

Working Forest Conservation Easements: *A Primer for Forest Landowners*

The landscape is changing and forestland continues to be broken into smaller parcels and converted into housing developments at an astonishing rate. If forest landowners want to ensure that their forest stewardship efforts extend beyond their tenure and are available for future generations to use and cherish, they must act responsibly and take charge of the direction and long-term future of their land. The question is how to assure that their property is managed responsibly? There are a variety of estate planning tools available to accomplish this task. A **Working Forest Conservation Easement (WFCE)** may be the answer.

Concept of conservation easements, how they work and some of the benefits

A conservation easement is a legal agreement between a landowner and a nonprofit land trust or governmental entity that permanently limits the uses of the land in order to protect specified conservation values. It does this by restricting the amount of development and activities that can take place in the future. Since the development value of the property cannot be realized, the market value of the property may be reduced to that of “open land”, i.e. the value of the land for agricultural or forest uses. In some areas, the re-sale value of property under conservation easement may or may not be negatively impacted due to high demand for large parcels containing limited development. Not only do conservation easements protect open space values such as wildlife habitat, ecological diversity, and forest beauty, but they can also protect the economic and community benefits that arise out of the forest’s production of forest products, goods and services. Future owners are also bound to the easement’s terms and conditions.

By donating a conservation easement, a landowner eliminates or limits the potential development on the property, and receives potentially significant benefits from income, estate and property taxes. In areas with rapidly increasing property values due to development, a conservation easement can reduce the estate taxes that would have to be paid by heirs. This can prevent the familiar situation of the heirs having to sell the land or timber to pay Federal estate taxes. A conservation easement donation that meets Federal tax code requirements can qualify as a tax-deductible charitable donation. This can result in significant reductions in income taxes. In some states and counties, property tax credits are available to donors of qualifying conservation easements.

Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

Some of the benefits of conservation easements include:

- They leave the property in the ownership of the private landowner, who may continue to live on it, sell it or pass it on to heirs.
- They can significantly lower estate taxes, and provide the landowners with income tax and/or property tax benefits.
- They are flexible, and can be written to meet the particular needs of the landowners while protecting the property's resources.
- They are permanent, even when the land changes hands.
- They provide private landowners with a means to control the future use of their own private lands – independent of government agencies and the local planning and zoning process.

Additional considerations about conservation easements:

- Be sure to obtain counsel from qualified professionals, such as an attorney and an accountant who are familiar with the tax provisions that deal with conservation easements.
- Talk to an appraiser early on in the process so that you can make an educated financial decision when you donate a conservation easement.
- Take it upon yourself to learn about conservation easements and land trusts so that you can be informed about entering into an agreement like a conservation easement.

Other Estate Planning Tools

The conservation easement is just one of the ways in which to protect a valuable piece of land. The following list provides a brief overview of other options that are available to landowners. After thorough research, if you decide that a conservation easement is right for you, the remainder of this document provides a detailed analysis of the conservation easement. A good financial advisor can help you run the numbers pertaining to the value of your property and various taxes and can help you decide the best strategy for you and your land.

- Donate the land or transfer the land to your heirs in order to reduce the value of your estate for tax purposes.
- Place the land into the hands of a partnership and have family members receive interests in the property over time in order to avoid the double tax associated with a corporation and to get the asset out of your estate.

Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

- Place the land in a Charitable Remainder Trust - may allow you to transfer the land out of your estate, while providing a sustainable income stream for heirs or other beneficiary. This is particularly effective in the case of a working forest that will generate income over time through sustainable timber harvest.
- Wealth replacement plan - can help generate income through a life insurance plan that is paid for from the income generated by a Charitable Remainder Trust. The result is that heirs will receive a substantial financial benefit, land will be protected, and a charitable organization such as a land trust also benefits.

What is a working forest and how does it differ from others?

All forests “work” by providing wildlife habitat, clean air, clean water, beautiful surroundings, etc., but a “working forest” is one that is actively managed using a forest stewardship plan as the roadmap or guide. This is in contrast to an easement that is commonly called “forever wild”, where forest harvesting is prohibited so that nature can take its course. It is also different from an easement with no harvest restrictions at all.

