

Preserving Open Space:
The Private Alternative

Robert Franciosi

Arizona Issue Analysis 155
February 1999

It is often noted and well remembered that Arizona is one of the states with the fastest growing population in the nation. The growth of our population during the 1990s, 24 percent, ranked only behind Nevada. The state's growth rate in the 1980s was third, once again behind Nevada, and Alaska. This rapid growth has created the worry that Arizona's exceptional natural beauty will soon be buried under tract houses, golf courses and strip malls; a worry leading to several government initiatives to preserve the State's natural heritage.

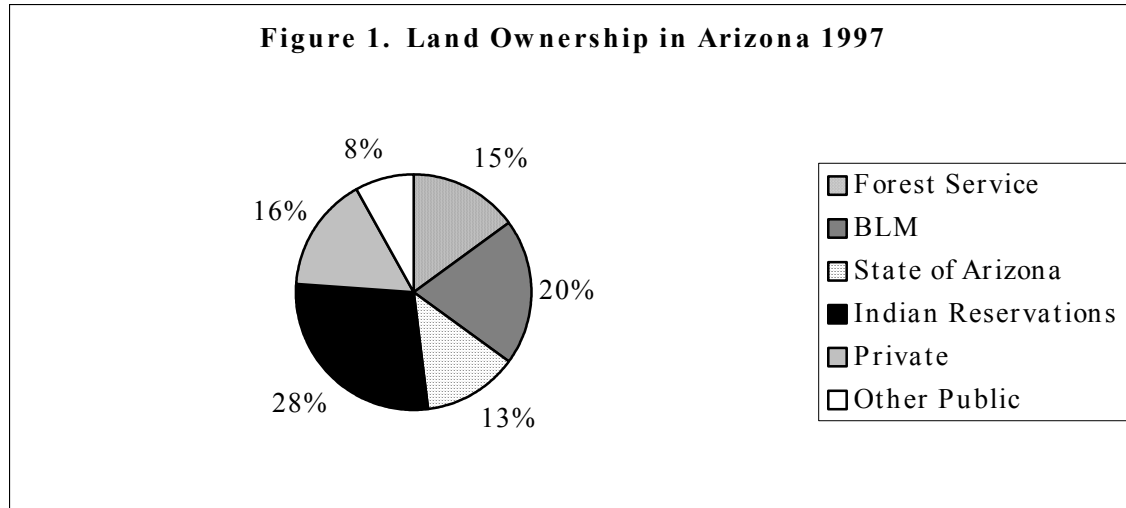
It is not necessary, however, for Arizona's residents to prod elected officials and bureaucrats into action in order to conserve the state's natural beauty. There is a long tradition, in this state and nationwide, of private citizens using private resources to conserve nature. This report looks at one of the means of private conservation: the land trust. Land trusts, as defined by the Land Trust Alliance, are nonprofit organizations that work to conserve land by undertaking or assisting direct land transactions. Land trusts acquire, through purchase or donation, land or conservation easements on land. The organization itself may hold these acquisitions, or transfer them to a public agency. Through various means, land trusts have conserved 3.2 million acres in the United States.¹

Land in Arizona

Before looking at how land trusts preserve open space, it is worth looking at the present situation on the ground. Figure 1 shows land ownership in Arizona. Roughly 16 percent of the land in Arizona is in private hands. Cochise County has the largest portion of land privately owned (41 percent). Only 30 percent of the land in Maricopa County and 11 percent of the land in Pima County is private.

Thirteen percent of land in Arizona is state trust land. This is land given to Arizona by the federal government when Arizona was established as a territory in 1863 and in 1910 when it was preparing for statehood. By state and federal law the state must assure the highest and best use of trust land in order to benefit public schools, colleges, hospitals, charitable institutions and other designated beneficiaries of revenue from use of the land. Fair market value must be obtained from all trust land transactions, including sales and commercial leases.

¹ Land Trust Alliance (1998), *1998 National Directory of Conservation Land Trusts*, Washington, DC.



