

Conservation Defense Network



Fifth Symposium on
Advanced Legal Topics in
Land Conservation

Stay informed on the latest conservation law
developments and practical legal solutions



Conservation Defense Network

Risk Management Planning Services

- Free affiliate membership with the Nonprofit Risk Management Center

An information hub for conservation defense issues

- 531+ members in network

TLC: Conservation Defense Clearinghouse



March 2016

First Three Years

**Conservation Defense Liability
Insurance for Land Trusts**





Since 2011: www.terrafirma.org

TerraFirma is owned and operated by your land trust and the other 493 insured land trusts.

- Provides Risk Management Guidance
- Insures the costs of upholding conservation easements and fee lands when they have been violated or are under legal attack

Owners and Members

- Formed on April 18, 2011 by Land Trust Alliance
- Exclusive purpose: qualified charitable risk pool
IRC §501(n)
- Owned and controlled by participant §501(c)(3) land trusts
- Alliance Risk Management Services manages day-to-day
- Alliance is the sole and managing member of ARMS
- ARMS not third party
- Financial manager commercial captive insurance
- Manager has conservation expertise
- Captive Manager has insurance expertise



Terrafirma
is not Terra Firma or TerraFirma

Terrafirma is a land trust owned company

A scenic landscape featuring a winding gravel road that curves through lush green hills. The sky is filled with dramatic, cloudy light, suggesting a sunrise or sunset. In the distance, a small white house is visible on a hillside. The overall atmosphere is serene and natural.

Terrafirma is *not* owned by the
Land Trust Alliance

Terrafirma is a Risk Retention Group



Terrafirma is **not** property insurance

Terrafirma is liability insurance

A scenic view of a beach with waves crashing on the shore and a large piece of driftwood in the foreground. The text is overlaid on a semi-transparent white box.

Terrafirma is not just for precedent-setting cases

Terrafirma is liability insurance

A sunset over the ocean with silhouetted grasses in the foreground. The sun is low on the horizon, creating a warm orange and red glow in the sky. The grasses are dark and silhouetted against the bright light of the setting sun.

Terrafirma is *not* just for easements

Terrafirma covers all conservation

Terrafirma Risk Retention Group LLC

Service to Land Trusts is guiding principle

- Covers both conservation easements and preserves
- Defends and enforces conservation rights





Terrafirma

- Is a Safety net
- Not substitute for sufficient reserves
- Helps meet liability of legal challenges
- Funds defense costs
- Provides early, effective expert assistance
- Minimizes disputes with wide array of problem solving

Terrafirma Delivers Confidence in Perpetuity



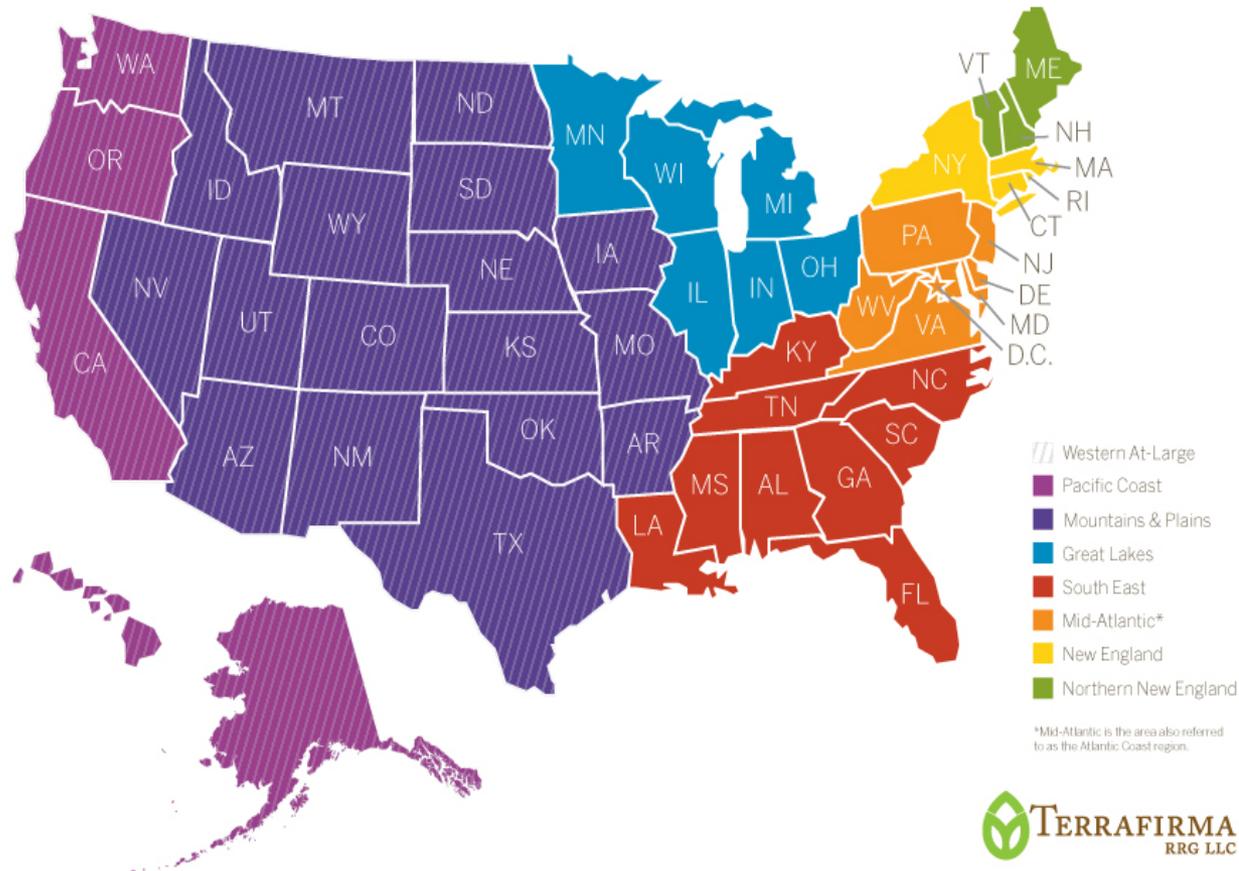
- Funds expert costs
- Pays for mediators and negotiators
- Covers attorney fees and costs
- Provides early effective expert assistance
- Acts as a sounding board to test ideas

