ESTABLISHING ACCREDITATION FOR LAND TRUST ORGANIZATIONS: SEEKING PUBLIC TRUST IN THE CONSERVATION EASEMENT MOVEMENT

A Thesis submitted to the Faculty of The School of Continuing Studies and of The Graduate School of Arts and Sciences in partial fulfillment of the requirements for the Degree of Master of Arts in Liberal Studies

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December 2009
ABSTRACT

Transparency and accountability are arguably priority institutional values for the American public, and questions over these values in the conservation easement movement led to a 2003 expose in The Washington Post. The resultant scrutiny by the U.S. Congress pushed the Internal Revenue Service (IRS) to initiate nationwide conservation easement audits and develop new tax procedures that greatly affected the movement.

The Land Trust Alliance (LTA), a membership organization with 1,700 U.S. land trusts, was immediately motivated to minimize further IRS involvement by planning the development of a land trust accreditation program. Concurrently, the LTA still lobbied Congress for permanent tax incentives on conservation easements—a goal that has consumed the movement for a decade, and irregardless of any congressional scrutiny.

The development of the accreditation program was left to the Land Trust Accreditation Commission (LTAC), a new and independent arm of the LTA. After 39 inaugural accredited land trusts were introduced in 2008, the LTA touted this endeavor as
a new way to uphold their highest standards. The LTAC hailed the accreditation process as deserving of the public’s trust.

Yet, throughout 2009 there was no public attention on accreditation. The LTA remained focused on the permanence of tax incentives through a strong lobbying effort. The IRS implemented sweeping tax reporting procedures for nonprofit organizations—including most land trusts, to ensure more organizational transparency and accountability to the IRS. At the same time, the LTAC was left to accredit more land trusts without any public involvement or public disclosure processes.

Consequently, the 2003 initiatives of Congress, the IRS, and the LTA would lead to unintended values conflicts by 2009. Despite the LTA’s efforts to promote the public’s trust, the IRS instead pushed to determine the public’s benefit of conservation easements and tax exempt land trusts—thereby meeting their congressionally mandated responsibility for ensuring regulatory compliance. Concurrently, the LTA seemingly allowed the LTAC to prioritize confidentiality over transparency, and self-regulation over verified accountability.

As the conservation easement movement looks beyond 2010, the true intent of accreditation appears undefined in terms of earning the public’s trust when federal regulatory compliance has assumed a dominant role in ensuring transparency and accountability. The prioritizations of confidentiality within
the movement and the LTAC’s self-regulation of land trusts diminishes the values issue of public trust, and any notion that the accreditation process upholds the public’s trust appears rhetorical in nature.
ACKNOWLEDGEMENTS

To Anne Ridder, your calm presence and dedication to this program can never be succeeded. To Betty Duke, your genuine concern for students is awe-inspiring. To Nikki Castle, your courses and readings were the best in this program. To Chet Gillis and Mike Duggan, your thesis recommendations proved invaluable. To all, I thank you.

To Keith Fort, your 1992 writing course here at Georgetown still humbles me. Drink, smoke, laugh, and rest in peace.

To Jim Hershman, thank you for guiding me through this thesis with your unending flexibility and good humor. I will always remain indebted. Again, thank you.

To my beautiful wife, Donna, thank you for your support and patience, and more support and patience, and even more... To our wonderful son, John Paul, yes—I can now play matchbox cars and legos with you all day.
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CHAPTER 1

INTRODUCTION

“At a time when the public is demanding increasing accountability from nonprofit organizations and government, including land trusts, the new independent accreditation program provides the assurance of quality and permanence of land protection the public is looking for,” said Commission Executive Director Tammyra Van Ryn. “Today land trusts join museums, hospitals, universities and other nonprofit institutions that demonstrate that they deserve the public’s trust through rigorous accreditation programs.”


The Public’s Trust

Accountability and transparency in an organization are often scrutinized when there is a question of public trust. Land trust organizations in the U.S. are facing these values issues by actively embracing a new accreditation process. However, accreditation alone may not be enough to earn the public’s trust when individual land trusts are run independently, and under different interior and exterior influences.

This thesis delves into a two-fold dynamic that has stymied the land trust movement in recent years. First, federal and state laws and procedures for non-cash charitable contributions, or tax deductions, on conservation easements are often juggled with the motivations and actions of landowners, land trusts, attorneys, real estate appraisers, local government officials,
and other third parties who may be involved with conservation easements. Second, because land trusts are nonprofit businesses, they are only held to their respective state requirements for public reporting (or access) of specific financial contributions, income, land sales, and assets.

This dynamic helped precipitate a stinging Washington Post (Post) investigative series which later prompted congressional hearings, reviews and audits by the Internal Revenue Service, and the eventual formation of the Land Trust Accreditation Commission (LTAC). Even though the newly established LTAC accredited 39 inaugural land trust organizations within the Land Trust Alliance (LTA) in September 2008 (see above epigraph), there still remains a question of how the LTAC and these nationally accredited land trusts can better advocate for public transparency and accountability when nonprofit business practices may remain individually respective to internal practices, state laws, and influences at the local level (see Appendix A for a list, by state, of the 39 inaugural accredited land trusts).

While it is seemingly beneficial to establish and nurture a reputable, independent accreditation program for the land trust movement, it is also important to understand how this small, qualified group of newly accredited land trusts work
individually and together with the LTAC in the public arena. With the LTA membership now exceeding 1,700 U.S. land trust organizations, more land trusts will likely be accredited and the LTAC wants to surpass 100, then 200, and then perhaps 500 land trust accreditation approvals over the next several years.

Consequently, the importance of understanding the levels of public transparency and accountability with each of the newly accredited land trusts—and in collaboration with the LTAC, may offer a preview on how this small group of accredited land trusts may grow into a large and diverse group that maintains individuality while also promoting homogeneity and, therefore, public trust at the national level.

**Land Trusts and Conservation Easements**

In September of 2008, 39 U.S. land trust organizations became accredited members of the LTAC. This is the first accreditation process for land trusts to occur in this or any other nation, and these inaugural accredited land trusts were required to be active LTA members before the LTAC considered them for accreditation.

What are land trusts? Although there are similar definitions (see Figure 1.1), land trusts are predominately and traditionally nonprofit, independent organizations with the primary missions of land conservation and the preservation of
natural habitat. Land trust organizations are most commonly formed at the local and regional levels when resident activists see a need to preserve open space—particularly in growing communities. Nonprofit land trusts can also evolve when community organizers and their state or local governments see a mutual benefit in joining forces (and resources) to preserve ecological, historic, or scenic lands, and thereby creating a public-private partnership.

**Figure 1.1. Definitions of Land Trust**

Many nonprofit organizations such as museums, Audubon societies, and nature centers own areas that they maintain as habitat, for education, for research, or for public enjoyment. Land trusts are a special case in this general category. The difference between land trusts and nearly all other organizations and agencies is that land trusts have protection in perpetuity as their sole or central mission.  

A nonprofit organization that, as part of its mission, actively works to conserve land by undertaking or assisting in land or easement acquisitions, or by engaging in stewardship of such land or easements.  

Although the idea of a uniform accreditation for individual land trusts had been considered in the 1990s, accreditation became a reality due to media, public, and political attention on questionable business practices within the land conservation
movement. The focus of this scrutiny was the possible abuse (by landowners, developers, land trusts, and third parties) of substantive federal tax incentives for granting conservation easements.

A surge of individual landowners in the late 1990s and early 2000s had relinquished specific and perpetual property rights to qualified organizations—most notably nonprofit land trust organizations—in order to attain conservation easements and, therefore, gain eligibility for a qualified noncash charitable contribution for a federal tax deduction. Land trusts, particularly at local levels, have been the principal contacts for landowners who seek conservation easements and the subsequent benefits for qualified noncash charitable contributions.

What is a conservation easement? While there are various and similar aspects in defining this kind of easement (see Figure 1.2), a conservation easement is simply a restriction of a landowner’s fee simple interest on a specific property. This simple interest can be compared to all the rights that pertain to a property and include such rights as the right to build and the right to do anything a landowner wants that is not prohibited by law. By granting a conservation easement, a landowner gives up certain rights or transfers them to someone
else, most often a nonprofit land trust. The rights a landowner chooses to forego, or restrict, are specifically set out in a Deed of Easement, or deeded land restriction, that is recorded at the jurisdictional courthouse.¹

Figure 1.2. Definitions of Conservation Easement

A Restriction that limits the future use of a property to preservation, conservation, or wildlife habitat.


A nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archeological, or cultural aspects of real property.

Source: From Section 1. Definitions, Uniform Conservation Easement Act, 1981.

A legal agreement between a landowner and a qualified organization that restricts future activities on the land to protect its conservation values.


Federal and state tax incentives for these deeded land restrictions are a primary motivation for landowners. A landowner who desires these incentives, which are often substantial income tax deductions, will likely choose one land trust from many nonprofit land trust organizations that specialize in these land restrictions, thereby allowing
landowners a choice. Public acceptance of this quasi-competitive market stems from the belief that a land restriction is preserved in perpetuity: a conservation easement is forever.

Conservation easements that qualify for a federal tax deduction, or noncash charitable contribution, must be made on lands with scenic, recreational, or open space value; or historic land and/or land with an historic structure. Additionally, the holder of the conservation easement must be a qualified third-party, such as a land trust, and the easement must be in perpetuity. Land trusts are the majority holders and stewards (land monitoring and enforcement) of conservation easements that have qualified for federal tax deductions, and almost all U.S. land trusts are members of the LTA (not to be confused with the LTAC).

However, a landowner may not be interested in any tax incentives or the enactment of a desired conservation easement may not qualify for a tax deduction. A landowner, for bona-fide reasons, may simply want to enact a conservation easement with a government agency or land trust to ensure a short-term restriction on a property. Another landowner may just want to ensure that a future owner does not build an unreasonable structure on land that is surrounded by other private properties and, therefore, will not meet the true definition of an open
space preservation that is required for a federal noncash charitable contribution. Therefore, land trust organizations can be essential to landowners and taxpayers in facilitating landowner’s goals while also helping to ensure the viability of tax deductions on conservation easements.

There is also another type of easement that is often referred to as a conservation easement: an historic preservation easement. By definition, an historic conservation easement includes the wording of conservation easement:

A conservation easement used to preserve the façade, interior, or surroundings of a historic structure. These easements require preservation of the essential character of the building while permitting changes that are necessary to ensure that the building is maintained and remains economically viable over time.²

The LTA has land trust members who specialize in this type of easement, and some land trusts that primarily hold conservation easements also hold historic preservation easements. Historic preservation easements may also qualify for noncash charitable contributions, have known benefits and pitfalls, and have been scrutinized by the Post, Congress, and municipal governments. For this thesis, however, the term conservation easement will apply to that easement alone; discussing both types of easements may add confusion, inaccuracy, and dilution of content to this thesis.
Background on Accreditation

In May of 2003, the Post began printing a series of articles that were critical of nonprofit land-holding environmental groups and land trust organizations, specifically The Nature Conservancy (TNC) and indirectly the LTA community. TNC was and still remains this nation’s largest holder of private land for conservation purposes. The LTA was and still is the premier advocacy group for almost every nonprofit land trust organization in the U.S. There are currently over 1,700 land trusts that are active LTA members (including TNC), representing the vast majority of conservation easement holders in the U.S.

The Post reported and opined on the growing nonprofit business of acquiring private land to curb development while also enacting conservation easements under the influence of substantive federal tax incentives. TNC was the focus of the Post’s four-part series and follow-up articles. The values issues of public transparency, organizational accountability, compliance with laws, and enforcement (stewardship) of conservation easements were heavily inferred throughout the expose.

Consequently, this expose created an immediate, reactionary behavior from federal lawmakers, the IRS, TNC, and the LTA. By
late 2004, a public discussion for national accreditation standards for land trusts was evidenced by congressional hearings, IRS scrutiny over land gifts, a TNC working group study in 2004, and the LTA’s rewriting of ethical standards and practices—also in 2004. Additionally, the LTA formally offered to spearhead an accreditation process—an idea that had been considered by the LTA for several years.

Throughout 2005 and 2006, the LTA developed and established the LTAC as a separate nonprofit entity that would be dedicated to the planning, implementation, and enforcement of land trust accreditation. By late 2007, the LTAC had designed and executed an accreditation pilot program to enable a structured and legitimate application process under national accreditation standards that mirrored post-2004 LTA standards and practices.

The first application filings for accreditation took place in early 2008 and 39 of 67 individual land trust applicants were formally accredited during a September 19, 2008 ceremony at the LTA’s annual national conference—known within the land trust movement as the LTA Rally. There is an ongoing review process for the 2009 accreditation applicants and more land trusts are expected to receive accreditation throughout the year.
Looking Beyond September 2008

As far as the 39 inaugural accredited land trusts, how will they and the LTAC set the example for prospective land trust applicants and the conservation easement movement in 2009 and beyond? These 39 land trusts are from all over the U.S. and represent land conservation advocacy in urban, suburban, rural, and wilderness areas. While these land trusts have seemingly followed the generally broad LTA standards and practices prior to possible accreditation and have met the audit and/or panel review process of the LTAC, they have also operated under different state laws and diversities in fundraising, board membership, and staff priorities.

