

**Working Forest Conservation Easement  
Our Forests today and for the Future**

By

Robert Lodes

Submitted to the Board of Environmental Studies  
School of Natural and Social Sciences  
in partial fulfillment of the requirements  
for the degree of Bachelor of Arts

Purchase College  
State University of New York

May 2020

Sponsor: Ryan Taylor

Second Reader: George Kraemer

## **Abstract**

A Working Forest Conservation Easement is an efficient and effective present-day approach to solving the problem of dwindling quantities of reasonably unspoiled land in America. The United States of America, from the time of the signing of the Declaration of Independence, allowed and encouraged private ownership of land. As population increased, demand for agricultural products increased. As science and technology advanced, so did our ability to fully extract and deplete natural resources from the land. Historically, landowners used their land as they saw fit, with little concern for the long-term consequences. Public and private conservation groups today continue to recognize that without change in attitude, increased incentives, and specific laws that regulate land use, America will eventually consume and ruin the land.

## **Introduction**

The objective of this paper is to appreciate how we arrived at the point in our American history, where Working Forest Conservation Easements (**WFCE**) exist. Specifically, land in all 50 States has been and continues to be used, abused, and sometimes ruined. We are at the point in time where individual citizens, and elected officials at the local, state and federal level seek to motivate landowners to protect, reclaim and rejuvenate their land. Ultimately, for the benefit of future generations.

## **LAND OWNERSHIP: Engrained in the minds of AMERICANS**

### **Pre-Revolutionary War**

During the era of the “New World”, Europeans arrived at the western hemisphere, in particular North America, as settlers and colonists. The reasons for this migration of people include escape from religious persecution and for the chance to make a better life for themselves and their families. Many of the early settlers had descended from a European history of serfdoms (system of feudalism). The poorest people, known as peasants, were bound to a life of work-for-survival on their lord’s estate. The new world offered opportunities, land ownership that could lead to prosperity that many people, might not have had otherwise. These opportunities were not offered without individual struggle. <sup>1</sup>

In Jamestown, Virginia Colony (founded 1607), land was to be held and managed collectively. Each colonist was to receive an equal share in the colony’s production, regardless of his or her contribution. Two-thirds of the initial 104 colonists died of starvation and disease before the first winter. Governor Thomas Dale visited the colony in 1611 and found living skeletons bowling in the streets while fields went untended. After Dale partially converted the communal lands to individual three-acre tracts in 1614, productivity increased seven-fold. The remainder of the communal land was privatized by 1617. <sup>1</sup>

The Plymouth, Massachusetts (founded 1620) colonists began with communal land and were near starvation when land was privatized in 1623. As William Bradford noted, the change “made all hands very industrious, so as much more corn was planted than otherwise would have been.” Taken together, natural-rights theories, legal doctrines, and practical experience combined

to give the American colonists a strong sense of the role of private property rights in ensuring their survival and prosperity. <sup>1</sup>

Early Americans learned the importance and benefit of individual land ownership. Puritans in America argued that land was held not of the king but as a gift from God alone. Much of the uninhabited land of the new world became 'owned' by settlers by the simple act of occupancy and defense, an 'affordable' cost for most.

### **Post-Revolutionary War**

Since inception, the mindset of citizens of The United States of America's was one of total acceptance to the idea that a landowner had the final say in how his land was to be used or abused.

Thomas Jefferson (U.S. President 1801-1809) believed that American population would double every 20 years. America's founding fathers remembered the relative (high) population density of Europe and wished to manage the density through increasing the availability of land. Acquisition of land was not specifically addressed in the U.S. Constitution as a right or purpose of the federal government. However, President Jefferson and the federal government proceeded with the Louisiana Purchase (1803).

The lands that defined the United States of America continued to expand through the 19<sup>th</sup> century. Larger additions included: the Transcontinental Treaty 1819; the Annexation of the Texas Territory (1845); Oregon Territory (1848); Mexican Cession of 1848. The concept of 'Manifest Destiny' defined the mindset of Americans and their elected officials of the mid-19<sup>th</sup> century.

