



WHAT MAKES FOR A GOOD LAND TRUST?

A Roundtable Discussion

Jean Hocker

Tom Holt

Robert J. Smith

John Turner

Steven Eagle, Moderator

In recent years, the land trust movement in the United States has grown by leaps and bounds. While few would deny the important role that land trusts play in conservation, some believe that the movement has strayed from its private conservation roots. Land trusts still offer a golden opportunity to put private conservation ideas into practice, but as their numbers have grown, many land trusts have been accused of failing to observe donor intent and of serving as an arm of state conservation efforts, among other things.

To begin to address these concerns, the Center for Private Conservation hosted a roundtable discussion on October 7, 1997 to ask the question “What makes for a good land trust?” What the assembled panel of experts – CPC senior scholar R.J. Smith, author Tom Holt, the Land Trust Alliance’s Jean Hocker and John Turner from the Conservation Fund – thought about these ideas constitutes the text that follows. The discussion was moderated by Steven Eagle, a professor of law at the George Mason University School of Law, and also includes comments from invited observers.

The discussion hit upon the differences between smaller and larger land trusts, and how important size is to facilitating or hindering private conservation. The panelists addressed the concern that some land trusts have simply become land acquisition agencies for government agencies, and also talked about the issue of perpetuity and whether it creates the proper incentives for conservation.

There is no doubt that the numbers of land trusts will continue to grow. There is active debate, however, as to how many of them will truly advance private conservation efforts. The discussion that follows, while only a starting point, should help to clarify where land trusts have been, how some have changed over time and where are they heading today.



PROF. STEVEN EAGLE: Welcome to the Center for Private Conservation land trust roundtable. My name is Steven Eagle, and I am a professor at George Mason Law School.

The land trust movement has been lauded by some as a “third way,” whereby private landowners interested in conservation can work cooperatively to see their lands used for environmental purposes, without governmental intrusion or regulation.

On the other hand, land trusts also have been called, in effect, a “stalking horse,” whereby government takes over land uses and abuses the trust that landowners may have put in the land trust device and institutions.

Today, to discuss these issues, we have four panelists who will each make an introductory statement, and then we’ll have a discussion amongst the panelists, and we may also have some questions or participation from invited guests.

The first of our four speakers is Mr. John Turner. Mr. Turner is a native of Wyoming, a rancher, for 19 years a member of the Wyoming State Legislature, Director of the Fish & Wildlife Service during the Bush administration, and now President and CEO of the Conservation Fund.

MR. JOHN TURNER: Thank you very much. Let me begin by reflecting on two or three things. First, on a meeting I was at last week at the Western Governors Association, and on a recent award we gave to the head of a land trust out West. And, third, I’ll talk a little bit about private sector conservation initiatives.

First of all, the Conservation Fund is a non-profit group dedicated to land and water conservation. It’s rather unique in that our non-profit charter is for conservation and economic development, which allows us to work in partnerships with the private sector. We probably have 180 corporate partners, and I think we’re one of the most innovative groups in the country. We’re credited by some, and accused by others, of conserving more land, in acres, than any other non-profit group in America. We’re currently working in 47 states.

For a flavor of these kinds of projects, I’ll briefly mention some. One is a cattle ranch we recently purchased in northern New Mexico which will be used in partnerships with local livestock producers that are having problems with public land grazing permits which are, of course, essential to their survival. We will use our ranch, in partnership with the Northern New Mexico Stock Growers Association, to give them access to the grass in exchange for helping to restore productivity on public lands with fire and other management tools, so that cattle can return.

Another example is a low-cost housing project we recently completed in Aspen, Colorado. We used the proceeds to protect elk winter range in Vista, outside the community of Aspen. We also recently announced at the National Press Club, along with Dupont, a new easement with the American Farmland Trust to protect 3,300 acres on the Chesapeake Bay. It will be protected to

The land trust movement has been lauded by some as a "third way." Land trusts also have been called, in effect, a "stalking horse."



keep it in agricultural use, and there will also be research on innovative new farmlands, wetland protection and wildlife.

Another proposal is with equestrian groups around the country – Huntmasters, Pony Clubs of America, and so forth – private landowners who have large estates or large landholdings who are interested in the riding sports. We are looking at how we can work with them to advise landowners and local groups about creative tools to protect land, not just for open space in the community, but also for equestrian events. In Illinois, we've worked with a developer to establish a new residential community and, at the same time, protect open lands and restore native prairies and wetlands. We are now holding those easements, but will eventually transfer them to a local land trust.

One of the things we're doing in West Virginia, to help landowners stay on the land, is providing them with additional cashflow opportunities. We have installed what we think is the world's most efficient aquaculture unit, which allows a farm co-op to raise trout, and now we've hooked greenhouses to those, and a natural gas company has given us free natural gas to heat those greenhouses.

There are other examples but let me shift to what I think is the forgotten agenda of the environmental movement, and that's this country's relationship with the land. I think there is growing concern about the loss of productive farmlands and ranch lands around the country, about two acres a minute. We've lost 40 million acres since 1970.

It's impacting water, and one of the key issues, I think, of the next century will be water quality and water availability. It's impacting the nation's economic underpinning, not only food production but all of our resource availability. And lastly, it's impacting the economic viability of communities. So

I think, and properly so, a lot of groups are looking to land trusts and other creative methods to solve these problems.

There is growing concern about the loss of productive farmlands and ranch lands around the country.

I personally think land trusts form one of the most creative and innovative parts of the conservation movement today. It's local folks coming together in a democratic way, developing a vision, and then implementing it. For their communities, it allows for a mix of players. It provides landowners with creative new tools.

I think the future is going to see a trend toward private partnerships and private land stewardship. It's where the best gains are going to come for endangered species, wetlands, open space, water quality, and so forth. It's going to be a shift from the federal government down to local-based initiatives, place-based conservation.

And, lastly, I think we're going from a regulatory approach and strategy to one of more collaboration, proactive and voluntary. And I think land trusts are one of the most exciting formats for that. Thank you.

PROF. EAGLE: Thank you, Mr. Turner.

Our next speaker is Mr. Tom Holt, author of a forthcoming book on the land trust movement in the United States. He also serves as a Visiting Fellow at the Capital Research Center in Washington, DC and he is a writer and consultant on land use issues in Beaverton, Oregon.



MR. TOM HOLT: Thank you. I want to, first, just say a quick word on how pleased I am that CEI is putting this on, particularly because it's home to the Warren Brookes Fellowship. It was Warren Brookes' reporting, probably 10 years ago now, that first got me interested in this whole issue.

The other comment I'd like to make is just that – because I'm kind of the designated critic today – I do admire the good things that Conservation Fund and other land trusts do, and I greatly admire what the Land Trust Alliance has done for land trusts. It's a tremendous resource of information and Jean Hocker has done tremendous work in building it into a large organization.

That said, I disagree with some of the goals of the land trust movement, as I see it. Before I came out here I was talking to some folks who are free market environmentalists, about this whole idea of trusts, and one of the questions they had was "Well, you know, different people have different definitions of a land trust. What, really, is a land trust?"

And I think the short answer is that there isn't any one answer. But, at risk of over-simplification, it seems to me that land trusts exist to preserve as much land as possible in its natural or historic state, for the least amount of money. And, to that extent, trusts exist to remove land or certain rights to the land from ordinary commerce. Once land is put under a conservation easement or an open space easement, that portion of the property right no longer trades in the marketplace – it is not bought or sold as ordinary property.

If the land ends up as part of a park, it no longer trades. So, to that extent, the land is removed from commerce, in all deference to projects like the ranch just mentioned that are finding ways to keep the land in commerce.

I came into this, into working on land trusts, truly with an open mind. I didn't know much about them. I had no particular environmental background. My background was as a reporter and writer, and so I just started out with "Okay, what do these things do?" and looked at land records and talked to people involved with land trust transactions, went to some Land Trust Alliance meetings and tried to learn as much as I could about how they actually operate, and I think, albeit as an outsider, I've gotten a pretty fair picture of how they operate "on the ground."

And I ended up thinking, first, "Well, overall – maybe it's an okay thing," that it is a market-oriented solution, a third way as it were, to handle environmental problems. But I saw a lot of technical objections or problems. For instance, the whole practice of pre-acquisition, that I'll talk about in a minute, certainly raises some controversial issues.

