

“Land Trusts, Easements, and the Role of Private Land Conservation”

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I am delighted to be here this morning. In 2002, I addressed the fourth international conference, and it is a great pleasure to return this year to France, to Aix, and to this company of distinguished colleagues.

This morning, I want to discuss the role that non-governmental land conservation organizations, known as land trusts, play in conserving open spaces in the United States. I will first give an overview of land trusts, their history, methods, and accomplishments. Then I will talk about their strengths and challenges, including new attention and responsibilities that growth and success have placed upon them. Finally, I will discuss some lessons we have learned from over 100 years of private land conservation in the U.S. and what they might mean for private land conservation in the 21st Century.

Overview of Land Trusts

First, I want to emphasize that I am discussing conservation land trusts – not the community land trusts that Steven Bourassa discussed yesterday whose worthy goal is to increase affordable housing.

Second, I stress that I am discussing only the experience in the United States. It is important to recognize that terms of art, such as “conservation easements,” can mean quite different things in different cultures. I will discuss today only how these concepts are understood and applied in the U.S.

Defining a Land Trust. What is a conservation land trust? The Land Trust Alliance, the national association for all land trusts in the United States, defines a land trust this way: *“A land trust is a nonprofit organization that, as all or part of its mission, actively works to conserve land by undertaking or assisting in land or conservation easement acquisition, or by its stewardship of such land or easements”.*

The common unifying characteristics that apply to almost all land trusts are these:

- **They are not-for-profit non-governmental organizations**, usually recognized by the United States tax authorities as tax-exempt public charities. That means that, although they are private organizations, they must always operate for the public benefit and never for private gain. This status also means that donors of money, land, or qualified conservation easements to land trusts can generally receive federal, and often state, income and estate tax benefits for their gifts.

- **Land trusts work with private property owners** to help find ways to protect their land. As problem-solvers and entrepreneurs, they try to find the best combination of tools and strategies for each property and its owners. As private organizations, they must always respect landowners' property rights and wishes. Indeed, since they have no governmental powers, cooperation and persuasion are the real bases of land trusts' success.
- **They are involved in conservation real estate transactions.** Some land trusts acquire, own, and manage conservation land. Even more common in recent years, land trusts also acquire conservation easements. In the U.S., a conservation easement is a legally-binding servitude that protects important lands by restricting or prohibiting specific kinds of development and uses on a parcel of land. Land protected by a conservation easement stays in private ownership. However, the easement's restrictions against harmful land uses continue to apply to the property, usually in perpetuity, and must be followed by all future landowners. In the U.S., *conservation easements do not replace regulation*. Rather, the restrictions of an easement are *in addition to local, state, and federal land use regulations*. Landowners who want to permanently restrict their land for conservation may donate or sell a conservation easement to a land trust, or for that matter to a public conservation agency. The land trust or agency then has the responsibility for enforcing the restrictions on the land.
- In addition to holding land and easements themselves, land trusts may also assist or collaborate with other NGOs or public agencies in conservation acquisitions. Many land trusts have acquired conservation property, which they later turn over to a public agency or to another conservation NGO.
- **Land trusts assume long-term stewardship responsibilities.** They must manage any land that they own, often accommodating public access and providing educational programs. If they hold conservation easements, land trust organizations are obliged to monitor the land regularly and to enforce the restrictions of the easement agreement – even, as a last resort, taking legal action against a property owner who violates those restrictions. Since easements usually run in perpetuity, this is a major, very long-term responsibility for a land trust or agency that accepts these easements.
- Except for a few large national organizations, **land trusts typically focus their work within a defined geographic area:** a state, a specified region, sometimes a river corridor or a valley or an island, or even a single community.
- They usually **intend that the land they protect will be conserved permanently or at least for many generations.**
- **They bring organized private capital** - people, energy, intellect, and funding – to the protection of conservation land for the public benefit.

Those are the common traits of land trusts. But land trusts differ from one another, too. Some are large organizations with many professional staff members and significant annual budgets. Others are small, depending mostly or even exclusively on volunteers.

Land trusts also differ in the kinds of land they protect. They set their own priorities, as long as their conservation work serves the public interest. So land trusts may protect stunning scenery, wildlife and plant habitat, important farmland, historic properties, urban parkland, wetlands, watercourses, desert landscapes, archeological sites, and many other kinds of resources. The choices depend on what open spaces are important in their regions and what lands are especially threatened.

