

“Protecting Coastal Land through Land Trusts”

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Introduction

It is a great pleasure to be with you to talk about non-governmental organizations known as land trusts. I will discuss their growth and success, their methods of protecting land, their global spread, their challenges, and their future. In addition I will describe one of the major tool for environmental land use control i.e. conservation easements.

Most of what I will say is not strictly limited to land protection in coastal zones, because land trusts work similarly to protect a variety of resources. However, land trusts and their methods have great applicability to coastal lands. They offer ways of protecting land that go beyond regulation. And they complement and expand the governmental role by bringing private resources – both human and financial -- to land conservation.

1 The Land Trust Movement: an overview

To examine the land trust movement, we must first have a working definition of a land trust. Here is a definition used by the Land Trust Alliance, the national umbrella organization for land trusts in the United States: *“A land trust is a nonprofit organization that, as all or part of its mission, actively works to conserve land by undertaking or assisting direct land transactions – primarily the purchase or acceptance of donations of land or conservation easements.”*

In the United States, most land trusts are no different in legal structure than any other nongovernmental organizations. Land trusts are generally organized as tax-exempt public charities, (known as “501-c-3’s,” after the section of the Internal Revenue Code that grants their tax-exempt status). Thus, they are governed by federal and state laws designed to ensure that they operate for the public benefit and not for private gain, that they have reasonably broad support, and that they abide by other rules and regulations.

The vast majority of land trusts are local or regional in their geographic focus, although there are a few well-known organizations that operate as land trusts nationally or internationally – among them: The Nature Conservancy, the Trust for Public Land, the American Farmland Trust, Ducks Unlimited, and the Conservation Fund.

It is the emphasis on **conservation through land transactions** that distinguishes land trusts from other kinds of NGOs, and from other kinds of conservation and environmental organizations. Land trusts also emphasize permanency -- conservation that will last for many generations or even “perpetuity.” .

Land trusts protect many different kinds of open space – watercourses and rare habitat, community gardens and forest lands, archeological sites, ranch and farm lands, islands, coastlines, fragile desert ecology, popular hiking trails, and much more. The choices depend largely on what kinds of key open spaces exist in their regions and are important for conservation and for shared community values.

There are many land trusts in the coastal zones of the United States, including such organizations as the Maine Coast Heritage Trust, the Coastal Georgia Land Trust, the Florida Keys Land and Sea Trust, the Eastern Shore Land Conservancy on the Chesapeake Bay of Maryland, and the Peninsula Open Space south of San Francisco, California.

2 The Tools of Land Trusts.

The basic tools of private land conservation are fairly easy to describe: acquisition of land and acquisition of conservation servitudes (generally known as “conservation easements” in the U.S.) However, use of these tools can have many variations. So let’s look more closely at how land trusts work with private property owners and other partners to protect open space.

21. *Land Trusts acquire land outright* – either by buying it or by receiving it as a charitable donation. Once they own it, their choices depend on the kind of land involved and their own management capacity.

They may **manage the land as a natural area**, opening it to the public or using it as an outdoor classroom for school children, for example. They might **lease the land** to a farmer or rancher, or to a community organization, with specific restrictions on uses and practices. They might **put permanent restrictions on how the land can be used, and then sell the land** to an appropriate buyer, or they might **convey the land to another nonprofit conservation group** to manage. Or they might **turn it over to a public conservation agency** – a local parks department or a state Fish and Game Agency or a federal agency such as the US Fish and Wildlife Service.

22. *Land trusts help others acquire land for conservation.* Many land trusts work in partnership with local, state, or federal conservation agencies or other conservation organizations to help protect land. In that case, the land trust may not actually end up owning land, or may hold it only temporarily before conveying it to a third party. In these cases, the land trust contributes expertise, credibility, local knowledge, ability to act quickly, and perhaps interim financing.

23. *Land Trusts also protect land using servitudes, or conservation easements.* Instead of buying land outright or full fee a land trust may acquire only interest in the land it wants to preserve. When possible this solution help to solve funding and land management issues. I will discuss this tool in section 5.

