

COMMON QUESTIONS:

LAND TRUSTS AND THE PROTECTION/RESTORATION OF WETLANDS



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PREFACE

This guide is designed for local land trusts, birder conservationists, landowners, members of the public, local governments, federal and state agency staff, and others interested in forming or operating a land trust to protect and restore wetlands and related ecosystems. A selected bibliography and list of web sites will provide the reader with more information. We particularly suggest that readers contact the Land Trust Alliance for more detailed information including a broad range of guidance documents concerning the establishment and operation of a land trust.

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COMMON QUESTIONS:

LAND TRUSTS AND THE PROTECTION/RESTORATION OF WETLANDS

What are land trusts?

A. Land Trusts are local, regional, or statewide not-for-profit corporations organized by members of the public and landowners under the laws of particular states to work with landowners to protect open spaces--natural, recreational, agricultural, historic, archaeological, and cultural sites. There are almost 2000 land trusts nationally with over 800,000 members. Land trusts have been formed in every state. Land trusts own over 437,000 acres, hold conservation easements on another 450,000 areas, have acquired and transferred ownership of another 668,000 acres to other organizations and have used indirect methods to help protect another 1,159,000 acres. All told, they have helped to protect more than 4.7 million acres including many wetlands, rivers, and streams.

The primary role of most land trusts is to purchase or otherwise acquire and protect open space lands. They are experts in working with landowners to help them protect their lands. Land trusts also acquire easements. Many local land trusts are also playing an increasingly important role as advocates and educators at the local level to assist community land and water planning efforts.

What roles are land trusts playing in the protection and conservation of wetlands?

A. Some land trusts, like the Wetlands Conservancy in Oregon, have been formed primarily to protect wetlands. Other examples include the Bolsa Chica Land Trust, California; Ballona Wetlands Land Trust, California; and the Huntington Beach Wetlands Conservancy also in California.

Many other land trusts have been formed to protect rivers and adjacent lands such as the Battenkill Conservancy (Vermont), Scenic Hudson (New York), McKenzie River Trust (Oregon), Brandywine Conservancy (Pennsylvania), and the Land Trust for the Little Tennessee (North Carolina).

Protection of wetlands is often one of the open space protection activities of other land trusts. For example, in 1999 the Little Traverse Conservancy in Michigan purchased a 135-acre Mud Lake Bog. The bog is a peatland which formed in a glacial kettle hole. The bog is prime habitat for woodcock, ruffed grouse, mink and raptors. The Conservancy plans to retain title to the property and to maintain an existing boardwalk at the southern end for educational purposes. The Conservancy will allow public access for activities such as bird watching, walking, cross-country skiing and photography.



Most trusts have protected some wetlands

Some statewide land trusts also play major wetland protection roles like the Massachusetts Audubon Society which maintains Wellfleet Bay Wildlife Sanctuary on Cape Cod and has undertaken a broad range of wetland protection and education efforts over a period of years. Much of the 1,000 acre Wellfleet Bay preserve is coastal and estuarine wetland. The Sanctuary has constructed a beautiful Nature Center, many trails, and a wetland boardwalk at the site. It provides extensive educational programs.

A number of national environmental organizations also acquire and protect wetlands at the local level. These include the Nature Conservancy which has protected hundreds of wetlands. Similarly 154 local chapters of the National Audubon Society have undertaken wetland protection efforts for over 400,000 acres. Ducks Unlimited has helped landowners restore tens of thousands of acres across the nation.

Where can I find out more about land trusts?

A. Your best source of information is the Land Trust Alliance (Alliance). The Alliance, formed in 1982, is a national membership organization with over 1,227 local, regional, and national land trust members. It serves as an umbrella for land trusts across the nation. The Alliance provides a broad range of training services. In 1990 the Alliance organized, with the Hastings College of Law in San Francisco, the Land Conservation Law Institute to provide legal advice to land trusts. It publishes a quarterly newsletter, Exchange, and also holds an annual national Land Trust Rally every year. The Rally often includes sessions on wetlands.

See Land Trust Alliance, 1331 H Street, NW, Suite 400, Washington, DC 20005, 202-638-4725, info@lta.org, <http://www.lta.org/>.

Why do land trusts protect and restore wetlands?

A. Protection of wetlands is often a land trust goal because:

- Wetlands often constitute an important portion of community undeveloped open spaces.
- Wetlands are havens for biodiversity—a principal concern of many land trusts.
- Wetlands are principal bird watching areas. Many land trust members are bird watchers.
- Wetlands are of great interest to students and teachers. Land trusts often wish to provide educational opportunities.
- Wetlands are often some of the most seriously threatened areas in a community and in need of protection.
- Because of federal, state, and local wetland regulations, many landowners are willing to donate rather than develop their lands.