Additionally, respective land trust staffs and board members must also address local or state exterior forces that may, for better or worse, influence national accreditation standards and practices. This may affect the LTAC’s accreditation process as more land trusts from other states seek accreditation, and as the public and the land trust community presumably see land trust accreditation as an effective tool for greater public transparency and organizational accountability at both the local and national levels.
CHAPTER 2

LITERATURE REVIEW

Conservation Easements are promoted as saving land from development or containing sprawl. This they do, but these are almost side effects. A conservation easement has one purpose: to protect the conservation values of a specific piece of land. The easement does this by switching the responsibility, and burden, of defending the conservation values from the successive owners of the land to an outside organization devoted to land conservation...Conservation values are the natural, scenic, open space, biological, and ecological features of the property that provide the public benefit on which the tax relief of conservation easements is justified.1

—Richard Brewer, Conservancy: The Land Trust Movement in America

The Conservation Easement Movement

There may be no better primer to understand the origin and history of the U.S. conservation easement movement than the foreword to Protecting the Land: Conservation Easements Past, Present, and Future (2000).2 This foreword was written by Jean Hocker, one of the most respected activists in the movement (see Appendix B for the complete transcript of the foreword). Hocker was then-president of the LTA and served in that position from 1987 to 2002; the annual LTA Rally, a highly popular national conference for land trusts, was established in 1995 under her leadership. Coincidentally, in early 2009 she was named an LTAC commissioner with a three-year term.

Hocker’s foreword is a must-read because the content of her writing captures the spirit of the movement prior to 2003:
conservation easements as charitable gifts were on the rise, more organizations and communities were forming nonprofit land trusts, and the most important debate of the day was focused on how these easements would be monitored and enforced in the long term.

The editors of Protecting the Land: Conservation Easements Past, Present, and Future (2000), Julie Ann Gustanski and Roderick H. Squires, incorporated dozens of point papers from over 40 legal experts and scholars in the movement. This was among the first comprehensive texts that addressed conservation easements on national and local levels, and useful for all land trusts and their respective board members and staffs—regardless of organizational size and resources.

Included in the text is a brief chapter on charitable tax contributions that only focused on the implementation of newly established IRS guidelines for estate tax deductions on conservation easements. This chapter was written by Stephen J. Small, a prominent tax attorney and advisor in the movement. The rest of the text primarily focused on legal analyses and anecdotes of conservation easements as they pertain to regional influences, state adoptions of the Uniform Code of Conservation Easements (see Appendix B), and experiences within various circuit court systems.
In the final chapter, scholar John B. Wright synopsized the themes that are prevalent in the book:

Their [authors of previous chapters] applications of easements are diverse, and, beyond the statutory impediments discussed elsewhere in this volume, their future use seems limited only by the creativity and patience of practitioners. The dominant themes illustrated in this book are (1) the tension between the permanence and amendability of easement restrictions, (2) the use of easements in conservation strategies, (3) the advantages of cooperative partnerships, (4) the role of limited development in easement designs (and as a fund-raising technique for land trusts), (5) the benefits of systematic procedures, and (6) the necessity of comprehending the cultural geography of landscapes we wish to conserve.4

While the book offered examples of conservation easement successes that resulted in noncash charitable contributions, there was no comprehensive discussion of public transparency and organizational accountability in light of those tax deductions. When Gustanski and Squires’ book was published in 2000, they and their contributors appeared to not be publicly concerned with the millions (and soon to be billions) of dollars of foregone revenue at the federal and state levels, and how the public may react to questionable practices of conservation easement enactments and subsequent tax deductions.

Gustanski and Squires’ contribution to the movement was undoubtedly positive. The analyses and anecdotes in their text provided an invaluable reference guide at a time when no other published document had previously sought to inform readers of
specific examples of enacting and maintaining conservation easements in different states. Yet, within just three years after their work was published, the conservation easement movement became the focus of intense scrutiny and a change in public perception.

**The Washington Post and Relevant Perspective**

In May of 2003, the Post began a critical, three-year look into the business of land conservation. The principle reporters of the three dozen articles were Joe Stephens and David B. Ottaway. Albert B. Crenshaw wrote two articles on IRS actions toward nonprofits and the conservation easement movement, columnist Steven Pearlstein wrote a commentary, and The Post printed an editorial. The titles and frequency of their work captures the Post’s intensity on TNC, the LTA, and consequently the movement (see Appendix C for a chronological record of these articles, commentary, and editorial).

From 2003 through 2005, national television networks and wire services relayed the Post stories and subsequent congressional hearings on the seemingly big business of land conservation—something the general public was not aware of and smaller land trusts with LTA memberships may not have fully understood. Stephens and Ottaway reported on how large donations from big businesses may have influenced land
conservation and how TNC may have misused donated funds while also selling newly preserved lands to wealthy individual contributors—who then built large estates on those lands. They also reported that some land trusts failed in some of their missions and squandered contributory funding, and that nonprofit groups like TNC, the LTA, and some individual land trusts were not easily persuaded into discussing internal matters beyond the typical, generic annual financial reports that are common practice in both for-profit and nonprofit businesses.

The eye-catching titles (see Appendix C) and content of these articles caught the public’s attention: taxpayers, activists, and watchdog groups either questioned or hailed the investigative series while some leaders in the movement criticized the series for a lack of understanding the difficulties in preserving lands that were ideal for profitable, large-scale developments. On May 13, 2003, the Post printed a reply by Steven J. McCormick, then-president and CEO of TNC. McCormack wrote, “Despite our disappointment over the lack of balance in the series, I am the first to acknowledge that it raises valid questions for our institution. The (TNC) Board of Governors will therefore dedicate its entire June meeting to a frank discussion of our practices, policies, and procedures.”
A week before McCormack’s reply, Pearlstein offered a relevant perspective on what Stephens and Ottaway were starting to report and why the conservation easement movement would eventually need to address a changing public perception:

Let me state upfront that I don’t think the Nature Conservancy’s bona fides as an environmental organization is called into question by having corporate executives on its board of directors and working closely with oil and timber companies...To me, however, the most disturbing revelation of The Post’s series was that even a large and well-respected nonprofit—a pioneer in adopting corporate best practices—turns out to be no more open or transparent than most money-grubbing corporations.

A review of the Conservancy’s annual reports and other public materials, for example, finds no mention of the costly failure involved in trying to bring eco-business to the Eastern Shore of Virginia, or of the legal trouble it got into drilling for gas under someone else’s land. There is no annual listing of business dealings with trustees, directors, and members of their families, or much detail on executive compensation, both of which are required by all public corporations.

Truth be told, the Nature Conservancy is probably better than most nonprofits in terms of transparency and disclosure, which is precisely the point. This remains a sector in which the first instinct is to reveal only what is flattering while keeping the bad news from donors, the public and even from boards of directors, which tend to be every bit as compliant and clueless as those at Enron and WorldCom.5

Pearlstein’s commentary became a dominant perception issue within the movement as media and congressional attention increased the following year. In a Post article published on July 1, 2004, Stephens and Ottaway reported that the IRS would begin scrutinizing deductions for noncash charitable
contributions from conservation easements. It was only a matter of time when smaller land trusts without TNC’s resources and influence would face IRS inquiries, and therefore risk a negative public perception at the local level.

Subsequently, Crenshaw reported in a Post article on April 5, 2005, that the IRS was auditing 50 donors of conservation easements and was reviewing another 400 tax deductions on easements for possible audit. Not coincidentally, just two weeks later Stephens reported in a Post article on April 20, 2005, that LTA announced a plan for an accreditation process for land trust organizations:

“We cannot allow a few bad apples to stop thousands of land owners, working farmers and ranchers, and local communities from protecting America’s natural areas and landscapes,” Rand Wentworth, president of the Washington-based (LTA) alliance, said in a statement. “Accreditation can meet two important goals—to build strong and enduring land trusts and to create a seal of approval that publicly recognizes their good work.”

Despite LTA’s timely announcement for an accreditation initiative, by June 2005 the IRS had established an internal investigation team to pursue nonprofit organizations that violate civil and criminal laws pertaining to the wrongful establishment of conservation easements and subsequent tax deductions from donors. Also in June 2005, the Senate Finance Committee issued an obligatory report on TNC. While the committee applauded TNC for enacting reforms after the Post
series, it recommended that the IRS require nonprofits to disclose all conflicts of interests on contributions, land exchanges, and land sales. Additionally, the committee also recommended the IRS consider the revocation of a nonprofit’s tax-exempt status if there are continual lacks in stewardship of conservation easements.

Pearlstein’s relevant perspective in May 2003 was realized by June 2005 with the actions and reactions by Congress, the IRS, TNC, and the LTA. The conservation easement movement had been under the proverbial microscope for two years, and while the IRS was pressing forward with reviews and audits, the LTA was now motivated for an accreditation program to promote and maintain the importance of land trust organizations. As the LTA’s president Rand Wentworth seemingly inferred in his above statement on the new accreditation program, the movement chose to pursue accreditation as a reputation-building mechanism that would, hopefully, better the public’s awareness and confidence in how land trusts facilitate, enact, and manage conservation easements in their communities.

Increasing the Public’s Understanding

This was not the first time the LTA addressed the need for public awareness with land trusts and the benefits of conservation easements. In Conservancy: The Land Trust Movement
in America (2003), author Richard Brewer commented on the LTA’s 1998 bulletin “Strategic Directions,” co-written by then-LTA president Jean Hocker and Jay Espy, then co-chair of the LTA’s Standards and Practices Committee. Brewer synopsized a four-goal strategic plan that Hocker and Espy wanted the LTA to adopt as the number of land trusts were increasing across the nation and the LTA itself was becoming the premier advocacy group in the conservation easement movement.

Brewer quoted Hocker and Espy’s first goal as, “...increasing quality, professionalism, and effectiveness of land trusts,” which included more training opportunities for board members and staffs. The second goal was to better standardize procedures on how land trusts enact, monitor, and enforce conservation easements—especially for smaller land trusts who could be overwhelmed with the stewardship of numerous conservation easements. Brewer again quoted Strategic Directions and opined on the third and fourth goals:

The third goal is to “identify new opportunities for conservation and expand the tools and incentives available for voluntary land conservation.” This is mostly about public policy, convincing legislators and agencies to do a better job of helping the private side of land protection.

The fourth goal is to “increase the public’s understanding of land trusts and the importance of voluntary land conservation.” As of 2002, this seemed the least fleshed-out of the goals.
Brewer's perspective on the third goal will be discussed further in Chapter 3. His opinion of the fourth goal is verified by the minimal attention on increasing the public's understanding in the 2004 edition of *The Conservation Easement Handbook*, written by Elizabeth Byers and Karin Marchetti Ponte, and co-published by the LTA and the Trust for Public Land, another nonprofit land conservation organization. This 280-page text, with an additional 230 pages of easement drafting guidance, is principally focused on the stewardship aspect of conservation easements, and specifically the importance of enacting easements through comprehensive documentation, maintaining and enforcing easements that are based on that documentation, and ensuring that conservation easements are perpetual.

Byers and Marchetti Ponte wrote on the underlying theme of their text:

But whatever the age, experience, or focus of an easement holder, a well-organized and -funded stewardship program is critical to maintain easements over the years and build credibility with landowners and the community. This book—as well as other publications—can be used as a guide to develop a stewardship program that meets the basic standards and enables easement holders to manage the easements it holds.13

*The Conservation Easement Handbook*, both the first edition and the current second edition, is considered to be one of the most important reference manuals used by land trusts to develop,
enact, and maintain conservation easements. While it may have been likely that the 2003 Post series could not have influenced the 2004 edition because of costly printing schedules in the publishing industry, Brewer’s opinion is evident by Byers and Marchetti Ponti’s limited discussions of public awareness. In fact, there only appears to be four separate paragraphs throughout the entire edition that infer a need for public understanding in the movement: one of which briefly touches on marketing to the community “...to identify, understand, and reach...” citizens who are interested in land conservation, a second promoting that “...volunteers (are) an excellent way for an easement holder to connect...” and increase community involvement, and a third that addresses the need for public representation through their states’ attorneys general offices to ensure easement perpetuity, and therefore the public benefit.\textsuperscript{14}

Fortunately, the fourth paragraph is the most direct. Written in an early chapter that focuses on setting goals in preparation for a conservation easement program, the inference is in its own section, \textit{Criteria Should Ensure that Projects Benefit the Public.}\textsuperscript{15} Unfortunately, it is the smallest section in the chapter, and with only one paragraph:

Both public agencies and private nonprofit organizations are obligated to see that their resource protection
programs provide public benefits. Public agencies exist to serve the people; their programs must presumably meet a public need. Private nonprofits face the same standards of public accountability by virtue of their tax-exempt status. Thoughtfully conceived and well-written easement acquisition criteria that are based on providing public benefits will focus holders on easements that best serve the public.16

This near-omission of addressing the need for the public understanding, through providing a public benefit, should not be faulted: the book focuses on the importance of documentation, monitoring, and enforcement of past, present, and future conservation easements—just as the previous edition had accomplished. Stewardship alone is an extremely important values issue in the movement, and the LTA has worked diligently over the last decade to educate and prepare large and small land trusts to be effective stewards of the easements they hold—which is why The Conservation Easement Handbook remains a vital land conservation tool.

