

Trumpeter (1990)  
ISSN: 0832-6193  
FORMING A LAND TRUST;

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Land trusts are excellent organizations for preserving open space, natural areas and/or agricultural lands. Their purposes and programs vary from community to community, but most land trusts can purchase and manage lands and educate their communities on issues of land preservation. As nonprofit organizations, land trusts can act more quickly, with greater flexibility, and with more resources than individual citizens or government entities. The following outlines a methodology for structuring a successful land trust and important issues to consider before and during land trust formation. The Trust for Public Land (TPL) (in the U.S.) and Turtle Island Earth Stewards (TIES) (in Canada and the U.S.) are available to counsel emerging trusts on the many aspects of forming a community land trust and running successful land preservation programs.

## I. PRELIMINARY RESEARCH

The first step in creating a land trust is to determine whether there is a need for one. In other words, to find out if the disappearance of open space, natural or agricultural lands is a problem in your community, to find out if your community is concerned about land preservation, and to find out if there are any existing organizations dealing with the issues that might provide a better mechanism for attaining land preservation than starting a new trust. This research is imperative since public support is essential to a land trust's success and well-being.

Citizens interested in starting a land trust will be able to assess the need for a land trust by gathering, on a cursory basis, the following information.

**A. Nature, Ownership and Control of Property**

- Describe current land ownership, land-use patterns, and conversion trends (source: planners, comprehensive plan, Soil Conservation Service (SCS), local development agency).
- Identify unique and distinctive natural areas and features which have been or need to be protected by the community (source: planning maps, SCS, local people).

**B. Socio-Economic Make-up of the Community**

- Describe local demographics and composition of the community (source: planners, health department, and welfare agencies).
- Identify relations between different groups and each group's political and social clout and visibility. Where do the initial incorporators fit into the social framework?

**C. The Role of All Nonprofit, For-Profit and Governmental Entities which Are Involved with Land or Environmental Issues within the Community**

- List community, civic and nonprofit organizations such as historical societies, church groups, garden clubs, scouting groups, block associations, service organizations (Kiwans, Rotary, Elk and Moose), bird clubs, fishing and hunting clubs. What are their specific land-use and land preservation goals? How are these organizations perceived, and how large a following does each have?
- Identify specific roles of government agencies involved with land issues: planning commission, conservation commission, community development agencies, chamber of commerce, SCS, Agricultural Stabilization & Conservation Service (ASCS), tax assessor, special citizen committees or quasi-public agencies.
- Describe existing land-use controls such as: large-lot zoning, wetland restrictions, dedication in lieu of payment, agricultural or historical districts, transferable development rights, Environmental Impact Statement requirements, purchase of development rights, and use-value assessment. What are landowners reactions to these restrictions? Have there been any lawsuits as a result of certain restrictions?

#### D. Real Estate Market and Local Economy

- Identify credit practices of local banks (HMDA and CRA).
- Identify the indicators of local business activities. How important are tourism, industrial and commercial enterprises and development? (source: Chamber of Commerce, local development office) How would land preservation affect each of these?
- Describe general attitudes towards land and determine whether your community foresees a need for preservation. What types of land would your community like to preserve?

## II. PRELIMINARY OUTREACH

Equally important as the "facts and figures" type of research described above is a thorough research of your community's feelings towards starting a land trust, that is, can you garner the public support you will need to run well? This sort of research is a combination of information gathering and information giving. People must learn about a land trust before they can support one. Your major goals in this step are: (1) to educate the public on the purposes and functions of land trusts; (2) to determine the community attitudes and prejudices towards land preservation; (3) to learn the source and intensity of any opposition to a land trust; and (4) to identify any potentially strong land trust supporters.

To accomplish these goals, land trust proponents should conduct a series of interactive public meetings involving appropriate agencies, organizations and key citizens. Proponents should present a general but clear and concise presentation of a land trust and its potential benefit to the community. Ideas, suggestions and reactions should be solicited.

In addition, you should arrange personal interviews and meetings both to explain the local trust idea to key government officials, organization presidents, and individuals, and at the same time to gauge potential support as well as identify potential board members.

A word of advice: Don't move too fast! Be sure to take the time to make the community understand the potential value of a land trust and solicit support along the way before diving in.

