However, following this initial ruling, the easement was reopened for discussion by the judge, and the land trust was able to strengthen it in other areas, gaining additional controls over color and exterior materials of the building, and devel-

Stopping a Prohibited Action Before it Starts: Napa County Land Trust Blocks Commercial Venture

In 1995, a landowner attempted to start a commercial winery on property where commercial activity was prohibited by a conservation easement held by Napa County Land Trust (NCLT) (CA).

When the fourth-generation landowner applied for a permit to start a commercial winery in an existing structure on the 45-acre property, the land trust deemed it a violation of the easement.

NCLT volunteers had been monitoring the property annually, and usually contacted the landowner during monitoring visits. NCLT staff had also repeatedly informed the second, third and fourth-generation landowners that the structure could not be used as a commercial building. The structure had been built, as permitted in the easement, in the 1980s by the second-generation landowner.

Despite two years of warnings and negotiations, the landowner continued to try to locate the business in the building. In 1997, she filed suit against NCLT, seeking a declaratory judgment to allow the commercial winery on the property. She maintained that, while the easement did not allow a commercial vineyard, a commercial winery was not specifically prohibited by the easement. She viewed the winery as the equivalent of a residence, which was permitted by the easement. NCLT counter-sued to enjoin the landowner from starting the winery.

After two years of trial preparation, the landowner settled, forever waiving her claim to develop a commercial winery or make any other commercial use of the property. The settlement expanded and clarified the easement, giving NCLT greater leverage should the easement face violations in the future. NCLT Executive Director John Hoffnagle reported that media coverage of the case made it clear that the land trust is committed to defending and upholding the integrity of its conservation easements.

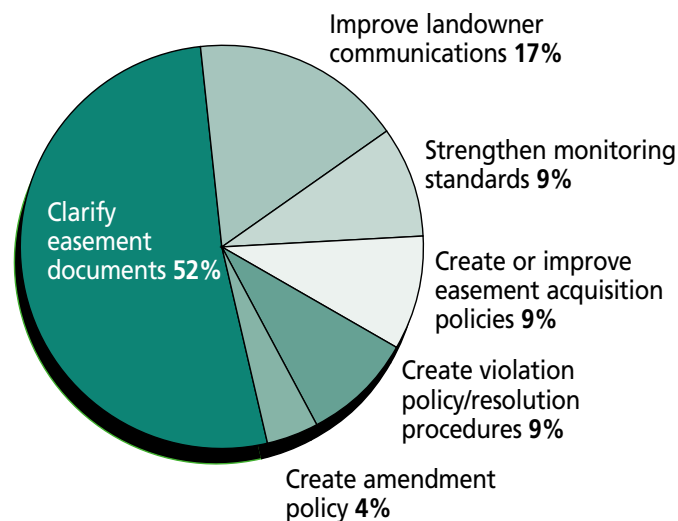
The land trust incurred legal fees of \$40,000 and staff time amounting to nearly 100 hours. None of these costs were recovered. When a favorable settlement seemed imminent, NCLT's counsel advised that the risk of going to trial was not worth the damages that might be recovered.

According to Mr. Hoffnagle, the easement's defense would have been aided by better baseline documentation and a more clearly-drafted easement and set of exhibits. (The easement was drafted prior to the creation of LTA's Model Conservation Easement, noted NCLT President Ann Schwing.) Mr. Hoffnagle said the land trust learned two other important lessons:

- Land trusts must prepare, when undertaking their monitoring, for the eventuality that any given situation may go to court.
- When a violation is likely to go to court, the land trust should hire a real estate litigator. "We learned that attorneys who do real estate transaction work have a different set of skills than those who deal with lawsuits on a regular basis," he said.

—Melissa Danskin

FIGURE 2: Clarifying easement documents was the most common policy change reported by land trusts that experienced major conservation easement violations. A total of 42 land trusts reported making one or more policy changes as a result of major violations.



oping a vegetation restoration plan for screening vegetation that was much more restrictive than the original requirements.

Typically, a lawsuit is filed if the two parties come to an impasse, said Mr. Leavy of The Big Sur Land Trust, adding that an attorney should be involved throughout the process of dealing with a violation. “It’s really a judgment call” as to if and when to file a lawsuit, he said. “You cooperate as much as you can. If the other party refuses to cooperate, then you go to litigation. If there’s cooperation, you can usually avoid litigation.”

Of the litigated cases settled out of court, land trusts reported that they had reached acceptable agreements in all cases. Resolutions occasionally involved some compromise. In one case, for example, an easement boundary was redrawn around a prohibited structure and more land was added to the easement area to ensure the natural resource value of the protected land was kept intact.

Other cases involved no compromise. For example, one landowner violated an easement by failing to get permission from the land trust to build a structure. The landowner was required in the settlement to remove the structure and pay staff and legal fees to the land trust—between \$25,000 and \$30,000 for legal fees alone.

Looking Ahead

Although less than 1 percent of the easements in the country have experienced major violations, easement stewardship continues to be vital.

“If a land trust is going to hold conservation easements, it should expect to be involved with their legal defense—including going to court, if necessary,” said David Shields,

associate director of land protection for Brandywine Conservancy (PA). “Land trusts should anticipate violations, and be willing to tackle the nitty-gritty work of resolving them.”

The Conservation Easement Study provides a mixed message, observed Andrew Zepp, LTA vice president for programs. “The good news is that most easements are not experiencing violations and, for those that are, land trusts are following through to ensure that they are upheld.

“On the other hand, it is sobering that several of the litigated easement violations occurred even though they were diligently monitored and the landowner was clearly aware of the terms of the easement,” Mr. Zepp continued. “As more properties under easement are transferred to second generation landowners, land trusts must be prepared for the eventuality that they will be required to defend some of their easements.”

Melissa Danskin is the information specialist for the Land Trust Alliance. She and Information Services Manager René Wiesner conducted the 1999 Conservation Easement Study.

LTA thanks all who participated in this study. Without their time and commitment, we would not be able to provide this information. LTA continues to collect information on easement violations. If you are aware of a violation, please contact Melissa Danskin at 202-638-4725; mdanskin@lta.org.

Resources

The following publications on conservation easements drafting and stewardship are available from LTA:

- *The Conservation Easement Handbook*
- *The Conservation Easement Stewardship Guide*
- *Model Conservation Easement and Historic Preservation Easement, 1996*
- *The Standards and Practices Guidebook*
- *Managing Conservation Easements InfoPak*

To order, call LTA at 202-638-4725, or visit LTA’s Web site, www.lta.org.

LTA also offers training on conservation easements at its regional conferences and National Land Trust Rally, and through the Land Conservation Leadership Program, offered in conjunction with The Conservation Fund.

Previous *Exchange* articles on violations have appeared in the following editions: Spring 1999, page 19; Winter 1998, page 17; Winter 1997, page 5.

Conservation Easements in the San Francisco Bay Area: Study Reveals Differing Approaches to this Popular Tool

by Darla Guenzler



Peninsula Open Space Trust

THE USE OF CONSERVATION

easements in the San Francisco Bay area has exploded in the past decade, but stewardship practices can differ widely from organization to organization, according to “Ensuring the Promise of Conservation Easements,” a study on the use and management of conservation easements released in 1999 by the Bay Area Open Space Council.

The study shows many San Francisco Bay Area land trusts are doing a good job monitoring conservation easements. They have professional staffs and very active conservation programs. Nevertheless, significant challenges remain in ensuring top-quality easement stewardship programs throughout the region.

Large differences were found between the ways that public agencies and nonprofit land trusts manage and monitor their easements. Many common land trust practices such as annual monitoring, baseline documentation and endowments to steward and enforce conservation easements are not yet practiced by public agencies, or are handled in very different ways.

Even among land trusts, however, practices can vary substantially. Size, available resources, personnel, and organizational identities accounted for differences. The study found that easement stewardship is not well integrated with

Peninsula Open Space Trust (CA) volunteers use GPS equipment to identify the boundaries of a conservation easement.

other organizational activities such as financial or strategic planning, or even with easement negotiations and drafting. The study data were assembled from detailed mail surveys and in-person interviews with staff members of organizations that hold easements during fall 1998 and winter 1999. Participants included 32 land trusts, 48 public agencies and 24 other organizations (such as water districts) that operate in the nine counties of the San Francisco Bay Area. The research identified 315 easements protecting nearly 85,000 acres. Of these easements, nonprofit organizations such as local land trusts hold about the same amount of acreage as public agencies, although public agencies hold 56 percent of the easement documents. Most of these easements are relatively new. While some date as far back as 1950, nearly three-fourths were established during the 1990s. Unlike in many parts of the country, the majority of conservation easements in the Bay Area are purchased rather than donated.

In addition to looking at monitoring and baseline documentation practices, the study identifies the purposes and characteristics of easements in the region, types and rates of violations, costs of purchasing and stewarding easements, comparative advantages of using staff and volunteer monitors,



Napa County Land Trust (CA) volunteers Fred Crowhaw and Vanessa Johnson monitor the proposed Jack and Bernice Newell Open Space.

and concerns of easement holders about the future directions of easement use and management.

Monitoring Practices

The study found that 75 percent of easements held by land trusts are monitored annually, and 30 percent of public agency easements are monitored annually.

The study defined “monitoring” as consisting of three or more monitoring tasks from a long list of possible tasks such as walking the property, meeting with the landowner, taking photos, preparing a written report, taking aerial photographs, and measuring water or soil quality. While a number of easements only had one or two tasks performed, these were usually minimal activities—such as driving by the property—that could not be interpreted as systematic monitoring.

The study explored the obstacles to monitoring in detail for both public and nonprofit easement holders. “Inadequate organizational resources” was the most frequently cited reason for not monitoring easements, followed by “monitoring not important or low priority.” One-fifth of responding organizations (public agencies and land trusts) claimed that monitoring was unnecessary because their easements were in good shape. This belief was usually based on the landowner’s identity. For example, some easement holders felt confident that no easement violations would occur because a public agency or a conservation-minded landowner owns the land.

