

**DONATIONS AND SALES OF CONSERVATION  
EASEMENTS ON FORESTLAND IN THE NORTHERN  
FOREST OF NEW YORK STATE**

by

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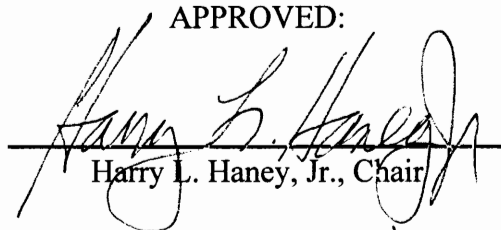
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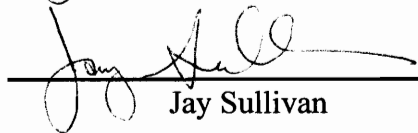
FORESTRY

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This is a study of conservation easements on forestland in the Northern Forest Region of New York State. Forestland easements are the subset of conservation easements encumbering forestland. As of 1995, there were 79 of these forestland easements within the study area. Of this total of 79 forestland easements, 50 were granted as donations and the remaining 29 were granted in sales. Most forestland easement donors were individuals or related individuals. Forestland easement sellers are split between industrial owners and individuals. Eight forestland easement grantees in the Northern Forest Region were identified. This group of grantees includes one public agency and national, regional, and local land trusts. Deeds to the forestland easements inventoried in this study contain 155 separate variables. These variables reflect the differences in encumbered properties, ownership goals of grantors, and land management goals of grantees. Deed information shows that forestland easements have a broad common purpose of preventing change or directing change in an acceptable manner. The specifics of preventing and directing change will vary with each property. The limits of acceptable change are a large part of working out the agreement between grantor and grantee. Interviews with both donors and sellers reveal that, in retrospect, most are

satisfied with their decision to grant the forestland easement. Analysis of forestland easement deed content reveals embedded potential future problems for owners of encumbered properties. Recommendations contained in this report provide guidance for landowners considering the grant of a forestland easement and suggestions for deed content. Most landowners made forestland easement granting decisions that are favorable from their perspective, but less than optimal from outside observation.

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## CONTENTS

### CHAPTER

1	INTRODUCTION.....	1
	Easements as Ownership Interests in Forestland.....	1
	Study Purposes.....	5
	The Northern Forest Region of New York State.....	7
	Land Use Controls.....	10
	Landowner Decisions in Granting Forestland Easements.....	24
2	REVIEW OF THE LITERATURE.....	33
	Discussions of Easements.....	33
	Empirical Studies of Easements.....	44
	Related Studies.....	46
	Implications of Literature Review for this Study.....	49
3	METHODS AND PROCEDURES.....	53
	Identifying the Study Population.....	53
	Analyzing Forestland Easement Content.....	56
	Forestland Easement Donor Interviews.....	58
	Forestland Easement Seller Interviews.....	60

**CHAPTER**

3 (cont.)	Sales Prices and Parcel Attributes.....	61
	Limitations.....	64
	Delimitations.....	66
4	<b>RESULTS.....</b>	<b>67</b>
	Deed Information.....	67
	Donor Interview Results.....	111
	Seller Interview Results.....	127
	Forestland Easement Sales Information.....	144
5	<b>DISCUSSION AND RECOMMENDATIONS.....</b>	<b>158</b>
	Forestland Easement Descriptions.....	159
	Comparisons to Landowners in Other Studies.....	161
	The Forestland Easement Decision Process.....	169
	Post Forestland Easement Grant Considerations.....	179
	Property Rights And Valuation.....	185
	Recommendations for Improved Landowner Decision Making.....	199
	Recommendations to Grantors for Forestland Easement Deed Content.....	207

**CHAPTER**

6 SUMMARY AND CONCLUSIONS.....218

    Summary.....218

    Conclusions.....222

**LITERATURE CITED.....230**

**APPENDICES**

A CONSERVATION EASEMENT INFORMATION.....235

B EASEMENT DONOR PHONE INTERVIEW MATERIALS.....237

C EASEMENT SELLER PHONE INTERVIEW MATERIALS.....245

D A DEED TO A DONATED FORESTLAND EASEMENT.....252

E A DEED TO A SOLD FORESTLAND EASEMENT.....264

F OWNERSHIP INFORMATION FROM DONOR INTERVIEWS.....289

G PROFILES OF FORESTLAND EASEMENT SALES.....293

**VITA.....299**

## LIST OF TABLES

### Table

4-1	Grantees of forestland easements in the Northern Forest Region of New York State and the number of easements they received, by type of grant.....	70
4-2	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.....	78
4-3	Restrictions on development 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.....	84
4-4	Restrictions on open space 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.....	85
4-5	Reserved rights for development 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.....	88
4-6	Reserved rights for ownership administration 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.....	89
4-7	Reserved rights for resource management 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.....	90

**Table**

4-8 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.....91

4-9 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.....95

4-10 Actual and expected occurrences of reserved right to remove dead and damaged trees and a restriction on all timber harvesting in forestland easement donations deeds.....102

4-11 Actual and expected occurrences of right of entry for compliance inspection and grantor held harmless clauses in forestland easement donations deeds.....102

4-12 Actual and expected occurrences of right of entry for compliance inspections and grantee held harmless clauses in forestland easement donations deeds.....104

4-13 Actual and expected occurrences of right of entry for scientific and nature study and grantor held harmless clauses in forestland easement donations deeds.....104

4-14 Actual and expected occurrences of right of entry for scientific and nature study and grantee held harmless clauses in forestland easement donations deeds.....106

4-15 Actual and expected occurrences of public recreation rights and grantor held harmless clauses in forestland easement sales deeds.....106

**Table**

4-16	Actual and expected occurrences of public recreation rights and grantee held harmless clauses in forestland easement sales deeds.....	108
4-17	Actual and expected occurrences of reserved right of use for recreation and clauses prohibiting public access in forestland easement donations deeds.....	108
4-18	Actual and expected occurrences of right of view rights and baseline data report requirements in forestland easement donations deeds.....	110
4-19	Forestland easement donors' top three reasons for land ownership.....	112
4-20	Reasons for donating forestland easements given by donors in the Northern Forest Region of New York State and the frequency of the response as a primary or secondary reason.....	116
4-21	Reasons for ownership of forestland given by forestland easement sellers, and the frequency of the response, by rank of importance.....	129
4-22	Reasons for selling forestland easements given by sellers in the Northern Forest Region of New York State and the frequency of the response as a primary or secondary reason.....	132
4-23	Results of t tests comparing the means of attributes for forestland easements selling for high and low prices in the Northern Forest Region of New York State.....	146



**Table**

5-1 Type of ownership among forestland easement grantors in New England and New York, by percent of total acreage.....165

## LIST OF FIGURES

### Figure

1-1	The Northern Forest Region of New York State.....	8
1-2	The Land Use Control Spectrum.....	11
1-3	An economic overview of landowner decision making in the considering the grant of a forestland easement.....	27
1-4	A model of the decision-making process for forestland easement grants.....	31
4-1	Number of forestland easement donations in Northern Forest Region of New York State by year.....	71
4-2	The cumulative distribution of donated forestland easements over time in the Northern Forest Region of New York State.....	72
4-3	Number of forestland easement sales in the Northern Forest Region of New York State, by year.....	74
4-4	Number of forestland easement donations in the Northern Forest Region of New York State, by acreage class.....	76
4-5	Number of forestland easement sales in the Northern Forest Region of New York State, by acreage class.....	77
4-6	Price per acre for forestland easements by parcel size.....	149
4-7	Price per acre for forestland easements by amount of lake and pond frontage.....	150
4-8	Price per acre for forestland easements by amount of public road frontage.....	152

**Figure**

4-9	Price per acre for forestland easements by amount of wild, scenic, or recreational river frontage.....	153
4-10	Price per acre for forestland easements by number of development rights extinguished.....	155
5-1	The cost of a forestland easement as the difference between the rent from land in its current use and the rent from a foregone alternative use.....	187
5-2	Percent of present value (5% discount rate) of total development rights represented by each development right if exercised at five, ten, or fifteen year intervals.....	190
5-3	Percent of present value of total development rights represented by each development right, for three different discount rates, if exercised at five year intervals.....	192
5-4	A generalized representation of forestland easement grant possibilities in relation to development rights needed for open space and landowner objectives.....	203

## CHAPTER ONE

### INTRODUCTION

#### CONSERVATION EASEMENTS AS SHARED OWNERSHIP IN FORESTLAND

New and diverse demands for forestland are being reflected by changes in ownership patterns. Traditional market demands on privately owned forestlands must compete with the growing market for amenity values. One way for a forest landowner to provide these amenity values is to grant a conservation easement on the property to those who are interested in securing these benefits.

Daugherty (1978) defines an easement as “a right or interest in land less than full fee ownership”. A grantor is a person who has sold, exchanged, or donated an easement. A grantee is the recipient of the easement. A less than full fee interest may be used to convey a variety of rights to land, such as right-of-ways for utility lines or driveways, or rights that restrict the uses of the fee owner. Conservation easements have come to be defined as less than fee interests in land that limit the allowable development on the property, define management standards, and in some cases allow the grantee on-site uses such as nature study or public recreation. Binkley and Hagenstein (1989) note that a conservation easement “implies that the purchaser of the easement has, in addition to acquiring the development rights, limited the other uses that can be made of the land and its resources”. The legal instrument behind a conservation easement is a deed.

Conservation easement deeds are binding agreements that define the rights of the grantor and grantee to an encumbered property.

There is little information available on the decisions of landowners to grant conservation easements and the details contained in conservation easement agreements. This lack of information, at a time when the use of conservation easements is gaining popularity, led to this study of conservation easements on forestland in the Northern Forest Region of New York State. The purpose of this research is to describe these easements and develop an understanding of forest landowner behavior in the decision to grant a conservation easement.

The growing popularity of conservation easements as legal mechanisms for meeting demands for amenity values from private lands has created a limited market setting in which a landowner can restrict his/her use of the property and in some cases grant on-site uses to others. In exchange, the grantor may receive financial benefits as well as realize increased personal utility. Conservation easements can be tailored to match the land in question, the landowner, the party who wants to secure benefits from the land, and the legal environment surrounding land use. Existing conservation easements will vary by each of these four factors. To date, much of what has been written about conservation easements has been promotional, rather than descriptive. This promotion of the conservation easement concept creates a need for information about the content of existing conservation easements on forestland and the processes leading to the landowners' decisions in granting them.

In New York State there is a legal definition of a conservation easement. Under Section 49-0303 of the Environmental Conservation Law:

“Conservation easement means an easement, covenant, restriction, or other interest in real property, created under and subject to the provisions of this title which limits or restricts development, management, or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property in a manner consistent with public policy and purpose set forth in section 49-0301 of this title, provided that no such easement shall be acquired or held by the state which is subject to the provisions of article 14 of the constitution.”

This definition is broad and requires clarification, particularly in its relationship to Article 14 of the New York State Constitution. Article 14 requires that all state owned land in the Adirondack Park becomes part of the State Forest Preserve, where timber harvesting is prohibited. Since placing land under a conservation easement in the forest preserve would rule out managing them for timber production, this qualifying statement about Article 14 had to be placed in the law.

Conservation easements are commonly grouped together in the literature and discussed as if they are all alike and “conservation easement” is a precise and well understood term. The broad legal definition of conservation easements in New York State encompasses several types of land and many packages of property rights. Each package of property rights that constitutes a conservation easement will be different. From a descriptive standpoint, it is desirable to divide the population of conservation easements by the types of land they encumber. Four main subsets among conservation easements are apparent. These four subsets are forestland easements, farmland

easements, greenspace easements, and historic preservation easements. The focus of this study is on forestland easements. Hereafter the term conservation easement will be used to refer to the broader group, and forestland easement will be used to refer to the easements that are the subject of this study. The information gathered on forestland easements in this study provides a more cohesive definition of forestland easements.

More completely described, a forestland easement is a right or interest in land less than full fee ownership that allows the grantee to enjoy benefits commonly associated with forests. These benefits may include existence values (through limited development), promotion or prevention of timber management, access for on-site recreation, and protection of scenery, open space, and wildlife habitat.

The purposes of this study are more fully delineated in the next section.

## STUDY PURPOSES

The goal of this study is to describe forestland easements in the Northern Forest Region of New York and to develop an understanding of landowner behavior in considering a forestland easement grant. The study will report on the decision making process of landowners who granted forestland easements in the study area. Specifically, the purposes of this study are as follows:

1. To categorize and describe the existing types of forestland easements.
  - a. To inventory all of the forestland easement in the study area;
  - b. To gather all the deeds to forestland easements in the study area and describe their contents;
2. To investigate and describe the opportunities for landowners to grant forestland easements in the study area.
  - a. To describe the grantees of forestland easements;
  - b. To describe forestland easements sales and donation opportunities;
3. To describe landowner behavior in evaluating a forestland easement grant, based on the information gathered from actual grants.
  - a. To examine economic aspects of forestland easement grants;
  - b. To make recommendations for landowners to use in evaluating and designing forestland easements.

Before forest landowner behavior and the existing forestland easements that have resulted can be examined, the context in which all of this occurs must be explained.

Descriptions of the Northern Forest Region of New York State and an explanation of how



private land is subjected to land use controls follow this section. With these things established, an economic representation of landowner behavior in the decision to grant a forestland easement is presented. Finally, a discussion of the decision making process followed by forestland easement grantors completes the introduction.

## **THE NORTHERN FOREST REGION OF NEW YORK STATE**

This study encompasses the Northern Forest Region of New York State. The region, seen in Figure 1-1, was first delineated as part of the USDA Forest Service's Northern Forest Lands Study. There are 7.6 million acres of land in this region, with 4.8 million acres in private ownership and the remaining 2.8 million in state ownership (Harper 1990). The region is part of a larger 26 million acre area stretching across New York and New England that was the focus of the Northern Forest Lands Study (Harper 1990). The Northern Forest Region includes all or part of 13 counties, including Clinton, Franklin, Fulton, Essex, Herkimer, Hamilton, Lewis, Oneida, Oswego, Saratoga, St. Lawrence, Warren, and Washington. The two major notable areas within the Northern Forest Region are the Adirondack State Park and Tug Hill.

The six million acre Adirondack State Park was created in 1892 (Adirondack Park Agency 1980). It is comprised of a mixture of privately and publicly owned lands. Fifty-five percent of the land is privately owned and the remaining forty-five percent is owned by New York State.

Most private timberland in the Park is zoned resource management. Among the restrictions upon this classification is a requirement that the minimum lot size for a single dwelling be approximately 42.7 acres.

"Over half of this private timberland is in ownerships over 2,000 acres, which is about the minimum size of ownership needed to produce regular annual income from timber harvesting. About one-half of these holdings over 2,000 acres is owned by pulp and paper companies and about one-quarter each by other corporate owners involved in forestry and forest products and by individuals, families, and clubs" (Hagenstein 1990).

