



POLICY BRIEF



Private Land Trusts: A Free Market Forest Conservation Tool

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November 2002

Research for this paper was completed during the **Kinship Conservation Institute**, a one-month educational conference conducted by the Political Economy Research Center (PERC) in Bozeman, Montana, and funded by the Kinship Foundation.

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October 2002

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I. Introduction

Residents of Washington state enjoy a vast wilderness and a diverse natural environment, ranging from the rolling hills of the Palouse and the serenity of the San Juan Islands to the ecological variety of the Olympic Rainforest. These natural amenities foster a strong environmental ethic in most residents. Preserving our natural environment is an important social goal, but overuse of the traditional top-down, government approach to environmental protection has fostered a severe regulatory climate that often stifles economic growth and development.

In addition, harsh regulatory solutions to environmental problems threaten many of the basic principles upon which our country is founded. Public officials often violate property rights in the name of the perceived common good. In many cases government regulatory solutions do not achieve the intended conservation goals. In other cases the cost of achieving environmental goals, both in dollars and in lost liberties, lead many residents to question the value of the strict regulatory system.

Throughout Washington people are becoming more aware of the spotty and inconsistent record of traditional environmental regulations like the Shoreline Rules and Growth Management Act. Support is waning for a regulatory system with continually rising costs but often-questionable results. Residents want a fresh alternative - one that can bring environmentalists, property owners and businesses together to cooperate in protecting our natural surroundings. This paper explores the potential of private preservation of forestland, which provides vital habitat for many animal species, is an

important source of economic stability for the region and is an essential element for the quality of life in our communities.

Over the past 20 years a new movement around the country has emerged, benefiting from the free market ideas that catapulted our nation to prosperity. This movement, termed free market environmentalism, or FME, is gaining a strong foothold in Washington state. Rather than relying on narrow government mandates, regulatory strictures and controversial court rulings, free market environmentalists are using the market to enhance the environment while also respecting basic property rights. A major component of the new environmental movement is the use of private, non-profit land trusts to protect valuable natural amenities.

This paper discusses how land trusts are being used in Washington state and throughout the country to successfully protect productive timberland and old growth forests from development. The study analyzes land trusts and how they fit into the free-market environmental movement; presents case studies of existing land trusts; recommends principles that can be used for establishing a private, free-market land trust; and finally, discusses some of the difficult structural and political questions faced by land trusts.

II. History of the Environmental Movement: A Philosophy of Limits and Regulation

During the industrial revolution Thomas Malthus popularized the hypothesis that existing environmental resources could not sustain the world's population based on existing growth and productivity patterns. In his much publicized and debated research, he predicted a catastrophic shortage of finite resources caused by uncontrolled population growth and a failure to improve production efficiency.¹

Malthus' predictions, though wildly alarmist and on many accounts incorrect, sparked an interest in the world's environmental problems. As the industrial revolution

¹ A detailed biography of Thomas Malthus is available on the New School University website at <http://cepa.newschool.edu/het/profiles/malthus.htm>. Malthus predicted a continual and disastrous worldwide famine resulting from population increases that outstrip food production capacity. His fatal flaw was a miscalculation of human ingenuity. While the world's resources may be limited, the human ability to find innovative answers to complex problems is limitless. Today, the world produces more food on less land than in any other time in history, illustrating the human ability to maximize the value of a limited resource. Other faulty predictions of worldwide and national crisis caused by resource scarcity include the rubber crisis of early World War II, the timber crisis of the early 1900s, the oil crisis caused by a shortage of sperm whale oil before the widespread discovery and use of fossil fuels and Paul Erlich's 1968 prediction of widespread worldwide famine by the early 1980's. In each circumstance, human ingenuity and market incentives helped identify alternative products and production methods that averted the eminent crisis. Data on resource crisis from, "A Reviewer's Notebook: Doomsday Myths," by John Chamberlain, published in *Ideas on Liberty*, Foundation for Economic Education, Irvington on Hudson, New York, August 1984 and "Defusing the Population Bomb," by Stephen Moore, Cato Institute Commentary, October 15, 1999, available online at www.cato.org.

continued, a growing group of environmental activists began to insist on a necessary link between economic growth and environmental degradation, based on their theoretical assumption that the two are inseparable. As the world grew more prosperous and industry thrived, dire predictions of impending environmental meltdown spread.

Over time, interest in protecting the environment became increasingly tied to pressure for government regulations and economic restrictions. In the United States, environmentalists began lobbying the Federal Government for top-down, command and control regulation of natural resources. Beginning with the establishment of Yellowstone as the first national park in 1872, the federal government proceeded to restrict the use of public lands. Today the federal government controls more than 700 million acres across the country, much of which is off limits to most human uses.²

Today, centralized government control of the nation's environmental resources is a concept firmly engrained within many government and non-profit environmental organizations. In Washington state many of the principles of the traditional environmental movement are incorporated into our regulatory system. Two prominent examples of regulatory environmentalism are the Growth Management Act and the recently rescinded Department of Ecology Shoreline Regulations.³ Both regulations impose strict limits on the use of private property without offering compensation to the landowner for the diminished value of the land.

In other areas of environmental policy, the state imposes more extensive and burdensome versions of certain federal regulations, including endangered species rules, water quality laws and air quality regulations. Another set of regulations, based on the State Environmental Policy Act (SEPA), gives state agencies the ability to “consider the environmental consequences of a proposal before taking action. It also gives agencies the ability to condition or deny a proposal due to identified likely significant adverse impacts.”⁴

Today, centralized government control of the nation's environmental resources is a concept firmly engrained within many government and non-profit environmental organizations.

SEPA, enacted in 1971, set the stage for thirty years of rising state environmental regulation. Most existing environmental regulations are a direct response to the broad new powers granted to state agencies following passage of SEPA. Today state government policy relies heavily on command and control-style regulation, while imposing an increasingly expensive burden on local residents and businesses.

² Data from, “State by State Government Land Ownership,” published by National Wilderness Institute is available online at www.nwi.org and “National Park Service Acreage Summary 2001,” published by the National Parks Service and available on their website at www.nps.gov.

³ In 1999 Department of Ecology issued strict new regulations on the use of shorelines throughout Washington. The Shorelines Hearings Board invalidated the regulations in August 2001. An appeal has been filed in Thurston County Superior Court and settlement negotiations are under way. An agreement is expected before the end of 2002.

⁴ Information is from the Washington State Department of Ecology. An explanation of SEPA is available at www.ecy.wa.gov/programs/sea/sepa/faq.htm.

III. Free-Market Environmentalism

All environmentalists do not support the reliance on state and federal power to manage the environment. In the early 1980s a group of conservationists, landowners and policymakers challenged the assumed regulatory philosophy.⁵

Government-imposed environmental regulations often cost much more than expected and in many cases fail to accomplish the original conservation goal. Billions of dollars in tax money are spent each year creating and enforcing centralized regulations mandated by Congress and implemented by government bureaucrats. At the national level, monitoring and enforcing environmental regulations costs taxpayers more than \$7.2 billion.⁶ Here in Washington state, the agencies and commissions chartered to control and manage environmental rules employ more than 1,400 government workers and have a biennial budget exceeding \$760 million.⁷

The free market environmental movement promotes market-based alternatives that enable individuals to engage in voluntary exchange and protect natural resources without government coercion. At the center of the movement is a system of well-defined property rights to land and resources. Property rights recognize ownership in the productive value of an environmental amenity.

