Using Limited Development to Conserve Land and Natural Resources
Research yields new perspectives on an innovative conservation strategy

by Jeffrey C. Milder

For many land trusts, it's an all-too-common scenario: a parcel of land with key conservation values comes on the market, but there are no public or philanthropic funds to protect it and the owner is unwilling to donate the land or a conservation easement. The parcel is sold to a developer and fully developed, and its conservation values are lost forever.

One alternative to this disappointing scenario is to combine conservation with limited development, thereby protecting the site's conservation values at little cost to the land trust. In fact, limited development can be more than just a conservation tool of last resort. It allows land trusts to work with a wide range of landowners, offering the landowners a spectrum of financially attractive options for protecting most or all of their land. It can also help land trusts move beyond opportunism to target high-priority lands in their service area.

In the late 1990s, for example, the Groton Land Foundation in Groton, Massachusetts, was faced with the imminent development of a 70-acre parcel that contained a critical wildlife corridor and habitat for the threatened Blanding's turtle. Given the parcel's high price tag and the need to act immediately, the foundation chose to pursue a conservation and limited development project. The foundation reached an agreement to purchase the site and laid out a 12-house subdivision on about one-fourth of the land, avoiding alteration to key habitat areas (see Figure 1). Drawing heavily on the professional skills of its board members, the all-volunteer foundation designed and permitted this small development, then sold the permitted land to a developer for more than the foundation had paid for the entire 70-acre tract. The additional revenue funded the purchase of an adjoining 40-acre parcel. In all, the project developed 17 acres while the foundation retained fee ownership over 93 acres, including the important habitat resources.

This example illustrates how land trusts can use limited development to capture the large differential in value between raw, undivided land and subdivided, permitted land—profit that ordinarily flows to land speculators or developers—and harness it to fund conservation. It also demonstrates that land conservation need not be an all-or-nothing proposition: through careful site planning, valuable conservation resources can be fully protected while less important parts of a site are made available for other uses.

Although limited development has been part of the conservation toolkit for decades, recent trends in land conservation—such as rising land prices and growing interest in limited development by for-profit developers and investors—call for a fresh look at this strategy. Based on the author's recent research on the subject, this article investigates when and how limited development can advance conservation goals—and how land trusts can make the best use of this creative technique.

Conservation and Limited Development Projects

Projects that use limited development to finance conservation have historically been known as limited development projects. However, this article will instead refer to them as conservation and limited development projects (or CLDPs), a term coined by the author to reflect the fact that conservation is a primary goal of such projects.

The CLDP concept is predicated on three principles. A successful project must:

1. identify and protect in perpetuity the site's key conservation values and the public benefit arising from these values;
2. provide acceptable financial returns for the land trust, landowner and other participants; and
3. be acceptable to the local community and designed with due respect to the surrounding ecological and human context.

Within these parameters, the range of CLDPs is limited only by the creativity of the project proponents in melding conservation and financial objectives. For example, most CLDPs are conducted or facilitated by land trusts, but some are initiated by private landowners or conservation-minded developers. Most include as their development component a small number of high-end homes, but some provide compact affordable housing, senior housing or even small retail facilities.

To illustrate further how CLDPs work, it is helpful to describe four common project structures—i.e., four different approaches to land ownership, financing, project planning, and the role of the land trust and other project participants.

Structure 1: Buy, Restrict, Sell

As illustrated by the preceding example from Groton, Massachusetts, in this structure the land trust purchases a property, retains or places a conservation easement over the areas of conservation value, and sells some of the remaining land for development to finance the project. Funding for the initial land purchase may come from the land trust's endowment or capital fund, from commercial lenders, or from charitable financing provided by donors. This structure gives the land trust maximum control over the amount of development and the location of conservation areas, but it also entails the greatest financial risk and can demand considerable time and expertise.

Structure 2: Work with Landowner

This common technique is used when a landowner is interested in conserving his or her property but is unwilling or unable to part with its entire economic value. Typically, the land trust works with the landowner to prepare a site plan that meets the landowner's revenue or estate planning goals while protecting important conservation values. The land trust then receives a donation of (or easement over) the portion of the site designated for conservation, while the landowner retains the development lots for sale or personal use.

