

# Working with Land Trusts: A Guide for Military Installations



# Land Trust Alliance



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Land trusts and military installations share the common goals of advocating for protecting natural areas, appropriate development, and working with community organizations.

The Land Trust Alliance provides training for land trusts and works to increase both the quality and pace of land conservation throughout America. I am proud to partner with the Department of Defense (DoD) to encourage collaborative activities between military installations and land trusts. Since 2002, The Alliance has invited DoD involvement in our national land trust conference, and DOD staff have served as workshop presenters and plenary speakers.

Our latest partnership activity is the creation of a community of practice on the Alliance's members' only website, The Learning Center, a forum for Department of Defense and land trust personnel to share information on land conservation. The goal of The Learning Center is to increase the capacity of the participants to conserve and protect land.

I look forward to continued collaboration with the Department of Defense to increase land conservation around military installations by land trusts and their partners.

Sincerely,

A handwritten signature in black ink, appearing to read "Rand Wentworth". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rand Wentworth, President Land Trust Alliance

November 2009



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## FRAMING THE ISSUE

### *The Need for Communication*

To work together on the issue of compatible land use, there must be two-way communication between the military and stakeholder groups. Land trusts have the ability to greatly amplify the military's efforts to promote compatible development, while the military can bring to the table various resources that work toward these groups' specific missions. However, without proper communication these groups with concerns may miss opportunities to achieve mutual solutions.

This report is designed to:

- Help Department of Defense officials and military base commanders gain a better understanding of how land trusts operate in making land use decisions that may affect military operations
- Facilitate communications and potential collaboration.

The chart on the next page is a summary of what installation personnel should be doing to engage with state and local governments in protecting against encroachment and working on compatible land use issues.

### *The Issue*

Encroachment on U.S. military installations and training and testing ranges is a serious and growing problem for the Department of Defense (DoD). Encroachment – a term used by the Department of Defense to refer to incompatible uses of land, air, water and other resources – is the cumulative impact of uncontrolled urban development that hampers the military's ability to carry out its testing and training mission.

The rapid pace of urban growth into formerly rural areas around military installations and ranges presents two sets of problems. First, as residential and commercial development increases in areas near military bases, residents may be exposed to aircraft over-flights, dust and noise from military activities. Second, the military may have its ability to conduct important training exercises compromised by incompatible land use developments adjacent or in close proximity to their property and facilities. For example:

- Night training can be compromised when light from nearby shopping centers interferes with soldiers' night vision

*The Army, Navy, Air Force, and Marine Corps manage nearly 30 million acres of land on more than 425 major military installations.*



**Table 1: Installation Community Engagement Guidelines**

Concerns	True/ False	What the Law Says	What This Means
“DoD personnel cannot provide information to state and local governments about legislation that would protect our military base and ranges.”	FALSE	<ul style="list-style-type: none"> <li>• “No part of the money appropriation...shall be used directly or indirectly to...influence...a Member of Congress, a jurisdiction, or official of any government, to favor oppose any law, policy or appropriation.” [18 USC 1913]</li> </ul>	<p>IT IS OK TO:</p> <ul style="list-style-type: none"> <li>• Share information about Administration positions</li> <li>• Share information necessary to the administration of laws for which a government agency is responsible</li> <li>• Provide pre-existing materials</li> <li>• Give speeches on Administration positions (as long as not exhorting the public to contact government officials in support of positions)</li> <li>• Send letters from agency to members of Congress</li> <li>• Make statements to news media on Administration positions</li> </ul> <p>IT IS NOT OK TO:</p> <ul style="list-style-type: none"> <li>• Use appropriated funds to generate “grass roots” support, i.e., attempt to mobilize citizens or networks to call, write, or emails or otherwise contact lawmakers in support of DoD initiatives</li> </ul>
“Providing information on impacts of local development action on our installation is lobbying.”	FALSE	<ul style="list-style-type: none"> <li>• Applicable to lobbying at the state and local level AND with regard to regulations and policy, not just legislation and appropriations</li> <li>• “No part of any appropriations contained in this Act shall be used for publicity or propaganda purposes... [DoD FY05 Appropriations Act]</li> </ul>	
“Giving speeches on legislation is considered lobbying.”	DEPENDS		

- Airborne training, such as parachute training, can be halted when housing developments are built near drop zones
- Usable testing and training areas in general can be segmented and diminished if development forces endangered species to migrate inside the military installation fence lines to their open space and only remaining natural habitat
- Energy projects such as wind turbine and transmission line development may interfere with military operations if project siting is not planned collaboratively with the military



