



STEWARDSHIP RESOURCES TO HELP YOU ON THE PATH TO FOREVER

The Land Trust Alliance Learning Center

The Land Trust Alliance Learning Center is an online resource featuring land conservation focused tools and information specifically developed to assist land trusts in to defend conserved lands.

- [Conservation Defense Clearinghouse](#): An interactive resource with legal information on cases, practical tips, law review articles, statutes, tax code and sample documents. Fast and easy to use.
- [Online Courses](#): Answer practical questions about how to, monitor conserved properties, keep good records and maintain landowner relationships, hire an attorney, address stewardship problems and more through a wide variety of online courses.
- [Forums](#): Network with stewardship colleagues and tap into the expertise of conservation professionals throughout the country.
- [Practical Pointers](#): Tips for record retention, triage and types of easement violations and more in the Conservation Defense Practical Pointers Series.

The Legal Defense Reserves Calculator at <http://tlc.lta.org/clearinghouse/calculator/start>

Risk Management Resources

The Risk Management for Land Trusts Online Course: Available at <http://tlc.lta.org/courses/a-guide-to-risk-management-for-land-trusts>; qualifies for the risk training discount for TerraFirma.

Nonprofit Risk Management Center: to login for free, click on the live link in the [Conservation Defense Clearinghouse](#) and find the link which is the Center's logo.

- Access *free* unlimited risk management webinar recordings
- Call for special one-on-one free personal help for quick questions at (202) 785-3981 or info@nonprofitrisk.org.
 - Download **A Guide to Risk Management for Land Trusts** <http://tlc.lta.org/library/documents/35980>
 - [Risk management collection](#) on The Learning Center with resources specifically to help you balance risk at your land trust.
 - Each fall the Alliance hosts new, free **webinars** on risk management. [Check for dates](#) »

TerraFirma Risk Retention Group LLC

- TerraFirma Risk Retention Group members get a free monthly bite-sized risk tip called *TerraBite*. If you want to receive *TerraBite*, ask help@terrafirma.org to subscribe you for free.
- For more updates, follow **TerraFirma RRG** on LinkedIn.
- **TerraBite: Ideas to chew on for TerraFirma owner-member land trusts**

Call or write to us any time. We are here to help: Hannah Flake (202) 800-2248 and Lorri Barrett (202) 800-2219 or help@terrafirma.org | Leslie Ratley-Beach (802) 262-6051 | lrbeach@lta.org



RISK MANAGEMENT DRAFTING POINTERS

Draft defensively.

- Can't anticipate or define everything.
- Articulate intentions of parties to the original easement to give courts a guide to interpretation.
- Avoid jargon, abbreviations, colloquialisms, "terms of art," or technical terms.
- Beware of court and common law principles that may result in construction of easement language against conservation purposes of easement.
- Explicit clause on liberal construction and conservation easement enabling act implementation.

Future Evolution. No use shall be made of the Protected Property, and no activity thereon shall be permitted which is or is likely to become inconsistent with the Purposes of this Grant. Grantor and Grantees acknowledge that, in view of the perpetual nature of this Grant, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Grant. Grantees, therefore, in their sole discretion, may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Grant, or (b) alterations in existing uses or structures, are consistent with the Purposes of this Grant.

Economic Hardship. In making this grant, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under the terms of this Conservation Easement shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. It is the intent of both Grantor and Holder that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment or amendment of this Conservation Easement.

Nonwaiver. The failure or delay of the Holder, for any reason whatsoever, to do any action required or contemplated hereunder, or to discover a violation or initiate an action to enforce this Conservation Easement shall not constitute a waiver, laches, or estoppel of its rights to do so at a later time.

Controlling Law and Interpretation.

Acknowledge in your Easement clause:

1. Exception to general rules of deed or contract construction in common law
2. Liberally (generously or broadly) interpreted to uphold conservation purposes
3. Any ambiguity interpreted in favor of giving effect to conservation purposes
4. No ambiguity or interpretation allowed that invalidates or impairs effect of Easement

The interpretation and performance of this Easement shall be governed by the laws of the State of XXXX. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the conservation purposes of this Easement and the policy and purpose of the XXXX Conservation Easement Act at XXXXX Revised Statutes Annotated, Sections XX through XX, inclusive, as amended. If any provision in this instrument is found to be ambiguous, the interpretation most consistent with the conservation purposes of this Easement and the attributes of the land and in furtherance of the state policy favoring conservation shall govern.

