

RECREATIONAL ASPECTS OF FORESTLAND EASEMENTS IN THE NORTHERN FOREST REGION OF NEW YORK STATE

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Abstract: Forestland easements are the subset of conservation easements encumbering forested properties. These less than fee interests in private land are flexible legal mechanisms that contribute to a diverse collection of land use influences. This study of forestland easements and their grantors in the northern forest region of New York State revealed that recreation rights are an important aspect in the decision by forest landowners to grant a conservation easement. These recreation rights may be legally acquired by the grantee, retained by the grantor, or divided in ways that allows both parties to share them. Financial and non-financial values placed on the use of forestland for recreation are evident in the factors affecting the decisions of landowners who granted forestland easements. Private, non-industrial landowners who donated forestland easements most often retain recreation rights to the protected property. Industrial landowners who sold forestland easements commonly granted broad public access to the protected property for recreation.

Introduction

Conservation easements are commonly associated with protecting land from development, but they have other functions as well. Often they go beyond ensuring that land remains as open space by constraining or directing how that open space is used. Conservation easements may encumber land of many different open space uses, as well as buildings, so it is helpful to divide them by land use types for the purpose of discussion. The subset of conservation easements encumbering forestland, known as *forestland easements*, are used to ensure land remains forested and to provide other forest related benefits to the grantee. The disposition of recreation rights is often dependent upon whether the landowner donated the forestland easement or

sold it. An investigation into the content of forestland easements in the northern forest region of New York State revealed that one of the benefits from forestland that is commonly addressed in the agreement is the use of the property for recreation.

In the northern forest region of New York, the highest and best use of many forested properties is joint production of timber and recreation. That is, forestland has a market value that reflects its ability to grow timber and to be used concurrently for recreation. Most this land has some development value, which may be to the exclusion of the other two uses. Private, non-industrial landowners often capture this recreation value through their own enjoyment of the property. Industrial owners, such as forest products companies, capture this value through hunting leases or year-round recreation leases. Forestland easements have been used by landowners, at least in part, to retain, sever, or divide recreation values of forestland. Examination of forestland easement deeds reveals the various ways in which recreation is addressed in these easements.

The northern forest region of New York State has a diverse group of forestland easements, providing a background for this study. This region was first defined by the Forest Service's Northern Forest Land Study (1990) and later described in greater detail by the work of the Northern Forest Land Council (1994). It is a 7,600,000 acre area of largely undeveloped forestland that includes both the Adirondack Park and the Tug Hill Plateau. Within the 6,000,000 acre Adirondack Park, there are some 2,500,000 acres under New York State ownership. This state land is classified as "forest preserve", which means, among other things, that it can never be managed for timber production.

The forestland easement study (Bick 1996) inventoried all of the conservation easements held by known grantees in the region. The deeds to these conservation easements were examined. Those deeds found to encumber a property with a significant forestland component were included in the data set. The information contained in the deeds was divided into five categories: general information, affirmative right, restrictions, reserved rights, and terms and conditions. The variables within each of these five categories were then identified and inventoried. A description of the five categories follows in the next section, along with a discussion of the recreational aspects of each.

Results and Discussion

There is a considerable amount of general information included in most deeds. This information includes, among other things, the identity of the grantor (person or organization who donates or sells), and the identity of the grantee (organization that receives the easement). There are 50 donations and 29 sales in the study area, spread among eight grantees. The 50 donations came from 47 different grantors (i.e. a few grantors made more than one donation). Of these 47 grantors, 39 were private, non-industrial landowners. The sold easements, most of which were purchased by New York State, came from 11 different

sellers. Of these 11, a group of seven, including forest products companies, a public utility, a real estate investment firm, and a college, are considered industrial landowners. Donated and sold easements are discussed as distinct groups throughout this paper and, to a certain extent, this distinction generally represents the difference between non-industrial and industrial landowners.

Affirmative rights are those things the grantee is allowed to do on or with the protected property. A total of 23 different affirmative rights occur in the study. The donated easements generally contain far fewer affirmative rights than the sold easements. Among these are a group that pertains to allowing public use of the property for recreation. These affirmative rights for recreation are shown in Table 1.

Table 1. Affirmative rights found in forestland easements in the Northern Forest Region of New York State and the percentage of deeds they occur in, by type of grant.

<i>Public Recreation Affirmative rights</i>	Type of grant	
	<i>Donations</i> (%)	<i>Sales</i> (%)
Construct and maintain trails	2	79
Public recreation use comparable to that on state land	0	79
Parking lot construction	0	72
Recreation corridor access	4	10
Fishing	0	10
Trapping	0	10
Construct and maintain campsites	0	3

The data set includes 50 forestland easements that were granted as donations and 29 forestland easements that were granted as sales.