Interestingly, our interviews found that organizational

Many common land trust practices such as annual monitoring, baseline documentation and endowments to steward and enforce conservation easements are not yet practiced by public agencies, or are handled in very different ways.

factors are an important source of obstacles. For example, one significant obstacle appears to be whether the organization viewed itself as a “land holder” or a “deal-maker.” The “deal-maker” organizations are often organized along project or transaction lines, with no one responsible for the few, often dispersed, easements they may retain. “Land holder” organizations tend to have more stewardship systems in place, and personnel focused on stewardship.

While all of these obstacles were shared by land trusts and public agencies, some stand out as particularly associated with one or the other. Land trusts were more likely to believe that the landowner would not act against the terms of the easement he or she had created. While some didn’t monitor these properties as rigorously, others still monitored in order to maintain the relationship with, and confidence of, the landowner.

Land trusts were also more likely to experience the dichotomy of “land holder” versus “deal-maker.” “Deal-makers” are structured around making new land transactions, and stewardship is not a primary focus. In theory, it often falls to the people who effectuate the projects to keep an eye on the easement, but their attention is on new projects. And if they leave the organization, someone must voluntarily assume responsibility for the easements. As a consequence, easements fall through the organizational cracks.

For public agencies, several obstacles stood out. The staffs of public agencies were more likely to view conservation easements as inferior to fee simple holdings, or even as undesirable. Agencies were also sometimes forced to accept easements for political or statutory reasons. In such cases, the easements often came with no maps or endowments, and may not fit the agency purposes. Another obstacle was the management difficulties sometimes created for agencies when easements do not allow public access. For these reasons, public agency staffs were often skeptical about the usefulness of easements, and the easements tended to be last in line for receiving stewardship resources.

Monitoring Costs

Of the regularly monitored conservation easements, the average time spent monitoring each easement is 10 hours per year. This figure includes time spent making the monitoring



Volunteer easement monitors pause on a hillside.

appointment and preparing for a monitoring visit, and post-visit activities such as updating files.

We calculated a “preferred” average cost based on the monitoring costs of those organizations with established, regular monitoring activities. This annual average was \$267 per easement. Actual costs may vary due to a variety of factors, including the need for detailed or expensive measurements and the dispersion of easement locations. For example, on easements that require monitoring of endangered species, a utility company spent \$10,000 annually per easement and hired consultants to perform the monitoring.

We could not produce a meaningful calculation specific to public agencies; not enough monitored or tracked their monitoring costs. The larger public agencies have extensive and dispersed regions, but they also have field staff who could be taught about easements and monitoring. As more public agencies develop stewardship programs, we hope to calculate their costs.

Baseline Documentation

As with monitoring, the percentage of easements that have baseline documentation differs according to organizational type: 72 percent of land trust easements, 58 percent of local public agency easements, and 9 percent of state and federal agency easements have baselines, according to the study.

On average, baseline preparation has lagged three years behind the creation of the easement. This lag time is partially a manifestation of the low priority put on stewardship in comparison with the protection of additional lands, and is also due to a lack of financial resources. Particularly in the case of purchased easements that will not be claimed as charitable donations on landowners’ income tax returns, many organizations do not have internal deadlines for completing baselines.

At the same time, a number of organizations reported that

their baseline documents are becoming more detailed and sophisticated as their understanding of long-term easement stewardship has evolved. For example, they are including more documentation in the form of photographs, maps, and resource descriptions, such as vegetation and wildlife measurements. To some extent at least, the changes in the baseline documents seem to parallel the increasing detail and sophistication of the easement documents.

The rate of easements that have baselines, particularly low for the larger public agencies, reflects the need for more education about easements. While many organizations may be quite knowledgeable about managing fee simple property, they have not developed the necessary practices for managing conservation easements such as monitoring, creating baselines and record keeping.

Some public agencies still view management plans as an adequate substitute for baseline documentation. While the two could be interchangeable with the right elements included, many management plans will encompass multiple parcels, fail to identify the easement specifically or to include sufficient details for a subsequent easement defense.

Overall, knowledge about the need for baselines is growing. Most easement holders understand the importance of creating baseline documents for reasons beyond the Internal Revenue Service requirements for donated easements. In the Bay Area, many land trusts were not creating baselines 15 years ago. Over time, many organizations realized they needed to prepare baselines and set about the task of doing so.

Enforcing Easement Terms

While only one conservation easement violation has involved litigation in the Bay Area, 43 (14 percent) of the region’s easements have had some violation. A significant number of these were violations related to land management or agricultural practices that do not immediately threaten the conservation values of the land. Nevertheless, the number of violations is notable considering that only 51 percent of the region’s easements (held by both public agencies and non-profits), are being monitored on a regular basis, three-quarters of easements are less than a decade old, and first-generation landowners still appear to own the vast majority of easement-protected land.

Land trusts reported two-thirds of the violations, although they hold less than half of the region’s easements. This is likely due to their regular monitoring programs, which increase the likelihood of catching a violation.

The nature of reported violations was diverse. The most frequent violations involved exotic species proliferation (for example, failing to control exotic species as presented in the easement goals or management plan), construction of buildings or structures, overstocking cattle, erosion and boundary relocation.

Some violations related to land management practices are addressed in different ways than violations that present a

more immediate threat—such as construction of a prohibited structure—to easement-protected land. The Marin Agricultural Land Trust, for instance, reports that addressing violations such as exotic species become “a process of incremental progress over time.” The land trust may work with a landowner for several years to remedy a situation such as exotic species proliferation or prevent it from worsening.

Endowments

At the time the study was conducted, nearly two-thirds of easement-holding organizations had no stewardship endowment, although the concentration of easement ownership resulted in only one-third of easements having no endowment support. Of those organizations without endowment, 60 percent are public agencies and 30 percent are land trusts.

Many land trusts acknowledged a need to make substantial improvements to their endowments. Only five organizations with multiple easements (one open space district and four land trusts) have endowments of \$100,000 or more.

Most also noted that endowments are hard to raise. Most easements are purchased, and many are funded through grants. Funding for purchases has rarely included provisions for endowments and, unlike easement donors, easement sellers are usually not asked to contribute to an endowment. As an alternative, some land trusts are including endowment funding as part of their capital campaigns to purchase conservation easements.

Many public agencies noted the legal impediments or political impossibility of amassing an endowment. For most agencies, endowments dedicated to individual easements were the only possibility and few of those existed except for easements created for mitigation purposes. As one respondent noted, “To have a reserved fund for long-term needs would be very difficult. Elected officials would see the pot of unused funds and appropriate it for other needs.”

The Bay Area Open Space Council is exploring the specific legal impediments public agencies face in creating endowments as part of the follow-up research to this study.

The absence of endowments is widely overlooked because public agencies have access to legal and other services should they need to defend an easement. However, the study's interviews revealed that an agency may still have to pay for these services from its own budget, forcing it to choose between using limited departmental resources to enforce an easement and carrying out its other (often mandated) projects. Additionally, the agency may not enjoy independent discretion to draw upon or direct the services. For example, the decision to pursue the litigation may rest with a legal agency, such as the state attorney general's office, which may have limited resources, set differing priorities, or be susceptible to political winds.

Concerns about the Future

Interviews with staff members of easement-holding



Peninsula Open Space Trust

A Peninsula Open Space Trust volunteer monitors an easement in California's San Mateo County.

entities in the region included a series of open-ended questions about the future of easements. Unquestionably, the greatest concern that emerged is the inconsistency of easement monitoring and stewardship. This was seen as the Achilles' heel of easements.

Other concerns were that stewardship is not integrated into most organizations' other land protection activities such as negotiating easements and financial planning. The lack of knowledge about easements and stewardship among governing bodies (such as land trust boards of directors, or commissions that oversee government agencies), the absence and/or low levels of endowments, inadequate preparation for second-generation landowners, the need to build stronger and more viable land trusts and to strengthen public agency stewardship were other concerns.

Recommendations

The study made numerous recommendations for improving the individual and collective stewardship in the Bay Area. The following five are directed at land trusts, public agencies and other entities that hold easements. Many of these correspond with the recommendations of LTA's 1999 Conservation Easement Study [see page 7], such as:

- **Develop and improve easement stewardship programs.**
- **Maintain high standards for easements and monitoring programs.**

■ Prepare for violations.

On a regional level, the study recommends that easement holders:

- **Partner with others to fulfill stewardship obligations.** One obvious option for organizations unable to keep up with their monitoring responsibilities is to contract with another organization that has an existing monitoring program. (This would not excuse the easement holder from reviewing monitoring activities and taking any necessary enforcement actions.)
- **Support efforts to improve easement stewardship.** Bay Area easement holders have an incentive to work together to conceptualize, develop and fund regional resources for improved easement stewardship. Each can benefit from increased knowledge, training opportunities and access to additional resources. They will also benefit indirectly by improving easement management across the region, and decreasing the likelihood of serious violations that could create harmful precedents.

The study also makes recommendations to others involved in regional conservation, including public and private funders. The recommendations include increasing funding for training and organizational development, and encouraging documentation and monitoring as a fundamental part of land conservation programs involving easements.

Next Steps


Based on these findings, the Bay Area Open Space Council is working to raise awareness about easement responsibilities and to encourage the creation and improvement of stewardship programs. We have been making presentations throughout the region about stewardship and the results of this study. Training materials and workshops are being developed and will be offered for both staff and governing bodies.

The study and individual presentations are already spurring action to improve conservation easement practices. Several organizations with no baseline records, monitoring programs or endowments are now starting stewardship programs. Many others with existing programs are reviewing their activities and making improvements.

To maintain a focus on easements, the council formed a Conservation Easement Committee composed of leaders of land trusts and public agencies from the region, state and nation. This committee will guide the implementation of the study's recommendations, marshal resources for easement stewardship, and develop other projects to improve easement use and management.

Work has already started on two related projects: One is an examination of easements created for regulatory purposes, such as land use approvals and project mitigation, and held by public agencies whose mandates do not involve land management, such as planning departments. Another study has several elements, including a study of nonprofit resources, roles and responsibilities in assigning/co-holding easements, and issues of capacity, governance and effectiveness.

In the coming year, the council will also begin a comprehensive study exploring the feasibility of different options for collective easement defense in conjunction with the Land Trust Alliance and Colorado Open Lands. Multiple options exist, ranging from co-holding arrangements to pooled endowments to creating a separate nonprofit with the purpose of legal defense of easements. The study will consider these options at three different levels of organization: regional, state and national. Questions of structure, funding, policies and marketing will be addressed.

