

**The
Thanks & Pranks
of**

**CONSERVATION
EASEMENT
APPRAISING**



DISCLAIMER

***The Comments and Views expressed by
the Presenters may not Reflect the
Position or Policy of the Internal
Revenue Service.***

***Commentaries offered are the
Opinions of the Presenters***

A BRIEF BACKGROUND

A Conservation Easement ...

- Is a legal agreement between a landowner and a land trust or governmental agency
- Permanently limits uses of the land in order to protect its conservation values
- Allows the landowner to continue to own & use the land and to sell it or pass it on to heirs

A BRIEF BACKGROUND

The “Bundle of Rights” includes...

- ❑ Right of possession
- ❑ Right to control the property within the law
- ❑ Right of enjoyment (legal use of the property)
- ❑ Right to exclude others (within law)
- ❑ Right to disposition
- ❑ Right to encumber
- ❑ Right to do nothing

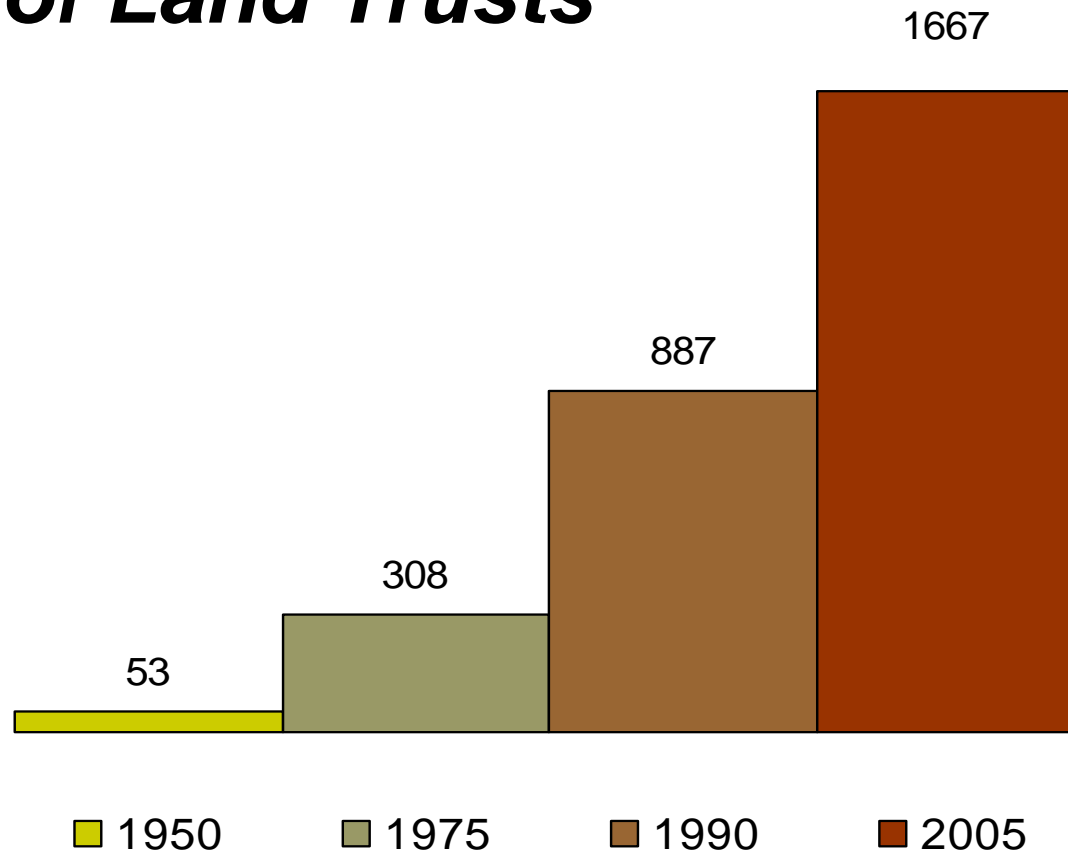
A BRIEF BACKGROUND

Land Trusts...