But, then, as I looked deeper, I really have come to some broader philosophical objections to what the land trust movement does now. One is that the trust movement has been changing the nature of its activities in recent years. Not very long ago the general focus of trusts was fairly site-specific: you'd find a place that was worthy of preservation. There was not too much disagreement on the fact that it ought to be worthy. Then you'd go take care of that project.

Land trusts form one of the most creative and innovative parts of the conservation movement today.



Now trusts are oriented, it seems, more toward broader ecosystem protection, landscape protection, and things of that nature that involve a much broader vision, and because of that, it seems to me that the land trust movement, in effect, whether it's intentional or not, is moving into a role of the de facto zoning authority of the nation, without all the encumbrances that an elected government would have to overcome if it were to engage in zoning or similar kinds of things. For instance, there's no need for a public hearing, there's no need for a vote. You arrange the transaction and you go in and it gets done.

Secondly, and this is a related issue, is the whole issue of perpetuity. This, I think, is totally a creation of the Tax Code. No one can get a tax deduction for making a donation of land or property rights (mineral rights, for example) to a land trust unless that donation is permanent.

It seems to me it's a quite radical notion to say that, here in 1997, we know what the appropriate use is for a particular property 100 or 200 years from now. And we could be, intentionally or not, setting

Not very long ago the general focus of trusts was fairly site-specific. Now trusts are oriented more toward broader ecosystem protection.

some things in place that we may not like or our successors may not like very much, 100 or 200 years from now, and yet we've left no way to change that, under the existing system.

And I think there's an easy technical fix to that: Change the Tax Code so that there could be some kind of 20- or 25-year revisiting, or 50-year revisiting. I don't know what the magic number is, but allow it to be revisited so that we are not making permanent decisions about what happens in whole communities, without the community necessarily being involved or having a say in what happens.

And, along with that, the pace of trust activity is accelerating rapidly.

There are a lot more trusts now than there were even 10 years ago. The latest number I've seen is well over a thousand. Not too long ago it was a couple of hundred. And, not long before that, it was a handful.

The U.S. Department of Agriculture Research Service says that the amount of land under trust control or that has been preserved by land trusts, outside of what I call "the big three," the Conservation Fund, Nature Conservancy, and Trust for Public Land – and maybe it should be "the big four," with the American Farmland Trust – has gone up by about half in just the last five years.

Now, in general terms, if that pace continues, and this is rather apocalyptic I realize, but at the present pace and including existing government ownership, in a generation or so, we'd be looking at a majority of the land mass of the United States under some kind of a conservation easement or preservation status. And I'm not sure that that's healthy at all for a country that's based on a free economy, having that much land restricted in its commerce.

Those are the big, philosophical objections I have. The technical objections are really fairly straightforward. This whole notion of pre-acquisition: I don't see any good reason why taxpayers should be giving land trusts two dips at the trough, one, a tax deduction for donations to a trust and, secondly, profits on land sold to the government.



I understand that not all trust transactions result in profits, but an awful lot of them result in what can only be called “unseemly profits,” that, really, land trusts take very little financial risk and large amounts of money changes hands. If the government wants to acquire land, there is really no good reason why the law could not be changed to allow the government to go out and buy land. If that’s what we agree that we are supposed to do, let’s just do that. Why have middlemen doing it?

I don't see any good reason why taxpayers should be giving land trusts two dips at the trough.

I ran across a lot of questions in land records and I’ll just cite one quick example, near the Cypress Creek National Wildlife Refuge area. In the 1980s, the land prices, supposedly, were depressed because insurance companies were unloading their farmland.

Well, the appraisers, who were setting the price that the government would pay for the land, most of which was pre-acquired, first, by a trust of one sort or another, decided “Well, that didn’t really count. That depression didn’t really count, and we can set an appraised value somewhat higher and make up for that,” which raised the question in my mind “Well, at what point has the market changed enough that we can on longer take that into account?”

And, again, it seemed to be arranging the transaction in a way that benefited a special interest group and raised the question across the board of “Does the tail wag the dog? Is there a deliberative process by which the government decides, or our elected representatives decide, that XYZ piece of land is something, by golly, we ought to preserve, it’s worth preserving, we’re going to make it a park, and let’s go out and get it done,” or, as I have seen in a number of transactions, does a trust go out, buy a bunch of land, or easements, or get them donated, and then say “Look what a wonderful thing we’ve done. The Congress has to take this off our hands. And if you don’t you’re being very bad people.” Then Congress appropriates the money.

Lastly, there is the issue of squeezing landowners. And we have an observer here, I think, who can speak to that better than any of us theorists, Ann Corcoran, with her experience at Antietam Battlefield.

But, basically, there are instances, and I think this is just a symptom of being out of touch with people “on the ground,” who have to live with the results of what we decide as policy or to acquire land, but there are instances where landowners can find themselves, by virtue of trust acquisitions, suddenly on the border of a park, close to a park, in the middle of some larger set of transactions that they know nothing about, have not been informed about, and they’re stuck. And that seems rather unfair, and I don’t really see why trusts have to operate that way. That doesn’t make sense to me.

Now, I know – I did find one good citation that summarizes why government does this, and it’s very simple: It’s free to the government. The USDA report says “Partial interests in a particular tract of land can be held and traded separately, presenting opportunities for public agencies to influence resource use,” and this is the key phrase, “without incurring the political costs of regulation or full financial costs of outright land acquisition.”

I have run across this so many times it makes me sick, government officials saying, “We use land trusts because they can do things we can’t do.” That’s right, they don’t have to have public hearings, don’t have to have public notice, and in all deference to the wonderful things that some trusts do, and I think there are some terrific ones – Mt. Vernon I name in my book as one of the nation’s very best land trusts.



It does its job very well, has an indisputably good mission. What you described, John, at the ranch in New Mexico, sounds like a wonderful project. But I really don't understand why there has to be these kinds of methods that raise questions and put landowners in really untoward positions.

The USDA report says, "Partial interests in a particular tract of land can be held and traded separately, presenting opportunities for public agencies to influence resource use."

This is an admittedly critical view. One of the decisions I had to make in writing my book was "Do I rehash what many others have already done, of telling the good news about land trusts?" And I thought "Somebody has to tell the more critical side of it," and that's what I've done. And I just wanted to make clear that although I'm here as a critic, I do understand that trusts do some very good things, and I agree with a lot of those things. But I do have some objections.

PROF. EAGLE: Thank you, Mr. Holt.

Our next speaker is Ms. Jean Hocker, who has for 10 years been President of the Land Trust Alliance, a national umbrella organization for land trusts. Prior to that, she was one of the founders and the first Executive Director of the Jackson Hole Land Trust in Wyoming, where she worked with ranchers and other landowners to preserve open ranchlands and natural areas.

MS. JEAN HOCKER: Thank you. I want to thank you all for holding this forum, because I think we do need to air some of the issues that are on the table today.

I have just come back from an extraordinary meeting of land trusts. It was the Land Trust Alliance's National Land Trust Rally, held in Savannah, Georgia this year, where over a thousand people came together from communities all across the country to learn from each other how to be successful land trusts, how to protect and sustain a way of life that makes their communities special places to live, and how to work with landowners to do that.

They came from land trusts, some very small land trusts, some very large land trusts. They were landowners. They were professionals who work with land conservation. It was an extraordinary four-day gathering that shows, indeed, the vitality and diversity of the land trust movement.

I want to talk just a little bit about land trusts, about the Land Trust Alliance, about what land trusts look like today, the methods they use, and then speak specifically to a couple of the things that Tom Holt raised in his opening remarks.

The Land Trust Alliance was formed 15 years ago by land trusts themselves, local and regional land trusts, because they recognized that they were scattered throughout the country, with little method of contacting one another and learning from one another, and that each organization, upon forming, was likely to be reinventing the wheel. It didn't seem a very efficient or very effective way to operate.

So, the Land Trust Alliance was formed by land trusts to provide those connections and ways of sharing information, training, and learning with one another.

The Land Trust Alliance is a membership organization. Land trusts pay dues to the alliance, based



on their own operating incomes, from \$150 a year to \$1,500 a year, with most of them being in the much lower range.

The land trust movement in this country is growing, as Tom said. There are now over a thousand land trusts in the country. The last time we did a real census of land trusts was three years ago. We're in the midst of doing another one now and I cannot bring you, today, the absolute, current, statistics, because we are just assembling those right now.

