

Using Conservation Easements to Protect Working Forests

by Brenda Lind

FOR DECADES, CONSERVATION easements have protected open space values such as wildlife habitat, ecological diversity, recreational access and aesthetics. Working forest landscapes present an opportunity to protect not only these open space values, but also the economic and community benefits that arise from a forest's pro-

duction of goods and services. Conservation easements have evolved dramatically over the last decade to address the diverse public benefits of working forests and increasing public demands on forests and other working landscapes.

"We're still on the steep slope of the learning curve. We have to assume we have more lessons to learn from experience and our approach will change over time," explained Paul Doscher, senior director of land conservation for the Society for the Protection of New Hampshire Forests. Working forest easement terms are being refined continually, as practitioners and landowners gain practical experience and watch the results of their easements unfold on the land.

To facilitate a nationwide discussion, the Land Trust Alliance in April 2000 convened conservation easement and forest management practitioners to define the "state of the art" of working forest conservation easements (WCFEs). Financial support was provided by the Doris Duke Charitable Foundation. Participants included working forest landowners and easement holders—large and small, public and private—



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from various areas of the country and a variety of regional and regulatory backgrounds. [see box, page 13.] Applying their collective experiences and the consensus reached at several Land Trust Rallies, the group examined how conservation easements can best protect forested landscapes and their productive capacity.

A new Land Trust

Alliance publication, *Working Forest Conservation Easements: A process guide for land trusts, landowners, and public agencies*, shares the advice of these practitioners, who considered questions including:

- How do easements on working forests differ from traditional open space conservation easements?
- What should an organization have before beginning a working forest conservation easement program?
- When is a working forest conservation easement the right tool to use?
- How do variables such as landowner and easement holder goals, property features, regional context, easement holder capacity and regulatory environment influence easement design?
- What is the range of approaches to drafting WFCE terms?
- What belongs in the forest management plan? In the baseline documentation?



- How does stewardship of working forest easements, including expectations for monitoring and enforcement, differ from traditional open space or scenic easements?

Defining Working Forest Easements

While all forests “work” by providing multiple benefits such as clean air, clean water and wildlife habitat, the discussion of conservation easements was focused on forest lands that are actively managed for goods or services that have a monetary value in the current market place, such as timber, recreation and water supply protection.

Working forest conservation easements do more than limit specified development rights on a property. Traditional conservation easements, sometimes called “open space” or “scenic” easements, remove landowners’ rights to engage in certain activities, such as mining, subdivision and residential and commercial development. These easements may not mention forestry at all, or may simply allow timber harvesting according to “good practices” with no additional detail. A WFCE adds language that guides forest management in order to protect specified forest values.

WFCEs can protect property-specific forest values by prohibiting damaging forest practices and encouraging management practices that promote a desired forest type. WFCEs can also protect landscape values by encouraging management of a forest in relation to its surroundings. For example, an easement on a forest over an aquifer or surrounding a reservoir may have special provisions for protecting the water supply. Further, WFCEs can address broader societal goals, such as sustaining a forest economy and the regional community that depends upon it by protecting the productive forest base. Moreover, WFCEs can enable landowners to continue to derive economic value from the land to support the ongoing costs of ownership and stewardship.

Management Plans: A Strong Consensus

The practitioners strongly endorsed that WCFEs require forest management to be performed according to a written, professionally-prepared forest management plan. Easement terms should specify the goals for forest management and

How are Working Forest Conservation Easements Used?

Working forest conservation easements (WFCEs) vary from region to region, and serve different purposes depending on the goals of the land trust:

- The Montana Land Reliance uses WFCEs to maintain forest production on lands that have long been owned and managed by individuals and families. The program focuses on forest land in a part of the state where timber production contributes to the economy, but the forest base is increasingly threatened by conversion to non-forest uses. The easements are designed to protect forest values, while respecting landowners’ traditional forest management. This, in turn, supports the local economy and way of life.
- The Tall Timbers Research Station uses WFCEs to protect land within the 300,000-acre Red Hills region of Florida and Georgia, particularly its native long-leaf pine ecosystem. The land shelters threatened and endangered species and exceptional game habitat, and supports high quality timber production. Often, families have owned tracts of several thousand acres for several generations. Tall Timbers has developed easements that require forest management practices favoring protection of the ecosystem and development of old growth native forest. The easements protect the region’s unusual ecosystem and timber economy, as well as the landowners’ game management interests.
- In northern New England and New York, where corporate and industrial owners control large forested tracts on which local economies depend, regional conservation organizations and state and federal agencies have cooperated to purchase WFCEs. In the Adirondacks, for example, one such purchase protected 110,000 acres of industrial forest land. The easement, held by the State of New York, guides sustainable forest management practices, protects wildlife habitat and other natural resource features, and provides opportunities for public recreation. This approach addresses broad public interests in the property and provides certainty about allowable forest management for the landowner.

items to be addressed in the plan. The management plan, tailored to landowner and easement goals by the landowner’s forester, should fully address conservation values protected by the easement.

Requiring such a plan may decrease the need for pre-



scriptive language and shorten details written into the easement. This approach allows flexibility, within the bounds of the easement terms, so that forest management can adapt to changing conditions over time—it is easier to change a plan than an easement. The easement holder is obligated to review and/or approve the plan, which ultimately helps prevent easement violations.

Stewardship Considerations

The consensus reached by these practitioners included a caution that working forest conservation easements are not the only, or necessarily the best, protection method for every working forest. Tom Duffus, program director of The Nature Conservancy's Northeast Minnesota Office, explained: "The conservation strategy you use should bubble out of the land,

landowner goals, organizational mission and your understanding of the resource and the threats. The first questions you should ask are, 'How does this project work toward our mission?' 'What end result do we want on this property?' 'How can we build a relationship with the landowner?' Only after you tease apart the landowner's goals and understand your own can you choose the right tool, whether it be management agreement, easement, conveyance of partial interest, pass through to conservation buyer, purchase, etc. Too often land trusts let the tool become the goal—to collect as many conservation easements as possible."

The practitioners also agreed that when a working forest easement is chosen, the demands on the easement holder generally is greater than the demands of traditional open space easements. Experienced easement professionals and foresters are needed to draft and monitor easement provisions governing forest management. Working forest easement holders need experience owning and/or managing forest land (or the involvement of individuals with such experience in policy-making roles within the organization) in order to understand and respond to issues faced by forest landowners. And, as with all conservation easements, stewardship of working forest easements requires deep pockets. The easement holder must be financially prepared to support, for example, professional review of forest management plans,

Get the Full Report

The 48-page *Working Forest Conservation Easements: A process guide for land trusts, landowners and public agencies* is available from the Land Trust Alliance (\$24 for LTA Sponsor and Affiliate members; \$30 for others). To order, call 202-638-4725 or visit LTA's Web site, www.lta.org.



inspection of forest management activities to determine compliance, and extensive professional expertise to respond to violations.

Next on the Agenda

The publication shares a range of approaches that are practiced in working forest easement programs, as well as sample easement language from template easements including working forest easement purposes, goals, restrictions and reserved rights. In addition, the group established basic standards for the forest management plan and baseline documentation and protocols for stewardship activities including monitoring and handling violations. Further, their collective experience demonstrates how variations in forest type, geographic region, landowner base, regulatory environment and local attitudes toward land protection influence real-life working forest conservation easement programs. [See box, page 11.]

Ongoing discussions within the working forest easement community, including a second meeting convened by LTA in April 2001, continue to examine such questions as: How can 'green certification' of working forests relate to working forest conservation easements? What future enforcement problems can we anticipate with these easements and what type of documentation may be needed for a legal challenge? What

conflicts might emerge between working forest management and IRS rules for qualified conservation easements? And, what is the larger context for the use of working forest conservation easements—should we be reaching for a more integrated approach across regions?

The protection of working forests has stimulated a new dialogue that spans resource, regional and political boundaries, and the next decade's evolution will reflect the fast-growing experience of working forest easement programs. "Working forest conservation easement practices have evolved dramatically over the past decade and represent a starting point, not an ending point, on working forest easement land," observed Tammara Van Ryn, LTA Eastern Region director and facilitator of the working forest group. 🌿

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