Optimizing Private Land Conservation and Public Land Use Planning/Regulation

Report of the 2010 Berkley Workshop

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Introduction

The tradition among most private land conservation organizations is to avoid engagement in political processes around land use planning and regulation. Rather, their focus has been on acquiring ownership of priority sites identified by the organization itself.

When money and sites were plentiful, this focus on “bucks and acres” was extremely successful. An area larger than the state of New York is now protected by land trusts across the country. The land trust community has a remarkably bipartisan base of support across many localities.

As money for land conservation has become harder to find and the competition for land across uses has become more intense, however, more questions are being raised about whether and, if so how, the private land conservation community should engage with public land use planning and regulatory processes. How should priority sites for protection be identified – by the land trust alone or in collaboration with local communities? How might the political organizing in support of ballot measures or the adoption of zoning requirements be mutually supportive? Where have local land use regulations been designed in collaboration with or to support private land conservation efforts? How far can regulatory measures go toward permanent land conservation? How should the costs of private land conservation be compared to those of public land use planning/regulation? What capabilities do land trusts need in order to participate in more public processes? How might the private land conservation and public land use planning/regulation communities best lever each others’ expertise in pursuit of their shared goals?

The purpose of this workshop is to explore these differences in experience and perspective in pursuit of effective new ways forward. The program was developed by:

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- Rand Wentworth at the Land Trust Alliance
- John Nolon and Jessica Owley-Lippmann at Pace Law School
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Workshop Summary
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Themes from the discussion
Over the course of the workshop, two broad themes emerged:

- The choice of private or public land conservation is not usually an either/or decision – in fact, there are many situations in which they are mutually reinforcing
- The right balance between the two is driven by mission and context

If a land trust’s mission is limited to accepting donated conservation easements, then the scope for its engagement in public land use planning and regulation is quite limited. If, however, a land trust has a broader mission – such as building sustainable, healthy communities over the long term – then it will eventually need to engage in public processes affecting land use.

“Is the mission of land trusts to do transactions or to protect land? If the latter, then we need to be more open-minded about the tools we use.” Rand Wentworth, Land Trust Alliance

Contextual differences stem from both the external and internal circumstances in which a land trust operates. Regional political differences have major impacts – if there are no public land use processes or if they do not function well, it makes little sense for a land trust to participate directly (but they might help catalyze community visioning activities). If they exist and are effective, then many more opportunities for engagement exist. The regional “ecology of organizations” will also shape a land trust’s options. If strong land use advocacy groups exist, then the niche for land trusts is smaller. If they do not, then the land trust may well need to offer a regional voice in support of land conservation in order to meet its mission. Finally, the land trust’s
existing resources and skill sets will shape the scope and timing of any such engagements. All-volunteer land trusts may want to start by providing information on conservation priorities. Larger, regional land trusts may move to lobbying and litigation as well.

If a land trust chooses to engage in public land use processes – as an increasing number appear to be – then they can do so along a spectrum of possibilities, from information to litigation. For example, a land trust might seek to:

- Build a constituency to support land conservation as part of a healthy, sustainable community – as several workshop participants noted: “Ultimately, it’s all about people”
- Inform the public land use planning process – as land trusts often have better information on priority sites for conservation than most municipal or county planning departments
- Push for zoning rules/incentives that allow/encourage conservation development or create new incentives for land conservation or even prevent development inconsistent with the land trust’s mission
- Engage in the question of “where should development happen” as a way to protect sites where it should not

“How do you keep the countryside open? Send development back into the cities.” Tom Daniels, University of Pennsylvania

Clearly there are risks to a land trust should it decide to move from just acquisition to a broader engagement with public land use processes. Over the course of the discussions, however, it seemed that those risks may be smaller or more manageable than is often thought – particularly if one sees the opportunities for action along the spectrum noted above. In fact, the questions appear to be more ones of changes in culture, focus and skill sets: will a land trust’s board let it explore such public engagement or not? Can a land trust focus on both “deals” and “planning/regulation”? What additional skills and resources would be needed to move into this arena? As many land trusts see their acquisition funding decline and as they move from only acquisition to more stewardship of lands, there appears to be a greater willingness to try out public engagement as fits their mission and context.

Why is optimizing private and public land conservation such an important question now? The participants came back time and time again to the fact that now seems like a truly remarkable opportunity to influence public land use planning and regulation given that:

- The economy is being remade, creating many opportunities to change traditional models of development and conservation toward more sustainable, integrated approaches; and
Land trusts are remarkably well positioned to have a large, positive impact on the future development of their communities given the “civic capital” they have built and are working to maintain over time.