After the Post Investigative Series

During the Post series in 2003 and follow-up articles through 2004 and early-2005, there appears to be a void in literature that addresses transparency, accountability, and the public benefit in the conservation easement movement. However, a perspective on these values issues, albeit limited, is in a book written by William J. Ginn, Investing in Nature: Case Studies of Land Conservation in Collaboration with Business.
At the time, Ginn was the director of the Forest Conservation Program for TNC and a highly respected activist in land conservation. His book, published in 2005, was hailed as a terrific compliment to other finance reference material for land conservation. Even LTA president Rand Wentworth wrote his praise in the book’s back cover, “Land trusts need to make new friends and find new approaches to protect natural areas before it is too late. If you are looking for creative, new ways to save land, read this book!”

Ginn appears to be the first published author to address the Post series and the inherent risk of a changing public perception with conservation easements:

In 2003, The Washington Post, in a series of stinging investigative articles directed at TNC, made allegations of insider sales with trustees and other closely affiliated people, suggesting conflicts of interest in evaluating easement gifts and sales. Recently, TNC adopted new policies that prohibit transactions with trustees, board members, staff, and even corporations of partnerships in which a TNC-related party holds more than 5 percent of the ownership.

Few other land trusts have as strict a policy, but the Land Trust Alliance is currently looking at similar procedures for its members. All this vigilance points to the need for careful legal and financial work as part of any easement or fee sale with federal or state tax deductions or credits. However, it must be noted that the land trust community has completed thousands of conservation easement transactions with well-intentioned donors in transactions that are scrupulously honest: selling only when the conservation value is demonstrable and, for their charitable donation, receiving a tax benefit that is beyond reproach.
Due to Ginn’s professional involvement with TNC, it is understandable that his writing of the *Post* series was more of an acknowledgement of the actions taken by TNC and a proactive perspective of the land trust community. While a comprehensive discussion of absent values issues was not made, Ginn did focus on what was already possible within the conservation easement movement: higher due diligence with legal and financial matters in conservation easements can help the movement to avoid further public and political scrutiny. A full discussion of public transparency and organizational accountability—or even a cursory review of nonprofit business aspects of individual land trusts—was either not relevant to the book’s content or was too sensitive of an issue for Ginn to address.

Pearlstein’s commentary on the movement’s sensitivity in only revealing the positive outcomes, and thus sustain fundraising capabilities, remained seemingly prevalent in the land trust community. The fear of discussing how these nonprofit businesses managed internal matters may have seemed too risky in the competitive and limited market of financial donors. Fortunately, a unique opportunity to publicly discuss and document the viability and values issues of conservation easements was about to begin, but not within TNC or the LTA.
CHAPTER 3

INFLUENCING FEDERAL PUBLIC POLICY

This is an uneasy time for the conservation easement community. Because of alleged abuses widely reported by the news media, both Congress and the IRS are investigating conservation easements and appraisal practices. Congressional proposals emerged in 2005 to substantially reduce tax incentives for conservation easement donations. The time is right to explore conservation easement reforms to avoid jeopardizing their benefits and positive land use effects.¹

—Jeff Pidot, Reinventing Conservation Easements: A Critical Examination and Ideas for Reform

Advocating Values Issues

In February of 2005, the Lincoln Institute of Land Policy (LILP) organized a symposium on the future of the conservation easement movement. Based in Cambridge, MA, the LILP is a national and international land policy think tank, promoting itself as, "A leading resource for policy makers and practitioners...," and, "...addresses issues involving the use, regulation, and taxation of land."² Over the past 30 years, the LILP has become a reputable advocacy group with political, business, and academic ties while also offering fellowship and research support in land use policies and practices.

The symposium discussions and suggested legislative reforms were later documented as an LILP Policy Focus Report, written by Jeff Pidot and titled Reinventing Conservation Easements: A Critical Examination and Ideas for Reform. At the time, Pidot
was an LILP Visiting Fellow with an extensive career as an environmental attorney, activist, and public servant in Maine.

While Pidot’s 40-page report was straight-forward and timely, it was also a generalized analysis to emphasize participant consensus. Although one-third of the document contained oversized landscape photographs to enhance the promotion of land conservation and thereby provide for an easy read, the report was informative and relevant in 2005 despite no specific examples of possible abuses of conservation easement practices. This was understandable and perhaps necessary to secure the attendance, participation, and consensus of conservation easement movement leaders and activists.

There were two dozen participants at the symposium, including the LTA leaders Jean Hocker and John Bernstein who was then-LTA Director of Conservation Programs. There were also prominent movement leaders at the state levels, including Mary Nichols and Jym St. Pierre; and legal scholars Gerald Korngold, Julia Mahoney, and Nancy McLaughlin. Outside of congressional hearings, the LILP symposium was the first and apparently only public forum on conservation easements since the Post series. There have been no subsequent and in-depth public and documented discussions of the conservation easement movement by such a wide spectrum of qualified participants.
The report included direct quotes from several of the participants. These quotes were separated from Pidot’s analysis and printed along the side margins of the document, thereby adding personal opinions to support the report. Both Gerald Korngold and Jym St. Pierre offered specific criticisms on the conservation easement movement’s lapse of values issues. Korngold commented, “There is a lack of transparency and a particular concern about the identity and actions of easement holders [e.g., nonprofit land trusts] who purport to act in the public interest. What kind of accountability do they have to the public?” St. Pierre offered, “Public transparency is important. When conservation easement deals are made, the public often has no opportunity to see what’s going into them. Even when there has been direct infusion of public money, there often is no meaningful opportunity for public input. The quality of many easements would improve if there were.”

Julia Mahoney was equally critical when concerned about the many different sizes, locations, types, and uses of conservation easements. Mahoney commented, “I think bluntness is needed concerning the public benefits that conservation easements generate. They vary enormously, both in terms of magnitude and distribution.” Mahoney’s comment supported Mary Nichol’s observation, “As a state official in a pro-conservation
administration, I found it hard to work with dozens of small, local land trusts to help them achieve their goals, because the lack of any common standards and practices.”

John Bernstein of the LTA offered a proactive approach to these values issues and other problems, albeit understandably generalized given the venue and the ongoing congressional inquiries. Bernstein offered, “The land trust community should shed the viewpoint that its acquisitions have no relationship to the government or public at large. We need to cooperate with government when we take easements, consult master plans, and make better judgments about whether they’re publicly valuable.”

These comments and the symposium’s suggested reforms were aligned under the values issues of transparency, accountability, and the public benefit. This corresponds to the criticisms on absent values issues that were specifically noted by Korngold and St. Pierre. Pidot listed the symposium’s suggested reforms:

As described in this report, reforms in both federal and state laws should respond to deficiencies in conservation easement design; lack of uniformity in easement terms; lack of public accessible record keeping; lack of public transparency and input in easement creation; lack of public accountability in determining public benefits; concerns about the institutional capacity of easement holders; ambiguities in appraisal and other tax standards that determine public subsidies; uncertainties about processes of easement termination, amendment, and backup enforcement; effects on public land acquisition, regulation, and other programs; and issues related to environmental justice and equity."
Equally impressive is the consensus goals from the symposium’s participants, infusing the same values issues and challenging government agencies, land trusts, and landowners to work for a better conservation easement movement:

If conservation easements are to serve future generations as promised to the public that subsidizes them, they must achieve three essential goals: the process by which conservation easements are created, appraised, and enforced must be rigorous, publicly transparent, and accountable; conservation easements must be designed to create meaningful and durable public benefits; and landowners and land trusts must fulfill their responsibilities to implement, monitor, enforce, and uphold public easements in the future to secure their public benefits.10

The consensus goals are supported by Nancy McLaughlin’s comment on enacting conservation easements in light of the public benefit, “It’s very important for us to keep in mind that the value inherent in a conservation easement, whether it’s purchased or donated, belongs to the public and should continue to be used for public conservation purposes.”11 Her contention, perhaps extreme for land trusts and landowners who may view conservation easements without any direct public benefit, highlights the debate over how private lands with these types of easements should also be granted some type of public use.12

McLaughlin also seemed to push farther when the symposium discussed the LTA’s intent to accredit land trusts. McLaughlin opined, “An accreditation program for easement holders has to be mandatory. That will, and I think should, slow the pace of
conservation easements in this country by weeding out week and abusive transactions.”\textsuperscript{13} Jean Hocker agreed, “I think the time for mandatory accreditation of easement holders has come. Not every land trust should hold easements, but those that do should be held to account. Community-based organizations can play many important roles that do not involve holding easements.”\textsuperscript{14} However, Bernstein understandably disagreed, “(The) LTA is organizing an accreditation program for land trusts. We’d rather not have it mandatory for tax deductions because it’s emotionally fraught as it is. We need to recognize that it will take time for 1,500 land trusts to qualify for accreditation.”\textsuperscript{15}

The comments on accreditation from McLaughlin, Hocker, and Bernstein were noteworthy and Pidot reiterated their concerns of mandatory verses voluntary accreditation.\textsuperscript{16} Pidot also wrote of the possibility of a more mandatory process, “If (the) LTA’s (voluntary) system is sufficiently rigorous, compliance could be imposed by either the IRS or state laws as prerequisite for holders.”\textsuperscript{17} Unfortunately, Pidot did not expand on the discussion of accreditation, except to note that it could help land trust stewardship, “A meaningful accreditation and oversight system could respond to (conservation easement) holder failure to implement adequate monitoring and enforcement (stewardship).”\textsuperscript{18} There is no other specific mention in the
report on accreditation, and it was not included in the symposium’s suggested reforms and consensus goals.

Furthermore, the report’s summary conclusion statement only advocated for reforming laws and regulations, and not necessarily the behavior and actions of land trusts and landowners when influenced by tax incentives. Pidot wrote, “Many conservation easement issues derive from the laws and regulations that govern them...To find solutions to these problems, we should reform the laws and regulations with the participation of land trusts, governments, and landowners.”

The omission of accreditation could easily be dismissed when focusing on the report’s lengthy list of reforms and the three consensus goals. However, the participant’s comments and the discussion of the impending accreditation program should have, at the very least, offered a preview on how interest groups like the LILP, the LTA, and the LTAC may later interact with Congress and the IRS as it pertained to accreditation and, hopefully, values issues.

**Advocating Conservation Easements**

Unfortunately, the LILP has not coordinated a follow-up discussion on conservation easements or even testified before Congress on the conservation easement movement, and the LTAC has deferred any discussion of public policy—even if it relates to
accreditation. In other words, the LTA has been the only prominent interest group to publicly advocate for the conservation easement movement and accreditation since 2005. Individual land trusts, including TNC, have no doubt communicated to Congress and the IRS over the past four years on the benefits of conservation easements—but probably not at the level of the LTA’s advocacy activities in the public arena.

While the LTA’s four-year leadership at the federal level should be no surprise, the LILP symposium does present a valid question: are the values issues of transparency, accountability, and the public benefit also a public part of the LTA’s advocacy efforts for accreditation? A cursory review of available online documents and media releases from the LTA offers no conclusive answer, and it would be unfair to presume otherwise.

Perhaps the only reasonable way to answer this question is to understand the publicly known advocacy actions that the LTA took over the past four years. While this may be stating the obvious, it is important to acknowledge that an organization like the LTA was not only created to assist and educate all types and sizes of individual land trusts, but to also serve these same land trusts by advocating for the protection of lands and natural habitats from development, agricultural and industrial misuses, and illegal activity.
The LTA seemingly meets the premise of an organization committed to environmental justice, and therefore possesses many values in the pursuit of fulfilling their mission. A noteworthy example includes their annual conference, or LTA Rally, with dozens of seminars and open forum discussions that focus on land stewardship, community involvement, leadership development, ecological awareness, land conservation success stories, and even failures in conservation as teachable opportunities.22

Aside from their annual Rally, a major part of the LTA’s mission is to advocate for the continuance and expansion of federal tax incentives for conservation easements. The LTA’s Public Policy Director, Russ Shay, appears to have spent most of his staff’s time and resources over the past four years in extending the federal tax incentives for conservation easements.23 Shay’s commitment is necessary for the conservation easement movement to continue its land preservation strategy: marketing tax incentives as a motivator for interested landowners to increase the number of easements and, therefore, reduce land development or the displacement of natural habitat.