But, in 1994, we found about 1,100 land trust organizations (defined, by the way, as a non-profit organization whose primary business and purpose is to work with land owners to protect parcels of open space and sustain their natural or open space values for the public benefit). Over half of those land trusts were all-volunteer organizations. Over half of them had budgets of less than \$10,000 a year.

At the other end of the spectrum, there are large land trusts, the national land trusts that you mentioned, and also a number of statewide and regional land trusts. So land trusts do run a range, though they tend to be clustered at the smaller end of things.

The Land Trust Alliance serves, especially, the local and regional land trusts and was formed to do that, the national land trusts, of course, having resources that the local and regional groups do not. However, our membership encompasses the full range.

The methods land trusts use are also diverse and they are always voluntary. Land trusts are non-profit groups so they have no powers of government. They must depend upon voluntary methods.

The method land trusts use are diverse and they are always voluntary.

Land trusts acquire land outright, by purchases, sometimes, and usually by donations from landowners who want to see the values of their land perpetuated for future generations. They conserve all different kinds of land. Much of it is productive land; very little of it is set aside as totally pristine, untouched, land. Most of it is rangeland, agricultural land, woodland, forest land. On much of that land productive use continues to take place, with only certain restrictions on it.

Land trusts, in addition to acquiring and holding land outright, sometimes acquire land and transfer it to third parties. That third party may be a rancher or a farmer who couldn't afford to buy the land at current market value, but if the land trust first puts restrictions on the land as to its future use, the value of the land comes down, and a farmer or rancher may be able to afford to buy that land. So, sometimes the third party transfer is to other private landowners.

Other times, as you point out, the land trust may acquire land and transfer it to a government agency, be it a local parks department or a state fish and game department or, in some cases, a federal conservation agency.

Our last census found that only about 18 percent of land trusts had engaged in any kind of pre-acquisition activity with government agencies. So, this is not a big part of what land trusts generally do. It is one of several methods that they use.

Land trusts also use and have perfected the use of the conservation easement which, as the people in



this room know, is a legal agreement between a landowner and a land trust to limit, usually in perpetuity, certain uses of the land, in order to sustain specified conservation values.

Our last census found that only about 18 percent of land trusts had engaged in any kind of pre-acquisition activity with government agencies.

The conservation easement is a good tool in many cases. It's not always the perfect tool but it can be an excellent tool for, especially, sustaining productive use in a way that's compatible with conservation values. Because the land stays in private ownership, it stays on the tax rolls, it stays in productive use, and limits only those uses that would be in direct competition with the conservation and natural values of the land.

It is a very good tool for sustaining many kinds of open land, without interfering with productive values.

The conservation easement can be written as a term easement, and some government agencies actually purchase term easements. But, as you point out, the Tax Code does say that easements, in order to qualify for a tax deduction for the limited value given up, must be donated in perpetuity. "Perpetuity" merely means that it has no end. The courts could, over time, overturn a conservation easement if they felt that the purpose of the easement and the public benefit has changed. But, we do assume, and the Tax Code does anticipate, that donated easements are given in perpetuity.

The amount of land that the local and regional land trusts have helped to protect is a little bit over four million acres. Now, you expressed some concern that most land in the country, the majority of land, would soon be under conservation easement or taken out of productive use by land trusts.

I think that the four million acres that local and regional land trusts have helped to protect do not indicate that we are at any time soon likely to see all land taken over and placed in some conserved status, even though you're right that land trusts are increasing the amount of conserved land.

The perpetuity question is one that I would also like to address. The decision by a landowner to develop land, whether as a parking lot or a house or a condominium development, or whatever it may be, is also a permanent decision and a perpetual decision for the use of land. And what land trusts are doing when they are working with landowners is carrying out the land owners' desires for the land, just as the development of land is carrying out the landowners' desires for the land.

I believe that both are relatively permanent decisions as to how land will be used, although protecting, keeping land in open status, also preserves opportunities for a variety of uses that developing the land in effect closes off.

The land trust movement is growing. I think that represents the desire of a broad range of people to see open space as part of their lives, not only their own lives but of the lives of their children and their grandchildren. We don't make any apologies for that; we think that this is something that people in this country want. They are the people who are supporting land trusts. And we believe that land trusts are a democratic, a very American, way of protecting and conserving values for the future, and preserving options for the future and are, indeed, a third and very valid way of sustaining the character

of communities in this country. Thank you.

PROF. EAGLE: Thank you, Ms. Hocker. Our last panelist is R.J. Smith, a Senior Scholar here at the Center for Private Conservation. Mr. Smith has far-ranging interests as a naturalist and in biology and economics. He was president of an Audubon Society chapter in New Jersey, served in President Reagan's Council on Environmental Quality, and is the author of the phrase "Free Market Environmentalism," which everyone in the area uses and for which we are all indebted. Mr. Smith?

MR. ROBERT J. SMITH: Thank you. I've been very interested in the whole history of private conservation for at least 25 years. It combined my two major interests, one in free market philosophy and private property rights, and second my interest in nature and wildlife, particularly in birds and my work with the Audubon Society. So, I have long been interested in gathering stories and documenting the history of private conservation in the U.S., because it's a story that, to a large degree, is still relatively unknown.

The amount of land that the local and regional land trusts have helped to protect is a little bit over four million acres.

Everybody looks at the creation of the national parks, national wildlife refuges and so on, and forgets that there's been a long and very vital tradition of private conservation that has saved a lot of things, a lot of very important things, that never would have been saved if we had simply relied on the government, which was simply setting aside huge blocks of land here and there.

This started early on with the early conservation groups like the National Audubon Society, which saw the bird life of the continent vanishing and no laws to protect most of the birds, particularly the large, showy birds like the plumed birds and egrets. Fortunately, they were able to use the institutions of a free society and simply send their biologists out to find the last places that these birds were nesting, the last colonies of the egrets and spoonbills and herons and so on, and they simply bought them in fee simple and set them aside as their first wildlife sanctuaries and wildlife preserves, and they hired their own private wardens to protect them.

Most people are not aware that the first wildlife warden in U.S. history to be killed in the line of duty protecting wildlife was an Audubon Society warden, Guy Bradley, protecting birds from poachers, protecting the egrets in the Everglades. And, indeed, the second and third wardens killed were also private Audubon Society wardens.

And in areas where the Audubon Society couldn't buy and preserve in that manner, they would often ask the landowner, whether it was a government entity or private entity, if they could post the land "no trespassing." Then they would simply arrest anybody who came along to kill birds for trespassing.

Land trusts are a democratic, a very American way of protecting and conserving values for the future.

So, it's ironic that we've now seen a switch. In almost every major property rights case that's hit the courts in the last decade, the Audubon Society has been there arguing against property rights, filing briefs against the Fifth Amendment and compensation, marking a huge shift.



Parallel to the National Audubon Society and other groups, on the conservation side of private conservation, there were also some of the early land trusts and particularly the prototype land trust, the Trustees of Reservations, which was created in Massachusetts in 1891, which became the model for most of the land trusts around the world. And, at that time they were based solely on the institutions of private property, private action and the use of the institutions of a free society, and their motto was to find a way to “create a living library of the landscape of the Commonwealth of Massachusetts.” To save it for the people of Massachusetts, but to do it privately.

All these early efforts relied on voluntary association. There is a whole history of achievements. For example, the action that turned the tide on saving birds of prey, raptors, hawks and eagles in America, was the creation of the privately owned Hawk Mountain Sanctuary. At that time, not only were there no laws protecting hawks, but government agencies were actually paying bounties to kill them. And Rosalee Edge, a suffragette, tried repeatedly to get people to stop killing hawks. It wouldn't work. So she simply raised the money and went and bought Hawk Mountain, hired a warden and preserved it, and turned around the whole history of hawks in this country.

Land trusts were once based solely on the institution of private property, private action and the use of the institutions of a free society.

The same thing happened at the Sea Lion Caves on the coast of Oregon. When government bounty hunters were out there killing every seal, every sea lion, that they could, the people who owned the caves, simply because they had a self interest in protecting them, were actually engaged in shooting wars with the bounty hunters, and were eventually able to protect that area, which became the nucleus of the sea lions and seals that reestablished populations up and down the coast.