This structure allows landowners to "cash in" on the value of their property without sacrificing the entire site to development and without relying on traditional middlemen such as developers. In fact, this type of limited development can sometimes be more profitable for landowners than selling their entire tract to a developer, once tax consequences and the timing of revenue streams are considered.

On the eastern part of New York's Long Island, where productive farmland and coastal habitats are under threat from suburban development, Peconic Land Trust has conserved thousands of acres using this method. When a landowner approaches Peconic Land Trust or is referred to it by a local development review board, the trust works with the landowner to create a site plan that strikes a careful balance between conservation and revenue generation.

After seeing a range of options, landowners have a better understanding of their property and of the benefits of limited development. Compared to full yield development, these benefits may include lower taxes, more flexibility for the landowner, and access to funds from government open space or farmland protection programs. After going through the site planning process, many landowners choose a more conservation-oriented plan, according to the trust's president, John v.H. Halsey.

Structure 3: Partner with Developer

In this structure, a land trust partners with a private developer to conduct a CLDP. Typically, the developer acquires the site and leads the permitting and development processes, but the land trust is actively involved in site planning and in identifying the conservation areas. (By contrast, with many "developer easements" the land trust only becomes involved once the development is a fait accompli, giving the trust little input into the easement terms or the location of conservation land.)

One advantage of this structure is that the developer, not the land trust, assumes the financial risks of development and is the "public face" associated with the development. Thus, the land trust may choose to take a neutral position on the development rather than act as an advocate. Nevertheless, because the public may associate the land trust with the development outcome, it is important to consider type and quality of development proposed before entering into this type of partnership. In addition, land trusts should be aware that conservation easements donated as part of the development permitting process are generally not tax-deductible. (See below.)

Structure 4: Conservation Investors

This structure involves collaboration between a land trust and a group of conservation investors, who help finance the project and share in its benefits. Conservation investors are individuals or businesses who participate in a CLDP for at least one of three reasons: 1) to improve their community through land conservation, 2) to obtain an attractive piece of property for personal use, or 3) to reap financial rewards in the form of profit or tax deductions.

Under this structure, conservation investors are brought together to form a business entity such as a limited partnership, which then purchases the land, prepares a site plan, restricts the conservation areas, and sells the development tracts or retains them for the conservation investors. Compared to the other project structures, the conservation investor approach can reduce a land trust's financial risks without sacrificing site control to the same extent as the Partner with Developer structure.

How Effective are CLDPs?

Land Trust Standards and Practices require that land trusts stay true to their conservation mission and clearly demonstrate a bona fide public and conservation benefit for any project in which they participate. Recent public scrutiny of some land trust transactions underscores this guideline. In fact, some people both inside and outside the land trust community have questioned whether limited development is consistent with this mandate, or whether it functions mainly to “greenwash” development projects.

To shed some light on this question, the author conducted research on CLDPs in 2004 and 2005 to investigate their effectiveness from the standpoints of conservation, cost or revenue generation, and community perception. The following discussion draws on the experience of land trusts nationwide and on more than 100 project records, 80 interviews, 30 site visits and 10 detailed case studies.

Conservation Effectiveness

Conservation success was evaluated according to the set of indicators summarized in the sidebar, Indicators of Conservation Success. Indicators were evaluated for 10 representative CLDPs in the eastern U.S. using methods that include geo-spatial analysis from aerial photos and site plans, fieldwork and land trust interviews.

Overall, these projects yielded significant conservation benefits. Most were protecting unique and threatened conservation resources that would otherwise have been lost. As shown in Table 1, the degree of protection offered was typically far better than that provided by conservation subdivisions (defined in the caption) and in many instances nearly as good as outright full protection. In addition, many of the CLDPs had leveraged development revenues to restore and manage resources to a degree that is often unaffordable for typical conservation projects.