Costs and Fee Recovery.

Acknowledge in your Easement clause:

1. All reasonable fees, costs, expenses in administration
2. Including, without limitation,
3. Investigation, negotiation, mediation, settlement or suit and
4. Reasonable attorneys, experts, consultants and other such fees, and
5. Any fees and costs of restoration
6. Borne by Owner

All reasonable fees and costs incurred by Grantee in administration including, without limitation, investigation, negotiation, mediation, settlement or suit of this Conservation Easement including without limitation, all fees, costs, and expenses of investigation, dispute management, negotiation, mediation, settlement or suit and reasonable attorney's, experts and consultants fees, staff time and any fees and costs of restoration, remediation or other damage correction necessitated by any such action shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in full in a judicial enforcement action each party shall bear its own costs. If Grantee prevails in part, then Grantor shall be responsible for all fees and costs of both parties as set forth above.

[Call or write to us any time:](#)

Call us! We are here to help: Hannah Flake (202) 800-2248 and Lorri Barrett (202) 800-2219 or help@terrafirma.org | Leslie Ratley-Beach (802) 262-6051 | lrbeach@lta.org

DISCLAIMER

The Land Trust Alliance designed this material to provide accurate, authoritative information about the subject matter covered with the understanding that the Land Trust Alliance is not engaged in rendering legal, accounting or other professional counsel. If a land trust or individual requires legal advice or other expert assistance, they should seek the services of competent professionals. The Land Trust Alliance is solely responsible for the content of this series.

Last revised 9-27-16



Simple Risk Balancing Ideas

- A) Appoint a Champion of “What If”: A contrary, challenging, skeptical board member can help avoid group-think decisions. This board member asks uncomfortable questions. He raises red flags. He slows down runaway processes. The questions may be detail-oriented, or may focus heavily on undesirable outcomes and the bottom line.
- B) Have one simple risk query for every item on every board agenda: Add a risk question to *every* existing agenda item that asks: “What are the negative risks associated with this report or decision?” “What are the opportunities and costs?”
- C) Ask seven risk questions once a year: Don’t allow your discomfort with uncertainty to dampen your commitment to engage the board in a discussion on the crucial strategic risks facing your land trust. If you’re working on your next board agenda, consider the questions below. Invite the board to discuss these questions as a way to engage in a high-level conversation about risk taking and risk management.
1. Risk taking: What big risks are worth embracing this year or next to advance our mission?
 2. Risk landscape: What mission-related risks are starting to emerge on our horizon? What additional information do we need to understand and act?
 3. Lemonade from lemons: What seeds of opportunity exist in the risks we fear the most? (For example, could the threat of funding cutbacks compel us to finally move ahead with a new business model?)
 4. Progressive lens: Are we using our collective, progressive lenses to reflect on our past, appreciate our present and anticipate our future or are we only seeing risk through a single lens?
 5. Risk oversight: Is the board contributing to a shared understanding of the organization’s top risks?
 6. Lessons learned: During the past year, what important lessons did we learn from our “crowning achievement” and from our biggest disappointment?
 7. *Risk resources*: Have we made an appropriate commitment in terms of personnel time and financial resources to understand the risks we face and make adjustments as needed?
- D) Take three steps to a more candid culture
- 1. Establish Clear Risk Management Goals and Objectives**
 - 2. Foster Dissent and Inquiry**
 - 3. Nurture a Culture of Learning and Continuous Improvement**

E) Follow the meeting tips: Following these meeting tips will make discussions easier and ultimately enhance the land trust mission:

Start and stop on time

Listen sincerely

Don't rehearse

Discuss ideas (don't give a performance)

