A01: Do You Have the Right Balance of Insurance and Risk Management? (CLE, RM)

Friday, October 18 | 10:30 a.m. - Noon

Room 307

Session Faculty:
Leslie Ratley Beach
Lyle Cooper Lyles
Meghan Mullee
Laurie Smith

Rally 2019: The National Land Conservation Conference
Raleigh, NC

Land Trust Alliance
Together, conserving the places you love
Do you have the right balance of Insurance and Risk Management?
Friday October 18 | Session A01 | 10:30 a.m - Noon | Basic for all | Great for Board Members
CLE and Qualifies for the Terrafirma risk management discount if senior staff or board attends

Three Learning Objectives:
1. Understand the types of insurance a land trust may need
2. Understand the basics of coverage and how they overlap and don’t
3. Understand how a board balances risk and assesses mitigation and insurance coverage especially in connection with Land Trust Standards & Practices Standard 6

Session Description:
Having the right insurance is a key part of good risk balancing for land trusts. Terrafirma helps cover threats to the lasting conservation, however, land trusts need to assess many other types of insurance to balance risk. We will present real life stories of how insurance plays into all land trust activities. Do you own buildings? Is your board covered against hostile legal actions? What about employee owned vehicles used for work? Are you responsible for physically monitoring conservation easements? Is your fee property open for public recreational use? We will cover basic types of insurance, as well as some that may be unique to land trusts, and using a land trust example we discuss how a board goes about assessing what insurance to purchase.

Detailed Outline:
1. Untangling the types of insurance, how they do and do not overlap
   a. Review the materials on Commonly Purchased Insurance Overview
   b. What are the coverages and how do they fit together
   c. Key similarities, differences and gaps
   d. Coverage matrix
2. What are your risks? What are land trusts doing to assess and balance risk?
   a. Catawba Land Trust story and strategy
      i. The difficult decision to halt or slow the addition of public access trails to conserved land held in fee
   b. PeeDee Land Trust story and strategy
3. What questions to ask and how to assess what insurance you need
   a. Review the materials on Assessing Insurance for Land Trusts and Evaluating your Land Trust’s Insurance Needs and Obtaining Proper Coverage
   b. Is insurance meeting your needs and how do you know?
      i. Risk assessment and mitigation strategies
         1. How often?
         2. How to documenting status and steps?
c. Understanding your activities and the opportunities and obstacles they pose
   i. Organizational
   ii. Type of work
   iii. State law where work occurs
   iv. Property value
   v. Landowner, funder, neighbor, regulator, public official and general public expectations
   vi. Understanding what state and federal protective laws do and more often don’t do

d. Balancing risk with strong principled practices
   i. Land Trust Standards and Practices 2017
   ii. Risk Management Drafting Pointers

e. Working with your board and broker to identify where insurance can finance risk

4. Understanding deductibles, rate quotes, retro dates
   a. Review the details in Evaluating your Land Trust’s Insurance Needs and Obtaining Proper Coverage and Commonly Purchased Insurance Explanation
      i. Deductibles or self-insured retention – who cares?
      ii. What in heavens name is a retro date and how is it relevant?
      iii. What does it matter if it is duty to defend or indemnity?
      iv. Is organizational coverage really like continuously maintaining home fire?
   b. Timely notification of insurers critical
      i. How Terrafirma differs in pricing from most other insurers
         1. Sad stories about land trusts failing to give timely notice and what resulted
   c. Getting a good price and the right coverage
   d. Disaster strikes: what to look for in your insurance policy
      i. Knowing beforehand how your broker will help you (or not)

Panel:
Meghan Mullee, mmullee@alliant.com, Assistant Vice President, Conserve-A-Nation Program, Alliant Insurance Services, Inc. Meghan has spent the better part of a decade helping conservation nonprofits with their unique insurance needs, providing risk evaluation and insurance solutions for land trusts, conservancies and habitat preservation organizations nationwide. Her expertise lies in understanding the multi-dimensional aspects of challenging conservation exposures – conservation easements, prescribed burns, recreational hunting – and working with her team to design comprehensive insurance solutions especially for those difficult risks. Meghan oversees the Conserve-A-Nation Insurance Program, and has written and presented on a variety of insurance topics for the Land Trust Alliance. In 2017, she was nationally recognized by Business Insurance magazine largely due to her specialized efforts in the conservation space.

