

LOCAL LAND TRUSTS: A COMPARATIVE ANALYSIS IN SEARCH OF AN IMPROVED TEMPLATE FOR LAND TRUSTS

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INTRODUCTION

Local land trusts are one of several tools utilized in an effort to preserve land and to protect the environment.¹ Land trusts serve as a vehicle to ensure the protection of a landscape, habitat, or other valued resource by placing ownership of the land in the hands of a private non-profit organization.² Although local land trusts vary in size, effectiveness, and purpose, they provide a historically dependable mechanism to effectuate the goals of preservation.³ Despite the overall effectiveness of land trusts in managing property and accomplishing policy goals,⁴ there are discrepancies among the individual successes of the various land trusts throughout the United States.⁵

This Note consists of a comparative analysis of two local land trusts, the Aspen Valley Land Trust in the Rocky Mountain Region and the Wildlands Trust of New England, in an effort to recommend a model template to be used when creating future or reconstructing current local land trusts. The Aspen Valley Land Trust of the Rocky Mountain Region and the Wildlands Trust of the New England area are two successful land

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¹ RICHARD BREWER, *CONSERVANCY: THE LAND TRUST MOVEMENT IN AMERICA* 1 (Univ. Press of New England, 2003). Another method of preserving land is through public ownership, which differs from the local land trusts, which are the study of this Note, because they are not nonprofit organizations.

² BREWER, *supra* note 1, at 1.

³ *Id.*; ANTHONY ANELLA & JOHN B. WRIGHT, *SAVING THE RANCH: CONSERVATION EASEMENT DESIGN IN THE AMERICAN WEST* 18 (2004).

⁴ BREWER, *supra* note 1, at 5.

⁵ Some commentators note that issues exist even with conservation, such as disputes over control or seller management. SALLY K. FAIRFAX ET AL., *BUYING NATURE: THE LIMITS OF LAND ACQUISITION AS A CONSERVATION STRATEGY* 8–9, 153, 209 (2005).

trusts in their respective regions.⁶ Part I of this Note provides background information about land trusts, which begins by detailing the growth and popularity of land trusts in the United States. Part I also describes common policy goals promoted by land trusts. The section then examines the current use of land trusts by analyzing the different mechanisms and tools various trusts use, as well as different legislative restrictions and consequences relating to land trusts. Part I continues to provide background about land trusts by providing general information about the formation and regulation of land trusts at both the state and federal level.

Part II begins the comparative analysis by focusing on the Aspen Valley Land Trust in the Rocky Mountain Region. It considers the history and development of local land trusts in the region, as well as cultural and societal factors that may contribute to the success of the Aspen Valley Land Trust. Part II then delves into an in-depth analysis of the Aspen Valley Land Trust, focusing on the organization's structure and governance. It also considers legislative influences, community activity, and other pertinent characteristics of the trust that may be attributable to its success. Finally, this section analyzes the trust for its strengths and shortcomings.

Part III, following the same structure as Part II, analyzes the Wildlands Trust of New England. Part III considers the history and development of the trust by looking to the emergence of land trusts as a protective mechanism in the United States. It also details the societal, geographical, cultural, and legislative impacts on the Wildlands Trust's success. Part III focuses on the organization's structure, governance, and presence in the community before concluding with a synopsis of characteristics that should be adopted in a similar fashion to those used by the trust and methods that are better left behind.

Part IV suggests a proposed model that combines the qualitative strengths of each land trust, and suggests which characteristics of each should be eliminated for the proposed template. Part IV proposes a template of a local land trust that is applicable in many regions. The model suggested by this section also considers methods and strategies not employed by the Wildlands and Aspen Valley Land Trust. This proposed model consists of six elements that are imperative considerations when creating or restructuring a local land trust based on the analyses of the

⁶ See *Learn About the Trust*, WILDLANDS TRUST, <http://www.wildlandstrust.org/learnaboutthetrust/missionvisionhistory/tabid/147/default.aspx> (last visited Mar. 10, 2014) [hereinafter *Learn About the Trust*]; *About Us*, ASPEN VALLEY LAND TRUST, <http://www.avlt.org/sitepages/pid13.php> (last visited Mar. 10, 2014) [hereinafter *About Us: AVLT*].

Aspen Valley Land Trust and Wildlands Trust, as well as their respective successes and shortcomings. The first element is to establish a land trust in an area with a rich cultural history of accepting and promoting environmental preservation, yet this Note provides an explanation why an area lacking such a rich history may still be fruitful in utilizing a local land trust as a protective mechanism. The second element focuses on the tax incentives and benefits associated with land donations. This discussion instructs the land trust organization to become an advocate for improved tax deductions or incentives. If such deductions are already well-established at the state level, the second prong calls for the land trust to become an active educator for current and potential donors of the tax and imparts the legal consequences associated with being a donor.

The third element, which is the primary focus on this Note, concerns strategic planning. The third element suggests that a land trust should spend considerable time deciding on a balance of conservation tools and should avoid becoming too dependent on any one particular tool, as is common for the vast majority of current local land trusts.⁷ Specifically, this element recognizes the prevalent and current success of conservation easements. It encourages the use of conservation easements but warns against a complete reliance on the device for preservation. This element also addresses management and staffing considerations, with a focus on management that is aimed toward preventing failure and building a reliable and accountable entity.

The fourth element suggests the land trust place an emphasis on becoming an involved, well-recognized community member. This community involvement mirrors the involvement of the Aspen Valley Land Trust and the Wildlands Trust. The fifth element recommends membership in partnerships on both a national and local level as a method of building the organization's reputation and providing a forum of free-flowing information and support. Finally, the sixth element of the proposed model urges the local land trust to plan and operate in a way that allows the organization to be honored by the Seal of Accreditation. As discussed later, this honor is awarded to organizations after a close analysis of the organization and its conservation methodologies as a whole. The selective nature of the Seal of Accreditation makes it an honor to receive and a reputation boost for the receiving institution.⁸

⁷ See SALLY K. FAIRFAX & DARLA GUENZLER, CONSERVATION TRUSTS 152 (2001).

⁸ See *infra* Part II.

Although the proposed land trust template accounts for differences that are not covered by the Aspen Valley Land Trust or Wildlands Trust, the two trusts are limited in the applicability of their analyses to the creation of a template, as they are merely two instances of thousands of trusts in the country.⁹ As a result, the proposed model may not address issues relevant to land trusts in regions that differ drastically from the Rocky Mountain and New England Regions. This Note does not ignore the possibility that some land trusts, depending upon specific geographically related issues, will be unable to seamlessly adapt the template's provisions. Rather, it notes that the addressed concerns are prevalent regardless of geographical location, and as such, they should still be taken into consideration.

Land trusts have evolved into an incredibly useful and practical tool in the United States, but they are a far-from-perfect tool for protecting nature and the land.¹⁰ Although the template suggested by this Note will not be a flawless solution to the current land trust models, its application will address various problems that the current land trusts fail to resolve.

I. BACKGROUND

Considered by some scholars to be the most effective means of maintaining and preserving land,¹¹ land trusts are responsible for preserving approximately 6.5 million acres of land as of 2000 according to one study,¹² with the majority of the preservation occurring in the last two decades.¹³ Prior to the growth in use of land trusts, the majority of land in the United States was protected by means of government regulation.¹⁴ In contrast, the majority of land is no longer preserved by government regulation, but is instead protected by land trusts that vary in structure, amount of land protected, goals, and size.¹⁵ Such trusts can be international, national, or local.¹⁶ This Note focuses on local land trusts,

⁹ See BREWER, *supra* note 1, at 1.

