

Conservation Easements

A Position Statement of the Society of American Foresters

Initially adopted by the Society on December 9, 2001 and revised and renewed on June 10, 2007. The position will expire on June 10, 2012, unless, after subsequent review, it is decided otherwise by Council

Position

Conservation easements are often an effective tool for maintaining working forests, preserving environmental values, and protecting communities from excessive development pressure. The Society of American Foresters (SAF) supports conservation easements as one tool for ensuring sustainable forest management. Easements are not appropriate for all forestlands, however, and should only be entered into with full understanding of their consequences. Foresters have a responsibility to ensure that landowners they are working with understand the benefits and restrictions of conservation easements.

Public financing of conservation easements should allow for maximum flexibility in negotiating terms and conditions of easements between a willing seller and a willing buyer. Conservation easements should be based on a forest management plan prepared by a professional forester. Public agencies involved in purchasing conservation easements should have strict internal policies to ensure that prices offered for easements are fair and that the agency's fiduciary responsibility to taxpayers is met. Programs, such as the Forest Legacy Program, should continue to focus on supporting sustainably-managed working forests.

Issue

Conditions incorporated into conservation easements normally transfer when land is sold or bequeathed. Some landowners may not be interested in easements because they are reluctant to restrict the management options of their descendants or potential land buyers. In addition, some interest groups seek to divert Forest Legacy funds from the program's original intent to conserve working forestland, as specified in the 1990 Farm Bill.

Background

Conservation easements are an increasingly popular tool used for a variety of purposes, but primarily to purchase development rights. In forest areas that are rapidly being converted to residential and other developed uses, conservation easements are often useful for ensuring that lands remain undeveloped. Purchasing conservation easements is usually a more cost-effective means of conserving public trust resources than government fee-title acquisitions or excessive regulation of forest practices. Selling or donating conservation easements may provide landowners committed to sustainable management with the wherewithal to resist pressure to sell their property to developers. Similarly, where pressure to withdraw working forests from active management is intense, conservation easements may offer a means of providing adequate environmental and open-space benefits, while allowing continued timber harvesting.

Conservation easements are a legal tool to maintain land in an undeveloped state (Siegel 1998). A conservation easement is a voluntary legal agreement between a property owner and a qualified organization, such as a land trust or government agency, that limits the activities and uses that can take place on the property. Landowners (grantors) can enter into a conservation easement with an easement recipient (grantee) by selectively giving up some rights to their property, either through sale or donation (SWCD 2007). The easement may apply to an entire ownership or any specified portion thereof.

Terms of an easement may vary depending on the goals of the landowner and the recipient, and on the characteristics of the specific property. The easement is recorded with the deed for the property and, although the duration of an easement can vary, is usually perpetual. While the grantee or a third party is responsible for monitoring the property to ensure the terms are followed, the owner retains title to the land, and can sell it when and to whom the owner wishes, though the easement remains in effect (Davis 1997). Landowners often choose to place conservation easements on only a portion of their property, excluding from the easement areas which are already developed or where the landowner might wish to retain certain development options.

Goals and Objectives of Conservation Easements

Landowners have diverse motivations for selling conservation easements. Such easements are usually sold to ensure that the land will not be developed, subdivided, or converted to non-forest use, often to preserve wildlife habitat. Easements can be used to ensure that preferred forest practices are used, while practices considered undesirable are prohibited. There may be additional interests to retain limited development rights for family use, for future income generation, or for management activities. Conservation easements can be structured to address diverse landowner interests (FWS 2007).

Easements may also carry financial benefits for the landowner. The income tax benefits of qualified donations of conservation easements, or revenues from the sale of an easement, make the mechanism attractive for many individuals and businesses, often enabling them to withstand pressure to sell their property for development. Property tax savings may also result from the restrictions imposed by the easement because the income-potential and value of the land has dropped (Siegel 1998; Davis 1997). (This information is not intended as legal advice; An attorney should be consulted for specific legal assistance. It is also important to advise landowners that when selling development rights it is often difficult to determine a competitive price for those rights.)

