Incorporating Social Equity in Conservation Programs in the Northeastern U.S.

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Abstract

A new model to combine social equity goals with perpetual conservation of forest land has been developed under the Ford Foundation's Community-Based Forestry Demonstration Project. Forest land is acquired by a conservation organization or the town and some of the rights -- the rights to enjoy and manage and profit from the forest as a forest -- are sold to a group of community members who own and manage the land in common. The anticipated income from careful management of the land is the basis of the sales price; with stewardship, the community members expect a modest return on their investment. The model is designed to use the existing conservation programs, policies and organizations to the extent possible, yet experience suggests ways in which these can be revamped to better incorporate lower-income community members. A pilot project undertaken in Vermont illustrates potential benefits and issues.

Key words

Forests, community forests, equity, U.S. rural development, land conservation, land trusts

In rural New England, those who are the most likely to make their living from the forest are the least likely to be able to afford a piece of it. Land is much more valuable as a site for development or as an enormous leafy privacy hedge protecting an estate from the rest of the world. Those uses determine the price—making purchase impossible to justify as an investment in sound forestry—and the ownership of forest land.

Strategies to maintain forests often include public acquisition of a tract to be owned by the public as a whole, or acquisition of a conservation easement so that land will never be developed yet it will remain in private ownership. In an effort expand this portfolio of conservation strategies to provide more tenure options to community members who might not otherwise be able hold land, nonprofit organizations in Vermont, through the Ford Foundation's Community-Based Forestry Demonstration Program, collaborated on a hybrid conservation model. In this approach, forest land is acquired by the conservation organization or the town and some of the rights -- the rights to enjoy and manage and profit from the forest as a forest -- are sold to a group of community members who own and manage the land in common. The anticipated income from careful management of the land is the basis of the sales price; with stewardship, the community members expect a modest return on their investment.

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The primary goals include: permanently conserving forest land that contributes to the local economy; connecting community members to forests in a meaningful way; and providing assets and forest ownership opportunities to lower-income community members. In the past thirty years conservation organizations and government agencies have successfully developed programs to address the first goal and, to some extent, the second. This paper outlines an attempt to build on that strength to also address the third goal so that projects that conserve forest land in perpetuity also promote social equity.

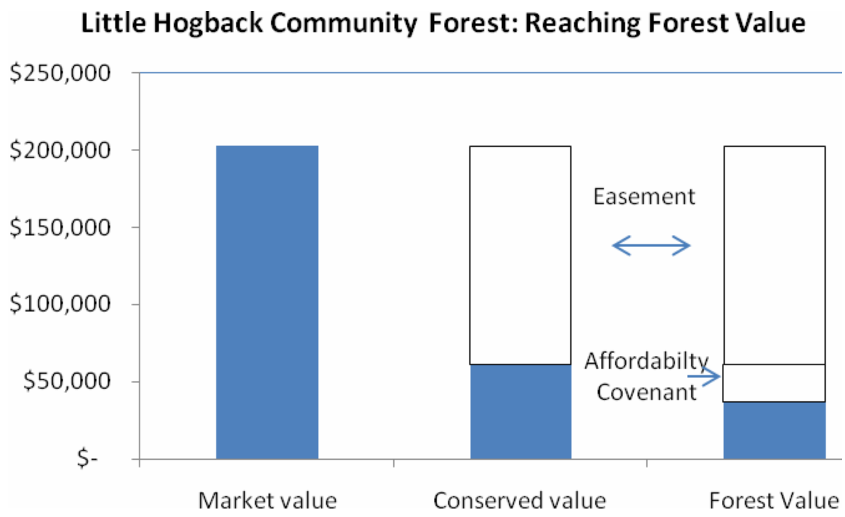
How the model works

A conservation organization or a public agency acquires a parcel of forest land that is important to the community. The organization divides the bundles of rights by executing two legal documents. The first document is fairly familiar: a conservation easement ensuring that the land must be managed according to certain standards and that it can never be developed. The second document is more familiar to housing land trusts than to conservation land trusts: an Affordability Covenant that gives the conservation organization the ability to keep the sales price affordable and to keep the land in the hands of community members in perpetuity. The remaining rights—including the rights to carefully manage the land and to profit from that management—are sold at a price that reflects the income producing potential of the land (“forest value”) to a Limited Liability Corporation (LLC) comprising community members. Each share, technically called a membership unit, gives the owner an undivided interest in the remaining rights of the sustainably managed forest.