“Land trusts are one of the few types of organizations that can deliver on the ‘poetics of place.’” Laura Hansen, J. M. Kaplan Fund

Identifying priority sites
On the possible intersections between land trust efforts to identify priority sites for conservation and public land use planning, several participants noted that land trusts are often better informed and have more resources on these topics than county or municipal planners. This creates real opportunities for land trusts to contribute their knowledge to local planning efforts over time. Or, if the government is not effectively conducting land use planning, a land trust might choose to build on its civic capital and help catalyze a community or regional visioning process.

“Land trusts have a democratic obligation to lend their voices to public discussions about the use of land in their communities.” Chris Miller, Piedmont Environmental Council

Visualization of land use options and their impacts is key to engaging with the public – words alone are nowhere near as effective. New digital mapping and community participation software is making it much easier to bring possible futures to life – thereby stimulating more meaningful community/public discussion.

“Sustainable development requires communities to decide where they want to develop and where they do not.” John Nolon, Pace Law School

Assembling inventories of community assets – historical, ecological – offer huge opportunities for community engagement, education and articulation of a local land ethic. As Chris Miller from Piedmont Environmental Council put it: “Once citizens started collecting information on historical sites, they found themselves in an irresistible ‘process of discovery’.”

Finally, the increasingly well documented finding that parks and other conserved lands almost always increase the value of surrounding properties and the community in which they are located can be used to help build support for land conservation in these difficult economic times. This is particularly true as the real estate community seeks new models for profitable development.
“The current economic crisis is a remarkable opportunity to influence the future culture of development – away from sprawl and toward attractive, livable cities/villages.” Steve Maun, The Leyland Group

Building political constituencies

The campaigns to pass ballot measures for funding land conservation are seen by many as the “entry portal” for land trusts into local politics. While different coalitions will support funding for voluntary land acquisitions or involuntary regulation of land uses, many aspects of such campaigns are similar, including the:

- Research that needs to be done on voters and their core goals
- Organization that needs to be developed to get the message out to voters
- Opponents of either new public spending or regulation
- Supporters of either new public spending or regulation

“When conservation groups have to win the urban core in order to win ballot measures . . . communities of color regularly vote yes on funding for land conservation.” Hazel Wong, The Nature Conservancy

When land trusts participate in a ballot measure campaign, their cultures often change – making them more willing to engage in other public land use processes. In addition, the polling and message-testing work helps land conservation organizations build a “new lexicon” for connecting land conservation to voters’ most fundamental values.

“When reaching out to new audiences/communities, do not go out to convince them of your agenda, but rather to listen to theirs.” Tony DeFalco, Center for Diversity and the Environment

One of the key questions posed is, having built these broad constituencies of support for conservation, how can they best be maintained once the election is over or the crisis is averted? Doing so may create major opportunities for “mature” land trusts – i.e., those more focused on stewardship of the lands they have acquired than on the acquisition of new properties. If coalitions are built around meeting peoples’ core values over time, then land stewardship in ways that do so will be a key aspect of efforts to keep people engaged in land conservation over the long term.

“Working in built environments allows us to welcome new people into the conversation . . . not just to keep people out. Conservation must be approached from the landscape level and go hand-in-hand with building better communities.” Gene Duvernoy, Cascade Land Conservancy
Promoting conservation through public planning/zoning

Efforts to use zoning incentives or requirements to promote land conservation have shown that it is often difficult to accomplish, but can work well. Often, this is done by using a package of tools, such as: transferable development rights programs, urban growth boundaries and low-density zoning. For example, conservation design uses assessments of community assets to inform planning processes and zoning codes to incentivize conservation subdivisions. Public planning and zoning efforts may also be paired with regional acquisition strategies to protect the priority conservation sites identified. In many cases, the use of public acquisition funding is conditioned on applying it to conservation-worthy properties identified in local land use plans. The overarching goal is to achieve as much legal permanence as possible by combining the strengths of the different approaches.