Taxpayer Liabilities from Public Easement Acquisitions

When conservation easements are purchased through government programs, the costs of the acquisition are typically borne by taxpayers. Most public agencies involved in purchasing conservation easements have strict internal policies to ensure that prices offered for easements are fair and that the agency's fiduciary responsibility to taxpayers is thereby met. For example, the USDA Forest Service requires that easements purchased through the Forest Legacy Program be acquired at no more than fair market value, as determined by a qualified appraisal. In some

cases, however, there is considerable potential for easements to sell for prices that greatly exceed the fair market value of the property rights being sold, particularly when the fair market value for the property itself is unknown. For example, where highly valued environmental benefits are popularly perceived to be at risk due to impending forest development, particularly in highly publicized situations, extreme pressure can be applied on the government to prevent development at virtually any cost.

Examples of Conservation Easement Programs

Conservation easements are used for a variety of purposes, which include the assurance that a forest remains a working forest. Easements that ensure working forests allow landowners to manage their forest, maintain ownership, and not succumb to development pressures. Easements can be designed to keep forests forested and protect the land against conversion to non-forest uses. Although not all land trust organizations follow the same procedures, the following are some examples of land trust efforts with conservation easements:

The Nature Conservancy uses this model effectively, with more than 2 million acres protected to date through conservation easements, and have assisted other land trusts and public agencies in protecting an addition 1.3 million acres of conservation easements.. For example, The Conservancy has worked with many public and private partners who have participated in the complex task of protecting significant natural areas along 137 miles of the Roanoke River in North Carolina. In 1989, the Conservancy purchased 10,626 acres in Bertie and Martin counties from Georgia-Pacific Corporation to create the Roanoke River National Wildlife Refuge and add land to the state-owned Roanoke River Wetlands. In 1994, Georgia-Pacific Corporation and the Conservancy entered into an agreement to jointly manage and protect approximately 21,000 acres on the Roanoke. And in 2006, The Nature Conservancy purchased 22,000 acres along the Roanoke from International Paper, as part of the largest-ever land conservation project in the southern United States. (TNC 2007 a)

In Oregon, Weyerhaeuser recently donated permanent conservation easements on five properties to The Nature Conservancy to protect important fish and wildlife habitats. One of those easements is for a 469-acre track known as Gearhart Fen, the largest coastal wetland of its type in Oregon. It also creates a consulting partnership to ensure that harvest activities on adjacent forest lands are compatible with protecting the wetland. (TNC 2007 b)

The State of New Hampshire holds a conservation easement on 10,000 acres of working forest owned as a town forest by the Town of Randolph, NH. The easement was acquired using Forest Legacy Program funds. The land abuts the White Mountain National Forest, but the community did not want the land owned in fee by the federal government. The community raised nearly \$2 million to purchase the restricted fee, while the state holds the easement. The easement allows for town control over land use, while ensuring that the land remains undeveloped and is managed according to sustainable forestry standards.

The Pingree Conservation Easement on 762,000 acres in Maine was completed in 2001 by the New England Forestry Foundation (NEFF). (Sader, 2002) This effort took several years working with many partners, including the Pingree family, to raise funds to procure the

conservation easement and to outline those property rights to be retained and then a monitoring framework at the landscape scale to insure compliance with the easement.

The Virginia Department of Forestry, as do several other states, administers a conservation easement program that focuses on riparian areas – utilizing the Conservation Reserve Enhancement Program (CREP). The landowner retains ownership and full control of the property, while giving up certain rights to use areas within the riparian zone. The landowner works with the easement holder to develop a management plan to ensure the protection of the riparian zone, which includes establishing or maintaining vegetation and limiting livestock access to the stream (VDOF 2007).

Sources of Funding

Public and private programs provide important funding sources for purchasing conservation easements. Many foundations, corporations, other non-governmental organizations, and individual families are committed to conserving working forests by providing funding for conservation easements.

Within the public sector, the two leading sources of funds for forest conservation easements are the federal Forest Legacy Program and the Land and Water Conservation Fund. Numerous state and local government programs also provide funds for conservation easements.

Congress established the Forest Legacy Program (FLP) in the 1990 Farm Bill to fund the purchase of land and conservation easements. The FLP provides federal funds in partnership with states for protecting environmentally sensitive forestlands and is an entirely voluntary program. The program encourages and supports the purchase of conservation easements by states and federal government agencies from private landowners but is only providing for state acquisition at this time. Most FLP conservation easements restrict development and subdividing of the property, impose reasonable standards for sustainable forestry practices, may provide recreational access, and protect other public values. Participation in the FLP is limited to private forest landowners who qualify by preparing a multiple resource management plan as part of the conservation easement acquisition. The federal government may fund up to 75% of program costs, with at least 25% in matching funds from private, state or local sources (USFS 2001a). In federal Fiscal Year 2006, the FLP received \$56.5 million, far less than the demand for the program that year of \$209 million. FLP funds are being used to acquire easements on significant tracts of working forestlands, in 46 states and territories. To date, FLP conservation easements have been closed on over 1.4 million acres in 367 tracts in 35 states and territories.

