

# Savvy Risk Taking and Prevention for Land Trusts



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**HOUSEKEEPING**

# Agenda

- Roles, Resources and Risks
- Financing Risk
- Stories to Test your Imagination and Courage
- Minimize Risk!
- Please chime in anytime!



# Roles, Resources & Risk



# Call or write to us anytime

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# Great Resources Gratis

- Fun-to-use interactive game customizes RM plan <http://tlc.lta.org/riskmanagement>
- *Practical Pointers for Land Trusts When Facing a Lawsuit or Other Legal Challenge of Any Size*  
<http://learningcenter.lta.org/library/documents/35468>
- *A Guide to Risk Management for Land Trusts*  
<http://tlc.lta.org/library/documents/35980>

# Free Risk Help

- Nonprofit Risk Management Center: click on the Center's logo in the [Conservation Defense Clearinghouse](#).
- View FREE Affiliate Risk Tips.
- Get the FREE risk management eNews.
- Access FREE unlimited online recordings.
- Call for special free help for quick questions  
(202) 785-3981 or [info@nonprofitrisk.org](mailto:info@nonprofitrisk.org).

# What is Risk?

- Surprise and Uncertainty
- Different from expectations and assumptions
  - Opportunity
  - Obstacle
  - Or both
- Much worse or much better
- Uncertainty about achieving mission
- Everyone manages risk every day



# Everyone manages risk every day

- Land trusts have many plans and policies
- Risk Management planning adds:
  - Methodical and comprehensive
  - Organization integrating
  - Prioritizing
  - Reveals misallocations and omissions
  - Sized to fit you

A photograph of a lush field of yellow wildflowers and purple flowers, likely Delphiniums, growing on a grassy hill. In the background, there is a dense line of green trees under a bright, slightly overcast sky. The text "WHAT DO YOU CARE ABOUT?" is overlaid in a bold, blue, serif font across the lower portion of the image.

**WHAT DO YOU CARE ABOUT?**

# Board members responsibility

- Have legal duty of care
- Have ultimate responsibility
- Obligated to benefit the public
- Required to protect assets
  - Including conservation rights
- Advance land trust mission
- Minimize mission impairment



# Simple Ideas to Get Started

- Appoint a Champion of “What If”
  - page 44
- Have one simple risk query for every item on every board agenda
  - page 313
- Ask seven risk questions once a year
  - page 31
- Take three steps to a more candid culture
  - page 40
- Follow the meeting tips
  - page 47

# Three Dimensions of Risk

- Direction (good or bad)
- Probability (likelihood)
- Magnitude (size)
- Context of land trust
  - mission
  - operations
  - capacity