## Present Day

Land value can be calculated (or appraised) by the number and to the degree in the ways in which the land can be used. The number of ways and the value associated with any particular way that a property can be used impacts the monetary value of the land. <sup>2</sup> Some of the traditional or historic ways land can be used include: homesteading; agriculture; mining for minerals; harvesting native plant and wildlife; and recreation (example: camping, hiking, swimming, etc.) Some present-day land uses that affect value include scenic view value; open space value; protection of existing historic structures; surface and ground water quality protection; wildlife migration corridor; and further sub-division of the land for sale.

Today, much of the land in America has been built upon, paved over, polluted and otherwise rendered to be useless for purposes other than its present use. For example, the land under a prestigious skyscraper in a major metropolitan city may be built on, paved over, and polluted yet have an extremely high market value. That particular parcel of land under the skyscraper may be of minimal value, other than for its present use.

Land at a dumpsite (polluted), a closed-up factory (built on), or a ghost-town (built on and paved over) is likely worth significantly less than similar raw or natural undisturbed land located nearby.

Some area of land in western United States has been rendered useless for agriculture, as a result of improper farming and irrigation practices. <sup>3</sup>

The accepted American view that land ownership by individuals has consequences to this day. *Early on in American history, Landowners were free to use and abuse their land as they*

*saw fit.* Today, citizens and their elected officials look to take back some of the ability of landowners to abuse the land.

**Timeline: Significant GOVERNMENT and PUBLIC ACTIONS regarding LAND**

- The General Survey Act of 1824 authorized the use of Army Corps of Engineers to survey roads and canals. <sup>4</sup>
- The first national park, Yellowstone, was established by the U.S. Congress and signed into law by President Grant on March 1, 1872. <sup>5</sup> Yellowstone was the first national park in the U.S. and is also widely held to be the first national park in the World.
- The Appalachian Mountain Club was established in 1879.
- The United States Geological Society established within the Department of the Interior in 1879.
- The Adirondack Park was created in 1892 by the State of New York. It contains six-million acres and is nearly three times the size of Yellowstone. It contains both private and public lands. Forty-five percent of the Park is publically-owned Forest Preserve, protected as “Forever Wild” by the New York State Constitution since 1894.
- The Refuse Act of 1899 regulated dumping into navigable waterways.
- The Reclamation Act of 1902 established the U.S. Reclamation Service (also known as the Water Bureau), for the oversight and operation of the diversion, delivery, and storage projects that it has built throughout the western United States for irrigation, water supply, and attendant hydroelectric power generation.<sup>6</sup>

- National Park Service as established in 1916. Grand Canyon, Acadia, Bryce, Zion, Lassen, Hawaii, and Mount McKinley were established as national parks.<sup>5</sup>
- In the mid-20<sup>th</sup> century, many environmental acts were signed into law that impact land usage: 1948 Federal Water Pollution Control Act; 1965 Solid Waste Disposal Act & The Water Quality Act; 1972 Clean Water Act; 1986 Emergency Wetlands Resources Act; 2008 Farm Bill.

### **Government efforts to control**

There are three ways the government has traditionally been able to affect land usage:<sup>7</sup>

- Specific use of public capital investment: Building major infrastructure (roads, dams, etc.)
- Manipulation of property tax: Tax reduction for create of additional affordable housing, industry expansion, strategic agriculture.
- Through regulation: Conservation and pollution control acts of the mid-20<sup>th</sup> century.

Two out of the three ways is for government to promote the consumption of non-renewable resources. The latter effort is to influence and regulate conservation, thus managing resources.

### **Present Day use of Conservation Easements**

#### **Conservation Easement**

In an effort to manage or control the rate of degradation of the quality and quantity of land in America, the concept of a conservation easement evolved. The easement agreement can offer private landowners flexibility in protecting their land for future generations to use and to cherish.<sup>8</sup>

There are two sides of the conservation easement agreement: The land owner side, which has the legal ability to transfer a conservation value attributed to a particular piece of land; and the side of either a private interest group (example a Land Trust) or public agency (Federal, State, County and/or local government) willing to offer something of value to the land owner, in exchange for the creation and establishment of the agreement. To rephrase: a **conservation easement** is a voluntary legal agreement between a landowner and a land trust or government agency that **permanently** limits uses of the land in order to protect its **conservation** values.<sup>9</sup> In a conservation easement, a landowner voluntarily agrees to sell or donate certain rights associated with his or her (real) property, and a private organization or public agency agrees to hold the right to enforce the landowner's promise not to exercise those rights.<sup>9</sup> A conservation easement is also known as a conservation covenant, a conservation restriction, or a conservation servitude.

