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## **01 Chuck Knox – Executive Director of the Massachusetts Land Trust Coalition**

Knox:

(...)

A little bit more on my background. I was the head of a small regional land trust in New Hampshire based in the capital city of Concord. It served central New Hampshire communities. I did that for over five years, and before that I was associate director of a watershed association in Maine. Before that, I was for 20 years with the New Hampshire Environmental Protection Agency. The most recent position before this that I had was directly involved with protecting land, meeting with land owners who wanted to preserve their land forever for posterity. So, I would talk with farmers who would come my way and would inquire what it would take, how to do it, what to save, what were the advantages and disadvantages. Or we protected wildlife habitat and wetlands and forests and so

forth. And that was interesting, I enjoyed that a lot. Just, often times going to people's homes and just sitting and talking and learning what their goals were for their land, and then explaining how, by preserving it, not only could they preserve it, but in America, they could get a tax deduction if they donated the development rights for the land. I can go back to this, but in this position now, we don't hold land protection rights here. What we do, we serve those who do. We serve other land trusts, sometimes called land trusts, sometimes land conservation associations. There are land trusts and land conservation organizations across America, and there are many in Massachusetts, over 100. The members of this organization are those land trusts. They wanted some sort of central forum as a clearinghouse to do anything from education, training, conferences, and legislative advocacy. If there is a bill that comes up before the Massachusetts legislature that has to do with conservation, they want to know about it and they want someone to go and testify in the bills in favor of conservation. So that is what this role is all about. It's not directly being involved with the land, but it is indirectly.

TD:

Like the LTA, but on the state level.

Knox:

Exactly. Not every state has such an organization. New Hampshire didn't have one. There are about a dozen land trusts in New Hampshire, but no alliance or coalition. We sometimes get together very informally. New Hampshire is a less populated state. So there are only 12-15 land trusts, while there are about 120 or so in Massachusetts. It's the second most in the nation. The most is in California. Of course, it's a much bigger state with a bigger population, so it's not surprising. But Massachusetts is very proactive when it comes to preserving land. They have an Endangered Species Act, their own state act. They have a special environmental bond that funds communities that want to set aside land. The Northeast in general, I would say, is pretty environmentally oriented. The West and the Rocky Mountain states are more conservative and less apt to... Private rights are more important and public lands are less important, at least conservation is less important. And then, of course, the western states, California, Oregon and Washington are also relatively liberal and progressive in this point.

Anyway, I am brand-new. I've been here for less than two months, just getting organized.

(I talk about conservation in Germany.)

Knox:

Land trusts here can protect land in two ways. One is to acquire the land, buy it from the property owner. The other is to tell the landowner: 'You can keep your land. You can still own it. Just give up the right to develop it, the right to build any more buildings on it and leave that portion of your land completely free of structures.' Of course, that makes his property less valuable. If he were going to sell it, he would not get as much money. For a property owner, let's say a farmer who has his farm of 40 acres or even just 20 acres. If he wanted to sell his farm to a developer, he might get \$ 2M for that, but if he gives away the development rights to an organization like a land trust, it devalues his property. Instead of \$ 2M, he might only get \$ 500,000. He gives up \$ 1.5M. It's lot of money to forego. Some landowners just don't want to do that, but others say: 'You know what, I love this land and I want it to stay... It's been in my family for years. I love seeing it in its natural state. I don't want to sell it and have a developer put houses here.' So he wants to keep it natural and he's willing to sacrifice and give the development rights to a group like ours. As an incentive, because that's in the public benefit, the United States government said: We will give you a tax deduction which will help a little bit. It won't give you back all the \$ 1.5M that you forego, but a portion of it, as a tax deduction

when you write your income taxes every year. You might not be able to take it all in the first year, but based over a period of time you can get your money back.' And that's the way it works.

Massachusetts and some other states have a state tax deduction as well. Here in Massachusetts, you pay state income tax. Every year you pay federal income tax and state income tax. With the federal income tax, they've had this tax deduction business for a while now, 15, 20 years or so in America, which is good. But not many states have created their own state deduction as well, because they're giving up money when they say: You don't have to pay taxes on that 1.5M. But Massachusetts is an exception in that way. They did something like that a couple of years back. So there's an extra incentive for landowners, which may be a tipping point. A landowner may say: 'You know, I really want to preserve the land, but boy, if I sold it, I could get so much money, I'm giving up the opportunity to make a lot of money. My kids would like the money when I die. This is a bit of a constellation. I can get some of it back through tax benefits.'

The way the federal and state governments set up the tax deduction is that only qualified organizations can hold these development rights. That means that they have to apply to be a special non-profit organization. They incorporate as a non-profit. It's under a portion of the federal tax code that has a number to it, 501c(3). There's one little paragraph in there, and that has created organizations like this across America. Organizations like the land trust I worked for in New Hampshire have to record what they do every year. If the IRS says: 'You are not doing things right.' Then they'll remove your qualification, your authority. They rarely do that, but they could if they wanted to. And typically, a non-profit has a board of trustees and policies.

(...)

The conservation easement or conservation restriction is a document where basically the landowner lists all the things that he gives up. He gives up the right to put houses or structures on the land... Every conservation easement is a bit different. There might be some exceptions. For example, he might give up the right to cut the trees on the land, because you don't want to give up the development rights and then log the land so that it renders the natural beauty and wildlife capabilities. So he gives up the right to cut the trees, but there can be some exceptions. The conservation easement could say: 'You can cut some trees, maybe thin the trees, but you just can't clear cut. You can cut some trees as long as it's done in accordance with a good management plan.' So there are exceptions, and that's a help, too. Some farmers or landowners who harvest their trees for firewood or making a little money will be able to continue to do that. But it's all in the document. The document actually gets signed by the landowner, us and it goes into our files. And there's an appraisal of the land. Before the document is signed, a real estate appraiser has to come and determine: How much is the value if the landowner were to sell the property now, before the easement is placed on it? How much would it be worth? The appraiser might say: 'Based on other sales, you could get \$ 2M on these 20 acres. But if you give up the development rights, it's worth less. Some developer might not come along if you can't develop the land, he might buy your house and the land for \$ 500.000, but you're going to lose \$ 1.5 M.' So there's a before and after easement price, and the difference in price is what the property owner is allowed to take as a tax deduction. And the government says: 'Yes, ok, that's good for the public benefit.' It has to fulfill at least one of about eight different criteria. The public benefit could be scenery, the scenic view. Maybe it's a beautiful hillside farm, not so great for wildlife or anything, but just very clear with nice views, and it has scenic values. People drive by to look over the crest of the hill. And now it will always stay that way, the natural view. So, aesthetic quality is one. Wildlife quality is another. Maybe water protection, maybe it's determined that it's good for water supply. So there are a number of criteria. As long as one of these criteria is fulfilled, you can take a deduction, but only a qualified organization

can hold that easement. It could be a government agency like the Massachusetts Department of Conservation.

TD:

Does it happen at all that government agencies hold conservation easements?

Knox:

Yes, but rarely and less common than non-profit land trusts like the one I was involved in, the Five Rivers Conservation Trust in Concord.

(Knox gives examples of names of land trusts in Massachusetts.)

These trusts send in annual membership dues to help maintain the organization and my salary.

TD:

How many people work for the Coalition?

Knox:

There are only three paid employees, so it's relatively small. But we have a very active board of 15 directors and a steering committee of also 15 members.

(Knox gives more examples of names of land trusts in Massachusetts.)

Our member trusts have all received official sanction by the federal government through this 501c(3) non-profit setup that allows them to actually be the recipient of a conservation restriction deed. Anything about the deed is in perpetuity, is forever. The farmers who deeded away his property rights, five years down the road says: 'You know what, I'm old. I don't want to farm anymore. My kids don't want to farm. I'm going to sell the land, and I can only get \$ 500,000 as compared to before, but I need to sell.' The next owner of the land has to abide by that. He can't come along and clear cut everything, and he can't come along and put other buildings on either. He has to abide by the restrictions.

TD:

Isn't that an ethical problem to define land use in perpetuity or that you take away land use options from future generations? What are your feelings about that?

Knox:

Well, that's ok. As far as I'm concerned, it's good. That's the key to it. What we're doing here is ensuring for future generations that the land will never change, that 20 years from now, people will not come back and find houses upon houses. I mean nothing wrong with houses. I live in one, you probably do too. But it's a tradeoff. You're trading wildlife habitat and beautiful, untouched scenery for house, house, house, house, house... So our position is: Yes, we firmly believe that it's in the best interest of America to preserve some land, not necessarily all land, but certainly the key areas and lands that are special. If a landowner has land that has no real, true value, he just wants the tax deduction, we won't accept it. If it doesn't have either a scenic quality or wildlife habitat quality or some other of the public benefits, we'll say: 'I'm sorry. It's not really what we're looking for. I know it would be good for you to get a tax deduction, but we're looking to preserve land of special quality.'

TD:

How do you define these conservation objectives? Are they set in the bylaws of the land trusts?

Knox:

Two ways: The federal government has listed the public benefits in the IRS code. But also, when an organization is set up, they establish a policy document saying: We will only accept conservation easements on land that qualifies because of... and then they list the reasons, scenery, wildlife habitat, maybe wetlands and other.

TD:

But valuable scenery or valuable wildlife habitat are relative terms. How do you prioritize?

Knox:

Good question. Scenic value probably is going to be subjective. Someone will look and be moved and say: 'Look, it's beautiful.' And someone else may say: 'Meh, it's not that great.' So that is subjective. But as far as wildlife habitat, if you can identify that there are active populations of certain wildlife species – bear or deer or rare or endangered species – that automatically would qualify. You know, strangely, some landowner would call me on the phone and say: 'I'm thinking of preserving our land. Would you like to see it?' And I go out there and walk it, and there's nothing special. Maybe it's even been logged 10 years ago and there's no wildlife habitat left on the land. Then I have to politely say: 'You know what? I don't think that our board would approve pursuing this project because it just doesn't meet our qualifications on paper.'

TD:

So there has to be some understanding among the board members what kind properties you would accept. Is this something you discuss?

Knox:

Yes. Every project gets discussed. Typically the full board doesn't discuss it, but a land protection committee. Every board has different committees. There is a communications committee, a financial development committee, and a land protection committee. In my previous organization, they meet monthly. Every month, we would talk about certain lands. Some people would say: 'I got a phone call from some property owner who wants to consider preserving their lands through a conservation easement. I haven't had a chance to go out and walk it. Would one of you committee members like to go out?' And after a while they get pretty expert at what they are doing. So they go do that, and the following month they come back and say: 'You know what? This is a really, really good property. It got this and that quality.' Or they might come back and say: 'Hmm. It's not worth our time and effort. I recommend that we vote not to pursue this property, because it doesn't fulfill our guidelines.'

TD: Do you also actively target properties or landowners?

Knox:

Many land trusts do target. They might say: 'There is a beautiful river running right through the heart of the area that we're trying to protect. These other properties over here and there are nice, but we're going to really spend our efforts on either side of this river because it's a floodplain and there's a special elements to it, scenic elements and water quality elements, and we want to preserve the continuity of it. We're not a big enough land trust to deal with everything in our area.' The land trust I worked for served about 15 or 16 communities. And so we'd concentrate at least for one year to focus all of our efforts on one section, maybe the river or maybe a series of ponds and wetland areas. Typically when a small land trust begins, after having been incorporated, the first two or three years

they might say: 'We'll look at every property that comes our way. We're not that well known. We won't get as many inquiries for a while. But after while they might say: 'Look, we're not going to even bother looking at small acres, maybe ten acres or less. It takes time to work it all out. With the paperwork and everything it may take six to nine months from start to finish of a project. We don't have time to do that for small properties. But anything over ten acres, we will consider.' The organization I worked for in New Hampshire, basically, after it got going it said: 'We'll have a ten acre threshold. We'll consider anything over ten acres, but below ten acres, it's just not worth our while, because every project takes the same amount of time. If we got big projects of 300 or 400 acres and we're spending our time on a five acre property here, it takes away the opportunity to really do a lot of more good through preserving this 400 acre property.'

TD:

Would you say that land acquisition is still a growing business? Is there a saturation point for land trusts?

Knox:

Oh, hm. I think it depends on the activeness of the board and staff. Sometimes they just run out of steam and energy, but most of the times they don't. The people who get on a board like this really love the land. They like walking the land, they just love everything. They've been thinking about their children and grandchildren down the road. How is their community going to look in the year 2050? So they want to do something meaningful and they want to participate. So that's more typical, but everyone is different. Now, there aren't land trusts covering every community in America. Many states have very few land trusts so far, or some states do.

TD:

I guess my question is: Are there financial limits too?

Knox:

Yes. Once the property gets managed, the IRS requires us to walk the land on a regular basis, at least once a year, just to get out there and make sure. The farmer got all this money as a tax deduction promising not to build any structures on the land or not to cut the trees, and you have to go and make sure, because sometimes you go on a property and: Oh my gosh, contrary to the easement, he's built a couple of houses back there. Or he's gone and clear cut the land. Oh boy, then what do you do? Fortunately this doesn't occur very often, at least with the person that donates the easement. If he sells the land and along comes somebody else who doesn't really care that much, and he goes and develops it, then you have problems with the second, third, fourth owner, but typically it doesn't occur with the first guy who donated the easement. The land trust that I was involved in didn't have that much money. So when somebody would come along and say: 'I want you to pay me for this easement, or I want to sell you the land.' We would say: 'You know what? We're limited in our money. If you want to donate the easement and take a tax deduction, we'd be willing to talk to you. We just don't have the money right now to go out and buy.' There were a few exceptions to that. We could raise money through special projects, fund-raising drives, maybe getting grants from charitable foundations or the federal government. We did that for a couple of very special properties, one was beautiful mountaintop orchard that had magnificent views of the mountains and hills, another was a wonderful dairy farm that bordered two different rivers, but in 90% of the cases all we did was receive conservation easement donations. We didn't pay for that.

TD:

How did you finance the running costs of the land trust?

Knox:

Through different means. Memberships or donations. People who want to contribute write a check for \$ 25 a year or maybe \$ 1.000 from wealthy major donors. Also through memberships in the organization and grants. One of my roles is to apply for grants for charitable foundations that donate to non-profits. Some charitable foundations specialize in grants for health-related things or education, but some say land conservation qualifies under our charter. Also state and federal grants. They have funds that they will give out for very special projects. So we would apply for that. Sometimes projects that protect water quality, watersheds. There is a fund in New Hampshire from the state government that says: 'If you protect land near a water reservoir that is used – let's say by the city of Concord – we'll contribute to that cost.'

TD:

Would you also use endowment funds? Would you ask donors of conservation easements to also give you the money?

Knox:

Excellent question. Yes, we would say to the landowner: 'I know it's a big sacrifice to donate an easement to us, but we're also going to ask you to donate some money to us too, because it takes effort on our part to go out there every year and check your properties. If there were ever to be a legal challenge, we would have to pay lawyers' fees, for example. One lawsuit could wipe out our organization. We need money in our coffers.' And we would set it up as a stewardship endowment fund to set aside for stewardship, inspections, and also for legal work, education and training. We had a policy that first we'd ask the donor for whatever he can give us. Then we would say: How about at least \$ 500, can you do that? By the time I left, our board decided that we should ask as a minimum \$ 5.000. But you know, the landowner is so kind to donate an easement, and I always, kind of sheepishly, would say: 'Do you mind giving us also \$ 5.000?' And I tried to be articulate and explain: 'You can also take these \$ 5.000 as a tax deduction because it's a charitable donation too.' Sometimes they would say: 'No, I'm not going to do it.' And I would say: 'Ok, you don't have to.' But if they give it free and clear, then it is a true charitable donation and tax-deductible. So of that \$ 5.000, let's say he makes \$ 50.000 a year, he can take these 5.000 right off and only makes \$ 45.000. So there is that incentive, too. The tax incentives play a major role in the whole world in America for the success of land trusts. Here is an example: A land trust became a member of our coalition. They can pay between \$ 50 and \$ 250. They paid \$ 250. And here's a lady who gave \$ 100 as a contribution. Well, she can take these \$ 100 as a tax deduction next April when she does her taxes. But she wants proof from our organization for the IRS. So I send her this proof and write a thank you note to make it personal. So that's part of the tax structure in America.

TD:

Did the financial crisis have any effect on land trusts?

Knox:

For some legislators yes. Some said: 'We should do away with all these deductions. This is costing the government money. We could be getting all this money from taxes, more money than now.' But in the federal government, most legislators say: 'No, this is a good program. I know we're giving up the opportunity to get more taxes, but America has many special lands, many special properties, and it's a good program, so let's keep it going.' But during this economic downturn, more and more

legislators have said: 'I don't know about this.' Especially those who don't care about the natural world. Or they don't care about the future, about what America looks like in the future. They say: 'We need money now. We need money for other things, to pay for our military- We need money for education. We got plenty of open space in America. What do we need more for?' That attitude will constantly be here with us. We will constantly face this as an organization, but it's just a matter of philosophy, what you think is good for not only America, but also the planet in the long run. Some people value open space and the natural world, others don't.

TD:

What role do umbrella organizations play in the political process?

Knox:

One of our roles is to be a voice in the state legislature. The Land Trust Alliance is a voice for bills on the federal level. As a matter of fact, after our talk a phone call is going to be coming to me at 11 am from somebody from the LTA. He's a regional director and wants to talk to me about setting up a training program for land trusts. There are many things that go into making a successful land conservation organization. One of them is being able to manage the finances of such an organization. He wants to talk to me about setting up a training program to help land trusts across Massachusetts in this. So that's one of our roles. Because land trusts don't have the time or staff to be running to Boston to the state legislature. They want somebody else to do it. That's why they created this organization 20 years ago. It started out with volunteers, and they started hiring staff.

TD:

What is the annual budget of the Coalition?

Knox:

Roughly \$ 80,000 to \$ 100,000. It's not so much. We are basically an educational organization. We do a big conference every year. It's the second biggest in the United States, after the Land Trust Alliance Rally. 500 people attend. It's all day long, lots of workshops. It's a good one. I went to this year's conference before I got hired, and I was surprised. Now it's my role to do it.

TD:

Would you say that there is a sense of being part of a movement among land trusts?

Knox:

Yes, I would say so, definitely. And it's important to keep the fire alive. For some people it's just always there and it won't die, it's their cause. Other people need to be inspired periodically.

TD:

How do you differ from other environmental organizations?

Knox:

We specialize in land trusts. Some organizations are focused on clean air, some on clean water, and some on watersheds. But we specifically, as it says in the name Massachusetts Land Trust Coalition, focus on land trusts. That's not to say that we wouldn't welcome other organizations that are not land conservation organizations. We would. But this was set up by land trusts to serve other land trusts.



TD:

Is The Nature Conservancy part of the coalition?

Knox:

As a member, I think they are. I know that the Trust for Public Land is a member. We're working with them now on a study that shows that preserving lands can actually help communities economically. That it's not just taking properties off the tax rolls, but actually helps communities. People like open space and move into these communities. For businesses, they know that communities that have parks and recreation draw employees. The LTA is also a member, and we're a member of their organization.

TD:

What is the most important level of networking for a local land trust, state or federal?

Knox:

I think both. Many land trusts are members of both organizations, ours and the LTA. But I would say that not every land trust in Massachusetts who is a member of the Coalition is a member of the LTA, because they think in their own terms. They are concerned primarily with local issues, not even the greater good of Massachusetts. They are thinking of the greater good of their geographic area for which their land trust is set up. And by the way, land trusts try not to step on each other's toes. Let's say a farmer from a certain town approaches your land trust and says: I want to preserve my land, I want you to hold the easement. But you know that typically that farmer is in the area that is served by another neighboring land trust. You might gently say: 'Thank you for coming to us, but there is a very good land trust over in your area that can do just as well.' So as a courtesy, you try not step on their area. If it happens, most land trust people say: 'Oh well, it's ok. If he wants to go to you and you hold the easement, that's fine.' There's not so much competition. I mean, every land trust wants their star to rise and people to know about them and how great they're doing, and have donations coming to them.

TD:

Is there competition for donations?

Knox:

A little bit, but it's not so active, not cut-throat. It doesn't come up that much. I know in New Hampshire, there is pride in your own organization, but we try not to step on other land trusts' toes. We served about 16 towns and knew that another land trust north of our area handled those towns up there, while we handled those down here. And that was fine. A small land trust can't be travelling all parts of the state. We had enough travel to do in our own area.

TD:

Is there competition for funds between the Coalition and land trusts?

Knox:

There is a little bit to that. And I, as the brand new person, I don't want to step on anybody's toes. I don't want to take money away from some of these land trusts by going to people in their community and saying: 'Hey, give us \$ 1,000.' So there is a little bit of sensitivity there, but I don't think it's been a major issue.

TD:

What are the biggest challenges for you?

Knox:

Making sure that the land trust community that we serve is served properly. That we do our job by providing training opportunities, how to set aside conservation lands, how to do financial aspects of your organization, how to do all kinds of elements. Training is important, that's why we do the annual conference. We do quarterly meetings too. Just making sure that we handle their needs is a big thing. The other thing is helping keep them abreast of what's going on that might impact them at the state government level. So we have an active website and on that, every two weeks we put out what we call an e-news. It's a sandwich of all these different topics that we think might be helpful for them. Over 1,000 people get that and subscribe to that. It keeps them abreast of things. We put out an alert every so often. There is a challenge right now to the Massachusetts Endangered Species Act. There are some legislators who want to emasculate it, take away a lot of good that it does, because they feel it's an infringement on their property rights. So we put out an alert that people should contact their legislators and let them know that they support the Endangered Species Act. Also, we have a special section on our website that lists professionals who can help land trusts, like lawyers who specialize in environmental law, real estate appraisers who know what they're doing when they appraise a property before and after a conservation easement, qualified surveyors, and so on. Our website is a critical element. People don't come here that often, but they go to our website. That's why they contribute money, to keep that website going, and keep the conference going. This role is not as hands-on as my previous role, where I was actually walking the land. But I'm getting to know other trusts now. I visited a couple of land trusts who are members. I've been to some meetings of board of directors. Next week I'm going to the western part of the state to meet with some more. It gets me a handle. In my own mind, little by little, I'm getting to know the needs of the land trusts, and hopefully it will turn into some good, continuing and improving what this organization does.

## **02 Robert O'Connor - Director of Land and Forests, Division of Conservation Services, Executive office of Energy and Environmental Affairs**

(...)

O'Connor:

The zoning and regulation business here in Massachusetts compared to Europe generally is way behind. So I'm always impressed when I go to Europe, like in England the farms are perfectly preserved and the village center is very well located. The idea of putting development on good farmland is maybe culturally thought of as a bad thing. Why would you destroy land that we use to grow food?

Private land rights in the United States are a big deal. I think that's one of the reasons why... When you go to Colorado, this will be much bigger. Normally the ranchers would not be government-friendly. But the loss of farms and ranches has gotten so much that normally the rights-oriented people are supporting conservation, especially with easement where they can continue to ranch. But I know that in Montana there is a movement to change the law that allows them to do easements. So there is definitely a strong land rights movement in the United States. Even in Massachusetts, we just bought a large piece of land from one of the biggest private landowner in the state. They are actually one of the oldest family companies in the world. They are ranked 16<sup>th</sup>, because they have been a company since 1700. So they've owned some of their land since then. We approached them years ago saying: 'Why don't we do a conservation easement on your land? And they said: 'We don't want to deal with the government.' But when we had the bad recession, the sawmill closed because the housing market fell through. So then they approached a land trust to say: 'Maybe we would think of an easement, because we could continue to do forestry.' They went through a long, two to three year negotiation process. The land deal closed in December. Our Governor went to the big event a couple of weeks ago. So we got the easement in a partnership of the Kestrel Land Trust, which is a small land trust out in the western part of the state, and our Department of Fish and Game, and Franklin Land Trust, so two land trusts and the state agency. And then the federal government gave us a grant for 5M \$. It was a 9M \$ project, about 3.500 acres. It's probably the single biggest piece of land in the state under one ownership. The family owns about 16.000 acres. I think the same issue is going on in the rest of the United States. We did this project in the central part of the state a couple of years ago. Our land, which is mostly privately owned, I think we have about 20% of the land in the state protected, mostly through government, and 20% is already developed. So we have about 40% that is private and could be developed but isn't. The idea of protecting your land with easements is a very good tool. So we had this project where we focused on four towns that we thought were very strategic. They are right next to the Quabbin reservoir, which is the Boston water supply and ranked very high for habitat. Forestry is still viable there. And because our land is broken up in lots of little parcels, it is difficult to protect the landscape. This parcel that we just protected with the old timber company was pretty unique. So we did 9.000 acres of protection in two years in 100 easements, basically just working with a local land trust and our two agencies, the Forestry Agency and the Fish and Wildlife Agency. We just had a standard easement and wrote a letter to everyone, 600 landowners in these four towns, we said: 'We will purchase an easement on your land. You can continue to own the land. You can do farming and forestry. You just can't develop it. And we'll pay you a fair price.' So in two years we were able to... and the key here was, if the government went out there and said: 'We're going to buy all your land in fee', it would have been a bad situation. So the land trust, which had good support locally, was our negotiator. We had a standard easement. We had some changes that people wanted, but we didn't spend a long time going back and forth. We said: 'Look, here it is. If you want snowmobiling, we'll put it in. But other than that, we're not going

to change it.' We were able to close 100 easements in two years. The easements are held by the state. The state paid for them. The land trust was the door opener and negotiator.

This has led us to this whole landscape approach. There is a Forest Legacy Program, which is the biggest federal program to do easements mostly on private land, mostly forest land. I just was looking over their annual report. Massachusetts has done 115 projects with that program. We started with a state program where we tested the idea whether we could do a lot of easements and protect a lot of the landscape. Another interesting fact: Of the 100 easements that we did... Our staff wasn't crazy about this idea, because they want to do more strategic work than just call every landowner in four towns. They thought they would end up with a lot of scattered parcels. But something like 99 out of the 100 parcels were connected to existing protected open space. I don't think that is a coincidence. I think if you live near a conservation area, you're going to be more conservation-minded. So we went from that to using this federal program and again partnering with land trusts who have done 115 parcels with federal money. In Maine they protected many more acres. A landowner up there might own 100,000 acres. Or in Montana or Michigan, even. But nobody can beat Massachusetts for how many deals we've done. What we've done is the same thing. We look at a whole landscape and the land trusts find 20 landowners who are strategically located. We put that in as one application.

TD:

How do you do the spatial planning behind the landscape scale approach?

O'Connor:

We're very unique. This is another kind of partnership. This is the Dept of Fish and Game's guidebook for habitat, "BioMap2".

(O'Connor shows me the book.)

They look at all of the rare species records. We have two different classifications. We have what we call core habitat, which is habitat for the 25,000 rare species records that the Fish and Wildlife Agency keeps track of. Some of it is part of the state inventories that The Nature Conservancy started, the Natural Heritage programs. Every state has one. They look at all the records for the rare species. Then they have a biologist who knows about the salamander, researches its life history, and makes up a map of how much land does this salamander need to thrive, and how many populations do you need to be genetically viable. From that, they came up with this map of the core areas where there is a viable rare species habitat where you could protect the land. Another map is looking more at the landscape perspective. Most of the rare species records are due to somebody locally who knows about rare species finding them. We don't have enough staff to comb the whole state looking for all the rare species. If there is a lot of unfragmented forest and intact ecosystems, it's likely that there is a lot of biodiversity in that area. So this map is based on intact habitat, not rare species occurrence. There is a model that the University of Massachusetts did, called the CAPS model that looks at the integrity of the land. It looks at the vegetation type, the geology, the soils... We might have 10 hardwood forest parcels that we're interested in, but only one is on a north-facing slope, a cool, moist area that is totally unique compared to the other ones. This model finds the hidden biodiversity. In this model, they also looked at climate change, because the species on our rare species list might either flourish or be invalid because of climate change. Basing your conservation activities on the current status of rare species is too static. This is a much better approach. They always use this analogy that it doesn't matter what actors we're protecting, we're protecting the stage where they can perform. The model also looks at habitat and stream connectivity. I would say that about 80% of the land we protect is in this map. The 20% that isn't on the map fulfills some of

the other criteria that we use. We did a statewide land plan in the early 2000 with the land trust community and took everything we knew about important land and put it on the map. Basically, because everybody is parochial about their land trust district, we came to a consensus that if there are three maps for a certain area, if the land trust said it was important, the biomap said it was important, and water supply maps said it was important, it goes on the state map. This partnership of land trusts, state and federal agencies and communities mapped about 1M acres on the statewide map. (O'Connor shows me the report.)

It provides a landscape forest vision for the whole of New England. The plan for Massachusetts relied a lot on the map for the state, where we had 1M acres that had three or more overlapping reasons why people thought it was important. This report however, done by the Harvard Forest University who does a lot of research on land use history, is interesting because usually Harvard doesn't get into the policy advocacy area, but this report does. So this is a connection between scientific research and policy. We also have The Nature Conservancy and a lot of other scientists working together with us to come up with policy recommendations. We have maps for water supply, whether wells or surface water, we have maps of the best farm soils, the best forest soils. So the 20% that we have protected that isn't in this book is farmland, water supplies, recreation areas, parks, scenery and other reasons.

TD:

Sounds like the relationship between the land trust community and the state agency is very good.

O'Connor:

Yes. For the last ten years, all the state land staff and the land trust community, we get together at Harvard Forest where they have a retreat center. We spend two days each year planning the work of the next year together. They cook the dinner and we cook the breakfast. We socialize in the evening. We think that's very unique. We actually have a proposal for the next LTA Rally to talk about this. We've talked to other states where the land trust community and the state don't work together this much.

TD:

How come that Massachusetts has the money to do this kind of work?

O'Connor:

In these days, we're very lucky to have good state funding, mostly because of the current governor. He wasn't very well known when he began running for office. The land trusts offered to meet with him, as with all the other candidates. He committed to spending 50M \$ each year on land and parks. He got elected, the recession hit, the state funding was down the drain, but he kept his promise. So we've had very good funding for six years now. It has gone down a little bit, but is much better than other states. Now we have about 40M \$ per year. The federal money is very competitive. This project with the 3,500 acre parcel I mentioned was ranked 10<sup>th</sup> nationally. We were the last one to get funded, so we were very lucky. We have another Forest Legacy project that was ranked second out of the country. The House has just reduced the budget for the whole nation down to 3M \$, and ours is now out, even though it's second, because the first project uses that 3M \$. But we're not worried, because we'll probably go back to the top ten. However, they used to do about 25 to 30 projects each year.

TD:

Which fund is this?

O'Connor:

This program is financed by the Land and Water Conservation Fund. There has been a long standing advocacy to increase it. It's been around since the 1960s, funded by revenues from offshore drilling. The way the law is written, all the revenues should go to it. If that were to happen, it would be like 1 Bn \$, but lately it has been more like 100-150M. Half of that goes for the federal agencies to buy more national forests and parks, and half of it goes to the states.

(O'Connor shows me more reports.)

There are a lot of issues with conservation easements and the Lincoln Institute has a lot of seminars on that. Will they be permanent? What will happen to them? Is it fair if society in the future needs affordable housing, should they be taken away? What are society's main priorities 200 years from now?

(I talk about conservation in Germany and growth boundaries.)

O'Connor:

Sprawl is a big issue in the United States, probably more in the West than here, because there is so much land out there that people say: 'Why bother?' We don't have that much land. We have a zoning expert who works here. He's spent his whole career trying to get a good zoning law passed. The real estate industry just keeps fighting and saying: 'You can't do that.' Maryland has much better zoning, but on the other hand, if you went on a tour down there, you would say it's worse than what you can see around Boston, because the development pressure is not as big around here. We're actually losing population. But in the South and the West there is so much land. The airport of Denver is about 40 miles from the city. About 10 or 15 years ago they decided to build the airport out there. Now the area in between is becoming like a city. But they have a lot of land.

Massachusetts is the only state that has a government approval required for easements to assure a public purpose. If a land trust writes an easement, they send it to our office with Irene DelBono, our Conservation Restriction Reviewer. If we say, this isn't protecting the public purpose, there are too many things allowed, the trust has to redo it. We have to be reasonable, but we're the only ones who do this check. If you are in Montana and a rancher and a land trust write an easement, they can write it the way they want. I just was in Connecticut the other day. They don't have a standard easement law, so they all say: 'Let's agree to the standard language.' On our website you can find a model easement. So if you want to become instantly approved, you can write the easement exactly like this. If you start changing it a lot, our staff will start to push back. In the land trust community, you would think that they don't like this situation, because they meet with a landowner and suddenly the easement they agreed to, we get involved. But they like it because we can be the bad guy. If they want something to be protected on the land and the landowner is only going to go this far, they send it to us, and we say: 'No, you got to go the last bit.' This helps. It's a funny relationship because the trust and landowner keep pushing because they want to close the deal, and we keep pushing back. Our office reviews about 100 to 150 easements a year. The only ones that don't have to be reviewed are the government ones. They have their own attorneys and we trust that they do a good job protecting public interests. But we check the easements of all the towns, land trusts and anybody else. We were one of the first states to have a law defining what a conservation easement is, and in that law it says that the secretary of the environment has to sign the easement if it's going to be in perpetuity. There has to be a public purpose for conservation in the easement, which is kind of vague. Easements don't have to have public access. Only if the state is paying for the easement, there usually has to be public access. A good example is our islands and the shore. There, real estate is worth a lot. If a land trust is able to get a donation of an easement by a wealthy landowner who

wants privacy, they are protecting the habitat, the view, but not public access. But there is a public purpose in the habitat, so we'll say ok. Our tax credit law has a higher standard for the easement in order to get the 50.000 \$. The way we've written the regulation is: For habitat and water supply we use our maps. We said 50% of the gift must be covered by our main maps. Then we have a tier two, things that are important, but not so important. If you've got a couple of those... We've had about 60 applications and we turned down six or seven. It has been very gratifying that the applications the land trust are getting are really good land, and we think it's really a good program. We're hoping that now that we've hit the cap already and we have six more months of applications coming in... And we do have a lot of land trusts who are very good. It might be possible to get the limit bumped up to 5M \$, because one of the benefits of this program is the leveraging. The state pays 50.000 \$, the appraisal comes in and its 200.000 \$. So for 50.000 \$ we're protecting 200.000 \$ worth of resources. The tax credit law has a very good leverage. We're finding some people who wouldn't have done it without the state. They're saying: 'The federal tax deduction is good, but this is even better.' Especially because it's refundable, you get a check. The federal tax deduction on the other hand doesn't have a limit, but it's not cash.

TD:

Can you give an example of a conservation easement on forestry land?

O'Connor:

We have something called the Forest Stewardship Program, which is a federal program that hasn't been funded, but we fund it. We pay the landowner to get a plan. A private forester will go out and do an inventory of the forest, sit down with landowner to define forestry management goals, including wildlife and timber. They'll come up with a plan that's sustainable, good silviculture. Our forestry easement requires that before you do any cutting you have to hire a licensed private forester, and they have to do this plan. There is a standard format of how to do the plan. It has to be approved by our state forester. Once that plan is approved you have to implement it. Some of our easements are more specific, saying on a steep slope you can only remove so much of the trees because of erosion. Some of the agency easements have that level of detail, but mostly we say: 'Before you do any cutting, you have to have a plan and a professional forester work with you through the project, to make sure it's sustainable and well done.' We have one of the strictest forest oversight laws in the country. California and Massachusetts do.

TD:

But that means that the easement is linked to a plan that can be changed.

O'Connor:

But the plan has to be approved by the state. The plans are usually 10-year plans. If you write a new plan, it has to be approved by the state forest. It's similar to the easement. If there isn't good forestry in the plan, we won't approve it. We also have a rare species law, so if the logging is happening in a rare species habitat, the practices have to be approved by our biologists at the Fish and Game Agency. We also have a book of best management practices that has to be followed on all logging. We have a staff of foresters that review all logging. Every time that someone cuts timber on private land they have to file a cutting plan, which is different from the management plan. It just says what is going to be cut. It has to meet the water quality protection, rare species protection, and we're having a long argument about high-grading. This is when the logger goes in and just picks the nicest trees, the valuable trees, and leaves all the junk. If you keep doing that, you are ruining your forest financially, and some people would argue genetically and in terms of wildlife. High-grading is

probably the most prevalent way that forestry goes on in the United States. Our state has one of the toughest forestry laws, but it mainly protects water and species. We keep advocating with the loggers and the mill owners and the foresters to have our regulations require good silviculture in all forestry, but the some of the landowners are saying: 'No, it's our land. If we want to harvest the valuable trees and leave the junk that is our right. We own the land.' The regulations were nearly completed then, we just missed, but we keep trying. But the plans that we pay for we get good forestry, and in the easements we get good forestry. We're trying with incentives rather than... We've used our regulations as much as we can. We're doing a survey of all the 1.100 plans we've done on private landowners' land in the last five or six years. That is about 120.000 acres. So it cost us about 15 \$ an acre to pay for a plan. The landowner meets with a forester, has goals for the land and starts thinking of their land, walks the land... You know, we want them to fall in love with the land. Our thinking is that this plan connects them to their land, maybe brings in some firewood to heat the house, improves the wildlife habitat, that this is a slow step towards permanent protection. The end of the game is the easement.

The other program that we have is the estate planning. We used the UMass extension forestry staff and two land trust staff. We fund about 100.000 \$ a year for them to do estate planning. This is a way to reduce the tax burden and look at ways to conserve land in a financially viable way. We educate people about how to use conservation easements to reduce the value of their land so the taxes are less, and maybe get a tax deduction or a tax credit. There are different legal things you can do with the land so it does get passed onto your children but in a protection status. We've been educating people about this idea. I think we're one of a few states who do this. We had dozens of workshops with the landowners coming to learn about estate planning, with attorneys and land trust people who know about this. These workshops are getting people to think about this, and we're starting to get the first donated easements. UMass and the land trust team have been doing this for three years and have six or seven donated easements because of this. We have a great book called 'Your land, Your legacy'. It has seven or eight examples of landowners who conserved their land through good estate planning and avoided conflicts among the heirs, and it provides a cookbook on how to do estate planning. So this is another tool. We use the management plan. Right now, we're doing a survey of the 1.200 people we paid for the management plan. We want to know: What good did doing this plan and meeting a forester do for you? Are you doing forestry? Are you following the plan? Are you thinking about land conservation? We also send 'Your land, Your legacy' to all these people. We got a call from one of them recently who said: 'I read 'Your land, Your legacy' two years ago, I read it again this year, and I decided to donate my land to a land trust.' You don't know how it's going to happen, but if we invest 100.000 \$ to do workshops and get donations of easements worth 2M \$, it's a good investment.

TD:

How do you monitor your easements?

O'Connor:

That's where the land trusts are way ahead of us. We have something called a baseline documentation report, where the current condition of the land is documented. Is there a barn here? Are the boundaries well marked? Ten years ago, both the state and the land trusts did very little. We got the easement and hoped people would be good. The way to think about perpetuity is that every easement will be violated in perpetuity. And if it didn't get violated, just wait a little longer. Given that that's the case, monitoring easements is crucial. The LTA has been a great motivator. Some years ago, A national land trust got into a controversy because of some easements they purchased were not properly done. They purchased them from some of their board members. One was on one



of our islands here. It got the tax deduction, in kind of an inside trade deal. So, in reaction the IRS required some sort of registration of the land trusts, to show that the standards were respected, if you wanted the deduction. Rand Wentworth (the president of the LTA) did really excellent work to keep the tax agency away and say: 'We'll fix this ourselves cooperatively.' LTA has a very big accreditation program that has Standards and Practices in it, requiring good care of an easement, baseline reports and annual monitoring. So the land trusts are doing a good job of doing baselines and doing monitoring. Sometimes they'll charge the landowner some extra money to put into a fund for easement monitoring and legal protection. We had one easement where there was a major violation. New landowners built a barn where they clearly shouldn't have done that. The land trust didn't monitor very much, so by the time that they found out, it was a few years old. They went to court. The landowners' argument was: 'They didn't even tell us that we shouldn't have done this. So how can we be wrong when they don't do their job.' So all the land trusts chipped in to hire an attorney to defend this land trust. It was very interesting that a lot of the 100 land trusts and the Land Trust Coalition that meet quarterly saw this as a big issue. They said: 'Everybody needs to chip in to defend this very small land trust who owns the easement.' They won the case, but it just sent a shockwave that the easements will be violated. If you don't do a good job monitoring and documenting the condition of the land, you aren't protecting it. One of the interesting tools land trusts use is to say: 'When this land with an easement is sold, a small percentage of the proceeds will go into the easement defense fund.' So they have been creative on how to fund their monitoring and defense funds, but for us as a state, it's hard to be creative. We've been trying to do baselines. We have 1,200 easements. Most of them are agricultural easements, 850 of them. The rest are with Fish and Wildlife and Forestry. We're very close to doing baselines on all the 1,000, but it has been slower each year. Hiring staff to do the monitoring is difficult. The cost goes up, the budget goes down. Right now, we have two people in our agency that do easement monitoring. The Boston Water Supply Agency that owns the land around the reservoirs. They have about 100 easements and one staff person that just visits each one. The Agricultural Agency has one person with 800 easements. The other agencies have nothing. New Hampshire has a law to set aside a fund where the interest can be used to monitor easements. It's difficult to get a fund, because when the money gets tight, the funds all come into the mother fund to pay for the bills. So I think the state and federal monitoring of easements is a bigger issue than with the land trusts, because the land trusts have flexibility to negotiate the fund somehow or raise money when they raise money to pay for the easement. They always say: 'The easement is not going to be bought until we get that extra money to monitor it.' This is very good. The LTA accreditation requires that you do that.

We have six grant programs that give money to buy land or build parks. One of them is just for land trusts. It's a small program but it's always the favorite program of the state secretaries. The grants are only up to \$85,000, and we usually give out 10 or 15 grants a year. They protect a lot of beautiful land. The land trusts can find cheap, nice land. It has been a very good program. We're one of the few states who have a land trust grant program. New York has one, but I think we have done 100 grants over the last 5 years. So we have done the most grants and the most money of any of the grant programs. We have a new grant program called the 'Landscape Partnership Program', which is meant to protect landscape-scale projects. It's called partnership because there is a minimum size of 500 acres, so it has to be a large piece of land, and it has to be a partnership of a local community, the land trust and the state agency, or at least two of those three. It forces partnerships because we feel that in big projects you need a lot of partners who can access foundations and federal grant programs. We just did that program last year. We did eight grant awards for 8,000 acres totally. We're going to be putting out our next advertisement for that. We're a little overbooked on how many programs we have versus how much money we have. We have three agencies that buy land:

the Agricultural Agency, the Fish and Game Agency and the Forestry Agency. We have six grant programs, so we have to break up our pie into a lot of pieces.

TD:

What is more important nowadays, fee title acquisition or easements?

O'Connor:

This is how we spent our 51M \$ last year: 41% grants, 26% easements, 26% fee, and the rest for overheads. So it depends. There could be a big project that will make either side increase. Our agencies like fee land. It's the old thinking that you can manage it, you don't have to negotiate with the landowner for public access, you don't have to worry that the public access might be taken away when a new landowner comes on board. The easements are a little bit cheaper. The way you appraise an easement is you look at the development value and then the forestry and agricultural value is the other value. We have had an idea that we've been trying for many years, which is an easement national forest. There are 300M acres of national forest in fee. There is the Forest Legacy Program, which gives states the money to do easements, but is a very competitive program. It's towns or the state. So our idea is to create a new national forest in our Western mountains that would be totally easement-based. So there would be regional trails for hiking. There might be core areas where the federal government has a visitor center and campgrounds, but other than that it's all privately held land. There are several problems with the traditional "fee" national forest model. When they want to do forestry on the land, anybody in the country can take them to court to dispute the timber sale. So many timber sales go to court. Every time they try to do a plan saying: 'We would like to do this much forestry, this much recreation etc.' People that don't like forestry fight the plan. So the ten-year plan takes ten years to do. The national forests were meant to safeguard and manage our forests and provide timber for our needs. It's one of their multiple uses. In the easement model, the forest would still be owned by the landowner. We would require high standards for forestry. We would require some sort of public access. Their land would not become a campground, but might have trails or hunting. It's a very different model for designation and it requires state law, federal law, it's a big deal. The Forest Service likes the idea because they know that expanding their national forest is very controversial because of land rights. In Idaho, where 40% of the land is owned by the national forest, they don't want more national forests. But easements people like. So there is a huge benefit to easements, I think. The taking care of easements is problematic, but you have to take care of fee land too. We have encroachments from neighbors on fee land, where they put their swimming pool over the boundary line, because we don't watch the boundary well enough. But with an easement, it's their land, so it's more likely that there will be an encroachment or violation.

TD:

Is there a sense of competition between state agencies and land trusts?

O'Connor:

That's why we started these sleepover retreats. We weren't getting along like that ten years ago. Our money comes from the governor and the legislature. Each local area has their senator and state representative. In the old days, if a land trust wanted state money for their little project in their area, they would ask the state agency: 'Do you think you can partner with us?' And the agency would say: 'No, we have our book that we're following. Then they would go to the state senator and say: 'Get us that money.' We didn't like that. With our budget we try to do priorities for the whole state, not just the local level. I think the land trusts felt like we were not listening to them. We said: 'We're going to do this project. Come and be our partner.' And they would say: 'No, we want to do another project.'

Forget it.' That's why in the first year we had a retreat we had a facilitator from outside come in to mediate. I think just getting to know each other better helped a lot. But also, the land is getting so expensive that even a good state budget can't go very far, and the same thing for the land trusts. To do an important project like this mountain that we protected with this largest piece of land, it would have taken a quarter of our budget to do this project. So to get the federal grants, it's important to have a lot of people all saying this is the most important thing. The land trusts raised 1M \$ from the Duke Foundation and Kohlberg Foundation, so 1M from foundations, 5M from the federal government, 1M from this Landscape grant program, and 1M from a fee that hunters pay on their license, and it all came together. Every land deal needs that kind of partnership. There are very few land deals where the agency says: 'There is a piece of land we're interested in. It's going to cost 1M \$, let's get the money and buy it.' Because they know that if they can get it for 500,000 \$ with foundation grants and private fundraising from the land trusts, and maybe we hold a conservation easement and the land trust owns the land, then we don't have to manage it either. There are so many positives from being partners from both ends. And I think the pace of conservation – if you talk to Wes Ward or Bob Wilber, any of the people that we deal with from the land trust community – the pace is much better when the state has a good fund. So they can't do it alone, and we can't do it alone. The tax credit legislation was put through with help from MassAudubon and TNC. We couldn't have done it. It's just such a good partnership. We had a governor in the past who tried to put the land budget to zero. And the land trusts, when he announced his plans to kill the land budget, had 10,000 calls to his office in a week. The next strategy that they tried was to go to individual land trust like the Trustees of Reservations and say: 'What project is your favorite project? We will fund that. We don't want to give a lot of money for the budget, but what you need, we'll get. Just don't object to this.' And they tried that with several land trusts, but in a unified voice they said: 'We don't want that money for one project. We want a pool of money that's good for the whole state. We trust the state agencies to work with us to allocate it. That made me feel like we really are partners. They could have easily said: 'We need the money, we want the project. We will be partners in the next chance.' So I think that really tested our partnership. And then they went and met with the governor who was running and now for six years we've gotten 50 M \$. We probably wouldn't have gotten that without the land trusts. This governor grew up in a poor neighborhood in Chicago. He values parks, because he remembers from his childhood that they are important, but I'm not sure he would have funded farms and water supply across the whole state. It's a good partnership and I truly value it. The other thing that has helped is that some people have worked for the state and then moved on to land trusts, and the other way around. So there are people who know what it's like to work for both sides. That's important too.

TD:

How important are institutional networks like the LTA and the Coalition for this sense of partnership?

O'Connor:

I think it's very important. They bring the group together regularly. I go to all the quarterly meetings and report what's going on. And we can't do without this. It probably wouldn't happen because we couldn't mail out to 100 land trusts to say: 'When can we meet?' Plus it would be the state's meeting, which would be different. It's their meeting. They set the agenda. We go in and listen. Before Chuck Knox was hired, I could talk to Bernie (McHugh) or Cathy (McGrath) if we had any issue, and they could send it out immediately to all the land trusts to tell about the issue we needed help with, advertise our grants. The tax credit would not work the way it was written. If you have a ten year carry over and you have a 2M \$ limit, you get to the second year and you don't know how many people will use the carry over. Maybe they've got an inheritance and they've got a big tax burden, and then they want to use the whole. So it became clear to us that there was no way to

predict whether you would meet the 2M \$ limit as you moved forward. You might have carry overs from four years ago who may decide they want all the rest that year' For the idea of a refundable tax credit, we had to change the law. The land trusts did it. For us to meet on policy issues like this tax program that wouldn't work the way it was written, they are very helpful. As you'll hear, there is a little friction between the Coalition and the LTA, but the meeting we had recently was very positive. The LTA was formed in Massachusetts by people like Wes Ward. For the new organization that Massachusetts land trusts helped create to tell the Massachusetts land trusts what to do or to tell the land trusts what to do causes friction. But Wes Ward has been working between the camps, and I think that he's been successful at getting the accreditation... People were very resistant to accreditation because they felt like: 'We created the land trusts here. We created the LTA, so why should they be telling us how to run our business?' But I think that things are getting better. The LTA has an important role in states where there are not 100 land trusts and a coalition. There the LTA regional staff is very helpful. Sometimes when the regional staff comes to our meetings you can see that they are uncomfortable, but things are getting better. And I think that fixing the tax deduction as a national law has been all on the LTA and they've done a great job. So I think there is a good role for both, and there are other states with coalitions, Colorado has one and Michigan is forming one. From a lobbying point of view, although they can't really lobby, the Coalition is really important. When they meet with the governor or the candidates for governor and they represent 100 land trusts with 200,000 members, that is much more efficient than each group going in separately.

### **03 William 'Buzz' Constable – president of the Lincoln Land Conservation Trust**

(The interview took place mostly while Mr. Constable showed me properties in Lincoln.)

Constable:

(...)

One of the things small towns do is actually buy things when they have the chance. It took a long time to acquire these four parcels, but now there are about 300 acres up there protected forever, part of it in conservation easements, most of it in fee. The clever conservation subdivision we did was part of that.

The average house in Lincoln costs more than 1M \$. So there hasn't been a real farmer in Lincoln for a very long time. Certainly none of whom we needed to buy land. This little field belongs to the house that we just passed. We bought it and lease it to the farmer that does the big field across my house. We bought it for a very cheap price, and the local church paid for part of it because it protects the view for the church. So doing lots of different creative things is how we do it.

(Constable shows more conservation land.)

If someone doesn't want to put a conservation easement on his property, we wait until the time is ripe.

(Constable shows trail entrances.)

We got trails that go from everybody's house up. The theory of conservation in Lincoln was to protect what needs to be protected but also to connect everybody in town to nature.

TD:

How do you finance all these trails?

Constable:

Until 1980, every trail was built by volunteers. We have 70 miles of trails in town. About 50 miles are managed by the land trust. Until last year, they were all done by volunteers. I ran the program. We hired a couple of students in the summer to do the work under my supervision. This cost about 7.000 \$ a year.

(...)

This is something called a food project. It's all town land. We lease these 40 acres for one dollar to the food project, which brings urban and suburban kids out here to farm the land, grow produce and take the produce back into Boston to give away at food banks and places. So it's a way to get urban into the suburbs, it's a way to raise food for urban needy families, and it's a way for the suburban kids to have an urban experience, because they go in and sell. It's been around for about 10 or 15 years. It started right here. It now has 5 or 6 farms around Boston.

In Lincoln, in our own special way, we've allocated money to buy conservation land. For a very long time the (Conservation) Commission didn't have any staff to do any land management or land oversight or any stewardship. So the land trust provided that. Now, the Conservation Commission is very strong. The town, almost always with the land trust providing some of the money, would acquire land, and the land trust would care for it. It was just that the town had 800 or 900 acres of land in total, and there wasn't a lot of money to care for it. So the volunteer entity to care for it was the land trust, beginning in the 1980s or so.

(Constable shows me more properties, trails, and Walden Pond.)

TD:

Where do you get the money to do your work?

Constable:

We have about 300 or 400 households that are members, so that is about 1.000 individual members in Lincoln. Almost 6.000 people live in Lincoln, so almost every 5<sup>th</sup> person is a member of the land trust. We aspire to have half of the Lincoln population as members. So I'm actually not happy with memberships. But through membership fees between 10 \$ and 1.000 \$, depending on what people want to do, we raise about 30.000 \$ a year. When we were all-volunteer, that was pretty easy, it was enough to do things, because we only had to hire kids for the summer. I ran a budget of about 20.000 to 22.000 \$. We also ran an educational program, which would cost us a few thousand dollars a year to have, to rent halls and use the town facilities. So we only needed 20.000 to 25.000 \$ a year. A year ago, we hired a staff person. But these are only the operating costs. To purchase land or to help purchase land, originally most of it was donated and we would leverage small donations and mid-size donations to get some federal and state grants. We've continued to do that. In addition, in Massachusetts, over the last 15 years, there has been something called the Community Preservation Act, which allows the town to...

(Constable shows us a Farrar Pond.)