## III. PRELIMINARY ASSESSMENT

After completing your preliminary research and outreach you will most likely discover one of the following situations:

- A. There is no concern or support for a land trust, or the individuals interested in starting a land trust are the environmental advocates who, whether right or wrong in their advocacy, do not command the necessary public support and respect and should neither start the organization nor sit on the board as a majority. In such circumstances, you do not feel you have enough clout or influence within the community to launch a successful organization. If this is the case, the community is not ready and you must wait until external circumstances (i.e., the obvious loss of farmland or important community open space) can fortify your own outreach enough to boost other peoples' enthusiasm. Some communities may never be ready for a land trust! In this situation, activists must use other preservation mechanisms, such as political activism, legal suits and zoning.
- B. Community concern and support are lacking but you have enough influence and clout to create the necessary concern and support with more time and outreach. It took almost two years of outreach to create the Land Preservation Trust in Maryland, which is now entirely successful and well-accepted. Not everyone can be expected to join right in, particularly if there are no models nearby to follow.
- C. The community is fragmented in its support; a particular organization or agency opposes the land trust; or there simply are not enough land acquisition/management projects to justify starting a new organization. In this case, you must weigh the strength, goals and abilities of the existing organization to determine whether they can handle the problem. If the existing organization feels that "another environmental organization" will diffuse environmental energies and resources, then you must either convince them otherwise or compromise. For example, agree to abandon the land trust, if the existing organization will take on a more aggressive and active role in the land-use arena. Jolting another organization out of dormancy or broadening its purposes may be as satisfactory a result as setting up a land trust.

## IF THE TIME IS RIGHT...WHAT NEXT?

### IV. SETTING UP YOUR BOARD OF DIRECTORS

The single most important consideration in setting up a land trust is choosing a board of directors. The composition of the board is a key determinant of a land trust's future success. Once you have a board, the actual process and paperwork of setting up your land trust as a legally incorporated organization is straight-forward.

Ideally, your board should consist of 7 to 15 individuals, with each person embodying one or more of the following characteristics:

- A. People who are well-respected and well known in the community: Until a land trust launches its programs, many people will evaluate the trust on the basis of its board members. If "Mary Joe is a board member then it must be a good idea", illustrates this line of thinking.
- B. Representatives of the constituency affected by your land trust: If your trust is dedicated to agricultural land preservation then your board must have farmers. Farmers listen to other farmers. Local residents listen to other local residents.
- C. Professionals: e.g. accountants, lawyers, bankers and journalists, can offer contacts, advice and services that a land trust normally cannot pay for. (Such "free" services must not be abused!)
- D. Individuals with contacts to the philanthropic community: Foundation board members, or even board members who are friendly with philanthropic individuals, could result in future grants to the land trust.
- E. Individuals with time and energy: Simply setting up and structuring a land trust requires an enormous investment of time. Certain individuals must be ready to make this type of commitment!

Many land trusts find that the optimal mix of board members is an equal number of individuals from groups A, B,C, D and E. In all instances, a community land trust must avoid stocking the board with only activists or controversial environmentalists who might alienate the broader community. Often, the original proponents embody these characteristics and may not be the most appropriate people for the board. Understandably, they are reluctant to turn over the board to other citizens, but the most useful role for such activists is often off the board. An activist, for example, can blow the whistle on a developer, while your land trust steps in as an impartial mediator. Developers are often glad to work with land trusts under these circumstances. If the land trust had initially blown the whistle, the developer would be less willing to enter into friendly negotiations. In establishing this sort of activist/land trust symbiosis, you are asking strong proponents to put aside personal pride. An ad hoc position on an advisory board or special committee can provide the formal recognition that their affiliation with and contribution to the land trust deserve.

Once you have identified the types of people you need for a board you must find the right individuals. If the interest is truly there, this should not be difficult. Throughout the outreach program, identify interested and enthusiastic citizens. Put them to work immediately on the process of incorporating the land trust, writing by-laws, applying for tax exemption and finding other interested citizens.

These are concrete, defined tasks through which your group members can get to know each other.