A property owner who benefits from the protection of the environment has an incentive to conserve precious natural resources for the future. In contrast, without clear property rights there is no incentive for an individual property owner to conserve those resources, particularly (as is the case with the Endangered Species Act) if the presence of certain species will restrict the owner's freedom to use the land, reduce its value, and expose the landowner to criminal penalties.

⁵ More information about the environmental movement and the growth of free market environmentalism is available in the book, "Free Market Environmentalism," by Terry Anderson and Donald Leal, Palgrave, New York, NY, 2001.

⁶ This estimate only accounts for the direct budgetary expenditures devoted to regulatory activity. The cost of complying with the regulations imposed by the federal government is not nearly as transparent. "Regulatory Response: An Analysis of the Shifting Priorities of the U.S. Budget for Fiscal Years 2002 and 2003," by Susan Dudley and Melinda Warren, published jointly by the Mercatus Center at George Mason University and Weidenbaum Center at Washington University, June 2002, p 4. One estimate by the U.S. Small Business Administration Office of Advocacy estimates the cost of compliance with all Federal regulations at \$843 billion. "The Impact of Regulatory Costs on Small Firms," by W. Mark Crain and Thomas D. Hopkins, a report for the Office of Advocacy, U.S. Small Business Administration, August 2001, Washington D.C., p 3. Another study by Cato Institute estimates environmental regulations now cost the average American household at least \$2,000 annually. "Cato Handbook for Congress: 106th Congress," Cato Institute, January 1999, Washington, D.C., p 424.

⁷ Analysis based on author's correspondence with Washington state agencies involved with environmental regulation and policy. Those agencies and commissions include: Conservation Commission, Department of Ecology, Environmental Hearings Board, Pollution Liability Insurance Agency, Puget Sound Water Quality Action Team, Growth Management Hearings Board, Department of Fish and Wildlife and Department of Natural Resources.

Criminal penalties and restrictive limits on property use are a growing concern for landowners. Many feel they are being forced into a system in which the government must grant permission before any action can be taken on private land. In many communities a shift of power from the landowner to local, state and federal government agencies increasingly limits the accepted use of private lands.

Free market environmentalism uses market incentives instead of regulations and fines to achieve its ends and allows property owners to benefit from the protection of forestland, species habitat, riparian stream ecologies and other vital natural amenities. Concepts enshrined in old environmentalism - particularly the three P's of prescription, process and punishment - are being discarded in exchange for a more positive approach that embraces voluntary interaction, market incentives and a new focus on results.⁸ By promoting these new methods of environmental protection, conservationists can avoid what is commonly called the tragedy of the commons -- the frequent degradation of resources held in public, or "common," ownership.

In an influential article in the journal *Science*, biologist Garrett Hardin explains why a scarce resource open to all is subject to overexploitation. He uses the example of a pasture open to all herdsman for cattle grazing -- a "commons." Hardin points out that eventually the pasture will become overgrazed because each herdsman can capture all the benefits of adding more cows, while facing only a fraction of the costs -- the harm caused by overgrazing -- since all users share the costs. The tragedy, notes Hardin, is that each individual is locked into a system of competition for common pastureland that leads to ruin.⁹

Many landowners feel they are being forced into a system in which the government must grant permission before any action can be taken on private land.

Hardin's analysis is particularly relevant to public parks and forestland. Two popular national parks, Yosemite and Yellowstone, suffer from a classic tragedy of the commons. Without sufficient limitations on usage, the parks are becoming overcrowded and suffer from maintenance backlogs and general resource depletion. Visitors shoulder very little of the cost of maintaining these parks, and are thus unlikely to consider the high cost borne by American taxpayers to continue their upkeep.¹⁰

⁸ For further discussion see, "Moving Beyond Conflict: Private Stewardship and Conservation Partnerships," a speech by Lynn Scarlett, Assistant Secretary for Policy Management and Budget at the U.S. Department of the Interior. The speech was delivered to the Heritage Foundation on August 29, 2002 and is available online at www.heritage.org.

⁹ "The Tragedy of the Commons," by Garrett Hardin, *Science*, 1968, v. 162, pp 1243-1248.

¹⁰ In an effort to address the over-use of some of our national parks Congress approved the "Fee Demonstration Program," in 1996. The program allows some federal parks and forestland to charge a small entrance or use fee. Proceeds from the new fee are used to maintain park operations, address maintenance backlogs and fund improvements in park facilities. Most analysis of the project indicates that it is successful, but harsh opposition from certain special interest groups blocks permanent adoption of this market-based mechanism for limiting the tragedy of the commons. More information is available in, "Paying to Play: the Fee Demonstration Program," by Holly Lippke Fretwell, *PERC Policy Series*, December 1999, available on the web at www.perc.org.

Many other examples help explain the concept of the tragedy of the commons. In each case, the inability or reluctance to define ownership of a resource results in overuse or misuse by the collective owners. Without property rights, there is little incentive or mechanism for controlling the use of a resource.¹¹ As the history of public lands in the United States illustrates, government control of natural resources often results in degradation and exploitation of those amenities held in common.

IV. Land Trusts as a Conservation Tool

Because government control is often cumbersome and ineffective, private land trusts can play a vital role in conserving forestland throughout Washington state and the nation. Groups that are traditionally opposed to each other can embrace land trusts. Free market enthusiasts support trusts because they move power out of the hands of government and introduce business-like efficiencies into the conservation of natural resources. Supporters of traditional environmental regulation find private trusts appealing because they offer clarity of purpose and a level of predictability that is typically not present with government regulation.

Private land trusts can also help avoid a tragedy of the commons by recognizing clear property rights for the environmental

Advantages of Private, Free-market Land Trusts

- Brings together traditionally opposed groups
- Moves power out of government hands
- Introduces business-like efficiency to conservation
- Offers clarity of purpose and higher level of predictability

amenities on private property. Many small landowners desire to preserve their forests from approaching development but find themselves driven by increased land values and higher taxes to contemplate selling for development.¹² Larger landowners, such as natural resources companies in the region, also want to maintain productive forestland for both economic and community relations purposes.

Many of these same property owners are skeptical of government efforts to regulate and control their land. Land trusts offer a private solution that does not involve government regulatory coercion and allows local communities and individuals to pursue conservation goals without dictates from outside authorities.¹³ Land trusts that purchase

¹¹ It is often difficult to define ownership of a resource for protection purposes. This is the case with air and water pollution. For a more comprehensive discussion of this problem see, "Evolutionary Ecology: A New Environmental Vision," by Lynn Scarlett, published in *Reason Magazine*, May 1996, available online at <http://reason.com/9605/may96.shtml>.

¹² Landowners with property defined as forestland in accordance with Revised Code of Washington (RCW) section 84.33 can receive a special exemption from state and local special property tax assessments. Should the property be developed after receiving this exemption the landowner will be responsible for the original amount of the assessment plus interest for the time the exemption was claimed. A detailed explanation is found in RCW 84.33.210.

¹³ "America's Private Forests," by Constance Best and Laurie Wayburn, Island Press, Washington, D.C., 2001, p 21. In their analysis of private forests the authors explain that, "While [private forest owners]

land and easements to private property are successfully converting the landowner's conservation interests into real results.

V. Importance of Forestland to Washington state

Forests have been an important part of the economy and culture of the Pacific Northwest for generations. Washington state forests are among the most productive on earth, yielding a wealth of benefits: timber, habitat for fish and wildlife, natural beauty, clean air, pure and plentiful water, stable climates; as well as inspiration, recreation and an abundance of biological diversity.