Working Forest Conservation Easements (WFCEs) do more than restrict specified development rights on a property. WFCEs 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 (the donor or seller of the easement). And, WFCEs can enable landowners to continue to derive economic value from the land through the harvest of forest products, good and services, to support the ongoing costs of ownership and stewardship.

Are “Forever Wild” easements good forest stewardship?

The concept of forever wild refers to the notion that by leaving the forest alone (no harvesting or minimal management activities) nature will take its course and the forest will revert to some type of naturally-sustainable ecosystem. Unfortunately, forest history and the impacts of human populations on forest ecosystems have demonstrated that what nature will provide is not what most landowners envisioned. In the 1920’s, the entire Appalachian forest saw the decline of the American chestnut due to the introduced chestnut blight. In recent years, the gypsy moth has caused the mortality of thousands of acres of oak forests. Millions of acres of New England forest were ravaged by an ice storm in the 1990’s. The future will surely bring new surprises.

Landowners who restrict timber harvesting in conservation easements many times do so to protect sensitive or unique habitats, or maintain a certain forest stage (for example – old growth).

Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

Over time these habitats change through the process of natural succession and many times require forest harvesting to maintain or enhance them. Also, natural disturbances such as windstorms, tornadoes, insects and disease are to be expected and forest management is needed. With our global economy and more of our population living in forests, the introduction of exotic insects and diseases are to be expected, and foresters must have the tools to deal with these foreseen and unforeseen problems.

Landowners who consider giving up the right to harvest forest products as part of a conservation easement should carefully consider the future implications of that decision. The inability to harvest timber forever limits the ability of the land to support itself economically in the future. While the present generation may be able to handle this financial burden, future generations may not.

What is forest stewardship and how do landowners involved in forest management programs benefit from WFCE?

Forest stewardship is *"the managing of forest resources in a way that meets the needs of the current owners, but does not detract or degrade the use by future generations."* It requires that the owner has a sense of responsibility; knows the opportunities; is aware of the consequences of actions; and is guided by objectives.

A professional forester is the one who will guide the landowner in creating a forest stewardship plan and can be the liaison between the landowner and the land trust advisors. Professional foresters will tour your woodlot and help you develop forest management objectives based on your interests and goals, as well as the ability of the land to meet them. The forester can conduct an inventory of your woodland and develop a written management plan. They can also help you implement the plan.

Who qualifies as a professional forester?

The qualifications of professional forester change from state to state. Many states have licensing or accreditation programs. The basic qualifications should include a degree from an accredited four-year forestry college, 2 years of acceptable forestry experience, and some continuing education requirement.

There are three types of professional foresters. **State foresters** work for a state forestry agency and may develop forest stewardship plans, but do not handle commercial timber sales.

Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

Consulting foresters are private foresters who work for landowners as their agent on a commission basis. They will develop forest stewardship plans, market timber products and perform other services. **Industrial foresters** work for the interests of a specific company or mill.

To locate a list of professional foresters for your state or area, contact your state forestry agency through the phonebook or log onto www.stateforesters.org/sflist.html. Or to contact the forester in your county, look in the blue pages of the telephone directory under State Government, Department of Natural Resources or Forest Service. Several national professional associations of foresters exist, such as the Society of American Foresters (www.safnet.org), the Association of Consulting Foresters of America (www.acf-foresters.com/), and the Forest Stewards Guild (<http://foreststewardsguild.org/>).

When you have selected a few foresters, talk with each to find those whose land management philosophy meshes with your general goals and objectives. Ask for and investigate references. Visit a few examples of the foresters work if possible.

Landowners who have a forest management plan benefit from WFCEs because their objectives, specified and carried out in a stewardship plan, are also written into the language of the conservation easement, and thus protected forever.

What is the forest stewardship plan? What are the basic components of a plan, when the plan is prepared, who prepares it, what belongs in the plan and when is the plan revised?