Only two of the affirmative rights for recreation purposes occur among the donated forestland easements in the study. Two donated forestland easements allow public use of trails on the property. One forestland easement grants the right to construct a trail for this purpose. Few landowners donated recreation rights, indicating these rights are of value to them. Public recreational use of the property can detract from the landowner's privacy and may degrade the resource. A landowner who derives satisfaction from the private enjoyment of his/her property could be forgoing all or part of that satisfaction by sharing the on-site use of the property with others.

Affirmative rights for recreation are major components of the deeds from forestland easement sales. This underscores the financial value these rights have. One of the two most common is broad public access for recreation uses comparable to those allowed on public lands in the State Forest Preserve. This is the right in which the landowner most clearly surrenders privacy and opens the resource to public access. Among sales, the other common recreation rights are intended for use in managing the resource to enhance public recreation access, including the right to construct trails and the right to construct parking lots. The remaining affirmative rights for public recreation, including

fishing (10%), trapping (10%), and campsite establishment and maintenance (3%), are associated with use of the property under the affirmative right to broad public recreation access. A few of the sales deeds (10%) provide for public use of trails, rather than broad access. It is interesting to note that these forestland easements were purchased from private, non-industrial owners.

Restrictions are those things that the grantor is prohibited from doing on, to, or with the protected property. There are 37 different restrictions found among the forestland easements. These restrictions can be divided into two types. Some of the restrictions involve various aspects of development, effectively constraining the property to forested uses. With restrictions in place that assure continued forest uses, the second category includes restrictions that shape and limit how the forest is used as open space. All restrictions work with reserved rights in determining the extent of development and the way the forest will be used. The restrictions affecting recreation use of the protected property are shown in Table 2.

Table 2. Restrictions affecting recreation uses found in forestland easements in the Northern Forest Region of New York State and the percentage of deeds they occur in, by type of grant.

	Type of grant	
	<i>Donations</i> (%)	<i>Sales</i> (%)
Open space use restrictions		
Motor vehicle use	50	65
Hunting	22	0
Trapping	12	0
Fishing	8	0
Powerboats	4	0
Number of vehicles on the property at one time	0	3
Trail construction	2	0
Use of firearms	2	0
Camping	2	0

The data set includes 50 forestland easements that were granted as donations and 29 forestland easements that were granted as sales.

Among the restrictions affecting recreation use of the protected property are limits on motor vehicle use, hunting, trapping, fishing, powerboats, the number of vehicles on the property at one time, trail construction, firearms, and camping. Note that many of these restrictions pertain only to donated forestland easements, those in which the recreation rights were retained by the grantor. Though most of the restrictions occur infrequently in the study, they are worth noting because their presence demonstrates the variability of content in forestland easement agreements.

The restrictions, by themselves, provide an incomplete picture of how the use of the property is constrained. Reserved rights are those uses of the property retained by the grantor. This section is the portion of the forestland easement agreement where the grantor can truly customize

it to meet his/her needs. These reserved rights guarantee continued or future uses of the property by the grantor or subsequent owners of the protected property. In many cases, these reserved rights serve to modify the restrictions in the deeds and define the limits of acceptable development and use of the protected property. Nevertheless, the reserved rights section represents more than a list of exceptions to the rules. These reserved rights are very telling evidence about the landowner's intended uses of the property. A total of 72 separate reserved rights are found among the forestland easements. These reserved rights can be separated into four types: development, resource management, ownership administration, and on-site enjoyment. The reserved rights for on-site enjoyment are shown in Table 3.

Table 3. Reserved rights for on-site enjoyment found in forestland easements in the Northern Forest Region of New York State and the percentage of deeds they occur in, by type of grant.

<i>Reserved rights</i>	Type of grant	
	<i>Donations</i>	<i>Sales</i>
	(%)	(%)
Use of the property for recreation	32	7
Construct and maintain lean-tos	12	41
Cut firewood for on-site use	18	0
Create and maintain scenic vistas	16	0
Recreation use the same as allowed to the public	0	4
Construct docks	6	0
Home gardening	4	0
Bury camping refuse	2	0
Establish lawns	2	0
Have electric generators	0	3
Hunting and fishing	2	0
Bring enforcement proceedings against violators	2	0
Use aircraft near the property	2	0

The data set includes 50 forestland easements that were granted as donations and 29 forestland easements that were granted as sales.

