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A Critical Analysis of Land Trusts and Their Use of Conservation Easements as an Effective Tool for Open Space Preservation

Susan Louise Monahan
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A CRITICAL ANALYSIS OF LAND TRUSTS AND THEIR USE OF
CONSERVATION EASEMENTS AS AN EFFECTIVE TOOL FOR OPEN
SPACE PRESERVATION

SUSAN LOUISE MONAHAN


A THESIS

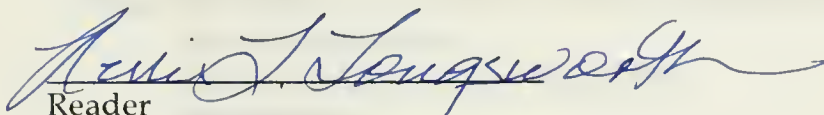
in

HISTORIC PRESERVATION

Presented to the Faculties of the University of Pennsylvania in Partial
Fulfillment of the Requirements for the Degree of Master of Science

1995


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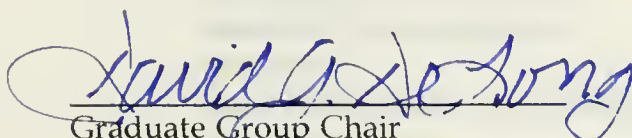

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INTRODUCTION

*"We don't lie in front of bulldozers. We don't take people to court. We don't get involved in regulation---that's why people like us."
~John Sawhill, President of the Nature Conservancy*

The common sense approach to land and building conservation is fast becoming the most successful means of environmental preservation. One of the critiques of the field of historic preservation is that it is reliant on government intervention and regulation rather than incentive for its success. Many preservation programs are tied to local, state and federal legislation and exist only because of a growing grass roots lobby working for laws that regulate historic resources such as enabling legislation for historic districts, monuments, land mark buildings, and other single historic structures and land. Without the framework of statutes, ordinances and financial support, preservation might still be a volunteer movement run by architecturally and environmentally aware citizens. Preservation has evolved, however, into a full-time, well developed profession in which trained individuals are needed to develop private, non-governmentally dependent programs for its future success. While preservation may never be

a wholly private enterprise, it is important to take steps towards self-reliance within the field.

Public-private partnerships are fast emerging as a promising venture for preservationists. Private nonprofit organizations are becoming commonplace all over America. Designed to run as a private business, nonprofits are working towards the goal of preservation and conservation of the built and natural environment. In the field of land preservation, nonprofit land trusts are a most effective means of direct conservation bringing land owner and conservator to the table, face to face in some cases for the first time. Land Trusts are nonprofit, private organizations designed to protect and preserve historic and otherwise significant landscapes from development. In 1993 alone, the number of land trusts increased at a rate of close to one per week.¹ As land trust popularity grows within the fields of preservation and land conservation, it is important to inform and educate the general public, as well as preservation professionals, about the success and potential of local and regional land trusts.

Educating planning professionals as well as the general public about the conservation of land is an important component in the land saving process. As land conservation becomes a larger issue within the fields of historic preservation and conservation, more trained conservation professionals will be needed to administer land trusts. A number of factors have contributed to the growing concern over the protection of open space. Population growth, spreading urbanization, and rapid technological advances have made it imperative to plan for the protection and preservation of our dwindling open space. The operation of the land trust has long been one of

¹Land Trust Alliance Press release, October 31, 1994, Washington D.C.

the most important aspects in land conservation, but it is only recently that the growth of land trusts has created a demand for educated professionals to administer the vast number of newly created land trust organizations as well as educate the public on land conservation options.

Land trusts use several tools to implement and monitor land conservation programs. Land trusts can receive outright land donation, purchase a property through a bargain sale, lease a parcel and restrict its use, or acquire land by will for the purposes of conservation. The principal tool of the land trust, however, is the conservation easement which gives the land trust the legal right to prevent specified changes in the use of the land from occurring. The use of the conservation easement is both environmentally and fiscally responsible for the property owner and land trust. A conservation easement is a recorded land-use agreement in which the property owner surrenders some or all of the development rights to his or her land and to a third party for the purposes of conservation. The third party can be either a government unit or a charitable organization such as a land trust. Most conservation easements are granted in perpetuity although term agreements do exist. Land use restrictions are negotiated between property owner and easement grantee according to the needs of both parties involved. The easement is legally binding on the grantor and his assigns. A conservation easement assures that the natural, scenic, historic or open space characteristics are protected from over-development or other undesirable change. Currently, over 731,000 acres of land in America are protect by conservation easements.²

²Ibid.

This thesis will examine the effectiveness of land trusts in protecting open space, scenic, or historic land through the public private partnerships. The paper will focus specifically on the land trusts' use of conservation easements as their principal tool for preserving land. It will discuss the history of land trusts and conservation easements, the reasons for their growing popularity, and the tax incentives associated with such programs, and present an analysis of their current and future value to the fields of land conservation and historic preservation. Two case studies of local land trusts, the Brandywine Conservancy and the French and Pickering Creeks Conservation Trust, will be used to illustrate difficult concepts associated with the creation and management of land trusts and conservation easements.

CHAPTER ONE: HISTORICAL BACKGROUND

The protection of open space and the American natural environment has been an important component of American ideology since the first American settlements. Legal action to preserve open space, however, took longer to develop. The National Park Service was the first government agency to take pragmatic action toward open space preservation. As early as 1872, the United States government recognized Yellowstone as the first national park. The federal government has since protected over 169 million acres in national wildlife refuges and national parks.³

The formation of land trusts to protect our countryside and its inhabitants began in the late 19th century in the Northeast where urbanization forced early attention to land conservation. The first land trust was formed in 1891 when a state effort by the Massachusetts legislature incorporated the Trustees of Reservations.⁴ Land trusts were and still are developed primarily to meet immediate local needs. During the 1950's, the number of land trusts increased greatly when urbanization began to spread to all parts of the country.

³Eve Endicott, *Land Conservation through Public /Private Partnerships*. (Covelo, CA: Island Press, 1993) xiii.

⁴Elizabeth Levitan Spaid, "Land Trusts Saving Much Wetland and Open Space," *The Christian Science Monitor*, August 5, 1991) 9.

Prior to 1950, 39 land trusts were preserving land in twenty states; nearly half of them operated in Mid-Atlantic states and New England.⁵ By 1975 there were 174 land trusts in existence with a growing number of them in the South and West of the United States. In 1981, 423 land trusts had registered as non-profit land-saving organizations. The greatest increase of land trust development, however, has occurred in the last 5 years. In 1994, over 1,100 land trusts were recorded in 47 states.⁶ One third of all land trusts are located in the New England area.⁷ A 1994 Land Trust Alliance survey reported that although the growth of land trusts has been evident all over the country, the southern region of the United States has grown at the fastest rate in the past four years. See figure A and B.

HISTORY OF EASEMENT USE

The first American conservation easements were written in the late 1890's to protect parkways in and around Boston.⁸ The most extensive early use of easements, however, was in 1930 when the National Park Service established scenic corridor easements along the Blue Ridge and Natchez Trace parkways. Two decades later, the state of Wisconsin used a similar approach to preserve the landscape along the Great River Road. In the 1960's, the Park Service continued its successful conservation approach by placing easements on the landscape around the historic landmark of Mount Vernon.

⁵Terry Breemer, "Portrait of Land Trusts," in *Land Saving Action*, (Covelo, CA: Island Press, 1984) 17.

⁶Phone interview with Karen Rowe of the Land Trust Alliance, January 24, 1995.

⁷Land Trust Alliance, *1994 National Land Trust Survey*. (Washington, D.C.: Land Trust Alliance, 1994) 2.

⁸John B. Wright, "Conservation Easements: An Analysis of Donated Development Rights." (Planners Notebook, Autumn, 1993) 487.

Figure A

Number of Land Trusts by Region

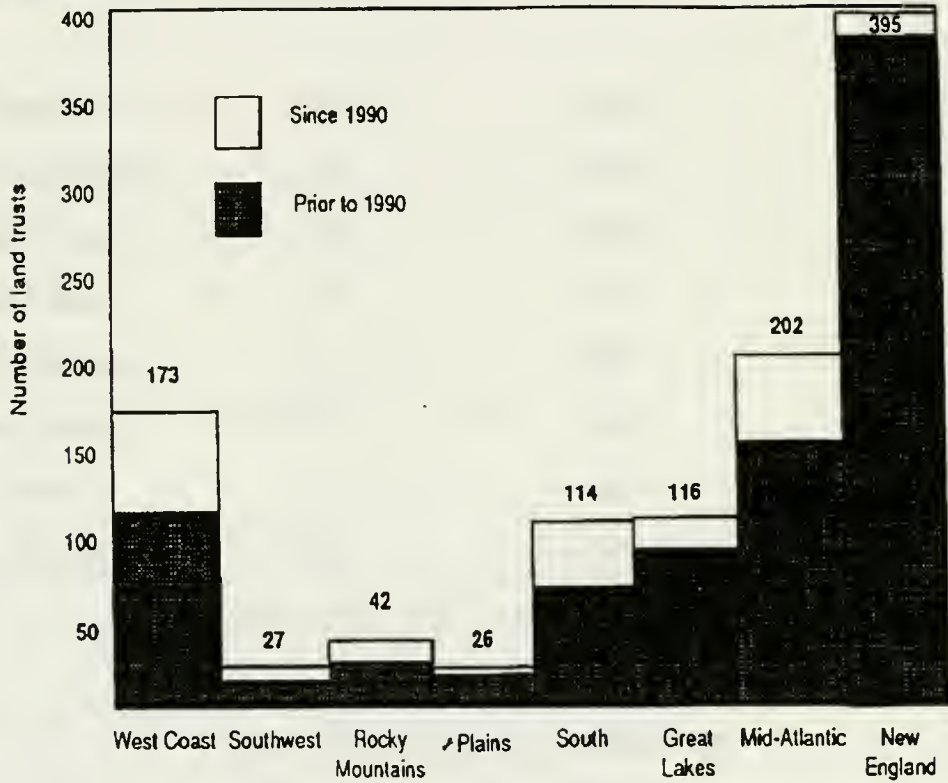


Figure B

GROWTH IN LAND TRUSTS BY REGION

REGION	# IN 1990	# IN 1994	% INCREASE
South	74	114	54%
Rocky Mountains	28	42	50%
West Coast	119	173	45%
Southwest	19	27	42%
Mid-Atlantic	154	202	31%
Great Lakes	97	116	20%
Plains	23	26	13%
New England	374	395	6%

