



Protecting Private Forests with Conservation Easements

A Joint Position Statement of the
Inland Empire Society of American Foresters
and the
Intermountain Society of American Foresters

Position

The Society of American Foresters (SAF) supports conservation easements as a potentially effective method for ensuring sustainable forest management through efforts designed to maintain working forests, preserve environmental values, and protect communities or individuals from excessive development pressure. The SAF's national position statement advocates that "conservation easements should be based on a forest management plan prepared by a professional forester" (SAF 2007). Such a plan provides a basis for negotiation between the landowner (easement grantor) and the organization or agency that will hold the easement (grantee) regarding restrictions placed on the property and rights reserved by the landowner.

If conservation easements are to be encouraged with public support for either direct purchase acquisition of easements or encouragement of donated easements with incentives such as income tax credits, the SAF recommends that involved public agencies should have strict internal policies to ensure that the value of an easement is fair (i.e., not excessive) and that the public fiduciary responsibility to taxpayers is met (i.e., conservation benefits exceed easement value). The conservation easement agreement or deed should clearly identify the public benefits from the easement.

Conditions incorporated into conservation easements normally transfer when land is sold or bequeathed, and are usually perpetual. Some landowners may not be interested in perpetual easements because they are reluctant to restrict the management options of their descendants or potential land buyers (SAF 2007). A term easement that is less than perpetual should have an appraised value that is considerably less than a perpetual easement.



Adopted December 20, 2007, by the Executive Committees of the Inland Empire Society of American Foresters (representing professional foresters in northern Idaho and eastern Washington state) and the Intermountain Society of American Foresters (representing professional foresters in southern Idaho, Nevada, Utah, and western Wyoming) and approved by the Forest Policy Department, Society of American Foresters, Bethesda, Maryland.

This statement will expire December 20, 2012, unless revised or extended by the Executive Committees.



Issue

In some areas of the U.S., forest land is rapidly being converted to residential and other developed uses. Conservation easements are often useful for ensuring that lands remain undeveloped (SAF 2007). Over the next 50 years researchers expect a nationwide loss of 23 million acres of forest, or 3% of the total forest area (Alig et al. 2003). "Parcelization" resulting from increased housing density on private forest lands results in smaller average size of forest holdings and potential loss of working forests (Best 2002). Some states address the issue by providing publicly-funded incentives for conservation easements. Idaho fits the "parcelization" aspect of the issue (see concluding section, **Private Forest Trends in Idaho and State-funded Incentives for Conservation Easements**).

Background

A conservation easement is a form of land-use control formally recorded in a deed or agreement stipulating specific restrictions placed on a property as well as rights retained by the landowner (Bick and Haney 2001). Unlike a utility or road easement that gives the easement holder the right to do something on another person's land, a conservation easement instead gives the easement holder the right to prevent certain land uses (Hocker 2000, emphasis in original). A conservation easement deed is generally a permanent plan for the future use of land from which there may be no turning back, and should be entered into cautiously, with professional advice from foresters, accountants, and attorneys (Bick and Haney 2001).

A conservation easement is a legal agreement between a landowner and an eligible organization – either a qualified non-profit organization or a public agency – that restricts the activities that may take place on a property in order to protect the land's conservation values; restrictions are tailored to a particular property, the interests of the landowner, and the policies and purposes of the easement-holding organization or agency (Byers and Ponte 2005). Easements are entirely voluntary and are donated or sold by landowners at their discretion, with land-use restrictions arrived at jointly by the landowner and the organization or agency accepting the easement (Gustanski 2000).

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 (SAF 2007). This is one of two basic ways to allow development. The other way is to include the land where development is desired in the easement, with language specifically allowing it and conditioning it, if so desired. For instance, the landowner may want to retain the right to build a home. The easement would explicitly recognize this right. If desired, it could be conditioned, say by a footprint limit, location, height restriction, outbuilding restrictions, utility right-of-way terms, etc.