Traditionally, Congress has been reluctant to make permanent any tax incentives for conservation easements. Legislation throughout this decade have included sunset clauses to the tax code that involve conservation easements as noncash
charitable contributions, thereby setting an expiration date for enacting an easement to qualify for a tax incentive.²⁴ To the consternation of the conservation easement movement, the Post series provoked intense congressional inquires on whether or not to let these tax incentives expire. Yet, Congress has always extended the sunset clause—including the last extension in early 2008 that expires at the end of 2009.²⁵

Using federal tax incentives to stimulate the enactment of conservation easements is an undisputed win-win program for many Senators and Representatives—for both Democrats and Republicans alike. Whether it is saving land from development without local governments using municipal funds to buy properties, preserving private property near federal land without procurement, or a landowner enjoying a tax-benefit opportunity to conserve private land, popularity for the conservation easement movement has grown in Congress because of constituents who directly benefit from tax incentives. Other constituents, such as neighboring landowners, environmentalists, and the stereotypical not-in-my-backyard “NIMBY” suburbanites, often embrace the intended results of nearby private properties placed under conservation easements, thereby providing broad public consensus and enabling Congress to continually renew tax incentive legislation.
Throughout 2009, Shay and the LTA President Rand Wentworth were not only working to extend the current sunset clause, they were also urging Congress to make permanent the conservation easement tax incentive program. The advocacy for permanent tax incentives has been a long desired goal for the LTA since tax incentives began for conservation easements, and Shay and Wentworth have recently pushed this issue with Congress by actively enlisting individual land trust members to lobby Congress. On July 23, 2009, they hosted a well-publicized telephone conference call with the sole objective of encouraging the LTA membership to push their respective Senators and Representatives to co-sponsor legislation that would make permanent the tax incentives on conservation easements.26 Perhaps understandably, this conference call was not centered on values issues but rather on grassroots activism to get members to contact their elected federal officials. However, exterior conflicts placed on the conservation easement movement were communicated during Shay’s remarks. Shay noted that the movement was in a “tumultuous time” with a strained economy, a decade-old mission for permanence of the federal tax incentive in spite of increasing federal deficits, and recent IRS involvement. Shay went so far as to consider whether or not
the LTA membership would soon need to go to Congress to “change the rules” on the IRS.  

Shay was not only concerned of the IRS authority over noncash charitable contributions on conservation easements, but also on the IRS’ new reporting requirements for nonprofit organizations. All qualified nonprofit organizations who seek tax-exempt status have always been required to report their respective income tax statements on the IRS tax Form 990. Using and understanding this IRS form is nothing new for nonprofit organizations since the last update to this form was in 1979.

Unfortunately, there have been a growing number of nonprofits who have made it difficult for the IRS to review and, if needed, audit their returns to ensure compliance as tax-exempt status organizations. Just like publicly traded corporations and private small businesses, nonprofit business organizations can also find themselves under scrutiny over basic financial transparency and managerial accountability. The Wall Street Journal reported on April 6, 2009, “The IRS has intensified oversight of charities recently, through reports and an overhaul of nonprofits’ annual tax form.” The report synopsized congressional and IRS concerns over nonprofit activities:

Nonprofit (executive) pay packages pale in comparison to some of those doled our to Wall Street executives. But a
series of charity scandals in the past few years has focused attention on executive pay. Republican Charles Grassley of Iowa, the ranking member of the Senate Finance Committee, has questioned some nonprofit executive pay practices. Others have said charities’ tax-exempt status—essentially a large taxpayer subsidy—could give rise to more scrutiny in the current political climate.

Ms. Lerner (Director of Tax-Exempt Organizations) of the IRS said the agency’s redesign of charities’ annual tax form—known as Form 990—will make it easier for people to find information on executive pay. That makes it incumbent for charities to pay close attention to their pay policies, she said.29

Bruce D. Collins, an attorney in the nonprofit industry, was among the first to address congressional and IRS concerns in a March, 30 2005 commentary in the journal Corporate Legal Times.30 Collins wrote specifically on the IRS Commissioner Mark Everson’s 14-page reply letter to United States Senator Charles Grassley’s inquiry on the agency’s compliance challenges in the nonprofit sector:

The commissioner (Everson) then proceeded to cite a litany of specific abuses. He mentioned charities that were created to benefit only their donors or their founders, and singled out promoters of such shady arrangements. He noted the increased number of credit-counseling organizations that seemed more interested in providing fee-based services...than in helping debtors. He fingered non-profits engaged in political activities. He highlighted the misuse of tax deductions for conservation easements that nevertheless permitted lucrative development...He cited the persistent problems of the tendency of taxpayers to over value their noncash contributions such as donations of cars and clothing. He chided the nonprofits that gave their executives much more than reasonable compensation—especially those that let the executives set their own compensation. And so on.31
Everson’s inclusion of conservation easements was an acknowledgement that Congress and the IRS had not forgotten the Post series and subsequent hearings, and Collins concluded by opining, “...there is something of a gathering storm on the Hill that could engulf the non-profit sector with new regulation.”32 A Republican, Grassley was then-Chairman of the Senate’s Committee on Finance in 2005, responsible for oversight of the IRS’ agency authority which included the non-profit sector. The Ranking Member for this committee during that period was Democratic Senator Max Baucus. Even though Grassley and Baucus later switched committee leadership roles in January 2007 due to a change in Senate majority, both maintained their commitment and influence to push for non-profit compliance.

Everson would later highlight the emergence of regulations from new laws in a June 28, 2007 IRS letter to Grassley and the Senate Finance Committee, “Since our March 30, 2005 letter, the Congress has enacted the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) and the Pension Protection Act of 2006 (PPA), two important pieces of legislation that addresses a host of problems in the tax-exempt sector, including many highlighted in the 2005 letter. We appreciate your leadership, support, and assistance, as well as that of Chairman
Baucus and other members of the Committee, in helping us keep this area compliant."

Congressional and the IRS concerns and actions over nonprofit organizations led to the eventual redesign of the Form 990 in 2008, with the IRS mandating non-profits to use the revised form under a phase-in program for the 2008 tax year and later returns. The redesigned Form 990 details a more extensive reporting of all assets, compensations, and relationships between board members, staffs, and the community. The IRS deemed the old form as an ineffective snapshot of an individual nonprofit that qualified for tax-exempt status, and touted the new form as a comprehensive and uniform report of all nonprofit activities.33 Ironically, the IRS formally announced the new Form 990 on August 19, 2008, only a month before the 2008 LTA Rally. While the LTA and the LTAC were finalizing preparations to announce the 39 inaugural accredited land trusts, the IRS had officially taken steps to better infuse transparency and accountability for non-profit organizations—including land trusts.

At the 2008 LTA Rally, there was little formal discussion of the new Form 990 because the phase-in details and form instructions were not finalized. Most land trust board and staff members who attended were aware that this new form would
be required for the 2008 tax year, and during one open-forum discussion some attendants were concerned over a perceived invasiveness of the new form. Others worried that the new form would make it difficult for individual land trusts with little resources to fully comply because of the perceived time commitment and the documentation involved.\textsuperscript{34}

During the same forum, the IRS' primary intent of compliance was not mentioned in terms of the parallel efforts of the LTAC to increase transparency and accountability. The LTA likely knew of the IRS’s newfound attention toward nonprofit compliance in early 2005, when Grassley and Everson began their dialogue on nonprofit organizations and tax-exempt statuses. Yet, out of necessity or coincidence, while the LTA was directing the LTAC in 2007 to press on with accreditation as a method to earn the public trust of nonprofit land trusts, the IRS was publicly beginning to plan and enact new requirements for all nonprofit organizations to do the same.

\textbf{Risk for Values Conflicts}

The LTA held a reception on June 10, 2009 to “Honor Champions of the Easement Incentive.”\textsuperscript{35} Several Senators and Representatives were honored for their past involvement and current co-sponsorship of legislation to make permanent the tax
incentives for conservation easements—including Baucus and Grassley. Grassley praised:

I also want to take this opportunity to thank Rand Wentworth and the Land Trust Alliance for their leadership in setting standards for conservation organizations. At a time when...a shadow [was cast] on all land conservation organizations, the Alliance took the bulls by the horns. Instead of waiting to see what the legislative outcome might be, they decided to proactively pursue the path of self-regulation. The 2004 revision of the Land Trust Standards and Practices document promotes transparency, accountability, and compliance with the tax laws. I wish other umbrella groups would work together to develop best practices for their own sectors.

However, at the 2008 LTA Rally there was no advocacy priority to work with Congress and the IRS on nonprofit compliance. While there have been yearly half-day or full-day seminars at the LTA Rally on federal tax laws for conservation easement incentives, there have been limited opportunities to educate land trusts on nonprofit tax issues and compliance. Even at the 2009 LTA Rally, there were no scheduled seminars or discussion forums specifically for nonprofit organizations and the new tax Form 990.

In other words, the LTA maintained the singular strategy of accreditation as the principal key to earning the public’s trust in land trust organizations and practices. As discussed in Chapter 2, Wentworth’s April 20, 2005 press release on a new accreditation program indicated, “Accreditation can meet two important goals—to build strong and enduring land trusts and to
create a seal of approval that publicly recognizes good work."⁴⁰ Yet, as also discussed in Chapter 2, the IRS was beginning to investigate nonprofit organizations that violate civil and criminal laws that pertain to the wrongful establishment of conservation easements and subsequent tax deductions from donors. At the same time in 2005, as discussed earlier in this chapter, Congress and the IRS were beginning to move forward with new laws, regulations, and a revision of the tax Form 990 to better ensure compliance, accountability, and transparency of all nonprofit organizations who seek tax-exempt status—including land trusts with membership in the LTA.

Unquestionably, the peripheral effect of the new tax Form 990 and the direct effect of new IRS regulations on conservation easements led to Shay’s critical comments on the IRS during the aforementioned July 23, 2009 advocacy conference call. Unsurprisingly, the proposed LTA’s 2010 advocacy policy priorities changed from the 2009 priorities (see Figure 3.1).

In an October 1, 2009 email sent by Shay to interested land trust advocate recipients, an attached word document titled “2010 Policy Priority Options” presented by the LTA’s 14 member Policy Advisory Council, all of whom are members of land trust boards and/or provide legal advice to land trusts, offered a
consensus perspective on each of the proposed 2010 policy priorities, including the number one priority:

1. Working to improve IRS administration of the rules governing conservation donations. Over the past several years, the IRS has completely changed its approach to enforcement of the law governing charitable donations—with particular attention to donations of conservation easements. The IRS initiated audits of hundreds of conservation easement donations in the past several years, starting in Colorado. Now, easement donors are being audited all over the county. How these cases are resolved will change the rules that we live by. In addition, the IRS has increased its oversight of charities, resulting in changes to...the Form 990, and a new and much more aggressive enforcement stance. There are real risks that new policies and practices at the IRS could have significant impact on land trusts, and on our ability to conserve land. The IRS is a large and complex bureaucracy, and both their policy-setting and audit processes are slow. We can expect this issue to be of great importance to land trusts for the next several years—or longer.

Figure 3.1. The LTA’s 2009 and 2010 Policy Priorities

2009 Advocacy Policy Priorities (Updated)
#1 Making the 2006 Conservation Tax Incentive Permanent
#2 Creating a Conservation Incentive in Estate Tax Reform
#3 Improving IRS Administration of Conservation Donation Rules
#4 Framing Land Conservation as an Important Response to Climate Change


2010 Advocacy Policy Priorities (Proposed, Top Four)
#1 Working to Improve IRS Administration of the Rules Governing Conservation Donations
#2 Making the 2006 Conservation Tax Incentives Permanent
#3 Create a Conservation Incentive in the Estate Tax Reform
#4 Make Aid for Land Conservation an Element of Global Climate Change Legislation

Source: LTA ADVOCATES email list, subject “Alert: Help Set Alliance Policy Priorities”, sent October 1, 2009
Perhaps it is no surprise that the third priority of 2009 became the top proposed priority for 2010, and the language for the rationale of the 2010 priority marked a new, public acknowledgement to confront the IRS' efforts for compliance, accountability, and transparency. This presents a risk for values conflicts—a risk that was addressed in 2005 with the LTA’s formation of the LTAC and Wentworth’s hope that the accreditation of land trusts would prevent further congressional inquiries and IRS regulation (see Figure 3.2).

**Figure 3.2. Risk for Values Conflicts**

1) Freedom (confidentiality) versus Transparency
2) Autonomy (self-regulation) versus Accountability
3) Agency Authority versus Compliance
4) Public Benefit versus Public Trust

With Grassley’s above mentioned praise at the June 10, 2009 LTA reception, there is seemingly a clear disconnect between the
efforts of the Senate Finance Committee, the IRS, and the LTA. Grassley’s comments were certainly a welcome reiteration of the LTA’s intention for the LTAC and the accreditation process. Yet, the publicly available communications between Grassley’s committee and the IRS presented a different approach to resolving the values issues of accountability, transparency, and the public trust.

Moreover, congressional pressure to ensure regulatory compliance not only influenced the IRS to better prioritize investigations into congressional easement donations, but also to better prioritize the regulation of nonprofit organizations who seek tax-exempt status. Whether intentional or not, these investigative and regulatory priorities that were initiated in 2005 became an effective two-pronged spear that would affront the land trust movement by 2009, consequently making the IRS’ actions a top LTA advocacy priority by 2010.

Shay and members of the LTA Policy Advisory Council, through their respective public comments and the 2010 policy initiatives document, clearly inferred that the IRS could harm the growth of land trusts and therefore harm the LTA’s mission of increasing and sustaining conservation easements in this nation. As the Director of Public Policy for the LTA, Shay’s desire to lobby Congress to “change the rules” on the IRS’
agency authority over conservation easements and nonprofit organizations must be assumed as representative of the majority of the LTA membership—especially given the 2010 policy priority document’s authors (the 14 member Policy Advisory Council) and their approved verbiage of the top priority.