Widespread experience with easements is only a few decades old, and understanding of stewardship responsibilities continues to grow. By initiating this study and launching follow-up programs, the council members decided that if easements were to be a dependable and enduring conservation tool, collective action is needed to ensure that the necessary stewardship activities and resources exist. We are confident that, working together, land trusts and public agencies can ensure that conservation easements continue to be a strong tool for land protection. 

Darla Guenzler, associate director of the Bay Area Open Space Council, designed and conducted the organization's "Ensuring the Promise of Conservation Easements" study and report. The council is a collaborative effort of public agencies and nonprofit agencies, providing regional leadership and expertise for the preservation and professional management of important open spaces in and around the cities of the San Francisco Bay Area.

The easement study was funded by the David and Lucile Packard Foundation and the Marin Community Foundation. Copies of the report are free to nonprofit organizations and public agencies in the San Francisco Bay Area; \$7.50 to organizations outside of the area. To learn more, please contact Ms. Guenzler at dlg@conl.net, 707-469-0926, or by mail at Bay Area Open Space Council, 530 Bush St., Suite 303, San Francisco, CA 94108.

Building for the Future

The Land Trust Alliance's Strategic Directions

by Jean Hocker

LTA's Vision

The Land Trust Alliance's vision is that all people will appreciate and support conservation of natural lands, working landscapes and other open spaces that enrich our natural and human communities. Leading land conservation efforts will be a network of highly effective, well-respected land trusts, operating wherever they are needed, that actively protect open space and engage a broad constituency in understanding its benefits.

NEARLY TWO YEARS

AGO, WITH pressures to conserve open space mounting, the Land Trust Alliance began to examine the most important things we could do over the next few years to lead, support, and build the land trust movement.

Last year, after considerable board and staff discussion, LTA's board enthusiastically adopted a new statement of mission, vision, and strategic directions for the organization. In October 1999, the board adopted an accompanying four-year business plan, charting an organizational course to ensure we can deliver programs that will advance our strategic directions.

Essentially, all of our programs will be directed toward achieving four overriding goals:

1. Increase the quality, professionalism, and effectiveness of land trusts.
2. Ensure that the protection tools land trusts use, especially conservation easements, are sustainable over time.
3. Identify new opportunities for conservation and expand the tools and incentives available for voluntary land conservation.
4. Increase the public's understanding of land trusts and the importance of voluntary land conservation.

A fifth goal describes a new emphasis in program delivery:

5. To ensure its ability to identify and respond to the needs of

land trusts, land trust service centers and coalitions, and other conservation partners, LTA will expand its network of field representation to eight regions, encompassing the entire country. These regional programs will become an integral part of LTA's

program delivery.

How did we arrive at these strategic directions? And what will they mean for LTA and land trusts over the next several years?

The Thinking Behind the Plan

Since 1982, LTA has built many programs to strengthen land trusts. Our publications, periodicals, training, and information services have given land trusts access to essential information and skills. We have successfully influenced key public policy decisions that brought new resources and incentives for conservation. We have developed *Standards and Practices* for land trusts. And, at land trusts' request, we offer hands-on, regionally-tailored support through programs in New York, the Northwest, and most recently in the Southwest.

Yet as we started our planning, it was clear that the land trust movement is facing challenges and opportunities that require new leadership and support from LTA. Here are some of the trends and issues that influenced our planning:

- LTA is serving a land trust movement whose numbers have nearly doubled in a decade and whose land protec-

LTA's Mission

LTA's mission is to promote voluntary land conservation and strengthen the land trust movement by providing the leadership, information, skills and resources land trusts need to conserve land for the benefit of communities and natural systems.

tion activities have increased far beyond that. Many land trusts are successfully executing complex land transactions, but others are on a steep learning curve as they try to address urgent opportunities before them.

- Use of conservation easements is rapidly increasing, especially for working forests and productive farm and ranch lands whose aging owners seek alternatives to subdivision. It is increasingly critical that all land trusts holding easements be able to manage these programs well, including such things as obtaining knowledgeable legal help, preparing baselines, monitoring protected property, and keeping detailed records.
- Land trusts are beginning to face easement violations and requests for amendments. Each organization needs to plan now for costs of enforcement, including, if necessary, litigation.
- Land trusts are becoming better known and will inevitably face more scrutiny. At the same time, most people—including landowners and their advisors—still don't really know how options for voluntary land conservation work.
- People's concern about disappearing open space is growing rapidly, providing a favorable political climate for new policies and incentives supporting voluntary land conservation. National prosperity increases people's willingness to invest in open space.

What Will LTA's New Plan Mean for Land Trusts?

To address these and other key issues, LTA is already re-tooling many of its programs in line with our new strategic directions. Here are some of the programs you will see from LTA as the plan unfolds over the next four years:

- A new initiative to help land trusts adopt and implement *Standards and Practices*, through targeted training, self assessments, peer assessments, mentoring and other programming.
- New efforts to strengthen the defense of conservation easements and advance the state of the art. First steps will include analysis of collective easement defense options and the most effective use of easements to protect working landscapes. A comprehensive approach to training that provides both land trust staff and volunteers with a curriculum that builds their skills in a coherent, progressive way and provides more training opportunities closer to home.
- Information services focused especially in those topic areas most essential to land trusts and available through a range

of delivery means, including a searchable digital library of information that will be available to LTA's land trust members.

- Public policy initiatives that advance incentives for voluntary land conservation.
- Increased funding for both land trusts and private land conservation through LTA's public policy efforts as well as expanded capacity-building grant programs.
- Expanded communications and outreach to tell a broader audience about land conservation and how land trusts work to protect open space.
- Regionally-tailored efforts to assist land trusts with the sharing of services, coalition development, and the facilitation of broad-based conservation partnerships.

What Does the Plan Mean for LTA?

Like the land trust movement, LTA will need to grow over the next four years. Some of the growth will build depth into our overall training, public policy, quality assurance, information services and communications efforts. But much of the growth will be outside of our Washington, DC office, as we emphasize program delivery at the regional level.


With generous assistance from the David and Lucile Packard Foundation, LTA is also investing in the systems and infrastructure needed to operate a decentralized yet coordinated organization, to improve efficiency, and to increase technological capabilities for program delivery.

Growth will also necessitate a larger operating budget, which at the end of four years will be about 65 percent larger than it is today. We expect to direct nearly half a million dollars each year to land trusts in the form of grants. In addition, we will budget to build a modest operating reserve.

The greatest portion of our revenue will continue to come from foundation and corporate grants, but the largest percentage increase will be from major individual donors—people who almost certainly are loyal supporters of a land trust (maybe more than one) and who also want to support the national land trust movement.

What Will Result?

The Land Trust Alliance's sole agenda is to promote voluntary land conservation and to build a network of highly effective, well-respected land trusts that conserve land for the benefit of communities and natural systems. Never has the opportunity to do that seemed more promising.

The board and staff of the Land Trust Alliance are convinced that its new plan will go far in the next few years to advance that agenda. The plan is challenging and exciting. As we succeed, we will see a stronger land trust movement, capable of making a difference in communities and on the ground far into the next century. That outcome will be the best reward we could have! 

Jean Hocker is president of the Land Trust Alliance.

Land Trust Cleanings

Connecticut Conservation Groups Anticipate Utility Land Sales

As competition and restructuring among utility companies increase, Connecticut water companies and electric utilities could sell more than 16,500 acres of open space in the next few years, according to studies by the Connecticut Fund for the Environment and the Housatonic Valley Association (CT).

In 1998, the Connecticut legislature approved a deregulation law that calls for power companies operating in the state to separate their generation assets from their distribution assets and auction them off. The law allowed utilities to sell off non-income-producing assets, such as land, to help pay “stranded costs”—costs they had previously incurred while meeting government mandates. Conservationists feared that this could lead to widespread sales of electric utility-owned land.

This issue is not unique to Connecticut, noted LTA Public Policy Director Russell

Shay. “A number of states have passed laws de-regulating the electric utility industry that have led to corporate restructuring of utilities, often accompanied by the selling off of ‘unprofitable’ assets such as land,” he said.

On a different front, Environmental Protection Agency water filtration requirements phased in after the 1986 Safe Drinking Water Act as well as corporate mergers and restructuring have caused some water utilities to consider selling off their watershed lands.

In an effort to prevent extensive losses of open space, the Connecticut legislature in 1998 renewed and strengthened a law requiring utilities to notify municipal governments, the Connecticut Land Trust Service Bureau and other “qualified nonprofit land-holding organizations”—including many land trusts—of plans for land sales. Under the law, these organizations have the right of first refusal to purchase such lands.

Land trusts and other conservation groups have been tracking utility lands

at risk of being sold, and working to protect parcels with important conservation values:

- With a grant from Northeast Utilities, the Housatonic Valley Association (HVA) completed an inventory and conservation plan for the electric company’s lands. The utility owns more than 5,000 acres of open space that had been acquired for hydro-electric uses and right-of-ways, among other purposes. “Now that the plan is complete, we are organizing a public outreach campaign to build support for saving important utility lands among the public as well as government and policy leaders,” said HVA Land Protection Director Elaine LaBella.
- Aspetuck Land Trust and the Town of Weston acquired 778 acres in 1999, through a \$12.4 million purchase from Bridgeport Hydraulic Co. (BHC). The water utility donated 90 of the acres. The state provided a \$6 million grant for the purchase. At a town meeting, Weston residents voted to spend \$845,000 on a portion of the land, and The Nature Conservancy and Aspetuck Land Trust raised approximately \$6 million for the purchase. (Portions of the acreage are owned by the town, state and land trust.)
- Oxford Land Trust and Seymour Land Trust played important roles in educating their towns about the 1998 ballot initiatives that provided more than \$5 million in bonds to purchase 749 acres from Birmingham Utilities. The purchases were negotiated by the Trust for Public Land. The land contains a 100-acre reservoir, forests and meadows, and provides a buffer between the two communities. The initiatives

Dave McKane, Oxford Land Trust



Great Hill Reservoir between Oxford and Seymour, CT, is on land formerly owned by an electric utility. The property was purchased by the two towns with help from Oxford Land Trust, Seymour Land Trust, the Trust for Public Land and the Housatonic Valley Association.

allowed for municipal building on 25 percent of Oxford's land and 15 percent of Seymour's.