One of America's best land use visionaries was a guy called Charles Eliot. He was the founder of the Trustees of the Reservation. He had a vision of a bay circuit, a strip of green land all around Boston. Well, it never happened. But about 30 years ago, a guy said: 'Let's have a trail!' So he created something called the Bay Circuit Alliance, which are all the conservation lands between 10 and 30 miles from Boston. There is now a trail that is 140 miles long and runs from Ipswich in the north to Duxbury in the south. It goes around the whole town. We're missing about 8 miles to make it complete. Lincoln was the first to have the whole part in town complete. One of the things that Lincoln has done better than anyone else is... Suburban land outside of Boston has been under a lot of development pressure since the 1950s or 60s. We've had occasion to say: 'Ok, here is the land being developed. How do we protect what ought to be protected from either a landscape place or habitat place or recreation purpose or even educational? All the land surrounding the schools in Lincoln is conservation land. When there is a development threat, we have responded in different ways. When this whole area (along Farrar Pond) was to be built, there would have been houses just right down to the pond. We went to the owner, who was a very good man, a doctor in town, and said: 'Let us work with you to do a development that would protect the land that you love, that you grandfather has purchased here, and we'll give you the same economic return. You need a return. You have four kids, and we want you to get your money out.' He said yes, and we worked with him for about two years and went to town meetings and rezoned the land from single-family houses, which is all you could have had here before, to allowing condominiums with the idea that 80% of the land had to be permanently protected open space. So, by the time we had done that, there was a couple of very good designers who designed where these condominiums would be laid out and rezoned it with the idea that all this land would be protected, but the condominiums could be built. That happened in 1978 and 1982.

(Constable shows me a bunkhouse along Farrar Pond.)

This bunkhouse here is actually a well site. It isn't used by the town for water, but it could be. It's a backup water supply. If the town's big reservoir doesn't have enough water or the pipe gets shut

down or something happens, they can pump out of here. That's worth a lot of money. The town paid 100.000 \$ or something for the right to put the well here. We let them drill for free and investigate it. Then for 100.000 \$ they built this. It did two things: They made the Bay Circuit Trail much nicer, because to build this and for the right to pump water from here we got enough money, which would have been what we would have had to endow to protect this and build these trails. In fact we built these trails with volunteer help. By the time I came to Lincoln, I worked on this part.

(...)

You can see the condos up here. These are the little trails. There are probably seven or eight places between here and the end of the pond where you can get to the pond either from the condominiums or from the neighborhood. So, we have this beautiful trail that goes the entire length of the south side of the pond and we have a bunch of access to it. This is really why we do land conservation. And that's really why nobody complains when we want conservation land. We make it possible.

TD:

Do you keep public access?

Constable:

The public can go anywhere. What we do is we limit the use by making it uncomfortable to park. So if all 200 units of housing up here and the 100 or so houses that are behind them wanted to come down at one time, it would be too busy here. But in this whole area we have a parking lot that can probably fit 10 or 12 cars. I've never seen it full. So, everybody is welcome. If you want to ride your bike, you can come here. And we haven't had the problem that they have at Walden Pond, which is 30.000 people. Although, when mountain biking first started, we had occasions where there would be as many as 5.000 mountain bikers going over conservation land, and not staying on the trails. If they stayed on trails it would be fine. But they can ride up hillsides, destroying vegetation. So we did have to take a little action. We passed a rule that said you couldn't do that except where it is marked to do so. But for the most part, there is no limit to people being here. There are a few places that are a little boggy, to discourage horses.

TD:

Do you have any problems with liability?

Constable:

No, interestingly enough, every state in the country has something what they call a 'landowner liability statute', which says that if a landowner lets people use their land without charging them for it, the landowner is only liable for gross negligence or willful damage. You can't put a pit in and have them fall in. It's a very strong statute that the courts have protected. Not only have we never been sued, in Massachusetts I know no court cases that actually went to trial because of somebody being insured on conservation land. There have been a few claims, but in each case they beat the claims.

(...)

It's actually a private pond with maybe 75% being owned by three non-profit groups. These are the Lincoln Ridge Condominiums, to the Lincoln Ridge Land Trust owns the land, while my land trust holds a conservation easement on the land. It's protected now through the easement, but it's owned by a third party entirely. This is probably not the best way to do it, because the third party has no other assets than this land. It was only created to own this land, so that the condominium owners wouldn't do ugly things to it. So it really can't do stewardship. My land trust does the stewardship

and maintains the trails since 1978, but this isn't the best way to do it. We should probably have wanted to own the land or something that gave us a little more right to maintain the trails.

TD:

How do you finance acquisitions?

Constable:

Thinking about it generically, there would be gifts of the landowners or a bargain sale, funds for the acquisition by neighbors or other people in town. Or the next most popular (way) is working with the town, when the town would appropriate some money – usually about half of the acquisition price – either by going to town meetings, the legislature body and asking for the money or through this Community Preservation Act – the CPA money – which is a law that has been in place for about 12 years. It allows a town to say: 'We will appropriate 3% or less of our annual money for special purposes.' If you do that, the state will take a chunk of money, which happens to come from our registry of deeds, and match it. So the PCA in Lincoln, we use 3% of our tax revenues and apply it to – and here are the things you can apply it to: open space conservation, affordable housing and historic preservation. For these three special things, we raise about 400,000 \$ a year through the PCA. Over the last 10 years, that's been a very common way of doing things. It's a lot of money, but a development site in Lincoln costs 1M \$. That means you don't buy a lot of land unless you put together a lot of creative stuff. So there are gifts of the landowners, gifts of the abutters, town money, and state money. There aren't really any federal grants for us anymore. Lincoln is too expensive to live. The fifth would be other entities, Walden Pond Reservation, a national wildlife refuge or the national park. The sixth is what we are really famous for: taking a piece of land and doing a partial development, so that we make the money of creating the development and that allows you to save other parts of the land. So these are the six primary ways we fund land conservation.

TD:

Do you have a revolving fund?

Constable:

No, we have a complex system. Let me describe it to you. We have about 2M \$ in a subsidiary, the Rural Land Foundation, which does these conservation subdivisions. We have about 2M \$ in the bank, which isn't really a revolving fund. It's really the asset we would use if we had to do something. So far we have never drawn on it. But in 1972, a huge estate became available, 150 acres of land. The Rural Land Foundation, working with the land trust, bought the land, rezoned it – we went to a town meeting, so we worked with the town – into a commercial development. It was right where the train station was in town. We needed commercial development, so the deal was 100 acres including the best farmland in Lincoln was permanently protected. We needed affordable housing in town. This we all recognized. So the Rural Land Foundation sold 18 acres for 1 \$ to another non-profit group to build 120 units of affordable housing. We paid for the whole thing by selling another 12 acres to a developer to build a commercial mall. When we did that, we reserved in 1972 the right to buy it back after 25 years, in accordance with a formula. Well, stupid people who did it in 1972. In 1997, we bought the mall back for 380,000 \$. At the time, it was generating about 250,000 \$ a year net, so it was obviously a good deal to buy. So the good news is: We own the mall and we can get revenue off the mall. The bad news is: Just about the same time, the two tenants said they were leaving because the mall was run down. It was 25 years old and they didn't like it anymore. So three years ago, we had to borrow about 7M \$ and we spent about 8M \$ to fix the mall. So now that we have a



mortgage, we're not getting as much as we did before. We're still getting some money out of it, and 20 years from now, we'll be getting a lot of money out of it, but right now that takes an incredible amount of time. So we have been in the real estate business since 1972, when we acquired this chunk of land, or since 1962, when we did the Wheeler Field. An interesting aspect to all of that, which I think the LTA hasn't figured out: The LTA cares about professionalization, but Lincoln has had 100 really good professionals doing really creative things successfully. None of us has ever taken a dime for it. So that's probably the biggest fundraiser. It would have cost – the kind of projects we do and the kind of professionalism that it has brought to bear, of whom I'm not the biggest by a long shot – would have cost 40, 50, 100, 150.000 \$ a year just for consulting fees. And we get it for free, just because we care about the town. And that's what a small land trust can do. The Trustees of Reservations or MassAudubon can't go to the best tax attorney in the country, to Stefan Nagel or his boss Steve Smalls and say: 'Give us 50.000 \$ worth of work.' Well, Lincoln in the 60s and 70s had the best tax lawyer certainly in Boston, Ken Burgin. He structured that mall deal, he structured the deal with the Wheeler Road and how to finance it completely by an incredibly innovative thing too long to describe. However, super-innovative things have been done at each stage. You know, the Nature Conservancy can do creative things, the Trust for Public Land does very creative things, but they do it by paying people a few hundred thousand dollars to work for them. Small towns sometimes have access to a different way, so I think that's important.

TD:

How do you set up your priorities?

Constable:

I'd love to be pretentious and say: 'Well, we set up our priorities because we like this and that.' But in fact, everybody – whether it's the Nature Conservancy or the Trustees or MassAudubon or the Lincoln Land Conservation Trust – we all operate off of opportunity. If something is either endangered because someone is about to develop it, or someone is ready to do an estate plan, we pay attention to it. That's really what we do. We have goals. Also our trail planning is done like that. We know where the big pieces are. We look for opportunities to connect them. Sometimes it's not a straight line, sometimes it doesn't happen all at once, but you wait for the right opportunity to get what you need. So it's really kind of fun.

(Constable drives around showing me more properties.)

This is the acquisition we're working on right now, about 50 acres of land. It's part of the Cambridge water supply. We're trying to save these 55 acres, which includes some upland that could be developed. It's a 2M \$ acquisition. We got the city of Cambridge to put up 1.6M \$ out of their CPA money, because the CPA says you have to spend 10% of your money on open space, 10% on affordable housing, and 10% on historic preservation. Cambridge has lots of reasons for affordable housing and historic preservation, but they can't spend much money on open space. So they spend 60% on affordable housing, but they have to spend 10% on open space. They can do that outside the city boundaries. So it's their land, it's their water supply. So our funding drive has just gone out. It shows that we're putting it together through state money, because the city of Cambridge isn't using any of their own money. In this case, we're only looking at raising 93.000 \$ from citizens' donations. That's because not very many people live up there. The ones who do don't have very much money. We just don't think we can raise very much. We're smart enough to think about how to structure that deal. At this point we're not going to lose the deal. The conservation organizations put up 120.000 \$ in that. If we are short 20.000 or 30.000 \$, we will take it from the 2M \$ we have in the bank. It's too important. The family who actually owns this also owns the biggest most important

piece of conservation land, that's probably worth 8 or 10M \$. The last piece we want to acquire. So we want to work carefully with this family. This is really why we're working so hard on this.

The other things that I think might be important: Germany has very strong land use regulations. We don't have that. All land is subject to development unless it's purchased. You can't just say: 'You can't develop this land or you can just develop one house per 100 acres.' It's a taking under the US Constitution and the Massachusetts Constitution. Consequently, we have to use conservation manners to get things done. That really drives where conservation has gone. You can't use zoning to stop development either. You can just use it to shape development.

(Constable shows me more properties.)

Some land trusts care about preserving habitat, some about preserving agricultural land. In Lincoln it's really about preserving landscapes.

(Constable shows me conservation land around the mall.)

All of this was saved by building the mall. And at the same time, what conservation doesn't mean is being exclusive. This is a claim they often make in the US – that you become exclusive. You save the land and people don't have a place to live. Well, because of the conservation we did, this affordable housing was able to be built because nobody had to pay for the land. We gave the land for free to develop this affordable housing complex in 1972.

TD:

Is affordable housing controversial?

Constable:

It is controversial everywhere. In fact, there is a state statute that makes them (affordable housing projects) even more controversial that says unless 10% of you town is affordable, you can ignore zoning. So you can buy a piece of land anywhere and propose any size of affordable housing with any design. The town has no control. That really ticks people off, including us. It didn't occur in Lincoln because we jumped at it. We said: 'We want to be more than 10%, so we control our future.' So that's what we do here. So no, unlike Weston, which is the richest town in Massachusetts and is next door, and other places, where it is controversial and people don't like it, we've never had a problem.

(Later in the afternoon, Constable and I are sitting on his porch.)

We haven't had the kind of problems that Colorado had with the tax credit program. I think because of all the small land trusts. If somebody tried to come in and do what they did in Colorado, taking golf courses and getting huge tax credits on them, there would be enough people who would say no that it couldn't happen. That's another benefit of all these tiny private land trusts. There are 1.700 land trusts in the country, which means there are at least 10 times that many trustees of land trusts. So you have 17.000 people who keep their eyes open. That's more that the Nature Conservancy can do. So there's a value in these small guys.

TD:

How much land have you saved?

Constable:

The land trust owns about 480 acres of land. We hold easements on about 800-900 acres of land. But we don't consider it this way. In Lincoln, I don't think about the 480 acres we own, I think about the 2.200 acres that we own together with the town, because we manage it all. There are about 1.500

acres of conservation easements. Between the national park and the wildlife refuge and Walden Pond and our 3.700 acres, we control about 49% of the town. 49% of the town is permanently conserved. And we're not done yet, because we have another 100 acres right down the road.

TD:

Is there a saturation point?

Constable:

It's interesting. One of the things I'm very active in at the moment is showing the value of conservation land. Our house would be worth a 100.000 \$ near Cambridge and here it's worth 1M \$. So obviously saving this conservation land creates value. And I'm paying taxes on 1M \$ of property. I'm working hard with the TPL (Trust for Public Land) on a big study showing the value of open space. There is no doubt that the first bit of open space is worth a lot. And I don't think there is a saturation point. We clearly reached the point where we're known worldwide for having conservation land near houses. I think if you get the next one, it just ratchets it up a little more. There will be a saturation point where we don't need to protect anymore because either nothing else can be built or we've... actually I don't believe that. There will never be a time when we've bought everything. There will be a time when we transition from buying acreage to buying landscapes. So, this house and all the houses on this block are all part of the historic district, which says you have to get approval from the town to make major changes to the buildings. It's not a very strong law in the US because if they really say no you can take them to court and you'll win because it's considered a taking. So I think private conservation in a world like mine will go on. We'll stop buying land, but we won't stop preserving the landscape. For this kind of suburban world, this is true for all around the country. Boston still needs open space desperately. Wyoming still needs to protect open space. So I don't think this will go away.

TD:

But can you afford it?

Constable:

It gets more and more expensive to do it because we make land valuable. It's hard for us little land trusts to say: 'When do we have enough?' There is always something else to be done. Stewardship is a big issue, the cost of caring for the land. If farming stopped, we wouldn't be able to keep the fields open. I don't think that's going to happen, but 20 years ago we worried a lot about whether it would be too expensive for a farmer to pay for his gas. Farming could have been not economic anymore, and it would have killed our landscape. Now local farms have a comeback and everybody wants local produce. So now I'm working the other way. There once were 17 greenhouses down the field behind my house. I can envision a time when we actually grow crops for Boston there.

If there are farmers or neighbors who want to have horses it's not hard to keep the fields open. I go to the neighbors and say: 'We really want to keep this field open. Your field isn't good enough for hay. We can't afford to mow it. Will you hire the local non-profit in town to mow?' So the neighbors pay 400 or 500 \$ a year and they get it mowed once a year, and that keeps the field open. So caring for the land hasn't been hard. It would be harder if we had to manage the forest. Unlike in Europe, there is not the tradition of caring for the forests in a commercial way. All the forest came back after farming was abandoned. People don't think of them as commercially viable. And in fact they aren't.

(We are interrupted by a phone call.)

Stewardship involves land management as well as monitoring and enforcement. The idea is that you monitor each land every year. We monitor – most land trusts can't say this, but beginning nine years ago, we started a monitoring program. Every piece of land owned by the town or the land trust or on which either of us holds a conservation easement, we monitor the land every year. We have baselines. We walk the land. I did it the first year. Then, for about eight years, we hired people just out of graduate school for the most part.

TD:

What do you look out for?

Constable:

There are two things to look out for. First, for all practical purposes, the primary thing you look out for is: You walk all the boundaries to see whether somebody has done something they shouldn't have done on the land. Maybe they trespassed or hurt the land. That's 80% of what you do. You also want to see whether there is an invasive species outbreak or a tree has fallen across a trail or it's been dammed by a new beaver or we actually do wildlife sightings. I have done wildlife sightings, which aren't really terribly professional. But we did have good baselines done. Given that we started acquiring land in 1975, there are a lot of baselines to do. It used to cost about 12,000 \$ a year using interns. The last two years, we've done something different, where my one 60% person who works three days a week, spends about half her time on that. So that already is 15,000 \$ there, and she is only doing half of it. The town has allocated one of their staff people to do half. That probably is another 30,000 \$, because they pay more. So we're sharing our monitoring. If there is an enforcement problem – and everybody's had any, don't let them tell you that they haven't had any problems – the question is how much. The average problem is somebody throwing a Christmas tree over the wall. That's not a real problem on its own. If he throws it for 15 years in the same place, it doesn't look quite as good. We had somebody overtly and deceptively – a Harvard professor, in fact – who bought a house on a property that we had bought and put restrictions on – a conservation buyer program. (The conservation easement) carefully articulated what could be cut and what couldn't. He had a professional doing what was permitted to be done. Then, over the next three months he went and cut another – well, there were 80 trees but most of them were very small, but he cut a number of very good-sized trees just on his own. We found out and he had to spend about 40,000 \$ replanting and otherwise fixing things up. You couldn't replant the huge trees, but we had him sign a contract to take care of invasive species along the edges of his property that he wouldn't have had to do otherwise.

TD:

Did you go to court for that?

Constable:

No. See, here is the other piece. If you talk to the LTA, they say you can spend anywhere from 50,000 \$ to 1M \$ on lawyers. We've never had to take anybody to court. I've had some very serious conversations with people. I've had conversations about lawyers. I've had our lawyer call their lawyer, but if you're right, you're right. For example, right now I've got a guy who helped protect a bunch of land, an old farm. He's in the manor of the farm. It had a beautiful 19<sup>th</sup> century formal garden that had really fallen into disrepute. His wife spent 30,000 or 40,000 \$ fixing the formal garden. She had the contractor clear out all the forest next to it. And he's a great guy. He's my doctor, my personal physician. I said: 'Lynn, what did you do? You're trespassing. It's not your property.' 'I was just doing what I thought is right. I never even thought about it. Of course I was

wrong.' It'll take another year to figure out what he'll do. We'll make him... He cut a whole bunch of invasives out. We'll have to get a program together that'll have him make the natural forest grow back. But it will never go to a lawsuit, because it won't have to. I'm not worried about that.

TD:

Isn't that also a problem that you have too personal of a relationship with people, that you lose your objectivity?

Constable:

I think not. The reason I think not is, first of all, Lincoln is a small town, we all know each other, which means people shouldn't do things wrong. So it's less likely that people do things wrong. If Warren Flint, the family Flint, took his bahco and went up in the woods and took a bunch of trees down, I would probably say: 'What the hell are you doing?' And if it caused an ecological impact, it would be a simple deal. I'd say: 'Ok, you're going to give me 100 hours of bahco time.' He'd say yes. So, is that being favoritism to him or not?

TD:

It really depends upon you as a person.

Constable:

But I have a whole board behind me. In the 30 years I've run the land trust, in 20 of those years, I would have just done that. I would have had the conversation and be done. In the last seven or eight years, I'm trying to step back. I need to step back. I shouldn't be 'Mr. Conservation'. That's really why we hired this person, so there's more of an identity for other people. So I get everything approved by my board, but they for the most part trust me, so it helps. But I'm also on the committee for the Trustees of the Reservations that oversees the guys who do the enforcement for the Trustees. We have a portfolio of a dozen or so problems. We have used a lawyer twice. In neither case has it gone to a trial because if you have the right lawyer and approach it the right way, no one is going to waste their time. They might, in which case we would spend a lot of money, but I think it's overblown to think that there really is going to be a lot of problems. That is why the whole idea of the insurance program – you've heard of the LTA insurance program Terraforma – is really a good idea. We're not going to do it for reasons I can't talk about, but the Trustees (of the Reservations of Massachusetts) have voted to buy the insurance. I think the insurance program is a good program. In all likelihood, it will hardly ever be used, but if there is some rich guy who says I'm just going to do this and drag on a lawsuit, you can point to the insurance program and that will scare the hell out of them. So I'm very much in favor of Terraforma. The LTA has almost finished capitalizing it. They need about 1M \$ more to get it capitalized as the easement defense insurance. I am on the LTA Conservation Easement Defense Council. It's like 15 people that had to pass on insurance and we talk about lawsuits and stuff like that. That's really where I'm going personally. I love this stuff, but I have to let other people do this stuff in Lincoln. But I really like working for the Trustees and I like caring for smaller land trusts. Rand Wentworth and Russ Shay are working on smaller land trusts. He's getting there, he's coming along.

TD:

Do you do education?

Constable:

We do. We have an active 'Walks and Talks' program that we don't charge for. It's all volunteer-run. It doesn't cost us very much. That's sort of a recruitment campaign. It works for membership. Our members are mostly from Lincoln. We have very few members from outside, people who used to live in Lincoln or visitors who walk our trails and want to become members. But we don't really market to them. We are only now getting a more sophisticated donor tracking software, so we'll be able to do a little marketing that way, but when you're seeking 25, 50, 100 \$ donations, it doesn't make a lot of sense to spend too much time beyond your borders. When we raise money or when we send our newsletter out, we don't send it out to our members. We send the newsletter to everybody in town, because if you send it to everybody in town, the postage is 16 ct. apiece instead of 38 ct. apiece. So it's better to send it to everybody. It means you don't get much for your membership dues, but it's not a bad place to go.

Back to stewardship: The issue of perpetuity has two components that affect both Lincoln and the Trustees. One is caring for each parcel, the monitoring and enforcement, the management plans... In the case of the Trustees, they're very attentive – I think a little too attentive – but Wes Ward will undoubtedly talk about never getting another piece of property that isn't fully endowed to pay for its upkeep forever.

TD:

How much is that?

Constable:

It depends. It can vary dramatically. If you get 100.000 acres of woods out in the Berkshires that are worth 1M \$, it might be 10.000 \$. (On the other hand), we're now talking about buying a piece of property in New Bedford. It used to be the whaling capital in the world. It's a really beat-up mill town down at the ocean. The property is five acres and it's actually going to cost us less than 1M \$, because it is a really terrible place. But it happens to have a historic building that has got a historic land use associated with it. Wes Ward is talking about 4M \$ for the endowment, because it is in the middle of a run-down area. It's only valuable if we get people to use the area, so we'll use it for education. We'll build community gardens on it. There are greenhouses, which we will run. And Wes wants to get the whole thing endowed. My view is: You ought to be able to make money from it, so you only have to endow a little bit of it. So that's a major issue that differs between large and small endowment. This is the endowment for each property in perpetuity. But much more important – and I think underdiscussed - is the permanence, the perpetuity for the organizations themselves. There are somewhere between 120 and 150 land trusts in Massachusetts. There is a group of three of us who are working on this. We don't know any that have gone out of business while they still hold land or an easement. There might be one or two, but we don't think any have. But 70 of them are going to go out of business sometime in the next 100 years. There are organizations that don't have a lot of support to them. They don't have endowments. So we know some are going to go out of business. Now, perpetuity means they go out of business by transferring all their assets. The Trustees have done three mergers, which I was involved in, in which we acquired the assets of an organization. They were great organizations and had fully endowed properties. But logically there will be a lot of ones that don't have endowments. So, the perpetuity of the organization I think is a much bigger issue than the perpetuity for open space.

TD:

Isn't it fixed in the bylaws of an organization what happens if it goes out of business?

Constable:

It is. As a legal matter it's easy, although people tell you it isn't. If the organization goes out of business, it has to transfer all of its assets to another non-profit, but they almost never say which one. If you are the receiving one, you don't want to. The Trustees and The Nature Conservancy have been named as recipient. But they've never agreed to be a recipient. They don't know how much money it will take or in what condition the land would be. That will never happen. But the bylaws say you have to transfer it to another organization. The law says that if you don't do that, the state – usually the attorney general of the state – can step in and make sure it happens that way. So as a legal matter, I'm not worried about it. There is a bunch of lawyers nationally who are babbling about it, but I don't think that's the real issue. The real issue is: Who is going to take it? The average land trust... There are 70 or 80 or 100 land trusts in Massachusetts who don't have endowments for their properties or aren't big enough to think that they are going to be around forever. Hardly any of those would have a finder. It is very good conservation land, but the Trustees or MassAudubon are not going to take it unless it is endowed. Can we raise the money? It is going to be virtually impossible. If you say: 'Here is conservation land without an endowment. We're going to transfer it and we need 3M \$ for the recipient organization to take it,' you will never be able to raise that money. The land is already protected. Why would anybody pay more money for it? That will be a big problem. I don't think it's a solved problem yet. There is a guy, Marc Smiley. He's always a big hitter at the LTA Rally. He's got some money from the Doris Duke Foundation to look at what happens when small land trusts go out of business and what happens to their easements. That's a study that gets through till the end of this year or the beginning of next year.

TD:

If there is no recipient, is the easement void?

Constable:

Well, people might say that. It isn't, of course. The easement would never be void because as a legal matter, if nobody took it, it would go to the attorney general, to the state. The problem is the state might not care about it and won't enforce it. The easement doesn't go away. There is just nobody to enforce it. The good news would be: It's still there and you might convince the attorney general to enforce it.

TD:

Could you take him to court for that?

Constable:

Interesting question. At least you could claim to take him to court. In fact, in Massachusetts the attorney general is a woman who I went to college with, so I won't take her to court. She is really a very good person, but she doesn't happen to care much about land conservation. I talk to her about it and she doesn't like it... (He laughs.)

TD:

Is there a sense that you are a part of a movement?

Constable:

About ten years ago, when Rand Wentworth and I were at odds about smaller land trusts and accreditation, which I'm not completely fond of, I said that the accreditation would destroy the movement. And he said: 'You know that's the problem. Land conservation shouldn't be a movement. It should be an industry. We're beyond having this as a cause. It really needs to be a business, when

you think about it that way.’ So I’ve used that against him 100 times. About a year ago, may at the Rally in Milwaukee, he said something about the movement. I said: ‘Wait a minute. You told me it wasn’t a movement about five years ago.’ He said: ‘No, no, I never said that.’ (He laughs.) So yes, we are a movement. It is an important movement. I guess the adjective I would use is: It is a diverse movement. The people who want to save 60,000 acres in Wyoming at a shot are fundamentally different from me happy to take a quarter acre easement. I’ve done that, but it was in an important place and had to do with other things. So, we’re fundamentally different. But you know what? We’re all part of the same movement. We all understand that (importance of working) together. I hope we support each other. I think it’s a movement. I think the private movement has become more important than the state and federal government. The feds have a lot of money. The Fish and Wildlife Service buys things, and the National Park Service still buys things. But the push to save land I think has transitioned from being... Obviously, the national parks and the National Forest Service and the Bureau of Land Management of the late 19<sup>th</sup> century were all federal, but I think the momentum has shifted to private organizations. In the 40s and 50s the private organizations were like the Sierra Club, which really was fundamentally important in saving the Sierra Nevada and the Rockies. But they weren’t a land trust. They were an advocacy organization, which talked the feds into buying. Now, it would be The Nature Conservancy and the TPL and others who may still use federal money – and I think federal money will stay important – but the momentum seems to be the private movement. So think we’re terribly important, although I don’t know which direction we’re going. (He laughs.)

TD:

When did that start?

Constable:

The transition started in the late 60s and early 70s. There were maybe 300 land trusts nationally as late as the late 80s. So the growth has happened since then. That growth has both caused the momentum to shift, and the shift of the momentum has caused the numbers to change. So actually I can’t tell which comes first.

TD:

What role have umbrella organizations played in this transition?

Constable:

Historically, both the LTA and regional entities like the MLTC (Massachusetts Land Trust Coalition) for the first 20 years were educational entities. It’s where you went for resources. So it was really important to build the movement by giving people the assets to build the movement. In the beginning, the first website the LTA had was 25 people telling what their membership looked like, 25 people posting their newsletters. You would go to it to see what other people were doing. Then they passed ‘Standards and Practices’ and accreditation afterwards, and the LTA became more of a ‘here is how you have to do it’ organization. Now it’s pretty stringent. Now it’s: ‘Here is what you have to do.’ Rand (Wentworth) says that’s absolutely necessary and I can’t see how reasonable people can disagree, but I dislike it. I like the idea that we can be creative on our own and not have to do things exactly the way somebody wants. So that’s happened on both the regional level and the national level – much more on the national level where there are really more standards. It’s gone from this educational role to a directive role. Going forward, it can go in two directions: It can go into a regulatory mode, which is my big fear. You will have to be accredited by LTA before the IRS will let you give a deduction. That would be terrible. Among other things, 900 land trusts would go out of business because they don’t qualify for accreditation. They are too small for accreditation or they



don't have enough properties. So, that's one avenue it can go and it's the avenue that I greatly fear. At times I fear that Rand (Wentworth) is directing it that way, but I'm feeling a little better about it. The other direction it can go is as an advocacy organization like any other advocacy organization – like the Truckers' Association – being on Beacon Hill in Boston or in Washington, advocating for what we need to have, advocating for more money, advocating for support – lobbying in a way – but also public education. It could take over the role that the Sierra Club used to do, but doesn't do very much anymore, that the National Wildlife Federation doesn't do as well. But it can't go both ways. I don't think it can become the regulator and the advocate. I don't think they've figured out where to go. I fear that we're going more towards the regulatory role. That's on the national level. The regional stuff, I think, has the hope to continue to be the network, really to hold us all together. I've worked individually with maybe 20 land trusts over the last 20 years, people who called me and said: 'Can we do this?' or 'Help me form it. We want to make a land trust. What do you think?' That kind of thing. Now, there are about 110 or 120 that are active. We see each other once or twice a year. We know who to call. We set up a lawyers' referral panel so that anybody can call the Coalition about 20 or 30 lawyers who do this stuff, and the first call is free. In 90% of it, that's all they need. I think there is a really important role for binding us together. The only other thing they might do as an association more on a state than federal level is helping manage these transitions, when small organizations are going out of business, or when a big organization has a problem, pulling us all together, both raising money to save things, maybe helping the state evaluate what to do with the restrictions. I think there is a real role for a statewide organization to do that.

(...)

There is no simple answer. That ought to be the premise of what you say.

## 04 Rand Wentworth – President of the Land Trust Alliance

Wentworth:

(...)

In Australia they are forming an Australian Land Trust Alliance, Canada has a Land Trust Alliance, and Chile is just beginning a similar initiative.

TD:

Is there a sense of competition between the LTA and land trusts?

Wentworth:

When the LTA was formed in the United States 30 years ago, there were groups – The Nature Conservancy has been around 60 years, the Trustees of Reservations have been around 120 years – but most land trusts were just forming. There were probably 350 in the country. When they came together and formed the alliance, it wasn't some big group that said: 'We're now in charge of you.' Or people with lots of money who said: 'Do as we say.' It was really the groups themselves that met in Boston at the Lincoln Institute. After several days they said: 'We would be stronger if we had a place where we can share information, documents, stories, leadership and work together to influence federal legislation in Washington D.C. So the groups came together. Even so, in the founding documents there was a lot of concern that this group should not compete with those groups. So, we as an organization do not hold land. We do not do easements. We don't purchase properties. We do education and policy advocacy. So in that way we're not competing with other groups. And like you guessed: The larger groups think: 'Well, we know everything. We're in charge.' They are all members of the LTA, but some think that they don't need us. They'll do whatever they need to do. Some of the smallest groups who most need us don't know that they most need us. So there is a whole range of attitudes. And the best way I found to build confidence in the need for an Alliance is by actually getting things done, by doing things where it is clear to everyone that they couldn't do them by themselves. Here in the United States by far the largest group is The Nature Conservancy. They've got a 500M \$ annual budget, a 1bn \$ endowment. They're just enormous, but when they were criticized in the front page of the Washington Post – this was seven or eight years ago, three headlines day after day – it was clear that they couldn't get themselves out of that hole. They needed help. I was the one to testify before Congress. What we found was that we are much stronger by having 1.700 land trusts. We're working the relationships between these land trusts and members of our Congress to tell the good story of what land conservation is doing. This is not something The Nature Conservancy could do by itself. We still have a little tension...

(Wentworth asks me about my motives for interviewing him. I tell him about my PhD project.)

When our alliance started, there were about 350 land trusts in the country. People didn't know where they were. Each one started on its own. There was no registry. Similar to what you're describing for Germany, there are several occasions where the government has chartered a non-profit private group to do this. In Maryland, there is something called the Maryland Environmental Trust that was actually chartered by the state government. Most of its budget is funded by the state of Maryland, but it has its own private board and its own private activities. In New England, in Massachusetts and Connecticut, it's very common for a town to have a Conservation Commission. It sometimes still holds property; sometimes they have a quasi-regulatory role. They make an opinion on a new development. They got a different function than a land trust in that they are an entity of the local government. So that's different.

(I talk about activities in other EU countries.)

Wentworth:

Would it be worth to bring the various groups doing land conservation together at some point?

TD:

Yes. (...) How did the LTA start? What did it do at the beginning? What kind of services does it provide now?

Wentworth:

An attorney at Boston, Kingsbury Brown, who was active in his local land trust, had heard that there are other conservation groups doing work. He took a sabbatical from his law firm, travelled around the country, met with people in Iowa and Wyoming and California, did a lot of listening and a kind of diagnostic and said: 'These people are all doing interesting work in different ways. They could learn so much from each other. Many of them are making the same mistakes that others have already made.' The next year, he got a grant from the Lincoln Institute for Land Policy, brought in many of the leaders of these groups, started a dialogue and they started. Most of these groups don't have much money. So to create an association of groups without money... They said: 'Well, let's just get started.' And they hired some staff, and each of the groups said they would pay some membership dues. About within a year and a half, they were out of money. It was hard to make it work. They moved it to one guy's house, just very small, no office space, virtually no salary. And they just kept the idea alive until more land trusts joined and then some foundations and other individuals contributed funds. Then they had enough money. By the time we moved to Washington DC, we had four staff, still very small. Over the years we expanded in our staff, but it's because we've been delivering services that no one else is delivering, so that foundations and individual donors have made it a priority to support us. We've really had fantastic support from some of the largest foundations in the country, the Packard Foundation of Hewlett Packard... If you got a computer and it's got an Intel chip, it's helped to pay for some land conservation, because Gordon More, who is the founder of that company, has also been a big donor of the LTA, many groups... Now, over time, we've grown. So now we've got a staff of 55. We've got a 12M \$ annual budget. Still, many of our land trusts are very poor and are just struggling. Half the land trusts in the country have budgets under 50.000 \$ a year. They're small, community-based groups with limited resources. The function of the LTA has been to be the meeting place of ideas. We function like a virtual university. We do over 300 workshops a year. Increasingly many of them now are webinars for remote education. We're doing more online learning. We publish research and books. We establish standards. We host meetings. We do leadership development. We did a strategic planning initiative 10 years ago, as all groups do, and we decided that we didn't just want to be a group that does an annual conference. I quoted a professor of Harvard who once defined leadership in a very simple way. He said: 'Leadership is taking responsibility for what actually happens in the world.' Very simple. If we're going to be leaders, what do we need to do? We need to take responsibility, so it's not just hosting a nice conference where everybody got lunch and lots of people came. Is the world better because of that? We really took our mission to the actual results of saving more land, strong institutions, and strong public support. We came out with three strategic goals: to increase the pace of conservation, increase the quality of conservation, and increase the permanence of conservation. Pace, quality, permanence. Those three goals have really become our mantra, the guiding principles of our work. On these three goals, we established increasing the pace simply because there are so many threats on the land. Up until the recession, the biggest threat was the construction of shopping centers and roads and subdivisions – sprawl. But even after the recession, the loss of agricultural and natural lands has been high – not as high – to energy development, coal mining, drilling for oil and natural gas, construction of roads, and

industrial facilities. If we are serious about this threat, we need to move quickly. The primary ways to increase the pace of conservation is here at the nation's capital influencing the tax code for private landowners to give them strong reasons to donate conservation easements on their property. We've got a basic level of tax incentives, but we were able to pass through Congress a dramatic increase in that. It's part of the Pension Reform Act of 2006. We were able to get the two-year incentive renewed for a second and third two years. It has now expired along with everything else that expired in Congress – and we now have a Congress that, as you may have noticed, isn't doing much. It's arguing a lot on dogma, but not doing much. But we feel confident that it will get renewed again. We're trying to make it a permanent part of our tax code. We also are promoting and had great progress in the Farm Bill and other legislation to help with funding of land conservation across the country. So the more money and tax incentives we give our members, the more conservation they are able to do. We have been able to track before and after this enhanced tax incentive. The pace of land conservation significantly has been up. For the donation of easements, the tax incentive is a big driver. There are many reasons people donate easements. Many of them are simply emotional. They love their land. The other thing we are now focusing on is passing local government funding for land conservation by land trusts, and doing this through ballot measures. A city or a county will put before the voters: 'Will you approve a quarter cent increase in the sales tax. That money will go to purchase these lands.' Remarkably that has funded more conservation than what the federal government has done. It's declined since the recession as well, but the ballot measures in this country on average have created 3-4Bn \$ a year. If you want to look into this, go to the Trust for Public Land website. They got a report called 'Land vote', which tracks all the conservation funding for the last 10 years. It's huge. We're now investing more time and energy in encouraging land trusts to be active with their local governments to pass these local funding programs. So that's the first goal: pace. The second goal is to improve the quality of conservation. Here, the basic idea is people telling stories, sharing documents, helping each other. In this country, it's the most collaborative, friendly, wonderful community. Everybody is eager to help out. You wouldn't find this in commercial enterprise. People who teach at Rally all volunteer their time. We don't pay them. They do this because they want people to be successful. They believe in their mission. So for the second goal of increasing the quality, we're teaching, we set forward a set of national standards and practices called the 'Land Trust Standard and Practices'. It wasn't like I just wrote the Ten Commandments and said: 'You have to do this.' We came to the standards through a lot of dialogue and participation so that by the end, the land trusts felt it was theirs. But it's a national standard of how we'll do things so that they're done right and will stand the test of time, and they'll preserve public trust from public officials and the general public. After The Nature Conservancy controversy, we now require that for a land trust to be a member of the LTA, their board has to formally adopt the Standards and Practices. That doesn't mean that they implement all of them. Many of them are very difficult. But they have to adopt them and be working towards implementing them.

TD:

Does that scare some land trusts away?

Wentworth:

We lost maybe three out of 1,200 members when we set the standards. They all worried that it would be too hard, especially the small ones: 'We can't do all this. It's extra work. It's more important for us to save land than do these record-keeping policies.' When I testified before Congress, I was bragging about our Standards and Practices, but they are smart guys and said: 'Anybody can say they adopted your standards, but how do we know that people actually implemented them?' We promised that we would create a national accreditation program. It's a year-long intensive investigation into policies, record-keeping, compliance with the standards and

practices. A lot of land trusts found that very threatening, especially the very small ones. I assured them that we were not going to use this in any way to make them second class citizens or block their access to funding. But we felt that the groups that most actively do transactions needed to get accredited. Now we have a 153 or so that are in. We have another 150 that are in the application process. By the end of this year, 50% of the conserved land in the United States will be held by an accredited land trust.

TD:

Are there any legal consequences to being accredited?

Wentworth:

No. People are proud that they are doing the right thing. They're getting some recognition. Some foundations are starting to say: 'We'll only work with a land trust that's either accredited or has committed to get accredited in the next two years.' In some states, they are starting to make that requirement, but we think that when accreditation is fully up and running, we'll have about 500 groups that are accredited. There are 1.700 groups in the country. That leaves 1.200 groups not accredited, smaller groups. Part of our attention now goes to: 'How do we help them get better if they'll never be accredited?' We don't want them to be second class citizens. We want them to be making progress. But accreditation has been a huge driver towards consistent practices and policies, towards taking responsibility for what actually happens in the world. Before, people would go to workshops, and they'd go home and forget everything they learnt. Who knows what they did? Now we actually can measure those groups that have actually implemented the standards and practices and are functioning at a high level. Getting accredited is not the goal. The goal is saving more land and making sure that it's done in a way that the public will want to continue to invest in. So you may or may not feel the need for accreditation over time in Germany. For us land conservation groups, who are now operating at a scale where we are handling over 1bn \$ a year in public funds, tax incentive, tax credits, private gifts, and foundation grants, to have groups doing this in a way that was fly-by-night or amateurish, was just dangerous for the whole movement. So we decided that we had to do this.

TD:

Was it more a preventive measure or a reaction to shortcomings?

Wentworth:

There was plenty of room for improvement. For example, the federal law required that if you hold an easement you have to have documentation of the baseline condition of the land, so if 20 years from now there is a violation, you can go to court and say: 'Here is what the land was like, and here are five new houses.' If you don't have a baseline, you can't do that. There were thousands of easements that had no baseline. There were hundreds of land trusts that just ignored the law. And I could talk until I was blue in the face and say: 'Do your baselines.' People would go: 'I'm too busy.' Now with accreditation, we can go and say: 'Show us your baselines.' Now they're going back and doing what they should have done 10 years ago. So there is real change and real improvement coming out of this. Also, in terms of improving quality, it's a lot about people. So we got a big initiative now to improve the quality and training for the board members of these land trusts. We have an intensive leadership development program that runs for two years for the executive directors of these land trusts. We're doing lots of good things, more work with small land trusts. That's the second goal of improving the quality. The third goal is ensuring the permanence of conservation. If you have followed our writing you probably know that we now have an attorney that now runs a legal defense

center. We do research, attorney education, prevention, all kinds of work about how you do an easement right. We created a legal defense fund. We have a clearinghouse on legal documents on how to defend conservation. If somebody comes in and tries to break the easement, sues you, takes you to court, or if they just start building houses, how do you stop them? But the big breakthrough for us was figuring out a way to pool the risk of these legal costs, and actually just last Wednesday, we received our license from the insurance commissioner to offer an insurance service, which we call Terrafirma. For 60 \$ a year per property, you can get 500.000 \$ in legal cost to defend that if it is challenged in court. At the start of next year, for those who qualify, they will be able to get this insurance. We couldn't get a private company to do it, because they wouldn't make enough money. And our goals were different. A private company would want to settle at the lowest possible cost. We want to preserve the land first, but we also want to create a good precedent for other court cases. So our goal is to win every precedent-setting case and to shape good case law for conservation into the future. We understood, knowing our members, that except for the top 40 groups in the country, none of our members could withstand two big difficult litigation cases costing 400.000 \$ each. You'd bankrupt these groups. So this is a huge step forward to building confidence with Congress and funders and landowners.

(I talk about nature conservation in Germany some more.)

I actually like your way, because circumstances change. The easement document needs to stand over centuries. So if you put in the easement document itself very detailed prescriptions of what you have to do now, but with climate change 100 years from now, there may not be an endangered pitcher plant bog, maybe something different. So I'm a big advocate for the easement being not one page, but being simple, and then have a separate management plan that is renewed every 10 years with a lot more of detail. Some of the problems with The Nature Conservancy's easements is that there is too much detail in the easement, and then now they have to start changing the easement. That's hard.

TD:

Have there been any major court cases about conservation easements yet?

Wentworth:

There have been thankfully relatively few. 10 years ago it was just two or three a year. Now it's up to 16, 18 a year. Most are settled in early stage. Land trusts are winning most of them. Going forward, Terrafirma will be the funder of these litigations, so we'll be in the front lines. What we found in research is that the original donor of an easement almost always respects it, but when that land is sold to somebody else, the new owner is much more likely to violate it. So if you look at the demographics and peoples' life expectancy, knowing that most conservation easements have been donated since 1985 till the present, you can see the rate of violations is going to go up. So we are setting in motion today what we know we are going to need over the next five or ten years.

TD:

So you can already anticipate that the role of the LTA will shift from helping organizations in acquiring land to helping them defend what they already achieved?

Wentworth:

Even broader than that. In many parts of the country, the land trust, if you take Martha's Vineyard or Nantucket Island or the town of Greenwich, Connecticut, these land trusts are down to their last 15 properties they might protect. When they finished that, unless Martha's Vineyard island decides to

take on another island, that's their work. Now they turn to stewarding that land, managing it, restoring it for ecological values, inviting the public in, education, community engagement, and legal defense. So there is a longer turn process of caring and stewardship.

TD:

Would you say there is a saturation point for land acquisition in the land trust community? You said that you want to increase the pace of land conservation, but do you also see that the slope will level out at some point?

Wentworth:

That may come. On the map behind you, each dot represents a land trust. In the more densely populated Northeast, around Philadelphia, New York, Baltimore, there will be a saturation point, but in the terms of the growth of acreage, if we look nation-wide, there is so much land. And the big growth in land now in our movement is agricultural land trusts working with ranchers in the West. Just two weeks ago, a man named Lewis Bacon announced that he would donate 90,000 acres in a conservation easement to a land trust and the federal government. The largest conservation easement ever is 765,000 acres on a forest that will be continued to be cut on a sustainable basis. One of the questions is: How do you monitor an easement of that size? If your full-time job was walking the property, it would still take you all year. You still wouldn't see all the land. So we're more and more looking at satellite imagery for monitoring forest easements. We do a land trust census every five years. The last one had us at 47M acres protected by land trusts.

TD:

Do you also count land that is passed on to public agencies?

Wentworth:

Yes. Some of it is now a national park or state forest. But still, if you think of 47M acres, and now up to 50M acres, it's the size of one of our bigger states, and it's all put together by private non-profit.

(We are interrupted by his secretary telling me about my access to the Learning Center.)

If a land trust joins, the board members and staff get access to our online curriculum. If an individual joins, at a certain level around 200 \$ they get access too.

TD:

Is the shift from acquisition to stewardship something you're concerned about?

Wentworth:

Yes, I'm worried about it. I think it's not as sexy, but it's just as important. So I think we will be looking for models of organizations that make that transition and then we'll share good stories about how to do that well. But most of our groups are still in a place where there is lots to do. I don't see it being a national problem yet, but some day.

TD:

Is the number of land trusts still growing or is there a consolidation process?

Wentworth:

Great question. 30 years ago our goal was to increase the number of land trusts. We actually had goals for how many new land trusts we wanted to form. We were adding two new land trusts every

week for a decade. I looked at it and thought: 'Our goal should not be more land trusts. It should be stronger land trusts, more capable land trusts.' So our goal is no longer around growth. It's around strength. In the last census indeed the number of land trusts stayed steady. There were a few that went out of business in the recession. A few new ones came up. We think it is fine. Oklahoma didn't have a land trust, so we thought it is great that there is a land trust now in Oklahoma. But if somebody calls me and says: 'I want to start a land trust.' The first thing I'll do is encourage them to join forces with somebody in the region. And we are seeing consolidation. The biggest case is in Cleveland, Ohio, where 11 groups in Northern Ohio all came together and created one. The results have been phenomenal. In just the past year they conserved as many acres as all 11 groups did since their founding together. So think we'll see some market pressure. IRS investigations, accreditation, scarcity of funds will encourage people if not to formally merge at least to collaborate more and share services.

TD:

Would that improve the quality of conserved land? What about organizations with bad book-keeping?

Wentworth:

There will be many ways to move quality forward. Accreditation is one, Standards and Practices, IRS regulations. I don't expect that we're going to see huge mergers. When you have 1,700 groups, all they all going to merge? No. But I think there will be a tendency in that direction. We have set up so many land trusts, especially in Connecticut and Massachusetts. There are 180 land trusts in Massachusetts, 120 in Connecticut. What do we do with these very small, town-based, volunteer-led groups without budget or staff? They know their community. They know their land. They are the voice for conservation in the community. They are doing a lot of good. They have good relationships with their members of Congress. We want to help them to be successful. We are now studying how we can best help them do what they are best at, a lot to learn there.

TD:

What would that be?

Wentworth:

Well, I haven't finished the study yet, but probably an increase in support and training, maybe some way – not accreditation, but some way to recognize those groups that have demonstrated big progress in compliance.

TD: Has the sense of being part of a movement influenced the movement? What is the role of the LTA in this?

Wentworth:

In this I'm biased. I think we're making a big difference. But I also recognize that humans are tribal. We relate best to the people we see every day and our local community. The tendency is to think that's all there is, even though five miles away there is somebody who is doing this kind of work, but you don't see him every day. So there is a tendency to think: 'I'm all there is and I don't need anybody else.' What we found over time is that we when we get in trouble, when our funding is cut, our tax incentives are cut or there is a legal investigation, people say: 'Oh, we need to stand together.' So I think what the Alliance has done is to demonstrate in a concrete way how we will do better if we stand together. People still are going to concentrate on saving land in their own town or raising money for their own budget, but if you go to Rally you pick up the sense that if somebody gets



involved in the Alliance, they see its about something bigger than just protecting one park at home. And that is big. I think it actually transcends... The titles of the different workshops are how to monitor a conservation easement or how to avoid environmental toxics in urban projects. If you take it to a movement level, it's really about connecting people to nature again. That mission is something profoundly important to help people being fully human. I think you can find in Germany – as we found – that once people see how effective and powerful they can be when they are not just doing this alone, there is a real sense of common purpose.

TD:

Has the LTA helped popularize land trusts in the public?

Wentworth:

Yes. Right over the years, we used newspaper articles and we have been on the front page of USA Today. We got a big article in the New York Times just recently. And as we do that, it raises the profile of land trusts everywhere. It's like migratory birds. When they're flying together, their efficiency can go up 70%. I think that's how land trusts work.

TD:

Do you conduct PR campaigns?

Wentworth:

When the census comes out, we do a big national blitz. When the recession hit in 2008, we shrank our communications staff just to do communication within the movement, to promote accreditation, to promote TerraFirma, to promote Rally, but now as the economy is getting better, our long-term plan is to do just what you're talking about: a national media campaign, using traditional media, but also social networks and blogs and things like that.

TD:

How has the recession affected the movement and the LTA?

Wentworth:

The LTA came through the recession much better than most charities. We had a drop in contributions, but we are financially stable. We didn't have to lay off any staff. I think most land trusts around the country had to take – on average – a 20, 30% cut, which is hard. If you had six staff, now you probably have four. The good news is very few of them went out of business. They've been resilient. I think although the pace of conservation continued pretty strong in the last five year period, much of that happened before the 2008 crash. We continued to sustain about a 2M acres a year pace, so 10M acres over a five year period. If you compare that to the federal government, which has a program called the Land and Water Conservation Fund, our biggest source of acquisition funds for national parks and fish and wildlife refuges, during five years, LWCF protected 500,000 acres. Land trusts did 20 times that. This puts some scale into your report. Where is the action turning? In a time as now, with federal and state government budgets cut, there is real acknowledgment that we can't rely on the government to save or protect the places that we want conserved in the long term, and that it is going to turn to the private sector to make that happen.

TD:

Are the tax incentives the most important building block of land conservation in the last years?

Wentworth:

If you look at the census, you see growth in conservation easements during the last five years, but an even more astounding growth in the five years before that. I think there was a low during the recession, because the tax incentives are pegged to the appraisal of the value of the easement. With the fall in property values caused by the crash, these appraisals shrunk, so a lot of people are waiting for property values to come up before doing the donation. Still the numbers have been pretty strong. As the economy improves, we'll see a trend line, which will be: less federal and state acquisitions, more use of conservation easements on private land through donations, purchase, or bargain sales. I think land trusts will play an increasingly large role – both by themselves and in partnership with agencies. For us in the United States, this is politically attractive. The conservatives, the Republican folks who don't like big government, who don't want the government to be buying more land, hiring more rangers and having to pay annual maintenance on that land, love the idea of an approach that's private, based on voluntary agreements with private landowners, keeps the land in productive use, and shifts the management costs to the private sector. So we have a majority of the Republicans in Congress as co-sponsors of our bill to make the tax incentive permanent, and the majority of the Democrats. So for us it's the way into the future. Unlike Germany, there are vast parts in the United States that have no land regulation. The rural South, Texas, much of the West has virtually no land regulation. If our culture was such that we could have you and me sit in Washington and tell people where they could develop, we would conserve a lot of land just by decree. But the way our culture and legal structure has evolved. We can't rely on regulation, even in places where regulation is strong. For example around New York City in New Jersey, there is the Highlands Commission that protects the drinking water supply for most of the metro area. It was a big thing to get is passed – great regulation limiting the density of development, you couldn't build next to a stream, left a lot of it natural... Well, now there is a new governor, a new legislature. He's appointed his people to the Highlands Commission. The regulation is only as good as the elected officials who get reelected every four to six years. A conservation easement – not a perfect tool, but once it's on the land it's there – has of course to be defended.

TD:

What are the biggest challenges in your work?

Wentworth:

Publicly, with conservation easements, there is not much political conflict about that. Some Tea Party people are running around after they have read a blog saying that a conservation easement is a government taking taken by condemnation, which is just wrong, but that's just some wacko fringe idea. There is concern that our biggest members – The Nature Conservancy, the Trust for Public Land – might go in and tie up a block of land. For example if 50,000 acres of forest are declared off forestry, that might run out all the jobs in the community. There is some concern about wealthy conservation groups not being responsive to the communities. I spend a lot of time helping our groups to be more inclusive in dialogue. It doesn't mean that you'll do what the chamber of commerce wants you to do, but you are at least listening and you are making adjustments. In the case of a Vermont land trust, they bought 5,000 acres that adjoined a town, and instead of putting it all into conservation they had talked to people and found out that they needed a place for the new fire station and they wanted enough room so that the community can grow in the next 100 years. So they carved out 100 acres not for conservation.