# Three Dimensions of Risk



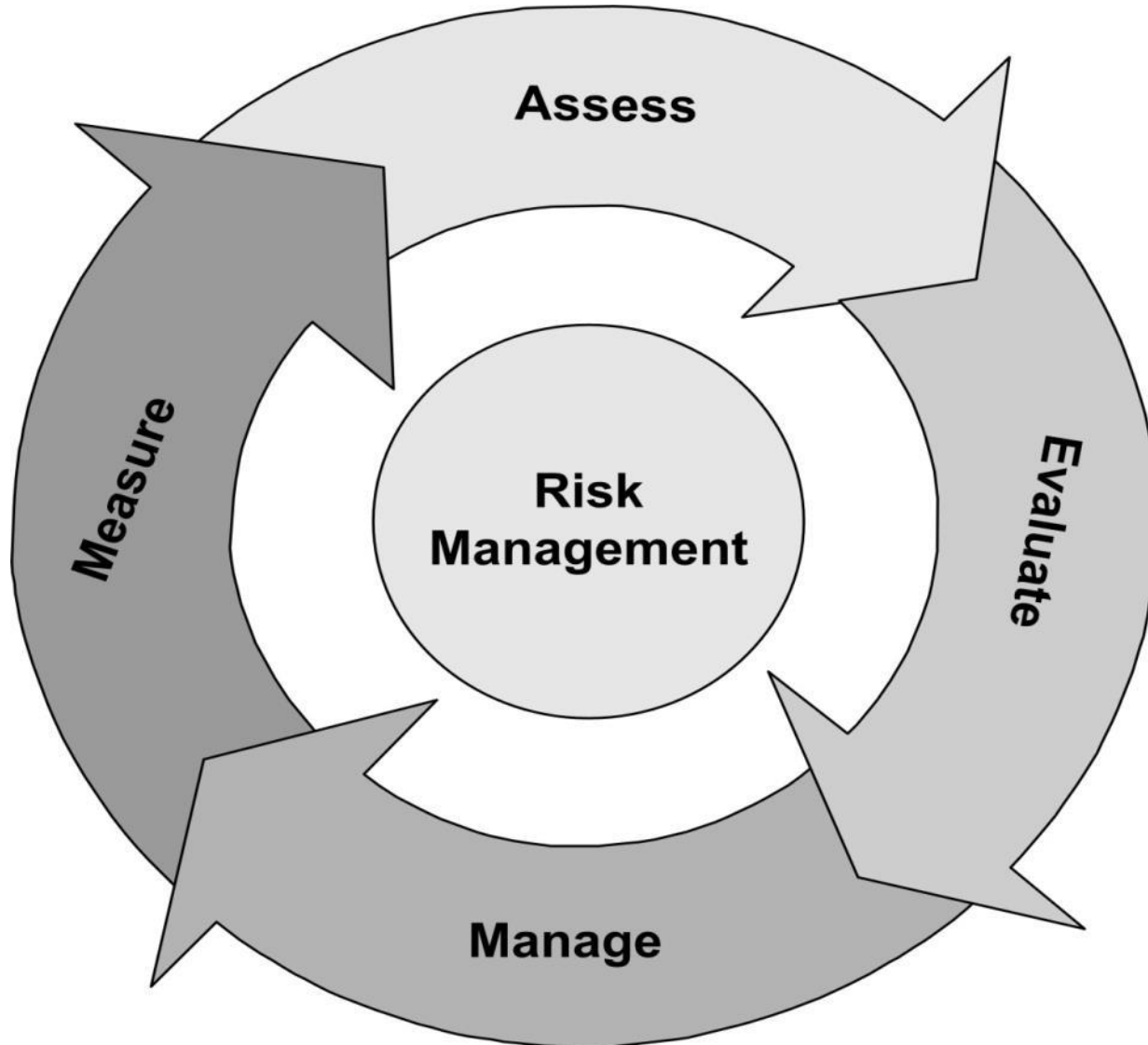
# What to do?

- Conservation easement violation
- Education and engagement over 2 years
- Successor owners rebuffed and escalated
- Land trust finally sued
- President explained land trust's liability to uphold public benefit at annual meeting
- And what happened?
- That's when the owners sued him personally.
- Eight years later after every stalling tactic
- Land trust prevails at trial; \$650,000 award
- Successor owner still delaying

# Iterative Process to Handle Uncertainty

- Assess
  - Articulating and analyzing assumptions
  - Articulating risk tolerance
- Evaluate
  - Asking and answering “what if” questions
  - Reviewing circumstances, expectations
- Manage
  - Mitigate, communicate, implement
- Measure
  - How did we do?
- Learn and refine