Successful easements are those in which both parties derive benefits from the transaction (Bick and Haney 2001). Two subsections below provide background information on **Benefits to Forest Landowners**, and then **Public Benefits and**



Support for Conservation Easements. A concluding section addresses **Private Forest Trends in Idaho and State-funded Incentives for Conservation Easements.**

Benefits to Forest Landowners. The primary use of conservation easements is the protection of open space, attained by reducing the potential for excessive development or other perceived threats to the "protected property" (Bick and Haney 2001). Forest landowners have diverse motivations for selling or donating conservation easements. Such easements are usually sold or donated to ensure that the land will not be developed, subdivided, or converted to non-forest use, often to protect wildlife habitat (SAF 2007). Conservation easements are a way for the current owner to ensure that his or her desire to recognize and maintain a "sense of place" is passed along to future generations.

For some landowners, the prime benefits of conservation easements are intangible and purely personal, such as the satisfaction of preserving a spectacular scenic view; for most landowners, the prime benefits, although not the prime motivation, are the economic rewards from protecting the land (Squires 2000). The federal tax code provides economic benefits in the form of reduced income and estate taxes. Some states offer income tax credits for donated conservation easements (Pidot 2005); the state of Idaho will consider such a proposal in 2008 (Popkey 2007).

Selling or donating conservation easements may provide landowners committed to sustainable management with the wherewithal to resist pressure to sell their property to developers (SAF 2007). 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 forest management; such easement may provide assurance that preferred forest practices are used, while practices considered undesirable are prohibited (SAF 2007). Such arrangements are called working forest conservation easements, and the landowner's forest management plan is a key to developing a successful one (for details see Bick and Haney 2001, Kays and Bittenbender 2002, Lind 2001). Identifying stewardship restrictions in a management plan rather than the conservation easement document has the advantage of flexibility; the plan can evolve along with scientific and technological changes in forest management more readily than the easement deed, which typically requires "extreme legal measures" to amend (Mortimer et al. 2007).

The federal 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 (SAF 2007). These benefits are available only if the donation meets the Internal Revenue Service's Conservation Purposes Test: "The donation of a conservation easement is a tax-deductible charitable gift, provided that the easement is perpetual and is donated exclusively for conservation purposes" to a qualified conservation organization or public agency. "Conservation purposes" are as follows:

- 1) preservation of land for outdoor recreation by, or the education of, the general public;
- 2) protection of relatively natural habitats, of fish, wildlife, or plants, or similar ecosystems;
- 3) preservation of open space – including farmland and forest land – for



scenic enjoyment or pursuant to an adopted governmental conservation policy; in either case, such open space preservation must yield a significant public benefit; and 4) preservation of historically important land areas or buildings (Internal Revenue Code § 170 (h)).

Federal estate tax benefits allow the landowner to provide benefits to his or her heirs. The rules are somewhat complicated and should be considered as part of estate planning with appropriate professionals (see Small 1997, 1998, 2000).

Many states, including Idaho, offer forest landowners reductions on their property taxes in exchange for dedicating their land to forest management. These agreements can require the landowner to adhere to an approved set of management guidelines (Bick and Haney 2001). In recognition that Idaho's 12,200 forest landowners have diverse objectives, the guidelines are quite general, requiring among a few other stipulations that the forest property be at least five acres in size (Idaho State Tax Commission 2007). The benefits of reduced property taxes are considerable. For example, in Kootenai County the assessed value of forest properties is about 8 percent of the market value. This represents about a 90% reduction in annual property taxes for forest properties compared to what market value property taxation would entail.

Agricultural land also enjoys preferential property tax treatment under Idaho law (Idaho Code § 63-602K), and another benefit not available to forest landowners. Farm and ranch owners may exempt from property tax lands with a conservation easement for wildlife purposes that has been granted to a nonprofit organization (Idaho Code § 63-605); forest landowners are not afforded this benefit.