TD:

In that case the land trust almost becomes a spatial planning institution that has a very holistic view of the territory.

Wentworth:

That certainly is trend in the United States, less operating by ourselves and much more inclusive of community needs. The small groups that are struggling, they are poor. They are just trying to speak for the trees, the plants, and the animals. But the big groups have enough money to make trouble and lose friends. So I think it's important that we are more responsive in that way.

TD:

How is the relationship to other environmental organizations that focus on advocacy?

Wentworth:

You would be surprised here in the United States how little the two talk. Greenpeace, Sierra Club, NRDC (Natural Resources Defense Council), EDF (Environmental Defense Fund), they are using the courts. They do advocacy campaigns. They're on climate change, clean air, clean water, coal, toxics... Land trusts by and large are not engaged in those issues at all. We are sort of aware of each other. I sit on something called the Green Group, which is the CEOs of the largest national environmental groups. We overlap on a few things, but mostly their issues are things that we can't take a stand on. We encourage our land trusts not to take a stand on it, in parts so they can work with both parties and stay bipartisan. We are encouraging them in getting much more active in getting to know their political officials, because we need those relationships to influence the tax policy and funding just for land conservation, but it's a very narrow band of issues. If anything, there is a little bit of... We're considered the conservatives in the environmental movement and some of the radical... because we work within the power structure and we're not taking on the real tough battles that they have to take on. So I respect them, but in a way they look at it as: 'Your members have more money and your battles are not as hard as our battles.' So there is a little bit of envy. It's all friendly. In the worst case, there is one radical who thinks that all I'm doing is protecting nice views for rich white people. And I go: 'Well, that's one way to look at it. Of course, these rich white people are also the people who have the money to buy up these beautiful lakes. And if they are willing to donate them to the public, that's not a bad thing.' There is conflict around, but mostly we stay pretty neutral on these things.

TD:

There are probably not that many that serve both fields. Either you are a land trust or an advocacy organization. Maybe the Audubon Society?

Wentworth:

It depends on the chapter. They are an advocacy organization, but also do hold some land. Some of the more sophisticated land trusts work that way. The Piedmont Environmental Council is like that. Chris Miller (the head of the PEC) is one of the most sophisticated conservation leaders. He's able to do both land conservation, but he also has enough strength and knowledge that he'll do land use advocacy. He'll weigh in on where transition lines go. He is involved in the state capital. So he's a cross-over to advocacy. There is Scenic Hudson in New York and Fortera up in Seattle, working that kind of sophisticated advocacy work. Most land trusts though don't have the strength to do both. I'd like them to.

TD:

Is there a sense of competition between land trusts or the LTA? Do you compete for funds?

Wentworth:

Yes, I think there is plenty of that. This is the real world. Land trust people are really collaborative and friendly, but... ask Chris Miller that question. The bigger you are, the more you think there is no competition, because you are the dominant player. So The Nature Conservancy would probably answer that with no, the Conservation Fund would answer it no. Everyone who's had a deal stolen by one of these groups would say yes. There is a lot of tension in different states where several land trusts are in the same overlapping area, saying: 'Wait a second, that's my territory.' But part of what we try to do is encourage land trusts to have a clearer understanding of how to prevent unproductive fighting. Funders don't like that. So there is some of that. I think in general land trusts have found their own niche. The more interesting story is when they come together, as they have around the Blue Ridge Parkway or the Great Lakes or around the Redwoods in California, with coalitions of four or six or eight land trusts.

The land trusts don't see the LTA as a competitor for deals, because we don't do them. On fundraising, any time – and especially in a hard economy – when there is fundraising happening, people say: 'Oh, I could have had that money.' I'm sure that there are times when I go to New York City and I visit a donor who is also a donor to three land trusts around there, that people may say: 'Oh, he is taking my money.' But generally we'll have a process where we talk to the executive director before we come and ask for money. In the best case, like Chris Miller, he's helped us to raise money from his donors. He said: 'I'll go with you. Let me write the letter.' So there is some of that, but I don't think that's a big concern. My view is, if we get an individual excited about land conservation, they come to Washington DC, they lobby their senator, and they see what other land trusts are doing around the country, they will give a bigger percentage of their philanthropy to land trusts, to conservation in general. Less than 2% of all charitable giving in the US goes to the environment, land conservation and animal welfare. So if the LTA, in telling the story of land conservation, in building the sense of movement and vision, helps to motivate and introduces board members from different groups to each other, so they're more excited, we actually build a bigger movement and there is more money around. Still people may feel a little resentful.

## **05 Renee Kivikko – Director of Education for the Land Trust Alliance**

Kivikko:

I've been with the LTA since 2000, so 12 years now. I started by being asked to establish the Midwest Program for the LTA. When I started there were no regional programs and very few regional offices. So I started the Midwest program, based in Kalamazoo, Michigan, but we have staff across the region. From there they asked me to become their National Services Director, where I oversaw all the regions. I did that briefly and then they moved me to Director of Education. In my current role I manage the division that takes care of all the information resources for the land trust community, all the curriculum, online resources, training, Rally. And I also supervise Conservation Defense, all of the defense side. It really started out as best practices for stewardship and then evolved into the practical side of defense also. Insurance will have its own separate entity. But there is a lot of intersection of defense with best practices, education, having the resources required to monitor and defend your easements and properties. So there is a synergy there.

TD:

How big is your division?

Kivikko:

Not that big. There are five attached to education, which is the online training and Rally and associated training. There is one person, Sylvia Bates, who structures Standards and Practices and research. So you can think of her as quality control, making sure that all of our materials are good. She also helps manage the emerging issues and works very closely with Conservation Defense, which is two people, who are basically managing the defense side and now are launching the insurance program.

Prior to joining the LTA, I was the executive director of a regional land trust. I came from the land trust side. I was hired as the first staff of that land trust and grew it to five staff and then got recruited to work for the Alliance. The trust was called the Southwest Michigan Land Conservancy. It serves nine counties, which is about 3.6M acres. The same size as the state of Connecticut.

TD:

What is the purpose of the Standards and Practices?

Kivikko:

Standards and Practices are the ethical and technical guidelines for operating a land trust. So if you're going to be assured of having a sound institution you really need to follow the best practices within Standards and Practices. There are 12 standards, and within that there are 88 practices, some of which are what we call 'indicator practices' for accreditation, which are the ones that we consider the must-haves. If you can verify compliance with the indicator practices through your accreditation application, then you become an accredited land trust.

TD:

Do you also do the accreditation?

Kivikko:

We do the accreditation preparation work, all the curriculum and assessment tools and so forth. We help people understand how to prepare for accreditation. The (Accreditation) Commission itself is a separate supporting institution. They have their own staff. They have the application. They do a

requirements manual that helps explain the expectations for the Commission, but it's the staff on the Alliance's side that help with the initial assessment and coaching and getting them ready for that. We're the ones helping them see the way on how to do it. We can – as the training and support institution – we can get down in the dirty laundry with them and sort things out. The Commission who is the verifier doesn't have to see all that messiness before they get their house in order. Once the house is in order, they register and apply for accreditation, and they are hopefully successful. There is a firewall in between. The land trust can bridge across the firewall, but we can't talk to each other, to avoid conflict of interests. We help them sort out a bunch of stuff, and when they got it right and go through accreditation, there is no need for the Commission to know what the history was, because they got it good now.

TD:

Which of the educative tools would you consider the most important?

Kivikko:

I don't know. I consider them a suite. The curriculum itself is the books. As far as a go-to resource, that's what we point people to. These resources may then be used to do a workshop or a webinar. We also use those at Rally. As far as the content itself, that's within the curriculum, but it's delivered in a number of ways. The curriculum interprets the Standards and Practices, but it is primarily for the indicator practices right now. Of course, that's delivered within person workshops. Those are often done on the regional level. The regional staff manages the delivery of regional workshops. And of course at Rally, which is the national conference. We do about 20 webinars a year with Adobe Connect. It's synchronous. Everybody is online together through the workshop. Then we have some recordings. People can either buy a recording, or we have a few that are free. We also use webinars for introducing people to expectations for accreditation, and expectations now for insurance with Terraforma. What do they need to do in order to be eligible? It's a test that they have all the right pieces in place to be insurable. Those are things that we do that are more orientation and preparation than they are training. And webinars are well attended, especially when deadlines get close. (She laughs.) Overall, I would say we're getting more attendance at webinars. It depends on the topic, anywhere from 15 connections – which can be a lot more people – to as high as 100. They probably average 30. Most webinars cost a fee, which is 55 \$ per connection right now. Sometimes we do them free – depending on what the topic is – if it is something that we want to make sure is broadly available.

TD:

Do the fees cover your expenses?

Kivikko:

No. They really don't. We subsidize our fees to the extent possible. There are only a few things where we try to budget for the fees to cover the direct expenses. Those are some of our higher end workshops, like an advanced legal symposium that pulls a lot of attorneys and more advanced practitioners to it. We usually budget that to break even.

TD:

How about the Rally?

Kivikko:

We do our darndest, but it is also subsidized. If you look at the Rally fee structure and compare it to other conferences of the same size, we are on the very low end. We do our best to control costs and keep our fees such that we get as close to breakeven as possible on the core costs. But to get all the other pieces of Rally, we have to rely on sponsorship dollars also. When all is said and done – if you are interested in scale – Rally essentially costs us \$ 800.000 or \$ 900.000 to pull off. It's a lot of money, and if you consider the registration fees, you can see that it doesn't quite add up.

TD:

Do you have to come up with your own fundraising for that or is this done by a central fundraising department within the LTA?

Kivikko:

We coordinate with the development team. There is a whole series of cultivations. We have some of our key agency partners and other key partners, like The Nature Conservancy, the Trust for Public Land and those kinds of entities that sponsor Rally. Sponsorships are typically anywhere from \$ 5.000 up to \$ 50.000 or \$ 60.000 \$. Most of them are in the \$ 10.000 to \$ 25.000 range. We'll raise in the neighborhood of \$ 350.000 each year to help with sponsorship and underwriting for Rally. Then there are different foundations that may offer scholarships for land trusts in their region to get to Rally and so forth, which also helps land trusts with the costs of the Rally. People assume we make money on Rally, but no, that's a fallacy. It really isn't the case at all.

TD:

How do you see the cost and benefit of the LTA? What is your overall staff?

Kivikko:

We have a staff of about 55, but we're spread all over the country. There are four regions and then some staff within the region got home offices. We have three offices that congregate multiple people. Our Western Region program, for example, which covers the whole Western US, is covered by two people, soon to be three. The director of the program is in Missoula, Montana. The conservation manager, who watches the Southwest of the US, is in Carbondale, Colorado. We're in the process of hiring someone to help manage our Oregon Excellence program. So this will be based in Oregon. But there are several hundred land trusts. We spend a lot of time on the road, especially the regionally based staff, because the point is to meet with the land trusts. That usually means we go to them. They don't necessarily come to us. That's just the way the world is. (She laughs.) The reason why a land conservation organization joins something like the LTA has to do with the question: Is there a threat or opportunity that together you can advance and deal with?

(Kivikko talks about the land trust alliance in Canada.)

TD:

Do you cooperate with state land trust coalitions?

Kivikko:

Yes. There are probably 20 states at least with some kind of (umbrella) organization. Some of them are very well organized, e.g. Massachusetts. They have a strong group in Maine (the Maine Land Trust Network). The LTA is the state association also for New York. It's just the way the program started. It was one of the earliest of our field-based programs. So there is a long history there. North Carolina has a strong association, and Wisconsin. Michigan is quite strong. We have burgeoning ones in Illinois and Indiana. Texas has a Council. They've had a rough patch. If you look out west, Montana

is quite strong on the state policy front. California has one. Oregon is just getting going. Part of the support comes from us in Washington DC. Idaho is just getting started. So there are some that have been around for a while like Wisconsin and Massachusetts, and others that are getting together now. For the most part I think half the battle is – as they are getting organized, especially if they are getting organized where we have some Alliance staff capacity – is trying to figure out how we are collaborating and not duplicating, or leveraging. Sometimes it's easy, sometimes it's not.

TD:

Where are the difficulties?

Kivikko:

Some of the difficulties are when both are trying to do service delivery to land trusts, like education or best practices, sometimes there is confusion about who should be doing what. Sometimes it's called by the foundations that are funding both of us: 'How are you guys collaborating? How are you doing that?' Sometimes that makes it a little tricky.

TD:

Is there a sense of competition?

Kivikko:

Sometimes there is real and/or perceived competition, depending on what the history is. For the most part, we usually smooth it out, but sometimes it's a little bumpier. Colorado is another really strong program. We've gone through bumpy periods, but right now I think we are in a pretty good place. But that's a state that has seen a lot of challenges, because they have Transferable Development Rights, tax credits essentially, and there has been some controversy. So they really had to step it up and do a lot more, get a state certification program for those groups using these tax incentive programs. So there has been a real shift there. There is what they call the Center of Excellence Initiative, where they are looking at what it means to be a strong land trust in the state and all the expectations of the state, and accreditation.

TD:

The Standards and Practices are supposed to set minimum standards for land trusts. So if you start setting standards, you take on a different role than just education.

Kivikko:

Yes, the Standards and Practices are performance standards. And there is a tension there. Larry Kueter can tell you about this. It was just: 'Here are some best practices. Let's all agree to work from best practices.' This was a lot of the history. They were established in 1989, and it wasn't until relatively recently that we had the commission. And it did change the flavor from being best practices, 'we all are doing our best together', to 'somebody is measuring this'. The whole act of the Commission coming on board and actually having due diligence on measures of what's acceptable or not has changed the flavor a bit. It's been an interesting dance, because there are times when it's now put to us that we're really about regulation, and it's not fun anymore. (She laughs.) It does put it in a different light. Now there are higher expectations because of the commission, but also just because of insurance and so forth. There are all these additional pieces of work. Best practices are overarching, but there are a lot of aspects of our work that aren't federally mandated. They are state-enabled. Now, not every state is the same. How do you know what the sidebars are, but allow for flexibility within, as each state – depending on what the issues is – finds a way? It's a little bit tricky,



because not everybody does the work the same way for very good reasons, but they all have to aspire to a certain performance standard and say that they are following the right rules.

TD:

Do you discuss this kind of stuff within the Alliance?

Kivikko:

Oh yes, all the time. Some things are controversial. Some things can be very controversial, because one question is what the law says, but then there are different philosophies about what's appropriate. Not everyone agrees.

TD:

'Are we a part of a movement...'

Kivikko:

'...or are we a convener that allows a big tent where disparate voices can agree to disagree?' Part of it is cultural, because the land trust movement in the Northeast, New England, is very different from the land trust movement in the Mountain West. They can do one deal that's larger than the service area of a land trust in the East. So there is a very different culture and worldview about how conservation works and what conservation values are important to protect. A small town preserve that gives you access to a river can be one acre and very valuable in one place, and anything less than 10,000 acres means nothing in another place.

TD:

What do you think where the LTA is heading, more towards accreditation or other fields?

Kivikko:

I think there is more to the LTA than accreditation. I think of accreditation as a signal that basically says: 'Yes, we're serious. We're going to be here to stand the test of time.' That's what accreditation does. But there is so much more to the work than accreditation. To really be successful and really meet the promises that the land trusts are making in whatever scale or context, you have to think about how you are engaging your community. You have to think about what you are protecting and why and what that adds up to in the long term – what we call 'strategic conservation'. You actually have a conservation vision that is going to be meaningful to the community. There is a plan. You know how you are going to steward it and you know what that means over time: closing that circle of protecting land that means something to the communities you serve and having the backing of the communities over time to defend and steward that land in perpetuity. That's a huge big circle that goes way beyond just Standards and Practices. In some ways, that is where we are at now, looking beyond Standards and Practices and thinking about what the promise of protecting land forever really means. How as community organizations do we ensure we have the backing of the community for the long term?

TD:

Isn't this too much to ask from a small land trust?

Kivikko:

It depends on the context. If you are in one town and you are primarily owning the land, and the land is meant to give public access or community space, you're probably fine with a little more

opportunistic, in-the-neighborhood, small-scale projects. What has been a lesson learnt from some of the larger land trusts like the one I used to work for – with a larger service area or even a state-wide service area – is if you just use a shotgun approach, the pattern doesn't make sense. If you're working at this scale, you need to look at how you're packaging a number of parcels together. You need to look at watershed planning. Or are you trying to create an Agricultural Security Area, meaning there is a whole series of prime farmlands? Then you want to put together enough farms so that there is a critical mass that economically sustainable farming can happen, because it's not just the farms, it's the farming industry and all the jobs that support the farm. Just having one farm protected is not going to protect farming, if that is what your goal is. So, looking at that: What are we actually trying to do? How do we put together the right mix of things to make that successful over time?

TD:

Is the LTA involved in any kind of strategic national planning in that sense?

Kivikko:

It depends on the land trust and the missions. There are land trusts that form multi-state coalitions, looking at giant ecosystems, and are basically saying: 'Together, we are going to look at these kinds of criteria.' The Great Lakes for example: Just doing the Lake Superior basin and getting land trusts to protect water quality there, that's 86,000 square miles in two countries and three states. Trying to step it up and say: 'We all are at least moving in the same direction. We don't have to be lockstep, but if we're going that way and we are all moving in that direction, are we going to get there together in a more efficient and effective way than (we would) if we were just all willy-nilly?' There are those opportunities. Some states try to organize around their State Wildlife Action Plans. Others may get multiple land trusts and watershed organizations together to look at watershed management issues. So there are efforts in various parts of the country to wrap it up and get a broader-based approach. And the LTA is sometimes involved in these efforts. Sometimes we are more on the side, coaching and reminding people that best practices lead to good planning, because if you have best practices, you have criteria, and you also have what we call 'clear focus areas'. We don't call them landscape plans, but you know what your focus is and what you try to achieve. Then you have criteria that meet that major mission. We just try to roll it up and help land trusts to think clearly about what it is they are trying to do. And then, being involved in efforts like the Landscape maps that help people visualize how they fit in the world – their land trust versus the work of others – is part of what we do, to inspire people to think outside of their own little piece of the world and see how they fit with the rest of the world.

## **06 Don Owen – Executive Director of the Land Trust of Virginia**

Owen:

(...)

I am the executive director. I report to a board of directors. We have four staff persons, including myself. We have eight contractors to do specific types of work. That would probably place us in the class of medium-sized land trusts. We have everything from two lawyers to an accountant to resource specialists who do very specific tasks for us in addition to what the staff does.

I worked for the USDA Forest Service, the US Department of Interior, Bureau of Land Management, and mostly – the last 23 years of my career – for the US Department of Interior National Park Service. I spent my entire Park Service career on the Appalachian National Scenic Trail. I served in three different capacities, first in Land Acquisition, second in Resource Management, and third in Environmental Protection. I also served on an occasional basis as the superintendent, in an acting capacity, but I was never really the superintendent. Even though some people seem to think I was, I was not. (He laughs.) So I spent 32 years as a federal governmental employee in those three agencies. During one part of my employment on the Appalachian Trail, I was duty-stationed at the Appalachian Trail Conservancy to help them with a number of their resource management programs and policy. That was the most fun I ever had. Four years ago, I retired from the National Park Service and took this job.

TD:

What is the service area of the Land Trust of Virginia?

Owen:

The Land Trust of Virginia is chartered to accept easements by donation anywhere in the Commonwealth of Virginia, so we could go down to Virginia Beach, we could go to the far southwestern corner of the state. We started here locally in Loudoun and Fauquier County. The direction I get from my board is: 'Take care of the home base first. Make sure we work with everyone in the area, who is interested in working with us, and then cautiously expand and work with others in other parts of the state.' So the focus area is these two counties. We have easements in eight counties right now. We're working with landowners in two other counties. Maybe one day we will be as big as our name, but we're not there yet.

TD:

Do you hold land in fee title?

Owen:

No, only donated easements. The Land Trust of Virginia as an organization started in the 1990s. It's about 20 years old. It was an all-volunteer organization until 2005. They hired an executive director in 2005 who stayed about nine months. They hired another director in 2006 who stay 18 months. He resigned for health reasons. Then they hired me in 2008. I've been here four years. I'm the longest-tenured executive director. In terms of our development – have you ever seen the hockey stick analogy, for how organizations take off? Any type of organization usually goes along on a very slow pace and then all of a sudden, something happens and it takes off. For us, that was precipitated by a group of individuals that decided that we had to become a professionally staffed, accredited land trust. That happened starting in 2006. Since that time, just by point of contrast, six years ago, on January 1<sup>st</sup> 2006, we had 39 easements in our portfolio. Now we have 117. So we got three times as

many. We had 4.300 acres under easement. Now we have 12.000. We had a budget of about 130.000 \$. Now it's 290.000 \$. We were not accredited. Now we are accredited. Our stewardship fund has gone from a very small amount to more than 1M \$.

TD:

Is that due to the accreditation process?

Owen:

Accreditation and professionalization came hand in hand. Turner Smith, our former chair and president, committed the organization to becoming accredited and to having a professional staff. The rest of the board agreed and went out to raise the money.

TD:

How much does it cost to get accredited?

Owen:

There are two parts to the answer. The application fee is only 4.500 \$. But it takes almost a solid year of concerted effort to put everything together to become accredited. I would say that with staff, you are probably looking at anywhere from 10.000 to 45.000 \$.

TD:

This must be a tough decision for a land trust of this size to invest this kind of money for the accreditation.

Owen:

It really is.

(Owen shows me a big folder).

This is our application. It is about 2.500 pages. As you can see, accreditation is very much a challenge, but I would say it's absolutely the best thing that has ever happened to this organization. It made us grow up. It established a standard of professional conduct in not just one aspect – dealing with landowners for example – but in every aspect of non-profit management and land conservation. There are 12 different standards. There are 26 different practices. In reality there are 88 different practices, and you can't just do 87 of them. You have to do all 88 of them. What it did for us is it made us realize what we had to do to operate at a professional standard. We don't argue anymore among our board or staff about whether we're going to do something the right way or not. We just do it to that standard. We argue about other stuff, but we don't argue about whether we're going to do it right.

TD:

Does it also help you with donors of easements?

Owen:

Yes, because you can roll out that you are an accredited land trust.

TD:

Do they know what that means, that you are accredited? Does it make any difference to landowners?

Owen:

I think some landowners may not care, but just like universities or hospitals are accredited, you know you're dealing with a professional organization. If you are a university and your accreditation is revoked, you can't give anybody a degree anymore. Your degree is literally worthless. That's not the case with an easement. You can donate your easement to a non-accredited land trust, but you're running the risk of not doing things to professional standards and ending up having your easement looked at by the IRS. I don't think that that is going to happen to an accredited land trust.

TD:

Apart from the initial financial and time effort, is there any downside to the accreditation? Does it make your work more cumbersome?

Owen:

No, it has actually made our work easier, because now we know where everything is. Our filing system was a disaster. Every time we needed a particular document, we had to hunt for it. Now we know where it is. It is in the books and our computer filing system. We can find it instantly. There has not been a downside. We're going through reaccreditation now. We have to renew it every five years. We hope it will be less work than the first time.

TD:

Does the accreditation also set standards for the content of easements?

Owen:

Accreditation isn't a highly rigid process. What it requires you to do is to develop your own internal mechanisms, procedures and policies. Then it judges whether those policies do what they are intended to do. Then, secondly, they evaluate your performance against those policies.

TD:

These policies could be strategic planning?

Owen:

That's correct.

TD:

Do you have a planning map?

Owen:

No, we don't have a map.

TD:

How to you select properties?

Owen:

We will work with any landowner whose property has significant conservation values, as the IRS identifies those conservation values. Scenic values, wildlife, habitat, watershed protection – if a landowner is willing to protect them, we will work with him. If we end up in a circumstance where we have more landowners than we can service, then we will let them know – and we determine this

either by location or by significance to conservation values – that their properties will either be difficult for us to monitor and steward on a regular basis, or their properties don't have highly significant conservation values, we will advise those people that we can't work with or we decide not to work with to go to another entity or they can wait till the next year, typically.

TD:

Do you ask for an endowment fund together with the donated easement?

Owen:

We do. It's actually a calculation that we make based on the actual stewardship costs that we expect to occur over the lifetime of the easement, which is forever. What we do is we ask for a payment of a certain amount that goes into our stewardship fund that we can draw off the interest of that fund every year to pay for our stewardship cost. It's not specific to a piece of property. It's not like x thousand dollars per parcel. The primary drivers in the cost of stewardship are the number of structures that are permitted on the property and the number of divisions if there are any permitted on the property.

TD:

How do you do the monitoring?

Owen:

For monitoring we walk the land or fly it. We do monitoring visits sometimes more than once a year. Once a year is the minimum standard for accreditation, but we do either an aerial or a physical on-the-ground visit every year.

TD:

Do you do active management as well?

Owen:

No, we just make sure that the easement is not violated. We end up with a lot of letters of interpretation, where the landowner says: 'I want to build a garage; I want to build a swimming pool. I want to sell my property and the owner wants to know if they can build another barn.' So we end up with a lot of those questions. These are pretty time consuming, because you have to look at the easement, you have to look at what they are proposing to do, and determine whether what they are proposing to do would be consistent with the terms of the easement.

TD:

This almost puts you in a role of a zoning board. It's almost a public function.

Owen:

That's right. Actually what it is, is we're just executing the legal terms of the agreement.

TD:

Do you cooperate with the county or municipality in these regards?

Owen:

Not unless we co-hold the easement with them.

TD:

How sophisticated is the monitoring? Do you do vegetation studies or wildlife counts?

Owen:

No, but I would say the stewardship is fairly sophisticated, because we use a GPS unit. All our photos are geo-indexed as well. All the terms and conditions are in the stewardship coordinator's hand as he's doing the site review on the property. So he knows right then and there whether the terms of the easement are violated or not. But we do not do detailed vegetation management surveys. We're not trying to steward a farmer's use of the property other than to make sure that they're protecting the riparian areas, protecting the conservation values and not violate the easement itself.

TD:

Have you had any infringements?

Owen:

We've have had a couple. We resolved them without having to go to extreme measures. We didn't go to court. Our stewardship coordinator is on a first-name basis with almost all of the landowners. And because we do our annual stewardship, they know we're here.

TD:

What happens when someone sells the property? The new owner may not be aware of the easement.

Owen:

That's very true. We check each property each year on the tax rolls of the county to make sure that the property hasn't changed hands. If it has changed hands, we usually will know about it. If we find about it at that point in time, we'll write the new landowner saying: 'We just want you to know there is a conservation easement on this property.' But that is a challenge.

TD:

How many members do you have?

Owen:

About 400, 80 to 90% in these two counties. There are a couple of hundred thousand inhabitants in these two counties. Eastern Loudoun County is very heavily built. The western part is what we're trying to save. About 40% of western Loudoun County and northern Fauquier County is in conservation easement. The Land Trust of Virginia and the Virginia Outdoors Foundation hold most of it. There are a couple of other organizations. PEC (Piedmont Environmental Council) has some. The Potomac Conservancy has some. The counties have some easements. The Department of Historic Resources has some easements. 40% – most people think that's great, but I think we're half done. We got another 40% to go and then we can say we're done.

TD:

Are you still acquiring easements at the same pace or are you leveling off?

Owen:

I don't know. I would say that we are growing at the same pace. It's episodic. 2006 was a huge year. 2011 was a very good year for us despite the recession, but I think the Virginia Outdoors Foundation dropped some. The Virginia Outdoors Foundation probably takes 80% of the easements in Virginia. It's a quasi-state organization.

TD:

How do you work with other organizations? Is there a sense of competition?

Owen:

That is a great question. I would like to say that we work cooperatively with everybody, and I think we do. Occasionally you can end up sideways with another organization, but we try to go to the nth degree to avoid circumstances. We don't always achieve that. Sometimes a landowner will talk to two different organizations and not tell either organization that he's talking to someone else. That can cause bad situations. We try the best that we can to avoid that from happening by asking the landowner: 'Are you working with anyone else?' As soon as I find out that they are, typically I will try to contact the organization to ask: 'How would you like to handle this?' I do that for a couple of reasons. One is self-preservation. We can't afford to spend 3 to 6 months working on a land conservation project just to find out that they go with somebody else. That's not an efficient use of resources. But also I don't want to be in a conflict position with another entity. We try pretty hard. It's not a perfect world.

TD:

Is there an informal understanding about territorial boundaries or the type of easements you do?

Owen:

Yes, but it's a very informal understanding. We can't say: 'This is ours; that's yours' without violating anti-trust law. What I typically will do with the landowner who says: 'I've been talking to the Potomac Conservancy' is to say: 'This is what our program is. That's what their program is. You should talk to them and please let us know what your decision is, who you would like to work with.' Because it is a long process, not like going to a car lot and deciding this afternoon.

TD: Have you had other organizations referring landowners to you?

Owen:

Yes, it happens quite often. And I would refer somebody to any other accredited land trust or to any state agency. If it's a property with a historic structure on it, it might be better that they better that they work with the State Department of Historic Resources, that's great.

TD:

What are the criteria for that?

Owen:

It is partly a landowner preference, but also what resources need to be protected. If they're looking to protect a historic resource – let's say there is a historic structure and the interior is important to be protected – we don't have anyone on staff or contract who has specific expertise in monitoring the inside of a building, to determine whether what they're doing is keeping the historic integrity and significance. We don't have an architectural historian, so I would refer somebody who wants to protect that resource to the Department of Historic Resources.



TD:

What kind of properties would go to you then?

Owen:

Well, we have everything from battlefields to open space. We can do almost everything else. But if we're not a good fit, that's fine. We don't have a size criterion. As long as the property is significant and the landowner is willing to protect the significant resources, we'll work with them. That being said, most of the tax benefits from conservation easements are tied to the development rights that are given up. If they only have a four or five acre parcel, they may not be able to subdivide that. They may not get any tax benefits really, so it's typically larger parcels that we do – 20, 40 acres. I think our largest is 700 acres.

TD:

Do you regularly meet with other land trusts?

Owen:

I do. I get together every couple of months with my counterparts in a couple of different organizations. I will typically see them at common functions. Then of course we have the Virginia Land Conservation Conference that is held every year.

TD:

How many land trusts are there in Virginia?

Owen:

32. At the conference we just held last month we had 130 participants, also from state agencies.

TD:

What is more important for your work, the networking on the regional or the national level? Do you go to Rally?

Owen:

I do. I would probably say that Rally is more important than the state conference. Our statewide conference last year had some of the best technical presentations that I have ever heard. It's much cheaper. You get a lot more bang for your buck. You get to deal with issues that are specific to your state. But Rally is more important because it's a big world. It's amazing to learn about what's going on in other states, what's going on on a national level. I think that some of the tax benefits and implications for landowners on a federal level are as important if not more important as any tax consequences or tax benefits they may get at the state level.

TD:

Would you consider yourself part of a movement or a business?

Owen:

Part of a business. Sure that there is a movement aspect to it. This is a relatively new phenomenon, and in my mind conservation is pretty essential to saving the world. You just have to look 30 miles from here to see what the world will look like if you don't pay attention to what is important. I don't have problems with development. I think cities and development are absolutely essential. That's

where people live. But if people don't save what's important in the process, we're just going to pave over everything. There won't be farms. There won't be forests. There will be sprawl and tract development from here to New York City. Some places already look like that. I don't think they have anything special to offer to the people that live there or the people that visit.

TD:

You sound like the representative of a movement. (both laugh)

Owen:

I never thought about it that way.

TD:

What other services from the LTA do you use?

Owen:

We get more help from the LTA than we can possibly ever thank them for. Accreditation is very significant for our organization. We have LTA regional staff work with us. They help us when we have a technical issue. They have what's called the Learning Center. I'm on that once or twice a week. They provide small grants. We got a grant for a watershed report that we did with a grant from them and another grant. We participate in regular conference calls. We use their webinars. I'm on the listserv every day. I don't actively weigh in, but it's a wonderful way to stay on top of what's going on around the world. Because one tax court decision can affect everything we do.

TD:

Do you pay a membership fee to the LTA?

Owen:

Yes, and all of our board members are also individual members.

TD:

Was it controversial to join the LTA?

Owen:

Becoming accredited was hugely controversial. Back in 2006, when our chair Turner Smith decided that should become accredited, fully half of the board members of the Land Trust of Virginia didn't think it was necessary and were perfectly happy being a volunteer-based local land trust. They said: 'Why do we have to become accredited? Why do we have to spend this money?' I think that those people that are still with the Land Trust of Virginia that were originally not in favor of becoming accredited, one of the first things that they will tell you is: 'We are from the Land Trust of Virginia, and we are accredited.' It's serious. It has done wonders. I think that's almost a universal opinion both inside our organization and outside.

TD:

What is the biggest challenge for you right now?

Owen:

Fundraising to pay our staff and other bills. Our staff costs are about 70% of our total budget, and it's not nearly covered by the membership fees. We need grants, individual donations and corporate

donations. We need foundation grants. It's a constant struggle, and in a down economy that's even more so, but we balanced our budget five years in a row. We didn't have to lay off anybody. We just hired a new staff person. We've gone from one half of a staff person in 2006 to four staff people and eight contractors. We've increased our capacity significantly.

TD:

Does it help to be near Washington DC? Where are your major donors?

Owen:

In Loudoun and Fauquier Counties. Their backyard is very important to them.

TD:

Are these the same that also donate easements?

Owen:

Some of them, but not all of them. If someone lives in a small house in Middleburg, they don't qualify as a landowner, but they still believe that the land is worth protecting. If they have the financial means to do so, they'll give us a donation. The typical donation is anywhere from a 100 to 1.000 \$. There are extremes far beyond that on either end. We have one woman who very, very faithfully once a year will send us 10 \$.

TD:

How do you reach out to donors?

Owen:

Through a newsletter – which goes out to about 2.000 people – and a website. A lot of people hear from us through the news media when we do something significant. I go out to meet with people individually. I'm not a gifted public speaker, but I go out and muddle my way through these really short presentations. My public speaking professor used to say: 'If you can't be a really good public speaker, be really short.'

TD:

Do you have volunteers?

Owen:

We don't have a lot of volunteers. We have a legal intern. We have people that have expressed an interest in volunteering with stewardship. A lot of the work is very technical. Our board is all volunteers. Our committee members are all volunteers. But I wouldn't say we have large pool of volunteers. Maybe we will someday.

TD:

Do you plan to join Terrafirma?

Owen:

Yes, we have already signed it. I think it's just smart business. It will cost us about 8.000 \$ a year.

TD:

Where do you see you land trust in 20 years from now?

Owen:

If we maintain the hockey stick – but I think we can't possibly maintain it, it will have to level out – 20 years from now we will have 10 people on staff, we will have a 1M \$ annual budget. We'll be protecting 5.000 acres a year. And we'll have close to 100.000 acres under easement.

## **07 Chris Miller – President of the Piedmont Environmental Council**

Miller:

(...)

I'm now 50, so I'm not young anymore, but when I came to PEC, I was very young. I was only two years out of law school, and while I had done a lot of undergraduate research on the environment and land conservation to a certain extent, I really had no experience in land trust work. I was probably 28 when I became the president of PEC, so that was very early. It wasn't my first job, but my third job. I was very fortunate, because I got to do something very early in my career that I really had no expectation of. I assumed that it would be later.

We're an interesting hybrid of an advocacy organization, a planning organization that works on a very complex regional scale and a land trust. We are not just a land trust and yet land conservation has been part of what PEC has worked on since it was founded in 1972. And it was always perceived like that. If you read the founding documents, but even the letters preceding that, when it was about whether or not to form PEC and how it should be structured, the people who started it were very thoughtful and said: 'We need an organization that is capable of doing anything that needs to be done to protect this place.' It was a place-based organization that wanted to be able to access all the possible tools including private land conservation in protecting at a regional scale. Just to give you a perspective, the PEC's service area is about 180 x 90 miles, so quite a big chunk of territory, from the Potomac River down to the James River, from Washington to Richmond. It doesn't follow jurisdictional boundaries. We are incorporated in about 9 counties. Our counties are quite large, 400,000 acres or so. That's the level where land use decisions are made in Virginia, the county level. There are very few municipalities. The counties are really the land use decision makers. But it's the equivalent of about the size of New Jersey. It's big. Virginia is a reasonably big state. And it's very complex, because it is on the edge the Washington metropolitan region, which is one of the more significant growth areas in the United States. It has all the dynamics of federal land ownership. It has a couple of smaller cities – Charlottesville, Fredericksburg, and Winchester – which affects what happens here. It goes for everything from urban, served by mass train, to pretty remote actually. There are little pockets that are two hours from Washington and an hour and a half from Charlottesville that are quite rural. The countryside around here (Middleburg) is arguably exurban, but if you go another 40 minutes west, it's rural. It really is. And it has a declining population as opposed to growing. It's a mix of very productive farm soils, pastures and forest. It's the water supply for Northern Virginia and the cities of Fredericksburg and Charlottesville. It has a lot of ecosystem service values, which over the years have been articulated in different ways, but it certainly has an enormous amount of value for different sectors. The western edge is the Shenandoah National Park, which is one of our earlier national parks. It has high species diversity and over the years has gained quite a lot of ecosystem integrity. People don't realize that those mountains were pasture in 1920. So, we've had about 100 years of wildlife restoration. After 100 years, it has got quite a lot of interesting habitat. It's getting to be the climax stadium of succession. The rest of the working landscape is more in the range 50 to 75 years of restoration. A pretty broad range, but the potential is pretty high because you have it anchored by a national park.

TD:

Would you say that the PEC is a typical environmental organization?

Miller:

No, it's not typical, because it's not single-issue. It's place-based and always has been. So, we work on everything from historic preservation and scenic and cultural values to wildlife restoration to

watershed protection to stopping uranium mining to power lines and energy policy. There are a handful of organizations that are similar, but the breadth is much wider than most organizations. We're not siloed. We're an omnivorous organization. We have this joke that we eat complexity for breakfast. So we take a lot of information in and then try to figure out what makes sense for this part of the world. The board and staff reflect that. Our board of directors is composed of 45 members. We try to have four or five from each of the nine counties. They have a broad range of professional backgrounds. One thing they have in common is that they own land – sort of like the Jeffersonian principle that if you don't have a stake in it, then you don't care as much. But beyond that there is a huge diversity of opinion. We value that. The staff has a wide range of professional experiences. The growth of the staff was from initially one administrative person in 1972 to roughly 45 now. We have affiliates – basically subsidiaries – that work on smart growth in Washington and another group that works in the Shenandoah Valley, but our core staff is about 40. The subsidiaries are unincorporated campaigns. That is probably what you would call them. They essentially are legal aliases. The raise money under a different name, but we register at the state with that name as one of our aliases. That is how we handle it. We take full responsibility for what they do. One is called the Coalition for Smarter Growth. It has got a professional staff that works on planning and zoning and policy issues. They report to me, but they are very independent in terms of setting agendas. So our organization is a very complex set of nodes. The balancing act is between the core function of protecting land as fast as you can protect it – which is very much a marketing and real estate transaction function – combined with policy, advocacy around incentive systems and funding to support that conservation. But then where we start to get broader is the policy that sets the land use plan's vision for that land and the policy that we think that might threaten that. The best way to understand it is: We do a lot work trying to develop a common vision and understanding about what we want in the future. Here are the demographics, here are the main ecosystem values, here are the trends, here are scenarios that we can have depending on how you respond to those trends – that is about 20% of what we do. We play the function of a spatial planning agency – both as a commentator on other people's spatial planning, but we also do some on our own.

Another 20% is reactive. So we have a vision. In many cases that vision has been incorporated into the local government planning documents on the county level. Zoning would be a codification of that vision. We would go from the vision – which would be the comprehensive plan – to codification, which is the ordinance. Then there is the case-by-case testing of that ordinance. So we do a lot of work on that, the reaction to the latest bad idea. We are a free country. A lot of people come and we'll say: 'Here is our idea about how we'd like to agree or disagree with your vision. And by the way, none of it is provided for in the ordinance.' So we got a lot of reactive capacity. We are no watchdogs, but campaigners. We don't just say: 'There is a problem.' We actually go and try to organize people to participate. We'll litigate even. We'll fight for it in certain cases.

Then there is the third sector, which is more traditional land trust work – protect it as fast as you can protect it. That's another 25-30% of what we do, our revenue, staff and organizational effort.

The remainder goes back to the vision, to the 'what if?'. There is a whole part of this which is trying to get ahead of the curve and give people ideas about things that might be major shifts that have a big impact. I'll give you two examples: Five years ago we started experimenting with the local food issue. We tried to think about ways we could essentially reach a level of critical mass of protected land. There are 360,000 acres under permanent easement. That's a land base you can plan around. The challenge now is: How are we going to use it if agriculture is one of the uses. How do we improve the rate of return for those agricultural uses? So we took a shot at trying to facilitate the first level of local food networks, which are direct sales between farms and consumers. Traditionally that happened in two ways: farmers' markets and CSA – community supported agriculture. What hadn't

been done very well is broad marketing that these farms were available to go buy things. So we put together a 'Buy fresh – buy local' guide, which is a listing of all 500 vendors, most of which are farms who sell directly to the public. Few of them are restaurants, few of them are farmers' markets, but 400 out of the 500 are farms who will welcome you if came to buy vegetables or a cow or whatever it is you are looking for. We put together this catalog, but we also sent it out by direct mail to every resident in the 9 counties. That was our initiative. What we were saying was: 'What can we do to change the balance? How can we shift the market?' I don't know where that fits. That's not really visioning or being reactive or protecting land. It makes sense, but it doesn't fit into those categories. It was just a shot at trying to do something different. Another example is when we were confronted by proposals to build high-voltage transmission lines through about 100,000 acres of easements. So we took it on as a conservation defense issue. What we realized is that we had to weigh in on energy policy, because if you bought the assumptions that the energy company was using and you ran it through the model that was their black box, the result they produced was hard to argue with. So we spend almost 1M \$ reverse-engineering their model, so we could understand their assumptions, and demonstrated that they were insane. We started an advocacy campaign around that, which has had an impact. LTA followed in on that and started to have a significant role in trying to get the federal government to make the protection of conserved areas part of the transmission and energy planning. They are still working through how that's going to happen, but it was because PEC was willing to reverse-engineer the transmission model to understand how they were coming up with point A to point B and that being such a high priority. That was very revealing. Those are non-typical campaigns or activities that don't fit into columns one, two, or three, but represent – from year to year – about 10 or 20 or 30% of what we are doing. We maintained that capacity because there never seems to be a year where we don't have to do something creative. The book 'Hollowed Grounds' (about the landscape and history of Northern Virginia) was started when the Disney company proposed a theme park about three miles away from the Manassas battlefield, which is one of most famous of our Civil War battlefields. We led the campaign against Disney. One of the things we kept saying was: 'You wouldn't want to have Disney desecrate all of these historic and cultural resources that are in the Virginia Piedmont.' Most of the times the response we would get was: 'What are you worried about? There aren't any resources that anyone cares about.' It wasn't that there weren't resources, but no one had put together a story about what was there and why it was important. So, a year after that campaign wrapped up we tried to document it. This book is just a coffee table book, but it is well photographed. The production value is pretty good. That was the beginning of telling a narrative. A publicity effort that 20 years later is still a useful thing. I can give it to you, and you will have a better sense of what it is that we are trying to protect. That's what makes us a little unusual. In a country that is highly democratic and gives very high value to property rights, we try to play a non-governmental role that fills some of the vacuums that are left by the lack of government – spatial planning, long-term policy thinking about protecting ecosystems and values and historic and cultural resources, providing a different perspective on things as large as national energy and transmission planning. All those sort of fit in, but it starts from a group of people saying: 'We care about this place and we'll do our damndest to protect the values that we care about.'

TD:

For this you need to cooperate with a range of different stakeholders.

Miller:

That's true. We deal with a lot of different dynamics. We are in an interesting debate right now with a group of entrepreneurs that in the last five years have started farm wineries. You would call them vineyards, but it is debatable how much of the grapes are really being grown here. They're bottling wine and they are selling wine, but not all of it is based on grapes that they grow themselves. They

are using them as entertainment venues. One of the things we have done is to create a beautiful place that is only an hour from Washington. A lot of people are trying to figure out how to exploit those views. Actually when we mapped those vineyards, out of the 26 of them in Fauquier County, 24 are sited right next to land under conservation easement. Only three of them are on land in a conservation easement. They pretty clearly try to take advantage of the scenic values, but not subject themselves to the restrictions. These entrepreneurs are being very aggressive about trying to bring in hundreds of people and having big events and big activities, which are in conflict with what people around them want to have to be happening on Friday, Saturday, Sunday nights. The alliances that are forming around that debate are fascinating, because we want to help farmers. The farm wineries define themselves as part of agriculture, but there is this set of activities that are non-agriculture. Is it agri-tourism or is it an unregulated commercial activity? Do we work with the farmers, the neighbors, the local governments that are trying to get control, the state agencies that are trying to promote job creation in whatever form and don't really care about the local disputes? It is really a very complex set of issues, and that's typical. There is always something. What we've learned over 40 years is that everyone is a potential friend and a potential opponent. You need to be really careful to be respectful of peoples' values. You can disagree on the policy. You can disagree on the outcome, but you need to be respectful of different value systems, because frankly we all have to live here together. You can't go around pointing fingers saying: 'That's a bad person, that's a good person.' Three months from now that person is going to be someone you will want to work with. That's a delicate balance. It also affects who you are willing to partner with. On both ends of the extreme – pro-business and pro-environment – there have been a lot of personal attacks and judgments about people's humanity. You can't really back away from those very easily. So Sierra Club is a hard organization to partner with, because they really made some strong statements about people's integrity. Similarly, the Tea Party appears to be interested in destroying government, not reforming it. So there are limits to who you can work with.

TD:

Are you the facilitator in these cases?

Miller:

Very often we are the facilitator. Sometimes we are the organizer. Sometimes we are the point, the organization out in front.

TD:

But you still are an environmental organization.

Miller:

I think we are a place-based organization. I think environment in the broadest sense, but I think we're much more – community structure, spatial issues... It is hard to say that that is just environment. It's pretty holistic. That's why it's a fun place to be. I think if you went across the board and interviewed our staff or board and asked whether they enjoy being part of this organization, I think people are motivated, because there is enough of what they are most interested in in what we do, and they're willing to tolerate or enjoy the rest.

TD:

Are you not afraid of losing sight of your core objectives?

Miller:



I get asked that question every three weeks. I always laugh because what organization do you know that's preserved more land? What organization do you know that has a stronger membership, given our geography, better resources, more influence? Does everyone like us? No. Do they fear us? Maybe, but the bottom line is: They pay attention. They respect what we do, not necessarily in the sense of agreeing with us. But they know they have to take us seriously. I think for non-governmental organizations, that's what you are shooting for. You're shooting for being relevant. It doesn't mean you have to be loved. We're not trying to be everybody's favorite charity. We want them to know that we are effective and relevant. So yes, we are controversial, but that doesn't seem to be a very useful criterion.

TD:

Do you have controversies inside the organization?

Miller:

Huge, healthy debates. We have good debates, but usually operate on consensus. It's fascinating. If you went through the record of issues that we were involved in, I would say in the over 20 years that I have been here, there may have been five or six where it hasn't been an overwhelming majority of support within our board and staff. And even in those cases, it was because of either legitimate conflicts of interest or they were very complicated issues, and quite frankly, it would be hard to know which way to go. We have good hard debates, and then we tend to move forward with a relatively unified approach, which isn't easy but healthy.

TD:

You also must rely on good personal relationships with your board.

Miller:

We have good communications. We communicate with them regularly. On any given day, I probably talk to probably two or three of the 40 board members every day. We meet as a full board four times a year, but we also meet in various committees every week. And the board members all live here. So there is a lot of presence. In any given moment, a board member will walk into the door and say: 'I've heard something. I care about something. I'm worried about something. Do something.' The point is: They are engaged. They know what we are doing – for the most part. They don't know everything about what's going on, unless they are interested. But they know what the organization is doing in their community. They are very supportive, both financially and in terms of their time commitment. Over time, they have gotten to be incredibly sophisticated. They are very good messengers. They have taken on almost quasi-staff roles. That's probably the hardest thing, when the line between board and staff gets blurred, not because they aren't well-intentioned, but the episodic nature of their engagement can upset the staff dynamics. Who's in charge? Who is the final decision maker? This person hasn't taken the time to take in home the pieces that it needs to. That's a little hard to manage. But it's a problem that most people would die for, to have board members that are so active.

TD:

Has there been an evolution over time in the focus of the organization?

Miller:

Remarkably, no. It has gotten increasingly sophisticated, with the advent of improved technology and the ability to share information more quickly. It's a larger number of people that are more

sophisticated in their understanding on the same set of issues. But it was both land trust and advocacy right from the beginning. A group of people said: 'We have to be involved in spatial planning because there are dynamics in this region that are going to potentially... real change dynamics. We're either going to participate or it is going to happen without our participation. So let's participate. And there is a wide range of ways we can do that. We can do it by being technical experts and consultants, by being advocates, and by direct action. We should do all of those things.' And it's right in the articles of incorporation. It's fascinating. It is in the exchanges before they incorporated. And then it's in all the discussions too.

TD:

It makes so much sense. Why aren't there more organizations like that?

Miller:

I don't know. And that's after 20 years of trying to encourage it. There are more than you may suspect. Scenic Hudson has evolved into something very similar. The Land Trust of Tennessee has modeled itself after PEC in many respects. I think even The Nature Conservancy is now quite seriously looking at some things that we are doing, saying: 'We've got to have this component about the human managed landscape. That's relatively new language out of them, but it comes from what they have learned in places like Virginia, where – quite frankly – we're more effective than TNC because we're dealing with places that people care about because of their historic and cultural values, as much as their ecosystem values. This is a more powerful emotion. More people will study the history of their land than they will study the biology of it. It's an easier point of entry.

Speaking of partners and ways to cooperate with others: The local scale may not be particularly interesting, in the sense that there are not a lot of organizational partners, it's more people, identifying individuals with interests and working with them. But as you go up the ladder, the regional, state, the federal level, the coalition structures are becoming increasingly important, because you need that organization. You can't just do it through personal relationships. So, we're one of the founding members of the LTA, but we're also one of the founding members of what has become Smart Growth America. It used to be called the Growth Management Leadership Association. It was just spatial planning, the Thousand Friends of Oregon, the PEC and a handful of other organizations. We're very active in our regional watershed, the Chesapeake Bay. We're a founding member of the Choose Clean Water Coalition, which has now got 260 organizations in five states trying to figure out how to implement a very sophisticated multi-state strategy on water quality restoration. We're part of a coalition of organizations working on large landscape planning. It's been organized by the Regional Planner Association. That's fascinating. It's the whole Northeast, from Maine to North Carolina, thinking about how to do conservation at that scale, at least coordinate where possible. So that's new. It's a four-year endeavor so far. We're very active members of the National Trust for Historic Preservation and the whole historic preservation movement. We do work on energy, clean air, a whole range of issues, issue-specific stuff. So it's funny. When Russ Shay of LTA calls up and says: 'Are you coming to Washington?' I say: 'On what issue? Because yes I am, but it may not be the one you want me to do. You may not be so happy I'm working on this.' (He laughs.) And it's a challenge too, because you've got a wide range and from a management perspective, do you have individual staff people in each one of those siloes? Or do you take all of that stuff on the federal level, funnel it through one or two people and then push it back out? That's where we're still experimenting. Do we have Washington office or do we send people to Washington when we need to? What you find is that at the national level there is no crossover. These efforts are very much siloed. So we are the facilitator often of national coalition work, because in our house and in our people, we are actually integrating this stuff in ways that the organizations

aren't. So I think that's another place for land trusts. Because they're so specifically place-based, they've played a huge role – beyond their original intention of developing techniques for saving land – they've become this really interesting place where all of these issues come together. They are beginning to play a role at the national level that breaks down siloes and moves past them. That's how we've evolved. We've become an active member of about 10 national coalitions and have found ourselves very often in this role of bringing those national interests together around something.

(...)

Brandywine is a little bit like this too, and Scenic Hudson.

For land conservation, we actually have a very bold goal, which is: We want to protect half of the privately owned land in this region with permanent conservation easements. It's about a million acres out of two million. It's a nice, simple, measurable thing. After 40 years, we're 360,000 acres in. That suggests that it's going to take at least another 40 years. Within that, we have a whole lot of sub-goals, depending on prime agricultural soils, forest lands, and stream miles with riparian buffers. We've broken it down in a lot of different ways. And we track all that. One of the most important investments we made as an organization was about 15 years ago. We invested in our own geographic information system capability. We didn't develop all our own data, but we acquired data and we manage our own databases. We certainly use the data without having to go through a third party. I find a lot of land trusts are dependent on these guys to generate their maps. As long as you are in that role, you're never going to be able to really track things. That's changing as we go through more and more open source code and data that's more and more public. But for the last 15 years that was a real point of leverage. We knew more than the state and local governments knew about this land, because we were doing a better job of integrating data and analyzing it.

TD:

What kind of data would that be?