WHERE ARE THE LAND TRUSTS ARE

Land Trust Alliance, October 1994

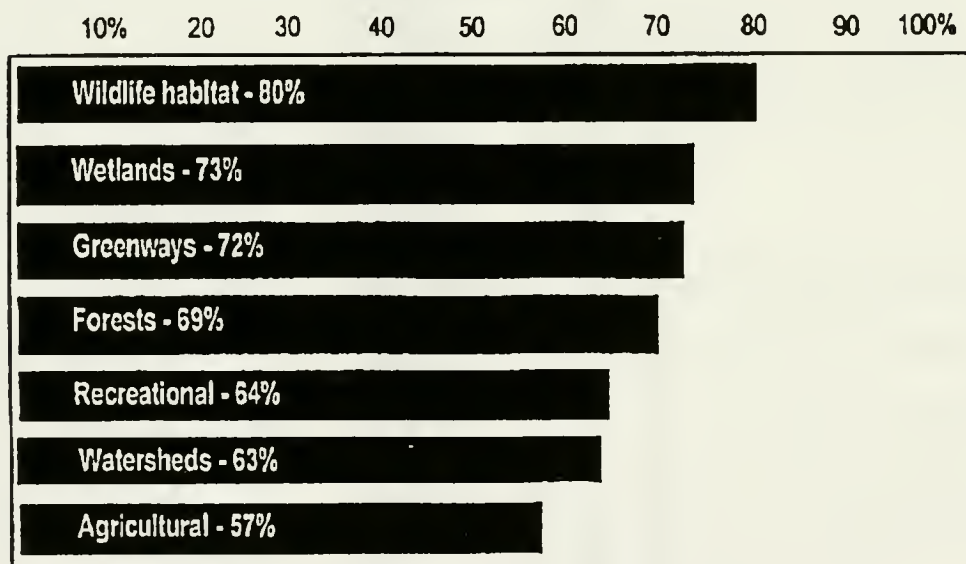
Historically, the concept of purchased easements has been a more popular venue for the public to protect open space. Since the 1950's the U.S. Fish and Wildlife Service has purchased easements on 1.3 million acres to prevent wetlands from being drained or filled.⁹ An earlier record further indicates the use of purchased development rights in the state of California.

⁹Ibid.

In 1933, the California Department of Parks and Recreation bought easements from several different land owners to safeguard lands next to the Big Sur State park from encroaching development. Many other states have since held referenda to allow for the bonds to be issued to purchase conservation easements.¹⁰ In 1994, the protection of wildlife habitat accounts for 80% of all land trust activity. See figure C. A recent report by the National Trust for Historic Preservation indicated that 46 states, Puerto Rico, and the District of Columbia have conservation easement laws on their books, the only exceptions being West Virginia, Alabama, Oklahoma, and Wyoming.¹¹ For a complete break down of the number of land trusts in each state, see figure D.

Figure C

Types of Land Protected



Percentages of land trusts reporting that these types of land are protection priorities.

Land Trust Alliance, October 1994

¹⁰Supra, note 8.

¹¹Report from the Land Trust Alliance, October 24, 1994.

Figure D

This chart indicates the number of land trusts in each state

STATE	# of Land Trusts
ALABAMA	3
ALASKA	1
ARIZONA	6
ARKANSAS	0
CALIFORNIA	118
COLORADO	24
CONNECTICUT	113
DELAWARE	3
DC	3
FLORIDA	27
GEORGIA	14
HAWAII	4
IDAHO	6
ILLINOIS	27
INDIANA	5
IOWA	6
KANSAS	1
KENTUCKY	8
LOUISIANA	1
MAINE	80
MARYLAND	36
MASSACHUSETTS	121
MICHIGAN	28
MINNESOTA	6
MISSISSIPPI	1
MISSOURI	8
MONTANA	6
NEBRASKA	4
NEVADA	1
NEW HAMPSHIRE	24
NEW JERSEY	35
NEW MEXICO	9
NEW YORK	70
NORTH CAROLINA	18
NORTH DAKOTA	1
OHIO	29
OKLAHOMA	0
OREGON	17
PENNSYLVANIA	55
RHODE ISLAND	29
SOUTH CAROLINA	12
SOUTH DAKOTA	.
TENNESSEE	14
TEXAS	12
UTAH	4
VERMONT	28
VIRGINIA	14
WASHINGTON	34
WEST VIRGINIA	2
WISCONSIN	27
WYOMING	2

Total 1,095

Land Trust Alliance, October 1994

LEGAL BASIS:

The legal legitimacy of recorded land use agreements is rooted in an English common law. According to environmental law expert Ross D. Netherton, common law and equity provide three types of less-than-fee simple interests for achieving conservation and preservation objectives. They are equitable servitudes, covenants running with the land, and easements.¹² The common law provision that allows for donated easements dealt with the acquisition of rights-of-way.¹³ In early English society, country farmers needed certain access to fields through private property. In order to account for such a necessity, English common law provided rights of way by which the farmers could access their fields. This was the progenitor of easement law. The first application of this legal transaction in America occurred in Boston to save the Fens from development in the early 1890's.

HISTORY OF TAX TREATMENT

Charitable deductions have been permitted by the Internal Revenue Tax Code since 1917. At the onset of America's involvement in World War I, the United States government needed a method to raise revenue to defray war expenses.¹⁴ As a result, the Revenue Act of 1917 was passed with the intentions of raising 1.8 billion dollars in additional taxes. Attached to the bill

¹²For an in-depth discussion, see "Environmental Conservation and Historic Preservation Through Recorded Land-use Agreements," in *Land Saving Action*, by Ross D. Netherton, (Covelo CA: Island Press, 1984) 85.

¹³Ibid.

¹⁴Report of the Committee on Ways and Means Accompanying H.R. 4280, 1939-1 C.B. (part 2) 48.

was an amendment regarding charitable deductions that set the parameters of charitable contributions:

..a deduction in computing net income under the tax of such amount, not to exceed 15% of the taxpayer's taxable net income, as the taxpayer contributes during the taxable year to corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes....¹⁵

As finally adopted, the amendment allowed citizens to deduct a donation to a charitable organization, "an amount not in excess of fifteen per centum of the taxpayers taxable net income as computed without the benefit of this paragraph."¹⁶

With specific regard to conservation easements, Congress and the IRS conferred during the 1970's to amend the Tax Act specifically to address the legitimacy of easement donations and deductions. The Tax Reform Act of 1976 included the Historic Structures Tax Act which allowed for the deductibility of the donation of easements for "conservation purposes."¹⁷ According to a documented chronology of events by Steven Small, who represented the IRS in conferences regarding the tax law, another amendment was passed in 1977 that allowed for the deductibility only for easements that were given in perpetuity. The 1977 amendment also set 1981

¹⁵Statement of the Managers on the Part of the House in Explanation of the Effect of the Actions Agreed Upon by the Conferees of H.R. 4280, 1939-1 C.B. (part 2) 72.

¹⁶Walter E. Barton and Carroll W. Browing, *Barton's Federal Tax Laws Correlated*, vol. 1, (2d ed.) (Branford: Federal Tax Press, 1987) 101-103.

¹⁷Steven Small, *The Federal Tax Law of Conservation Easements*, (Bar Harbor: Land Trust Exchange, 1986) 1-1.

as the expiration date for this statute.¹⁸ Between 1976 and 1986, several meetings occurred among conservation organizations, interested Congressional leaders, and IRS representatives to create a permanent and binding regulation permitting the deduction on the value of easements given in perpetuity. Finally, on January 14, 1986, the official Regulation was published in the Federal Register. Today, the deductibility of a conservation easement in gross in perpetuity is one of the few allowed exceptions of deductibility for a gift of a partial interest property.¹⁹ Distinct parameters exist regarding the specific transaction of the development rights of a property and will be expounded upon later in this paper.

The myriad precedents for land conservation have created a complex, yet supportive base for the ensuing land trust movement. Although different states have to design their conservation programs to conform with their particular legal precedents, 46 states in the union have at least one method that conservationists may utilize to create and administer a land trust.

¹⁸Ibid.

¹⁹Byrle M. Abbin, ed. *Tax Economics of Charitable Giving*, (Chicago: Arthur Andersen, 11th ed. 1991) 82.

CHAPTER TWO: LAND TRUSTS

A. SIZE AND FORM OF ORGANIZATION

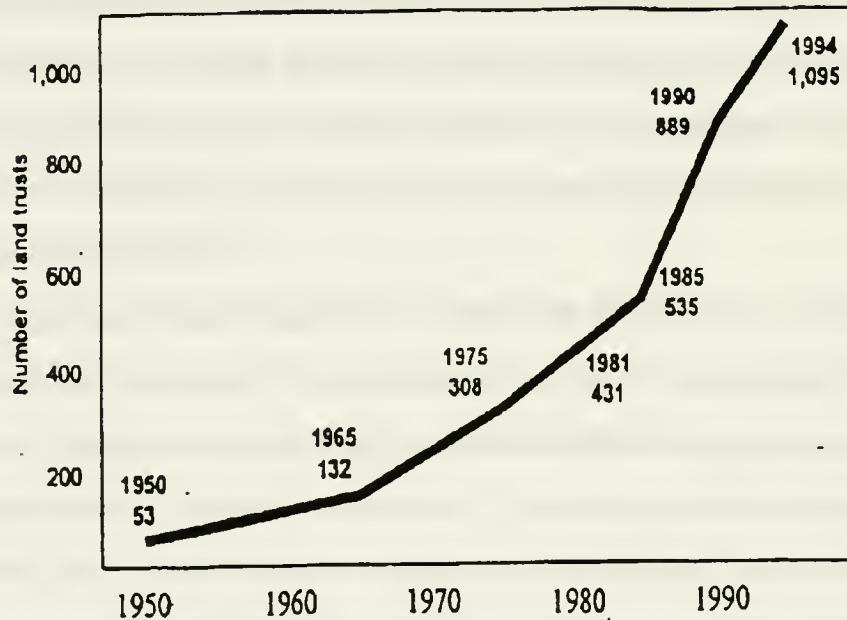
Land trusts are not trusts in the true legal sense of the word. Legally, a landowner may put land in *trust*, by transferring title to a trustee under a deed of trust. In this instance, the trustee assumes a fiduciary responsibility to the beneficiaries of the trust and must manage the assets of the trust with their interests in mind. An organized *Land Trust* does much more than own property. Most land trusts are private, tax-exempt, charitable corporations that use a variety of mechanisms to protect land and its resources. The Land Trust Alliance defines a land trust as a local, state, or regional nonprofit organizations directly involved in protecting land for its natural, scenic, recreational, historical, or productive value. In most land trust projects, however, the land is protected through one or both of two methods: 1) full fee simple ownership, or, 2) a conservation easement, a less than fee interest in the land that protects a property's conservation resources.²⁰ The most common types of land targeted for protection by land trusts of ecological

²⁰Land Trust Alliance, *Starting a Land Trust, A Guide to Forming a Land Conservation Organization*, (N.p.: Land Trust Alliance, 1990) 83.

significance, open space, and recreational land.²¹ Farmland is also a strong emphasis for many land trusts. The number of land trusts in America has grown from 53 in 1950, to over 1,000 in 1994. See figure E.

