

An Option For The Future

By Tom Berger

I was recently talking with a Tree Farmer who had just placed his property under a conservation easement. He was quite excited about what he had done with his Tree Farm and its future. The term conservation easement is frequently bantered around in conversations at forestry meetings. But just what is it and is it something that you should consider?

When you “Google” up Conservation Easement, this is what you get from Wikipedia.....“In this country, a **conservation easement** is a transfer of usage rights — which creates a legally enforceable land preservation agreement between a landowner and a municipality or a qualified land protection organization (often called a ‘land trust’), for the purposes of conservation. It restricts real estate development, commercial and industrial uses, and certain other activities on a property to a mutually agreed upon level.”

The decision to place a conservation easement on a property is strictly a voluntary one where the easement is sold or donated. The restrictions, once set in place, “run with the land” and are binding on all future landowners (in other words, the restrictions are perpetual). The restrictions are spelled out in a legal document that is recorded in the local land records and the easement becomes a part of the chain of custody for the property.

The primary purpose of a conservation easement is to protect agricultural land, timber resources, and/or other valuable natural resources such as wildlife habitat, clean water, clean air, or scenic open space by separating the right to subdivide and build on the property from the other rights of ownership. The landowner who gives up these “development rights” continues to privately own and manage the land and may receive significant state and federal tax advantages for having donated the conservation easement. Perhaps more importantly, the landowner has contributed to the public good by preserving the conservation values associated with their land for future generations. In accepting the conservation easement, the easement holder has a responsibility to monitor future uses of the land to ensure compliance with the terms of the easement and to enforce the terms if a violation occurs.

As mentioned above, there are some real tax advantages for a landowner considering an easement. The most recent changes in our tax laws have really helped those interested in conservation easements. Landowners can now deduct up to 50% of their adjusted gross income and carry forward unused portions of their tax deductions for up to 15 years. The previous limitation was only 30% of adjusted gross income over a 5-year period. These tax laws were set to expire last year, but the Rural Heritage Conservation Extension was recently passed by the U.S. Senate, making the deduction “permanent.”

I hope that Tree Farmers at least consider conservation easements as an option to keep their legacy moving forward. According to many good sources, the family Tree Farm’s future is not looking good. I’ve always appreciated this quote from John Sawhill, “A society is judged not only by what we create, but also by what we refuse to destroy.” And Tree Farms are a perfect match for John’s thoughts. Conservation easements are an option that Tree Farmers should explore for their property. Conservation easements do not fit into everyone’s long-term plan, but they are definitely worth thinking about. Consider keeping your Tree Farm legacy in place.

Literature: “Conservation Easement.” Wikipedia. 2008. Retrieved on 20 December 2008.