Miller:

Anything kind of data we could get, we'd add it to our databases. Again, this is unique about land trusts. We care about things at the tax parcel level. In three or four counties, we actually created the first digital tax maps. So we had tax parcel level data integrated across nine counties, and the state didn't have anything like that. So we knew about things on a tax parcel that nobody else knew. They couldn't slice it that way.

TD:

Don't the land registries have such data?

Miller:

No, when I started here, they were still doing things by hand. They've probably caught up, but not in all cases.

TD:

Do you use Natural Heritage Data?

Miller:

Yes, all of it. We don't pay every year for new satellite imagery. We've learned how to cut corners. We have the ability to analyze almost any issue. That is giving us the ability to understand and communicate on some of these issues.

TD:

Do you set priorities for land acquisition?

Miller:

Absolutely. We do, but we find that our priorities and the landowners' priorities aren't always the same. We have a whole bunch of priorities, but since we're planning on being here for a long time, and we've already said we're trying to permanently protect half of it, and we would like to protect some portion of the remainder, almost every piece of land is in our prioritization. It's not such much what you target. It's how you describe it and how you do the protection, so that it fits in with your vision. So I think the focus on prioritization, which has really come out of the Conservation Fund and The Nature Conservancy, to be honest with you, is a thinly veiled effort to force resources into their single-issue priority, which is species diversity. We don't buy into that. They're trying to protect 10% of the land that they say is most important. We're trying to protect 50 to 90%, because we know you only need to use 10% for development. Every parcel of land has got a set of values that is worthy consideration. All these weighting systems are inherently subjective. I've been in lots of meetings where people say: 'Here is the data. And here is how we weigh that data so it produces the result we want.' So it all goes back to what is the result they are starting with. If you have a broad set of objectives, it all comes out brown. It really does. We've run the exercise. We said: 'Color this and this and this. We blended it together and came up with a brown map.' We tend to be more – and I don't think it's any less strategic – we're taking advantage of opportunities. We understand how these opportunities fit in to our long-term vision. I think that's strategic. That's a different kind of prioritization, but arguably it's pretty effective.

TD:

Are there cases where you decline offers because you can't handle it all?

Miller:

Yes, absolutely. There are certain places, for instance, where you plan for dense urbanization, so there are a whole lot of reasons why it wouldn't make sense to do a conservation project there: cost, conflict, the set of values that you would be protecting are not the highest and best use. What's different is we have a wider set of values that we're trying to address once you get out of these urban areas. What we found is especially east of the Mississippi in the United States, the best places to grow things tend to have the best soils, that tend to be the places that people want to live in and protect, tend to be near rivers and streams, etc. If you do a conservation easement on a civil war battlefield, it's going to be close to a major river crossing. So the buffers that you can put in are going to help water quality, species diversity, habitat corridors, scenic views, recreational opportunities. It's a lot easier than you think to get to nine or ten values being included. They can't all be optimized, but they can usually be accommodated.

TD:

Would you address all of them in the conservation easement?

Miller:

As best we can. We can't optimize them all. We can't optimize for each value. But you can certainly take them all into account. Sometimes it's an interesting exercise, and you have to put on your thinking cap, but I think that's healthy. One example: There is a piece of property we had along a river that had an old mill. It wasn't being used anymore, but the mill structure itself dated back to the 1700s. You can establish a riparian buffer but also protect that mill, as long as you don't say that

100% of the riparian area has to be dense forest, right? Now, some would argue that that's an exception, but our argument would be that that historic resource is worth protecting as well. So you've made a little bit of a compromise, but you've done it consciously and you have certainly thought about it ahead of time.

TD:

Do you have cases when you are approached by landowners that want to do something that doesn't fit to your objectives?

Miller:

We only hold easements on maybe 10% of the land we work on. So we work with the Virginia Outdoors Foundation, which is a public easement holder. We work with The Nature Conservancy, the Conservation Trust, the Department of Historic Resources... We tend to encourage landowners to work with an easement holder that's best matched to the values they are trying to protect. We won't hold easements if there is a better easement holder. But we are accredited. We've got the best stewardship program in the state. We got the biggest legal defense fund. We have joined TerraFirma, not because it is particularly useful to us, but it will be helpful for others. We're willing to help with the cost. Our legal defense fund goal is 5M \$ self-insurance. At one point we had it there, but then we spend a lot on this transmission issue. We have a separate stewardship fund that covers the annual monitoring and interpretation issues, as opposed to all-out violations, where we actually have to go to court.

TD:

You said that only 10% of the land you work on is conserved by easements?

Miller:

No, the goal is 50%. Now, it's about 20% in most counties. But we already hold easements on about 10% of that conserved land, so about 30,000 acres. Most of the rest is held by the Virginia Outdoors Foundation. We also own land. That's an ongoing discussion. We've made our first significant purchase in the year 2000. We're still unwinding that transaction. So, what we've learned is it takes a long time if you're trying to get rid of it. So you better be prepared to manage it.

TD:

Why do you want to get rid of it?

Miller:

Well, the history of public land management here has not been great. The fluctuation in parks even is pretty scary. We have a well-run park system, but they're bare bones in terms of resources. If it gets any worse, they will have to close some parks, as in California. But you better ask that question in California than here, because we never had a lot of public land. California is shutting down 30% of its parks. What's going to happen then? The fact that they are not open to the public is part of it, but then my question is: What are they doing to meet their stewardship obligations? So, the reverse of that is: We don't think that private landowners are bad stewards. In fact, they are pretty good stewards, given the right set of tools. As a non-profit, are we private or public? We're probably closer to public than private. We've had this fluctuation of funding available. So the position our board has taken is a very sound one, which is: We will hold fee lands where we have endowments to manage them. So we're moving towards that. The strategic question is: How aggressively do we pursue it? For the lands we hold in fee, we have endowments. We're a few years into how that works.

TD:

What kind of land is that?

Miller:

There are three properties right now. One is a working farm. One is a piece of land we bought to prevent it from being developed as a commercial place at the intersection of two roads. So it could have been a strip mall. Now we're trying to figure out what we're going to do with it. That might turn into a public park. It might be an incubation site for small farms. The third piece of land is a quasi-park. It is 50 acres of land that we're operating as a green graveyard, a memorial site where people can scatter ashes. But it's on the Appalachian Trail, so it's very publicly accessible. An appropriate memorial site with public access, I don't know what you call that. It is not quite a park...

TD:

It is a forest cemetery.

Miller:

Yes, maybe that, but a little bit more permissive in terms of access.

TD:

Is the working farm leased back to the farmer?

Miller:

Right now it is, but we're thinking about taking a more active role in the management. One of the major agricultural issues in Virginia – and this is probably true across the United States – is that the capital investment required to get started is prohibitive for younger farmers who don't have family land. There are two problems. One is: How do you know that you really want to be in charge? It's hard to lease land at a scale that is big enough to test, but small enough to afford. And then also: How do you encourage innovation if the threshold is a couple of million dollars in land and equipment. Currently, we are leasing the land to an adjacent farmer. What we are thinking about is to set up an incubator system, where on 350 acres we create seven farms with a shared infrastructure, and then do 10-year leases, so people can say: 'I'm going to try to grow strawberries in a greenhouse system.' This way they don't have to buy 100 acres of land. They can lease it. The infrastructure is shared. And then if they're interested, they can go and find a piece of land and replicate, but they will already have tested it out for themselves. So we're thinking of trying to endow and subsidize that. That might be useful. Scenic Hudson did a really interesting thing 10 years ago. The state of New York and some of its municipalities were in a fiscal crisis. There were some critical public-access sites, essentially urban parks or parks in relatively small areas that needed to be protected and opened up, but the state and the localities weren't doing it. So they initially did this as an interim move. They said: 'Ok, we'll step in. We'll buy the land. We'll put the resources together to build a kiosk or whatever is needed. But then we'd like to turn it over to you.' What they found was that the opening of those parks was so popular that there wasn't any reason to give them back. They had actually found a thing that expanded their membership, gave public attention to what they were trying to do, and so they're trying to see a targeted set of public-access sites – mostly for recreation – as critical for their organizational development. So we're looking pretty hard at that. One of the best examples – they could tell you the story themselves – is that they helped organize with the restoration of an old bridge into a walking trail from one side of the Hudson River to the other. The original plan was to give it back, but then they realized that if 10,000 people a day walk across this thing, and it has their name on it, that's a pretty good thing. The Trustees of the Reservations is

another model for us. They are passionate about it. It's a community-managed private organization that provides public access. They like that. They don't want government, but they want the public to benefit.

TD:

Let's talk about financing.

Miller:

Ok. 95% of our money comes from our members. Our membership has fluctuated from about 1,800 to 4,500, depending on how controversial we are. The more controversial we are, the more members we have. Campaigns are actually a wonderful way to expand your membership base. But we list all the contributors, and we track them and all that. They represent about 90% of our revenue, both for operating and long-term contributions. We apply for government grants for specific projects, but it never ends up representing a significant portion. That's actually a good thing, I think. When you start getting on the government tit and start sucking milk, you develop this bond and you can't really be critical. I don't think that's the role of a non-governmental organization. I think they need to keep their independence so they can be a credible voice. It's an interesting thing to watch politicians in Virginia, because they always try to put their thumb on us, and because they can't it makes them very upset. But in the end, they respect us more. Whereas if they could do that...

TD:

Do you have private donors or grants from foundations?

Miller:

I don't really draw much of a distinction. The foundation money we get is usually... Because we have a relationship with one of the principals in the foundation, they are really all private donors. Few people give their money through foundations. It's mostly individuals.

TD:

So this source of income is less important than membership dues.

Miller:

Oh, I don't differentiate between the two. They are both within the 95%. I'd say 60% of our money comes from the top 200 donors, but that's pretty normal. We have a reasonably broad pyramid, but it's still a pyramid. What we are also worried about is what happens if the two generations... We're down to the third generation of donors within the same families. We're talking about the grandchildren who may or may not have anything to do with the motivations that granddad had originally. So we do worry about that a little bit. But we've never reached the point... What has resulted from our efforts over 40 years is so inherently attractive that there are more people buying into it. So I'm not worried at the level of pulling my hair out. It's more about how do you get people to understand that they are benefitting from an investment. So there is constant education and reeducation.

TD:

Do you have difficulties making ends meet?

Miller:

Well we do, because we are always trying to do a lot. But in some respect, we could scale back to half our size and still do most of what we do. That other 50% is important, but I think we could survive.

TD:

How did you go through the recession?

Miller:

We cut a lot of external costs. Our overall budget shrank by 25%, but most of that were external expenses. We anticipated it. Because we track real estate and land so closely, we knew there was a bubble two or three years before it burst. I was already saying to make adjustments in terms of our expenses. We're back to where we were in 2005, 2006. It's hard to say. Our operations contracted, and it was a good thing for our donors to see. They expected us to contract and wanted to see us tighten up. But at the same time, we had a capital campaign that was raising money for our legal defense fund and other things.

TD:

How do you manage your funds?

Miller:

We created what's called a 509a supporting organization, whose board of trustees is elected by the PEC's board and can be removed with a supermajority. So, we've taken all our long-term assets and put them into a separate organization that we control very openly. There are those lines of control. But what it does is it means you have to go through a more formal process to release funds. So for instance, our legal defense fund: We can decide that we go into a lawsuit. They can decide not to pay for it, because it's not the right case, which doesn't mean that you can't do it. You just have to raise the money from somewhere else. That could happen. For the most part, they're not willing to not do what the board asks them to do, but because there is a formal request, it makes you do what you should do anyway, which is have a board resolution and briefings and everything else. So I think it's an awkward but useful way of segregating your long-term funding from your short-term funding. The long-term funds are invested in a combination of equities and money market funds. We have to stay a little bit liquid, because some of them are for acquisition projects. So we don't put everything into non-liquid structures. I think our current balance is 60/40, with 60% invested in long-term growth investments.

TD:

Have these funds suffered from the crisis?

Miller:

Net, over time, we're probably ahead, but yes, they went down. Luckily, we weren't that heavily invested yet. We brought assets that we already had into investments on a staggered basis, which is a conservative strategy. So, when the market started to drop, we had only invested 20 or 30% of we wanted to invest. The rest was in liquid form. So we actually benefited a little bit from the drop, because some of the investments came in at the bottom. In the life of the investment, we're positive 10-12%.

TD:

Do you keep liquid assets for other short-term needs than acquisition?

Miller:



Those are long-term needs. But sometimes we raise the capital before we identify the need. We keep some of it liquid so...

TD:

You can react spontaneously to...

Miller:

Well, part of it is the spontaneity, but more, you don't want to go through a penalty of early disinvestment. You don't want to use an equity that you're counting on coming back when you need that cash. It's a combination of those things. We have some pretty savvy people who manage money for a living watching that investment.

TD:

Do you do funding drives?

Miller:

Yes, constantly. We use every way anyone has ever thought of. Our most effective way is direct relationships. We have donors who we really talk to, because they are essentially making investment decisions. It's very personal. We spend a lot of time on donor cultivation. We do events. We're pretty good at that. We've figured out how to hold costs down and get high ticket prices. We do 20, 25 events a year. We do 2 big ones. The most effective we found is when a board member or an existing donor invites 10 to 20 people to their house and says: 'This is an organization I support. They work in your community. You should support them too. And here they are to tell you what they're working on in your community.' That's the scale of audience that will actually ask questions and you can meet with most of them by the end of the night. The cost of organizing that is very low. Usually the donors will pay for it themselves. They do the list of people they want to invite. All you're doing is showing up at the time and doing your thing. So it's a very cost-effective form of solicitation, and I think very effective. But we've done direct mail. We've done stuff on the internet. We're trying to use google ads. We experiment with a lot of things. They just don't tend to pan out as high dollar return. They either break even or are only marginally beneficial. You don't find yourself wanting to do more of it.

TD:

Would you consider yourself part of a movement?

Miller:

Yes, I think we are. Protecting land through permanent structures was a relatively new idea even 25 years ago. There were places where people had already thought about how to do it – Massachusetts, Pennsylvania – but not a lot. So yes, this is a movement, and it's going through a lot of the growing pains that movements do. It was really fun for the first generation of people because they were people with a lot of skills from other arenas who were applying them to this new idea – brilliant lawyers or real estate brokers. They were bringing extremely great skill sets to a new opportunity. They were brilliant and they did great things. Whatever they did was better than what had been done before and was at a scale that seemed at the time incredibly effective and large. Then we went through a phase when we probably overpopulated, the Jean Hocker (former president of the LTA) of 'everybody should start a land trust' times. I think four or five years into that we realized that there were too many. You'd gone from really smart, capable people applying that expertise to this new idea to a lot unskilled people working on an idea, but not really knowing what they were doing. That was starting to create a lot of problems. Now we are through the crisis part of that, and because of

the Accreditation Commission and the whole thinking about how you improve the quality of land trusts, I think we are at a stage where we're getting down to a not uniform set, but at least a marginally qualified set of practitioners across the whole country who are doing the increments. We are more in the retail phase. We've moved beyond models and early adopters through crisis, where you get too many experiments and some of them are really awful. Now 90% of the people are doing things the right way and doing a good job of it, but none of that project is particularly interesting anymore, because it has been done somewhere else. A little bit it is becoming a routine, but that's ok, that's a movement in maturation. I think there is going to be a point, varying depending on where you are in the world, when land conservation – the acquisition stage – is going to slow down, and the stewardship, monitoring issue is going to become more important. It's an issue for everybody already, but in the future it's going to be a much larger portion of what you do. That part of it I think we're still feeling our way on. I think Terrafirma is an interesting piece, but it doesn't answer all the questions. The legal discussions that are going on now about who gets to decide about amendments in the evolution of easements over time – those are pretty divisive discussions. You think the range of discussions would be much narrower, but it is pretty wide. This is going to be a testing point for the movement. Right now, friends are fighting with each other, and it's getting pretty ugly. It's over the issue of whether the land trust or a judge gets to decide what happens when there is a change. I think a lot of the land trust movement came out of non-governmental instinct, very private. Other people think that government got more credibility and should decide. In between there is the question of tax deductibility. If you don't do it through a judge, will the IRS question the charitable deduction? That's an interesting issue, but it doesn't get to the heart of it, which is: Are land trusts capable of making long-term decisions? I think we're still trying to work that one out. There are really only two institutions that have survived ups and downs of government: universities and churches, in varying degrees. The German government is very different now, but the University of Berlin is still there, right? So I look at universities as what we want to be like – not churches, because there is an issue there. It requires articles of faith I am not sure we can claim. But universities seem like the more human institution that is close to approximately what we want. We want permanence, but we want to evolve too. Universities don't operate under judicial oversight. My argument would be: If land trusts become like universities or permanent institutions that do a really good job at preserving certain fundamental values, they should be allowed to evolve without judicial oversight. There are other people who would argue that only government should decide about that. That's where the divide is. I'll just be blunt with you: Would you want a government led by a communist party to decide on conservation easements? I think you get some pretty scary results.

TD:

I would say the likelihood of having a communist government in the United States is quite small.

Miller:

Maybe in the States, but in other countries it's a real possibility. I mean I would argue: Do you want to have a Tea Party-based government making decisions? So it doesn't matter whether you go right or left, but if you get a really radical...

TD:

On the other hand you could argue that any democratically elected government that got the majority of the votes should also be able to decide what to do with the land. It's about democratic legitimacy. Should a private institution be able to decide what happens on a certain piece of land in perpetuity?

Miller:

That's why I'm saying it's an interesting debate. There is no easy answer. I would say that like universities there are certain institutions that have demonstrated that they are capable of making those determinations, not through governmental thought process. We're all subject to law eventually...

TD:

The point is: The conservation easement is a deal between the landowner and the land trust. How this is done is governed by law, but the specifics are negotiated between the land trust and the landowner. So you make decisions about the land use restrictions for a certain property forever. Future generations might not agree with that.

Miller:

I agree, but I don't think that future generations are necessarily better decision makers.

TD:

But we don't know what their needs will be.

Miller:

No, but if the easement is well drafted, their needs should be able to be accommodated, I'd think. That's going to be the test. I would argue that an organization like PEC, which has actually given some thought about the future in a serious way, is probably designing easements that are going to do just fine. I think single-issue easements are the ones that going to be subject to most scrutiny. This easement is to preserve this habitat. Well, if climate change also means that habitat doesn't exist, which has nothing to do with the easement, then what do you do? So I think that is a question about the integrity of the easement process and the question of Standards and Practices upfront. We need to be sure the land trusts are being more holistic in thinking about permanence, but I don't think a judge is any better or the local government is much better qualified to make those decisions than a land trust. I think the land trust will understand that that's a stupid easement as well as a judge will, or better.

TD:

The question is: How do you react to unanticipated developments, such as the objective of the easement being gone?

Miller:

Well, if the easement is well drafted, it has multiple objectives. So that's an amendment process, not a termination. But again, we ought to be focusing on making sure that land trusts play their part. The reason I'm raising the analogy (to universities) is because it is a serious question. Places like the University of Berlin or Oxford or whatever have demonstrated value beyond government. I would argue that we're doing something that has value beyond government, so we ought to put emphasis on doing it really well and being worthy of that, as opposed to trying to figure out how to give government control. I'm really glad that universities are not subject to government control. I think in the history of civilization that has been incredibly important, even in the history of our country, and I am sure in the history of your country.

TD:

I guess there is a higher level of government control over universities in Germany than in the US.

Miller:

Because you don't have private universities? See, we have private ones. That's how it belongs.

TD:

German universities are public institutions, or part of the public sphere. Political consequences of regime changes have always precipitated in the change of university staff. They have survived different regimes as institutions, but what they did during the regimes was fundamentally different.

Miller:

That's a fair point. I'm not saying universities always do good things. But if you look at institutional structures, they seem to be able to survive best. Germany has gone from a set of tribes to a feudal system and then a monarchy to an empire to a democratic system to a dictatorship and again a democracy, but you still have the University of Berlin. It may have had a moderating effect at some point, I don't know.

TD:

What is your relationship to the LTA?

Miller:

We're a big part of it. We're a big contributor to the LTA. In some years we give as much as 100,000 \$. We helped start it. It's not that we agree with everything they do. One of the challenges the LTA faces is its management structure. It has a board made up of some magical combination – magical in the sense that nobody really understands how it is made up – of people, some of which have institutional affiliations, some of them don't, without any apparent line or reason. I'm sure there is one, but it's never been communicated. I can explain to you how we select our board. I'm not sure they could tell you how they select their board. There is a real accountability question for the 100 largest land trusts, which do probably 80% of the land conservation in America. They don't feel like LTA represents them. They feel that LTA represents this mysterious board and then smaller land trusts who desperately need their services. Those of us who are relatively independent and need LTA as a coalition leader have serious concerns about that role. That's been an ongoing dialogue over the last 10 years or so, about how they deal with that. Smaller land trusts don't like us, because they see us as the big bad monoliths that prevent them from... They are the competitive small businesses that are entrepreneurial, and we keep telling them they're doing things wrong. (He laughs.) Many times we're right, and they don't like that. They are also highly inefficient, volunteer-based. There is a whole list of things. And yet LTA, if you ask them... Accreditation: Some of us said: 'Look, you have to cut some of these people out. They are not professional. They are not performing to any standard. You just have to say you're out.' And they say: 'Oh, but if we do that, we lose members.' And my reaction is: 'So? What percentage of your revenue comes from those members? And anyway, as a matter of principle, you shouldn't be playing to the bottom 10% of your membership.' And that's still out there as a concern. So I think that's their biggest challenge as an organization, to figure out who they are going to be accountable to or make sure that they have good communication structures so that everybody feels like they are participating. If you called the 100 largest land trust executives and asked whether they are happy with LTA, 90% of them would say no. Not because they don't support LTA, but because they can articulate two or three or four things that they're really not sure what LTA is doing and why.

TD:

Like what?

Miller:

For example its position tax policy. We just don't think that they are being aggressive enough or give enough credence to the work we do on the state tax. Energy policy: We had to beat them over the head to get them to help us on this issue of the transmission line. There is a suspicion that they tend to cater to The Nature Conservancy and the big national organizations in terms of getting land trusts to support... There is the Land and Water Conservation Fund. In reality it never gets funded. Most land trusts never see a drop of those dollars, but somehow it's a priority for the LTA to advocate for it. I'd much rather they work on tax policy than advocate for something that's really to the benefit of The Nature Conservancy and a couple of other national organizations who specifically work with federal agencies on these projects. I think it is a diversion of resources and it has not necessarily helped. In Virginia, we got 2-3M \$ a year from the Land and Water Conservation Fund. We get hundreds of millions of dollars in tax incentives. That's more accessible for the land trusts. You don't have to go through silly exercises. Those are all advocacy issues, but those are the issues. What is LTA's role? They don't do transactions. We don't need them to teach us how to do transactions, because we're the practitioners who teach at Rally. Terraforma is no use to me. I can't rely on an insurance policy where somebody else decides whether they're going to cover my expense, right? So what have they done for me?

TD:

They've raised the profile of the movement?

Miller:

Not in Virginia. We do more PR in a week than they do in a year. As a practical matter, they never brought a donor. They take money from me. They don't deliver money to us.

TD:

Do you see them as competitors on the donors' market?

Miller:

Absolutely. But I say that while being a big supporter of them. Don't misread me. I think that we need them, but I think it is part of the evolution of the movement. They have got to take a hard look at who actually does land conservation and recognize that a lot of volunteer groups who talk and think they are doing land conservation is not the same as the ones who are actually doing it. They ought to be listening to the ones who are doing it, not the ones talking about it, which isn't to say that people who care about land conservation shouldn't have a role. They just shouldn't be running organizations that don't have the capacity to do what they are trying to do.

TD:

What is the role of the accreditation process in this?

Miller:

It wasn't set up to say no. It was set up to say: 'If you do xyz, we will let you in.' But that has just lowered the floor.

TD:

Was it of any use for your organization?

Miller:

Oh yes. We support it. That's the complicated relationship. It helped us with discipline. We were doing 99% of what they said we should be doing. The 1% was really helpful to focus on. It's the process of having anyone, any third party look at you. It wouldn't have had to be LTA. It could probably have been any consultancy. But I think the usefulness is having a bunch of peers who have a pretty good idea of what you're trying to do do that look, as opposed to people that would be learning what you're doing on the fly.

TD:

Do you use any the LTA's tools, like the Learning Center or the listserv?

Miller:

From time to time, but not really. I think the organizations of our scale have professionals within them who are already trained to a certain extent. You might use it as a reference, a checkup, but not learning for the first time.

TD:

How important is the networking side of it?

Miller:

That's really important. We always go to Rally. We send a lot of people to it. The training is useful for the younger staff. I mean none of this is... If we had to rely on LTA, we'd be in big trouble. I mean it's not a law school. There really isn't legal training. It's not a database of information. It's best described as a coalition of practitioners who find value in touching base with each other and exchanging ideas, more of a trade association than it is a training center.

TD:

Is the Virginia Coalition of Land Trusts important for your work?

Miller:

Yes, mostly for its coalition function. I think the members of it get a lot of value out of it. The smaller organizations need that coalition to fill services they can't provide themselves.

TD:

Would you say one is more important than the other?

Miller:

I don't know. They have different functions. The state one – by its nature – is more state-specific. LTA never has the resources to pay attention to Virginia-specific issues. I wouldn't want them to. They would have a lot of staff, and I would contribute 1M \$ to them. (He laughs.)

TD:

Is there anything you miss from the LTA's services? Is there a function they could potentially fill, but they don't?

Miller:

I think with the evolution there is going to be the role of facilitating the exchange of experiences between those 100 land trusts. I think they need to focus on that. I've been telling them that openly for years. I just don't think they do enough of that.

TD:

You mean the top 100 land trusts?

Miller:

Yes, because they are doing a huge majority of what is being done. That 100 is a group you can organize and do things with in much a different way than 1,200. You ought to be doing it, and they don't. They do one meeting at Rally. They talk about having these conversations, but they've just never done it. That's part of an ongoing conversation I'm having with Rand (Wentworth) and Mary Pope. I'm obviously not very persuasive. It's hard. Their narrative is: 'We represent all land trusts. All land trusts are good. We need to find a way to all work together.' Our narrative is: Yeah, yeah, yeah, but we're doing 80% of the work, so 80% of what you should be doing is working with us to figure out how to do that better.' And they say: 'No, we need to spend 80% of our time on the 20% that are not doing it as well yet.' But they never will. That's where you get off. But it's a healthy conversation, and I think it's a natural evolution issue. I think with anything having to do with land you have to be patient. If you're too impatient, you throw away allies. I'm very hyperactive and don't sit still, and I started this job when I was 28, so I was way young. Now I'm one of the longest-serving directors, and I'm basically at the age of the ones who are just starting or just a little bit older but not much. So it's an interesting thing. As a parent, one of the things I've learned is how kids and actually all people form new ideas. I have a daughter who is deaf, so I've had to learn a lot about language development and neural pathways. The thing that educators who are really focused on the neurobiology of it say is that you need between 30 and 120 repetitions of an idea before anyone will understand it. There are obviously exceptions – the extremely perceptive, the impossibly dull – but 30 is a lot! If you have to talk to someone about your idea 30 times before someone actually gets it, you feel like a broken record. But that's been borne out by my experience. The gestation period for an idea with my organization is somewhere between three and 18 months. I'll say: 'This is what we need to do.' If I'm really good, three months later people will agree with me. Normally it's more like 18 months. I always know I've been successful when board members tell me to do something that I have suggested and don't acknowledge the suggestion, but it's been internalized. That's inevitably three or six or nine or 18 months later. You develop a certain humility and patience about your ideas. They may have been brilliant, but the human brain doesn't respond to that the way you would think. So I think LTA is a complex idea. It's not unusual in the sense that it's a trade association, but the subject it is working on has a huge amount of variation. Each state has different property laws, so there is a lot of different stuff to work through. The fact that 30 years in the history of LTA, we're having some of these discussions still, it's not surprising. In terms of property law, conservation easements are still a relatively new idea. If you teach property law in law school, they still don't have a section on conservation easements. They're just starting to talk about it, even though it affects 12M acres or what the number is. You would think that there is a pretty major section in every textbook about it, but – and that's an interesting footnote – most law schools don't even mention them. Yet it's fundamental to real estate law in every state. 20% of the land in Virginia is under conservation easement. If you don't know about conservation easements, you shouldn't be practicing law. But most attorneys have no idea how it works, although it's probably the most important instrument for land conservation. LTA is a reflection of that youth, and the issues I'm talking about are a reflection of that. So, we'll work through it. Most of the time, we have fun doing it. Rally is a pretty good time.

(...)

When you go to Denver, the Cattlemen Land Trust is interesting because they've probably done the most land in Colorado. They borrowed a lot from us.

TD:

What are the biggest future challenges?

Miller:

I think it is large-scale changes in demographics and economics. Energy was an outlier for what our normal work would be. If you ask people in Pennsylvania, the biggest challenge is hydro-fracking. Do we grant the rights to exploit the resources 5,000 feet under the surface and how do we do it? That's been a real challenge for them. There wasn't a whole lot they could have done to anticipate that. It caught everyone by surprise as a viable energy resource. So it's going to be something like that. We do a lot of thinking about the future, but it's going to be something we didn't think about. And then, what do we do? It might be a sustained drought that really has a major climatic effect or a major earthquake. We had one (earthquake) last year that really woke people up to the idea that seismic activity is something to take seriously when designing nuclear power plants, something like that. So making sure that you have an organization that doesn't rely on having perfect knowledge to be resilient is important. And how do you do that except by having a strong board and a diverse membership, some money in the bank? So when change happens you have the ability to adjust. That's why I used the reference to universities. When universities started here, they were endowed with money. The management of those endowments is a special area of public trust, not government. Because people have been very careful to manage those funds, those entities have some staying power. Maybe that is a critical piece of what land trusts have to have. You have to have that sophisticated fiduciary perspective.



## **08 Steve Swartz – General Counsel and Secretary of the Humane Society Wildlife Land Trust**

Swartz:

(...)

The Wildlife Land Trust was set up in 1993. It spun off from the Humane Society of the United States to be a direct habitat protection side of the organization. The Humane Society in the US had been doing a lot of wildlife protection work – Endangered Species Act, anti-poaching efforts and issues like that. The management at the time thought that it would be good to have a group that could really do on-the-ground habitat protection. So they created the land trust to be that arm. We've been in existence for 19 years. We have about 110 sanctuaries now throughout the country. Probably 60% of those are conservation easement-protected. The rest are owned. On top of that we have other things. We make grants to other organizations. We have an anti-poaching program that supports law enforcement in that area. We provide what we call 'robotic decoys', which are taxidermied animals with little motors in them that are given the game wardens so that they can use them to put in the field and attract people who may be inclined to poach. The head will move, the tail will move, and when someone shoots them...

TD:

And that works?

Swartz:

It does. There is a great video of guys shooting at these things, and they don't fall down. So they wonder what's going on and keep shooting even as the cops pull up with the lights on to give them a ticket.

We have some temporary protection efforts where we have short-term or placeholder efforts – agreements with people who own a property that they won't do anything to it. They are not really legally enforceable, but more symbolic or ceremonial. We're hoping that we can build on that to do something more permanent. That's where we're at. As I said: 60% easements, 40% title properties, all around the country. It has always been a national organization. We have been largely reactive in terms of what we protect. Projects we take on and land we protect would be based on people contacting us. In any given year, there can be something. We had a lot of interest early on in New England – New Hampshire, Vermont, and Maine. There was a stretch for a while when we would get a lot of interest in Upstate New York – in the Albany and Buffalo area – and then in the Upper Midwest. These are still projects scattered around the country. A little more recently, we've been thinking more strategically and proactively. In the moment, we are working on a big project in Oregon, where own a property. The property next door came up for sale, so we bought it and are thinking of expanding that further, as other properties become available. We have one in process now in Tennessee, which is about 2,000 acres. The landowner really wants it to be our largest sanctuary, so he keeps thinking about buying more property to add to this. When he gives us the easement, it will be our largest one. It's pretty cool. It's fairly diverse habitat. He wants to retain the right to have certain activities on the property, which makes it a little more complicated. He wants to do some pretty serious timbering on an ongoing basis. There is an area that he actively uses as a farm. So it will be a little more evolved than the run-of-the-mill easement, but we're working through that.

TD:

What's the average size of your sanctuaries?

Swartz:

At one point we thought the average size was about 110 or 120 acres. It may be skewing a little bit higher now, because we've had a couple of bigger ones. It ranges down from ones with a couple of acres, which we took early on and we probably wouldn't do now, to 1,500 acres or something like that.

TD:

How do you monitor your easements?

Swartz:

There are two things. We have staff that does the full-scale easement monitoring. We recruit volunteers on a lot of them, as many as we can. That is a program that is cycling in and out, in terms of being able to dedicate resources to it. It is picking back up again. We've been pretty lucky in terms of our easement-protected properties right now. Probably 80% of them are still in their original ownership. We don't have problems with most of our original donors. We have problems with a couple, but not with most of them. We can focus more of the enforcement efforts on the ones where we have a secondary owner that we have to worry about, who doesn't understand it or doesn't like the idea.

TD:

How big is your staff?

Swartz:

We have seven people who work full-time for the land trust – here in Washington DC and in the office out in Maryland. Most of the Humane Society staff is actually in Maryland. It's kind of blurred, because the people who do promotion and PR, the accounting staff, and fundraising staff are ones we share with the parent organization. There is one person in HSUS (Humane Society of the United States) who handles our 'account' for purposes of direct mail fundraising. There are people on accounting who deal with our accounts. We have never gone through how many full-time equivalents there are who work for the land trust, but there are a lot of people who during the course of any given day will touch some of our areas.

TD:

Do you compete with your mother organization for resources?

Swartz:

Absolutely. We compete with the others. At any given time, we have in our budget about 10M \$. HSUS's budget is 170M \$. They have programs across the world of animal protection. So the person who is doing our volunteer screening is also being asked to screen for volunteers for a conference we're having or an animal care center. You're always trying to juggle priorities there. Sometimes it works better than others. At any given day, something is a high priority for the overall organization and it's going to suck resources into it, putting everything else on hold for a little while. Over the course of a month or so, it's not a problem, but if you wanted something today, you might not get it today because the person you want to be doing this is actually busy for some other program and is on a tight deadline.

TD:

Do you have oversight over the trust?

Swartz:

We do. We have a board of directors. One of things we set up to do originally is to be a completely separate organization from HSUS. We have our own board of directors. It is populated mostly by people who are seated in other positions with the Humane Society, but one of my jobs is to be sure that corporate separateness is being maintained. There are odd elements to it. I'm actually wearing two hats here. I have a position with the parent organization still, so I find myself at times negotiating for the land trust with the attorney of the parent organization about what it is we are doing. We understand what the rules are. We have it in other contexts as well, so we're all very careful about how we do that. That's one of the things I'm tasked with: to be sure that we don't knock down that wall between the two organizations and treat the land trust as a department of HSUS.

TD:

Do you have separate memberships?

Swartz:

We have separate memberships. We are technically not a membership organization, and our members don't vote. But we maintain separate mailing lists. We maintain separate assets. We keep our books separate. There is a consolidated audit of all Humane Society's affiliates, but our books track separately. We issue a separate 990 federal tax form. We have separate filings. We are registered separately for charitable solicitation purposes. We're registered for corporate purposes. All those things are maintained individually.

TD:

Where do you get your money?

Swartz:

Historically it has been what's termed 'direct marketing', the mailings to people. Funding from that has really dried up. We've been pretty successful with a couple of fairly large bequests. People have passed away and left us money.

TD:

Why has the direct mailing return dropped?

Swartz:

It's partly the recession, but also in the US there is an increasing distaste for 'junk mail' fundraising solicitation. People are tossing them away. So it's a problem we are trying to deal with day to day, to understand what message works. Who do you need to ask? Who is the audience you're asking? Can you build that audience? Can you get people more interested in land conservation and what we do so that they are able to fund you? Can you find those people and ask them for money? Can you get them engaged in what you do as an organization so they feel more excited that they are a member, even though they can't vote? That's an ongoing issue for people.

TD:

So it's not that much of a share anymore?

Swartz:

It's not that much of a share, but we try to move that up. In the last couple of years it has really dropped off. It's a combination of a couple of things – the message, the recession... We're doing new approaches to asking those questions. In fact, before we got here (to the café), one of the things I do is I review the fundraising copies we do. So we're looking at those to understand... I review to make sure it's stating accurately what we do. It's a legal issue. It's being written by different people. The message and the tone are different, trying to recapture people who supported us and hopefully will do so again.

TD:

What other sources of funding are there?

Swartz:

Bequest is one, when people have left us money. We had a couple recently when people were pretty generous. That caught us by surprise, because we didn't know they were out there. We actually own some oil and gas interests.

TD:

Is it like a fund?

Swartz:

It's actually that somebody has left us in their will the interest in an oil and gas property down in Louisiana, which turned out to be incredibly valuable in terms of how much oil and gas there is. It's in an area that always had a lot of interests. Whatever well they were drilling in the pool, from reading the reports, it just started producing dramatically. So we have done well. The higher gas prices and more production means we are just throwing off a lot of money, which has helped us to get through the drop of other sources. The finance people will tell you that you look to diversify sources of income. Nobody is expecting that to continue so...

TD:

Did you have to lay off people during the recession?

Swartz:

We didn't. The land trust has been pretty stable. The parent organization didn't lay off anybody. There was a hiring freeze for a while. Periodically there will be one for a quarter of saving. But it hasn't been a big issue. There has been enough attrition. Some departments – not us – have had people walk, so they work with fewer people than they need and then they come back.

TD:

Do you still grow as an organization?

Swartz:

I think we are trying to be smarter about it. What we have done is... We were in the reactive mode. We were new. When I came here, we had been here about seven years. There was an attempt to grow really rapidly. We were less selective about projects than we probably should have been. But it was an informed decision. We knew there was a risk if you take anything that comes through the door, to be bigger faster, eventually those couple ones come back and you have issues with them, and we do have issues with them. I think the issue we've got now is that we are trying to do fewer better projects, both in terms of conservation value and in terms of whether they are coming with

funding, so we're not tapping into reserves or other sources of funding. Steward these properties so they're coming with money. So there is that tradeoff. You look at some good properties, but the people won't donate to us. Stewardship is important. How do you deal with those? You don't want to be a land trust just for rich people, so...

TD:

Do you ask for an endowment fund?

Swartz:

We do, but we have historically agreed to defer the actual receipt of that to testamentary gifts, so they give it to us in their will. We are more insistent upon it now. I actually think that most people we ask for it (the endowment fund) and that still own the property will eventually provide for that in their will. The ones I talk to almost invariably do.

TD:

Do they understand the necessity of monitoring?

Swartz:

Most do. I think some... We can hit on people who don't. I don't think any land trust is out there who doesn't understand that the obligation to... In their mind they are giving away something of value. And they are. And from our mind, we are assuming a liability. It crosses the philosophical discussion, it crosses the legal issues, and it crosses the accounting issues. We have talked about accounting people. Conservation easements in particular are the one thing that has a tremendous value until it hits our books, at which point it... (He laughs.) It can be 1M \$ of conservation easement. The donor takes a 1M \$ tax deduction. It shows in our books, and we book it as one dollar, because we have these permanent ongoing responsibilities. It may have been 1M \$ yesterday, when this guy gave it to you, but it isn't today.

TD:

And you can't capitalize on it anyway.

Swartz:

Right. We're doing one now where we're actually taking from another charity a property. Tomorrow I'll call an appraiser about this, because it's coming with all those restrictions, requirement of a court approval, transfer and all this stuff. So I'm sitting there in fact thinking this property is worth 1M \$ in the hands of the original owner, but we would have to pay somebody to take this from us. It looks a lot like it's got a negative value, which will drive our accounting people crazy. This is why you end up putting a placeholder of one dollar in the books.

TD:

You talked about strategic planning for property selection. How do you do that?

Swartz:

The plan for that planning is on the agenda for later this year and early next. Our criteria before have been relatively basic. Is it natural habitat? Is it some place where you can identify wildlife? Our organization was set up to protect habitat for any kind of wildlife. So the criteria have been relatively basic. We adopt them in various ways. You know when you see it. Or the 'drive by model', which is you drive there and you have a pretty good idea of what it's worth in terms of habitat. Two things

about that: One is that we're getting more selective and we're trying to differentiate between a property in Northern California and a property in Southern Tennessee. How do you value and choose between the two? The IRS is more particular about things, the deductibility.

TD:

Wildlife can be anything. Do you focus on game animals?

Swartz:

We've tended more towards game animals, because those are the ones that are hunted. But we have lots of properties that we protect that are still in areas where there is fundamentally no hunting and no game to speak of. We tend to opt more toward bear and wolf, although you get threats to amphibians, reptiles, and those are still pretty high too through loss of habitat. So we're trying not to be too specific about it, but at the same time recognize that different types of animals can survive in... It may not be as much of a threat to one species or another in a particular portion of an area that we're looking at. But it's the kind of questions we need to ask as an organization, to find a way to prioritize, rank and do things that we haven't done.

TD:

Do you have biologists to help you with that?

Swartz:

We do. Our stewardship director is a biologist. We have a habitat protection advisory committee with biologists or quasi-biologists, people who either have the academic background in that or people with on-the-ground experience. Those people provide a level of review for a property that we protect. We can access them otherwise, but we also have the ability to ask for a more formal role in terms of looking at a property that we want to protect and make a recommendation whether it's a good or bad idea, or whether there is something we should be focusing on for management or easement language or like that.

TD:

Do you work together with other institutions, such as state agencies? There is so much data on wildlife available...

Swartz:

There is. When we do baselines or management plans, the staff looks at agency data, what the Department of Interior has or what the state agencies have. In terms of working collaboratively with the state agencies, we do that a little bit. With the law enforcement side, we actually do that a lot. One of the things our stewardship people try to do is to engage with the local law enforcement community to have them buy into what we are doing. That's where the 'robotic decoys' spun from, to give them tools to help with these and expand it beyond just areas where we have sanctuaries. We don't really have any ongoing collaboration on the conservation side with government agencies. We have some with other land trusts, either by virtue of co-holding easements or where they have easements on properties that we hold or something like that. So there is some of that, but we're not like The Nature Conservancy or some of the others that are working collaboratively with the federal government or state agencies.

TD:

Do you provide public access to your properties?

Swartz:

Ours is more specific. Our easement-protected properties we leave in the hands of the landowners. For title properties, our position has been that in most cases, we will let people on if they contact us and ask for permission first. Partly it's a product of the stewardship issue, which is... There is a different component: We used to post properties for "no hunting," but it is difficult to enforce that restriction on occasions because of the problem of proving that someone was hunting on the property. So we tend to post for "no trespassing," so we don't have to deal with the question of whether you're hunting. If you are on our property without permission, we have that [legal] ground to chase after people. But at the same time, we don't want to anger neighbors who tend to be our greatest eyes and ears. So we tell our stewardship people that it's fine if day-to-day people contact them saying: 'I just want to go birding. I want to hike on the property.' (In this case, they should) say: 'Fine, just let us know what's going on.'

TD:

But you don't build trails?

Swartz:

We don't build trails or facilitate access in any way. I think some of our easement properties have fairly involved trails on them. I'm not sure that the owners allow people to use those, but that's not in our control. There is one exception, which is a property up in Maine, which is actually owned by our parent organization that we manage for them, where there are in fact a couple of snowmobile trails across the property that we have specifically granted by license to people to use. That's a specific stewardship decision, the thinking being that people are going to use them anyway. Maine is an interesting area. People are going to use them anyway. If you work with the snowmobile club in the area to create these trails, they will maintain it and police it, and people will stay on the trails. If you say that nobody can use them, people are going to use them anyway and they will go anywhere. Nobody will police it. So we struck a balance after a lot of debate. We were actually asked to expand this to all-terrain vehicles during everything but winter. We made a decision that it's better to be good neighbors with people and have control over it than to be obstinate and have them do it anyway. The ATV use issue is one that is more complicated because there are two different elements to it. One is we have a retreat center up there – the Humane Society [of the United States] has – that is designed for people to go and spend a couple of weeks to write a book or do something like that. So people are going up there for quiet. It is way up in Northern Maine. We don't want the ATV use to interfere with this. It is also during hunting season. Snowmobile use is outside hunting season. We don't want the ATV users to use the trails to facilitate hunting even on our neighboring properties, because it seems contrary to what we own the property for. So it's a debate where you have six or seven people trying to decide whether to use ATVs or snowmobiles. I think the last decision we made was that we have mounted cameras up there to monitor how much use there is of these in the neighboring areas, to try to get a feel for what the problem is.

TD:

Do you print educational material about the preserves?

Swartz:

We do. We have our website, which is pretty evolved now. We don't tend to list exactly where they (the sanctuaries) are, although people nearby know where they are. We have an annual report. We have periodic newsletters. We have an e-newsletter and things like that. In terms of educational

materials, we build educational messaging into almost everything we do, including fundraising, to try to inform people about issues.

TD:

I'm asking because I have met land trusts that advertise their properties very strongly.

Swartz:

We tend to be lower key. We do put it out on our website that we just redid. There is a lot of stuff there about our sanctuaries. We do promote them as an effort of successfully accomplishing what our mission is. The nature being national is that we really don't have a good way to attract local interest. Lots of land trusts have picnics on their properties or have hikes on their properties. They are working in a county or a portion of a state, so it's easy for them to do that. We don't have the ability to do that. In our model of how to do things, it is one of the difficulties. It's a challenge. You want people to be involved, but we don't have the staff necessary to do it.

TD:

You are rather small for a national organization.

Swartz:

We are.

TD:

If I think of the other nationals: The Nature Conservancy, The Trust for Public Land...

Swartz:

The Nature Conservancy has state chapters and state directors... The two exceptions we do are that a couple of times a year, we have trips for major donors to one or more properties in their areas. There is a New England trip. This year there was an Montana trip. We have talked about the property in Oregon, which is the one we're trying to expand, of having a trip there. That idea was just approached earlier this year at a planning meeting, so I don't think anything has happened with it. So I think we're trying to do it and see what will work. It's just hard if you don't have state-based people, you can't understand what the audience is. The ability to package the event to get it... It is really hard to do that.

TD:

Do you have a strategic planning for your trust in terms of where you want to go?

Swartz:

We do, but probably less formalized than most. The view of it has been that we want to expand the number of sanctuaries by 10% each year over the next three years. The last plan we did had a three-year shelf life. That's the current plan. What's in the pipeline would be not consistent with that. I don't think we have enough in there to get to 10% this year. So we have to expand that a bit, which spills into another question about how you solicit people to be interested in... In the past we have had a national radio public service announcements that would solicit people. We had a group... People would apply. You have the ability to screen. We dropped that concept because what we were getting weren't necessarily enough good projects to make it worth the messaging. We are still – at this stage in our existence – struggling with how to get people who have 200 to 500 acre properties



aware of us and contacting us, and us being able to react to that. We're still not quite... We don't have a model for that that works.

TD:

Do you think there is a saturation point for your organization?

Swartz:

I don't think there is, unless internally we just decide that we're just going to be very selective. I don't think anybody wants to do that. I think it's a little bit of 'success begets success'. If you have a big project, you can promote it. More people will become interested in it and contact you about other projects. If you sit there and stop, at any kind of fundraising message, any kind of program selection people will ask you: 'What have you done recently?' And if you haven't done anything recently, people will say: 'Are you still in existence? Do you care? What do you want to do?' That's hard. It's an ongoing issue for us. You could be in all our meetings and we talk about it. (He laughs.) We'll just have to deal with it. The thinking right now is that if we get a couple of bigger projects done that consume a lot of time right now, we can focus a little bit more on the next step. It's easy if someone walks up to you and asks: 'Do you want to take over a couple of thousand acres?' That's pretty easy to say yes to. It consumes a lot of staff time and energy. You just have to... The one I'm doing now, we'll get that done... Then I'll be trying to think about what other things are there. And people can sit around and try to understand what we need to do. If we have this goal, how do we get to it?

TD:

Are you an accredited land trust?

Swartz:

We are not.

TD:

Have you ever thought about applying?

Swartz:

We have. It's complicated at the moment because I am on the Accreditation Commission. It is really impossible for us to become accredited while I'm on the commission because of conflict of interests. The rules allow land trusts for which... that have a commissioner as a member of the staff. Heather Richards of PEC (Piedmont Environmental Council) was on the commission when they became accredited, but the conflict rules are such that you can't have any role in either the application preparation or certainly not the review of it. My position is such that we can't do any accreditation application without me being involved. The thinking for now has been that my first term on the commission ends this year. I might re-up for a second term, depending on whether or not I can do all the work. So we'll look at getting accredited toward... I'm thinking about waiting a little bit with my second term. There is period of one year before you can get back involved in it, so I can get off and then...

TD:

Do you think it is worth the effort?

Swartz:

I actually like it. It is interesting. It's not surprising I am a big fan of accreditation. I think what it has done is focus land trusts' attention on really good governance, good policies, and good conservation [in a way] that nothing else has done. On the commission side we talk about accreditation working not only for land trusts that are accredited, but for land trusts that are not accredited or even that get turned down by the program. Because what you have in accreditation... Take a look at the Accreditation Commission's website. We just put out a 'requirements manual', which sets out what these are. If you look at what happens in accreditation now is that you have the application and this incredibly in-depth review of your land trust by at least one commissioner and a staff person who spend... The last one I did, I spent 20 hours reviewing it. Then you have this discussion with the commission about what your organization is doing. At the end of the day, you have this third party – it's not for free, because you have to pay for accreditation – review of what you are doing right and wrong. It's the same – we talked at HSUS about merging with other organizations, there are smaller organizations that might want to merge with us – you have the same level of review. Are your bylaws up to date? Are your easements up to date? Are your procedures coherent? Are your financial statements accurate? What you see in a lot of these cases is well-meaning land trusts out there that have never looked at it at this level of detail. 'Form 990? Sure it's fine.' And then you realize you didn't answer any of these questions in form 990 or your statements are wrong. And you go: 'Oh!' (He laughs.) So I think that's the benefit of it, plus the accreditation itself.

TD:

Is it like a seal of approval vis-à-vis donors?

Swartz:

I think land trusts that have been accredited see it as valuable in terms of being able to show that in fact they are really doing what they are supposed to do. I think it is more important for the small or regional organizations that may be perceived as too informal or too small to be able to do that. The Nature Conservancy has applied for accreditation, the Conservation Fund is applying for accreditation, but no one is going to say that The Nature Conservancy is not a good organization if they weren't accredited. It is the Land Trust of Virginia, Upper Valley Land Trust in Vermont – those organizations that do lots of good work do have the ability to say: 'You trust your property to us. We are actually approved that we can do this.' This is really valuable.

TD:

Do you adhere to the Standards and Practices?

Swartz:

We do. We've always done that. It actually predates me. One of the things we have done fairly deliberately is to understand that those are important. I mean there are ones that we don't agree with. There are things where I actually think – and I've said this to Rand (Wentworth) and other people at LTA – that there are some of them that are just out of touch of how organizations work.

TD:

For example?

Swartz:

The current one that I get is – and that continues to drive me crazy – if you sell a property you have to have it appraised before you sell it. It applies across the board to anything you own. As an example, somebody gave us a condominium unit in Washington. It's a public market. You know how

much these things are selling for. We hired a realtor who looked at comparables, listed it and we sold it. But we didn't get an appraisal of it, and we won't get an appraisal of it, because it doesn't make any sense. We are not going to spend 1.000 \$ to get an appraisal for a property when the realtor is saying: 'Every unit in this building has sold for between 240 and 260. We're listing it at 260, and if you sell, you're going to be ok.'

TD:

Standards always introduce some rigidity...

Swartz:

Well, they do. Where we see it as well is on accreditation, where accreditation has indicator practices that the LTA established once and we are supposed to look at. And this is one of them. It's interesting. I confess that the rule says that we have to say this is a requirement. But it's hard to argue that that's a requirement when you think that it is a really dumb rule. But you do and you go forward. So I think there will be a lot of that. What's coming from accreditation and will come from [conservation defense] insurance is rethinking which of these are critical to land trust operations and where some flexibility can be acknowledged.

TD:

What is the main function of the LTA for your land trust? I've talked to small land trusts who say that the accreditation is too much for them as volunteer-based organizations and rather excludes than pushes them. Then there are the big ones that say they don't need it.

Swartz:

I think accreditation is... The Nature Conservancy doesn't need accreditation and yet they are seeking accreditation. Their application is pending. It will come up for a decision in our meeting in August (2012). There have been volunteer land trusts that have been accredited. I think there is some tension with land trusts that... Both as a commissioner and an attorney and as someone working for an organization... I mean there is a view by some small land trusts of: 'We're different. We're doing ok. Leave us alone.' I think everybody understands that. What accreditation was set to be was setting national standards. There is flexibility built into being picked up by the TNCs of the world out to the all-volunteer land trusts of the world. But you can't really have a national standard if in fact you make exceptions for everybody who is out there. There are some things about it – board governance, accounting, tax things – which are actually pretty universal. I've argued before at Rally, when you get yelled at by somebody who thinks accreditation is horrible, that if you look at what's required, none of it is really extreme. None of it is really off the wall. If you thought about it less emotionally, you would think maybe it's a good idea that when we file our tax returns and our 990, they're accurate. Maybe we should have minutes of our board meetings and things like that. You do have these kinds of things that you just have to address. The Alliance is working on something that would be a recognition of land trusts that would be beyond adopting Standards and Practices but less than accreditation. I don't know where that is now, but accreditation is much more popular now than it was even a year ago. Next year's application was filled within 30 minutes this year. More land trusts are applying and understanding that that's the case. The people who don't get accredited are annoyed. But you just have to...

