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New England Environmental Finance Center

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New England Environmental Finance Center

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Summary

In early 2002 the New England Environmental Finance Center hosted a series of roundtable discussions among municipal officials, residential developers, land trust representatives, and others about "Innovative Approaches to Land Conservation and Smart Growth" [1]. Among our observations was that for many of the over 20 conservation/development partnerships we discussed in the series, creation and maintenance of trust was central to success or failure of various stages of the partnership. This suggested a link between creation of trust and financial return for traditionally opposed project partners.

To further examine this matter, we interviewed 11 roundtable participants and asked questions about key moments in the course of the project where the main financial benefits or losses were realized, and about specific behaviors (by them or others in the partnership) that led to creation or dissolution of trust. This report describes 1) the roles of developers, land trust representatives, and municipal officials in projects for which interviews were conducted; 2) behaviors project partners felt were central to creation or dissolution of trust; and 3) particular financial benefits that were obtained

in these partnerships and that should be attainable in other conservation/development partnerships where trust is cultivated.

Comments on Limited Development

"Limited" or "partial" development has been identified as one method of preserving open land when outright purchase is not an option for a land trust or municipality. Described by one planning professional, it is "financing the preservation of threatened property by developing a portion of it." [2] Once a parcel of land has been identified as having conservation value (typically by a local land trust, community organization, elected official, or municipal professional), these parties work to buy or hold the parcel, sell a portion of lesser conservation value to a developer, and sell or assign stewardship of the remaining land to a public or nonprofit entity. Limited developments are not necessarily "cluster" or higher density projects, although they may have conservation easements or contract zoning attached to restrict the type and extent of development that will be allowed. Having a third party facilitate the process is often critical for time-sensitive negotiations, especially because buying, conserving, selling, and stewardship arrangements tend to occur simultaneously and amidst the threat of conventional development.

Also described as "compromise development," limited development balances the need to preserve "sensitive" land and accommodate growth [3]; it thus requires financially risky collaboration between parties that have not historically worked together. Though road maps for such collaborations are difficult to come by, at least one author has offered specific guidelines for land trusts working with landowners to create limited development plans [4]. It is the goal of this report to provide additional guidelines for those involved in such partnerships, as a context-specific supplement to traditional literature on mutual-gains negotiation [5].

Role of the Developer

In the limited development projects studied, developer actions that led to project success included readiness to negotiate, outreach to affected parties, maintaining a cooperative attitude, and generating support from diverse parts of the community. Some developers were additionally willing to accept project constraints and para-regulatory requirements, and to persevere over extended project timelines. When developers pursued non-conservation oriented options while limited development

options were being discussed, trust was undermined. Examples of developer behavior in support of a collaborative partnership included:

- opening one's books to all involved in order to show financial details of the project;
- meeting to discuss a project with a known opponent in order to establish rapport and defuse antagonism;
- taking a property off the market to allow time for grants and funding sources to be arranged in support of a limited development option;
- incorporating feedback from project abutters;
- bringing a large-scale development proposal (for example for a "big box" retailer), allowed under ordinance, to the table in order to spark conversation and compromise, and challenge negative attitudes toward a limited development project; and
- hiring a third-party mediator to help with negotiations.

Role of the Conservationist/Land Trust

The land trust typically sees itself in the role of keeper of the community's vision for conservation. In the case of expensive land, some conservationists found it in their best interest to partner with a developer to conserve sizeable portions of a parcel, rather than do nothing or attempt to purchase the land outright on the open market. The most successful role in these cases was described by behaviors that accommodated development within the overall framework of conservation goals for the community. Behaviors that fostered these partnerships included:

- identifying critical parcels of land;
- presenting (to a municipality or developer) limited development options compatible with land conservation;
- establishing compromise positions; and

- bringing together wide coalitions in support of particular projects.

Extreme tactics (such as derision in the press) and not involving relevant stakeholders undermined several otherwise effective conservation-oriented project proposals. Because acquiring funds, changing zoning ordinances, and working with project complexities tended to protract project timetables, being patient was also a most constructive behavior. Other helpful behaviors included:

- proactively presenting a developer with a conservation-oriented option for a valuable parcel of land;
- identifying the balance between the conservation agenda and the development strategy in the acquisition of a key parcel;
- asking the developer for an outright donation of the land, to get the topic of conservation on the table.
- spearheading the public relations campaign for a limited development project by inviting the press to see the property and using regular news releases to keep the project in the public eye;
- aggressively advocating for a limited development project with the local planning board and legislative body in order to overcome trust issues within the community.
- aggressively recruiting participation from other conservation groups in order to secure political support and grant money at the earliest possible point;
- engaging in persistent outreach and communication in order to keep a project on track (e.g., following up meetings with calls, writing letters, and meeting face to face); and