In December 1999, BHC, which owns about 1 percent of the state's land and was purchased in 1999 by a British industrial conglomerate, announced a two-to-three year moratorium on land sales. During this period, the company will work with the Connecticut Department of Environmental Protection on the state's potential purchase of 6,000 acres.

Texas Forms Council, Focuses on Standards

The Texas Land Trust Council planned to start its first official statewide meeting in January with a focus on LTA's *Standards and Practices*. The council will work with LTA on a pilot project to supplement the national standards with state-specific laws and regulations and to provide training on the material.

The council officially made its debut in June 1999 when its board of directors approved its bylaws and a memorandum of agreement with the Texas Parks and Wildlife Department. Under the agreement, the state department will provide a coordinator for the council.

Carolyn Scheffer, who has informally filled the role as council coordinator for about five years, has been named to the position. Although the coordinator will remain an employee of the state division, her duties will reflect both agencies' missions and goals.

The growing statewide council—with 18 land trust members at press time—will provide technical and educational assistance to land trusts and others interested in conservation. "Our fundamental mission is helping grow and sustain quality organizations," Ms. Scheffer said.

Civil War Land Trusts Merge

Two prominent Civil War battlefield preservation groups have joined forces. The Arlington, VA-based Civil War Trust merged in November 1999 with the Hagerstown, MD-based Association for the Preservation of Civil War Sites to form The Civil War Preservation Trust.

"Both organizations were doing almost the same thing in almost the same fashion," said James Lighthizer, president of the new organization. "We believe that the merger will eliminate duplication of effort and expenditure of money." It will also eliminate confusion for donors, Congressional staff, and others key audiences for the organization, he added.

The merger combines the two organizations' 40,000 members. The Civil War Trust, formed in 1991, and the Association for the Preservation of Civil War Sites, formed in 1987, have collectively saved nearly 10,000 acres of battlefield land in 15 states. The organization currently maintains offices in Virginia and Maryland, although a future consolidation is likely, Lighthizer noted.

GOOD NEWS from Around the Country

Land trusts across the country continue to chalk up victories for open space protection. Exchange takes a look at just a few of the many success stories from the nation's land trusts:

Superfund Site Cleaned Up for Conservation Education

A contaminated Superfund site will be cleaned up and 78 acres of wetland protected, thanks to a complex partnership including the nonprofit advocacy group River Action, the Iowa Natural Heritage Foundation (INHF), the city of Davenport, IA, and the Environmental Protection Agency (EPA).

The property is the largest parcel of the Nahant Marsh, adjacent to the Mississippi River in Davenport. The wetland is important for water quality and hosts a variety of waterfowl, including mallard, blue-winged teal, green-winged teal, wood ducks and coot. Trumpeter swans reintroduced to nearby marshlands are expected to use the property as well.

Owned by a local sportsmen's association, part of the property was used as a shooting range and became contaminated from lead pellets. In 1998,

the EPA declared 13 acres a Superfund site, estimating cleanup costs at \$2 million and bringing potential transfer of the land to a halt.

River Action had long advocated protecting the wetland. After it was declared a Superfund site, INHF helped negotiate a deal under which the EPA will provide the cleanup costs if the site is permanently protected and used only for conservation education. In exchange, the city of Davenport agreed to buy the land at its appraised price of \$86,000, and INHF will hold a conservation easement on it. Also, the city, River Action and other local groups will create an educational field station.

The transaction is unusual because the EPA typically seeks full monetary compensation for any cleanup it does of contaminated sites. In this case, the sportsmen's club was not able to provide the \$2 million, but the EPA took other factors into consideration, noted Jane Kloeckner, an attorney for the EPA Region 7 office in Kansas City, KS. "Even though we're not getting much cash, we're getting significant value in terms of the conservation and community education," she said. The transaction is also unusual because—unlike most Superfund sites that are redeveloped for industrial use—this property will be conservation land, Ms. Kloeckner noted.

"We hope Nahant Marsh becomes a precedent-setter for other EPA cleanup projects," said INHF President Mark Ackelson.

Local foundations, including two riverboat casino companies, helped fund the city's land purchase. One couple donated 32 acres of farmland to INHF in lieu of cash. The land was sold and revenues went toward the wetland purchase.

A Corporate Buyout for Conservation

When Grand Traverse Regional Land Trust (GRLTC) (MI) moved to protect the largest contiguous parcel of farmland in Benzie County, it ended up buying a \$1.42 million corporation as well as the farm.

Located just a few miles from Lake Michigan, the 551-acre Fruithaven Orchards has been a prime site for growing fruit since the 1800s. Its topography and proximity to the lake a make it relatively “frost-free” location.

When the land trust learned that a developer was offering to transform the property into a resort with two 18-hole golf courses and an air strip, it countered with an offer to purchase not only the land, but the family corporation that owned the land. “The family owned Fruithaven Orchards as a corporation, which left them facing a double taxation upon sale of the land, both as individuals and as a corporation,” said GRLTC Land Protection Specialist Heather Rigney. To avoid this problem, the land trust purchased stock instead of acres.

“As soon as the conservancy purchased the stock, we converted the for-profit fruit-growing business into a nonprofit corporation called Fruithaven Farmland Preservation Corporation—a new stock entity dedicated to preserving open space,” Ms. Rigney said. “The new Fruithaven Corporation has its own by-laws and board of directors, but is fully owned by the Grand Traverse Regional Land Conservancy.”

Early this year, GRLTC will sell parcels of the orchard, subject to a conservation easement that restricts

The Mendocino Land Trust (CA) partnered with the California Coastal Conservancy to purchase Navarro Point on scenic Highway 1.



Jenny Griffin

them to agricultural use. The land trust plans to keep a 180-acre wooded parcel near other land trust and state-protected land as a nature preserve.

To avoid getting “double taxed” for an estimated \$500,000 on the land it resells, GRLTC received a private letter ruling from the IRS that authorizes the nonprofit organization to resell the land tax-exempt. “Unfortunately, the tax law we applied under changed at the end of 1998, and, although our deal was grandfathered in, other land trusts may not be able to follow our example,” Ms. Rigney noted.

In addition to the revenues from the agricultural parcels it plans to sell, funding for GRLTC’s purchase is coming from a \$776,580 grant from the state’s purchase of development rights program, and the equipment that came with the farm. The land trust is also working to raise \$200,000 in donations for the proposed nature preserve and other expenses.

Land Trust Steps in to Protect Beachfront Properties

The Mendocino Land Trust (MLT) (CA) has partnered with the California Coastal Conservancy to purchase two oceanside properties in California’s fast-growing Mendocino County.


In September 1999, MLT purchased the \$1.8 million Caspar Beach property—74 acres in Caspar, that include an estuary, some of California’s southernmost Sitka Spruce, grassland, and a creek where coho salmon spawn. In December 1999, the land trust purchased the \$1.1 million Navarro Point, 55 acres of open headlands and shore-

line near the village of Mendocino. Known as the gateway to the Mendocino Coast, this is the first expansive coastal property seen from scenic Highway 1 by thousands of annual visitors to the area.

Both purchases were funded by the California Coastal Conservancy—a state agency that works to protect the coastal lands. The agency had targeted both properties as top conservation lands but needed a partner to own and manage the land.

To date, MLT has received private donations of \$44,000 to initially fund management of both properties, with the help of a part-time coordinator, volunteer maintenance crews, and local stewardship committees.

The land trust is raising \$297,000 for the long-term management of Navarro Point. MLT is discussing a possible transfer of Caspar Beach to the State Parks Department, which already owns part of the beach. In part due to a history of public access to Caspar Beach, it will cost \$12,000 a year to care for the property and would require a \$300,000 endowment to permanently manage the property, estimated MLT Executive Director Roger Sternberg.

Decisions about the long-term ownership and management of conservation lands are a recurring issue, Mr. Sternberg said. “There’s a lot of land that needs to be protected, but there aren’t a lot of organizations that are willing to own and manage it. I think we’re filling an important niche, but we need to carefully weigh the costs of that ownership.” 

Heather Rigney



A potential buyer inspects a tractor at the Grand Traverse Regional Land Conservancy’s (MI) farm equipment auction. The land trust obtained the equipment when it bought a corporation to protect a 551-acre farm.

Law Update

The Future of Estate Taxes in Question

by William M. Silberstein

LTA's 1999 National Land Trust Rally in Snowmass, CO, was fantastic! Although I may be biased as an LTA board member and a resident of Colorado, I thought that the quality of presentations and the exchange of ideas were outstanding. I look forward to a repeat performance at Rally 2000 in Portland, OR.

In this column, I would like to share three legal topics which were discussed at the Rally: the potential for expanding the geographical coverage of the Internal Revenue Code Section 2031(c) estate tax benefits; the potential for reduction and eventual repeal of the federal estate and gift tax; and a change in the rules for IRS Form 8283 on Noncash Donations.

Expanding IRC 2031(c)

While the 1999 Taxpayer Relief Act passed by Congress last summer was vetoed by the President and did not become law, two noteworthy proposals within the bill are likely to resurface. One was a provision to expand the geographical limitations of IRC 2031(c).

Under present law, an executor may elect to exclude from a decedent's taxable estate 40 percent of the value of any land subject to a "qualified conservation easement" up to a maximum exclusion of \$300,000 in 2000; \$400,000 in 2001; and \$500,000 in 2002 and thereafter. Section 2031(c) also provides an opportunity for heirs to obtain the same benefits through a post-mortem

donation, if allowed by state law. [See *Exchange*, Fall 1999, page 8; Fall 1998, page 20.] Among other requirements for a "qualified conservation easement" is a geographic requirement that the land must be located within 25 miles of a metropolitan area, national park, or wilderness area; or within 10 miles of an urban national forest. Under the 1999 act, the distance from which the land must be situated from a metropol-

A proposal in the 1999 Taxpayer Relief Act, had it become law, would have reduced estate and gift taxes and eliminated them altogether in 2009.

itan area, national park, or wilderness area would have been increased from 25 miles to 50 miles; and the distance from which the land must be situated from an urban national forest would have been increased from 10 miles to 25 miles.

