

The image is a composite of two aerial photographs. The top photograph shows a wide, calm body of water, possibly a bay or fjord, nestled between steep, forested hills. The water is a light blue-grey color, and the surrounding land is covered in dense green trees. The bottom photograph shows a patchwork of agricultural fields, some of which are green and appear to be planted with crops, while others are brown and fallow. The fields are separated by dark lines of trees and hedgerows. In the distance, a small white building, likely a barn, is visible on the right side. The overall scene depicts a rural landscape where agriculture meets nature.

Results of Land Trust Alliance Research and Survey on Easement Modification and Termination

Results of Land Trust Alliance Research and Survey on
Easement Modification and Termination

December 2014

The Land Trust Alliance's mission is to save the places people love by strengthening land conservation across America.

Founded in 1982, the Land Trust Alliance is a national land conservation organization that works to save the places people love and need by strengthening land conservation across America. The Alliance represents 1,200 member land trusts supported by more than 100,000 volunteers and 5 million members nationwide. The Alliance is based in Washington, D.C. and operates several regional offices. More information about the Alliance is available at www.landtrustalliance.org.

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Cover photo: Tarboo Wildlife Preserve. The Jefferson Land Trust (WA) added 80 acres to the Preserve in 2014 by amending the conservation easement. Photo by Lowell Jones.

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Introduction

When a land trust accepts a perpetual conservation easement, it promises the easement grantor, land trust members, funding sources and the public that the land trust will uphold the easement in perpetuity. Nevertheless, the occasional need to amend an easement is rooted in our inability to predict all the circumstances that may arise in the future. The concept of amendment recognizes that neither the original grantors nor the land trusts are infallible, that natural forces can transform a landscape in a moment or a century and that amendments can protect more as well as less.

The Land Trust Alliance is committed to helping land trusts make the best possible amendment decisions that preserve public confidence in land conservation. While there has been much good dialogue and useful anecdotal information, we had little hard data on the scale and frequency of easement amendments. The Alliance last asked land trusts about amendments 10 years ago as part of the 2004 *Conservation Easement Violation and Amendment Study*. Given the importance of this subject to the land trust community and the integrity of conservation easements, we needed current data to gain a better understanding of the nature and extent of easement modification and termination. To address that need, in 2014 the Alliance undertook research on the IRS Form 990 and conducted a survey of land trusts on their amendment and termination practices. The results of the research and survey are presented here. Please note that there may be slight discrepancies between total numbers listed in tables and figures due to rounding.

IRS Form 990 Research



The IRS requires that all organizations with annual gross receipts greater than or equal to \$200,000 or total assets greater than or equal to \$500,000 file a full Form 990 each year. In 2008, the IRS introduced Schedule D, which contains additional reporting requirements for conservation easements. Schedule D asks about the “number of conservation easements modified, transferred, released, extinguished or terminated during the [tax] year,” and Part XIII of the schedule requires a description. Form 990s for all nonprofits for the last three years are available to the public on GuideStar (www.guidestar.org), an information service specializing in reporting on U.S. nonprofit corporations. We searched GuideStar for all the available Schedule Ds for Alliance-member land trusts that hold conservation easements and reviewed a total of 1,875 Schedule Ds dating from 2008 to 2012.

Land trusts reported holding the following number of easements on Schedule D.

Year	2008	2009	2010	2011	2012
	77	7,352	29,446	30,502	20,337

Table 1-1: Total Number of Easements Held by Land Trusts, as Reported on Schedule D, Form 990 for 2008–2012

Form 990 Results: Easement Modifications

From 2008–2012, 143 land trusts reported a total of 553 easement modifications, as defined on the Schedule D instructions. This figure represents less than 3 percent of the total number of conservation easements land trusts reported holding on Schedule D as of the end of 2012. More land trusts in the Northeast¹ reported

¹ References to regions in this report are based on the Land Trust Alliance’s service area regions. See www.landtrustalliance.org for more information.

easement modifications than land trusts in other regions in each of those years. However, the total number of modifications reported by region each year was more variable with the most appearing in the Northeast (37 percent) and West (28 percent). (Figures 1-1, 1-2, and 1-3)

The most modifications reported occurred in 2010 (184) and 2011 (180). Between 2008 and 2012, 63 organizations reported between two and five modifications, while only 10 land trusts reported more than 10 modifications. Of those 10 land trusts, six hold portfolios of more than 350 easements and 30,000 acres. Their total number of reported modifications (169) represents an average easement amendment rate per land trust of 0.36 percent (Figures 1-4 and 1-5).

Of the 553 reported modifications, 30 percent lacked a description and 12 percent of the descriptions were ambiguous or unclear on Schedule D of the Form 990. We characterized the remaining descriptions as shown in Figure 1-6. Technical corrections, language clarifications and acreage additions made up the majority of reported modifications.

The majority of organizations reporting modifications have between 1 and 25,000 acres under easement. Those groups with 100,000 acres or more in their easement portfolios reported far fewer modifications. Those with annual budgets exceeding \$3.5 million (as reported in the 2010 Land Trust Census) reported the most modifications (between six and 10) (Figures 1-7 and 1-8).