TD:

Let's get back to the role of the LTA.

Swartz:

I think there are two big things. The educational role is the biggest thing that it does. The second one is the public policy one. In reverse order, I think for the public policy stuff and the IRS, it is uniquely positioned to take the lead. You have 1,600 land trusts. They can't really individually lobby Congress or the IRS. They are just not in the position to do that and even if they could, they are not going to carry the clout. So I think that element is important. Part of this comes from teaching. Part of this comes from other things. I think the overall educational component of the Alliance is invaluable. If you are setting one up, that's the thing. Again, 1,600 land trusts with two or three staff a person have this universe of educational opportunities, the Rally, the curriculum...

TD:

What are the most important tools the LTA offers from your perspective? Do you use the Learning Center?

Swartz:

I do use the learning center, although I use it less than others would because I've been doing it for 13 years. What I tend to do is know more people. So if I have a question, I will write Larry Kueter or Stefan (Nagel) or Steve Small and ask: 'What do you think the answer to this is?' I'd get it that way and learn something.

TD:

Is the LTA useful for these kinds of contacts?

Swartz:

All of those contacts I have I got through visiting LTA Rallies. I go to Rally every year and teach there every year. I think Rally is the thing. Everybody who does land conservation goes to Rally to a) get excited and b) learn something, whether they are there for two days or four days. At the end you're exhausted. But that's when the party is. (He laughs.) I think you have the ability to get the breadth of educational subjects, whether you're a lawyer or you're writing your PhD dissertation or you're a stewardship guy or a fundraising guy, there are two or three different workshops you can attend at least. There are all the networking opportunities. You just have the ability to meet people and talk about things. Stefan (Nagel) is a good example. Stefan and I sort of knew each other, but then we were at some roundtable discussion one day at Rally, started talking again at a seminar, and then started working together on a seminar that we have put on for a couple of years. We stopped now, but that's how you get to know the people. He's my Canada guy too, because that's what he does. So you have the ability to know all these people, but if you are new to the universe of land conservation, you can learn in immense amount in two days by going to that. That's incredibly valuable. The curriculum books represent various aspects of it. If you got them all and read through them all, you'd have all this understanding from all these people who do this stuff constantly. Webinars: There are webinars for new lawyers. There are webinars for old lawyers. There are webinars for all kinds of people. All this stuff is circling on. The list serv is out there.

TD:

Do you use that?

Swartz:

I actually don't. I will answer peoples' questions privately. One of the things that I find disturbing about the list serv is the fact that the conversation deteriorates at some point to something that is

just a little bit off topic. I don't think it's helpful. Usually if someone has a question and I have an answer to it, I'll just call him back. But again, I tend to use personal contacts. If you have a question about Wisconsin, you have somebody to call, if you have a question in general, you have someone to call. But that's different from the person in Virginia who may not know someone to call.

TD:

Who do you think the LTA should cater to? I think they are most helpful for small and medium-sized land trusts.

Swartz:

I agree with that. Organizations like us... I get paid a salary. I go to Rally on my expense account. I feel bad at times. I know people who go to Rally who have four in their hotel room and stuff like that, because it's valuable. They want to go, but their budgets can't support it. And they understand that. They're geared towards making it affordable for people. Rally is actually pretty cheap. My wife works for an organization. She has been to other conferences. She's been to Rally once. She said: 'I learned more. The people are nicer. It costs less.' That's pretty good. If they continue to do that – and I think they can do that – it's really valuable. Nobody who teaches there gets paid. The most we've ever got is a free registration. (He laughs.)

TD:

What are the major challenges for your organization? Where do you see yourself 20 years from now?

Swartz:

I think the land trust will just grow slowly and incrementally. At one point there was a view that it will become so large that it might spin off. I don't know if anybody sees that now. I think anyone sees it as part of the Humane Society [of the United States]'s overall program and what they are doing. I think that's valuable. I think there will be a challenge in the... You know I'm 59, in a few years I'm retiring or at least moving on to something else. I actually like to say in the land trust there will be an evolution of management, of the board members of HSUS, as they retire from their positions and step off. Our executive director and I are roughly the same age, so we'll step off and then there will be the question of where the organization goes. We'll see how that plays out, succession planning issues for an aging organization. I think the land trust movement is here to stay. It's really popular. It's really valuable. People will see it that way.

TD:

Do you conceive yourself as part of a movement?

Swartz:

I do. I came from a world (of private law practice). I'd practiced for 20 years, mostly representing developers, builders and things like that. I sort of moved over to become a tree hugger, the other side of the equation. I look at my career, as oddly as it was, as bringing me to this stage, which I really think is my life's work. My legacy besides my kids is... – not so much individual properties that we protect, that is an organizational goal. What I find really rewarding is to have people – I mean I've taught at Rally since 2000. I've had people come up to me and say: 'I took your course 10 years ago.' That's where I see value of what I do: getting people to understand how to do this work and that it is important to do it right and do it well. I always say this in my talks: There is a tendency in organizations to say: 'We are doing good work. We can be fast and loose about things.' And I say: 'No, you can't! You're telling somebody that you are going to permanently protect that property.'

How are you going to do that if you come at it with this lackadaisical attitude? Maybe [you think] the rules don't apply to you, but what happens if you go away? What happens if you didn't do a title report? What happens if in your easement you made mistakes?' It is the kind of thing that a friend of mine says keeps her up at night.

## **09 Phil Tabas – Chief Legal Officer of The Nature Conservancy**

Tabas:

(...)

Let me say just a couple of words about The Nature Conservancy and then our relationship to the land trust community, and our work with the LTA. The Nature Conservancy was established in 1951. We're a conservation organization dedicated to protecting lands and waters on which all life depends. We started as one of the biggest land trusts in the United States – and now in the world. In 1981 there was a study group that helped lead to the creation of the LTA. The Nature Conservancy participated in that. We have been a sponsor of the LTA for many years. We consider ourselves as a partner, an entity that has helped start the land trust movement in the United States. One of the things that I think has led to the growth of land trusts has been the tax incentives for conservation easements and the policy initiatives that have happened on the federal level as well as the state level. The Nature Conservancy was instrumental working on the tax changes that got enacted and became the law. The Nature Conservancy led that process – the federal tax deductions and even state credits. The Nature Conservancy spearheaded the effort to try to expand the range of tax incentives at the state level, starting in the early 90s. Now we have about 18 to 20 states that have state level tax incentives for conservation.

TD:

And that helps?

Tabas:

Absolutely. I think the existence of the tax incentives has helped spur landowners to want to protect their land and for doing that need to have institutions that can receive those interests. And that is where the development of the land trusts, of local land trusts comes in.

TD:

Conservation easements have existed for a long time. When did you feel the need to lobby for a targeted tax policy supporting them?

Tabas:

If you look at the history of easements, they've been around for about 100 years. They went along like this for a little while. There were two forces at work. One was the environmental movement in the late 70s and then the changes in the tax code. That forced – it is like a hockey stick, going up like this. I think those two forces led to the increase in the use of conservation easements. I think there was a sense that conservation easements were a good match between allowing landowners to keep land in private ownership, and at the same time it was protected for conservation purposes. So it was a nice way to match.

TD:

But why did the tax incentives only change in the early 90s?

Tabas:

It was the late 70s and early 80s that the federal tax code was changed. The state changes started in the early 90s. What happened in the early 90s was a reflection of the critical mass of land trusts that had grown since the early 80s. What happened in the early 80s was the creation of the conservation

easement tax deduction, the notion that you could give away a property under our tax law and retain the right to use it.

TD:

How did this come about?

Tabas:

I came about because the federal tax law for many years said you had to give away all your interests in property, except with respect to certain kinds of interests, and that law sunsetted in 1976, if I'm not mistaken. And then what happened was because that law sunsetted, the conservation community wanted to make use of that law to create an instrument that allowed people to get a tax deduction for a gift of a partial interest. That opportunity led to the creation of the 1980 changes that allowed for a deduction of conservation easements.

TD:

So that was pre-Reagan, not a deliberate choice of policy change of the new administration.

Tabas:

Yes, it was pre-Reagan. I wouldn't characterize it as a liberal or conservative issue. It was not very highly visible. It was a very small part of the tax code. It was a very small thing in terms of the visibility. In those days the politics weren't as partisan as they are today. Of course, The Nature Conservancy made use of a lot of these tools. They pioneered some of the best practices. Now of course, there are 1,800 land trusts. The LTA is developing best practices. There is the Land Trust Accreditation Commission. I think actually the conservation community has gotten mature enough, as a result of a couple of things that happened to The Nature Conservancy in the early 2000s. I don't know if you know about that history.

TD:

The Washington Post series.

Tabas:

Right. As a result of that, the conservation community recognized the need to police itself, which led to the creation of the Accreditation Commission, the effort to provide good governance and best practices in the conservation community.

TD:

I imagine that The Nature Conservancy has an excellent network of contacts to all kinds of conservation organizations, agencies and other institutions. What is the added value of having a LTA for The Nature Conservancy?

Tabas:

Well, The Nature Conservancy has a different mission. Our mission is a broader mission. We employ strategies that are not just about land or land acquisition or easements. The land trust community and the LTA – I think – tend to be collection of local institutions. They focus on the lands in their jurisdiction. The Nature Conservancy is employing strategies having to do with dam removal, having to do with buying fishing licenses and trying to restructure the fishing industry in certain places to allow fishing to be done in a more sustainable way. We're trying to show how natural resources can be used in a more compatible way with conservation goals. So it is not just about land. Land is a



major component of it, but it's not just about land. I think there is more of a heavy emphasis on land-related issues in the LTA and the land trust community.

TD:

But that is part of the evolution of The Nature Conservancy.

Tabas:

Yes, absolutely. If we are serious about our mission – protecting the lands and waters on which all life depends – it means looking at land, water, air, climate change... We have a huge program in climate change. We are trying to demonstrate how adaptation strategies can be employed to address climate change. We have people working on policy changes to climate change.

(I talk about the land trust community in Germany and the skepticism of bigger organizations towards forming an umbrella organization.)

Tabas:

Here is what I would respond: The Nature Conservancy views the land trust community as an important partner. Even though there are a lot of smaller land trusts, we think they are valuable for a couple of reasons. One is: They represent the eyes and ears of the local community. You can't do conservation unless you have local community support.

TD:

And the state chapter structure of The Nature Conservancy is not enough for that?

Tabas:

Well, we have a state chapter structure, but they are focused on larger-scale projects. They are focused on things the local land trusts can't do. So there is a nice complementarity of resources and targets. Another thing is: If the land trusts didn't exist, all that work would fall on the shoulders of The Nature Conservancy. So we look at the land trusts as though they are taking on responsibilities that we want to see done, but would take away from our ability to do big stuff. So I think The Nature Conservancy would say it's a very nice partnership, because we do things they can't do and they do things we can't do. We work together and we complement our resources. In some cases, we're adding value to the work they do. We do training sessions for local land trusts. Land trusts provide the political eyes and ears to help us do our work more effectively. Big organizations who say they do better training, well, they have an obligation to participate in the community as we do. We go to the LTA Rally each year. Staff of The Nature Conservancy teaches seminars there.

TD:

And is there a competition?

Tabas:

I wouldn't say there is a competition with the land trusts. There may be a friendly competition with other national organizations.

TD:

Like the LTA?

Tabas:

Well, no. The LTA is functioning as the network. They are providing the functions of a network. I'm thinking more of other organizations as the Trust for Public Land or Ducks Unlimited that actually conduct a program of conservation. But it is not competition in the sense that we are constantly undercutting one another. We just did a huge project in Montana with the Trust for Public Land – the Montana Legacy Project, 300,000 acres, 0.5M \$ purchase. We worked hand in glove with the Trust for Public Land. It's a little like sibling rivalry. We're all part of the same team, but it's a healthy competition.

TD:

At some point in time, you might have thought that by founding the LTA, you are creating a competitor.

Tabas:

I think we have shown that there are enough resources to focus on. The LTA has its share of donors, and they go after them. Those donors don't necessarily give to the things that we are working on. We have our donors who aren't necessarily interested in the land trust work. So I think we are fortunate in this country to have enough philanthropic support that we can each accommodate our own thing. I don't know if that is true for other countries. That may require more... Some donors say to us: 'We'll give you money, but you have to cooperate with other conservation organizations.' So donors see the need to make sure that the organizations are using the resources well.

TD:

I would be interested if the pie got actually bigger because of the creation of this network.

Tabas:

I think it would. There would be more visibility. You can leverage the resources. Basically, from a network (perspective), you are leveraging the resources of every single organization, so that they get the power of the network as opposed to their own organization. The Nature Conservancy has sponsored in many states a state-wide land trust alliance – in Connecticut, in Pennsylvania... The Nature Conservancy put money into supporting those state coalitions or service bureaus that provide services to the land trusts in that state. That's another function of a network. The central network can provide things that are common to a number of organizations that they need. This would be an economy-of-scale issue.

TD:

How is your day-to-day cooperation with the LTA?

Tabas:

Well, on a state basis, I would say it's more common for the state TNC programs to work on a day-to-day basis with the land trusts of those states. On the national level, most of the things we cooperate on on a day-to-day basis are changes that we work on in policy – advocacy, legislation, regulations. We're working hand in glove with their policy people. Russ Shay (of the LTA) does some of the policy work. He works with our policy people. We have a Government Relations Program here, and they work hand in glove together. That's the area where we collaborate. We go to Congress and say: 'We need these tax incentives. We need these policy changes.'

TD:

I've talked to people from bigger land trusts who said that the LTA is catering to the wrong crowd, because the focus is too much on smaller and middle-sized trusts, helping them to get better, but the advocacy work is not focused on the needs of the bigger organizations. They focus too much on the Land and Water Conservation Fund and too little on tax incentives...

Tabas:

Well, I would disagree that they focus on... I think the LTA is leading the charge on tax incentives. I think they are doing a great job on tax incentives and funding programs, so I don't agree with that. I can see some organizations, like a regional land trust, saying: 'Well, I'm trying to fight the installation of an energy corridor, a powerline corridor, by keeping it out of the community. And the LTA is not really... That's not central to the LTA.' So there are some things that regional land trusts do that are not necessarily aligned with what the LTA is working on. But I think those are cases that are more limited. The bread and butter, the meat and potatoes... I think actually the LTA serves the needs of the broad land trust community pretty well. Those regional land trusts are beneficiaries of those tax policies and the funding program that they lobby for. I can see where there is some dispute. They are more in the nature of land use development issues that these regional land trusts...

TD:

They are out of the scope of the LTA.

Tabas:

Exactly. That's exactly right. The LTA focuses more on traditional land conservation transactions. I think The Nature Conservancy sees this and that's why we have a differentiation between the LTA and The Nature Conservancy, because they do focus more on traditional land conservation activities and we focus more on, you know, trying to work with the World Bank to influence the World Bank's investments in various kinds of energy-producing activities so that they are not as environmentally destructive as they would otherwise be. It is the same kind of problem, but I don't see...

TD:

Is The Nature Conservancy turning into a land use advocacy organization?

Tabas:

I wouldn't characterize it as land use and advocacy, but I would say we're looking at policy-level strategies that will influence the use of natural resources – land, water, and other things. You might characterize it as these policy-level strategies here, there are the land use advocacy issues a regional land trust might deal with, and then there are the local land conservation activities that a small land trust would do. They are all important. They are all at different scales. They require different organizations to be able to implement. You couldn't have a local land trust dealing with the World Bank. But The Nature Conservancy, given its global mission, that might be something we do. And we do it to the benefit of local land trusts. I don't know if that's helpful or not, but it is one perspective.

TD:

What are your biggest challenges right now?

Tabas:

Well, The Nature Conservancy is a very big organization. So one of the challenges is that we have so many things that we're trying to do, it is very hard to set priorities and say: 'Of these 10 things, the five things are the most important. That is where we will put our focus on.' Because The Nature

Conservancy has a tendency to try to do everything. So I think that is one of our challenges. I am managing the legal department, so one of my challenges is figuring out a way to provide services to a very diverse and decentralized organization. We have programs in 39 countries. We do things ranging from the traditional land conservation activities to working with the World Bank. And we have to provide legal support for that full range of activities. That is a challenge. How do you do that with a limited staff? We are no different than any other charity. We don't have unlimited resources. We have limited resources. We're dependent upon charitable contributions. That's a challenge. Fundraising is always a challenge.

TD:

Has the recession affected The Nature Conservancy?

Tabas:

It affected us a number of years ago. We had a downsizing. So now we are back on the upswing. I think people are nervous about the future, given the fiscal cliff in Europe and all that. People are worried and try to be very conservative with their resources.

## **10 Larry Kueter – Chair of the Accreditation Commission**

Kueter:

(...)

I am on the board of the LTA. I am chair of the Accreditation Commission. Here in Colorado – I am an attorney – all my legal work has been land conservation for the last year. Before that, it was about half conservation work and half doing other things.

TD:

Are there enough clients to survive?

Kueter:

Well, there is one land trust – Colorado Cattlemen's Agricultural Land Trust – that I helped form about 16 or 17 years ago. They were a client. I did the work. I supervised the attorneys that were doing the work for them. But a year ago, my law firm closed and I decided to do this on my own. They had enough work to keep one person busy. And I do a little bit of things for a couple of other land trusts. I am one of the few people that just do conservation work and are able to support themselves as an attorney. There probably aren't more than 10 or 20 attorneys in the country who are able to do that. So I got pretty lucky that way. It's a passion. I've also been at the center of the agricultural protection that has happened in the West. The Colorado Cattlemen's Land Trust was formed by the Colorado Cattlemen's Association, which is the trade association for ranchers in Colorado. They thought some of their members would like to have a land trust that they could donate conservation easements to. It was made up of people that understood ranching, as opposed to other land trusts. They thought a couple of ranchers a year would do that.

TD:

No tree huggers...

Kueter:

Right. It was a balance. We were a little concerned about whether they would just be an old boy network. You would make these promises, but your friends would look the other way. It's not that at all. The board members take this very seriously. But in the 15 years, they hold easements on almost 400,000 acres of land. This year we'll do another 10,000, only in Colorado. Colorado is about 100,000 square miles (64,000,000 acres), but a lot of it is federally owned – national forests, Bureau of Land Management. So sometimes the land you protect... There is a valley in Colorado where we protect about 15,000 to 20,000 acres, but the valley only has about 35,000 acres of privately owned land, and everything around it is federally owned. If we get all of that land protected the impact is much broader because of the federally owned land. So after the Colorado experiment started to go well, California, Wyoming, Kansas and Oregon all created land trusts out of their producer organizations. So there is a network of land trusts in the West that are rancher-oriented. They still take the conservation very seriously. There is also one in Montana. Among the seven of those, they form the 'Partnership of Rangeland Trusts'. All of those seven hold about 1.5M acres of land in the West. The land trust movement started out a little bit as an environmental movement. In a lot of places they figured out how to deal with the dairy farmers. In Vermont the land trusts figured out how to do that. But the connection here in the West between the land trust movement and the ranchers is what has caused the explosion of conservation in the West. And that has caused an ability to influence legislators and Congress all over the West. So it has really changed the physical and political

landscape. All of those things have changed, partly because of what has happened down here in the West of the last 10 years.

TD:

Is there a different niche for land trusts here in the West than there is in the East?

Kueter:

Just a different role. In New England, as an example, there are the small towns, and it is worth protecting 10 or 20 acres that are a buffer at the edge of town or 20 acres of wooded area that has gotten conservation importance. Here I work in 1,000 acres at a time. It is just working in a different scale. And it is connected with a different... The landowners are our clients in a way, so we are connected with a different kind of client. A different ownership pattern. It has caused an ability in Congress now... The West is pretty conservative politically, but the land trusts have great support from both Democratic and Republican congressmen all over the West. It's a pretty non-partisan issue. So I was in Washington DC in May with the Colorado Cattlemen's Land Trust. We stopped in various offices. Democrats and Republicans, they were all glad to see us. They all support us. It's a very interesting place when almost everything else in the world is very, very contentious, and this issue is not. So, circling back to the LTA, one of the things that have caused the LTA succeed over time is that it stayed very focused about its mission, which is private land conservation. It has very carefully stayed out of the other... The climate change policy debate, what should or shouldn't happen, the Clean Water Acts. We let other people fight those battles. We are about landowners making their individual decisions. It is always voluntary. Sometimes there is money to give somebody an incentive to do it, but it is always voluntary. That strikes a chord with everybody. On the Democratic side, we are preserving land, and it has got wonderful environmental consequences. On the Republican side, we're respecting private property owners and their property decisions. So we have very, very conservative people protecting their land and then working with land trusts. It's a really pretty interesting place.

TD:

What I gather is that ranch land protection is the primary purpose of land trusts in general in Colorado. Would you say that?

Kueter:

Of this one. There is a land trust in Grand Junction, in the western part of the state. They have protected some ranches. They work in Mesa County. But they have a lot of peach orchards – five, ten acre peach orchards – and they have protected peach orchards. So other land trusts have protected ranch lands as well, but they tend to work in a smaller community, so they do some ranch protection, but they'll do other kinds of projects as well. The Colorado Cattlemen's Land Trust works statewide and it just protects ranches.

TD:

And it does so to prevent development.

Kueter:

Yes.

TD:

Is it all through conservation easements?

Kueter:

Yes, only easements, no fee title.

TD:

So it is a win-win situation. The rancher gets the tax benefits and you... Can you steer development? Does it have an impact on sprawl on a spatial planning level?

Kueter:

It has some impact on the planning. A lot of the ranches we protect aren't close to urban development. Some are, but most of them are not. We have 8 or 10 projects north of Steamboat Springs, which is a big ski area. There it is impacting the development patterns. These are along the Elk River, and now the Elk River isn't going to get divided into 35 acre tracts. So that has an impact on development. But we protect things that are pretty remote as well. The biggest impact it has on the development is: In Colorado you have the right without any government approval to divide land into 35 acre parcels, and you can drill a water well by state law. So anybody can sell 35 acres to somebody to put a house on, drill a well, and that fragments the land for agriculture, but also for wildlife. The biggest impact that our Colorado Cattlemen's Land Trust has is keeping that from happening. (It has) less consequence on suburban development because we tend to be a little farther out than that. But some other land trusts hold conservation easements (in suburban areas). It will protect the property while development will (continue) around it. That does happen.

TD:

But these 35 acre lots would still become residential?

Kueter:

Yes. But if you think about a square mile of land, you can divide that into 15 or 16 of those, and you put a house on everyone. It is not the same anymore. It doesn't look the same anymore, really scarred. Even one house on every 35 acres kind of scars the landscape. They put a fence around it. The wildlife can't migrate. It has all kinds of impacts.

TD:

Do you prioritize what kind of properties you protect or do you just react to landowners?

Kueter:

A little of both. At the beginning it was reacting to landowners. The board has set some minimum standards of what it accepts. They will accept something as small as 160 acres if it is irrigated.

TD:

These round patterns you see from the plane?

Kueter:

It could be that, but usually it is just ditches with mountain runoff. They'll accept for dry land ranching 600 acres. They like it to be 600 acres and larger and active ranching. Those are the minimums for them. At the beginning they were formed to be reactive, to be just a service to their members. When they were formed, one of the principals was that the land trust wouldn't go knocking on ranchers' doors and say: 'Would you like to conserve your land?' Because – we don't have door-to-door salesmen anymore around here, but we used to – the Cattlemen' Association

didn't want the land trust to be a salesman. They wanted people to be making their own mind and then coming to the land trust. So at first it was that and it was a modest pace of protecting the land. In 2000 Colorado enacted a tax credit for conservation easements, and the land trust started finding sources of money to buy conservation easements. Now the line is longer than we can deal with. So this year, we'll probably do about 25 to 30 project, at least half of them will include some money to purchase the conservation easement. There is Great Outdoors Colorado, which is a statewide organization, from one or two counties that have a tax for open space, and from the US Department of Agriculture, which has a Farm and Ranchland Protection Program, and we use a lot of their money. But even in those, we rarely pay more than 50% of the value of the easement, so it's half purchase and half donation. That's how it ends up being structured. This, finding some sources of money and the Colorado tax credit, was like lighting a fire under all of this. It has just exploded over the last 10 or 12 years as a result of that.

TD:

Do you install endowment funds when you take over easements?

Kueter:

Yes. Right now, the base amount is about 12,000 \$ per transaction. The Cattlemen's Land Trust has probably getting close to 2.5M \$ in endowment. But it's forever. (He laughs.) It looks like a lot of money but it is also...

TD:

You can only take out the interest.

Kueter:

Yes. They take a little bit of the interest off to cover their stewardship costs, and they leave the principal the same. They also have a defense fund for lawsuits. That's – I think – about some 200,000 \$. That could disappear pretty quickly.

TD:

Are you going to join TerraFirma?

Kueter:

Yes. We were one of the volunteers at the early stage. They wanted to do that, and they are getting ready for the paperwork. They are putting it into the budget for the next year. I was involved a lot in TerraFirma on the Alliance board, so I wasn't going to let them not do that. It's a really wise idea. You don't know if it will save you money or the next land trust, but it will. It will also scare off legal disputes. The LTA got the last grant that they needed in June. The regulators of Vermont had a capitalization requirement – I think it was 4M \$ – in order to start doing business, and the LTA in June reached the 4M \$. So next spring it will be real. We voted at the June meeting of the LTA board to go ahead and get started. It is a real thing, pretty exciting.

TD:

What is the content of a typical conservation easement for ranch land protection?

Kueter:

They are pretty typical of others in allowing a right of access to monitor, enforce... The technical requirements of agreeing on a baseline report, those are all no different than any other conservation



easement. They will specify what we call the 'reserved rights', so on the 1.000 acres you have 10 acres with a barn and a house, and that's where you can build. We'll say how many additional houses they can build, so we always put a limit on that. We do building envelopes. All of the major structures have to be within those. We allow minor agricultural structures, a water tank, irrigation systems, what they call 'loafing sheds', which would be like a shade structure open on the side, but something where animals can go in to get out of the wind and snow. We allow those anywhere on the property, but any major agricultural structure has to go within the building envelopes. We don't tell them how many agricultural structures, whatever they want and they can fit within that area. We will speak to how many residential buildings can be constructed. The requirements on stewardship for the landowner to perform are pretty general. It's because we don't feel like we are in the regulating business: 'Protect your ranch and you should operate it this way.' You might get some of that if you are... We are doing some easements that are protecting the Sage Grouse, which is close to an endangered species. They have very specific breeding requirements when they nest and breed. Then you might get something that says: 'You can't cut the hay in this month because of that.' Sometimes if there is funding for the purchase because of something like the Sage Grouse, we will get more specific, but generally we set normal industry practices. It gives us the ability if someone is just doing awful, and the grass is gone because they overgraze, we have the ability to go and fix that, but we don't want to tell the ranchers how many cattle to have, where to put them, when to move them,... The board feels really strongly that that's not their business. If you think about what kind of a rancher would think about conserving their ranch, it is one who would have pretty good conservation practices to begin with. So it's the one who would care a lot about the land. We really don't have much problems that way. We look at the easement as something of limitation. It tells you what you can't do. Not very often we start to tell them this is how you have to do it. We don't do that very much.

TD:

What if a rancher who has a conservation easement on his ranch sells the land and the next owner wants to do irrigation agriculture. Would that be ok?

Kueter:

If he has enough water to grow crops instead of cows, that would be ok with us.

TD:

So it just says the land use is for agricultural purposes.

Kueter:

Yes. On 95% of the land, hay is about the only crop we see. That's not because that is all we want, it is because who would like to deal with us. We don't have many easements in Eastern Colorado on wheat farming. They are not quite as interested. If they came to us, we would do that. So it is about preserving the property so that it has the capability of being used for agriculture. We don't even require that they keep ranching. We don't say: 'You have to have cows there.' We just say: 'You have to keep it so that you or somebody else could do that.'

TD:

How about resource protection, like watershed or soil erosion?

Kueter:

We roll that into our general industry practices and leave that to the landowners to decide. That's a place where we don't get very specific about what the landowner has to do. Improving it for agriculture generally would be looked at favorably.

TD:

Are there any properties where you require visitor access?

Kueter:

A couple, but not very many. Many of them have fishing and hunting on their property. Our easements say they have the right to lease the property or charge for somebody to come and hunt on their land. So the public does get on a lot of these properties, but it's the public through the land owner as opposed to a general right of the public to walk up and onto the land.

(Kueter talks about public access to land in England.)

It (public access to the countryside) doesn't work here. There isn't something culturally that would give you confidence that the people you would let on the land would really respect it the way they do in Germany and England.

(...)

In Colorado it helps that there is so much public land already. There are tens of thousands of square miles of national forest and Bureau of Land Management land where people have the right to go on. When you don't allow access to these ranches, it doesn't keep people in the city because they can't do that because there are lots of other choices. But we're worried about that because kids in cities don't know where their food comes from. They don't know why they should value these lands, and so this board of ranchers is worried about this. They have talked and thought about: 'How do we let (the public in)? We don't know any way to just really let the public have access here. All of a sudden it's mountain bike heaven, and the cattle are harassed.' They just don't know how to do that, but they know they need to get the public more engaged about it. They haven't figured out how to do that yet. It's interesting to watch.

TD:

Have you talked about educational programs?

Kueter:

Yes. They do that a little bit. We are protecting a ranch right now that has a program with the local school. Kids come out a couple of times a year and spend days on the ranch. Those kinds of things are happening some, but it is in the beginning stages. It was very different for me growing up in Wisconsin in dairy country. My grandparents had a 160 acre dairy farm. That was a pretty good size and enough to run a dairy farm. It isn't now, but back in the 1950s it was. And every dairy farmer lived on their land. Then we went to Germany, where everybody lived in town and walked out to their land. And then I come here to the West, where the scale is just so much bigger. They had range wars between sheep growers and the cattlemen. It was a bit of a lawless place when it was settled. The culture here is very different even than it is in the Midwest, and the Midwest is so different than what we found in Germany. So it is really interesting to see all of that.

TD:

How do you finance your operations? And what is the staff size of your organization?

Kueter:

They have nine staff. . They finance it from a lot of different sources. They take a little bit of the interest from the endowment to help fund the stewardship operations. They have cultivated donors for charitable deductions. They hold a barbeque in August every year. That will generate some money. Those donations are maybe 30% of what they need to operate. They get some grants too.

TD:

Are the donations mostly from individuals or foundations?

Kueter:

Those are mostly individual donations. They get some foundation money. Foundation money is usually about doing something specific. The money is for your staff support. It might be geographic related, like doing some conservation in Eastern Colorado or hold some workshops. They charge a project fee for the projects that they do. That's a pretty significant source. Those are the main pieces, but they have to look to multiple sources to get to that. There isn't one easy source to create 650,000 \$ every year to keep a staff going. Right now, they are still doing enough projects that the project income is a pretty good size.

TD:

Do you have membership fees?

Kueter:

No. It is not a membership organization. They have a pretty good list of people that they solicit for this barbeque and some other special events. Since a donation is a deduction from the federal taxes, they get a lot of money in December every year. Their flow of money isn't very even. It is pretty uneven. At some point... right now they still have as far forward as we can see... three, five, seven years they are still going to be doing projects, but at some point you start doing less projects and you become a stewardship organization instead of a conservation. When that switches... The staff and executive director and the board are thinking about this already a little bit because then the project fees aren't there, but you've got a statewide organization. The easements are all over the state, about 270 of them now. That's 270 ranches to visit. If that gets to 400 or 500, that's a lot of work every year. You need a base of support just to do that if you don't do any more conservation work.

TD:

So you can already see that there is a saturation point where the role of the trust will change?

Kueter:

You know that it's going to come. We're not sure when, but we've all seen some other organizations that have crossed that threshold, because they have conserved what worth or capable of being conserved, and they are doing much less of that and more of just the stewardship. You can see organizations that have crossed that threshold already. The Jackson Hole Land Trust is a little bit like that in Jackson, Wyoming. Their focus was Jackson, Wyoming, which has national forest, Teton National Park, all of that. So there is only so much private land to begin with. So that's an example of one organization that probably has a higher focus on stewardship than adding more conservation to it. I am sure in the East there are some organizations like that. I think in Colorado there are not that many quite like that yet. Most of them are still pretty actively conserving land.

TD:

Let's talk about the tax credit.

Kueter:

Sure. I won't tell you the whole story, because it's very long, but where we ended up. It started in 2000. For a donation of a conservation easement where the donation value is 750.000 \$ or more, the landowner can get a tax credit for 50% of the 750.000 \$. So they can get a tax credit of 375.000 \$ against the Colorado state income tax. The Colorado state income tax is 4%, so it is not very high. A rancher who is land rich and cash poor doesn't have much income. So a 375.000 \$ tax credit when you don't have much taxes to pay doesn't do you much good. But early in the creation of this we made the credit transferable so that the landowner who has little or no Colorado income tax but donates a conservation easement worth 750.000 \$ or more has this credit that they can transfer to somebody else. There are some tax credit brokers who are – for the most part – also very conservation-minded people, who match some people who do have a lot of income – companies, very wealthy individuals – with those landowners to sell the credit. They typically sell it for about 80 cents on the dollar. So 375.000 \$ dollar sells for 300.000 \$. A rancher can come and say: 'I don't want to develop this land. I don't want it developed. I can keep people after I die from developing it. I am going to do that. I am giving away 800.000 \$ in value, so I get a tax credit of 50%, of 375.000 \$. I hold a 375.000 \$ tax credit. Somebody will pay me 300.000 \$ for that. I can pay down my debt. I can buy a new tractor. I can buy some more land.' That is pretty enticing. It is the ability to transfer it that just has really been the engine for how well it worked and how much land it conserved, because the landowner who gives away so much value but wouldn't have any use for the tax credit part of it has an ability to sell it and get that much cash. They are giving away 800.000 \$ in value. They are not getting 800.000 \$ worth. They are only ending up with 300.000 \$, but it is for something they didn't want to use in the first place. That looks attractive to a lot of ranchers.

TD:

So the wealthy individual would save 75.000 \$.

Kueter:

Actually the tax credit broker gets a little bit too. But yes, that's why the buyer does it. They pay 80 cents for something they get to use all of. Maybe 5% of the 20% goes to the tax credit broker. So they save about 15% on their tax bill. Most of the individuals who do that have some conservation interest. They like the fact that they have helped the rancher conserve his land and that they used the tax credit so the rancher would save the ranch. And they got something out of it as well, so almost everybody wins a little bit in that.

TD:

But the state loses.

Kueter:

The state does. And the reason the state did it: When you get something like this, you have to be lucky as well as good about what you do. The state has some very strange rules about its taxes and budgets. In the year that the tax credit was put in place, the state was taking in more revenue than it was allowed to spend by the law. It had a budget surplus. A law enacted in the constitution by the voters said that if they had that they had to collect the money and then they had to give it back pro rata to the taxpayers. The legislators like spending money for the things they support. They couldn't figure out how to... They were getting this extra money but they couldn't do anything with it. They were going to have to give it back. So they thought: 'Well, if we give people a credit, so we don't ever get the money, then we've influenced peoples' behavior by the credit and the money won't come in to the state, and we don't have to write a check to each tax payer and give it back.' So the tax credit

was enacted in a couple-year period of time when the state was running regular surpluses. There were a number of tax credits adopted just so the legislature could use that money if it got it couldn't do anything with. It gave people incentives to not get it at all. It was really kind of strange. Those same rules prohibit changes in tax policy without a vote of the people. So once it was put in place, it almost can't be changed. It is really strange circumstances that all aligned to make it happen. I am sure that we've had one or two million extra acres protected in Colorado because of that tax credit. The state now – this year it will be about... for a while it was about 50M \$ in revenue a year that the state estimated that it didn't get but would have if the tax credit hadn't been there. It's been a little less because of the recession. People are doing a little less donations of conservation easements without any payment. So it has gone down a bit. We think that a normal level is probably 40M to 50M \$ a year. It's a lot of money, but it's a state with an 8Bn \$ budget and the landscape is one of the things that brings everybody to Colorado. It brought me here. It's a pretty good investment. The state has gotten its money out of that investment. It is not an insignificant amount of money, but at the state level we have both Democrats' and Republicans' support for this, like we do at the national level. We have a Colorado Coalition of Land Trusts that does at the state level what the LTA does at the national level. They are very careful about being focused so they are viewed as non-partisan, so whichever party gets in power, we can work with them and we're ok. CCLT has walked that line really carefully and well over the last 20 years as well.

TD:

Are there other tax credit programs in Colorado?

Kueter:

Not in Colorado. There are a couple of counties...

TD:

I mean not related to land conservation.

Kueter:

Oh, yes. There are some other tax credits for... I've forgotten what they are for. There are some related to investment in equipment. There are some others, about 10 or 15 of them adopted at the time when the conservation tax credit was adopted. Most of those are still around as well. I used to know what some of them were, but I lost track of them.

TD:

There has been a period when the tax credit program was exploited and abused.

Kueter:

It was abused. We had two organizations that...

(Kueter's wife Nancy comes home.)

The abuse has happened because the State Department of Revenue wasn't paying attention to what was going on. We met with them and told them that we knew some of that was going on.

TD:

Conservation easements on golf courses?

Kueter:

Well, the land was ok. It was that the values were so inflated. The problem was always the appraisals. We told them that that was going on and we asked them to do something about it, because it's confidential tax returns. We couldn't go in and look at the paper and show them. And they just wouldn't do anything about it. Then, they were offended when they found problems years later. In 2008, the Colorado Coalition of Land Trusts went to the legislature and we got the majority leader of the House of Representatives to create a task force that I chaired. We made some legislative recommendations. One was to certify land trusts. A landowner couldn't get the tax credit unless they donated the easement to a certified organization. The two bad organizations stopped doing business. So we got control of that, but it is a cloud on the program, which is what we are worried about. And there was a cloud because the state just didn't pay attention. The first time they saw something like that they could have called us to ask: 'Does this make sense? Does this work?' We would have said no. They would have gone after somebody, and it would have stopped. Instead they just... It's like speeding. If you know all the police officers are in a meeting and there is nobody... You need the enforcement. Now we have it, but we didn't have it. The problem is isolated and it is not still there, but it was a real problem for a couple of years. We were getting some bad headlines. There was some outright fraud involved where the appraisals were probably 8 to 10 times as high as they should have been. Not that you appraised it at 1M \$ and it only should have been 700.000 \$. This is tough work to appraise these. That is the normal territory. This was something that was appraised at 1M \$ that was really worth 100.000 \$. That was what was going on. It is now under control, but we still suffer the effects of that a bit.

TD:

In public opinion?

Kueter:

A little bit in public opinion, but mostly in the legislature where they see that happening and wasting money comes to the forefront of their mind. That is the biggest problem, making sure we didn't lose our legislative support for the program. In the end I think we didn't but it took a lot of work always to explain: 'The Colorado Coalition of Land Trusts and its members, that's not where it happened. It happened with these. They are not doing it anymore.' We've had to say this over and over again. Finally I think we're almost passed that but it took a while.

TD:

You said there is a certification scheme now. Is that on the state level?

Kueter:

Yes, that's on the state level.

TD:

Is it comparable to the LTA accreditation program?

Kueter:

It is pretty similar. The accreditation was already in existence when we were thinking about it at the state level. So in the legislation, we wrote that if you are accredited by a recognized national organization, at the state level you just check the box on the first page – and you write the check. (He laughs.) You still have to pay them, but you don't have to do anything else for the certification. That has worked pretty well. When they did the state certification they talked to the Accreditation

Commission a lot to make sure there weren't standards that you couldn't meet both of, that they were consistent. That worked reasonably well.

TD:

Isn't it redundant to have two certification programs?

Kueter:

It isn't in this case because the Accreditation Commission is voluntary. In Colorado we needed something that was a requirement. If you want to receive donations where the donor gets the tax credit, you've got to do this. We could have said you have got to get accredited by the national organization, but then this voluntary group turns out to be a regulatory, but not by its choice. So that's why we thought that that overlap was the best. The public open space program – a Boulder County open Space program or the Larimer County open space program – those counties... You could donate a conservation easement to a governmental entity too, they have to get certified. And the state of Colorado, we made the Colorado Division of Wildlife get certified to hold conservation easements So they didn't complain about that. The only one we couldn't regulate was the US government, because they couldn't be regulated by Colorado law.

TD:

What are the main federal agencies holding easements?

Kueter:

The US Fish and Wildlife Service hold a lot of conservation easements. The Bureau of Land Management I don't think has many. I am not sure about the (US) Forest Service. But the Fish and Wildlife Service holds a lot of them, especially in some of the flyways where the duck population flies. In North and South Dakota, in the Pothole Region, the US Fish and Wildlife Service has hundreds and hundreds of easements. That's why we have both a certification at the state level and accreditation at the national level.

TD:

If I understand correctly, the accreditation program has come from a similar motivation as the state certification program, to get a certain minimum standard of professionalism into the movement. Has that happened? Has it been effective?

Kueter:

Yes, but it took a little while. I was on the committee... The whole story – and this one is worth repeating a little bit of – started in 2003. The LTA has what they call the Standards and Practices. There was a committee I was on in 2003 to update those. It had been 15 years since they had been updated. That was done. It took about a year and a half. After that they formed a follow-up committee to decide whether or not the LTA should have an accreditation program or some kind of program that... Should it be mandatory or voluntary? What should be the standard? What should it do related to those standards to recognize land trusts that were doing really excellent work and that were excellent organizations? That committee in 2004 or 2005 – and I was a co-chair of that committee – recommended to the LTA board that they create an Accreditation Commission. So that was done and we had our first meeting in 2006. We had a consultant who did accreditation programs for other industries. In the United States, colleges have them. There are university and college accreditation programs. Hospitals have them, museums, lots of others... But among non-profits, nobody had ever done anything like this. We had to figure this out from scratch. That took a while.

TD:

Why did you feel the need to do that?

Kueter:

Well, the community had been thinking about that for probably 15 to 20 years. It turned out that we... I believe that as a person or as a community of interest, you benefit from holding yourself to high standards. You don't always know when or how that's going to happen. I think you benefit from that in life. And this is a community that takes their work seriously. I think some people were seeing that: 'Well, people say they follow these standards, but are they really doing it?' So I think there was some concern about that, but I think mostly it comes from a feeling of: 'We should hold ourselves to high standards, and we should be willing to see if we meet those. Something like the accreditation will show that we do.' Then probably all along it was viewed as something that as far as the credibility goes... So much of the credibility of this land trust world is dependent... We're dependent on public support. The members of land trusts write checks, supporters for the Cattlemen write checks, the state legislators, Congress – without the tax benefits and money, it would disappear. Maybe a little bit here and there of somebody who wants to do conservation, but without a little bit of the incentive it just disappears. So we're dependent upon that. The credibility of what we do is really essential to that. I think people saw that. This committee, the way it played out... This is how you get rewarded for doing that, which is – I believe – by holding yourself to highest standards. In 2005 The Nature Conservancy – the biggest nature conservation organization in the world – got hauled in front of the United States Senate Finance Committee...

TD:

...after the Washington Post articles...

Kueter:

...after the Washington Post articles. And Rand Wentworth went to testify. He got called up with not more than a couple of weeks' notice. He was able to sit in front of that Finance Committee and say to them that right now the LTA has a committee that is meeting 40 miles up the road in Baltimore, which is where we were – meeting and discussing the possibility of an accreditation program. He got so much credibility for being able to say that because he was able to say: 'We are already doing this, before you would have made us do something.' I think it saved us from IRS oversight in a really significant way. So the motivation was a general feeling of: 'We should hold ourselves to high standards. We should be able to have organizations show that they meet those. How do we do that?' It turned out to have an enormous benefit in front of Congress. We hadn't even made the decision to have an accreditation program, but we were meeting. Rand Wentworth was at our meeting – I was co-chairing the meeting – and in a break, he hauled me into a hallway to say: 'I am headed from here to the Senate Finance Committee and here is what I am going to say. Does that work?' So we benefited enormously from that. A community of really well-meaning people who understand the importance of what they do. They recognize the public credibility of what they do. Thinking that we should hold ourselves to high standards... It just flowed from that. It wasn't reactive. If nothing had happened, it might have occurred anyway, to be reactive. But it wasn't. It flowed from all of that. It is not an accreditation program because of the Senate Finance Committee. That just cemented the fact of why we were doing what we were already in process.

TD:

But you might have been aware of things happening in the community that you felt you needed to do something about, or otherwise it would get out of control...



Kueter:

Sure.

TD:

So were you more sensitive to what was going on in the land trust community than the Finance Committee was?

Kueter:

I think so. I think we were more knowledgeable. There were a couple of deals where The Nature Conservancy just pushed the edge a little bit, not in a bad way. They were just trying to figure out how to be creative. In one they should have paid more attention to the conflicts of interests and the public perception of what they did. It made for an easy headline. That's what happened. But the accreditation wasn't for fear of that kind of event. It was the community really holding itself (accountable) to these standards. Some of them are really simple. You have to do a baseline before you do a donation. Not everybody was doing that. But if the IRS saw the wrong order, they would get to say: 'No charitable deduction.' Then you think about that land trust and its local community not doing something that simple correctly. The community would say: 'You want me to make a donation? Joe Smith just lost his entire deduction because you didn't do your homework. And you want me to donate?' Your local credibility is lost. The next landowner you talk to will wonder: 'Do I want to deal with them?' We live in a world where it is not rocket science, but you really have to pay attention to the details. I think what was happening in the community was that we saw people were well intentioned, but they were overworked. They were non-profits. They were focused on the land and nothing else. They weren't paying attention to all the details. Accreditation – a part of it – is: 'You got to pay attention to these details. Yes, there is a bigger picture, but you got to get the details right for doing it.' Now we have... There are about 1,600 or 1,700 land trusts in the country. Probably two thirds of those belong to the LTA, but a lot of them are small one-property organizations in New England. We figure there are somewhere between 500 and 700 organizations that really could think about being accredited. Some are in existence two years with two projects or aren't really active anymore. Some of them are almost dormant. That's the range we think we can get to. We now – with our registration for next year – have either accredited or have in process right now or have registered for 2013 a little over 300 land trusts. If you had asked me that question two years ago, I was worried, because we had an initial bump of activity and then it really slowed down. We weren't sure if it was disinterest or people thinking: 'Oh, we need to be sure we are ready.' I think it was a little bit of that. The LTA went out and prodded people. Now, 300 in process or accredited after six years – that's a pretty good success rate. We still got a lot of work to do and we can still screw it up, but we're in a pretty good place right now.

TD:

How is the board of trustees of the LTA composed? How are its members chosen?

Kueter:

The non-profit organizations are created under state law. The Colorado Cattlemen's Land Trust as an example is a Colorado non-profit organization. The non-profit organization has 40 pages of rules and the Colorado statutes. This is as complicated as being a for-profit corporation. You can elect to be a membership organization where you allow people to sign up, maybe write a 30 or 50 \$ check to be a member. Then you have the members vote on the board, and the board votes. But you don't have to be a member organization. You can be what we call a 'perpetual board organization', where you create the non-profit, at the original time you select an original board, you create bylaws that talk

about how board members can be removed, how they are elected, how many, how the bylaws can be changed, which takes a full complement of the board, but it is not a democratic organization. So being a non-profit corporation in the US does not mean that you have to be a democratic organization.

TD:

And the LTA?

Kueter:

The LTA is not a membership organization for voting either. There is reason for that. You have to keep your... You can't ever blame your members for what you are doing, because they told you to do it. They can't say: 'Well, we are members, and we told you to do that. If it doesn't go well, it is kind of all our fault.' So as not being a member organization, you have to understand your community and know what they need. So we do have... Land trusts will say they are members of the LTA, and they are, but our bylaws don't provide for any voting rights for being a member. But if we stop being of use to them, they stop being members, and then we can't go to Congress and speak for the whole community.

TD:

So they are more like clients, you provide services and they pay for that.

Kueter:

They are. We provide services to them, and they support us with their membership and allow us to speak for them. The fact of speaking for 1,700 local organizations made up of diverse people politically is really powerful when we have to go to congressional offices or hearings. The constraint on being on the LTA board is: If you stop being of value for them and speak for them, they'll go create an organization that does, and you are just going to disappear. So it's not that we do whatever we want. That's the kind of tension that keeps you in line. I have been on the board for six years, and I was asked to join the board by the board that existed at the time. While I have been on, we have added new members. And will after I am off. So it is a self-perpetuating board. We have about 20 board members.

TD:

So at board meetings you say: 'We need a new board member for this or that.'?

Kueter:

Well, actually, the bylaws, which are the laws of the organization, provide that we can have up to 22 board members. We have a committee called – I think – the Board Governance Committee that is charged with that... and we have term limits. You can serve two three-year terms. After that you have to be in office or something. I am in my third three-year term, because of the Accreditation Commission, but normally after two three-year terms somebody goes off. So this Board Governance Committee is charged with: 'Ok, how many board members do we have? Do we have as many as we can? Are we one or two low? Do we want to fill those? Who can't be on the board anymore at the end of this year? Is there somebody who has served a term but doesn't want to do a second term? Is there somebody that we don't want?' Every once in a while, not often, there is somebody who is finishing the first term who you don't want to have a second term. That happened to somebody just as I was coming on. So that Board Governance Committee is charged with making recommendations to the full board. We have a matrix that asks: What are the skills you would want on a board? Not

everybody can have everything, but you want some geographic diversity from different parts of the country, different size of organizations. You want people in that are working day-to-day in the land trust world, which is what I do. You want people that are conservation-minded, but have access to fundraising. Somebody who is a board member of a large Eastern land trust, but is in the finance world of New York City, they might make a really great board member. So you create this matrix and you try to have a good mix of all of those things over time. That's part of the charge of the Governance Committee, to keep track of that balance. Do we have nobody with fundraising or is everybody good with fundraising but nobody knows what our members do anymore? You keep track of that over time. A specific committee keeps track of that. We tend not to see a need for one particular thing and go find somebody for that. We tend to look a little bit more generally. Then you see how you are operating in the next round. Maybe you need a little more help here, and then you put an emphasis on that. The committees we set up, we can put non-board members on the committees. One of my ex-partners at the law firm who does a lot of conservation work, Bill Silverstein – he is also a co-counsel for the Colorado Coalition of Land Trusts – he used to be on the LTA board before I was. He has been off for seven or eight years now, but he is on the Board Defense Committee. So we look in the world outside the board for our committees to help as well.

TD:

Are there any organizations that are required to be on the board, for example The Nature Conservancy?

Kueter:

No. Right now, so many people in the conservation world at one time or another worked for them, that it is kind of inevitable. (He laughs.) The danger of that is... Some boards will do that, a designated seat, like: 'You are the representative for the Midwest, or the TNC seat.' What happens when you do that is people think that their role is just that. So it is different to say: 'We want a geographic diversity, so we want a board member from the Midwest on the board.' But we don't want a Midwest seat, where they come on and think their responsibility is to look out just for the Midwest and not think about the bigger picture. We say: 'Your job is to think about the whole thing, but we want your perspective from there.' So both on the Accreditation Commission and at the LTA board, we have been very careful not to create niches like that where somebody comes on and thinks their job is a really narrow interest.

TD:

...just to advocate the interest of their own organization.

Kueter:

Exactly, that's what happens. And you kind of told them that if you say: 'You are the Midwest representative on the Accreditation Commission.' Well, that's what they think their job is. And it's different from that. So both the Commission and the Alliance board we look to have that diversity so we got the different perspectives, but nobody is ever told: 'You are filling the large land trust seat. We want somebody on the Accreditation Commission from a large trust and from a small volunteer land trust.' We have people like that but they are never told that that is their job. We want their perspective but their job is the same as everybody else's. That's more work, but it works pretty well to do that.

TD:

It is difficult to keep that balance, I imagine.

Kueter:

Yes. You work at it. That's why you have this Governance Committee – and the Accreditation Commission has its own version of that for filling commissioners – to think about that mix.

TD:

But there can still be a dynamic where the organization becomes dominated by let's say New England land trust, and that feeds into itself, so all of a sudden you have a biased organization.

Kueter:

You have to work really hard at that, but I think you solve those questions from the bottom up. You can't fix that from the top down. You have really good officers of the board for running meetings, how committees get set up, that people are respectful and fair... Then you think really well about who you put on. When we created the Accreditation Commission – this is not in our matrix, because it would look dumb, but we asked the question: 'Do they work well with others?' It is not an actual box to check but we ask that question every time, because even on a board of 20 people, one person that just won't accept a decision that they disagree with can kill the dynamics of a board. So we really work hard at that. What happens is you are rewarded by how the board works then. Both the LTA board and the Accreditation Commission, we have not had a dysfunctional person on either one of those, where they just reduce the overall effectiveness of the whole... So we really work hard on that.

TD:

Do you vote unanimously for accreditation?