Although this geographic expansion did not become law during 1999, a geographic expansion is included in several other pieces of pending legis-

lation, and there is a possibility that such a provision could become law in 2000. LTA favors a provision to eliminate completely the geographical restrictions. LTA Director of Public Policy Russell Shay has been instrumental in lobbying Congress on this issue, and it remains a high priority for LTA.

Demise of the Estate Tax?

Another proposal in the 1999 Taxpayer Relief Act, had it become law, would have reduced estate and gift taxes and eliminated them altogether in 2009. The reduction in rates would have been modest to begin with, starting by reducing and capping the top estate tax rates to a rate of 50 percent. In 2002 through 2004, estate tax rates in all brackets would be reduced by 1 percent, and by an additional 2 percent in 2005 through 2008. In 2009, all estate, gift, and generation-skipping taxes would have been eliminated, according to the proposal.

The proposal did not, however, have to account for the loss of revenue within the federal budget that would come with a complete elimination of estate taxes. Its 10-year time frame essentially pushed the expense of the estate tax elimination off of Congress' budget accounting time horizon. Nevertheless, the opponents of the estate tax have made substantial political headway, and if a Republican president is elected and the

Republicans keep their majorities in the Senate and House of Representatives, it is possible that the estate tax could be phased out.

The potential benefits to landowners of the reduction or elimination of the estate tax is offset to some degree by the elimination or modification of a step-up in basis. Under present law, the tax basis of property inherited from a decedent generally is "stepped up" to its fair market value on the date of the decedent's death. This step-up in basis eliminates the taxation of any capital gains on the appreciation of property that occurred prior to the decedent's death. If the step-up in basis were eliminated, a property's basis would be set at whatever the decedent or his or her predecessors had paid for the property, and heirs would be liable for taxes on all capital gains over that base price. This would increase the amount of capital gains tax due if and when the heirs sell inherited property.

Under present law, the reduction in estate taxes is a factor, sometimes an important one, in the decision-making process for a conservation easement donation. The reduction or elimination of estate taxes will remove this strong incentive for voluntary land conservation. The conservation community needs to begin thinking about its message to landowners in the event of a reduction or elimination of the estate tax. If you would like to share your

ideas on this, please e-mail me at bsilberstein@irwl.com.

IRS Form 8283 Requires More Documentation

The IRS Form 8283 for Noncash Charitable Contributions is the two-page form on which a taxpayer reports


**Under present law,
the reduction in
estate taxes is a factor,
sometimes an
important one, in
the decision-making
process for a
conservation easement
donation.**

the value of a conservation easement for federal income tax deduction purposes. The form is signed by the appraiser and the land trust. The land trust's signature does not constitute an endorsement or verification of the accuracy of the value of the conservation easement, it simply acknowledges that the land trust has received the easement gift.

In a development that was very

easy to miss, in October 1998 the IRS changed the form's requirements for conservation easement donations. It added the requirement that an extra statement be attached to the form that states the fair market value of the property before the conservation easement, the fair market value of the property after the conservation easement, as well as the conservation purposes of the easement. This change is reflected in the October 1998 revision to the Instructions for Form 8283 (available from the IRS Web site at www.irs.gov/forms_pubs/forms.html) and in LTA's newly revised edition of *Appraising Easements*.

While the taxpayer is responsible for completing this form, land trusts should notify conservation easement donors about IRS Form 8283 and the changes to it, so that the donation can be properly reported for income tax deductions.

The Rally provides a great opportunity to catch up on the latest developments in land conservation law and to share ideas with colleagues. Important changes to tax incentives for conservation loom on the horizon. We will continue to report on those changes in future issues. 

Bill Silberstein is a member of the LTA Board of Directors. He is an attorney with Isaacson, Rosenbaum, Woods & Levy, P.C. in Denver, CO. E-mail him at: bsilberstein@irwl.com.

LTA News

LTA Introduces Regional Conferences for Mid-Atlantic, California

LTA and its regional partners will offer two new conferences this year: one for land trusts in California, and one for land trusts in the Mid-Atlantic states.

The Mid-Atlantic Regional Land Trust Conference, sponsored by the Maryland Environmental Trust and LTA, will be held May 19-20 at the National Conservation Training Center in Shepherdstown, WV. The conference will be for land trust staff and volunteers from Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia and West Virginia. Information and registration materials will be mailed in March.

The California Land Trust Conference, co-sponsored by the Trust for Public Land and locally hosted by the Land Trust of Santa Cruz County with financial support from the California Coastal Conservancy, will be May 4-6 in Santa Cruz, CA. Information and registration materials were mailed in January.

Both conferences will offer workshops, training, and opportunities for networking and small group discussions on organizational management, conservation easements, conservation techniques and transactions, fundraising and regional issues.

Detailed information and registration materials will be mailed to land trusts in these regions and posted on LTA's Web site: www.lta.org.

New Fundraising Course Available

LTA and The Conservation Fund will offer a new course on fundraising May 4-7 through the Land Conservation Leadership Program.

Fundraising for Land Trusts is a two and a half-day course, designed for

land trusts with one to three staff members. It will provide training on membership development, annual giving, database management, major gifts, and planned giving from highly experienced land conservation fundraising professionals. The course will be held at the National Conservation Training Center in Shepherdstown, WV.

Visit LTA's Web site (www.lta.org/lclp.html) for updated information, or contact Andrea Freeman, 202-638-4725.

LTA Makes International Connections

LTA New York Program Director Tammara Van Ryn made a presentation on site conservation planning and conservation easement monitoring at the Second Interamerican Congress on Private Lands Protection in Costa Rica, held Nov. 29-Dec. 1, 1999.

"There have been many exciting developments in conservation in Mexico, Central and South America in the last few years," said Ms. Van Ryn. "Costa Rica, Mexico and Ecuador all

have easements in place. Paraguay hoped to complete its first easements by the end of 1999—12 easements in all, covering more than 60,000 acres."

LTA has welcomed a growing number of international visitors to the National Land Trust Rally, and hosted its first international reception at Rally '99, with representatives from five Canadian provinces, Paraguay, Scotland, Australia, Mexico, Costa Rica and the Bahamas. LTA also regularly provides information on private land conservation practices and the work of land trusts in the United States to conservationists around the world.

Rally 2000 "Call for Presentations"

Every year, hundreds of volunteer workshop leaders share their knowledge and expertise in workshops at the National Land Trust Rally. If you are interested in leading a workshop at Rally 2000 in Portland, OR, please submit your proposal by March 10.

If you did not receive a workshop proposal form in the mail, it is avail-



Participants at the Second Interamerican Congress on Private Lands Protection

Tammara Van Ryn

able on LTA's Web site (www.lta.org/rally.html), or by contacting Andrea Freeman, 202-638-4725; afreeman@lta.org.

Rally '99 Participant Wins Free Registration to Rally 2000

Call it time well spent. Just for jotting down his thoughts on Rally '99, Dennis Evans, parks resources coordinator for the St. Charles County (MO) Parks Department, is invited to attend Rally 2000 for free. Evans and other Rally '99 attendees who returned evaluation forms to LTA were entered in a drawing for a complimentary Rally 2000 registration.

"We rely on input from Rally attendees in fashioning the next year's program," said LTA Director of Training and Conferences Andrea Freeman. "The drawing is our way to encourage more people to turn in an evaluation form."

Leadership Retreat Reflects on Future Challenges

LTA convened its first "Land Trust Leadership Retreat" in October 1999 to bring together a score of the country's most experienced land conservation professionals to share ideas on some of the most important challenges and opportunities land trusts face.

The retreat was held in conjunction with Rally '99 in Snowmass, CO. Participants were selected from LTA's past and present board, as well as those who have attended every Rally or have served on LTA's National Land Trust Council.

Discussion focused on three topics: the future of conservation easements, reaching out to a more diverse constituency, and the secondary impacts of land conservation on communities and landowners.

- Discussing conservation easements, many participants expressed the wish to further develop quality assurance programs for the drafting, baseline documentation and monitoring of easements. They focused on peer reviews, mentoring, models of best practices and/or recognition

of quality easement programs by LTA as possible approaches.

Others suggested that building community appreciation for the public values that easements protect will contribute to their stability and defense. "Some pointed out the need of land trusts to focus on the owners of conserved lands as clients," said retreat participant Gil Livingston, vice president of land conservation of Vermont Land Trust. "We really need to shift our perspective to think that we're in service to landowners, and we need to develop an in-depth relationship with them." Findings drawn from the session will be incorporated into quality assurance programs currently being designed by LTA.

- On the topic of diversity, some participants suggested that there is a need to recognize areas where land trusts' conservation missions connect with social diversity, and a need to share information on model projects that have been successful at bringing in and serving diverse constituencies. "We talked a lot about the general benefits of diversity to land trusts," said Mr. Livingston, who moderated the discussion. "From that came a lot of interesting stories, on how projects that have appealed to a more diverse constituency brought a new level of support and energy to land trusts." In response to the issues raised, LTA's board has created a committee to investigate how best to foster diversity in the land trust movement.
- The group identified and discussed a wide range of the "secondary impacts" of land conservation, including community tax revenues from conservation lands, the interplay of local planning and zoning with conservation, the role of land protection in perpetuating farms and ranches, and other topics for future discussion.

Planning is underway for the next

retreat, which will be held in conjunction with the National Land Trust Rally 2000.

LTA Completes Needs Assessment in Great Lakes Region

Land trusts in the Great Lakes states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin have diverse needs and are at several different levels of development, according to a 1999 Needs Assessment Study by LTA in cooperation with Gathering Waters land trust service center (WI).

"A significant number of volunteer land trusts identified public outreach and board training as high priorities for assistance," said LTA Vice President for Programs Andrew Zepp. "Alternatively, some of the region's larger staffed land trusts identified assistance with public policy initiatives and the need for programs to ensure the sustainability of conservation easements as priorities for attention."

Fundraising and developing partnerships and cooperative efforts tended to be an important issue for land trusts of all sizes.

The study, conducted through written surveys of land trusts and a series of focus groups, will help determine the support land trusts will need from LTA and land trust service centers in the region. Financial support for the study was provided by the Great Lakes Protection Fund.