Some of the land trusts, as you can see, were extremely innovative. One of the land trusts that's impressed me most has been the Archaeological Conservancy in New Mexico, which saw that important archaeological sites often got buried under development because of ignorance. So, they hire archaeologists to go out and try to locate these sites. You can fly over areas and see that there might be a mound here or there, so they try to be proactive, and when they see that a development might be going in, they go talk to the developers and say “Look, you have an archaeological site here. If you donate or contribute this to us you can get a tax write-off on it, you can build your community around this and it will add a certain cachet to your community; it becomes open space within your community.” That seems to be a very successful program, and I think those are the good kind of things that you see land trusts doing – using voluntary, private action.

But, increasingly, I share the concerns that Tom Holt has brought out, that just as we saw a shift in the early seventies within the conservation movement as it shifted from a philosophy that believed that man and nature were part of the same nexus, where the trick was to get the incentives right, to find ways to encourage man and nature to coexist better. Up until then, you had all of these conservation organizations that had one mission – to protect and preserve something that was unique. They were either the Audubon Society and cared about birds, or the Xerxes Society and cared about butterflies, or the Wilderness Society and they cared about wilderness areas, or a forestry association and cared about trees and forests.

But then environmentalists increasingly began to dominate these organizations with a new philosophy, which wasn't first and foremost about protecting anything in particular. They had a totally different goal. It was stopping things. It was stopping progress, it was stopping development, it was stopping resource use, it was stopping technology, capitalism or whatever, and people who knew nothing about birds began to dominate the philosophy of the Audubon Society and the direction it was going, and birds went by the wayside.

Well, to some degree, I can detect some of this same shift within the land trust movement. And it certainly shouldn't be surprising that the same sort of shift might take place within the land trust movement as took place within the conservation movement. I think that explains why, almost anywhere you go in the country now and meet with organizations of landowners or property rights advocates or wise use types, one of one of the things they're most concerned about is the large land trust organizations.

I mean, what's been happening to the Nature Conservancy in Texas and elsewhere is really amazing. The state legislature there has even tried to eliminate their tax-exempt status, and organizations have sprung up all over Texas to show that they can preserve open space and private lands "very well, thank you," without them. I think shows that there's been some sort of fundamental shift.

For twenty years or so, The Nature Conservancy was widely viewed as an exemplary private land trust. They raised private money and went out and bought unique little areas that no one else was protecting and that had high environmental values. And I have certainly praised them for some of the good work they did back in the late sixties or early seventies, when their motto was, "conservation via private action" and their goal was to save "the last great places." In 1956, in Connecticut on the Myannis River Gorge, they saw the last remnant population of ancient Eastern Hemlock and they said "Well, somebody has to save this. The government's not going to save it. We're going to buy it and save it." And they did.

But then a shift in their thinking and actions became increasingly apparent. More and more of the lands they purchased were immediately turned around and sold to Federal Agencies at an enormous profit. And it appeared that some of these Federal Agencies had known about their efforts and were waiting to purchase the land. Some accused The Nature Conservancy of becoming little more than a real estate arm of the Federal Government, and a rather strong-armed and heavy-handed agent at that.

Some journalists reported allegations that some landowners were being pressured to sell their land, or to sell at less than fair market value, with thinly veiled suggestions that governmental efforts to greenline their lands were the alternative.

Now, as Tom pointed out, they're starting to pull out of preserves and, particularly in California, saying "No, we can't do this. We have to manage everything," to become, as you say, a giant land-use control mechanism.

We saw a shift in the early seventies within the conservation movement as it shifted from a philosophy that believed that man and nature were part of the same nexus.



I think this is the major concern – that some sort of philosophical shift has happened both in the conservation movement and within the land trust movement, and I don't know if we can find a way to resolve this, to get a lot of these groups to reexamine their relationship to private property and private property rights and how they can work harmoniously to find a way to have a landscape that has both nature in it and man in it.

PROF. EAGLE: Thank you, Mr. Smith. We have concluded our opening statements and now will move on to a discussion amongst the panelists.

To get things started, I'd like to ask one question of Ms. Hocker and Mr. Turner, which is this: Once a land trust has acquired an interest in land, is there a distinct land trust style of dealing with or managing that land, or would a land trust deal with that land in the same way that any governmental organization might?

MS. HOCKER: You have to make a distinction between land that's owned outright by a land trust organization and land on which a land trust holds a conservation easement. I'm not sure if you're making that distinction or not, but let me talk about both.

A land trust that owns land outright has to determine, first, why it acquired that land. Often it's for public use or use as a nature preserve or as a place for education. In fact, about 40 percent of land trusts have some sort of educational programs in conjunction with the land that they have protected.

Land trusts may use the land they own for public conservation programs, they may have walking trails, they may use it to demonstrate good farming or timbering practices. It depends upon the nature of the land and the land trust itself.

I don't know if we can find a way to get a lot of these groups to reexamine their relationship to private property rights.

When a land trust holds a conservation easement on a piece of land, that land stays in private ownership, and the management of the land is up to the private landowner, the landowner that conveyed the conservation easement or a subsequent owner of the property. The land trust merely has the right to prevent the kinds of uses on the land that were restricted under the terms of the voluntary agreement that the landowner makes in the easement.

So, the land trust generally has very limited day to day involvement in the management of the land. How that land is managed depends upon what the land is like – if it's a ranch it will be managed and used as a productive ranch. If it's a farm, it will be used as a farm. If it's intended to protect bald eagle habitat, there might be very little use on the land. The uses are up to the property owner, consistent with the terms of the easement. The land trust usually has very little day to day involvement in management.

MR. TURNER: Steve, let me use your question to comment on some of the observations made earlier. I think land trusts (and the Conservation Fund is not a land trust) because they have non-profit status and because their well-being is grounded in the trust the public has in them, whether it's a community or whatever, that criticism and a close watch are certainly in order and appropriate.

But I would like to comment on some of the underpinnings that Tom talked about, which I find, though

he may find instances, are a little far stretched and border on the absurd.

Let me first take the one that land with a conservation purpose “no longer trades.” I really find that borders on the absurd. I think it was Teddy Roosevelt who said conservation is economic development. Those that feel that lands under easement have no commercial trade, let me offer the following: We have somewhere in the neighborhood of 50 million acres of privately-owned timberlands in this country. Many big timber companies, and small timber operators, are now looking to the advantage of easements and I’ve been involved in several that plan to carry on a very hardy productive forest. We recently did a 30,000 acre tract, the largest easement ever done in Vermont, with Hancock Timber.

Those that feel an easement no longer trades also certainly ignore the value of recreation, outdoor recreation, and the fastest growing segment of that, non-consumptive wildlife viewing. As Jean pointed out, those that would submit that lands under conservation easement no longer trade ignore the productivity of farm and ranch lands all over this country, cattle production or crops.

I recently met with a large, very wealthy, landowner in Colorado who thinks that the conservation value of his ranch will maximize his ability to receive returns from the protection and sale of water from his place. I find all those are tradable.

One of the other underpinnings was that a majority of land will soon be under conservation. This simply ignores reality. In fact, we’ve lost 40 million acres of productive farmland. That’s not counting natural areas. And land trusts have struggled and protected four million.

It certainly flies in the face of what voters are telling us recently in places like Florida, New York, North Carolina, Colorado, California, and recently here in Maryland, where the voters have said they are distressed about the loss of open space, the cost of sprawl, and in fact have gone to the ballot and they’ve turned down school bonds and school funds and but said they’re alarmed at the disappearance of open space and would like money to go in to protect their communities and farmland.

Let me talk about “the squeeze of landowners.” Recently, I was out at the Western Governors Conference and the three governors that hosted that were Utah, Nebraska, and Wyoming, and a concern was mentioned that a third of the ranches in the inter-mountain West, over a thousand acres, are up for sale. That’s discounting the ones that have already been sold. These are ones simply on the market today.

To me that has frightening ramifications for those that believe in a working landscape, multigenerational farm and ranch families, and their ability to stay in business and carry on a way of life.

The squeeze that I’m talking about is neighbors that I live near in Jackson Hole who would like to pass on a cattle ranch to a future generation. But they cannot afford to pass that on to their own kids. It’s that kind of concern that has them looking to the land trusts and the creative private sector tools they can bring.

When a land trust holds a conservation easement on a piece of land the management of the land is up to the private landowner.