With the LTAC accreditation process in its second formal year and with the LTA as the principal public policy advocate for the LTAC, the policy arm of the LTA had acknowledged that stronger advocacy approaches were needed in 2010 and beyond. With such an acknowledgement, the LTA would not only need to convince Congress that individual land trusts could effectively govern themselves, but also prove to the IRS that land trusts were capable of regulating themselves through LTA membership and organizational authority. This also presents a risk for values conflicts if the LTAC’s process and growth of accredited land trusts are not part of the LTA’s advocacy efforts. Because the central, well publicized premise of accreditation was to earn the public’s trust through transparency and accountability of individual land trusts, an awareness of the LTAC and the LTA’s intent for accreditation has become well known to congressional leaders and the IRS. As a result, accreditation procedures and the LTAC’s commitment to success may likely be analyzed, and
perhaps eventually scrutinized, by those in the movement who are working to influence federal public policy.
CHAPTER 4
THE LAND TRUST ACCREDITATION COMMISSION

The Program Design Steering Committee worked over the last year to develop an accreditation program that is responsive to the needs of land trusts and accessible to land trusts all across the country. We solicited and reviewed more than one thousand comments from the land trust community and made our recommendations based on this input. We are pleased that the Land Trust Alliance accepted our recommendations and is moving forward with an accreditation program that will help ensure the public’s confidence in voluntary land conservation and build a stronger land trust community.¹

—Larry Krueter and Jay Espy, Co-chairs
Program Design Steering Committee

Addressing Values

In October of 2005, the LTA released an eight-page pamphlet entitled, An Introduction to the New Voluntary Land Trust Accreditation Program.² This document concluded a 12 month effort by the LTA’s Program Design Steering Committee, a 19 member panel representing large and small land trust organizations throughout the country. Their findings were also a follow-up to another eight-page pamphlet released by the LTA in July 2005. The July pamphlet announced administrative concepts for accreditation and an agenda for two August 2005 conference calls with land trusts to discuss recommendations for an accreditation program.³

The content of these pamphlets provide an easy-read synopsis of the LTA’s efforts in promoting the introduction of voluntary accreditation, and it also shows that none of the 19

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steering committee members’ names were participants of the February 2005 LILP symposium. As such, there was no apparent continuance of the symposium’s values discussion in the LTA pamphlets, let alone any acknowledgement of the symposium. The only exception to this was the joint statement, in the above epigraph, by Larry Krueter and Jay Espy. Even then, their goal of public confidence is the only close association with specific values issues that were identified by LILP symposium participants.

However, both pamphlets did point to the LTA’s Land Trust Standards and Practices, Revised 2004 as a means to communicate better ethical practices for land trusts interested in accreditation. Specifically, “Land trusts applying for accreditation would be required to adopt [the LTA’s] Land Trust Standards and Practices as their operating guidelines and to complete a self-assessment...However, applicants would only need to demonstrate compliance with the [selected] core practices.”

This statement in 2005 ought to have raised two red flags for the next five years. The LTA was signaling that only certain practices from 12 standards and 88 practices of the Standards and Practices would be utilized to determine the accreditation of a land trust. In other words, the LTA would be omitting a number of practices for accreditation consideration at the same time they were advocating for the use
of all Standards and Practices as a guideline for all land trusts—irregardless of accreditation.

This contributes to the second raised flag. Any concerns over how accreditation may be determined when using only selected practices may be compounded if known values issues are not publicly addressed during the planning, implementation, and continuance of the accreditation program. The absence of a values discussion in both 2005 pamphlets may be understandable if the primary intent of those documents were to simply inform land trusts of the administrative process of accreditation. Yet, with the exception of Wentworth’s April 2005 press release on the LTA’s plans for a new accreditation program, there are no other known publicly available documents or recorded discussions of values issues, as it relates to accreditation, from the LTA or the LTAC until early 2008—one year after the accreditation pilot program concluded and three years after the LILP symposium.

The 53-page March 2008 LTAC publication, Application Handbook: Companion to the Application for Land Trust Accreditation, is almost exclusive to the administrative and technical aspects of the accreditation application process. However, two pages of the Applicant Handbook include a commission’s vision statement and details three sole Commission
Values that finally resonates with the 2005 LILP symposium’s values issues (See Figure 4.1).

While there is a clear acknowledgement of congressional, media, and public concerns over accountability and the public trust in the Commission Values, there is no mention of transparency. This raises yet another flag, as the lack of transparency to the public was a significant contributor to the Post expose and subsequent congressional scrutiny. Even the value statement on integrity heightens this concern, as it prioritizes confidentiality of individual land trusts over any apparent discussion on transparency.

Figure 4.1. Commission Values

**Integrity**
To be clear and honest in our communications with land trusts, the public, and others; to build trust in, and respect for, the accreditation program; to respect the confidentiality of data provided to us.

**Accountability**
To operate and accreditation program that is fair and makes consistent decisions; to learn from and respond to the land conservation community, the public, and other shareholders.

**Service**
To manage an accreditation program that is efficient and makes productive use of participants’ time; to work cooperatively with land trusts of all types and sizes as they go through the accreditation process.

The commission’s vision statement also omits transparency, and seemingly injects self-regulation in its place:

Our vision is that in the future land trusts have made dramatic gains in land conserved, membership, practices and overall effectiveness. The continuing increase in citizen leadership and professionalism in land trusts reflects the growth of the movement into a well-respected force serving the public interest. The growing pool of accredited land trusts reflects the broad diversity of organization sizes, missions, and geography—united by strong ethical practices and by a commitment to sound transactions and the long-term stewardship of land and conservation easements. The land trust accreditation program is a model of self-regulation in the nonprofit sector. It is run by a commission that reflects and responds to its diverse constituents and has earned the trust of land trusts, regulators, funders and others. As a result, land conservation is widely supported by private philanthropy and government policies, and more land is permanently conserved.

The vision statement does compliment integrity, accountability, and service; and it aspires to associate an intention, or at least inference, for compliance and the public benefit with the administrative and technical aspects of the accreditation process. Yet, the absence of advocating for any public or organizational transparency within individual land trusts and/or the LTAC itself dampens the LTAC’s intent to earn the public trust. Whether it be the LILP’s participants call for transparency, Pearlstein’s commentary in the Post for a more transparent process, or the correspondences of Grassley and Everson, transparency in some form of public openness has been a major factor in the overall scrutiny of land trust organizations.
Additionally, by not clearly identifying any level of transparency, a larger question mark looms over the accreditation process and newly accredited land trusts when the very same vision statement fragments the intent for earning the public’s trust into different aspects of the public, specifically, “...the land trusts, regulators, funders, and others.”9 This is merely indirect openness to the public, and it risks diminishing the true meanings of transparency and the public trust in all the aforementioned values discussion.

This categorization also contrasts the LTAC’s September 20, 2008 press release on the inaugural accreditation (see epigraph on page 1), where earning the public’s trust is touted as the primary intended goal of accreditation, “Today land trusts join museums, hospitals, universities and other nonprofit institutions that demonstrate that they deserve the public’s trust through rigorous accreditation programs.”10 The same verbiage is also in a February 2009 press release, announcing the addition of newly accredited land trusts.11 Yet, the vision statement of 2008, as it remains virtually unchanged on the LTAC website, still includes the verbiage, “It is run by a commission that reflects and responds to its diverse constituents and has earned the trust of land trusts, regulators, funders, and others.”12
Unfortunately, any questions over the intent for deserves the public trust or earned the public trust, and the omission of transparency are further convoluted with the May 27, 2009 and August 5, 2009 LTAC press releases, also announcing the addition of more newly accredited land trusts. The statements on public trust of both press releases are nearly identical, yet different than the September and February press releases and the LTAC vision statement—and reaches beyond the intention made in that vision statement. The May 27, 2009 press release advocates, “The accreditation seal is a mark of distinction in land conservation signifying that the accredited group meets national standards for excellence, upholds the public trust and ensures that conservation efforts are permanent.” The August 5, 2009 press release states “upholding.”

This contrast may be considered benign when all the aforementioned LTA and LTAC documents advocate for the beneficence of the land trust movement, and therefore offer a presence of values. However, the conflicting notions of deserves vice earned vice upholds vice upholding the public trust, particularly when considering local level influences where most land trusts are involved, is arguably detrimental to the initial success of accreditation and for any possible long-term assurances of limited scrutiny by Congress and the IRS. To make the assertion that, after just one year of accrediting a
small number of land trusts, accreditation itself upholds (or is upholding) the public trust seems premature. Only the LTA and the LTAC rhetoric attempts to prove trust—with the intent of confidentiality and self-regulation, and without any appearance of public transparency.

Confidentiality and Self-Regulation

During the 2008 Rally in Pittsburgh, emphasis was added on the assured confidentiality of land trusts and the premise of self-regulation during the information seminar on accreditation and the roundtable discussion with newly accredited land trusts. These events were respectively titled “Building On Your Organization’s Success Through The Land Trust Accreditation Program” and, “Putting Your Best Foot Forward: Process, Tips, And Pointers For Assembling A Land Trust Accreditation Application.”

Relief and gratitude for the LTAC’s confidentiality were communicated by panelists throughout the roundtable discussion, and attendees who were interested in the possible accreditation of their respective land trusts had peppered the discussion with concerns over the privacy of financial contributors and donors of conservation easements, and the assurance that the accreditation process itself would remain confidential. No doubt, prioritizing confidentiality in the commission’s integrity value statement reflected prior concerns from land
trusts, and will likely remain a concern so long as any outside authority, including the LTAC, selectively reviews and critiques their private records on nonprofit fundraising, internal management, and easement documentation.

During the 2008 information seminar, any discussions of specific issues that pertained to the accreditation process and the Standards and Practices were ambiguous in nature; again, confidentiality of the accreditation process and those land trusts seeking accreditation was prioritized. The lecturer of the seminar and the participants in the separate 2008 roundtable discussion only referred to a few handouts which offered cursory guidelines for 8 of the 37 practices that the LTAC used during the accreditation process. These 37 practices were referred to as indicator practices (see Appendix D for list of the 37 indicator practices).

A similar seminar and separate roundtable discussion were held during the 2009 LTA Rally in Portland, Oregon. During both events, the LTAC provided last year’s handouts and additional handouts which offered cursory guidelines to 7 more indicator practices, thereby giving generalized information to 15 of the 37 indicator practices. Another handout was also offered to participants that aligned each of the 37 indicator practices with a recommended LTA educational curriculum—undoubtedly to better inform and prepare prospective land trusts
who may seek accreditation. While both the 2009 LTA Rally seminar and roundtable discussion appeared to be more informative than the previous year, there was no apparent documentation or even references to additional resources on how the LTAC used only 37 of the 88 practices in the Standards and Practices to measure and evaluate land trust accreditation applicants.

Before the 2007 accreditation pilot program, the LTAC had already narrowed down the utilized practices to 42. This list was again decreased to the current 37 indicator practices and with documented rationale, just prior to the first round of the 2008 inaugural accreditation process (see Figure 4.2). The LTAC’s rationales for why these five practices were removed from the indicator practices appears to be the only known or accessible public documentation on why any of the 51 practices are currently not measured by the LTAC (see Appendix E for list of the 51 non-indicator practices).

The most striking verbiage in the respective rationales are, “The balance of this practice is difficult to measure effectively in a paper-based process, without being on sight and examining a land trust’s donor base,” in Accountability to Donors; and, “...this practice is difficult to evaluate without being on sight,” in Land Stewardship Administration. While this honest admission of difficulty in measuring or evaluating
these two practices should not diminish the credibility of a confidential accreditation process, the acknowledgement that on-site visits and easy access to a land trust’s donor base may later question future credibility of the LTAC’s touted self-regulation if an accredited land trust faces legal or media scrutiny—especially at the local level.

Figure 4.2. Five Removed Indicator Practices and LTAC Rationale

**Standard 2, Practice D: Records Policy**
The elimination of this practice removes duplication with 9G, Recordkeeping, and allows the Commission to review applicant’s record policy and focus on appropriate recordkeeping.

**Standard 5, Practice B: Accountability to Donors**
The Commission found that partial evidence for this practice was often included under Standard 10, Tax Benefits. The balance of this practice is difficult to measure effectively in a paper-based process, without being on site and examining a land trust’s donor base.

**Standard 8, Practice E: Site Inspection**
While it is very important for a land trust to conduct a site inspection before accepting a project, evidence of the site inspection is in other practices, such as 8B, Project Selection and Criteria, and 8G, Project Planning.

**Standard 9, Practice L: Transfers and Exchange of Land**
The Commission found that the steps a land trust takes with respect to transfers and exchanges of land are similar to those reviewed in other parts of the application, such as 8G, Project Planning, or 9K, Selling Land or Easements.

**Standard 12, Practice E: Land Stewardship Administration**
The Commission learned that this practice is difficult to evaluate without being on site. By focusing on recordkeeping in Practice 9G [Recordkeeping], the Commission can ensure that the land trust is keeping adequate records for its fee ownerships.

*Source: www.landtrustalliance.org/learning/accreditation/2008-indicator-practices (accessed September 18, 2008).*
The purpose of the *Standards and Practices* and the use of only certain practices by the LTAC seemingly conflicts with how the public trust for accreditation may be earned (or uphold) during such a short period. Like the commission’s vision statement, the introductory sentence to the *Standards and Practices* prefaces ethical content and administrative verbiage, “Land Trust *Standards and Practices* are the ethical and technical guidelines for the responsible operation of a land trust.”