LTA Awards Matching Grants in Great Lakes, Southeast Regions

LTA has awarded more than \$111,000 to 30 land trusts and land trust coalitions in the Great Lakes and Southeast regions through its 1999 matching grants programs.

This is the first round of grants awarded in the Southeast. The program was launched in fall 1999 through a grant from the U.S. Environmental Protection Agency. Among the recipients of grants up to \$3,000 in Alabama,

Florida, Georgia, North Carolina, South Carolina, and Tennessee were:

- **Martin County Regional Land Trust (FL) and Indian River Land Trust (FL)** to conduct a day-long information session for landowners of agricultural land in Martin, St. Lucie and Indian River Counties on land conservation options.
- **Chattowah Open Land Trust (GA)** to hire an organizational consultant and a conservation planner to facilitate strategic planning.
- **The Land Trust for Little Tennessee (NC)** to design a management plan, integrating information and site specific technical advice from botanists, wildlife biologists, stream and wetland restoration specialists, archeologists and historians.

Grants of up to \$5,000 were awarded to land trusts within the Great

Lakes watershed, with funding from the Charles Stewart Mott Foundation. Among the grant recipients were:

- **Leelanau Conservancy (MI) and Grand Traverse Regional Land Conservancy (MI)** to hire a consultant to facilitate the creation of a strategic plan for a regional farmland protection program and a cooperative agreement between the two land trusts on the preservation of farms and farmland within the five-county Grand Traverse area.
- **Gathering Waters (WI)** to support a two-day training workshop on membership development for land trusts operating in the Great Lakes Basin of Wisconsin.
- **The Northeast Ohio Land Trust Coalition** to help fund two one-day workshops on organizational effectiveness and land transactions.

LTA Staff to Grow with Programs

In conjunction with LTA's strategic plan to expand its outreach and services [see article, page 15] LTA is expanding and restructuring:

- As part of its plans to offer more regional services, LTA will hire a program director at large. The at-large program director will focus on expanding services for both the Southeast and Mid-Atlantic regions.
- LTA will also hire a Rally manager to coordinate the National Land Trust Rally. Andrea Freeman, who has managed and organized Rally for five years, will maintain her position as director of training and conferences, and will focus on expanding training opportunities through the Land Conservation Leadership Program and other programs. 

LTA Regional News

Updates on the Land Trust Alliance's regional programs based in:

- **Saratoga Springs, NY** (*serving New York*) 518-587-0774
- **Seattle, WA** (*serving Alaska, Idaho, Montana, Oregon, Washington and Wyoming*) 206-522-3134
- **Grand Junction, CO** (*serving Arizona, Colorado, New Mexico and Utah*) 970-245-5811

New York Program

Property Assessment Symposium Sparks Discussion

New York Secretary of State Alexander Treadwell opened the Symposium on Property Assessment and Conservation Easements on Dec. 3, 1999 in Albany, NY, with a call to action to curb sprawl in New York state and to protect the landscape that makes the state such a wonderful place to live. The symposium, hosted by the Government Law Center (GLC) at the Albany Law School in

conjunction with the Land Trust Alliance New York Program, drew more than 80 assessors, landowners, land trust practitioners and attorneys.

The symposium presented the findings of an LTA-commissioned GLC study that compiled and analyzed states' statutes on assessing easement-protected land, case law from around the country, and the practices of New York state assessors. [For a summary of the findings, see *Exchange* Fall 1999, page 30.]

Secretary Treadwell lauded the usefulness of conservation easements and noted the state's increasing use of them. LTA New York Program Director

Tammara Van Ryn provided an overview of conservation easements and their use nationwide.

"What made this gathering so unique was the diversity of the audience and of the panelists," Ms. Van Ryn said. "Assessors and landowners, and builders and conservationists shared the dais and participated in open discussions during the day."

A portion of the meeting was devoted to a discussion of options for standardizing the practice of assessing land with conservation easements and providing increased conservation incentives for landowners.

Among the options discussed for improving practices were:

- offering training to assessors on assessing easement-protected properties.
- establishing systems to ensure that assessors are informed when easements are placed on properties.

Among the options discussed for increased incentives were:

- allowing easement-protected properties to qualify for the “current use” assessment programs available for forest and agricultural land.
- creating an income tax credit for property taxes paid on easement-protected properties.

A few themes were evident, noted Ms. Van Ryn: “Assessors are genuinely interested in the topic and would like both education and some administrative changes to improve the practice of assessing land protected with a conservation easement. However, even with these changes, landowners are not likely to receive significant property tax benefits for easement donations. To create real incentives for private land conservation, state funding to offset local fiscal impacts will be necessary.”

LTA/NY plans to continue the dialogue by working with the GLC to complete and distribute a report on the study to local and state officials, and to work with land trusts, landowners, and local officials for an increased understanding of conservation easements and the need for increased incentives for private land conservation.

Stewardship Course Focuses on Scenic Hudson Property

Scenic Hudson's (NY) 1,300-acre Mount Beacon and Fishkill Ridge Conservation Area was the subject of study for a land stewardship course offered in Cold Spring in November 1999 through the Land Conservation Leadership Program.

As part of the course, the 23 participants and course leaders analyzed the conservation values, history and public



Seth McKee, Scenic Hudson

Rob Sutter of The Nature Conservancy points out a rare dwarf pitch pine on Scenic Hudson's (NY) Fishkill Ridge property during a site visit for the Land Conservation Leadership Program stewardship course.

uses of the property, and worked on a Site Conservation Plan. The Site Conservation Planning (SCP) model developed by The Nature Conservancy provides a framework for making strategic decisions in conservation areas. Participants were taught the basics of SCP and adapted it to the Scenic Hudson property.

The land, which Scenic Hudson has acquired over the last 10 years, has plenty of features to consider. It contains Mount Beacon, one of the highest mountains at the gateway of the Hudson Highlands, ecologically significant features such as a rare dwarf pitch pine community, and 1,000 acres of contiguous forests, with stunning views of the Hudson Highlands and Catskill Mountains.

Portions of the property are used by hikers and other public visitors, and the land trust is challenged by illicit uses such as “partying,” camping and all-terrain vehicles, noted Seth McKee, senior land projects manager. Mount Beacon also has several historical aspects, he added. “During the Revolutionary War, it was a key communication link where George Washington's troops would light ‘signal fires’ to warn that the British were coming.”

McKee said that the management

techniques and the plethora of ideas that were suggested for Scenic Hudson's “case study” property will be helpful as the land trust develops its management plans. “I really felt like our property was the patient, and we had all these doctors and medical students analyzing it and offering suggestions.”

The Land Conservation Leadership Program is a training program for land trust professionals organized by LTA and The Conservation Fund.

Northwest Program

Mark Your Calendar for the Northwest Land Trust Conference

The Northwest Land Trust Conference will be held May 18-20 at the Sunriver Resort near Bend, OR, and locally hosted by the Deschutes Basin Land Trust.

Sunriver lies on the dry side of Oregon between the high desert and the towering Cascades, and is located 30 minutes south of Bend. It is home to state-of-the-art training facilities, and offers a number of restaurants and activities for everyone. Land trust

board members, staff, volunteers and families are encouraged to attend—the conference is open to anyone interested in land conservation. Come for the training and stay for the fun!

In addition to the workshops and seminars on a wide range of topics, this year's conference will introduce a series of *Discussion Clinics*. These open-forum roundtables will allow participants to discuss experiences, problems or questions they have on topics such as stewardship, forest ownership, conservation buyer programs, ethical concerns, fundraising, expanding staff, growth management, regionalism and other topics.

Experienced land trust practitioners will facilitate these clinics, and all participants will be encouraged to join the discussions.

The conference will feature full-day, pre-conference workshops on land protection program planning, riparian habitat protection, tax strategies and planned giving on Thursday, May 18. At least 18 shorter workshops on legal, tax, stewardship, resource lands, fundraising, personnel, finance and communications issues will be presented May 19-20. In addition, there will be poster sessions on land trust

projects funded by the Northwest Matching Grants Program.

The conference program, including registration forms, will be mailed in early February. Up-to-the-minute details about the conference, as well as forms for registration and accommodations, will be available on the LTA/NW Web page at www.lta.org/nwnews.html.

Washington Meeting To Focus on Planned Giving

This year's Washington State Land Trust meeting will be held at the University of Washington's Center for Urban Horticulture in Seattle on Feb. 26.

Melissa Laird, director of planned giving of The Nature Conservancy of Washington, will present an afternoon session on ways in which land trusts can build their fundraising programs through bequests, gifts of stock and other planned gift vehicles.

The meeting will also feature a legislative update and roundtable discussions on regional issues. Contact the LTA Northwest Program at 206-522-3134 for more information.

Northern Rockies States Land Trust Meeting Set for March

The second annual meeting of the

land trusts in Idaho, Montana and Wyoming will be held at the Conference Center located at the University of Montana's Lubrecht Experimental Forest outside of Missoula, MT, on March 4. Details of the meeting, as well as housing reservation forms, can be found at www.lta.org/nwnews.html, or by contacting the LTA/NW program.

LTA/NW Welcomes Program Associate

LTA/NW Director Elizabeth Bell and Assistant Director Dale Bonar are delighted to welcome **Alicia Yamamoto** to the LTA/NW office as a full-time program associate. Alicia has served in the development office at the Fred Hutchinson Cancer Research Center and as a "jack-of-all-trades" administrative assistant at the Washington Wildlife and Recreation Coalition. She will be responsible for office management, conference scheduling and administrative oversight of the LTA/NW grants programs, as well as contributing to our development efforts.

Southwest Program

LTA/SW Launches Mentor Program

The LTA Southwest Mentor Program offers land trusts assistance tailored to their needs in such areas as strategic planning, board development, hiring staff, fundraising, membership development, land transactions, and stewardship.

Congratulations to the three land trusts that have been accepted into the Mentor Program: The Desert Foothills Land Trust (AZ), the Southern Rockies Agricultural Land Trust (NM), and the Virgin River Land Preservation Association (UT) will receive assistance in enhancing their organizational capacity.

The Mentor Program requires a significant commitment of time and resources by the board and staff of

Deschutes Basin Land Trust



The Squaw Creek area near Bend, OR

participating organizations. Over a duration of six months, each land trust will receive 60 hours of mentoring in the form of in-person visits, document review, phone consultations and/or meeting or planning facilitation. "The goal of the program is to have each organization emerge with the structure it needs to succeed and thrive," said LTA/Southwest Program Director Michaelle Smith.