Washington's nickname as the Evergreen State is fitting - more than 21 million acres of forestland cover about half the state. Of those 21 million acres, federal, state and local governments own more than half: 12.5 million acres. Individuals, tree farmers and small and large businesses own the remaining 8.5 million acres, or about 40 percent of forestlands.¹⁴

Figure 1

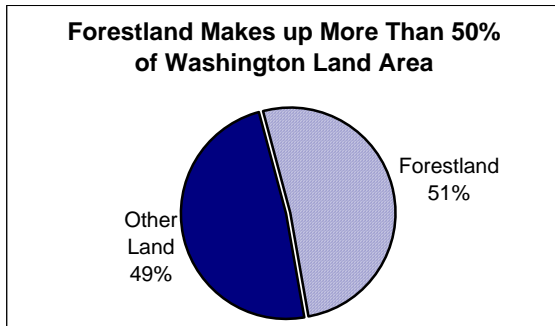
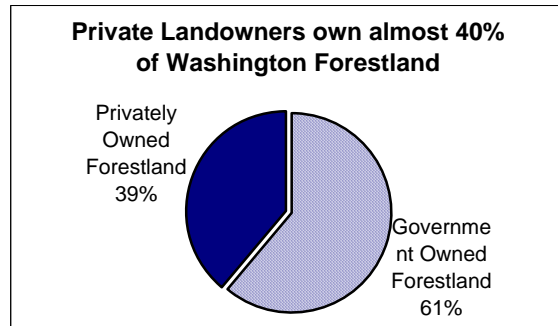


Figure 2



Private landowners are a diverse group. They range from individual families with 100 acres of forestland, to international companies that use scientific forest management techniques to ensure a healthy, sustainable forest for years to come. Regardless of size, however, government regulations directly affect all landowners.

Population growth also impacts private forestland owners. Throughout the state residential development is pushing farther out from the urban centers. While the nation's inventory of productive forests continues to grow, private forestlands near growing

support for environmental protection is generally strong, using regulation as the means to that end is not supported. Of landowners with 100 acres or more, only 27% supported regulations as a means to protect water quality, threatened species and scenic beauty.”

¹⁴ Data provided by Washington Forest Protection Association (WFPA) in “Forest Facts and Figures,” a study of forestland in Washington state published in March 2002. Available online at www.forestsandfish.com. The WFPA is an organization representing private forestland landowners across Washington state.

communities face increasing conversion pressure.¹⁵ Private landowners, while deeply interested in conserving their productive forestland, are also strongly opposed to costly government land use restrictions imposed without scientific basis or collaboration with the people who will be impacted the most. Many landowners share a suspicion of the usual legislative and judicial tactics environmental activists use to advance preservation goals.

VI. How a Land Trust Works

One of the most widely used alternatives offered by free market conservation is the private land trust. A private land trust is a non-profit organization directly involved in conserving land for natural, recreational, scenic, historic and productive values.¹⁶ While there are a number of large, well-known national trusts, most land trusts are community-based, non-profit organizations that solicit private support to protect land from future development. Land trusts use a number of tools for conserving land. Two of the most commonly used are:

Fee Simple Ownership. With fee simple ownership a land trust organization purchases all property rights from the landowner and assumes full ownership of the land and its amenities. This method grants the most control and flexibility to the land trust, allowing it to manage the property without conflict with the original owner based on the conservation mission of the trust.¹⁷

The primary deterrent to fee simple ownership is upfront cost. When purchasing land outright, a land trust must compensate the landowner for the net present value, which includes the current use, plus any potential future uses of the land that could add to its value. For this reason, many land trusts often turn to the second tool of land conservation: easements.

Conservation Easement. A conservation easement typically includes restrictions on future development, protections for riparian and wetland habitat and guidelines for timber harvest. Easements limit the use of land but do not transfer full ownership rights to the land trust. The primary costs are specifying, monitoring and enforcing easement provisions.

¹⁵ Despite an increase in population of nearly 165 percent, total forestland across the nation has remained basically stable since 1920, covering about 746 million acres or 33 percent of US land area. Growing timber inventory dramatically increased over the past 45 years, growing from 613 billion cubic feet in 1953 to 835 billion cubic feet in 1997. "US Forest Facts and Historical Trends," published by the United States Department of Agriculture Forest Service, January 2001, pp 4,11.

¹⁶ The Land Trust Alliance, a national organization representing land trusts across the United States, defines a land trust as, "A nonprofit organization that, as all or part of its mission, actively works to conserve land by undertaking or assisting direct land transactions - primarily the purchase or acceptance of donations of land or conservation easements."

¹⁷ "The Law and Economics of Habitat Conservation: Lessons from an Analysis of Easement Acquisitions," by James Boyd, Kathryn Caballero and R. David Simpson, published by Resources For the Future in April 1999, Washington, DC, pp 6,7.

Land trusts primarily use three methods for acquiring fee simple land ownership and easements.¹⁸

Purchase. Full purchase of land and easements is the most difficult to achieve because of the high cost, but it also opens the door for conservation opportunities that would not otherwise be possible through donation or bargain sale.¹⁹

Donation. Perhaps the most popular form of transaction. Land trusts report that about 60% of their transactions are completed via donation of land or easement from the original landowner.²⁰

Bargain Sale. Some landowners will offer to sell their property to a land trust at a below-market price because the landowner feels the value of conserving the land is more important than selling on the open market.

Purchases and donations facilitated by private land trusts are voluntary agreements between the land trust and the landowner. The voluntary nature of the transaction is vitally important to the success of land trusts as a conservation tool. In some cases, there is evidence of private, non-profit land trusts using the coercive, regulatory power of government to force landowners to give up land or sell it for less than it is worth. A true free market land trust uses only voluntary market mechanisms and freely negotiated private agreements to accomplish conservation goals.²¹

VII. Land Trust Financing

Land trusts are financed in a number of ways. The two most common are private donations of money and land. Because land trusts are non-profit organizations, a landowner can receive substantial tax benefits by donating money or land to a trust.

Other financial tools include government grants, fees for recreation access and educational programs, harvest of productive timber and tax-free conservation bonds. Tax-free conservation bonds are a new funding technique proposed by U.S. Forest Capital and Evergreen Forest Trust in Washington state. The Trust is awaiting a ruling from the IRS and possible Congressional action to determine if the mechanism is legal.²²

¹⁸ Additional data on the Land Trust Alliance, land trusts and their role in free market conservation can be found on the Land Trust Alliance's website at www.lta.org.

¹⁹ Fee simple ownership means absolute and unqualified legal title to real property. The owner(s) has unconditional power of disposition of the property during his or her lifetime. Upon his or her death, property held in fee simple can pass to the owner's heirs. Fee simple ownership may exist with respect to property owned jointly or solely.

²⁰ Estimate based on author's research and conversations with land trusts during preparation for this paper.

²¹ This subject is discussed in more detail later in the paper. More information is available in the article, "Can Land Trusts be Trusted?" by Michael De Alessi of *The American Enterprise Online*, published in *American Enterprise*, July/August 2000, available at www.theamericanenterprise.org.