Do not dominate or hog the conversation

Be sure everyone speaks

Ask open-ended questions

Never interrupt

Never dismiss an idea or concern

Be curious and explore the issues openly

Establish a set of genuine values and live by them

Articulate a coherent philosophy about the land trust's work

Keep it civil

Don't turn the conversation into a contest with a winner and a loser

Resist making assumptions

Resist drawing conclusions

Expect good intentions until unequivocally demonstrated otherwise

Ask for others' perspectives

Ask that everyone adhere to these meeting tips

Ask the silent to speak

Call or write to us any time:

Call us! We are here to help: Hannah Flake (202) 800-2248 and Lorri Barrett (202) 800-2219 or help@terrafirma.org | Leslie Ratley-Beach (802) 262-6051 | lrbeach@lta.org

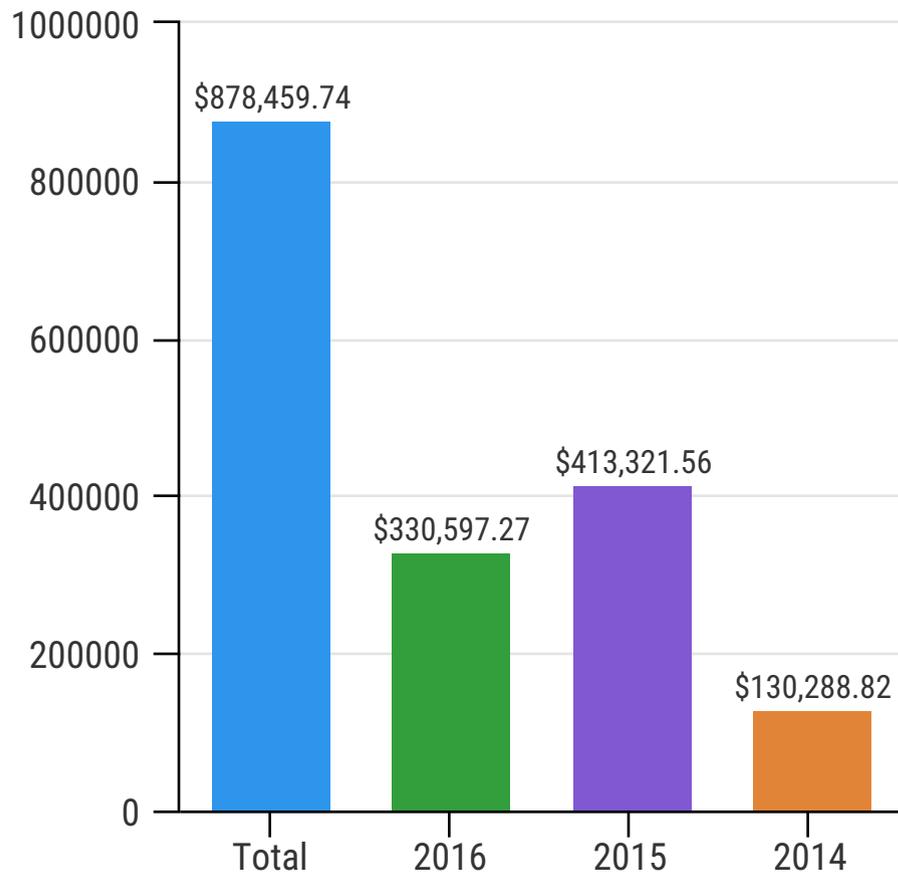
DISCLAIMER

The Land Trust Alliance designed this material to provide accurate, authoritative information about the subject matter covered with the understanding that the Land Trust Alliance is not engaged in rendering legal, accounting or other professional counsel. If a land trust or individual requires legal advice or other expert assistance, they should seek the services of competent professionals. The Land Trust Alliance is solely responsible for the content of this series.

