



Trends in Working Forest Conservation Easements

A report from the April 2001 meeting of the Land Trust Alliance
Working Forest Conservation Easements Advisory Panel

by *Brenda Lind*

The increasing use of conservation easements to protect private, productive forestland and recent large-scale projects protecting tens or hundreds of thousands of acres are bringing out challenges and questions related to working forest conservation easements (WFCEs). WFCEs are easements developed specifically for working forests that are actively managed for timber or other marketable goods. In April 2001, a Land Trust Alliance (LTA) advisory panel of conservation easement and forest management practitioners from across the country discussed emerging WFCE trends and ongoing challenges, including forming complex partnerships with multiple parties in easement transactions, documenting and monitoring a forest's multiple resources and managing public access on some working forestlands.

“WFCE practitioners hope that by exploring these questions and anticipating future challenges, we can work together to fine-tune and strengthen this tool to benefit and protect working forests,” said Tammara Van Ryn, LTA’s eastern region director. The meeting built on the advisory panel’s first gathering in the Spring 2000, where panelists worked to identify and gain consensus on basic approaches to WFCEs.

These approaches were captured in a 45-page publication, *Working Forest Conservation Easements: A process guide for land trusts, landowners, and public agencies* (2001). [The complete guide is available for \$30; \$24 for LTA organizational members. To order, contact LTA at 202-638-4725, or go to www.lta.org. For an overview of the guide and a list of the advisory panel, see the Spring 2001 Exchange, page 10.] Funding for these meetings was generously provided by the Doris Duke Charitable Foundation.

Complex Partnerships

In the Northeast, recent “mega” projects have stretched land trusts’ concepts of what can be accomplished, as well as their capabilities. In March 2001, the New England Forestry Foundation purchased the Pingree conservation easement, protecting 762,192 acres of Maine working forest. Currently, the Forest Society of Maine is negotiating terms and funding for a 656,000-acre forest conservation area known as the West Branch Project. Other recent projects exceeding 80,000 acres in size have been completed in Vermont and New York. WFCEs were purchased in each of these projects, requiring tens of millions of dollars in funding from a variety of public and private sources. Funds were raised for up-front easement holder expenses and stewardship endowments as well as acquisition.

These “mega” projects demonstrate a trend common to many smaller scale WFCE projects as well; dealmaking for land trusts often involves complex partnerships. Negotiations over a conservation deal can be complicated as various funding sources step in with special requests or requirements for the project. When public money is involved, special interest groups, such as recreational groups, wilderness preservation advocates and those concerned about preserving local forest industry jobs, may try to shape or influence the project. Public agencies and legislative bodies can weigh into the process as well. Conflicts can arise between landowner requirements for confidentiality and privacy and the openness of public funding processes. Regardless of whether public or private funding sources are used, the larger WFCEs can generate debate over the definition of sustainable forestry and how best to achieve it.

To effectively manage multiple complex relationships and public input, land trusts negotiating large-scale or high profile WFCEs may benefit from a planned public involvement strategy. Land trusts on the cutting edge of these projects offer the following strategies:

- Early in the easement development process, identify who must be involved under what time frame, and inform the landowner what to expect.
- Identify and include key stakeholders in the process, to make sure that you have all the information you need and to avoid being blind-sided by opposition later in the process.
- No space Develop ways to provide or publicize information to stakeholders on the project’s benefits.
- No space Create a plan for public involvement following the acquisition to build community and political support so that conservation values protected today are respected in the future.
- No space Expect that land trusts will need increased public relations skills as well as ample experience with negotiation subtleties to handle these demands.

Managing Public Access

While most land trusts don’t require public access on donated WFCEs, easements purchased with public money may. For example, public money invested in WFCE acquisition in New England often introduces public access requirements. (The degree and type of required public access differ by state and region.) With public access comes concern about impacts on natural areas, the costs of regulating and enforcing public use, and potential conflict between different land uses, such as forest harvests and hiking.

Some members of the advisory panel observed that the land trust community needs to explore the issue with public agency leaders, and develop guidelines for access and cost management. One approach is having the easement require a public access plan, separately updated like a forest management plan to respond to changing factors such as land conditions and demands on the resource. Such a plan might incorporate a user fee system to pay for management costs. Vermont Land Trust, which is participating in public access planning for a large tract of WFCE land, cautions that the planning process alone may cost tens of thousands of dollars.

While public access has taken the limelight in some major public WFCE acquisitions, “public access has not replaced public benefit,” said Paul Doscher, senior director of land conservation for the Society for the Protection of New Hampshire Forests (SPNHF). Public officials or media sometimes equate the public benefits of WFCEs with public access. As part of their public

outreach on conservation easements, land trusts can heighten public understanding of other public benefits such as scenic preservation, the economic benefits of working forests, wildlife habitat and protecting water and air quality.

Baseline Inventory

As land trusts gain experience monitoring WFCEs, some are re-examining their methods for documenting baseline ecological conditions. While the WFCE guide recommends a standard timber inventory or forest type inventory in WFCE baseline documentation, this alone may not provide enough information to monitor changes in the forest's range of conservation values. Timber harvest and other management activities on working forestland may, over time, affect non-timber resource values protected by the easement, such as threatened species or forest vigor and health. Further, full ecological assessments are, in some cases, needed during the development of the easement so that it can make provisions for special features or ecological resources, such as waterways or threatened or endangered species.