24. *Land Trusts own and manage conservation preserves.* Many land trusts actively manage natural areas they own, including opening them to the public for at least part of the time, conducting naturalist and educational activities on their land, monitoring and restoring natural resources and systems, and even dealing with issues such as signage, trespassing, and parking.

25. Land trusts help put together complex, multi-party transactions. These basic tools of land trusts – acquisition of land and conservation easements – do not begin to describe, however, the creativity and ingenuity of many land trusts. High land prices, competing development pressures, complicated land ownerships, and urgency all suggest that simple approaches do not result in conservation. Successful land conservation inevitably involves solving complex problems, tailoring solutions, finding partners, assembling a range of resources, and gaining the trust and confidence of landowners and all parties involved.

No matter what tools land trusts use, these private organizations succeed because they bring organized capital – people, energy, intellect, and funding – to the protection of conservation land and resources. It is not a new idea..

3 The Emergence, Growth, and Status of Land Trusts

Back in 1835, Alexis de Tocqueville in 1835, wrote, in *Democracy in America*, “Wherever, at the head of some new undertaking, you see the government in France, or a man of rank in England, in the United States you will be sure to find an association.”

Indeed, in 1891, a handful of Massachusetts citizens, led by landscape architect Charles Elliot, 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 over a century now The Trustees of Reservations has been acquiring properties, and more recently conservation easements, in the state of Massachusetts and today this land trust has protected nearly 40,000 acres (16,200 hectares), including some of the state’s most important coastal properties.

By the mid-sixties, best records show that there were some 130 land trusts in the United States and by 1981, about 430. At the end of 2000, the number of local and regional land trusts in the U.S. had grown to 1,263.¹ Thus, nearly two-thirds of today’s land trusts were formed in the last twenty years.

More impressive than the numbers of organizations, though, is the conservation they have accomplished. By the end of 2000, local and regional land trusts – not including national land trusts like The Nature Conservancy – had protected nearly 6.2 million acres (2.5 million hectares) of land. **While the numbers of these local land trusts grew 42 per cent in the decade from 1990 to 2000, the total amount of land they protected grew by 226 per cent during the same period.** At the end of that decade, these groups held conservation easements on nearly 2.6 million acres (slightly over 1 million hectares), owned outright more than 1.2 million acres (486,000 hectares) and had transferred almost 2.4 million acres (972,000 hectares) to public agencies or other conservation organizations. [All of this information can be found on the Land Trust Alliance web site: www.lta.org.]

¹ The Land Trust Alliance, National Land Trust Census, released October 2001

What has fueled this tremendous growth? Can it continue? Where will it expand beyond the United States? And what are the issues facing this once little known land trust movement, as it assumes a major position in conservation?

The growth of land trusts is no mystery. It has been driven by at least five factors:

- probably most important, an intense and rapidly growing feeling of dismay and urgency at the extent of irrevocable open space losses;
- a recognition that land use and environmental regulations, as crucial as they are, are not adequate to protect habitat, natural areas, and other significant tracts of open land;
- a sense that significant additions to public land ownership are neither likely nor even, in many cases, necessary;
- a strong desire on the part of many people to take action leading to visible results; and
- a significant increase in resources and support available to those who form and lead land trusts.

I see no indication that this growth will diminish. While the increase in numbers of land trust organizations is beginning to slow, this is no sign of weakness. Rather, it is a sign of growing maturity and stability; the significant increase in protected land confirms this. I also see no sign that threats to open space will lessen. Development pressures may be influenced in the short term by fluctuations in the economy, But the long term trends seem clear: preserving critical open places will require swift, skillful, and deliberate action, of the kind that land trusts are increasingly able to deliver.

4 The Global Spread of Land Trusts.

As the land trust movement continues to grow in the United States, it is also expanding around the world, where the spread of local land trusts and the use of conservation easements is quite new and growing with great speed

National Trusts, of course, have existed for decades in countries such as England, Australia, Scotland, and New Zealand.