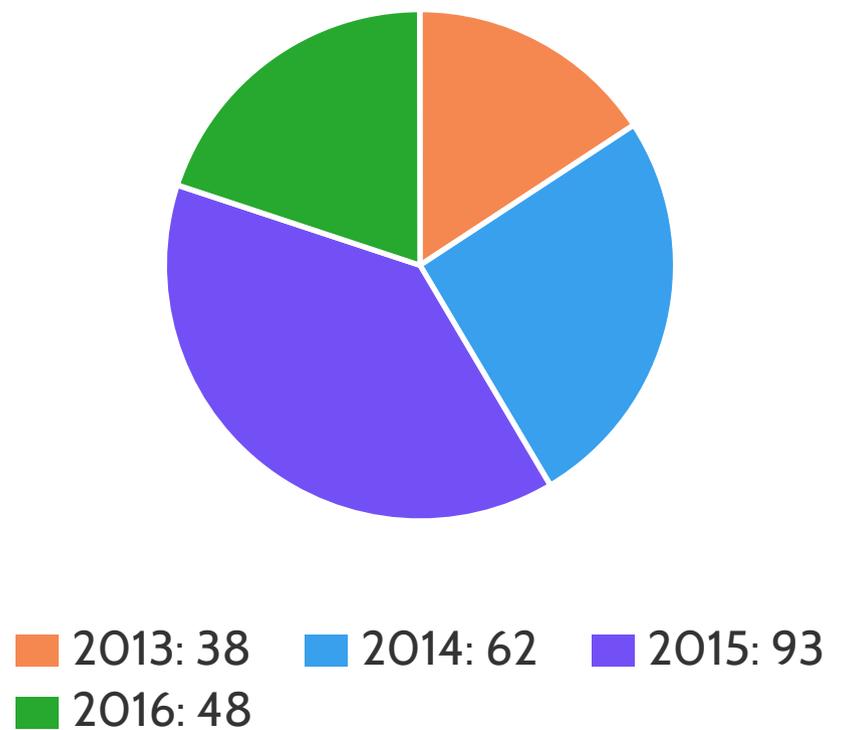
Last revised 9-27-16

Terrafirma Claims

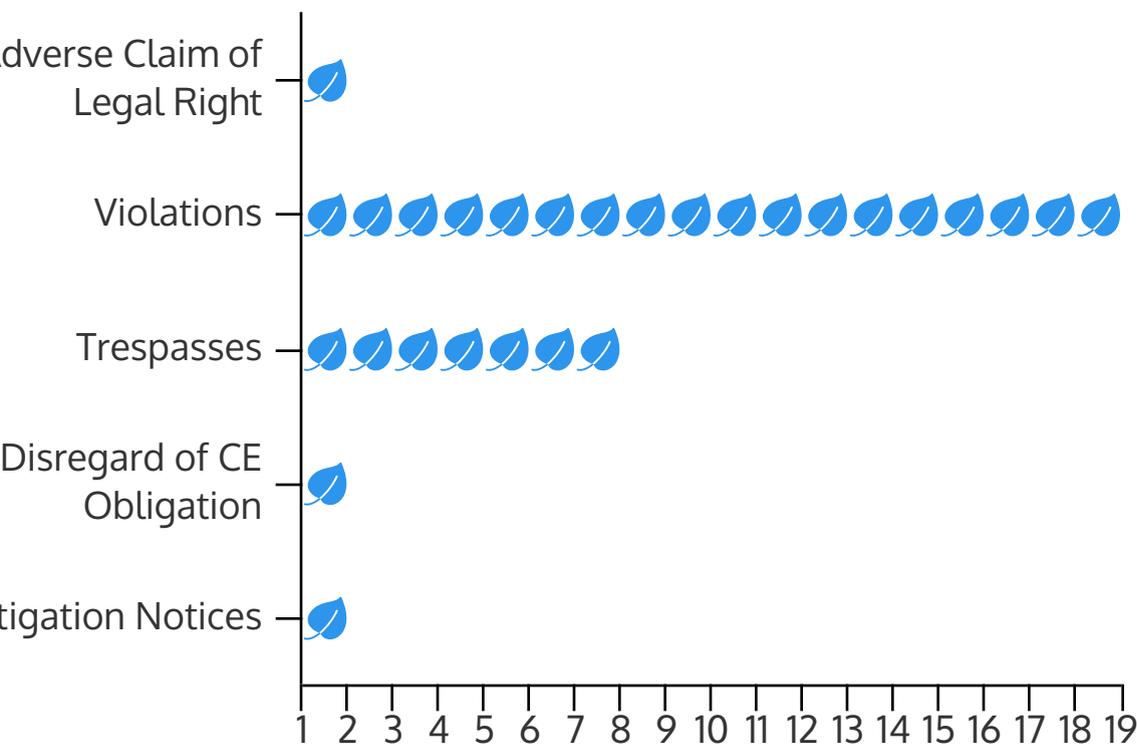
Paid Losses By Year



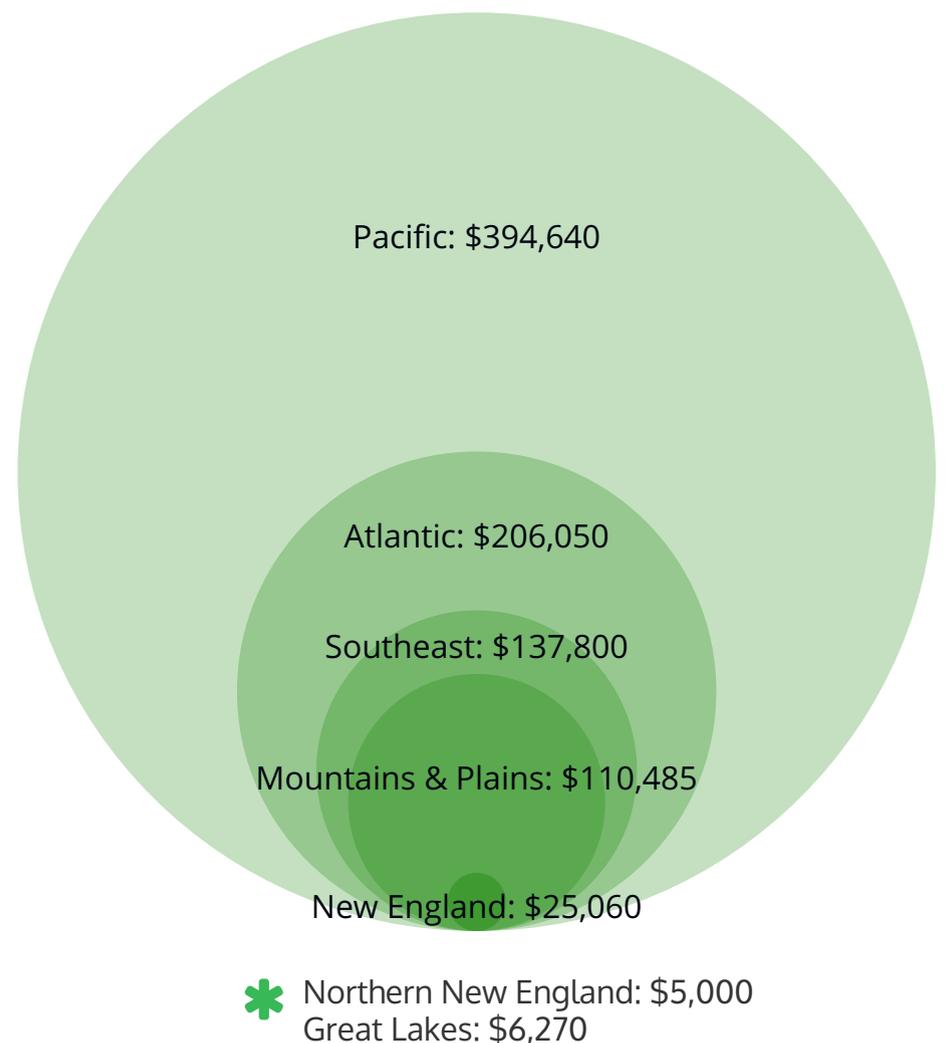
Claims by Year



Resource Issues



Spending by Region





Risk Balancing is an Evolving Organic Process

Risk Balancing: how your organization engages in an evolving process of continually assessing changes, obstacles and opportunities encountered along the way to fulfilling your mission. Start with the long list of typical nonprofit risk categories in the course book on *Guide to Risk Management for Land Trusts*. Then list challenges, negative risks, opportunities and current activities, insurance, policies and procedures in a free flowing conservation. *Then* apply the risk methodologies below to organize, refine and triage obstacles and opportunities.