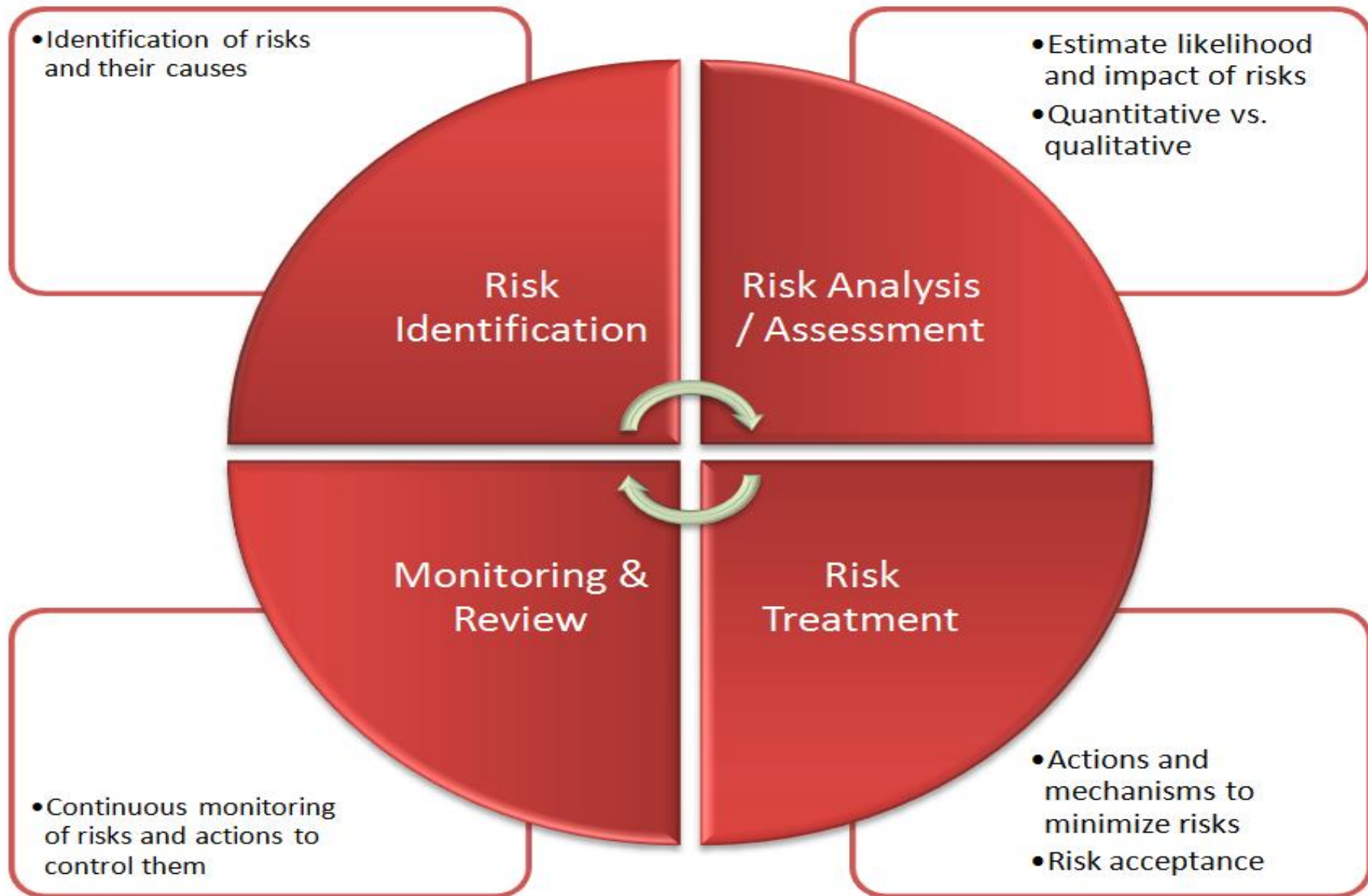
# Risk Management Process



# Risk Management Cycle



# Risk Management Cycle



# Simple Approach

- **Linger and Test Assumptions**
  - What happened? Why?
  - How did we respond?
  - How likely is a repeat? Can we see it coming?
  - What practical steps can we take?
  - Did we openly ask all the “what if” questions?



# Insurance Coverage Financing Land Trust Risk



# Role of Insurance

- Insurance is:
  - Part of organization-wide risk-management
  - A method of financing risk
- Kinds and amounts depend on your organization's:
  - size
  - risk
  - property owned
  - org structure

# Various Statutory Shields



- Page 131
- Recreational Use Statutes
- Liability Shields (waivers and releases)
- Volunteer and charitable immunity statutes
- Indemnification
- Insurance (finance what you can't avoid or manage)

# Insurance Commonly Purchased

- Terrafirma
- Title Insurance
- General Liability (GL)
- Commercial General Liability (CGL)
- Directors and Officers Liability
- Employment Practices Liability
- Fiduciary Liability
- Crime Coverage
- Professional Liability
- Non-Owned Auto Liability
- Property Loss or Damage Coverage
- Workers Compensation/Unemployment Coverage
- Volunteer Accident Coverage
- Excess and Umbrella Coverage