Community open space inventories often reveal that wetlands are priority acquisition areas. For example, The Compact of Cape Cod Conservation Trusts, Inc. has undertaken a comprehensive wildlife habitat mapping and assessment project for Cape Cod. This inventory indicates that wetlands are prime open space with over 20,000 acres of salt marsh, shrub swamp, forested swamp, bog, and fresh marsh.

What techniques can land trusts use to protect and restore wetlands?

A. Land trusts can use a wide variety of techniques to help protect and restore wetlands:

- Acquire wetlands by donation from landowners and protect and manage these lands. This is the most common and important role for land trusts.
- Acquire conservation easements from landowners. This is also an important role for many land trusts.



Many land trusts conduct wetland festivals

- Inventory and map wetlands along with other habitat types. Examples include wildlife inventory carried out by Cape Cod Conservation Trust described above.
 - Construct and operate boardwalks, trails and interpretative facilities. Examples include Corkscrew Swamp in Florida (National Audubon Society), and Wellfleet Bay Sanctuary (Massachusetts Audubon Society).
 - Provide wetland educational programs. Examples include the Georgia Conservancy, Corkscrew Swamp, and Wellfleet Bay Sanctuary.
 - Conduct wetland fests, bird festivals. An example is the Horicon Marsh Bird Festival.
 - Help landowners restore wetlands. Ducks Unlimited has helped landowners with hundreds of projects.
- Help landowners and government entities monitor and control invasive species.
 - Take leadership roles in promoting local wetland protection plans, regulations, acquisition. Examples include the Oregon Wetland Conservancy and the Tipp of the Mitt Watershed Council.

How can interested individuals form a land trust?

A. Steps in forming a land trust include:

- Organize a group of interested individuals who will serve as a board of directors and unpaid staff.
- Incorporate as a not-for-profit corporation in the state. Usually forms can be obtained from the Department of Corporations or Department of State. This may often be done at minimal cost with the help of a local lawyer (donated help is common).
- Apply for 501(c)(3) status with the IRS (the IRS requires a \$500 fee).
- Operate the trust with a board of directors and volunteers or a combination of volunteers and paid staff.

How can a land trust acquire or prepare wetland maps for a community.

A. A land trust can acquire National Wetland Inventory (NWI) maps from the U.S. Fish and Wildlife Service for most areas of the nation. Many of these maps are also online. See NWI web site below. Wetland maps can also be acquired from state wetland agencies or local zoning boards. More refined information pertaining to specific issues such as endangered plants and animals is often available from State Heritage Programs, Nature Conservancy, or other groups.

Some land trusts carry out their own wetlands inventories. These usually utilize a combination of the use of existing wetland maps, air photos, and field surveys. For example, The Compact of Cape Cod Conservation Trusts has established a Geographic Information System based wildlife habitat mapping and assessment project for all Cape lands. Of the 31 wildlife habitat types mapped in the inventory, 21 are wetland. Areas are being ranked to help other land trusts, local governments, and others acquire and protect these areas.

How can land trusts persuade property owners to protect wetlands?

A. Land trusts can use a variety of techniques to persuade landowners to donate lands or conservation easements to the trust or a governmental unit or to voluntarily protect wetlands. A trust may:

- Offer the landowner **income tax** incentives spread out over five years for donation of lands or conservation easements to the trust. See discussion below.
- Offer the landowner **estate tax** incentives for donation of lands or easements to the trust. See discussion below.
- **Buy wetlands or conservation easements outright or through “bargain sales”**. See discussion below.
- Help landowners **find funding** from federal and state agencies, other sources to protect or restore wetlands.
- **Educate** landowners with regard to functions and values of wetlands.
- **Provide plaques** and other types of community recognition for conservation efforts.

How can land trusts use conservation easements to protect wetlands and other lands?

A. Many land trusts have acquired, by donation, bequest, or purchase, conservation easements for wetlands and other open spaces. A conservation easement is a voluntary legal agreement permanently restricting the use of land between a landowner and qualified land trust or governmental entity. The landowner retains ownership and restricted use of the property. A wetland conservation easements typically prohibit all filling or drainage of the wetland although certain other activities such as limited timber harvest may be permitted. The easement may apply to all or only a portion of a property.



A qualified not for profit, tax exempt conservation organization or a federal, state, or local government holds the easement. The precise nature of the restrictions in the conservation easement is worked out between the holder of the easement and the landowner. Typically the easement does not grant the public access to the land. The landowner can use, bequeath, or sell the land subject to the easement. The restrictions on use of the land transfer to the new owner.

Donation of an easement to qualified land trust or governmental unit generally provides federal and state income tax benefits equal to the reduction in fair market value caused by granting of the easement. There are limits to how much may be taken as a deduction each year but deductions may be spread over a period of years.