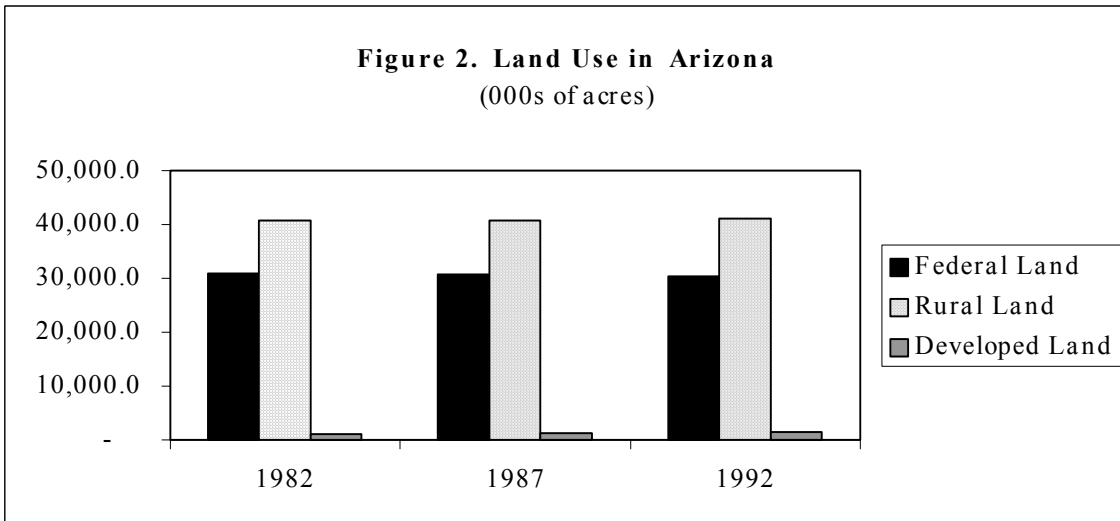
Source: Arizona Agricultural Statistics Service, *1997 Arizona Agricultural Statistics*, Phoenix, AZ, 1998.

In 1996, the Arizona Legislature passed and the governor signed into law the Arizona Preserve Initiative (API). The API created a process where trust land can be leased or sold for conservation purposes. The original legislation specified that only trust land inside a city or town, or within one to three miles of an incorporated municipality could be classified for conservation. Amendments in 1997 expanded the amount of eligible land to include land in Maricopa and Pima Counties ten miles beyond the original 1996 boundaries and land near the Superstition and Tortolita Mountains.

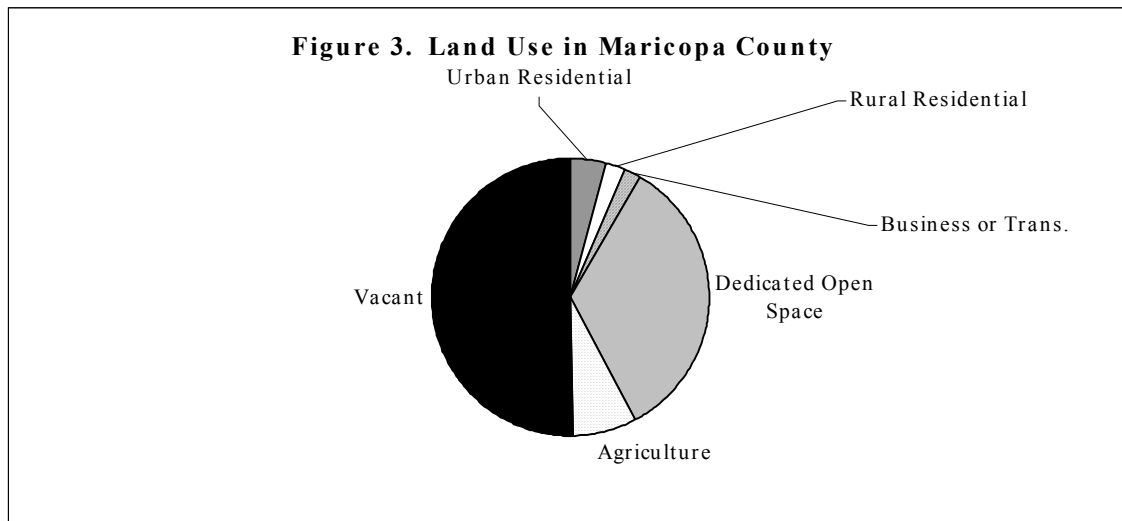
In 1998, the Growing Smarter Act expanded the opportunity for private conservation on state trust lands. First, it authorized the sale of development rights through the API on state trust lands throughout the state. The intent is that any rights to develop purchased through the API would not be exercised, and the land would remain in its current use as range or farmland, for example. The Growing Smarter Act also provided for grants to nonprofit, land preservation organizations, that is land trusts, to purchase or lease state trust lands or development rights on state trust lands. Finally, the Act allowed landowners and those who lease state trust land for agriculture or grazing to enter into a contract with the state. In return for state funds, the private farmer or rancher would agree to provide wildlife habitat or other conservation benefits through 1) alternative, conservation-based livestock management or crop production; or 2) reduction of livestock or crop production.