A forest stewardship plan is a working guide that allows the landowner to maximize a mix of forest benefits, including wildlife, timber, recreation, aesthetic value and other benefits. A good plan combines the natural and physiographic characteristics of the woodlot with the interests and objectives of the owner to produce a set of forest management recommendations. A fact sheet on developing a forest stewardship plan can be found in the references at the end of this publication

Basic components of a forest stewardship plan

- **Goals and Objectives** – The plan begins with a statement of the landowner’s goals and objectives and is meant to express the desired future of the land. Few landowners have goals that seek to maximize timber production. However, most are interested in timber harvest activities that enhance wildlife, recreation, forest health, and other forest benefits.
- **Maps** – The maps denote the property’s location, boundaries, forest stands and soil types.

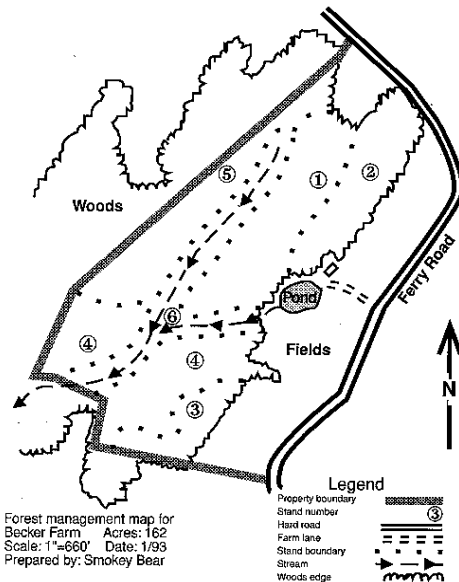
Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

- **Inventory** – Examples include a timber inventory complete with fill volume, stocking and species information; an inventory of critical areas and/or endangered species; biological inventory; descriptions of geological features, cultural features, ecological communities and soil data. The intensity of the survey can vary depending on the interests of the landowner.
- **Activities** – This part of the plan provides detailed actions steps on meeting the mentioned goals and objectives. This includes a chronology of activities that will be done each year over the next 10-year period.

When is the plan revised? Plans are typically written for a 10-year period but should be updated about every 5 years. However, easements should allow for off-cycle revisions for such things as natural catastrophe, changes in inventory data, additional activities or the landowners desire to rewrite the plan. In a WFCE, activities called for in the plan may change from time to time, but only in a manner that serves the goals and objectives of the original easement Grantor.



When is the forest stewardship plan prepared? Stewardship plans are fully capable of addressing forest conservation values protected by the WFCE. Plans can provide clear guidance for monitoring and enforcing the objectives of the original easement Grantor.

Additionally, the plan can be revised as conditions change, technology or knowledge advances or if there is

a natural disaster. The easement document may specify who revises the plan, and who reviews and approves it. Having said this, it is best to draw up the stewardship plan and WFCE at the same time to secure the conservation values in the easement as it is drafted.

How can a land trust help you?

- They listen to your goals for your land and help match these with protection opportunities.

Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

- They often can provide referrals to attorneys, appraisers, accountants and land planners familiar with conservation strategies.
- They serve as recipients and stewards of conservation easements and lands.

How do I select a proper land trust?

Not all land trusts are willing or able to handle working forest conservation easements. Many local land trusts may be targeted toward scenic, historic, or preservation easements, not those that involve working forests. There are many state, local and national land trusts that may fit your needs.

Research local, state, and national land trusts to find out how long they have been in existence, how many properties they protect, and if possible, talk to another landowner who has a conservation easement held by that land trust.

Land trusts should:

- Have an understanding of working forests; or access to a professional forester.
- Share similar objectives concerning the land with the landowner.
- Be able to respond to such things as marketplace pressures, harvest complications or storm or insect damage if required in the easement or the forest stewardship plan. For example, if there is a major storm and brush and/or timber needs to be removed. If the easement or forest stewardship plan says that the landowner has to check with the land trust first, the land trust should be capable of responding quickly.
- Be prepared to evaluate management options and respond to circumstances on the property and the landowner's needs. Land trusts may not have foresters on staff, but they should have relationships with professional consulting foresters who can oversee the management of your property.