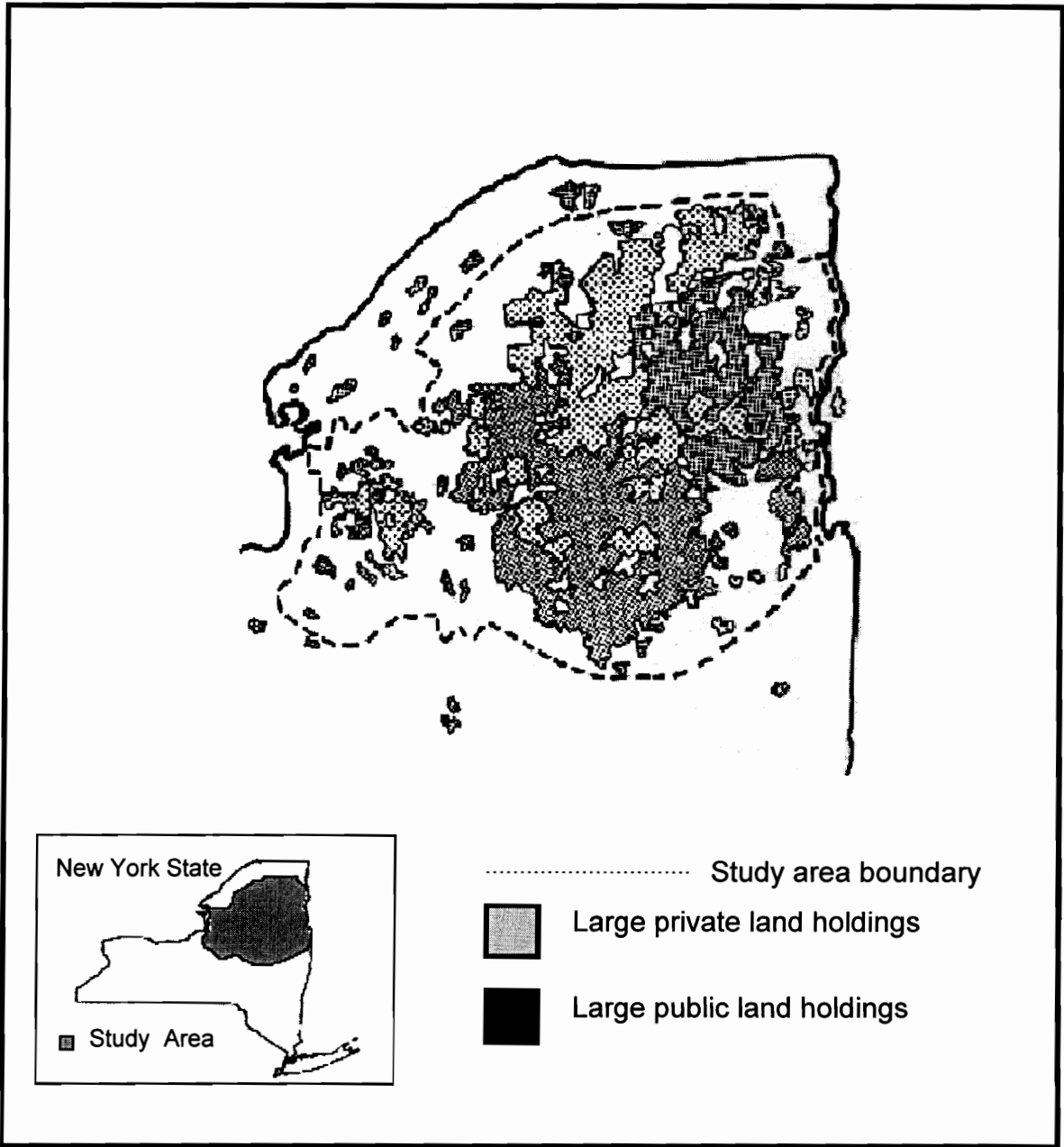


Figure 1-1. The Northern Forest Region of New York State. [Adapted from Harper, et al. (1990) p. x)

Nearly all public land in the Adirondack Park is part of the State Forest Preserve. The State Forest Preserve has been constitutionally protected as "forever wild" since 1894 (Adirondack Park Agency 1989). The Adirondack Park Agency (APA) established guidelines for the use of State Forest Preserve lands in the Park in the *Adirondack Park State Land Master Plan* (1989). The New York State Department of Environmental Conservation (DEC) follows these guidelines and collaborates with the APA in devising management plans for individual Forest Preserve units within the Park. The DEC is responsible for administering these unit management plans. Among the different unit classifications are wilderness, wild forest, primitive, canoe areas, and intensive use (Adirondack Park Agency 1989). A variety of wildland recreation opportunities are available within the various forest preserve land classifications, free of charge.

Tug Hill is the other significant area within the Northern Forest Region of New York State. The Northern Forest Lands Council (NFLC) provides the following description of Tug Hill.

“The Tug Hill Region is a 41-town, 2,100 square mile area west of the Adirondack Park, separated from the Park by the Black River Valley. About 10 percent of the region is in state land ownership as reforestation or wildlife management areas. Farmlands ring the region, but it is predominantly forested, including a core forest area of about 500 square miles that is nearly devoid of public roads or structures other than hunting camps. Three forest industries own about 80,000 acres of the region. The remainder of forest land holdings are in non-industrial, private ownership parcels of several hundred to several thousand acres” (NFLC 1992).

## LAND USE CONTROLS

Easements are part of a range of alternatives for controlling land use. Public agencies can either acquire the necessary rights to private land and place the land in a desired use, convince the private landowner to place it in the desired use, or compel the landowner to do so. The methods of acquiring, convincing, or compelling can be thought of as a spectrum of land use controls (Bick 1995). The Land Use Control Spectrum (LUCS) illustrates this continuum in Figure 1-2. The methods of land use control include eminent domain, fee simple acquisition, easements, leases, incentives, exactions, taxes, zoning, regulations, and the public trust doctrine.

Eminent domain, fee simple acquisitions, easements, exactions, leases, and incentives are exchanges between the government and private landowners. Taxes, zoning, regulations, and the public trust doctrine are all imposed by the government on private landowners. In practice, the entire Land Use Control Spectrum is used, and often several of the methods are combined. The entire range is available to the government and a smaller range is available to private individuals and organizations. In a broad sense, the range goes from specific to general in the definition of property rights. On one end of the spectrum is outright fee acquisition of land (including eminent domain). This leaves the bundle of property rights intact. The next alternative in the range is acquisition of easements to land. This makes a division of the bundle of property rights. A further alternative is the imposition of land use regulations. This divides the bundle of

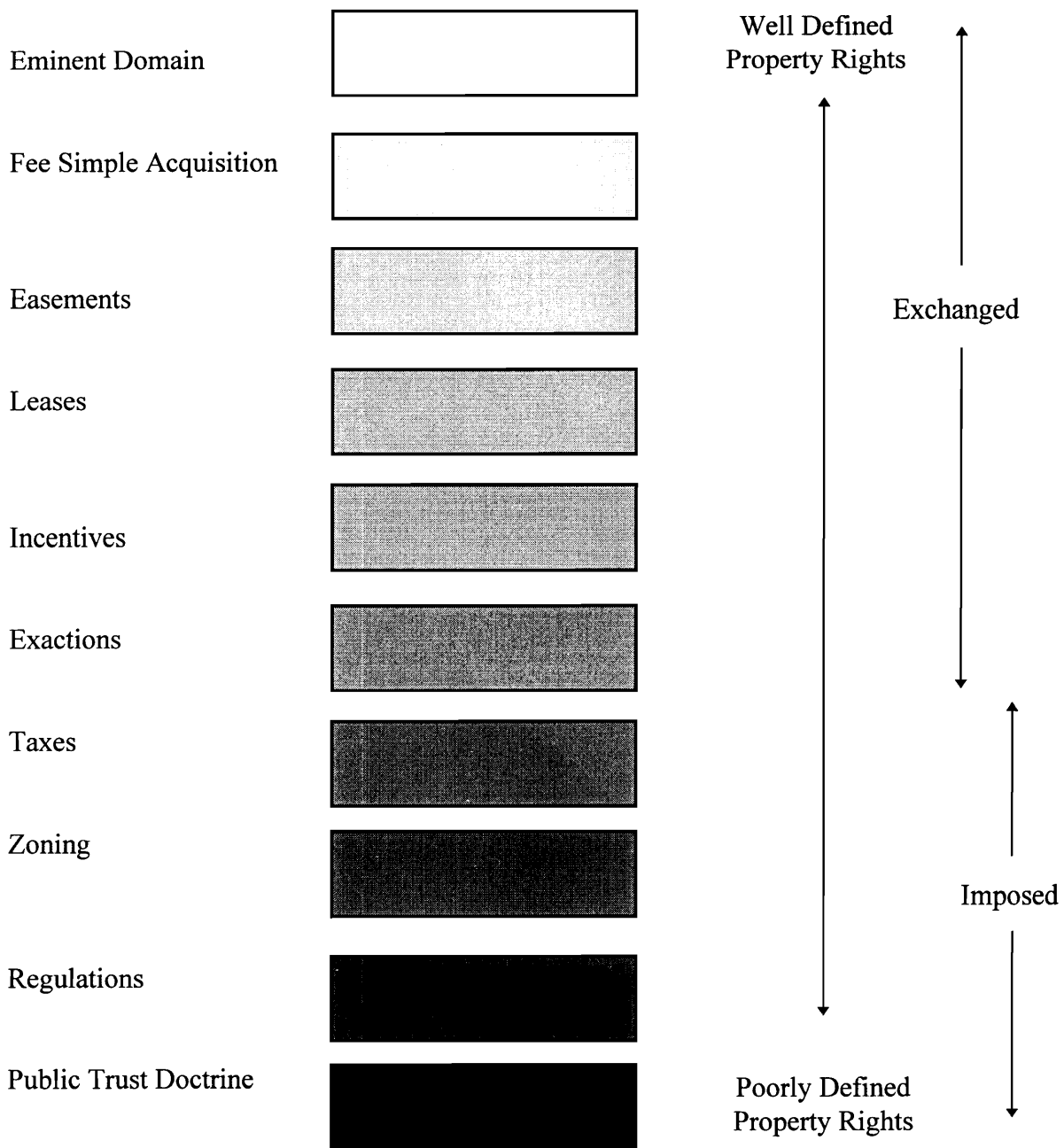


Figure 1-2. The Land Use Control Spectrum (Bick 1995).

property rights and may cause some uncertainty over who holds what rights. The other end of the spectrum is expanded interpretation of the public trust doctrine. This clouds private property rights. The public trust doctrine can be used to expand the scope of regulations while effectively circumventing the constitutional question of taking. It maintains that rights in question were never held by the landowner, and instead were always held in trust for the public by the government. The use of the public trust doctrine has been far less widespread in application than the other methods. A more detailed description of each of the methods in the spectrum follows.

*Eminent domain* is the power of the state to take private property for public purposes. Since all land ownership is understood to be subject to the constraint of the state's right of eminent domain, this method is entirely consistent with well defined property rights. The taking must be for a public purpose, follow due process of the law, and there must be just compensation for the landowner (Barlowe 1978).

*Fee Simple Acquisition* as a land use control is simply gaining outright ownership of property through purchases, exchanges, or donations. Outright government ownership of land is the most definite method of subjecting land use to public interest processes. Various levels of government in the United States now control and administer about 39 percent of the country's land area (Barlowe 1978). In particular, outright ownership of land has been used to ensure land remains more or less intact and subject only to natural processes (e.g., National Parks) or to dedicate land to producing specific benefits (e.g., National Forests).

As discussed earlier, an *easement* is an interest in land less than full fee ownership. Even though an easement divides interests in property, property rights may still be well defined if the easement is designed carefully for a specific intent and takes contingencies into account. The government may find that less than complete control over a parcel of land is all that is necessary to ensure that the land is used in a way that is consistent with the public interest. For example, a county government might acquire an easement for a right-of-way to provide a bicycle trail across private property. In the case of the bicycle trail, the same goal could have been achieved by outright purchase of the land, but the cost would be greater than the cost of an easement. Government agencies have been purchasing easements upon forestlands for quite some time. These purchases have generally been for very carefully defined rights to specific portions of a tract, such as access to a streambank corridor for fishing. Conservation easements have recently become popular. In the case of forestland easements, they are designed to contain broad packages of rights that limit development, provide public access to sizable forestland tracts, or both.

The use of *leases* by the government as land use controls has been somewhat limited because other methods are more permanent. These leases are essentially contracts restricting land uses for a fixed period of time. Nevertheless, leases are useful in instances when a short term solution is desirable. If the government obtains rights to the land through a lease that prevents changes in land use for a specified period, the undesirable shift in land use may be avoided without incorporating the land into the



public domain. A variation of this is a rolling lease, in which the parties extend the agreement periodically in such a way that if they decide against extending it, the land is still subject to the lease for some period of time from the previous extension. Because this method is impermanent, it keeps future options for the land available, in case public policy preferences or land markets change.

*Incentives* can be used to control land use by exchanging some favorable treatment within the government's control for a landowner's agreement to use his/her land in a certain way. Since taxation is one of the major rights governments have in connection with land, tax relief is often used as an incentive. Many states offer landowners considerable reductions in their property taxes in exchange for dedicating their land to forest management under an approved set of management guidelines. Federal policy has been to encourage the donation of conservation easements or full fee title to land for conservation purposes through income tax incentives. Donations meeting certain requirements are deductible for income tax purposes and may be used as a strategy for lowering the taxable value of a person's estate. Another example of incentives is cost sharing for improvements or other activities that enhance the way in which the land is used from a public perspective. The Stewardship Incentive Program administered by the US Department of Agriculture offers to share the cost of improvements and activities for conservation with private landowners (USDA 1991).

The government's power to levy *taxes* is one of the constraints all ownership of land is subject to, just as it is subject to the power of eminent domain. Current use

valuation in property tax assessments can help prevent conversion to what would otherwise be more profitable land use. High property tax rates on less desirable uses of land can help ensure that a certain amount of land remains in a use defined as desirable to the public interest. The income from different land uses can be taxed in a way that constrains the highest and best use of land to desired uses. Influencing land use through income taxes can be done more effectively at the state or federal levels. For example, a lower tax rate on income from timber or agriculture may ensure that the highest and best use of existing open lands is in these uses, rather than in residential or commercial development.

*Exactions* are exchanges in which the government grants a landowner rights to use his/her land and the landowner agrees to certain conditions or grants the government certain rights in return. A pure exaction is one in which the landowner is granted property rights that he/she was previously without. Fischel (1987) points out that judicial barriers to contract zoning have limited the use of this form of exaction. The more common type of exaction is an exchange in which the landowner gives something up in order to be allowed to exercise rights he/she already possesses under current zoning laws.

*Zoning* is an extension of the police power of the state. It is one of the primary constraints that attenuates ownership of land. Wright and Webber (1978) define police power as "the power to regulate for the benefit of the health, morals, safety, or general welfare of the community". Valid zoning regulations, according to Wright and Webber,

are concerned with what generally is agreed to protect the health, morals, safety, and public welfare.

*Regulations*, as distinguished from zoning, are rules enforced by public agencies that come from interpretations of laws these agencies are charged with enforcing. Generally regulations come from the state or federal level, while zoning is done at a local level. Regulations cloud the definition of property rights more than zoning. Unlike zoning, it is often initially unclear what lands are affected by regulations until an agency decides to enforce them. How do regulations result in the control of land use? For example, if the Army Corps of Engineers determines that a wetland on someone's property is unsuitable for residential or commercial development, a land use control has resulted. Preventing a landowner from harvesting timber if the US Fish and Wildlife Service detected an endangered species on a property is another example of a regulatory land use control.

The *public trust doctrine* maintains that the public possesses rights superior to any private claims. Private rights are subjugated to these public rights. The people retain sovereignty over public resources and the use of such resources; therefore, the state can neither exercise that sovereignty nor delegate authority to individuals in the form of property rights (Anderson and Freemeyer 1991). The public trust doctrine, depending upon how it is interpreted and enforced, can hold that certain rights to property have been held in reserve for the public by the government and were therefore never actually held by the landowner, even if a landowner exercised a particular right in the past. With this

definition, application of the public trust doctrine may permit the state to wield immense power to restrict and rearrange property rights and land uses (Dunning 1989). The uncertainty raised by the public trust doctrine places it at the end of the land use control spectrum associated with poorly defined property rights. Courts have identified fishing, hunting, boating, maintaining ecological integrity, aesthetic beauty, and open space protection as legitimate public expectations protected by the public trust doctrine (Bader 1992).

### **Land Use Controls and Open Space in the Study Area**

LUCS is employed in several ways to place land in open space uses in the Northern Forest Region. Public agencies at all levels have some part in doing this and private organizations participate as well. The key methods from LUCS used in this region are fee and easement acquisitions, zoning, taxes, and incentives. The main public agencies are the State Department of Environmental Conservation and the Adirondack Park Agency. Local, regional, and national land trusts also have a role in the land use control environment of the region.

State acquisitions of fee title to land have a long history in this region. The details and extent of state ownership in land in the Adirondack Park were presented in a previous section. Forestland administered by the DEC that is outside of the Adirondack Park, but still in the Northern Forest Region, is typically State Forest. These lands are managed for multiple uses, including timber production. Other public domain forestlands in the region

include a few State Parks, administered by the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP), and county forests.

Dawson (1990a) describes the funding and processes that led to New York State ownership of a large portion of the land in the Adirondack Park. The first funding, prior to the establishment of the Adirondack Park, came from the sale of timber, land and camp leases. The State Legislature made a series of appropriations from general purpose funds for acquisition of forest preserve lands after 1895. Bond acts in 1916, 1924, 1960, 1962, 1972 and 1986 provided more funds for the purchase of land by the State of New York. Purchases of land with these funds, as well as donations of property, have created the large amount of public domain open space in the Northern Forest Region.

State acquisition of conservation easements in the region has a shorter history. The earliest forestland easement acquisitions were donations. The 1972 and 1986 bond acts provided funds for conservation easement acquisitions. Prior to 1986, conservation easements could only be acquired by the state if they were on lands contiguous to land under state ownership.