Figure E

Growth of Land Trusts



Land Trust Alliance, October 1994

Land Trusts can range in size from very small (the Jackson Hole Land Trust in Wyoming has seven volunteers as its entire staff and no budget at all), to extremely large (the nationwide Nature Conservancy has over 755,000 members and a revenue of 280 million in 1993²²). Fifty percent of land trusts

²¹Chris Elfring, "Preserving Land Through Local Land Trusts," in *Bioscience*, vol. 39, February, 1989, 71-74.

²²Andrew W. Osterland, "War Among Nonprofits," *Financial World*, September 1, 1993; 36.

have budgets of less than \$10,000, 30% have budgets between \$10,000 and \$100,000, and 20% have budgets greater than \$100,000. Because of the vast ranges in budgets, land trusts have a myriad of approaches to fundraising.

Different land trusts may also pursue markedly different approaches to land conservation. Many try to maintain a free market approach to land conservation and limit the amount of public funds they receive. The Florida Keys Sea and Land Trust, for example, began in 1978 to protect 63 acres of natural preserve. In order to raise money for conservation, the trust accepted private donations to create a research lab and two museums that have prospered. Now, 90% of the Keys Sea and Land Trust is private income from the museum profits.²³

Most land trusts, however, do not have the luxury of such a large private income however. Financially limited land trusts depend on the federal tax benefits resulting from the deductibility of charitable contributions to compensate land owners financially.²⁴ In general land trusts depend heavily on individuals in their communities for support and assistance. According to the Land Trust Alliance, land trusts in America have a combined membership of nearly 900,000 individuals, an increase of about 100,000 in the last four years.²⁵ On average, 65% of land trusts' revenues are from individual donation. Approximately 50,000 people in the country volunteer their time to land trusts.²⁶ Land trusts like the Jackson Hole Land Trust must rely solely on volunteer efforts and cooperation with the county

²³For more information, please see, "This Land is Your Land," in *American City and County*, March 1992.

²⁴John B. Wright, "Conservation Easements: An Analysis of Donated Development Rights," *Journal of the American Planning Association*, vol. 59, No. 4, Autumn, 1993: 487-493.

²⁵Land Trust Alliance, 1994 *National Land Trust Survey*, (Washington, D.C.: Land Trust Alliance, 1994) 3.

²⁶*Ibid.*

commissioners for land conservation because the Wyoming legislature has not approved legislation that would let the county start its own land acquisition program. Regardless of size or method, land trusts are prospering all over the country. According to an October 1994 report from the Land Trust Alliance, land trusts have protected over one million acres of land in the last four years, with a total of 4.04 million acres protected in all -- an area larger than the state of Connecticut. Director of the Land Trust Alliance Jean Hocker notes that one reason land trusts are becoming so popular is that it is something over which individuals can have a direct influence: "We don't have to wait for the government or someone else to act."²⁷

Land trusts have several other advantages that are in part a reason for their rising number in America. First, they are corporations that can hold and manage land and other assets, not individuals. Second, as private organizations, land trusts can act far more quickly than government organizations such as the Park Service to protect threatened areas. The private aspect of land trusts also allows for creative and specially designed solutions for each land saving project. Third, land trusts are able to negotiate directly with the landowner and are often able to act as an arbitrator between the private citizen and the government entity. Finally, the land trust's nonprofit status allows for a number of tax benefits to the land trust itself and the private land owners and donors. Properly structured, land trusts are exempt from federal and state income taxes, and in some instances, exempt from local property and real estate transfer taxes as well.²⁸

²⁷Supra, note 24.

²⁸Ibid.

B. TAX STATUS OF LAND TRUSTS

Under Section 501(c)(3) of the Internal Revenue Code, land trusts can claim tax exemption as a charitable organization. If a land trust is able to obtain certification as a 501(c)(3) organization, its income is not taxed and, most importantly, contributions to it by individuals are deductible. To qualify as a charitable organization, however, the IRS requires the organization prove that its primary purpose is to serve the public good rather than in the private interests of the organization.

The extent to which a donor may be able to deduct his gift to the land trust varies depending on how the land trust sets up its status as a nonprofit entity. According to the Land Trust Alliance, there are three ways in which a land trust can qualify for donor deductions: as a "publicly supported charity," as a "private operating foundation," or as a "supporting organization." These distinctions were created by the Tax Reform Act of 1969.

1. Public Charities

Most land trusts are "public charities" as defined in Section 509(a)(1) of the IRS Regulations of the Internal Revenue Code. To be recognized as a public charity, the land trust must prove that it meets one of two tests, the *One Third Support test*, or the *Facts and Circumstances test*. In the one-third test, a land trust will be found to be a public charity under section 509(a)(1) if it normally receives one-third of its support from the government and/or the general public. "Normally" is defined as the aggregate support for the four years preceding the current year.²⁹ There is a two percent stipulation, however, that adds a difficulty for many land trusts. The rule is that the land

²⁹ For an extensive review of these tests, please see IRS code section 509(a)(1).

trust can only count two percent of an individual's contribution toward the one-third public support needed to pass the test. This prohibits one large donor's individual contribution from being counted as the entire public support component necessary to fulfill the test.

If the land trust cannot meet the "one-third support test" requirement, it may still qualify under the "facts and circumstances test". This test requires only ten percent of the trust's support come from the public, but it also stipulates that the land trust must prove that it makes a concerted effort to attract public support for its funding. The facts and circumstances test also takes into account several secondary factors, such as whether the organization benefits the public directly, whether its board represents a cross-section of the community, what percent (if over 10 %) of its support comes from the public, and the breadth of its support.

2. Private Operating Foundation

"Private operating foundations" are afforded the same maximum donor benefits as public charities under Section 509(a)(4), except they do not need to demonstrate broad public support. The difference between the two organizations is that the IRS imposes a 2% excise tax on any net income that a private operating foundation may receive. Furthermore, private operating foundations are required to report to the IRS that they are not participating in certain lobbying efforts and that they are acting in the recognized interests of the foundation and not working for personal gain.

Few land trusts are registered as private operating foundations because under the IRS code, they do not qualify as a charitable organization and therefore cannot accept deductible gifts of partial interests like conservation

easements. They can however, accept deductible donations of land outright. Small land trusts may want to consider registering as a private foundation as it eliminates the burden of proof of broad public support. Often a small land trust may be funded by one or a few land owners and can provide a better service to their patrons without the unnecessary tax requirement imposed upon charitable organizations. Often under these circumstances, conservation easements are not the best option for the preserved land anyway.

3. Supporting Organizations

Some land trusts are created only to support or negotiate land preservation for a government entity or charitable organization like the Nature Conservancy. Such land trusts are registered as "supporting organizations" under Section 509(a)(3) of the IRS code. Supporting organizations must be qualified under Section 170 (h) and can receive deductible gifts such as conservation easements. A supporting organization's existence must be for the sole purpose of helping its "parent" organization and it must be operated mainly by that parent. Many supporting organizations share the same Board of Directors as their parent organizations. A shared Board allows a cohesion of organization that allows the process of land saving to move more quickly. All of these types of trusts are required by the Internal Revenue Service to keep a record of their transactions and file an annual report to the IRS each fiscal year.

The Internal Revenue Code limits severely charities' lobbying activities. Charitable organizations are not allowed to support candidates for public office but may lobby for legislative change. Private operating

foundations may not lobby at all, with the exception of legislation that may affect their existence or status.³⁰ Some charitable organizations may wish to engage in extensive lobbying and must apply for a special permit from the IRS, Form 5768, which allows a charitable organization to spend up to 20% of its exempt expenditures on lobbying efforts. Organizations like Preservation Action in Washington D.C., may commit their entire budget to lobbying for preservation and are required by the IRS to file as a 501(c)(4) organization which is a special use permit of sorts for a minimal number of charitable organizations.

C. LAND SAVING TOOLS

As previously stated, land trusts may use a number of different tools to preserve, conserve or protect endangered land. A land trust may either acquire the land to become the owner or it may act as a holding bank for conservation easements. If it holds the easement, the land trust becomes the land's protectorate or guardian, while allowing the owner to retain the rest of the bundle of rights accorded to owning property in the United States.

If a land trust buys the land and its complete bundle of rights, it is said to have "fee simple" ownership." In this case, the land trust not only has all the advantages and permanence associated with owning land, but it also has the burden of financial responsibility which includes property taxes if it is not tax-exempt, and liability and property insurance for the purchased parcel. As land trusts often are not properly funded to maintain such a burden, many will refuse to buy land outright, and rely instead on the donation of

³⁰Land Trust Alliance, *Starting a Land Trust*, (Washington, D.C.: Land Trust Alliance, 1990) 37.

easements. Easements are a popular method for land conservation with land trusts and will be discussed in the next chapter. However, it is to be noted that conservation easements are not always the best option for preserving land and are also financially restrictive for some land trusts. As a result, many refuse to accept fee simple title and favor other methods of conservation.

If a land trust prefers to own the land outright, there are several methods of acquiring the property. If the land is donated, it can be donated outright, donated in stages, donated at the death of the owner, or donated with a remainder interest. If the land is purchased, it can be bought through a bargain sale, bought in installments, or purchased at the fair market value.

1. Land Donation

If the landowner chooses to donate her land and its complete bundle of rights, the donation is considered to be "outright," and the owner may claim an income tax deduction equal to the land's current fair market value. This donation may limit any capital gains taxes that would incur as a result of the sale of the land. Donation of land will also reduce the owner's taxable estate. These tax advantages will be discussed at greater length later in the paper.