Role of the Municipality

Many municipalities have struggled to incorporate conservation goals into comprehensive planning and zoning regulations, because public pressure to preserve land occasionally conflicts with long-term economic interests of the community. To

balance fiscal and environmental needs, several municipal officials interviewed met with representatives from various interests to establish guidelines for a negotiated proposal development process. They subsequently crafted ordinances and zoning variances that created developer incentives for the preservation of open space. The most supportive role for the municipality was thus defined by mediative behaviors and setting the stage for effective negotiation. Extreme tactics, such as the threat of eminent domain or using the zoning variance process to extract concessions from developers and land trusts, were seen to erode partnership opportunities. When a municipality created excessive guidelines for project implementation, some limited development projects became uneconomical and could not proceed.

Examples of constructive, process-oriented behavior included:

- Evaluating the relative merits of competing proposals (typical vs. limited development) for the same parcel side by side, in order to dramatize public benefit.
- Taking the role of lead educator in promoting the benefits of conservation-oriented development.
- Negotiating a compromise between a developer's proposal for narrower roads and the public works/public safety departments' desire for standard road width, by assessing the developer a fee equal to his cost savings for use in creating a town park or other public amenity.
- Brokering the design of a conservation easement and hunting restrictions in exchange for limited development on remaining portions of parcel.
- Openly supporting projects with a strong open space component in order to defuse political pressure and secure funding.

Trust and Risk

For conservation/development partnerships to be effective, each partner must perceive clear benefits of their involvement. Each partner has a threshold for considering a project to be a "good deal;" developers and landowners seek maximum financial

outcomes; land trusts seek the greatest amount of valued land in permanent protection (and, at the same time, cannot afford doing projects for free); and municipalities seek efficiency of land use and scarce financial resources. The key to successful partnering lies in achieving individual thresholds in tandem with other participants. Ensuring this result requires trust among project partners.

Although trust is not easy to quantify, it is manifest in a variety of tangible benefits that serve as adequate proxies. For the land trust, mutual confidence may result in its acquiring a parcel that might otherwise be unobtainable; being involved in a process that might otherwise be closed; and increasing membership in its service area. Collateral benefits of trust also impact the municipality, which can see a less divisive public process of deliberation, and higher levels of engagement in planning and public policymaking. For the developer, following the path of least resistance (seeking approval of projects that simply meet requirements of traditional ordinances) may appear to be optimal, but may not be so in situations where collaboration with conservation interests can increase density on developed portions of a parcel.

However, developers increasingly perceive the approval process to be unpredictable, and have a sense that many current planning and development standards have hidden costs. One impact of this can be initial mistrust between developers and the municipality. To counter this, several developers noted that being involved in partnerships with strong conservation elements can improve a developer's image in the community and enhance future business opportunities. They also suggested that the mutual confidence resulting from collaboration with conservation groups can dramatically increase likelihood of success for any given project.

Risks inherent to such partnerships are considerable, however. If a partnership fails to result in adequate profits or protected land, participants may feel their investments were wasted. Each potential partner has a threshold for risk; each must weigh the potential consequences of trying to collaborate and failing versus continuing with the status quo. Importantly, though, individuals are not without means to influence the magnitude of tolerable risk in a collaborative effort. Several veterans of successful conservation/development partnerships mentioned they felt it was necessary to change their own behavior in order to change the system or the pattern within which they were operating. Indeed, our interviews suggest that in a majority of cases, benefits of cultivating conservation/development partnerships will outweigh risks, provided the

individuals entering the partnerships are willing to change their own behavior, rather than looking for changes among other parties.

Financial Return

In any limited development project, there is a given amount of potential money to be generated; the difference in projects involving collaborative partnerships is the size of that "pot" and its distribution [6]. For example, in one limited development project we examined in Rhode Island, developers and the land trust were able to find common interest in the land. As a result, the land trust was able to preserve 142 acres of a 174-acre parcel at a cost of \$1.2 M. The developers paid \$1.6 M for the remaining 32 acres. Together they defined the conservation goals and established criteria for the new development. In return, the developer obtained both financial benefit from the proximity of his project to a conservation area and political benefit from improving his image and working relationship with the municipality. The land trust preserved the bulk of the parcel, including the most geologically significant areas.