Before selecting a land trust to work on a WFCE for your property, make sure they walk your land with you.

General cautions about land trusts:

In general, government/public agencies have been known for the following:

- They can be less flexible and move more slowly than private land trusts.

Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

- Most government agencies prefer donations whenever possible, as do most easement holders. Furthermore, a donation is required to take advantage of most tax benefits.

In general, private land trusts have been known for the following:

- Being governed by a Board of Directors that typically decides whether or not the land trust will accept an easement donation, or seek to purchase a conservation easement on a particular piece of property.
- Are staffed by people who specialize in the type of focus of the land trust – I.E. attorneys, policy specialists, foresters, or farmers. If natural resource management is a priority, make sure the staff has the proper background to support your objectives.
- Sometimes have a high turn-over staff rate.
- Sometimes only accept conservation easements with a cash endowment attached to ensure proper monitoring and enforcement. The land trust should explain the purpose of a stewardship gift, which is to make sure it can legally defend the easement and uphold your objectives. Adequate funds must be available to defend the easement in court as well as make annual monitoring visits. Most challenges to easements are from second, third or fourth generation owners of eased properties.

“The Devil is in the Details”

Land trusts vary widely in their experience and expertise. Some may have yet to secure any conservation easements, while some may have acquired quite a few. It is very important for you to take into account the amount of experience various land trusts have. You may want a group with a proven track record or you may want to take a chance on a newly formed non-profit. Regardless of whom you choose, it is important that both you and your land trust share an understanding and appreciation of your property and your land protection goals. It is also important that you understand the “forever” plans of this land trust. Make sure you ask the question, “Who will take over the monitoring and enforcement of my easement should your agency or organization go out of business?” You may want to consider other agencies or organizations if yours doesn’t have a “forever” plan. One way to provide added security in this regard is to have two organizations accept and hold the conservation easement jointly; this is a common practice in some states.

Some land trusts will request a donation (of cash, stock, or other assets) to help pay for the monitoring and enforcement of the easement. Most land trusts have a stewardship fund that is

Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

specifically dedicated to providing legal defense of conservation easements. It is important to work with a land trust that will be able to defend your conservation easement if a future landowner should ever challenge it.

While photocopying another landowner's conservation easement and filling in the blanks may provide a starting point for drawing up a deed, it will not likely fit with your goals and objectives. A conservation easement may have a few basic details, but it should be custom crafted to your particular land and desires. That's why it's important for you to research various land trusts to find one that best matches your plans.

Conflicts of interest can occur if the landowner relays too heavily on the land trust for advice, especially in the negotiating process. It is best if you have done your own research, have an existing forest stewardship plan, and your own legal representation. While grantees have trained staff to help them out, they are professionally obligated to the mission and goals of the land trust.

For more information about land trusts and conservation easements, the Land Trust Alliance (www.lta.org) provides a variety of informational publications and lists of land trusts throughout the United States.

What belongs in a WFCE? Principles:

- WFCEs must meet basic IRS requirements for public benefit if the owner is seeking a Federal income tax deduction. For example, if a charitable income tax deduction or estate planning are an essential part of the easement, the conservation purposes that are recognized by the IRS should be documented. Conservation purposes that are acceptable to the IRS are as follows:
 - The preservation of land areas for outdoor recreation by, or the education of, the general public;
 - The protection of a relatively natural habitat of fish, wildlife, or plants or similar ecosystem;
 - For the scenic enjoyment of the general public;
 - Pursuant to a clearly delineated federal, state or local governmental conservation policy, and will yield a significant public benefit;
 - The preservation of a historically important land area or a certified historic structure.

Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

- These purposes are the minimum standards needed to qualify the easement for a charitable income tax deduction.
- WFCEs should state forestry and/or forest conservation purposes as well as other easement purposes. If these are not stated, future easement interpreters may see the forest goals as unimportant or even conflicting with other stated purposes.