Applications to participate in the next round of Mentor Program will be accepted in September.

LTA/SW Director Out and About

LTA/SW Director Michaelle Smith has been getting a firsthand look at the land trusts in Arizona, Colorado, New Mexico and Utah. After stepping into the director position in September 1999, she visited 37 land trusts by the end of 1999, with a goal of visiting every LTA Sponsor member land trust in the region by early 2000.

"I have met wonderful people who are accomplishing amazing things with limited financial and human resources," Ms. Smith said. "The creativity and dedication are inspiring! I look forward to working with these land trusts and

supporting them with information, grants and training through the LTA Southwest Program."


Coming Soon: The Southwest Land Trust Conference

Join land trust staff, volunteers and conservation-related professionals from across the region at the Southwest Land Trust Conference May 18-20 at the Radisson Hotel in Santa Fe, NM.

Concurrent workshops on topics

ranging from conservation easements, tax issues, organizational management and fundraising will be offered at the conference, as well as opportunities for informal networking and round-table discussions.

Information will be mailed in February. See the LTA/SW Web site for up-to-date information and registration forms:

www.lta.org/swnews.html, or call LTA/SW at 970-245-5811. 



Desert Foothills Land Trust

Major Grants Available Through LTA's Northwest and Southwest Programs

Land trusts in Alaska, Arizona, Idaho, Montana, New Mexico, Oregon, Utah, Washington and Wyoming are invited to consider applying for capacity-building grants up of to \$50,000 through the Land Trust Organizational Advancement Grants (OAG) Program. The program is implemented by the Land Trust Alliance through its Northwest and Southwest programs, and funded through a major grant from the Wilburforce Foundation.

Grant awards will generally be in the range of \$10,000 to \$50,000. Grant funds are expected to be matched on a one-to-one cash basis by the successful applicants.

Land trusts with an interest in the program should submit a letter of inquiry accompanied by a board resolution recognizing the board's fiscal commitment to the grant program by May 31. Detailed information on the letter of inquiry and application process is available on LTA's Web site at www.lta.org/grant.html.

Land trusts from Alaska, Idaho, Montana, Oregon, Washington, and Wyoming can obtain information on the program from LTA's Northwest Program at 206-522-3134. Land trusts from Arizona, New Mexico and Utah can obtain information from LTA's Southwest Program at 970-245-5811.

Ask an Expert



Attorney William T. Hutton answers reader questions about conservation easements and tax law. Mr. Hutton is a professor of law at the University of California Hastings College of the Law. He is tax counsel to the Trust for Public Land, editor-in-chief of The Back Forty, and counsel with the law firm of Coblentz, Patch, Duffy & Bass LLP in San Francisco.



A landowner interested in donating a conservation easement will sometimes want to donate the easement in phases to extend the window of opportunity for tax benefits. The land trust, on the other hand, wishes to acquire protective interest for the entire tract up front. Are there approaches to conservation easement planning that meet the needs of both landowner and land trust in such cases?

A. “Phasing” conservation easement donations will rarely, if ever, entirely meet the needs of the land trust, since full protection may be defeated by changes in circumstances, changes of heart, or mortality. But there are often sound reasons—not just tax reasons—for a landowner to embark upon a phased-gift plan. How many kids will actually want a home on the range? Does it make sense to sacrifice commercial recreation potential that has not been exploited? Will an increase in land value more than make up for the deferral of tax deductions?

Once the land trust acknowledges that it will have to settle for less than a full-protection strategy, the challenge becomes one of preserving the landowner's opportunity to achieve a meaningful “phase two” contribution while still achieving significant “phase one” protection. Frequently, the essential choice will be geographical;

that is, whether to create a comprehensive easement over a portion of the target property or to create a less restrictive easement over the entire property, with such clustering of development and regulation of uses as will both provide meaningful overall protection and still leave the landowner with substantial value to eliminate in phase two. The land trust is nearly always advantaged by the latter plan, which forces the parties to think comprehensively about the property and avoids the appraisal complications attributable to the “enhancement” rule (the Department of Treasury regulations' requirement that enhanced value of appurtenant property be taken into account in reduction of the easement value § Reg.-1.170A-14(h)(3)(i)).

The land trust may also aspire to some assurance about the consummation of the phase two transaction. It has been suggested that the phase one easement might itself trigger the subsequent heightening of protection; for example, by the elimination of certain development rights not exercised by a certain future date. Unfortunately, that plan is unlikely to produce a second bite of the tax apple—on the initial conveyance, the appraiser will be bound to assume that the development rights will be exercised and, upon the elimination of those rights by operation of the extinguishment provision at the

end of the specified period, it would be difficult to demonstrate that there has been a “payment” of a second charitable contribution, as is required for deductibility.

A more felicitous plan would be for the charity to acquire, at a nominal price, an option to buy a second easement at a bargain price, covering intended phase two restrictions, and allowing for adjustments in coverage dependent on the landowner's interim land-use decisions. It would be the land trust's hope, of course, that the phase two easement would be donated, and that the option would serve only to backstop the landowner's charitable intentions. If the option were required to be exercised, the phase two acquisition would presumably be at a dramatic bargain price, with adjustments to take account of the landowner's pursuit of permissible development and/or uses occurring before that date.



I'd like a clear explanation of how to do a conservation buyer deal. If a landowner gives our land trust a property and says we can sell it to raise money, but wants assurances that the eventual buyer will keep the property intact, how do we ensure this? As I understand it, if the land trust owns the land, we cannot impose a conservation easement on ourselves prior to selling, because such a “merger”

of the fee title and easement would essentially delete the easement. How would our land trust ensure that the buyer put an easement on the land?

A. Your question invites the attorney's usual plaint: "Why didn't you come to me earlier?" At the beginning of every so-called "conservation buyer" transaction, you must assess the charitable contribution opportunities. In this case, the original owner was obviously intent upon, and capable of, realizing the entire available government subsidy attributable to a donation of the property. So this wasn't, at that juncture, a conservation buyer deal but, rather, a relatively simple matter of structuring the transaction so as to afford the landowner a full fair market value deduction and ensure the intended preservation of the property. That would have been best achieved by donating a comprehensive conservation easement to one land trust, and the fee title intended for resale at its diminished value, to another.

Having missed that opportunity, the landowner must trust you to do the right thing; there may be no commitment on your part without creating the substantial risk of a diminution of the intended tax deduction. Fortunately, that perpetual protection is easily arranged. There is no proscription against your selling the property subject to a retained easement. (A "merger" of title extinguishes an easement when the holder acquires the fee; here you are selling a restricted fee and creating an easement in the process. No problem.)

The challenges arising from "conservation buyer" opportunities are many and varied, all revolving essentially around the question of how to ensure that the buyer's good intentions are ultimately realized, either in the form of a donated conservation easement or a cash donation. In your scenario, however, you need only find a buyer at the property's restricted value; she will only earn the "conservation" appellation if she meaningfully overpays.



If a land trust is prevented from granting a conservation easement amendment that would result in a "private benefit" because the land trust could jeopardize its 501(c)(3) nonprofit tax status, what prevents a public agency from granting amendments that result in private benefit?

A. Among the operational constraints attributable to maintenance of exempt status for a land trust under Internal Revenue Code section 501(c)(3) is the venerable "inurement" rule, which proscribes any unwarranted benefit to an insider, and the requirement to observe a properly charitable scope of activity, which precludes the provision of more than incidental private benefit to third parties [see Spring 1999 *Exchange*, page 22]. Governmental entities, although qualified to receive charitable contributions on the same favorable bases as are land trusts, are not subject to section 501(c)(3); their tax-exempt status derives from principles of intergovernmental immunity. Thus, although a governmental entity's tax status suffers no jeopardy in respect to a potentially weakening amendment of a conservation easement, it would be unrealistic to think that the administering agency could agree to such an amendment with impunity. Most such entities are bound by statute or regulation to procedures intended to ensure that any such administrative action is productive of public benefit, not to mention the obvious political and public relations fallout from perceived derelictions of duty. As a practical matter, then, the standards for easement amendments should not substantially differ between private land trusts and governmental easement holders.



It has been suggested that a private individual purchase the development rights on property adjacent to theirs, and donate them to our land trust. Tax issues aside, is there any legal difference between an easement obtained this way, and one donated directly by the landowner? In general,

are purchased easements as "strong" as donated ones? Our state of Michigan does have legislation enabling easements and I believe it is pretty standard.

A. Preliminarily, you should note that the validity of the privately-purchased easement, prior to its transfer to the land trust, would be tested under common law principles. Very few, if any, state enabling laws permit easements in gross in perpetuity to be acquired except by nonprofits and government entities. Although you stipulate that your would-be purchaser is the owner of appurtenant property, thus apparently satisfying the requirement of a "dominant estate," the private possession of the bundle of restrictive rights we commonly call a "conservation easement" is apt to raise novel legal issues as to validity. But the principal defect of this plan lies in the unstated assumption that the private purchase of development rights will establish their value for purposes of the subsequent income tax deduction. Once those rights, essentially negative in character, have been severed from the neighbor's property, their value will be nominal. The purchaser has no access to the "before and after" valuation method sanctioned by the regulations as to donations of easements, since, as to him, the so-called "development rights" are a property entire, not a partial interest. Once naked and alone, those development rights are poor candidates indeed for meaningful tax benefits. 🌿

In the next issue, guest expert Kim Klein will answer questions about cultivating individual giving and major donors.

Ms. Klein is founder and co-publisher of the bi-monthly *Grassroots Fundraising Journal*, and author of the book *Fundraising for Social Change*. She is co-owner of Berkeley, CA-based Chardon Press, which develops and publishes materials that help build a strong nonprofit sector, and is a fundraising trainer and consultant.

Please submit questions by March 1 to Kendall Slee at LTA by e-mail (kslee@lta.org) or fax (202-638-4730).

People on the Move

Tom Quinn, director of the Wisconsin Farmland Conservancy, has received a Bush Foundation Leadership Fellows grant. Through the fellowship, he will research communities in the U.S. and abroad that have linked local land protection with local economic development. **Rick Gauger**, a former board president of the land trust, will step in as interim director for the year.