Kueter:

No, it's just a majority vote. This is true for the LTA board as well. Some bylaws might say that there are some things that need a higher percentage. Sometimes bylaws will say you can't change bylaws without a two thirds vote. There might be some other things you think about, but once or twice on the LTA board level – and I have done it as chair of the Accreditation Commission – when an issue was so split that about half were for and half were against, it was just one more on one side than the other, I have stopped it and held a decision to come back to it, not to have that kind of a split. Probably 95% of the things done at the Accreditation Commission are done unanimously, on the LTA board level probably even higher than that. There isn't... that you don't get factions on the board. So I've done that a couple of times where I just stepped back to a different decision that more people were comfortable with. If of 16 commissioners, 12 are ok and 4 are not, that's good enough, but if it gets almost fifty-fifty I just stop that. I say: 'We need to all get to a better place about this decision than half unhappy with it.' If it's a small decision I don't worry about it, but on big decisions I've done that a couple of times.

TD:

How do you see the role of the LTA? You said that about two thirds of the land trusts in the US are members of the LTA. Why not more?

Kueter:

I think some of the ones that aren't... An organization in Washington DC gets labeled as a lobbying organization, so there are few organizations that are doing just a little bit of conservation and they think they are doing it just fine, and having this big organization in Washington DC creating accreditation and insurance and all of that... 'Why are you bothering us? Stay out of our lives.' So

there is a little bit of that, not a lot, but a little bit. But more is that they are just not active enough or are doing enough that it matters. Probably half of the land trusts in the country are in New England, New York State and California. Especially in New England and New York, in Connecticut a township would have a land trust just to protect these two pieces of property. And they did, and they have to stay in existence, but they are not doing anymore. 'Why should we pay dues to that organization? We have done what we were going to do. We're staying in existence because we need to watch those, but we're done.' That's the biggest part of organizations that don't belong or that just really don't need to be in the LTA.

TD:

So there isn't a huge untapped potential of organizations that you have been trying to address.

Kueter:

No. I can't – and I have been pretty deep in the business for 20 plus years – I can't think of one major credible land trust that is not a member of the LTA. When you ask the question: 'What percentage of conservation in the country is done by LTA members as opposed to other land trusts?' It is probably 99% of the work.

TD:

Who should the LTA cater to the most? There are very small trusts, very big trusts. Should it worry most about the big ones that do most of the work or the small ones that need the most help with standards and education?

Kueter:

Come to the next board meeting and you might get an answer. (He laughs.) It is not controversial. It is just difficult to do, because the resources and the help are going to the organizations that do most of the work. That's what funders want to see, conservation come out of at the end. So that's where the resources are going. But we had a discussion.

TD:

What are the services for the big organizations?

Kueter:

The LTA does a lot of re-granting, they get money from funders and they re-grant it to land trusts. The Nature Conservancy has a relationship of equals a little bit, but Colorado got help from the LTA when we had our tax credit credibility issues. They had a fund and wrote 30.000 or 40.000 \$ in checks to the Colorado Coalition of Land Trusts to do some legislative work to protect that. So they'll do things like that. The service they provide for everybody is the lobbying in Congress and with the IRS. Everybody gains from that. They'll raise money in the Midwest and...

TD:

Are they focusing on the right issues in lobbying?

Kueter:

I think so. We revisit them every year. Some of them are dictated to us by outside events, but some of them are our own initiative, and I think we got the right ones. They haven't changed a lot over the last 10 years, mostly the tax incentives and funding. The Department of Agriculture and the IRS are the key ones. So the LTA will hand out grants in the Midwest for an organizational assessment to be

done for an organization about where can they improve or do something specific. So land trusts get some pretty direct benefits as well as the lobbying in Washington DC. Actually at our last board meeting – not the one in June but the one before that – we had the discussion about these small land trusts. The discussion was: There was pressure from the small land trusts: ‘Is there a way for us to get recognized. We know there is no way we can get accredited.’

TD:

Because it is too much work or because they wouldn’t meet the standards?

Kueter:

Some of them didn’t meet the minimum of two projects. They have done one project. Or they have done five, but they are not going to do any more, so they think it doesn’t make sense for them to do all this work, which is probably the right answer. Now they feel like: ‘We’re hanging out there like we’re a bad actor because we can’t get accredited.’ So there is pressure about that. The discussion of the LTA board started to go towards: ‘Let’s put our focus and resources where the conservation is being done.’ And then the comment to that – which was the view that finally prevailed – was that we get our credibility from being able to stand up in front of Congress and say: ‘We speak for everybody here, the small volunteer organizations with a 10,000 \$ budget and The Nature Conservancy. When we as the LTA go somewhere we speak for all of those.’ If we couldn’t say that we would really lose our credibility. So we’re trying to figure out how to carve out a niche of resources and some support and other things for these small organizations, while we help all of the others who are doing most of the work. We are still trying to figure out what that is.

TD:

So you are trying to keep the community together.

Kueter:

Yes. Because the comment that was made is the difference between Rand Wentworth sitting in front of a congressional committee, which he’s done a lot, and saying: ‘I speak for all the land trusts in the country.’ Or saying: ‘I speak for all the sizeable organizations.’ It wasn’t the same thing. We haven’t figured out... We figured out that we have to identify an amount of resources and do some things for those small organizations, but we’re still trying to figure out what it is. But we know we have to do that so they feel valued, so that Rand can go to Congress...

TD:

An ‘accreditation light’?

Kueter:

Those are the kinds of things that are being proposed. And yes, it might be a certificate that they have done an assessment. We got to figure out what that is, but we’ve made a decision that we need to do that and figure it out, because otherwise we risk losing that part of the community. If we lose them and can’t say we’re speaking for them, our ability to be effective politically just changes dramatically. It’s a fascinating world. It is never going to be cut and dry, we know what we need to do and who we are, and this is what we do. At the end of it, it is constantly evolving and changing, and these kinds of issues come up. It’s just fascinating.

TD:

What is the role of feeling part of a community for the land trust movement?

Kueter:

Well, if you went to Milwaukee (the last LTA Rally), did it feel like that?

TD:

Absolutely. That was just enthusiastic.

Kueter:

I went to my first rally in 1993, and I haven't missed one since. And I still get that way. Every time I get back from Rally, I feel exactly the same way. I haven't ever gotten jaded – a jaded or cynical view of that. I still come back from Rallies and I'm excited and enthused. Most times I come back with good ideas. But sometimes you don't even come back knowing anything more, but it's just nice to remember that you are part of an enthusiastic community like that. That sure is something you care about.

TD:

On the other hand, the movement has matured. It has institutionalized. Has that taken away from the enthusiasm?

Kueter:

No, but the risk is there. I think it was just the inevitable price of success. When I was first starting to do this in the 1990s, this was on nobody's radar screen. Nobody was paying any attention. The Congress didn't. The IRS was worried about other stuff. And so, the Standards and Practices were self-imposed. The community really was pretty good about it, but it wasn't because somebody was watching. Nobody was watching. What you want is success in how much land you've protected. If you have done that it raises the public cost of doing that. So you knew – if we didn't know it we should have known – that as we started really succeeding the way we wanted to in how much land conservation we were doing, we were also going to raise the profile and have what we did more closely scrutinized. That's what happened. I think you just can't have both. You could say: 'Let's keep this simple, so we don't have the complexity of a big organization.' Then the answer is you wouldn't have had the millions of acres that have been protected every five years. It is in the LTA census. This wouldn't have happened. You couldn't have accomplished that without having to now deal with this issue. If I ever come back from a Rally where nobody cared, I would really worry. The Rally reinforces the feeling that the people that are involved are still... that the underlying passion is still there. Yes, I hear the complaints about how big the Alliance is and accreditation and those things, so I'm polite about that, but I think it was inevitable to have that happen with the success that we've had. It just doesn't work to think that you could have that success and still keep the rest of your life simple. I don't think that works. But I do worry about that a little bit, and I think other people do. But if we keep worrying about it, you can temper up any bad effects from that.

TD:

But it still becomes more of a routine.

Kueter:

You know, after six years on the LTA board and Accreditation Commission, I have never felt that way. Now we are going to start the first renewals. And because the IRS is paying closer attention, they are scrutinizing some things they didn't before, so at the accreditation level we are starting to insert those. Every time I go to an Accreditation Commission meeting, it is intellectually challenging, stimulating, exhilarating... And the LTA board meetings are like that. It has never been a routine.

TerraFirma helped. We had accreditation and we've seen it evolving with some success. Now all of a sudden, we created an insurance program, which people just dreamed about, but nobody thought it could really happen. We have to see if it works or not. So it has never been a routine. That's one of the things about it that I love. And it is not just me and for everybody else it is a routine. You can see it by the participation of the board and the engagement or the commission, how everybody is engaged as well. You can see it by how people talk and their body language, the follow-up emails afterwards, that everybody leaves with the same feeling that you have. That is pretty remarkable. Nothing has gotten routine about either of those. Some of it might have to do with the fact that this is still only 30 years old from when the Treasury regulations were adopted in the early 1980s. That's a pretty young industry. That's a little bit of it. 50 years from now – I'm going to be long gone and don't have to think about that... We are still a maturing industry in a lot of ways, and growing.

TD:

If you compare the networking on the national level with the one on the state level, where is the focus for you?

Kueter:

It's both. They are equal. We have important state issues. It is about protecting the tax credit. Greg Yankee might tell you how we are thinking about putting a cap on that program. It didn't have any limit on how much money the state might have to spend. In the last three years, we put a yearly limit on it because of the state's budget problems. We tried to preempt the problem before they got to the last day of the legislature session, wondering what program to cut. We thought: 'Let's go make our deal ahead of time.' And we did that. So they might go see about striking a permanent deal at what we think is about the natural level of the program. So there are always going to be things at the state level that matter, that the LTA wouldn't be right... They wouldn't have the time or capacity to deal with this kind of issue. As an agricultural land trust, the new farm bill and how much money comes out of it and the rules are incredibly important for the Colorado Cattlemen's Land Trust. They are a land trust that deals with a lot of state issues, but there are also things that they deal with the LTA on, because they are federal issues. It's not one or the other, but which do you need for what issues. Both of them are pretty essential for us and for keeping the resources coming.

(...)

The key that this movement has done is the conservation easement. It is just such a unique tool, because it allows the landowner... It is not: 'Is it public or is it private?' It creates this anomaly where the public has an interest in what happens on the land in terms of it not being developed, but the dairy farmer or rancher just gets to still operate. That's pretty unique. I'm not sure there is something comparable to that in Europe. How do you get at that? There are probably other ways to solve it, but how do you not have to think that your only choices are that it's completely private at one end of the spectrum and completely public at the other end, and to think that those are the only choices. Finding some place in the middle is the genius of what happened here.

(I talk about planning and regulation in Europe.)

We have people critical of the movement because it operates independently of land use planning. When I was doing other things part-time, I did land use planning as a lawyer, so I've seen that world. Regulation is temporary, because consensus that this shouldn't develop can change to: It should. So it's temporal much more than conservation easements are. It is not as landowner-friendly. If the consensus doesn't include the landowner, then you get the result, but you got someone really unhappy. That person who is unhappy is the one who might try to change the consensus later. We've



gotten criticism from some law professors that we shouldn't be doing it this way, that we should be using regulation to do – and I think they are doing this because it is their niche in the legal world – but I have seen this land use planning world. It is temporary. Anything can change. But our easements are pretty permanent. Steve Small, Stefan Nagel's legal partner, has this phrase: 'Never trust an unrestricted piece of property.' I believe that's true. Speaking of unrestricted doesn't mean land use restricted. It means real property restricted. With my land use hat on, I have zoned, rezoned and developed open spaces. The biggest one I did was in conjunction with a bigger open space program where they own 2,000 acres of land. It was being surrounded by the city. The wildlife was disappearing. They wanted to take that resource and create a new one somewhere else where they could protect against that. The only way to do it was to take about 500 acres of the 2,000 and allow development on it. So I am a conservation attorney, but I went to the neighbors and said: 'We're going to build houses on these 500 acres across your backyard. We understand that you don't like that and we know why, but there is a bigger picture here and we need to do that.' So we went to the city of Aurora. This was owned by a conservation district. It was open space with not a thing on it. And now it has 500 acres of houses. It happened. That's what happens. You think regulation is permanent, and it is just not. Because I did it. I am not sure I trust myself or people who do what I do to keep it that way. These are just different views about it.

TD:

As a conservationist, you are always interested in perpetuity because on a day-to-day basis you experience defeats. So you have this mindset that you want to make sure the victories stay permanent.

Kueter:

Exactly, and I think it puts a burden on you to really be thoughtful about why and where you do that. I think most land trusts are pretty thoughtful about that. They look at their standards and ask: 'Is this worth saving? Is this a property of 100 acres next to the town that can't grow except growing this way?' A land trust should be smart enough to say: 'Maybe that's not where we should have this. Maybe it should be the other side of the property.' I have seen land trusts do that.

TD:

But on the other hand you could say that a landowner will always only consider a partial interest, his own subjective view of the world. If he decides to keep land in agricultural use, that's fine, but it is an individual decision. How can the community influence this? Is the conservation easement the right tool to make decisions for the community, if it is only the expression of the will of a single individual? That would be an argument very much against conservation easements as a tool to steer land use planning. And how do we know what the best use for a property is for future generations?

Kueter:

There is another phrase that I have also – after 30 years of doing lots development legal work and conservation – come to like: 'The last crop is asphalt.' Think about that. What it means is: 100 years from now they will look at conserved land and they will figure out some adjustments where you terminate some easements. That will happen. People smart enough will figure that out. But you can look a long time to find anything that was developed and then went back to open space, unless you look at the context of multiple centuries. That's not the human scale. If you look at the 100 years-time scale, you don't find that at the beginning and then something else at the end. So that phrase has truth for me, saying: If you put houses or businesses or something on it, you've lost it. That's

what it is going to be for a couple of generations at least. It just sounds better to say: 'The last crop is asphalt.'

## **11 Greg Yankee – Policy Director of the Colorado Coalition of Land Trusts**

Yankee:

(...)

I've been with the Colorado Coalition of Land Trusts (CCLT) for four years. The first year I was a Colorado Conservation Trust Fellow, a program of a separate organization that used to do multiple graduate students or professional schools... get them to come to Colorado and get involved in conservation. It had a couple of lawyers but also masters in wildlife biology or natural resource management. So I came out, did that, and then CCLT decided to keep me on as the policy director. It's a small non-profit so we all wear different hats. I help out with the administration. We all help stuff envelopes and do fundraising and all the rest. Technically the job description is to serve as a resource for all our members on what's happening politically, legislatively, legally – the court cases that affect our members' ability to conserve land. It's my job to know about them and figure out how to convey the impact of it to them.

TD:

Is this what you wanted to do later in your life when you studied?

Yankee:

Yes, I went to law school knowing that there was a really good chance that I was not going to practice. I wanted the degree anyway. I picked the school I went to in part for its breadth of education. It was rather teaching us how to think about problems than how to be lawyers.

TD:

But you didn't specifically study environmental law?

Yankee:

No, actually very little... I focused primarily on broader non-profit issues. What I actually spent time working on was poverty and homelessness issues. I was not an environmental law guy, but I have an interest in it through my family background. Both my parents are from rural Michigan and grew produce – cherries, peaches, that kind of thing. So I have always cared about the land. I saw the posting, was interested in it, wanted to come out to Colorado... It made some sense. Now, four years into it, I am basically the point person on the tax credit for sure. I work a lot with other lawyers and land trust professionals on making sure we protect it, making sure it remains as an incentive for land conservation.

TD:

How is that coming about?

Yankee:

Good. A couple of years ago, we had to cut a deal with the governor to reduce the amount of funds available, in part because of the budget crisis that everybody has gone through, but also in part because there was some pretty widespread abuse by non-members... It's not even fair to call them land trusts – people who realized the very good incentive in place and not a lot of oversight, so they created bogus land trusts. We tend to refer to them as 'rogue land trusts'. There was some scrutiny of the program anyway. Some legislators who didn't like it didn't want to take the time to find out whether there was a problem with the system itself or whether it was just a problem with these actors. They were some people who were ready to see the tax credit go away. So we had to work

with some partners to protect it. I have actually started the negotiations for the next round of funding, because that deal that we cut two years ago expires in 2013, which all of a sudden is six months away. It expires at the end of 2013, but it's still coming. It's a valued tool. It's just always getting overworked, underpaid legislators listen to your issues, when they have so many other issues to care about.

TD:

How do you do that?

Yankee:

With partners, tailoring the message to each one. A Denver, urban legislator is not going to respond to the value of land conservation from a 'keeping farmers and ranchers on their land' perspective. They may care personally, but they don't have to care about it from a constituents' standpoint. What they care about is keeping farmers and ranchers on the land so groceries stores in Denver can carry Colorado-raised beef, Colorado-raised produce, so when their constituents drive West on I-77 to the mountains there are protected views that make them happy to be in Colorado. The water issues come up a lot with urban legislators. They like hearing that land conservation plays a role in protecting water quality. If you're reducing the amount of development along rivers, it is going to keep both the quantity and the quality of the water higher.

TD:

How do you coordinate with you constituency? How do land trusts mandate you to do something?

Yankee:

A significant amount is just by phoning and email, but we try to get out and meet with our members in their districts and their legislators altogether, so they begin to have a relationship and it's not always through us.

TD:

How many land trusts are there in the Coalition?

Yankee:

35 to 40 land trust members and then a dozen city and county public open space programs, so it's around 50 in total.

TD:

Do they pay membership fees?

Yankee:

Yes, they do, based on their budget. It's an incredibly small portion of our funding, single digits. Membership fees are about 6-7% of our budget. The rest is sponsorships for our events, whether the yearly conference in March or our big fundraiser in November. People drive in from Durango, six hours away. They wouldn't come in more than a couple of times a year. We wouldn't want them to either. They need to be doing work in their area, not spending time on the road coming to Denver. So in those two events, we raise the vast majority... and then grants, donations. Member fees are quite minimal.

TD:

Is the Coalition a non-profit?

Yankee:

Yes, we are a 501c(3). That puts some limits on our ability to do political work. There are Department of Treasury regulations on how much lobbying we can do, the IRS code on lobbying. So we do lobby, but we track it very carefully to make sure we are not running afoul of those standards.

TD:

Does the Coalition have a board?

Yankee:

Yes, we have a 13 person board right now. It has shifted a little bit since I am here. I was the third full-time employee, and only a couple of months before me the second full-time employee was hired. So the board effectively was additional staff for a while. They had their own jobs, but they were a working board. We started to realize that is not what sustains a growing organization. We needed more fundraising, we needed help in other areas. So it has phased out certain aspects of what the board does, given more responsibility to the staff, and then changed the makeup of the board a little bit to reflect more fundraising, relationships with foundations and that kind of thing.

TD:

Do they also direct the overall policy of the organization?

Yankee:

They do. John Swartout, our executive director, and I will make a staff recommendation to the board on what we think should happen, and they are free to agree or disagree with us. It is good to get their input because sometimes – you know it is what we live and breathe, so sometimes we don't think of certain questions that they do. We are actually going to meet with them pretty soon on those questions of the tax negotiation. John and I have our position, and we will go to the board and say:...

TD:

'Is this ok with you...?'

Yankee:

Right.

TD:

Do you get a formal mandate?

Yankee:

Yes, if it is something as serious as legislation for the tax credit, then there will probably be a formal proposal and then a motion and a vote. This also gives us cover, if we go meet with a legislator and say that our board voted unanimously – it's nice to be able to say that rather than to say: 'We like this...' No: 'Our board took the time to think about this and voted' sounds better. We'll do input with our board members as well. The president of our board is (a representative of) a member organization, Larimer County, she is the chair of our board. We got a couple of other land trust representatives. We always make sure we have a small land trust, a big land trust and then a public landholding entity (on the board), just make sure we got the diversity of perspectives represented.

There are some things that land trusts don't care about that public entities care about, and vice versa. Trying to make sure it is all there is something we are sensitive to.

TD:

Are all the Colorado land trusts members of the Coalition?

Yankee:

The active ones yes. The ones who can use the tax credit are. There is actually a state certification required for the tax credit. Every certified land trust is a member of ours. Not all of our members are certified, because not all of them do... it doesn't necessarily make sense. The Colorado Water Trust is a member of ours. They are not a land trust at all. They do water. Why would they get certified? No one knows, and that's why they didn't. It makes no sense. But this is not true on the public side. On the public side, there are some certified cities and counties that are not members of ours. But we're basically approaching them saying you're benefitting from the work we do. You should probably become a member. Actively I would say the number is probably around 40 total organizations that are doing active private land conservation. That's probably about 25 to 30 land trusts and then a dozen municipalities and counties.

TD:

Is the tax credit that became effective in 2000 only for easements or also for fee title donations?

Yankee:

No, it has got to be a conservation easement that meets both treasury regulation standards and state law. The state law piggybacks off the federal law quite a bit.

TD:

Have you heard the term conservation easement in law school?

Yankee:

Yes. It actually came up in my reading for property law class. They didn't really teach it. I don't think it was in my land use class. It wasn't in my natural resource class, just in property as a way people can restrict their land. It probably came up as one of the few if not the only one that is in perpetuity. Larry (Kueter) has taught a conservation easement class at Denver Law School. Vermont Law School has a specific conservation easement class, but I went to the University of Michigan. They didn't have anything that specific.

(...)

The tax credit is one-time, up to 375.000 \$ and it's transferable. Without that piece, there would be very little use of it.

TD:

Are there other states that have it?

Yankee:

Virginia, New Mexico, Georgia just started last year. We talked with them quite a bit about how to do it, how to not make the mistakes that Colorado made, because we were the first to do it.

TD:

What would be the mistakes?

Yankee:

Not having the proper oversight at the state level, basically to prevent the eventual...

TD:

...abuse of it?

Yankee:

Yes, the scrutiny. There is a way to keep the public... people who are tasked to make sure public investment is well worth it – whether it is legislators, the governor, whoever – things to give them assurances that you are aware that this is a blessing, not something we're just owed, that the money can go elsewhere. A little more reporting, a little more transparency... I think Georgia is doing a lot of that, New Mexico is, and Virginia has a huge program. I think they're almost 100M \$ a year. The deal we cut caps us at 22M \$ this year, 34M \$ next year, but even naturally we're probably at about 40M \$.

TD:

So the cap doesn't create a big backlog?

Yankee:

We saw about a 7M \$ waitlist last year. In 2011 there were 22M \$ available and 29M \$ got used. So for 2012, 7M \$ were already gone in January. It is first come first served. Then there is a waitlist, so really for 2012 there were only 15M \$ in conservation tax credit. In 2013 it will be 34M, but we're expecting at least 10 to 15M of that to be gone by January 1.

TD:

What are your hopes for after that?

Yankee:

We'd like to have it back at the natural level of probably around 45M \$. We'd like to extend it. This was a 3-year deal we cut for 2011-2013. We'd like to do longer, just so we don't have to be having these negotiations every couple of years. If we could do five or seven years that would be great. It will be a process. We've met with the Governor's office about it, but at the end of the day it is going to be legislated. Having the Governor on your side is a good thing, but he doesn't pass laws. We have to get a majority. There is going to be a bunch of new legislators, 37 or so out of 100. A bunch of people who don't know what we do, don't know about tax credits. It is going to be a challenge.

TD:

Who is the hardest crowd to convince? Is it a partisan issue?

Yankee:

It is bipartisan support and bipartisan for those who are against it. There is a lot of support from rural legislators, regardless of whether they are Democratic or Republican, because they understand the role it (the tax credit) plays. There are so few other ways for a farmer to get 300,000 \$ cash. And again, the beauty of the transferability is, they get to keep doing what they're doing. They've just given up the ability to do these other things. There are no grant programs available giving a 350,000 \$ check to a farmer or rancher. That money then goes to retiring debt, buying new equipment, to

buying adjacent land. It is not going into an investment account. It goes right into the economy in these areas that don't have much going other than agriculture. On the other side, there is some support for urban and suburban legislators again from both the Democratic and the Republican side for quality of life. People who are pro-business realize that businesses relocate here from other places because people love hearing: 'You've got to move to Colorado. We're moving our headquarters from Peoria, Illinois to Denver.' No one gets upset about that. Legislators get the role of outdoor recreation, tourism, and those kinds of things. The people who are against it, it tends to be primarily just from a budget (perspective). It's: 'We don't have enough money for all kinds of things.' And then they have priorities. So some traditional political interests that line up on the liberal or progressive side would rather see that money spent on early childhood education or on healthcare for the elderly or.... It's not that they are against it. No one is against conservation in Colorado. It's just... for them they turn it into a priority issue: 'If we had a surplus, great. Then we'll go save land. But we don't have a surplus, so you guys need to take a backseat.' That's when it's our job to educate them: 'No, in recessions it's actually the ideal time to do certain levels of conservation because properties that otherwise wouldn't be within reach of protecting suddenly are. Property values are down. People are more in a position willing to... And the farmers absolutely need help.' With the drought going on right now, a rancher that I've bought beef from, they have to sell of their second-year cows to raise the money to be able to finish raising their third-years. But then next year they are not going to have anything. There are some really tough things going on. The only way to keep in operation is having things like a tax credit, being able to be used to pay for some of the bills and expenses.

TD:

So this is an ideal example of where conservation and economic interests of the farming community line up?

Yankee:

Yes, I think in rural areas absolutely. Both the ecological interest of the region and the economic interest of the region can be protected with the same tools.

TD:

Have you had situations in which farmers have regretted their choice to put a conservation easement on their property?

Yankee:

Some of the ones who got burnt by those rogue groups absolutely, because they are now in a pretty tough spot, having their tax credit audited, because the organizations didn't do it correctly and they didn't check up on the organization. There is a certain amount of responsibility there, but folks who work with Cattlemen's (Land Trust), who work with Colorado Open Space, who work with certified, legitimate, professional organizations, they know... It usually takes years to go through the entire process, for the simple fact of making sure people know exactly what they are getting into. It is: 'This is going to tie you, this is going to tie your area, this is... If you really think you ever want to build a home on that back lot, you got to say so now. We can amend it later, but that might affect... Basically let's just be open and think about this as comprehensively as possible.'

TD:

How do you amend a conservation easement?

Yankee:



It's a legal issue, as amending any kind of a contract. There can be an amendment for minor issues, the place for the fence. We – a member of ours – dealt with one last year that was actually a fire mitigation issue. A fire had burnt down a fence. They didn't want to rebuild it where it had been, which is what the easement said would have to happen. They took it as: 'We just got indications that this is not a good place to build a fence.' So the easement had to be amended, that's pretty minor.

TD:

How does it work? Do both parties go to the court and say they would like an amendment?

Yankee:

Right now, it doesn't require judicial oversight at all. It is just a contract. You have got to refile with the county clerk, so it shows up if someone pulls the titles, it shows that there is a 1999 easement and a 2004 amendment to the deed granted in 1999.

TD:

Could that influence the deductibility of the easement?

Yankee:

Yes, and that comes up... There is some interest on the state level right now – actually nationally – of having attorney general oversight at the state level of all easement amendments. We've met with them on it. Our take is that there might be some unintended consequences of that. They might not know that it can be as little as the placement of a fence. Why do you need the attorney general deciding whether or not a fence 250 miles from here that they have never seen, why do they have the expertise to determine where it should be placed? Whereas the land trust that is based there or at least has a relationship with the landowner, has visited the land, has monitored it, has stewarded it, they have a better sense of where that fence might go. The flipside of that is if there has been a significant public investment, either through a tax credit or GoCo funding. If it's a major amendment – you're adding home sites or something like that – then it makes sense to involve the attorney general. That to me is a no-brainer. If you said you won't build any homes and you got a tax credit based on that fact, and 10 years later you said: 'Actually I want to build two homes.' The state hasn't got the benefit of its bargain.

TD:

Why should the land trust agree to such an amendment?

Yankee:

That is exactly the doubt that many would. I in fact don't think any of our members... Even the certification process by the state looks at the amendment policies. So they look at: How does a land trust or a city open space program, how do they deal with requests to amend? What is their process for dealing with amendments? So having something that big, I can't imagine too many of our members being supportive of.

TD:

How can it be a national issue? Isn't it governed by state law?

Yankee:

National in the sense of getting as many states as possible to do it, national rather than federal. There are a couple of academics trying to get individual attorney generals of the states to do this. I

don't know the status in other states. I think there are a couple of them who are receptive. Colorado is somewhere in between. We are going to be dealing with that next year.

TD:

So it is an open question?

Yankee:

Yes, they had a bill drafted last year that would probably have led to oversight of amendments, and it never got introduced. So they are sitting on it and ultimately decided not to introduce it.

TD:

And the Coalition's take on it?

Yankee:

We've got people who are totally against it. We've got people who are for it. So it's going to be an instance of what we do, which is building a coalition, finding consensus. And I think there is some wiggle room. Maybe going and saying that amendments you really want to be involved with are potential extinguishments, or it's amendments that have a clear effect on public investment.

TD:

It's about trying to draw a line between significant and insignificant amendments.

Yankee:

Right, because there is no reason to bog down the possibility of an easement amendment being dragged through a process in Denver. That's where it is almost regardless of your political leanings, no one enjoys bureaucratic extra work. There is a bit of a burden on the proponents to prove to us that it is not repetitive. Show the benefit of why there needs to be attorney oversight. It makes sense in a vacuum. Of course you want certain assurances, but let's talk about it on the ground, how this is going to affect land conservation.

TD:

Apart from the legislators, who are your other contacts that you deal with?

Yankee:

We have partners in agricultural interests, in recreation, in tourism, health... We are starting to get involved with youth development organizations that are getting kids outside. I think some of our public members have more opportunities there than our private members, where it is private land and there aren't trails or public access.

TD:

And the Coalition as such? Do you do meetings with these people?

Yankee:

Yes, last year we had a couple of bills that were going after some of our funding sources. We created a coalition of us and the Outdoor Industry Association – Osprey Packs, La Sportive, they all joined in. We had them call legislators and say: 'We are businesses. We are not non-profits. We need to keep this funding in place because our products are used by people on these properties. We need the City of Fort Collins to be able to build trails, so people buy our running shoes and run them.' So I think

that's increasing, finding a way to bring these people to the table so it is not just about private land conservation. It is about all these other pieces that land conservation affects, the impact it has on pretty major economic industries. In Colorado the biggest economic industries include agriculture, tourism, and outdoor recreation. Those are all tied to the outdoors. You can't do agriculture at a wide scale indoors. You can't do outdoor recreation indoors. You can't ski indoors – well you can in Dubai. (He laughs.) So I think we are getting there as an industry, realizing that we need to become more relevant to more people and it will be at our peril if we don't. If we remain primarily a white, educated, affluent, aging industry, then it won't be a surprise 15 years from now, when there is not political support for our programs. We need to make it about its economic sense, its health sense...

TD:

You are the Policy Director, so you may be biased, but it sounds like the Coalition is mostly about advocacy. Is this true?

Yankee:

No. Well, that is a primary result of me being me. We got a big education piece for our members and associated professionals. We have thought about making our professionals members as well, but right now it is only organizations. So we'll put on trainings, webinars or in-person conferences – how to do easement drafting better, how to do baseline reports better... We will even do stuff for board members. We'll bring in a fundraising expert to talk to our board members on getting involved in the community and that kind of stuff. Our conferences – the March meeting – are two full days, three days last year. 250 people come.

TD:

Only from Colorado?

Yankee:

No, this year we had a couple from Wyoming, New Mexico... LTA used to have a Southwest conference, but then they basically realized that people were coming to ours over theirs. Now we work with them. But there is a big education piece. That's what we do.

TD:

Would you say that the yearly conference is the most important piece in your education program?

Yankee:

I think it will be eventually. I think at this point because of the number of political questions remaining... What I've said for a couple of years is I am trying to work my way out of a job. It would be ideal if Colorado was so supportive of land conservation that there was no need to ever going into the State Capitol ever, never lobby, never educate because people just got it. There is no lobbying interest down there for – I don't know – clean drinking water. Everybody is for clean drinking water. Nobody is going to be for dirty drinking water. It would be good to not have the need for essentially two full-time policy people – because our executive director is basically full-time policy as well. At that point, then the focus will need to be on making sure our members are stewarding the land (in a way) that the land deserves and the level the public investment deserves.

TD:

I meant to ask whether the conference is the most important element in the education program.

Yankee:

Oh yes, the conference education-wise is definitely the most important thing that we do. The biggest webinar that we'll ever do is 25 people. To have 250 people in the same room talking about certain issues and then breaking up into smaller groups is a tremendous opportunity.

TD:

The teachers, do they hold the courses for free or do you pay them?

Yankee:

The attendees pay us, and then you have access to whatever class you want.

TD:

And the teachers, do they get reimbursed?

Yankee:

Oh no, they want to teach at the conference.

TD:

For visibility?

Yankee:

Yes. It is a lot of the same people from LTA Rallies, Larry (Kueter), Allan Beezley teaches a class on easement drafting and title review, Jessica Jay... A bunch of attorneys are Colorado-based. It's a really important piece.

TD:

The certification that you have in Colorado, is it also done by the Coalition?

Yankee:

No, it's through the state. The Division of Real Estate does the certification.

TD:

Do you help them?

Yankee:

We helped them create the application. Primarily we just know what they want to look at, and they didn't know that. So when we said, for example: 'You want to look at amendment policies.' They didn't know that. Why would they know that? They never had to do this before. They've never needed to do this before. So we worked with them on the application. We worked with them on changing the application for public entities. There are questions that make sense to ask the City of Fort Collins or the City of Durango that don't make sense to ask a land trust and vice versa, but they are tasked with the actual review of the application and the yes-or-no vote. And it's expensive. I think the initial fee is 7.000 \$. The renewal is 3.000 \$.

TD:

That is more than the accreditation program of the LTA.

Yankee:

Yes, and for some organizations this is a lot. That's quite a bit of their budget. And you've got to do it once, but then you have to pay 3.000 \$ every couple of years. But you have to do it. A landowner will look at that list. If they donate an easement to an organization that is not certified at the time of the donation, they can't get a tax credit, so they won't. So you need to be certified or you're not going to conserve land. Some of these groups will do fee title, but that's quite rare on the private side. Public entities might have a funding source, but a land trust is rarely a fee title owner.

TD:

But that is typical for the Western states where there is already so much publicly owned land.

Yankee:

Yes, I think that's true, especially if you look at Nevada, which is over 90% public. There is the legitimate question of what needs to be done. I remember the first time at the Rally I met someone from Maine. And they were talking about how they had 100 land trusts. And I said: 'Maine? We have counties that are the size of half your state. How do you have that many?' Well it's because each community had a land trust, or a particular river valley would have a land trust, and the river valley over might have its own land trust. They might hold only four easements or only protect a certain number. If you're telling someone about the Colorado Cattlemen's Agricultural Land Trust, they have 350.000 acres under easement, 250 deals. I told someone that, and they were: 'One land trust has 350.000 acres?' Yes. That's a lot of land in Eastern states, not a lot here. There is also just more open space here.

TD:

With all these differences, would you consider yourself part of a bigger, a national movement?

Yankee:

Yes, definitely. We work with LTA closely on a lot on federal political issues, funding through the Farm Bill, funding through conservation easement tax deductions on the federal level. They have an interest in making sure Colorado-specific incentives remain on the books, just from a (perspective of the) ability of other states to do it. If we failed, the opportunity for other states to do it is lessened. Now, a legislator can come up and say: 'Well, hasn't it been a disaster in Colorado?' So when we did that major reform in 2008, LTA was a major part of funding, playing a role in it, making sure that we did it right. That said, there are things that make Colorado unique. GoCo for sure. I don't think there is any other state that has 100% of its lottery go to outdoor, recreation, open space protection. That's pretty unique. But I think overall, the common theme tends to be the conservation easement as a tool. So our partners do that in 49 other states. They might not have the same funding, they might not have the same pace, they might not have the same effectiveness, but still at the end of the day, when they are meeting with the landowner, they are having a conversation about the value of it being voluntary, the value of it being individualized. How you want to restrict (the land use of your property) is going to be your call. It is going to affect the ultimate donation value, but if you want to retain the ability to build 20 homes, you get to do that. We get to maybe walk away and decide not to work with you, but you get to do that. It is not an entity telling you how it is going to be done. So we definitely are a part of a national trend. In fact we would probably say we're trying to be an example of how things can be done, both incentive-wise but also how to respond to challenges, how to be effective advocates without getting political. How to do that balance, I think other states can learn from us.

## 12 Ryan Boggs – Executive Director of the Legacy Land Trust

(We talk about public access to the countryside.)

Boggs:

(...)

In the conservation world, one of the first questions we get from a landowner is: 'Do we have to have public access on our property?' If I say yes, the conversation is over. It's amazing, just that tiny little thing, how different peoples' mentalities are here and there (in Europe).

TD:

I wonder if it has always been like that. When the West was settled, you could go anywhere.

Boggs:

That was before people owned it. Do you know the book 'The Wire that Fenced the West'? The premise is that barbed wire changed everything in the West. Before that it was open range. You let your cows go out. Then you'd round up your cows and give back whatever ones weren't yours. But as soon as people realized that the grass wasn't infinite and that you needed grass to grow your cows it started to be much more 'fence everybody out, keep them off your land'. And that's the root of that. But it is also about ecosystems. The West doesn't have very productive soils or temperate forests. It's arid. In Germany or even on the East coast of the US, you can make a living on 40 acres. Here you can't even graze a goat on 40 acres. (laughs) It doesn't rain enough. There is not good enough soil. You just need a lot more land. So people have this thing about: 'I have to get as much as I can.' You need a lot more. That low productivity creates a scarcity mentality in people.

TD:

Why don't you tell me a little bit about your job and the land trust you work for?

Boggs:

We are a medium-sized land trust. We think of ourselves as a regional land trust. Colorado Open Lands are a statewide land trust. They work all over the state. They are actually similar to us in the sense that they are a generalist land trust. They work on land that is agriculturally significant or significant for biodiversity or any of those different kinds of things. We just do that in Larimer, Jackson and Weld Counties, so we're in Northern Colorado here.

TD:

Was that a decision taken from the start?

Boggs:

Well, at the very beginning we were called 'Larimer Land Trust'. There was no land trust in Larimer County. There weren't any government open spaces. The only one who was working was The Nature Conservancy. I guess Colorado Open Land was working here too. The founders saw the need for a local effort, not people coming out of Boulder and Denver, but people here taking the initiative to do that. The land trust was founded in 1993, so we're 20 years next year. We're one of the older land trusts in Colorado. There was a really large boom in land trust generation in the late 90s in terms of local land trusts. After there was an open space program at the city and county, we saw a need to work outside of Larimer County, so we started working in Jackson and Weld Counties. Actually the majority of the acres we have protected are in Weld and Jackson Counties, because there are much

bigger properties, farms and ranches. So we're protecting over 41,000 acres in 116 projects. We have worked with about 80 different landowners. Sometimes a ranch is so big that if they put a conservation easement on it all at once, they would lose the tax benefit. So they might split it in half and do one half this year and the other half the next year.

TD:

Do you also hold properties in fee title?

Boggs:

No, just conservation easements. The cost associated with buying and maintaining land in fee title is way too high for what we do. We pride ourselves on being very efficient with what we do.

TD:

How big is your staff?

Boggs:

We have two full-time year-round staff, myself and the director of development, and then we have a six-month position in the summer for the monitoring season. She goes and visits every property that we have protected. I still can't believe we actually pay somebody to do that job. It is just a great job. You get to drive around, meet with the landowners, it's perfect. And then we have our director of conservation. She used to be the director of the open lands program of Larimer County. She wanted to work part-time, so she works 60%, three days a week. So we get a lot done with a very small staff. That's because we leverage the power of conservation easements.

TD:

Do you have volunteers?

Boggs:

We probably have 50 people who volunteer with us at different points of the year. Some of them are very active, some of them volunteer only once or twice a year. There are two main things that we have volunteers to do. We have our fundraising events. Our little army of volunteers helps us put these events on. Then we have the monitoring program. We get qualified volunteers to help us with that too. So we got retired federal agency people who want to keep their hands in, so they might just do two or three easements each summer. Then we got people who just want to get out and see properties. So they go out with our monitoring person. It's a nice safety precaution to have two people out. That's how we get people who are not qualified but still want to be out and see the properties. That's what they do. Then we have our board of directors. We have 13 people on our board of directors. They are supposed to help us with governance of the organization and help with fundraising.

TD:

Are you a membership organization?

Boggs:

Yes. We have 500 members if you count people who pay their membership dues. If you count technically everybody who contributes anything to the organization every year as a member, then we're probably close to 800.

TD:

How much is the membership fee?

Boggs:

35 \$ is what we say. We always give the option of people to give more. We just got a membership donation on Friday. It was 500 \$. It was very nice to get.

TD:

And that helps with paying your salaries?

Boggs:

That's the hardest thing, raising payroll dollars. We don't get any help from the city or county or anything like that. It is all fundraised.

TD:

No grants?

Boggs:

Not really. We had a grant that paid for the director of conservation salary for the first two years, and then we had to pay for it after that.

TD:

Is that a struggle?

Boggs:

It's tough. It is probably the hardest part of the job, raising the dollars. But – stop me if you've heard this – in the US there is the philanthropic pie, all the dollars that are given to charity. Something like 75% of that goes to colleges and hospitals, for lack of a better way of describing it. Only 4% goes to the environment, and that includes animal shelters, a lot of those kinds of organizations. But, on average, the people who do give to environmental causes give more than people who give to those other causes. So we have fewer people but they give more money. So that is a good thing for us.

TD:

How do you go about soliciting donors?

Boggs:

That's my job and the director of development's job, to go out and talk to people. We try to meet with our major donors every year and give them an update and say: 'We could really use x amount of dollars.' We try to figure out what the maximum amount is we can ask for without embarrassing either of us.

TD:

How did you learn that?

Boggs:

It's not really a learn thing. It's about knowing how to relate to people. I think I have always been an intuitive person... Have you heard what an empath is? You can feel what the other people are feeling.



I've always felt like that. When you're sitting with somebody you can feel what they're feeling and can adjust what you are talking about to meet that. If it isn't natural for you, it is really hard. Some people say that they would rather chew on glass than ask people for money. It is intimidating. I went and asked some of major donors for 20,000 \$ and it was scary. But she said yes.

TD:

How do you identify these donors?

Boggs:

One of the things we do is we ask our board members and our donors: 'Do you know anybody else who might care about what we do?' And they go: 'Oh yes, Joe. He really is into the outdoors.' 'Can you set up a lunch for us?' They usually come here and we just talk about the land trust. What we do isn't super simple. I always tell people it's not saving puppies or feeding kids. Those are the things that people can instantly have a gut-level reaction to. So we have to take the time to explain what we do. Once they understand that this land will always stay open and undeveloped and the landowner gets these benefits, which can allow them to pass this on down to their kids, and it's an elective thing. We often use the example of big bad government coming in and telling people what they can and can't do. That doesn't play well in the West. We explain that this is a decision that the landowner makes if they really want this, and we help them do that. Especially the right-wing people tend to be much more about private property rights and not big bad government. So they like the idea of private individuals working with a private organization to protect their land in perpetuity. It works well. And also the land stays on the tax rolls. If the city or county buys a piece of property, then it comes off the tax rolls and it's not generating revenue for city or county. Actually the president of our board is very fiscally conservative. He listens to Rush Limbaugh every day, watches Fox News, but he loves what we do because it goes with all of his values in terms of not having government in all of it.

TD:

So you don't have the lefty tree-huggers image?

Boggs:

Right. Well, what's great about what we do is that the last president of our board, she was a lefty tree-hugger. But there is not really room for that in the discussion of what we're talking about because it is all about protecting this land in this way. So you end up with the lefty tree-hugger and the right-wing property rights person not even knowing this about each other.

TD:

You seem to be focused on working farms and ranches.

Boggs:

We have a wide variety of lands we have protected. A lot of the lands we have protected in the last three or four years have been working farms or ranches. There have been a few exceptions to that but a lot of them have been either farms or ranches. I'm not sure why that is exactly. People like it. Here there is this huge local food movement. So we talk about that we protect the land that grows the food you eat. That is a really powerful thing right now. So working land is a big thing and it's a big fundraising thing. But it also just happens to be a lot of what we've done in the last years.

TD:

Are these strategic decisions taken by the land trust or is it more a reaction to what is available?

Boggs:

We went through a fairly long strategic planning. 'Strategic conservation vision' was the way it was written. We got together – this is right before I came on board so this is here-say – what ended up happening was that we identified all the values that we had, wildlife habitat, agricultural lands, scenic open space...

TD:

That's in the bylaws?

Boggs:

I'm not sure it's in the bylaws. It's in the mission statement. So what we did is we mapped those values on the ground. So we said: 'What are the really important places for wildlife?' We mapped those. 'What are the really important places for agriculture? Where is the good soil? Where is the good water available? Where are the important scenic open spaces?' We mapped those. And then what we did is we looked where those things overlapped. If all three of those things overlapped, that was a high-priority area. We did all that, and it still is very important for us, but I like the way our past president of the organization described it. She said: 'We are a land trust for landowners. Anybody who wants to protect their land, and their land has conservation values associated with it, should be able to.' That's where we come in. The cities and counties have very specific places where they work. They don't get outside of that.

TD:

Because they work on trails?

Boggs:

And they do conservation easements on private land, but it's mostly focused on maybe around their fee title open space properties as buffers. So that's the situation where we have our priority areas, but we are not limited to them.

TD:

Do you actively go and contact landowners in your priority areas?

Boggs:

We don't do cold calls. It's a sales thing. The vacuum cleaner salesman knocks on your door and says: 'I've got a vacuum for you.' We don't do that. There is a good saying: 'Conservation sells over the fence.' It has to do with conservation easements. It also has to do with conservation practices. So say you got a farmer or rancher who might be a little more progressive in their thinking, and they sign up for an NRCS program to change their tilling patterns that will reduce erosion. And their neighbor looks over the fence and says: 'That's working!' So he'll try that to. It also happens with conservation easements. A landowner may be in really dire financial straits. They do a conservation easement. They generate some income from it. All of a sudden they are going from driving a 30-year old beat-up truck to a brand-new pickup. And their neighbor says: 'How did you afford that truck?' 'Well, I did this conservation easement. It paid up my mortgage. And now I got this extra cash.' That's absolutely the most powerful way that this happens – landowner to landowner. We also do workshops where we will bring in an attorney, an appraiser, us as the conservation organization, a tax credit broker – all the people a landowner would work with when doing a conservation easement. We bring them in

for an afternoon. They each do a little presentation and the landowners can ask them questions. So it is like a free introductory thing to it. We hold those in strategic places. We do have a fairly broad invite list that we put in the public newspapers and all that kind of stuff, but where we hold them tends to bring people from that area.

TD:

How many people show up?

Boggs:

A hugely successful one would be 15 people. Of those 15, 10 of them will not be eligible for some reason. Two of them will decide it's not right for them. If we get one deal out of a workshop, it's a success. So it's not something where you can generate a whole year's worth of work, but it works for us.

TD:

Do you pay the people who hold the workshop or do they do it for free?

Boggs:

They all do it for free, because often times what happens is that this one person (who decides to do an easement) hires these people. For them it's advertisement. And it works well.

TD:

When you do a deal, do you ask for money for an endowment fund?

Boggs:

Yes, we ask for two different payments. We ask for the transaction fee, which is paying for us to do the deal.

TD:

Is that part of a statutory requirement?

Boggs:

No, it is part of our budget income. The way that we do it is we ask for 3.500 \$ - well, there is 1.000 \$ upfront that is like earnest money in real estate transactions, called the 'letter of intent fee'. Before we put much time in it, we need to know you are serious about this. It is not refundable. And at closing we ask for 3.500 plus 2% of the appraised value of the conservation easement. That is the fee. Then we ask for the stewardship endowment. We call it a stewardship fund. 'Endowment' has very specific legal implications here. We can't actually... Endowment means you never spend the capital, only the interest. We can spend the capital for legal defense of the conservation easement. Two years ago we spent 70.000 \$ defending a conservation easement.

TD:

Against the original landowner?

Boggs:

Well, it was complicated. It was kind of a nightmare. The landowner had a mortgage on the property. We did a conservation easement with him. When you do a conservation easement and there is a mortgage on the property, the mortgage has to be subordinated to the easement, so that if the

person defaults, in the line of title the easement trumps the mortgage. So the bank can't do away with the easement. So the landowner went to the bank and got the subordination agreement signed, and we completed the conservation easement. A year or two later, he defaulted on his loan. The bank, which was a subsidiary of AIG, they claimed that their person at the bank who signed the agreement did not have authority to sign it. So they sued us to remove the conservation easement. How is it in Germany, can anybody sue anybody for anything? Well, here (in the United States) you can claim anything, and before you even get to a point at which a judge or anybody makes a decision about whether the suit can go forward, before you get to court, we spent 50.000 \$ just getting to that point, with depositions and all that stuff. Because if you don't show up in court or you don't do these things, you automatically lose. And here, everybody pays their own legal costs. In England, the loser has to pay for the costs. That's the way it should be, because it keeps people from filing frivolous lawsuits, if you're going to have to pay the whole thing. So anyway, we ultimately spent 70.000 \$ defending this. We ended up settling, not going to court, and we bought the property from the bank. Now we are marketing it, to try to resell it and recoup some of our costs. Unfortunately it doesn't have very good access and there are no home sites allowed on it.

TD:

Because of the easement?

Boggs:

Yes. So it is hard to sell it.

TD:

So that can really bankrupt a land trust. A few cases like that. Are you joining TerraFirma?

Boggs:

Oh yes. We weren't the first land trust to sign up, but we were one of the first. We've been through this. We know how bad this is. We need to get in this and get in this fast. So we totally believe in this whole concept.

TD:

Have you felt the effect of the financial crisis in terms of donations?

Boggs:

Hugely. The difference between the end of the year – which is the time when people do most of their giving – the difference between 2007 end of the year and 2008 – because it all started crumbling towards the end of 2008 – was like 75%, hugely down.

TD:

Did you have to lay off people?

Boggs:

Well, I wasn't at Legacy at that time. I worked for The Nature Conservancy. I was there for nine years before coming to Legacy. But, in the spring of 2009, The Nature Conservancy laid off nine people from the satellite offices. I was working in the satellite office down in Southern Colorado. I was one of those that got laid off. So I personally felt the economic crisis.

TD:

Apart from landowners, are there other important institutions or stakeholders that you work with?

Boggs:

The city and county, having huge amount of funding resources through their sales tax revenues. They are important partners for us. Then there is GoCo, the lottery money that local land trusts and open space programs can apply to for acquiring land. It requires a 25% match, which is tough. We don't have a sales tax to match the GoCo money, so the city and county use it all the time, because they have more money than God. But when they acquire a property using GoCo money, they have to have a third party easement holder on the property, because you can imagine: 20 years from now, the city council changes. They look at their books. Maybe something happens and they are really strapped for cash. They look at their books and see all this land on their books and say: 'Wow, we could sell that for development.' The third party easement prevents that from happening. So we hold conservation easements on about 25 properties that are owned by the city or county or the City of Loveland as well. So those are our partnerships. The other one is, we are working with a landowner right now who owns property right next to Devil's Backbone Open Space, which is a county open space down by Loveland. We did a conservation easement with him years ago. He is acquiring another piece of ground that is adjacent to Devil's Backbone Open Space. So the county is chipping in some money to help pay for some of the transaction costs. Here, an appraisal can cost 10,000 \$ or more. They will help to pay for those costs.

(The waiter comes.)

So these are really important partners. The Nature Conservancy is an important partner too in lots of different ways. They will chip in on transaction costs sometimes. There are some people who don't feel comfortable working with an organization like TNC because they are too big or they are too greeny, too left-wing tree hugger. They want to be able to walk down the street and see who they are working with, and not to go to Boulder. If you understood Boulder, how some people perceive Boulder... totally left-wing, crazy, nuts. You get outside of those cities... City people think of Boulder: 'Oh yes, they think they are so awesome.' That's how I think of Boulder. You get outside of the cities and everybody is like: 'I wouldn't go to Boulder if you had a gun to my head.' Just because it's so left-wing, so liberal, and kind of hypocritical. The people of Boulder pride themselves for being so green, and they are driving around in their range rovers getting 12 miles per gallon. It's a little hypocritical. But that's just my perception.

TD:

Affluent, white...

Boggy:

Oh, very. And they put up a wall. They are the only city in the Colorado that has put a growth boundary. What that did – because nobody else has done it – is that half the people who work in Boulder live in Fort Collins or Loveland or Denver, because nobody can afford to buy in Boulder, because it's restricted. People sometimes call it 'The People's Republic of Boulder'. They think of them as communists. A lot of landowners don't want to work with Boulder people. So what can happen is if TNC has a property that they really want see conserved but they know that people won't want to work with them, they'll come to us and say: 'Hey, we'll chip in and help pay for this if you guys do the deal and hold the conservation easement.' The other way is – it's a project that we're working on now and it's a real struggle to get off the ground, but it could be great – is about the Native Species Act. There is a section in it called 'section 6', which authorizes the funding to acquire property that would protect endangered species. In Northern Colorado we have one of the largest

populations of Preble's Meadow Jumping Mice. It's a little sub-species of mouse that only lives in these riparian areas. It was listed as threatened under the Endangered Species Act. The Laramie Foothills north of Fort Collins hosts the biggest population of Preble's Meadow Jumping Mouse in the state. It's also the least fragmented, so the best chance of protecting Preble's Meadow Jumping Mouse in a relatively natural habitat is there. TNC has a really strong ability to work with government agencies and get funding, but most of the landowners up there who would work with The Nature Conservancy have already done so. The ones that are left don't want to work with TNC. So they have asked us to be the people who work with the landowners. They will help bring the money and we will work with the landowners. Heather (Knight) and I have been working on that for two years now.