*Table 1, cont.*

Concerns	True/ False	What the Law Says	What This Means
<p>“If state and local governments take the military’s advice the military may become liable for takings.”</p>	FALSE	<p>“Nor shall private property be taken for public use, without just compensation.” [US Constitution, Amendment 5]</p>	<p>IT IS OK TO:</p> <ul style="list-style-type: none"> <li>• Testify or provide information to governmental agencies about impacts of actions of military operations.</li> </ul>
<p>“Testifying to a local land use planning authority makes the government liable for takings.”</p>	FALSE	<p>“The United States may use its position as a landowner to influence local zoning authorities without incurring liability for a taking.” [Persyn v. United States, 32 Fed. Cl. 579, 585 (1995)]</p>	<ul style="list-style-type: none"> <li>• Make recommendations or otherwise be persuasive about actions</li> <li>• Prepare draft ordinance/legislation</li> </ul> <p>IT IS NOT OK TO:</p> <ul style="list-style-type: none"> <li>• Be part of a panel that VOTES on land use matters</li> <li>• Threaten, deceive or recommend others do what we cannot do</li> </ul>
<p>“Working with state and local governments to combat encroachment is DoD policy.”</p>	TRUE	<p>“I recommend you direct more active involvement at the installation and Regional Environmental Coordinator level in all aspects of state and local planning that could impact readiness.” [Philip Grone, PADUSD, “Working with State and Local Governments to Combat Encroachment, August 23, 2004]</p>	<p>IT IS OK TO:</p> <ul style="list-style-type: none"> <li>• Participate, communicate, build relationships and share information</li> </ul> <p>IT IS NOT OK TO:</p> <ul style="list-style-type: none"> <li>• Avoid all interactions with local planners and organizations about land use issues</li> </ul>

*In 2002, the General Accounting Office reported that nearly 80 percent of the nation's military bases were witnessing growth around their fence lines at a rate higher than the national average.*

## ***The Implications***

Restrictions on military training and testing caused by increased growth and development can have a larger more detrimental impact on the military than just minor disruption and inconvenience. Troops that receive unrealistic, degraded training are more likely to misunderstand combat strategies and tactics, which can lead to the development of wrong or unsafe skills. Additionally, an inability to “Train As We Fight” eventually limits combat forces to fight only as they have trained. This can result in a reduction in safety and success in real world conflicts. Furthermore, mitigated training and compromised safety goes against the agreement the military has with the American people to educate, train, and prepare our military personnel for the challenges of war BEFORE placing them in combat. In order to protect the lives of our armed forces, they must have the right skills and training.

The responsibility for managing growth and development falls to state and local governments that can exercise land use management authority. Additionally, groups such as land trusts, the agriculture community and conservation organizations can leverage their interest in open space conservation areas and working lands to partner cooperatively with the military to establish compatible land use buffer areas around DoD land.

To date, various groups have taken action in response to the growing issue of encroachment. Some examples:

- States have passed legislation aiming to minimize incompatible development and promote compatible uses of resources around military installations.
- State and local governments have formed military advisory boards to facilitate discussion and develop policy about incompatible land use around military installations.
- Specific installations have engaged with conservation-oriented non-governmental organizations, as well as state and local governments to establish conservation areas surrounding military lands.

## LAND TRUSTS



*A conservation easement is a private, voluntary legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation value.*

### *What is a Land Trust?*

Land trusts use a variety of tools to help landowners voluntarily protect their land and are distinguished by their firsthand involvement in land transactions or management. The most commonly used methods are purchasing, and/or accepting donations of conservation easements and land.

Land trusts may also manage land owned by others or advise landowners on how to preserve their land. They may help negotiate conservation transactions in which they play no other role. Land trusts often work cooperatively with government agencies by acquiring or managing land, researching open space needs and priorities, and assisting in the development of open space plans.

Some land trusts focus on distinct areas, such as a single town, county or region, or concentrate on the uniqueness of a lake, river or mountain. These local and regional land trusts support grass roots efforts to conserve lands important to their communities. Others operate throughout an entire state or even several states.