### **Working Forest Conservation Easement (WFCE)**

All forests “work” by providing wildlife habitat, clean air, clean water, beautiful surroundings, etc. A ‘working forest’ is a forest that is actively managed using a forest management plan. This contrasts with a ‘forever wild’ forest, where forest harvesting is prohibited, and nature can take its course in the absence of human intervention. A ‘WFCE’ is also different from an easement with no harvest restrictions at all. WFCE’s can protect forest values by assuring sustainable forest practices and encouraging long term land stewardship, all in accordance with the goals and objectives of the easement grantor. WFCE can enable landowners to continue to derive economic value from land through the harvest of forest products, goods and services, to support the ongoing costs of ownership and management.<sup>10</sup>



## **Why and how Conservation Easements are established**

As described in Alabama State conservation website, each piece of land has a quantity of attributes. If each attribute can be described as a 'stick', then the land has a pile of sticks associated with it. The number, size, and quality of the sticks can be a way to measure, or appraise, the value of the land. Each conservation easement deeded to the land can be considered as a stick being removed from the pile of sticks associated with the Land. The landowner would generally expect to be compensated for the loss in value of his land.<sup>8</sup>

## **Examples of land attributes or ('sticks') in Georgia-Alabama Land Trust website**

Scenic: May include Lands near natural geographic features, such as the Grand Canyon, or Yellowstone National Park.

Natural: May include Lands that have a water feature (stream, river, pond, lake), abundance of wildlife in need of protection, contain a migration corridor, abundant open space. 'Forever Wild' Conservation Easements are intended to allow the Land to exist without intervention by human activity.

Historic: May include lands that have archeologic value, historic structures, historic events.

Minerals & Mining: May include deposits of minerals and elements.

Harvest: May includes land useful for agricultural production, including timber.

Recreation: Hunting, canoeing, hiking, sight-seeing, water sports, camping

Sub-division: May include lands that have market value for division into smaller parcels, for land speculation or development.

## **Who can benefit from a Conservation Easements**

Although a conservation easement prohibits certain uses by the landowner, such an easement does not make the land public.<sup>11</sup> Many conservation easements transfer no use of the land either to the easement holder or to the public. Also, some conservation easements reserve to the landowner specific uses, which if were not described in the agreement, would be prohibited.

Conservation agreements can be unique, granting uses to specific groups of users.<sup>11</sup>

**Public interest groups** include governments (local, county, state and federal) that can offer financial reward(s) to landowners, when a conservation easement is granted. These rewards primarily include reduction in real estate tax, income tax, and inheritance/estate tax. There is a cost of oversight to be identified, quantified, and funded.

At the federal level, in 2015 Congress enacted the enhanced federal tax incentive for conservation easement donations. If the conservation easement qualifies, it can be used as a charitable tax deduction on the donor's federal income tax return. The 2015 act of Congress:

1. Raised the deduction a donor can take to 50% of his or her annual income.
2. It extended the carry-forward period for a donor to take the tax deduction to 15 years
3. Allows qualifying farmers and ranchers to deduct up to 100% of their income.<sup>12</sup>

**Private interest groups** include Not-for-Profit organizations. Generally, they can offer oversight service, as part of the Conservation easement. Oversight is essential to ensure perpetual compliance with the objective described in the conservation easement.

At the federal level, if a conservation easement benefits the public by permanently protecting important conservation resources, it can qualify as a charitable tax deduction on the federal income tax return.

The Internal Revenue Code, Section 170(h) describes the ‘Qualified Conservation Contribution’ as:

- A qualified real property interest, transferred to a qualified organization, exclusively for conservation purposes.

Conservation purpose is defined: i) the preservation of land areas for outdoor recreation by, or the education of, the general public ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem. Iii) the preservation of open space for the scenic enjoyment of the general public or pursuant to defined governmental conservation policy and will yield a significant public benefit or iv) the preservation of an historically important land area or certified historic structure. A Conservation purpose must be protected in perpetuity.