Figure 2 shows the trend in land use in Arizona from 1982 to 1992, the last year for which data is available. Over this time period there has been little change. The federal government owns

approximately 42 percent of the land. Fifty-six percent of the land is rural, that is cropland, pasture, range and forest, but not federally owned. Roughly 2 percent of land in the state is non-federal and developed. Even Arizona’s most urbanized county, Maricopa, is largely open space: 50 percent is vacant, 33 percent is dedicated open space and 7 percent is used for agriculture. Only 8 percent is developed. (Figure 3)

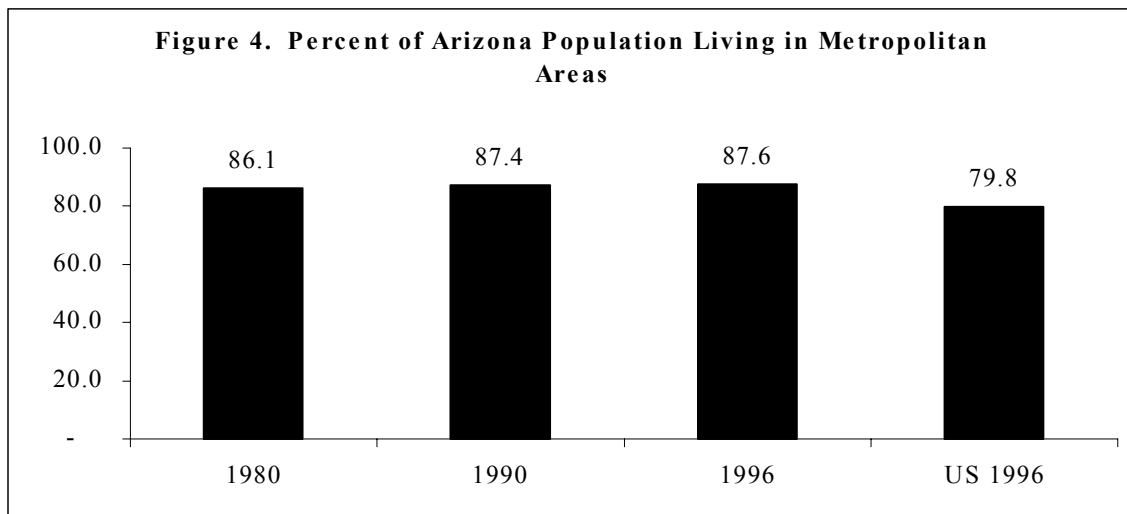


Source: US Department of Agriculture, Soil Conservation Service, 1992 National Resources Inventory, www.nhq.nrcs.usda.gov/NRI/tables/1992/table1.html



Source: Maricopa County, *Land Use Element Inventory and Analysis Report*, 1996.