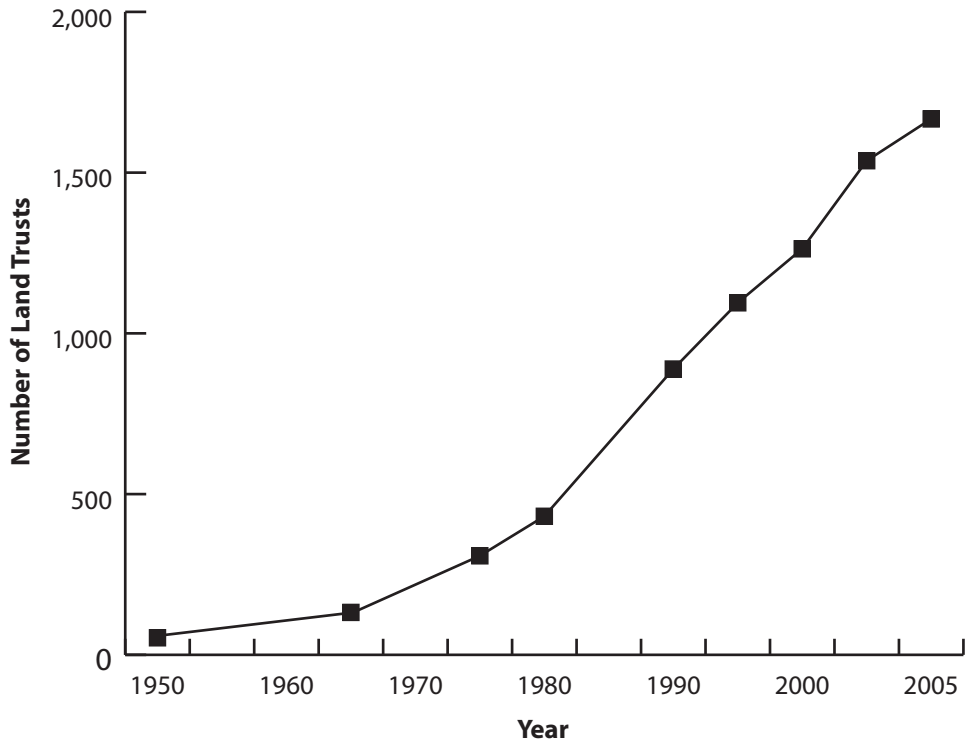
There are national land trust organizations like The Nature Conservancy and the Trust for Public Land that have state and regional offices and operate nationwide and in many cases internationally.

There are also many national and local conservation organizations, such as Ducks Unlimited, Trout Unlimited, Sportsman's Alliance of Maine, and Sporting Lands Alliance that were created by outdoor enthusiasts to protect hunting and fishing areas.

### ***How Did Land Trusts Originate?***

The country's first land trusts were established in Massachusetts during the 1850s for the purpose of protecting small parcels of land for public use. One hundred years later in 1950, there were 53 land trusts operating in 26 states. Today, there are more than 1,700 local and regional land trusts across the country, serving every state in the nation. They protect over 12 million acres of farmland, wetlands, ranchland, forests, watersheds, river corridors and other land types.

***Figure 1. Growth of Local and Regional Land Trusts: 1950 - 2005***



### ***What Does a Land Trust Do?***

Land trusts protect land directly by buying or accepting donations of land or of conservation easements. They also educate the public and advocate for the need to conserve land. They can help landowners tailor a conservation plan to their individual situation and financial circumstances, and determine the property's conservation values and future ownership. Most importantly, land trusts pledge to

landowners and to the public that they will protect their land in perpetuity. To do this, a land trust must be strong and sustainable.

### ***How are Land Trusts Structured?***

Land trusts are like snowflakes, no two are alike. However, they all share common characteristics in their structures and how they operate. Land conservation is a complex endeavor, and successful land trusts master many organizational, legal and financial tasks. Land trust work has two parts: organizational management and land transactions.

#### ***Organizational Management***

Organizational management issues for land trusts include being in compliance with all nonprofit laws; having the ability to fundraise; instituting careful financial management; and attracting a strong board of directors along with an appropriate mix of volunteers, staff and/or contractors.

#### ***Land Transactions<sup>1</sup>***

Land transactions involve evaluating and selecting land conservation projects carefully. Most land trusts would like to protect more land than their limited time, staff or other resources permit. So, the most effective organizations create a strategy or plan of action to target specific types of land to save.

Once a land parcel is targeted, the land trust ensures sound transactions by making sure that every project is legally, ethically and technically sound. The land trust also ensures that every charitable donation meets Federal and state tax law requirements.

*References can be found on page 23.*



*Strong sentiments and state traditions in favor of private property rights can have a tremendous influence on local land development decisions. For example, elected and appointed officials may find it difficult to adopt more stringent land use controls to protect military installations.*

### ***How Does a Land Trust Conserve Land?***

Land trusts have many options available to them in order to conserve land (Appendix A, Page 21). Two of the most popular options are fee simple and conservation easements.

#### ***Fee Simple***

A land trust can conserve land through an outright purchase or donation, in which the landowner sells or grants all rights, title and interest in the property to the land trust. The land trust maintains perpetual stewardship and management responsibility for the land. It owns the land and may grant conservation easements on land it owns in fee to another conservation organization, agency or town.