Laurie Smith is a graduate of the University of North Carolina at Chapel Hill (1992) and Yale Law School (1995). After working with a federal judge in Virginia, she joined Robinson Bradshaw and Hinson, where she became a partner specializing in corporate law. She has represented public and private companies in a variety of corporate transactions, including equity offerings, mergers and asset acquisitions and dispositions, and complex financing transactions. Laurie took a leave of absence in order to devote more time to her family and community service and is now back as a practicing attorney at Robinson Bradshaw, where her practice currently focuses on healthcare mergers and acquisitions and joint ventures. Laurie’s past community service includes serving on the Charlotte-Mecklenburg Historic Landmarks Commission, the Executive Board of the PTA for St. Patrick’s School and various committees of the Mecklenburg
County and North Carolina Bar Associations, and as Chair of the Parent’s Council for Covenant Presbyterian Preschool. She also leads the Catawba Land Conservancy’s corporate governance and board risk management policy updates.

**Lyles Cooper Lyles**, Executive Director, for Pee Dee Land Trust in South Carolina. Lyles joined PDLT in April 2015 and became Executive Director in October 2017. Lyles' professional experience spans multiple organizations in both the corporate and non-profit worlds. A graduate of College of Charleston with a degree in Corporate Communications and Marketing, Lyles brings a unique mix of skills and experience to PDLT. Within the last five years PDLT has successfully grown in most every aspect as an organization. This vast growth has led PDLT staff and Board of Directors to reevaluate risk for the organization in order to ensure stability long-term. PDLT was first accredited in 2012 (reaccredited in 2017) and currently utilizes TerraFirma for their 74 conservation easements spanning 28,000 acres across the nine counties in the Pee Dee Watershed of SC. Contact: PDLT, PO Box 2134, Florence, SC 29503, lclyles@peedeelandtrust.org, 843-667-3229 ext. 303, website: www.peedeelandtrust.org.

**Facilitator:**

**Leslie Ratley-Beach**, Vice President, Alliance Risk Management Services LLC, Manager for Terrafirma Risk Retention Group LLC, and Conservation Defense Director, Land Trust Alliance, Leslie Ratley-Beach joined the Land Trust Alliance as its first Conservation Defense Director in 2007. Leslie leads the national conservation defense liability insurance program (Terrafirma) and the Alliance's conservation defense center. Previously, she worked with the Vermont Land Trust as stewardship director and project counsel. Leslie has practiced real estate law for over thirty years with an emphasis on conservation and tax law for the last 24 years. 44 Deerfield Drive, Montpelier, VT 05602, 802-262-6051, lrbeach@lta.org
Pee Dee Land Trust was started in 1999 as an all-volunteer local land trust organization. Over the last twenty years, we have grown into the leading regional land trust covering the Pee Dee Watershed. PDLT has a paid staff of five full time and one-part time staff members, a twenty-one member volunteer Board of Directors and volunteers. Currently PDLT partners with seventy-five private conservation easement properties encompassing over 28,700 acres of permanently protected land across ten counties in South Carolina. PDLT also owns and manages two nature preserves open to the public and currently owns one additional fee property.

As we have grown as an organization, so have our responsibilities and with those responsibilities our risk has grown tremendously. Known for our conservative and strong conservation easements, we have been fortunate to avoid any legal disputes with inside or outside parties. Over ninety percent of our current conservation easements are still owned by the originating conservation easement owner, but as time passes we know the future owners will bring additional risk of violations and potential legal battles. PDLT has purchased Terra Firma insurance since 2013; our research has shown Terra Firma provides the best potential conservation easement defense coverage and is offered at reasonable rates based on number of properties held in our portfolio.

Based on the online Legal Defense Calculator, PDLT has higher than average risk because:
- we have been operating for more than 5 years (20 years) and we have not had any legal battles, which statistically we will more likely experience a significant legal challenge in the next 5 years
- Over 90% of our 75 conservation easements are still owned and managed by the original landowner that entered into the conservation easement with PDLT, however as we see these landowners sell property and pass property down upon their deaths, we know we have a larger risk for a potential legal battle. In my opinion, I think the online Defense Reserve Calculator is very conservative and I would strongly suggest that organizations consider keeping the highest reserves as possible.