During the initial meetings, before officers are selected, rotate the positions of chair and secretary among all the individuals to lend structure and organization to the meetings and identify potential officers. It's best not to elect a formal board for a few weeks to allow for natural attrition or additions. While boards usually range from 7 to 15 individuals, you might limit yourself to 10 to 12 to start. This leaves room to add individuals who initially stood back to watch the land trust's early progress.

### **Election of Officers**

Once you have a satisfactory core of board members your land trust must elect its officers. The President and Treasurer are particularly vital positions.

The President is the spokesperson and primary representative for the land trust. He/she should have lots of time and energy to get the organization off the ground, the leadership ability to organize and chair meetings, and the ability to adequately speak for the land trust at public meetings. Often land trusts suffer from being too dependent on such a leader, but if the trust is properly structured (to be discussed in Section VII) such a leader will be a bonus, not a hindrance.

The Treasurer should be familiar with accounting and finance procedures and be able to file necessary tax forms, and organize a simple, but effective, accounting and budgeting procedure.

## **V. SETTING UP A LEGAL ENTITY**

There are four major components to making your land trust a bona fide legal entity:

- **A. Incorporation:** This is straight-forward paperwork. Using model forms, your land trust must decide upon its name, three initial incorporators and the trust's purposes. After research and outreach exercises, the purposes should be clear. In drafting the Articles of Incorporation for your land trust, you must carefully tailor the wording to meet the Internal Revenue Service's (or Revenue Canada's) criteria for 501(c)(3) (charitable, non-profit) organizations. Furthermore, you should familiarize yourself with the state and local statutes governing real property tax exemption; often these statutes will make property tax exemption (a future consideration) contingent upon certain language included in the corporate purposes. This will help you gain tax exemption.

- B. By-Laws: By-laws describe the organizational structure of a trust and rules of procedure. The format is somewhat standard and often regulated by state law, but a land trust can tailor certain terms to meet its own needs such as the terms of officers and directors, quorum considerations and votes for approving expenditures.
- The By-laws also describe membership criteria. Not all land trusts are membership organizations, but all community land trusts must have community support. This often prompts the creation of a membership organization such as an association.
- C. Tax Exemption: Applying for tax exemption requires your completing federal tax forms. This is routine paperwork requesting information generally available in your Articles of Incorporation and By-laws. The application for tax exemption should be reviewed by someone familiar with tax-exemption applications for nonprofit organizations, such as the Trust for Public Land.
- D. Charities Registration: In many states land trusts which solicit funds, or plan to solicit funds, over a specified dollar amount, must register with a state charities agency. It is helpful to do this at the inception of your organization.

The whole incorporation process from start to finish takes about 8 to 12 months. Most of this time is consumed by the IRS's (or Revenue Canada's) review of the appropriate forms. The actual filing of Articles of Incorporation, writing of By-laws and submission of a tax-exempt application takes only one or two meetings and some follow-up work. Once your application is submitted, your land trust can conduct business but cannot provide maximum tax benefits to donors of land, funds or other resources, until the IRS (or Revenue Canada) accepts the application and grants a preliminary letter ruling.

## VI. INITIATION OF PROGRAMS

A land trust should devote its first meetings to developing specific programs to accomplish its long-term objectives. Too often board members lose interest and commitment by contemplating lofty ideals. Board members need to roll up their sleeves and pursue well-defined tasks from the start. Land trusts which organize around a specific purpose, circumstance or goal, have an advantage: Their work is already defined and it is immediate. Nevertheless, these trusts still need specific program development, since they risk losing their momentum and purpose after that specific goal has been accomplished. The following are suggestions of the types of programs a land trust should plan and implement in the early stages of its development:



- A. Land Acquisition Program: Often land trusts form to protect a specific parcel(s). Other times land trusts should set general criteria for the type of land they want to preserve as well as specific target site(s). Written criteria help the land trust remain focused. Ideally, a cursory mapping project identifying the areas of concern — not necessarily acquisition targets — will provide useful visual aids to explain your goals to the general public. Too often, without this criteria, land trusts become the developers' and landowners' favourite dumping ground for open space of little recreational or natural value. Land trusts that passively accept all gifts of land will soon have an inventory that includes several parcels with no recreational, aesthetic or natural significance. Is this a land trust goal? Will it benefit your community? Without a policy or standards a land trust has no justification for accepting some parcels and not others. Once the community is familiar with the defined criteria, the land trust can resist individual requests to save "my" property and still represent the community-at-large.
- B. Other Programs: In the early stages of development, land trusts often are not appropriately organized, skilled or funded to launch a full-scale acquisition program. They may start with an initial donation, one key acquisition or just a conservation easement. "Other programs" fill this void until the trust can take on more property acquisition. Such programs provide an opportunity to immediately accomplish some concrete goals, and establish some credibility. Many land trusts never hold a large amount of acreage; land is expensive and stewardship demanding. One or two land holdings is sufficient to create a focal point, sense of responsibility and reputation for the trust. Other programs which can supplement a land acquisition and holding program might be:
  - Environmental education programs such as lectures, nature walks, classes or even films;
  - Public advocacy or participation in the land planning process;
  - General consulting and financial advice to farmers and large landowners (professional accountants and attorneys should be consulted for specific financial advice);
  - Land sales information to match willing buyers and sellers; and
  - An environmental watch program for larger organizations such as the Trust for Public Land or Turtle Island Earth Stewards.
- The choice of specific programs will depend on the community, purposes of the land trust and expertise of the board. Initially, the board will want to start with low budget and easily organized programs.

- C. Public Relations and Membership Programs: Public relations and, if the organization is a membership entity, sustained membership are continual and essential components of all land trust programs. An effective trust must establish visibility and a role in the community in order for the community to use it. Public relations and membership drives help promote a land trust's role in the community by educating people, generating interest, and encouraging participation.
- D. Fund Raising: Some organizations make fund raising a program in itself and then distribute funds to other specific projects. Others solicit money on a project-by-project basis, and still others make each program director or committee responsible for raising his/her own funds. The manner in which funding is handled depends on the specific structure of the organization. In any case, the manner and means of raising funds should be considered early on.

## VII. IMPLEMENTATION

With little or no experience with land trusts and limited time, how, when, and where do 12 to 15 board members implement these types of programs (land acquisition, other programs, public relations and fund raising)? Initially, board members will have a difficult time explaining their purpose or role, much less acquisition techniques. The role of the president is crucial to implementation. The president and other active members must set up an efficient but participatory internal structure, which delegates responsibility and uses the talents, time and expertise of each board member.

A. Internal Structure: An efficient, streamlined organization has several components which deserve special comment: Committee Assignments: Committees are extremely effective working tools for any land trust. One to two board members assigned to a committee should have sole responsibility for accomplishing specific tasks. Such responsibility may even include financial independence. Such financial responsibility heightens a committee's overall sense of responsibility and duty. Periodic reports to the entire board will ensure consensus and supervision. Such delegation of authority ensures maximum participation, circumvents the common problem of one or two "leaders" carrying the organization and allows for more rapid and focused accomplishment of tasks. Under this structure, a charismatic leader is a welcome addition, but will not cause total disruption upon his or her departure. A board that emphasizes participation, delegates authority and uses committees should aim for at least 12 to 15 members. Larger numbers will result in lighter work loads, and relatively short terms (2 years) will reduce the chance of "burn-out." Committee assignments might be periodically switched, but individuals usually find a comfortable niche on a committee that meets their interests and uses their talents.

Advisory Board: An advisory board can be very powerful and beneficial component of a land trust in so far as it supplements the expertise and energy of the board of directors. This is an ideal role for