“Combining money and law can lead to great conservation results.” Kim Elliman, Open Space Institute

As one thinks about land conservation on the regional scale, several other potential areas of work for land trusts arise. These include helping to:

- Identify the areas where development should occur
- Channel development into cities, villages and other population centers
- Build and maintain sustainable rural economies in protected landscapes

Engaging on broader topics such as these will require many land conservation organizations to think and work on a larger scale than they now do, as well as to expand their relationships with new organizations – from developers and environmental justice communities, to economic development agencies. Land trusts will need to be careful that they do not fall prey to mission creep or dilution. They can do so by staying focused on the direct linkage of these broader activities to better conservation, while emphasizing partnerships with other organizations that are better equipped to handle particular tasks.

“Conserved parcels are always at risk from adjacent development. Land owners should protect their investments by supporting more stringent controls on development.” Peter Stein, Lyme Timber

Permanence

One of the more surprising parts of the workshop was the discussion on permanence – as there was much more agreement than many participants had expected. It was quickly conceded that neither private land conservation nor public land use regulation was permanent – both can be changed by governments, both need to adapt to changing climatic and other external circumstances. Rather, both were seen
as ways to preserve options for future generations – for as long as is possible given local circumstances.

“In the land use planning community, permanence is about empowering communities to manage their lands.” David Kooris, Regional Plan Association

From there, the discussion moved to the conclusions that permanence “is all about the people” and that “laws don’t protect land, people do.” The continuing need to organize and sustain coalitions in support of land conservation brought the discussion back to the opportunities that now exist for land trusts to play a major role in this effort. Particularly, as land trusts increase their stewardship activities, new opportunities arise to learn from Native American stewardship traditions, as well as the focus of modern land use planning efforts to empower communities. On-going efforts to inform and provide value to communities through expanded stewardship, educational and engagement programs will be central to permanent land conservation – or at least to maintaining sustainable, resilient communities and land uses.

Costs and timing
Both private land conservation and public land use planning/regulation take money and time. How much of each varies dramatically from case to case, location to location and time to time. As a result, few broadly applicable conclusions on relative costs and timing arose from this session. One exception was the opportunity for land trusts to share information – particularly from their mapping efforts – with cash-strapped county and municipal planning departments.

Rather, the discussion focused on how to choose among the full range of private and public conservation tools that are available. In some instances, the scale of the conservation effort will suggest the tools to be used. For example, the preservation of a single lot to prevent it from being developed lends itself to acquisition tools, while the protection of a large landscape is often best accomplished through a combination of planning, regulatory and acquisition approaches.

In addition, a graduated series of steps were suggested for land trusts to help them think about how best to engage in the public realm:

- Engage and plan first – to know where to focus money and time
- Prioritize acquisitions within the plan – focus first on prime areas threatened by development, then on areas where public access is desired
- Educate the public – to raise awareness of how land conservation helps communities achieve their core values, as well as how to engage in private and/or public conservation efforts
- Provide a forum – in which citizens can share their hopes and fears for their community and relate those concerns to choices on land use
• Build diverse coalitions – to support conserving land, building urban parks/playgrounds, moving development to where it should be occurring in cities and villages and strengthening rural economies

• Support sustainable development in the “right” places – to create opportunities for some developers to support, or at least not to oppose, conservation in other locations

“The two big trends are climate change and the growth of cities — the conservation community needs to engage on both.” John Nolon, Pace Law School

In the end, the discussion echoed that of the first session — land trusts should choose between or combine acquisition and planning/regulation tools as best fits their mission and context.

Risks and opportunities
Several of the most active periods for land conservation in the past have occurred during and just after financial crises — many participants believe that now is such a moment as well. As such, the final session focused on the risks and opportunities facing land trusts as they decide how best to optimize the use of their traditional acquisition tools with the planning and regulatory approaches used by local governments and influenced by a variety of advocacy groups.

Among the risks to land trusts, the following were noted:

• Alienating members and donors who do not believe in public land use planning or regulation

• Alienating landowners who feel threatened by tighter regulations and want a neutral party (outside of local politics and advocacy) to negotiate a confidential conservation transaction

• Putting themselves in harm’s way — politics is often a dirty business posing real risks

• Failing to execute — promising more than they are prepared to deliver or promising political/regulatory outcomes over which they do not have direct control

• Adding new skills around stewardship, cultural competency, planning and regulation — how fast and what impacts on organizational culture? Will land trusts spread themselves too thinly? Can they cover the additional annual costs?