#### ***Conservation Easement***

A conservation easement (or conservation restriction) is a private, voluntary legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values. It allows the landowner to continue to own and use the land and to sell it or pass it on

### ***Considerations When Deciding Whether to Use Fee Simple Ownership or a Conservation Easement to Protect a Property<sup>2</sup>***

#### ***Factors Favorable to Fee Simple Ownership:***

- Property contains very sensitive natural resources
- Public use is a significant conservation objective
- Resources on the property require intensive management
- Surrounding lands are owned in fee by the land trust or other conservation organization or agency

#### ***Factors Favorable to Conservation Easements:***

- Conservation objectives include productive use
- Private ownership is compatible with the conservation objectives
- The land trust has the capability and finances to monitor and enforce the easement
- Restrictions that protect the resources can be negotiated and can be reasonably monitored and enforced



## ***Good Neighbors for Military Installations:***

### **Working Landscapes Protecting with Agricultural Conservation Easements**

Farming, ranching and forestry can be highly compatible with military land use. Protecting working lands adjacent to military installations can help sustain military training and testing by buffering bases from residential neighbors, as well as providing habitat for endangered species.

America's agricultural sector provides the nation with an abundance of food, fiber and even fuel products. Its dominant role in the global economy has been likened to OPEC's in the field of energy. Not only does it support America's balance of trade, and offer potential for reducing our dependency on foreign oil, agriculture underpins the economies of many rural communities. Working landscapes also provide non-market benefits such as scenic views, open space and community character. Long-range environmental benefits include wildlife habitat, clean air and water, flood control, ground water recharge and carbon sequestration.

However, according to a June 2002 General Accounting Office Report on military training, 80 percent of communities surrounding military installations are growing faster than the national average. Additionally, of the nearly 35 million acres of non-Federal rural land developed between 1982

*Many DoD installations still have working lands nearby. Protecting these with easements can help to buffer the base from incompatible development.*





*By engaging your local Farm Bureau, you can find ways to work with local landowners to preserve agricultural and forest lands near military installations.*

and 2002, more than half of that was agricultural land. As populations grow, protecting military installations and the valuable working lands adjacent to them becomes even more critical.

One way to protect these working lands as well as buffer military installations from development is to purchase **Agricultural Conservation Easements**. Under the 2003 National Defense Authorization Act, the military can enter into agreements with eligible entities to purchase conservation easements or other real estate interests for the purpose of protecting military installations from urban encroachment. Agricultural Conservation Easements are designed to keep land available for agriculture by limiting non-farm development. Some agricultural conservation easements allow housing lots to be reserved for family members and most do not restrict farming practices, although some require soil and water conservation plans.

Just purchasing Agricultural Conservation Easements is not enough. Engaging land owners and agricultural groups is an important component in protecting working lands as well as military installations. Most rural landowners have multiple interests in their property. They can sell land, or they can sell or donate conservation easements to protect land along the borders of military installations. Depending on whether or not individual landowners support local planning initiatives, they can make or break changes to land use policy.

Owners of “working lands”—farm, forest and ranch lands—and other rural residents respond to new planning and zoning proposals depending on their own personal and family priorities. For example, farmers and ranchers who believe agriculture has a strong future are more likely to support policies that limit new development (and potential encroachment) into agricultural areas bordering military bases. Landowners who believe they can make a lot of money selling their land for development are more likely to emphasize private property rights and oppose policies that they think will reduce the value of their farms.

Representing the collective interests of farmers and ranchers are agricultural groups. The largest national group representing the interests of farmers and ranchers regardless of size or commodity is the **American Farm Bureau**. As a non-governmental organization, the Farm Bureau advocates for policies and issues of concern to its five million members. There are Farm Bureaus in every state, and most states have local chapters. Agricultural groups often have concerns about the fairness of new land use policies and how they affect property rights, economic viability, environmental regulation and other vital interests of the farm community.

to heirs but the easement ‘runs with the land,’ meaning that it is not extinguished when the land is sold.

### ***How Do Conservation Easements Work?***

An easement restricts development to protect the conservation values of a particular property, which may or may not include the prohibition of construction. Landowners and land trusts, working together, can write conservation easements that reflect both the landowner’s desires and the need to protect conservation values. Even the most restrictive easements typically permit landowners to continue such traditional uses of the land, such as farming and ranching.

When a landowner donates or sells a conservation easement to a land trust, he or she gives up certain rights associated with the land, primarily relative to development. For example, the right to build additional structures might be given up,

#### **Steps in the Process of Working with a Land Trust**

*The following are the basic steps in executing a conservation easement.*

*These may vary from land trust to land trust and region to region.*

1. Landowner and land trust representative(s) meet to discuss landowner’s wishes, needs and conservation objectives. The land trust representative describes the land trust and its policies, and explains how a conservation easement works, appropriateness for the property, and any other conservation options that may be available to the landowner.
2. Landowner reviews the material, consults with family members, legal counsel, and/or tax advisors, and indicates an interest in further exploration of an easement.
3. A land trust representative visits the property to evaluate its features and the natural and open-space resources, and consults again with the owner on the easement terms and the long-term objectives. The land trust representative determines whether protection of the property serves the public interest and, (if donated), which of the various IRS public benefit tests is satisfied. The land trust conducts a baseline study to inventory and document the resource values of the property.
4. After consulting with family members, advisors, or others, the landowner reaches a preliminary agreement with the land trust on the proposed terms of the easement and property description.