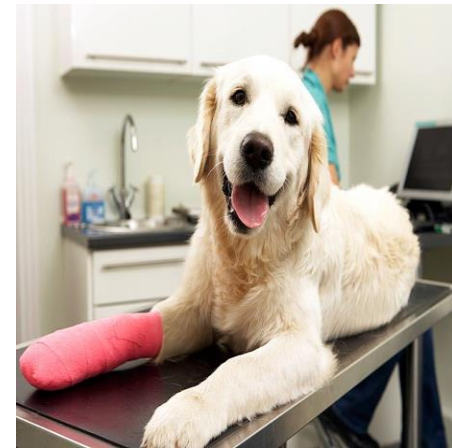


# What to do?

- Your land trust owns a preserve
- Sadly a woman is killed by a falling tree while driving on adjacent public road
- What is the risk?
- Who owns the tree?
- Woman's family sued land trust for negligence
- How about a conservation easement example?
- Why have *commercial general liability coverage*?

# General Liability and Commercial General Liability

- GL covers claims against insured for:
  - Bodily injury
  - Property damage
- CGL adds:
  - Persons injured
    - on Insured's property
    - at Insured's events
    - Liquor liability (with conditions)
  - Medical coverage (usually small)



# Exclusions in GL & CGL Policies

- Sexual abuse and molestation
- Contracts
- Intentional acts
- Workers' comp
- Employers' liability
- Professional liability
- Media or internet biz
- Limits on use of vehicles
- Damage to property you own or possess
- Pollution



# Minimize Your Risk

- Cover directors, officers, employees, volunteers
- Don't undertake obligations not able to fulfill
- Indemnify another only if necessary
- Only if obligation insured
- Shift risk to
  - licensed, insured professionals



# What to do?

- Easement landowner sued neighbors
- Neighbors say they own property water rights
- Neighbors attempt to improve water ditches
- Water rights continuously used in full by ranch
- Landowner asked for relief barring such access
- Neighbors then filed Amended Counterclaims and a Third-Party Complaint
- Named conservation easement holders as involuntary defendants in the neighbor dispute

# Does Directors & Officers Insurance cover?

- Conservation easement clearly covered the water rights but not directly challenged
- Neighbor claimed that Holders failed to enforce conservation easement in many respects
- Neighbors claimed Holders mismanaged weeds, agricultural uses and water resources

# Yes! D&O Pays Defense

The company shall pay on behalf of the organization any loss which the organization becomes legally obligated to pay on account of any Claim first made against the Organization during the Policy Period ...,

or a Wrongful Act committed attempt or allegedly committed or attempted by the organization or the Insured Persons before or during the Policy Period, ....

# Directors and Officers Liability Insurance

- Economic damage from insureds wrongful acts
- Errors and omissions
  - in governance
  - in management
- Excludes bodily injury and property damage
  - Covered by GL
- Insureds are
  - directors & officers
  - employees
  - volunteers
- Make sure all appropriate people named as insureds



# Types of Claims Covered by D&O

- Breach of fiduciary responsibilities
- Tortious interference with contract
- Conflict of interest
- Infringement of
  - trademarks, copyrights, or patents
- Negligent financial advice to third parties



# Exclusions In D&O Policies

Common exclusions:

- Pollution-based
- Retirement plans
- Fraudulent acts or omissions (intent)
- Willful violation of law (intent again)
- Violation of securities laws
- Employment-related actions
- Sexual harassment

# Minimize Your Risk

- Be aware of details and differences
- Address as part of risk management plan
- Obtain additional insurance to cover exclusions if needed



# How To Determine What You Need

- Ask yourself the questions on page 298
- Use the checklist on page 299
- Get a great independent agent or broker
- Ask them about the services on page 300
- Use the Coverage Matrix on page 303 and 304



# How To Monitor Whether Your Insurance Is Meeting Your Needs

- Read the policies
- Review your risks annually
- Have a senior staff or experienced board member purchase your insurance
- Periodically bid with other agents and companies



# Insurance is Fun!

- Read the insurance section of the *Guide*
- Work closely with good agent or broker
- Understand how your policies fit together
- See the gaps, gores, overlaps
- Evaluate insurance program annually
- Have a risk management plan



# More fun ....

Your stories of obstacles and opportunities.

- First, what's the conservation opportunity?
- Second, what are the risks?
  - Can the risks be prevented?
  - Can the risks be mitigated?
  - Is the risk worth the benefit?
- Third, how do you address this in a plan?
- And what is the benefit of that?



# #1. Field trips are great!



Then the guy in the grey shirt clutches his chest and collapses!