By removing the rights to develop and subdivide the land, the conservation easement lowers the price. In a standard conservation easement project, the land would be sold at this “conserved” value. Because, in Vermont at least, the market value for perpetually conserved land is still higher than a value that could be justified by the return from responsible forest management, an additional covenant—the Affordability Covenant--is designed to lower the price of the land to “forest value” and to make sure that any future transfers are also at forest value. The Affordability Covenant gives the conservation organization the right to repurchase—at forest value-- any of the shares that might come up for sale. Even if the organization does not exercise its right to purchase, subsequent buyers would not be willing to pay high prices for a share that they might have to sell at a lower price, so the price should remain affordable. The forest value of the parcel is expected to increase, but it will increase because of its value as a managed forest—not because of the market for second homes—and therefore it will remain a viable investment in forestry. The Affordability Covenant also serves to keep the shares in the hands of local community members of limited means by allowing the conservation organization to repurchase a share when it comes up for sale and to resell it to community members.

Little Hogback Community Forest—A case study

Vermont Family Forest’s first community forest was created on115 acres of northern hardwoods with a long view from the summit. Initially, an appraiser estimated three values: the fair market value, the conserved value (subject to a conservation easement), and forest value. The appraisal explains the approach to forest value as "the value in use of the property (which is estimated) by employing a form of the Income Approach that reflects the income-producing characteristics of the land and timber." This is the value for which the land was sold to the LLC. In some areas, and on some tracts of forest land, there may be no difference between the value subject to a conservation easement and the forest value. However, in most of New England there are people willing to buy conserved land for prices that far exceed its value to produce timber—even though a conservation easement may preclude building a house on it. The difference between the conserved value and the forest value is the extra cost associated with limiting the sales price to forest value. A conservation organization, the Vermont Land Trust, held the conservation easement and sold the land at conserved value to VFF. VFF held the Affordability Covenant and sold the remaining rights at forest value to the LLC. Donors supported the acquisition of the Affordability Covenant.



Because annually billing and collecting each member's share of the property tax bill would be cumbersome, the share price was set so that it would cover two things: the forest value of the land, and a management account. The management account would be capitalized so that it could pay for expenses until the next harvest. Between harvests, the management fund would be drawn down to cover carrying costs while the trees would grow, increasing the forest value. At harvest, some of the forest value would be converted to cash; enough money would be put back into the management account to cover expenses until the following harvest and the remainder would be distributed to members.

Participants in an early focus group felt that a purchase price of $3,000 would be "palpable yet possible." When the forest value of the land was added to the estimate of the necessary initial deposit into the management fund and divided by the palpable $3,000, it indicated there should be sixteen shares. As this seemed to be a manageable group size and also an appropriate match for the land, sixteen shares were offered for $2,850 each.

Initially and idealistically, VFF envisioned giving a group of enthusiastic strangers complete control over the organization of their group and their land. But the enthusiastic strangers responded quite clearly that they did not need another frustrating exercise in democracy in their lives. They said they would like to be presented with a fully defined product—complete with a specifications sheet—explaining what they would buy. They would like to know at the outset, for example, if deer hunting and All-Terrain Vehicles would be allowed before they decided to even find out more information. They were absolutely not interested in fighting with tree huggers about whether or not timber would be cut; they wanted to be sure that each member of the group came with the understanding that this was about community forestry and not Bambi. They also said that they would like Vermont Family Forests to manage both the land and the LLC for at least the first two years. They wanted to make sure that the land was carefully managed; they wanted to make sure their rights would be protected; and they didn't want to feel they had to spend a lot of time haggling about this. Vermont Family Forests developed a management plan, an operating agreement for the LLC, and a list of accepted and prohibited uses.

Although this is not a necessary part of the model, the Little Hogback project involved an explicit structure to ensure inclusion of community members who could not otherwise afford to purchase land. Half of the shares were restricted to households with incomes less than the county median; deferred loans for half of the share price were offered to these households. This meant that an income-eligible household could purchase a share for $1,450 and VFF would loan the remaining $1,450. The member would have full-share rights for voting, firewood, and revenue distributions. No payments would be due on the loan unless or until the member decided to sell or transfer the share in the future. In order to transfer, the member would need to repay VFF for half of the value of the share at that time.

Recognizing the concern about liquidity, particularly among the lower-income members, VFF set aside a fund to enable it to purchase a share from a member who needed to sell quickly. VFF could then market and resell the share.