*When a mortgage holder **subordinates a mortgage** to a conservation easement they agree to allow the easement to be first in the chain of title, so that in the event of a foreclosure, the integrity of the easement remains intact.*

*Most land trusts will not accept an easement on mortgaged property unless the holder of the mortgage agrees to subordinate.*

*A **Baseline Report**, which can usually be found recorded at the county courthouse, typically include initial property descriptions and biological features of the land.*

*They record the condition of the land at the time the easement is put in place, and support the terms of the easement. Thus they are essential in identifying the conservation attributes an organization plans on protecting as well as changes to the land over time, whether brought about by man or nature.*

5. The land trust board approves the conservation easement, making a finding as to the public benefit of the easement and how it fits with the land trust's strategic plan.
6. Landowner provides chain of title, certification of title or title report to the land trust.
7. The landowner contacts the lender, if any, to arrange for subordination of mortgage. The mortgage must be subordinated for the conservation easement to be effective and (if donated) for a tax deduction to be available.
8. Landowner determines if certain IRS requirements for an easement to be tax deductible are met.
9. A qualified appraisal is required if the landowner is donating a conservation easement valued at more than \$5,000 and intends to seek a federal charitable income tax deduction for the gift. For charitable deduction purposes, the appraisal must be completed no earlier than 60 days before the date of the gift (the date on which the conservation easement is signed and accepted by the Minnesota Land Trust) and no later than the date on which the tax return for that year is due. In some circumstances, an older appraisal can be updated with more current data. For other non-tax purposes, timelines may vary. Conservation easement appraisals are complex and time consuming. As such, landowners should contact an appraiser early in the process as it may take up to 4 to 6 months or more to complete an appraisal.
10. Conservation easement is finalized and signed.
11. The signed easement documents, usually including the Baseline Report, are recorded at the county courthouse.
12. Most land trusts ask conservation easement donors to make a donation to the land trust to cover the costs of monitoring and enforcing the conservation easement in perpetuity.
13. Land trust provides landowner with contemporaneous, written acknowledgements of the gift.
14. The landowner claims a federal income tax deduction for the donation on a special form with his or her income tax return (Form 8283). Depending on the state, there may be state and local tax savings as well.
15. The land trust has the responsibility of monitoring the property at least once per year to ensure that all of the easement conditions are met.

while the right to grow crops is retained. Those restrictions remain with the land in perpetuity, i.e., future owners also will be bound by the easement's terms. The land trust is responsible for making sure the easement's terms are followed.

### ***What Are the Advantages of Conservation Easements?***

Landowners have found that conservation easements offer great flexibility, yet provide a permanent guarantee that the land will not be developed. For example, an easement on property containing rare wildlife habitat might prohibit any development, while one on a farm might allow continued farming and the building of additional agricultural structures. An easement may apply to only a portion of the property, and need not require public access.

A landowner may sell or donate a conservation easement. If the donation benefits the public by permanently protecting important conservation resources and meets other federal tax code requirements, it can qualify as a tax-deductible charitable donation. The amount of the donation is the difference between the land's value with the easement and its value without the easement. Placing an easement on property may or may not result in property tax savings.



Perhaps most importantly, a conservation easement can be essential for passing land on to the next generation. By removing the land's development potential, the easement lowers its market value, which in turn lowers estate tax. Whether the easement is donated during life or by will, it can make a critical difference in the heirs' ability to keep the land intact.

## ***What Are a Land Trust's Responsibilities Regarding Conservation Easements?***

The land trust is responsible for enforcing the restrictions detailed in the easement document. Therefore, the land trust monitors the property on a regular basis, typically once a year, to determine that the property remains in the condition prescribed by the easement document. According to the Internal Revenue Code, for a qualified organization to be an eligible donee of a qualified conservation contribution, it must also have a commitment to protect the conservation purposes of the donation, and the resources to enforce the restrictions.

## ***What Are Some of the Other Methods Land Trusts Use to Protect Land?***

### *Planned Gifts*

A planned gift is a contribution given at death, such as bequests through will, or a life income gift such as charitable remainder trusts, charitable gift annuities, reserved life estates, life insurance and gifts of IRAs and pension plans.

### *Mutual Covenants*

A mutual covenant involves several landowners that mutually agree to restrict their land. It may not always involve a land trust, and is not necessarily permanent or binding on future owners. There are no income or estate tax benefits.

### *Deed Restrictions*

Deed restrictions are terms that are placed in the deed to the property that restrict certain uses of the real estate by subsequent owners. Again, there are no income tax benefits, but possibly estate tax benefits.