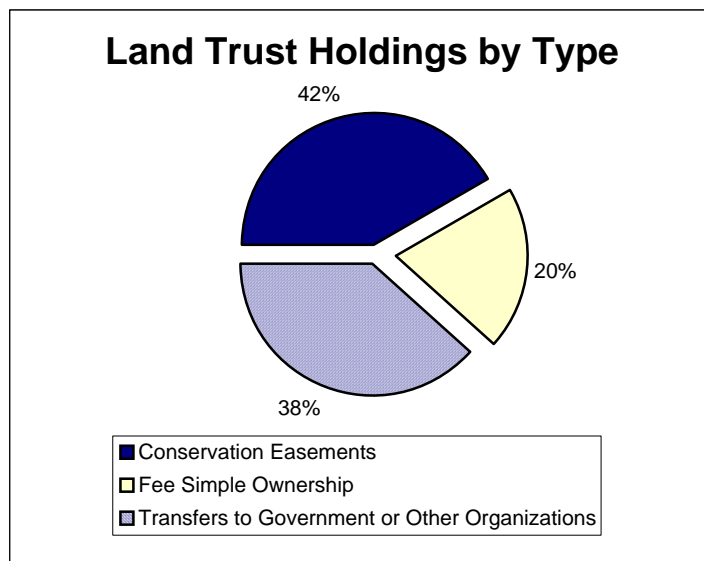
²² The details of this financing mechanism are discussed in a later section of this paper.

The most successful land trusts form a bond with the local community and work with landowners to accomplish conservation goals. For many communities this is a welcome change from the regulatory environmentalism that forces land-use mandates on unwilling landowners. Land trusts also offer a way for conservationists to support their own personal interests without imposing higher taxes on their neighbors. These qualities translate into successful and growing support for private land trusts throughout Washington state and across the nation.

VIII. Land Trusts as a Forest Conservation Tool

In local communities across the country, more than 1,200 land trusts are working to preserve forestland, an increase of more than 40% since 1990. They oversee more than 6.2 million acres, of which 2.5 million acres are protected by easements and 1.2 million are held in fee simple ownership. The remaining 2.3 million acres have been transferred to government agencies or other public organizations. Timberland, which is vacant land preserved for its productive or non-productive timber resources, is a major component of protected land for about 14% of all land trusts.²³

Figure 3



In Washington state there are 29 operating trusts. That number is growing every year as more individuals transform their interest in land conservation into real action. Companies impacted by state and federal regulations also welcome the increase in private land trusts. Instead of dealing with unpredictable state regulators who can single handedly eliminate any value a piece of property once had, land trusts work to compensate landowners for the value of

their land while also accomplishing their conservation goal.

Forestland owners find land trusts particularly appealing. As communities grow and development expands into new areas, land values increase, pushing up property taxes, management costs and opportunity costs for forest landowners.²⁴ Land trusts offer

²³ Data from the “2001 National Land Trust Census,” conducted by the Land Trust Alliance, Washington, D.C. This information is available online at www.lta.org.

²⁴ Landowners with property defined as forestland in accordance with Revised Code of Washington (RCW) section 84.33 can receive a special exemption from state and local special property tax assessments. Should the property be developed after receiving this exemption the landowner will be responsible for the

an alternative to development - allowing forestland to remain as a productive component of the local economy and ecology, while compensating the landowner for the opportunity cost of not developing the property.

IX. Management and Monitoring of Land and Easement Holdings

In addition to acquiring land and easements, it is important to consider another major responsibility of a private land trust: land management and easement monitoring. Some of the ongoing actions required of land trusts include:

- Monitoring and enforcing land use on conservation easements.
- Limited harvesting of timber from productive forestland.
- Administering recreation programs on lands with public access.
- Maintaining and restoring natural habitat and other amenities.

These activities can be very costly, administratively burdensome and time consuming. The Land Trust Alliance (LTA), an organization representing land trusts and their interests, works with land trusts and national experts to develop land management techniques that are both cost effective and successful. Their program includes an extensive online resource bank and a number of publications written by experienced land trust professionals.²⁵ Frequent regional and national events on the management and growth of land trusts also add to LTA's resources.

Some large land trusts (like Pacific Forest Trust, discussed in the next section) also offer educational programs and produce original research on land management techniques that are used by other trusts and by conservationists. Implementing proven management techniques can help land trusts achieve financial stability and effectively conserve natural resources.

Advanced research and insistence on proven management techniques help land trusts raise money and solicit land donations or purchase agreements. Sound, accurate management also helps land trusts gain acceptance in local communities that may have a well-founded suspicion toward traditional environmental activists.

X. Examples of Successful Land Trusts

Conservation of forestland by land trusts is an important component of preserving open space from urban development. Because private land trusts do not typically rely on zoning changes or other regulations, their effectiveness is often overshadowed by public battles involving land use restrictions. The following examples show how private land trusts are quietly using market mechanisms to protect the environment, with little or no intervention from government regulators.

original amount of the assessment plus interest for the time the exemption was claimed. A detailed explanation is found in RCW 84.33.210.

²⁵ More information about the Land Trust Alliance and their programs is available at www.lta.org.

Capitol Land Trust: A Small, Local Organization ²⁶

Year Established:	1987
Number of Acres Protected:	900+
Number of Purchases and Easements Completed:	25
Website:	www.olywa.net/trust

The Capitol Land Trust is a small trust operating in and around Olympia, the capitol of Washington state. The trust, formed in 1987, works closely with community members, businesses and other organizations to offer landowners non-regulatory conservation alternatives. By working cooperatively with local communities, Capitol Land Trust is successfully preserving forestland and open space.

One ongoing project highlights how Capitol Land Trust is working with landowners and businesses to protect important natural resources. In 1994, a landowner in Thurston County donated an easement on a 40-acre parcel of first- and second-growth timber along a tributary to the Black River just south of Olympia. The easement, directly adjacent to productive timberland is filled with important wildlife habitat, wetlands and mature trees with significant timber value.

In 2000, a logging company began clear-cutting the adjacent land, spurring local landowners to donate another 10-acre easement to Capitol Land Trust, providing a buffer for some of the most sensitive habitat on the property. In total, the 50-acre easement supports two salmon-filled tributaries to the Black River and habitat for species including great blue heron, red tail hawk, band tail pigeon and northern pigmy owl. Without the easement, the area would likely have been sold for logging, but it is now protected for future generations. By respecting local landowners, Capitol Land Trust is actively assisting in the success of the private conservation movement.

Pacific Forest Trust: A Large Regional Trust ²⁷

Year Established:	1993
Number of Acres Protected:	55,000
Number of Purchases and Easements Completed:	11
Website:	www.pacificforest.org

Founded in 1993, Pacific Forest Trust (PFT) is a well-established regional land trust that works with landowners, policymakers and forest managers to sustain long-term working forests. PFT is headquartered in Santa Rosa, California and has an office in Seattle, Washington. The two offices manage forest conservation initiatives up and down the west coast, focusing on preserving productive private forestland.

²⁶ Information about Capital Land Trust is from author interview with land trust staff, June 26, 2002. More information is available on the Trust's website at www.olywa.net/trust.

²⁷ More information about Pacific Forest Trust and their Stewardship Forestry program is available on the web at www.pacificforest.org.

PFT is a pioneer of Stewardship Forestry. This concept promotes “forest management that works with natural forest diversity, structure and ecological processes to produce fine timber and other commercial products as well as the whole array of forest ‘ecosystem services,’ such as clean and abundant water, carbon sequestration, fish and wildlife habitat, natural beauty, recreational opportunities and cultural values.”²⁸

A useful example of how Stewardship Forestry works is the Butano Creek project in southern San Mateo County, California. The area is a likely target of development expansion for the growing Silicon Valley area. The Big Creek Timber Company granted a conservation easement to PFT for 370 acres of the Butano Creek Timber Farm. The easement covers old growth and mature second growth stands of redwood forest.