Range of approaches:

- *Your WFCE should list general forest management purposes with other conservation purposes.* For example:
”...The purpose of the Easement is also to conserve wildlife habitat and other natural resource and scenic values of the Protected Property and to allow long-term responsible management of forest resources which does not compromise water quality and wildlife habitat.” (Lind 2001)
- *The purpose of the forest should be specified.*
”Whereas, the Grantor intends that the productive biological capacity of and genetic diversity on the Property be protected and that the land be used as a working forest landscape that is dominated by natural succession and old growth characteristics.” (Lind 2001)
- *The objectives should be prioritized. For example:*
”a.) The principal objectives of this Grant are to establish and maintain productive forestry resources on the Protected Property and, in consideration of the contribution timber products make to the economy and communities of the region and the State, to encourage the long-term, professional management of those resources, and to facilitate the economically sustainable production of forest resources in a manner that minimizes negative impact and the duration of impact on surface water quality, recreational benefits to the public, wildlife habitat and other conservation values...; and
”b.) The secondary objectives of the Grant are to encourage sustainable management of soil resources, to conserve scenic and natural resources associated with Protected Property, to improve the quality of life for Vermonters, and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside.” (Lind 2001)

Basic contents of an easement:

1. *An introduction and statement of purpose*, which also contains several paragraphs about everyone’s involvement and their desire to protect the property. Important information

Educating People to Help Themselves

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

linking protection of the property with federal, state and local government conservation policies will also be noted.

The introduction should state both the landowner's and land trust's individual goals. This part of the easement is extremely important as clauses in the later part of the document will constantly refer back to the stated goals and purpose of the agreement. It's important to be very clear and concise, as you don't want anything to be misinterpreted in the future.

2. *Rights of the Grantee* – things the land trust is allowed to do on, with or in relation to the property. Usually, the main affirmative right of the land trust is to inspect the land for compliance with the conservation easement with reasonable notice to the landowner. Some affirmative rights are always necessary and include inspection, enforcement, emergency access and occasionally limited rights for scientific study and educational uses. A conservation easement only allows public access if it is specifically requested to be included by the landowner. In most cases, conservation easements state that the easement does not grant any public access or use of the property.

3. *Restrictions* – things the landowner is prohibited from or limited in doing. Easements are typically drafted to include a list of prohibitions and restrictions, with all other rights of use retained by the original Grantor and all future owners. You should carefully review each of the restrictions proposed by the land trust. If you find anything questionable or you do not understand something, ask for clarity in writing. You have the right to eliminate or modify areas in this section. However, just as you have the right to restrict access, the land trust can respond to your objections with modifications of their own. It is a process of discussion and negotiation. Common restrictions include limitations on development, use requirements, such as maintaining agricultural or forestry use, or prohibition of commercial or industrial use, protection of the property's aesthetic values, protection of certain wildlife or plant habitat, protection of water resources such as springs, prohibition on mining, prohibition on dumping, limitations on signs to preserve aesthetic qualities, limitations on structures and improvements and legal subdivision. Some landowners choose to donate or sell all of their development rights, but it is common to reserve certain rights, such as a home site, which may allow children or grandchildren to build a home on the land.

Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

The University of Maryland is equal opportunity. The University's policies, programs, and activities are in conformance with pertinent Federal and State laws and regulations on nondiscrimination regarding race, color, religion, age, national origin, sex, and disability. Inquiries regarding compliance with Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Educational Amendments; Section 504 of the Rehabilitation Act of 1973; and the Americans With Disabilities Act of 1990; or related legal requirements should be directed to the Director of Personnel/Human Relations, Office of the Dean, College of Agriculture and Natural Resources, Symons Hall, College Park, MD 20742.

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

4. *Reserved rights* – things the landowner is allowed to accomplish and retain. It is important to look beyond the current landowner’s intended use of the property, and to anticipate any future uses of the landowner’s heirs and successive owners.