There are more questions than answers on the best baseline documentation methods for WFCEs:

- What level of ecological inventory is appropriate – cursory methods that screen for significant unusual species or habitats, detailed property-wide ecological studies, or somewhere in between?
- This is expensive – who pays?
- When are inventories best accomplished – with baseline documentation, with forest management plan development, and/or with monitoring data collection?

In a search for answers, SPNHF has developed a new GIS-based inventory tool. Field staff enter data from sampling plots on the land trust's fee-owned preserves directly into a portable electronic data recorder. The data include timber volumes, understory and herbaceous species, threatened and endangered species, and historical and cultural information. Back in the office, the digitized information can be numerically summarized and displayed in GIS layers. The New England Forestry Foundation uses a similar system on its fee-owned forestlands.

Mr. Doscher of SPNHF explains that, as the land trust tests and refines this tool on its fee-owned lands, “we ask ourselves if it can be used to document baseline conditions on easements as well. Perhaps this tool could help us be sure we are documenting key ecological values on easement properties and then help us have confidence that our monitoring is sufficient to protect them. WFCE holders are still just scratching the surface of the whole baseline documentation question.”

Enforcing Forest Management Plans

The WFCE guide recommends that WFCEs require working forestland be managed according to a written forest management plan prepared by a knowledgeable professional. Unlike an easement, a forest management plan may be changed and/or updated periodically to respond to new forest conditions, landowner requirements and information.

If a forest management plan is required by specific easement terms, it can serve as an enforceable extension of the easement even as it evolves over time. However, WFCE holders

have, so far, little experience in addressing easement violations arising from failed forest management plan implementation. Questions include:

- What kinds of forest management plan violations are probable?
- What actions, or inactions, would merit enforcement?
- Are forest management plans constructed and written so as to be enforceable?

“The concept of management plans being enforceable is relatively new in the field of conservation easements,” observed Ms. Van Ryn. “Generally, land managers have used forest management plans as guidance documents, not enforceable documents. If forest management plans are to be enforced, we need to apply the same eye toward enforceability in forest management plans as we apply to conservation easements.”

Gauging an Easement’s Effectiveness

Many WFCEs have evolved beyond simply prohibiting development toward advancing specific desired forest conditions. Monitoring must now evolve to evaluate whether the easement provisions are effective toward achieving these conditions. Monitoring easement effectiveness in addition to landowner compliance with easement terms will require easement holders to experiment with new yardsticks by which to evaluate their work. Ultimately, easement holders will use the information to hone their easements.

Expanded inventory methods such as SPNHF’s new baseline data collection may help evaluate WFCE effectiveness. Other approaches are in the works as well. The New England Forestry Foundation (NEFF) is developing a monitoring program for the Pingree easement that will both monitor traditional no-development provisions of the easement and build a database of forest change over time using aerial and satellite imagery and ground-based methods. Instead of extensively monitoring the landowner’s forest management planning and implementation, Keith Ross, director of land protection for NEFF, explained, this monitoring approach will help evaluate the long-term results of forest management with an eye toward sustainability. Further, Mr. Ross explains, this monitoring data on the forest’s health may provide forest managers with valuable information for their forest stewardship that would be otherwise too costly to obtain, and therefore unavailable.

Appraised Values

Easement holders report that, as they deal with large-scale working forests, valuation for specific easement terms becomes increasingly important during negotiations. Landowners and easement holders need better appraisal information about how specific elements of an easement affect property value, such as particular forestry restrictions, forest management planning requirements, requirements for review or approval of forest management plans, special habitat reserves and public access. Some are concerned about appraisal elements that have been challenged by the IRS, and others are particularly interested in elements that are not specifically valued today but may be in the future, such as carbon credits. Further, easement holders would like to explore external factors that may contribute to valuation, including regional location and urban/rural context. The growing sophistication of WFCE transactions drives a need for additional development and wider sharing of appraisal information.

Ensuring Forest Productivity

For WFCE holders whose core organizational goals include supporting sustained production of forest products and the economic and community benefits that flow from such productive use, forest management can become a conservation purpose as well as a permitted use in working forest easements. For example, Vermont Land Trust (VLT) recently collaborated with the State of Vermont and other entities to acquire an 84,000-acre easement in which sustainable forest management and timber harvesting is required. This provision addressed concern that the WFCE property could later be acquired by an owner with goals other than continued productive forest management, thus undoing an important purpose of the easement. This requirement generated enormous public discussion as well as opposition from wilderness protection advocates.

VLT and other WFCE holders continue to explore ways to ensure that working forests protected in part for their productive values will not be permanently removed from production, while assuring that the forests' other conservation values are protected. One method discussed would include a provision in the WFCE that would allow subsequent easements to be placed on the property only with approval by the WFCE holder, so that the holder could determine whether proposed subsequent easements harmonize with the original easement purpose. This approach has raised substantial concerns in the conservation community as well, and also raises interesting appraisal questions. WFCE advisory panel members emphasize that other methods of ensuring productivity need to be explored as well.

Looking Ahead

Are WFCEs getting too complex? Should we go back to basic, open space-oriented, "no-build" conservation easements? In response to these questions, the WFCE advisory panel agreed that, although the WFCE tool demands greater expertise, its complexity has appropriately evolved to address the specific threats and values inherent in working forests. The effort that land trusts and others have devoted over the past decade to gain consensus on basic expectations for WFCEs has established a solid foundation from which to grow.

WFCE practitioners will continue to explore questions including easement valuation, ecological inventory and monitoring methods and enforcement of management plans. Anticipating challenges and considering probing questions will help to ensure that this tool will protect forestlands long into the future.

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