The rights to subsurface oil, gas or other minerals must be identified and assigned in the agreement. Generally, no surface mining is permitted when dealing with qualified conservation contribution, as viewed by the IRS.

The value of the easement donation, as determined by a qualified appraiser, equals the difference between the fair market value of the property before and after the easement takes effect.

The United States Internal Revenue Code (IRC) 170 (h)

Estate tax reduction:

In certain situations, such as in the death of a landowner, there may be financial costs associated with the transfer of land to the heirs in the form of inheritance. If the heirs do not have the resources to pay for these costs, a conservation easement could create and provide a new revenue stream for the heirs.

### **Working Forest Conservation Easement application to the regions of the U.S.**

The geographic characteristics of America, including climate, for the purpose of WFCE discussion will be divided into three regions: Northeast& Mid-west, South and West. This division is aligned with the National Association of Forester's website.<sup>13</sup> Each of these regions has some attributes considered to be somewhat unique.

#### Northeast and Mid-West

Over 175 million acres of forest-close to 23% of forestland in the nation. Fragmentation, sub divide and conversion to non-forest uses are critical priorities.

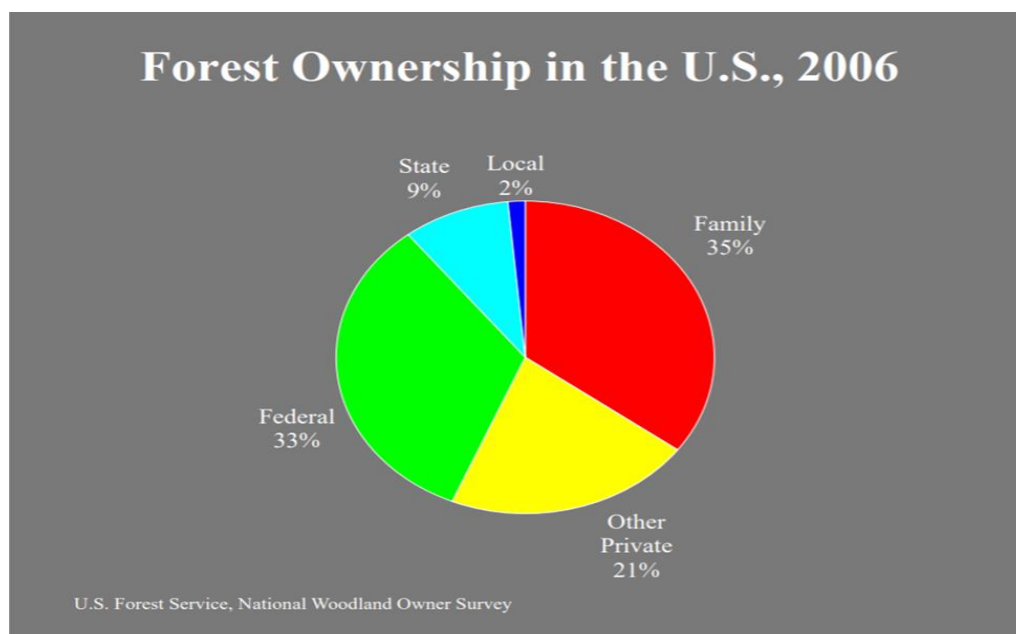
#### The South

Two thirds or more of the land in some southern states are forested. Southern forests are shaped by population growth, urbanization, changing landowner characteristics and extreme weather and fire events.