The three basic rights a landowner has are:

- The ability to use the protected property in a manner that is consistent with the purpose and terms of the easement.
- The rights to sell, lease, exchange or dispose of the property.
- To use, maintain, repair, replace, reconstruct or demolish existing structures and improvements.

Remember, the landowner retains all rights and uses not prohibited or restricted by the easement document.

When concerned with working forests, it is extremely important to work with a consulting forester (one who doesn’t represent the land trust) [Note: if the land trust has a forester on its board, the landowner may also chose to work with that person.] when creating the conservation easement. Their knowledge can be invaluable when determining the reserved rights needed to continue practicing forestry.

Some of the basic reserved rights necessary for continuing to practice forestry are: to harvest timber; to build temporary or permanent logging roads and trails; to reforest with trees; to restrict public access during harvesting periods and immediately after reforestation; to harvest pine straw; to use appropriate silvicultural techniques (e.g. prescribed fire, herbicides, fertilization and improved genetic stock); to excavate sand and gravel for on-site use; and to lease the property for purposes of hunting and fishing. (Bick, Haney – 2001). A forestland owner may choose to restrict, guide or otherwise control the exercise of these rights in a WFCE.

5. *Terms and conditions* – things that frame the actual agreement, most of which are legally related. This is the area where the services of a lawyer are highly useful. Some of the items that are included in the terms and conditions area of an easement include administrative issues, property taxes, liability issues, public rights, management items and monitoring and enforcement by the Grantee.

Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

Objectives vs. Restrictions

When creating an easement plan, it's highly advised that a landowner clearly convey their objectives for their land and work with a professional forester who can make correct suggestions to meet that goal. It's also advised to not to get too specific on how to meet those objectives in the easement as technology and knowledge change over time and the main goal is to keep the land consistent with the original objectives. It is helpful to keep in mind not only the current landowner's objectives, but possible objectives of future landowners.

It's also important to note that while the landowner has important objectives they wish to maintain, they must always abide by the conditions of the easement regarding forest harvest activities. In some cases, an easement may require the landowner to use a professional forester to administer a timber sale and to notify the land trust prior to any major harvesting decision. Legal battles can result if this is not done.

The following case study is an example of what can happen if you don't notify the land trust prior to a harvest, when that is required in the easement. It suggests how the problem could have been avoided: (Adapted from Bick, Haney, 2001)

Clayton Case Study:

The Claytons saved for years to purchase a second home in the mountains. They were thrilled to find a place on a very private 250-acre parcel. The previous owner had donated a conservation easement to a regional land trust. The Clayton's realtor provided them with a copy of the conservation easement so that they would be able to review all of the provisions prior to purchasing the property.

At first the Claytons were apprehensive about the easement, but they decided to contact the land trust to learn more. The land trust staff quickly arranged to meet with the Claytons to explain how the easement worked and the role of the land trust with respect to the agreement made by the prior landowner. The Clayton's were glad to learn that the agreement allowed for other traditional land uses such as forestry and hunting and that it prohibited public access to the property. They also learned that the easement required that they notify the land trust and provide a Forest Stewardship Plan if they decided to timber. Subdivision and development was the only tangible land use option that was prohibited.

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

Several years passed and the Claytons thought little about the conservation easement. They were reminded of it only when the land trust made its annual stewardship visit. One winter the Claytons decided to sell some timber from the land in preparation for the expense of sending their oldest daughter to college. The Claytons contacted the land trust, and contacted a professional forester to develop a Forest Stewardship Plan. The forester developed a plan in which certain trees would be harvested over a six-week period. The Claytons also provided a copy of the Plan to the land trust. The Claytons received nearly \$30,000 for the timber.

Because the Claytons carefully reviewing the conservation easement prior to buying the property and contacted the land trust to better understand the agreement, future management activities such as a timber harvest did not create a situation that could lead to misunderstandings. Further, the land trust carried out its monitoring responsibility, which created good communication between landowner and land trust.