TD:

It probably helps that you have worked for TNC.

Boggs:

Oh yes, it definitely helps, because I know their bureaucracy and can deal with it in a pretty good way.

TD:

Is the TNC very bureaucratic?

Boggs:

It's not as bad as the government, but it's a whole lot more than what I have. Everything at the land trust, all the bureaucracy is whatever I say it is. If I have a problem with bureaucracy it's my own fault.

TD:

Which brings me to the question: Are you an accredited land trust?

Boggs:

We are not. We are registered to go through the accreditation process next fall, not this one but the year after. So we'll be going in in 2013.

TD:

Why do you do that?

Boggs:

There is a pretty strong push out there for accreditation. We have to be certified for people to be able to claim the tax credits, but the accreditation part we have started hearing from funders that they don't want to work with land trusts who aren't accredited or they are thinking about it.

TD:

They know the difference.

Boggs:

Oh yes. Funders who fund land trusts really know the difference, because they are putting hundreds of thousands of dollars into this thing. They are spending a lot of time understanding it. Between that and just the general feeling that it's the right thing to do to make sure we are doing everything right. The accreditation process is very rigorous, but it also helps land trusts become better. By going

through it, you identify your weak spots and what you can do better. You'll end up being a better land trust, whether the accreditation helps you or not. You'll be able to fulfill your promise of perpetuity better.

TD:

What other services of the LTA do you use?

Boggs:

You know, we really cashed in on LTA lately. Have you heard of the LTA Western Leadership Training Program? They do a thing every couple of years called the 'Leadership Training'. The slang name for it is 'executive director boot camp'. It's a weeklong program where they bring together executive directors from land trusts – ours is just from the West. In 2010 we all went to near Monterey, California. We went to a conference center there and spent six days together in both classroom settings, where we were being taught things, but we also had one-on-one sessions with experts. We had fundraising experts. We had accounting experts. We had governance and management experts. We would usually have the classroom in the morning and in the afternoon we could sign up for one-on-one time with these experts and ask them very specific questions. Otherwise it would cost hundreds of dollars, because these people charge by the hour. It was an incredible experience. Plus, we developed this network of people. In most states in the Western US, I can go and call somebody and they will say: 'Hey, come and stay at my house.' So there is this network of people... and locally even more. There is this really small group of people from Colorado that, if something really bad happens and you need to talk to somebody and get some advice and help, you call them. That's been incredible. But, in addition to sending us to these trainings basically for free, they gave us implementation grants. We had money from LTA to implement the ideas that we came up with at these trainings. Last year we (Legacy Land Trust) had about 5,000 \$, this year about 10,000 \$ to do that. LTA has been unbelievably helpful in that. Last year, we used for... Before you can go into accreditation you have to do an assessment, which is like a first pass screening of your programs to see if you are even ready for accreditation. LTA funded that for us.

TD:

These local contacts and the establishment of personal relationships in these kinds of meetings, wouldn't they be also possible without help from the LTA?

Boggs:

Theoretically they would be. But we are all very, very poor. We get sucked into focusing so narrowly that without these outside encouragements to get out and do this, it's hard to do that. We all go to the CCLT conference once a year. You start meeting people that way, but it's two days and not nearly the depth of relationship building you get when you spend six days with people 24 hours a day doing lots of different things. That's where LTA really shines in bringing us together. After we did that one year in California, we did it here in Colorado the next year on one of the properties that we hold a conservation easement on. It was a lot of fun.

TD:

Do you go to the Rally?

Boggs:

I wasn't going to go this year because fundraising is down this year, but LTA came through with a scholarship for me. So I'm going and they may have some money for me to take a staff person too.

So I can't say enough great things about LTA. In the West we have Wendy Ninteman who is the Western Regional Director of the LTA, and her deputy is Shannon Meyer. Both worked for land trusts. You can't say that about everybody. I don't think there is anybody at CCLT who ever worked for a land trust. They are a great organization and they do a lot for us, but they don't have that direct knowledge and experience to understand what problems we are facing.

TD:

Would you say that networking and education are the most important services the LTA provides? What about advocacy?

Boggs:

Oh yes, I always forget about that because they just take care of it. They get it done, which is great. We call our senators and congressmen when they send the email, but that's critical. If there wasn't that kind of advocacy happening I think we would have lost a lot of stuff. A lot of the tax benefits would have gone away because unfortunately in our system of government, there is a lot of money thrown at those things. And if something isn't supported even a little bit, it's very easy for things to get rid of. I forget about that, because they are so effective. I don't think about it that much, but it's critical. It probably is the more important (service). But then CCLT is critical in that regard for us as well, because the state tax credits drive conservation in Colorado. The majority of conservation happens because of those. Without that – if the legislature voted to get rid of the tax credit tomorrow, I would probably lay off staff tomorrow, just because it's such a huge part of what we do.

TD:

Do you still keep growing as an organization?

Boggs:

We're probably maxed out on our fundraising. We want to do a lot more than we do. We'd love to have an education program, where we take lots of people out to our properties. Now we do fundraising where we take our major donors and show them, but just as fundraising tool. We'd love to take school groups. We'd love to do all kinds of stuff. You almost need a full-time person to do that, so we don't do that. We'd love to do more funded easements, where you go out raising government money to buy easements. It takes a huge amount of time without a lot of assurance that it's going to happen. It takes a huge amount of time and you never know. But we'd love to do that. From a financial standpoint, hiring people and then letting them go because you can't afford them really sucks. At Legacy, we were hit pretty hard with the economic recession. We don't have any operating reserves. It is hand-to-mouth. So growing is a long-term proposition for us. We need to have a year's worth of operation reserves before we can ever think of hiring more people.

TD:

In terms of acreage protected, do you think there is a saturation point for this as well?

Boggs:

The low-hanging fruit has been picked, a lot it has. There were times when we did 10 deals a year. That was a lot. It's hard to do that many deals in a year.

TD:

What is the average size of an easement?

Boggs:



It totally varies. It might be 27 acres or it could be 2,000 acres. It totally depends. I even think if you actually did the math to figure out an average, it would be meaningless. But we have to work harder for the deals that we get now. We are also in a situation where agricultural land values have risen, because commodity crops are higher – mostly corn for ethanol, the stupidest thing in the entire world. Agricultural property values have risen. Development values are down. Our easements are valued on the difference, so if one comes up and the other one down, the difference that people would get their tax credit on is less. There is less of incentive to do it. People will just wait. So every deal we get is harder to land.

TD:

Do you compete with other land trusts for easements, the Cattlemen's Land Trust for example?

Boggs:

I would say we are more cooperative than competitive. They do work in our area. They have never done an easement in Larimer County. I'd like to think that it's because we have been effective. There hasn't been a need for them.

TD:

Is there a formal agreement about what belongs to whom?

Boggs:

No not at all. Actually in Weld County, which is the largest agriculturally producing in the state and the fourth largest agriculturally producing county in the country. I think the other three that are above it are in California, so it's a huge agriculturally productive area in terms of revenue – there are a lot of agricultural landowners, and that's what Cattlemen's (Land Trust) works on. There have been numerous times when Cattlemen's have been working with a landowner or contacted by one and something happened. They weren't the right land trust for that landowner or they weren't able to do it just because of their capacity. And they call us and say: 'Hey, we've got that landowner. We think you should talk to him.' We have done four or five deals that way. The same with The Nature Conservancy where they might just not have the capacity to work with the person who contacted them.

TD:

Would you say that there is more supply than demand in this sense?

Boggs:

Not in terms of landowners who want to do easements. I would say it ends up being circumstantial. Cattlemen's does have priority areas, so if they get a deal that's outside of their priority areas, somebody comes to them with land that's outside their priority area and they have all the work they can handle in their priority areas, that's when they hand it to us.

TD:

Where do you see the Legacy Land Trust 20 years from now?

Boggs:

In 20 years?

TD:

Well, you can start with 10.

Boggs:

20 is easier. 10 is short enough that you don't know exactly. If you do 50, it's real easy. I think in 20 years we will start winding down our acquisitions. I think we will be at that point where most of the land that is going to be protected under the current ownership will have been protected. I think at that point we will shift from acquisitions to stewardship and monitoring, where we're making sure that nobody's breaking their easements and help landowners with how to make their land better. Right now we don't really do that because we don't have the capacity to do it. We work with some other organizations that are more able to do that, like Rocky Mountain Bird Conservatory. They have a whole stewardship division. They help people with fencing projects or wetland restoration projects or riparian fencing. So we do a lot more of that with them. But in the future we may move more to an active management stewardship with those landowners.

TD:

Is that something that troubles you?

Boggs:

No, I think every land trust's goal is to work themselves out of the acquisition by doing it all. It really is a finite thing. That's really what separates us from a lot of charities. Soup kitchens and homeless shelters have a goal, making sure that there will never be anymore hungry or homeless people.

TD:

But there will always be new people.

Boggs:

Right. For us it's not as much that in the same way.

TD:

Do you consider yourself part of a movement?

Boggs:

People talk about it that way. Every non-profit truly is a business. Even if we call ourselves something different, it is a business. The only difference is what you're selling. We're selling people pretty views and the knowledge that they're doing something good for the world when they donate to us. So I guess I don't think of myself as part of a movement. I think Wendy (Ninteman) and Shannon (Meyer) – there is this generation of folks that is about 10 to 15 years older than I am – I think they are the movement. They were the ones that founded land trusts or were the first executive directors of land trusts. None of them have kids. Most of them are not married. They spend every hour of every day doing the land trust thing. I have two kids. I am not willing to... My dad was gone most of the time. He wasn't around much. I'm not willing to do that with my kids. They brought that whole thing forward. Now myself and my colleagues, our responsibility is to keep things going where they are, not necessarily to grow it into something 10 times bigger. Better for sure, we all need to get better all the time.

TD:

Is it more of a routine?

Boggs:

Yes.

TD:

What's your background?

Boggs:

My degree is in wildlife biology from CSU. I was going to be a game warden when I was at college. I got an internship with The Nature Conservancy and that was it. I was: 'This is what I want to do.'

TD:

So you are passionate about conservation.

Boggs:

Oh yes. There is that magazine called 'Ranger Rick'. I don't know if you have ever heard about it. It's for kids between five and 12. And it is just about wildlife and stories about different species that do different interesting things and the importance of habitat conservation. I read that all growing up. I had stacks of them in my room. I would just reread them over and over again. It was timeless information. For as long as I can remember, wildlife was important. Then in college, in one of the wildlife classes the professor said: 'Those of you who want to touch the wildlife a lot and play with them, get out now, because they don't need you to mess with them. They need you to protect their habitat. They need you to do other things, but they don't need you to touch them.' That was an eye-opening thing, understanding the importance of habitat.

**13 Dan Pike – President of Colorado Open Lands, Dieter Erdmann – Director of Conservation Operations, Sarah Parmar – Land Protection Specialist, Amanda Nims – Land Protection Specialist, Christine Strickland – Development Coordinator, Cheryl Cufre – Director of Land Stewardship, Elizabeth Richardson – Stewardship Volunteer, Tessa Goldhamer – Volunteer Land Protection Assistant, Cheryl Fox – Director of Development and Administration**

(...)

Parmar:

I'm curious about funding for conservation because I think one of the reasons why conservation easements are attractive in the US is the relative cost is so much lower. We feel like we are achieving similar goals but at a much cheaper cost. You don't have the cost of management in the long term.

(I talk about land conservation in Germany.)

Richardson:

In California it's different from Colorado. They've had a series of public bond issues, which enable them to buy land. So many of the land trusts that I know from around there buy land and manage it, which always seems to me like a nightmare. They do that, and what's interesting as we're coming to the end of the latest bond issue, there is some money. Now there are some conservation easements, but in California it is primarily the purchase of properties through all these bond issues. So that's a whole different world out there.

TD:

Why don't people buy here?

Pike:

Colorado is better off than many other states. Not quite as well off as California, but we've got more funding programs than most states do. We have a statewide lottery, of which the money is dedicated, plus we have a large number of local governmental funds – GoCo, Great Outdoors Colorado. We are probably second to California here in West as far as public funding for conservation.

Richardson:

But prior to the passage of GoCo in I think 94 or 95, it was private land donation with federal tax benefits. It was all that way.

TD:

Was that fee title donation or conservation easements?

Richardson:

Conservation easement donation.

Parmar:

But that is a good question. I don't know why they would differ so much in strategy between California and Colorado.

Cufre:

Does California have as much public land as we have?

Richardson:

I don't think percentage-wise they have as much, but they have a lot.

Erdmann:

It might be that along the coast in particular around some of the bigger cities, there may be a demand for more public land. I've spoken with some people recently that say that basically even if you get funding for a conservation easement in California, you need to provide public access. That was the message that I was getting. So if you have to provide public access anyway you may as well own it. Perhaps.

Cufre:

There may be some different psychology in the electorates and the two jurisdictions. The land ownership ethic in Colorado is pretty fierce in terms of the farmers and ranchers wanting to own their land and control it. At the same time, there is a resistance to paying taxes, so if you can accomplish what you want through some kind of tax benefit, it overcomes some of the reasons to insist on strict landowner control – whatever they want to do whenever they want to do it.

Parmar:

I think one of the differences between purchases of land versus conservation easements is the function of conservation objective. What do you want to do with the land once it's protected and what is the organization's or agency's priority? So The Nature Conservancy buys a lot of land because they are preserving it for biodiversity primarily. Boulder County Open Space and Jefferson County Open Space buy a lot of land for public access. I think there are number of things going on. There is psychology, there are objectives, there is funding availability...

TD:

Do you guys focus on working ranches?

Parmar:

It is one of our priorities. It turns out to be one of the bigger ones.

Erdmann:

Yes, and that's just as a factor of who owns the land. Big pieces over in Larimer County are in agricultural production one way or the other. But our mission allows us to work on a variety of land types. We can do historic preservation projects. That is something I think... A lot of times, people who are just getting involved with the land trust movement often think that it's entirely focused on the preservation of biodiversity. That is one of our priorities, but – as mentioned – preserving agriculture, some limited public recreation...

Richardson:

...preserving scenic is another big piece...

Erdmann:

...open spaces and view sheds...

TD:

Do you prioritize between these objectives or do you just take anything that comes up?

Parmar:

We tend to work in a few different areas around the state. We call them our 'Community Conservation Areas'. Within each of those areas we try to assess what the local priorities and the local needs are, and then work with them in that context. So they may differ depending on which area of the state we're dealing with.

TD:

Is that a formal strategic planning process that you do within each area?

Parmar:

Sometimes. For some of our 'Community Conservation Areas' we have longer term visions for conservation objectives and for others we don't.

Erdmann:

They are also on different levels of maturity. There are some areas where we have been dedicating resources for 20 years, and there are fewer opportunities there simply because we have taken advantage of them. Then there are other areas that are newer where there are emerging opportunities. So we are transitioning based on the need.

TD:

Do you cooperate with counties when you come up with priorities?

Erdmann:

You can use Colorado as a good reflection of the United States. There are some counties that really feel like preserving agriculture and open space is critical to their long-term economic stability. There are other counties that view land conservation as a threat to their economic development. So it depends on the leadership and philosophy of the counties and the electorate. We tend to see... Even if you look at the two major drainages in the state – on the Eastern Plain you've got the Platte River that runs to the Northeast and the Arkansas River that runs out the Southeast – I think the Arkansas so far has been... the political dynamics and the folks that live down there have been much more accepting of conservation easements than the folks in the northeastern part of the state. That just reflects a different populus and overriding philosophy.

Pike:

There is a coalition and partnership in Colorado. The campaign name was 'Keep it Colorado'. It was The Nature Conservancy, the Trust for Public Land, the Conservation Fund, us and one other organization. We spent a fair amount of time trying to identify priority landscapes in the state. It was a little arbitrary but we came up with 25 fairly large landscapes to protect. One of the things we did during that process was trying to collect all the GIS layers of various resource interests that we might be conserving. What really came out of it was that a lot of those lands – whether it was biological diversity, recreation, scenic, agriculture – were the same lands. Here in the West they tend to be

along river corridors. There are exceptions, but generally if you find a river corridor, you are going to find wildlife habitat, you are going to find scenic, you are going to find irrigated agricultural land, and you are going to find people who want to protect it. The planning sometimes is self-evident. You can go into an area and see the river and that's where everything is.

(They hand me a map showing priority areas.)

Parmar:

In the areas we work in, we work with the local governments. We work with the watershed groups sometimes. It just depends on the area, who is interested.

Cufre:

From a project-specific basis, Dan (Pike) was getting to something that I was going to mention when you were asking whether we are mostly an agricultural land trust, whether we work mostly with farmers and ranchers. One of the things that we take into consideration when we evaluate a project is: How many different conservation values does this particular project have? It's usually not just a farm or a ranch. It's got wildlife habitat. It's got scenic qualities to it. There are water rights on it that are worth protecting for a variety of reasons, for wildlife or the larger agricultural community in the area. So there are multiple benefits that we can check off with each conservation easement, and it makes the conservation easement more robust. If it were ever to be legally challenged, it would make it just a stronger easement.

TD:

So you put all of these objectives into the easement? Doesn't it make that very complex?

Parmar:

Yes, our normal easement is, I think, 30 pages right now.

Cufre:

And then there is a baseline report that is longer. It addresses each of the conservation values.

TD:

Does the baseline report go with the title?

Richardson:

It is referenced, but it doesn't get recorded. There are some land trusts that like to record those, but we don't do it in Colorado.

(I look at the map of priority areas.)

TD:

If I look at this map as a landowner, I either see an opportunity or I feel scared. You could ask yourself: 'What they are planning there? A big preserve maybe? And I am in the middle of it?' What is the reaction of the landowners to your planning? Do you go out with it to show it to them?

Pike:

Depends on who you're seeing. The other statewide organization besides us is an agricultural-based group, the Colorado Cattlemen's Land Trust. They generally abhor maps for the very reaction they get from landowners: 'Somebody is plotting to do something with my land.' The reality is that

somebody is plotting to do with everybody's land. But it depends a lot on how it is introduced. But their whole process really was a result of demands by funders who got frustrated by seeing proposals from all over the state and not knowing how to compare them. There was really pressure from funders to say: 'You guys come up with a master plan.'

Parmar:

Which is interesting because you said you were on the other side of that. You were looking at proposals from across Europe. What was that like for you?

(I talk about the project evaluation methodology for funding programs of the EU commission.)

TD:

How big is GoCo per year?

Pike:

45M \$ a year for easements and land acquisition.

TD:

Do they fund 100% of the costs?

Pike:

They have four quadrants of expenditures. Two of those quadrants are state agencies, Wildlife and Parks, another quadrant is local government, and then the final quadrant is open space, which is where private organizations participate. Over time they roughly distribute the money equally to those four quadrants. In the local government and the open space quadrants, they have to have matching money to their grants.

Erdmann:

25% is the general rule of thumb.

Parmar:

Of course, if you can do better, it's helpful.

Erdmann:

I would say our projects on average have a 50% match.

TD:

Do you always try to leverage your investments with GoCo money.

Pike:

Not always, but it's an easy source of money to go to.

Erdmann:

We do about 25% bargain sale conservation easements, so easements that have a cash component, but also take advantage of the charitable opportunities, and then probably 75% are straight charitable contributions, so donated conservation easements.

Pike:



Do you have tax benefits for donated land or conservation easements?

(I talk about the situation in Germany.)

Strickland:

Here, they don't even donate their land, they donate their development rights. We have it (the tax incentive) on the federal level, but in Colorado the thing that really pushed conservation here was that we have it on the state level now. And you can transfer the state one.

Erdmann:

What's really interesting in this conversation about fee ownership versus easements, both on the federal level the incentives have been moving in this direction, but certainly at the state: You can do better – from a deductibility standpoint, from a tax benefit standpoint – as a landowner you can do better with a conservation easement than you can with giving the land. So it actually incentivizes conservation easements as opposed to land gifts.

TD:

Has this been driven by the land trust community or landowners?

Pike:

Probably the land trust community.

Erdmann:

The land trust community, but I'd also say that again it reflects the philosophy that a conservation easement is a voluntary transaction, and that you're also maintaining private ownership of the resource, of the tax base, productivity, from an economic perspective, let's say agricultural or otherwise. So I think politically it's easier to justify among the variety of potential interests that are out there. It's easier to get the votes to restrict private interests as opposed to incentivize transition from private to public.

TD:

My understanding is that property rights are very strong out here, but they are strong everywhere in the States.

Strickland:

Especially out here. That's what Tessa and I were muttering about over here that it's just the American Way, maintaining your private ownership is an underlying current that is – I think – also supporting a higher interest and priority in conservation easements.

TD:

What do you think about that? Do you share this mentality?

Erdmann:

Well, as a user of public land, quite honestly, agencies are not the best land managers.

Parmar:

Their budgets aren't growing, so you don't have...

Erdmann:

And you've got a tragedy-of-the-commons situation, where you've got agencies which are essentially the police. Everybody utilizes these properties as if they were the owner or they don't necessarily have the responsibility. They probably overuse them as opposed to their own properties. It depends. You've got all levels of land management by public agencies, from the federal land management agencies like the Bureau of Land Management and the Forest Service down to cities that have parks. The land management resources and the intensity of the management change with scale.

Strickland:

And it changes with which arm of the public government owns the land too. You've got wilderness on one end and you've got probably the Bureau of Land Management on the other. The Department of Interior wilderness land or Bureau of Land Management...

Erdmann:

Land of Many Abuses...

Pike:

Are you seeing Wes Ward tomorrow? Ask him. They own a little land in fee, and they've got a lot of sanctuaries where they do both easement and fee land in it. It would be interesting to have his take. New Hampshire has a whole different view of the world than Colorado.

TD:

Do you own land?

Pike:

Not at the current time.

Parmar:

We have in the past.

Goldhamer:

But we sell it with a conservation easement, so it is protected land.

Strickland:

Well, for the most part. We've had some pieces that were donated just to be sold.

Nims:

So going back to your question, I think for me personally there is equal importance for publicly owned open space and privately protected...

TD:

But it could also be owned by a private organization like a land trust. That would be the third option.

Nims:

...that offered public access, sure.

Strickland:

Yes, nature reserves, like The Nature Conservancy does.

TD:

What happens a lot in Germany is that conservation organizations buy land from farmers and then lease it back to them with restrictions.

Parmar:

Boulder County actually does that.

TD:

That way they have the control over what type of farming happens, that is compatible with wildlife protection and so on. And the farmers actually like it because they get to sell the land for the real market value and then they get very cheap lease contracts. And they say that the conservation organizations are very reliable, that you can plan with them for the long term, because their objectives don't change. They are not subject to fluctuations in the real estate market. They won't sell the property ever again, so you can have long-term lease contracts. The farmers say that this is great because they make money by selling the land and then they save money by getting these conservation lease deals, and they can actually plan their farm operations because they know they will be able to lease the land for decades if they want to. So for them it is also a very attractive situation. But that doesn't seem to happen very often here.

Pike:

I don't think people trust the government.

TD:

But it's not always the government. It is private organizations that do it too.

Goldhamer:

I think people are more wired to owning the land. The people wouldn't be fine with the type of farming you mentioned. It is a homestead heritage...

Nims:

...own it and pass it on. I think what you describe sounds fantastic, but I think then what do you have to pass on to your children? What sort of investment are you making? Home ownership is this big deal here, because then you've got something you're investing in and you can sell. You got some result from it that you can then invest – cash return that you can invest.

Erdmann:

Maybe. (We all laugh.)

Nims:

Yes, maybe. Lately not so much. But you know, if you're leasing all the time... A dear friend of mine pays more for her rent than I pay for my mortgage, and her home is a third of the size of mine. That makes absolutely no sense. When the time comes and I sell my home –because that's what I've got, I don't have a 500 acre ranch – I will have some return from that, that I can go somewhere else. If you're just leasing... That's the mentality that I think our country has.

TD:

We have the same kind of mentality among our farmers. They hold on to their land. You don't find many that will operate on 100% leased land. They want to own the core of their land. But maybe they want to expand and see this as a good opportunity to get more land. And they can calculate and plan with this land, because they get long-term lease contracts and know exactly what these conservation guys want.

Erdmann:

That's interesting. The correlate that I think of would be the federal grazing leases. I think about what I've heard about folks and their complaints. What they can do, their activities and their use, is constantly being throttled back by the land management agencies. I think that would be... It doesn't sound like this is necessarily the situation in Germany, but I would see that any farmer or rancher who is leasing land from a conservation group, particularly on a long-term basis, would be concerned about having their operations limited.

TD:

I mean that's the point. Of course you limit the operations, because otherwise there is no point in buying the land in the first place.

Erdmann:

But on a sliding scale over time...

Nims:

I think the fundamental difference is that we have land owned by an entity that has to provide a benefit for all. So there are constantly competing different groups from the public at large saying: 'We don't like this. We're going to challenge that.' Whereas if you're private non-profit, you're not managing it necessarily for the benefit of the whole public.

TD:

Your mission stays the same.

Nims:

Exactly, I would think you have fewer people challenging it and therefore cutting back on... cutting back because it is supposed to be for everybody, although only one person is using it.

Goldhamer:

...or changing what can or cannot be done. Ours is subject to political whim, whoever is in office overseeing the management of that land.

Nims:

So I think it is really different.

Pike:

The one thing I would encourage you to look at is tax advantages of donations. If you just take a hypothetical: A conservation easement may often be worth half the fair-market value of a piece of property. The deduction is often half of that. So the government ends up paying a quarter in tax revenues of what they would pay if they bought it in fee. That's such a driving force besides the fact that they don't have long-term financial management obligations. It just allows you to look at the world in a different perspective.

TD:

Do you ask for endowment money when you take over easements?

Nims:

Absolutely.

TD:

And the landowners pay that?

Pike:

In our case, the landowners pay. I know in some states they'll fundraise for it.

Nims:

Well, if it's a funded conservation easement, we often go to whoever is providing the grant funding.

TD:

How much is that on average? Do you have a rule of thumb?

Parmar:

40.000 \$ for all the due diligence costs.

Erdmann:

For the stewardship endowment I would say probably between 15.000 and 20.000 \$ per easement.

TD:

And that goes into a fund and you can only use the interest?

Erdmann:

Yes.

Pike:

We have a formula but we follow our rule of thumb. (Everybody laughs.)

Cufre:

That's in addition to generating the documentation of the easement, which can be substantial.

TD:

Do you do monitoring visits? How do you enforce the easement?

Cufre:

Yes, every easement every year.

TD:

That's a good job.

Richardson:

It's a good job for everybody else except Cheryl (Cufre).

TD:

Why?

Cufre:

Because of the violations. Oil and gas is the main problem child right now. Just the past week there have been three calls of people wanting to lease off their minerals for drilling.

TD:

How do you deal with that?

Strickland:

How much time do you have?

Cufre:

Yes, it is... Now the language in the easement has changed from what it was 10 years ago. That is part of the problem, that 10 years ago certain types of drilling weren't feasible. Now, there will be something different. The language has a hard time keeping up with technology.

Pike:

We were just talking about a case this morning where now they can directional drill from off the property. We've got an easement where this technique wasn't known when we wrote the easement. So somebody is proposing to directionally drill and the easement says you can't remove the minerals and so theoretically prohibits directional drilling. It was a technology that nobody contemplated at the time that we wrote the easement.

TD:

So what do you do?

Pike:

We do what you always do: You call a lawyer. (He laughs.) It's nasty.

Cufre:

And expensive.

TD:

Do you have to go to court?

Pike:

Well, maybe. We've been threatened with that.

TD:

Are you planning to join Terrafirma or do you have your own legal defense fund?

Pike:

We will join Terrafirma.

Cufre:

We do have a legal defense fund.

Parmar:

How big is it?

Cufre:

It's part of the stewardship endowment that we receive and we allocate.

Erdmann:

It should be half a million. Some 250 conservation easements that contribute 3.000 \$. We didn't do it historically, but theoretically it should be 500.000 \$.

Richardson:

That number got set in concrete at 1995.

Erdmann:

It has been a fantastic rule of thumb. (Everybody laughs.)

Richardson:

It is very easy for people to remember.

TD:

Have you had court cases already?

Pike:

We've had one where we actually went to court.

Cufre:

It wasn't because of a violation. It was because some other party sued us.

Parmar:

What about Pine Cliff?

Pike:

Well, that wasn't an easement violation, just a property re-owned.

Cufre:

So we haven't gone to court to enforce an easement violation, although I do see one coming down the road, a couple.

Pike:

We were pretty early supporters of TerraFirma. Jessica (Jay) did the first analysis of easement insurance in the country.

Richardson:

We are under an agreement with Colorado Open Lands.

Cufre:

Yes, we've already agreed to raise the money to do it, because we saw it as a problem coming down the road.

TD:

...especially when ownership changes.

Cufre:

Yes. The more it changes the more likely you have problems.

Pike:

Although we'd like some ownership to change. (Everybody laughs)

TD:

Have you been hit by the financial crisis at all?

Pike:

No, not at all. (Everybody laughs.)

Strickland:

Yes, we have. In multiple ways... There used to be 11 of us.

TD:

So you did have to lay off some people?

Strickland:

We did not lay off. It was more attrition. People who were leaving weren't replaced.

Nims:

And our fundraising has definitely been affected, both grants and individual donors.

TD:

Grants too?

Nims:

Well, because they are from private foundations whose endowments have also dropped. The investment value has dropped, so their 5% to give away has gone down.

TD:

Where do you see your organization 10 years from now?

Pike:

Ask me on Friday. We're doing a strategic plan right now. We'll take it to the board as a draft in a month.

TD:

How big is your board?

Pike:



11 People.

TD:

That's fairly small, isn't it?

Pike:

It has been smaller. The organizations tend to have either working boards or ceremonial boards. A smaller sized board tends to be more of a working board. Our organization has an interesting background. We are an outgrowth... We were started by a business organization, something called the 'Colorado Forum', which was a group of Denver CEOs of companies that started the organization, which is not typical of most conservation groups. So because of that, we've tended to have a more business-oriented board right from the start.

TD:

Why did they form this organization?

Pike:

There was an effort back in the late 70s by the governor of the time to address important issues statewide. He created blue-ribbon committees. One of these committees was charged with open space issues. When the governor disbanded the program, the committee wanted to keep going. It was chaired by and many of the members were out of this Colorado Forum. So they said: 'Let's figure out a way to keep this effort going.' That was the start of it.

TD:

Are you the oldest land trust in Colorado?

Pike:

No, there are a couple of local ones, Mesa Land Trust in Grand Junction, Aspen Valley...

Richardson:

Estes Valley is also older.

Pike:

I think we're the fourth. There are quite a few land trusts in Colorado, although not like Massachusetts. For a Western state there are quite a few.

TD:

Because of the recreational value of the landscape or why is that?

Nims:

I think it's a general ethic among people who live in Colorado that conservation is high on the agenda.

Goldhamer:

We live in a gorgeous state. It's a beautiful state. It brings out folks who think it's great. They don't like to see houses all over.

TD:

Would you say that private land conservation has an impact on sprawl and housing development? Or is it just on a scale that's too small?

Pike:

Well, it undoubtedly has some impact. I have often maintained that private land conservation is a really lousy way to control growth. We're more oriented towards what should be protected than what shouldn't be developed. I think that is probably collectively what most of the land trusts are oriented towards, the positive rather than the negative aspect of it. But as you know, growth controls are an awful big issue in the West.

TD:

I know that Boulder has a growth boundary and that people complain about it.

Strickland:

Yes, it drives property values up and pushes development further out. It creates its own different form of sprawl.

Pike:

On the other hand, the property values go up because people do want to live there. Boulder is surrounded by a circle of publicly owned open space that was financed by the people of Boulder. They obviously like it.

TD:

Do you still keep growing in terms of acreage protected as an organization?

Strickland:

Oh yes.

TD:

Do you see a saturation point in the future where it just levels off?

Richardson:

Colorado is a big state. It's going to take a long time.

Nims:

I think we're pretty steady. It's 10,000 acres a year that we protect. I don't see that going down any time soon.

TD:

Do you have a list of landowners waiting?

Nims:

You know, even when we don't have a list, somehow they keep popping up.

TD:

Do they contact you?

Parmar:

It's a little of both. Sometimes we get calls. Other times we target landowners a bit more proactively.

Nims:

Sometimes projects are brought to us by partner organizations, the Trust for Public Land...

TD:

Why would they give it to you instead of doing it themselves?

Nims:

They broker projects.

TD:

They don't do easement transactions themselves?

Nims:

Not anymore. I don't think the Trust for Public Land holds easement themselves, do they? They are just like a broker.

TD:

Do you compete with other trusts?

Parmar:

For funding. We don't like to talk about it, but yes.

Nims:

Not so much the conservation itself, but the funding.

Parmar:

Sometimes the conservation.

Nims:

Occasionally.

Pike:

I'm not sure it's intentional, but Sarah (Parmar) mentioned that we focus on 8 or 10 geographical areas in the state. In some of them, we've been for quite a while, 15 to 20 years. The consequence of it is that we've assembled significant quantities of protected land, whether it is river corridors or the majority of a landscape, which is a little bit different than most national or statewide groups. They are a bit opportunistic and they'll do a big property here, and then they'll go over and do a big property there. So I think we've been more involved with assemblies of properties.

TD:

Are these areas counties?

Pike:

Yes, they are counties, but they tend to be more watersheds than anything else.

TD:

In terms of percentage of these areas, how much do you protect? Single digit or more?

Parmar:

These are pretty large priority areas, so the percentage is rather small.

TD:

I've been talking to a community land trust in Massachusetts where they said half the land in the municipality is protected, with 40% through easements. The rest is public land I guess. And they aim at protecting 80% of the land in the town.

Pike:

We are nowhere near that. I think the Vermont Land Trust has 2% of the state of Vermont protected.

Erdmann:

I'm just doing some quick numbers here. Colorado is 66M acres. Roughly a third of that is in public ownership, so that leaves 44M acres of private land. The land trust community in Colorado has preserved about 1M acres. So what does that tell you? There is a lot of work for us to be done.

Pike:

So we're as good as Vermont though. (Everybody laughs.) It's 2%.

TD:

I'd be curious to hear how you network with other land trusts in the state and in the country. 'Keep It Colorado' is an initiative aside from what the Coalition does, right?

Pike:

Yes, Colorado has a large amount of networking between land trusts. A great deal of it came about because the Internal Revenue Service about six or seven years ago came to Colorado and started investigating conservation easements. And they had good reason to do it. There was some abuse of the easements. But the Internal Revenue Service couldn't tell the difference between the good ones and bad ones, so everybody got thrown into the same category. As a result the community started working together more than we ever have, and it carried over. There is a lot more collective activity in Colorado than in other states among land trusts.

TD:

I know that you had to get certification by the state. Are you also accredited?

Pike:

Yes.

TD:

Has that helped? Is it worth the effort?

Pike:

I don't know. You just hold your nose and go do it.

Parmar:

I think it's worth it.

Pike:

Yes, it helped. I think Colorado has probably the highest percentage of accredited land trusts in the country. We probably have 20 now.

Strickland:

But isn't this driven in part by the Department of Revenues?

Pike:

Yes, because we've had these bad transactions happening that brought the IRS in, and we had reform legislation go through the state legislature to try to address the problem. That's where the certification got set up at the state level. And you automatically get certified if you're accredited, so that became a reason for people to get accredited.

TD:

Is the LTA an important partner for you or is it more on the state level that you network?

Pike:

I think they're less strong here than in other states, because we've got a strong state organization, the Coalition of Land Trusts.

Nims:

I think national policy-wise they are important to us. But I agree, as a local advocacy we have our Colorado Coalition of Land Trusts. They are very strong. And for local policy issues, I think they're also very strong there.

Richardson:

We have had friction over the years when LTA would come in and try to do something that competed with CCLT. So then that has occasionally flared and will again, depending on what they are trying to do and how they are planning to do it.

TD:

For example?

Richardson:

Oh, they were competing for financial resources coming in to solicit money from people that we've raised money from historically. That's one competition. Another competition – and this goes back into the 90s, when they wanted to hold conferences when we had CCLT holding its own – that has ironed itself out, but occasionally can flare up again.

Strickland:

Educational things, training land trusts, things like that...

Richardson:

So it does create friction from time to time.

TD:

So they create more competition than... They don't offer services that are very much needed?

Richardson:

Well, the national legislation for sure... very, very important. One of their key legislative people lives around the Western slope. So they do offer services. A great number of us go to Rallies. Those are always very educational.

Strickland:

The national insurance I think plays a great role.

TD:

But you don't use their curriculum, webinars...?

Richardson:

In Southern California I take their webinars.

Pike:

We do some of it.

Nims:

I think they are most useful for us from a big picture standpoint, intermittently, but not on a day-to-day basis. I don't think we use a ton of their webinars and curriculum, because we are one of the more sophisticated land trusts. We already feel pretty well informed and actually have come up with some of the standards and forms that other land trusts use. We teach at their Rallies. But certainly from a national policy standpoint and accreditation and insurance, they are excellent partners. CCLT I think probably affects us a little more frequently and we work with them a little more frequently on statewide issues that come up more regularly.

TD:

I have a philosophical question: Do you feel part of a movement or part of a business?

Parmar:

I think it depends on who you talk to in the room. I would say business.

Richardson:

I don't think so. Dan, you feel part of a movement, don't you? I mean we've been tilling in these fields for decades.

Pike:

True. I was in this in 1972. It was more of a movement in the 70s and 80s than it is in the 2010s. It's more business now.

Strickland:

I was going to say over the years it has become more business because it had to. The regulations, the ins and outs, all the tax benefits, a whole series of things, the accreditation stuff, the fraudulent stuff that has come up over the years... Every time there is a good thing and someone figures out they can make money, they're going to find loopholes. I think all this has created a need for more professionalism than how it started. That being said though I still think it's a movement. We're just getting older. (Everybody laughs.) I think there is still idealism.

Pike:

There is still idealism, but there is much less innovation. When I started we just made up all the rules. Now you have someone watching over your shoulder to make sure you follow them. It's just a lot harder to do things differently?

TD:

What are the challenges that you see down the road?

Pike:

Germans. (Everybody laughs.)

Strickland:

One of them is perpetuity. The language you're using today, you have a hard time taking into account what the innovations and new ways of doing things are going to be even 20 years from now, much less 120 years from now. I think that will always create stressors.

Cufre:

What I think it comes down to – and I have a hard time saying this – these are individual properties that are protected with a language that is very specific to that property. But we are realizing more and more, we are confronted more and more with the reality that it is not an island of protection. There are issues in the world, there are issues in the county that directly impact the future conservation scenario. We really just do the best we can and then some now, but what's the future immediate surrounding world and larger surrounding world going to mean for that particular property, probably primarily from just an economic standpoint?

Nims:

Climate change...

Cufre:

Yes, climate change is going to affect agriculture...

TD:

It doesn't exist. (Everybody laughs.)

Cufre:

So some say. Silly people.

(I talk about Natura 2000 and climate change, and that protected places tend to keep some values, even if they change.)

Erdmann:

I think it is the same perspective that we have taken. The conservation easements do – although it may be a really far-fetched scenario, whereby all your conservation values are lost... theoretically you could extinguish that conservation easement and be compensated for it and move on to a place that is perhaps more valuable. In reality conservation easements aren't that specific. That is what we discussed, enumerating multiple conservation values.

Pike:

Most of the philosophies you hear about climate change is that size matters. The bigger it is, the better chance you have to adapt.

TD:

And continuity. You need to be able to provide migration corridors and stuff like that. So the shape of network becomes much more important, the question of what kind of preserves you have and how they connect to each other. That's the most important answer to climate change right now. But some say that if you look at the migration patterns of some species, they are way too slow to even run away from the climatic changes that are happening. They won't be able to make it up to the peaks or the higher latitudes. There are going to be some losers in the game.



## **14 Wes Ward – Vice President of the Trustees of the Reservations of Massachusetts**

Ward:

(...)

20 years ago Lincoln was being attacked for being exclusionary, keeping itself elite, large 2-acre lots, but actually Lincoln has been pretty progressive in establishing its own affordable housing right in the Village. So it was hard for people to attack Lincoln for doing what other suburbs were not willing to do.

TD:

Buzz Constable told me that they did it (the affordable housing) as a preemptive measure not to be forced to do anything. That's really smart.

(...)

What I would be most interested in is your role with the Trustees (of the Reservations of Massachusetts) and your other roles and positions in the land trust movement.

Ward:

Well, I've been with the Trustees for 32 years. I was the co-founder of the Massachusetts Land Trust Coalition. But I stepped away from that 10 or 12 years ago. So I really am solely... Well, then I was on the Accreditation Commission of the LTA for 3 ½ years, and I've stepped away from that. Now I just don't have time for anything more than what I'm doing.

TD:

I'd be interested in the history of the Trustees and private land conservation in Massachusetts in general. I know that the Trustees are the oldest land trust worldwide probably.

Ward:

No, it's actually not true. Even in Massachusetts there was a land trust. There are precursors of land trusts in the United States. I keep telling Rand Wentworth this and he keeps forgetting it. I believe that the first actual land trust in the United States of America was the Mount Vernon Ladies' Society. That was about the historic preservation of Mount Vernon. But it wasn't just – unlike a few single-site, single-building historic preservation organizations, like the Second Church Historic Preservation in Boston that was focused on one church back in the mid-19<sup>th</sup> century – unlike that Mount Vernon was concerned with this huge plantation, thousands of acres, and with abutting property on both sides of the Potomac River. So they took a very large landscape-scale look at their responsibilities. So I call them a land trust, even though it was primarily historic preservation. But in terms of what we think of as the proper role of a land trust, it's not just to protect the natural features, but the cultural features as well. So I say that they are the oldest, because if you just go by names you wouldn't call the Trustees of Reservations a land trust. It's not the 'Trustees Land Trust'. I think names are less important than the work that is actually being done. There were several precursors to the Trustees. They were advocacy organizations that advocated for the preservation of land, but didn't actually own land. So I think we may be the first land trust in the world operating at a regional scale, more than a single-site or - more importantly – a single-town scale.

TD:

Although it started with Boston and its surroundings.

Ward:

Well, no! The Trustees were founded to be statewide.

TD:

Right, it's in the name, that's true.

Ward:

They were the 'Trustees of Public Reservations' because everything needed to be open to the public.

TD:

And the land trust movement as such started in the 1970s...

Ward:

Yes, it started in the late 70s. It was started here in Boston by a group of organizations nationwide, who got together in order to defend the easement law from the IRS and from Congress, which was threatening to remove the tax benefits associated with granting easements. That was the initial idea, to have an exchange. Then it quickly grew from defending itself to exchanging information, keeping it up to date. It was called the 'Land Trust Exchange' before it was called the Alliance. It had a pretty successful initial conference or gathering, called a 'rally', because the idea was to rally the forces. About 100 people went to Washington DC. Alan Spader was the (president). I knew him. Then it failed here in Boston financially, moved to Maine and reconstituted itself in Maine and eventually moved to Washington.

TD:

If you look at the history of the Trustees, where were the big periods of growth, organizational growth but also acreage protected?

Ward:

I actually did a chart that showed the Trustees growth in acreage plotted over the years, and of course you can concur...

TD:

I've been browsing through this brochure with the list of properties of the Trustees, and it seems to be pretty evenly spread out, with a peak in the 70s maybe, but hard to tell.

Ward:

Yes, I did a chart, which is now somewhat out of date. I've also done a graph for the past 10 years. The past 10 years have been very strong, but when I say strong it is the combination of the property we own and the property that we've helped others like the state government or the municipal governments protect. We're doing about 25%... I need to give you some statistics. In terms of our staff effort, if you take all the hours that we spend on conservation-related work, we have our own properties that we acquire for our own portfolio. We have our assists. We have our conservation easements, and then we have our advocacy work. We have our community assistance work, which may be advocacy or it may be assisting the community with other conservation projects or assisting the community in developing the capacity to do conservation projects. Then we have our conservation easement monitoring and enforcement. So it's complicated because it would be a

different percentage if we cut out the ancillary activities and just talked about the direct conservation activities. If we talked just about our conservation activities, I would say we're doing about 40% assistance work and about 60% our own work. But we're throttling back on acquiring new reservations, because new reservations of stand-alone properties are very expensive to acquire now. We also need to acquire an endowment to maintain them. In these economic times that's very difficult. Also our standards have increased. We really want properties that will engage substantial numbers of people, so having a property that is beautiful but 60 miles west from here in a rural community – unless it is really spectacular or offers programming possibilities that are going to bring in substantial numbers – people will probably pass that up and a local or regional land trust in Massachusetts will probably find a way to acquire that.

TD:

Not only is public access important but even...

Ward:

More than public access, programming. We've found that passive enjoyment of our properties by people who come and visit and go away, we don't know who they are. We can't afford to staff that property continuously, so we have no way of increasing our membership because we own that property. I have to say on the negative side, we have reached a plateau in membership. We need to increase our membership in order to move forward as an organization. We need to increase our base of support. Membership is just part of that, sort of a pyramid: membership, greater supporters, and substantial donors. And we need to keep building that base.

TD:

Do you see these properties as showcases for your work?

Ward:

Absolutely. Well, not so much showcases, but platforms for engagement of the surrounding community. So it's not a one-up thing: 'We've established a reservation. Come and visit. We're going out to the next community.' We found that, to make that really work, we have to build with a community on a longer-term basis. So we have a stronger relationship. We're continuing to provide services of importance to the community, and then we have a platform for attracting membership.

TD:

Do the entrance fees play a role financially?

Ward:

Yes they do. If we don't have a substantial endowment, which is almost always the case, we need the entrance fees. Otherwise the books don't balance. But at most of our properties – two thirds, three quarters, maybe it's 80% of our properties – we don't have entrance fees.

TD:

I went to Crane Beach the other day and paid for the parking. I thought that would be the case everywhere.

Ward:

No, because you need a certain amount of business coming through the gate to afford the person at the gate.

TD:

I was surprised how many people worked there. There were at least 15 people or so, maybe seasonal volunteers, but it was very well staffed.

Ward:

Well, that is our flagship property. We have only a few at that level and none at that level in terms of amount of visitation, about 300.000 people a year. Actually more that are not counted, because a lot of people are visiting during the winter, late fall, early spring, when we are not collecting money from them.

TD:

You said that fee title acquisitions phase out because there is a saturation point finding valuable properties that attract the public, whereas conservation easements are still going strong?

Ward:

We are still doing conservation easements. We now have about 365 conservation easements. We are still acquiring between one or two dozen a year of additional conservation easements. But we are reaching a point there where we are becoming more selective, because we are reaching a point there where a few more above that 365 – maybe it's 400, maybe it's 375 – we will need another full-time monitor, and that's expensive. We can solicit on the average of 10.000 \$ from each easement donor to endow that easement. 10.000 \$ at 5% gives us 500 \$ a year for monitoring. It's not a lot, particularly if it's remote. It's one thing if it is in a cluster of easements we already have. But if it's out here alone, to get somebody in car to go out there and back and write the report... And we want to save some of the endowment to support the defense we know that will challenge us in the future.

TD:

Do you have a legal defense fund?

Ward:

We do, absolutely. And if you check the accreditation requirements of the Accreditation Commission, they require you to have a substantial defense fund.

TD:

Are you joining Terrafirma too?

Ward:

Oh yes, we are. Absolutely. We think and hope that will help. So the organizational adjustment is one thing, but most important for us is broadening our influence and the awareness of us as an organization doing good things for the environment.

TD:

So you're shifting more towards engaging local municipalities or other organizations?

Ward:

Two terms: one is called 'grassroots'. So we're trying to shed our elite image and attract people from all walks of life – the grassroots level – and recruit them to help us get our message out and to recruit them as members of course. And then 'grasstops' is the same kind of thing, but looking at the elite

level of people who are in a position to influence legislation and politics. We are trying to operate on both levels.

TD:

How do you do that?

Ward:

Well, our board is sort of a grassroots group. Our members are really grassroots. So again, we are trying to broaden our membership. We would like to attract a more politically active group of board members. The land trust movement has tended to be politically rather conservative. It was historically much stronger in republican circles than in democratic circles. That has now switched.

TD:

Why is that?

Ward:

It has to do with the switch in culture. We have to get into the political history of the US to understand the switch. Republicans tended to be better educated than democrats. Democrats tended to be the working class. Republicans tended to be the small businessmen and managers. That has somewhat changed.

TD:

Do you think it has something to do with the role of private property as well?

Ward:

Yes, definitely.

TD:

...because to me the land trust movement seems the perfect answer to anti-government, pro-private property feelings and the general sense that we should try to do it our own and American way.

Ward:

That's exactly right. When I came into the land trust movement, this was really the rhetoric of the Trustees. The Trustees is a private organization.

TD:

I've been hearing this in Colorado.

Ward:

Yes, absolutely.

TD:

They say: 'Landowners don't want to cooperate with the government, but with us they're fine because we are private organizations and they know us.' So conservation easements for them are the perfect tool.

Ward:

Yes, that's right. That is exactly what the Trustees were like 30 years ago. But we began to realize that what we can do – we have a reservation here, we have some easements there, we have this, we have that – our total impact on acres over past last 121 years is about 60.000 acres. Massachusetts is 6M acres. About a third of those 6M acres is protected – actually it's about a fifth that is protected. So is that moving towards sustainability? Perhaps, but very slowly. So how do we increase that? The only way we can increase that is to engage the public and the public sector. Massachusetts now is one of the strongest supporters of conservation in the country, even in these recessionary times. In terms of per-capita commitment to conservation on an annual basis, Massachusetts is one of the top. There are some states that are spending more, but they are much larger. Massachusetts and New Jersey together are perhaps the most innovative states in encouraging private partnerships for protecting land and caring for land once it's protected. So it's counter to say: 'We are a private organization. Give to us because we're taking better care.' We're actually in the same boat. If the state is not taking good care of its land, it's not that people say: 'Well, I'm going to support the Trustees of Reservations, because they care so much more for land.' There is more of a general discontent: 'Why are they protecting land if they can't take care of it?' So it's important for us to support the state politically, so the state will take better care of its land and so the state will maintain its programs for conservation. We can't afford to buy properties worth 10M \$. We can't raise that much money. The Nature Conservancy can occasionally raise that kind of money for something really important on a national scale. But if we can get the state interested, 10M \$... The state is spending approximately 50M \$ a year on conservation. Occasionally it will spend 3M, 6M \$.

TD:

If you say 50M \$, is that only the acquisition of new properties or also the stewardship of already existing ones?

Ward:

No, new properties. In addition, there is the budget – which is totally inadequate – for the care of already existing properties. That's the big challenge moving ahead for the land trust movement and the land conservation movement. We're feeling this as an organization. The state is feeling it as a public body. We've now protected thousands and thousands of acres of land, but our ability to care for it has not increased at the same rate.

TD:

Despite the endowment funds that you have?

Ward:

Despite the endowment funds. We never estimate correctly. Nine times out of ten, the property that we thought was adequately prepared for – we were given a 1M \$ endowment – we find the only way we can do good job is to spend the endowment wisely on capital needs of the property, improvements of the property, renovations of the property. But to actually continue that property stewardship, we need the membership on top of the endowment. And then, if there are historic buildings, if the roof blows off, we need to have a special fundraiser for the roof. If the heating system collapses, we have to have... If we decide that energy efficiency requires us to reinsulate a historic house, we have to raise money for that. The endowment is not enough. Why is that? It's the normal thing. You try to get something done. You do an estimate. It would be better if you had a 10M \$ endowment, but you know you're never going to get that. So you try to convince your board that 1M or 1.5M \$ is going to be enough. You scrabble and scrabble to get that and you feel good that you provided for the property. That's probably responsible, but only if you go back in 10-year or

20-year intervals and raise more money and distribute among your properties. So it's just the first step.

TD:

You're touching on the limits of acquisition or private land conservation as a land conservation strategy if you say you came to the realization that you can only do so much. And in terms of percentage of the complete surface of the state protected, private land conservation has its limits.

Ward:

Or it needs to be a public-private partnership. One of the agencies that protect land publicly in the greater Boston area, when it protects a new area along the Charles River it is now finding some organization to provide stewardship, basically lawn mowing.

TD:

Which organization is that?