# What did you encounter?

- What's your responsibility to provide emergency care?
- What are the limits of your responsibility?
- What are the legal vs. ethical responsibilities?
- What are the public relations issues?
- Is there insurance coverage for this?
- What preparations could you make?
- Other risks
- If this could happen why would you do it?

# #2 Organizational Management



# What is at risk here?

- Building fire devastates land trust offices
- Smoke, chemical and water damage
- No heat, running water or electrical power
- Windows shattered, desks ice-encased, carpets soaked, communications non-existent, files wet and hard drives inside melted smoking computers
- ED, COO, Board Chair injured in salvage effort
- After relocation theft of replacement equipment
- Disruption in processing mail and checks reveals 6 years of embezzlement
- Umm ... what kind of insurance do we have?

# #3 Time, Capacity and Money to Steward



# But, I plan to use volunteers!

- Knowledgeable person to supervise?
- Are the people trained?
- Supervisor conducted orientation
- Set out ground rules?
- Such as what rules?
- Sufficient support and systems?
- Commitment and continuity?





What do you do to minimize bad things and manage good things?

# How can risk management address this?

- Organizational appropriate allocation of resources based on risk.
- Correct insurance coverage for risk assessed activities that advance the mission.
- Assessment of applicability of laws.
- Funders, donors and members support.
- Appropriate preparation to deal with complaints and media.
- Incorporates and coordinates all plans and policies and budget.

# Risk Management Plan Elements

- Two Prep Steps page 195 and 219
- 1 -Context page 256 A
- 2- Goals or objectives page 256 B
- 3 -Key areas of risk page 257 C and
- 4 -Risk tolerance and rating page 257 E
- 5 -Brainstorm management strategies page 214
- 6 -Implementation roles and responsibilities page 258 F
- 7 -Timetable and communications page 258 G
- 8 -Monitor and Adjust page 258 H



# Prep Steps

Your land trust's mission statement

- Basis of your risk management plan.
- Is your mission statement current?

Identify Risk Management Team

- Takes the lead
- Prepares plan for board review
- Focuses on risk assessment
  - identifying and prioritizing risks
  - brainstorms strategies
  - team of 3-5 with diverse perspectives
  - leader is Risk Management Champion

# Step 1: Establish Context

- **Sample Philosophy Statement**
- [Land Trust] has embraced a collaborative, strategic approach to risk management, which includes identifying and addressing the threats and opportunities the organization faces. This collaborative effort will culminate in the creation of a risk management plan. The plan will be presented to the board of directors for its review and approval.

# Step 2: List Your Top Goals



- Identify specific goals your land trust hopes to achieve by integrating sound risk management practices into your operations.
- Incorporate your strategic plan

## **Sample Goal Statement:**

Any and all risk management activities should be designed to enable, rather than impede, the mission of [Land Trust].

# Step 3: Key Areas of Risk

Remember that all risks have good and bad dimensions

- Governance
- Conflicts of interest
- Technology and Information
- Reputation and public perception
- Noncompliance with laws and regulatory requirements
- Recordkeeping
- Stewardship administration
- Financial assets
- Property management
- Personal injury
- Contracts
- Employees, volunteers and contractors
- Fundraising