*I think non-profits
have made unseemly
profits on the co-op
and pre-acquisition
basis.*

We recently gave an award at the Rally of the Land Trust Alliance, in conjunction with the Alliance, to a cattle rancher out of Colorado by the name of Jay Fletcher who has founded the Colorado Cattlemen's Agricultural Land Trust, and he talked about the loss of 90,000 acres of ranchlands in the State of Colorado per year. He felt that the land trust approach gave him the tools to carry on a way of life and to keep those ranches family ranches.

And let me talk about this whole idea that a land trust could work out a deal with a landowner without public notice, public hearing, or involving the public community. I find that rather interesting that a private landowner cannot sit down and make choices on behalf of his land and his family. To me, we're flying in the face of private landowners to do what they think is best for their land – wishing to protect the integrity of an operation – maybe because of their love of the land, or the rights of the landowners to work with their communities and chart a future for it and then try to implement that. So, I think some of these underpinnings are in the past.

I would agree with one comment, and that is I think non-profits have made unseemly profits on the co-op and pre-acquisition basis and I think that has been looked at. Hopefully, many have and will change their ways.

It's my opinion, and the philosophy of the Conservation Fund, that the only role a non-profit should have, because of their tax-exempt status, is to conserve lands for a state, federal agency, or any other group, at a cost – in a manner or strategy that protects the taxpayer, and that is “Does it deal cheaper or no higher than a federal agency or state agency?” Because a government has to pay fair market value plus the internal costs of title searches, land surveys, environmental assessments, appraisals, which usually add to it.

If a non-profit cannot save money for those agencies, then they shouldn't be in the business, at least that's our policy – and I think our record is 35 or 40 cents on the dollar.

PROF. EAGLE: Tom Holt, a response?

MR. HOLT: Well, yes, I'd like to respond to a few things. One, I'd like to clarify, if I didn't make it clear in my opening remarks about land no longer trading, because that's certainly a key issue here, what I believe I said and certainly what I intended to say, is that although a ranch may have an open space easement on it and still function as a ranch, that portion of the property right has been extinguished and it no longer trades. I don't think we can dispute that. That's what I'm referring to. Why would you bother having a land trust if you didn't need to take some element of the potential land use out of potential commerce? I think we can agree on that.

Now I'm just delighted to hear John say that the Conservation Fund is taking a position about non-profits not making unseemly profits.

I share the concern about this idea of ranches and farms up for sale and being under pressure. By the nature of the work that I've done on land trusts and by virtue of where I live, I've come to know a lot of landowners, farmers and ranchers, particularly in the West. But, in all the research that I've done, I haven't found land trusts lobbying to get rid of the estate tax. I haven't found land trusts lobbying

to get rid of the capital gains tax. I haven't found land trusts lobbying to reduce property taxes. Those are three of the biggest pressures on landowners, to develop their land from one generation to the next.

It seems to me that too many trusts are, and it's certainly possible, with more than a thousand out there, that I missed one that's lobbying on those points, but it seems to me that trusts seem quite content to leverage that pressure rather than relieve the pressure.

Another issue that I'd like to put on the table regards pre-acquisition, and perhaps we should be clear about what we're talking about. "Pre-acquisition" is when land is acquired by a land trust and then sold to or donated to a third party, whether it be a government agency or another land-holding entity.

My big concern in this area is, obviously, that pre-acquisitions on behalf of the government raise a lot of serious questions. Certainly others have done more work on this than I on the particulars, but government isn't a very good land manager. Charles Kay has done a wonderful report on over-grazing at Yellowstone National Park. Time and again, the Interior Department Inspector General has noted that the Fish & Wildlife Service and the Park Service don't have the resources to manage what they have, yet they continue to acquire more through pre-acquisition, and I'm wondering why land trusts cooperate in an activity that is not particularly good for the land in the long term.

MR. SMITH: Well, I'm concerned too about the loss of ranches and ranchland, family ranches, all across the West. I've spent a lot of time visiting small ranchers in the West and talking to them about their problems. And I feel very disturbed that the only thing we really seem to have to offer them is that perhaps if they cut some sort of deal with a land trust, or put a conservation easement on their ranch, that they might be able to save it.

I would like to look, first, at lower taxes to begin with – eliminating estate taxes and so on. Instead of having taxes on the highest and best use, let's have, essentially, no taxes on land that's kept in conservation. Then only when you decide to take your ranch and turn it into a casino or something, are you then taxed on the highest and best use.

It's nice to see an environmentalist who's concerned about the loss of cattle ranches since, for the last 15 years, most of the environmentalists I've seen in Washington are trying to shut down every cattle ranch they can as quickly as possible and get all the cattle off the land. Slogans like "Cattle free by '93" or "No more moo by '92" are what we have been hearing from the environmental community.

Some groups are busy finding an endangered species of animal or plant to list on every single remaining source of water in New Mexico and Arizona, so they can control all the water, and then the cattlemen are off the land. What do they really want? Do they want a 20,000 acre cattle ranch or do they want 1,000 20-acre ranchettes? Which is going to leave the most room for nature and for wildlife? That's something that a lot of them ought to rethink before they start suddenly discovering "My God, all these people are leaving the land and cattle ranches are being abandoned everywhere."

I'd also like to address a point that Tom brought up. The whole question of perpetuity and whether or not environmentalists themselves, and conservationists, should really be concerned about that.

I haven't found land trusts lobbying to get rid of the estate tax ... the capital gains tax ... or lobbying to reduce property taxes.



Because, if you're basing an action on perpetuity, then you're simply foreclosing future societal choices and future societal options. Many environmentalists are increasingly claiming that we can't straight-jacket the future or completely commit to one conservation strategy. They say we can't know what's best even in the near future. With regard to the Endangered Species Act, they're opposed to creating habitat conservation plans for 25 or 50 years into the future. We can't say "No surprises," because the one thing we know that nature brings is surprises. That's the nature of nature: surprise.

We can see that in what we have done in this country. The United States government, for three-fourths of our history, subsidized landowners who drained wetlands as rapidly as possible. And now, if you touch a wetland, you're in trouble, maybe even in jail.

Obviously that showed that we don't always know what's going to be valuable in the future. And if we start deciding that there are certain kinds of lands that we must have conservation easements on, put all our efforts into saving wetlands or saving forests, and then find out, 10 years down the line or 20 years down the line, that we have a glut of those, or the climate changed, or some other kind of land is far more valuable for conservation, we're not in the position where we can say "Okay, we're going to sell off these wetlands and use this money to buy something more important."

The most recent example of that, which is particularly striking for a birdwatcher, is that for the last 20 years we thought the most rapidly disappearing bird populations in the United States were neotropical migrants that nest in interior forests, and with forest fragmentation those species were vanishing. Well, we just found out, through data accumulated over the last 20 years, that that's not true. They found most forest birds are doing fairly well. What's really disappearing are field birds and meadow birds. They're disappearing like mad. Nobody's been out there saving fields and meadows, because we all got locked into one particular footstep. And that, if nothing else, should be one reason for environmentalists and land trust people to not want to persist with perpetuity.

I've argued this with some folks in the land trust movement, and I've been surprised with the certainty that they've said "No, we know enough. We can do this. We know what we're doing. We understand how biology works." It seems to me that they are less concerned with changes that might take place than with locking up that land. That plays to my concerns that people are trying to do more than just save land.

We don't always know what's going to be valuable in the future.

PROF. EAGLE: Let me ask a question, following up on that, if I may. You made the comment before, RJ, that you thought that some environmentalists were following a traditional path of trying to preserve bird and animal species, and plant life, whereas other groups had as their primary goal impeding progress of man and the notion that human beings may be the enemy.

MR. SMITH: I meant more that there had been a shift from groups that were trying to save things, to groups that were now trying to stop things, sort of a wholesale shift, from conservationism into environmentalism.

PROF. EAGLE: Would it make sense, from the point of view of a contributor, or a landowner who's thinking about dedicating some portion of his land to a land trust, for those groups more clearly interested in the traditional activities like preserving species instead of stopping human activity to

more clearly designate themselves and to, perhaps, carve out a separate image for themselves?

MR. SMITH: I think so. And I think you're starting to see this, at least in on the local level. Chapters of organizations like the Audubon Society, for example the Stockton, California Audubon Society is suddenly saying "We're doing things with the Endangered Species Act that all the folks in Washington love, but look what it's doing to this ranch that we have right here, that we know is probably the best spot for birds in our county, and they're getting shut down by people enforcing the letter of the law rather than the spirit of the law." At the local level you're starting to see some sort of reaction. That's where I would have people look at whether a land trust or a conversation trust is small and close to home and that you know some of the people in it.