Land can also be donated to a land trust as remainder interest with a "retained life estate." In this instance, a landowner can donate the land and receive certain income tax deductions, and live on her property during her lifetime. The owner may also name others in the deed to allow children or anyone else to be included as measuring lives for the reserved life estate. The disadvantage of a reserved life estate affects mostly younger donors as the tax deduction takes into account the age of the donor at the time of donation and

allows greater deduction for older individuals. The IRS uses actuarial tables to determine the actual value of a reserved life interest and reduces the size of the income deduction by reducing the fair market value of the donated property by the actuarially defined value of the reserved life estate. The more life tenants there are, and the younger they are, the lower the value of the remainder interest and, hence, the lower the income tax deduction.³¹

Land donations can also be a fractional interests in the whole property. Known as undivided partial interests, this method allows the landowner to tailor the size and number of the charitable deductions to the amounts she can use in succeeding years.³² To do the tax calculations correctly in this instance, an updated appraisal of the property is required each year, because the value of the donated partial interest is generally less than the corresponding percentage of the ownership transferred.³³ Until the entire property is transferred to the land trust, the landowner and the trust will be co-owners of the property.

A land owner may bequeath her property to a land trust by will. The tax advantages in this case are obtained at the time of death. The owner cannot receive income tax benefits while living and must still pay the property taxes. The donation of land by will reduces the estate taxes after death substantially.

³¹Land Trust Alliance, *Conservation Options: A Landowners Guide*, (Washington, D.C.: Land Trust Alliance, 1993) 29.

³²Ibid.

³³Supra, note 31.

2. Purchase of land for conservation

A land trust may purchase the development rights or the entire parcel of land outright by paying the fair market value for the property just like any other interested buyer. The owner of the land does not partake in the conservation of the land and therefore does not receive any of the tax benefits that she would if she donated the land. A fair market value purchase is usually prohibitively expensive for the land trust. With the exception of national organizations like the Nature Conservancy, few land trusts have the financial ability to purchase land at the fair market value. After buying the land they still have the added responsibility of monitoring and protecting it as well as paying insurance and property taxes.

In situations where a fair market value purchase is prohibitive, a bargain sale may be considered by land owner and land trust if the owner is willing. A bargain sale combines some of the income-producing benefits of a sale with the tax-reducing benefit of a donation.³⁴ In a bargain sale, the difference between the fair market value and the sale price is considered as a charitable donation to the land trust, and can be claimed as an income tax deduction.³⁵

Another way for a land trust to purchase land is through an installment sale. In an installment sale, the seller accepts a series of payments over time rather than a lump sum.³⁶ This is advantageous as it allows the owner to spread the income from the sale over a number of years.

³⁴Supra, note 31.

³⁵Supra, note 31.

³⁶Supra, note 31.

Installment sales are also a much more feasible way for land trusts to purchase property as it gives them time to raise the necessary funds.

3. Other options

Other purchase options are available to land trusts. Some landowners will give a land trust an option to purchase their property. With an option, landowners and land trusts will set an agreed upon sale price, and a specified amount of time in which the land trust has to raise the money needed. Sometimes land trusts pay a substantial price for an option to buy. Other times they pay as little as a dollar. Regardless, the option is recorded so that it is a matter of public record. During this time, the land cannot be sold to anyone else, and the land trust has the option not to buy at the end of the period. A land trust may also be given a "right of first refusal." A standard practice in many real estate transactions, a right of first refusal gives the grantee the right to match any offer that might be made on the property in which the grantee is interested. A right of first refusal does not obligate the land trust in any way. It is merely an option to meet another buyer's offer within a specified, and usually short, amount of time.

Land trusts may also acquire property for land conservation through leases or through their guidance of restrictive covenants. In a lease agreement, the land is leased for a specified number of years to a land trust with conservation restrictions placed on the land. A lease does not affect the property taxation of the property. A land trust may also help communities develop mutual covenants to help protect open space. In this instance individuals in a community will agree to certain restrictions on their

property. Land trusts do not own and generally do not monitor restrictive covenants, but they are often involved in their preparation.

Irrespective of size, method, organization, or process, the land trust is proving to be a most pragmatic instrument for land conservation. Unlike other more vocal environmental groups like Greenpeace, land trusts attract many mainstream individuals who are simply concerned about the future of America's open space and are willing to commit time, effort, or money to the cause. Land trusts also have the advantage of wide range appeal in that they can be local, state, or regional in nature. Land trusts are a timely solution to the imminent threat of over-development of dwindling open space.

CHAPTER THREE:

CONSERVATION EASEMENTS

On the Snake River in Wyoming, not far from Jackson Hole, here are 700 acres of woods and meadows with springfed creeks, elk migration trails, and a heron rookery. Its preserved in perpetuity, but you can't go there at all, unless you're an elk. It's Harrison Ford's backyard.³⁷

Since 1990, land trusts have protected an additional 290,000 acres of land using conservation easements.³⁸ Conservation easements occupy an appealing niche in the array of land protection techniques halfway between outright public or nonprofit ownership at one extreme and harshly restrictive government land use regulation at the other.³⁹ A land conservation easement is a less than fee simple interest in land, and is voluntarily donated or sold by a landowner to a unit of government or an IRS-recognized nonprofit conservation organization (like a land trust) for the purposes of protecting open space. Although term arrangements can be made, and easement must be granted in perpetuity to receive the Federal tax benefits. The easement gives the donee the right to prevent the donor from engaging

³⁷Jerry Adler with Daniel Glick, "Put Your Trust in the Land," *Newsweek*, December 10, 1990, 76.

³⁸Land Trust Alliance, 1994 *National Land Trust Survey* (Washington, D.C.: Land Trust Alliance, 1994) 2.

³⁹Margaret Haapoja, "Conservation Easements, Are they for You?," *American Forests*, Vol. 100, January, 1994 ,14.

in activities that the agreement prohibits for the purposes of conservation. As stated in the introduction, land restrictions are negotiated between property owner (donor) and easement receiver (easement holder) based on an analysis of the property and on careful consideration of the land owner's needs. The conveyed easement is a legally binding plan for how property will be utilized. A 1994 report indicates that donated conservation easements protect over 1 million acres in the United States from development.⁴⁰

A. TYPES OF EASEMENTS:

In order to qualify for the IRS regulated tax benefits for donating an easement, the easement must be considered a "qualified conservation contribution" under IRS Code Section 170(h). A qualified conservation contribution is a contribution of (1) a qualified real property interest to a (2) qualified organization, (3) exclusively for conservation purposes under Section 170(h)(1). The easement must constitute a restriction, granted in perpetuity on the use that may be made of the real property. We have already reviewed what a trust must do in order to be a qualified organization. The Internal Revenue Code has established five categories of conservation purposes. Easements are accepted by the IRS if they are granted for:

***public recreation or educational purposes:** these easements must have public access and there must be a public desire to use the property;

***natural habitats:** in this case the land must be left in its natural state, must hold rare or threatened species, or must contribute to a surrounding habitat;

***open space or scenic enjoyment:** these properties must be scenic and easily seen by the public or must yield a significant public benefit;

⁴⁰Land Trust Alliance survey completed August, 1994.

***open spaces pursuant to government policy:** these areas must be clearly delineated by a governmental conservation policy or must yield significant public benefit; and finally,

***historic value:** in the case of land, it must be an independently significant or contributing to a registered historic district or adjacent to a historic structure. In the case of a structure, they must be listed on the National Register or be a contributing building to a historic district.

In addition to specific income and gift tax deductibility requirements stated, qualified conservation contributions must meet other requirements of state laws. Most states have a specific statute guiding conservation easements, however four states still rely on the common law of real property. State law may differ from the IRS requirements regarding what is a valid conservation purpose. Regardless, the most restrictive rule among conflicting laws must be met to assure validity of an easement and deductibility.⁴¹

B. THE PROCESS OF CREATING AN EASEMENT

Every land trust has its own methods for creating an easement agreement. However some general rules apply. The land trust or donor will initiate a meeting to discuss the intentions and desires of both parties and to ensure that the property will qualify for easement protection according to the Internal Revenue Code. The landowner must then submit to the land trust an up-to-date title report to demonstrate fee simple ownership without a lien or other cloud on the tile, and whether a survey must be done to divide the parcel appropriately. If the owner has a mortgage on her property, a clause

⁴¹Land Trust Alliance, *The Standards and Practices Guidebook, An Operating Manual for Land Trusts* (Land Trust Alliance Press: Washington, D.C., 1993) 12-7.

must be inserted in the easement agreement that the land will remain under easement in the event of a foreclosure; however the mortgage holder must consent to the donation in writing, and thus, has effective veto power. A study must then be done of the property to ensure that the property falls into one of the aforementioned IRC categories of acceptable easement programs. Then the interested parties must negotiate the types of restrictions that are to be imposed by the easement. Once this is agreed on, an appraisal must be done of the property to determine its fair market value and its value once an easement has been put in place. The appraisal process will be discussed in greater detail later in this paper.

Once the appraisal or appraisals have been accepted, the land trust may be required to notify the local planning board. Many states have uniform easement bills that require a meeting with the planning board while other states have no enabling legislation for this purpose and rely upon common law precedent to set up an easement, (Pennsylvania has no uniform easement law on its books; however, the municipalities planning code allows private entities and government agencies to purchase easements). Relying on common law precedents is often problematic for land trusts as many cases have held that restrictive covenants should be interpreted in favor of the landowner. Uniform easement laws, however, require that conservation easements should be literally construed in favor of the easement holder. The Pennsylvania House of Representatives has introduced legislation several times that would create a Uniform Easement Act. Titled H.B. 1836 in the most recent session of the Pennsylvania State Congress, this Bill died on the last day of the voting session and is expected to be reintroduced when the Legislature reconvenes.

After the meeting, the land trust and donor may draw up the final easement document and file it with the local Recorder's office. While this may seem a long and arduous process, many feel that this is the easiest part of the easement transaction. Stewardship of the property requires money, expertise, and time and many land trusts do not have the financial ability or the professional talent required to properly monitor eased land.

C. STEWARDSHIP

Many environmental specialists criticize land trusts for focusing on formulating the contractual agreements of an easement rather than dealing with the issues of monitoring and continued protection that are integral to the original conservation purposes. The Associate Director of Cultural Resources of the Park Service, Jerry L. Rogers, writes:

In my experience, few easements adequately document the resources or conditions that are to be preserved. They may work well enough in preventing construction of new facilities, but most do little to assure that colors, textures and even shapes of buildings are not changed and usually do nothing at all to assure that buildings or landscapes are maintained. All one has to do to an open battlefield is nothing, and in most parts of the country it will revert to forest.⁴²

The land trust or government agency receiving the easement takes on the permanent responsibility and legal right to enforce the terms of the easement.⁴³ The easement holder must monitor the land and enforce the restrictions of the easement. Most organizations monitor on a yearly basis.

⁴²Letter from Mr. Rogers to David Hollenberg, November 17, 1994.