Currently, there are three potential government funding sources in place for the acquisition of land and forestland easements in the study area. The State of New York established a permanently dedicated fund in 1993, the Environmental Protection Fund (DEC and OPRHP 1995). This fund is in part intended for acquisitions of open space. Two sources of federal funds that are potentially available for acquisitions are the Land and Water Conservation Fund (LWCF) and the Forest Legacy Program. The LWCF

provides federal matching funds (50% state - 50% federal) for conservation projects, including open space acquisitions. Since 1965, New York State has received \$191,000,000 from this fund (DEC and OPRHP 1995). Availability of new funds from this source depends on allocations to the fund from the federal government. The Forest Legacy Program is administered by the USDA Forest Service. This program provides up to 75% of the costs for acquiring forestland easements with federal funds (Beliveau 1993). The Forest Service is the grantee for forestland easements under this program. This funding source has yet to be used for forestland easement acquisitions in New York State. There has traditionally been strong resistance to a federal presence in the management of open space in New York at both the state and local levels.

The majority of open space in the region is outside the public domain. Much of it is protected as open space through zoning. The 1.6 million acres of the study area outside the Adirondack Park is subject to local zoning controls at the town level. Some of these towns have zoning laws, while many of them are without such ordinances. Regional zoning constrains land uses within the Adirondack Park.

Although the Park was created in 1892, it was not until 1971 that any comprehensive form of management over the entire Park was put in place. Today, private land within the Park is regulated by the Adirondack Park Agency.

In 1973 the New York State governor and legislature approved the Adirondack Park Agency's first *Adirondack Park Land Use and Development Plan*. This plan has been updated and revised since its conception, but remains largely unchanged in

principle. Among other provisions, this plan zoned most of the privately owned land within the Park. Zoning categories include resource management, rural use, low intensity use, moderate intensity use, hamlet, and industrial use. The bulk of the private land fell into the resource management (53%) and rural use (34%) classifications (Glennon 1990). These two zoning classifications require approximately 42.7 acres and 8.5 acres for each primary residence built, respectively. The development threshold requirements are minimum guidelines, and the APA has often required lower densities before development projects have been improved. The resource management classification is sufficient to keep land in a condition that can still be considered open space. The rural use classification is arguably sufficient to keep land as open space as well. Nevertheless, if lands are developed at these thresholds, the nature of the open space may be changed considerably.

The areas zoned for resource management play a large role in the developing market for forestland easements. With these zoning facts in mind, much of the privately owned open space in the study area has already been protected. When further land use controls are used, such as the acquisition of easements or fee title to land, it is the character of the open space in question that is being protected. In the absence of any new forestland easement or fee title acquisitions by the state or private non-profit groups, much of the Northern Forest Region would remain in open space. The real issue is one of maintaining the present character of existing open space and adding new compatible uses to it.

At present, the region is without any directed use of the power of taxation to encourage open space uses of land. Taxes do, however, play a large role in the land use pressures in the Northern Forest Region. Property tax rates can influence land use because they are often one of the major expenses in holding land. This can determine which land uses a landowner finds economically justifiable. In New York, the relatively high property tax rates tend to discourage keeping land in open space uses. Canham (1992) reported that annual property taxes on Adirondack forestland had risen from \$3.35 an acre in 1985 to \$4.25 an acre in 1990. By contrast, he reported property tax rates of \$.95 per acre in Maine in 1988, \$.80 per acre in New Hampshire in 1990, and \$5.91 per acre in Northern Forest Region counties in Vermont in 1990.

New York State has one program to ease the burden of property taxes for forest landowners. This program falls under the LUCS heading of an incentive. Section 480a of the New York State Real Property Tax Law grants a partial property tax exemption to landowners who enroll their land and agree to abide by a DEC approved management plan for the property. The exemption is equal to 80% of the properties assessed value, or in some cases, \$40 per acre multiplied by the local equalization ratio (Resource Systems Group, et al. 1993). This program essentially guarantees enrolled land will stay in timber production for the foreseeable future. Withdrawal from the program is possible, but the land remains bound to the agreement for ten years, during which taxes must be paid on its full assessed value. This condition makes withdrawal from the program impractical in most cases.



Hagenstein (1990) calculated that owning land solely for timber production in the Adirondacks is only profitable if the land is enrolled in the 480a timber tax assessment program and interest rates are very low. His calculations were based on representative property tax, growth, and stumpage rates.

Other incentives play a role in keeping land in open space in this region as well. The major incentive involving grants of conservation easements (and fee contributions as well) is that donations of these conservation easements are considered tax deductible as charitable contributions under federal income tax law. This has not always been the case, and the nature of this incentive has changed over time.

Federal policy has been to encourage the donation of easements for conservation purposes through income tax incentives. The Internal Revenue Service (IRS) first approved tax deductibility of less than a full interest in land in 1964 (Knight and Knight 1987). This first recognition that a gift of a conservation easement qualified as a charitable deduction came in an Internal Revenue Service ruling in 1964 (Revenue Ruling 64-205). A series of revenue rulings broadened the concept of open space easements (Barrett and Livermore 1983). The Tax Reform Act of 1976 allowed deductions for conservation easement donations which lasted at least 30 years (Spata 1993). The Tax Reduction and Simplification Act of 1977 required that the donation of conservation easements be in perpetuity. This act made “explicit the deductibility of charitable contributions of less-than-fee interests made for conservation purposes” (Barrett and Livermore 1983).

In 1980, the IRS specified that easements qualifying for a charitable deduction must meet acceptable conservation purposes. In 1986, the Treasury Department provided additional guidance on conservation easement donations by issuing extensive regulations.

Conservation purposes acceptable to the IRS are as follows:

- 1) Preservation of land for outdoor recreation or education for the general public;
- 2) wildlife habitat and ecosystem protection;
- 3) preservation of open space, including farms, forest, and scenery of significant public benefit; and
- 4) historic land area or structure.

In addition to specifying acceptable conservation purposes of easements, the IRS requires that the easement be donated to a "tax exempt conservation organization that has the resources to enforce the restriction" (Dodd 1990). Public agencies are included in this group of conservation organizations.

The extent to which exactions are used to protect open space in the region is not known. Exactions have definitely occurred here, though they are seldom recognized as such. Within the Adirondack Park, the APA requires some landowners to forfeit a portion of the development rights the zoning allows, in exchange for allowing a proposed development project to go through.

The discussion of the land use control environment of this region has, thus far, focused only on the actions of public agencies. Not-for-profit organizations are also part of the land use control environment. These organizations lack the use of the full range of

LUCS, but most of the methods involving exchanges are available to them. In addition, they work in partnership with government agencies. These organizations can act more quickly in acquisitions than public agencies. Their purchase of conservation easements or properties desired by public agencies may ensure that the property is still available for public acquisition, once funding and administrative details of the public acquisition process are resolved.

In acting on their own, land trusts may acquire conservation easements or fee title to land through purchase, exchanges, or donations. In the United States, purchased conservation easements by the approximately 1,000 local and regional non-profit groups include some 350,000 acres (Wright 1994). These groups may also lease land, obtain the first right of refusal to it in the event of sales, offer incentives to landowners for land management practices or uses they desire, or try to influence land uses by giving management advice to landowners. Another way these land trusts interface with public agencies through the land use control spectrum is through the income tax deduction incentives for charitable donations of property for conservation purposes. Most land trusts have tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. This qualifies them as recipients for charitable donations of conservation easements. As of 1989, 70% of the 743 land trusts identified in a survey done by the Land Trust Exchange accepted conservation easements (Healy and Bristow 1989).

Local, regional, and national land trusts are all active in the Northern Forest Region of New York State. Acting both as third parties who pre-acquire land and

forestland easements for the state, and as grantees of forestland easements and properties in their own right, these organizations play a large role in the forestland easement granting opportunities of private landowners.

This background on the landscape and the legal and institutional structures that guide its use provides a starting point in looking at how a forest landowner might interact with the land use environment when deciding to grant a forestland easement.

## **LANDOWNER DECISIONS IN GRANTING FORESTLAND EASEMENTS**

### **An Economic Approach to Forestland Easement Grants**

An economic representation of a forest landowner's decision to grant a forestland easement is seen in Figure 1-3. The landowner discovers the opportunity to sell or donate a forestland easement. Once the opportunity's existence becomes known, the landowner gathers the readily available information about the program and the group or public agency interested in protecting his/her property. The criteria used in evaluating the opportunity to grant the forestland easement is based on economic theory. The landowner will ask: "am I better off granting this forestland easement or declining the opportunity?".

To answer the questions, the landowner compares both financial and non-financial consequences. In theory, industrial landowners are assumed to consider only the financial aspects of the grant in their comparisons, though in practice they may include non-financial factors as well. Non-industrial landowners are assumed to consider both financial and non-financial components in their comparisons. These non-financial factors include personal enjoyment of amenities and other satisfactions coming from subjective values they hold. Each owner has a unique set of weights for the value of these components. This is an oversimplification of forest landowner's thought processes, but it does represent some of the more easily identifiable aspects of it.

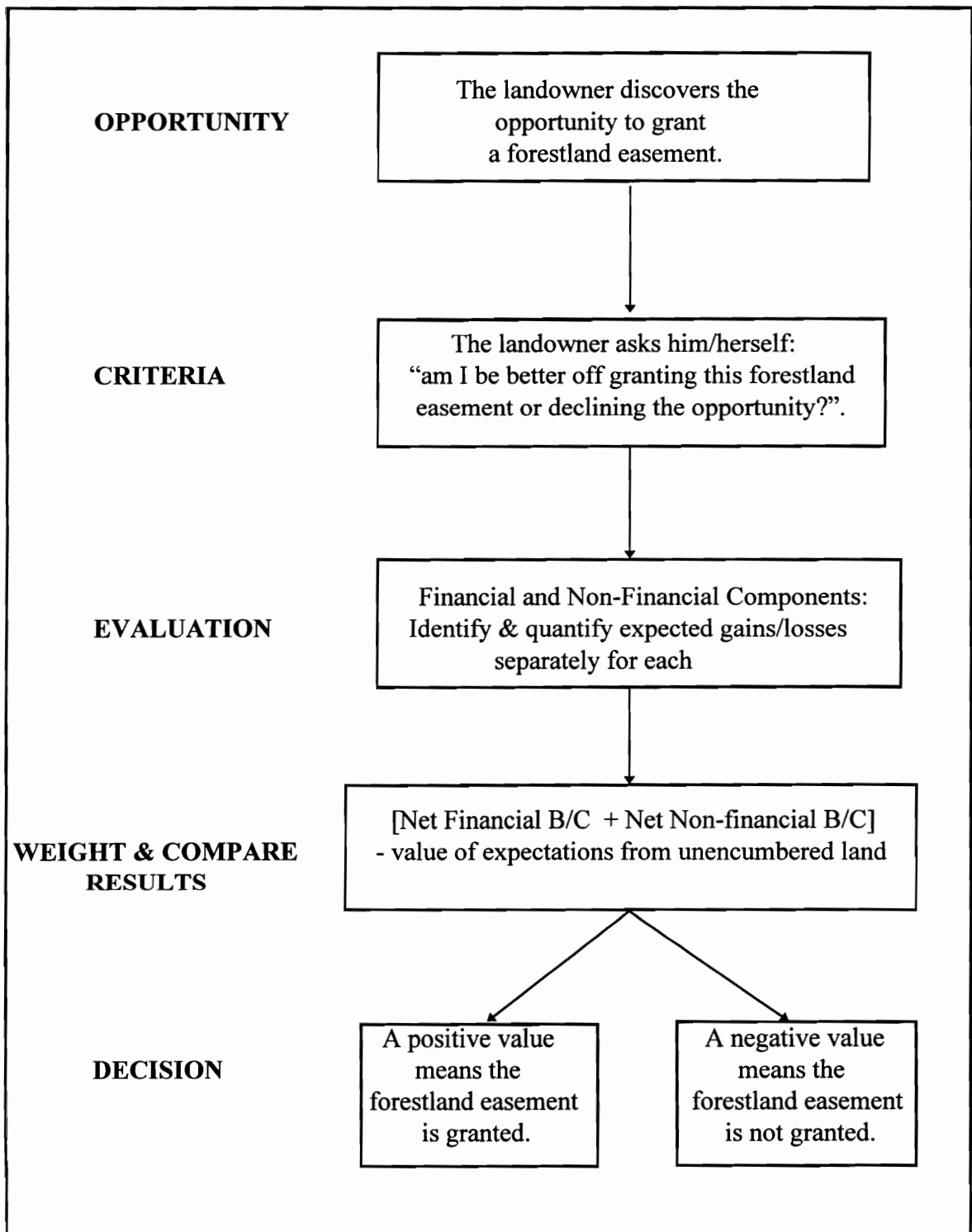


Figure 1-3. An economic overview of landowner decision making in the considering the grant of a forestland easement.

Potential financial gains may include cash payments, income tax deductions, lower estate tax burdens, and lower property tax assessments. Potential financial losses include those financial benefits forgone and any land holding costs that result from participation. Financial benefits forgone include the value of the development rights that are extinguished. Calculating these forgone benefits requires considering both their current market value and the net present value of real annual appreciation of development value over the lifetime or likely tenure of the landowner. Another financial benefit forgone by some is timber income. Holding costs from participation may include compliance costs and unforeseen effects on the value of the property in its current use.

Non-financial gains and losses are more difficult to identify because they are different for each individual landowner. Some examples of non-financial gains include satisfaction from protecting the land beyond the landowner's lifetime, pride in providing a public good, and utility derived from lessening the estate tax burden of heirs. Non-financial losses are negative changes in the landowners on-site use and enjoyment of amenities from the property, perceptions of lost control by dividing interests, and inconveniences associated with compliance. Amenity uses of the property are of particular importance to many non-industrial landowners, and include all sorts of active and passive leisure pursuits in a private, unimpaired, natural setting.

Once all of the expected gains and losses of a landowner are identified, the landowner weights them according to an individual set of values and compares them to his/her expectations from the land in an unencumbered state. If the net weighted

financial and non-financial benefits from granting the forestland easement exceed those expected from keeping the land unencumbered, the landowner is better off granting the forestland easement. It is only when the landowner chooses to grant the forestland easement that we can be sure the benefits of doing so outweigh the costs to that individual landowner. If the landowner declines to make the grant, we can assume that the net benefits from granting the forestland easement, in the landowner's estimation, are less than those from keeping the land unencumbered.

A decision to grant the forestland easement means that the landowner perceives him/herself as better off by making the grant, though a less than an optimal agreement can result. Some forestland easement grants may have been only marginally better choices than declining to grant a forestland easement, while others may have resulted in a large amount of consumer surplus for the landowner.

This description ignores negotiation between the landowner and the potential grantee. The timing and extent of negotiation could make the decision an iterative process. In this case, the landowner maintains a dialogue with the potential grantee until reaching an agreement that provides him/her with positive net values in the comparison or until they come to an impasse, and the landowner decides against granting a forestland easement.

### **The Forestland Easement Decision Making Process**

When a landowner grants a forestland easement, it is the result of a decision making process on the landowner's part. The landowner has a goal in mind. Granting a



forestland easement accomplishes this goal and may contribute to a larger set of ownership objectives he/she has for the land. Slade (1994) illustrates a general model of the decision-making process. Each of Slade's steps in this model is adapted to the landowner's forestland easement decision making process in Figure 1-4. The steps in the forest landowner's decision making process provide a framework for reporting some of the results of this study.

The first step in the decision making process is encountering the opportunity to grant a forestland easement. How do forest landowners encounter the opportunity to donate a forestland easement? First, they must know or find out about conservation easements. Next, they must investigate the opportunity to sell or donate a forestland easement.