Risk Management Takeaways

Risk Management: a way of making decisions and making plans based on rational analysis of the costs and the benefits, in light of your mission, your resources and your stakeholders, that you apply *after* you engage in a free-flowing sharing of ideas, insights, concerns and goals.

Reasons for responsible organizations to take risks:

1. They have more than adequate resources to take the risks.
2. The risks are essential to achieve the organization's mission.
3. Failure to take the risks would disappoint stakeholders.

Using the Risk Matrix

The Risk Matrix is a tool used by Risk Management experts to start planning for risk.

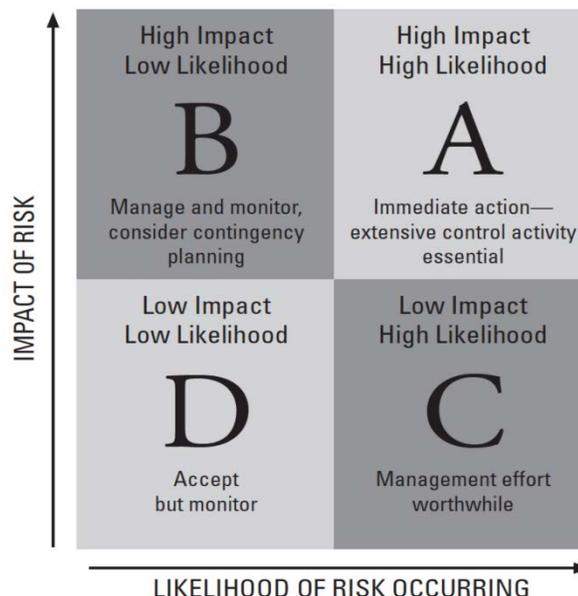
The x-axis for the Risk Matrix:

How likely the risk is in your area with your projects (also referred to as the likelihood or *frequency*).

The y-axis for the Risk Matrix:

How costly it would be to handle a risk like that (also referred to as the impact or *magnitude*).

Remember this is an evolving and organic process engaged in by your board and other stakeholders at least annually.



Risk Matrix Categories

Category A risk: High Impact, High Likelihood Risk. (i.e., severe accidents when performing very dangerous tasks) Generally can't be insured. You want to avoid these risks unless they're critical to your mission. In those cases, you try to mitigate risk (with protective gear and careful safety procedures, and retain whatever you need to cover the cost when something goes wrong.

Category B risk: High Impact, Low Likelihood Risk. (i.e., lawsuits with disgruntled parties, random accidents under ordinary conditions) Generally, you want to insure these risks if insurance is available for them. That way, you don't have to keep a reserve for risks with low likelihood. However, when insurance is not available for the risk, having a reserve may be your only option.

Category C risk: Low Impact, High Likelihood. (i.e., wear and tear) Like category A, it generally isn't something you can insure. These losses are too common for pooling risk to make sense. So again, you can take precautions, or retain reserves to fix things when they get broken.

Category D risk: Low Impact, Low Likelihood. (i.e. petty crime, dropped items) In some cases you can purchase insurance for these events but the cost is often not commensurate with coverage. You often have the option to insure, take precautions, or retain reserves to fix things when they get broken.

Land Trust Examples

Lyme Land Conservation Trust:

The land trust found a violation on the property and had to enforce the easement. They successfully defended the terms of the easement but it took years and cost over \$300,000.

Lindon Lea Ranch:

A real estate broker purchased a neighboring property and argued that he should be able to build a road through the ranch to access his property. The landowner successfully defended the property, but had to spend over \$100,000 on attorney's fees.

Newport Cliff Walk:

A pedestrian lost his footing, slid down the embankment, and then fell off the cliff, crashing into the rocks below. He then sued the city and the land trust for \$30 million dollars. The land trust was determined to be immune in this case but the municipality was not.