In a conventional development, the land owner and developer are typically the only parties who make money. The municipality may see a negative fiscal impact through the increase in infrastructure costs associated with low-density developments, without a commensurate increase in property tax revenues. The land trust may consider the loss of land to conventional development an opportunity cost to the community. In contrast, in a collaborative partnership on a conservation/development project, the expectation is that funds to be generated will increase and benefits will accrue to all parties. When this occurs it can be referred to as the "realization of latent financial interests" which, we argue, is a trust-based result.

In the partnerships we examined, several specific financial benefits were obtained through trusting the collaborative process. It is our view that these results will be attainable in other conservation-development partnerships where trust is cultivated. By role, these benefits are as follows:

Developer

- Permitting processes may be shorter (and associated expenses fewer) when it is in a land trust's interest to see the project approved. In more than one

instance that we observed, the trust successfully approached the municipality to speak on behalf of a project.

- Being conservation-minded and cooperative may lead to better reputation and increase in business.
- Changing the development scheme from a parcel purchased and developed with standard zoning to a parcel with a conservation easement and higher density may result in a higher profit margin.
- Defusing opposition and antagonism may lead to fewer lawsuits, which may reduce overhead.

Conservationist/Land Trust

- Reducing outlays for purchases of complete parcels may reduce costs.
- Reputation and influence of land trust may be improved in the community, leading to an increase in dues-paying members and donors to the land trust (which may even include developers).
- Cost of human resources may be lower in situations where major conflicts over a development do not emerge. Land trusts will be more able to focus on long-term goals than having to put out brush fires.
- Collaboration with other conservationist interests may lead to an increase in grant funding.

Municipality

- Use of infrastructure will be more efficient.
- Property tax revenues will more adequately cover service expenses in cluster developments.
- Costs of human resources may be lower in situations where extended conflict over a project is avoided. Planners and elected officials will be able to

focus on long-term public interests instead of fighting developments in potential conservation areas.

The community as a whole may take a greater interest in public participation in planning, meaning that developments may better reflect financial and other needs of the citizenry.

List of Interviewees

<u>Contact</u>	<u>Project Location</u>	<u>Association</u>	<u>Role</u>
Richard Berman	Falmouth, ME	Berman Associates	Developer
Eric Chindburg	Durham, NH	Chindberg Builders	Developer
Ted Clement	Aquidneck Island, RI	Aquidneck Island Land Trust	Conservationist
Nan Cumming	Portland, ME	Portland Trails	Conservationist
Peter Dow	Exeter, NH	Town of Exeter	Municipal Official
Peter Hughes	Marlborough, CT	Town of Marlborough	Municipal Official
Al Lima	New Bedford, MA	Town of New Bedford	Municipal Official
Bob Linck	Craftsbury, VT	Vermont Land Trust	Conservationist
Frank Stewart	Sudbury, MA	Northland Residential Corporation	Developer
Shep Spear	Georgetown, MA	Camelot Realty Trust	Developer
Harvey Perry	Westerly, RI	Westerly Land Trust	Conservationist

[1] The report is #01-02,
at:<http://efc.muskie.usm.maine.edu/docs/RoundtableReport.pdf>.

[2] Lima, A. J. (1997). Open space through limited development [Electronic version]. *San Diego Conference Proceedings, American Planning Association*. Retrieved February 13, 2003, from <http://www.asu.edu/caed/proceedings97/lima.html>.

[3] Malamut, J. (1987). Compromise Development: Bridging the Gap between Development and Preservation. *Urban Land Magazine*, March. Urban Land Institute.

[4] Pitz, A. D. (1988). Helping Landowners Implement Limited Development Projects. *Exchange, The Journal of The Land Trust Exchange*, Fall. San Francisco: The Trust for Public Land.

[5] e.g., Susskind, L., and J. Cruikshank. 1989. *Breaking The Impasse: Consensual Approaches to Resolving Public Disputes*. Basic Books, New York, NY; Fisher, R. W. Ury, and B. Patton. 1991. *Getting To Yes: Negotiating Agreement Without Giving In*. Second edition. Penguin Books, New York, NY; and Arrow, K., R. Mnookin, L. Ross, A. Tversky, and R. Wilson, eds. 1995. *Barriers to Conflict Resolution*. W.W. Norton, New York, NY.

[6] This is the "shared money bag concept" from our roundtable report, #01-02
at:<http://efc.muskie.usm.maine.edu/docs/RoundtableReport.pdf>.