Ward:

It used to be the Metropolitan District Commission, which is now folded into the Department of Conservation and Recreation. It is our state park agency. They learnt. We should be doing the same thing. We should be saying: 'This is a wonderful land. We don't have the funds to protect it, but we'll oversee. But we need a partner in this community to provide the day-to-day routine.' We're not quite there yet, but I've been trying to convince local land trusts like the Lincoln Land Conservation Trust. Now the Lincoln Land Conservation Trust is doing this. It has taken on pretty much the town trail network, which goes through its property and town property. It's kind of a unified approach. This is what I think other land trusts should do. They should stand up, they should go to their conservation commissions and their boards of selectmen and say: 'We know that the town is strapped when it comes to funding stewardship of conservation land. But we have members and we have volunteers, and we will volunteer – under the oversight of your conservation commission – to increase the level of stewardship.' There is a beautiful organization – and you should talk to this fellow – in Weston, which is a very high value, elite suburb, but that community, which is just west of Boston, a lot of doctors, lawyers, financiers in that community, that spawned on the most exiting experiences in local stewardship of conservation land that I think you can find anywhere in the United States. It's a group called 'Land Sakes'. And this visionary fellow by the name of Brian Donahue, who is a friend of James Levitt by the way, Brian Donahue – and he has written a book on this – is really very good. He and his wife were kind of hippies, I would say. They were just hanging out in Weston, making money as they could. And he had this idea: 'Weston has a lot of open space and nobody is doing anything with it. The town is protecting it. It has always been conservation-minded, but nobody is doing anything. Let me see if I can put together a group of people who would be interested and work with me on the trails.' So he found a group of people. He eventually incorporated it, not as a land trust, but as a land stewardship organization called 'Land Sakes'. Of course that supported the town's commitment to protecting land because people would say: 'Well, we're just adding to the town budget.' And he would say: 'Oh no, Land Sakes will take care of that property.' They had the brilliant idea of concentrating... Initially he was focused on wood cutting in the town forest. Then he realized that a lot of the land the town had protected was good agricultural land, so he started a little agricultural operation as well. So it was kind of holistic: agriculture, maple syrup and wood cutting, using youth and adult volunteers. It's an inspirational story. And it works. It is well supported by donations in the community, which is very wealthy. It is harder to do in a community that is not as wealthy. But I think that same pattern could be adopted by many land

trusts, which have shied away from doing that because they say: 'We're a private organization and we own these private lands and we protect them very well.'

TD:

So the shift from acquisition and ownership to stewardship...

Ward:

The LTA has recognized that that is happening and is trying to support with training and education, publicity and so on, is trying to support that move, but nobody wants to say: 'The end of conservation is ahead. We're going to move into stewardship.' Or various organizations in various regions are in different stages of that. But that evolution is happening. You can see it happening at the National Park Service level. You can see it happening at the state park level and you see it happen at the municipal conservation level, and at the land trust level. And we have to break through that, because if we don't break through that we will not – in my believe – succeed in protecting an integrated ecology for the United States or for various regions that will withstand climate change. We talked about resilient landscapes. We need to make our landscapes resilient so they can adapt, and the habitat and the critters can adapt to climate change. So the unofficial goal that many of us believe is that possibly half of Massachusetts should be in a protected state.

TD:

If you look at the advantages and disadvantages of fee title ownership versus conservation easement, do you have a preference?

Ward:

Oh, I think every conservation organization would say that owning fee title is better, because you have the control. Then you can decide to lease it, you can decide to just hold it passively or do active programming on it. Your management can evolve over time, but you are the owner. An easement is going to be difficult. The first generation may be very generous. They may be completely committed psychologically to protecting that property. It then gets passed on to the third child who was in California when the parents made this decision and he or she comes home and says: 'What the hell happened here? This used to be worth 1M \$ and now you're telling me I can't build a tree house on it? What's going on?' We have some examples of that happening. Then, even worse, if it gets sold to somebody who says: 'Look, I just paid 5M \$ for this property. And this is America. This is my property. You can't tell me where I can build my barn.'

TD:

So it is just a reactive type of conservation. You can respond to land uses or restrict them, but you cannot really steer or guide them yourself as you can on your own property.

Ward:

Well, the truth is at the Lincoln Land Conservation Trust level, it is a lot easier to work with people because you have the peer network. If we're here in Boston and we're talking about trying to control a landowner in Deerfield, Massachusetts, that we see once year, and unless we're really integrated into that peer network sociologically, we're going to have difficulties. And if this person is litigious, we are going to have a long-term problem with this person. You can imagine what a judge in a busy jurisdiction thinks when he gets a case from us or somebody else saying: 'This guy cut five acres of trees that are protected.' Unless the judge is trained in ecology or forestry, he will say: 'I thought trees regrew. What's the damage?' 'Well, the damage, judge, is that this document says that so and



so can't cut.' 'But what's the justification? Has he destroyed the soil? Has he put down pavement? He's just cut trees. Tell me what the problem is.'

TD:

So would you say that easements are more suitable for a local land trust than for bigger ones?

Ward:

If they have the resources. This is where TerraFirma is very, very important. That's a real innovation that could make it possible for the easement model to continue. I think it's problematic at our level. We'll finally get to a point where we have too many and it's too expensive. It may be that organizations that have so many easements need to concentrate totally... Their number of problems will be such, the complexity of the problems will be such that they have to spin off the easement holding part of their work and raise the money to fund that separately. But how would you find the funders? It's very unattractive to people to try to fix problems. People want to move forward. They don't want to fix problems.

TD:

The whole conservation easement idea seems to play a similar role here in the States that spatial planning does in Germany, for example...

Ward:

Absolutely right, or in England.

TD:

...because you impose... What you do is you restrict land use possibilities on private property. We do that through regulatory instruments, whereas you do it cooperatively with the landowner and only with his consent. But you don't have a central agency that oversees this thing. It's very complex and very much patchwork, so it makes it very hard to monitor and the stewardship increases because you have to do it on a property parcel level and each easement is different.

Ward:

That's absolutely right. If the land trust organizations start getting a string of bad decisions on the state level suggesting that easements really aren't perpetual or that they really need to be interpreted more liberally in order to allow for natural change, amendments need to be easier, enforcement needs to be more flexible etc. etc., or they are just not valid, that's one bad thing. The other bad thing could happen in conservative states when they start changing their easement laws to undermine the easements, which could happen. If those things happen, then the value of the easements is going to deteriorate and we will have difficulties. It will empower people who have been sitting waiting for an opportunity to overthrow their easements so they can do something on it, to recapture the value. So far the precedents have been good. I think we owe it to the very good organizations that have been willing to defend their easements and the LTA, which really has served as the communication organ, but I'm very worried. I think one thing that has been neglected is figuring out new tools that would work, because I do think that easements have their limitations. The organizational capacity to provide the stewardship is limited even with large organizations. The Vermont Land Trust for example has about 2,000 easements. They experimented with spinning off their easement defense and monitoring work into a separate entity, but then they folded it back in – I think because they found that they couldn't raise money for it. They can raise money for it as part of their overall work, but they can't raise money for it separately. It would be the same in our

organization, because our mission now is so broad, our activities are so broad, when we have budget difficulties, people are looking for what we can cut. If you cut the easement defense, you can put that person over here to fundraise, you put that person over there over to engagement, or that person to property stewardship...

TD:

Do you think merging trusts will be an answer to that?

Ward:

Yes, I do. That's happening, but slowly. It's always difficult, because these organizations are proud of their territory. And if they are doing terribly, nobody wants to merge with them. If three or four are doing terribly, it takes a visionary to bring them together. But it is happening. I think three, four, five time mergers, those are happening. I think larger mergers, 20 organizations and so on, that's difficult. There is a very good example of a merger on the Hawaiian Islands. Each of the islands had a separate land trust. I believe they have now formed into a multi-island land trust, statewide, which is very good.

TD:

How can conservation easements and spatial planning be complementary?

Ward:

Well, how can we get Americans to accept spatial planning? Well, there is a lot of acceptance of spatial planning. The Boston metropolitan area is one of the best spatial planning examples in the country. A few blocks away from here is the Metropolitan Area Planning Council, which represents about – I would say – 4M people, and Massachusetts is 6M, but it's all voluntary with the communities. The MAPC can put out these plans, but they are implemented community-wide, not statewide. Boston is a tiny city of 600,000 people and has a metropolitan area of 4M people – actually close to 5M people. It has very little influence on its neighbors. So, how do you break down these patterns? Los Angeles County is a huge area in population and has some planning powers. There are some other states that have large counties, which usually includes suburbs and urban areas, which have planning powers. And even there, the neighborhood control is very, very strong. When you think of the history of Boston, Boston grew and absorbed these little villages and townships. But right next to Boston is the town of Brookline, which has maintained its independence and it's retained its township form of government. People keep proposing that Brookline operate as a city, because it is large enough to be a city, but no. Cambridge is a city. Somerville is a city. Brookline is a township, right next to Boston, in fact somewhat enwrapped and enfolded in Boston. It's crazy! How would that change? I don't know.

TD:

I guess my question is: Do land trusts around here look at those spatial planning agencies or spatial plans that exist, even if those are just descriptive and don't have any enforcement power, to guide their own work? Do they conceive easements to help implement these plans?

Ward:

It varies. Under this administration in the state, there have been some exciting new initiatives. One is in the so-called Metro West, Route 495 area, which is a huge area of growth. The Boston area is not growing very much, the narrowly defined Greater Boston Area. The western and southwestern portion of it is growing quite rapidly, with the engine of growth being Route 495. The inner belt was

Route 128, the Technology Highway. That was the engine for 30 years. Now it is 495, which connects with Rhode Island and New Hampshire. So with state support, those communities got together to do some vision planning about areas where growth can be supported, and because of this administration, they built in a strong conservation component. So those plans are pretty good, because they show some growth areas. Those plans are looked at by entrepreneurs and companies that think about siting new offices or research establishments. They look at these plans and see that areas are targeted as growth areas. And the state has incentives for businesses to locate there, in particular in relation to transportation centers. 'And over here, it says there is protected land. We want to stay away from there, but over here they're saying recreational development. That's interesting.' So I'm just very pleased. I went to a couple of meetings. I should have been more involved. I just couldn't spend the time, but I was very pleased that people from our organization were attending those meetings and some land trusts were attending them. The main thing was: At the administrative level of this process, there was a commitment to reaching down to the communities and getting the community plans for open space protection and prioritizing and amalgamating those on the maps and so on. It was a very good example. I know that the fellow who is head of the state agency that funded this one – and there is another one – used to be our general council. So these things are working, but it's not going to be overnight in the United States. You will still see this tendency of undifferentiated sprawl. But New Jersey and Massachusetts are really trying to counteract that. And even areas like Los Angeles have some tendencies now to reverse the effect of that kind of unregulated, undifferentiated, unplanned development. There are groups in Los Angeles working to tear up the Los Angeles Culvert and expose the tributaries to air and to tear up these concrete floodwalls and restore the natural river. When you get right down to the densest part of Los Angeles, that part of the Los Angeles River will probably never get torn up, because there is too much development around it. But these groups are making substantial progress in bringing back the natural river. In the Bronx in New York, along the Bronx River, little groups – which aren't really land trust because there is no prospect for them owning land – are putting pressure on the politics to improve the neighborhood by providing green space and by providing stewardship for green space, which convinces the municipality to invest in the improvements.

TD:

Would you say the era of the land trust movement is subsiding?

Ward:

No! Here is what I would say: I'm making a prediction that over time, land trusts will recapture their origins. The origins of land trusts – I believe – were actually the village improvement societies of the mid-19<sup>th</sup> century and the larger part of the 19<sup>th</sup> century in the United States, where groups spontaneously grew up, even before such a thing as 501c(3) non-profit organizations existed. They just formed associations to help their villages and their towns become more beautiful. It was sort of an offshoot of the City Beautiful movement. One of the precursors of land trusts was the Laurel Hill Association in Stockbridge, Massachusetts. It started to improve the town common, to do tree planting along the highways into the village. Then the town acquired a hill, called Laurel Hill, which is a viewpoint in town at a geologic feature called ice gland – I think – which is that naturally insulated cave that was icy into the summer. That was considered the symbol of the village of Stockbridge. The Laurel Hill Association stood up and said: 'We'll take care of that for the community.' And to this day, the Laurel Hill Association is taking care of town property with volunteers, raising enough money to support the administration. As far as I know, the Laurel Hill Association doesn't own any land, even today. It has maintained that tradition. In other communities, The Andover Village Improvement Society, which is now fully a land trust, and the North Andover Village Improvement Society, also now a very active land trust, they began as the Laurel Hill Association, as village improvement

societies, but transformed into land trusts. They provide stewardship for miles and miles of trails in Andover and North Andover.

TD:

So that would mean that the question of who owns the property might become less important than who takes care of it.

Ward:

Absolutely. I think that's the challenge. Land stewardship and stewardship for sustainability are the challenge. Land trusts will become part of meeting that challenge. But of course it won't be all at once. It will be an evolution over a period of years, maybe a generation. If it doesn't happen to land trusts, there will be another movement started, the land stewardship movement, which has already started, particularly in urban areas where it's almost impossible to acquire land because of the high cost. Anyway, this is my vision, which is not the prevailing...

TD:

Most people see that there is long-term transition from acquisition to stewardship. Most people are aware of that, but what that means is very open.

Ward:

Yes. I would say that most land trust people see that but don't really want to be part of that. They want to take the next 10 years or 20 years, as long as they are in the movement, to protect as much land as possible.

## 15 Bob Wilber – Director of Land Protection of MassAudubon

Wilber:

(...)

I've worked here for 12 years. Prior to working here, I worked for the Massachusetts chapter of The Nature Conservancy. I began my career working for Massachusetts Forest and Parks in Boston, for the state government. So I worked for an agency that is now known as the Department of Conservation and Recreation. I enjoyed that very much. I've always enjoyed conservation that involves people, that there is a clear recognition of people in that equation.

TD:

Is MassAudubon better at this?

Wilber:

Very. MassAudubon is an interesting organization. We started in 1896. We are the first Audubon organization in the world. In 1896 there were two women in Boston who started the organization in response to the decimation of the bird populations because women's fashions at the time were essentially to put an entire bird on your hat. That was fashionable. So we started then in 1896 as an organization. We predate National Audubon. We have always remained independent. Many other states have Audubon chapters. Some of them are related, affiliated with National Audubon. Some of them are not. We were the first one, and we've remained independent. We just share the name. Actually part of the movement a couple of years ago to create this logo...

(He shows me the MassAudubon logo.)

...was all about creating a brand. We wanted to help distinguish ourselves a little more from National Audubon. Whatever we could do as opposed to just 'Audubon', because if it is just Audubon it could be either one. There is confusion. We wanted to make it more distinctive from a brand perspective.

TD:

Why are you not part of the national organization?

Wilber:

We just never felt the need to be. There is a strong sense of independence that runs through Massachusetts in general. I think that's all a part of it. We're an organization that... again going back to our logo, the three corners of the triangle relate to our three primary conservation strategies: conservation, education and advocacy. We have an office on Beacon Hill in Boston. We have several staff that spend the entire day in the State House in offices talking to legislators, brokering deals and shaping legislation.

TD:

How big is your staff overall?

Wilber:

Overall over 200. It is a big organization. It's the largest conservation organization in New England. We have 41 staffed sanctuaries. We're a big believer in the importance of land as a means of cultivating a conservation ethic. As our president Laura Johnson points out: It is really important for us to be educating kids in particular, for several reasons. There is this whole thing of... Maybe you look too young to be parent yet, but you know what's going on. You see these kids. They're doing

their screen games and computer shows and they are getting separated from the natural environment. And some day those kids are going to walk into a voting booth and they are going to make important decisions about land that we've been involved with conserving. We want to make sure that we shape their values and their eco-literacy, so that they can be intelligent about what they do throughout their life.

TD:

If you look at your budget, could you give me percentages of how much goes where?

Wilber:

That's a good question. I won't be able to do that, not exactly. It's a very complex organization. Let me try to spin that out for you a little bit. In many ways, we are an organization that is comprised of dozens and dozens of constituencies. That would include people who are very into land conservation. We are one of the doors that people come to MassAudubon through. Another one would be bird conservation, because we've been doing that for so long. That's a core activity of ours. There is a whole separate constituency that is attached to that activity. Each of our 41 staffed sanctuaries has a strong following, a strong constituency, as do our camp programs. We educate something like 300,000 kids per year with our camp programs. I actually went to MassAudubon camp as a kid.

(Wilber shows me drawing he did as a kid in a MassAudubon camp.)

So to try to answer your question, because it is a fair question, the way we are structured – and I have been here for 12 years – I just can't tell you how the percentages boil down. This (land conservation) group here, there are about four offices here, we're sort of the land trust part of MassAudubon. We handle all of the real estate transactions. Our sanctuary system, which is well distributed throughout Massachusetts...

TD:

How many sanctuaries are there in total?

Wilber:

There are just under 100. There are 41 that have staff.

TD:

Are these fee title preserves or also conservation easements?

Wilber:

Those are fee title. The fee title that we own is just about 30,000 acres. That's the largest in Massachusetts. The conservation easements that we hold are only about 5,000 acres. I know that the Trustees of Reservations have gone much deeper into conservation easements. They own huge amounts, 300 or 400 conservation easements. We own 120, something like that. We take a lot of pride in our stewardship of conservation easements. We do a very good job of that.

TD:

What do your easements consist of? Do they refer to bird species?

Wilber:

No, our mission as an organization is broader than that. As time has gone on, our focus has broadened. We are really focused on protecting nature in Massachusetts.

(Wilber gives me brochure about conservation easements.)

The reason I wanted to show you that is to... We are an old and big organization and we work in a state where there are a lot of conservation groups. I have been involved for many years with the Massachusetts Land Trust Coalition, the umbrella organization for Massachusetts. For MassAudubon, we feel that we have a responsibility to try to help some of the smaller land trusts to be as strong and effective as they can be. That brochure is a good example of it. We didn't do that for us. We already had our house in order when we did that, but we wanted help others. So we take that responsibility fairly seriously, trying to help others.

TD:

You're a membership organization, right?

Wilber:

Yes.

TD:

Do membership fees play a major role in your yearly budget?

Wilber:

They do for the overall organization. This is a – again – complex, big organization doing a lot of different things – office on Beacon Hill, day camps all across the state, sanctuaries all across the state, paid staff at those locations, educators in schools all across the state...

TD:

Do you do that for free, the environmental education in schools?

Wilber:

Generally we work out some sort of fee because we have to raise every dollar that we spend.

TD:

It's legitimate.

Wilber:

What we've been trying to do and lately have had some success is reaching out to local businesses and having them help to underwrite some of our costs for coming into their community and into their schools. That seems to be a good fit. It's a nice reflection on the business. They get some credit for helping to bring MassAudubon to their town and science curricular. We are a very science-based organization. We do a lot of research. I am very pleased that we have a very aggressive land conservation program. We're really trying to do as much as we possibly can.

TD:

In terms of expanding the network of preserves or the stewardship of the already existing?

Wilber:

Good question. It's really both. I should have paused earlier. When I was hired, when Laura (Johnson) asked me if I would be interested in this job, she said: 'The first thing that I want you to do is to revise our land protection strategy.' We frankly hadn't done that since 1987. That was very attractive to me

because I knew I would have a chance to shape that. Because I'd worked in Massachusetts for many years before working at MassAudubon – as I described earlier – I knew who MassAudubon was. The fact was that MassAudubon was perceived as a non-player, because we were so focused on just our own sanctuaries. So if it wasn't a MassAudubon sanctuary, don't count on us for helping. I tried to change that a little bit. What the strategy says is: 'Let's use best available information, best available science generally, to guide our identification of properties that we want to preserve.' Instead of responding to people calling us and saying: 'Hey, do you want this piece of property?' Or: 'There is a 'for sale' sign at the end of my street. You need to do something.' We tried to turn that around completely and say: 'Look, we don't have unlimited resources or unlimited time. So we need to be more focused and more selective.' So using science as a filter to identify our priorities...

TD:

I know that The Nature Conservancy works like that too. They have Natural Heritage data. Bob O'Connor showed me that they (the Department of Conservation and Recreation) have produced a planning map for Massachusetts as well. Did you use that?

Wilber:

The BioMap? Yes, we did. Actually MassAudubon was part of it. Some of our scientists were on that team.

(Wilber shows me a collection of parcel-level land protection maps.)

So this is for our 30 most important places. We have identified exactly which properties we want to protect and why. Now, we are reaching out to those people and try to engage them.

TD:

So the maps show your properties and then the ones you would like to acquire?

Wilber:

Yes. It's not rocket science. I don't want to make it sound like it is rocket science, but it has helped us. It helped us be more focused. Our impact is increasing with that, which is great.

TD:

I was going to ask you about the content of the conservation easement, but then we switched subjects...

Wilber:

Yes. They are much more general. They are more geared at protecting nature more broadly. If there are specific species that we know of on a particular property, we can fine-tune it. If there is a rare orchid or something, we could design the conservation restriction to be specific to that. But really what we are trying to do is protect the functioning habitats and natural systems on the property, and – if possible – provide the rights for people to access and benefit from it.

TD:

Also in the easements you try to do that?

Wilber:

Yes, the access piece is not an essential piece, the protecting nature piece is. So we get the access when we can, but it's not an absolute requirement.



TD:

Is the mission of MassAudubon broad enough to do scenic easements or historic easements too?

Wilber:

Not as much. The Trustees of Reservations (TTOR)... many people think we are exactly the same. And I'm going to guess that you are beginning to realize that we are not.

TD:

Yes, I had guessed that before. (We laugh.)

Wilber:

Well, a lot of people think we are exactly the same. People look from a distance and... intelligent people think we are exactly the same. They (TTOR) – again, I admire them tremendously, they are a terrific organization – they traditionally have been more focused on historic landscapes, scenic and historic landscapes. We're both doing quite a bit in urban areas, which is interesting. There aren't many others doing that. In Massachusetts in general that's an area where we may be lagging behind some of the other states – urban land conservation, urban land trusts. I don't know if that's true for sure but I have a hunch it might be. We think of ourselves as leading in a lot of areas, but I don't think that's one of them. I think that's one where there is a lot more progress that needs to be made.

TD:

You were speaking about expanding the system as well as stewarding it and how to weigh that.

Wilber:

Yes. With our land protection strategy, we're trying to do things more effectively than we were before. One is the traditional work of protecting land in and around our existing sanctuaries.

TD:

That is consolidating the existing property boundaries.

Wilber:

Yes, but consolidating from a natural system's perspective. And that is what the strategy has allowed us to do, to really look at that differently.

TD:

Looking at external factors and buffer effects...

Wilber:

Exactly. So if there is a cold water stream that comes through our sanctuary, we're more concerned about the whole watershed of that stream than we used to be, as we should be. There are so many things I could talk to you about.

TD:

Well, go ahead.

Wilber:

Well, let me talk about one thing, because I fear that I may forget it later: Conservation restrictions – or conservation easements, as the rest of the world calls them – we’ve had, as you probably know, in the States here, we’ve had expanded federal tax incentives for conservation easements. Those have been very effective. And state tax credits, two separate things. The fact that the federal tax incentives only apply to conservation easement interest in real estate, as opposed to fee interest, is a problem. You come into the United States to learn about things that you might bring back to Germany to use. I would feel irresponsible if I didn’t say what I am now saying to you. Don’t make the same mistake that we made. In the States, the mistake we made was to put out that federal tax incentive and only have it applied to conservation easements, because what happened – and I don’t think anyone anticipated that – is that conservation easements... In the end they are a tool for protecting land, one of many tools for protecting land. With that incentive they started to be used at an artificially high rate. They were used inappropriately. If fee interest was also included in that qualifying interest, many of those easements... There are now three times as many easements generated than there used to be.

TD:

I know, in Colorado that was the only thing that they did, most of the land trusts. They were only holding easements.

Wilber:

I am not a fan of that approach. I’m not. I’m going to be really direct about it. This is my 30<sup>th</sup> year working in this business. I think it’s a mistake to think of conservation easements as being THE tool, or the tool of the future. I think there are profound problems with them. Number one: At the rate that they’re being generated in the United States – again: three times. When those incentives came in, suddenly it tripled the number of easements being generated. The problem with that is that there has always been a percentage of the easement being generated, they are being held by groups that don’t have the capacity or the intent to steward them. They are not even doing their baseline documentation. They are certainly not prepared to monitor them annually. Now, it’s three times that number. There is a greater and greater number of easements that are being generated that are going to become problems and could bring down the whole thing. I am sure you appreciate that perspective that everybody’s conservation easement matters to everyone else, because we are all in this together. It’s all a house of cards. The courts could decide one day to say: ‘You are not taking this seriously enough. You are not fulfilling the responsibility.’ So that’s one reason. If all of the groups were doing a good job, I wouldn’t feel this way. There are a large number of easements that are being conveyed to groups that are not going to do a good job, and that’s a problem for me and for everybody. So that’s number one. Number two: I also think that we haven’t yet really been able to calculate the true costs of holding an easement, of stewarding an easement. Because in order to do that you have to do it over a longer timeline.

TD:

In perpetuity.

Wilber:

Almost every one – when you start looking what perpetuity really means – almost every one of those easements will be violated at some point. So when you factor in enforcement costs and all of the other things, really what I feel is that conservation easements should be kept in proper perspective as a tool. I think we lost that perspective with these incentives. Maybe I should leave it at that. That’s probably enough editorial for you.

TD:

What I've heard a lot from other organizations is: 'It's such a great tool because it's so cost-effective in the sense that we only pay for the conservation value, not the whole property. We don't need the whole property to implement our conservation objectives on the property. It's only the difference before and after, and only half of it is tax-deductible, and that may only be half of the whole property value, so we're actually paying only a quarter of what we would pay if we bought it in fee title, and we are getting the same result in terms of conservation objectives on the property.'

Wilber:

I would question that last part. I think our sample, the data, is incomplete. We need to look at it over a longer timeline to make that conclusion. But that's my own opinion.

TD:

So how do you prepare for that with your easements? Do you have a legal defense fund?

Wilber:

We do. We have decided not to buy the insurance, Terrafirma. The reason why... Our president is on the board of directors of the LTA, so there was a certain pressure for us to think about this seriously. And we did. I eventually concluded that it was not a good idea for us. It wouldn't be cost-effective for us, because essentially what we would be doing is helping to underwrite the costs of the insurance for others who aren't taking stewardship as seriously as we are. Put differently, we are taking stewardship so seriously that we feel like the utility of that insurance to us just wasn't that great. As you probably have heard from others, conservation easement stewardship is more about relationships that you develop with owners as opposed to policing someone. That's really effective stewardship.

TD:

More active communication.

Wilber:

Yes. You have a new owner come in and make it a priority to meet with them and go through what this (easement) is, how it works, be there to answer any questions they have. That's the way it should work as opposed to looking over someone's shoulder and trying to catch them doing something they shouldn't be doing.

TD:

...when the damage is done.

Wilber:

Right.

TD:

Membership fees are one source of income. Do you take grants as well?

Wilber:

Oh yes. We in this office – again, I'm going to distinguish between the land trust part of MassAudubon and the larger part, because I can speak much more intelligently about the piece that I

am most involved with – we apply for a lot of grants. And we have been pretty successful. We have a very talented grant-writer in one of the other buildings. We have done very well. In the 12 years that I have been here, we have had six grants over 1M \$, which is a lot of money for a private group. We've been able to increase the scale of the projects that we're trying to do.

TD:

That is for acquisition?

Wilber:

That is for acquisition and stewardship. When we put together an acquisition budget, it includes a stewardship endowment.

TD:

And the staff costs? Do you take a percentage as overheads that pay for the staff?

Wilber:

We do that when we can. We do that on a case-by-case basis. We assess the prospects of raising money for this particular project, and if we think it's good, that this is one that people will respond to then we'll fold in some staff time to recoup our staff costs. Another thing we do that you might be interested in is we use transfer fees.

TD:

For easements?

Wilber:

No, for title. We use them in a different way than a lot of people are. We came up with a name that we copyrighted or trademarked. We called them 'Conservation Legacy Agreements'. Let me give you an example.

(Wilber shows me the planning map of a sanctuary.)

We might approach a landowner next to this existing sanctuary, especially if there is a house on the parcel. We might say to those people: 'Your kids have gone to the camps here. You've had wildlife walking through your backyard for the entire time that we've owned the property. You've had dark sky at night because of the sanctuary right here, and xyz... Now, because of the existence of this conserved land, your property is worth 18% more than it would be, because of the enhancement of abutting conservation land. So would you be willing to share some that upside?' The vehicle that we propose is this Conservation Legacy Agreement that says that when they sell the property, they will make a cash payment to MassAudubon earmarked for the ongoing stewardship and protection of this sanctuary. In some ways it's helping to ensure that we will continue to be able to manage our land well and continue to enhance the value of their abutting property...

TD:

It's a recognition of your contribution to the raised value.

Wilber:

Precisely. And it has been fairly effective. Many landowners have been more than willing to do it. The agreement usually calls out a payment of somewhat between 1 and 3% of the selling price. The enhancement is 18% or more, so it's a relatively small piece of that, but it's a way that helps us

finance what we do. So that's an interesting piece that you might want to think about. Another thing that I want to mention to you... It's funny because I had a conversation with a guy from Mongolia. Very different context, obviously, from where he was working and from where you are working, but the part that was similar was trying to think of things that I encounter in the course of my work that might be helpful for you and that you could bring back, think about them, maybe tweak them a little bit, and have them really work for you. One: We have something in Massachusetts, a law that was passed, called the Community Preservation Act. I think it's a terrific piece of legislation. The way it works is it was a law that was passed at the state level. It was passed in Boston for all of Massachusetts. Individual towns – there are 351 cities and towns in Massachusetts – each of those has to affirmatively vote to participate and to enroll in the Community Preservation Act. When they do that, the community is agreeing to tax themselves a certain percentage. That is from 0.5% to 3%. That real estate property tax surcharge is put in a dedicated fund called the Community Preservation Fund, held locally. Towns that do that receive a check from the state every year to match those funds and expand their ability. The expenditure of those funds is limited to only three things: open space conservation, historic preservation, and the provision of affordable housing. Those are good things. But it's the fact that it's a limited universe, it's really quite limited. And it further requires that you have to spend or reserve at least 10% for each of those three things in any year. You can't ignore one of them and just do two or just do one and ignore the other two. The reason why I'm talking this up so much is it has really helped things in Massachusetts. What has happened is that suddenly municipal governments are a player in the conservation world. Suddenly they have some money to work with. The way it works in a crowded landscape like Massachusetts is that I'll have a project that will come up and I'll look at it and say: 'It's a wetland. There are rare dragonflies there. I know if I call The Nature Conservancy, they might be interested. If I call the state Fisheries and Wildlife, they might be interested. And now I can also call – if this town has adopted the Community Preservation Act – I can call the town and see if they would come to a meeting and talk about a potential partnership, a collaboration.' One of the things that it has done is it has created a greater role for local land trusts. Massachusetts is in many ways the land of the local land trust. We have more local land trusts than any other state in the country. Almost 10% of the land trusts that exist in the entire United States are in this teeny little state. It's very strange. Many people thought that local land trusts would gradually wither and die and go away. I don't believe that. I really don't. They have a very important role. They are closest to the important landowners. They often have the relationships with the farmers and the other important landowners. They also know the donors, the financial supporters in their town. And now they can also be important conservation stakeholders using Community Preservation Act funds. So if you didn't know about that, I really urge you to take a look at it, because it's very innovative and it gives tremendous power at the local level. There is no pressure to spend money by a certain date. All the decisions of whether to spend are made at the local level.

TD:

Do you have any idea of how much money we are talking about?

Wilber:

A huge amount of money. Overall... the example I can give you is: I live in a very small town 10 miles from here, less than 6,000 people. We adopted the Community Preservation Act in 2000, right after it was created. We have since raised, between local money and state matching funds...

TD:

Is this 50/50?

Wilber:

Traditionally it has been. We have raised almost 7M \$. So for a small town, that is a lot of money, believe me. It is a really small town, and it has allowed us to do some things that we would never be able to do. It's really great. It also has created some synergy for partnerships between affordable housing and open space conservation and historic preservation.

TD:

Buzz Constable talked about how they dealt with affordable housing in Lincoln. Very interesting...

Let's get back to land acquisition. This seems to be your preferred type of land conservation.

Wilber:

It is.

TD:

Is this still a growing business? Or is it leveling off?

Wilber:

No, it's still very, very active. In Massachusetts, five years ago when Deval Patrick was running for governor the first time, he was one of the six candidates. I was very involved with the Massachusetts Land Trust Coalition at the time. We approached every candidate and we said: 'Will you take the pledge?' The pledge was that – if elected governor – they would support state spending on land conservation on a very high level, 50M \$ a year. That was what we were asking. He was the only one who agreed to take that pledge. Thankfully he was elected governor. What happened then is something none of us could have expected, which is: The whole real estate market in the United States and beyond crashed. Suddenly there was... In some ways it was the perfect setting. We had no competition from developers. We had very low market prices. We had lots of willing sellers, people that were under distress. They were happy to sell their land or their development rights. The one thing that we couldn't be assured of is having the financial resources, the money, the key piece. But Governor Patrick kept his word and kept state spending on land acquisition at 50M \$ a year through the whole downturn – I mean, we are still in the downturn, but through the worst of it. Because of that, what happened in Massachusetts is unprecedented. It didn't happen anywhere else. We protected over 100,000 acres of land in the last six years. To give you a perspective: That is about 10% of what has been protected in the last 120 years. It really is amazing.

TD:

Is this pace continuing right now?

Wilber:

For now it is. But I know that it won't continue, because housing is coming back – as we speak. So we will have more competition. But that's fine. It couldn't have lasted forever. It was a time that really in many ways was the perfect setting, and I think we really made the most of it. One of the ways we were able to do that is that the private organizations through the Massachusetts Land Trust Coalition were able to use their political clout to influence political leaders. That was key. It's having all of those things in sync. That's why I pointed to the Community Preservation Act, because that allows money to flow at the lowest level, the local level.

TD:

Was that also due to the influence of the land trust community?

Wilber:

Yes, we were part of the coalition that pushed for that. So I think to some degree yes. But there was also very strong push by affordable housing advocates. It was a nice coalition that formed.

TD:

What role do private donors play for your organization?

Wilber:

A huge role. They are huge.

TD:

More than grants?

Wilber:

Well, no, I would say in magnitude it's a little bit smaller, but it's still very, very significant. We still rely an awful lot on them.

TD:

When we talk about grants, do we mean public grants or are we also talking about private grants from foundations?

Wilber:

We do both. We do public grants and government grants, but we also do private foundations, and then the last piece we just talked about, individual fundraising. So they are all very, very important to us. We have an event here every year – I wish you were around for it – we call it the Giving Thanks for the Land Event. It's in November, near Thanksgiving. The idea is just to gather... Well, first the idea is to recognize that land conservation happens through the coordinated efforts of an awful lot of different people. It's not just MassAudubon's land protection staff. It's the people who support us. It's the government grants that we got. It's the partners that we work with, the other land trusts, the state agencies and so on. It's the wonderful landowners that we get a chance to work with sometimes who discount their land to sell it for conservation. It's even professionals – vendors, appraisers and so on – who give us a discounted fee. We want to thank them too. So we gather everyone once a year and we just pat each other on the back and say: 'This is great. We did some good things this year by working together.' That's how it happens. That event is what we call a 'friend-raising event'. We are not going to ask anybody for any money at this event, but it's really to draw them a little bit closer and say: 'Be a part of it!' This is something that we try to provide, real engagement for private individuals who are enthused about this and want to support it financially. We want to give them an opportunity to really get engaged and feel a sense of ownership and accomplishment.

TD:

Do you feel a sense of competition with other environmental organizations or land trusts for donors?

Wilber:

No question.

TD:

How do you deal with that?

Wilber:

Well, to some degree the old adage: 'The donor is always right.' If that donor wants to give to another organization, good for them! To a certain extent there may be not that much you can do about it. There is also – I'll be frank with you – there is a very collegial... Well, you mentioned that Stefan Nagel and Wes (Ward) both said 'Hi'. That doesn't surprise me at all. It is a very collegial community.

TD:

That is my overall impression too.

Wilber:

Yes, and that manifests itself in a lot of different ways. I'll give you an example. I'll get a phone call from somebody saying: 'We've got 40 acres of land in a particular town. It's beautiful, it's blah blah blah. And I listed to the description and realize that this really isn't our thing. It's not for us. But I have a responsibility to help that person find a home for the property that they are trying to protect.

TD:

So you refer them to a local land trust?

Wilber:

Yes, or Wes (Ward). You just say: 'You know, you should really try them.'

TD:

Does it happen the other way around too, that people refer to you?

Wilber:

Oh yes.

TD:

So there is an informal understanding of the division of roles and responsibilities?

Wilber:

Yes. There is a general knowledge of priorities, mission, criteria of each organization, who is interested in what. Then there is also an unstated obligation to try to help, not to let this one drop to the floor, but to try to help that person get connected with an organization they can work with.

TD:

How do you communicate with other land trusts?

Wilber:

Lots of ways. The Massachusetts Land Trust Coalition meetings are a really good way. We have steering committee meetings quarterly. Usually representatives of about 70 different organizations come to those meetings.

TD:

To the steering committee meetings?



Wilber:

Yes. It's very vibrant. A lot of communication happens on that level. An awful lot is through email.

TD:

Do you have a mailing list in Massachusetts? Because I only know the listserv for the LTA, the national land trust listserv.

Wilber:

You might want to seriously consider signing up for the MassLand e-newsletter. That comes out I think once a month. If you go to MassLand.org, you can subscribe to it. I really recommend it. It's very well done. I am biased. I'll acknowledge that.

TD:

It's probably more of a one-directional communication tool than an exchange forum.

Wilber:

That's true. We also have a listserv. That one doesn't get as much traffic, but – as you probably know – it can be a useful tool.

TD:

Do you use it?

Wilber:

Personally, once in a while.

TD:

Do you rather call someone?

Wilber:

I'll be honest with you. I am so overloaded with communications. Between the phone and the computer, it's pretty close to impossible to keep up with. I do it with a lot of effort, but because of that I think I have an aversion to signing up for things like listservs because I just don't have the bandwidth. I just don't. I'm already struggling to keep my head above water. But I do acknowledge it as a good tool. My staff uses it. So indirectly I do. But I made a conscious decision not to be a regular subscriber to it. I just can't keep up with it.

TD:

Do you have specific PR tools only for the land trust section of MassAudubon?

Wilber:

We do. We meet quarterly, my staff meets with the marketing and communications office here in MassAudubon. They provide marketing and communications support for the whole organization. Yesterday was a chance for us to get together with them and to talk about our stuff. They are great actually. They help us with press releases, because we try to issue a press release for every acquisition that we do, even if it's a very small one. Because – as you probably know – in that town where that is located, that's a story that people care about. It doesn't always have to be the New York Times or the Boston Globe. Just get these out in the local papers. So we are doing more of that.

We are doing more with blogs. We have an e-newsletter called 'Land for People and Wildlife'. Those annual events, the 'Giving Thanks for the Land' event, all of those are strategies for connecting with more people and trying to generate more support.

TD:

How do you contact landowners whose properties you are interested in? Do you ring them up?

Wilber:

We often do. This (the planning map) becomes our roadmap, and because it is based on ownership – the map shows parcels with individual ownership – we can access the local tax assessor's information and find out who owns a parcel, get their phone number and get into immediate contact. But many times, it's a cold call. They have not heard from any (conservation organization) ever. Many times they are not conservation-minded, so you really have to quickly sort out who you are talking to. Is it somebody who cares about conservation or not? In which case you would present your argument in a different way. If it's someone who doesn't care about environmental protection, you might send them a proposal that has a spreadsheet in it that compares sales for development and sales for conservation side by side; because that's the type of person you are dealing with. Whereas if you are dealing with someone who is a strong environmentalist, you might just talk about why their property is important, that there is a rare fern that grows on their property. But it does involve this type of proactive outreach, which is harder. That part is harder than waiting for things to come to you. You've got to go get them. But more than 10 years into it, I can tell you it's more rewarding, because over the course of a year or five years or even 10 years, I can look back and every one of those acquisitions, the justification for it is clear - the significance of it, why we did it is clear. It is generally grounded in good science.

TD:

Have you been trained to do stuff like that or is it just learning on the job?

Wilber:

It's funny when you said: 'Isn't that what The Nature Conservancy does?' Because you are right. That's where I learned. Again, it's not rocket science. It's looking at it a different way and trying to be proactive instead of reactive.

TD:

Yes, but you also need to know how to relate to people. I bet there are certain techniques and strategies that you can actually learn. Every real estate agent probably has to go through this and learn how to communicate with landowners in that way.

Wilber:

I think you're exactly right.

TD:

It would be interesting if these skills were actually part of a curriculum that land trust staff should do.

Wilber:

They are – or I should say: They have been. From time to time it has been that formalized at the Land Trust Rally.

(We talk about attending the last LTA Rally.)

TD:

Let me ask about the general role of land trusts in the nature conservation movement in the States. I feel it is the most active and important movement right now, as compared to other environmental movements.

Wilber:

I think it's the most effective. That's the word I would add to your words. I think it's the one that is getting the most traction. Why that is I don't know. I've got some theories. I think it's the (fact) that almost everyone – whether it's in the United States, whether it's in another country – you've experienced change and you watched things change through your life. Maybe it's your hometown, maybe it's a view that you always loved – but we've all experienced change and loss and realize that land use is a very powerful thing and that there are some fairly simple discrete legal steps that one can take to avert that. You can't do that with every property, and it doesn't make sense to do that with every property, but the way that we usually talk about it is: The key is to identify those really important places before the inevitable growth and change occur and to take steps to protect them in advance as assets, because growth and change are inevitable. You want to get out in front of it as much as you can. Again, back to my pitch for the Community Preservation Act, that's one of the things I really like about it: It gives communities the chance to get out in front a little bit and protect those important elements that define the community.

TD:

Would you consider yourself part of a bigger movement?

Wilber:

Definitely, and really proud of it. That's one of the reasons I love going to Rally. I really get that feeling. I love that feeling.

TD:

I was really impressed by that too. It was really vibrant and stimulating.

Wilber:

And it's not just talk. There is a lot of hard accomplishment every year. When you look at what is being accomplished, it is really significant.

TD:

Or would you also say it is a business?

Wilber:

Yes, it has certainly become one.

TD:

Has it become a routine exercise?

Wilber:

No, I don't think so. I think that for most people who are drawn to it either as a volunteer or a professional... I've done both and I do both, I'm involved in my local land trust, the Stow

Conservation Trust, on the board of directors as a volunteer. We've been around for 32 years. We could probably talk about that by itself. I will just briefly mention: A very common thing that we've experienced in the United States is that these local land trusts often go through a certain transformation. A group of people gets together and says they want to form this. There is a lot of excitement and enthusiasm. They work diligently together for a number of years. Their founders begin to move away, die, lose interest, and that land trust then is at a critical point in its life. It either needs to reenergize itself, rejuvenate itself, or it needs to go out of existence or limp along indefinitely with not very high prospects. So what our trust did... When I started there seven years ago, I was with all the original founders. So I felt very honored because they brought me into their little circle. One of the first things I said was that we needed to expand the circle. At first they didn't like the sound of that, because it was about control and trust all of that stuff. But they eventually realized that that is exactly what they needed to do. So we recruited some more people. We didn't have any women. Crazy...

TD:

Well, maybe it's a coincidence, but if you look at my list of interview partners, there are 15 men and one woman.

Wilber:

It happens.

TD:

I would say it's almost 50/50 at the Rally.

Wilber:

Yes, I think so to. In Massachusetts maybe it's less so. So we made a conscious effort to rejuvenate ourselves. I would have to think that land trusts in other countries experience similar things, the need to bring in some new blood and keep yourself current and all of that.

TD:

When you talk about networking, what is more important, the networking on the state or on the national level?

Wilber:

The state, no question. But I don't want to give the impression that the national is not important. You just asked me which is more important. The state is more important but the national is still important.

TD:

Is it the Coalition or the informal networks that exist on the state level?

Wilber:

It's both. The Coalition is a clearinghouse for information. It is the voice of the conservation community when needed. It is also a capacity building entity, training and so on. The informal network...

TD:

Do they also set standards for Massachusetts organizations? I'm thinking of the accreditation that the LTA does. Are you also accredited?

Wilber:

We are not yet. We are on the path to. We are spending a lot of time on that! (He laughs.) Because we have so much stuff, our files are just huge. I am very envious of a small land trust that has three properties. We have so much.

TD:

I talked to the Land Trust of Virginia. Their application was one folder, and they were already saying it's way too much work.

Wilber:

It is a lot of work. So to get to your question – and I don't know whether Rand (Wentworth) might have raised this when you were with him – when accreditation was first proposed by the LTA, it caused a lot of tension in Massachusetts, a lot of tension. The reason why is because we knew that so many of our land trusts, being all-volunteer land trusts, they would look up at that bar of accreditation and would say: 'I can't see myself ever getting over that bar. So I'm not going to do it.' We also anticipated that there would be unintended negative consequences to those local groups. Eventually, foundations and others are going to pay more attention to who is accredited and who is not.

TD:

It might create a two-class society.

Wilber:

Exactly right. That's right. So we, the Massachusetts Land Trust Coalition, proposed to the LTA something called 'registration'. You could call it certification. It's something lighter... It's a companion. It's not an alternative. It's a companion to accreditation. The idea is that it would involve the LTA or MLTC having a circuit rider to go out and meet with that local land trust, probably at night, when they are meeting, and over a series of months do a very honest self-assessment of how they are doing relative to LTA standards and practices. Then a report would be generated that identified areas where they needed to improve. That would be a great companion to accreditation, because no local land trusts would feel left out. They would have some way of validating themselves from an institutional perspective. And the next four, five years from now, when they look at that bar (Accreditation), it might not look so high. So I think that might happen. We've actually talked (about it) very recently – the LTA board came and met here. That was a good meeting. One of the things we talked about a lot is the potential collaboration of LTA and MLTC. I think it's the missing piece. I think it would really, really help. I hope that you'll hear about it at some point.

TD:

I know that the Colorado Coalition of Land Trusts has a certification scheme. It is part of the state. They have to be certified to get the tax credit. But that doesn't exist in Massachusetts, right?

Wilber:

No. With the tax credit, we tried very hard to avoid some of the mistakes that some of the other states made. We did a couple of things differently. We were rolling it out slowly, because it is such a powerful thing. If you look at some the states – Colorado is one of them – they had some real

problems there with bogus easements being generated, bogus land trusts forming, all built around tax fraud basically. So we've tried to avoid that. One of the ways we did that was: We had it roll out more slowly. But also, the only projects that are really eligible are those that advance published state priorities, things like the BioMap. So there has to be a direct link to an identified state priority. It can't just be my backyard.

TD:

And every easement is checked by the state.

Wilber:

Yes, and then the other thing we have in Massachusetts is for the easement themselves, there needs to be a local signoff and a signoff by the state. I don't know if that is what you were talking about.

TD:

That's what I meant.

Wilber:

We do the same thing with tax credits also. So the state also validates that it's a worthy property, not just someone's backyard.

TD:

What other services can you think of that the LTA or the Coalition provide? Are there any of value for you? Are there any that are missing?

Wilber:

Well, the value is huge.

TD:

Do you use the webinars?

Wilber:

We do. I can't resist a little editorial comment: I think it would be great if they could make them free. I think it's too bad, because it is a disincentive for a number of people that should be watching those. They are not because there is a cost. That is a minor complaint. The content has been very good. I like their webinars a lot. The Learning Center is a very powerful thing.

TD:

Is there something missing?

Wilber:

Yes, there is something missing. We talked about it at that meeting with the LTA staff. What's missing is – I'll try to describe it – in terms of taking things to the next level – because that is what we are always trying, how can we tweak this to get this engine to run even better – one of the ways is to provide technical assistance to those who need it on specialized topics, instead of having them need to have that capacity in-house. Things like contaminated properties: A local land trust encounters a project with some contamination. They've never dealt with anything like that. Around the table, they don't have that knowledge. So one of the things we kicked around at this meeting is a way to address that. It could be a couple of different ways. It could be a very structured way. Maybe the

Massachusetts Land Trust Coalition has a digital mapping expert, maybe one person who is a surveyor, maybe one person who is very good with title problems, another who is good with contaminated properties, who knows? They would be able to be hired at a reduced fee by the land trust, sort of as a SWAT team to come in as needed, take care of the issue and move on to the next one. I think that would really help a lot, because it would allow those many groups that don't have that capacity in-house. We are lucky here, because I am able to draw on grant writers and other things here that really allow us to do some good things. If some of the smaller groups could have access to some of those skillsets, it could really help. Another way it was talked about – I'll be quick here – was to have a group of professionals who would be on call, either pro bono or on a discounted fee. So there are different models trying to get at the same problem.

TD:

Normally you would subcontract an external expert. The fee partially comes from the fact that they are liable for their work. If you get a pro bono expert, who is liable if something unforeseen happens?

Wilber:

That's a good point. I would say it doesn't remove the need for a private contractor who could shoulder the liability, but it would allow the organization – whether a local trust or whatever – to navigate through that complicated subject more efficiently. They'd have some base knowledge what they are talking about. It doesn't remove the need to keep some of the structures in place that deal with liability.

TD:

What are your biggest challenges right now?

Wilber:

My biggest challenge is trying to connect with more people who can help us. We made a lot of progress in that area and I'm very happy with it, but I've already seen that that helps us so much, so I want to speed things up. We have a core group of individuals who support us. It might be 15, 20 people, the real core group. I'd love that to be 50 people. Is that a problem? I don't think you can phrase it as a problem. It's my biggest challenge. I'm spending a lot of time on that because I want it to change.

TD:

How do you go about it?

Wilber:

Oh, all of the above. The e-newsletter, the event that we have...

TD:

Do you have dinners with your supporters and tell them to bring friends?

Wilber:

Yes, exactly. Networking is one of the key, trying to get them to reach out to others.

TD:

Does your board of directors help?

Wilber:

They do. We have a very good board here at MassAudubon. Some of them themselves are big supporters, but they have also helped by reaching out to new people. We have something called the MassAudubon Council, which is a feeder for our board. The board is 15, 20 people. It's a fairly limited number. We want to be able to engage with much more, so our MassAudubon Council is over 100 people. That is another group of special people that we are connecting with. Some of them will move on to become directors on the board directors.

TD:

Thank you very much! Anything else you would like to mention?

Wilber:

Yes, just very briefly: Several years ago, a guy named Peter Forbes – he was the New England director for the Trust for Public Land – he had been doing a lot of traditional land transactions and had been very successful. In Massachusetts, the Trust for Public Land does a lot of helping municipal governments protect land. That is the niche that they have. He was in the town of Billerica, Massachusetts. It was a classic case study where the last farm in town was under contract to be bought by WalMart, right out of a documentary. So he was using all the skills that he had been trained for to make the case at a town meeting. 300 people were in attendance, and he was making his presentation. He could feel that it was not going well. It was slipping away. The board of selectmen was just about to take their vote, and he knew it was going to go against him. The board of selectmen said: 'Is there anybody else who has something to say?' Two young mothers with kids in strollers rolled up to the microphone and started talking in a very different language about fairness and access to fresh food, public health, clean air, clean water, these much bigger human threads that resonate with everyone. And the whole thing turned on that. The vote was positive. So they saved this last farm. Within two weeks, Peter resigned his job and started the Center for Whole Communities. He's really convinced me of a lot he's talking about. He says a couple of different things that I think are really powerful. One: He says that because of everything that people have been through in the last 10 or 15 years, terrorist attacks, economic downturn, financial distress, multiple wars, people are stressed and in 'code orange', with the vice president and all the kookiness that he was doing, all that stuff, manipulating people through fear. People have had it. People don't respond to the old playbook. The old playbook was: You show bulldozers coming pushing the trees down, and people will respond writing the checks. They don't anymore, because they shut down. They don't respond to that anymore. Instead you flip the whole thing over. What they will respond to is hope and optimism, and a real credible path for making the world a better place. That's what land conservation is all about. So he said: 'Don't be afraid to speak in those broader human themes, because you will connect with many, many more people in your community. Another of his important points is: After 100 years, conservation interests have succeeded in connecting with only about 5% of the population. 95% are tuning us out. Using those broader human themes is a good way to connect with a larger cross section of society. That's the last piece I would mention. I think it has already helped us tremendously here. We make a conscious effort to use more accessible language in all of the communications. Try not to talk in technical jargon, where only the people who know this stuff know what you are talking about. Instead, don't be afraid to talk about things like spiritual values of the land, places for people to decompress, places for people to be healthy, to do physical fitness responding to the obesity epidemic, and that land can actually play a role in that, all of those things. So I share it with you, because he shared it with me, and I think it's a very powerful thing.



## 16 Anmerkungen zur Transkription:

- Bindewörter wie ,and', ,so', ,but', ,like' wurden ausgelassen, wo sie nicht zum Verständnis beitrugen.
- ,There is' mit Plural wurde zu ,there are' umgewandelt.
- ,I think' und ,I mean' wurde weggelassen, wenn die Aussage nicht eindeutig als persönliche Meinung aufgefasst werden konnte.
- ,gonna' wurde zu ,going to' umgewandelt
- ,kind of' and ,sort of' wurde zumeist ausgelassen.
- Kurze Nachfragen und Einwürfe von mir, die keine neuen Inhalte betreffen, wurden zumeist ausgelassen.
- „Yeah“ wurde zu „yes“ umgewandelt
- „You know“ wurde ausgelassen
- ,ag' wurde zu agriculture umgewandelt
- Einleitungen wie: 'Do you know this?' oder 'You have probably heard that story.' Wurden weggelassen