The second step in the decision making process is to identify alternatives for the forestland easement content, grantee, and type of grant. At this point in the decision making process the model contains two alternatives. One alternative is to continue the process. This is discussed next. The other alternative, according to Slade, is to "choose usual action". The meaning of this alternative has been left undefined for the forestland easement decision process. Landowners who followed this path are difficult to identify, preventing their inclusion in this study. In the context of the forestland easement model, this alternative embraces such things as abandoning the problem at this stage, waiting and starting the process over in the future, or going back and redefining the problem in broader terms. Each of us encounters opportunities on a daily basis that we fail to

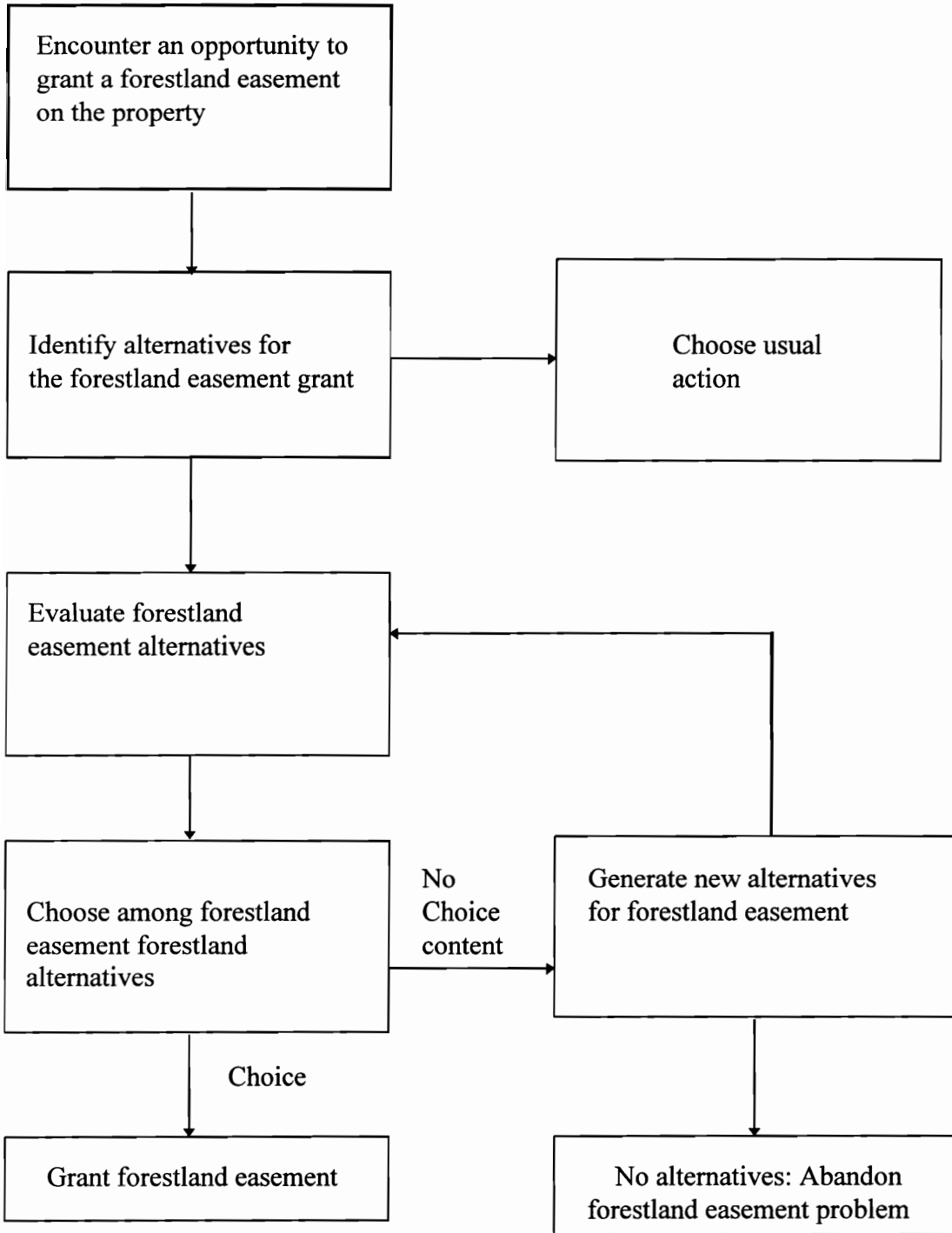


Figure 1-4. A model of the decision-making process for forestland easement grants - adapted from a general model of the decision-making process by Slade (1994).

consider, such as credit card offers and department store sales. This step also includes those landowners who fail to give the opportunity further consideration.

The third step in continuing the decision making process is to evaluate the forestland easement alternatives. Financial and subjective criteria are used to evaluate the desirability of the opportunity.

The fourth step in the decision making process is to choose among alternatives for forestland easement content. This step represents a juncture that leads to a choice to grant the forestland easement or to avoid making a choice.

If the choice is avoided, the next step is to generate new alternatives. If the landowner is unable to generate new alternatives, the problem is abandoned. This study did not examine landowners who followed this path in the decision process, so these alternatives are only speculative. Theoretically, the landowner could go back to the drawing board and extend negotiations over forestland easement content with the potential grantee, if the grantee is willing to do this. Another alternative is to sell the land outright. Landowners can also wait and attempt the entire process again at a future date. If a choice is made, the fifth and final step in the forestland easement decision making process is the actual grant of the forestland easement.

This description of the forestland easement grantor's decision making process is revisited in Chapter Five as a framework for discussing a portion of the study's results.

## CHAPTER TWO

### REVIEW OF THE LITERATURE

This chapter is divided into four sections. Discussions of easements in the literature and how the available information about easements relates to this study are reviewed in the first section. Empirical research studies on conservation easements are canvassed in the second section. Studies that have some bearing on forest landowners, forestland easements, and the study area are reviewed in the third section. Finally, the implications of all the literature reviewed are examined in the context of this study.

#### DISCUSSIONS OF EASEMENTS

Land is commonly cited as a factor of production. Use of land in production comes as a benefit of ownership.

“This is usually thought of as a physical entity which the businessman acquires and uses ( an acre of land, a ton of fertilizer) instead of as a right to perform certain (physical) actions. We may speak of a person owning land and using it as a factor of production but what the land-owner in fact possesses is the right to carry out a circumscribed list of actions” (Coase 1960).

Barlowe (1978) defines fee simple ownership as “the largest bundle of rights a private owner can hold in land property”. It follows that a right, specific to a certain purpose, is considered a factor of production. The rights of growing and harvesting timber, building houses, or of leasing hunting rights to others are all examples of rights as factors of production.

One portion of the bundle of rights is the right to grant easements. "An easement is an interest in real property that conveys use, but not ownership, of a portion of an owner's property" (Appraisal Institute 1992). Daugherty (1978) defines an easement as "a right or interest in land less than full fee ownership" and divides easements into two broad categories - positive and negative. A positive easement is a device that permits the easement grantee certain specified rights to the grantor's property. Examples of positive easements include a right-of-way acquired by the grantee for such things as roads and trails, and the right to erect a billboard on a property. A negative easement limits or restricts the grantor's use of his/her property for the benefit of the easement grantee. Examples of negative easements include restrictions on the number and styles of buildings that the grantor may construct. In either case the easement is a factor in the easement grantee's production process or purpose.

"Easements cannot be revoked except by sale, release, abandonment, or condemnation" (Barlowe 1978). Normally easements are granted in perpetuity. However, a term easement may grant rights for a specified number of years. Easements are sometimes referred to as being "in gross". "Easement in gross" means that the easement can be transferred to a person, corporate or natural, who own no land at all (Knight and Knight 1987).

Gregory (1972) provides one of the earliest reports on the use of easements for conservation purposes. He advances a need for conservation easements in the United States and reviews easements as legal devices. His commentary on the variety of

easements, coming at a time prior to the rapid increase in the use of conservation easements, remains relevant due to the lack of descriptive information in more recent literature. Specifics on the Massachusetts Conservation Restriction Act and similar legal compositions in France and Germany round out Gregory's discussion.

The Appraisal Institute (1992) distinguishes between conservation easements, open space easements, and preservation easements. Such terms are used for descriptive, rather than legal distinctions among easement types. The term "forestland easement" is used throughout this study as a means of describing both the negative and positive easements purchased to provide benefits to public agencies and not-for-profit environmental organizations from private forestland.

The use of conservation easements by landowners has been suggested as a means of lowering income, estate, and property taxes. Income tax implications of conservation easement donations were discussed in considerable detail in Chapter One. There is a smaller amount of information in the literature on estate and property tax advantages.

"With increasing frequency, heirs find they are forced to liquidate their timber stands and/or sell their land simply to pay the tax" (Broderick et al 1994). The donation of a conservation easement reduces the value of the estate, on paper (Wright 1994). By donating a conservation easement, the landowner can lower the value of his/her interest in the land, and thus lower the estate tax burden of his/her heirs. Concern over forest fragmentation and land use conversion resulting from the burden of estate taxes has been part of the impetus behind some public policy statements regarding forestland easements.

When property tax assessments are based on potential use rather than current use, a conservation easement seller may get a reduction in his/her assessment (Wright 1994). Donation of a conservation easement prior to sale of land may also provide some shelter from capital gains tax (Wright 1994).

"Easement values tend to average 30 percent of the value of unrestricted property, but can range from 10-90 percent" (Wright 1994). What constitutes this value? The direct comparison method of valuation determines the value of a conservation easement by comparing it to previous conservation easement sales of a similar nature (Vicary 1994). Unfortunately, in a typical conservation easement scenario there are generally no comparable sales figures upon which to make a valuation determination (Wood and Dodd 1990). This is a problem for both those seeking to value a donated conservation easement for estate or income tax purposes and for potential purchasers and sellers trying to determine a fair price for a conservation easement.

"The value of an easement is usually estimated as some part of the amount of value it adds to the property it benefits; the burdened property's loss in value can also be used to indicate the value of an easement" (Appraisal Institute 1992).

Wood and Dodd (1990) define the value of a scenic easement as "the price at which the easement would change hands between a willing buyer and a willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of the relevant facts; that is, its fair market value". "A price represents the amount a particular purchaser agrees to pay and a particular seller agrees to accept under the

circumstances surrounding their transaction" (Appraisal Institute 1992). A price in this sense represents fair market value. The value to the buyer is at least the price paid, and often more. This excess value above the price is the surplus the buyer gains from the sale. "The holder of an easement realizes a gain by paying less than the added value." (Appraisal Institute 1992).

Vicary (1994) describes the before and after method of appraising the value of conservation easements. This method determines the value of conservation easement interests by subtracting the value of the land after it is encumbered by the conservation easement from the fair market value of the land before it was encumbered by the conservation easement. "The manner in which fair market value is determined is comparative: that is, the fair market value of the property before the scenic easement was granted compared with the fair market value of the property afterward" (Wood and Dodd 1990). Green (1992), in discussing the taking of easements for electric transmission line right of ways, states "comparing a servient estate's bundle of rights before and after the easement taking, albeit a difficult task, provides a means of quantifying the impact of an easement".

In addition to the various financial benefits of tax reduction from donating a conservation easement, a landowner who may or may not choose to take advantage of the donation incentives can also derive personal utility from the donation. Andreoni (1989) states that "people get some private good benefits from their gift per se, like a warm glow". He identifies the situation in which there are at least some selfish reasons for



making a donation, such as the “warm glow” as impure altruism. This “warm glow” is also called “donative intent” by foundation officers. Without questioning the genuine good will of those who make forestland easement donations, it is still possible to identify real benefits that accrue to them from making the donation.

There are many examples of forestland easements already in place. “Donated conservation easements protect over one million acres in the United States from development.” (Wright 1993). Conservation easements purchased nationwide by approximately 1,000 local and regional non profit groups include some 350,000 acres (Wright 1994). In the Adirondack Park, a major portion of the study area, there were at least 889,198 acres under forestland easements owned by New York State as of 1992 (NYSDEC 1992). In addition to state owned forestland easements, there are other lands in the study area encumbered by forestland easements granted to not-for profit environmental organizations.

In New York, a state-wide plan for the protection of open space recommends the use of conservation easements in achieving the protection of water resources, significant ecological areas, recreation opportunities, and lands of distinctive character, as well as the enhancement of public lands (NYSDEC and NYSOPRHP 1995). An earlier document pertaining only to the Adirondack Park region of the state, the Report of the Commission on the Adirondacks in the Twenty-first Century (1990), contained recommendations for extensive acquisition of forestland easements in the Adirondack Park.

Buist (1993) presents a perspective of the economics of conservation easements on farmland. His discussion is limited to programs for the purchase of development rights. Specifically, the conservation easements would prevent subdivision or development for residential, commercial, or industrial purposes. Buist develops “an economic model which defines and determines” the conservation easement value, based on financial theory expounded by Pindyck (1991). This model includes the often overlooked opportunity cost of converting the land use today instead of waiting for future periods. Waiting for future periods to develop is treated as a future option that has a present value.

“From the point of view of economic theory, the correct way to price easements is to interpret the conversion investment decision as a financial option and to utilize options pricing theory to value this option: the price of an easement should equal the option value to convert the farm to urban use at the optimal date.”

Buist goes on to illustrate this point with an example that shows how before and after price estimates can underestimate the value of the conservation easement, when compared to the value if development is viewed as a financial option. Similarly, comparable sales approaches ignore the optimal conversion date of the parcel in question because they are based on optimal conversion dates for other parcels.

Buist’s economic model of conservation easement values on farmland provides a theoretical framework for examining the development values forgone by the donors of forestland easements in this study.

Buist et al. (1995) builds on the foregoing discussion of the economics of conservation easements on farmland. The focus of this technical report is on development rights. A public finance approach is taken to valuing the benefits of purchasing development rights from farmers. In addition to discussing similar material to Buist (1993), this report examines the administration of conservation easement programs, externalities, incentives, alternative uses, and the role of private land trusts. An appendix gives details on programs for the purchase of development rights in nine states.

Binkley and Hagenstein (1989) provide one of the few economic discussions of conservation easements and their use on forestlands in the northeast. Conservation easements are one of several policy alternatives they mention. The cost of a conservation easement is presented in terms of conversion pressure - the rent that could be realized from converting lands from forested uses to development. They identify some of the management implications of divided rights to land under conservation easements, noting that "assignment of management responsibilities can be crucial". They also bring up an important point for consideration by both forestland easement grantors and grantees: the potentially significant costs of managing forestland easements.

Binkley (1989) calculates the theoretical value of a forestland easement under a set of simplifying assumptions. The land has two alternative uses in his illustration - timber management and second home development. Development will occur once the rent of the land from development equals that from timber management. The rent of land from both uses is increasing over time, but development rent is growing at a higher rate.

The cost of the forestland easement is the difference in value between the value of the land managed for timber production and the value of the land development at the optimal time. The value of the land if developed at the optimal time to do so is equal to the net present value of the rent from timber management between the present time and the conversion date and the net present value of the development rights exercised on the optimal date. Binkley's calculations provide a basis for discussion of the value sold or donated by forestland easement grantors.

Ansley (1994) discusses the legal aspects of conservation easements in New York State. This report examines federal and local taxation issues and reports on the use of conservation easements by both the New York State Department of Environmental Conservation and not-for-profit organizations. One disadvantage of conservation easements that is identified sets this report apart from many of the other sources of information. The uncertainty over how a conservation easement will be valued by the local assessor for property tax purposes is an inhibiting factor during the negotiations of such agreements. Ansley concludes that:

“the state assumption of property tax liability for acquired conservation easements in the Adirondack and Catskill parks, and the landowner's ability to liquidate wealth without taking the property out of production, are the driving forces behind State conservation easement acquisition program”.

McGough (1990) reports on some of the issues surrounding the use of conservation easements in the Adirondack Park. Included in this report is some of the history behind conservation easement laws and acquisitions in the state, the activities of

grantees in the Park and around the State, and policies behind easement acquisition by New York State. Other issues addressed in this report are property tax assessments of lands encumbered by forestland easements, forestland easement appraisals, enforcement, and the unresolved question (at that time) of how the State Constitutions' Article 14 forever wild provisions applied to forestland easements.

McGough's report reveals some of the background information of the acquisition environment and uncertainties during the middle of the period when most state forestland easement acquisitions took place. This information may be useful in understanding the timing and provisions of some of the forestland easements catalogued in this study.

Barrett and Livermore (1983) prepared one of the most comprehensive books on conservation easements. Although the focus of this book is on conservation easements in California, much of the information applies to other areas as well. This book was published in 1983, prior to the time when the use of conservation easements spread quickly in the Northeast. Nevertheless, the book contains much of the history behind the popularity and use of conservation easements up to that date. Specifically, the authors outline key legislation related to conservation easements, discuss tax incentives for conservation easement donations, give considerable detail about drafting conservation easement deeds, and catalog other real property conservation techniques.

Forbes et al. (1989) discusses conservation easements and their role in the Northern Forest Lands Region. This document is intended to be informative to those shaping public policy. It includes a "conservation easement utility matrix", a section on

factors influencing conservation easement acquisition strategies, and a concise description of the “infrastructure for conservation” in the region. The “conservation easement utility matrix” is meant to rank a property’s desirability for encumbrance with a conservation easement as a “land protection tool”. The authors do not state how or if the scores they provide in this matrix have been subjected to public interest processes for valuation.

There are many other publications that discuss conservation easements. Most outline the advantages of the conservation easements for use by public agencies and private land trusts in protecting open space. Several discuss the advantages to landowners in donating conservation easements. Most of these point out the flexibility of conservation easements and then go on to describe them as if they were actually very standard in their content. Almost none address the specifics of how a landowner should protect his/her interests in the terms of the conservation easement. Rather than review all of this promotional conservation easement material, sources of this type are listed in Appendix A.