The lower-income slots were definitely the harder slots to fill. When VFF followed up with certain key residents to find out why they had not responded or how the project could be modified to meet their needs, they said had seen a poster or read a newspaper article about the venture, but they determined that they could never own land so they had not attended meetings. VFF learned it would take more time to anticipate and understand invisible barriers and to creatively encourage potentially eligible people to imagine themselves as landholders.

There was concern about the mix of members. VFF's commitment to provide tenure opportunities for those who couldn't otherwise afford it was non-negotiable. However, no one wanted the project to have the aura of a welfare project. Eventually it was decided that half of the shares would be income-restricted and the other half would not be. Although some feared that the participation of better-educated or better-known people in the community might be intimidating to others, it seemed that this actually provided reassuring validity to the venture. When author/activist Bill McKibben broke the trail in his snowshoes and led the group to the summit, people sensed that they were involved in something worthwhile—not just a flaky scheme.

From the beginning, Little Hogback Community Forest was intended to be a carefully managed working forest that would produce an income. One of the goals of the project was to reinstate small-scale community forestry as an economically as well as ecologically viable enterprise, and thereby to enable lower-income community members to invest in an asset. As Michael Sherraden pointed out: "With assets, people begin to think long term and pursue long-term goals. In other words, while incomes feed people's stomachs, assets change their heads." (1991, 6). Little Hogback Community Forest was advertised as "a living investment that you can walk in, work with, and be proud of." Although the forest value estimated by the appraiser was based on an 8% capitalization rate, VFF represented the investment as providing a rate of return along the lines of a bank account. This return would come in two pieces: the distributions and the appreciation in the value of a share—which would include the rights to both the land and the management account. Firewood, which is clearly a benefit to many members, was not included in the calculation of the financial return.

How this fits into the existing structure

The model is not designed to replace other types of land conservation, but rather to be an option that may help achieve additional goals in certain situations. Although public acquisition and ownership of forest land is admirable, it is sometimes too difficult to convince a majority of the voters to increase their property taxes in order to conserve land. In addition, many people feel distanced from public land because of the controversy over its use and the large number of owners. Finding a group of people with common management goals who are willing to make an investment may be easier than finding a majority of the voters. And, the new land holders are likely to be quite involved in the use and management of the land.

Acquiring an easement protects the land but generally does not change the ownership—which tends to be in the hands of fairly wealthy families. If the easement land is eventually offered for sale outside of the family, the parcel is generally too expensive—particularly if a house or second home is part of the package—for most aspiring community forest owners. The VFF model basically uses the easement process, but adds a community and equity component.

This costs more than simply acquiring an easement for two reasons. The first is that the conservation organization must finance the difference between fair market value and forest value, as opposed to the difference between fair market value and conserved value. In some areas, there may be no difference, but in most of New England there probably is. The second extra cost is due to the staff time spent organizing, educating, and supporting the group over time. Conservation organizations have noted that the model would have us spend limited conservation dollars to conserve fewer acres. While it is true that the model competes for existing conservation funding for the acquisition of easements, VFF found that it also brought new money to the table. Different donors were intrigued by the community aspect; and the money from the members themselves would not otherwise be directed toward a forest conservation project. But, even more important in the long term, the model allows the conservation organizations to work with lower-income community members, dissolving some of the elitist divide and gaining community trust and support for the organization, easements, and land conservation.

Funding for land conservation is crucial to the success of the VFF model. Vermont has a well-organized land conservation movement that relies on donations of land, financial contributions of individuals as well as foundations, federal programs, and a state fund. The state fund, called the Vermont Housing and Conservation Fund, relies on a portion of a tax levied when property changes hands. The money is distributed to non-profit organizations in order to meet dual goals: affordable housing and land conservation. In the 1980's, in what has been called a conspiracy of good will, people concerned with the lack of decent affordable housing and people concerned with land conservation banded together to push for the establishment of the fund. The logic of the unusual coalition and of its proposed revenue source was that land speculation was fragmenting the landscape and driving up the price of both working land and also housing. A tax on that property market could be directed to help respond to the threat to communities. The coalition has held together for twenty years, and the fund is hugely important in leveraging other money and making progress toward the dual goals. Although any funding for the VFF model that came from this fund would come from the conservation pot, the idea that the fund and the board that administers it have both social and conservation missions is an important precedent in governmental approaches to supporting communities.

In addition to funding to bring the capital cost down to the forest value, programs are needed to keep the carrying costs in line with the income from the forest. For property tax purposes, Vermont's Use Value Appraisal program assesses forest land based on its income-producing potential for forestry. As a result, the property tax can be supported by the income from careful forest management.