WFCE Restrictions

- Forest Stewardship Plans - A forest stewardship plan is strongly recommended in a WFCE. When prepared by a knowledgeable forestry professional, the plan should allow flexibility, within the bounds of easement terms, so that forest management can adapt to changing conditions over time. Using a forest stewardship plan, forces an easement holder to go through a periodic review process and ensures that the forest management plan conforms to the easement, conservation values are protected and the easement holder interests are maintained. Some of the advantages a forest stewardship plan offers include:
 - It can address conservation values protected by the WFCE.
 - It can decrease the need for prescriptive language and shorten details written into the WFCE.
 - It can provide clear guidance for monitoring and enforcement and can be revised to accommodate changed conditions, evolving technology or knowledge or disaster. (Lind 2001)
- Best Management Practices (BMPs) – Landowners are advised to adhere to BMPs whenever they need to implement forest management activities. This may be required by state law, but it is good to refer to it directly in the easement. BMPs are referenced for all forestry management practices or for specifics such as road construction, erosion control

Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

The University of Maryland is equal opportunity. The University's policies, programs, and activities are in conformance with pertinent Federal and State laws and regulations on nondiscrimination regarding race, color, religion, age, national origin, sex, and disability. Inquiries regarding compliance with Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Educational Amendments; Section 504 of the Rehabilitation Act of 1973; and the Americans With Disabilities Act of 1990; or related legal requirements should be directed to the Director of Personnel/Human Relations, Office of the Dean, College of Agriculture and Natural Resources, Symons Hall, College Park, MD 20742.

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

or other defined issues. These vary and are required from state to state. For a brief listing of BMPs in various states, log onto www.stateforesters.org.

- Use Proper Silvicultural Terms – Silviculture is the science, art and practice of caring for forests. Forest practices should be based on sound silvicultural methods and the listing of specific practices in an easement is not recommended. An example of a misused term is the term “selective harvest” as a means of thinning or regenerating forests. While well intentioned, selection harvest is not a proper silvicultural term and its use can provide the potential for poor forestry practices where only the best trees are harvested. “Selection harvest” is a proper term and refers to specific type of silvicultural practice. For a explanation of silvicultural practices go to: www.snr.missouri.edu/silviculture/

As always, restrictions should only be applied if they are necessary to protect the overall core purposes and goals. They should only be used in a WFCE if the landowner and easement holder both agree that they should be permanent.

How can I be sure my WFCE is monitored and enforced?

- Make sure that your land trust, is readily available to answer your questions.
- Your land trust should be present to monitor major harvest activities – if the easement and/or plan calls for this.
- Some land trusts provide annual aerial monitoring.
- Land trusts give prior notice to any inspections that will be taking place and landowners should request a copy of the report of that inspection.
- Your land trust should meet with you annually to review activities of the past year and review plans for the upcoming year. Even if new activities aren't planned, the meeting should still occur.
- A land trust's legal duty is to take corrective action if the landowner breaks the terms of the easement agreement. Land trusts will typically seek to resolve any problems through mutual agreement, since legal action can be costly, and may lead to a negative relationship with the landowner. However, a land trust may seek court action in cases where the landowner does not remedy the problem

Where do I go from here?

- Contact a land trust – You can contact the Land Trust Alliance at 202-638-4725 who may be able to put you in contact with a land trust in your area that handles working forest

Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

conservation easements. You can log onto their website at www.ltanet.org/findlandtrust for a listing of land trusts in your area. Also, for a complete listing of nationwide cooperative extension centers where you can obtain publications and easement information, log onto www.csrees.usda.gov. Some states also have a land trust network or association for all the local land trusts in that state (e.g. Maryland, Pennsylvania, Virginia).