Public Benefits and Support for Conservation Easements. All conservation easements must provide some documented public benefit (Byers and Ponte 2005), otherwise there is no rationale for providing public incentives, such as federal income tax deductions or state income tax credits, for encouraging landowners to enter into conservation easements. Quantification of public benefits did not surface as an issue until the late 1970s, during debate that in 1980 resulted in a change in the Internal Revenue Code giving donated conservation easements the status of charitable donations for federal income tax deduction purposes, as well as qualifying for preferential federal estate tax benefits (Pidot 2005). Tax benefits to the landowner generated by a conservation easement are determined by subtracting the value of the land after the easement from its value before granting the easement (Gustanski 2000).

The public benefits issue has remained prominent since 1980 and is associated with the imprecision of the legal concept and purpose of conservation easements. This imprecision is manifested three ways: 1) difficulty in determining whether conservation easements provide public benefits commensurate with the public subsidy conferred by their tax deductibility; 2) difficulty in appraising the value of conservation easements; and 3) uncertainty about the easement holder's resolve and resources to monitor and enforce conservation easements permanently, which may affect future public benefits (Pidot 2005). Monitoring is crucial for ensuring that the intent of the easement agreement is met; survey research shows that 89% of working forest conservation



easements are inspected annually (Mortimer et al. 2007).

Virtually every conservation easement involves a significant public subsidy, either directly if purchased with public funds or indirectly through reduction of taxes (Pidot 2005). Public programs such as the federal Forest Legacy Program provide a limited funding source for purchasing conservation easements (see SAF 2007 for details). Federal income tax provisions offer incentives for the donation of perpetual easements, and also some estate tax benefits. A number of states provide incentives in the form of income tax credits (Pidot 2005). In states like Idaho with current use property tax treatment, forest landowners can qualify for substantial savings on their property taxes whether or not conservation easements are involved.

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 (SAF 2007). This enhances the political acceptability of conservation easements. To the extent that forest practices acts in states like Idaho have devised regulations that provide conservation benefits, one must make a case for public funding of conservation easements on the additional public value created by the easement. For instance, Idaho regulations for streamside protection zones are designed only to protect water quality. A conservation easement may protect other specific values that benefit the public, such as wildlife habitat.

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 (i.e., not excessive) and that the agency's fiduciary responsibility to taxpayers is thereby met. For example, the U.S. 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 (SAF 2007). These ideas should also extend to state incentive programs that encourage donated easements.

In some cases there is potential for easement values to 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 (SAF 2007).

Private Forest Trends in Idaho and State-funded Incentives for Conservation Easements

Because of pressures to develop private forest land, the states of Colorado and Virginia provide income tax credits as incentives to encourage conservation easements (Pidot 2005). The state of Idaho will consider such a proposal in 2008 (Popkey 2007).

The two SAF units that operate in Idaho offer suggestions below on conservation easement issues associated with proposed legislation that would provide transferable



state income tax credits for qualifying donated easements (H262 Idaho Ranch, Farm and Forest Protection Act, a bill introduced in March 2007, or its subsequent variations if there are any). One issue is the interaction of conservation easement incentives with the **Idaho Forest Practices Act Requirements**; another is **Private Forest Land Ownership Trends in Idaho**, which furnish evidence of "parcelization" but not acreage loss.

Idaho Forest Practices Act Requirements. In Idaho, private forest landowners must employ best management practices that protect water quality, including streamside protection zone requirements of the Idaho Forest Practices Act (Idaho Code § 38-13). Under a conservation easement landowners would need to maintain streamside protection zones. Such protection provides additional benefits beyond legal requirements, including wildlife habitat, so conservation easements in forest riparian areas should qualify for incentive programs.

Private Forest Land Ownership Trends in Idaho. According to U.S. Forest Service researchers, in Idaho total private forest land acreage is not expected to decline between 1997 and 2050; nationwide, however, a loss of 23 million acres of private forest is projected (Alig et al. 2003). The expectation of no future loss of private forest land in Idaho may hide more localized problems. Kootenai County, for example, is heavily forested and among the fastest growing areas in Idaho. Although there is evidence that private forest acreage did not decline from 1997-2006, average parcel size did decrease (see "Trends" table below).