### *Rights of First Refusal*

A landowner who cannot afford to donate his or her property to the land trust may consider a right of first refusal, in which the landowner agrees to grant the land trust the opportunity to match any bona fide purchase offer at a future time if and when the landowner elects to sell the property.

### *Conservation Buyer Program<sup>3</sup>*

In a typical conservation buyer transaction, a land trust protects a property by identifying a buyer who is willing to purchase conservation land and subsequently donate a conservation easement on it to the land trust. Sometimes the land trust itself purchases the land and resells it to a conservation buyer, reserving an easement.

*Lewis Jeffries, a descendent of Mary Draper Ingles, lives in the same home that has been in the family continuously since the 1750s. He placed an easement with Virginia Outdoors Foundation in 2002, telling a local paper: "Not everything can be bought with a dollar. Some people say, 'You ought to sell this farm.' I say you can't buy your heritage."*

### *Registry Programs<sup>4</sup>*

Some land trusts operate programs to “register” significant conservation properties. This registration involves drafting a nonbinding agreement stating that the landowner will not develop the land, or at least certain portions of it, and will notify the land trust of any threat to the land or of any plans to sell.

### *Limited Development<sup>4</sup>*

Sometimes portions of a property can be developed without sacrificing the protection goal. Such limited developments usually entail subdividing the less environmentally sensitive portions of a land parcel and selling these to a private buyer; the portion of the property with the most valued resources may be retained by the land trust or sold to a third party with conservation restrictions.

### *Like-kind Exchanges<sup>5</sup>*

A like-kind exchange happens when property that is held for investment is exchanged for any other property that is being held for investment, allowing the investor to defer paying capital gains taxes. This is also known as a “1031 exchange,” after the Internal Revenue Code §1031 (a) (1).

## ***Where Do Land Trusts Get Funding to Conserve Land?***

Land trusts draw upon a variety of sources to buy land, or interests in land. They may use one or a combination of acquisition endowments or funds, local bond measures, request donations from individuals and foundations to an acquisition campaign, and a unique and proactive method called conservation financing. Conservation financing utilizes local, state, federal and other funding sources (Appendix B) to protect open space and manage growth. Growth is accommodated where it makes sense, near existing infrastructure, while conservation is used where it matters most—for the farmland, waterways, wildlife habitat and open spaces that sustain and define a community.

Since the amount of federal funding available for conservation fluctuates annually, local funding is the key to effective, long-term conservation financing. It is important to have local commitment and control. Local funds also help leverage federal, state and private dollars, establishing a predictable and sizable conservation funding stream.

State and local governments continue to fund open space acquisition, viewing parks, recreation and habitat as “green infrastructure” important to the quality of life and the economy.

*Voters across America continue to pass tax levies for purchasing open space.*



- Property contains very sensitive natural resources that are of great interest to the American public. In the last two decades, more than \$54 billion in new conservation funding to protect land as parks and open and open space has been created at the state and local levels, with voters backing measures in 46 states<sup>6</sup>.
- Several states have enacted trust funds to provide a sustainable principal that can generate regular interest payments for purchasing land. The strongest trusts are enacted by constitutional amendments that specify the use of the funds. Revenues that have been used include general appropriations, lotteries, mitigation funds, special taxes and user fees.



### ***What are the Advantages of Working with a Land Trust?***

Land trusts have many advantages as land protection organizations. One advantage of working with land trusts is that they are very closely tied to the communities in which they operate. They can draw on community resources, including volunteer time and skills. Their community orientation is also helpful in selecting and negotiating transactions. They are familiar with the land in the area and often have the trust and confidence of local landowners who may not want to work with entities from outside the area, or directly with a federal agency such as the Department of Defense.

Moreover, the nonprofit tax status of land trusts brings them a variety of tax benefits. Donations of land, conservation easements or money may qualify for income, estate or gift tax savings. Properly structured land trusts are exempt from Federal and state income taxes and sometimes from local property and real estate transfer taxes as well.



Additionally, due to the fact that land trusts are private organizations, they can be more flexible and creative than public or government agencies, and can often act more quickly. They can hold and manage land and other assets as a corporation, and are able to negotiate with landowners discreetly.

### ***What are the Advantages and Disadvantages of Working with a National Organization Versus a Smaller State or Local Land Trust?***

Conservation organizations vary greatly from one state or region to the next. There are national organizations like The Nature Conservancy (TNC) or the Trust for Public Land (TPL) that have a national office with state and/or regional chapters. TNC has state chapters that can act like local land trusts. There are also many different types of local land trusts. These can be all-volunteer, or a large, medium or small staffed land trust. You should talk with representatives of the various organizations in your area to get a feel for the types of land they focus on protecting, their ability to bring outside funding to the project, and their organizational strength to live up to their stewardship duties. Often, these organizations will work together on a project.