MS. HOCKER: I would like to point out that this meeting today is to talk about land trusts, not, I believe, the entire range of environmental groups. And I would point out that land trusts do exactly what you say. Of the 1,100-plus land trusts in the country, almost all of them are local or regional groups. They are almost all working very close to home, and the national groups very often partner with the local groups, in order to get the job done.

I would point out that land trusts cannot succeed in any way without building strong partnerships with landowners. Without the partnership with the landowner there is no land trust. The land trust doesn't exist in a vacuum. Land trusts help carry out the conservation wishes of landowners, consistent with public benefit. Landowners, we believe, have every bit as much right to decide to protect their land for future generations as they have the right to develop the land. The landowner has both rights and ought to be able to choose which path to take.

I submit that paving over land is designating the use of that land for perpetuity every bit as much as setting it aside as a natural area or open space. To me, protecting land as open space preserves options for the future, which paving it over does not.

When you make those choices, no matter which choice, I believe you are making it for a long period of time. If you preserve land as open space, you've left a lot more choices than if you've "preserved" it as a parking lot. I think a landowner has the right to choose conservation.

If we're talking about land property rights here, one of the property rights is the right to choose to sustain its open space character. Let's not forget that.

I also think that we're focusing far too much here on pre-acquisition. Yes, it is one of the things that land trusts sometime do. As I pointed out, fewer than 20 percent of land trusts, the last time we asked, had done any pre-acquisition work, and most of that was with local agencies, state agencies, close to home.

But there is nothing wrong with a partnership between a land trust and a government agency, if the land trust can help leverage tax dollars or help make the deal more compatible with the land and with the landowners wishes. I don't make apologies for these partnerships, which conservation-minded property owners often see as an advantage.

Nobody's been out there saving fields and meadows, because we all got locked into one particular footstep.



If we're talking about land property rights, one of those property rights is the right to choose to sustain its open space character.

MR. TURNER: As to the comment that you've never seen land trusts lobby for estate tax [relief] – as a 20-year legislator, I can tell you it was the local conservationists and many land trusts that worked hard for property tax breaks for land left in livestock production, ranching, and it was the Land Trust Alliance's major priority before the Congress last year to work on estate tax benefits. In fact, we're a major player in the passage of the Family Ranch Protection Act.

I agree with Jean and R.J. that some of the most successful conservation going on today is place-based, and it's focused on working landscapes, privately owned, working landscapes.

It's interesting to look at the economic profiles. I would think the Center for Private Conservation and CEI would be interested in the impact of land use on local taxpayers. There are some interesting studies coming out now. I remember one in Culpeper, Virginia, where they looked at the revenues from new development versus the cost, the eventual cost to the taxpayers. For every dollar that came from new development, it cost \$1.25 in new services for schools and public sewer.

For land that was kept in conservation or farming, for every dollar of tax revenues, only 19 cents had to go back for those services. I believe Rutgers just did a study for New Jersey and figured that increased sprawl and development of open space was going to cost \$10,000 to \$15,000 in extra taxes to every local homeowner, because of costs of \$20 billion to \$40 billion in infrastructure.

So, conservation is a very viable tool to protect taxpayers. Not only an individual landowner that has individual tax burdens, but the overall taxpayer burdens on communities. And I think if you don't look into that you're way behind what a lot of the American public and local elected officials and legislators are starting to grapple with, if, indeed, you're concerned about the welfare of local taxpayers.

MR. HOLT: I'd just like to address this question that we've been going back and forth on a bit, on perpetuity. As John and Jean have pointed out, when one chooses to develop land, say a shopping mall, it's a fairly long-term decision. I know that a lot of shopping malls are done on 99-year land leases. That's a fairly long time.

And Jean asserts that the landowner has every right to permanently encumber the land with an easement or some other such device, just as much right to do that as to develop it. I would dispute that point on two things. One, a landowner in this country, in general, does not have every right to develop his land. He has to go and get permits and work through the results of a deliberative governmental process to do that. That's not true of a land trust agreement; it's a private agreement.

Secondly, although the costs are significant, developed land can be rendered undeveloped, over time. You can bring a paving chawer in and erase pavement and, over time, with a lot of money –

MS. HOCKER: Have you ever seen it done?

MR. HOLT: Yes, actually.



MS. HOCKER: In many places?

MR. HOLT: My point is that land that's entirely in commerce, the use decision is revisited every time that that land is sold. The next owner decides. Or when the lease expires that question is revisited. I don't see where it's revisited in a trust agreement, and I'm wondering why trusts might be—if it would result, presumably, in more land coming under some type of easement or preservation, if they embraced the idea of, say, 10 or 20 year or 30 year, whatever term you want to pick, but a shorter term kind of preservation that allows the question to be revisited over a time span that's within the foreseeable future.

PROF. EAGLE: I thought I'd take a break from the colloquy among the panelists. Perhaps this is a good time to get some observations or questions from invited guests. Ann Corcoran?

MS. CORCORAN: * Yes, thanks. First, let me say that I agree with Jean wholeheartedly, and I've had this argument with my old property rights friends, that a property owner, like myself, has the right to place an easement on my property with any land trust that I might wish.

In our case, we've put our farms in a state agriculture land preservation program. And when you make those choices or you make the choice to develop your land, you can't always foresee the future, in either decision. And sometimes people make mistakes. But, you have the right to do that with your own property.

I wanted to bring this down to a more local level and explain a little bit what happened at the Antietam Battlefield and my involvement with a land trust.

In our case, at Antietam Battlefield, it was a classic undemocratic way of dealing with the local community, because many, many things happened at once. There was a great hew and cry that Antietam was going to be developed into something larger. We who live there said "Uh, where is it?" We even started hearing about it from the Washington Post.

Through much research and fortunate circumstances, we were able to find out that, in fact, there was a concerted plan. And this is my problem with land trusts. Once land trusts start working hand in glove with governments then what they're doing becomes my business. And, in this case, the trust, the state government and the National Park Service were all working together to bring about a change to our community that was debatable. I mean, some people would have liked it and some wouldn't, but we should have had a right to debate it, and we did not.

I found out about the plan because in a previous life I was a lobbyist for the National Audubon Society, and an insider came out to Antietam and told me what the plan was. We ended up calling it "preservation for profit." Lock up a core attraction and bring in high-class developers to do things such as a convention center. Governor Schaefer, at the time, had a study for \$50,000 to build a convention center near Antietam. All of this was a big surprise to those of us who live there.

The trust, working with the Park Service, decided that they were going to start picking up properties outside the boundary of the park. The Park Service did not have the right to tell them to go pick up

* Ann Corcoran is a landowner in the Antietam Battlefield area and the former editor of the Land Rights Letter.



private properties outside the legislated boundary, for the purpose of giving them to the National Park Service.

One of those properties would have surrounded me and put my farm in the park, and we purchased that property to save ourselves from being included within a national park boundary expansion.

This was a prime example of “squeezing landowners.” Every year, including this year, lobbyists have gone to Congress and attempted to find a senator who’s willing to increase the boundary of the park. But there are 16 homeowners who would get stuck as inholders inside the park and they’re scared to death. They are regular folks who are middle income people, who are elderly people, who are very scared of being inside the national park.

Once land trusts start working hand in glove with governments then what they're doing becomes my business.

It’s very interesting to talk about this on the large scale. But this is what can happen on a local level. It was a plan for our community. It was behind the local people’s backs. It was government and private groups, not just a land trust, with a big plan for the community, and we had a right to know about it. And that’s the problem that I have with this.

PROF. EAGLE: Myron Ebell?

MR. EBELL: Yes, Myron Ebell, Frontiers of Freedom Institute. I very seldom get outside the Beltway, so perhaps that’s why I only hear the problems with land trusts, not all the good things they’re doing. But, as a small biographical detail, I should mention that I did grow up on a family-owned ranch in northeastern Oregon, and I’m quite often surprised, when I return, to find the hostility that local landowners have towards not the 1,097 small land trusts in the country, but the hostility they have toward the larger land trusts operating in their area.