¹⁰ See generally ERIC T. FREYFOGLE, *THE LAND WE SHARE: PRIVATE PROPERTY AND THE COMMON GOOD* (2003) (noting that land protected by private mechanisms such as land trusts face the same problems as unprotected land, such as financial upkeep and pollution concerns); see also FAIRFAX ET AL., *supra* note 5, at 8.

¹¹ BREWER, *supra* note 1, at 1.

¹² *Id.* at 11.

¹³ *Id.* at 1.

¹⁴ FAIRFAX ET AL., *supra* note 5, at 151.

¹⁵ BREWER, *supra* note 1, at 5.

¹⁶ National land trusts, such as the Land Trust Alliance ("LTA"), or the Nature Conservancy ("TNC") have a larger focus and are composed of many local land trusts. BREWER,

which are ideal for the proposed model because they provide a more particularized organization for analysis, as local land trusts are smaller in size and vary from other land trusts because they consist of a single organization.¹⁷ This is in contrast to national land trusts, which consist of numerous land trusts.¹⁸ Despite their varying characteristics, local and national land trusts share the quality of preserving land through exerting control over a specified area and acting to protect the area.¹⁹

As previously mentioned, government regulation was the principal vehicle of land protection prior to the emergence of land trusts.²⁰ Stated simply, land trusts exist to protect land or natural environments.²¹ This goal is evident even when considering the emergence of The Trustees of Reservations (“Trustees”), one of the nation’s oldest and largest land trusts,²² which demonstrates the growth of land trusts in the United States. The Trustees began with the narrow goal of preserving county parks.²³ Since the emergence of land trusts, and for a multitude of reasons, the Trustees is now the largest land trust in the United States, and it functions to preserve areas beyond the original focus of county parks, with goals such as developing community engagement and educational purposes related to environment preservation and protection.²⁴ A non-exhaustive list of reasons explaining why land trusts are often created includes: educating the public, preserving habitats or species, maintaining open space or wetlands, and ensuring general protection of the land.²⁵

The growth of land trusts in the last decade speaks to the accessibility and effectiveness of the local land trust in protecting and preserving land. Another reason for the increased use of land trusts as a land-protective mechanism is the flexibility that trusts provide.²⁶ Land

supra note 1, at 178, 202. For a discussion of international efforts, see *id.* at 207–08 (discussing the international programming of the TNC).

¹⁷ Additionally relevant to the narrow analysis of this Note is the prevalence of local land trusts, as they account for the majority of land trusts in the United States. See BREWER, *supra* note 1, at 12; FAIRFAX ET AL., *supra* note 5, at 153.

¹⁸ BREWER, *supra* note 1, at 178, 202.

¹⁹ *Id.* at 5.

²⁰ FAIRFAX ET AL., *supra* note 5, at 151.

²¹ BREWER, *supra* note 1, at 5.

²² *Trustees History*, THE TRUSTEES OF RESERVATIONS, <http://www.thetrustees.org/about-us/history/> (last visited Mar. 10, 2014).

²³ *Id.*

²⁴ *Id.*

²⁵ JULIE ANN GUSTANSKI & RODERICK H. SQUIRES, *PROTECTING THE LAND: CONSERVATION EASEMENTS PAST, PRESENT, AND FUTURE* 21 (Island Press 2008).

²⁶ BREWER, *supra* note 1, at 5.

trusts need not be implemented in a set or rigid way, and they take on many forms.²⁷ In fulfilling a land trust's goal of preservation, several conservation tools are available.²⁸ Some of the tools used by land trusts include stewardships, conservation easements, gifts and sales, and purchase of development rights ("PDRs").²⁹ A deed restriction, which limits certain uses on the land, is another viable option for land preservation.³⁰ However, deed restrictions are not used with the frequency of other land protection tools, as they may be unenforceable in certain situations, and they vary with state property law.³¹ Depending upon the nature of the land protected and the goals of the land trust, different mechanisms may be preferable.

One of the most common of the aforementioned tools is the conservation easement.³² A "conservation easement" can be defined as, "a legal interest in land that perpetually limits development in order to protect significant agricultural, scenic, ecological, and historical resources."³³ Conservation easements also usually provide tax incentives to local community members,³⁴ which can account for their popularity as a preservation tool.³⁵ One advantage of conservation easements is that they quickly establish the policy goals of land trusts, as they limit the future development of the covered land.³⁶ The legal barrier against development provides a strong incentive to establish a conservation easement, but the conservation easement is also attractive because it allows the donor to maintain possession of the land, as he is still the legal owner.³⁷ The organization to which the land is conveyed acts as a protective body to ensure

²⁷ *Id.* at 139–62.

²⁸ *Id.*

²⁹ See BREWER, *supra* note 1, at 139–54. PDRs are rare in comparison to the frequency with which conservation easements are used, but they are essentially a conservation easement that has been purchased. See ANELLA & WRIGHT, *supra* note 3, at 34.

³⁰ *Deed Restriction*, WILDLANDS TRUST, <http://www.wildlandstrust.org/ConserveYourLand/AddaDeedRestriction/tabid/170/default.aspx> (last visited Mar. 10, 2014).

³¹ *Id.*

³² BREWER, *supra* note 1, at 144.

³³ ANELLA & WRIGHT, *supra* note 3, at 15.

³⁴ BREWER, *supra* note 1, at 146.

³⁵ The legal ownership consequences of a conservation easement are fairly straightforward. A land trust acquires possession of the land through the sale or donation of an easement and the rights to the land are transferred with remainder. ANELLA & WRIGHT, *supra* note 3, at 16.

³⁶ BREWER, *supra* note 1, at 143–46.

³⁷ *Id.* Additionally, the donor can maintain control by supplementing the conservation easement with certain requirements for the property, such as upkeep or preservation of buildings. See also ANELLA & WRIGHT, *supra* note 3, at 15–17.

that the land is not developed or used in a way contrary to the conservation easement.³⁸ In layman's terms, the conservation easement is an attractive option because it allows the owner to maintain possession without having to exert time or effort, beyond the conveyance, to ensure the protection and growth of the land. As will be explained in Parts II and III, the conservation easement has been a highly successful tool for some land trusts; however, land trusts also exist that do not employ the conservation easement as a protective tool, and these trusts are similarly effective in pursuing protective goals.³⁹

Despite the prevalence and rapid growth of the conservation easement in the United States, several concerns exist in regard to a land trust's exclusive use or significant reliance on the conservation easement as a mechanism of land preservation.⁴⁰ Namely, the tool does not have a long history of usage, which results in a large amount of uncertainty in the risks, downfalls, and long-term success of the mechanism.⁴¹ Additionally, conservation easements do not escape the common conservation problems of management and control.⁴² And while conservation easements are an exceptionally attractive preservation tool for many land trusts, they are difficult to obtain and control in urban areas.⁴³ As highlighted by the Aspen Valley Land Trust and Wildlands Trust analyses in Parts II and III, conservation easements serve as an attractive, and currently, successful mechanism in achieving land preservation goals. However, they should be used sparingly until the long-term success and risks of the conservation easement become known.

In addition to cultural and historical influences on the development of land trusts, there are several important legislative consequences of land trusts that should be discussed. The law governing land trusts and land transactions depends on the structure of the land trust, the state in which it is located, and the way in which it protects land.⁴⁴ States control

³⁸ ANELLA & WRIGHT, *supra* note 3, at 15.

³⁹ BREWER, *supra* note 1, at 139, 142, 144–45.

⁴⁰ John D. Echeverria, *Skeptics Perspective on Voluntary Conservation Easements*, VIRGINIA LAND RIGHTS COAL., <http://www.vlrc.org/articles/176.html> (last visited Mar. 10, 2014).

⁴¹ See FAIRFAX ET AL., *supra* note 5, at 8, 209.

⁴² *Id.* at 209.