### ***What are Some of the Challenges Land Trusts Face in Conserving land?***

A recent survey of the land trust community revealed the top three perceived internal and external threats to land trusts. The internal threats were:



- Inability to defend conservation easements because of lack of legal expertise or the funding to properly support a protracted legal proceeding
- Land trusts going out of business for lack of interest, funding, or a strong governing board
- Inability to steward land and conservation easements from lack of knowledge or experience.

The top three external threats were:

- Adverse court decisions that, if they set precedence, affect other easement cases
- Land use changes around conservation easements that may make them irrelevant
- Loss of tax incentives, which are an important reason why landowners are willing to give up their development rights.

### ***How Can I Find a Land Trust?***

To find a land trust near you go to <http://www.lta.org/findlandtrust/index.html>, for a listing of land trusts by state and county.



## **Factors to Consider when Partnering with a Land Trust**

### ***What is the land trust's mission, and is it compatible with the objectives of the project?***

Every land trust is different, and each one should be able to articulate its mission and how it is implemented. With limited resources and limited time to save all the land that could be saved, the most effective land trusts focus their efforts on one geographic area or one land type.

### ***Does the land trust have the capacity to complete the project and assume the stewardship responsibilities?***

Land trusts come in all shapes and sizes, and have varying levels of staffing and expertise available to bring to bear on a project. Talk with the land trust to explore the complexity of the proposed project and ensure that they have the needed staff, resources, and/or relationships with other organizations to complete the project and assume the stewardship responsibilities.

### ***What is the past experience of the land trust (projects, community outreach, landowner relations)?***

As with prospective employees, contractors and consultants, it is always best to check with people who have dealt with the land trust in the past to get an indication of how it will work. Ask previous landowners that have donated land or easements to it; contact local government officials and ask if they or someone they know have worked with the land trust in question.

### ***Does the land trust have access to other sources of funding?***

Land trusts may have access to Federal, state or local sources of funding, some of which are described elsewhere in this primer. Depending on the type of resource being protected, land trusts may be able to pool funds from a variety of sources or attract bridge financing to complete the project.

**Land Trust Alliance (<http://www.lta.org>):** LTA promotes voluntary private land conservation to benefit communities and natural systems. Its main goals are to dramatically increase the pace of land conservation, build strong land trusts, encourage strategic conservation, and defend the permanence of conservation easements.

### **National Level Land Trust Organizations that are members of the Land Trust Alliance:**

- **American Farmland Trust (<http://www.farmland.org>):** AFT is a nationwide nonprofit membership organization solely dedicated to protecting America's farmland. AFT works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment.
- **The Conservation Fund (<http://www.conservationfund.org>):** TCF helps local, state and federal agencies, and nonprofit organizations acquire property from willing sellers to protect open space, wildlife habitat, public recreation areas, river corridors and historic places.
- **The Nature Conservancy (<http://www.nature.org>):** TNC is an international, nonprofit organization dedicated to preserving the diversity of life on Earth. The Conservancy works with landowners, communities, cooperatives and businesses to establish local groups that can protect land.
- **Trust for Public Land (<http://www.tpl.org>):** TPL is a national, nonprofit, land conservation organization that conserves land for people to enjoy. TPL bridges the needs of landowners seeking to protect a special property and those of government agencies that acquire land for public benefit.

## Appendix A. Summary of Conservation Options Available to Land Trusts

Land Protection Option	Description	Results
<b>Conservation Easement Outright Land Donation</b>	Legal agreement between a landowner and a land trust or government agency permanently limiting a property's uses, land is donated to land trust or agency	Land conservation values protected by organization. Owner continues to own, use and/or live on the land. Land trust owns and protects the land
<b>Donation of Undivided Partial Interests</b>	Interests in land are donated to land trust or agency over several years, until organization has full ownership	Can be nullified by subsequent agreement of owners
<b>Donation of Land by Will</b>	Land is donated to land trust or agency at death	Land trust owns and protects the land*
<b>Donation of Remainder Interest in Land with Reserved Life Estate</b>	Land is donated to land trust, but owner (or others designated) continues to live there, usually until death	Land trust owns and protects the land*
<b>Bargain Sale of Land</b>	Land is sold to a land trust or agency for a price below fair market value	Land trust owns and protects the land*
<b>Lease</b>	Land is leased for a specific number of years to land trust or individual, with restrictions placed on how it can be used	Development postponed
<b>Mutual Covenant</b>	A group of landowners agree to restrictions on their land use. May not involve a conservation group	Can be nullified by subsequent agreement of the owners

\* For property best kept in private ownership, the land trust may place a conservation easement on the property to protect it, and sell it to an appropriate buyer.

For non-conservation property donated to generate income to the land trust, the land trust will sell the property. Cash from the sale in either case will be used to support the land trust's conservation programs.