## **EMPIRICAL STUDIES OF EASEMENTS**

Boelhower (1995) examined conservation easements on working forests in Maine, New Hampshire, and Vermont. The subset of conservation easements on working forests is defined as those easements on properties of 25 acres or more that allow the grantor to do commercial timber harvesting. All the conservation easements in Boelhower's study can be classified as forestland easements. The study surveyed both grantors and grantees of these forestland easements. The focus is on the approaches the forestland easement agreements took to ensure management planning for timber related activities. Nearly 500 forestland easements on working forests were identified in the three states. Eighty-nine forestland easement grantees were identified, and grantor information was obtained from 263 usable survey responses. A variety of descriptive information about the grantors and the contents of the forestland easement agreements are included in the results. Boelhower's study is the only in depth empirical research on conservation easements found in the literature review process.

Boelhower's study is not directly comparable with this one because of its narrower focus on working forests. It does, however, provide some results to be contrasted with the findings of this study. In particular, some of the information about the grantors and the timber harvesting guidelines can be compared with similar information from the Northern Forest Region of New York.

Healy and Bristow (1989) cite a 1985 study by the Land Trusts' Exchange that identifies 1.77 million acres of land encumbered by conservation easements. The bulk of

the acreage (1.23 million acres) is subject to conservation easements held by the federal government. Non-federal government agencies held 205,000 acres in conservation easements, and 336,000 acres in conservation easements were held by non-profit agencies. These figures are too dated to be of interest in this study. Three quarters of the conservation easements had been purchased and the remainder were donations.

The Trusts' Exchange study and Healy and Bristow's cite of it typify most of the empirical information available about conservation easements, and how they are discussed in the literature. Typically conservation easements are mentioned in terms of the acreage encumbered, rather than the number of properties involved. Distinctions are made between sales and donations, and between public agencies and not-for-profit grantees, but they are seldom made among types of conservation easement agreements. These broad groupings of conservation easements are useful when discussing the actions of the grantees, but do not convey enough information when landowner goals and behavior are of interest.



## RELATED STUDIES

The Northern Forest Lands Study identifies forestland easements as “one way to assure permanent protection from development in areas with important public values” (Harper et al 1990). It recommended the use of forestland easements as a strategy for protecting forestland. The Northern Forest Lands Council (NFLC) made recommendations based upon the findings of the Northern Forest Lands Study for the Northern Forest Region, composed of portions of New York, Vermont, New Hampshire, and Maine (NFLC 1994).

Forestland easements are a component of several of the NFLC recommendations. Specifically, the NFLC recommends their use because they "efficiently use public dollars by purchasing only the rights necessary to best protect identified, exceptional values". In identifying needs for further research, the NFLC suggests that "Universities, state agencies, conservation groups, and landowners should examine the relative costs and benefits of term and rolling easements." A summary of other recommendations pertaining to forestland easements follows:

1. Increase Federal Land and Water Conservation Funds and state funding sources, in part for the acquisition of forestland easements;
2. Changes in Forest Legacy Funds to allow state ownership of forestland easements, payments in lieu of taxes to communities for forestland easements, and funds for states to monitor forestland easement compliance;
3. Changes in estate tax policies to make it more desirable for heirs to donate forestland easements;
4. Changes in capital gains tax policies to exclude proceeds from the sale of forestland easements to public agencies from taxation.

Alden (1990) did a study of non-industrial forestland owners in the Adirondack Park. She collected and reported information on demographics, reasons for ownership of land, forest management, and sales behavior. This information is divided by categories of residents and non-residents of the Adirondack Park. Alden's results provide a profile of forest landowners for comparison with the grantors of forestland easements in the study area.

James W. Sewall Company and Market Decisions (1993) did a study of land conversion in the Northern Forest Region. They found 228 transactions involving parcels 500 acres and larger in the Northern Forest Region of New York occurring between 1980 and 1991. These transactions involved some 701,109 acres. Five of the transactions (64,895 acres) involved conservation easements. Eight of the transactions (7,686 acres) underwent conversion. Conversion was defined to include some building or road improvement or the clearing of merchantable timber on some or all of the parcels. Surveys and interviews with buyers and sellers of land were used to gather information on reasons for owning, buying, or selling land, as well as offering land for sale. This definition of land conversion is inexact in that it embraces some activity commonly associated with timber management.

Market Decisions (1993) conducted an analysis of the transfer and conversion of forestland of less the 500 acres in size in the Northern Forest Region. This study included 11 of the 13 counties in the Northern Forest Region of New York State. Between 1983 and 1991, there were 366 transfers of parcels less than 500 acres in this

category in New York, involving some 91,478 acres. Some of the information contained in the results of Market Decisions' study will be useful to contrast with the results of this study.

Binkley (1981) presents a theoretical microeconomic model of private non-industrial forest landowner behavior to explain how these owners affect timber supply. Binkley's model presents landowner utility as a function of exogenous income, net timber income from the land, and amenity uses of the property. Similarly, Dennis (1989) advances a model of landowner utility as a function of exogenous income, timber income and amenities, where the amenities are measured in terms of the quantity of timber reserved from harvesting.

These two studies present a theoretical framework for considering how the financial and non-financial considerations interact in landowner decisions on forestland easements. Their general implication is that landowner's derive utility from both the income they realize from their property and from a combination of on-site amenity uses and off-site satisfactions. This context of landowner decision making is directly applicable to the non-industrial forestland easement grantors in this study.

## **IMPLICATIONS OF THE LITERATURE REVIEW FOR THIS STUDY**

There are many definitions, terms, and descriptions of easements because of their flexibility in dividing the rights to land. Easements can be tailored in many ways to provide the rights the purchaser desires as a factor of production or utility. Legal terms for easements are important in distinguishing what rights easements entail. Other, less technical terms such as scenic easements or conservation easements are insufficiently descriptive to provide an understanding of how they are used by forest landowners in meeting their needs. One of the more useful things that can come from this study is a series of definitions of existing types of conservation easements on forestland that truly describes the interests the easements convey.

A number of public policies and subsequent regulations exist that both encourage and constrain forestland easement transactions. Most of these involve taxes (Spata 1993, Dodd 1990, Wright 1994). The effect these policies are supposed to have is obvious. How these policies actually contribute to the decisions of landowners who grant forestland easements in the study area should be apparent in the study's results. In turn, this knowledge should be useful to landowners who are contemplating selling or donating a forestland easement as a means of assessing the implications of their tax situation.

There is a considerable body of information on the value of easements. Sales price is the best empirical evidence of an easement's value. Other methods of valuing easements, such as the before and after method (Wood and Dodd 1990, Green 1992, Vicary 1994); are not directly related to market values. Valuation approaches focus on

appraised values (Vicary 1994), sales prices (Buist 1993) or costs (Binkley and Hagenstein 1989, Binkley 1989). Price probably understates the total value to either the grantor or grantee, because of their respective surpluses, but reporting and analyzing prices is one important contribution this study can make. It is part of the larger question of value that landowners must consider. Literature on valuation is for the most part concerned with fair market value. This information is important when a landowner calculates an acceptable sales price or the value of a charitable deduction for a conservation easement donation. What is lacking is any discussion of the value of a conservation easement grant to a landowner. The price of a conservation easement or the amount of an income tax deduction are only one part of the potential value a landowner realizes from the grant of a conservation easement. There are other financial benefits and some of these are identified in this study. There are non-financial benefits as well. Binkley (1981) and Dennis (1989) discuss non-industrial forest landowner utility as a function of both income from the property and enjoyment coming from ownership. This concept is followed in reporting the mix of financial and non-financial benefits to forestland easement grantors in the discussion section of this study.

There is a definite lack of empirical research on conservation easements in general. Reports of acreage encumbered by conservation easements (Healy and Bristow 1989) may be useful to some, but more information is needed because of the growing popularity of conservation easements. Boelhower's (1995) study is the only in depth evaluation of forestland easements. This study will be a part of a growing research base

that provides descriptive research on forestland easements . In particular, a focus on landowner decisions is needed because there is very little objective information available to landowners. Having identified what has been reported about easements, it is desirable to identify and describe the details behind them as they become more prevalent on the forest landscape.

The work of the Northern Forest Lands Study (Harper et al 1990) and the subsequent work of the Northern Forest Lands Council (1994) underscore the need for empirical research on forestland easements. These studies identify and encourage the use of forestland easements. If the trends identified and the actions encouraged by these studies continue, landowners may see expanded opportunities to sell or donate forestland easements. There is a void of information for landowners about forestland easements. The results of this research can begin to fill the information void.

The Northern Forest Region of New York State is an area of sufficient size and jurisdictional restrictions to provide a good model for a market on forestland easements. This region has been the subject of several layers of recommendations for public acquisition of forestland easements. Proposed new policies would provide funding for acquisitions and make tax implications more favorable for those considering the sale or donation of a forestland easement (NYSDEC and NYSOPRHP 1992, Harper et al 1990, Commission on the Adirondacks in the Twenty-first Century 1990, NFLC 1994). A significant number of forestland easement transactions between private landowners and both the State of New York and private, special-interest environmental groups, have

already taken place. Most of these transactions were in the six million acre Adirondack Park. Past sales of forestland easements in an environment where the number of future transactions of this type is expected to grow make this an ideal area and market to study.

Research on sales and ownership behavior of landowners in the Northern Forest Region (Alden 1990, James W. Sewall Company and Market Decisions 1993, Market Decisions 1993), provides a base of information that helps in understanding landowner behavior. Some of the results of this study are directly comparable to their results. These comparisons can reveal similarities and differences between forestland easement grantors in the study area and the larger populations of forest landowners in this area and throughout the entire Northeast.

## **CHAPTER THREE**

### **METHODS AND PROCEDURES**

The methods and procedures used in this study to gather information about forestland easement transactions are explained in this chapter. Each of these methods and procedures is linked directly to one or more of the study purposes listed in Chapter One. The study follows a structured progression, from identifying forestland easements in the study area to describing the processes followed by those who granted the forestland easements. Specifically, methods for identifying the population of forestland easements, acquiring and analyzing deeds to these forestland easements, interviewing people who have sold or donated forestland easements, and gathering parcel attribute information for sold forestland easements, are presented. Limitations and delimitations are discussed at the end of this chapter.

#### **IDENTIFYING THE STUDY POPULATION**

##### **Identifying Forestland Easements**

The first step in this study is to identify all of the forestland easements in the study area. This step is directly related to the purpose of inventorying all of the forestland easements in the study area (Study Purpose #1a in Chapter One). Under New York State Law, all conservation easements must be registered with the State's Department of Environmental Conservation. In addition, the law requires that deeds to the conservation



easements be filed with the County Clerk for the county containing the protected property. A list of conservation easements registered with the DEC was obtained from the database of the Northern Forest Lands Inventory for New York at SUNY College of Environmental Science and Forestry. This list was supplemented by conversations with employees of the DEC's Bureau of Real Property. Some of the conservation easements in the State are not in compliance with the law, so this list is incomplete.

### **Gathering Forestland Easement Deeds**

Copies of deeds to all forestland easements in the study area were acquired from County Clerks' Offices. These copies were a necessary part of gathering all the deeds to forestland easements in the study area (Study Purpose #1b in Chapter One). Using the DEC's list as a guide, the county clerk's office for each of the counties in the study area known to contain conservation easements was searched. Copies of deeds for each of the conservation easements on the list were made. In addition, the grantee index in each county was searched for all known grantees from 1960 to the date of the visit. Known grantees are those that appear on the list from the DEC as grantees for other transactions. Deeds to some conservation easements that are unlisted were obtained in this way. From this process, a data set including deeds from all of the forestland easements by known and registered grantees was compiled. The next step was to identify the subset of forestland easements within the larger population of conservation easements.

### **Defining the Data Set**

The deeds were examined to determine if the conservation easements were within the study area. The study area contains only portions of some of the counties. Once the set of conservation easement deeds was limited to those found within the study area boundary, it was necessary to narrow the data set to include only forestland easements. The presence of forestland was determined by wording in the deed and by referencing USGS topographic maps of the study area. The deeds that were found to encumber property with a substantial forestland component, as determined by deed content or map references, comprise the data set.

The data set consists of 79 forestland easements. This set is split into two groups: forestland easements granted as donations and forestland easements granted in sales. The type of grant is determined by the wording in the deed. Donated forestland easements generally contain a statement indicating donative intent and are stamped “exempt” for transfer tax purposes. Sold forestland easements generally contain a statement indicating the sales price and are stamped with the amount of transfer tax paid on the grant.

There are 50 donated forestland easements and 29 sold forestland easements. Some grantors donated or sold more than one forestland easement. The 50 donated forestland easements came from 47 different grantors. The 29 sold forestland easements came from 11 different grantors.

## **ANALYZING FORESTLAND EASEMENT CONTENT**

The data set of forestland easement deeds was examined in an exploratory way to determine categories of information and the variables within them. This examination was necessary in analyzing the detailed contents of the forestland easement agreements (Study Purpose #1c in Chapter One). Five major deed categories were established: general information; affirmative rights; restrictions; reserved rights; and terms, conditions, and other provisions. The variables within each of these components were cataloged and defined.

Variables within the general information category include the type of grant, date of grant, information about the grantor, and information about the encumbered property. The affirmative rights category includes on site rights of the grantee to use the encumbered property. The restrictions category contains a detailed list of those things the grantor is prevented from doing on or with the protected property. The reserved rights category contains a detailed list of the uses of the property retained by the grantor. The terms, conditions, and other provisions categories contains contingencies for future events and miscellaneous other items.

The presence (including degree) or absence of each variable in each deed was recorded in a Microsoft Access<sup>®</sup> database file. The Microsoft Access program was used in determining the frequency of each of the variables among the deeds in the data set. This program was also used in making cross-tabulations of variable frequencies. For

example, the acreage of properties having a restriction on timber harvesting is calculated in this way.

## FORESTLAND EASEMENT DONOR INTERVIEWS

Individual donors and representatives of organizations that donated forestland easements were interviewed by telephone to gather information about the sales decisions and forestland easements agreements. These interviews, in part, contribute to the purpose of describing landowner behavior in evaluating forestland easement grants (Study Purpose #3 in Chapter One). The interview target group included all donors of forestland easements who made grants since 1980. This group includes 31 different donors. One of these donors is deceased. An attempt was made to find addresses and phone numbers for the 30 remaining donors in this group. Grantor addresses came from three sources: forestland easement deeds, requests to the forestland easement grantees, a search of *Phonedisc*<sup>®</sup> Residential and Business directories. The addresses of 29 donors and phone numbers of 28 donors were found in this way.

A set of interview questions for the donors was developed. These questions were reviewed by selected faculty members at Virginia Tech and SUNY College of Environmental Science and Forestry. The suggestions of these people were then incorporated into the interview questions. Interviews with four donors of forestland easements in a different part of New York State were conducted as a pretest of the questions. Minor revisions were made in the interviews based on the experience gained from the pretest.

Introductory letters were sent to 29 donors beginning in December 1995. These letters contained a brief description of the study and informed parties they would be

telephoned and requested to answer questions about the forestland easement(s) they granted. One donor had an unlisted phone number. This donor was requested in the introductory letter to call collect to participate in the interview. Copies of the letter to forestland easement donors and the interview questions are found in Appendix B.

Phone interviews began in December 1995 and efforts to reach some of the grantors continued until March 1996. At the completion of the interview process, interviews had been conducted with 20 individuals, representing 21 separate donors. These 21 donors represent 68% of the targeted group of 31 donors. In one case a son who was also a donor was interviewed twice. One interview concentrated on his donation and in the other he answered questions about his mother's forestland easements donation. In another case, a husband and wife both simultaneously donated forestland easements on two properties. Their donations are treated as a single transaction and thus only one interview is needed for this couple. A former employee of an organization that donated a forestland easement was interviewed because he was the person most familiar with the details of the donation as it occurred.

## **FORESTLAND EASEMENT SELLER INTERVIEWS**

Individual sellers and representatives of organizations that sold forestland easements were interviewed by telephone to gather information about the sales decisions and forestland easement agreements. These interviews, in part, contribute to the purpose of describing landowner behavior in evaluating forestland easement grants (Study Purpose #3 in Chapter One). The 29 sold forestland easements in the data set came from 11 different grantors. The entire group of forestland easement sellers was interviewed. Ten people representing the eleven sellers of forestland easements in the study area were interviewed. In one case, a single company represented two different timber companies owned by separate groups of investors.