⁴³ *Id.* at 237.

⁴⁴ Twenty-one states have adopted the Uniform Conservation Easement Act of 1981, and the creation and regulation of land trusts with conservation easements are controlled by the Act in those states. See FAIRFAX ET AL., *supra* note 5, at 180–81. With the exception of Wyoming, all of the states, including those that have not adopted the Uniform Conservation Easement Act, have some form of legislation related to conservation easements

many land transactions, such as conservation easements, and as a result there are variances among the states in regards to obtaining and securing land possession.⁴⁵ Additionally, many land trusts are created as nonprofit organizations and are subject to limitations and regulations as 501(c)(3) entities.⁴⁶ As an illustration, for land trusts that use the gift or sale of land as their primary tool of land acquisition, the state law of the respective land trust's state will govern, but regulations or legal consequences related to donations to a charitable organization also apply.⁴⁷

Conservation easements are governed in part by federal law.⁴⁸ Section 170(h)(4)(A) of the Internal Revenue Code establishes that a conservation easement must have at least one of four "conservation purposes" in order to satisfy tax exemption.⁴⁹ Along with federal regulations for tax exemption, conservation easements must satisfy various other federal regulations when they are established, some of which include conducting a yearly visit by the landowner to the conveyed land,⁵⁰ submitting a yearly report of the easement,⁵¹ and presenting a desired conservation easement to the Land Trust Board.⁵²

When analyzed on a national level, land trusts can be categorized depending on their geographical region as West, Southwest, Rocky Mountains, Plains, Great Lakes, New England, Mid-Atlantic, or South.⁵³ The two regions addressed in this Note are the Rocky Mountains and New England Regions. Each has a well-established history of land trust use within the region.⁵⁴ Despite the fact that the New England Region has significantly more land trusts than the Rocky Mountain Region, both have experienced tremendous success in preserving over 500,000 acres of land, respectively.⁵⁵ The Rocky Mountain Region includes Colorado, Idaho,

that determines the acquisition and supervision of conservation easements used by the land trust. Additionally, for land trusts that do not use the government as an acquisition tool, state law controls land trusts and the regulation of such trusts. *Id.* at 156, 181.

⁴⁵ *Id.* at 152–53, 181.

⁴⁶ *Id.* at 152.

⁴⁷ *Id.* For instance, if a land trust acquires land possession through bequeath, then the respective state's trust and estate law will govern.

⁴⁸ See ANELLA & WRIGHT, *supra* note 3, at 17 (discussing the Tax Reform Act of 1976 and Uniform Conservation Easement Act).

⁴⁹ *Id.* at 22; see I.R.C. § 170(h)(4)(A) (2006).

⁵⁰ ANELLA & WRIGHT, *supra* note 3, at 30.

⁵¹ *Id.* at 23–24.

⁵² *Id.* at 27.

⁵³ BREWER, *supra* note 1, at 270.

⁵⁴ See *Learn About the Trust*, *supra* note 6; *About Us: AVLT*, *supra* note 6.

⁵⁵ See BREWER, *supra* note 1, at 270.

Montana, Utah, and Wyoming,⁵⁶ while the New England Region includes Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont.⁵⁷

II. ROCKY MOUNTAIN REGION ANALYSIS

A. *History and Growth*

The Rocky Mountain Region provides an excellent example of an area that has thrived under the use of land trusts. The region encompasses fifty-nine land trusts,⁵⁸ and the prevalence of land trusts varies depending on the state in the region.⁵⁹ The Aspen Valley Trust is one of the region's oldest land trusts and boasts an impressive amount of protected land, which amounts to 34,000 acres.⁶⁰

One method of measuring a land trust's success is by the amount of land protected.⁶¹ With 34,000 acres, the Aspen Valley Land Trust ("AVLT") meets the definition of success under this scheme.⁶² The AVLT has experienced drastic growth in its forty years of existence since its creation as the Parks Association.⁶³ Initial growth of the trust was partially due to community members donating land instead of giving the land to the City.⁶⁴ The AVLT grew by the protection of local trails, and eventually received its first conservation easement in 1981.⁶⁵ The AVLT, previously known as the Parks Trust,⁶⁶ was also instrumental in advocating on a local level for an open space tax.⁶⁷ As the AVLT grew, it focused on educating landowners about conservation easements and their benefits, and eventually switched to commission-based conservation transactions.⁶⁸

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *See id.*

⁶⁰ *About Us: AVLT*, *supra* note 6.

⁶¹ *Measuring Our Success*, LAND TRUST ALLIANCE, <http://www.landtrustalliance.org/about/saving-land/winter-2012/resources-and-tools> (last visited Mar. 10, 2014).

⁶² *About Us: AVLT*, *supra* note 6.

⁶³ *Id.*

⁶⁴ ASPEN VALLEY LAND TRUST, 2007 ANNUAL REPORT 1 (2007) [hereinafter 2007 ANNUAL REPORT].

⁶⁵ *Id.* at 2.

⁶⁶ *Id.* at 1.

⁶⁷ *Id.* at 2.

⁶⁸ *See* 2007 ANNUAL REPORT, *supra* note 64.

After several years of growth and community presence, the AVL T merged with another local land trust to become the entity it is today.⁶⁹

B. Structure, Governance, and Programming

As the oldest land trust in Colorado, the AVL T has faced several structural and focal changes throughout its existence,⁷⁰ but its strength as a land trust is certainly exemplified by its rich history.⁷¹ The AVL T is governed by a board of nine members, and is staffed by three employees.⁷² At first blush this number is seemingly small, but it is not uncommon for land trusts to be staffed by a few individuals, as opposed to a large group of people.⁷³ The land trust not only conserves land, but it also is an advocate for the community, as exemplified through its involvement in establishing tax benefits.⁷⁴ The AVL T's ties within the community and presence in Colorado, not only through its forty-year existence, but also through advocacy and community education, make it akin to a community member, and undoubtedly contribute to its strength as an organization.⁷⁵

As an organization, the AVL T is well structured and follows specific policies that may be attributable to its success as a land trust. Each conservation project is analyzed through a "Project Selection" process that is detailed in the organization's policy handbook.⁷⁶ This process sets a standard for obtaining land and ensures that the project is one that will be viable for protection, as well as legally valid.⁷⁷ The Policy Manual is a strong indication of the AVL T's organizational strength. The Manual also details the organization's requirements for acquiring land in fee and Transferrable Development Rights.⁷⁸

⁶⁹ *About Us: AVL T*, *supra* note 6.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² 2012 AVL T Board of Directors, ASPEN VALLEY LAND TRUST, <http://www.avlt.org/site/pages/pid23.php> (last visited Mar. 10, 2014) [hereinafter *AVLT Board Members and Staff*].

⁷³ See, e.g., *What Are Land Trusts?*, YOLO LAND TRUST, <http://www.yololandtrust.org/what-are-land-trusts.php> (last visited Mar. 10, 2014).

⁷⁴ The AVL T acted as an advocate for its community by lobbying for and urging legislators to pass greater tax incentives. *Tax Credit Program*, ASPEN VALLEY LAND TRUST, <https://www.avlt.org/sitepages/pid24.php> (last visited Mar. 10, 2014) [hereinafter *Tax Credit Program*].

⁷⁵ *About Us: AVL T*, *supra* note 6.

⁷⁶ ASPEN VALLEY LAND TRUST, POLICY MANUAL (2010) [hereinafter *POLICY MANUAL*], available at http://www.avlt.org/docs/AVLT%20POLICIES_Aproved_4-6-10.pdf (updated April 6, 2010).

⁷⁷ *Id.* at 1–2.

⁷⁸ *Id.* at 8–9.