The Promise of Permanence

- ❖ 493 member land trusts enrolled in Terrafirma insurance program – 48 states + DC
- ❖ 26,274 parcels of conserved land insured
 - 23,273 easements, 2,846 fee land parcels enrolled (+ trail/access easements)
- ❖ 90+% of Alliance members' conservation easements are enrolled (*not* counting large national organizations capable of self-insuring)

Land Trust Representatives

Terrafirma Members Committee Regions



How Eligibility Works

- *Members must continuously meet eligibility requirements*
- Accredited land trusts automatically eligible
- Do *not* have to be accredited to be eligible

13 Eligibility Criteria

1. Good standing
2. Tax exempt
3. **Complete baselines**
4. **Complete inventory for every parcel of fee-owned land**
5. **Annual monitoring**
6. **Regularly monitors fee-owned land**
7. Land Trust Alliance member in good standing
8. No final judgments for bad acts
9. No on-going governmental investigation or inquiry
10. Operating at breakeven or has a plan to reach breakeven
11. General liability insurance
12. Implemented written records policy and secure record system
13. Actively building defense reserves

How Eligibility Works

- Eligibility is on the honor system
- Self-attestation by authorized senior leader
- Any mistake may later disqualify you
- A substantial (important) material (relevant) discrepancy (error) is a major problem
- May result in denial of coverage
- Or other action including expulsion

Annual Enrollment

- Enrollment just ended, new year March 1
- December 1, 2016 – February 28, 2017
 - Must renew annually
- Join Leslie Ratley-Beach for eligibility webinar
(lrbeach@lta.org; 802-262-6051)

Basic \$ Numbers

- Base premium of \$60 per year per property
- Maximum limit of \$500,000 per claim
- Some higher aggregate limits for large portfolios
- \$5,000 deductible per claim
- Discounts available
- No coinsurance (co-payment) except in unusual situations



Want a \$ Discount?

- Attend free risk-management webinar
- Board directors, senior management or departmental director required
- Base premium \$60 per property
- Accreditation discount is \$11 per (\$49)
- Good practices discount is \$4 per

Questions?