Therefore, the LTAC’s contention for the public trust seems parallel, or at least in relation, to how the LTAC publicly utilizes *Standards and Practices* and how transparent their accreditation process is in the public eye. The *Standards and Practices* introduction continues:

The continued success of land trusts depends both on public confidence in, and support of, the conservation efforts of these organizations, and on building conservation programs that stand the test of time. It is every land trusts responsibility to uphold this public trust and to ensure the permanence of its conservation efforts. Implementing [*Standards and Practices*] helps land trusts uphold the public trust and build strong and effective land conservation programs. The [LTA] requires that member land trusts adopt [*Standards and Practices*] as the guiding principles for their operations, indicating their commitment to upholding the public trust and the credibility of the land trust community as a whole.

During the 2008 seminar and the separate roundtable discussion, the use of the *Standards and Practices* was not only professed as the key to the accreditation process, but also the primer for current and future self-regulation of accredited land
trusts; transparency was never mentioned or asked about during both events. While it is important to point out that the new accreditation process was overwhelmingly supported by every roundtable participant as comprehensive and scrutiny-driven, they were also relieved that the accreditation process itself consisted of only 37 of 88 LTA guideline practices and promoted self-regulation to ensure confidentiality of donors; a seemingly un-transparent process that remains as of December 2009.

**Transparency and Accountability**

Again, these 88 guideline practices were revised by the LTA in 2004 after the *Post* expose and the resultant congressional hearings, and only 37 *indicator practices* are currently utilized to evaluate each land trust accreditation applicant. Perhaps the LTAC deemed the other 51 LTA practices as not easily measurable or were redundancies to the 37 chosen LTA practices—an extrapolation of the LTAC’s rationales to dismiss five practices after the 2007 pilot program. However, the LTAC’s use of only 37 *indicator practices* and the absence of 51 other practices may later give rise to public misperceptions of the LTAC’s current desire for confidentiality and self-regulation—especially with the LTA’s renewed commitment toward the public trust after the *Post* series. Among these 51 LTA practices are eight seemingly important practices that express the values of transparency and accountability (see Figures 4.3 and 4.4).
Given the LTAC’s rationale for why the five aforementioned practices were removed as indicator practices after 2007, these eight non-indicator practices may be assumingly deemed as too difficult to measure or redundant with an approved indicator practice(s). Yet, these eight practices were easily selected for this discussion due to their clear objectives of public transparency and organizational accountability. Without any public or accessible documents on the LTAC’s rationales, it is impossible to accurately discern whether each of these eight practices were excluded as indicator practices because of the LTAC’s difficulty in measuring or evaluating, or due to redundancy, or all of the above?

By just looking at the titles of the non-indicator practices in Appendix E, it can be understandably assumed that the other 46 practices likely fall into one of the LTAC’s categorizations as either difficult to measure or evaluate, and/or redundant to one or more indicator practices. However, the practices in Figure 4.3 are not only transparency-directed, they are also messages to land trust organizations: the public’s trust cannot be achieved without inclusive public outreach and consistent, credible representation of public policy issues—irregardless of accreditation status. Similarly, the practices in Figure 4.4 are not only accountability-driven, they are also reminders to board members, staff directors and members, and
volunteers to be consistently responsible for land trust management practices and readily responsive to community interests and inquiries—also irregardless of accreditation status.

Figure 4.3. Non-Indicator Practices and Public Transparency

Standard 1, Practice C: Outreach.
The land trust communicates its mission, goals, and/or programs to members, donors, landowners, the general public, community leaders, conservation organizations and others in its service area as appropriate to carry out its mission.

Standard 2, Practice E: Public Policy.
The land trust may engage in public policy at the federal, state, and/or local level (such as supporting or opposing legislation, advocating for sound land use policy, and/or endorsing public funding of conservation) provided that it complies with federal and state lobbying limitations and reporting requirements. Land Trusts may not engage in political campaigns or endorse candidates for public office.

Standard 5, Practice C: Accurate Representation.
All representations made in promotional, fundraising, and other public information materials are accurate and not misleading with respect to the organization’s accomplishments, activities and intended use of funds. All funds are spent for the purpose(s) identified in the solicitation or as directed in writing by the donor.

Standard 8, Practice M: Public Issues.
A land trust engaging in projects beyond direct land protection (such as public policy, regulatory matters or educational programs) has criteria or other standard evaluation methods to guide its selection of and engagement of these projects. The criteria or evaluation methods consider mission, capacity, and credibility.

Furthermore, there is no inference of confidentiality or self-regulation in these eight guideline practices. While it may be easily argued that board members have a responsibility to maintain confidentiality of certain land trust interests, and land trust organizations should in no way be mandated to make accessible or compromise legally confidential documents to the general public, these eight LTA practices remain intentional goals of public transparency and organizational accountability for all members of the LTA community. These intentional goals overshadow the LTAC’s goals of confidentiality and self-regulation—not to mention the 2008 roundtable discussion participants and attendees who rejoiced at the confidential process, because the values of public transparency and land trust accountability were at the heart of the Post series in 2003, the subsequent congressional scrutiny, the LTA’s re-writing of the Standards and Practices in 2004, the overwhelming and documented personal opinions of LILP symposium participants in 2005, and the resultant formation and staffing of the LTAC in 2006 as a separate entity of the LTA.25

Perhaps consequently, what the LTAC does confidentially as a regulating body at the national level will affect the accredited land trusts and their commitment to transparency and accountability at the local level. As of December 2009, 15 months after the announcement of the 39 inaugural accredited
land trusts, there remains only the September 20, 2008 press release and an inclusion in the running accreditation list (for those land trusts who received accreditation in 2009) on the LTAC and the LTA websites; they remain the only publicly tangible proof of accreditation status.

Figure 4.4. Non-Indicator Practices and Accountability

**Standard 3, Practice A: Board Responsibility.**
The board is responsible for establishing the organization’s mission, determining strategic direction and setting policies to carry out the mission, and as required by law, the oversight of the organization’s finances and operations.

**Standard 4, Practice B: Board Compensation.**
Board members do not serve for personal financial interest and are not compensated except for reimbursement of expenses and, in limited circumstances, for professional services that would otherwise be contracted out. Any compensation must be in compliance with charitable trust laws. The board’s presiding officer and treasurer are never compensated for professional services.

**Standard 6, Practice C: Financial Reports and Statements.**
The board receives and reviews financial reports and statements in a form and with a frequency appropriate for the scale of the land trust’s activity.

**Standard 12, Practice F: Community Outreach.**
The land trust keeps neighbors and community leaders informed about its ownership and management of conservation properties.


In other words, there are no online documents available for the public to review the inaugural accreditation process and there are no communications or even general information to believe that any of the 39 inaugural land trusts are in
collaboration to better their honored group as the first representatives of accreditation—and therefore offer insight and leadership for aspiring land trusts who seek accreditation. There are only sporadic local press releases, found using different website search engines, to local newsprint from the respective 39 land trusts and the LTAC, reiterating the LTAC’s press release wording of increasing accountability, new independent accreditation program, and deserve the public’s trust through rigorous accreditation programs.

There is also no publicly available information on the LTAC’s commitment for accreditation renewal procedures—as discussed during the information seminar at the 2008 LTA Rally. In 2008, the LTAC’s goal was for accreditation renewal every five years. While this proposed timetable is still over three years away for the 39 inaugural accredited land trusts, there appears to be no past or current public discussion—or any further acknowledgement of future planning.

This is no surprise, as the accreditation process and the LTAC organization itself remain confidential. With the continued promotion of self-regulation of the land trust accreditation community, the apparent lack of public information on accreditation renewal and the 2008-2009 accreditation process seems counterintuitive to any premise of organizational transparency and accountability for the LTAC. The LTA’s
original intent for a renewed public trust through accreditation is difficult to accept, given the LTAC’s use of confidentiality over transparency, and self-regulation over any future public misperception of accountability.

This further risks a values conflict between the LTA and the LTAC, and any of the 39 inaugural accredited land trusts may feel empowered to simply defer to the notion of confidentiality and the LTAC accreditation process when faced with public questions of transparency and accountability—and they would be within their right to defer as they would appropriately be following the LTAC’s leadership stance.
CHAPTER 5

CONCLUSION

It is also fair to ask whether all conservation easements advance conservation goals, and whether all are consistent with a public land use process. Nonprofits may accept a donation for a conservation easement, often initiated by taxpayers seeking a deduction, even though the easement does not serve a real preservation goal. National organizations have recommended "best practices" for acquisition, and while these are helpful they are not binding. Additionally, nonprofits do not necessarily acquire conservation easements pursuant to a public land use plan. So, conservation easements may not be a part of a coordinated, community-wide preservation program.¹

—Gerald Korngold, Private Conservation Easements: A Record of Achievements and the Challenges Ahead

A Post-LILP Symposium Perspective

Surprisingly, and timely for this thesis, almost five years after the LILP symposium and without any prior writings on conservation easements during that period, the LILP published Gerald Korngold’s perspective on the conservation easement movement in the October 2009 Land Lines, an LILP monthly publication.² Fortunately, the author was a 2005 LILP symposium participant, and his comment on values issues from that symposium was earlier discussed in chapter 2, “There is a lack of transparency and a particular concern about the identity and actions of easement holders [e.g., nonprofit land trusts] who purport to act in the public interest. What kind of accountability do they have to the public?”³
Unfortunately, Korngold did not offer any mention of transparency or accountability in the October 2009 article; only the “public interest” was reintroduced, and not in any direct context with transparency and accountability or even under the notion of a renewed public’s trust. The other values conflicts depicted in Figure 3.2 were also not mentioned: compliance, the public benefit, freedom (confidentiality), and autonomy (self-regulation) are missing from the analysis. Korngold does add to the notion of the public interest by following the above epigraph with, “Moreover, nonprofits are not subject to the democratic, political process, and may not be responsive of local citizenry. This could lead to conflicts, especially between distant nonprofits owning conservation easements and the local community.”

Yet, Korngold never once mentioned the LTAC, the LTA, the accreditation process, or any accredited land trusts. While he did infer the use of Standards and Practices with “best practice,” it is obvious that he was not interested in directly addressing values issues. Korngold spent the bulk of his analysis with furthering IRS code reforms, judicial involvement, local or state approval of conservation easements, and government use of eminent domain—even on established conservation easements, if necessary.
Perhaps unsurprisingly, just as the IRS pressed on after 2005 to investigate suspicious conservation easement donations while also planning for a revised and more accountability-driven 2008 tax Form 990, Korngold himself ventured away from a direct discussion on values issues to solely focus on established and assumingly pragmatic avenues for remedy, such as the IRS’ agency authority, state legislative and agency interactions, and judicial precedence to better protect land and benefit the local public who are impacted by that land. He offered guidance on what he believes as practical: government interceding in problems where land trusts are not aware of, or are uninterested in, the best prioritization of present and future land use management. Korngold contended that without legislative, judicial, and/or agency authority intervention, the conservation easement movement may experience further legal and bureaucratic conflicts.

While Korngold noted the successes of the conservation easement movement, he obviously remained aware of the possibility of future public scrutiny—just as he acknowledged during the 2005 LILP symposium. However, his omission of the LTAC and the accreditation process affronts the LTA’s and the LTAC’s contentions that newly accredited land trusts are representative of the highest standards in the conservation
easement movement and uphold the public’s trust. Even Korngold’s substitution of “best practices” for the Standards and Practices diminished the LTAC’s arguably abbreviated and confidential use of only 37 indicator practices.

Korngold may be correct about these practices as “helpful” but not “binding.” Because the LTA mandates that all land trust members, regardless of accreditation, rely on the 88 practices as comprehensive guidelines, the LTA requires that all member organizations sign an LTA document that advocates for all 88 practices. As added measure, all land trust accreditation applicants must affirm their adherence to the 88 practices to the LTAC before any accreditation consideration can ensue—presumably by signing an LTAC document.

These LTA and LTAC documents, and the processes involved in order to affirm or sign these documents, might be good arguments against any future public scrutiny of an accredited land trust. However, the Post series on TNC offers the obvious. Even TNC, one of the most respected and largest land trust organizations in the country, stumbled to public scrutiny even though it affirmed the LTA’s pre-2004 Standards and Practices. The same holds true for the numerous Colorado land trust organizations that were scrutinized by the IRS, and subsequently the local media and the public.
In the October 2009 article, Korngold did not deviate from past scrutiny in the conservation easement movement, yet he did side-step the importance of the movement’s apparent values conflicts and outright ignored any notion that land trust accreditation may be helpful to the movement. This is remarkable since his comments at the LILP symposium was unmistakably appropriate to the discussion and germane to public, media, congressional, and in-house criticisms of conservation easements and land trust organizations.