Significantly, the AVLТ received the Seal of Accreditation in 2008,⁷⁹ which underscores the appropriateness of its analysis in this Note. The Seal of Accreditation is a distinction that the Land Trust Accreditation Commission grants to land trusts whose policies and practices have been reviewed and approved.⁸⁰ Though there are thousands of land trusts located throughout the United States, the AVLТ is one of only 230 land trusts that can claim the honor of the Seal of Accreditation.⁸¹ The mark of accreditation has a significant impact on a land trust's reputation, as it is a distinction that is awarded through a selective process.⁸² The Land Trust Accreditation Commission considers it to be a mechanism of streamlining land trusts.⁸³ Thus, the honor speaks to the credibility of the land trust as an organization,⁸⁴ and can be seen as a way in which an organization gains power within the land trust community and the organization's respective community.⁸⁵

The AVLТ employs various techniques to achieve its goal of preserving open space that undoubtedly contribute to the land trust's success.⁸⁶ One way the AVLТ works toward achieving its goal of preserving open space is through the Monitoring and Legal Defense Fund.⁸⁷ The AVLТ Policy manual sets forth the requirement that for each accepted easement, the Monitoring and Legal Defense Fund pays a fee for the general protection and monitoring of easements.⁸⁸ Policies such as these ensure the land under the AVLТ's watch is monitored on a regular basis and according to a predetermined standard, thus creating an expectation of care and activity.⁸⁹

⁷⁹ *About Us: AVLТ*, *supra* note 6.

⁸⁰ *Why Accreditation Matters*, LAND TRUST ACCREDITATION COMM'N, <http://www.landtrustaccreditation.org/why-accreditation-matters> (last visited Mar. 10, 2014).

⁸¹ *Accredited Land Trusts*, LAND TRUST ALLIANCE <http://www.landtrustalliance.org/land-trusts/accredited-land-trusts> (last visited Mar. 10, 2014).

⁸² LAND TRUST ACCREDITATION COMM'N, *supra* note 80 (noting, "[t]he commission conducts an extensive review of the application and grants accreditation—and the right to use the accreditation seal—to land trusts that meet the practices.”).

⁸³ *See id.*

⁸⁴ *Id.*

⁸⁵ *The Accreditation Seal*, LAND TRUST ACCREDITATION COMM'N, <http://www.landtrustaccreditation.org/why-accreditation-matters/about-the-seal> (last visited Mar. 10, 2014).

⁸⁶ *Id.* “We are committed to preserving key open space through the creation, monitoring and defense of conservation easements in perpetuity.”

⁸⁷ POLICY MANUAL, *supra* note 76, at 5.

⁸⁸ *Id.*

⁸⁹ This is an important strength of the Aspen Valley Land Trust, as funding is a common shortcoming of land trusts. *See* BREWER, *supra* note 1, at 170.

Several legislative factors should be noted in regard to the AVLТ. As previously stated, the organization was an advocate in establishing tax incentives for the encouragement of preservation easements.⁹⁰ Other tax incentives that exist beyond those the organization has advocated include incentives that are recognized on a national level.⁹¹ As throughout the United States, conservation easements account for much of the AVLТ's protected land.⁹² The process allows land to be protected and supervised by a land trust or other designated entity, and guarantees a certain level of control, which is appealing to the land trust.⁹³ Other conservation easements give land trusts control over land. Land owned in fee simple may also be desired, as it gives the land trust greater control over the land and has a possibility for fewer disputes.⁹⁴ The AVLТ reports that it conserves land through conservation easements in perpetuity, meaning that it relies solely on conservation easements to achieve the land trust's goals.⁹⁵ This is notably different from the mechanisms implemented by the Wildlands Trust.⁹⁶

The AVLТ also credits tax incentives from the IRS and Colorado Department of Revenue for its success in preserving land donated by private landowners.⁹⁷ Tax incentives have proven a successful incentive and catalyst in the growth of land preservation in the United States.⁹⁸ In addition to generous donations of conservation easements from landowners, the AVLТ assists the growth of its organization through a conservation technical assistance program,⁹⁹ a conservation tax credit transfer program,¹⁰⁰ and a conservation buyer program.¹⁰¹ The AVLТ credits Colorado's Tax Credit Transfer Program as one of the most generous programs in the nation,¹⁰² whereby tax credits are available to those who give "qualified"

⁹⁰ *Tax Credit Program*, *supra* note 74.

⁹¹ For instance, provisions relating to contributions made to non-profit 501(c)(3) organizations can warrant federal tax deductions. I.R.C. § 170(h)(4)(A).

⁹² *About Conservation Easements*, ASPEN VALLEY LAND TRUST, <http://www.avlt.org/sitepages/pid15.php> (last visited Mar. 10, 2014) [hereinafter *About Conservation Easements*].

⁹³ BREWER, *supra* note 1, at 153.

⁹⁴ *Id.*

⁹⁵ *About Us: AVLТ*, *supra* note 6.

⁹⁶ *See infra* Part III.

⁹⁷ *About Conservation Easements*, *supra* note 92.

⁹⁸ *Id.*

⁹⁹ POLICY MANUAL, *supra* note 76, at 18.

¹⁰⁰ *Id.* at 6.

¹⁰¹ *Conservation Buyer Program*, ASPEN VALLEY LAND TRUST, <https://www.avlt.org/sitepages/pid18.php> (last visited Mar. 10, 2014) [hereinafter *Conservation Buyer Program*].

¹⁰² *Tax Credit Program*, *supra* note 74.

conservation easements,”¹⁰³ meaning the credit will be for up to fifty percent of the easement’s value, with a maximum limit.¹⁰⁴ The tax program also creates other incentives, as “[c]onservation tax credits are transferable to other Colorado taxpayers, and may be sold for cash.”¹⁰⁵

The AVLТ advertises these policies on its website, but it also educates and empowers the Colorado community by assisting with the tax benefits through a process in which it pairs donors who have tax credits with buyers.¹⁰⁶ The involvement of the AVLТ in the process speaks to its strong foundation as an organization.¹⁰⁷ The organization’s sense of community involvement serves to educate and assist donors of conservation easements in a way that goes above and beyond actions taken by other land trusts.¹⁰⁸ The programs speak not only to the high level of involvement the trust has with its donors, but they also demonstrate commitment to the process and level of oversight.¹⁰⁹ Through the various programs the AVLТ has in place, it is awarded a level of oversight and communication that would be hard to obtain without such programs.¹¹⁰ Although the organization does not attribute this to its success, it is certainly a unique factor that signifies a level of involvement and awareness that is not common to all land trusts.¹¹¹

C. Discussion

When analyzing the AVLТ’s success as an organization, several characteristics stand out to make the organization distinguishable. The AVLТ’s rich history within its community provides a strong foundation for its work.¹¹² Additionally, the trust relies on conservation easements, which in turn creates a heavy dependence on the generosity and involvement of its community.¹¹³ Although the conservation easements involve community action and a relinquishing of rights, the trust is highly involved in the process, and provides many portals and educative opportunities

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* (emphasis omitted).

¹⁰⁶ *Id.*

¹⁰⁷ *About Us: AVLТ, supra* note 6.

¹⁰⁸ *Tax Credit Program, supra* note 74.

¹⁰⁹ *About Us: AVLТ, supra* note 6.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Tax Credit Program, supra* note 74.

for its community.¹¹⁴ In a sense, this makes the trust less dependent on community generosity and makes it a more persuasive organization that directs the process.

Another strength of the AVL T is its reliance on the policies set forth in its policy manual.¹¹⁵ The AVL T provides a strong example of a land trust that educates its constituents and plays an active role in continuing land preservation. This is evident through its participation in the creation of tax benefits in the state of Colorado, which has continued through its program of matching donors and those wishing to buy tax credits.¹¹⁶ Such a high level of participation is admirable and should be utilized by other organizations, as it is effective in protecting land, increasing the acreage of protected land, and educating constituents.