Not only does the easement protect valuable mature forestland, it provides substantial ecological benefits to the surrounding community. Butano Creek, which runs through the easement, is a year-round stream that supports a healthy steelhead run. The property also connects to Butano State Park, Ano Nuevo State Reserve and Big Basin Redwoods State Park, providing a network of habitat for species like marbled murrelets and spotted owls.

The Butano Creek project, and many others managed by Pacific Forest Trust are good examples of private protection of valuable forestland without government regulation. PFT’s pioneering work on stewardship forestry concepts can also be a guide for other land trusts and for-profit companies that want to maintain a healthy forest while continuing to generate revenue into the future.

Society for the Protection of New Hampshire Forests: A Historic Example²⁹

Year Established:	1901
Number of Acres Protected:	106,000
Number of Purchases and Easements Completed:	603
Website:	www.spnhf.org

Since the early 1900s the Society for the Protection of New Hampshire Forests (SPNHF) has been using private funds to purchase forestland and protect it from the dense urban development common to east coast communities. The Society’s long history and dedication to private conservation make it a pioneer in the private conservation movement.

Of the Society’s 106,000 acres, 72,000 acres are protected by easements and the other 34,000 acres are owned in fee simple. In 2001 the Society added 31 new properties to its holdings, encompassing more than 5,700 acres. SPNHF relies on land donations

²⁸ *ibid*

²⁹ Information about the Society for Protection of New Hampshire Forests is from author’s e-mail correspondence with Society staff and the Society’s website: www.spnhf.org.

and the purchase of conservation easements for most of its preservation activities. On many properties, productive timberland is left in production, but future development and mining are restricted, allowing the landowner to maintain a productive forest, while protecting the land as forest for the future.

Land donated in fee simple to the Society is added to their Reservation System. The SPNHF Reservation System manages the land for recreation, timber harvest, wildlife habitat, watershed protection and scenery. By continuing the productive use of Reservation land, local and state tax roles are not reduced, as they would be if the land were taken out of production.

One example of SPNHF's successful use of free-market conservation is the Monadnock Reservation Addition in Cheshire County, New Hampshire. The addition, a 360-acre parcel of private land that surrounds the 3,561-acre Monadnock Reservation on three sides, was purchased from private landowners in 2001. SPNHF raised the money to buy the 360-acre tract by soliciting numerous private donations and an anonymous pledge from a regional foundation. The purchase expands SPNHF's protection of Mount Monadnock, a valuable productive forest that provides recreation opportunities for the people of New Hampshire.

Evergreen Forest Trust: A New Financing Model³⁰

Year Established:	2001
Number of Acres Protected:	104,000 (Pending IRS Approval)
Number of Purchases and Easements Completed:	1 (Pending IRS Approval)
Website:	www.evergreenforesttrust.org

Evergreen Forest Trust (EFT) is not a land trust in the traditional sense, but a conservation organization that will manage large, working forestlands for economic productivity and environmental protection. The Trust is a non-profit organization created by members of the Puget Sound business, government, environmental and academic community specifically to acquire, manage and protect forestland in Washington state. EFT's first purchase will be Weyerhaeuser's Snoqualmie Tree Farm – 104,000 acres of productive timberland in east King County and south Snohomish County, just outside Seattle.

Cascade Land Conservancy, a traditional land trust based in Seattle, will hold a conservation easement overseeing sustainable forestry practices on the Trust's land. In addition, Evergreen Forest Trust will contract with U.S. Forest Capital, which will serve

³⁰ While Evergreen Forest Trust (EFT) was established in 2001, at the time this paper was written, it had not completed its first conservation project. EFT is included in this discussion because of the new financing mechanism it will use and the size of the organization's first proposed project. More information about Evergreen Forest Trust (EFT) and the Snoqualmie Tree Farm is available online at www.evergreenforesttrust.org. Information in this case study is from EFT literature, website and author interviews.

as the transaction manager for the \$185 million deal, and the Campbell Group, forest management consultants who will manage the forest on behalf of the trust, ensuring a long-term productive and sustainable harvest.

This purchase is of special interest for two reasons. First is the sheer size of the purchase. If completed, EFT's acquisition of the Snoqualmie Tree Farm will be the largest, privately funded conservation purchase in U.S. history.

Second, EFT plans to raise the needed funding with an innovative solution: using the land being purchased as the security for borrowing enough money to pay for the acquisition. To fund the purchase, EFT plans to issue tax-free revenue bonds that will be paid back with proceeds from future timber harvests.³¹

As this analysis is being written, neither the IRS nor Congress has approved the use of tax-free bonds for conservation purchases. U.S. Forest Capital, which developed the concept of "Community Forestry Bonds," is working with members of the Washington state congressional delegation to negotiate a favorable ruling with the IRS and possibly pass legislation authorizing the use of this new financing tool for future purchases.

Existing law allows certain government agencies to issue tax-exempt bonds in support of certain kinds of capital projects for private, non-profit organizations. EFT is proposing a similar arrangement that will allow private, non-profit conservation organizations to issue tax-exempt public bonds to pay for the purchase of environmentally sensitive properties. In EFT's case, revenue generated from timber harvests will be used to pay interest, pay off bond debt, finance conservation of the land and promote biological diversity.

The use of tax-free bonds by a non-profit conservation organization is new and untested. A later section discusses some of the impacts approval of this finance mechanism might have on the conservation movement and on the timber industry. Regardless of the final outcome, Evergreen Forest Trust is an example of groups that would normally oppose each other working together to realize both the timber and conservation values associated with timberland.

³¹ Industry experts hold varying views on the financial viability of Evergreen Forest Trust. Some are concerned the purchase price of the trust land is too high, forcing EFT into a highly leveraged financial situation, which could risk the long-term viability of the environmental amenities they are trying to protect. Even if the skeptics are correct about economic decisions made in this particular case, tax-exempt bonds will remain an innovative mechanism to be considered for other conservation projects.

XI. Basic Principles of a Free-Market Land Trust

Private, non-profit land trusts present a unique opportunity for Washington residents to conserve valuable forestland. Some land trusts use taxpayer-subsidized funding and government regulations to expand their land holdings. Others start with purchases funded with private donations, but then turn the land over to government agencies, and thereby lose the private ownership that is vitally important to the successful long-term preservation of forestland.

Given these realities, landowners need to ask a few basic questions before agreeing to work with a land trust to protect their forestland. A true free-market land trust will follow basic principles that guarantee private ownership and successful conservation. Some of the those principles include:

Private Funding: Land trusts that avoid public funding are more flexible and better able to react to changing economic and regulatory situations.

Voluntary Transactions Without the Threat of Regulatory Action: Free-market land trusts work closely with the local community to develop environmental management techniques and incentives that attract landowners to voluntarily sell or donate land and easements.

Focus on Conservation Action, not Environmental Public Policy: A free-market land trust is not a political organization. The goal of the land trust is to conserve forestland through voluntary transactions, not to lobby for greater government involvement in environmental protection.

Permanent Restriction on Sale of Land to the Government: Land trusts can only ensure quality environmental stewardship of protected forestland if it is privately owned and managed. An effective free-market land trust preserves private stewardship of important environmental amenities.

Develop a Productive Community Relationship: A land trust that works cooperatively with local communities is more successful than one that approaches locals with the intent of changing the community or its way of life.³²

Protection Against Third Party Enforcement: Some states allow third parties to take action against a landowner in an attempt to enforce provisions of an easement.³³ Allowing third party intervention confuses the conservation process

³² In one example, the author interviewed landowners in a Washington state community for a case study on a local land trust. The landowners expressed significant concern that the trust is simply acting as an agent of the federal government because many of trust purchases are performed under regulatory pressure or are conducted with tax money or the planned government purchase of the conservation property.