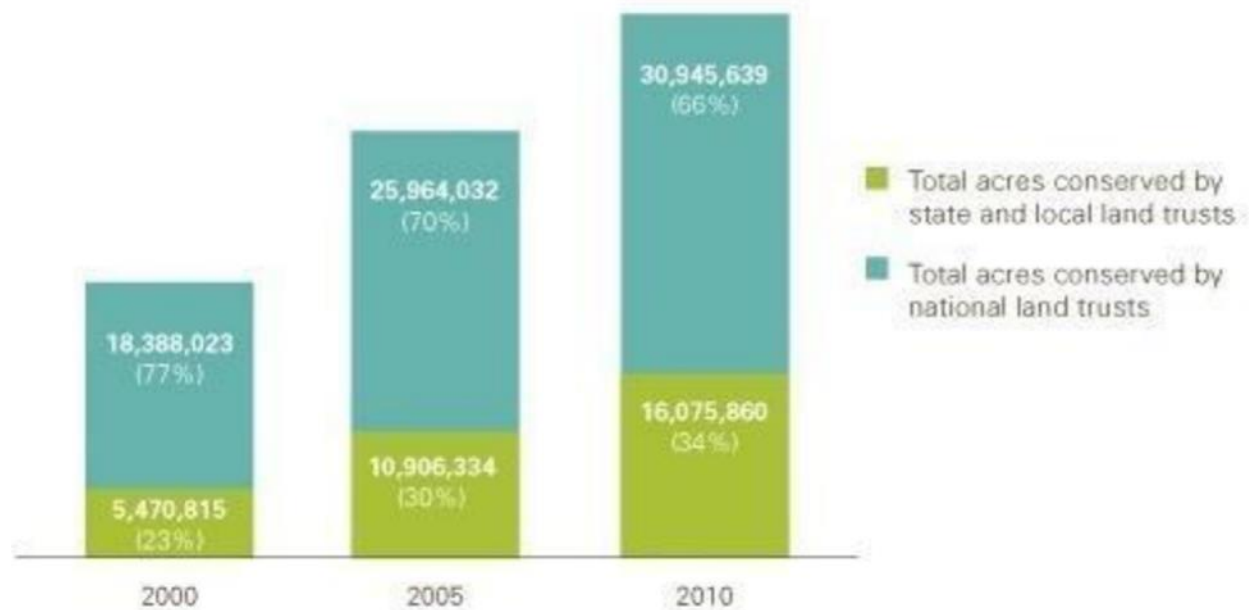
## The West

Forests of the West cover 365 million acres- 49% of the nation's total forested acres-and are managed by a diversity of owners. The issues, forest fires, invasive species, fragmentation, climate change.<sup>14</sup>

Working Forest Conservation Easements vary from region to region, to serve different purposes, depending on the goals identified for the property. The Land Trust Alliance offers examples of how the WFCE can be shaped to fit a particular region of the country. Montana Land Reliance uses WFCEs to maintain forest production on lands that have been owned and managed by individual and families. In this region, timber production contributes to the economy. The easements are designed to protect forest values while respecting landowner's traditional forest management. In the Red-Hills region of Florida and Georgia, the Tall Timbers Research Station uses WFCE to protect land, particularly its native long-leaf pine ecosystem.



## Total Acres Conserved by All Land Trusts: State, Local and National



The land shelters threatened and endangered species and exceptional game habitat. The easements protect the region's unusual ecosystem and timber economy. In northerner New England and New York, corporate and industrial owners control large forested tracts on which local economies depend. The easements, held by the State of New York, guide sustainable forest management practices, protects wildlife habitat and other natural resource features, and provides opportunities for public recreation.

## Potential Limitations of the WFCE

The WFCE at present, offers the best structure for landowners to be compensated for the restrictions they allow to be placed on their land. As noted by Gene Duvernoy, one of the WFCE limitations is the fact that the easement is a static document that may not be written or be prepared well enough today to be able to adapt to future conditions that may arise regarding regional infrastructure, advances in farming and timber practices, and changing environmental conditions (global warming).



## **Discussion and Conclusion**

America has been and continues to be a nation of laws that grant individual citizens and privately held entities to own real property. Additionally, America's laws have traditionally been aimed at protecting the property owner's rights to use, abuse, and otherwise consume their property.

As the population continues to grow, and technology and science continues to advance, landowner's ability to more fully and thoroughly deplete and consume their properties increases. Similarly, the number of citizens and elected officials who recognize the need to conserve continues to grow. There is a finite quantity of land and resources in America. The Working Forest Conservation Easement creates the structure that can allow the land to generate and consume renewable resources in perpetuity.

In light of the legal structure in America that protect the rights of landowners, the Working Forest Conservation Easement offers the most efficient way for the consumption of renewable resources to continue. Revenues gained for the consumption of resources can be used to offer the costs to manage and steward the property in perpetuity.