Contact Information

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Website at www.terrafirma.org

January 25, 2016

Claims Trends

Subjective Views



Refuse to Abuse 5K
 5K Run/Walk
 Saturday
 July 19, 2014
 7pm
RefuseToAbuse5k.org



Island Scene
 Billboard beckons with can't miss summertime shows, events
 PAGE 9

Guest Column
 He seems to know 'em all; find out why the 'Voice' of the annual Friday Harbor Fly-In is in his element
 PAGE 7

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The Journal

of the San Juan Islands www.sanjuanjournal.com

Trust won't back down
 Anacortes B & B owner pays \$100K for illegal clearcut

By Scott Rasmussen
 Journal editor
 It's not the first time that someone treated its protected land with disregard.
 But on this occasion, and largely because of the extent of the transgression, the San Juan Preservation

Marvel on Main Street

Journal photo/Scott Rasmussen

The Friday Harbor Independence Day parade strikes a patriotic tone in even the youngest of spectators. For more photos of the parade and other 4th of July events, see page 8, and visit www.sanjuanjournal.com

New clash in CAO struggle

By Scott Rasmussen
 Journal editor
 San Juan County's controversial update of its critical areas ordinance went into effect at the end of March, but the courtroom battle over the revised set of land-use rules has yet to be resolved.
 And, opponents on either side are less than pleased with a June 19 ruling in San Juan County Superior Court, in which Judge Don Eaton, siding with an earlier decision by the Western Washington Growth Management



Current Claims

- March 1, 2013 to
January 25, 2016
166 total claims
- 1 in 4 insured land
trusts had a claim
*166 claims by 128
land trusts or 26%*





RETALIATORY CLAIMS

“I’ll sue anyone and everyone who tells me otherwise”

“I will do everything in my power to harm you.”

- Defamation claims against Boards and Staff
- Wrongful eviction/denial of property right claims against Land Trusts
- Slander of title claims against all



The Deed/Easement was Defective in its Adoption

- Person holding record title didn't sign document
- Public meeting act requirements weren't met
- Legal description didn't restrict what was expected
- Name incorrect

Get Off My Land!

- **Denial of annual monitoring access**
- **Denial of public use access**
- **Trespass claims against land trust**

A black and white photograph of a dirt road with a 'KEEP OUT' sign hanging from a chain. The sign is rectangular with a black border and white background, with the words 'KEEP OUT' in bold black capital letters. The chain is made of dark metal links and is attached to a metal post. In the background, there is a fence made of vertical posts and horizontal wires, and a dirt road leading into the distance.

KEEP OUT

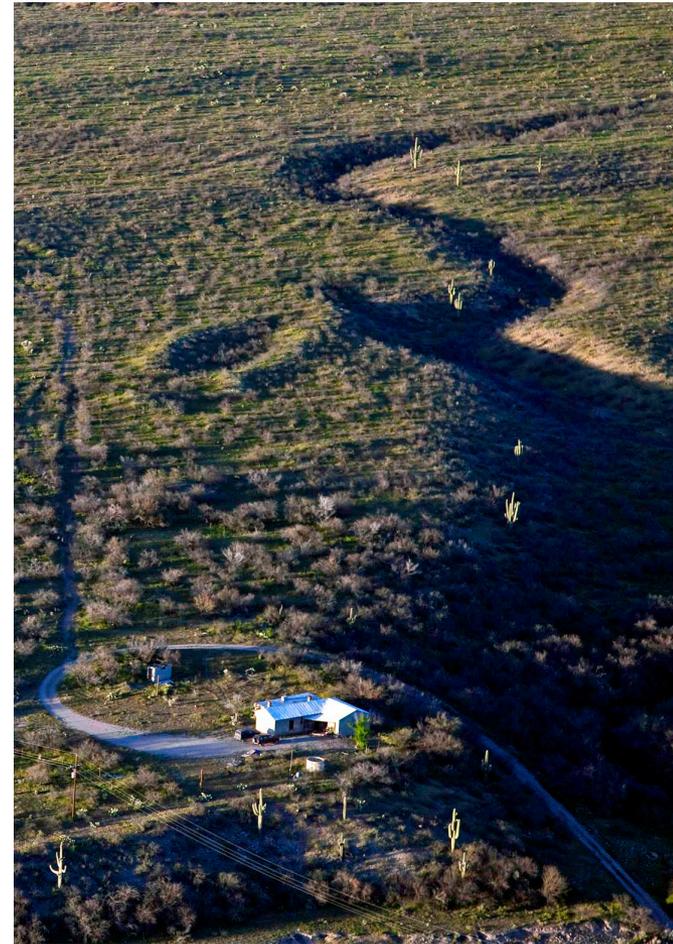
The Promise of Permanence



Claims Process?

Service to Land Trusts is guiding principle

- Land trust files *online simple* form to start process
- Receive reply email with next steps within 24 hours excluding weekends and holidays
- At land trust election claim heard on monthly Claims Committee conference call with land trust participation



Claims Process?

Service to Land Trusts is guiding principle

- Appointed volunteer Claims Committee determines coverage based on policy form
- Reviews land trust choice of counsel for rate and qualifications in line with guides
- \$5000 deductible and continuing involvement of Claims Committee in case