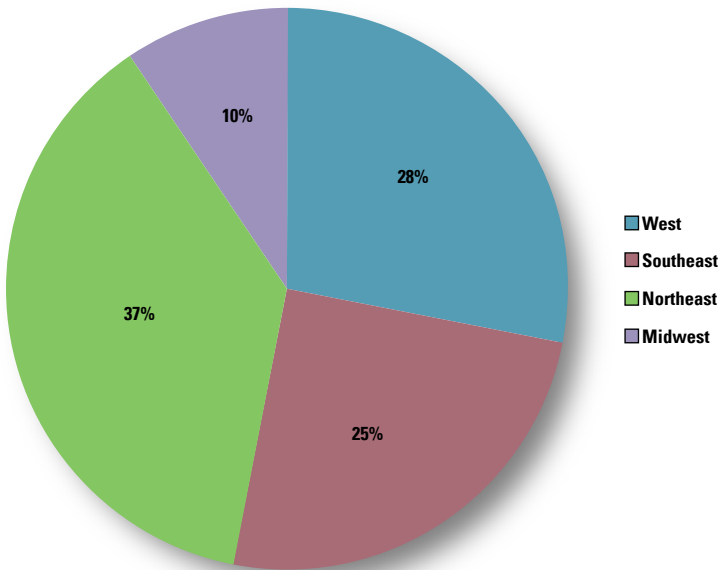


Figure 1-1: Percentage of Total Modifications Reported by Region

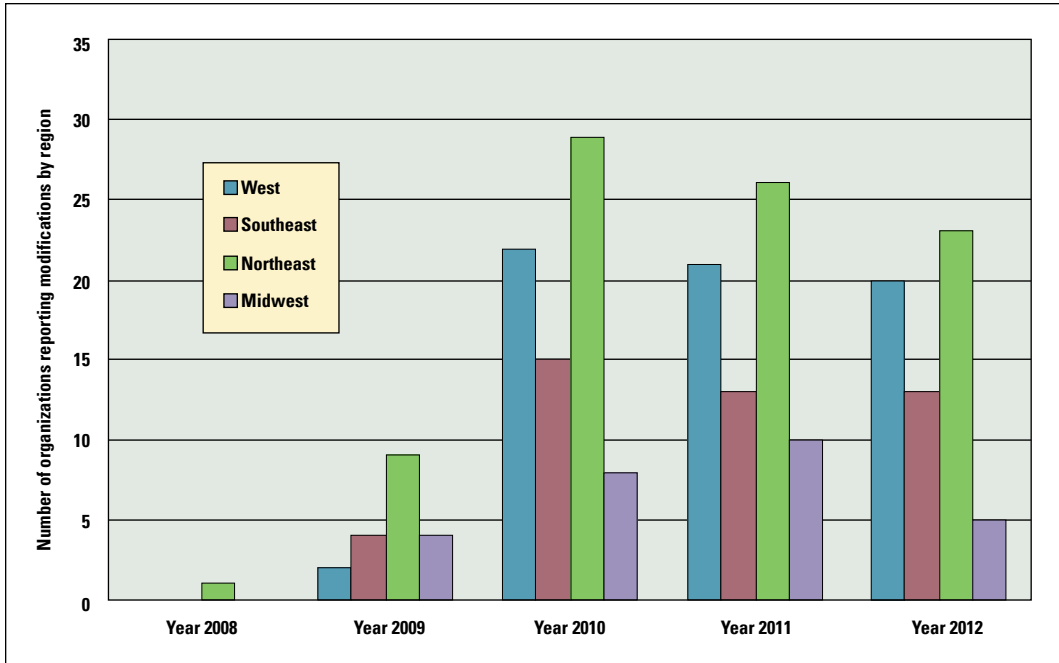


Figure 1-2: Number of Organizations Reporting Modifications by Region

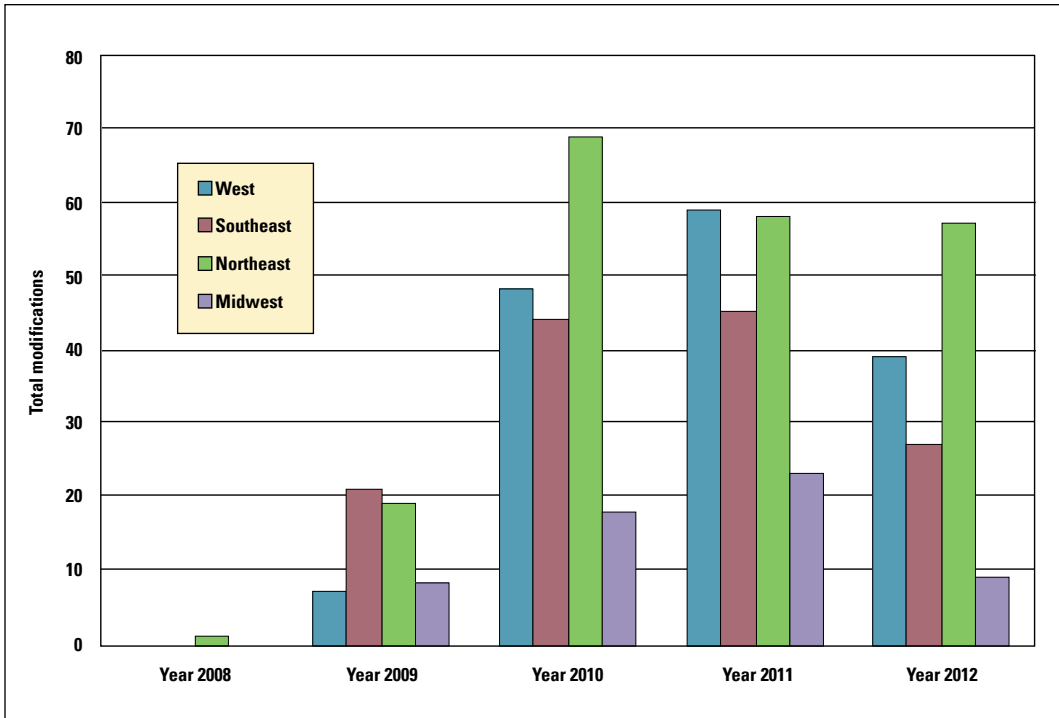


Figure 1-3: Number of Modifications Reported by Region

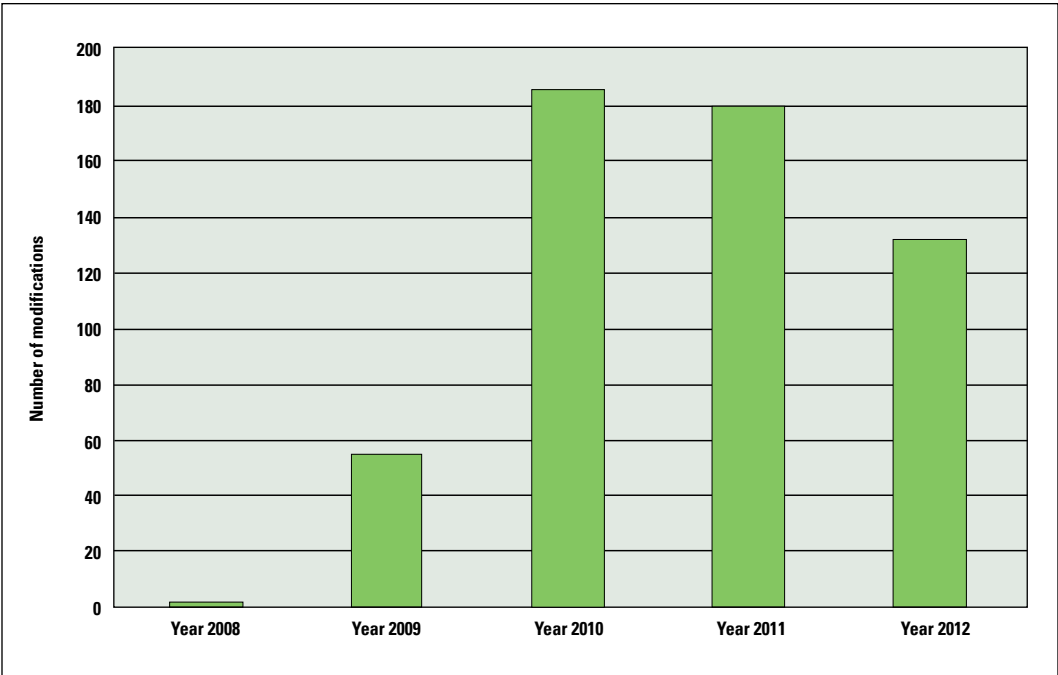


Figure 1-4: Total Number of Easement Modifications Reported by Year

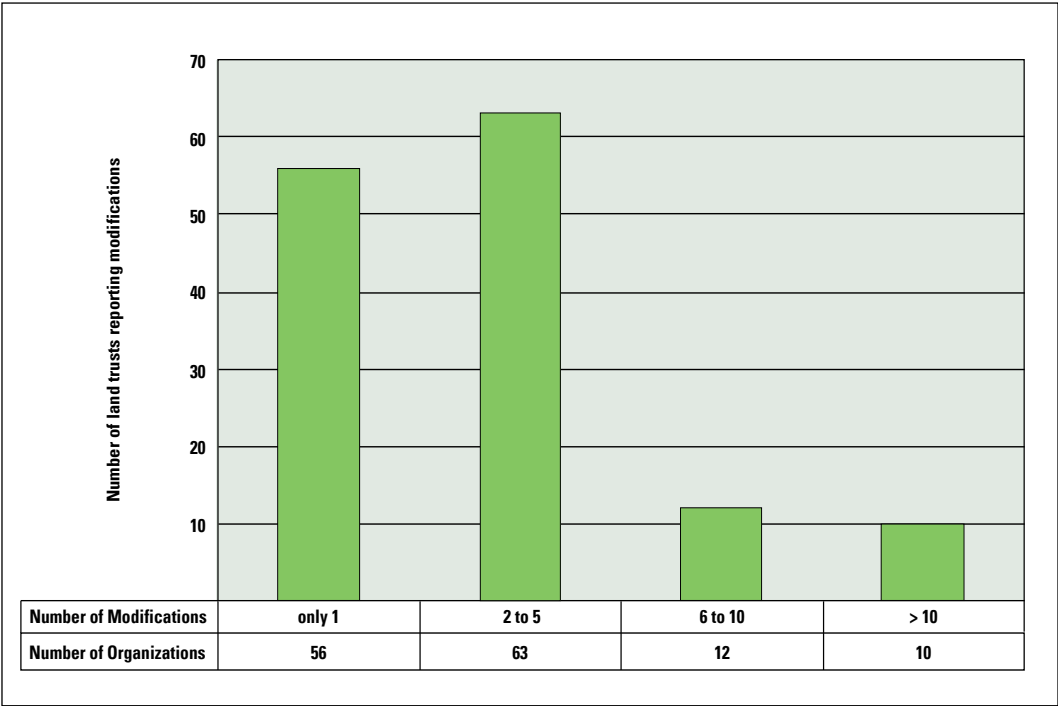


Figure 1-5: Number of Modifications Reported by Land Trusts

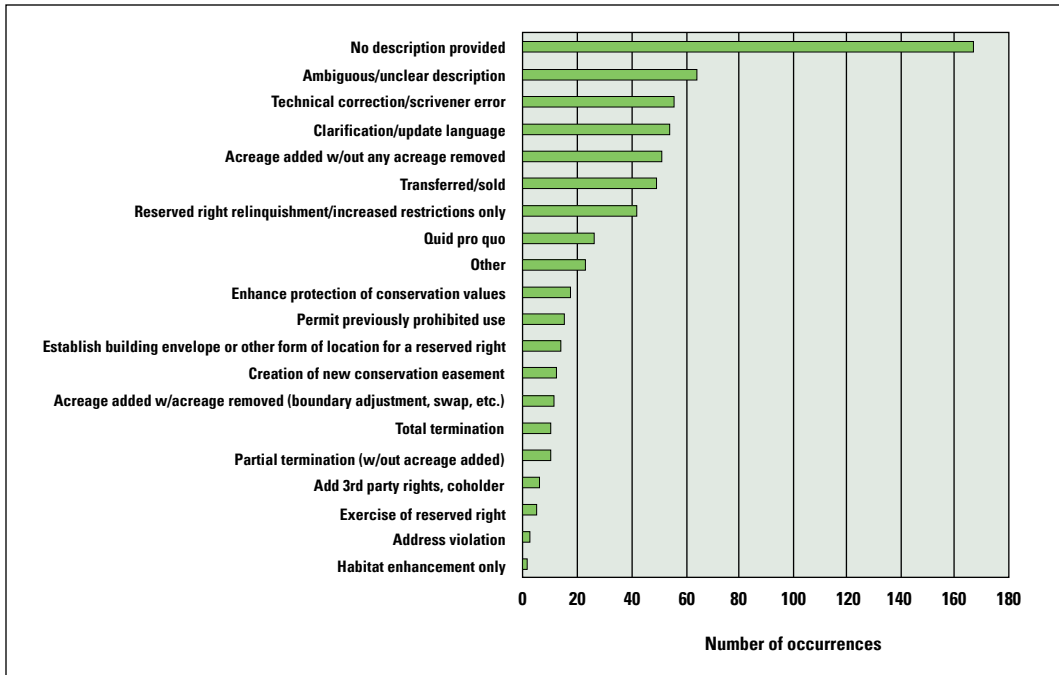


Figure 1-6: Reported Reasons for Easement Modifications

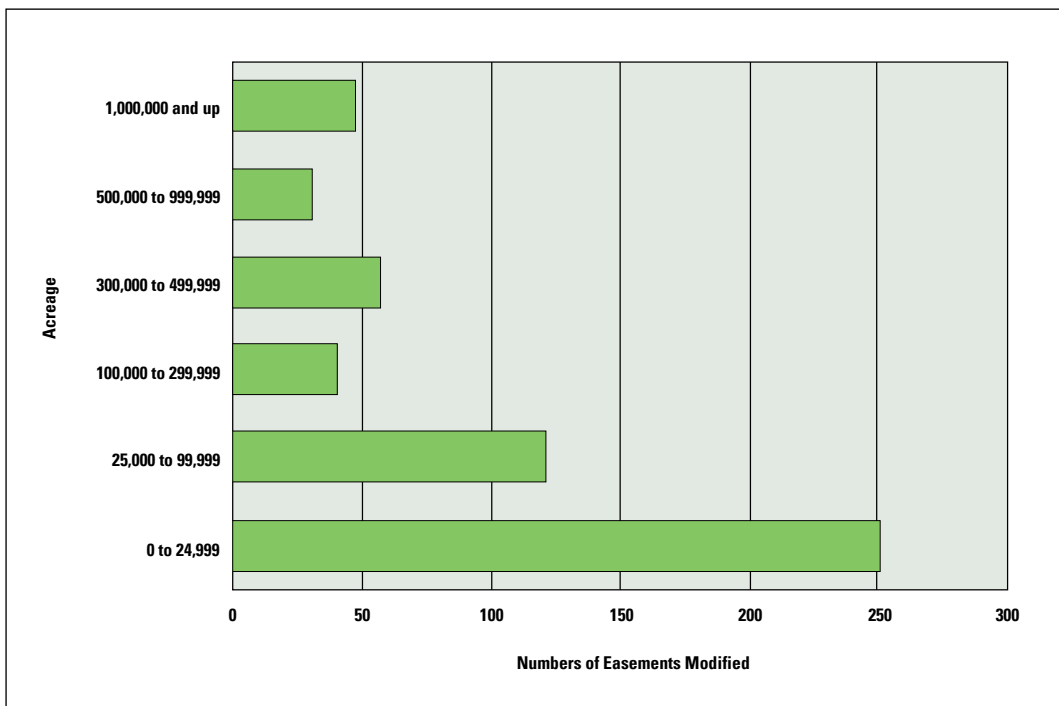


Figure 1-7: Total Number of Acres under Easement for Land Trusts Reporting Modifications

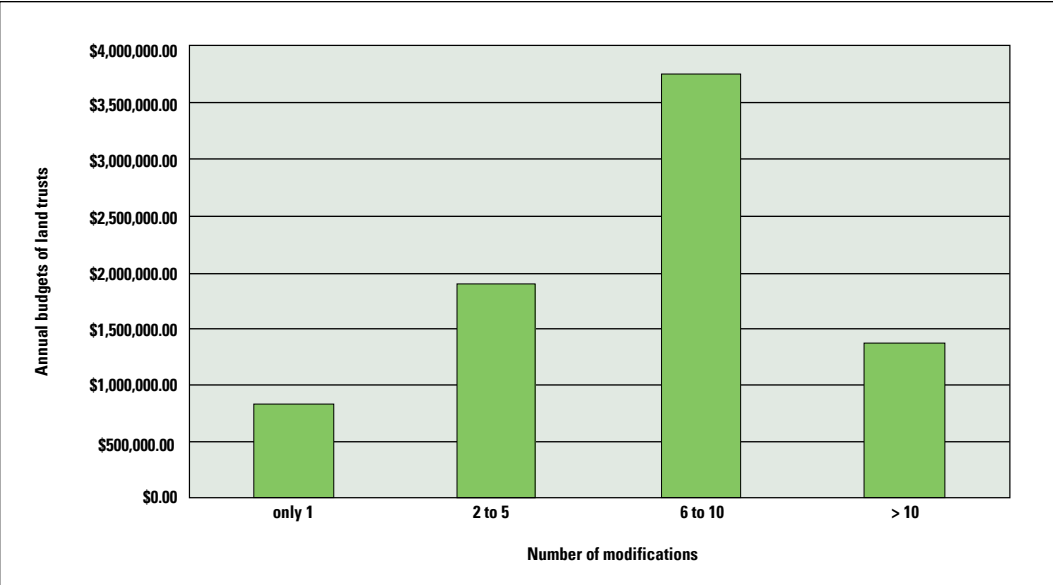


Figure 1-8: Annual Budgets of Land Trusts Reporting Modifications

Form 990 Results: Terminations

Six land trusts reported a total of 10 partial terminations ranging in size from 0.018 to 20 acres. Five of these were due to condemnation. Seven land trusts reported a total of 10 terminations in whole. Of those land trusts, only two reported an acreage figure: 1.38 acres terminated due to condemnation and 169 acres “vacated . . . pursuant to a court order.” The descriptions given for the remaining terminations varied, including merger of title and transfer of the underlying fee to a federal agency.

Land Trust Survey Results

In spring 2014, in partnership with the University of Wisconsin Survey Center (UWSC), the Alliance surveyed all 847 member land trusts that hold conservation easements. UWSC conducted the confidential web survey between April and June. When the survey closed, there were 409 completed surveys and 35 partial responses. The final response rate (not including partial responses) was 48.3 percent; 177 respondents (43 percent) were accredited land trusts.

Profile of Survey Respondents

Numbers of Easements and Acreage

Survey respondents reported holding 27,538 easements totaling 9,266,084 acres. If we apply the 2010 Land Trust Census data to these numbers, these figures would represent 65 percent of the total easements held by land trusts and 83 percent of all acres conserved under easement (Tables 2-1 and 2-2; Figures 2-1 and 2-2).

Acquisition Methods

Survey results indicate 66 percent (18,104) of these easements were fully donated, with the Southeast reporting the highest percentage (83 percent) of donated easements (Figures 2-3, 2-4 and 2-5; Tables 2-3 and 2-4).

Amendment Policies

The survey revealed that 73 percent of the organizations reporting have an amendment policy, and 53 percent have updated their policies at least once. The majority of original amendment policies date from 2007 to 2012. Many land trusts reported updating their policies within the last five years (Figures 2-6, 2-7, 2-8 and 2-9).