A set of interview questions was developed to ask of all sellers of forestland easements in the study areas. Due to a lack of a readily comparable group to pretest these questions on, the questions were reviewed by selected faculty members at Virginia Tech and SUNY College of Environmental Science and Forestry. The suggestions of these people were then incorporated into the interview questions.

Introductory letters containing a brief description of the study and informing parties they would be telephoned and requested to answer questions about the forestland easements(s) they sold were sent to all sellers beginning in November 1995. Phone interviews were conducted in December 1995 and January 1996. Copies of the letter to forestland easements sellers and the interview questions can be found in Appendix C.

## **SALES PRICES AND PARCEL ATTRIBUTES**

Information on forestland easement sales' prices and the attributes of encumbered parcels contributes to the purpose of investigating opportunities for forestland easement sales (Study Purpose #2 in Chapter One).

### **Sales Prices**

Forestland easement sales prices can be determined from the deeds to these forestland easements. Forestland easements sold to the State of New York indicate the sales price in the deed. In general, easements sold to private non-profit organizations lack a statement of the sales price in the deed. When any deed that is part of a sale is filed with a county clerk, a transfer tax must be paid on the amount that has been exchanged. Upon payment of the tax, the deed is stamped as proof of payment and the amount of the tax paid is written on this stamp. The tax is equal to .04% of the sales price. This tax information was used to calculate the sales price of those easements with deeds that lack a statement of the sales price.

### **Parcel Attributes of Sold Forestland Easements**

Maps of each of the properties encumbered by a sold forestland easement were used in measuring the physical attributes and development potential of the property. These maps were acquired through requests to the State of New York Department of Environmental Conservation, the Northern Forest Lands Inventory for New York at SUNY College of Environmental Science and Forestry, some of the grantors, current



owners of encumbered properties, and other researchers who were familiar with the properties.

Three of the physical attributes of properties encumbered by forestland easements were measured. These attributes are the amount of lake and pond frontage, the amount of frontage on a wild, scenic, or recreational river, and the amount of public road frontage. Maps of the properties encumbered by sold forestland easements were cross referenced with USGS topographic maps. A planimeter was used to measure the lake and pond frontage; frontage on wild, scenic, and recreational rivers; and public road frontage. Measures of these three attributes are expressed in lineal feet.

The number of potential development rights extinguished by each sold forestland easement is equal to the potential number of single family residences allowable under the zoning of the property, less any reserved rights to build houses. These reserved rights to build houses are found in the individual deeds. For properties within the Adirondack Park, the potential number of single family residences is calculated by cross referencing a map of the property with the *Adirondack Park Land Use and Development Plan Map* (APA 1990) to determine how the property is zoned. In some cases properties were in more than one zoning classification. In these cases, the number of acres under each of the different zoning classifications is determined. The zoning and size of the property are then compared with the allowable thresholds for development under the guidelines of the *Adirondack Park Land Use and Development Plan Map*. The size of the property is divided by the number of acres required for a single family residence in order to

determine the potential number of single family residence that could be built. This number, less any reserved development rights, is the measure of the development rights extinguished by the forestland easement.

For properties outside the Adirondack Park, local zoning laws have to be consulted to determine the potential number of single family residences that could be built. For most properties outside the Adirondack Park, the appropriate town clerks were asked the requirements for building single family residences under the local zoning laws. In one case a county planner was consulted. This information was then used in calculating the number of development rights extinguished by the forestland easement in the same manner as the encumbered properties inside the Adirondack Park.

## LIMITATIONS

Some forest landowners in the study area have probably considered the grant of a forestland easement and decided against it. A similar scenario is one in which the landowner is willing to grant a forestland easement, but the potential grantee declines to accept it. Difficulty in identifying landowners and instances of these two situations prevented including them in the study. A more complete examination of landowner behavior in the decision to grant a forestland easement would include both decisions against granting and refusals by potential grantees.

The results of this study will have limited applicability for use in generalizations about forestland easements across the entire country, or even in the Northeast, because the land use and open space environment of the Northern Forest Region is unique. The physical environment of this region is unique as well, although, perhaps to a lesser extent. These factors create different management considerations for both forest landowners who may grant or consider granting forestland easements and those grantees who secure the forestland easements. For these reasons the applicability of information about forestland easements and the decision process of landowners may be constrained to disjointed items, rather than broad comparisons. For example, a landowner in the southeast who wants to ensure continued ability to manage his/her property for timber production while at the same time restricting development may find useful clauses in a forestland easement agreement for a property in northern New York. This landowner would be less likely,

however, to find an entire forestland easement agreement that could be adopted to his/her situation.

Another limitation of this study has to do with its focus on forestland. The procedure for identifying conservation easements in the region and then sorting through them to find those that meet the criteria of the subset of forestland easements is delineated earlier in this chapter. Some forestland easements may have been missed in this process. Other conservation easements that have been secured by groups such as the American Farmland Trust have been eliminated from consideration. It is unlikely that lands encumbered by these conservation easements contained substantial forestland components since the focus of the grantee is on protecting farmland. Inclusion of conservation easements with only a minor forestland component would bring limited additional information to this study.

## **DELIMITATIONS**

Late into this study it was learned that many forestland easement donors also give an endowment along with the donation to help defray the costs of administering the forestland easement. The extent of this phenomena has not been measured in the study. It is assumed that those grantors who included an endowment in their donation, entered that into their arrangement under the financial aspects described in the economic overview of forestland easement grants presented in Chapter One (Figure 1-3).

During the course of the study a series of scenic easements that were acquired during the construction of the Adirondack Northway were discovered. The Northway is a major highway running from Albany, NY to Montreal, PQ, Canada. Investigation of these scenic easements revealed that they were acquired by the State of New York by appropriation. These scenic easements are older than others in the study and are less sophisticated in their terms. Since these scenic easement transactions prevented decision making on the landowners' parts, they were excluded from the study.

## **CHAPTER FOUR**

### **RESULTS**

#### **DEED INFORMATION**

The deeds in the data set contain five categories of information. These categories are general information about the property and parties involved; affirmative rights; restrictions; reserved rights; and terms, conditions, and other provisions. General information includes, the identity of the grantor (person who donates or sells), the identity of the grantee (organization that receives the forestland easement), the type of grant (sale or donation), and descriptive information about the protected property. Affirmative rights are those things the grantee is allowed to do on or with the protected property. Restrictions are those things that the grantor is prohibited from doing on, to, or with the protected property. Reserved rights are those uses of the property retained by the grantor. Terms, conditions, and other provisions encompass all of the interesting information not contained in the other categories.

The deeds to the forestland easements are more than a collection of rights and restrictions. When viewed in their entirety, they are a joint plan by the grantor and the grantee for the future of the property. Some of the deeds contain a requirement that a management plan for the property be written by one or both of the parties.

These plans are presumably more detailed than the deeds, but the deeds themselves provide more of a formal planning instrument than most landowners ever consider. A closer look at each section of the deeds, and some of the combinations various provisions occur in, helps to more fully describe the forestland easements and their effect on the land and the landowner.

An example of the deed to a donated forestland easement is found in Appendix D. An example of the deed to a sold forestland easement is found in Appendix E.

### **General Information**

A total of 79 forestland easements from the study area comprise the data set. This data set may or may not contain the entire population of forestland easements in the study area. The data set is the complete population of forestland easements among known grantees. Of the 79 forestland easements, 50 were granted as donations and the remaining 29 were granted as sales.

There are 58 grantors in the data set. This group of 58 includes 47 who donated forestland easements and 11 who sold forestland easements. One grantor, IP Timberlands, Inc. both sold and donated a forestland easement. Donors of forestland easements include 38 individuals or related individuals, four private corporations, two forest products companies, one town, one private club, and one real estate investment company. Three donors granted more than one forestland easement, which is why the

number of donated forestland easements is greater than the number of donors. Sellers of forestland easements include four individuals or related individuals, four forest products companies, one college, one real estate investment company, and one public utility. Four sellers granted more than one forestland easement, which is why the number of sold forestland easements is greater than the number of sellers.

There are eight grantees in the data set. Each of these grantees, and the number of sales and donations they are connected with are listed in Table 4-1. The State of New York is the foremost public agency involved with land acquisition in the study area. The Nature Conservancy, Trust for Public Land, and Open Space Institute are national organizations. The Adirondack Land Trust and Tug Hill Tomorrow are regional organizations whose work is limited to portions of the study area. The Saratoga Land Trust and Lake George Basin Land Conservancy are local groups. The Adirondack Chapter of the Nature Conservancy, the Adirondack Land Trust, and the Lake George Basin Land Conservancy all share resources and work cooperatively out of a single office.

Most of the forestland easements were granted in the past ten years. The number of forestland easements donated in each year is shown in Figure 4-1. Donations occurred sporadically until 1987 and then there were donations in every year after that. The cumulative distribution of donated forestland easements, shown in Figure 4-2, illustrates the trend in adoption of this means of land protection by



Table 4-1. Grantees of forestland easements in the Northern Forest Region of New York State and the number of easements they received, by type of grant.

Grantee	Type of Grant	
	Donations	Sales
State of New York	6	18
Nature Conservancy	16	9 <sup>1</sup>
Adirondack Land Trust	15	0
Saratoga Land Trust	6	0
Tug Hill Tomorrow	3	2
Trust for Public Land	2	0
Open Space Institute	1	0
Lake George Basin Land Conservancy.	1	0

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

1. The Nature Conservancy purchased 1 forestland easement for itself and acted as a third party on behalf of the State of York in 8 other sales.

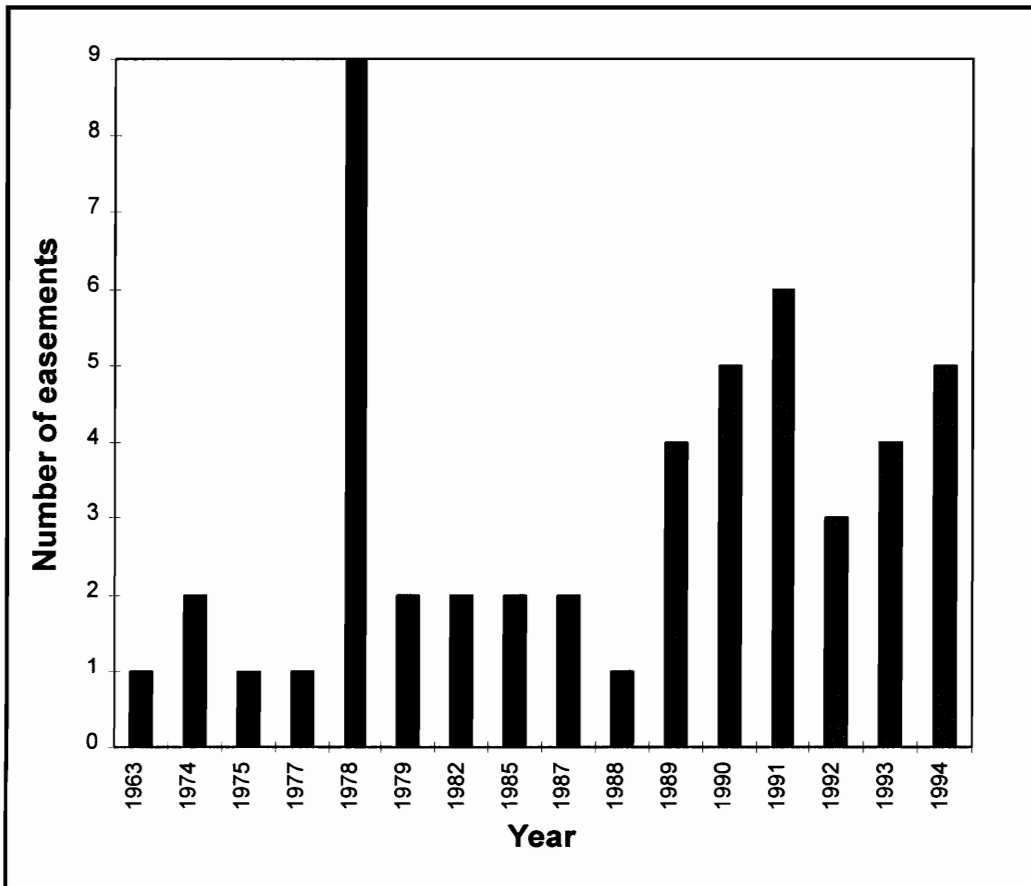


Figure 4-1. Number of forestland easement donations in Northern Forest Region of New York State by year.

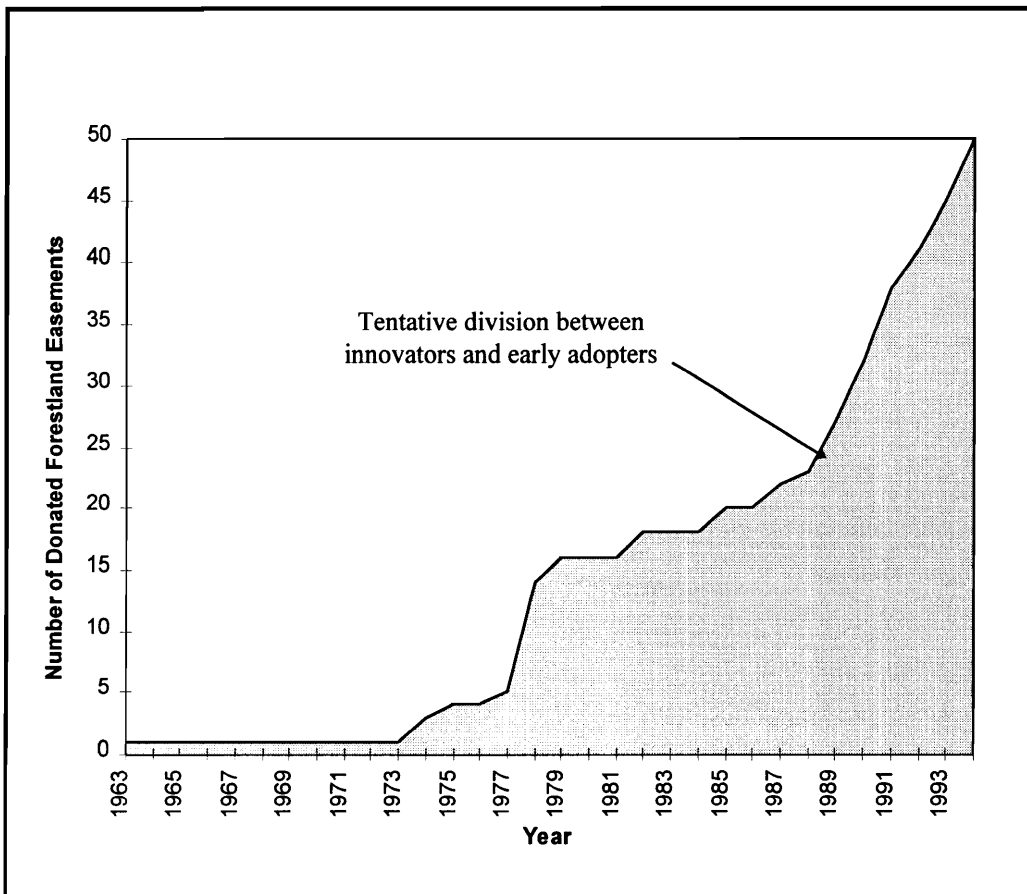


Figure 4-2. The cumulative distribution of donated forestland easements over time in the Northern Forest Region of New York State.

private landowners. The Foundation for Research on Human Behavior (1959) discusses a general trend in the adoption of new products and ideas. The adoption cycle for a new idea includes five groups of people - innovators, early adopters, early majority, late majority, and laggards. These groups of people will account for 2.5%, 13.5%, 34%, 34%, and 16%, respectively, of the total number of people who adopt an idea. The forestland easement donation trend is still on-going in the Northern Forest Region of New York State, making it difficult to separate forestland easement donors into these groups with certainty. If the trend in forestland easement donations continues, it is reasonable to identify the existing donations as coming from innovators and early adopters. A tentative division between innovators and early adopters occurs in the year 1989 and is labeled in Figure 4-2.

The number of forestland easements sold each year is shown in Figure 4-3. Since all but three easements sales are ultimately connected to the State of New York, their occurrence is as much a function of available funding and land acquisition priorities of the State as they are decisions of landowners. The vast majority of sales have been to only one buyer (State of New York). For this reason, the option to sell a forestland easement has been available only to a few landowners. The lack of opportunity for most landowners intervenes on the forestland easement sales adoption process.