III. NEW ENGLAND ANALYSIS

A. *History and Growth*

With arguably the richest history in the United States for land trusts, New England has 425 land trusts and is recognized for its historical role in land preservation.¹¹⁷ New England served as a birthplace for the current land trust, and its numerous land trusts speak to the effectiveness of land trusts in preserving the area's land.¹¹⁸ The land trusts found throughout the region consist of both easements and fees, meaning that the state is balanced in the way in which it preserves the land.¹¹⁹ As previously mentioned, The Trustees of Reservations and the Land Trust Movement are two monumental events in the development of land trusts, each playing its respective role in the emergence of land trusts as a vehicle of land preservation and each taking place in Massachusetts.¹²⁰ Massachusetts became an important actor in the growth of land trusts, as it was the home of The Trustees of Reservations, which was formed in 1891 due to population growth and land development.¹²¹ Since the emergence of this powerful organization, Massachusetts has become home to over 200,000 land trusts.¹²²

¹¹⁴ *Id.*

¹¹⁵ See generally POLICY MANUAL, *supra* note 76.

¹¹⁶ *Tax Credit Program*, *supra* note 74.

¹¹⁷ BREWER, *supra* note 1, at 270.

¹¹⁸ *Id.* at 24.

¹¹⁹ *Id.* at 270.

¹²⁰ See BREWER, *supra* note 1, at ch. 2.

¹²¹ See GUSTANSKI & SQUIRES, *supra* note 25, at 17.

¹²² BREWER, *supra* note 1, at 270.

The Wildlands Trust serves as an example of a strong New England land trust, as it is a long-standing association that has successfully protected approximately 10,000 acres of land in Southeastern Massachusetts since its creation in 1973.¹²³

B. Structure, Governance, and Programming

As previously mentioned, one recognized way to measure a land trust's success is through the amount of land it protects.¹²⁴ Under this measure of success, the Wildlands Trust is the second most successful land trust in Massachusetts, falling short of the Trustees of Reservations. The Wildlands Trust is a member of the Trustees of Reservations, which is not considered a local land trust because of its statewide membership.¹²⁵ It is hard not to attribute part, if not most, of the trust's success to the historical dominance of land trusts within the state of Massachusetts.¹²⁶ However, the Wildlands Trust's organization and management are also meritorious for the organization's success. The trust has a concentrated staff consisting of seven employees who are responsible for the day-to-day upkeep of the protected land.¹²⁷ Additionally, a fifteen-person Board of Directors oversees the Trust and maintains its success.¹²⁸ Most recently, this governance has undergone serious reconstruction, as new Articles of Incorporation were incorporated in 2009 and the Board of Directors saw a change in directors, replacing some directors for the first time since the 1990s.¹²⁹

The change in governance implemented in 2009 may be largely attributable to the Trust's success, as it demonstrates the organization's ability to change with the changing law and obstacles facing land preservation.¹³⁰ Additionally, the trust has strong support from its partnerships.¹³¹

¹²³ See *Learn About the Trust*, *supra* note 6.

¹²⁴ BREWER, *supra* note 1, at 11.

¹²⁵ See *Conservation Partnerships*, WILDLANDS TRUST, <http://www.wildlandstrust.org/learnaboutthetrust/conservationpartnerships/tabid/278/default.aspx> (last visited Mar. 10, 2014) [hereinafter *Conservation Partnerships*]; see also BREWER, *supra* note 1.

¹²⁶ *Learn About the Trust*, *supra* note 6, at 3.

¹²⁷ *Id.*

¹²⁸ *Meet Our Board*, WILDLANDS TRUST, <http://www.wildlandstrust.org/LearnAboutTheTrust/MeetOurBoard/tabid/150/Default.aspx> (last visited Mar. 10, 2014) [hereinafter *Meet Our Board*].

¹²⁹ WILDLANDS TRUST, 2009/2010 BIENNIAL REPORT (2010), available at http://www.wildlandstrust.org/Portals/0/Uploads/Documents/Public/2011/WLT_11BiennialReport.pdf.

¹³⁰ *Id.*

¹³¹ *Conservation Partnerships*, *supra* note 125.

In addition to being a member of the Trustees of Reservations, it marks a partnership with a long-standing powerful Massachusetts land protection organization, the Trust receives support from its 1200 members.¹³² Specifically, the Trustees of Reservations consists of various land trust organizations that are independent, local entities, but turn to the Trustees to be a part of a larger and more recognized organization.¹³³

Membership in a larger and well-recognized organization provides a strong foundation within the community and also provides access to various outlets of help and support, including other land trusts and voices of support for land protection.¹³⁴ The Wildlands Trust has conservation partnerships to establish ten initiatives.¹³⁵ These conservation partnerships range from regional, state and national organizations.¹³⁶ Additionally, the Wildlands Trust is a member of the MassLIFT AmeriCorps program, where it works with six other regional land trusts to accomplish shared goals, to garner support, and to spread awareness of conservation.¹³⁷

Employing a different strategy than the AVLT, the Wildlands Trust uses a variety of conservation tools to acquire land.¹³⁸ Like the AVLT, the Wildlands Trust receives land through conservation easements (also called conservation restrictions).¹³⁹ They also protect land through deed restrictions, bequeaths of land, acquisition of property in fee, gifts of land, and land received through life-estates.¹⁴⁰ It is worth noting the difference among these transactions, as they appear similar but result in varying consequences for the donor's legal rights.¹⁴¹ Gifting one's land to the land trust involves a complete relinquishment of the ownership rights, and is incentivized as it offers the most tax benefits to the donor.¹⁴² Land donated through a bequest allows the donor to declare ownership over the

¹³² *Id.*

¹³³ See BREWER, *supra* note 1, at 11.

¹³⁴ *Conservation Partnerships*, *supra* note 125.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *AmeriCorps Partnership*, WILDLANDS TRUST, <http://www.wildlandstrust.org/learn/aboutthetrust/amicorpspartnership/tabid/265/default.aspx> (last visited Mar. 10, 2014).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Conserve Your Land*, WILDLANDS TRUST, <http://www.wildlandstrust.org/Default/Permissions/ConserveYourLand/tabid/163/Default.aspx> (last visited Mar. 10, 2014) [hereinafter *Conserve Your Land*].

¹⁴¹ See *id.*; *infra* notes 142, 143.

¹⁴² *Gift Your Land*, WILDLANDS TRUST, <http://www.wildlandstrust.org/ConserveYourLand/GiftYourLand/tabid/165/Default.aspx> (last visited Mar. 10, 2014).

land, which will transfer to the land trust at death, but the owner maintains a greater degree of control throughout his lifetime as he still has obligations such as maintaining the property and paying taxes on the land until he passes.¹⁴³ Acquisition of land through a sale is a less common method, as the Wildlands Trust generally cannot afford to pay the fair market value for the land.¹⁴⁴ Despite this, sales of land occur through bargain sales and installment sales, in which the landowner receives money for the land but can choose to donate a portion of it or receive payments throughout a predetermined period.¹⁴⁵

Tax incentives also exist for those who protect land through the Wildlands Trust.¹⁴⁶ A new Massachusetts tax passed in 2011 allows landowners who choose to protect land by interacting with a land trust to receive a state income tax credit in the maximum amount of \$50,000.¹⁴⁷ Prior to the enactment of this law, tax benefits were only available to individuals who donated land through land gifts.¹⁴⁸

In contrast to the AVLTT, the Wildlands Trust is not distinguished by the Seal of Accreditation,¹⁴⁹ and the organization is neither listed as registered nor listed as having applied for the recognition on the Land Trust Commission's website.¹⁵⁰

C. Discussion

In considering what makes this land trust so successful in achieving its goals, it seems the cultural and historical importance of Massachusetts in regards to the development of land trusts cannot be overlooked. The strong cultural influence accounts for a factor that propelled the trust towards success. An area with a rich cultural background for land preservation, such as Massachusetts, plays a heavy role in effectuating the

¹⁴³ *Protect Your Land Through a Bequest*, WILDLANDS TRUST, <http://www.wildlandstrust.org/conservyourland/protectyourlandthroughabequest/tabid/166/default.aspx> (last visited Mar. 10, 2014).

