

Conservation easements as a forest management strategy

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Conservation easements have become an increasingly popular way of protecting private lands that have public value. Maine, like other northeastern states, has a particular interest in conservation strategies given among other things, its natural resource-dependent economy. In the following article, C. Edwin Meadows, commissioner of the Maine Department of Conservation (MDOC), and Donald J. Mansius, the Northern Forest Lands Coordinator for MDOC, address the forest management aspects of conservation easements. Two accompanying articles provide, respectively, general information about conservation easements and describe a conservation easement that has existed for more than a dozen years along the Penobscot River in northern Maine.

Introduction

Conservation easements are a powerful land protection tool. Today, conservation easements protect more than two million acres in the U.S. (Myers 1993). In the Northeast, easements are increasingly valuable as vehicles to protect working landscapes, help support local economies, and maintain the scenic appeal for which the region is known worldwide. Each year millions of tourists visit the northeast to enjoy its splendid coastline, spectacular forests and fall foliage, and the distinct heritage and character of rural Americana in classic New England towns and villages.

These visual images are the product of working landscapes: the picturesque fishing villages, breath-taking vistas of millions of acres of forests, and the rugged appeal of vintage farms. This is a managed landscape, where the forest and the farms knit a multi-textured backdrop for the powerful visual appeal that draws visitors to this region. Conservation easements play a growing role in the preservation of this visual experience while protecting the natural resource for management and use: The growing and harvesting of crops and trees. Without management, some important elements of this engaging aesthetic quilt would end as the fields grow to trees and the farms, open spaces and views are developed. Pressures created by rising land prices, higher property taxes and estate taxes increase the pressure on landowners to sell, divide or convert. We cannot, and need not, buy all of this land to conserve it. Conservation easements with forest management provisions provide new options and are an important tool in these protection efforts.

Conservation easements facts

What is a conservation easement?

A conservation easement is a flexible, legal agreement between a private landowner and a private or public conservation agency to protect the important natural and cultural values of a property while keeping the land in private ownership. Easements provide permanent protection

from land uses that could damage or destroy the scenic, recreational, ecological and natural resources value of a property. Under most easements, the landowner retains all rights to the land and its resources while transferring the right to exercise more intensive land uses, such as residential development or mining.

Easements are tailored to fit the needs of individual landowners, the individual characteristics of properties and the objectives of the easement holder. They may be permanent or for a specific term.

What are the benefits of conservation easements to landowners?

Conservation easements provide a way for landowners to actively participate in local land conservation efforts. Easements provide a legal, enforceable means to ensure that a landowner's desire to protect his or her property is realized.

The donation or bargain sale of a conservation easement may, when properly structured, yield significant tax benefits, including:

- Federal and state income tax deductions;
- Reduced inheritance and gift tax liabilities;
- Reduced capital gains tax liabilities; and
- Reduced property taxes

Because they maintain title to their property, landowners may continue the traditional economic uses of their land, such as forestry and agriculture, according to the terms of the easement.

What are the benefits to the public?

Conservation easements create a partnership between landowners and the public to protect important public values, such as open space, significant natural areas, and wildlife habitat, while allowing continued economically productive uses of the land. They represent an affordable way for the public to achieve land conservation goals.

As the land remains in private ownership, the property stays on local tax rolls and is taxed at its current use value. Landowners continue to derive income from resource production on their land, thereby generating income tax revenue. Jobs dependent upon resource production, tourism and other uses are protected.

(Adapted from material published by the Maine Department of Conservation.)

[Additional information about conservation easements may be obtained by contacting the Maine Coast Heritage Trust (729-7366) or The Nature Conservancy (729-5181). A recommended source of written information about conservation easements is The Conservation Easement Stewardship Guide by Brenda Lind, published by the Land Trust Alliance and the Trust for New Hampshire Lands.]