But now there is a great deal of land trust activity in Central and South America, including Costa Rica, Mexico, Guatemala, Paraguay, Ecuador, Belize, Chile, Peru, and Argentina. There are scores of land trusts in Canada and more than 20 land trusts in the Czech Republic. Interest in land trusts and conservation easements is also growing in Slovakia, Nigeria, Uganda, Tanzania, Kenya, and elsewhere.

Grassroots non-governmental organizations are very new in many of these places. Forms of property ownership, legal systems, and cultural practices often differ greatly from those in the United States. In many cases, laws and practices must be changed, and accommodations must be made. But the fundamental concept of voluntary land conservation, non-governmental action, and the use of servitudes underlies all of this more recent activity.

So does the desire of conservation leaders to learn quickly from the experience of others. The Land Trust Alliance, for example, has seen great growth in inquiries from people in other countries and in their attendance at its annual training conference, the Land Trust Rally. It is clear that they want to learn from the American land trust experience. But it is equally clear that we have much to learn from these newly developing land trusts and the ways they are approaching land conservation in their own countries and cultures.

We know the land trust movement is still somewhat vulnerable in that regard. Many trusts are still young. Some are still run solely by volunteers. Land trusts still vary in their size, budgets, staffing, and overall organizational capacity. But there are now, among land trusts, some of the most competent, professional, responsible non-governmental organizations anywhere, and those numbers are increasing. In my time at the Land Trust Alliance, I saw a great shift toward recognizing and preparing for the long-term responsibilities of being a land trust. The Land Trust Alliance has been a leader in emphasizing this stewardship responsibility and educating land trusts to assume it, and I believe progress will continue rapidly.

5 Conservation easement for Land trusting

The coastal zone is impacted by a host of private activities which, if unchecked, endanger the economic and environmental values that make this zone so valuable to all people in all coastal nations. Public and private rights must be carefully balanced as we strive to protect coastal lands, particularly where privately-owned land is involved

We cannot ignore the importance of sound land use regulation in the coastal zone. No private property owner should have unfettered rights to pollute or destroy resources from which the public derives great benefit.

Nor can we ignore the great value of public acquisition and ownership of the most environmentally and aesthetically significant lands. Public ownership provides management options and access opportunities that private ownership rarely can.

It is often not necessary or even desirable to own land outright in order to protect it. One can acquire only that portion of the property rights necessary to protect environmental resources. The private property owner retains all of the remaining rights.

The most common type of this “shared” ownership is known in the U.S. as a “conservation easement,” although it is more accurately described as a servitude. Under this arrangement, the private property owner voluntarily gives up only those land use rights that would harm ecological or aesthetic values – for example, the right to build in specified areas or above a certain low density, or the right to disturb the shoreline.

The conservation easement, or servitude, itself is a binding legal agreement between a private property owner and a public agency or nongovernmental conservation that places restrictions on uses of the property. In the U.S., most conservation easements are perpetual in nature. The “run with the land” and are recorded in the public records. Thus, they restrict not only the current owner but all future owners, as well.

Specific restrictions are tailored to the land and its conservation resources. So an easement protecting fisheries or scenic wild lands would be quite different from one that protects productive timber land with a trout stream running through it, or one designed to save habitat on a working farm.

A conservation easement will almost certainly limit the number, kind, and placement of future buildings, and may also spell out restrictions on such things as stream bank disturbance, removal of certain vegetation, timbering and agricultural practices, and other land uses. The private landowner continues to own and use the land, and can live on it sell it, or pass it to heirs, but all future owners will be bound by the easement restrictions.

The owner also continues to pay property taxes, though the taxes on protected land are often reduced, depending on laws and policies of the local jurisdiction.

The land trust or agency that acquires the easement is responsible for ensuring that the terms of the easement are upheld – including taking legal enforcement action if necessary. That is a major responsibility that land trusts and agencies must prepare to meet and responsible NGOs that hold conservation easements set aside funds to defend the easement in court, if necessary.