How can landowners benefit from “bargain sales” to land trusts?

A. Many land trusts persuade landowners to sell their wetlands outright or conservation easements to the land trust or a governmental unit in a “bargain sale” at less than fair market value. Donated lands and conservation easements meeting Internal Revenue Code section 170(h) criteria are charitable gifts. The difference between the fair market value and the sale value is considered a donation and may be subtracted from adjusted gross income. Donors can deduct an amount up to 30 percent of their adjusted gross income of the year of the gift when they sell to a land trust at less than appraised market value. Donations in excess of fair market value can be applied to federal taxes for the next five years, subject to some restrictions. Many state income tax laws provide similar benefits.

How can landowners benefit from bequeathing (willing) their wetlands to land trusts?

A. Land trusts also persuade landowners to donate their lands or conservation easements on lands to the land trusts to lower estate taxes. To the extent that the remaining lands (in the case of donation of fee interest) or the restricted value

(easement) is lower than fair market value, the estate will be subject to a lower tax. The Taxpayer Relief Act of 1997 provides an additional incentive for landowners to grant conservation easements. Executors of estates can exclude 40 percent of the value of land subject to donation of qualified easement from the taxable estate. This exclusion is phased in over a five-year period. In 1998, landowners could exclude up to \$100,000 under this provision. The amount increased to a maximum of \$500,000 in 2002. The full benefits of the law are available for easements that reduce the fair market value of property by at least 30 percent. Smaller deductions are available for easements that reduce property value by less than 30 percent.



Land trust receive most lands by donation

How can landowners benefit from reduced real estate taxes on lands with conservation easements or regulated wetlands?

A. A land trust may also be able to persuade a landowner to donate a conservation easement to the trust or a government entity because this will also lower real estate taxation of lands. Taxes are based upon fair market value and a conservation easement generally lowers fair market value. A few states directly order local assessors to reduce taxes. For example, Minnesota Statutes 2000, 273.11 (Subd. 11—Valuation of restored or preserved wetland) provides that “(w)etlands restored by the federal, state, or local government, or by a nonprofit organization, or preserved under the terms of a temporary or perpetual easement by the federal or state government, must be valued by assessors at the wetland value.” “Wetland value” is defined to “not reflect potential uses” which would violate the terms of the easement.

A land trust may also be able to persuade landowners to enroll in other open space real estate taxation programs offered by states even where the landowner does not donate a conservation easement for a property. However, such programs often offer only temporary relief for open space activities. A landowner deciding to withdraw lands from the program needs to pay all or a portion of the reduced taxes.

How can land trusts raise money to protect and restore wetlands?

A. Land trusts may use a variety of techniques to raise money:

- Hold dinners, auctions, bake sales, benefits, yard sales, concerts and other activities to raise money. Conduct land trust membership drives for special wetland acquisition projects. Much of the funding for land acquisition often comes from tax deductible gifts (money or property) from land trust members.
- Seek grants from foundations. Many land trusts have successfully sought funding from foundations.
- Seek grants from public agencies. Many land trusts have also successfully sought funding from government agencies including the FWS’s Partners for Fish and Wildlife grant program, USDA Natural Resources Conservation Service Wetland Reserve and Wildlife Habitat Incentive Programs, EPA Five Star Restoration Program, North American Wetlands Conservation Act grants, and NOAA’s Community Based Restoration Projects grants.
- Conduct fund-raising dinners. Ducks Unlimited has raised wetland protection and restoration funds by holding fund-raising dinners.
- Carry out special events such as Birding Festivals.

How can land trusts help local governments adopt and enforce wetland protection regulations?

A. Land trust members can help draft and propose wetland ordinances to local governments or work with local government staff to draft such regulations. Members can then lobby local legislators and the public to adopt the regulations. Members can help administer regulations by providing comments and testimony on permit applications. They can help enforce the regulations by monitoring the wetlands and reporting violations.



What sorts of management should land trusts carry out for wetlands?

A. In many instances, little management is needed for wetlands acquired by land trusts. Natural wetlands are self-sustaining systems. For example, “healing” often quickly occurs after a flood or hurricane although trees may be toppled and leaves blown off.

However, minimal levels of management such as picking up litter is needed for many sites open to the public. The management needs, of course, depend upon the specifics of the situation, needs, and the desires of the land trust. But common additional activities carried out by land trusts may include:

- Restoration or enhancement of the wetland if degraded,
- Control of exotic or nuisance plant and animal species,
- Design, construction, and maintenance of trails and boardwalks (sometimes appropriate),
- Construction of bird nesting platforms and birdhouses, and
- Active wetland management, in some instances, such as controlled burns.

Where can land trusts go to get wetland technical assistance?