In addition, land trusts differ in the combination and complexity of tools they choose to use. New or small land trusts may undertake fairly simple transactions. But increasingly, land trusts are tackling more and more complex projects. High land prices, competing development pressures, complicated land ownerships, imminent threats, and immense acreages all suggest that simple approaches often can no longer succeed. Frequently land conservation now involves solving complex problems, combining tools and strategies, working with multiple partners, assembling a range of resources, and collaborating with a multitude of landowners, public agencies, NGOs, politicians, donors, and other parties.

Beginnings, Growth, and Accomplishments. Fortunately, land trusts in the United States have a great deal of history and experience to draw on. In 1891, a few Massachusetts citizens proposed the establishment of “an incorporated association [that] would ... hold small and well-distributed parcels of land free of taxes, just as the public library holds books and the art museum pictures – for the use and enjoyment of the public.” The result was an association called The Trustees of Reservations, which incidentally became the model for the National Trust of Great Britain, founded just a few years later. For 115 years, The Trustees of Reservations has acquired land and more recently conservation easements, and today it has helped protect over 55,000 acres of land in the small state of Massachusetts.

By the mid-sixties, there were some 130 land trust organizations in the United States and by 1981, about 430. At the end of 2003, the number of local and regional land trusts in the U.S. had grown to 1,537, an increase of over 20% from just three years earlier.

Even more impressive than the numbers of organizations, though, is the conservation they have accomplished. By the end of 2003, local and regional land trusts had helped protect 9.4 million acres (about 3.8 million hectares) of land. These local and regional groups held conservation easements on about 5 million acres, owned outright nearly 1.5 million acres, and had transferred over 2.8 million acres to public conservation agencies or other conservation NGOs. [See the Land Trust Alliance web site: www.lta.org.] And to these figures must be added about 25 million more acres protected by very large national land trusts such as The Nature Conservancy and the Trust for Public Land.

But perhaps the most important observation from these statistics is this: **While the numbers of local and regional land trusts grew by 22 per cent between 2000 and 2003, the total amount of land they protected grew by 52 per cent during the same period.** Land trusts are indeed successful!

Challenges of Growing Up.

Like adolescents, land trusts are experiencing some growing pains as they blossom toward maturity. I might group these challenges into three categories: the challenge of catching up; the challenge of the spotlight; and the challenge of preparing for the future.

The Challenge of Catching Up. Land trusts are under greater pressure than ever before to protect critical open lands before it is too late. They are typically fairly small organizations with, at most, a handful of staff people. Yet they conduct complex real estate transactions and, if they own land or hold easements, they assume long-lasting stewardship responsibilities, usually designed to be perpetual. This places an enormous obligation on a land trust to be extremely well organized, adequately funded, and knowledgeable about conservation, real estate transactions, legal matters, and the laws of not-for-profit organizations. They need to keep careful records, document their transactions, monitor properties regularly, keep up with changing regulations and best practices, conduct sophisticated fundraising, and build community support. Above all, they need to build strong, well-managed organizations that will last for many generations, to care for the conservation properties they protect today.

Whereas good intentions and dedicated hard work may have sustained land trusts in earlier years, today land conservation has become complex, expensive, urgent, and demanding. Some land trusts have struggled to catch up with new demands, finding it difficult to succeed as small, mostly volunteer groups. Some small land trusts in adjacent regions are merging to become a single larger organization with greater resources. In Ohio, eight mostly small land trusts recently merged to form one large regional organization. Other small groups are working in partnership with larger land trusts on conservation projects or are pooling resources to share staff and services.

Even older, experienced land trusts are finding it necessary to grow, learn, and adapt rapidly just to keep up with land conservation on a larger and much more urgent scale than they ever imagined possible. A significant challenge is the need to raise more capital than ever before, for costly land protection projects, for growing stewardship responsibilities, and for staff and management of rapidly expanding organizations

The Challenge of the Spotlight. In 1987, when I first became CEO of the Land Trust Alliance, few people knew what a land trust was or had heard of a conservation easement. Some might have been familiar with The Nature Conservancy or perhaps with a nearby local land trust – if there happened to be one – but almost no one thought of land trusts as a national conservation force that was making a difference in the way we use land or conserve private open spaces.

Today, that has changed. Because of their dramatic growth and success, land trusts and their methods are not only familiar to a great many people, but they are beginning to find themselves in a spotlight of public attention.

In May of 2003, the *Washington Post* newspaper ran a series of articles accusing The Nature Conservancy, the largest land trust in the U.S. (in fact, it operates throughout the world) of several instances of wrongdoing, including improper conservation transactions, lax oversight, conflicts of interests, and misuse of conservation easements. The *Post* accusations often seemed to border on a “witch hunt,” with only one side of the story reported. Later, the Internal Revenue Service, the federal agency that collects federal taxes and carries out tax policies enacted by Congress, found no significant illegal actions in a subsequent audit of The Nature Conservancy.