The fact that so little land in the state is owned by the private sector, combined with constraints on resources such as water, creates de facto growth boundaries that funnel population growth into Arizona's two metropolitan areas—Phoenix and Tucson. Consequently, Arizona's population is more urbanized than the nation as a whole (87.6 percent versus 79.8 nationally), and has actually become more urbanized over the past 20 years (86.1 percent in 1980 versus 87.6 percent in 1996). (Figure 4)



Source: U.S. Bureau of the Census, *Statistical Abstract of the United States: 1998* (118th edition) Washington, DC, 1998.

Because so much open space in Arizona is already owned by the government limits the scope of private land trusts. This is the opposite of the situation in eastern states. In Massachusetts, where the land trust concept was born, the federal government owns 1 percent of the land, and there are 137 land trusts preserving 150,000 acres. There are 113 land trusts that have conserved 54,000 acres in Connecticut, where the federal government owns 0.2 percent of the land. In Arizona, where the federal government owns 42 percent of the land, there are around ten local and regional land trusts that have preserved approximately 3,000 acres.²

² Land Trust Alliance, note 1. U.S. Bureau of the Census, *Statistical Abstract of the United States: 1998* (118th edition) Washington, DC, 1998.

The Private Conservation Tradition

Efforts to preserve the environment are often seen as penance the beneficiaries of modern civilization must pay for despoiling the Earth Mother. The reality is that people like nature. They like to see it, they like to play in it, they like to contemplate its existence. As with all other human wants and needs, there are private entrepreneurs who seek to fulfill the public's demand for nature; people Terry Anderson and Donald Leal of the Political Economy Research Center call "enviro-capitalists."

The tradition of private conservation in the United States is long and deep. At a time when the government was paying bounty hunters to kill hawks, Rosalie Edge and a group of friends sought to save the raptors by purchasing Hawk Mountain in Pennsylvania and closing it to hunters. There is a similar story about Sea Lion Caves in Oregon, where the owners of the caves fought, sometimes with actual firearms, government bounty hunters. The first wildlife warden in U.S. history to be killed in the line of duty, Guy Bradley, was a private warden working for the Audubon Society. Although many enviro-capitalists preserve nature for personal satisfaction, the search for monetary profit has also added impetus to conservation efforts. Executives of the Northern Pacific Railroad, anticipating increased revenue from tourists, lobbied for the creation of Yellowstone National Park in 1872.³

In Arizona, private efforts were responsible for saving Camelback Mountain, the imposing sandstone and granite ridge and familiar landmark in the Valley of the Sun. Camelback Mountain was divided among private landowners, and there was even talk of putting a revolving restaurant on top. The Preservation of Camelback Mountain Foundation, chaired by Senator Barry Goldwater, sought to raise private money to buy land on the mountain from its owners. Goldwater convinced some landowners to donate their land, others to sell below full value. He personally pledged \$25,000, and his mother did the same. Overall 2700 individuals, in addition to hundreds of school children, donated money in amount ranging from 25 cents to \$25,000. The efforts of Goldwater and the Foundation helped to acquire a substantial part of the south slope, and federal matching funds help to wrap up additional

³ Political Economy Research Center (1998), "Enviro-Capitalists: Nature's Entrepreneurs," PERC Reports, **16**:4 (December), Bozeman, MT. Comments by Robert J. Smith in "What Makes for a Good Land Trust? A Roundtable Discussion" Competitive Enterprise Institute, Center for Private Conservation, Washington, DC.

acreage on the north side. On July 8, 1968, the Foundation handed the deeds and money it had acquired to the City of Phoenix.⁴

⁴ Peter Iverson (1997), *Barry Goldwater: Native Arizonan*, University of Oklahoma Press, Norman, OK, pp. 207-210.

What Is a Land Trust?