A. Source of technical assistance includes:

- Teachers. Contact local schools and colleges.
- Consultants. Some states such as Michigan have compiled lists of wetland consultants which are available online.
- State wetland agencies. Contact your Department of Natural Resources, Department of Water Resources, or Department of Fish and Game.
- Federal agencies. Technical assistance is available from the FWS, NRCS, EPA, NOAA and other agencies.

How can a land trust make a wetland available to the public after a wetland is acquired?

A. A land trust can construct a trail to the wetland to facilitate nature walking, hiking, and research. It may also construct a boardwalk. Other activities include:

- Work with local teachers and college faculty to provide science education opportunities for children.
- Hold a bird festival or wetland fest.

See other guides in this series dealing with boardwalks and wetland fests.

Where can land trusts go to find more information?

A. See other guides in this series including “Constructing Wetland Boardwalks and Trails”, “Wetlands and Ecotourism”, “Wetland Conservation and the Protection of Migratory Birds” “Wetland Restoration, Creation, and Enhancement”, “Local Government Wetland Protection Programs” and “Wetland Festivals”. See also suggested readings and web sites below.

SUGGESTED READINGS

- Byers, E. and K. Marchetti, 1988. The Conservation Easement Handbook. Land Trust Alliance
- Diehl, J. and T. Barrett. 1988. The Conservation Easement Handbook: Managing Land Conservation and Historic Preservation Easement Programs. Trust for Public Land. San Francisco
- Gustanski, J. and R. Squires. 2000. Protecting the Land: Conservation Easements Past, Present, and Future. Island Press 2000.
- Hopper and Cook. 2004. The Conservation Finance Handbook: How Communities are Paying for Parks and Land Conservation.
- Land Trust Alliance. 1990. Starting a Land Trust, A Guide to Forming a Land Conservation Organization. Land Trust Alliance.
- Lind, B. 1991. The Conservation Easement Stewardship Guide, Designing, Monitoring, and Enforcing Easements. Land Trust Alliance and Trust for Public Lands.
- McQueen, M. and E. McMahon. 2003. Land Conservation Financing. The Conservation Fund, Island Press
- Mitch, W. & J. Gosslink, 2nd Ed., 1993. Wetlands. Van Nostrand Reinhold, New York

SUGGESTED WEB SITES

<http://www.lta.org/>

Land Trust Alliance. Many links. Excellent collection of publications for sale.

www.epa.gov/owow/nps/ordinance/

U.S. Environmental Protection Agency. Collection of model ordinances to protect local resources.

<http://www.jacksonbottom.org/>

Jackson Bottoms Wetland Preserve.

http://www.nrcs.usda.gov/technical/stream_restoration/

Federal Interagency Stream Restoration Working Group, Stream Corridor Restoration: Principles, Processes, and Practices.

www.smartgrowth.org/Default.asp?res=1024

Smart Growth Online.

<http://www.epa.gov/owow/wetlands/restore/links:>

U.S. Environmental Protection Agency, Wetland links by state.

<http://www.cicacenter.org/swift.html>

Construction Industry Compliance Assistance, State Wetland Information Tool.

<http://www.wetlandsconservancy.org/index.shtml>

The Wetlands Conservancy – Oregon.

http://www.wetlandsconservancy.org/heroic_tales.html

Heroic Tales of Wetland Restoration (Book). Oregon Wetland Conservancy.

<http://www.sonomalandtrust.org/index.htm>

Sonoma Land Trust wetland restoration project.

<http://www.elkhornslough.org/index.html>

Elkhorn Slough Foundation wetland restoration projects.

<http://www.uri.edu/ce/wg/mtp/html/pawshort.html>

Project to identify wetland restoration sites between the Nature Conservancy and the University of Rhode Island.

http://www.tpl.org/tier2_kad.cfm?folder_id=2554#cs8

Trust for Public Lands watershed case studies.

http://www.tpl.org/index.cfm?folder_id=2105

Trust for Public Lands.

<http://www.ballona.org/f-about.asp>

Ballona Wetlands Land Trust formed to protect the Ballona wetlands ecosystem.

<http://www.bolsachica.org/>

Bolsa Chica Conservancy.

<http://landtrust.org/>

Little Traverse Conservancy (MI) has acquired many properties containing wetlands.

http://www.audubon.org/local/sanctuary/corkscrew/Visit/Visit_Us.html

Audubon Society's Corkscrew Swamp Sanctuary.

http://www.massaudubon.org/Nature_Connection/Sanctuaries/Wellfleet/index.php

Massachusetts Audubon's Wellfleet Bay Sanctuary. Wetlands and boardwalks.

<http://www.compact.cape.com/>

The compact of Cape Cod land trusts formed to aid land trusts in protecting open space including wetlands.



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An electronic version of this brochure is available in PDF at:

<http://www.aswm.org/brochure/landtrust.pdf>