Nevertheless, the Conservancy made many changes in its operating practices and policies. The newspaper articles also awakened the entire land trust community, as perhaps nothing else could have, to the need to maintain not only scrupulous practices, but also scrupulous appearances. Even if land trusts act strictly within the law, they have discovered that they are not immune to criticism and misunderstanding, and that errors in judgment can exact a steep price in public confidence.

Not long after the newspaper articles appeared, both the Internal Revenue Service, the Joint Committee on Taxation of the U.S. Congress, and the Senate Finance Committee all began to scrutinize the work of land trusts and especially the use of conservation easements. There were hearings and reports and investigations, which produced some alarming early proposals that would have drastically limited the effective use of conservation easements.

Under the leadership of the Land Trust Alliance, land trusts have mobilized to head off crippling reforms, working tirelessly to educate federal officials about the real benefits and methods of land trusts’ work. At the same time, land trusts understand that putting their own house in impeccable order is critical. The Land Trust Alliance has recently launched a program of accreditation for land trusts, which will help all of these organizations meet common standards of excellence.

The land trust community also recognizes that some abuses are probably occurring, primarily a few cases where the terms of a conservation easement do not adequately protect conservation values or where taxpayers claim unrealistically high values for easement gifts, resulting in unjustified tax benefits. The Land Trust Alliance and its members are keenly aware that preventing abuse is critical to the success of land conservation, and they have told Congress and the Internal Revenue Service that they applaud actions and reforms to “drive bad actors out of the conservation arena.” Indeed, the Alliance supported a recent decision by the United States Tax Court that disqualified a conservation easement donation by a real estate company to a county government in Virginia because the easement did not meet comply with the law. The IRS is currently examining 500 easement donations; so more cases may come to light.

To date, the IRS has tightened requirements for how conservation easements are appraised for tax purposes, and the Service or Congress may propose further changes. However, initial proposals that would have crippled the use of easements have been withdrawn.

That these once-obscure conservation methods occasionally become tools of a few bad actors is ironically a sign of the overall success and visibility of land trusts. Meanwhile, almost certainly the Challenge of the Spotlight is bringing about even stronger, more thoughtful, more effective land conservation in the United States.

Challenges for the Future. Lessons from land trusts' first century provide several guide posts for the future. Among them are these:

First, land trusts must be adaptable and innovative. They cannot rely *solely* on methods that have worked in the past. Just as land trusts added the conservation easement to their tool box 20 or 30 years ago, so must they continually seek and evaluate new methods, new partnerships, and new incentives for land conservation. The U.S. Congress is currently considering new federal tax benefits for donors of qualified conservation easements, even as they pursue taxpayers who abuse the use of easements. Other federal programs, such as the Farm Bill, contain funding for land conservation. State and local governments are also enacting new tax incentive programs and voters in many places continue to approve substantial funding for land conservation. In some communities, land trusts are attracting private capital not only through traditional philanthropy, but also through agreements with local businesses to direct a small portion of their revenues to conservation.

In the search for new incentives, care must be taken to ensure that new programs are as efficient, effective, and equitable as possible. But just as the use of conservation easements has evolved in recent decades, so must there be experimentation and adaptation in the use of new tools and incentives.

Second, land trusts must be leaders and advocates for the conservation work they do. In the past, many land trusts were effective precisely because they operated quietly, did not take on highly charged battles, and thus were able to work with a broad range of landowners and other partners. And that need not change. But as we have seen recently, land trusts must also explain the work they do, help the public understand its benefits, and advocate policies that advance the protection of public values on private lands. It is a lesson that land trusts are learning quickly, and – with 1,500 land trusts in communities across the U.S. – is a task at which they can be extremely effective.

Finally, land trusts must endure to carry out their long-term responsibilities. They must continue to build on their strengths as grassroots, community-based organizations by seeking to meet high standards of excellence. They must raise operating money, invest in staff and management systems, prepare for long-term stewardship of all land and conservation easements they acquire, and strive to meet well-accepted standards and practices in everything they do.

None of this is easy. Yet, as land trusts mature to face new challenges of the 21st Century, it is worth recalling the long history and evolution of land trusts in the United States. Based on over a century of land trust success, there is every reason to believe that they will meet all of these challenges with the creativity, determination, wisdom, and hard work that have brought them such remarkable success in the past. Indeed, given all

of their strengths, I have little doubt that non-governmental land trusts will endure as an even stronger conservation movement in the United States, protecting outstanding open lands for generations to come.