³³ This subject was discussed in detail on the Land Trust Alliance e-mail listserv in mid September, 2002. To sign up, or receive more information about this informative and dynamic electronic resource, visit <http://www.lta.org/resources/listserv.htm>.

and erodes the trust between landowners and a local land trust. Landowners and trusts can avoid the risk of third party interference by expressly prohibiting it in the original agreement.

Land trusts across the state and the nation vary widely in their resources, capabilities, personnel and conservation interests, but a lasting commitment to free-market principles will help ensure the conservation goals of the organization are met. Failure to abide by core principles will undermine the mutual trust necessary for a successful conservation program and distort the environmental-protection interests of the broader community.

XII. Conclusion

The growing use of land trusts as a forest conservation tool is an encouraging shift away from the regulatory environmentalism of the past 30 years. The change in attitude reflects a growing cynicism about politics in general. Many Washington residents now feel that government attempts to do too much, often failing in the process and reducing the opportunity for successful private conservation alternatives. In response there is a growing willingness to view markets as an effective and impartial mechanism for allocating resources. Land trusts are an important part of free market environmentalism that allows individuals, businesses and environmental organizations to protect the amenities that are most valuable to them through the free exchange of private property.

While issues like government coercion and the proper role of tax subsidies present real challenges to market-based conservation, the growing use of voluntary land trusts is a welcome step in the right direction. As Washington state's conservation efforts move forward, free-market land trusts will play a central role in bringing conservationists, landowners and local leaders together to preserve healthy, productive forests for generations to come.



Appendix A. Structural and Political Problems Faced by Land Trusts

While the increasing use of land trusts marks a critical and encouraging shift in the philosophy of the environmental movement, it is also important to understand some of the pitfalls and problems inherent to land trusts. As is true with any concept that has the potential to impact private property and the environment, expanded use of land trusts are a concern to many residents across Washington state and the nation. The following section helps explain some of those concerns.

• The role of tax exemptions in promoting land trusts.

The tax benefit granted to landowners that donate land or easements to non-profit organizations is one incentive used by land trusts to protect forestland. Donations to non-profit land trusts can be deducted from the current year's taxable income. This applies to both donations of land and money, but the two differ in their application.

A monetary donation or an outright donation in fee simple of land to a private, non-profit land trust is tax-deductible, similar to donations to a charity, educational organization, or other 501(c)(3) organization. Subject to certain restrictions, donations to a land trust can be used to reduce taxable income while advancing an individual's conservation interests.³⁴

Additional options exist for the donation of land. Conservation easements impose a burden on the land and reduce its value: the amount of the reduction is deductible. Gifts to take effect at death preserve the current owner's ability to live on the land but reduce estate taxes. Easements that restrict the use of land for certain purposes can also lower landowners' property tax burden by reducing the assessed value of the property.³⁵

Conservation, at its root, is an individual action that efficiently assigns value to those environmental amenities that are of highest importance.

Each of these allowances and restrictions present certain difficulties. The existing system of specialized tax breaks distorts the conservation interests of individuals and corporations by rewarding certain behavior over others. By controlling the types of conservation donations that will be granted tax benefits, the federal government can exert undue influence over the success or failure of many innovative conservation techniques and can hinder the ability of individuals to determine the most valuable use of their land.

³⁴ Charitable contributions are subject to limitations in 26 USC § 170(c)(2) and Internal Revenue Code § 170(h). This section defines which contributions of appreciated real property qualify for treatment as a charitable donation. Consult a qualified tax professional for further information.

³⁵ Donating a conservation easement is not a guarantee that the assessed value of a property will be reduced. According to land trust executives interviewed by the author, the impact of a donated easement varies based on the laws in each state and the interpretation by the local assessor. In some circumstances the property value is reduced, in others the assessor may perceive the easement to add value to the property and in other situations the value of the land may not change.

Conservation, at its root, is an individual action that efficiently assigns value to those environmental amenities that are of highest importance. Tax law that favors preservation of one type of land over another, or rewards non-profit organizations for effective conservation practices, while excluding for-profit companies, will not accurately capture the conservation preferences of society.

• **Should the perpetuity requirement for easements be lifted?**

Land trusts across the nation use the purchase and donation of protective easements as a primary tool for conserving forestland. Because it is difficult for a land trust to raise enough money to pay full market value for land, it is common for landowners to donate conservation easements that restrict certain types of land use. Landowners can gain substantial tax benefits from the donation of a conservation easement. For the landowner to receive a tax benefit, the easement must be donated in perpetuity.³⁶

The requirement to donate conservation easements in perpetuity raises some interesting questions for free market conservation. Land values and uses change over time. An area that was once best used for timber production, may later be best used for agriculture or development purposes. By extending the term of an easement for perpetuity future generations will have little ability to adjust the use of the land to that which best fits the needs of society.

The perpetuity requirement challenges a long-standing legal doctrine against property restrictions without defined time constraints. The “rule against perpetuities,” is designed to allow the proper operation of land markets, which will be compromised if the current generation can tie up assets with perpetual restrictions on use. The perpetuity requirement also presents a distinct challenge to our liberties, essentially allowing the far-reaching hand of a deceased landholder to force his will on distant future generations.³⁷

Some state governments are beginning to recognize the threat of easements that last forever. In North Dakota the governor must individually approve each new conservation easement. The restriction also limits the appeal of conservation easements to landowners. Many landowners want to protect their land, but are not comfortable with the inflexible requirement of granting an easement in perpetuity.³⁸

³⁶ Tax law requires protective easements to remain in place indefinitely for the donator to receive tax benefits. Federal tax law initially required easements be in place for a term longer than 30 years, but in 1977’s Tax Reduction & Simplification Act the law was changed to require donations to be made in perpetuity. “The Landowner’s Guide to Conservation Easements,” by Steven Bick and Harry Haney, published in 2001 by Kendall Hall Publishing in partnership with the Farm Bureau, Dubuque, Iowa, p 27.

³⁷ For a more detailed analysis of the rule against perpetuities see, “Repealing the Rule Against Perpetuities,” by Neil Harl, published by the *Ag Decision Maker*, at Iowa State University, August, 2000, Ames, Iowa.

³⁸ “Can Land Trusts be Trusted?” by Michael De Alessi of the Competitive Enterprise Institute’s Center for Private Conservation, published in *The American Enterprise*, July/August 2000, available on the web at www.aei.org.

- **The impact of land trusts on recreation.**

Public and private forestland throughout the state is an important recreation source for many people. In many cases, large private landowners like Weyerhaeuser allow individuals to purchase recreation permits for use on private land. In other cases, roads on private land provide a vital link to public land that would otherwise be inaccessible.

Continuing access to private lands that are purchased by or donated to a land trust is a concern for many Washington residents. Of particular concern is the perception that many conservation organizations and land trusts are opposed to motorized recreation within forestland. While the freedom to enforce acceptable-use restrictions on land trust holdings is an important aspect of free market conservation, it is also important to understand the differences between land trust forestland and forestland owned by the government or private companies or individuals.

It is important for landowners to fully understand the impacts of public access before allowing use of their land through a conservation easement.

The preservation objectives of the land trust will likely alter the accepted uses of land trust forestland. Motorbikes, ATVs and off road vehicles are popular with many outdoors enthusiasts, but environmental groups often fight to exclude them from both public and private forests. If land trusts are successful, and their land holdings grow, access to land for certain types of recreation purposes may be limited.