State	Easements	Acreage
Midwest	3,232	318,230
Northeast	13,314	2,210,842
Southeast	3,915	1,330,975
West	7,077	5,406,037
Total	27,538	9,266,084

Table 2-1: Reported Number of Easements and Acreage by Region

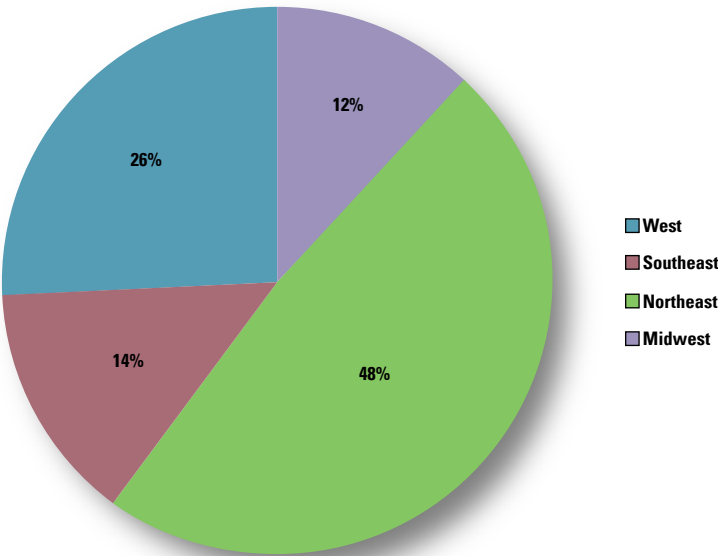


Figure 2-1: Easements by Region

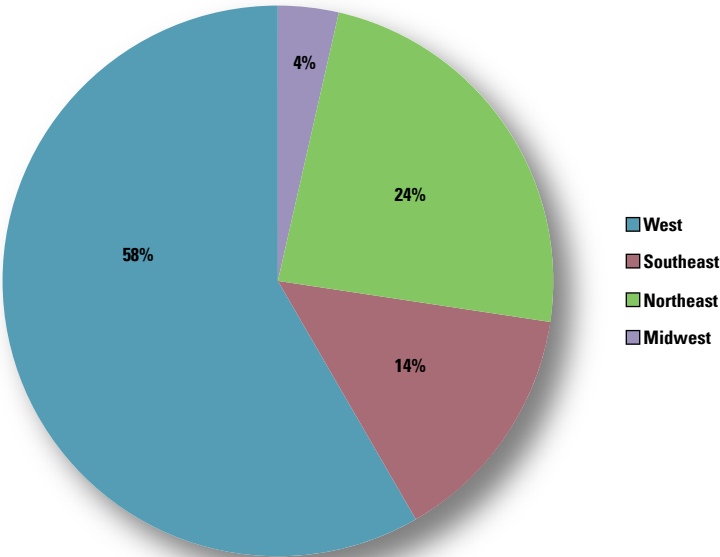
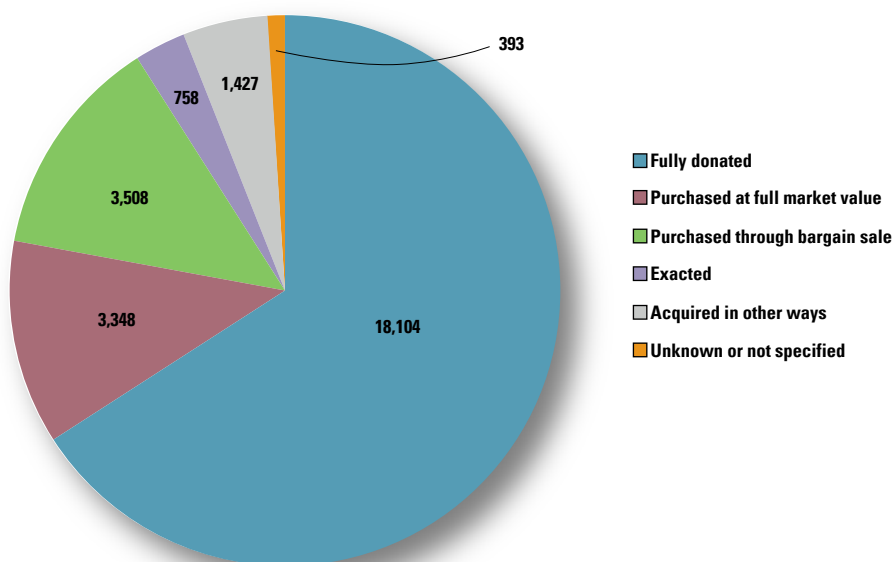


Figure 2-2: Acreage by Region

State	Easements	Acreage	State	Easements	Acreage
Alabama	174	62,889	Missouri	30	8,760
Alaska	12	848	Montana	1,392	1,418,680
Arizona	55	4,909	Nebraska	21	8,200
Arkansas	56	35,027	Nevada	2	1,480
California	1,049	772,342	New Hampshire	1,499	188,254
Colorado	2,175	1,543,075	New Jersey	81	3,002
Connecticut	342	25,260	New Mexico	177	448,841
Delaware	44	2,120	New York	2,085	266,203
District of Columbia	0	0	North Carolina	803	118,205
Florida	42	45,143	Ohio	778	76,084
Georgia	644	257,094	Oregon	110	31,970
Idaho	240	99,109	Pennsylvania	2,494	129,089
Illinois	241	12,563	Rhode Island	222	4,182
Indiana	66	5,266	South Carolina	807	338,190
Iowa	120	16,000	Tennessee	297	79,304
Kansas	53	22,367	Texas	334	477,181
Kentucky	137	23,139	Utah	50	5,025
Louisiana	33	43,000	Vermont	2,155	580,303
Maine	916	815,429	Virginia	617	124,667
Maryland	2,050	143,843	Washington	899	59,958
Massachusetts	1,426	53,157	West Virginia	138	19,284
Michigan	647	50,154	Wisconsin	749	73,070
Minnesota	527	45,767	Wyoming	582	542,621
Mississippi	167	185,033	Total	27,538	9,266,087

Table 2-2: Reported Number of Easements and Acreage Amounts by State*

*U.S. states or territories not listed in this table indicates that we did not receive any data from survey respondents for these geographic areas.

**Figure 2-3: Easement Acquisition Methods**

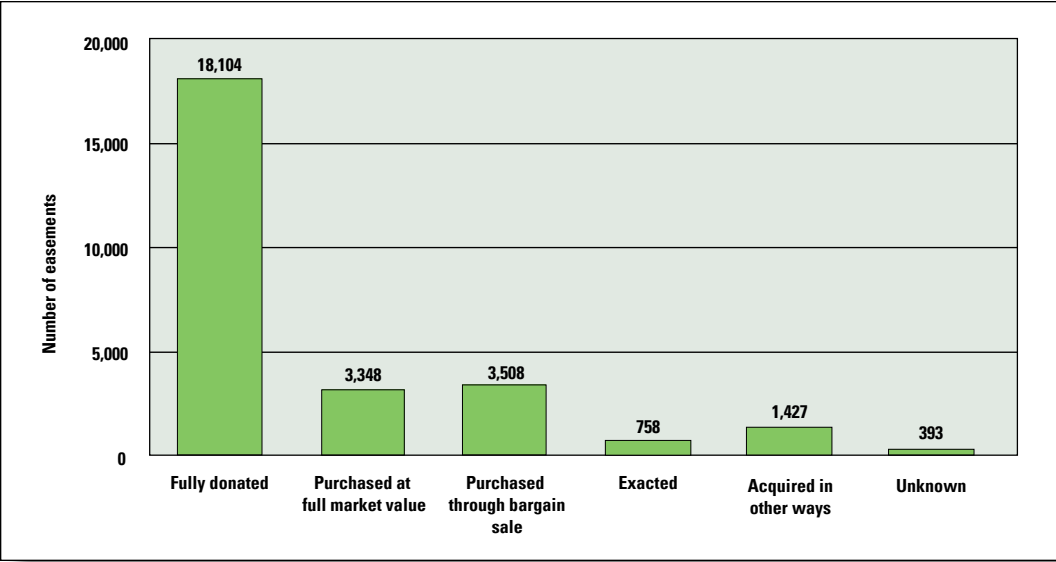


Figure 2-4: Easement Acquisition Methods

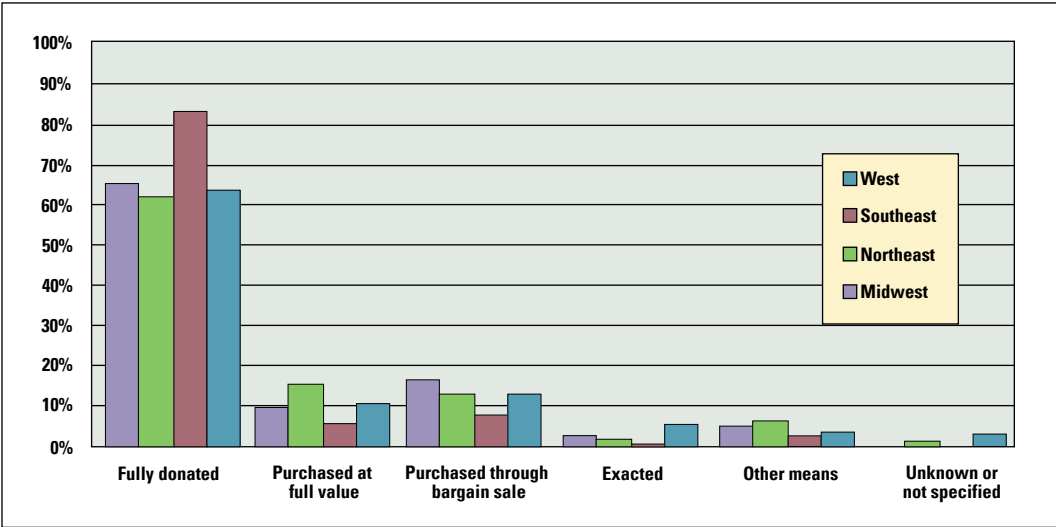


Figure 2-5: Easement Acquisition Methods by Region

State	Fully donated	Purchased at full value	Purchased through bargain sale	Exacted	Other Means	Unknown or Not Specified
Midwest	2,118	319	533	95	167	0
Northeast	8,236	2,049	1,741	249	878	161
Southeast	3,248	217	311	26	112	0
West	4,501	764	924	388	269	232
Total	18,103	3,349	3,509	758	1,426	393

Table 2-3: Number of Easements by Region and Method Acquired

State	Fully donated	Purchased at full value	Purchased through bargain sale	Exacted	Other means	Unknown or not specified
Alabama	158	7	7	2	2	0
Alaska	4	0	0	0	8	0
Arizona	53	1	0	0	0	0
Arkansas	40	8	5	0	3	0
California	415	256	40	272	30	36
Colorado	1457	188	344	7	64	115
Connecticut	252	14	9	56	11	0
Delaware	42	0	1	0	0	0
District of Columbia	0	0	0	0	0	0
Florida	41	0	1	0	0	0
Georgia	588	19	19	13	5	0
Idaho	134	30	67	0	9	0
Illinois	146	47	4	25	19	0
Indiana	46	8	0	6	7	0
Iowa	108	0	6	6	0	0
Kansas	14	38	1	0	0	0
Kentucky	133	3	1	0	0	0
Louisiana	25	4	3	0	1	0
Maine	682	104	63	10	30	28
Maryland	1136	231	17	27	639	0
Massachusetts	1129	38	154	88	17	0
Michigan	282	114	140	1	109	0
Minnesota	400	28	48	40	11	0
Mississippi	131	8	5	6	17	0
Missouri	21	5	3	0	1	0
Montana	1127	52	187	1	25	0
Nebraska	15	3	2	0	1	0
Nevada	0	1	1	0	0	0
New Hampshire	1171	131	155	18	23	0
New Jersey	42	23	15	0	0	0
New Mexico	128	11	20	1	17	0
New York	1548	295	109	18	52	63
North Carolina	659	20	87	5	33	0
Ohio	543	5	214	14	1	0
Oregon	75	17	18	0	0	0
Pennsylvania	1390	119	888	10	87	0
Rhode Island	88	9	37	18	1	70
South Carolina	623	50	106	0	28	0
Tennessee	291	3	3	0	0	0
Texas	201	36	22	45	30	0
Utah	5	18	8	5	13	0
Vermont	757	1085	292	4	17	0
Virginia	474	80	39	0	24	0
Washington	599	114	73	5	27	81
West Virginia	87	15	36	0	0	0
Wisconsin	543	70	116	3	17	0
Wyoming	302	40	144	51	46	0
Total	18,105	3,348	3,510	757	1,425	393

Table 2-4 Number of Easements by State and Method Acquired*

*U.S. states or territories not listed in this table indicates that we did not receive any data from survey respondents for these geographic areas.