There are relatively few reserved rights for on-site enjoyment among the sold forestland easements. This is expected because most of these grantors are industrial landowners who have foregone their own on-site enjoyment of the property to convey broad public recreation access. In addition to an outright reservation of the right to use the property for recreation, some donors reserved such complementary rights as the right to construct lean-tos, to clear scenic vistas, and to cut firewood for on-site use. Other reserved rights for on-site enjoyment occur infrequently in the data set, demonstrating the unique ways in which forestland easements have been tailored to meet the needs of the landowners.

Two reserved rights that are included in the resource management category of reserved rights also pertain to use of the property for recreation. Among sold easements granting public recreation access, it is common for the

grantor to retain the right to close portions of the property to public access during and immediately after timber harvesting. A smaller number of these grantors also retain the right to close reforestation areas for a set time period after the plantation is established.

Terms, conditions, and other provisions encompass all of the interesting information falling outside the limits of the other four categories. Ten variables in this category were tracked through all of the deeds. Four of these variables are directly related to recreation (Table 4).

Table 4. Terms, conditions, and other provisions found in forestland easements in the Northern Forest Region of New York State and the percentage of deeds they occur in, by type of grant.

Terms, conditions, & other provisions	Type of grant	
	<i>Donations</i>	<i>Sales</i>
	(%)	(%)
No public access clause	72	7
Liability clause - grantor held harmless	8	83
Liability clause - grantee held harmless	18	38
Management plan requirement (by grantee, grantor, or both)	0	69

The data set includes 50 forestland easements that were granted as donations and 29 forestland easements that were granted as sales.

The clause denying public access generally states that nothing contained in the forestland easement shall give or grant to the public a right to enter upon or use the property where no such right existed prior to the grant. This clause occurs in 72% of donations but only 7% of sales. This difference is expected because most of the sold forestland easements grant public access for recreation.

The grantor held harmless clause generally states that the grantee holds harmless and indemnifies the grantor for any and all liability from misfortunes the grantee may suffer in the course of activities on the property. This clause occurs in very few donations (8%), but is very common among sales (83%). A chi-square test indicates inclusion of this clause it is correlated with public recreation rights among sales.

Similarly, the grantee held harmless clause generally states that the grantor holds harmless and indemnifies the grantee for any and all liability from misfortunes the grantor may suffer in the course of activities on the property. This clause is occurred in 18% of donations and 38% of sales. Again, a chi-square test indicates inclusion of this clause it is correlated with public recreation rights among sales.

The management plan requirement may be on the grantee, grantor, or both. The donated forestland easements failed to include this requirement in all cases. Among donated forestland easements, the deed itself is an impressive

planning document for the property. Since most donors retained all of the recreation rights to the property, there are fewer potential conflicts in use and, thus, less need for a plan. The opposite is true of the sold forestland easements, where potential conflicts between recreationists and timber harvesting must be addressed.

Conclusions

Private forestland in the northern forest region of New York State has a market value that can be thought of as a combination of three different components - its value as a timber producing resource, its value for recreation, and its development potential value. This is a strong generality, and in some cases these values overlap or perhaps exclude one another. To the extent that we can observe all three of these uses and values occurring at once on a single ownership, we can think of them as subsets of the land's total market value. With this in mind, the ways in which these values have been divided by forestland easement grantors become more evident.

A substantial number of donors in this study are private non-industrial landowners who retained recreation rights. Clarifying what these recreation rights mean to the individual landowner requires further examination. Perhaps the landowner is just retaining privacy that they would have been unable to enjoy with public recreation on the property. Privacy may be an element of their own recreation use, it may be a quality they find desirable in a homesite, or it may be an option for either of these two purposes they retained for future owners of the property.

Reserving the rights necessary to keep the recreation value of the property intact demonstrates the financial value of these recreation rights. When interviewed, most forestland easement donors stated that they would be using the land in the same manner they were at the time of the interview,

regardless of whether they had donated the forestland easement. This suggests that they did not give up anything that was personally valuable to them in the forestland easement.

Forestland easements are being used, in part, as a means of providing opportunities for public recreation on private forestland. This has been accomplished through the purchase of forestland easements from industrial landowners by the State of New York. In most cases, the forestland easements came from industrial private landowners. As long as the recreation value coexists with the value of the land as a timber producing resource, financially motivated landowners must capture this value. For example, the annual capture of recreation rent has been accomplished through hunting leases. When the State of New York began purchasing forestland easements, some industrial landowners had the opportunity to capture the recreation value or recreation rent of the land through a one time sale of these rights. This allowed them to lower their basis in the land, making the economics of holding the land as a timber producing resource more feasible. Two of the sold forestland easements granted trail corridor access across the protected property to the public. In both cases these forestland easements were granted by private, non-industrial landowners.

Literature Cited

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