Fidalgo Preserve:

A neighbor clear-cut trees on the land trust's preserve to get a better view. With the help of TerraFirma, the land trust sued for negligence, which triggered the neighbor's insurance policy. The land trust then negotiated with the neighbor's insurance to get an out of court settlement of \$100,000.

Actuarial Analysis

Actuaries analyze dangers and their financial consequences. Using mathematics, statistics and financial theory, they:

- Evaluate the likelihood of challenges (by determining **frequency**),
- Calculate the cost of challenges that actually do occur (by determining **severity**),
- Find out what drives up cost and likelihood (by noting **hazards**).

Counting Parcels by Actuarial Standards

- Contingent on the number of landowner divisions—not the number of deeds or acreage or anything else
- In order for land to count as a single property, it needs to be held by the same land trust, owned by the same owner, preserved by the same plan, and contiguous
- Roads don't interfere with contiguity

The Legal Defense Reserves Calculator

The calculator is based on a 2008 study on conservation defense expenses, as well as new data, an actuarial analysis, and discussions with experts on the business of conservation.

- The calculator has a base fund that can vary between \$38,000 and \$58,300
- It then adds a per parcel reserve ranging between \$633 and \$6,215

Recognizing the in-house resources, expertise, and risk pooling of larger land trusts, the calculator reduces per parcel reserves for large and very large organizations

- For parcels 500-1000, recommended per parcel reserves do not exceed \$1,500 and can go as low as \$677
- For parcels 1000 and beyond, recommended per parcel reserves do not exceed \$1,000 and can go as low as \$177
- Available at <http://tlc.lta.org/clearinghouse/calculator/start>

The Risk Management for Land Trusts Online Course

- Available at <http://tlc.lta.org/courses/a-guide-to-risk-management-for-land-trusts>
- Also qualifies land trusts for the risk management training discount.

Other Risk Management Resources

- **Nonprofit Risk Management Center:** to login for free, click on the live link in the [Conservation Defense Clearinghouse](#).
 - The link is the Center's logo.
 - Access *free* unlimited risk management webinar recordings at the Nonprofit Risk Management Center
 - Call for special one-on-one free personal help for quick questions about risk, insurance, organizational risk management at (202) 785-3981 or info@nonprofitrisk.org.
- Download ***A Guide to Risk Management for Land Trusts*** <http://tlc.lta.org/library/documents/35980>
- [Risk management collection](#) on **The Learning Center** with resources specifically to help you balance risk at your land trust. If you haven't been there in a while, we have posted some new resources including an emergency succession planning template.
- Every fall the Alliance hosts new, in-depth free **webinars** on risk management. [Check for dates and subjects](#) »

Terrafirma Risk Retention Group LLC

- Terrafirma Risk Retention Group members get a free monthly bite-sized risk tip called *TerraBite*. If you want to receive *TerraBite*, ask help@terrafirma.org to subscribe you for free.
- For more updates, follow **Terrafirma RRG** on LinkedIn.
- **TerraBite: Ideas to chew on for Terrafirma owner-member land trusts**

My Risk Balancing Action Plan

Designating a risk management champion is a proven way to begin the process of getting everyone on board with the purpose, goals and activities of the program and sustaining the effort over time.

That could be you! Here are some possible steps:

STEP	LEADER	TIMING
Recruit a diverse group of participants.		
Talk about risk awareness with every item on the board agenda and at every meeting as a way to raise alertness and illustrate its importance.		
Charge a committee with drafting risk balancing goals for presentation to the board.		
Charge the committee with developing a set of value statements for risk balancing.		
Invite the committee to explore risk balancing process propose a strategy for engaging the board		
Devise a soft start agenda.		
Write it down!		
Remember to use the above resources		

Terrafirma is doing its job!

Terrafirma reached another milestone in April, having now received over 200 claims — legal issues are a reality. More claims mean more help to land trusts with lasting conservation, and Terrafirma has already paid over \$700,000 to defend challenges.



Call or write to us any time:

Call us! We are here to help: Hannah Flake (202) 800-2248 and Lorri Barrett (202) 800-2219 or help@terrafirma.org | Leslie Ratley-Beach (802) 262-6051 | lrbeach@lta.org