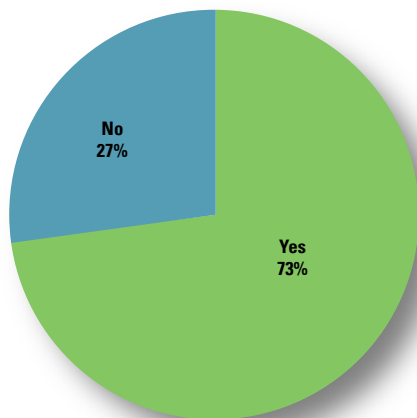


Figure 2-6: Percentage of Survey Respondents with Amendment Policies

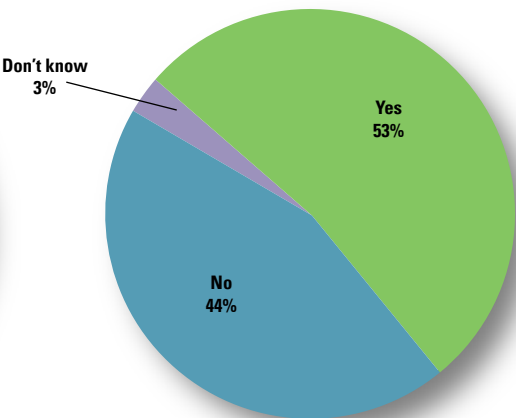


Figure 2-7: Percentage of Survey Respondents with Updated Amendment Policies

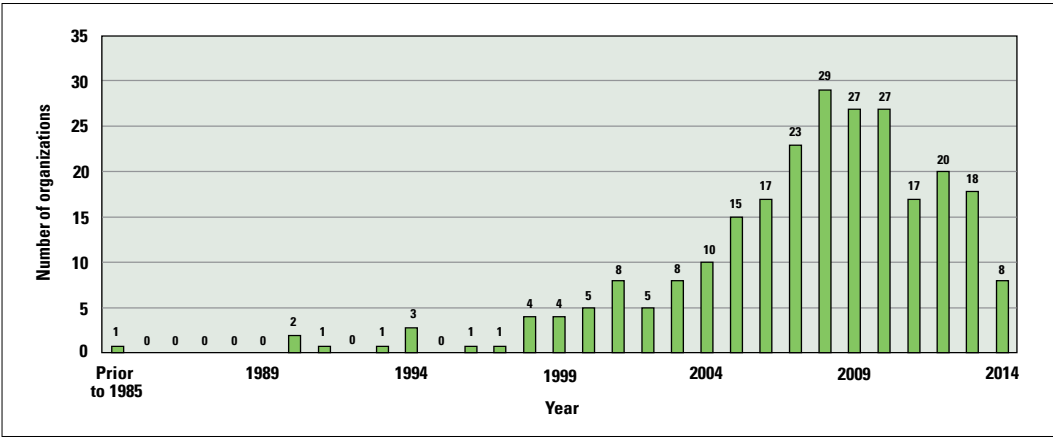


Figure 2-8: Year of Original Amendment Policy

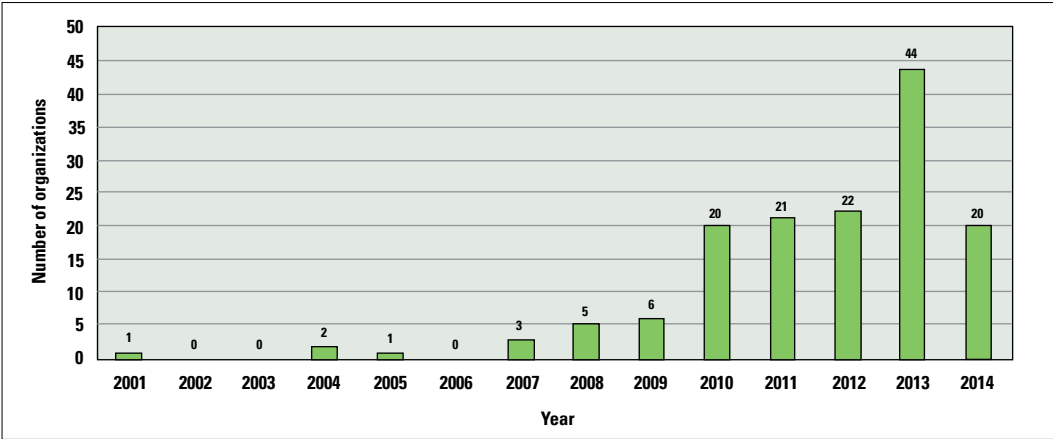


Figure 2-9: Year of Most Recent Update to Survey Respondents' Amendment Policies

Survey Results: Amendments or Modifications

The survey differentiated between easement amendment/modification and terminations or partial releases – even if an amendment deed had been used for the latter. For consistency with the IRS Form 990 Schedule D instructions, the survey defined an easement amendment as “one where the easement’s terms are amended or altered in any manner.” We referred respondents to a different section of the survey for terminations, extinguishments or releases.

In the survey, 211 land trusts reported a total of 2,093 amendments. This figure represents 7.6 percent of the easements held by the responding land trusts. Of note, 58 percent of amendments occurred since 2006. Only 17 percent occurred prior to 2000. Similar to the Form 990 research results, land trusts in the Northeast and West reported the most amendments (Northeast: 902 amendments, 43 percent; West: 728 amendments, 35 percent) (Tables 2-5 and 2-6; Figure 2-10).

Of the 211 land trusts that reported one or more amendments, 189 (90 percent) have an amendment policy and completed 98 percent of the 2,093 total amendments. The 22 land trusts who reported not having an amendment policy accounted for only 2 percent of the total amendments reported.

Reasons for Amendments

We asked land trusts to think about the amendments they completed since 2006 and to count them in the category that best describes the amendment’s *primary purpose*. More than 75 percent of these amendments fall into five broad categories: correcting errors, extinguishing reserved rights, adding acreage, adding new provisions and clarifying ambiguous terms. Land trusts reported 1,262 amendments in response to this question (Figure 2-11; Table 2-7).

Initiators of Amendments

The original easement grantor initiated more than half of all amendments since 2006 (Figure 2-12 to 2-14; Tables 2-8 and 2-9).

Declining Amendment Requests

Since 2006, land trusts reported declining 164 amendment requests. On average, 27 percent of amendment requests initiated by a party other than the land trust were declined. The top reasons for declining an amendment include (Figures 2-15 and 2-16):

- The amendment would diminish the conservation purpose of the easement (60 percent)
- It would confer private inurement or impermissible private benefit (28 percent)

Costs of the Amendment Process

For amendments completed since 2006, 37 percent of land trusts reported that they covered the costs of the amendment process. The survey revealed that 36 percent of land trusts reported that the landowner covered those costs. About 75 percent of land trusts responding to this question reported spending less than \$5,000 each year on average (Figures 2-17 to 2-19).

Conservation Outcomes

We asked land trusts to think about their most recent amendment and how they determined that there was a net positive or neutral outcome and that there was no private inurement or impermissible private benefit. When considering conservation outcomes, 83 percent of the respondents relied on internal analyses; 73 percent of organizations did not secure an appraisal or other external valuation when considering private benefit issues (Figures 2-20 and 2-21).

Legal Proceedings

Of the 180 organizations reporting any amendments since 2006 (Figures 2-22; Table 2-10):

- Ten went to court or used a judicial proceeding a total of 15 times in order to amend an easement
- Twelve sought approval by the state Attorney General a total of 68 times (29 times in New Hampshire)*
- Sixteen amended an easement a total of 20 times as a result of a legal judgment or settlement

* In New Hampshire, the Office of the Attorney General, through its Charitable Trusts Unit, is involved in the enforcement of the terms of perpetual conservation easements because they constitute charitable trusts under state law. As such, perpetual conservation easements may not be amended or terminated without compliance with applicable charitable trust principles and the involvement of the Charitable Trusts Unit.

Region	Prior to 2000	2000–2005	2006–2010	Since 2010
Midwest	9	43	67	55
Northeast	207	229	268	198
Southeast	22	56	124	87
West	125	193	228	182
Total	363	521	687	522

Table 2-5: Number of Amendments by Year Completed and Region

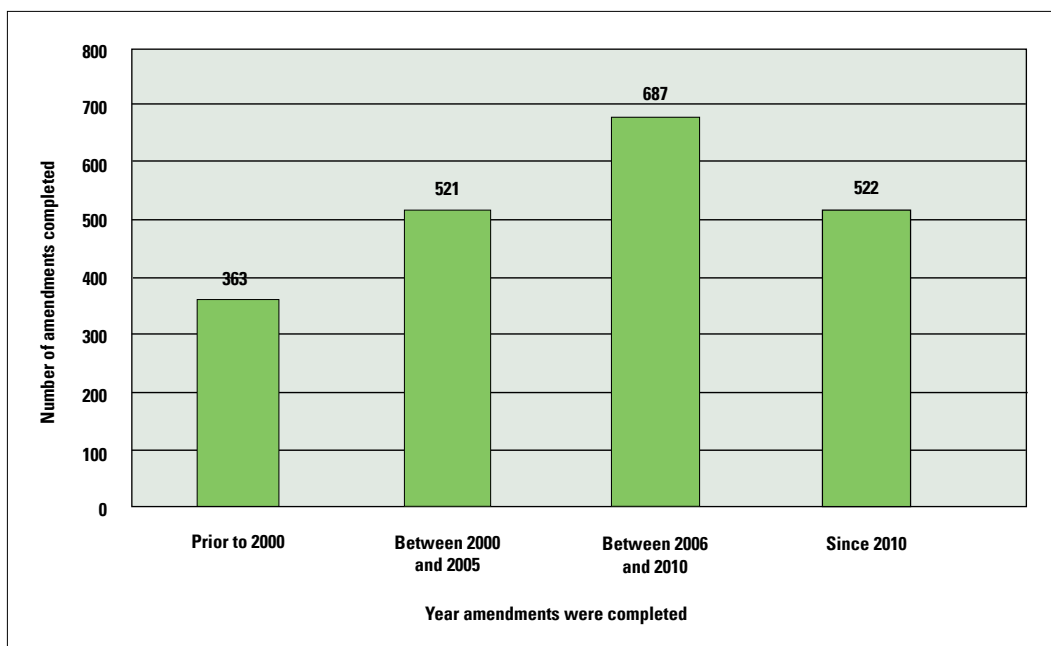


Figure 2-10: Number of Amendments by Year Completed

State	Prior to 2000	2000–2005	2006–2010	Since 2010	State	Prior to 2000	2000–2005	2006–2010	Since 2010
Alabama	0	0	0	0	Mississippi	0	5	5	6
Alaska	0	0	0	0	Missouri	0	0	0	2
Arizona	0	0	1	1	Montana	66	72	78	30
California	6	19	20	15	New Hampshire	36	40	36	38
Colorado	11	58	88	58	New Jersey	0	0	0	0
Connecticut	1	4	0	1	New Mexico	9	3	4	15
Delaware	0	0	0	0	New York	28	50	66	43
District of Columbia	1	2	0	0	North Carolina	2	11	25	17
Florida	1	7	15	6	Ohio	2	12	17	20
Georgia	0	5	7	12	Oregon	0	2	2	0
Idaho	0	2	1	2	Pennsylvania	54	73	53	30
Illinois	2	2	5	2	Rhode Island	0	1	3	2
Indiana	0	0	2	3	South Carolina	4	8	18	2
Iowa	1	1	2	1	Tennessee	15	15	15	21
Kansas	0	0	0	1	Texas	0	1	4	9
Kentucky	0	1	1	0	Utah	0	0	0	5
Louisiana	0	0	0	0	Vermont	17	19	69	36
Maine	13	17	19	22	Virginia	0	2	34	21
Maryland	36	16	15	12	Washington	18	26	22	38
Massachusetts	21	7	7	14	West Virginia	0	2	4	2
Michigan	4	11	13	10	Wisconsin	0	17	28	16
Minnesota	0	0	0	0	Wyoming	15	10	8	9
					Totals	363	521	687	522

Table 2-6: Number of Amendments by State and Year*

* U.S. states or territories not listed in this table indicates that we did not receive any data from survey respondents for these geographic areas.