PDLT’s Legal Defense Calculator results:
- Base reserve for the 1st 15 properties: $45,650
- Additional reserves based on properties 16-78: $95,225
- Board assessment of additional reserves needed: $250,000
- Total reserve fund needed: $390,875

PDLT currently has $776,000 in an invested Easement Stewardship Fund, along with about $50,000 in liquid assets donor designated, for a current total of $826,000. This sounds like a lot, but when you think about it this breaks down to just about $11,000 for each of our 75 easements.

We continue to build our Easement Stewardship Fund not just as our back-up financial pot in the case we have a major legal battle that goes beyond our Terra Firma coverage, but also as insurance for our land protection operations. We budget for a 4% expenditure from this fund each fiscal year that is used to help cover a portion of land protection salary- our current budget includes an expenditure of $30,000 from this fund. In addition to asking for an easement stewardship donation from each new landowner based on the calculated cost of monitoring the property, our Board has supported adding portions of non-designated gifts to help build the fund and help cover projects that come with lower stewardship gifts.
In addition to all recommended insurance and best practices for risk assessment and organizational risk reduction, PDLT’s Board has taken an aggressive approach to further protect the organization’s stability by the creation of long term investments. PDLT has pledged to landowners that PDLT will be responsible for enforcing their conservation easement in perpetuity and therefore PDLT’s Board is committed to supporting growth and availability of financial assets to serve as back-up resources for legal battles that go beyond insurance coverage. Currently PDLT has $2.9 million in invested assets. If there was a catastrophic event that led to PDLT having to shut down all operations except to keep a Land Protection Manager to monitor currently held easements, we could theoretically operate based on our current financial position for the next 30 years.

- **Operations Reserve:** Used in the event of a financial crisis for the organization; a lengthy legal battle would be considered a financial crisis and these funds would be utilized prior to endowment funds.
- **Easement Stewardship Endowment:** Funds used to monitor and defend conservation easements held by PDLT; principal of this fund is restricted to legal defense of easements while maintaining a minimum of $3,500 per easement.
- **Operations Endowment:** Annual expenditures from this fund are used to pay for all insurance coverage as a portion of ongoing operation’s needs. A portion of this fund is Board directed from non-donor designated gifts to the organization and could be utilized for a legal battle upon a ¾ Board vote to do so.

PDLT’s risk assessment practices include the best practices provided by the Land Trust Alliance and they are all reviewed annually by the PDLT Board of Directors Executive Committee and staff. In addition, PDLT follows the below policies to further ensure risk reduction.

- Every four years bid out all insurance coverage needs and ask for a full risk assessment as part of the bid, including General Liability, Directors’ and Officers’ Liability, Property, Workers Compensation and Conservation Easement coverage. PDLT utilized a well-respected local insurance provider that is a friend of the land trust to review all bids and give us feedback on ways we could strengthen our coverage and he helped us compare bids.
- Currently PDLT contracts with Alliant Insurance Services/ Chubb for our Liability, Property, Officers and Directors, and event Insurance and Nationwide Insurance for our Workers Comp; both agencies offer complimentary annual reviews.
- PDLT recommends title insurance research be ordered prior to PDLT’s Land Protection Committee’s recommendation to the PDLT Board of Directors for final project approval. PDLT requires title commitment or title policy for every project (all funded projects require full title policy).
- PDLT has a strict Conflict of Interest policy that is enforced to the letter to avoid perception of any insider deals that include staff, Board members, major donors and any other potentially conflicted party.
- PDLT was a target of cyber bullying by ransomware in 2017; additional cyber security steps were taken with our IT contractor and annual risk assessments are done on all equipment and systems (now covered under our Property policy through Chubb).
- PDLT has experienced and reputable outside counsel representation for all transactions. PDLT staff strongly recommends all landowners utilize the services of professionals (legal, accounting, appraisal, etc) with conservation easement project experience (this reduces risk for both the landowner and PDLT).
Frequently Asked Questions

Our state has strong Recreational Use Statutes. Why do we need insurance for our properties owned in fee?