The model relies on the existing structure as much as possible. However, the missing piece seems to be the explicit recognition—and the associated policies and programs—of the public benefit of financially viable ownership and stewardship of working forest land by community members.

Roughly thirty years ago, when the Use Value Appraisal program began in Vermont and when land trusts began acquiring easements, the main threat to working land seemed to be development and the associated speculation in land. The two conservation efforts, acquisition of development rights and use value appraisal for property tax purposes, worked together to reduce both the purchase price of land and the carrying cost to values consistent with the income from production. However, the acquisition of development rights does not remove the value of bragging rights or the value of providing privacy to an estate and this value has increased. Consequently, the value of conserved land now exceeds its value for production.

Organizations in New England have begun to address this issue for agriculture. In order to keep farmland affordable for farmers, some New England states have begun to acquire an option to purchase at agricultural value (OPAV) which essentially functions the way Little Hogback's Affordability Covenant does: should the owner offer the conserved land for sale, the conservation organization would have the right to purchase it at its agricultural value. In designing the OPAV in Vermont, the Vermont Housing and Conservation found: "There is an increased threat that conserved farmland will be sold at its 'estate value' which may deny present and future generations of Vermont farmers access to that land and removed the land from commercial agricultural production." The purpose of the OPAV is "to assure that resale values of agricultural land are affordable to operating farmers." No similar program exists for forest land and it is necessary if we expect to keep community forestry financially viable.

The public value of having community members of limited means own the conserved forest also needs to be recognized. Public support has gone into the Individual Development Accounts that provided assets for lower-income households. The Assets for Independence Act (PL 105-285), made the following findings:

> Economic well-being does not come solely from income, spending, and consumption, buy also requires saving, investment, and accumulation of assets because assets can improve economic independence and stability, connect individuals with a viable and hopeful future, stimulate development of human and other capital, and enhance the welfare of offspring.

Although this act clarifies that providing assets to lower-income people is a legitimate public benefit, the individual development accounts authorized under this act certainly did not include forest land.

Public programs related to forests rarely have explicit equity goals. In general, they are biased toward the wealthy. The main reasons for this are that higher-income people are more likely to own forest land; higher-income landowners are more likely to be able to provide their share of cost-share programs offered for land improvement activities; and income tax benefits (including the tax benefit of a bargain sale or donation of land) are greater for those with higher incomes. In a comprehensive study, Boyd and Hyde (1989, 278) analyzed the full range of government interventions in forestry in the United States and concluded that:

> The distributive effects are the opposite of what the US society generally prefers…Wealthier landowners, higher-wage employees, and Canadian

producers gain from these interventions. Small private producers, lower-wage employees, US consumers, and the public treasury bear the burdens of these interventions.

While there is a justification for directing some public forestry money to lower-income citizens, and while there is a public program for providing assets to lower-income households and a parallel accepted practice for selling land at agricultural value to "farmers," the public or charitable purpose of this type of project has not been clearly established.

This is important for receiving funding from government programs. It is also crucial for non-profit organizations to be secure that using donations for a community forest project would be consistent with their non-profit status. The IRS interpretation of this activity was a significant concern to conservation organizations in Vermont. VFF was advised to form an entirely new organization and to apply for 501 (c) (3) status rather than jeopardize or confuse the status of already established groups. Although it was eventually approved, the IRS agent who originally reviewed the application could not rule on it because it didn't fit any existing template.

Replicability

In New England, where land values are high and the ownership prospects for lower-income community members seem the least promising, there may be an advantage to creating this type of community forest: conservation organizations are well established and people are willing to donate both land and money. The ideal situation would be one in which a landowner donates land for this purpose and the conservation/community organization that shepherds the creation of the owners' group covers its costs, and the costs of providing loans, with the money received from selling the shares.

A community-driven application might focus on the parcel of land that a group desperately wants to conserve, but that seems to provoke enough controversy over taxes to doom a bond vote. Perhaps the community could raise the money for an easement and then cover the remaining amount through shares purchased by those community members who support the project.

In more rural areas, where land is cheaper and large tracts are more prevalent, there may be fewer community members who would like to buy shares. The ratio of people to land is lower, and it may still be possible for lower-income people to buy a piece of the earth. These are the areas in which the conservation organizations can acquire large, unfragmented pieces of forest most economically. It could be valuable, from a community relations perspective, for a portion of a larger conserved parcel to be allocated to the local community members.

References

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