# Top Ten Common Risks

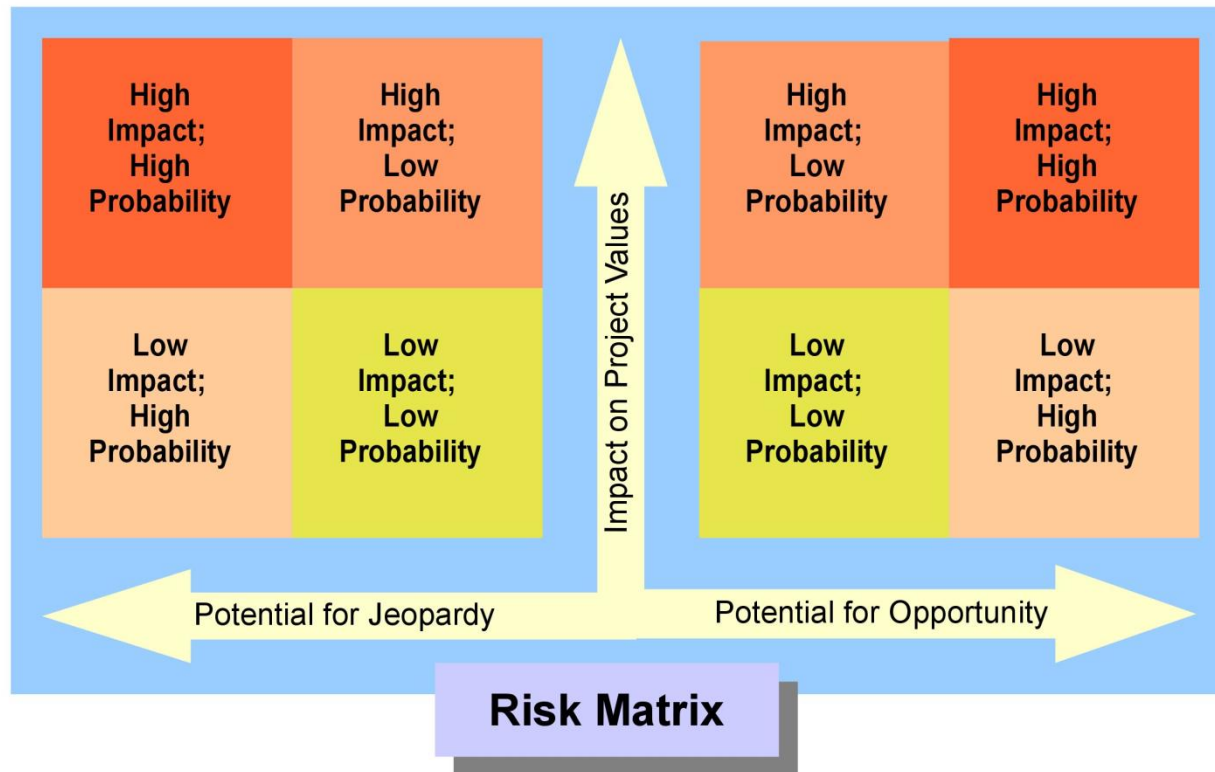
1. Uncertain financial sustainability
2. Ineffective fiscal and risk oversight
3. Incomplete appreciation of fraud risk
4. Allowing anyone to be above suspicion
5. Lack of succession planning
6. Ineffective departure planning and execution
7. Naïve crisis planning
8. Poorly understood or managed relationships
9. Unmanaged conflict on the board
10. Lack of well-understood governance practices

## Step 4: Rank and Rate Risks

- Sorting or prioritizing risks
  - Most critical organizational issues
  - Those that require short-term attention
  - Priority “project risk”
  - Short-term, acute risks for activities
- Score likelihood and impact
- Plot risks on a risk or heat map
- Risk avoidance (desirable)
- Risk elimination (impossible)
- Articulate organization’s risk tolerance



# Three Dimensional Rate Map



# *Organization's Risk Tolerance*

- Gauge *organizational* tolerance
- Living with worse result due to your decisions
- How much organization can psychologically handle if event worse than expected
- What can you bear if things go bad?
- Trade-off between minimizing bad results and maximizing good results

# Step 5: Brainstorm management strategies

- Reducing likelihood of downside risk
- Reducing the cost or impact of risks
- Select specific strategies
- Maximize likelihood of better-than-expected
- Formulate responses
- Actions if avoidance fails
- Remember Shields
- Identify Insurance Needs



# Step 6: Act on Your Decision

You do these now; RM helps you do more:

- Reflect land trust's goals and mission
- Purchase insurance
- Develop and implement policies and procedures
- Assign Roles and Responsibilities
- Implement top strategies identified
- Craft your budget to follow your RM plan

# Step 7: Address Timetable

- Annual examination of risks
- During budget review and approval cycle
- Close-up look at mission-impacting risks
- Adequacy of goals and strategies
- Communicate to all stakeholders



## Step 8: Monitor and Adjust

- Integrate gleaning from review into risk plan
  - Establish and track indicators
  - Measure what was unpredicted
  - Measure response to the unpredicted
  - Measure attaining objectives
  - Measure associated costs
- Make annual adjustments
- Remember to reevaluate insurance portfolio
- Remember to reevaluate shields
- Remember to communicate

# Thank you for your dedication to lasting conservation!