Forest management on easement lands

When done with care, forest management is compatible with the objective of conserving open space. It creates conservation opportunities when none would otherwise be possible. It also provides the landowner with some economic return on his or her land. This return increases the incentive to donate an easement beyond the incentives of the usual tax deduction. Continued forest management yields income for the local economy and lessens the municipal tax impact of removing development potential from land, as the land remains on the property tax rolls. Such provisions can enhance wildlife habitat for active and passive enjoyment. Forest management provisions maintain the rights of landowners who want to keep their land as open space but do not desire public ownership or control of their land. Finally, partnerships between land trusts and landowners often create an opportunity to practice and demonstrate exemplary forestry.

Forest management on conservation easement land is a topic of some controversy in the conservation community. Problems often arise due to inconsistencies in easement language, misunderstanding the agreement, and inexperience in monitoring. For example, questions that might be asked are: What is the level of harvesting per year? When and what type of cut should be made? Or, should cutting even be allowed? Questions also arise as to the percent of the cost of full fee acquisition that is reasonable to pay for an easement. But these problems should not be used as reasons to reject the concept; rather, we should learn from those experiences. Forest management may not be appropriate for every property, but it can provide a number of advantages. Much depends on the land trust's objectives, on the nature of the property, and on the benefits achieved from such protection initiatives.

Easement design offers excellent opportunities to be creative and flexible. For example:

- If the goal is to conserve open space or forest tracts and/or to simply prevent development, forest management is very compatible.
- If the goal is to preserve shore land or some other parcel with high amenity values, limited forest management may or may not be compatible. Often special view shed forestry provisions can be employed. (See sidebar on the Attean Easement in Western Maine, one example of such provisions.)
- If the goal is to preserve threatened, endangered, or special concern species habitat, forest management may be compatible under certain conditions, e.g. in the buffer zone around an ecological reserve, to provide foraging or range areas for certain species, or to maintain habitat for certain disturbance-dependent species.
- Trails created by timber harvest operations can offer recreational opportunities.

A mix of preserved and managed lands, and easement and fee lands can be applied to parts of the same parcel or project. This approach could be undertaken to accomplish specific protection of large tracts to maintain forestry, recreation, wildlife, aesthetics and other values, as precisely as possible on different sites with as much flexibility as possible.

Protecting large scale landscapes: The Northern Forest experience

The opportunity to combine conservation easements with sound forestry has been an important concept in the Northern Forest Lands Council's work. In response to the sale of large tracts of commercial forestland in the Northeast to developers, Congress funded the Northern Forest

Lands Study in 1988. The study area covers 26 million acres of northern Maine, New Hampshire, New York and Vermont. Congress directed the USDA Forest Service to examine the situation, the threats to and pressures on the lands, and to identify strategies to conserve the region's working landscape. The governors of the four states appointed representatives of state conservation agencies, forest landowners, and organizations to a Governors' Task Force to help guide the study. The project is a model of cooperation between the states, the federal government, forest landowners, industry, and the conservation community.

The Northern Forest Lands Study concluded that easements are a highly versatile tool that combine land protection and economic development and that often provide public access. In a companion report, the Governors' Task Force on the Northern Forest Lands recognized the special importance and many benefits of easements and recommended that easements be considered over fee purchase where protection or public land acquisition is warranted. Use of easements would allow for the protection of greater acreage, would appeal to more landowners, and would be more politically acceptable than fee acquisition. The Task Force found that easements keep land on the tax rolls and continue to generate economic activity in this region, where forest products and public access have functioned compatibly for 300 years and have created a strong heritage of shared use of the region's forests. Today, there are more than 900 easements protecting over 300,000 acres in these four states. The State of Maine is first in the region and a leader in the country in the use of conservation easements as a land protection tool, thanks to the active work of the state's effective land trust organizations, nonprofits, and government agencies (P. Forbes, et. al. 1989).

Easements create opportunities that otherwise would be unavailable. Nearly twenty percent of the forest industry land in the U.S. is in this region, so easements offer important conservation opportunities. Hundreds of thousands of acres and hundreds of miles of shore frontage are available in the Northeast from willing sellers who would consider easements but who would not consider fee acquisition. Obviously, the potential for mutually beneficial outcomes is great.