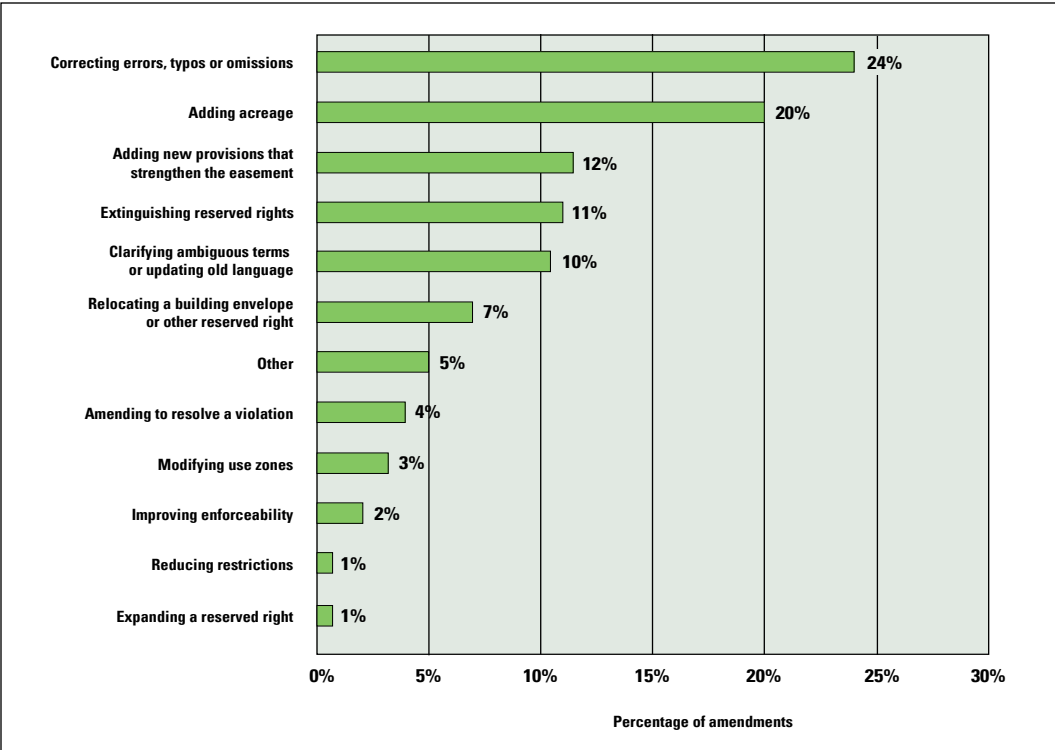


Figure 2-11: Reasons for Amendments

Reason	Midwest	Northeast	Southeast	West	Total
Correcting errors, typos or omissions	30	112	56	121	319
Extinguishing reserved rights	18	85	12	29	144
Adding acreage	31	87	53	97	268
Adding new provisions that strengthen the easements	18	51	45	40	154
Clarifying ambiguous terms or updating old language	25	45	21	47	138
Improving enforceability	4	11	4	9	28
Allowing a temporary, nonconforming use	0	2	0	3	5
Relocating a building envelope or other reserved right from one location in the easement area to another	16	38	11	28	93
Expanding a reserved right	1	2	4	2	9
Modifying use zones	11	22	7	2	42
Reducing restrictions	8	1	1	0	10
Amending to resolve a violation	3	29	12	8	52
Reducing the easement’s purposes	0	0	0	0	0
Total	165	485	226	386	1,262

Table 2-7: Reasons for Amendments by Region

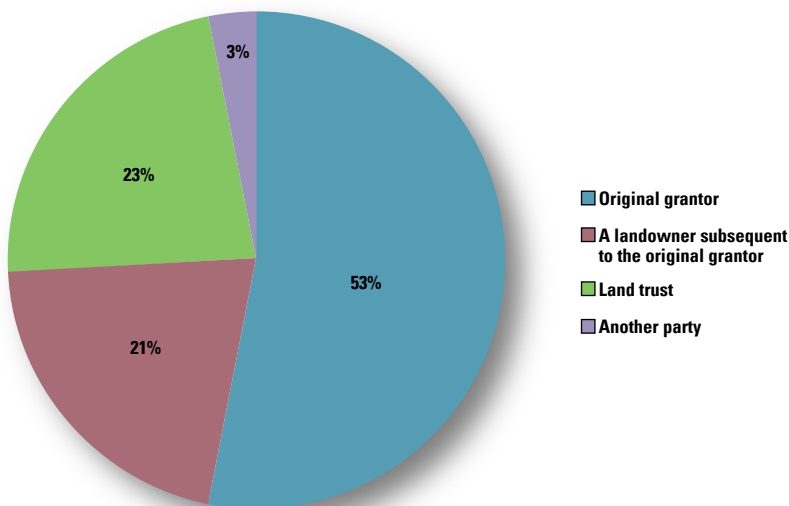


Figure 2-12: Percentage of Amendments by Initiating Party

	Midwest	Northeast	Southeast	West	Total
Original grantor	81	231	113	227	652
A landowner subsequent to the original grantor	21	148	42	48	259
Land trust	20	91	43	127	281
Another party	1	6	14	15	36
Total	123	476	212	417	1,228

Table 2-8: Number of Amendments by Region and Initiating Party

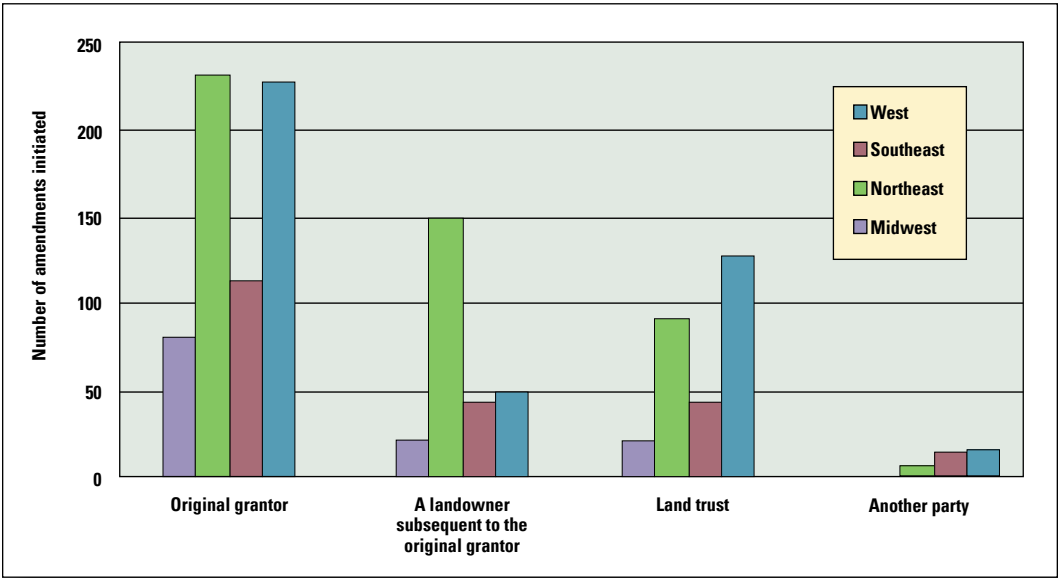


Figure 2-13: Number of Amendments by Region and Initiating Party

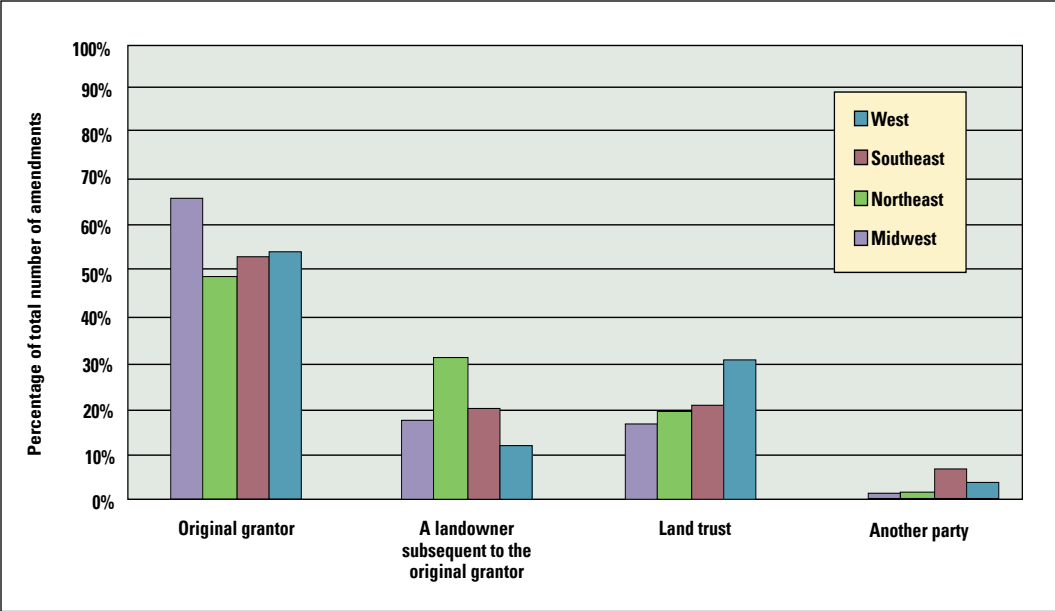


Figure 2-14: Percentage of Amendments by Region and Initiating Party

State	Original grantor	A landowner subsequent to the original grantor	Land trust	Another party
Alabama	0	0	0	0
Alaska	0	0	0	0
Arizona	1	0	1	0
California	23	7	5	1
Colorado	98	13	35	6
Connecticut	0	0	1	0
Delaware	0	0	0	0
District of Columbia	0	0	0	0
Florida	13	1	7	0
Georgia	11	5	2	1
Idaho	3	0	0	0
Illinois	4	2	1	0
Indiana	3	1	1	0
Iowa	3	0	0	0
Kansas	0	0	1	0
Kentucky	0	1	0	0
Louisiana	0	0	0	0
Maine	16	12	14	0
Maryland	13	9	5	0
Massachusetts	12	4	5	0
Michigan	14	4	5	0
Minnesota	0	0	0	0

Table 2-9: Number of Amendments by State and Initiating Party (continued on following page)

State	Original grantor	A landowner subsequent to the original grantor	Land trust	Another party
Mississippi	3	4	2	2
Missouri	2	0	0	0
Montana	49	13	44	2
New Hampshire	36	11	24	3
New Jersey	0	0	0	0
New Mexico	5	2	10	2
New York	46	43	20	0
North Carolina	19	2	19	2
Ohio	26	12	0	0
Oregon	1	0	0	1
Pennsylvania	36	35	18	3
Rhode Island	1	0	4	0
South Carolina	15	3	1	1
Tennessee	17	13	5	1
Texas	5	0	6	2
Utah	0	0	4	1
Vermont	71	34	0	0
Virginia	30	12	7	7
Washington	34	4	22	0
West Virginia	5	1	0	0
Wisconsin	29	2	12	1
Wyoming	8	9	0	0
Total	652	259	281	36

Table 2-9: Number of Amendments by State and Initiating Party (continued from previous page)*

* U.S. states or territories not listed in this table indicates that we did not receive any data from survey respondents for these geographic areas.