Each state has its own version of the Recreational Use Statutes -- laws intended to encourage public enjoyment of open space by limiting the liability of landowners allowing access to their property, provided the landowner is not charging a fee for access. In the event of an injury occurrence on the property, the statutes provide excellent grounds for defense and may even discourage some lawsuits. They cannot, however, prevent lawsuits entirely and a land trust may need to engage the services of an attorney to mount a defense. Further, Recreational Use Statutes do not provide unmitigated blanket immunity. There are circumstances in which the statutes would not apply, for example, if the landowner was charging for access or was found grossly negligent. General liability coverage will respond and defend the land trust in the event of this type of claim in which a third party asserts that the land trust is legally liable for injuries sustained.

We do not own the land protected by the conservation easements we hold, so why do we need to include the easements on our general liability coverage?

Conservation easement agreements typically contain provisions such that the easement holder is responsible for physically monitoring the property on a predetermined schedule. While the landowner certainly shoulders most of the liability load in the event of a bodily injury occurrence on the property, the land trust could be held partially responsible, as well. Consider a scenario where the injured party claims there was an obvious hazard on the property. It is possible for the injured party to sue the landowner as well as the land trust, claiming that had the land trust properly monitored the property per the terms required by the easement agreement, the hazard would have been discovered and remedied prior to the injury occurrence.

Why do we need a D&O policy if our board members are already insured on our general liability policy?

Your organization and its board of directors, executives, employees, club members and volunteers should be included as insureds on both your General Liability coverage and Directors & Officers (D&O) coverage, and it is important to understand that these policies offer very different types of protection. General liability responds to allegations of bodily injury or property damage while a D&O policy defends against allegations of mismanagement including misappropriation of funds, errors or omissions in management decisions, neglect, breach of fiduciary duty, etc. The Conserve-A-Nation D&O policy also includes a separate coverage section designed to respond to allegations of sexual harassment, discrimination and other similar claims. Further, without a D&O policy in place, your board members can be held personally liable for certain decisions they make or actions they take as fiduciaries of your organization and it is unlikely that their personal liability or personal umbrella policy will protect against this type of claim.
Why do we need Employment Practices Liability if we don’t have employees?

Despite its name, Employment Practices Liability is not strictly limited to traditional or standard employment relationships. The coverage responds to allegations of sexual harassment, discrimination, retaliation and wrongful termination. While these allegations could certainly come from a land trust employee, they could also come from a volunteer, an important donor, a member of the public, an event attendee, or even a member of a partner nonprofit.

Are our volunteers covered by our insurance?

When thinking about whether your volunteers are covered by your insurance, there are two things to consider: (1) what happens if a volunteer causes injury or property damage to a third party, and (2) what happens if a volunteer sustains injury while volunteering?

Your volunteers should be included as insureds on the land trust’s General Liability coverage. As an insured on the general liability, both the volunteer and the land trust would be afforded defense under the policy and the policy would pay damages in the event the volunteer causes and is legally liable for bodily injury or property damage to a third party. Conversely, if your volunteer sustains injury while volunteering, it is advisable to have a Volunteer Accident policy in place. This policy provides medical expense, accidental death benefits and optional disability coverage to injured volunteers or their families. Unlike in a general liability claim, the injured party is not required to prove the land trust is legally liable in order to have a claim paid. Coverage is excess to the volunteer’s personal health insurance, but would drop down and pay out of pocket expenses.

Are we covered by the government agency or other nonprofit we partner with?

It is extremely unlikely that any organization would enjoy full coverage on another entity’s policy without being a subsidiary of, or otherwise legally affiliated with, that entity. A land trust may enjoy limited protection under another organization’s insurance coverage in the form of “additional insured” status, but the scope of such coverage is narrow and would only respond under certain circumstances and would not respond and defend the land trust independently of the other organization’s involvement in the circumstances surrounding a claim scenario.
Catawba Land Conservancy’s risk assessment practices include the best practices provided by the Land Trust Alliance and the Board of Directors Executive Committee and staff review them all annually. In addition, CLT follows the below policies to further ensure risk reduction.