## **Issues to consider**

Cooperation and coordination across jurisdictional boundaries are needed to address the threats to our nation's forests. It is reasonable to assume that the non-renewable resources of the United States will continue to be consumed, as each generation takes control of the nation's economy. It is unknown when these same resources will be thoroughly depleted. The renewable resources, such as those found in working forests (Timber, wildlife habitat) will



continue to increase in their relative importance, as supply of the land that can provide these resources remains fixed, and demand to consume continues.

The Working Forest Conservation Easement agreements represent the best way for landowners to willingly give up some of the rights associated with owning their land at a fair value.

## Bibliography

---

- 1 Morriss, Andrew P. *Europe Meets America: Property Rights in the New World* | Andrew P. Morriss. 1 Jan. 2007, <https://fee.org/articles/europe-meets-america-property-rights-in-the-new-world/>.
  - 2 “Conservation Easement Valuation” ---. *Arizona Department of Revenue*, 1 Sept. 1997, <https://www.azdor.gov/>.
  - 3 Reisner, Marc. *Cadillac Desert*. Revised, Penguin Books, 1993
  - 4 *U.S. Army Corps of Engineers Headquarters > About > History > Brief History of the Corps > Introduction*. <https://www.usace.army.mil/About/History/Brief-History-of-the-Corps/Introduction/>.
  - 5 Butcher, Devereux. *Exploring Our National Parks and Monuments*. Oxford University Press, 1947
- 
- 6 *Bureau of Reclamation*. <https://www.usbr.gov/history/borhist.html>
  - 7 Jacobs, Harvey. “International Land Conservation Network.” *Conservation Easements in the U.S. and Abroad: Reflections and Views toward the Future*, Lincoln Institute of Land Policy, 2014, <https://landconservationnetwork.org/>.
  - 8 A Look into Conservation Easements with Land Trust of North Alabama Executive Director, Marie Bostick - Blog.” *Longview Financial Advisors*, 29 Apr. 2019, <https://longviewfa.com/guest-post-a-look-into-conservation-easements-with-land-trust-of-north-alabama-executive-director-marie-bostick/>

- 9 “The Nature Conservancy - Private Lands Conservation.” *The Nature Conservancy*, <https://www.nature.org/en-us/about-us/who-we-are/how-we-work/private-lands-conservation/>.
- 10 Kays, Jonathan. “University of Maryland Extension.” *Working Forest Conservation Easements: A Primer for Forest Landowners*, Aug. 2002, <https://extension.umd.edu/>.
- 11 *Guide to Equestrian-Friendly Conservation Easements*. <https://elcr.org/wp-content/uploads/2014/08/>
- 12 “Conservation Options.” *Land Trust Alliance*, 23 Dec. 2014, <https://www.landtrustalliance.org/what-you-can-do/conserving-your-land/conservation-options>
- 13 “Home.” *National Association of State Foresters*, <https://www.stateforesters.org/>.
- 14 “Working Forest Conservation Easements Conserving Your Legacy of Forest Stewardship.” *Pacific Forest Trust*, <https://www.pacificforest.org/>

---

## Works Cited

“Conservation Easements and the Georgia-Alabama Land Trust.” *Georgia*, georgiaalabamalandtrust.org/georgia-alabama-land-trust-conservation/georgia-alabama-land-trust-and-conservation-easements/.

Duvernoy, Gene. “Conservation Easements are not a Panacea” background paper referenced in Lincoln Institute of Land Policy Working Paper, 2014, <https://landconservationnetwork.org/>.

---

Lind, Brenda. “Using Conservation Easements to Protect Working Forests”. Spring 2001, [www.landcan.org/](http://www.landcan.org/)

“Open Space Conservation.” *Local & Regional Land Trust Session 5 , Page 11*, <https://www.fs.fed.us/openspace/webinars.html>.

“Open Space Conservation” ---. *Private Land Conservation Programs from the Farm Bill and Other Sources, Session 9, Page 50*, <https://www.fs.fed.us/openspace/webinars.html>.

26 U.S. Code § 170 - Charitable, Etc., Contributions and Gifts.” *Legal Information Institute*, Legal Information Institute, [www.law.cornell.edu/uscode/text/26/170](http://www.law.cornell.edu/uscode/text/26/170).

---