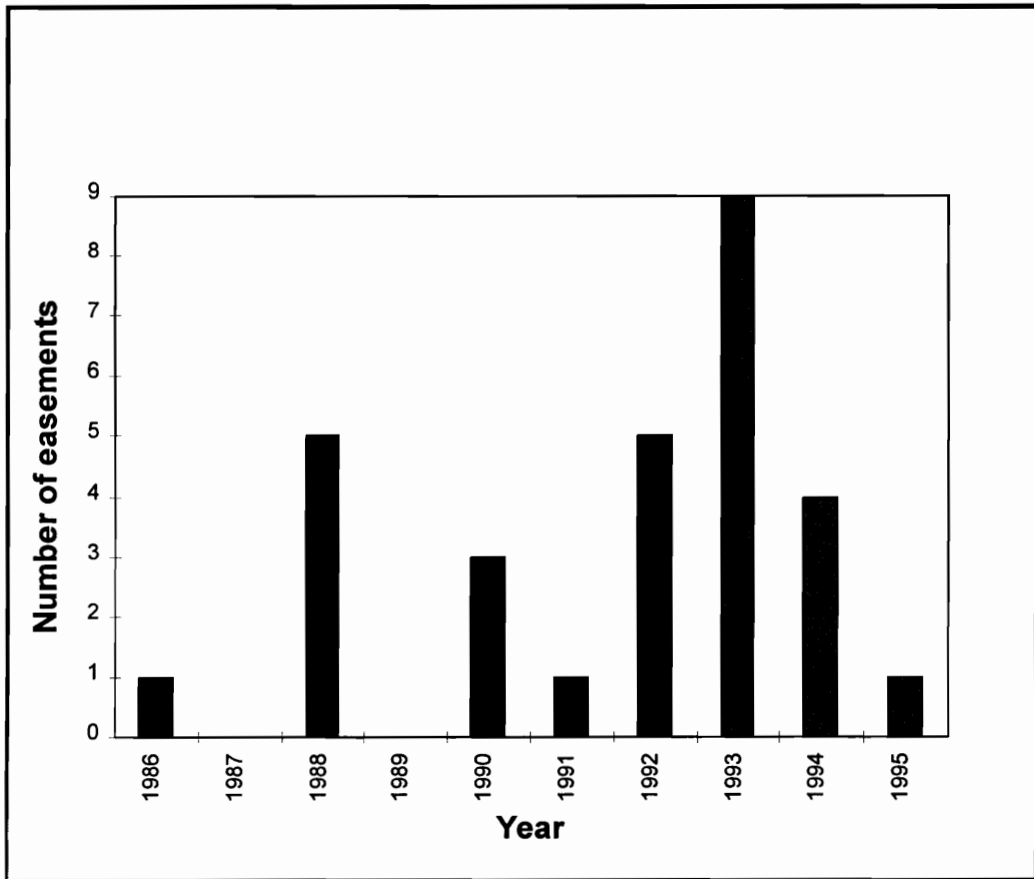


Figure 4-3. Number of forestland easement sales in the Northern Forest Region of New York State, by year.

The properties encumbered by forestland easements are divided into four different acreage classes. The number of protected properties in each acreage class among donations is shown in Figure 4-4. The median size of protected properties among donations is 240.5 acres. The number of protected properties in each acreage class among sales is shown in Figure 4-5. The median size of protected properties among sales is 800 acres.

Sixty of the forestland easements encumber single parcels. Each of the remaining 19 forestland easements encumbers from 2 to 25 parcels. Forty of the donated forestland easements encumber single parcels, while five of them encumber two parcels each and the remaining seven forestland easements encumber three or more parcels. Twenty-two of the sold forestland easements encumber single parcels and the remaining seven forestland easements encumber multiple parcels. The distinction between protected properties comprised of single or multiple parcels may be of little value. In some cases involving multiple parcels, all or some of the parcels are connected. In other cases there may be a considerable distance between parcels.

### **Affirmative Rights**

Affirmative rights are those things that the grantee is allowed to do on the protected property. There are 23 different types of affirmative rights in the data set. All of the affirmative rights and the ratio of deeds they occur in among donated and sold forestland easements are listed in Table 4-2. These affirmative rights can be

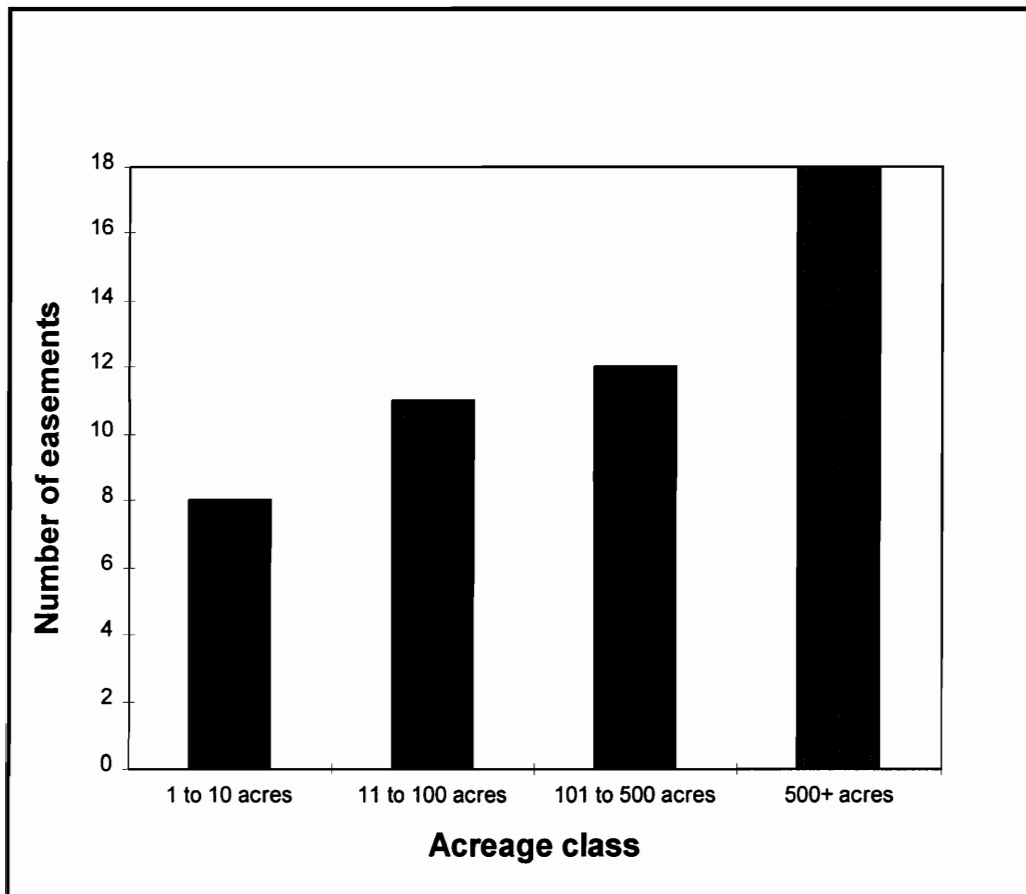


Figure 4-4. Number of forestland easement donations in the Northern Forest Region of New York State, by acreage class.

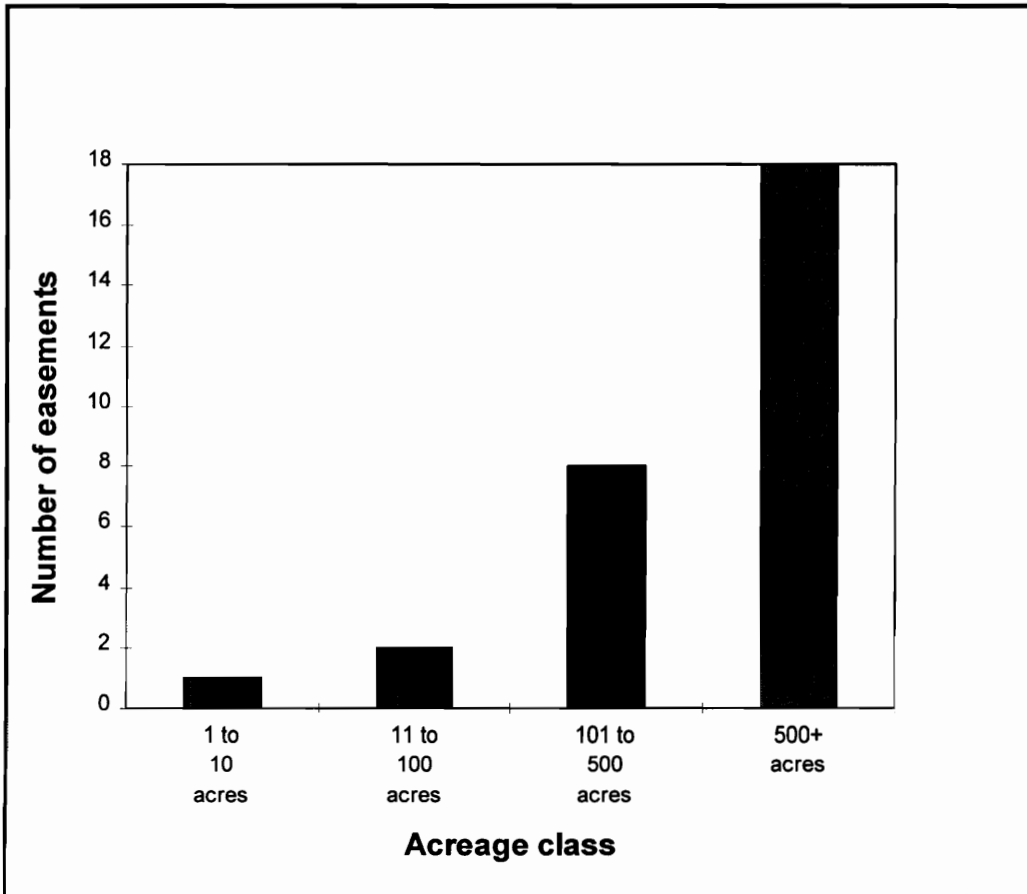


Figure 4-5. Number of forestland easement sales in the Northern Forest Region of New York State, by acreage class.



Table 4-2. 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.

<b>Affirmative right</b>	<b>Type of grant</b>	
	<b>Donations</b>	<b>Sales</b>
	<b>(%)</b>	<b>(%)</b>
<b>Administrative</b>		
Entry for compliance inspection	96	86
Emergency action in response to disasters	2	72
Entry to maintain boundary markers	2	0
Construct and maintain roads	0	14
Participate in temporary posting of timber harvesting closure areas	0	10
Cut or remove trees and other vegetation	0	10
Soil, sand, and gravel extraction for on-site use	0	7
Erect gates and barriers	0	3
Demolish specific buildings	0	3
Construct and maintain signs	0	3
<b>Public Recreation Rights</b>		
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
<b>Aesthetic &amp; Ecological Rights</b>		
Entry for scientific and nature study	34	3
Right of view of the property in an unimpaired state	56	76
Restore to a specified condition	0	41
Fish and wildlife management	0	21
Monitor and manage rare plant and animal populations	6	0
Identify scenic, historic, natural, wildlife, and aesthetic resources	0	3
Maintain views	2	0
The data set includes 50 forestland easements that were granted as donations and 29 forestland easements that were granted as sales.		

divided into three distinct categories. The first category includes rights associated with administering the grantees' interest in the property. The second category includes the rights associated with public use of the property for recreation. The third category includes rights associated with aesthetic and ecological values. Each category represents a different type of on-site use that the grantee finds necessary in securing benefits from the land.

The grantee's right of entry for compliance inspection, in some cases requiring prior notice, is the most common of the administrative affirmative rights in the data set among both donations (96%) and sales (86%). This right is also the most common of the affirmative rights in both cases.

Aside from entry for compliance inspection, the only administrative affirmative rights occurring among the donated forestland easements are the right to emergency action in response to natural disasters and the right of entry for maintaining boundary markers. Both of these rights occur in only 2% of the donated forestland easements.

After entry for compliance inspection, the most common administrative affirmative right among the forestland easement sales is the right to emergency action in response to natural disasters. This right is found in 72% of the forestland easements in this group. The other administrative affirmative rights found are uncommon. These include the construction and maintenance of roads (14%); the

right to cut or remove vegetation (10%); extraction of soil, sand, and gravel for on-site use (7%); erect gates and barriers (3%); demolish structures (3%); and erect signs (3%).

Only two of the affirmative rights for recreation purposes occur among the donated forestland easements in the data set. 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. This is an indicator these rights are of value to them. This value may be financial. For example, a landowner who receives income from leasing the property to a hunting club may find that the property is undesirable to the hunting club if the public is granted recreational access to the property. Granting public access results in a financial loss. The value may also be non-financial and tied to the landowner's enjoyment of the property. Public recreation 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 would be forgoing all or part of that satisfaction by sharing the use of the property with others.

Affirmative rights for recreation are major components of the deeds from forestland easement sales. The two most common - broad public access for recreation uses comparable to those allowed on units of the State Forest Preserve and the right to construct trails - are included in 79% of the sales deeds. The right to

construct parking lots is also very common, occurring in 72% of sales deeds. A few of the sales deeds (10%) provide for public use of trails, rather than broad access. The remaining affirmative rights for public recreation, including fishing (10%), trapping (10%), and campsite establishment and maintenance (3%), are in all cases associated with use of the property under the affirmative right to broad public recreation access.

The “right to view” the property in its “natural condition” or an “unimpaired state” is the most common of the aesthetic and scientific affirmative rights among donated forestland easements, occurring in 56% of the deeds. This right is also the least tangible of the affirmative rights and therefore potentially the most troubling. The deeds lack a good description of the specific actions that are associated with this “right to view”. “Natural condition” and “unimpaired state” are similarly lacking in definition. Even if the grantor and grantee have an informal and acceptable mutual understanding of what is meant by the “right to view”, subsequent owners of the property and administrators in the grantee’s organization may have inconsistent interpretations of this right. A lack of mutual understanding of what is meant by this the “right to view” can lead to future conflict.

The next most common right among donations is the right of entry for scientific and nature study (34%). The right to monitor and manage rare plant and

animal populations and the right to maintain views occur in 6% and 2% of donated forestland easement deeds, respectively.

The right to view the property in its natural condition is the most common of the aesthetic and scientific affirmative rights among forestland easement sales as well. The right to restore the property to the conditions that existed at the time of the grant (41%) and the right to manage the property for fish and wildlife (21%) are the other popular aesthetic and scientific affirmative rights among forestland easement sales. The right of entry for scientific and nature study and the right to monitor and manage rare plant and animal populations are both found in 3% of forestland easement sales deeds. The right to restore the property to existing or pre-existing conditions is one of the potential problems embedded in many deeds. Since nature is a process, rather than a snap-shot in time, attempting to achieve a static condition in a dynamic environment can prove to be a source of contention between the landowner and the grantee.

### **Restrictions**

Restrictions are those things the grantor is prohibited from doing on, to, or with the protected property. There are 37 different restrictions in the data set. These restrictions can be divided into two categories. 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.

Development restrictions and the ratio of deeds they occur in among donated and sold forestland easements are listed in Table 4-3. Open space use restrictions and the ratio of deeds they occur in among donated and sold forestland easements are listed in Table 4-4. All restrictions work with reserved rights in determining the extent of development and the way the forest will be used.

The most common restrictions on development among donated forestland easements are those on mining (78%); waste disposal (78%); commercial signs (60%); and mobile homes (50%). Occurring in lesser frequencies are restrictions on road construction (40%); subdivision (34%); residential, commercial, industrial, or institutional activities (28%); agriculture (28%); utility lines (22%); and signs (22%).

The most common restrictions on how the forestland will be used among the donated forestland easements are those on use of chemicals (76%) and alteration of water courses (68%). Restrictions on the use of motor vehicles (50%), timber harvesting (48%), and timber harvesting practices (40%) are all well represented in the data set. Area limits on timber harvesting (26%), restrictions on hunting (22%), trapping (12%), fishing (8%) and planting trees and other vegetation (8%), occur in lesser frequency.

Restrictions on development occur more frequently among sold forestland easements. Restrictions on mobile homes (90%); waste disposal (83%); commercial

Table 4-3. Restrictions on development 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.

<b>Development restrictions</b>	<b>Type of grant</b>	
	<b>Donations</b>	<b>Sales</b>
	<b>(%)</b>	<b>(%)</b>
Waste disposal	78	83
Mining	78	38
Commercial signs	60	83
Mobile homes	50	90
Residential, commercial, industrial, or institutional activities	28	79
New utility lines	22	83
Road construction	40	45
Exterior artificial illumination	0	72
Subdivision	34	7
Agriculture	28	14
Signs	22	0
Fences	12	0
Change of land use	10	3
Alteration of topography	10	0
Types of new buildings	0	3
Trail construction	2	0
Excavation	2	0
Commercial attractions	2	0
Dock construction	2	0

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

Table 4-4. Restrictions on open space 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.