As mentioned above, land trusts are private, nonprofit organizations devoted to preserving land in its natural state. The first land trust was founded more than 100 years ago in New England, where more than a third of the land trusts in the U.S. are based. Currently there are over 1,200 land trusts in the U.S. and its territories that have worked to preserve 3.2 million acres of land. Table 1 shows the number of land trusts and the amount of land they protect in Arizona and nationwide. (Table 1 does not include land preserved by the large, national land trusts like the Nature Conservancy.)

Table 1. Land Trusts, Arizona and U.S.		
	Arizona	U.S. and Territories
Number of trusts	10	1,213
Total acres	3,339	3,183,570
Acres owned	280	827,566
Acres under easement	857	1,384,883
Acres transferred to govt. agency	2,202	971,121
Source: Land Trust Alliance (1998), <i>1998 National Directory of Conservation Land Trusts</i> , Washington, DC.		

The common methods used by land trusts are acquiring land outright through purchase or donation, or obtaining, again by purchase or donation, conservation easements. A conservation easement is a permanent deed restriction that limits what all or part of a parcel of land may be used for. The first conservation easement was written in the 1880s by Frederick Law Olmstead Sr. to protect parkways in and around Boston. In 1976, the federal government recognized easements as tax deductible donations.⁵

Land Trusts in Arizona

The land trusts based in Arizona are small. They typically have a staff of one or two part-timers. Memberships range from 50 to 1,500; budgets from \$1,000 to \$50,000 per year. There are several large, multi-state land trusts operating in Arizona, the most notable being the Nature Conservancy. Founded in the 1950s, the Nature Conservancy has expanded internationally. It began operating in Arizona in 1965 with the purchase of the Patagonia-Sonoita Creek Preserve. Currently, it has 13 preserves throughout the state, protecting 18,000 acres. In partnership

⁵ Land Trust Alliance, www.lta.org/whaltlt.html.

with private landowners and federal, state and local governments, it has helped to preserve an additional 800,000 acres.⁶

Other land trusts operating in Arizona include:

Desert Foothills Land Trust. Founded in 1991, the Desert Foothills Land Trust is focused on preserving land in northern Maricopa County in the area surrounding Cave Creek, Carefree, New River and the northern part of Scottsdale. The Trust launched itself with a thorough planning process that involved identifying land types that needed preservation, assigning each type a priority and conducting an inventory of potential sites within the Trust's area of operations. A two-year botanical survey was conducted and the data entered into a geographical information system database developed by the Trust. The Trust currently gives highest priority to riparian habitat. It has seven preserves, totaling over 100 acres.⁷

McDowell Sonoran Land Trust. The McDowell Sonoran Land Trust is one of the largest, Arizona based trusts with 400 members and an annual budget of \$46,000, although it currently does not own any land. Founded in 1991 to protect the McDowell Mountains, the trust played an integral role in the creation of the 25 square mile McDowell Sonoran Preserve in the City of Scottsdale. Creation of the preserve was the vision of the Trust's founders, and it pushed for action by the Scottsdale City Council. Members of the Trust served on the City's McDowell Sonoran Preserve Commission, providing conceptual and technical assistance, and helping to develop an acquisition priority list. Finally, the Trust lobbied for the passage of a sales tax to finance land purchases. The Trust is presently devoted to educational and advocacy activities, and has received national attention for an environmental education curriculum that it has developed, and is taught in local schools.⁸

Malpai Borderlands Group. Founded in 1994, the Malpai Borderlands Group is a non-membership association of ranchers,

⁶ Steve Yozwiak (1998), "Preserve Is Effort to Save Flycatcher, Desert Forest," *The Arizona Republic*, October 24, p. A8. The Nature Conservancy, Arizona Chapter, <http://tncnt.tnc.org>.

⁷ Michael Francis Warren (1996), *Private Land Conservation Efforts in Arizona: A Multiple Case Study of Local Nonprofit Land Trusts*, Masters thesis, Arizona State University, pp. 80-96.