- Be prepared prior to talking with the land trust – It is important that you represent yourself as an informed landowner and approach the land trust with a plan of your own. Go through the “contents of a plan” on your own and write down concerns and intentions in each of the five categories. An attorney can craft intentions into clauses that will enable your plan to remain intact.
- Talk with your own legal and financial advisors – Since a land trust cannot provide legal or financial advice or guarantee that a particular conservation plan is best for your personal and financial circumstances, make considerations and decisions about your property only after a professional consultation. Land trusts can put you in contact with attorneys, tax accountants, appraisers, land-use planners and surveyors who are experienced in the land conservation field.
- Talk with others who have been through it – Don’t just talk with landowners who have had success with their easement, but also speak with those who may have had negative experiences. They can give you the ins and outs and advice on how to get things done.
- Review some sample easements – many of the references below provide examples.

References:

- Brenda Lind. 2001. *Working Forest Conservation Easements*. The Land Trust Alliance, Washington, DC. Can be obtained from www.lta.org.
- Jonathan Kays, Robert Tjaden *Developing a Forest Stewardship Plan: The Key to Forest Management*. Fact Sheet no. 625. Can be downloaded from www.naturalresources.umd.edu/Publications.cfm.
- *Conservation Options for Private Landowners*. A brochure by The Land Trust Alliance, Washington, DC. Can be obtained from www.lta.org.
- *Conservation Options, A Landowner’s Guide*. The Land Trust Alliance, Washington, DC. Can be obtained from www.lta.org.
- Steven Bick, Harry L. Haney, Jr. 2001. *The Landowner’s Guide to Conservation Easements*. Dubuque, IA. (provides good examples of different conservation easements)

Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

The University of Maryland is equal opportunity. The University’s policies, programs, and activities are in conformance with pertinent Federal and State laws and regulations on nondiscrimination regarding race, color, religion, age, national origin, sex, and disability. Inquiries regarding compliance with Title VI of the civil Rights Act of 1964, as amended; Title IX of the Educational Amendments; Section 504 of the Rehabilitation Act of 1973; and the Americans With Disabilities Act of 1990; or related legal requirements should be directed to the Director of Personnel/Human Relations, Office of the Dean, College of Agriculture and Natural Resources, Symons Hall, College Park, MD 20742.



Information

WESTERN MARYLAND RESEARCH AND EDUCATION CENTER • 18330 KEEDYSVILLE ROAD • KEEDYSVILLE, MD 21756
(301) 432-2767 • FAX (301) 432-4089

- Stephen J. Small. 1998. *Preserving Family Lands: Book I – Essential Tax Strategies for the Landowner*. Boston, MA.
- Stephen J. Small. 1997. *Preserving Family Lands: Book II – More Planning Strategies for the Future*. Boston, MA.
- Stephen J. Small. 2002. *Preserving Family Lands: Book III*. Boston, MA.
- Silviculture information on the World Wide Web: www.snr.missouri.edu/silviculture/
- General information on forest stewardship: www.naturalresources.umd.edu

For further information:

Land Trust Alliance
1331 H Street NW, Suite 400
Washington, DC 20005
202-638-4725
www.lta.org

Date: August 2002

Prepared by:

- **Jonathan Kays, Regional Extension Specialist-Natural Resources, Maryland Cooperative Extension:** www.naturalresources.umd.edu/
- **Lori Bittenbender, Faculty Extension Assistant, Maryland Cooperative Extension**

Reviewed by:

- Meredith Lathbury, Director of Land Protection, Potomac Conservancy, www.potomac.org
- Nick Williams, Coordinator for Local Land Trust Assistance, Maryland Environmental Trust www.dnr.state.md.us/met/

Educating People to Help Themselves

Local Governments • U.S. Department of Agriculture Cooperating

The University of Maryland is equal opportunity. The University's policies, programs, and activities are in conformance with pertinent Federal and State laws and regulations on nondiscrimination regarding race, color, religion, age, national origin, sex, and disability. Inquiries regarding compliance with Title VI of the civil Rights Act of 1964, as amended; Title IX of the Educational Amendments; Section 504 of the Rehabilitation Act of 1973; and the Americans With Disabilities Act of 1990; or related legal requirements should be directed to the Director of Personnel/Human Relations, Office of the Dean, College of Agriculture and Natural Resources, Symons Hall, College Park, MD 20742.