¹⁴⁴ *Sell Your Land*, WILDLANDS TRUST, <http://www.wildlandstrust.org/ConserveYourLand/SellYourLand/tabid/169/Default.aspx> (last visited Mar. 10, 2014).

¹⁴⁵ *Id.*

¹⁴⁶ *Conserve Your Land*, *supra* note 140.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *See generally* LAND TRUST ALLIANCE, 2011 ANNUAL REPORT 20, *available at* <http://www.landtrustalliance.org/about/who-we-are/annual-report/2011-annual-report>.

¹⁵⁰ *Id.*

preservation goals set forth by the organization. Such a rich cultural backdrop should be taken into consideration when creating new land trusts, although it is not always possible due to the land, history, and legislation of the proposed area.

Admittedly, the Wildlands Trust is a highly successful regional land trust.¹⁵¹ It celebrates success through the amount of land it protects, through its longstanding existence as an organization, and through its various partnership.¹⁵² Possibly because of its long track record, the Wildlands Trust is a recognizable organization. Its cooperation with similarly oriented organizations is admirable, as by maintaining partnerships, it spreads its name, builds its reputation, and furthers its organizational goals.¹⁵³

Despite the organization's success, there are several ways in which the trust could be improved. The Wildlands Trust is not distinguished by the Seal of Accreditation, which is an honor that other longstanding, regional land trusts have received.¹⁵⁴ Applying for such an accreditation would improve the land trust's organization and make it seem more credible, especially when compared to other organizations that are accredited with the honor.

Although Massachusetts legislation was recently enacted that created more incentivizing tax consequences for land trusts,¹⁵⁵ the tax-related programming of the Wildlands Trust are still inferior to tax incentives in other states, such as Colorado.¹⁵⁶ In determining how the Wildlands Trust can strengthen itself as an organization and further its goals of land protection and preservation, the organization should consider ways in which it can lobby for greater tax incentives for Massachusetts citizens.

IV. PROPOSED CHANGES FOR IMPROVED LAND TRUSTS

A. *Contributions from the AVL T and the Wildlands Trust*

Each of the analyzed land trusts plays a prominent role in its respective community and has a rich history of development that has ultimately led to preserving thousands of acres of land.¹⁵⁷ Various similarities exist between the two land trusts that can account for their

¹⁵¹ *Learn About the Trust*, *supra* note 6.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *See supra* notes 80, 81.

¹⁵⁵ *Conserve Your Land*, *supra* note 140.

¹⁵⁶ *Supra* Part II and accompanying text.

¹⁵⁷ *See infra* Parts II and III and accompanying text.

shared success of achieving preservation goals. Additionally, each trust is unique in its policies and programs. These attributes represent a tried and true method for preserving land. In contrast, the different policies and procedures provide insight into successful methods that the other trust lacks, and methods to be considered for a model template. Although the two land trusts analyzed throughout this Note are hardly representative of land trusts on a national level,¹⁵⁸ they do speak to the efficiency of two long lasting and successful land trusts. The commonalities the trusts share, as well as the successful programming where they diverge, suggests a middle ground that, although will not be a guarantee for a successful land trust, will be representative of historically successful programming and procedures.

Common to both the AVL T and the Wildlands Trust is a community where land preservation is critical and encouraged.¹⁵⁹ Although it is not always possible to establish a land trust in a community with a rich historical focus on land preservation, the influence of history cannot be denied in regard to the success of the AVL T and the Wildlands Trust.¹⁶⁰ Most notably, the Wildlands Trust is located in Massachusetts, which was an integral state for land preservation, as it was the birthplace of the first land trust and has an influential community, which values and promotes land preservation.¹⁶¹ Additionally, Colorado has a rich culture that respects the land, and the forty-year history of the AVL T speaks to the community's reverence for the land.¹⁶² Admittedly, cultural notions vary depending upon the community and cannot be immediately changed when establishing a land trust. However, as is evident from the AVL T and Wildlands Trust, when a land trust is established in a community that places significance on the environment and the preservation of the community's respective land, a land trust can be established on solid footing and can quickly garner local support. Establishing a land trust without having to overcome the additional barrier of a community that is not

¹⁵⁸ The thousands of land trusts throughout the United States account for a variety of trust compositions. Given the flexibility of land trusts, two examples of land trusts are not representative of the some 1300 trusts throughout the nation. BREWER, *supra* note 1, at 5, 11.

¹⁵⁹ See *supra* notes 59, 108–20, and accompanying text. The Wildlands Trust was established in the birthplace of the land trust movement, which allowed for a supportive environment. Similarly, the Aspen Valley Land Trust is located in a community that embraced the organization's ideals and had shared values of land preservation.

¹⁶⁰ *Supra* notes 117–20 and accompanying text.

¹⁶¹ *Id.*

¹⁶² *About Us: AVL T*, *supra* note 6 and accompanying text.

accepting creates a stronger foundation for a land trust, and ultimately it gives the land trust a better chance of thriving in the pursuit of its goals.

One noted similarity between the two land trusts is that each organization relies on conservation easements as a main mechanism for land acquisition.¹⁶³ While conservation easements are a reliable and popular type of tool of land preservation in the United States, they are dependent on the voluntary action of citizens.¹⁶⁴ Although land trusts cannot force the execution of a conservation easement, their habitual practices and community involvement can greatly encourage these transactions. Notably, the AVLTT receives the majority of its land through conservation easements and has depended on this tool for forty years.¹⁶⁵ One analysis of the use of conservation easements is that they create a heavy dependence on donors. However, the AVLTT is an example of an organization that takes the tool of conservation easements into its own hands and has more power in the situation. It does this through its programming and community involvement.¹⁶⁶ Specifically, the AVLTT has several hands-on practices in place that allow the organization to play an active role in completing conservation easements and making sure donors receive benefits for their donation.¹⁶⁷ The organization's role as a matchmaker for credit buyers is a perfect example of its hands-on approach that is undoubtedly responsible for its success. Not only does the AVLTT make sure its constituents are aware of tax benefits, it plays an active role in the process to make sure the constituents are benefited for their donation.¹⁶⁸

As noted above, the primary conservation mechanism employed by each land trust is the conservation easement.¹⁶⁹ This parallels the current trend of land trusts throughout the United States.¹⁷⁰ The rapid growth of conservation easements can be seen throughout the nation, and the trend is easily understood for the benefits that easements provide.¹⁷¹ Despite this trend, land trusts should heed the caution of experts

¹⁶³ BREWER, *supra* note 1, at 1.

¹⁶⁴ *Id.* at 139; ANELLA & WRIGHT, *supra* note 3, at 18.

¹⁶⁵ *About Us: AVLTT*, *supra* note 6.

¹⁶⁶ *Supra* notes 89–96 and accompanying text.

¹⁶⁷ *Id.*

¹⁶⁸ The AVLTT has implemented several longstanding and successful educational policies for its donors, such as serving as a matchmaker for the donor and the appropriate tax benefits. *Supra* notes 89–96.

¹⁶⁹ *About Us: AVLTT*, *supra* note 6.