⁸ Warren op cit. note 7 pp. 123-139. Chet Andrews and Robert J. Cafarella (1997), "Cooperation Builds Community Support for a Preserve," *Land Trust Alliance Exchange*, Spring, pp. 8-9.

conservationists, scientists and government agencies dedicated to preserving open space, wildlife and the traditional way of the rural areas in southern Arizona-New Mexico border region. The Group has received national attention including a MacArthur Foundation Genius Grant for one of its founders, Bill McDonald. The Group has spent \$400,000 on conservation easements to ensure that land remains as rangeland and is not developed. It also developed "grass banking." A rancher who participates in the bank grants the group an easement that bars major development but allows sporadic grazing. In return, the rancher receives the right to graze on land owned by the Group. In the past participating ranchers have been allowed to graze their cattle on Gray Ranch, land in New Mexico owned by a private conservation trust.⁹

Del E. Webb Land Conservancy. The Del E. Webb Land Conservancy is a nonprofit corporation, founded in 1996, is a wholly owned by the Del Webb Corporation. Based in Arizona, the Conservancy holds land in Del Webb communities across the United States. When a developer builds a community, it is sometimes the case that local, state and federal regulations prohibit building on parts of the land the developer has purchased from local landowners because the land is habitat for rare species or contains archaeological sites. In the Del Webb community in Georgetown, Texas for example, 50 percent will be left as open space, including 26 karst caves that serve as habitat for the Bone Cave Harvestman Spider and the Coffin Cave Mold Beetle. Rather than turn the responsibility for maintenance and the liability over to the local homeowners' association, Del Webb transfers the land to the Land Conservancy to ensure its long-term preservation.¹⁰

Conclusion: The Advantages of Private Conservation

There is a vast literature written by philosophers, economists, political scientists and others on the moral and material superiority of voluntary, private actions over a system based on politics and government commands. Private conservation efforts, like land trusts, embody these virtues. Landowners are compensated for their land, instead of having its value taken out from under them. Taxpayers are

⁹ Chas Erickson (1997), "U.S Meddling Makes Mess of Jaguar-Protection Situation," *The Arizona Republic*, August 19, p. B6. Charles McCoy (1996), "Cattle Ranchers Find Green Middle Ground Offers Rough Ride," *Wall Street Journal*, September 24, p. A1. Mark Shaffer (1998), "Rancher Qualifies as 'Genius'; Taking Care of Range Wins \$285,000 Grant," *The Arizona Republic*, June 2, p. B1.

¹⁰ Del Webb Corporation, "Environmental Intelligence."

not asked to finance amenities they neither want nor need. Private conservation preserves both the environment and individual liberty.

Of course, there are those who believe that nature trumps individual rights, and it is easier to lock-up land with government muscle and money than through private action. There is no objective way of knowing the ideal trade-offs among various land uses—how much land “should” be left as open space. However for a society that values both nature and liberty, it is better that these decisions be left as much as possible to private transactions, rather than political combat in the courts and legislature.

Private conservation does offer advantages for those who care deeply about the environment. First, public land is *public* land, and although some members of the public may be happy simply contemplating its preservation, others will want to walk on it; or ride horses, bikes or motorcycles across it; and camp, hunt and fish on it. It is hard for elected officials to deny citizens these wishes, since after all, their taxes paid for the land in the first place. Private conservation allows those who place highest value on pristine nature, in this case the members of the land trust, to ensure that it gets top priority in land use. Indeed, land trusts prohibit public access to especially sensitive land that they own.

In addition to taking land use decisions out of the political arena, private conservation can foster a conservation ethic that is difficult to develop with publicly held land. Instead of park rangers versus park visitors, there are land stewards. Private conservation offers more opportunities for involvement in caring for the land, like maintaining trails, surveying wildlife, conducting tours, improving habitat or making important decisions about use. Private conservation gives the individual much more power than he or she has as one of the over 260 million citizen “owners” of the Grand Canyon or Yosemite.