The study findings suggest that some types of conservation targets tend to be more compatible with limited development than others. For example, for resources restricted to a small geographic area (even sensitive ones such as rare plants or ecological communities), if the resource itself and a suitably wide natural buffer are protected, development elsewhere on the same property may have little negative impact.

On the other hand, geographically large conservation targets or those that are sensitive to fragmentation (such as wide-ranging mammals or forest interior birds) may be less compatible with limited development. For these targets, considering the scale and intensity of development impacts relative to the scale of the conservation target’s space needs can help determine whether limited development will be compatible and, if so, how it should be designed. For example, even a small amount of development on an 80-acre site may displace forest interior birds that require undisturbed forest patches of 20-40 acres to breed. However, a larger amount of development on a 5,000-acre site, if designed to retain large, interconnected habitat patches, may support even wide-ranging species.

More details on the conservation effectiveness findings and the methods used are available at the Web address provided at the end of this article.

Cost-Effectiveness and Financial Risk

CLDPs tend to be cost-effective for land trusts since development revenues finance most or all of the cost of land protection and stewardship. Some projects even generate additional revenue that can be used to fund off-site conservation. However, CLDPs can be highly demanding of staff time and expertise. In addition, land trusts that use the Buy, Restrict, Sell project structure incur the financial risks ordinarily associated with development. The other three structures can help reduce risk and improve cost-effectiveness through strategic partnerships with landowners, developers or investors.

Community Perception

One common concern about CLDPs is that they will tarnish a land trust's image by creating the perception that the trust is more interested in development than in conservation. While some CLDPs have produced negative publicity for land trusts, the study found that this concern is exaggerated. In fact, most of the projects the author reviewed were well-received by local stakeholders, according to the land trusts who led these projects.

In some cases, land trusts reported that CLDPs actually enhanced their reputation by helping build bridges to a broader constituency within their community. For many land trusts, being sensitive to local issues such as affordable housing and property taxes is more than just being a good neighbor; it also helps build financial and political support from the local community. David MacDonald of Maine Coast Heritage Trust observed this benefit from the Acadian Woods CLDP near Bar Harbor, Maine, noting that "this project allowed us to reach a number of people who weren't aware of our work and didn't know what an easement was. Some of the realtors, bankers, planning board members and homeowners had never seen a project like this before, so it was a very good education tool. People saw it as quite balanced and refreshing."

Guidelines for Effective CLDPs

For land trusts interested in exploring the use of CLDPs, the first question to consider is whether limited development is a suitable approach in a particular situation and, if so, which project structure to use. The choice of project structure should reflect how much control the land trust needs to protect the resource. If the conservation values are very unique or fragile, or encompass a large portion of the site, a high level of project control may be desirable. Conversely, if the project goal is to protect a lower priority site or less fragile resources, it may be advantageous to cede some control to reduce risk and workload. See www.LTAnet.org/objects/view.acs?object_id=18573 for a decision tree showing factors to consider when deciding whether to conduct a CLDP and which project structure to use.

For those engaged in planning or implementing CLDPs, this section offers some guidelines for designing conservation-oriented development, for maximizing project cost effectiveness while minimizing risk and for creating CLDPs that provide long-term stewardship of conservation resources.

Designing for Conservation-Oriented Development

In most CLDPs, the land trust's development goal is to meet the project's financial target while protecting the identified conservation resources. A common approach is to create a small number of high-value house lots in a private, natural setting. When lots are created in this manner, conservation restrictions added to the property—such as building envelopes that prohibit clearing aside from a house and modest yard—may actually increase property values because homeowners perceive them as protecting the quality of the neighborhood.

Other CLDPs have taken a different approach, creating a larger amount of tightly clustered development. Some such projects have included affordable housing, multi-family housing, or even small retail facilities as part of the development component.

Successful projects often keep infrastructure costs to a minimum, thus increasing the net revenue per unit of development and enabling the project to protect more of the site. This approach meshes well with the principles of low-impact development, which advocate design features such as narrow or unpaved roads and the use of native vegetation instead of traditional lawns and gardens.