The land trust or agency that holds the easement must document the condition of the property when the easement is placed on the land, and monitor the protected property regularly thereafter. The holder of the easement must also take prompt action to see that any violations of the easement restrictions are corrected. .

Most often, NGOs acquire easements by donation, although many also purchase these rights. Most public agencies that acquire easements do so by purchase. The value of an easement, whether for purchase or for determining a charitable contribution value, is the dollar amount by which the easement restrictions reduce the property’s fair market value.

For example, suppose you have a property whose appraised market value is \$100,000 (or euros). Then you grant a conservation easement that reduces the property’s appraised value to – say -- \$70,000. In that case, you have given up \$30,000 in property value. Thus, the value of the conservation easement would be \$30,000. That might be the price a land trust or public agency would pay for your easement.. Or in the U.S. you could claim that value as a charitable income tax deduction, should you decide to donate the easement. Of course, in general, the more restrictive the terms of the easement, the greater is its monetary value because the landowner has given up more rights.

The income tax deduction for donations of conservation easements has been a strong incentive for these gifts in the U.S. While few landowners relinquish development

rights solely for the tax deduction (financial benefits of the deduction can't compete with the financial gain of selling for development), the tax incentive does make the conservation choice somewhat easier.

However, conservation easements are now being used in several countries where tax laws do not convey any special incentives for donations. For example, the use of conservation easements is being explored or undertaken in Latin America and South America, Eastern Europe, and a few African countries

Conservation easements can be ideal tools for land whose conservation values can be protected by private ownership and some kind of low-intensity use. Although some conservation easements -- sometimes referred to as "forever wild easements" -- remove virtually all uses of a property, it may be better for a land trust or conservation agency to acquire outright a property that needs such a significant degree of protection. It is important to recognize that conservation easements may not be the best tool for *every* conservation property or purpose.

In addition to accepting conservation easements from long-time property owners, many land trusts also seek "conservation buyers" -- people who will purchase key conservation properties from willing sellers, with the expectation not of developing it, but protecting it with a conservation easement

As U.S. land trusts, especially, gain more and more experience with using conservation easements, the question of how much this tool can be expected to accomplish is a topic of discussion. For example, in addition to eliminating certain development rights, should an easement also *require* specified management practices? Can such affirmative requirements be adequately monitored and enforced over time? This and other questions will continue to be debated in the years ahead; the debate is the healthy mark of both an evolving land trust movement and an evolving conservation tool.

The conservation easement, as well as other forms of less-than-fee ownership, are tools with great promise for protecting private lands in the coastal zone. I am pleased to see this tool being used far beyond the United States. Carefully designed and well managed easement programs will result in the conservation of a great deal of private conservation land in the decades ahead -- more than could be protected through government regulation and ownership alone.

Conclusion: the Challenge of Responsibility.

One of the issues that face all NGOs that conduct land conservation is the stability and longevity of their own organization. These organizations are not just saving land today. They must safeguard the land they own and the conservation easements they hold. Land conservation is not a short term proposition, and land trusts cannot be short term organizations. So in addition to learning how to undertake technical, often complex real estate transactions, land trusts must learn to be well-run, enduring organizations. They must be prepared to carry out the responsibilities they assume. They must be professional in their operations, without sacrificing their grassroots advantages.

Land trusts have assumed a highly respected and successful place in conservation today. They have pioneered methods like conservation easements, demonstrated their ability to build bridges between the private and public sectors, and brought entrepreneurship and creativity to protection of natural resources. They are not a substitute for sound regulation and public ownership of highly significant natural areas. But land trusts can accomplish a great deal of conservation that government cannot, should not, or will not.

Property owners have just as much right to protect their land as to develop it. And land trusts can help them accomplish that, whenever that land protection serves a public purpose.

Land trusts have a significant, increasing role to play in conservation of land resources. And no where is that role greater than in our endangered coastal areas.