Susan Bates has been named the managing director of the Hudson Highlands Land Trust (NY).

Teresa Carrillo is the new executive director for the Coastal Bend Land Trust (TX) and the Coastal Bend Bays Foundation. She previously worked for the U.S. Fish and Wildlife Service, and has a background in biology and marine sciences.

Vermont Land Trust (VLT) recently welcomed the following employees:

- **Sharon Crossman** is the new Southwest Vermont and Mettowee Valley regional director. She previously worked as a community development and housing planner for the Windham Regional Commission in Brattleboro, VT.
- **Susan Hemmeter** is VLT's new development coordinator. She previously was director of membership and major gifts for the New Jersey Conservation Foundation.
- **Jon Osborne** has joined the staff as a GIS coordinator. He previously did GIS work for the City of Boulder, CO.
- **Jon Ramsay** is a documentor/monitor in VLT's Woodstock office. He recently earned a BS in natural resources from the University of Vermont.


Sandra Tassel is director of strategic resources at The San Juan Preservation Trust (WA), where she will lead efforts in developing fundraising strategies, partnerships and a strategic plan. She had been Colorado projects director for the Trust for Public Land.

Allison Vollbracht has joined The Land Conservancy of King/Snohomish Counties as office manager. She was previously the program associate with LTA's Northwest Program.

Tarn Dickerson is the new conservation lands manager for the Coastal Mountains Land Trust (ME). He recently interned with Jackson Hole Land Trust (WY) and has a bachelor's degree in natural resource management with an emphasis on GIS from Colorado State University.

Aaron Vogel has been named the assistant director and land steward of the Thousand Islands Land Trust (NY). A landscape architect and avid kayaker, he is completing a master's degree from the State University of New York College of Environmental Science and Forestry.

Sonja Wallen has joined the Coastal Georgia Land Trust as membership coordinator and administrative assistant.

Bill Rawlyk is the new land acquisition specialist for the Delaware & Raritan Greenway (NJ). He is a founding member of the Hunterdon Land Trust Alliance (no relation to LTA), and owner and operator of Hunterdon Turf Farm. 

Please send "People on the Move" announcements to Kendall Slee, fax: 202-638-4730; kslee@lta.org.

On the Bookshelf

Appraising Easements: Guidelines for Valuation of Land Conservation and Historic Preservation Easements, published by LTA in cooperation with the National Trust for Historic Preservation. This newly revised edition includes all the basics, with updated information on estate taxes, substantiation of charitable contribution requirements, and legal cases. 77 pages. \$20 for LTA Sponsor members; \$24 for others. Contact: 202-638-4725.

Growing Greener: Putting Conservation into Local Plans and Ordinances, by Randall Arendt, published by Island Press. How municipal comprehensive plans, zoning ordinances and subdivision ordinances can have a conservation focus. 236 pages. \$42.50. Contact: 800-828-1302.

What We Learned (the hard way) About Supervising Volunteers: An Action Guide for Making Your Job Easier, by Jarene Frances Lee with Julia M. Catagnus. 155 pages. \$21.95. Contact: 215-438-8342; www.energizeinc.com.

For the Health of the Land: Previously Unpublished Essays and Other Writings, by Aldo Leopold, edited by J. Baird Callicott and Eric T. Freyfogle, published by Island Press. Forty short pieces in seasonal "almanac" form, with longer essays which show the development of Leopold's approach to managing private lands for conservation. 240 pages. \$22.95. Contact: 800-828-1302.

New Sponsors and Supporting Organizations

October 1 – December 31, 1999

New Sponsors

Sponsor members are LTA's core constituency. We are pleased to welcome the following new members:

American Wildlife Partnership (MO)
Bergen Swamp Preservation Society (NY)
Buffalo Bayou Partnership (TX)
Groton Conservation Trust (MA)
Laguna de Santa Rosa Foundation (CA)
Lower Merion Conservancy (PA)
Museum Campton Historic Agricultural Lands (IL)
Open Space Alliance, Inc. (CA)
Open Space Council (MO)



Red-tail Conservancy (IN)
Southern Branch of Utah Open Lands (UT)

Supporting Organizations

Supporting Organizations are allied, nonprofit conservation and preservation entities, as well as government agencies. LTA is pleased to welcome the following new Supporting Organizations:

Desarrollo y Ecologia (Mexico)
Massachusetts Department of Fisheries and Wildlife (MA)
National Scenic Byways Resource Center (GA)
Normandeau Associates (NH)
Wake County Planning (NC)

Calendar

February 26

Washington Land Trust Meeting

Seattle, WA. Sponsored by the LTA Northwest Program.
Contact: 206-522-3134.

March 23-25

North Carolina Land Trust Assembly

Black Mountain, NC. Sponsored by the Conservation Trust for North Carolina, 919-828-4199.

March 25

Connecticut Land Trust Convocation

Berlin, CT. Sponsored by The Nature Conservancy.
Contact Linda Bowers, 860-344-0716; lbowers@tnc.org.

April 6-8

Colorado Coalition of Land Trusts Annual Meeting

Golden, CO. Contact Jane Ellen Hamilton, 303-271-1577.

April 9-11

13th Annual Conference on Purchase of Agricultural Conservation Easements

East Windsor, NJ. Sponsored by American Farmland Trust.
Contact Lynn Johnson, 413-586-9330.

April 28-30

Michigan Land Trust Conference

Boyne Falls, MI. Sponsored by Little Traverse Conservancy.
231-347-0991.

May 4-6

California Land Trust Conference

Santa Cruz, CA. Sponsored by LTA and the Trust for Public Land. Contact: 970-245-5811.

May 18-20

Mid-Atlantic Regional Land Trust Conference

Shepherdstown, WV. Sponsored by Maryland Environmental Trust and LTA.

Contact: 410-514-7900 or see LTA's Web site at www.lta.org.

May 18-20

Northwest Land Trust Conference

Sunriver, OR. Sponsored by the LTA Northwest Program.
Contact: 206-522-3134.

May 18-20

Southwest Land Trust Conference

Santa Fe, NM. Sponsored by the LTA Southwest Program.
Contact: 970-245-5811.

June 2-3

New York Land Conservation Conference

New Paltz, NY. Sponsored by the LTA New York Program.
Contact: 518-587-0774.

Tips & Talk

Membership: Making Renewals Easy

Make it convenient, and they will renew. That could be the motto of the Southeastern Cave Conservancy (GA), which saw its “sustaining” membership category skyrocket to 50 percent of its membership in the two years since it began accepting credit cards.

Individuals become “sustaining” members by signing a credit card form to pay membership dues monthly, quarterly or semi-annually. To ease the processing workload, the conservancy suggests a minimum monthly contribution of \$5 for sustaining members, or \$60 per year. Regular member dues are only \$15 per year.

“We started with a handful of people and now have about 300 sustaining members,” noted Chairman Bill Putnam. “This program generates about 60 percent of our annual operating budget.”

The steady revenue flow has allowed the land trust to plan land acquisitions and rely on mortgage financing, “an impossibility without a predictable income stream,” Mr. Putnam pointed out. The credit card option also makes it easy for people to renew their memberships each year. “Most people fill out the form and mark ‘good till canceled,’” observed Putnam.

Start-up costs are minimal: one PC terminal rented from a bank works with any credit card. Credit card processing fees range from 1 to 5 percent. “Most people don’t notice \$5 or \$10 on their credit cards bills,” said Mr. Putnam. “Lots of people prefer to charge their dues, especially when they get frequent flier miles.”

Let Them Eat Weeds

Faced with tenacious hound’s tongue, musk thistle, dalmatian toadflax and other noxious weeds around sensitive wetlands, Jackson Hole Land Trust (WY) turned to a natural de-weeder: goats. After two seasons, the goats appear to be winning the weed war.

“The goats are part of an Integrated Pest Management (IPM) system,” noted Stewardship Director Mark Berry. “While we’re using the goats, we’re also doing significant scientific evaluation in studying the changes in vegetation.” The land trust’s project, partially funded with a \$1,000 grant from LTA’s Northwest Matching Grants Program, is being assisted by the Teton County Weed and Pest District.

In 1998, the land trust used 100 goats on the 36-acre deBeixedon property, moving them around to feed intensely in certain areas. Last year, the land trust increased the herd to 200 animals, still moving them but using larger enclosures. It also added an easement-protected property to the experiment.

“We’re encouraged by what we see,” Mr. Berry said. “If we’re not killing the weeds, then at least we’re reducing their vigor and stimulating growth of surrounding native species.”

Around Jackson Hole, WY, goats are combatting noxious weeds with their appetites.



Jackson Hole Land Trust

“The goats are a success. They have suppressed weeds and it looks like the trend will continue,” Mr. Berry noted. “They have made the community aware of noxious weeds. People driving by pull over to see the goats, and we start sharing information about land conservation and IPM.”

Party On

The people of Fresno, CA, could have partied every weekend in 1999 with the San Joaquin River Parkway and Conservation Trust. In fact, Parties for the Parkway, a cornucopia of 59 events—ranging from family trail walks to dinners at some of the city’s most exclusive residences to artistic adventures—netted the land trust \$100,000.

In its seventh year, Parties for the Parkway has introduced the land trust to an affluent community it may not otherwise have reached. Each year, the parties are kicked off with an auction of the donated art used to illustrate the full-color, pocket-sized booklet that entices people to events. In 1999, the kick-off event attracted 500 people. The most popular offering allowed 150 people to munch tapas and sip sangria while listening to internationally-known Flamenco guitarist Juan Serrano trace the evolution of the music.

Ninety percent of the parties are in the homes of volunteers. Because the program is mounted largely by volunteers, the land trust’s costs are minimized. The single largest donation—the \$30,000 cost of printing the promotional booklet—is donated annually by Dumont Printing.

“Don’t worry about offering 60 parties,” suggested Christy Dennis, the land trust’s development director. “Start with 10. One of our biggest events was “California Viejo,” when 24 people visited the fabulous 700-acre ranch of our board chair, Coke Hallowell. They were treated like kings and queens, and, they also learned about land conservation.” For a free copy of the Parties for the Parkway booklet, call Christy Dennis at 559-248-8480. Shipping is \$2. 🍃

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