⁴³Land Trust Alliance, *Conservation Options, A Landowner's Guide* (Land Trust Alliance Press: Washington, D.C, 1993) 11.

Generally, violations of the easement grantor are few. However problems occur when the eased property is sold or bequeathed to a second owner. Since conservation easements are a relatively new legal restriction, many buyers do not understand the magnitude of their restriction even though it is stated in the title. If the new landowner violates the easement, the easement holder must take action to have the violation corrected. If the landowner has done irreparable damage, the land trust may try to negotiate another option -- such as a fine, or in a worse case, the discrepancy may end up in court.

Because of the time and money that is required to monitor easements, many land trusts require the easement donor to provide an endowment for stewardship. David Harper of the Brandywine Conservancy, notes that its average monitoring cost is \$150.00 to \$175.00 per easement, per year.⁴⁴ As a result, the Brandywine Conservancy asks for a multiple of the per year cost as an endowment from the easement giver. The percentage varies depending on a number of factors including the size of the easement and the donor's financial status. If an endowment is financially unfeasible for the donor, other arrangements can be made. Many land trusts purchase land outright and subsequently place an easement on the property. The land trust can then resell the parcel to the owner or to another owner, or donate the property to a public agency. In each circumstance, the land is protected due to the easement.

D. ADVANTAGES OF EASEMENTS

The advantages to conservation easements are manifold. First and foremost, the property remains in private ownership. Although the

⁴⁴Interview with David Harper at the Brandywine Conservancy, January 16, 1994.

development rights are stripped from the parcel, the rest of the bundle of rights remains in the hands of the owner. This is palatable not only to the property owner, but also to the community at large as the parcel will remain on the property tax rolls. Second, conservation easements are a voluntary option for the environmentally conscious land owner. Third, the donation of a conservation easement provides financial compensation for the donor in the form of a tax deduction. Federal income, estate, and capital gains taxes are all reduced by the donation of an easement. Fourth, the terms of an easement are negotiated between the donor and the land trust and therefore are tailored individually depending on the needs and purposes of the landowner and the accepting organization. Fifth, because land trusts are primarily private organizations, they lack the bureaucratic methods that are often time consuming and expensive. The negotiation is handled entirely by the individuals who have a vested interest in the agreement, and therefore negotiations run more smoothly than if a government entity were involved. Finally, conservation easements are a permanent contract that all parties enter into with full knowledge and acceptance of the terms involved. This permanent, negotiated, and legally binding agreement helps limit the possibility of future disagreements between the parties involved.

E. EASEMENT DISADVANTAGES

Some land trusts will not accept easements because of the prohibitive costs of monitoring. Other conservation organizations like the Pocono Lake Preserve in Pennsylvania think that easements are not the best way to preserve open space. Because conservation easements prohibit development (except for the limited exceptions allowed in the original agreement), many

conservationists argue that they are an impractical solution to the problem of conservation and urbanization peacefully coexisting. Limited development may often be the best way to preserve a large parcel of land. Limited development is a conservation plan whereby a specific portion of the tract to be preserved is set aside and developed to create additional income. The owner may choose to develop the property herself, but more commonly, the portion is sold to a real estate developer. Although conservation easements can be effectively used in conjunction with limited development, often the situation calls for a greater monetary reward than the easement/development combination can yield. Another potential problem with easements is that the tax laws may be amended. Further, if a landowner has no need for a tax shelter, the incentive to convey an easement is gone. While the landowner may preserve the land during her ownership, the land will be opened to development pressure after the landowner dies or sells her property.

F. VALUATION

The value of the conservation easement is the difference between the fair market value before the easement is granted and the fair market value with all the restrictions after the donation.⁴⁵ To determine the fair market value of an easement where there is no comparable record or similar market sale, the general rule is that the fair market value of the conservation restriction is equal to the difference between the fair market value of the property before and the fair market value after the granting of the easement.⁴⁶ Both methods of appraisal, known as the "before and after," and the

⁴⁵Regulation Section 1.170A-14(h).

⁴⁶Regulation Section 1.170A-14(h)(3)(ii).

"comparative sales," approach to valuation are supported by case law. See *Thayer v. Commissioner*, 36 TCM 1504 (1977); Rev. Rul. 73-339, 1973-2 C.B. 68. Under the regulations, if the "before and after" approach is used, the fair market value of the property before contribution of the easement must take into account not only the use of the property but also an assessment of what the likelihood is that property will be developed, as well as any effect of zoning or conservation laws that already restrict the property's highest and best use.⁴⁷ Where the contribution of an easement has no material effect on the value of the property or in fact increases it, a deduction will not be allowed.⁴⁸ The fair market value of the property after the contribution must also take into account the amount of access permitted by the terms of the easement and other nuisance issues such as inspections by the land trust.⁴⁹ In the unlikely case that the easement actually increases the value of the land on which the easement is placed, there will be no deduction, and the easement may raise the property tax.

The second and less popular method of appraising easements is the direct comparison method. With this approach, appraisers compare the actual sales of eased properties with the easement being appraised. In order to compare the two parcels properly, the appraiser must consider a number of variables including the nature of the restrictions in the easement property sales, the motivating force behind the easement sale, the physical comparability of the real estate, the market opportunities for realizing the economic potential of the parcel, the public attitude toward the resource being protected, and the offsetting benefits and severance damages unique to the

⁴⁷Regulation Section 1.170A-14(h)(3)(ii).

⁴⁸*Ibid.*

⁴⁹*Supra*, note 47.

sale.⁵⁰ Appraisers rarely use this method as it is difficult to measure the offsetting benefits and severance damages in tangible terms. As is the case with the before and after approach, this method also has difficulty finding comparable real estate with comparable easements.

Although the IRS has not identified a preferred method, conservation easement expert Stephen Small has stated:

The proposed regulation did indeed qualify the use of the before and after rule if no substantial record of marketplace sales is available then as a general rule but not necessarily in all cases, we will use the before and after rule. The final regulation has now elevated comparable sales in the marketplace to the rule in the first instance. Only if no such record of sales exists, according to the regulation, should the before and after test be used.⁵¹

When the appropriate market data exist, the Treasury appears to prefer the more direct evidence afforded by actual easement sales to the less direct before and after analysis.⁵² Appraiser Bret Vicary further asserts that when comparable easement sales exist, an appraiser must consider the direct comparison method as a more appropriate approach for two reasons: 1) the easement sales can be the most objective evidence of market value; and 2) an easement is a unique bundle of rights for which there is a unique market.⁵³ While the direct comparison method may become the standard appraisal method for easements, currently the use of the before and after

⁵⁰Bret P. Vicary, "Trends in Appraising Conservation Easements," *Appraisal Journal*, vol. 62 January 1994, 138.

⁵¹Stephen Small, *The Federal Tax Law of Conservation Easements*. (Washington, D.C.: Land Trust Alliance, 1985) 53.

⁵²*Ibid.*

⁵³*Supra*, note 51.

method is widespread, in part because of its ease, and in part because of the aforementioned difficulties with the alternative method.

G. TAX CONSEQUENCES OF EASEMENTS

Perhaps the biggest selling point of the conservation easement is the tax benefits that can be derived from a donation. Currently there are four. Each donor must balance the extent of economic gain with the purpose of conservation when deciding what type of easement agreement should be implemented. After this has been decided, it is important for the donor to discuss with his or her attorney and land trust the following four tax advantages afforded to easement donors.

Federal income taxes. A donor of a conservation easement may deduct the difference between the before and after valuations of the property as determined by an appraiser. The deduction in any tax year cannot exceed 30 percent of the taxpayer's adjusted gross income. If the value of the gift exceeds this limit, the excess may be carried forward for up to five years after the initial donating year. For example, landowner Smith donates an easement value of \$100,000 to a land trust. Smith's adjusted gross income is \$50,000 for the next six years. 30% of \$50,000 is \$15,000 so Smith may deduct a total of \$15,000 each year for up to six years, for a total of \$90,000. Depending on the capital gain that would have been due had the property been sold, Smith may or may not have gained financially by his decision to donate; however, it is important to note that most land donors give their land because they are concerned about their environment and have a stronger desire to save the land than to gain financially. Although he still pays property taxes, Smith probably still gained economically after considering real

estate costs and taxes. Depending on the individual state tax laws, conservation easements may also result in a reduction of state income taxes, or local property taxes.

The next tax consideration to discuss is the **capital gains tax benefit**. A landowner may donate an easement over the property prior to selling the land. This not only assures that the next owner will use the land responsibly, but also provides the easement donor some shelter from capital gains taxes derived from the eventual sale.⁵⁴ For example, if Smith bought the property in 1990 for \$50,000, and the fair market value of the property in 1995 is \$100,000, the capital gain is \$50,000, and would be taxed at 28% (the current rate of capital gains tax), at the time of sale. If Smith donates the \$100,000 property in fee simple title, he may deduct the full \$100,000 not the original basis of \$50,000. This is a significant tax benefit; however, Smith is still subject to the six year limit on charitable deductions as discussed previously. If he donates an easement, Smith may deduct the appraised value of the easement, say \$10,000. The new value of the property is reduced to \$90,000 and the capital gain is reduced by ten percent or \$40,000, if the property is then sold subject to the easement.⁵⁵

Tax savings can also be derived from a reduction in state and local **property taxes**, if allowed by the state or municipality. Property cannot be taxed as residential, commercial, or industrial land if those rights are severed from a landowner's title. Property taxes are calculated on the basis of fair market value, which includes potential uses in addition to the existing use,

⁵⁴Ibid.

⁵⁵Example given by Donna A. Harris, President of Lower Merion Preservation Trust in phone interview, March 15, 1995.

and an easement may provide significant tax savings.⁵⁶ This tax benefit may be especially helpful in affluent areas where property taxes often limit one's ability to remain on a family estate. For example, if Smith owns a property with a fair market value of \$100,000, and grants an easement valued at \$10,000, he may petition the taxing authorities to apply the \$10,000 toward a reduction of the land value to \$90,000. This law may backfire if the land has not been appraised recently for tax purposes, however. Some places like Montgomery County, Pennsylvania, have acts which allow for a ten year reduction in property taxes for conservation easements.

Finally, an easement donor must consider the reduction of estate taxes that result from the donation of the conservation easement. Often second and third generations of families are forced to sell bequeathed properties to pay the high estate taxes imposed on them. If the value of the land is decreased by the conservation easement, the estate tax is also reduced. The current Federal estate tax on estates of over \$750,000 starts at 37 percent and increases to 55 percent on estates of over one million dollars. Because of this astronomically high rate, this fourth tax benefit may be an integral factor for families who have such assets.