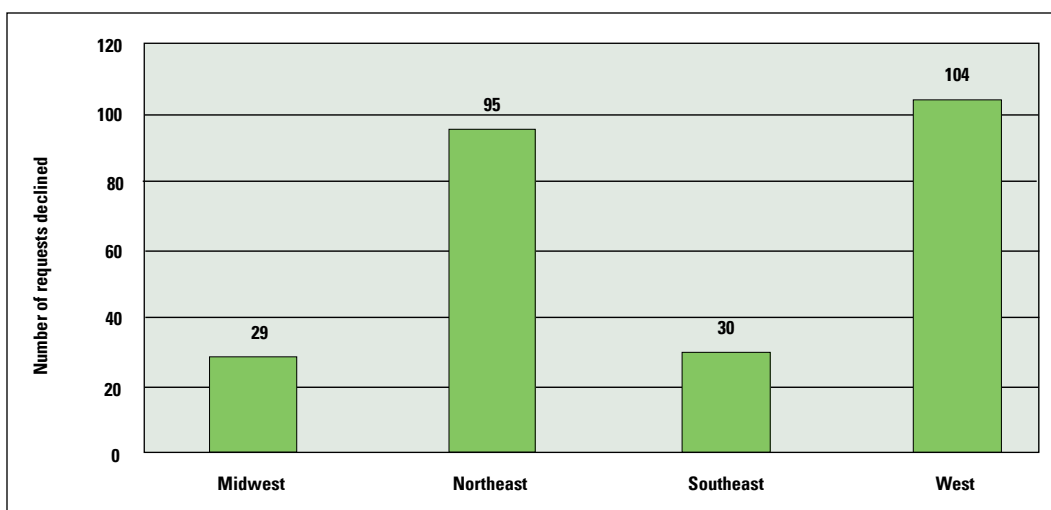


Figure 2-15: Number of Amendment Requests Declined

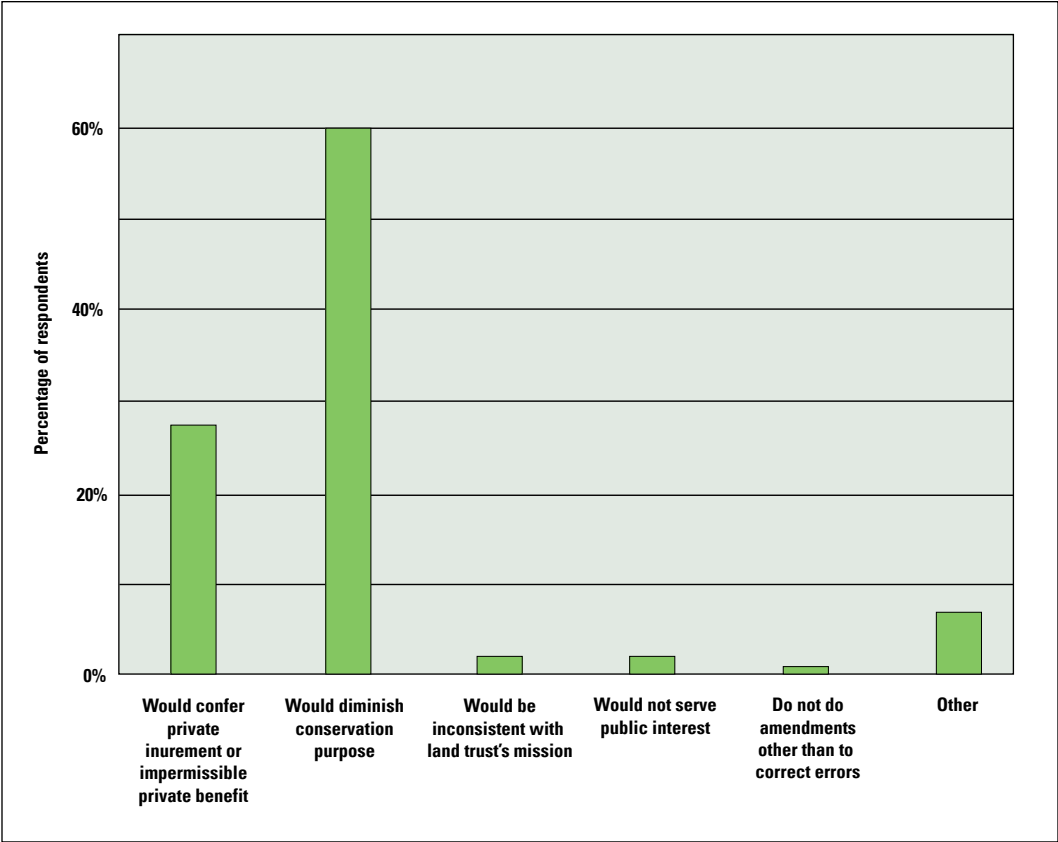


Figure 2-16: Top Reasons for Declining Amendment Requests

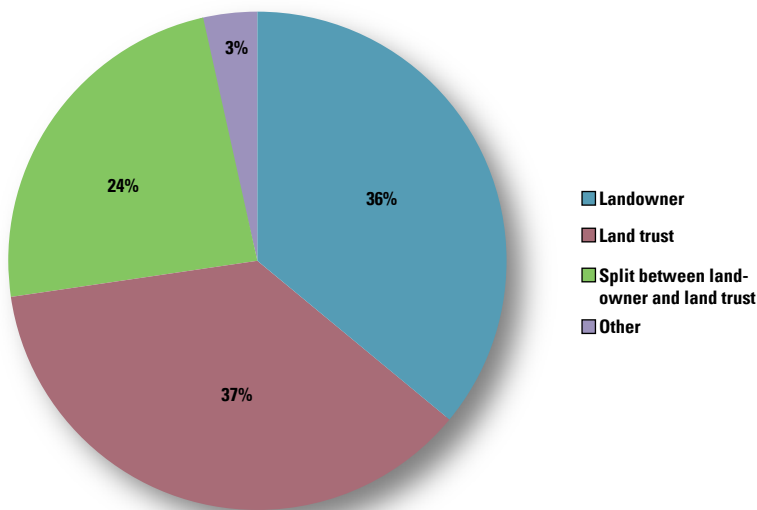


Figure 2-17: Average percentage of Amendment Costs Covered by Party for Amendments Completed Since 2006

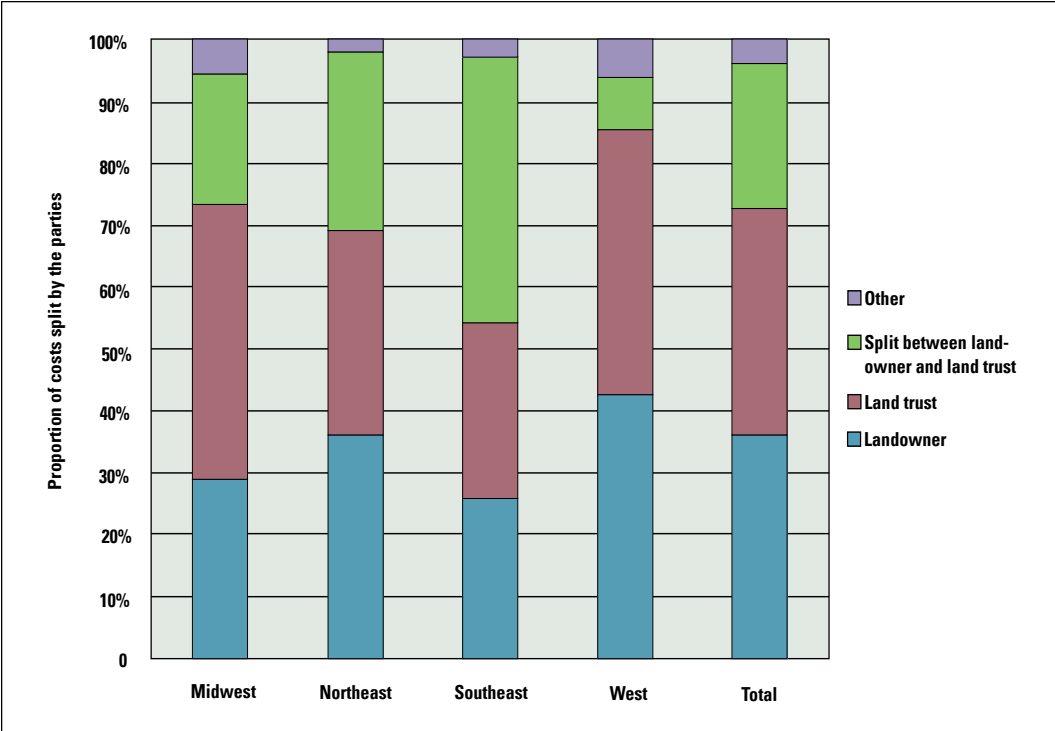


Figure 2-18: Average Percentage of Amendment Process Costs Covered

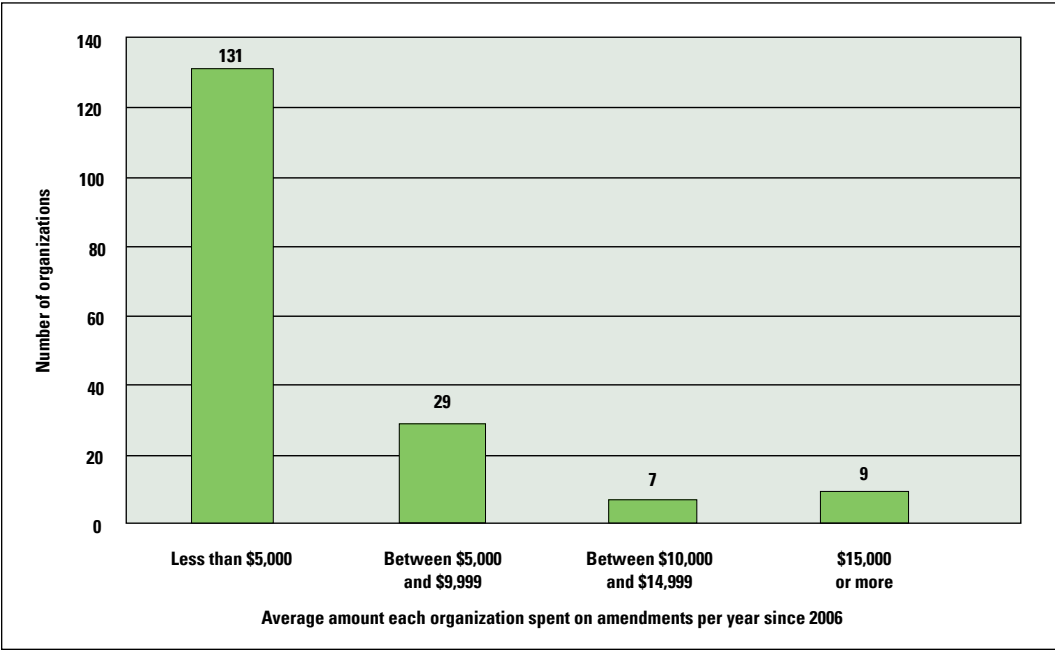


Figure 2-19: Average Amount Land Trusts Spent on Preparing and Completing Amendments per Year

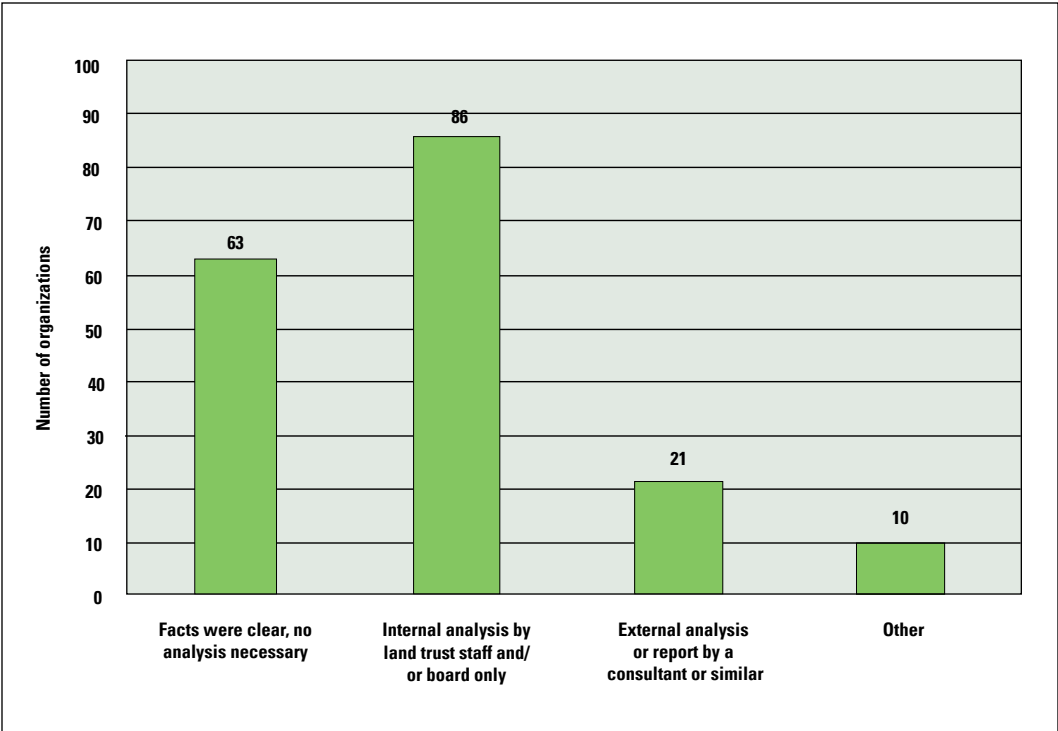


Figure 2-20: How Land Trusts Determined Net Positive or Neutral Conservation Outcomes