• Knowing when to fight in support of their mission and being willing to do so — not being intimidated

• Becoming irrelevant if they do not engage in public land use planning processes — “if you are not at the table you are on the menu . . .”
We should move our thinking from permanence to sustainability – of our communities on the world stage.” Gene Duvernoy, Cascade Land Conservancy

The opportunities identified for land trusts included the following:

- Prioritizing – with broader public support – the lands that should be conserved
- Addressing concerns about the “democracy deficit” posed by private land trusts making their own decisions about what is in the best interests of the “public” by contributing to public planning processes and reflecting public priorities in their work
- Developing a new “lexicon” for connecting the benefits of land conservation to a wider range of communities
- Building relationships with new communities, support groups and donors – as well as the next generation of folks who will love land enough to work to protect it
- Raising funding for listening/educational efforts within the communities in which they work
- Diversifying the services they provide, thereby expanding their base of support – to include communities of color and groups with fewer means – while also increasing their organizational sustainability
- Thinking about acquisition and regulation at the same time – how one might support the other as tools for advancing a land trust’s mission in the context in which it works
- Pushing development into the areas in which it should occur, particularly the cities – using parks and greenspace to help make those areas more desirable places to live
- Helping to change the incentives for development at the federal (subsidies/infrastructure) and local (planning/zoning) levels – moving the focus of the conversation from where to preserve to where to develop in a more sustainable manner
- Collaborating with new urbanists and smart growth advocates to help create attractive areas for development in cities and villages
- Creating public-private partnerships to work at landscape scales
- Capturing opportunities to think about and incentivize both development and conservation at the same time so that they will complement (rather than challenge) each other and therefore be easier to implement – such as through conservation design projects
• Looking across political boundaries to help identify where more sustainable development should happen, where land should be conserved and where the two should be combined.

• Focusing on the most efficient ways to promote sustainable land use across a range of uses – thereby creating opportunities to engage with a wider range of interests

• Capturing the opportunities for cross-fertilization of ideas and actions on ways to respond to climate change

• Realizing that not all land trusts will be effective players in public processes – building capacity among the most capable organizations first and expanding out from there over time

• Rethinking permanence – from a static to a dynamic process/set of tools

• Considering the questions: if not land trusts, then who and why? Who will help their towns and cities “see”, plan and shape their future land use, their communities’ future character and sense of place? Why would they stand on the sidelines and not participate in a democratic process that desperately needs participation from all, but particularly those who have such expertise, tools and resources to help inform the process?

• Becoming revered community institutions over the long-term, promoting healthy, resilient, sustainable communities

On balance, while acknowledging that there are real risks, the participants found even more opportunities for land trusts to engage in public land use processes. In fact, one participant suggested that the group “celebrate” the opportunities to be pursued.

Clearly, land trusts thinking of moving in this direction will need to do so in a careful and deliberate manner, not promising more than they can deliver. They should also – internally at least – consider their next steps in light of the limits of traditional land trust tools: donations/acquisitions of land that are often not strategic, monitored or enforced and which rarely make a difference on a regional scale.

Embedding the future work of land trusts in a wider, more public context may help address some of these limits. This could start with a common vision for the future, such as:

• Really great, livable US cities

• More compact development outside cities

• Local food, clean water, safe areas to play, good jobs on a landscape scale – from livable cities, to green suburbs, to sustainable working lands, to iconic protected areas
“Land trusts should be advocates for growth in walkable, more dense communities.” Randall Arendt, Natural Lands Trust

Under such a vision, land trusts could:

• Lead with their strengths – their knowledge of the areas in which they work and their commitment to be there for generations to come

• Open dialogues with new communities of interest – planners, regulators, developers, communities with varied socio-economic and ethnic backgrounds – to learn more about their interests and how conserved land might help them achieve their goals

• Look beyond the immediate area of focus to “see” the larger picture and help find the “right” places for development and conservation, sometimes outside the immediate geography or political district of concern

• Contribute their knowledge to public land use planning processes

• Use zoning/regulation to help protect and buffer important sites where those tools fit

• Use acquisitions to conserve priority sites and provide public access

• Use easements to strengthen zoning districts

• Listen and learn from the needs and successes of a wider range of actors

As land trusts move from a focus primarily on acquisitions to one giving more attention to the long-term stewardship of the lands and communities in which they work, expanded engagement in public land use planning and regulatory processes seems inevitable – both to protect the permanence of the acquisitions made, as well as to support the health of communities across wider landscapes and over the longer term.

“No land trust went into business to do deals. They do deals to protect their communities from threat. If other tools work better, we should learn to use them.” Peter Stein, Lyme Timber