- ❑ A private, tax-exempt, non-profit corporation
- ❑ Seek to protect land through land acquisition or donations
- ❑ Provide leadership, commitment & flexibility essential to local resources protection
- ❑ Offer continuity of management & monitoring of valuable natural resources

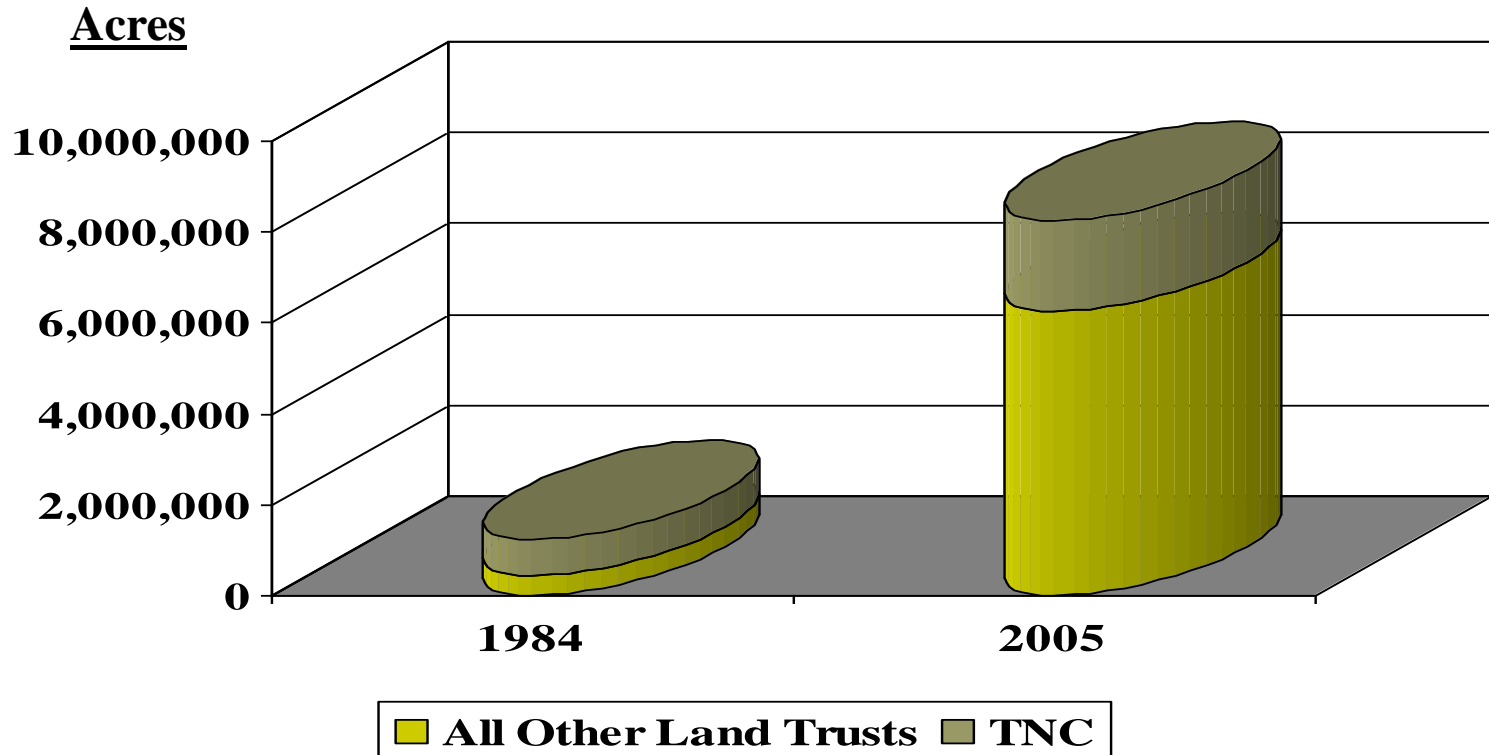
A BRIEF HISTORY

Growth of Land Trusts



A BRIEF HISTORY

Growth of Trust Controlled Lands



OUR CURRENT SITUATION

So, where are we now?