I agree that the land trust idea is a great one and, in its conception, harnesses the genius of our system of government and of private individuals achieving things on their own. However, instead of using that genius, it seems to me that some of the big land trusts - those that are more closely connected to a political agenda, rather than to the local problem that they want to solve - those land trusts are now starting to corrupt the movement and there needs to be some kind of reform.

I would suggest a couple of reforms and invite comments. One is I believe that in those jurisdictions that allow land trusts to have tax deductions on their property taxes or not pay property taxes at all, that should be changed.

Second, I believe that there should be laws passed in every state that any land sold to the federal government requires an excise tax to be paid by the seller, which will compensate for the loss of economic value and the environmental value, when you transfer land from private ownership to public ownership. We know, for instance, that when private woodlots are turned into national forests, they lose economic productivity. But we also have to recognize that they, in almost every instance, lose environmental values as well, because we know that the federal government is a very poor land manager. Those would be my two suggestions.

PROF. EAGLE: Is there any limit to how large a land trust should get, or how closely a land trust organization should be able to work with government?

MS. HOCKER: Well, limits in terms of what? In the number of acres saved? In the geographic region served?

PROF. EAGLE: Numbers of acres, numbers of parcels, geographic region. The level of involvement with government. We talked about pre-acquisition before, and I had gotten the notion that many members of the panel believe that that's not quite a good idea, although we didn't specify why.

MS. HOCKER: What I'm hearing here is a notion that land trusts are good as long as they're really small and don't really conserve very much land and don't really do very much, but as soon as they get a little bigger and become a little more successful and perhaps conserve a bit more land and work with more landowners, they're not good any more. Is that it? That's what I seem to be hearing.

MR. EBELL: Ann said this exactly right, the problem is when land trusts get involved in working with government at any level and the planning community, in general, to impose a large-scale plan that goes far beyond the boundaries of any land owned by the land trust or easements possessed by the land trust, particularly when that plan involves land and properties that are owned by people who don't want to have anything to do with that plan or those goals. Then it moves from the area of private citizens achieving private goals to trying to foist something onto others. And this is typically done by the big land trusts who work in cahoots with the federal land agencies. And we see this particularly in the West. I think it is absolutely sinister, the things that have been done there.

We know that the federal government is a very poor land manager.

MR. HOLT: I think, Jean, you have hit on an important point, and without putting too fine a point on it, I think you have summarized a good proportion of my analysis. Because what I found, at a very practical level, going through land records and looking at individual transactions, that by and large I found a lot more problems with transactions involving "the big three" or "the big four," than I did with those little, volunteer, trusts.

I think that is an important point, though how do you draw the line? Nevertheless, by and large, the projects that I've found that I thought were very good and closest to the kind of land trust in theory that I see in the popular press, are small organizations.

Mount Vernon has been a private organization from the get-go, which, not incidentally, the federal government and the Commonwealth of Virginia both refused to take over, back in the 1850s. There are other examples, but, generally, they're small organizations.

The Sand County Foundation, in Wisconsin, is an outstanding program! It's small. Maybe the problem is a function of getting to be a big organization. When you get to be a \$300 million a problem is a function of getting to be a big organization. When you get to be a \$300 million a year company, which is what the Nature Conservancy is, there are going to be abuses within the company.

Maybe there is something to the question, "Is there a limit?" I don't know what the magic number would be, and I certainly wouldn't want government to come in and say "Well, as a land trust you can't do more than a thousand acres." I can't imagine what awful things we'd end up with then by

the time Congress got done messing with whatever controls there would be.

But, I would suggest that there is some practical limit, where a trust ceases to be responsive to local concerns, starts playing lobbying games, starts playing political games, using the system rather than responding to the landowners.

Both Myron and Ann brought up a point about the trusts “looking beyond their borders.” That’s something I also found in my research. One particularly poignant case was one of many I found in the Shenandoah Mountains area of Virginia, where people were thrown off their land for the creation of Shenandoah National Park. Now, some years later now, they are being told “Well, hikers from Washington, D.C. and other cities don’t like the smell of cows and farming operations, and we don’t really like the looks of the kind of barns you people build. So we want to control the viewshed of the Appalachian Trail.”

And I know of one particular family, the Bradley family, that were it not for their somewhat unique ability to lobby first their state legislator and then their congressman, would have been left holding the bag because someone didn’t want to look at their farm operation from the trail.

But, the point is, the trail existed for some time. This totally phony charge was brought up about them being subject to development. They were a mile or better off the nearest road. There was no development remotely near them. This kind of thing happens all the time.

Does it represent what all of the trusts do? No. But those abuses are there and I think they need to be dealt with.

PROF. EAGLE: Looking to the future, do you see land trusts as continuing to be, at least in numbers, primarily local organizations, or do you think that the larger, national, organizations will play more of a role?

MR. TURNER: I think that’s an excellent question. I’ve heard some things here that to me, don’t make sense coming from those that supposedly champion the private sector. The conservation arena is a very competitive arena. We have a great deal of groups.

Their viability and sustainability is how good are their ideas, how good is their product, how well they’re supported by the private sector, do they resonate with the American people, et cetera. And I think, indeed, we’ve seen some national groups that were founded in the seventies and got out of touch with local people and the needs of this country, became way too liberal, hooked themselves to a congressional leadership. And I think you’ll find those groups in trouble, searching for a mission, searching for support, searching for a way to do anything effectively in the late 1990s and the turn of the next century.

Implying that “Well, small is good but big isn’t too good” – I wonder how companies that depend on how well they trade on the street would feel about that. Those groups that are the most successful are those that are learning to build collaborative partnerships with the private sector, develop new tools and strategy, ones that are finding non-regulatory approaches, using many private sector tools.

Land trusts are, I think, one of the most exciting, positive, parts of that movement. They are embraced by local people and they're supported by private funds. Their growth is amazing, and you'll see some land trusts fail and some succeed.

But I think the ideas of bottom-up, collaborative, community, place-based, conservation are going to be around for a while. I found Myron's comments on an excise tax intriguing, when the land goes from private to public.

I would ask, then, when land goes from private to private, if the land use becomes a detriment to the taxpayers, which we're finding is the case, where the individual seller makes a great deal of money but it impacts on a community a great deal of new taxes – should they also be taxed? Maybe that would be a good approach too.

I think the comment was raised, "Well, it's the sharing of expertise that we should guard against. It's when those guys from somewhere else come in and deliver some professional expertise." I can tell you, the landowners that I visit with and talk to do not want some group that doesn't understand real estate, does not understand the Tax Code, does not understand the laws of their state. If you do a disservice to landowners, it's giving them poor advice. And, in fact, those groups, having just met with a group of cattle ranchers and a group of developers in New England, both said, "How do you raise the capacity and the expertise of these land trusts so when we go for help we get the right answers?" So, this idea that it's all got to be mom and pop and no training, that just flies in the interest of those landowners that want the right kind of advice and not the wrong kind.

I wish we had pursued your question a little more about perpetuity, because I think that's a key one. It's a real concern on easements. It's a real concern on conservation. I think the whole idea of perpetuity is one that we ought to discuss further.

I would suggest that there is some practical limit, where a trust begins ... using the system rather than responding to landowners.

MR. HOLT: The concern I have there is more one of philosophy of approach, where the landowner may be concerned about his particular piece of ground, but someone else may have another agenda where that landowner is just a small piece of putting together a larger ecosystem plan or the like, and that the philosophy that comes from a large national trust is somewhat different from the philosophy that comes from a ground-up, voluntary trust.

MS. HOCKER: But we encourage land trusts to work together and really look at protecting land in a way that does build up to something, key parcels of a watershed or a river corridor for example, because if you're just protecting isolated parcels here and there that don't really protect the bird habitat or the ability to farm or ranch, then I think that's probably not a terrifically good investment of either public or private dollars, whether it's through the Tax Code or through donations. When land trusts do work together to maintain a scenic or wildlife corridor or greenway, then the public has gained. But there is also often good community benefit in conserving a single significant property.

I would also point out that no landowner that I know has been forced to deal with land trusts. Land trusts have no powers of coercion. I think it's somewhat unfortunate that we've spent almost the entire hour or so focusing on one or two land trusts, out of 1,100 land trusts in the country, and that those



particular land trusts are not here to talk about the transactions that so much of this discussion is focusing on.

I think the ideas of bottom-up, collaborative, community, place-based, conservation are going to be around for a while.