Given what Korngold stated in 2005, it seems ironic that one of the sharpest comments on the impending values conflicts came from a conservation easement movement expert who would later offer recommendations on conservation easements without any suggestion of interacting with accredited land trusts, the LTAC, or the LTA. Reading Korngold’s article is like not knowing that the 2003-2005 scrutiny revolved around public perceptions and congressional inquiries over transparency and accountability, that Pearlstein’s 2003 Post commentary on the lack of nonprofit transparency was not relevant then or in 2009, the LTA’s public policy initiatives have never conflicted with congressional prerogatives and the IRS’s agency authority, and that the LTAC itself did not even exist.
Addressing Values Conflicts

Unquestionably, the Land Trust Accreditation Commission faced and continues to face a near-daunting task at the national level in the accreditation of individual land trusts: participants of the 2007 pilot program and the 2008 inaugural accreditation processes were both large and small in organizational size, possessed many or very few conservation easements, operated as non-profit organizations for many years or just a few years, were located in different states, operated under different contributory circumstances, and were managed under different organizational structures and unique community influences.

In other words, the LTAC may have had little choice but to focus on only 37 indicator practices that best represented all 88 practices and were also measurable. The new LTAC organization of 2006-2009 likely did not have the resources to conduct extensive on-site surveys of conservation easements, interviews with board members and community activists, and appropriate reviews of political and/or private party influences at the local level. As the LTAC enters 2010 after two full years of the accreditation process, the difficulty in attaining and maintaining resources to repeatedly travel and interview different land trusts throughout the country will not likely
change; while there is no substitute for on-site work, it is a pragmatic decision for the LTAC to focus on the indicator practices that can be measured and evaluated in the most economical and timely manner.

As of December 2009, 43 additional land trusts received accreditation during that period.8 These land trusts and the 39 inaugural accredited land trusts are included in a running list on the LTAC’s website.9 Unfortunately, the first 39 land trusts are now merely lumped in with all accredited land trusts, without any attempt for an ideal opportunity to lead a higher standard for perspective accredited land trusts to follow, and without any information on what these inaugural land trusts have done to distinguish themselves as a new group nationally and as individual land trusts in their respective communities—with the exception of the standard press releases to publicize accreditation status. None of the inaugural accredited land trusts have testified before Congress, met together and with the media or other interest groups to showcase the accreditation process and the public benefit, or worked to better influence public perception and to seek the public’s trust. That said, when the first 39 land trusts were accredited in September 2008 and the LTAC promoted the idea that accreditation deserves the public’s trust, there remained (and still remains) a problem of
how these and future accredited land trusts could advocate for public transparency, and therefore access to verify organizational accountability.

As there appears that some nonprofit practices and organizational behaviors could not be accurately and objectively measured or evaluated on-site during the accreditation process, then how will the LTAC eventually help to better show transparency and accountability of individual land trusts at the national level? For example, the LTAC acknowledged that 125 land trusts have formally sought, or were formally seeking, accreditation status by the end of 2009; yet, there is no public disclosure of non-approval or deferment figures. Another question is whether the LTAC itself will eventually offer more specific public information on its accredited land trusts, the process for accreditation, and accreditation renewal plans? Or will these issues remain confidential and exclusive to self-regulating practices?

Despite these questions, as the public and media interest began to wane in 2008, there was little public attention on the LTAC and accreditation in 2009. However, the LTA has remained solely focused on the permanence of tax incentives through a strong lobbying effort—and reminded their membership and the media almost weekly throughout 2009. At the same time, the IRS
has implemented new tax reporting procedures for nonprofit organizations, including most land trusts, by instituting the revised tax Form 990 to ensure more organizational transparency and accountability to the IRS and the federal government. Yet, also at the same time, the LTAC was left to accredit more land trusts without any public involvement or public disclosure processes.

Consequently, the 2003 respective initiatives of Congress, the IRS, and the LTA would later result in unintended values conflicts by 2009, as depicted in the Figure 3.2 Venn Diagram. Despite the LTA’s efforts to promote the public’s trust, the IRS instead pushed to determine the public’s benefit of conservation easements and tax-exempt land trusts. By meeting their congressionally mandated agency authority, the IRS exerted the values issue of compliance—and indirectly transparency and accountability, over any notions of confidentiality and self-regulation in the nonprofit sector. Concurrently, the LTA seemingly allowed the LTAC to prioritize confidentiality over transparency, and self-regulation over verified accountability. Only the risk of a legal conflict was abated, as Congress and the IRS clearly remained committed to not repeating past media scrutiny of the conservation easement movement, and indirectly
the growing federal concerns over the tax-exempt statuses of nonprofits organizations—including land trusts.

As the conservation easement movement looks beyond 2010, the true intent of accreditation appears undefined in terms of earning the public trust, especially when Congress and the IRS has assumed the dominant role in ensuring transparency and accountability through oversight, regulatory compliance, and the determination for the public benefit. The prioritizations of confidentiality within the movement and the LTAC’s self-regulation of land trusts have diminished the values issue of public trust. Given these contradictions, any notion that the accreditation process upholds the public’s trust is only rhetorical in nature.
NOTES

Chapter 1

1. A conservation easement should not be confused with other types of easements on land, such as a utility easement: a corridor providing right of access for utility lines; an easement of access: also a corridor with a right to cross a landowner’s property to access another property with no street frontage; or a recreation easement: a public access path on private land to reach a public waterway or parkland.


Chapter 2


10. Ibid.

11. Ibid.

12. Ibid., 183-184.


14. Ibid., 37, 139, and 181.

15. Ibid., 29.

16. Ibid.

17. In addition to Rand Wentworth, there were quotes of praise on the back cover from Henry M. Paulson, William D. Ruckelshaus, and Steven J. McCormick.


19. Ibid., 126-127.

**Chapter 3**


3. Mary Nichols, Director of UCLA Institute of the Environment and former CA Secretary of Resources; Jym St. Pierre, Maine Director of RESTORE: The North Woods; Gerald Korngold, Dean and Professor, Case Western Reserve University Law School; Julia Mahoney, Professor, University of Virginia School of Law; and Nancy McLaughlin, Professor, University of Utah S.J. Quincy College of Law.

5. Ibid., 14.
6. Ibid., 13.
7. Ibid., 9.
8. Ibid., 13.
9. Ibid., 36.
10. Ibid., 37.
11. Ibid., 4.

12. “Public conservation purposes” can be confused with public uses. A public benefit does not equate to direct public use when an easement is enacted to protect natural habitat. However, there may be an indirect public use when an easement is for scenic preservation.

15. Ibid.
16. Ibid., 20.
17. Ibid.
18. Ibid.
19. Ibid., 36.
20. Per September 20, 2008 conversation with the LTAC Executive Director Tammarara Van Ryn while attending the 2008 LTA Rally in Pittsburgh, PA.

21. LTA email announcements were received and saved throughout 2006, 2007, 2008, and 2009. Additionally, media releases and announcements on www.lta.org were reviewed on July 16-18, 2009 and October 8-10, 2009.

22. I attended the 2008 LTA Rally, held in Pittsburgh, PA in September, as an interested observer.

23. I have been on the LTA email list since 2006, and the majority of emails on public policy advocacy have involved the risk of permanently losing the conservation easement tax incentive due to the sunset clause. There are also numerous emails on the expansion of the tax incentive program, such as increasing the percentage of a deduction against taxable income and increasing the number of years that these deductions can be made for conservation easements as large noncash charitable contributions. The timeline and perspectives of the expansion of this tax incentive program will not be included in this thesis as a discussion of this aspect would dilute the subject of values issues and accreditation.

24. Specifically, 26 USC 170(E)(b)(1) and 26 USC 170(B)(b)(2).

25. The enrolled bill H.R.2419 became law on May 22, 2008, retroactively extending the sunset clause for two more years, from January 1, 2008 to December 31, 2009.

26. I listened to the conference call as an interested observer. While there were already over 150 co-sponsors for H.R. 1831 and a dozen co-sponsors for S. 812, Shay and Wentworth heavily encouraged individual land trusts to seek out co-sponsors and uncommitted senators and representatives during the upcoming congressional recess to actively lobby (their words) for permanent tax incentives.

27. Ibid.


29. Ibid.

31. Ibid.

32. Ibid.


34. This occurred during a 2008 LTA Rally afternoon forum, “Working with the IRS,” the principal topic was IRS scrutiny of conservation easement documentation and appraisals in Colorado. Speakers included Russ Shays and three IRS attorneys and an IRS team specialist.


36. Ibid.

37. Ibid.

38. During that convention, as with previous years, all advocacy priorities are made for the upcoming year.


Chapter 4


2. Ibid.


6. In Standards and Practices, there are 12 standards categorized to represent several respective practices; each of the 88 practices fall under one of the 12 standards: (1) Mission; (2) Compliance with Laws; (3) Board Accountability; (4) Conflicts of Interest; (5) Fundraising; (6) Financial and Asset Management; (7) Volunteers, Staffs and Consultants; (8) Evaluating and Selecting Conservation Projects; (9) Ensuring Sound Transactions; (10) Tax Benefits; (11) Conservation Easement Stewardship; and (12) Fee Land Stewardship.


8. Ibid., 9.

9. Ibid.


14. I attended both the seminar and the roundtable discussion. LTAC Executive Director Tammara Van Ryn was the principal moderator for both events, with LTAC board and staff members in attendance.

15. There were six discussion panelists: Sherri Evans-Stanton, Brandywine Conservancy (PA); Jean Brokish, Chikaming Open Lands (MI); Jennifer L. Scroggins; Eagle Valley Land Trust (CO); Kelly Pohl, Gallatin Valley Land Trust (WY); Lara S. Ryan, Green River Valley Land Trust (WY); and Ryan Owens, Monadnock Conservancy (NH).

16. The handouts given to me and all attendees were each titled, “Guidance Document...[and] Indicator Practice(s),” with subtitles: 9G Recordkeeping; 10A Tax Code Requirements and 10B Appraisals; 11A Funding Stewardship and 12A Funding Land Stewardship; 11B Baseline Document Reporting; 11C Easement Monitoring; and 12C Land Management.

17. I did not attend the 2009 LTA Rally, held in Portland, Oregon on October 11-14. The similar seminar and roundtable discussion were titled, respectively, “Demystifying Key Accreditation Indicator Practices” and, “Introduction to Accreditation from the Land Trusts that Have Been There.”

18. These handouts were available on LTA’s website the week after the 2009 LTA Rally, and were each titled, “Guidance Document...[and] Indicator Practice(s),” with subtitles: 4A Dealing with Conflicts of Interest; 6F Investment and Management of Financial Assets and Dedicated Funds; 9G Recordkeeping (Note: a one-paragraph addendum to 2008 guidance handout); 11E Enforcement of Easements; 11I Amendments; 3F Board Approval of Land Transactions; and 9J Purchasing Land and 9K Selling Land (regarding independent appraisals). Land Trust Alliance, Learning Center “Rally Net 2009,” under [Workshop] C14 “Introduction to Accreditation from the Land Trusts that Have Been There,” http://learningcenter.lta.org/attachedfiles/0/92/9220/Rally2009_C14.pdf (accessed October 22, 2009).
Chapter 5


6. Ibid.
7. In Pidot’s 2005 work, Gerald Korngold was listed as Dean and Professor, Case Western Reserve University Law School. For Korngold’s 2009 article, he was listed as, “...professor of law at New York Law School and a visiting fellow in the Department of Valuation and Taxation of [LILP] in 2009-2010. He researches property rights, conservation easements, and global land issues.” Korngold, 13.


10. There is no information on the LTAC website, as of December 2009. During the information session at the 2008 LTA Rally, LTAC staff indicated that disclosing a land trust who did not yet meet accreditation could lead to some unwillingness from that land trust to reapply later, after any LTAC concerns are resolved.
A list by state affiliation of the 39 inaugural accredited land trusts that were accepted by the LTAC in September 2008.


CA  Central Valley Farmland Trust
    CA  Penninsula Open Space Trust
    CA  Placer Land Trust

CO  Aspen Valley Land Trust
    CO  Colorado Open Lands
    CO  Eagle Valley Land Trust
    CO  Estes Valley Land Trust
    CO  Wilderness Land Trust

GA  Athens Land Trust
    GA  Mountain Conservation Trust of Georgia

MA  Boxford Trails Association/Boxford Open Land Trust
    MA  Sippican Land Trust

ME  Coastal Mountains Land Trust

MI  Chikaming Open Lands
    MI  Leelanau Conservancy
    MI  Washtenaw Land Trust

MN  Minnesota Land Trust

MT  Five Valleys Land Trust
    MT  Gallatin Valley Land Trust

NC  Carolina Mountain Land Conservancy

NH  Monadnock Conservancy
NY  Hudson Highlands Land Trust
NY  Open Space Conservancy (Open Space Institute)
NY  Rensselaer Land Trust
NY  Scenic Hudson, Inc.
NY  Scenic Hudson Land Trust
NY  Westchester Land Trust

OR  Greenbelt Land Trust

PA  Bedminster Land Conservancy
PA  Brandywine Conservancy
PA  Countryside Conservancy
PA  Heritage Conservancy
PA  North Branch Land Trust
PA  Willistown Conservation Trust

SC  Upstate Forever

VA  Northern Virginia Conservation Trust

VT  Lake Champlain Land Trust

WA  Cascade Land Conservancy

WY  Green River Valley Land Trust
APPENDIX B


In 1959, William H. White wrote a technical bulletin for the Urban Land Institute called Open Space for Urban America: Conservation Easements. It was probably the first time an entire publication had been devoted to explaining and promoting this then-obscure conservation tool," he said. It certainly was a major step forward in educating planners, conservationists, and policy makers about a new way to protect open land without acquiring it.