## Appendix B. Available Federal Funding for Land Trusts

- **Federal Land and Water Conservation Fund:** This is the largest source of federal money for parks, wilderness and open space acquisition. It provides most of the acquisition funding available to the four federal land management agencies that land trusts typically might work with: the National Park Service, the Bureau of Land Management, the U.S. Fish and Wildlife Service, and the U.S. Forest Service. <http://www.nps.gov/lwcf/>
- **The Forest Legacy Program:** This program is administered by the U.S. Forest Service and provides matching funds to states to assist in forest protection. <http://www.fs.fed.us/spf/coop/programs/loa/flp.shtml>
- **The North American Wetlands Conservation Act:** This act promotes voluntary, public-private partnerships to conserve wetland ecosystems for waterfowl and other migratory birds. Congress appropriated \$47,647,000 for this program in FY2010, with an additional \$42M in funding from other sources such as fines from federal laws. <http://www.fws.gov/birdhabitat/Grants/NAWCA/index.shtm>
- **The Cooperative Endangered Species Conservation Fund:** Section 6 of the Endangered Species Act gives matching grants to states for conservation projects that benefit candidate, proposed, and listed endangered species. [http://www.fws.gov/Midwest/endangered/grants/S6\\_grants.html](http://www.fws.gov/Midwest/endangered/grants/S6_grants.html)
- **The Coastal Zone Management Program:** This program is a partnership between the federal government and 35 states and territories to better steward the nations' oceanic and Great Lakes coastline. While this program focuses primarily on management issues, there has been a recent push to better integrate conservation within the overall management strategy for the coastal zones. <http://oceanservice.noaa.gov/topics/coasts/management/>
- **The Farm Bill:** The 2008 Farm Bill includes a variety of programs, including the Farm and Ranch Lands Protection Program, Wetlands Reserve Program, and Conservation Reserve Program, which are applicable to the work of land trusts. <http://www.usda.gov/wps/portal/usda/farmbill2008?navid=FARMBILL2008>
- **The Transportation Equity Act for the 21st Century<sup>7</sup>:** Reauthorized in 2005, this act provides federal funding for transportation enhancement activities with conservation purposes and community improvement projects such as open space preservation and trail development. <http://www.fhwa.dot.gov/tea21/>

- **Readiness and Environmental Protection Initiative:** This program supports DoD compatible land use and conservation partnering initiatives implementing the authority authorized by Congress in 2002 under 10 U.S.C. § 2684a. It provides DoD funding to the Military Services to enter into agreements with private conservation organizations, and with state and local governments, allowing partners to use DoD and other public and private sector funds to acquire property, or property interests such as conservation easements, from willing sellers that preserve critical buffers and habitat areas near installations. <http://www.denix.osd.mil/portal/page/portal/SustainableRangeInitiative/CompatibleLandUse/REPI>
- **Other Federal Grant Programs:** Information on other federal, state, and non-federal grant programs is available in the Department of Defense Natural Resources Funding Manual. <http://www.denix.osd.mil/nr/ConservationProgramInformation/ReportsandPublications.cfm>



## References

1. **Starting a Land Trust: A Guide to Forming a Land Conservation Organization** (2000) Land Trust Alliance.
2. **Conservation Options: The Land Protection Toolbox Land Conservation Leadership Program Training Manual** (2003) Sylvia Bates and Peg Kohring. Land Trust Alliance and The Conservation Fund.
3. McQueen, Mike. "Local Markets Shape Land Trusts' Conservation Buyer Program," Exchange. (Spring 2002).
4. **The Trust for Public Land. Doing Deals.** Land Trust Alliance and the Trust for Public Land (1995).
5. Daniels, Thomas L. "Like Kind Exchanges & Escrow Accounts: Leveraging Land Protection." Land Trust Alliance Rally Presentation (2002).
6. **Trust for Public Land, [www.tpl.org/landvote](http://www.tpl.org/landvote) : LandVote 2008: Americans Invest in Parks and Conservation** (2008), Trust for Public Land
7. Cook, Ernest and Kim Hopper. **Conservation Finance Handbook.** The Trust for Public Land (2004).

This primer is one of a series designed in cooperation with DoD's Sustainable Ranges Initiative. The primer series includes:

- ❖ Collaborative Land Use Planning: A Guide for Military Installations and Local Governments
- ❖ Commander's Guide to Community Involvement
- ❖ Outreach for Mission Sustainability: Working to Balance Military and Civilian Community Needs
- ❖ Partner's Guide to the Department of Defense's Readiness and Environmental Protection Initiative (REPI)
- ❖ Working to Preserve Farm, Forest and Ranch Lands: A Guide for Military Installations
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- ❖ Working with Land Trusts: A Guide for Military Installations and Land Trusts
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