¹⁷⁰ As explained by Brewer, conservation easements were used twice as much as owning land in fee simple, according to a 2000 study. *See* BREWER, *supra* note 1, at 170.

¹⁷¹ The control over management decisions that conservation easements provide makes the easement an attractive option. Additionally, the tax incentives that accompany

in the field who note that conservation easements are a relatively new conservation tool, and the longevity and long-term reliability of the conservation easement is still unknown.¹⁷² As such, this Note suggests a newly established land trust should not follow in the footsteps of the majority of land trusts, such as the AVLТ and Wildlands Trust, and instead it should employ a variety of conservation tools discussed below.¹⁷³

Tax incentives can be an important and persuasive benefit for a prospective land donor.¹⁷⁴ Although tax consequences of the various land transactions depend greatly on the state where the land trust is located,¹⁷⁵ the subject of tax incentives is not entirely out of the control of land trusts.¹⁷⁶ As the AVLТ demonstrates, an organization can play an important role in advertising possible tax incentives and educating land donors on the impacts that one transaction or another may have.¹⁷⁷ The AVLТ, through its extensive programming and effort to provide land donors with information that they may not otherwise have, outperforms the Wildlands Trust in its efforts to educate land donors and make the transaction as beneficial as possible for each party.¹⁷⁸ The AVLТ not only educates prospective land donors, but it also became an integral part of the change in Colorado law by lobbying for greater tax incentives and by pushing the legislature to adopt changes that were more beneficial for land donors.¹⁷⁹

Similar to the important role that increasing awareness of tax incentives can have in the success of a land trust, programming to educate constituents can also be a critical indicator of how a land trust will develop and, possibly, thrive in a community.¹⁸⁰

Partnerships can also be an important focus for land trusts, as partnerships create strong community, regional, and national recognition.¹⁸¹

conservation easements make them a sometimes more desirable tool than other options that lack such a benefit. It is also worth noting that the transfer of land through conservation easements is a tried-and-true transaction that is rather easy and hassle-free. These characteristics make the easement a popular choice, as evidenced by the frequency of use.

¹⁷² BREWER, *supra* note 1, at 175.

¹⁷³ *Infra* Part IV and accompanying text.

¹⁷⁴ FAIRFAX ET AL., *supra* note 5, at 180.

¹⁷⁵ *See id.* at 181.

¹⁷⁶ *See id.* at 182.

¹⁷⁷ *See supra* notes 80–82 and accompanying text. The AVLТ played a crucial role in legislative changes that increased tax deductions for landowners.

¹⁷⁸ *Supra* Parts II & III and accompanying text.

¹⁷⁹ *Supra* note 89 and accompanying text.

¹⁸⁰ *About Us: AVLТ*, *supra* note 6.

¹⁸¹ *Supra* Part III and accompanying text.

Aside from the obvious benefit of achieving policy and mission goals, forming partnerships is an important step for land trusts because it provides a forum for information, communication and support from other similarly oriented groups.¹⁸² The Wildlands Trust, which is a member of various partnerships,¹⁸³ provides an example of how a land trust can form partnerships to pursue the organization's individual goals and benefit from the publicity and flow of information that greater community participation provides.

B. What Is Missing from the Studied Trusts?

One recurrent problem that many preservation-oriented entities face is funding.¹⁸⁴ Even with the generosity of community members, whether in the form of donating land or monetary support, a common obstacle for conservancy is the issue of receiving sufficient funding to protect the land or natural habitat from the perils of nature and human pollution.¹⁸⁵ Though each land trust fundraises in various ways, preserving land is an ongoing task that requires constant attention, both in human upkeep and in financial support.¹⁸⁶ The AVLTL and Wildlands Trust could each be improved with a more concrete plan for funding. While the plan suggested below is not a guarantee for financial funding, it is important in that it is a plan. This Note's model suggests a land trust with a comprehensive, well-thought-out plan, as it provides a mechanism to measure financial growth and to determine which kind of funding is most beneficial for the land trust at hand.

C. Suggested New Model

Given the analyses of the Aspen Valley Land Trust and the Wildlands Trust, the following six element model is proposed as a template that takes into consideration the practices of successful land trusts, as well as concerns that should be addressed when forming or restructuring a local land trust. The following template does not suggest a guarantee of success, as the formidable nature of the object that land trusts protect, the environment, requires constant attention and extensive planning, and

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ See generally FREYFOGLE, *supra* note 10.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

to a great deal the viability of nature is beyond human control. However, the following model provides a tool that can be used to guard against predictable and recurrent traps for land trusts. The model takes into consideration the culture and community where the land trust is located, lobbying and legislative options available to the land trust, strategic conservation planning, community involvement, partnerships, and acquiring accreditation. As discussed below, these six prongs cover a range of conservation considerations and threats to an organization's viability. The proposal provides a mechanism to plan for land trust success, and ultimately, for more comprehensive land preservation.

Based on the comparative analysis of the Aspen Valley Land Trust and the Wildlands Trust, a land trust located in a region with a rich cultural history of supporting environmental protection is very helpful in establishing a land trust's community standing. Although neither the AVLT nor the Wildlands Trust had to overcome societal resistance to its organization's purpose, there is no reason to believe that a local land trust located in a community without such a rich environmentally supportive community would be at a disadvantage, as the practices promulgated by each land trust arguably sets up the land trust to overcome many societal barriers or resistance. As such, the first element of this model is to create a land trust in a community that considers environmental preservation to be an important community value. This is greatly beyond the control of the land trust, as there are often environments or habitats that need preservation but lack support from the community. As such, if there is not a pre-existing sentiment of community support, the land trust should make community involvement and garnering support one of its primary focal points at the onset of developing the trust. Thus, if the community lacks a support or pre-existing consciousness of preservation, the land trust should focus, at least in the early stages of development, on gaining support through programming, education, and greater community involvement.¹⁸⁷ This is an important focus for a land trust as community support increases potential land donors, provides financial support, and allows the land trust to thrive overtime.

The second prong is lobbying for further tax incentives available to land donors. To the extent that there are already strong tax incentives for land donors in the state where the land trust is located, the land trust

¹⁸⁷ The Aspen Valley Land Trust provides an example of how to gain a greater community presence, which is exemplified through its educational programming related to tax consequences. *About Us: AVLT*, *supra* note 6.

should focus on educating potential land donors of all possible tax implications and benefits associated with the various conservation tools. The land trust should ensure that land donors understand which tool would best financially benefit them. Having a well-educated staff member who can discuss the individual impacts of donating land is crucial. The land trust should provide information about the state and federal tax implications and which forms to fill out. The AVLTT serves as an example for how a land trust can educate land donors in a way that encourages participation with a land trust.¹⁸⁸

In the event that the state does not have strong tax incentives, the AVLTT serves as an example of how a land trust can use lobbying and legislative participation to encourage changes in legislation so that land donation is more financially beneficial to land donors.¹⁸⁹ This gains community awareness of the land trust's mission while attracting potential land donors.

The third, and possibly most significant, step of the proposed model is strategic planning. This takes into consideration which conservation tools to use, how to staff the trust, stewardship, and monitoring. This model places the most emphasis on using a diversity of conservation tools instead of relying entirely on one type. Though it is undeniable that conservation easements are a historically successful and frequently employed device, the reliability of the conservation easement's success is undermined by its short-lived usage.¹⁹⁰ Several experts in the field caution that the use of conservation easements is a relatively new practice, and as such there is little history or knowledge about the risks associated with conservation easements or potential long-term issues associated with the device.¹⁹¹ Accordingly, this Note strongly suggests that a local land trust does not create a heavy dependence on conservation easements as the main preservation tool, but that the organization instead employs a variety of conservation tools so that the risk of failure is spread throughout many devices as opposed to relying solely on conservation easements. Tools to consider include gifts, monetary donations that are used to purchase land, land exchanges,¹⁹² mutual covenants, transfers of title with

¹⁸⁸ See *supra* Part II.