Freed from government regulations, private groups are also much more nimble and quick when it comes to purchasing or preserving land. Public agencies have taken advantage of the flexibility of private organizations through private-public partnerships to buy land. Between 1985 and 1991 the National Park Service and the U.S. Fish and Wildlife Service completed 273 land acquisitions that were assisted by nonprofit organizations, for a savings of \$32.3 million. Some private property rights advocates have accused the big land trusts of being too cozy with the government, and of adopting more heavy-handed tactics.¹¹

¹¹ Eve Endicott ed. (1993), *Land Conservation Through Public/Private Partnerships*, Lincoln Institute of Land Policy, Island Press, Covelo, CA, p. 4. National Research

Embodying the principles of voluntary, private action and individual responsibility, private conservation and land trusts offer a way of conservation superior to mandates and litigation. A major difficulty to their widespread application in Arizona is that most of the land in the state is not in private hands. With government already locking up so much open space, the scope of private action is mostly limited to the fringes of urban areas and efforts at sustainable ranching like the San Rafael Valley Land Trust and the Malpai Borderlands Group. Nevertheless, this is very important work since disappearing land on the urban fringe is the source of most of the popular angst regarding growth. Land trusts allow neighbors to manage growth in a way that is consistent with private property rights.

Council (1993), *Setting Priorities for Land Conservation*, National Academy Press, Washington, DC. Carol W. LaGrasse (1996), "The Non-Profit-Government Interface: Quietly Acquiring Private Property," Address to the 2nd Annual New York Conference on Private Property Rights, October 19, the Property Right Foundation of America, Inc. Stony Creek, NY.

Appendix: Land Trusts in Arizona

Arizona Open Land Trust

6737 East Opatas
Tucson, AZ 85717
(520) 298-3157 Phone
(520) 622-7112 Fax

Cascabel Hermitage Association

55 West Franklin
Tucson, AZ 85701
(520) 884-5238 Phone

Central Arizona Land Trust

P.O. Box 1050
Prescott, AZ 86302
(520) 445-5038 Phone
(520) 778-5300 Fax

Desert Foothills Land Trust

P.O. Box 4861
Cave Creek, AZ 85331
(602) 488-6131 Phone
(602) 488-5545 Fax

Del E. Webb Land Conservancy

6001 N. 24th St.
Phoenix, AZ 85016

Forest Trust

P.O. Box 519
Santa Fe, NM 87504-0519
(505) 983-8992 Phone
(505) 986-0798 Fax

McDowell Park Association

P.O. Box 18613
Fountain Hills, AZ 85269
(602) 837-3026 Phone
(602) 837-6305 Fax

McDowell Sonoran Land Trust

P.O. Box 14365
Scottsdale, AZ 85267-4365
(602) 998-7971 Phone
(602) 786-6161 Fax

Malpai Borderlands Group

6226 Geronimo Trail Rd.
P.O. Drawer 3536
Douglas, AZ 85608
(520) 558-2470 Phone
(520) 558-2314 Fax

The Nature Conservancy (Arizona Chapter)

300 East University Blvd.
Suite 230
Tucson, AZ 85705
(520) 622-3861 Phone

Prescott Creeks Preservation Association

P.O. Box 3004
Prescott, AZ 86302-3004
(520) 771-8300 Phone

Rincon Institute

7290 East Broadway Blvd.
#M
Tucson, AZ 85710
(520) 290-0828 Phone
(520) 290-0969 Fax

Rocky Mountain Elk Foundation

P.O. Box 8249
2291 West Broadway
Missoula, MT 59807-8249
(406) 523-4553 Phone
(406) 523-4550 Fax

San Rafael Valley Land Trust

HCR 2 Box 179
Patagonia, AZ 85624
(520) 455-5310 Phone
(520) 455-5006 Fax

Southern Arizona Grasslands Trust

P.O. Box 694
Sonoita, AZ 85637
(520) 455-5870 Phone

Superstition Area Land Trust

P.O. Box 582
Apache Junction, AZ 85217-
0852
(602) 982-6848 Phone
(602) 982-6848 Fax

Wilderness Land Trust

642 Surrey Road
Carbondale, CO 81623-1554
(970) 963-9688 Phone
(970) 963-9670 Fax