Other problems can result from recreation activity on land trust forestland. There are the obvious liability risks associated with allowing the public to use private land. There is also the cost and nuisance of policing the use of the land. In some cases, private landowners express frustration with the public access granted by land trusts holding easements on private land.³⁹ It is important for landowners to fully understand the impacts of public access before allowing use of their land through a conservation easement.

- **Government coercion and “greenlining.”**

While many private land trusts work closely with landowners to preserve land and private property rights, there is a disturbing trend among some land trusts. In some cases, land trusts work as adjuncts of government agencies by purchasing land from private landowners, then either donating or selling it to a government agency. This practice is troubling for two reasons.

The first problem with transferring land to the government is the poor conservation record of some government entities. Many of the nation’s most destructive environmental practices are the result of the government’s mismanagement of

³⁹ Examples of this concern are illustrated in, “The Landowner’s Guide to Conservation Easements,” by Steven Bick and Harry L. Haney, Kendall Hunt Publishing, Dubuque, Iowa, 2001, p 84-87.

environmental resources. The incentives in place for government agencies typically do not reward sound environmental stewardship. Private companies, individuals and organizations, on the other hand, have incentive to manage their land to protect environmental amenities. Forestland in particular, is much better managed when in the hands of private owners with a long-term view of the productive value of the land.⁴⁰

A classic illustration of the difference between government and private management of natural resources is found in the history of Seattle's Ravenna Park. In the late 1800s William and Louise Beck fenced the ravine between what would become 15th Avenue NE and 25th Avenue NE, just north of the University of Washington's current Montlake campus, and opened Ravenna Park. They imported exotic plants and built paths and picnic shelters. The park, which remains a popular destination today, was at the time home to a stunning collection of massive old growth timber.

When the local streetcar line was extended to the park, it became a popular destination for Seattle residents. Visitors paid 25 cents per visit, or five dollars for an annual pass. The magnificent trees attracted such attention that local clubs were allowed to name them. Mrs. Beck named the tree with the largest girth after President Theodore Roosevelt, who, during a stop in Seattle, visited the park and approved his namesake.

In 1911 the city of Seattle, after failing to negotiate terms of sale with the Becks, condemned the park and paid the Becks a court assessed value of \$144,000. Shortly thereafter, the massive trees that were once admired by President Roosevelt and stewarded by Mr. and Mrs. Beck began to disappear. After a long investigation, it was found that Park Superintendent J. W. Thompson cut many of the trees and sold them for firewood. Thompson was later pressured to resign for abuse of office and intoxication.

In the years following, local residents protested the continued cutting of the huge trees. William Beck, original owner of the park, personally requested the two trees named Robert E. Lee and Paderewski remain. Park engineers assured the community the trees would remain, but soon all the trees were gone, removing any hope residents once had of restoring and preserving the once magnificent stand of old growth destroyed under public management.⁴¹

The second problem with land trusts that operate as an agent for government acquisition of private property is a practice called "greenlining." Greenlining is a term used to describe a land trust that collaborates in government coercion of property owners to sell their land at a discounted price. A property that has been designated for

⁴⁰ For a more detailed examination of the successes and failures of government and private conservation initiatives, see "Free Market Environmentalism," Chapter 2, *Rethinking the Way We Think*, pp 9-26. In the text, Anderson and Leal point out that success is not necessarily dependent on public or private conservation efforts, but private conservation tends to be more successful because market incentives place a value on environmental amenities that cannot be effectively established through political lobbying in the public sector. In their words, "How well the institutional arrangement works will depend on its ability to generate information on values and provide incentives for individuals to act on those values," p 25.

⁴¹ The story of Seattle's Ravenna Park is available on HistoryLink.org, the online encyclopedia for Seattle and King County history.

government purchase is not worth much on the open market. Similarly, land with significant use restrictions imposed by growth management or environmental regulations will not maintain the value it once had.⁴²

In some cases, land trusts work with government agencies to either regulate or propose the purchase of private property. As a result, property values are reduced and the land trust can effectively offer the landowner an “offer they cannot refuse.” Government coercion and greenlining is often difficult to identify and defend against, so it is important for free market conservationists and community leaders to be wary of these underhanded tactics.⁴³

- **What are the requirements for monitoring land management techniques?**

Monitoring land trusts and property use is a complicated issue. A land trust has a responsibility to enforce the contractual requirements of any property holding or easement, and must also maintain sound environmental practices on property it owns in fee simple. These responsibilities can generate significant costs.

Transaction costs for securing a conservation easement average more than \$80 per acre.⁴⁴ Enforcement costs are an added burden for both private landowners with easements on their property and land trusts managing easements and fee simple ownership. Private landowners can be responsible for maintaining access points for the public, allowing land trust representatives to tour the property on a regular basis, completing reports on land use and environmental factors as part of the easement agreement and for maintaining certain environmental safeguards. Landowners should fully consider the cost of these responsibilities prior to entering into a conservation agreement with a land trust, or purchasing property that includes a conservation easement.

One continual struggle for many land trusts is the effort to maintain adequate operating capital to monitor and maintain land and easement holdings. Operational costs can include designing and administering public access areas, enforcing land use restrictions, regularly visiting land holdings and completing the paperwork required by local, state and federal regulatory agencies. Each of these activities requires staff time. Some smaller land trusts can get by with volunteer staffs that work without pay, but most land trusts require at least one or two paid staff with expertise in land management,

⁴² “Can Land Trusts be Trusted?” by Michael De Alessi of the Competitive Enterprise Institute’s Center for Private Conservation, published in *The American Enterprise*, July/August 2000, available on the web at www.aei.org.

⁴³ “The Landowner’s Guide to Conservation Easements,” by Steven Bick and Harry Haney, published by Kendall/Hunt Publishing Company in partnership with the United States Farm Bureau, Dubuque, Iowa, 2001, pp 83, 84.

⁴⁴ In “The Law and Economics of Habitat Conservation: Lessons from an Analysis of Easement Acquisitions,” authors James Boyd, Kathryn Caballero and R. David Simpson site an average transaction cost of \$83 per acre for conservation easements. These transaction costs include surveying, appraisal, title searches, title insurance and other actions necessary to record an easement. The study is published by Resources for the Future, Washington, D.C. , April 1999, p 12.

contract negotiation and tax law. Generating the funding necessary to continue these operations can be a difficult task and should be fully considered before starting a land trust in any community.

Local communities and landowners should also consider methods for ensuring proper oversight of land trust actions. As with any non-profit organization, there is a potential for fraud and mismanagement by land trust managers. It is already difficult for community members to keep tabs on the actions of government agencies. By operating outside the reach of electoral systems, private land trusts do not have a clearly defined system of public sector accountability.⁴⁵

The ability of land trusts to operate outside the controls of the electoral system can help increase the effectiveness of oversight efforts. Market mechanisms can effectively limit a land trust's ability to make land use decisions within a community. Land trusts that do not reflect the interests of the community will not receive donations of money or land and will find it more difficult to negotiate purchase agreements with local landowners.

In many cases, the absence of public sector oversight and restrictions is one of the primary benefits of a private land trust. Land trusts have much better organizational flexibility, allowing them to react to changes in the environment and changes in the economy to ensure the most efficient and effective allocation of conservation resources. By avoiding the traditional regulatory approach to conservation, land trusts can provide a much more effective alternative for landowners interested in protecting the environment.