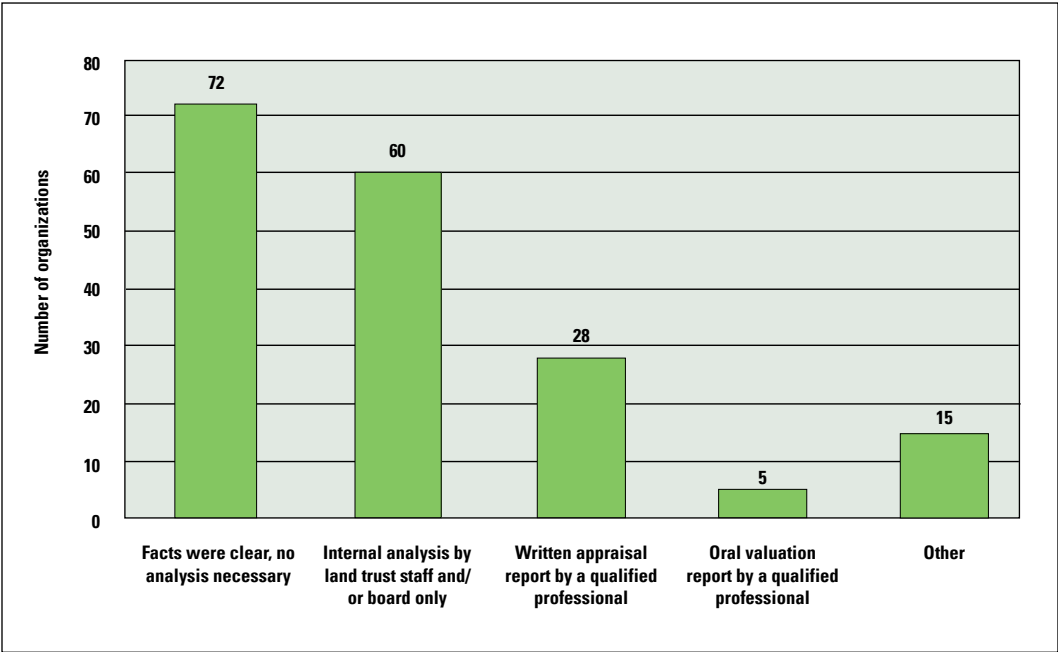


Figure 2-21: How Land Trusts Determined No Private Inurement or Impermissible Private Benefit

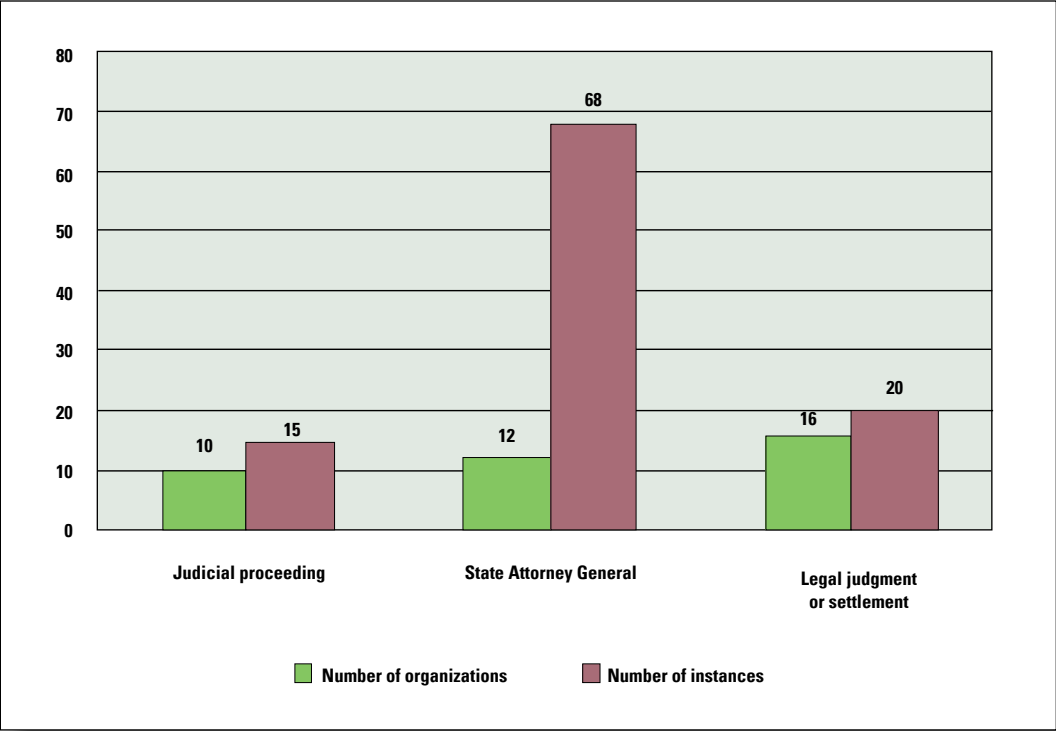


Figure 2-22: Number and Types of Legal Proceedings for Amendments

State	Judicial Proceeding	State Attorney General	Legal Judgment or Settlement
Alabama	X		X
California	X		X
Colorado	X	X	X
Delaware			X
Florida			X
Maryland	X		
Michigan		X	
Mississippi	X		X
Montana	X	X	X
New Hampshire	X	X	X
New York		X	
Pennsylvania	X		X
South Carolina	X		X
Texas	X	X	X
Wisconsin			X

Table 2-10: Legal Proceedings for Amendments by State*

*U.S. states or territories not listed in this table indicates that we did not receive any data from survey respondents for these geographic areas.

Survey Results: Policy Questions

External Review of Proposed Amendments

We asked respondents to consider under what circumstances they believe that land trusts should seek some kind of external review of a proposed amendment by a third party, such as a review panel or board, public official or public agency, before its execution. Survey results indicate that 70 percent of the respondents believe that an external review is appropriate in some circumstances. We then asked them to describe those circumstances; however, due to their broad scope, we are unable to categorize them for this report.

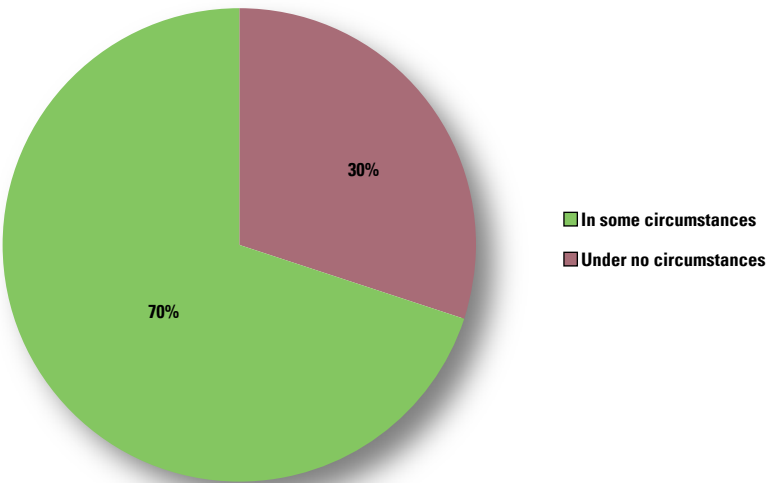


Figure 2-23: Opinions on External Review of Proposed Amendments by a Third Party

Survey Results: Terminations and Extinguishments

3

Definitions

Consistent with the IRS Form 990 Schedule D instructions, the survey defined easement terminations, extinguishments or releases as occurring when:

- All or part of the property subject to the easement is condemned
- The easement is extinguished by court order
- The easement is transferred to the landowner or in any way rendered void and unenforceable
- All or part of the property subject to the easement is removed from the protection of the easement, even if this takes the form of an “amendment”

Number of Terminations, Extinguishments and Releases

Land trusts reported a total of 35 easements released in whole and 155 easements released in part. These figures represent less than 0.70 percent (0.13 and 0.50 percent, respectively) of all the easements held by land trusts responding to this survey. The total amount of acreage released in whole is 2,395 acres. The total amount released in part is 2,207 acres. These figures represent 0.05 percent of the total reported easement acreage held by land trusts.

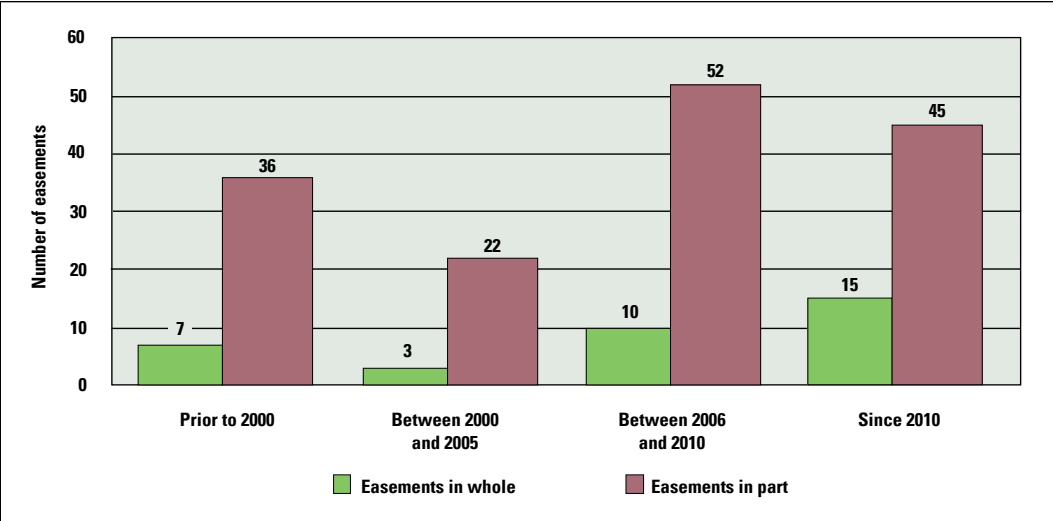


Figure 3-1: Number of Easements Released, Extinguished or Terminated

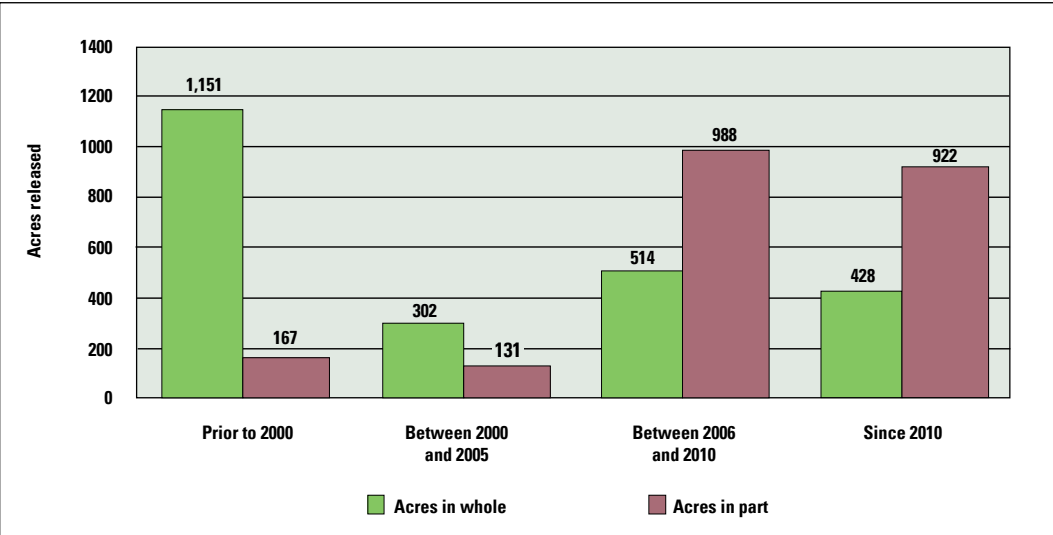


Figure 3-2: Number of Acres Released, Extinguished or Terminated

Region	Number of easements terminated in whole	Acres terminated in whole	Number of easements terminated in part	Acres terminated in part
Midwest	8	298	8	216
Northeast	10	343	97	1,104
Southeast	4	495	14	121
West	13	1,259	36	767
Grand Total	35	2,395	155	2,207