Forest Legacy

A companion, but separate, program emerged at about the same time as the Northern Forests Land Study. As part of the 1990 Farm Bill, Congress created the Forest Legacy Program to identify and protect important forestlands threatened with conversion to non-forest uses. To help maintain the integrity and traditional uses of private forestlands, the Forest Legacy Program promotes the use of conservation easements. These easements provide a new approach for the federal government, state and local agencies, private conservation organizations, and individuals to preserve the rich heritage of private forests across the nation.

Maine's Voluntary Forest Legacy Program establishes criteria for landowners who wish to qualify their lands under the program: Their land has to be threatened by present or future conversion to a non-forest use; they have to provide opportunities for the continuation of traditional uses; the property must contain at least two of seven "public values" (recreation, riparian areas/ wetlands, cultural resources, important fish and wildlife habitat, other ecological values, important plant communities, or scenic resources); and, a majority of the land offered for the program must meet the definition of commercial forestland. Significantly, public access, at

least by foot, must be allowed on each parcel included in the program so that the property can be used as specified in the easement.

Although the program is entering its third year of funding, it is still in its early stages of application. The first easement in Maine purchased under the Legacy Program was not finalized until early in 1994. Thus, it is difficult to assess the program's potential as a conservation tool. And, as is true of many pilot programs (legacy is being piloted in Maine, Vermont, New Hampshire, New York and Washington State), financial resources are very limited. For example, USDA made only about \$850,000 available to Maine for conservation easement purchases in the first year of the program (1992).

Examples of easement land where forest management is permitted

There are many excellent examples of land under conservation easements that are managed for forestry purposes. As described below, each can teach us something about how different applications can be tailored to each situation, meet the landowner's objectives, and apply to the specific attributes of each parcel.

The State of New York holds easements on land in Adirondack Park (and elsewhere) that are managed for multiple use. The Society for the Protection of New Hampshire Forests has numerous parcels under its stewardship on which forests are actively managed. Some have been award-winning "Tree Farms." Maine's Bureau of Public Lands has acquired a number of conservation easements in recent years. Although forest management is not necessarily the primary objective on some of these lands, timber harvesting will occur from time to time. The Maine Department of Inland Fisheries and Wildlife holds several conservation easements where the landowners retain forest management rights. One of the largest private donations of an easement with forestry provisions is on Attean Pond in Western Maine, held by the Forest Society of Maine and the Bureau of Public Lands.

An example that accomplishes the several goals detailed earlier is the Thirteen Mile Woods "scenic" easement in northern New Hampshire. The easement's objective is to maintain the outstanding scenic values of an undeveloped, free-flowing section of the Androscoggin River that races alongside a scenic highway. The easement covers privately owned land along the river and the road. Development is prohibited except for approved recreational facilities. Timber harvesting is permitted, if the operation is approved by professional foresters and adheres to New Hampshire's roadside cutting regulations. Twenty years after the agreement was signed, the state, the landowners and the public are pleased with the arrangement.

Another example is found on the Piercefield Tract along the Racquette River in the State of New York. In this case, the state had identified a section of this river as having important public values. Unfortunately, New York did not have the money to buy the land, owned by International Paper Company. The agreement involves the landowner, the Conservation Fund and the State of New York. The agreement protects 22,000 acres from development on both sides of the river. Of this acreage, 12 miles of shoreline, totaling 700 acres, are protected as "Forever Wild" by the state. The Conservation Fund will own and manage about 16,300 acres. International Paper will continue to own the remainder of the tract, with a conservation easement held by the state. With the state holding the easement, rather than the fee, the property remains in multiple use.

management. Both International Paper and the Conservation Fund will continue to manage the bulk of the land for forest products and recreational leases. The Conservation Fund will be able to sell the timber on its tract to pay property taxes and (hopefully) to cover its management costs on the entire tract. It is the intention of the Conservation Fund to create a model "forest legacy"/working forest project on this property.