CONCLUSION

Conservation easements are attracting much attention by environmentalists who see this voluntary donation as the great compromise between public regulation and private controls over endangered open space. Although conservation easements have a number of advantages, they are but one method to control growth and may not always be the best method for

⁵⁶Ibid.

preservation. A land owner must examine his or her individual situation and discuss all the possible venues for land protection with their local land trust before entering into a permanent and legally binding contract like a conservation easement agreement. Conservation easements can be an extremely practical mechanism to counteract development, and with a thorough understanding, can be a most effective way to preserve precious open space.

CHAPTER FOUR

CASE STUDIES:

THE BRANDYWINE CONSERVANCY AND THE FRENCH AND PICKERING CREEKS CONSERVATION TRUST

I. THE BRANDYWINE CONSERVANCY

"It's easy to be a non-profit entrepreneur, when you have twenty million in the bank."⁵⁷

In any industry, money makes things work. For the preservation of the Brandywine Valley, the DuPont family has been a financial fairy godmother. For over one hundred years, the Brandywine River Valley has been the seat of the DuPont family. As a result, when the Brandywine valley was threatened by suburbanization and real estate development in the 1960's, it was a DuPont who saved the area from imminent danger. The Brandywine Conservancy, which grew out of this threat, has become one of the most successful land trusts in the country. The Conservancy is a legally incorporated entity that not only appeals to a strong local constituency but

⁵⁷Anonymous editorial on the works of George "Frolic" Weymouth in the Brandywine Valley.

draws its board members from a national and regional elite.⁵⁸

The Brandywine Conservancy was created in 1967 when a group of amateur environmentalists led by George A. "Frolic" Weymouth, organized a program to save the dwindling open space in their community. Impending threats to the area included suburbanization from the King of Prussia area, as well as an immediate threat from an oil company that had tentative plans to build a tank farm on the 8.5 acre site of the historic Hoffman Mill, a locally famous location. Also among their concerns was the impending pollution problem that would affect the once ample and pure water supply in Chester County. Weymouth ran a campaign to raise money, bought the mill and the adjacent land, and turned it into a museum. At the same time, he and others created the Tri-County Conservancy, later renamed the Brandywine Conservancy. The Brandywine Conservancy has flourished and grown to be the largest non-state funded land trust, and the eighth largest land trust in the country. As a parallel component to its land saving activities, the Conservancy created the Environmental Management Center in 1967. Since then the Center has protected over 25,000 acres of land in the Brandywine Valley and adjacent watersheds and has placed over 300 conservation easements on local properties.⁵⁹

The first component of Weymouth's plan was the Brandywine River Museum which houses several local artists' paintings and is known particularly as the gallery for the Weyeth family paintings. The second part of the plan, was the Environmental Management Center. This office employs 16 land preservation experts who work specifically to conserve and manage

⁵⁸Dan Rose, *Ethnography and Estrangement*, (Philadelphia: University of Pennsylvania Press, 1990) 59.

⁵⁹Interview with Bob Wise and David Shields January 21, 1995.

the vast natural resources of the Brandywine Valley. The two-part system which is the Brandywine Conservancy was incorporated by Weymouth into a single institutional educational complex. He has been deemed "the nonprofit entrepreneur," for his work in the Brandywine Valley. According to an analysis of the Conservancy written by Dan Rose, Weymouth put into place an "institutional structure that served to stop the encroachment of industry and created a highly prized cultural organization used to socialize new suburbanites to the older landscape of estates and the cultural values that they represent."⁶⁰ Critics of Weymouth's work claim that his purpose was only to preserve the elite status quo of the Brandywine River Valley. Now, most environmentalists and citizens are grateful for the effort he made to save the countryside as the fruits of his labor exhibit themselves in the form of beautiful green countryside and plentiful clean water.

Because the Brandywine Valley is composed of several watersheds and tributaries, the Environmental Management Center has a distinct interest in water resource protection. The Center employs researchers to study the hydrology and limnology of the watershed to assure that an appropriate level of understanding is obtained. In addition to research on water resource management, the Center's programs extend to all areas of conservation. It feels that it is only through a comprehensive approach to conservation that the broad goals of a plan can be achieved. Just as the conservation plan must be comprehensive, so must the organization. The Brandywine Conservancy maintains strong ties with local planning commissions and employs tax attorneys and real estate experts to forge the nexus necessary to create the best possible environmental solution for the Valley.

⁶⁰Supra, note 58.

The Center has been a great source for innovative land conservation planning. The Center's design of a conservation easement agreement serves as a model for numerous other land trusts across the country. Much of its work today involves consulting for towns and regional groups with similar aims. Environmental consultant David Harper credits much of the Center's success to its satellite program under which local land conservation is handled by individuals in strategically located positions around the region. These volunteers, like Nancy Mohr in the Headwaters area, are paid to work from their homes to promote the advantages of the Center's easement program around their neighborhood. This strategy helps to localize the regional efforts of the Conservancy.

The Environmental Management Center at the Brandywine Conservancy works on projects of any size. Since its inception the Center has created land-saving plans for small tracts of a few acres to several thousands of acres of countryside. One particularly significant and successful project concerned 5,380 acres of property known as the Buck and Doe Run Valley Farms, in Chester County, Pennsylvania. The Buck and Doe story illustrates dramatically the power of the Brandywine Conservancy and its ability to work successfully with the business community to design and complete a significant environmental project.

A. BUCK AND DOE RUN⁶¹

By the mid-1980s, the Brandywine Conservancy had been working for almost twenty years to preserve the land and water purity of the Brandywine River Valley. The Buck and Doe Run Valley Farms was situated in the center of their targeted area and was in a position that was critical to the preservation of water quality of headwaters of many of the Brandywine River's tributaries, which cross on the farm. Then in the era of big development during the 1980's, the Texas based owner of the Buck and Doe Run Farm indicated that he no longer wanted an East coast location for his beef cattle finishing operation and sought an immediate cash sale. The Brandywine Conservancy began emergency efforts to put into effect a comprehensive plan for the highly developable land. The Conservancy contacted its members and trustees, to establish a quick solution to the impending dilemma. Daniel J. Snyder, former Regional Administrator of the Environmental Protection Agency, and Conservancy Trustee, was asked to develop a business structure to preserve the King Ranch Property.⁶² Mr. Snyder and several other individuals such as David Shields and William Sellars of the Conservancy, created a limited partnership, Buck and Doe Associates, Limited Partnership. It was their intention to raise enough money to purchase the farm for the purpose of preservation. As was the case at the time of the creation of the Conservancy, the Buck and Doe partnership was created to thwart an imminent threat by purchasing the endangered land.

⁶¹The following information was derived mostly from the unpublished notes of Mr. David Shields of the Brandywine Conservancy. The author wishes to thank Mr. Shields for sharing his files and thorough knowledge of the project known as the Buck and Doe Limited Partnership.

⁶²Brief written by David Shields regarding the turn of events in the Buck and Doe deal.

The notion of buying a property to save it is a luxury that few land trusts can consider. The Brandywine Conservancy has a great advantage over most other land trusts in that it is located in the heart of DuPont country. The DuPont wealth remains there and has created a healthy community of environmentally aware, and fiscally able neighbors. It is for this reason that by February of 1984, the Conservancy and the limited partnership had raised over \$13 million in subscriptions and were able to purchase the property by July.⁶³

1. The Plan

The Buck and Doe River project was an investment by several wealthy people interested in saving the countryside of Chester County.⁶⁴ Two basic requirements marked the parameters of the project: the first was to protect the headwaters of several tributaries of the Brandywine and Clay Creeks. The second requirement was to keep the visual impact of development on the Brandywine area to a minimum. A conservation easement plan was implemented to facilitate the two main objectives. The Brandywine Conservancy would be the easement holder.

The subdivision plans called for 37 farm parcels averaging over 130 acres, and 11 house lots ranging from 2 to 15 acres.⁶⁵ No further subdivision of any parcel is allowed under the conservation easement agreement. The maximum density of residential structures was limited to three houses per one hundred acres. The easement agreement required Conservancy approval for any new construction on the properties. The plan also called for the

⁶³Ibid.

⁶⁴Interview with David Harper, January 16, 1995.

⁶⁵Supra, note 62.

creation of a nature reserve, called the Laurels Reserve, that now protects over 700 acres natural habitat for flora and fauna indigenous to the Brandywine Valley area. The partnership drew boundary lines by using existing paths, roads and land features. This helped to protect the original integrity of the open space. Further limits on development were established by the partnership to protect the area's natural integrity. Among the regulations was a rule that forbade any construction to be done at the top of a hill or vista. Clearly, the administrators of the partnership went to great lengths to assure that the overall view of the farm would not be severely affected by the limited development plan.

The partnership consisted of 20 limited partners and two general partners.⁶⁶ Each partner received as a return on his capital investment a subdivided portion of the land, a share of all tax deductions generated from charitable contributions, and a share of all revenues earned from the sale of non-distribution parcels.⁶⁷ After each partner had acquired his or her portion, the partnership solicited third party buyers to complete the plan for limited development. The limited partnership required a minimum investment by each partner of \$200,000. Many interested individuals who could not afford this initial investment were able to buy smaller portions of the property after the initial division of the property had been established. Critics of the plan asserted that the partnership would not be able to sell the massive amount of acreage at a time where there seemed to be few capable and interested buyers. The partnership scheduled a five year time table in which to sell the remaining lots. Much to the surprise of everyone, all of the

⁶⁶Supra, note 62.

⁶⁷Supra, note 62.

remaining inventory had been sold for more money than the original projections had indicated within two years.⁶⁸

A conservation easement was placed on the parcel and given to the Brandywine Conservancy to monitor in September, 1994. In addition, the planned nature reserve, 775 acres, was also donated to the Conservancy. David Shields, administrator of the partnership, notes that although the project may seem to have run smoothly to those who were not involved, the complex deal almost collapsed at the last moment before closing. Several factors such as late subdivision approval from the township, administrative difficulties, and zoning requirements all added to the factor of difficulty of the final plan. William Sellers says that at one point he had "five law firms working for me and twenty-five calling me." Despite the arduous work, the Buck and Doe plan exemplified a rare occasion where the neighboring land owners worked in tandem with the environmental community to develop a successful and lasting endeavor to the advantage of both parties.

2. The Importance of the Conservation Easement

The goal of the Buck and Doe Associated partnership as dictated by the Brandywine Conservancy was to preserve the 5300 acre parcel in perpetuity. Although several important components created the successful venture, the conservation easement agreement was no doubt of critical import.