The difficulty of convincing local communities and landowners to embrace conservation efforts often attracts many environmentalists to regulatory solutions instead of market solutions. Regulatory solutions can be forced upon unwilling landowners using government's coercive power, while market solutions require a willing buyer and seller. Land trusts that are successful in reflecting the interests of landowners, businesses, policymakers and environmentalists will be the most successful in their conservation efforts.

- **The impact on existing timber and land markets.**

Land trusts play a vital role in increasing the market for conservation across Washington. They provide a simple, straightforward tool for conservationists to save timberland for future generations. Land conservation does not come without impacts on local communities and the economy. One consequence of land protection is limiting the productive use of forestland, sometimes reducing timber available for harvest and most commonly, limiting land available for residential or commercial development. In many cases land trusts allow sustainable timber harvest, but a nearly uniform component of timberland protection is limitation of commercial and residential development.

⁴⁵ "Conservation Trusts," by Darla Guenzler and Sally Fairfax, University of Kansas Press, Lawrence, Kansas, 2001, p 5.

In areas with strong population growth, like many areas of Washington state and other parts of the west, additional development restrictions will slow housing growth, which can lead to an increase in housing prices. As housing prices increase, more families will be forced out of the housing market, or driven further out of the city to find affordable housing.

Another impact of the growth in timberland protected by land trusts is traditional timber companies. By granting tax benefits to landowners with protective easements on their land, and to productive timberland owned by land trusts, for-profit timber companies will be at a competitive disadvantage. Granting tax benefits only to non-profit organizations may reduce the incentive for timber companies to practice less efficient sustainable forestry techniques, because they must compete on the open market with the non-profit organizations that receive favorable tax treatment.

• **Are tax-exempt bonds a good free-market funding alternative?**

It is often difficult for a land trust to raise enough money to purchase land for conservation purposes. Recreation fees and resource harvesting on trust land can offset land trust costs, but rarely can it cover the full cost of conservation. Tax incentives can also help by reducing the cost of capital and encouraging donations of land and money, but because tax policy is subject to unpredictable political manipulation, tax incentives for donating land and money to non-profit land trusts cannot guarantee continued financial sustainability. As a result, land trusts are looking for alternative funding mechanisms to help ensure the long-term viability of the private conservation movement.

One new funding alternative is the use of what are called “Community Forestry Bonds.” U.S. Forest Capital is pioneering this new bonding technique for use by non-profit conservation organizations across the nation. Evergreen Forest Trust plans to be the first organization in Washington state to use this finance mechanism. Community Forestry Bonds are tax-exempt bonds backed by proceeds from timber harvesting. The IRS and Congress have not approved the tax-exemption.⁴⁶

While Community Forestry Bonds provide a promising alternative for improving the incentive for market-based conservation, there are questions about the new tool that should be addressed. Tax-exempt bonds for private conservation projects offer lower-than-market financing rates to projects deemed to be in the public interest. This particular exemption will encourage certain conservation projects because it allows a non-profit organization to raise money to support operations at a lower cost of capital than if it had to compete for financing in the regular market.⁴⁷

⁴⁶ Senator Patty Murray and Representative Jennifer Dunn introduced congressional legislation in 2001 to amend the Internal Revenue Code of 1986 to authorize Community Forestry Bonds. The bill, “Community Forestry and Agriculture Conservation Act of 2001,” received a hearing in both houses, but no further action has been taken. The House bill is HR 1711. The Senate bill is S 822. A separate ruling from the IRS is expected near the end of 2002.

⁴⁷ Tax-exempt bonds reduce the capital cost of qualified projects at the cost of reducing revenue to the federal government. The result is the equivalent of a taxpayer subsidy that encourages favored projects deemed to be in the public interest by lowering their cost of financing asset acquisition.

There are two problems with proposals that restrict the availability of tax-exempt financing, which in this case is for nonprofit conservation organizations only. The first is the possible frustration of purpose. Granted that the preservation of forestlands in perpetuity is a public purpose sufficiently worthy to justify the subsidy of tax-exempt financing, the legislation, and regulations written pursuant to it, should have safeguards to assure the viability of the project.

For example, if the price paid for the land is too high, the sustained yield harvest of the timber may be insufficient to pay debt service, operating costs and environmental protection costs. This is a particular concern in the highly cyclical timber market. If revenue from timber harvests cannot support the cost of managing the land the result would be the ultimate default on the bonds and the return of the land to private ownership, or a high-cost government bail out, defeating the purpose for which the tax exempt financing was established.

While private bond investors have an incentive to assure the financial viability of the project at the time of their initial investment, their ability to do so is limited by information available. To qualify for tax-exempt status, and defend against bond defaults and government bailouts, the bonds should be supported by financial disclosures similar to those required by the SEC for public placements of securities.

The other problem with tax exempt financing is the discrimination against for-profit companies and landowners. By lowering financing costs for land acquisition, tax-exempt financing gives significant competitive advantage to any landowner operating on a non-profit model similar to Evergreen Forest Trust. If the defined public purpose is to encourage sustainable forestry techniques and conservation easements, it makes environmental sense to make the same tax treatment available to for-profit landowners provided they enter into the same covenants and restrictions on their land as are required for non-profit entities.

Establishing clear guidelines to protect investors and conservation organizations, and expanding the scope of favorable tax treatment, will help ensure taxpayers receive the public good they are subsidizing while promoting the protection of valuable natural amenities. Properly used, tax-exempt financing funded by the assets themselves should expand the amount of environmentally sensitive land protected against development in Washington state.

• What are the impacts on private property use for things not covered in the easement?

As with any growing conservation movement, conflicts over land use can occur on land trust protected forestland. In some cases the land trust may assert control over private property for things not specifically covered in the easement. This assumption of control can impact the community relationship that is necessary for land trusts to be successful. Customer service and community reputation can play a major part in

convincing a landowner to donate a conservation easement or consider a land trust's purchase offer.

In one example a family was forced to spend more than \$6,000 to defend a legally completed timber harvest on their own land that was challenged by an overreaching land trust that holds an easement on the property.⁴⁸ In this case a former owner of the property negotiated the easement and the restrictions were not well understood by the land trust. To prevent this from occurring, it is important for landowners to thoroughly review and understand all parts of a conservation easement and ensure the responsible land trust does the same prior to entering into a contract that will be enforced in perpetuity.

- **Are land trusts successful?**

Measuring the success of land trusts in protecting forestland across Washington is a complicated task. There is no widely accepted measurement that reflects the success or failure of the land trust movement. Acres protected can be measured, but that does not accurately reflect the quality of the habitat. The number of purchase and donation agreements can be measured, but that does not take into account the way the agreement was reached, whether through coercion or the threat of government action, or with a cordial private agreement between two willing parties.

In general, the recent expansion of land trusts as a forest conservation tool is a good measure of success. Because the primary conservation mechanism used by land trusts is a voluntary agreement of sale or donation, the increase of acres under land trust oversight reasonably reflects the growing approval of this method of conservation. While it would be a mistake to discount the risks posed by expanding use of land trusts, general figures indicate land trusts are being used successfully.



⁴⁸ "The Landowner's Guide to Conservation Easements," by Steven Bick and Harry Haney, published by Kendall/Hunt Publishing Company in partnership with the United States Farm Bureau, Dubuque, Iowa, 2001, pp 85-87.

About the Author



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Research for this paper was completed during the **Kinship Conservation Institute**, a one-month educational conference conducted by the Political Economy Research Center (PERC) in Bozeman, Montana, and funded by the Kinship Foundation. More information is available online at www.kinshipconservationinstitute.org and www.perc.org.

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