¹⁸⁹ See *supra* notes 89–96 (discussing AVLTT tax benefits).

¹⁹⁰ FAIRFAX ET AL., *supra* note 5, at 209, 269.

¹⁹¹ See BREWER, *supra* note 1, at 175; see FAIRFAX ET AL., *supra* note 5, at 8–9, 209.

¹⁹² Land exchanges are a less common preservation tool, and they are often accompanied by a myriad of complications that are beyond the scope of this Note. However, they are

conditions attached, and PDRs. Employing a variety of tools is important because it appeals to a broader populous of potential donors and/or community participants. Avoiding complete reliance on one tool, namely conservation easements, is also the more prudent planning decision given the unknown risks associated with conservation easements.

Other important considerations for the third prong of strategic planning concerns staff training and hiring. Both the Wildlands Trust and AVL T provide strong examples of how a local land trust can be well organized to ensure smooth operation and to avoid future problems related to management.¹⁹³ While every local land trust is governed by a Board of Directors or a parallel body,¹⁹⁴ taking the time to model the organization's management based off current land trusts is an important consideration. This Note does not suggest a specific staff number or Board of Directors composition, as the prior analysis shows both a larger and smaller staff can lead to a successful organization.¹⁹⁵ When creating a local land trust, several key considerations exist in regards to staffing. The organization should consider the amount of acreage it predicts to possess, as well as the monitoring and upkeep associated with the local environment. As previously discussed, monitoring can prove a large burden for many land trusts and is an area that is commonly recognized as a weakness of land trust management by experts in the field.¹⁹⁶ In the face of this obstacle, it is imperative that a land trust plans accordingly when it originally establishes its organization. Proper staffing is an area that can lead to better monitoring, which ultimately assists in the original focus of all land trusts of preserving an environment.

The fourth step is for the organization to become an involved community member. Although this notion may seem obvious at first, it is worth emphasizing that local land trusts rely on community involvement, support, and enthusiasm. If the land trust is not recognized or well received

worth mentioning, as land exchanges provide another mechanism that can be used by local land trusts for preservation. FAIRFAX ET AL., *supra* note 5, at 211.

¹⁹³ See *supra* Parts II and III.

¹⁹⁴ BREWER, *supra* note 1, at 10–12.

¹⁹⁵ *Id.* The AVL T consists of a staff of three employees and nine Board members, while the Wildlands Trust management team is composed of seven employees and fifteen Board members. Each is successful in its respective organization, which speaks to the flexibility of land trusts in their organization and in adapting the entity to its specific region and preservation goals. See *Learn About the Trust*, *supra* note 6; AVL T, *supra* note 6; *Meet Our Board*, *supra* note 128; see also *AVLT Board Members and Staff*, *supra* note 72.

¹⁹⁶ See FAIRFAX ET AL., *supra* note 5, at 209 (discussing the LTA's recognition of the poor management capability of conservation easements); BREWER, *supra* note 1, at 163.

by the community, success seems unlikely. The AVLTL provides an example of how an organization can become involved with community aspirations.¹⁹⁷ Another important method of garnering community support is by selective and decisive board composition.¹⁹⁸

The fifth step in the proposed model is to join or create partnerships with other land trusts that have similar missions or preservation goals. Partnerships, as suggested by this Note, include joining a national land trust and partnering with other local land trusts. National land trusts are often well-established organizations with a membership that consists of numerous land trusts.¹⁹⁹ The national land trusts mentioned in this Note include the Land Trust Alliance and The Nature Conservancy.²⁰⁰ By becoming a member of a larger organization, there is a flow of information and a forum that provides opportunities of growth through the exchange of ideas, policies and other pertinent information. Similar to many of the characteristics of land trusts, there is not a bright line rule suggested for which organization is best to join. Rather, it is important that the local land trust participate on a larger level through membership of a national land trust.

Additionally, the Wildlands Trust exemplifies a local land trust creating partnerships on a more local level, as opposed to joining one of the national and longstanding land trusts. Though such partnerships lack the historical foundation and national recognition that accompany some of the larger land trusts,²⁰¹ establishing partnerships, regardless of the national or local level, is beneficial for a land trust and is encouraged by this Note as a positive mechanism to gain members, information, and policies.

The sixth and final element of the model is to obtain accreditation as a land trust. Obtaining accreditation is different from the other elements, as it cannot be done immediately,²⁰² but rather it is a goal that the

¹⁹⁷ The AVLTL was an active advocate for increased state tax benefits for land donors. By advocating the values of its potential donors, the AVLTL became a part of the community on a political level and also increased its recognition. *See supra* notes 89–96.

¹⁹⁸ Scholars suggest taking into consideration the amount of land that will likely be protected by the land trust when determining the size of the Board of Directors and staff. *See BREWER, supra* note 1, at 10. This Note suggests a land trust go one step further by actively selecting and creating a Board of Directors by choosing members who have strong community connections and presence, which may help to garner support and recognition for a new land trust.

¹⁹⁹ *See FAIRFAX ET AL., supra* note 5, at 152.

²⁰⁰ *See BREWER, supra* note 1, at 178, 202.

²⁰¹ FAIRFAX ET AL., *supra* note 5, at 153–54.

²⁰² *See supra* notes 80–82.

land trust should keep in mind through its initial development. Obtaining a seal of accreditation is highly recommended for any land trust. Though the seal of accreditation cannot be obtained from the onset of forming a land trust, it should be done as soon as possible. Once recognized with a seal of accreditation, a land trust becomes a part of a larger conservation movement. With this comes an improved reputation, as well as the resources provided by the membership. Some resources are direct, such as financial support and growth.²⁰³ Others, such as stronger relationships with other land trusts, more direct communication, and networking are indirect but nevertheless invaluable. As land trusts exist to preserve the environment, whether they take form in preserving land, habitats or species, it is crucial for success that the organization constantly seek to improve itself and educate itself. As the organization's habitat changes, so will the best mechanisms to protect it. Maintaining a good, working relationship with other similarly oriented organizations provides an immeasurable network of support, information and knowledge. The Land Trust Alliance suggests a land trust take several steps in order to obtain accreditation.²⁰⁴ By following these steps and becoming an accredited organization, it is likely that a land trust will become a more recognized entity in the land trust community and will gain support from its immediate community.

CONCLUSION

Land trusts are a dependable and frequently used mechanism for land preservation. Though the rise of the land trust is a rather recent phenomenon, it has proven a successful vehicle for achieving land preservation. The model suggested by this Note provides a template on which new or restructured land trusts can be based. This template addressed frequent pitfalls of many land trusts and calls attention to potentially fatal shortcomings of future land trusts. Although this land trust model does not purport to guarantee the success of any organization, it does call attention to several imperative planning considerations, as well as potential unaccounted for and unknown risks, such as complete dependence on conservation easements. Despite the success of land trusts, management, monitoring, and supervisory issues prevail for many land trusts, which

²⁰³ See *supra* notes 80–82.

²⁰⁴ See *supra* notes 80–82.

calls for a reform in the way that such entities are organized. The template called for by this Note accounts for such shortcomings and provides a dependable model on which a land trust can be built in various regions. Based upon the successes and shortcomings of two well-established and meritorious land trusts, the suggested model is well grounded and suggests a sound template for land trusts. Without addressing the concerns of the culture and community where the land trust is located, lobbying and legislative options available to the land trust, strategic conservation planning, community involvement, partnerships, and acquiring accreditation, success is less likely.