environmentalists or activists who are controversial within the community but active and interested in land preservation and the land trust. It also offers a compromise position for individuals who do not have the time to serve as board members, but are willing to help out periodically and offer valuable expertise or contacts. Including them on the advisory board gives the trust a ticket to call on them and makes them more committed and apt to respond to a land trust's needs. Consultant Services: The board should not hesitate to pay for special services that require significant time or special expertise. However, a carefully chosen board and advisory board should reduce the need for outside consultations. Volunteers: Volunteers (other than board members) are another vital part of a land trust. Committees which have defined goals can invest time and energy into training or supervising volunteers. Individuals should be given clear direction and responsibility. Assigning a volunteer to a particular goal rather than a task can make the job more interesting, since it delegates more responsibilities. This approach involves some risk and requires more supervision but can be more effective in the long run. A board should solicit volunteers when, and only when, there is a specific need. Too often, organizations enlist extra manpower with no real task or goal in mind, and both waste time in finding jobs and risk losing interested individuals. Having defined the parameters and invested time in a volunteer, committees should feel free to make certain demands on them. To help keep volunteers, all good work should be formally recognized and accepted. Tight and Formal Structure: In the absence of staff, a board must not only make policy decisions but must implement this policy. While policy decisions are exciting, administrative details can be burdensome and easily ignored. A definite delineation of responsibilities, including administrative tasks, is helpful. In addition, deadlines and informal committee progress reports to the board demand a certain degree of professionalism and create just enough peer-pressure to perform well. If a trust's organizational structure becomes too informal and friendly, it becomes easier to ignore or delay assignments. Some sense of formality and seriousness (without abandoning comfort) negates this temptation. Staff: Staffing is not always necessary but once a trust has established and proven itself, and created a broad scope of activity, staff may prove beneficial. Eventually, a trust may grow to the point that administrative and managerial tasks will discourage or tire board members or simply become too demanding for a volunteer work force. One staff member can alleviate this pressure enormously by attending to day-to-day administrative tasks and coordinating and stimulating the trust's committees. Too often committees assume a more passive role once staff is hired. The relative roles of committees and staff must be clearly defined to avoid this problem. Timing: A land trust's internal structure must be established from its outset. Setting up a land trust involves numerous burdensome administrative tasks. At this stage, board members do not know one another and their individual commitments, energy and idealism can dwindle away. A set structure and procedure creates an environment in which individuals can easily work and voluntarily provide their energy, expertise and enthusiasm. B. Expertise and Experience: The above structure capitalizes on limited resources and time. It maintains a

democratic process but is action-oriented. Without specific expertise, training or experience, however, how effective can your land trust be? One of the first concerns directors express is lack of experience! The Trust for Public Land, as well as several other nonprofit organizations and other land trusts, can provide ideas, information and direction allowing directors to draw specific skills and expertise from their personal backgrounds. Such information helps individual board members understand land preservation and instills in them confidence that their goals can be accomplished. The following gives examples of the types of information needed to start directors on their way. Other Programs: The requisite expertise and experience depends on the type of program. Most programs originate from the interests of an individual board member. This person can spearhead a specific program, so long as it fits into the trust's overall goals, and direct an appropriate committee. For instance, educational programs often involve students in biological programs, or individuals from the natural resource or planning agencies in their community. Public Relations and Membership: Membership is solicited by an initial drive using a simple brochure and a letter detailing the specific intentions or accomplishments to date. Public relations requires attendance at environmental, social, and political functions. Newsletters, media events, and invitations to board meetings also help promote a land trust. Land trusts should explore cooperative programs with other community organizations. Such cooperative relationships ensure support. For example: Garden clubs can carry out inventories on natural lands; A university can supply interns for scientific, educational and administrative activities; The League of Women voters or similar organizations can help lobby for land use controls. A land trust should also contact developers and realtors to explore additional cooperative arrangements. A land trust can benefit from such an arrangement: realtors inform the trust of possible sales and the trust tries to promote the land sale with an easement on the land. Fund Raising: Fund raising should occur after specific goals and programs have been defined. Donors want to know how their money will be used. Land trusts can divide funding sources into three areas: operational funds, special project funds, and capital funds. Annual Operating Funds: Annual operating costs can and should be estimated by each committee. The annual budget and fund raising drive should be based on these cost projections. Potential sources of funding are: Contributions from board members; membership dues, which should cover annual operating and administrative costs but not special projects; cash endowments which accompany easement or land donations; donations, including equipment, from local merchants; fund raising events such as bake sales, dinners, musical performances; and local churches, corporations and foundations. Capital Drive: Some land trusts launch major fund raising campaigns to solicit funds for an endowment or revolving fund. These funds can help purchase or manage property. Sources of such funding are: Corporations and banks; tax-deductible gifts from wealthy individuals. Don't overlook solicitation of gifts of property as well as money. Several organizations raise thousands of dollars by taking donations of equipment or even land that doesn't have preservation value and then reselling them; and foundation grants. Capital funds provide security for a land trust. If they are continually