Maximizing Cost-Effectiveness and Minimizing Risk

Land development requires many steps such as hiring surveyors and engineers, preparing site plans, seeking development approvals, hiring contractors to install infrastructure, and marketing development lots. These activities can increase the value of land, thus raising money for conservation, but they may also entail financial or other risks for land trusts. Therefore, a strategic approach for land trusts is to consider conducting those activities that will add substantial value to the development areas and carry low or moderate risk, while partnering with developers, investors or landowners to conduct activities that are likely to be risky or that add little to the land's future sale price.

In addition to strategic partnering, other ways to reduce risk can include:

- Pursue non-development funding sources such as public open space funds and private donations to reduce the financing gap that will need to be closed through development.
- When using the Buy, Restrict, Sell project structure, obtain an option to purchase the prospective CLDP site. During the option period, conduct initial site planning, prepare pro-formas, and line up funding sources including commitments from future buyers. Move forward with the project if this initial legwork points toward a financially successful project.
- If the local community is unfamiliar with CLDPs, conduct outreach to explain the limited development concept and its conservation benefits. Education may also be needed for prospective buyers of development in a CLDP, since these properties often include more restrictions than conventional development types, as well as unique benefits.

Designing for Long-Term Stewardship

Because they combine conservation with development, CLDPs can present additional stewardship challenges. Experienced practitioners offer these suggestions for designing CLDPs that will be "stewardship-friendly":

- Avoid designs that tightly intersperse conservation land with unrestricted private land. Keeping the length of easement boundaries and interfaces with residential lots to a minimum is essential to reduce the future burden of compliance monitoring.
- Give homeowners within a CLDP enough space to avoid conflicts between homeowners' activities and the management of the conservation land. Buffer zones or natural features such as waterways can help provide clear separations between conservation areas and development areas.
- Specify the activities permitted within each portion of a landowner's lot. One way to do so is to define a building envelope within which typical residential structures and activities can be situated. Outside of the building envelope, no alteration is allowed.
- When conservation areas will be owned privately but subject to conservation easements, try not to split the management of a single resource among several

landowners. For example, if a CLDP will contain four houses on a 100-acre forested tract, consider creating three 3-acre lots and one 91-acre lot so that most of the forest is under single ownership. Land stewards can then interact mainly with this single large landowner when implementing management plans.

- Create development lots of a size appropriate to the land management goal. Development lots in the range of 10-30 acres are often too small to farm or to provide meaningful habitat, yet consume large amounts of the landscape.

In addition to stewardship challenges, CLDPs can provide exciting opportunities to reconnect people to the land. For the conservation development firm Chaffin/Light Associates, which has carried out CLDPs nationwide, the goal is "to build communities within parks and not parks within communities." Accordingly, many of their projects involve residents in land stewardship and ecological monitoring while providing environmental education programs for residents and members of the nearby community.

Conclusion

Although limited development often involves some complexities and risks, the author's research and three decades of land trust experience indicate that it can be an effective conservation strategy and a useful addition to the land protection toolkit. By keeping conservation objectives foremost in mind, proceeding strategically and learning from past experience, land trusts can maximize the conservation benefits of these projects while minimizing risk.

As land prices rise in many fast-growing parts of the country, creative, low-cost conservation methods such as CLDPs are increasingly necessary. When implemented effectively, these projects allow land trusts to expand the scope of their conservation efforts significantly, leveraging their resources though strategic partnerships to generate conservation results far beyond what would be possible using conventional methods alone.

Acknowledgements

The author thanks the nearly 100 land conservation professionals nationwide who contributed to this understanding of CLDPs by providing interviews and project documentation, and by accompanying him in the field.

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More information on how land trusts can use limited development as an effective conservation strategy, and the complete research findings, are available at the author's website, www.CLDPforum.net.