Table 3-1: Number of Easements Released, Extinguished or Terminated by Region (the sum of state or regional numbers may not add up to the total shown due to rounding)

State	Number of ease-ments terminated in whole	Acres terminated in whole	Number of ease-ments terminated in part	Acres terminated in part
Alabama	0	0	3	20
Alaska	0	0	0	0
Arizona	1	55	0	0
Arkansas	0	0	0	0
California	5	1,163	8	688
Colorado	7	41	3	5
Connecticut	0	0	1	902
Delaware	0	0	3	3
District of Columbia	0	0	0	0
Florida	1	257	1	0
Georgia	1	39	1	0
Idaho	0	0	0	0
Illinois	0	0	2	2
Indiana	1	30	0	0
Iowa	0	0	1	0
Kansas	0	0	0	0
Kentucky	0	0	0	0
Louisiana	0	0	0	0
Maine	1	160	1	15
Maryland	1	50	4	4
Massachusetts	4	89	7	88
Michigan	1	1	1	4
Minnesota	1	250	4	210
Mississippi	0	0	2	90
Missouri	0	0	0	0
Montana	0	0	14	54
New Hampshire	2	24	40	42
New Jersey	0	0	0	0
New Mexico	0	0	0	0
New York	1	13	2	5
North Carolina	1	169	0	0
Ohio	1	2	0	0
Oregon	0	0	0	0
Pennsylvania	1	7	9	11
Rhode Island	0	0	0	0
South Carolina	1	30	5	9
Tennessee	0	0	2	1
Texas	0	0	3	8
Utah	0	0	0	0
Vermont	0	0	30	33
Virginia	0	0	0	0
Washington	0	0	8	11
West Virginia	0	0	0	0
Wisconsin	4	15	0	0
Wyoming	0	0	0	0
Grand Total	35	2,395	155	2,207

Table 3-2: Number of Easements Released, Extinguished or Terminated by State (the sum of state or regional numbers may not add up to the total shown due to rounding)*

*U.S. states or territories not listed in this table indicates that we did not receive any data from survey respondents for these geographic areas.

Reasons for Terminations, Extinguishments and Releases

We asked land trusts to think about the easements they released, extinguished or terminated – in whole or in part – since 2006 and to count them in the category that best describes the *primary reason*. The survey revealed that 51 percent of the total releases represent a condemnation or settlement in lieu of condemnation, in whole or in part (Figure 3-3).

Legal Proceedings

Of the 63 organizations that released, extinguished or terminated any easements, in whole or in part, since 2006 (Figure 3-4; Table 3-3):

- Twelve went to court or used a judicial proceeding a total of 16 times
- Six sought approval by the state Attorney General a total of 13 times (eight times in New Hampshire)
- Eleven terminated an easement a total of 14 times as a result of a legal judgment or settlement

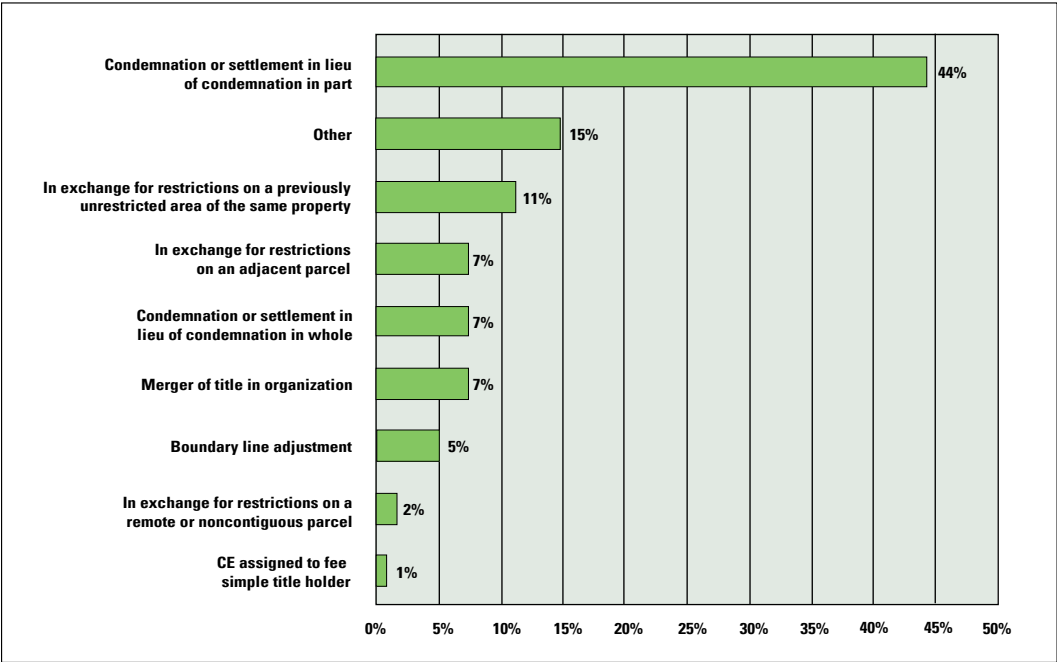


Figure 3-3: Reasons for Releasing, Extinguishing or Terminating Easements

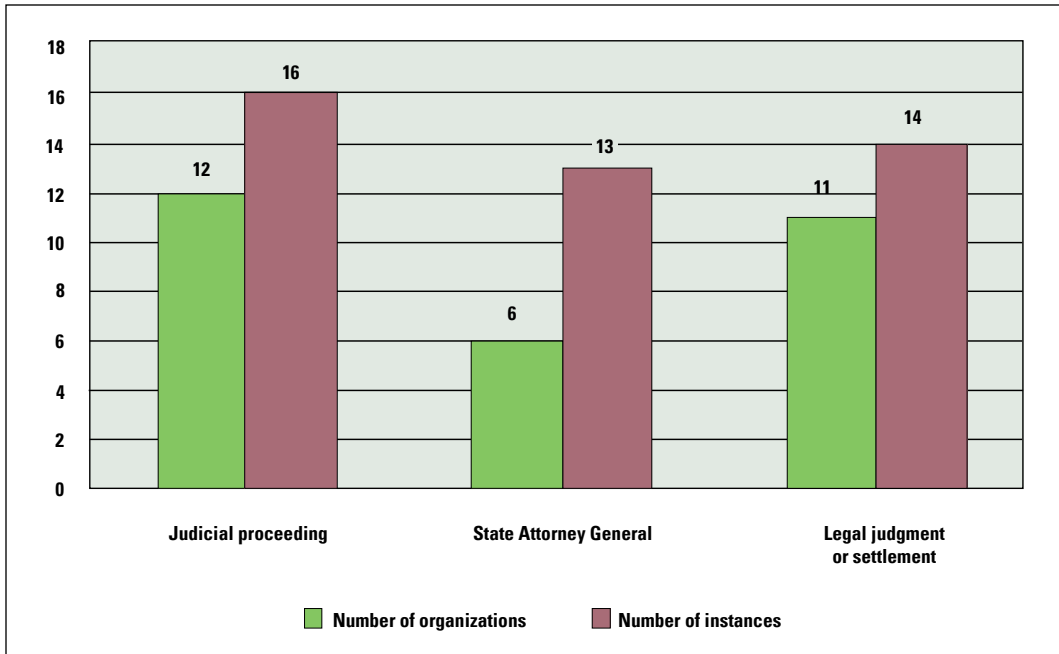


Figure 3-4: Number of Legal Proceedings in Cases of Termination

State	Judicial Proceeding	State Attorney General	Legal Judgment or Settlement
Alabama			X
California	X		X
Colorado	X	X	X
Illinois			X
Maryland	X		X
Michigan	X		
Mississippi	X		X
Montana	X		X
New Hampshire	X	X	X
New York		X	
North Carolina	X		X
South Carolina	X		X
Texas	X	X	

Table 3-3: Legal Proceedings in Cases of Termination by State*

* U.S. states or territories not listed in this table indicates that we did not receive any data from survey respondents for these geographic areas.

Judicial Approval of Easement Termination

We asked respondents to consider under what circumstances they believe land trusts should seek judicial approval of an easement termination, in whole or in part. Survey results indicate that 75 percent of the respondents believe that judicial review is appropriate in some circumstances. We then asked them to describe those circumstances; however, due to their broad scope, we are unable to categorize them for this report.

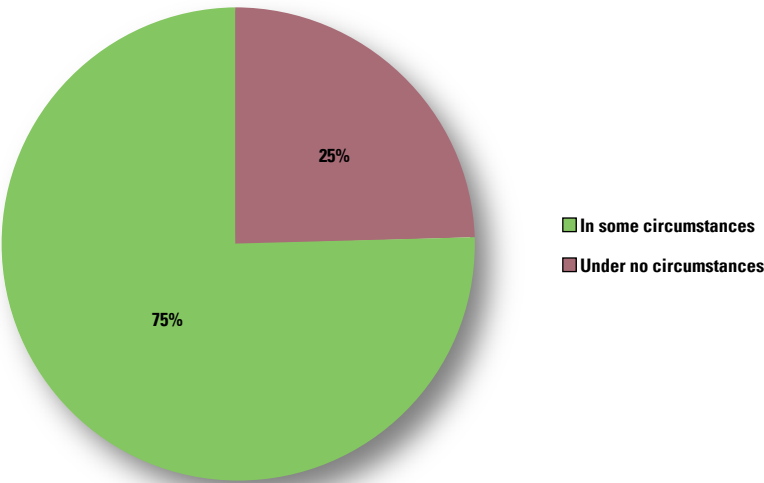


Figure 3-5: Opinions on Judicial Approval of Easement Termination

IRS Regulations and Tax Law Regarding Easement Termination

The IRS regulations do not address amendments, but federal tax law requires that conservation easements intended to be tax-deductible prohibit extinguishment unless a court determines that accomplishment of the conservation purposes is “impossible or impractical.” We asked land trusts what changes, if any, they would like to see to 170(h) or the Treasury regulations to address easement amendments or terminations that would help ensure conservation permanence and preserve public trust in land trust work. According to the survey, 64 percent of the respondents replied that they don’t know or did not want change.

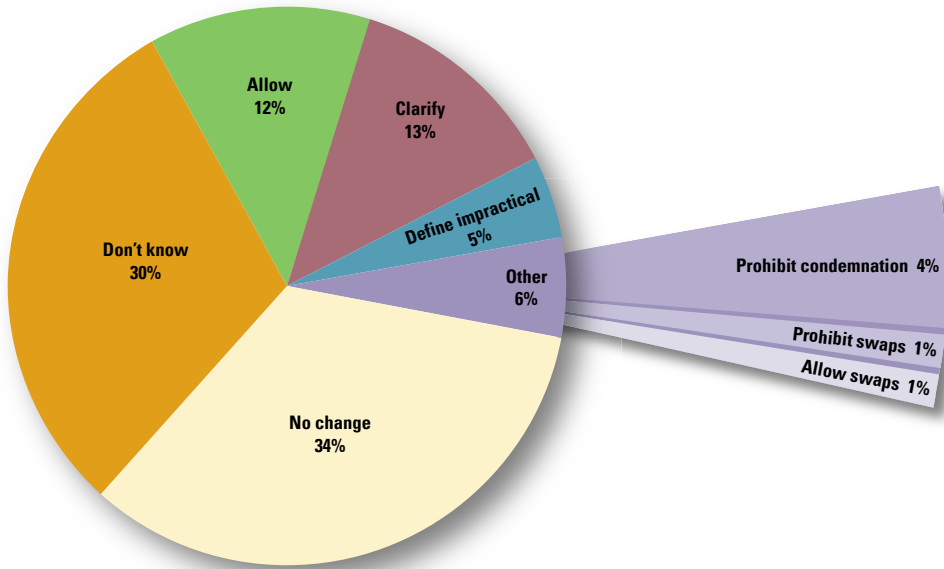


Figure 3-6: Opinions on Proposed Changes to 170(h) or the Treasury Regulations to Address Easement Amendments or Terminations

Conclusion

Whether, when and how to modify conservation easements speaks to the heart of the land trust community's obligation to protect land in perpetuity and serve the public interests. We thank the land trust personnel who responded to this survey. Your willingness to share your experiences and perspectives is invaluable and will help inform our plans to conduct follow-up research and reissue the 2007 *Amendment Report*. You can access the *Amendment Report* at <http://tlc.lta.org/amendmentreport>. While some issues remain unresolved, the Alliance will continue to foster a community of people committed to respectful discussion of the complexities surrounding easement modification and termination.