- ❑ Washington Post articles on TNC (2003)
- ❑ Other news stories indicated tax reduction was primary motivation
- ❑ Reports that trusts received appraisals that grossly overstated values
- ❑ So, Congress reacts...

And the IRS has to respond

OUR CURRENT SITUATION

The Cost to the US Treasury?

- Take one state (South Carolina 2001-03)
- Total claimed in donations (\$290 MM)
- Multiply it (on a \$ per easement acre) by the number of easement acres acquired nationwide
- Rough estimate.....

~ \$20.7 Billion

OUR CURRENT SITUATION

The Cost to the US Treasury? Act 2

- According to the LTA
- The IRS in 2003 “accepted” 2,800 CE’s
- Average donation value \$980,000
- Calculates to....

\$2.744 Billion

OUR CURRENT SITUATION

The Cost to the US Treasury? Act 3

- ❑ S. Carolina Dept. of Revenue
- ❑ Between 2001 - 2003
- ❑ Developers claimed \$125 million on CEs

Placed over Golf Courses



RECENT CHANGES

Possible solutions?

- ❑ **Land Trust Certification**
- ❑ **Better Appraiser Training**
- ❑ **Robust Enforcement & Review**
- ❑ **New Laws & Regulations**

CONSERVATION EASEMENT APPRAISING

The Basics

THE BASICS

- ❑ Correct Effective Date
- ❑ Purpose: FMV for Income/Estate Tax
- ❑ Users: Client, Taxpayer, IRS, etc
- ❑ Use the Correct Definition (FMV)
- ❑ Hypothetic vs. Extraordinary Assumption
- ❑ The Whole Subject Property



THE BASICS

- ❑ Know the applicable Treasury Regs.
- ❑ Know the Market Influences
- ❑ Describe the Property thoroughly
- ❑ Research Common Ownership
- ❑ Flood, Habitat, Williamson Act
- ❑ Income, Improvements, Rights

THE BASICS

- ❑ HBU (thoroughly) Before & After
- ❑ Sales - - Are they Comparable?
- ❑ Compare & Adjust
- ❑ Extract Improvement Value
- ❑ Understand the CE's effects
- ❑ Use CE Comps



THE BASICS

- ❑ CE Encumbered Sales
- ❑ Other sale types
- ❑ Reconciliation
- ❑ “Gut Check” time
- ❑ Include the Signed CE document
- ❑ Be a “Quality” Appraiser



CONTROLLING REGULATIONS

Methodology governed by
Treasury Reg. § 1.170A-14(h)(3)

Value is based on the sale of comparable
easements

If insufficient sales record exists...

Use “before” & “after” analysis



CONTROLLING REGULATIONS

IRC Section 170 (h)

General Rules governing deductions for charitable contributions

IRC Section 170 (f)(11)

Qualified Appraisal

Treasury Reg. § 1.170A-13

Qualified Appraisal Requirements

PENALTIES

IRC Section 6695A (PPA)

Substantial Valuation Misstatement
Lesser of 10% of the underpayment of tax
or 125% of gross appraisal fee

IRC Section 6701 (1984)

Document (appraisal) results in an
understatement of tax liability

CONSERVATION EASEMENT APPRAISING

The Thanks

CONSERVATION EASEMENT APPRAISING

The Pranks



THE PRANKS

Value Def: MV (FIRREA)

No Hypothetical Cond.

Site: Vacant

Actually: SF Res.

Zoning: Ag

HBU: High Density Res.

Dev. Costs

Used Owners Numbers



THE PRANKS

Donation: August

Appraisal: December

Prop. Appraised: 30 acs

Total Prop.: 400 acs

Before Condition Value

Sales older than subject

Prop. with Ag Lease

Ends when Constr. Starts



THE PRANKS

Site: 20 acs - 80% Flood

HBU: 400 Condos

Subject: 200 acs

Comps: 20 acs

Subject: County

Comps: City

Subject: Flood & Habitat

Comps: Neither

CONSERVATION EASEMENT APPRAISING

Thank You !!