The power of partnerships

In the Rangeley Lakes area of western Maine, an exemplary partnership protected over 30,000 forested acres and 40 miles of lake and river frontage. Recreation, tourism, fishing and timber harvesting have all been important economic mainstays in this region of western Maine since the early 1800s. Since the 1970s, the Department of Conservation has acquired 23,000 acres in land trades and consolidations on six lakes in the region. In this very exciting partnership, a private owner donated easements on 5,300 acres of forestland and on 17-1/2 miles of frontage adjacent to the existing state ownership to the Maine Coast Heritage Trust. With the assistance of the Maine Coast Heritage Trust, the Maine Department of Conservation, and the Land for Maine's Future Board, the Rangeley Lakes Heritage Trust is working with Boise Cascade, the Department of Conservation and the USDA Forest Service to complete a Forest Legacy project to protect another 1,260 acres and three miles of frontage. The Land for Maine's Future Board will acquire an additional 1870 acres in the same area. The Maine Department of Conservation will manage that land for multiple use, including timber harvesting. Six different parties are all working toward a common objective of truly magnificent proportion. This type of multi-party partnership, one that integrates forest management and conservation easements, is a powerful example of what can be done when all groups work toward their common interests. These lands will be available for public enjoyment, while helping to preserve in perpetuity the local forest-based and tourism economy of the region. Easement acquisition, used in conjunction with fee acquisition, created a powerful synergy that was crucial to this large project.

Clearly, partnerships such as the Rangeley Lakes partnership can be "win-win" relationships. Increasingly, successful land conservation projects in Maine involve multiple parties from the private, non-profit and public sectors, all working toward a common objective and succeeding together where working alone they could not.

New opportunities, many not yet thought of, are possible. One opportunity, and one which is needed to fill an emerging market niche, is the development of a new and different land trust that has as its focus the holding of forestry easements. Maine will be working to invent that and other options for the future.

Conclusion

Forest management provisions in conservation easement agreements will continue to grow in strength and importance as a tool to conserve working landscapes around the country. Such agreements provide added incentive for forest landowners to maintain their land in an undeveloped state and to manage for the traditional uses of their property. Conservation organizations can stretch scarce acquisition dollars much farther by only acquiring the rights necessary to protect important values on a property. Local communities benefit, because the land continues to generate economic activity and (albeit reduced) property tax revenues, whereas the

same land developed likely would cost more in revenues to service than the increased taxes it would yield.

The power of such agreements has yet to be fully appreciated. However, as the pressure on land owners to convert their properties to more intensive uses continues to grow, as the public places increasing and conflicting demands upon the land base, and as funding for conservation programs continues to decline, easements that allow forest management will come into their own as an effective, efficient tool to preserve the many public and private values of forest land.

References:

Forbes, Peter; Celia Barotz; and William Ginsberg. 1989. Using Conservation Easements in the Northern Forest lands; Building Partnerships for Land Protection. Boston: Trust for Public Lands.

Governors' Task Force on Northern Forest Lands 1990 "The Northern Forests: Strategy for Their Future." An action plan of the Governors' Task Force on Northern Forest Lands.

Harper, Stephen C., Laura L. Falk, and Edward W. Perkin. 1990 The Northern Forest Lands Study of New England and New York. Rutland, Vermont: Forest Service, U.S Department of Agriculture.

Morgenson, Gretchen. 1989. "Conservation Easements: Good View, Great Deduction." Forbes, Oct.16: 276-277.

Myers, Phyllis. 1993. "New Directions in Conservation Strategies: A reconnaissance of recent experimentation and experience." A report to the Northern Forests Lands Council.

Northern Forest Lands Council. 1994. "Finding Common Ground: The Draft Recommendations of the Northern Forest Lands Council." Concord, NH: Northern Forest Lands Council

A case study: The Penobscot Conservation Easement

The state has management responsibility for several easements of varying sizes and locations. Among the most prominent for recreational purposes is the easement on the West Branch of the Penobscot River.