The conservation easement on the King Ranch encompasses the entire parcel as a whole. The agreement allowed for the specified subdivisions but placed a maximum density requirement on the development of the property

⁶⁸Supra, note 62.

as previously stated. The easement also created predetermined sites for the building development. The chosen development sites were those with the least historic or environmental significance to the area. Residents could propose alternate sites as stated in the easement, but they would be responsible for doing the necessary research to determine the appropriateness of that site and would have to obtain the approval of the Conservancy before building.

The conservation easement also restricted the ground coverage of any new construction to 1% of the total ground surface of the area.⁶⁹ The one percent limit is to assure that the appropriate level of storm water percolation and keep the water table at an acceptable level. Numerous other restrictions were written in the easement with specific regard to water resource protection. Wells, for example, may only be used for purposes on the property, and ponds may only cover a minimum area to assure that the ground water remains pure.

All restrictions of the easement are in perpetuity. However, a resident may submit an alternative proposal to the Conservancy to which the Environmental Management Center must respond within three months. The easement agreement further indicates that any deviation granted must be at least half completed within a five year period from the date granted, or the granted party must resubmit his or her proposal. This is a unique procedure rarely used in conservation easements; however, in this case it assured that each party involved would act in good faith in accordance with the agreement.

⁶⁹Supra, note 62.

The role of the Brandywine Conservancy as environmental consultant to the limited partnership was critical to the success of the development plan. Although the partnership dissolved after all the parcels were sold, the Conservancy will continue to monitor the easement on the King Ranch in perpetuity. A third party, government agency was also named in the agreement to monitor the easement in the unlikely event that the Brandywine Conservancy closed its doors.

B. PENDING PROJECTS FOR THE CONSERVANCY

The Environmental Management Center continues to develop innovative conservation plans into the 1990s. Currently, it is working on a re-easement program where the staff contacts old easement donors and helps them re-write out-dated easements. Conservation easements written earlier in this century may have logistical and legal problems that would not hold up to judicial scrutiny. This problem is cropping up all over the country for older land trusts like the French and Pickering Creeks Conservation Trust, in Pottstown, Pennsylvania. In order to address this problem, the Brandywine Conservancy is reestablishing their ties with property owners of older easements including owners of houses with historic facade easements. Although it has not been the focus of this paper, the Brandywine is also concerned with the historic built environment and has done numerous studies to identify over 10,000 historic buildings in Chester County. This kind of preventative work saves time, effort and money for the Conservancy in the long run.

Although the Conservancy goes to great lengths to create legally sound land conservation agreements, it notes that rarely does it have to punish or

fine an eased property owner for failure to comply with the agreement.

Unlike the other land trusts, the Management Center boasts that it has not had to go to court for a single conflict between the Conservancy and an eased landowner. While the Conservancy has settled disagreements out of court, cooperation comes easily to the Brandywine Conservancy. It has established itself as a private nonprofit entity that desires to work with the community to develop a non-threatening conservation plan for both the environment and its inhabitants.

II. THE FRENCH AND PICKERING CREEKS CONSERVATION TRUST, INC.

While similar in their disciplines, The French and Pickering Conservation Trust could not be more different in style than the Brandywine Conservancy. Established by Eleanor Morris in 1966, The Conservation Trust has maintained itself as a small but diligent land trust for over 28 years. The Conservation Trust has two full time paid staffers, one part-time book keeper, and one dedicated volunteer to run the land trust that has protected over 6300 acres of land in the watersheds of the French and Pickering Creeks. The stated purpose of the French and Pickering Creeks Trust is twofold: first, the Trust desires to save open space, and second, it maintains a great interest in the preservation of the built historic environment. Not unlike most other land trusts, the French and Pickering Creeks trust was created when the area became threatened by development. The two watersheds, rich with historic sites and natural beauty, were subjected to urbanization and the existing zoning ordinances were inadequate to contain the tide of leap frog

development.⁷⁰ Conservationists Alston Jenkins and former Pennsylvania State Senator Sam Morris started the land trust as an immediate effort to meet real estate developers head on. Mrs. Morris has administered the trust and raised funds for its success ever since.

The operating budget of the French and Pickering Trust is approximately \$70,000. The money is raised by an annual appeal in January which raises approximately \$30,000 per year. The 1994 records indicate that this money was given by just over 600 individuals.⁷¹ The Trust also holds two annual parties: the Derby Day Party, held each year on the same day as the Kentucky Derby, and the Auction Party, held in the fall. The parties bring in about \$30,000. The money is used to initiate programs to educate the area residents about conservation as well as to contact individual and institutional landowners who may have threatened land. Recently, however, the Trust has had to spend a large portion of their budget fighting legal battles regarding conservation easements written by the trust early in its history. Of the three lawsuits, one has been particularly difficult to settle and has recently had a decision come down from the Supreme Court of Pennsylvania.

⁷⁰Eleanor Morris, *Why the Trust:?* unpublished speech given on February 8, 1976, at the Preservation Planning Conference for Public Agencies, Alexandria, VA.

⁷¹Interview with Debbie Hammond, Administrative Assistant to Mrs. Morris, March 23, 1995.

A. THE LAW SUIT

FRENCH AND PICKERING CREEKS CONSERVATION TRUST
v.
AUGUSTINE AND KATHLEEN NATALE⁷²

The case concerned a 42-acre tract in East Vincent Township that had been purchased by the Trust in its first year of existence and placed under easement. The original easement agreement stated that the land closest to the Creek was restricted to "forever remain in open space" for farming and nature study.⁷³ The only provision allowing building on the site was for small buildings "accessory" to these uses.⁷⁴ The Trust then sold the property to a farmer with the easement restriction clearly stated in the title to the property. The farmer subsequently sold the property to the defendant of the lawsuit, Augustine Natale. At the time of the second sale, the French and Pickering Creeks Conservation Trust met with Mr. Natale to make sure that he was aware of the easement restrictions. Mr. Natale ignored the advice of the Trust to obey the restrictions and erected a large machinery shed. He then filed for a zoning permit to build a family residence. At the same time, the Trust filed a request for a preliminary injunction which was denied. By the time the case first went to court in January of 1991, the Natales had already completed construction of their two family dwelling.

The decision of the Common Pleas Court was in favor of the Natales, stating first that if a farmer had ground, he also had the right to a house and

⁷²*French and Pickering Creeks Conservation Trust, Inc. and Lester Schwartz v. Augustine Natale and Kathleen Natale, Ronald Natale and Janet Natale.* Pa Supreme Court, No. 80 E.D. Appeal Docket, 1994.

⁷³Memo from the Pickering Trust to the members of the Pennsylvania Land Trust Alliance Association, September 13, 1994.

⁷⁴*Ibid.*

that the house could be designed for a large family. The judge noted that the acreage had to be used for farming. The second ruling, issued six months later after the Trust filed exceptions regarding the easement, ruled in favor of the property owner stating that "restrictive covenants are to be strictly construed against the drafters of the same."⁷⁵

The Trust appealed to the Superior Court. On May 28, 1992, the Superior Court reversed the decision of the County Court stating that not only were the buildings in complete violation of the easement restriction, but had to be removed from the property. The Natale's then appealed the decision to the Supreme Court which agreed to hear the case on January 25, 1995. In a letter discussing the case Robert Sugarman, attorney for the Trust stated:

"By definition, a restrictive covenant or easement is a protective law, a barrier, an artificial installation into the development conditions affecting land and resources. It acts as a protective device to retard the forces of commerce and development in their powerful and persistent disruptive force. The creator of the easement joins with the easement holder to establish a solid and permanent protective device. Despite the best efforts of the easement planners to anticipate future circumstances...time is immutable and the range of circumstances is infinite. It is therefore expectable that easements will sometimes lead to conflict...this [however] does not stop those who would profit from escaping easement conditions from scheming to do so."⁷⁶

⁷⁵Court of Common Pleas, Chester County Pennsylvania, Civil Action-Law No. 89-09574

⁷⁶Robert Sugarman, *Easement Erosion Control in the Courts: The French and Pickering Creeks Lessons*, unpublished article, March 9, 1995.

On February 14, 1995, the Supreme Court decision came down in one, succinct sentence, "ORDER: Appeal dismissed as having been improvidently granted."⁷⁷

The decision on whether or not the erected buildings need to be removed has not yet been made. At the hearing, one justice of the Supreme Court asked Mrs. Morris and her attorney what they thought should be done to rectify the Natale's blatant disregard for the easement. Although Mrs. Morris would prefer that the Natale's remove the buildings, the Judge suggested a monetary settlement, to which Mrs. Morris would not be opposed.

Even though this case had a positive outcome, the time and monetary sacrifice that the Trust had to make was, according to Mrs. Morris, "heartbreaking."⁷⁸ Sugarman asserts that not only should the easements be tightly written, but that the Land Trust should be ready to defend and prevent post-easement erosion through the courts.⁷⁹ As litigation becomes the normal venue for solving problems, land trusts have to prepare for possible civil action from disgruntled property owners.

Despite the difficult realities of administering a land trust, Mrs. Morris continues to work diligently to protect and defend the eroding open space in the Pottstown area. Among her increasing concerns are potential development plans of the upper reaches of the Pickering Creek area for which she has been researching and writing a documented report for over 19 years. Mrs. Morris hopes to finish this report by the end of this year. Since 1966, the

⁷⁷The Supreme Court of Pennsylvania, Eastern District [J-4 of 1995] No. 80 E.D. appeal Dkt. 1994.

⁷⁸Interview with Mrs. Morris, March 23, 1995.

⁷⁹Supra, note 77.

French and Pickering Conservation Trust has saved over 6,000 acres of open space, purchased two historic sites--The Mill at Anselma and Coventry House, identified and inventoried over 5,000 historic resources in northern Chester County, and placed 52 sites and districts on the National Register of Historic Places. Mrs. Morris vehemently rejects the notion that she has preserved a large portion of northern Chester County in perpetuity, "we do what we can, we keep very busy, and we hope for the best."⁸⁰ Mrs. Morris is an enormous force in the world of small land trusts. She is a one woman phenomenon who continues, well into her 75th year, to be a strong force in the conservation of open space in Pennsylvania.

⁸⁰Supra, note 77.