built-up and invested, they can spin-off significant investment income that can fund your land trust's operational expenditures. With dependable revenues, trusts can plan ahead and operate with more freedom and flexibility. Funding on a Project-by-Project Basis: There are several ways in which land trusts can conduct land transactions with highly leveraged, low-interest loans. Securing these funds on a project-by-project basis can take time, but if funding is not forthcoming the option can be dropped. Some sources of creative financing are: Banks and Insurance Companies: Nonprofits can solicit favourable or "charitable rates" whereby the bank offers an especially low-interest rate and then deducts the difference between the current interest rate and "charitable" rate as a charitable deduction. Foundations: Individual Grants and Program Related Investments (PRI). A PRI is a low-interest rate loan from a foundation that is extended to support an activity that will further the foundation's particular mission or goal. Syndication: Outside investors "put up" or "invest" capital in a project in return for a percentage of the profit from the particular project. Syndication is more prevalent among local trusts involved with housing projects. Local or Federal Government: An increasing number of states are recognizing the benefits of land trusts and are appropriating funds so that the trusts can help the local government acquire certain properties for the formation of state parks or for other public benefits (e.g. watersheds). Partial or Negotiated Development: Land trusts are increasingly purchasing property and selling a portion suitable for development, while preserving productive agricultural, scenic and/or natural areas. The sale finances the acquisition of the entire parcel and enables the preservation of the property's environmentally significant lands. Interest-Free Loans or Individually-Guaranteed Loans: If the land trust needs upfront capital to acquire but anticipates structuring a transaction so that the acquisition costs can be recovered (i.e., partial development), then they may approach interested individuals who will extend interest-free or low-interest loans. Alternatively, they may be able to guarantee a bank loan. Mastering these creative financing techniques may require some outside advice or expertise. The Trust for Public Land and TIES can explain the basic concepts, put trusts in touch with consulting organizations, and work out cooperative land transactions. Income-Producing Activities: With federal funding dwindling and charitable contributions stretched over more organizations, many land trusts have explored the possibility of generating their own income. Income derived from activities related to your organization's mission is not taxable. "Unrelated income", from non-related business, is separated and taxed separately. Some ideas for income-producing activities are as follows: One land trust has set up a profitable recycling operation that funds land acquisitions; Another trust charges fees for access to their preserves; and Local community development corporations lease out houses. Land Acquisition Strategies: Land acquisition strategies can be very complex, requiring familiarity with real estate transactions. Organizations such as the Trust for Public Land and TIES conduct workshops and provide material describing the host of preservation options available to land trusts. Although all board members should generally understand these tools so they can explain some of the special benefits and advantages

of the land trust, only a few select members need in depth knowledge of the details of these techniques. An attorney, realtor, or financier on the board should be assigned to your acquisition committee to transact deals. Every board should have one member who is familiar and experienced in real estate techniques and legal counsel familiar with the same.

## Summary

Land trusts that are well organized, and run in a professional manner, can serve a vital role in preserving a community's recreational, natural and aesthetic resources. A trust's early success depends strongly upon satisfactory research and outreach to gain information on a community's interest in and potential support for a land trust. Provided sufficient support exists, the two most important tasks of an emerging land trust are: establishing a diverse, influential and dedicated Board of Directors, and doing the paperwork required to form a legal nonprofit corporation. The programs which a land trust conducts can vary significantly. They reflect community interests as well as interests and skills of active members. No matter what types of programs are pursued, the strongest land trusts will be those that delegate responsibility to communities and individual volunteers. Advisory boards can provide invaluable support and expertise. In addition, land trusts should feel free to contact the Trust for Public Land or TIES on various aspects of their organizational structure and programs. The Trust for Public Land can be contacted through their Northeast Regional Office, 666 Broadway, New York, N.Y. 10012-2301 (212) 677-7171, or their Northwest Regional Office, Smith Tower, Suite 1501, 506 Second Ave., Seattle, Wash. 98104 (206) 587-2447. Either of these offices can put you in touch with offices elsewhere in the U.S. For information on contacting TIES see the end of Banighen's article in this issue of *The Trumpeter*.

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### Citation Format

Harvey, Rose & Lee, Evelyn (1990) FORMING A LAND TRUST; *Trumpeter*: 7, 1.  
<http://www.icaap.org/iuicode?6.7.1.8>

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