In 1981, Great Northern Paper Company (GNP) donated easements to the State of Maine that give the state the right to manage recreation on 67 miles of shoreline on the West Branch and East Branch and 12 miles of lake shore frontage on Lobster Lake. In granting the easements, the company gave up its rights to construct residences and commercial structures, except on 37 previously leased lots, along the shorelines covered under the easements. The easement area includes the shoreline on the West Branch of the Penobscot River, starting at Seboomook Dam and running through to Ambajewus Lake, excepting an area near Chesuncook Lake, and including most of the shoreline of Lobster Lake. An easement was also granted along the East Branch of the Penobscot. It follows the river from the northern to the southern borders of Township 5, Range 8.

The easements cover 500-feet back from the normal high water mark on the banks of the designated areas on the East and West branches. A total of 7,700 acres are included in the easements. Although GNP gave up recreational and development rights on the scenic easements, it retained rights to construct hydropower and transmission lines, as well as rights to extract gravel and timber and to construct roads.

The state Bureau of Parks and Recreation manages recreation in the easement areas. GNP collects the fees for camping and retains only a small percentage for administrative costs. The balance is used by the State to defray its management activities.

According to the Recreation Management Plan developed jointly by the State and the company, the goal for the recreational management activities in the easement area is "to maintain and enhance present types of recreational opportunities available, consistent with the maintenance of the present natural character of the waterway and the overall management objectives of the owners of these and adjacent lands." Among the objectives governing all recreational management activities are: Not encouraging significant increases in public use; maintaining a minimal number of campsites, providing access points and picnic areas to carry out the plan's goal; emphasizing traditional recreational uses of the area; instituting mechanisms for controlling conflicting recreational land uses and establishing standards to control development associated with recreation; and, providing a mechanism to insure the proper care and maintenance of administrative structures and areas.

The Penobscot River corridor in which the easements are located is well frequented by recreationists. Between 15,000 and 20,000 people go whitewater rafting on the West Branch annually. Records for 1993 show that the Penobscot River corridor experienced 20,558 camping days, based on more than 6,000 visitors. The average party of visitors consisted of three people who stayed an average of three-and-a-half days. July and August represented the busiest months, with approximately 11,700, or about 57 percent, of the total camping days recorded during those months.

A win-win solution

"I think it is working well," says Herb Hartman, director of the state's Bureau of Parks and Recreation, of Great Northern's Penobscot Conservation Easement. "It's a win-win situation." In Hartman's estimation, the company benefited by developing the resource protection and resource management plans for the project. "It was a very useful exercise in recreational management for the company," he suggests. "It certainly created a much more productive working relationship between the company and the state."

GNP's manager of forestry Marcia McKeague agrees that the Penobscot Conservation Easement helped the company focus on recreational uses of its lands. "Overall, the experience has been really positive. This project started before Great Northern had an organized mechanism for managing recreation. Clearly, we had to develop more active management and control of recreation on our lands."

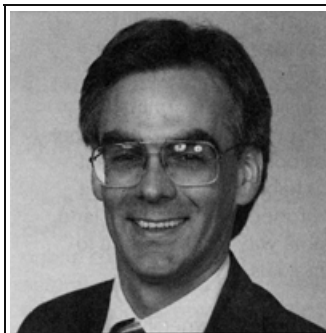
Both Hartman and McKeague note that although it is difficult to know precisely what might have happened to the West Branch had GNP not donated the easements to the state, it is fair to assume

that the easements have ensured recreational access to the public, and, generally, have brought stability to the West Branch.

"The easements give an important area special treatment" says McKeague. "Clearly, an area like this could be over-used. But the easement proposal set out some objectives for what both the state and GNP agreed to. This agreement eliminated uncertainty and gave some stability to the area along the West Branch. That may be the chief benefit arising from the project. Certainly, cooperative management is beneficial to all parties."

Hartman believes the easements have served to protect those scenic and recreational values on the West Branch in which the public is interested. McKeague agrees. "The public benefits are significant. The land is not being developed. It is a beautiful, protected area. It is extremely popular."

Although one expected benefit to the conservation easement donor in some sort of federal tax deduction, that issues remains unresolved for the Penobscot Conservation Easement. Georgia Pacific, the owner of Great Northern Nekoosa when the easements were granted to the State in 1981, continues to debate the details of the deduction with the federal government.



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