Trends in Forest Property Assessment, Kootenai Co., 1997-2006

Source: Gordon Harnasch, Kootenai Co. Assessor's Office

Year	Parcels	Acres	Market Value Exempted Parcels	Exemption Value	Net Assessed Value	Net Taxable Value
1997	5,981	256,124	\$487,939,957	\$377,844,238	\$110,095,719	\$4,624,609,016
1998	6,195	256,308	\$497,013,615	\$375,823,246	\$121,190,369	\$4,817,040,388
1999	6,337	257,709	\$496,090,474	\$371,267,705	\$124,822,769	\$4,968,380,177
2000	6,505	258,132	\$531,799,832	\$417,574,090	\$114,225,742	\$5,373,893,736
2001	6,626	259,361	\$537,878,442	\$429,189,597	\$108,688,845	\$5,584,793,988
2002	6,766	260,861	\$550,285,473	\$448,578,989	\$101,706,484	\$5,908,899,888
2003	6,875	260,533	\$568,443,233	\$477,004,247	\$91,438,986	\$6,337,583,734
2004	6,900	261,252	\$598,981,428	\$515,481,661	\$83,499,767	\$7,021,774,182
2005	7,050	262,171	\$784,729,024	\$705,567,295	\$79,161,729	\$9,527,713,610
2006	7,700	258,231	\$1,367,841,369	\$1,260,513,249	\$107,328,120	\$13,986,424,193

Total acres, Kootenai Co.: 780,488

In Kootenai County there were 256,124 acres of private forestland enrolled for current use property tax treatment in 1997 and 258,231 acres in 2006. As the number of landowners increased from 5,981 to 7,700 during that time, the average parcel size declined from 42.8 to 33.5 acres. The term "parcelization" therefore describes Kootenai



County's recent past. Parcelization results from housing development and can be associated with a loss of working forest lands and forest values such as wildlife habitat, along with increased wildfire risks and firefighting costs (Stein et al. 2005).

Research indicates that between now and 2030 in Kootenai and Bonner Counties in northern Idaho, housing density will increase on 5 to 20 percent of the private forest land area (Stein et al. 2005). A projected increase in housing density has implications for the condition and management of affected private forests and the watersheds in which they occur. Increased housing density in forested areas and decreased parcel sizes can be associated with decreases wildlife habitat, biological diversity, and scenic values; degradation of watershed values and recreation opportunities; and increased wildfire risk and firefighting costs (Stein et al. 2005). Increased housing development in rural areas bordering National Forest System lands could alter the ecological, social, and economic resources and services provided by those public lands and increase their management costs (Stein et al. 2007).

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ABOUT THE SOCIETY

The Society of American Foresters, with about 15,000 members, is the national organization that represents all segments of the forestry profession in the United States. It includes public and private practitioners, researchers, administrators, educators, and forestry students. The Society was established in 1900 by Gifford Pinchot and six other pioneer foresters.

The mission of the Society of American Foresters is to advance the science, education, technology, and practice of forestry; to enhance the competency of its members; to establish professional excellence; and to use the knowledge, skills, and conservation ethic of the profession to ensure the continued health and use of forest ecosystems and the present and future availability of forest resources to benefit society.

The Society is the accreditation authority for professional forestry education in the United States. The Society publishes the *Journal of Forestry*; the quarterlies, *Forest Science*, *Southern Journal of Applied Forestry*, *Northern Journal of Applied Forestry*, and *Western Journal of Applied Forestry*; *The Forestry Source* and the annual *Proceedings* of the Society of American Foresters national convention.



The Inland Empire Society of American Foresters (IESAF) is a multi-state society within the national Society of American Foresters. Membership is open to foresters and other natural resource professionals. The IESAF includes eastern Washington and northern Idaho.

The Intermountain SAF is a part of the Society of American Foresters and includes members that reside in Utah, Nevada, southern Idaho, and western Wyoming. There are seven Chapters to the Intermountain Society: Nevada, Color Country (southern Utah), Wasatch Front (northern Utah and southwestern Wyoming), Upper Snake River (southeast Idaho and northwest Wyoming), Southwest Idaho, Utah State University Student, and the University of Nevada-Reno Student Chapters.