Not that conservation easements were brand new, even then. In fact, the first conservation easements in the United States were written in the late 1880s to protect parkways designed by Frederick Law Olmstead in the Boston area. In the 1930s, the National Park Service made extensive use of easements to protect land along the Blue Ridge and Natchez Trace Parkways. And in the early 1950s, the state of Wisconsin established a highly successful easement acquisition program to protect land bordering the Great River Road along the Mississippi River.

When Whyte wrote his small bulletin, however, easements were neither well known nor much used, even among those whose business was land conservation. One of the stumbling blocks was that lawyers found a number of legal uncertainties with conservation easements.

Conservation easements are not like easements lawyers were used to. First of all, they do not grant the holder the right to do something on another person’s land, the way a utility or road easement does. Rather, they give the holder the right to prevent certain uses. A negative easement was not a common idea. Moreover, conservation easements usually run in perpetuity, something the common law does not like very much.

Finally, conservation easements are usually “in gross,” that is, they benefit the public at large, rather than benefiting an adjacent or nearby property, as does an “appurtenant easement.” There were questions about whether an easement in gross would be enforceable over time. As Russell Brenneman, a Connecticut attorney who was an early proponent of conservation easements, once noted, “An easement in gross is a very bad thing to be if you are an easement.”

Thus, in the 1960s, thanks largely to the work of William Whyte and the dedication of lawyers like Brenneman, states began
to enact legislation specifically dealing with conservation easements. California, Connecticut, Massachusetts, New York, and eventually many other states designed state laws to clarify the uncertainties. If a state statute was well drafted, it defined what a conservation easement was, stated how they could be created, said that they are valid even though they are in gross, and declared how they could be enforced and by whom.

Not all states were well designed, however, and by the late 1970s, there were enough states still without easement laws, or with inadequate laws, that the National Conference of commissioners on Uniform State Laws began work on a Uniform Conservation Easement Act (UCEA). This model conservation easement law was approved by the commissioners in August 1981 and recommended for enactment by all states. A few months later, the American Bar Association gave its approval of the UCEA. It was a significant advancement for conservation easement law, prompting a number of states to adopt or revise easement statutes.

As this book points out, few states have adopted the UCEA exactly as written. Some have modified it quite a bit, perhaps to appease political interests or to address issues the enactors believed unique to their jurisdictions. The results vary and can be confusing for landowners and easement holders alike. Moreover, as conservation easements have become a commonly accepted conservation easement tool, some practitioners may even have forgotten that, in most places, conservation easements are creatures of state law.

Not surprisingly, land conservationists have paid a lot of attention to the requirements of federal tax law that govern deductibility of charitable gifts of easements, but enforcement of easements over time will depend heavily on state laws. This book not only reminds of that, but also provides a wealth of information and analysis about those laws.

Anyone who has watched the use of conservation easements burgeon understands what a compelling tool easements are for the protecting endangered natural areas, scenic properties, and working farms and forests. For many properties, it is hard to imagine a more appropriate tool. The case studies in this book recount some outstanding successes, painting a vivid picture of the complexity that can be involved in crafting sound easement transactions and building the partnerships necessary to ensure their success. These stories also demonstrate the extraordinary tenacity and skill of dedicated land conservationists who work through land trusts and the enormous differences their work is making in the lives of their communities.
Yet anyone who understands conservation easements is also acutely aware of how much of the work of protecting land begins after the easement is signed. Some of the case studies remind us that consistent attention is required if easements are to work as planned. Monitoring and enforcement are tasks for perpetuity.

Finally, as the land trust movement and the use of easements matures, we are faced with questions born of our success: When do easements work and when is a different tool more appropriate? What land should be protected, and how do we choose? How does land conservation intertwine with the economic and social goals of our communities? How do we convey and understanding of the benefits of land conservation? The book suggests some ways of thinking about those questions.

The years since William Whyte wrote his technical bulletin have brought enormous changes to land conservation. Although then land conservation was largely a job for government, today the job is shared by public and private efforts, with nonprofit groups often providing the innovation. Although then the number of nonprofit land trusts were fewer than 200, today the number exceeds 1,200. Although then the emphasis was on public land acquisition, today the focus is increasingly on private lands and a panoply of conservation methods to protect them.

Perhaps nothing better illustrates these changes than the evolution in the use of conservation easements. Used wisely and well, easements will continue to be a major conservation easement tool for the twenty-first century, protecting precious natural areas and green space for generations to come.

Jean Hocker
APPENDIX C


Nonprofit Land Bank Amasses Billions; Charity Builds Assets on Corporate Partnerships, by David B. Ottaway and Joe Stephens [May 4, 2003]

$420,000 a Year and No-String Fund; Conservancy Under-reported President’s Pay and Perks of Office, by Joe Stephens and David B. Ottaway [May 4, 2003]

How a Bid to Save a Species Came to Grief, by Joe Stephens and David B. Ottaway [May 5, 2003]

On Eastern Shore, For-Profit ‘Flagship’ Hits Shoals; Local Ventures Launched, Floundered and Failed, by David B. Ottaway and Joe Stephens [May 5, 2003]

Nonprofit Sells Scenic Acreage to Allies at a Loss; Buyers Gain Tax Breaks With Few Curbs on Land Use, by Joe Stephens and David B. Ottaway [May 6, 2003]

Landing a Big One: Preservation, Private Development, by David B. Ottaway and Joe Stephens [May 6, 2003]

Nonprofits: Not So Transparent, by Richard Perlstein, Commentary [May 7, 2003]

Charity’s Land Deals to be Scrutinized; Senators to Send Letter to Nature Conservancy, by Joe Stephens [May 10, 2003]

Big Green Blues, Editorial [May 12, 2003]

Nature Conservancy Suspends Land Sales; Board of Nonprofit to Review Practices, by Joe Stephens and David B. Ottaway [May 13, 2003]

Charity Hiring Lawyers to Try to Prevent Hill Probe, by Joe Stephens and David B. Ottaway [May 16, 2003]

Conservancy Abandons Disputed Practices; Land Deals, Loans Were Questioned, by Joe Stephens and David B. Ottaway [June 14, 2003]
12 Home Loans at Conservancy; Nonprofit Says All But 2 Have Been Repaid; 5 Came Interest-Free, by Joe Stephens and David B. Ottaway [June 13, 2003]

Nature Conservancy Faces Panel Review, by Joe Stephens and David B. Ottaway [July 17, 2003]

Land Trust Alliance Rewriting Its Ethics Standards; Organization is Responding to Increased Scrutiny of Preservation Practices, by David B. Ottaway and Joe Stephens [October 25, 2003]

Senate Panel Intensifies Its Conservation Probe, by Joe Stephens and David B. Ottaway [November 10, 2003]

Developers Find Payoff in Preservation; Donors Reap Tax Incentives by Giving to Land Trusts, But Critics Fear Abuse of System, by Joe Stephens and David B. Ottaway [December 21, 2003]

Land Trust Boom a Boon for Habitat, by David B. Ottaway and Joe Stephens [December 21, 2003]

IRS to Audit Nature Conservancy From Inside, by Joe Stephens and David B. Ottaway [January 17, 2004]

Overhaul of Nature Conservancy Urged; Report by Independent Panel for Greater Openness, by Joe Stephens [March 31, 2004]


As Word Spreads, Clamor to Donate Grows, by Joe Stephens [December 13, 2003]

Senators Vow to End Tax Break on Easements; Wealthy Homeowners Have Taken Advantage, by Joe Stephens [December 18, 2004]

Group Ends Pitches for Home Easements; Criticism of Tax Deductions Leads National Architectural Trust to Halt Practice, by Joe Stephens [January 12, 2005]
Panel Advises Ending Tax Breaks for Easements, by Joe Stephens [January 28, 2005]

U.S. Targets Nonprofits That Aid Tax Shelters; Groups Abuse Exempt Status, IRS Says, by Albert B. Crenshaw [February 11, 2005]

Charities Fight for Easement Donors; Preservation Groups Target Legislators in Move to Save Tax Breaks, by Joe Stephens [February 26, 2006]

Tax Abuse Rampant in NonProfits, IRS Says, by Albert B. Crenshaw [April 5, 2005]

Alliance Starts Plan to Improve Land Trusts; Association Moves to Train and Accredit Conservation Organizations, by Joe Stephens [April 20, 2005]

Senators Question Conservancy’s Practices; End to ‘Insider’ and ‘Side’ Deals by Nonprofit Organizations is Urged, by Joe Stephens and David B. Ottaway [June 8, 2005]

IRS Starts Team on Easement Abuses, by Joe Stephens [June 9, 2005]

Fairfax Case Draws Line on Easements; IRS Gets ‘First Big Win’ in Push to Stem Abuse of Conservation Tool, by Joe Stephens [June 4, 2006]
APPENDIX D

The titles of the 37 indicator practices used by the Land Trust Accreditation Commission, as of December 2009.


Standard 1: Mission
1A. Mission
1B. Planning and Evaluation
1D. Ethics

Standard 2: Compliance with Laws
2A. Compliance with Laws
2B. Nonprofit Incorporation and Bylaws
2C. Tax Exemption

Standard 3: Board Accountability
3B. Board Composition
3C. Board Governance
3F. Board Approval of Land Transactions

Standard 4: Conflicts of Interest
4A. Dealing with Conflicts of Interest
4C. Transactions with Insiders

Standard 5: Fundraising
5A. Legal and Ethical Practices

Standard 6: Financial and Asset Management
6A. Annual Budget
6B. Financial Records
6D. Financial Review or Audit
6F. Investment/Management of Financial Assets and Dedicated Funds

Standard 7: Volunteers, Staff and Consultants
7A. Capacity
Standard 8: Evaluating and Selecting Conservation Projects
- 8B. Project Selection and Criteria
- 8D. Public Benefit of Transactions
- 8G. Project Planning

Standard 9: Ensuring Sound Transactions
- 9A. Legal Review and Technical Expertise
- 9E. Easement Drafting
- 9G. Recordkeeping
- 9H. Title Investigation and Subordination
- 9J. Purchasing Land
- 9K. Selling Land or Easements

Standard 10: Tax Benefits
- 10A. Tax Code Requirements
- 10B. Appraisals

Standard 11: Conservation Easement Stewardship
- 11A. Funding Easement Stewardship
- 11B. Baseline Documentation Report
- 11C. Easement Monitoring
- 11D. Landowner Relationships
- 11E. Enforcement of Easements
- 11I. Amendments

Standard 12: Fee Land Stewardship
- 12A. Funding Land Stewardship
- 12C. Land Management
- 12D. Monitoring Land Trust Properties
APPENDIX E

The titles to the 51 practices not used by the Land Trust Accreditation Commission, as of December 2009.

Standard 1: Mission
1C. Outreach

Standard 2: Compliance with Laws
2D. Records Policy
2E. Public Policy

Standard 3: Board Accountability
3A. Board Responsibility
3D. Preventing Minority Rule
3E. Delegation of Decision-Making Authority

Standard 4: Conflicts of Interest
4B. Board Compensation

Standard 5: Fundraising
5B. Accountability to Donors
5C. Accurate Representation
5D. Marketing Agreements

Standard 6: Financial and Asset Management
6C. Financial Reports and Statements
6E. Internal System for Handling Money
6G. Funds for Stewardship Enforcement
6H. Sale or Transfer of Assets (Including Land and Easements)
6I. Risk Management Insurance

Standard 7: Volunteers, Staff and Consultants
7B. Volunteers
7C. Staff
7D. Availability of Training and Expertise
7E. Board/Staff Lines of Authorities
7F. Personnel Policies
7G. Compensation and Benefits
7H. Working with Consultants
Standard 8: Evaluating and Selecting Conservation Projects
8A. Identifying Focus Areas
8C. Federal and State Requirements
8E. Site Inspection
8F. Documenting Conservation Values
8H. Evaluating the Best Conservation Tool
8I. Evaluating Partnerships
8J. Partnership Documentation
8K. Evaluating Risk
8L. Nonconservation Lands
8M. Policy Issues

Standard 9: Ensuring Sound Transactions
9B. Independent Legal Advice
9C. Environmental Due Diligence for Hazardous Material
9D. Determining Property Boundaries
9F. Documentation of Purposes and Responsibilities
9I. Recording
9L. Transfer and Exchanges of Land

Standard 10: Tax Benefits
10C. No Assurances of Deductibility or Tax Benefit
10D. Donee Responsibilities—IRS Form 8282 and 8283

Standard 11: Conservation Easement Stewardship
11F. Reserved and Admitted Rights and Approvals
11G. Contingency Plans/Backups
11H. Contingency Plans for Backup Holder
11J. Condemnation
11K. Extinguishment

Standard 12: Fee Land Stewardship
12B. Stewardship Principles
12E. Land Stewardship Administration
12F. Community Outreach
12G. Contingency Backup
12H. Nonpermanent Holdings
12E. Condemnation
SELECTED BIBLIOGRAPHY

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