Risk assessment is the first step. Each organization must assess its unique risks before considering the strategies for mitigating those risks. For example, does your land trust allow the public onto conserved lands? If so, how frequently – just once or twice each year for special functions, or more often? For what purposes – hiking? Hunting? Is that public use monitored by the organization? The answers to questions like these inform the types and amounts of insurance coverage that are appropriate.

In addition to being the first step, risk assessment should be an ongoing process. As your organization grows or otherwise changes, its risk management strategies should change as well. Consider setting a formal process and timeline for revisiting organizational risk management. In this regard, it is critical to document the risks you have identified. Because risk management is often a process, you should also document the steps you have taken to mitigate each category of risk and what steps remain to be completed. This documentation will be a useful tool for staff and an invaluable one for board members who presumably are not considering organizational risk on a daily basis.

*Land Trust Standards and Practices* has a practice element on insurance and risk management. See 6E1 and 2 that state:

**STANDARD 6. FINANCIAL OVERSIGHT**

E. Risk Management and Insurance

1. Routinely assess and manage risks so that they do not jeopardize the land trust’s financial health and its ability to carry out its mission and legal responsibilities
   2. Carry general liability, directors and officers liability, property and other insurance, all as appropriate to the land trust’s risk exposure or as required by law.
Commonly Purchased Insurance Overview

There is no set formula for insurance coverage for a land trust or an actuarial table for appropriate limits of liability and deductibles. Land trusts frequently purchase these coverages:

- General liability or commercial GL
- Directors and officers (D&O) liability
- Employment practices liability
- Property coverage
- Non-owned automobile liability
- Volunteer accident coverage
- Workers compensation
- Fidelity or dishonesty coverage
- Cyber
- Title insurance
- Terrafirma: Conservation Defense Liability Insurance Service
- Excess and umbrella liability
- Professional liability

### Similarities in Commercial General Liability and D&O Policies

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<th>Commercial General Liability</th>
<th>Directors &amp; Officers Liability</th>
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<td>Common liabilities like negligence</td>
<td>Wrongful management acts, mistakes and misjudgments</td>
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<td>Broad catch-all or basic liability coverage</td>
<td>Broad coverage for wrongful management acts</td>
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<tr>
<td>Covers everyone but not contractors</td>
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### Key Differences between Commercial General Liability and D&O Policies

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<th>Directors &amp; Officers Liability</th>
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<tr>
<td>Covers bodily injury, property damage and personal and advertising injury</td>
<td>Excludes bodily injury and property damage</td>
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<td>Covers accidents only; usually from operations not management decisions</td>
<td>Covers wrongful acts only; usually from governance or management decisions</td>
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<td>Occurrence policy is the date of the event, accident or occurrence</td>
<td>Claims-made means the date the third party made the claim against the insured</td>
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<td>Standard policy wording</td>
<td>Nonstandard policy wording</td>
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### Typical Coverage Sections in a Commercial General Liability (CGL) Policy

- **Coverage A – General Liability** - “Bodily Injury and Property Damage.”
- **Coverage B – Personal and Advertising Injury Liability** - Expands CGL coverage beyond bodily injury and property damage, covering common liability exposures.
- **Coverage C – Medical Expense** - Covers accidents arising from the insured’s premises or operations, regardless of the liability; reimburses expenses for minor injuries, reducing lawsuit risk.

### Commercial General Liability Policy Limits

- **General Aggregate Limit (Other than Products-Completed Operations)** – the maximum payable in the policy term for all claims other than Products Liability and Completed Operations Liability
- **Products Liability - Completed Operations Aggregate Limit** – the maximum payable for liability for products the organization manufactures or sells, or liability arising from construction or repair work the organization has completed
- **Personal and Advertising Injury Limit** – the maximum payable for Coverage B under the Commercial
General Liability policy

- **Each Occurrence Limit** — the maximum payable for any one claim
- **Fire Damage Limit** — the maximum payable for fire damage to the portion of a landlord’s building that the insured organization occupies
- **Medical Expense Limit** — the maximum payable for Coverage C

All the limits described above are *in addition to* defense costs available under the policy.

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Leslie Ratley-Beach, Conservation Defense Director, Land Trust Alliance 802-262-6051
lrbeach@lta.org  Last revised September 18, 2019