The Land and Water Conservation Fund (LWCF) provides money to federal, state, and local governments to purchase land, water, and wetlands for recreation and other values. The National Park Service, Bureau of Land Management, Fish and Wildlife Service, and Forest Service receive funds from the LWCF for both fee acquisitions as well as purchase of conservation easements. The fund is also used as a matching grants program to help state and local governments acquire conservation land or develop recreation sites and facilities (Zinn 2000; USFS 2001b).

The Healthy Forests Reserve Program (HFRP) (NRCS) was established by the Health Forests Restoration Act of 2003, and allows for the enrollment of easements on 2 million acres over a five-year period. HFRP is currently being offered in three pilot states – Maine, Mississippi, and Arkansas. To be enrolled, land must be private land or Tribal lands which will restore, enhance, or measurably increase the likelihood of recovery of a threatened or endangered species, must improve biological diversity, or increase carbon sequestration.

Literature Cited

- Davis, M.B. 1997. Conservation Easements. Appendix to The Forest Commons. A. Fritsch. ASPI Publications. 1997. Accessed on the world wide web at <http://www.uky.edu/OtherOrgs/AppalFor/commons.html> , January 2001.
- Fernholz, K., Howye, J., Bowyer, J., 2006. Conservation Easements to Protect Working Forests. Dovetail Partners, Inc. <http://www.dovetailinc.org/reports/pdf/DovetailEasements0206lg.pdf>
- Sader, S.A., Ross, K., and Reed, F. Pingree Forest Partnership, Journal of Forestry, Volume 100, Number 3, April/May 2002.
- Siegel, K.G. 1998. The Law and Your Business: Conservation Easements May Serve Business and Personal Goals. The Business Monthly, December 1998.
- U.S. Fish and Wildlife Service (FWS). 2001. Partners for Fish & Wildlife, Mountain-Prairie Region. Accessed on the World Wide Web at <http://www.r6.fws.gov/PFW/r6pfw8b.htm> , January 2001.
- Land Trust. 2001. Accessed on the World Wide Web at <http://www.possibility.com/LandTrust/> , January 2001.
- Society for the Protection of New Hampshire Forests, 2007. Conservation Easements – Questions and Answers. Accessed on the World Wide Web at <http://www.spnhf.org/pdf/CEQAFact.pdf>
- The Nature Conservancy (TNC a and b) 2007. Accessed on the World Wide Web <http://www.nature.org/aboutus/howwework/conservationmethods/privatelands/conservationeasements/about/art15087.html>
- Northern Virginia Soil & Water Conservation District (SWCD). 2001. Compiled by G.C. Evans, Director. January 2001, no longer on the World Wide Web
- Shelton, K. 2001. SE Land Trust Helps Land and Landowners. Accessed on the World Wide Web at <http://www.juneau.com/seacc/pages/Setrust.htm>. (No longer accessible)
- US Environmental Protection Agency (EPA). 1997. United States Office of Water.

Publication No. 816-F-97-010. October 1997. Accessed on the World Wide Web at <http://www.epa.gov/safewater/dwsrf/ffland.html> , January 2001.

USDA Forest Service (USFS a and b). 2007. Forest Legacy Program Implementation Guidelines. Accessed on the World Wide Web at http://www.fs.fed.us/spf/coop/library/flp_guidelines.pdf

USDA Natural Resources Conservation Service (NRCS). 2007. Healthy Forests Reserve Program. 2007. Accessed on the World Wide Web at <http://www.nrcs.usda.gov/programs/HFRP/ProgInfo/Index.html>

Virginia Department of Forestry (VDOT). February 20, 2007. Accessed on the World Wide Web at: <http://www.dof.virginia.gov/mgt/cons-ease-dev-donate.shtml>

Zinn, J. 2000. Land and Water Conservation Fund: Current Status and Issues. Congressional Research Service Report 97-792. Washington, D.C.