CHAPTER FIVE:

ANALYSIS

I. LAND TRUSTS AS ORCHESTRATORS OF PUBLIC POLICY

The popularity of land trusts in America has reached an all time high in the last four years, growing at the rate of one per week. They are the fastest growing segment of the conservation movement.⁸¹ This decade is one of self-motivation for the environmentalist. It is a time when the federal government is in debt \$4.4 trillion, the central bureaucracy has grown to an unmanageable level, and pushing legislation through the Congress requires more time, money and effort than most people have to give. Local and regional land trusts have created their own solution to the problem of slow, and stagnating government action. The land trust movement has created effective public policy that has protected over 4 million acres of natural land from development. Land trusts are successful inventors and managers of their own policies.

Land trusts have been so successful with their agenda that congressional appropriations for land acquisition by agencies at the Department of the Interior has more than doubled, to \$220 million between

⁸¹1994 National Land Trust Survey, published by the Land Trust Alliance, October, 1994.

1986 and 1991.⁸² While this may be a result of the reassertion of environmental importance that has increased in the last decade, the land trust movement has played a major role in the governments increased interest in acquiring land for parks and nature reserves.

The great national success and recognition of land trusts has spurred criticism as well as praise from the government and public at large. Critics assert that national land trusts like the Nature Conservancy take advantage of their close ties to the government and of their nonprofit status. A 1992 report of the Conservancy's land transactions indicates that it earned \$876 million from land sales, mostly to the federal government.⁸³ Many people think that is too much profit to be taking from the government.

Others feel that land trusts like the Nature Conservancy have been the saving grace for government agencies such as the Department of the Interior and the United States Fish and Wildlife Service. While the government entity is usually laden with red tape and unable to buy a parcel outright, the land trust can step in and act as the intermediary. This role played by the land trust saves time and money for the government. John Hunt, a management analyst for the Fish and Wildlife Service, says that land trusts perform an invaluable service to his department, "the nonprofits have been a godsend to us. They can move much quicker on things than we can and have probably saved us money in the long term."⁸⁴

Land trusts have been able to achieve their policy objectives because they combine several different areas of expertise to generate a full and far reaching preservation plan. Land trusts must use several avenues to

⁸²Financial World, September 1, 1994.

⁸³Ibid.

⁸⁴Supra, note 82.

promote their agenda and negotiate land saving agreements including legal, political, entrepreneurial, and public aid. A land trust is therefore composed of several entities that spur the success of the whole land conservation movement.

A. SIZE

More than half of the nation's land trusts have no paid staff, 21% have only part time staff, and only 25% have full time staff.⁸⁵ Land trusts staffed by mostly volunteers, like the French and Pickering Land Trust, have managed to save thousands of acres from development. The Brandywine Conservancy is considered large in number of paid staff (16) and in acreage preserved (26,000 acres). From this information, it can be concluded that it is not the size of the Trust that establishes its success, but rather the strength of its dedication to a purpose. Additionally, the larger, regional land trusts like the Brandywine Conservancy often step in on behalf of smaller land trusts to help implement a plan or solve a preservation problem. Success of a land trust may also have a great deal to do with the type of tools that they use to conserve land.

II. THE ROLE OF CONSERVATION EASEMENTS IN THE SUCCESS OF LAND TRUSTS

If the ultimate goal of a land trust is to save land, then the ultimate success of the land trust may be dependent on the conservation easement. Without the legal ability to create conservation easements, many land trusts would be little more than public relations groups for land preservation. For most land trusts, it is the conservation easement that enables the land trust to

⁸⁵Supra, note 81.

take pragmatic legal action. Because land trusts are so symbiotically tied to the success of the conservation easement, many land trusts fail in their environmental purpose if an easement agreement is unfeasible. However, land trusts also concern themselves with general environmental concerns such as the Brandywine Conservancy's program to protect the river and its tributaries. For some forms of general land saving protection, a conservation easement may not be required for the success of the program, and the land trust may succeed in its efforts.

In addition, conservation easement agreements have drawbacks that preclude their use in some preservation plans. For example, many family estate plans emphasize the land value of the particular inherited parcel. In such an instance, land owners may refuse to give up their development rights in perpetuity. As stated previously, term agreements exist. However they are rare and few land trusts are willing to accept such limited donations. Further problems can arise with the perpetuity of easements such as excessively high monitoring costs that are prohibitive for many smaller land trusts, and the legal challenges such as the one in which the French and Pickering Creeks Conservation Trust is currently involved.

Although most land trusts require a endowed monitoring fee, the money necessary to monitor an easement in perpetuity may exceed the initial endowment. In other cases, while the money may not be the prohibitive factor, the land trust itself may cease to exist. Without the land trust to hold and monitor an easement, the easement may be voided. To address this potential problem, most easement agreements contain a clause providing for the continued care of the agreement by another conservation group or government entity.

Conservation easements are also vulnerable to the shifting charitable contribution tax laws. Tax deductibility can not only change yearly, but the appraisal process is often questioned by the IRS and can result in a decreased deduction value. Without the incentive of tax deductibility, few land owners are willing to enter into a conservation easement agreement. Despite limitations that the current conservation easement may have, it is to date the best known and most often employed form of land conservation. It is successful public policy.

III. CONTRIBUTING FACTORS TO THE SUCCESS OF LAND TRUSTS

A. WHO BENEFITS?

Land trusts conserve land and preserve open space for the good of the environment. Conserving land and natural resources secures a relatively healthy environment for a longer period of time. This benefit would seem to be universal. However, there are some who would say that the land trust movement inhibits the natural growth of human environment and thwarts the principles of American expansion. While land trusts may inhibit development and even restrict business deals that would expand the tax base of a community, it is important to consider the balance of interests. If the environment is not protected and natural resources are not stabilized, business will have problems far greater than changing their location. Land trusts are cognizant of the importance of business and general development and try to work with the general marketplace to create environmentally significant plans, such as the Buck and Doe Limited Partnership plan.

B. CAPACITY TO EXPAND

The land trust movement has further proven its worth in its ability to replicate a program in various instances and in different organizations. The Brandywine Conservancy's general conservation easement program is an example of a type of program that has been successful all over the country. The fact that a land trust need not be large and heavily endowed to be successful is also an estimable feature. Although their tangible goals may be different, small land trusts like French and Pickering Creek have been just as able to complete their projects as larger land trusts like the Brandywine Conservancy. Whether they be local or regional, land trusts have been able to produce acceptable public policy and assert their environmental advice and planning throughout the country.

C. LEGAL DEFENSIBILITY

Although there are examples of litigation challenging the legality of conservation easements, land trusts are recognized by the national and local governments and the Internal Revenue Service as legitimate environmental organizations. According to the Land Trust Alliance, there is no record of any land trust participating in illegal or disingenuous practices. As previously mentioned, critics of the Nature Conservancy's power have asserted that the organization is able to strong arm government contracts. However, no record or contract has ever surfaced to prove this theory, and thus it remains only a speculation.

D. EDUCATING STAFF

The one real problem that land trusts have incurred all over the country is a lack of educated managers to administrate the organizations. Although this problem is rectifying itself currently, more educated individuals are needed to staff land trusts. The Land Trust Alliance publishes several "how to" books and videos to help local land trusts educate themselves. Despite their efforts, it is the only organization in the country that works on the promotion and education of land trusts. Little else is done on a national level to promote the importance of education about land trusts and conservation easements. One significant effort that the Land Trust Alliance makes is to hold a national convention of land trusts so that administrators from all over the country can interact and educate one another on particularly successful programs. Over 200 land trusts were represented at the 1994 Conference in Chattanooga, Tennessee. Such conventions will play a major role in the continued education of land trust personnel in the future.

E. POLITICS OF LAND TRUSTS—COOPERATION

As the opening quote by John Sawhill, President of the Nature Conservancy, states, land trusts are successful because they do not force their goals on anyone. The major component of the land trusts' ability to complete their projects is the willingness of the land owners to work with the land trust. Regardless of the tools land trusts use to implement their conservation programs, the voluntary commitment of the landowner is the Land Trusts' key to success.

Land Trusts have proven to be cooperative not only with property owners, but among themselves as well. During the French and Pickering Creeks legal battle, it was the Brandywine Conservancy that helped pull together affirmative testimony on the Trust's behalf. Often land trusts in the same area will share the same Board of Directors to help synthesize the local conservation plan. Finally, with the help of the Land Trust Alliance, land trusts all over the country communicate and meet to develop and implement new goals for the preservation of the natural environment.

CONCLUSION

Our options are expiring. The land that is still to be saved will have to be saved in the next few years. We have no luxury of choice. We must make our commitments now and look to the landscape as the last one. For us, it will be.

William H. White, The Last Landscape

Numerous studies have indicated that the larger number of land trusts has brought increased effectiveness for the environmental projects of land trusts. In the last 20 years, land trusts have developed expertise in implementing specific projects and demonstrated their influence in achieving and retaining supportive public policies.⁸⁶ Examples of this abound in federal legislation and in the many state legislature's adoption of statutes based on the Uniform Conservation Easement Act proposed in 1981 by the National Conference of Commissioners on Uniform State Law.

The great expansion of land trusts, however, is a result of a number of contributing factors that have enabled the land trust movement to develop into the mature and disciplined field that it is today. Public/private partnerships, increased funding from private entities and government grants, national organizations like the Land Trust Alliance, and the widespread use

⁸⁶Eve Endicott, *Land Conservation Through Public/Private Partnerships*, (Island Press: Washington, D.C, 1993) 291.

of the conservation easement have all furthered the successful programs and policies of the land trust.

The obvious importance of land trusts to steward development of our cities and countryside is dependent on the ability of the movement to educate the general public as well as to train environmental professionals to administer the organizations appropriately. The future success of the land trust movement is further dependent on the ability of conservation easements to withstand legal scrutiny. Despite these stipulations, land trusts gain more public acceptance and save more land through private agreements each year that they exist. Land trusts have proven to be extremely successful conservators of the American landscape.

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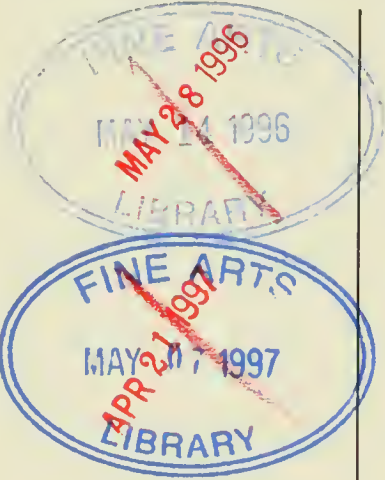
Wise, Robert Jr., Senior Planner, Historic Preservation. Brandywine Conservancy Environmental Management Center. Personal Interview. January 23, 1995.

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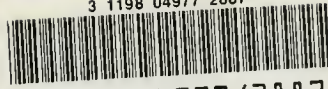


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