MR. HOLT: I appreciate the comment on that, Jean, but the fact of the matter is that the action, money-wise, and scale of land-wise, is in the largest organizations. The small ones do small portions.

But I'd like to talk just for a second about this coercive power thing because over the last number of years since I became first an observer and then deeply involved in looking at this whole realm of land issues, I can't count the number of times that I got a phone call from somebody out of the blue, who had tracked me down, and was genuinely worried, just ordinary people who are running a farm or maybe they have a

hunting cabin, but a land trust comes along and is active in their area and they are genuinely concerned. I have had this question asked many times of me, "Well, do I cut the best deal I can with them, or do I wait 'til the government comes?" That's a real concern of real people out there.

And it's primarily a concern in areas which are close to parks and where pre-acquisition activity is going on, which is certainly only a portion of what land trusts do. But, it's a real concern.

I have talked to landowners, where trusts are active in their areas, and they have a legitimate concern because those trusts are involved in working with government agencies, that there is an element of coercion, when the implied question is, even though the trust may be there of goodwill, there is a question in the air, like it or not, that "Either I cut my deal with them or I end up working with the government." I've seen this around Richmond Battlefield, I hear it a lot around the Yellowstone area, and Ann's case is a textbook case.

MR. TURNER: There's a lot more to Antietam than Ann tells you.

Let me talk about coercion. Coercion implies force and authority. Land trusts have no control over this land, nor do they have the force. Land trusts do not have that. If the local government seizes on it or the state or the feds, that's a different topic.

Let me talk about another type of coercion, because I just had an interesting talk with two ranchers in my state who are really concerned about the loss of ranch and farmland in the mountain West.

What happens when a rancher – and this is another set of ranchers that I'm dealing with in Arizona – when one of them gets picked off by a subdivider? The cost to that ranching community of trying to raise cattle goes up when you have an influx of weeds, cross country skiers, barking dogs, and school buses that fragment a community.

What about the coercion of an elderly rancher that would like to leave his ranch to his daughter or son and has no alternative – the Park Service doesn't want it as a national park, the Fish & Wildlife Service doesn't want it? They have no alternatives. But they're getting calls from subdividers or wealthy oil and gas companies, or people that have made a killing that want to build "starter castles," to find their pursuit of happiness?

Now, you gentlemen talk about coercion. Would you like an excise tax on the seller that sells to a subdivision, because of the cost he puts on a local ranching community, or the taxpayers there? The other ranchers, the taxes go up because new schools have to be built, more police, more sewer, and subdivisions.

MR. EBELL: Yes. I think, John, there is a false symmetry here.

When a private seller sells land to the federal government, an excise tax to compensate the local authority for the loss of property taxes, in perpetuity, is perfectly appropriate. When you say that if private development is going to cost the public, that is not symmetrical with the loss of property taxes. That is private individuals acting privately.

*Coercion implies
force and authority.
Land trusts have no
control over this land,
nor do they have the
force.*

Now, in this instance, when you say “Am I concerned about the coercion of subdividers, when people want to keep their landscape intact?” of course I am. Absolutely. But I do not believe it is coercion if one rancher or another who have adjoining properties wish to keep their property intact, those are individual choices. When one decides to subdivide, that is his choice. It’s not the other rancher’s choice.

Now, if that locality, in its wisdom, has passed zoning, if it has passed land use controls, if it has done tax incentives to keep land open, then that other rancher will be protected in some way or he will have some recourse. If his community, in its wisdom, has decided not to do that, then I’m sorry, that rancher who doesn’t own the adjoining property, is out of luck.

PROF. EAGLE: And the last word goes to R.J. Smith. Where do you see the land trust movement going and are you comfortable with that direction?

MR. SMITH: I’m not sure that I know where it’s going, and I’m concerned. That’s part of why we wanted to have this discussion – to raise the questions of whether some of the land trust movement seems to have lost its roots of being based on truly voluntary association and using private sector methods and truly willing buyer, willing seller approaches.

Unfortunately, we hear about coercion all over the country. Someone says, “Well, we’d like to buy your land.” People say “Well, it’s not for sale.” “Well, here’s what we’ll offer you for it.” And they say “Well, that’s below market price anyhow.” And they say “Well, if you’re not willing to buy it from us, how would you like it if our friends in the Assembly or the State Legislature decide to condemn your land?” That is what I would call extortion or force.

Now, when you ask me if I just want teeny little land trusts that are ineffectual, if "ineffectual" means that they are truly being voluntary, yes, if that was the choice. I don't think that has to be the choice. I don't think land trusts have to fall into these categories.

But I'm very concerned about the trend. Just as I saw the conservation movement move away from conservation into environmentalism and not really care about protecting birds, or whatever they were trying to protect, I think we can, unfortunately, detect some of those same sort of trends in the land trusts movement, particularly in the larger land trusts.

MS. HOCKER: If you had been in Savannah, you would have understood the land trust movement, and



*Unfortunately, we
hear about coercion
all over the country.*

I invite you to come to the land trust rally next year, and see what land trusts are really all about.

MR. SMITH: I'd love to.

PROF. EAGLE: Thank you, John Turner, Tom Holt, Jean Hocker, and R.J. Smith. On behalf of the Center for Private Conservation and the Competitive Enterprise Institute, I'd like to thank you all for participating - this has been a very enlightening and enjoyable roundtable. Thank you.

The Center for Private Conservation is supported by the William H. Donner Foundation.

ABOUT THE PARTICIPANTS

Steven J. Eagle is Professor of Law at George Mason University in Arlington, Virginia, where he teaches property and constitutional law. He received his B.A. in Economics from The City College of New York in 1965 and his J.D. from Yale Law School in 1970. Prior to joining the George Mason law faculty in 1987, Professor Eagle was Professor of Law at The University of Toledo College of Law in Toledo, Ohio, and Associate Professor of Law at Pace University Law School in White Plains, New York. He is a Senior Fellow at the Institute for Justice in Washington, D.C., and a Past Chairman of the Subcommittee on Takings Impact Regulation of the American Bar Association Land Use Regulation Committee. Professor Eagle is the author of *Regulatory Takings* and many articles in law reviews and other publications. He lectures and advises widely on property rights litigation.

Jean Hocker is president of the Land Trust Alliance (LTA), the national umbrella organization of land conservation organizations, known as land trusts. The Alliance provides land trust leaders with training, education and information; advocates laws and policies that encourage voluntary land conservation; and fosters public understanding of land trusts and their methods and approaches to conserving land. Ms. Hocker has been the Alliance's chief executive since 1987. From 1982 to 1987, Ms. Hocker was executive director of the Jackson Hole Land Trust in northwest Wyoming, where she led the organization in protecting several thousand acres of ranch land and wildlife habitat. Prior to that, she served as a consultant to the Izaak Walton League of America, directed a legislative effort to establish a Jackson Hole National Scenic Area and conducted a study of affordable housing options for the Teton County, Wyoming, Board of County Commissioners.

Tom Holt is the author of a forthcoming book on land trusts, is a public relations consultant and writer in Portland, Oregon. Presently a member of the editorial board of *Brainstorm*, a Northwest regional magazine based in Portland, he is a former editorial writer for the *Richmond Times-Dispatch*, Reagan administration speechwriter and public relations staffer at The Heritage Foundation. He is the author of *The Rise of the Nanny State* (a profile of the consumer advocacy movement), and his writings have appeared in *Reason*, *National Review*, *The Public Relations Strategist*, *The Wall Street Journal*, and many other newspapers.

Robert J. Smith is a senior scholar at the Center for Private Conservation and a senior environmental scholar at the Competitive Enterprise Institute. Combining a natural sciences background, geology at Stanford University, with the social sciences, economics at New York University, Mr. Smith began to apply market and property rights solutions to environmental issues when he was president of an Audubon society chapter in 1970. In his book, *Earth's Resources: Private Ownership vs. Public Waste*, he coined the term "free market environmentalism." He was consultant to the Department of the Interior and the President's Council on Environmental Quality and a special assistant at the EPA. He was Director of Environmental Studies at the Cato Institute. Currently he works on wildlife, endangered species, private property rights and property stewardship.

John Turner is a native of Wyoming, a rancher, for 19 years a member of the Wyoming state legislature, director of the fish and Wildlife Service during the Bush administration and President and CEO of the Conservation Fund, a non-profit group dedicated to land and water conservation.