Indicators of Conservation Success

1. **The CLDP has a clear conservation purpose.** Like any conservation project, a CLDP should seek to protect resources defined in the land trust's mission statement such as natural habitat, farmland or water resources. In addition, CLDPs are beneficial only when the resource is under foreseeable threat of development or degradation. Otherwise, limited development may serve only to introduce negative impacts.
2. **The CLDP protects the site's important conservation values.** A common indicator of conservation success is the acreage or percentage of the site protected, but this measure, alone, is inadequate. Other key indicators include:
   - Avoidance of edge effect—the close proximity of developed areas to conservation lands, which can negatively affect wildlife and agriculture alike.
   - Connectivity of conservation areas on-site and to surrounding sites.
   - Minimization of impervious surfaces.
   - Protection of riparian buffers.
   - Adequate protection for site-specific conservation values. Such protection may include design features such as road underpasses to facilitate animal crossings or vegetative buffers to prevent conflict between active farmland and nearby residents.
3. **The CLDP provides for appropriate long term stewardship of conservation resources.** One benefit of CLDPs is their potential to leverage development revenues to help finance restoration and stewardship. The project should also ensure that the development areas are managed in a manner consistent with adjacent conservation lands, and that steps are taken to minimize conflicts between residents and conservation values.

TABLE 1

Comparing Conservation Effectiveness of Three Approaches

Conservation effectiveness of CLDPs compared to full protection projects and conservation subdivisions, based on data from representative projects in the eastern U.S. (A conservation subdivision is a residential development that conserves a portion of the site as open space by clustering development on smaller lots than would ordinarily be allowed. In contrast to CLDPs, conservation subdivisions usually build at or near the full allowable density and are typically initiated by private, for-profit developers.)

INDICATOR	FULL PROTECTION Typical Project	CLDPS Average of 10 Projects	CONSERVATION SUBDIVISIONS Average of 3 Projects
Site altered by development	0 percent	6 percent	33 percent
Site degraded by edge effect	0 percent	14 percent	53 percent
Impervious surface	0 percent	1 percent	11 percent
Restoration of conservation targets	sometimes	in 5 of 10 projects	no
Appropriate long-term stewardship	usually	yes, in all 10	no
Cost or revenue to conservation group	high cost	break even or slightly revenue-positive	n/a

"Developer Easements"—Even Trickier Than You Might Think
by Stephen J. Small, Esq.

This article on conservation and limited development projects raises a number of important conservation, economic, and even political (as in local politics) issues. I want to raise some tax issues, and here is the bottom line. If you are working with a developer on a CLDP, you should make it clear at the outset that the developer should not rely on an income tax deduction for a conservation easement donation to make the economics of the deal work. The income tax rules make it very very difficult, close to impossible, even, for a developer to get a meaningful income tax deduction for donating a conservation easement.

I had been wanting to write an article about "developer easements" for some time, mostly to clear up misconceptions that most developers, and some land trusts, had about conservation easements. Prompted by an "information letter" we had received from the IRS on behalf of a client, I wrote that article and it was published in Tax Notes in October 2004. It is a technical article, but any landowner or land trust thinking about combining real estate development and a conservation easement should read it. You can find it at www.LTAnet.org in the Info Center.

Here are three of the important points from the article:

First, many people tend to think that you can get an income tax deduction for a conservation easement by agreeing to put fewer houses on your property than you are otherwise allowed by local zoning rules. That is incorrect. The conservation easement rules in the tax code start from the proposition that first you must protect significant conservation values, such as open space or wildlife habitat. Once you have done that, then you are entitled to an income tax deduction for the dollar value you have given up.

Second, in many developer-easement situations, the developer strikes a deal with the town under which some development is allowed and some open space is required as a condition of the approvals. This is fine, and legal, and such a deal will sometimes be an integral part of a CLDP. But in such a case the easement is not a charitable donation, it is required (a quid pro quo) as part of the business deal, and the easement is not deductible.

Third, and this is very technical, if the easement is donated on land that is part of a real estate development, even a “limited” development, it might well be that the deduction for the easement will be limited to the “cost” or “basis” of the easement, and that could be much less than the “fair market value” of the easement. See the Tax Notes article for a longer discussion.

Do not misunderstand. Limited development projects can make a lot of sense in particular situations. But combining such projects with deductible conservation easement donations is tricky at best, and developers or other landowners should be cautioned about this at the outset of such a project.