<u>Open space use restrictions</u>	<b>Type of grant</b>	
	<b>Donations</b>	<b>Sales</b>
	<b>(%)</b>	<b>(%)</b>
Motor vehicle use	50	65
Alteration of water courses	68	10
Timber harvesting practices	40	55
Timber harvesting on the entire property	48	7
Timber harvesting on a specified portion of the property	26	21
Hunting	22	0
Trapping	12	0
Planting vegetation	8	3
Erosion	6	7
Fishing	8	0
Powerboats	4	0
Cutting of vegetation	0	3
Number of vehicles on the property at one time	0	3
Trail construction	2	0
Introduction of non-indigenous flora and fauna	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.



that most clearly extinguishes development rights. Extinguishing development rights is the function most commonly associated with conservation easements.

signs (83%); utility lines (83%); residential, commercial, industrial, or institutional activities (79%); and artificial exterior illumination (72%) are all very common.

Restrictions on road construction (45%) and mining (38%) are somewhat less common. The remaining restrictions on development are far less common. The restriction on residential, commercial, industrial, or institutional activities is the one

The most common restrictions on how the forestland will be used among the sold forestland easements is the restriction on the use of chemicals (83%). Less common, but still prevalent, are restrictions on motor vehicle use (65%) and timber harvesting practices (55%). Area limits on timber harvesting (21%), restrictions on all timber harvesting (7%) and alteration of water courses (10%) are also present.

One forestland easement contains a restriction that prevents the grantor from harvesting more than 40% of the basal area of a stand in any ten year period.

The restrictions, by themselves, provide an incomplete picture of how the use of the property is constrained. Many of them contain caveats that state the activity is prohibited, except in so far as it is permitted under the reserved rights. For example, a forestland easement containing a restriction on residential, commercial, industrial, or institutional activities may also contain a reserved right to construct two additional residences, including necessary driveways and utility lines. The connectivity between

deed components is what makes the forestland easement document something of a plan, stating the limits of allowable development and management of the property. This concept leads to the idea that conservation easements, particularly those on forestland, have a broad common purpose of preventing change or directing change in an acceptable manner. The specifics of preventing and directing change will vary with each property. The limits of acceptable change are a large part of working out the agreement between grantor and grantee.

### **Reserved Rights**

Reserved rights are included in the deed for the benefit of the grantor. These reserved rights guarantee continued or future uses of the property by the grantor or subsequent owners of the protected property. A total of 72 separate reserved rights are found in the data set. These reserved right can be separated into four categories - development (Table 4-5), resource management (Table 4-6), on-site enjoyment (Table 4-7), and ownership administration (Table 4-8). 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 simple qualification of the restrictions that states the extent of how the grantor may use the property. The second most common reserved right found in the data set - the right to use the property for all purposes not inconsistent with the stated restrictions - seems to preclude the need to specify many

Table 4-5. Reserved rights for development 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.

<u>Reserved rights</u>	<u>Type of grant</u>	
	<u>Donations</u>	<u>Sales</u>
	(%)	(%)
Use, repair, replace, relocate, or demolish existing improvements	46	72
Use, repair, replace, relocate, or demolish existing buildings	46	62
Construct and maintain roads	36	38
Construct and maintain dwellings with accessory buildings	50	10
Install utilities	20	59
Build non-residential structures	14	7
Install drainage	1	0
Construct docks	6	0
Install sewage system	4	0
Install wells	4	0
Relocate a potential building site	0	3

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

Table 4-6. Reserved rights for ownership administration 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.

<b>Reserved rights</b>	<b>Type of grant</b>	
	<b>Donations</b>	<b>Sales</b>
	<b>(%)</b>	<b>(%)</b>
Sell, transfer, lease, or mortgage the property	86	86
All uses consistent with the easement purpose and not prohibited	66	97
Ingress and egress across the property	14	62
Transfer any of the reserved rights to others	14	14
Post against trespass	10	0
Subdivide	10	0
Grant temporary access to neighboring landowners by permit	0	14
Expel all persons	6	0
Receive compensation for in the event of eminent domain	0	10
No excess burden beyond stated conditions	0	10
Relinquish any reserved rights	4	0
Declare easement null and void in the event of eminent domain	4	0
Bring enforcement proceedings against easement violators	2	0
Amend for tax purposes	2	0
Amend to allow new and consistent uses	2	0
Amend to comply with any new conservation easement statutes	2	0
Reserved a specified right of way corridor	0	3
Action to preserve public health and safety	2	0
Transfer of development rights	2	0

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

Table 4-7. Reserved rights for resource management 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.

<b>Reserved rights</b>	<b>Type of grant</b>	
	<b>Donations</b>	<b>Sales</b>
	<b>(%)</b>	<b>(%)</b>
Soil, sand, and gravel extraction for on-site use	12	72
Remove diseased or damaged trees and other vegetation	34	24
Gate roads	6	66
Construct and maintain trails	28	24
Forest management for timber production	4	62
Action to preserve water levels and quality	22	28
Reforestation	34	3
Commercial logging	14	21
Educational uses	0	41
Emergency action in response to disasters	0	31
Designate and maintain a dump site	1	0
Explore and mine for minerals	4	17
Groom roads and trails for winter recreation	0	24
Restrict public access to active logging areas	0	21
Construct and maintain signs	10	0
Prune trees and other vegetation	2	10
Exclusive hunting rights for a specified period	0	14
Exclusive use of existing structures	0	10
Develop and maintain campsites	0	7
Restrict public access to reforestation areas	0	7
Agricultural use	4	0
Maintain Fields	0	7
Animal husbandry	4	0
Maintain and restore water levels	4	0
All cold water fishery rights	4	0
Establish lawns	2	0
Use of waterways	2	0
Burn to clear openings	2	0
Control of utilities	2	0
Clear openings for wildlife	0	3
Reserved a specified right of way corridor	0	3
Lease rights for campsites	2	0

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

Table 4-8. 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.

<b><u>Reserved rights</u></b>	<b>Type of grant</b>	
	<b>Donations</b>	<b>Sales</b>
	<b>(%)</b>	<b>(%)</b>
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 easement 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.

of the reserved rights included in the deeds. With this in mind, reserved rights are viewed as indicators of the grantor's intended uses for the property.

Many of the reserved rights occur in relatively low frequencies. These uncommon reserved rights are notable for two reasons. First, the wide variety and low frequencies serve to differentiate one forestland easement from the next. Second, the specific nature of these rights suggests this is an area of the agreement in which the grantor had significant input.

A total of 55 separate reserved rights are found among donated forestland easements in the data set. The most common of them are the right to sell, transfer, lease, or mortgage the property, subject to the terms of the easement (86%) and the right to all uses consistent with the forestland easement purpose and not expressly prohibited (66%). The right to construct new residences (50%); control of existing improvements (46%); control of existing buildings (46%); road construction (36%); use or removal of dead and damaged trees and vegetation (34%); reforestation (34%); recreational use (32%); trails construction (28%); and preservation of water levels and quality (22%) all have significant representation among the donated forestland easements.

A total of 41 separate reserved rights are found among sold forestland easements in the data set. The most common reserved right is the right to all uses consistent with the forestland easement purpose and not expressly prohibited,

occurring in 97% of the deeds. Also very common is the right to sell, transfer, lease, or mortgage the property, subject to the terms of the forestland easement. This reserved right occurs in 86% of the deeds. The next group of rights occurring in significant but lesser proportions includes control of existing improvements (72%), on-site sand and gravel use (72%), the right to erect gates and barriers (66%), ingress and egress for the grantor and others (62%), control of existing buildings (62%), forest management for timber (62%), and the right to install utilities (59%). Other rights occurring with notable frequency are lean-to construction (41%), educational uses (41%), road construction (38%), emergency action in response to disasters (31%) and preservation of water levels and quality (28%).

Further analysis shows the specifics of the reserved development rights that are common to many of the donations. Fully half of the deeds reserve the right to build new residential structures, while only 10% of sold forestland easements reserve such rights. Nine donated forestland easements reserve the rights to one additional residential building or camp, while the remaining reserved development rights range from 2 to 22 residential buildings or camps. A more complete measure of the development potential allowed under these forestland easements becomes more apparent by dividing the property's acreage by the reserved development rights. This is a better measure of the development potential that was given up and thus the degree of open space protection. The smallest threshold of development requires over



six acres for a single new residential building or camp. Twenty of the forestland easement deeds reserve over 50 acres for each new residential building or camp. Of these 20 deeds, 14 reserve over 250 acres for each new residential building or camp. The most extreme case allows one new residential building or camp for every 2,712 acres. One deed simply reserved all of the development rights potentially allowed under law, subject to stated spatial restrictions. A more accurate description of the level of development each property is potentially subject to requires knowledge of the degree of existing development at the time of the grant. This information is unavailable, but it is safe to assume that the properties are all largely open space or the forestland easement donation would have been declined by the grantee.

#### **Terms, Conditions, & Other Provisions**

The fourth component of the forestland easement deeds is designated Terms, Conditions, and Other Provisions. All of the terms, conditions, and other provisions, and the ratio of deeds they occur in among donated and sold forestland easements are listed in Table 4-9. There are ten of these variables in data set. The grouping of terms, conditions, and other provisions is designed to include all of the pertinent deed variables that remain after establishing the content of the other four categories of deed information. The information contained here is just as important in learning the nature of the forestland easement agreements, though less cohesive than that in the other categories.

Table 4-9. 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.

<b>Terms, conditions, &amp; other provisions</b>	<b>Type of grant</b>	
	<b>Donations</b>	<b>Sales</b>
	<b>(%)</b>	<b>(%)</b>
Clause for grantor acceptance of property tax burden	90	100
Reference to a state or federal government policy	76	97
Reference to a baseline data report	62	86
Internal Revenue Code Section 170 clause	82	31
Amendment clause	37	97
Property tax delinquency provisions	38	86
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 baseline data clause requires the compilation of a baseline data report on the condition of the property by the grantee and specifies if it is to be done before or after the grant. This clause is found in 62% of the donated forestland easements and 86% of the sold forestland easements.

The property taxes clause specifies that the grantor will pay all property taxes, or will pay taxes in proportion to its interest in the property. This clause occurs in 90% of donations and 100% of sales. In most cases, the forestland easement itself is an untaxed interest in land. An exception to this is conservation easements purchased by the State of New York on properties within the Adirondack Park. Under New York State Real Property Law, the State must pay property taxes to town and county governments on the proportion of the total property value that can be attributed to the forestland easement. This total assessed value is determined by the local assessors. The portion attributed to the forestland easement is determined by the State of New York. Some uncertainty exists from an evaluation standpoint because the local assessor has the power to raise the overall assessment. The proportion of an assessment he/she must pay is presumably less important to a landowner than the amount of his/her actual property tax bill.

The property tax delinquency clause spells out provisions for the grantor's failure to pay property taxes. This clause occurs in 38% of donations and 86% of sales.

The clause that denies 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 Internal Revenue Code Section 170 clause is included to show that the forestland easement meets the requirements for an income tax deduction as a charitable contribution. Some of the oldest forestland easements in the data set may include a reference to Section 501(c)(3) of the Internal Revenue Code of 1954 instead of the Section 170 clause. This clause occurs in 82% of donations and 31% of sales.

The management plan clause requires preparation of a management plan for the property by either the grantor, the grantee, or both. This clause occurs in 69% of sold forestland easements, but none of the donations. Of those requiring management plans, seven require a plan by the grantee only, twelve require a plan by both the grantor and the grantee, and one requires a plan produced jointly by the grantor and grantee.

The provisions for amendment specify if the forestland easement may be amended and if this decision must be mutual or at the grantor's or grantee's discretion. This clause occurs in only 37% of donations, but nearly all (97%) sales.

The public policy reference is simply some mention of a public policy in the deed and is without any weight or meaning in the same sense as the other variables in this category. A public policy reference may serve to strengthen the proof that the forestland easement meets qualifying contribution requirements under IRC Section 170 or, in the case of forestland easements purchased by the State of New York, that it is consistent with public policies. Public policy references are included in 76% of donations and 97% of sales.

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%). All of the donations that contain this clause have occurred since 1992. Among sales, the frequency of this clause is unaffected by time.

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 uncommon in both groups, occurring in 18% of donations and 38% of sales. All of the donations that contain this clause have occurred since 1991. Among sales, the frequency of this clause is unaffected by time.

### **Relationships Between Deed Variables**

Nearly half of the donated forestland easements prohibit the commercial harvesting of timber. These forestland easements encumber properties ranging in size from 1.1 to 7,200 acres. The median size of properties with this restriction is 76 acres. This group includes eight of the properties that are less than 20 acres and 8 properties that are greater than 1,000 acres. Twenty-three of the forestland easements with this restriction were donated by individuals or related individuals, one by a private corporation, and one by a private club. The frequency of this restriction appears to be independent of time.

An additional 26% of the donated forestland easements prohibit timber harvesting on specific areas of the property. This group is comprised of 11 forestland easements donated by individuals or related individuals and two by forest products companies.

Timber harvesting practice restrictions are present in 39% of donated forestland easements and 55% of sold forestland easements. This restriction states that all logging will comply with the Society of American Foresters' existing *Timber Harvesting Guidelines for New York State*, or its equivalent. Among donations, the properties encumbered by this restriction vary in size from 25 to 27,124 acres, with a median size of 325 acres. This group of donated forestland easements consists of 16

from individuals or related individuals, two from private corporations, one from a real estate investment company, and one from a town.

Individual reserved rights seem less important than restrictions or affirmative rights, because of the common use of a blanket reserved right that covers all uses not expressly prevented by the forestland easement. These rights do, however, indicate something about the grantor's intended use of the property. Among forestland easements that permit public access and recreation use, these reserved rights may include techniques for managing potential conflicts. Several of these reserved rights merit a closer look, including the rights to restrict public access to active logging areas, restrict public access to reforestation areas, forest management for timber production, and commercial logging.

Of the forestland easements that allow public access for recreation use (79% of sales, 0% of donations), six of them (26%) reserve the right to restrict public access to active logging areas for periods ranging from one to three years. Two of these forestland easements allowing recreation access (9%) reserve the right to restrict public access to reforestation areas. Closure of reforestation areas may be an advisable right to reserve, however, most landowners in the study area rely on uneven-aged management and natural regeneration of forests. Closing the area to public access for an extended period after harvesting has taken place is less necessary in this situation.

The right to manage the property for timber production is reserved in 62% of sold forestland easement and 4% of donated forestland easements. This right is generally spelled out in considerable detail, including mentions of reforestation, growth and harvest of forest products, clearing damaged timber, removal of various forest products, use of mechanical equipment, and current and future harvesting techniques allowable under law.

Commercial logging is reserved as a right in 14% of the donated forestland easements and 21% of the sold forestland easements. Six of the forestland easements (both donations and sales) that reserve the right to manage for timber production also reserve the right of commercial logging.

A full 50% of the donated forestland easements contain a restriction preventing any timber harvesting on the property. Those landowners who want to prevent all timber harvesting should consider the possibility that cutting trees will become necessary due to events beyond their control. One way of doing this is to reserve the right to remove dead and damaged trees and other vegetation. Half of the donated forestland easements contain this reserved right. The frequencies of these two variables in the donated forestland easements data set are shown in Table 4-10. A chi-square test indicates these two variables are correlated.



Table 4-10. Actual and expected occurrences of reserved right to remove dead and damaged trees and a restriction on all timber harvesting in forestland easement donations deeds.

<b>Reserved Right to Remove Dead and Damaged Trees</b>					
		Actual		Expected	
		<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
<b>No</b>					
<b>Timber</b>	Yes	13	12	9	16
<b>Cutting</b>	No	5	20	9	16

$\chi^2 = 5.56$  Reject independence of these two variables.

Table 4-11. Actual and expected occurrences of right of entry for compliance inspection and grantor held harmless clauses in forestland easement donations deeds.

<b>Right of Entry for Compliance Inspections</b>					
		Actual		Expected	
		<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
<b>Grantor</b>					
<b>Held</b>	Yes	4	0	3.84	.16
<b>Harmless</b>	No	44	2	44.16	1.84

$\chi^2 = .181$  Reject independence of these two variables.  
The test may be inconclusive because of low expected values.

The grantor held harmless clause is present in 35% of all the forestland easements, but is far more common among the sold forestland easements (83%), than the donated forestland easements (8%). The grantee held harmless clause is present in 25% of all deeds, including 38% of the sold forestland easements and 18% of the donated forestland easements. Of this 25% of deeds containing the grantee held harmless clause 14 (18%) reciprocally contain the grantor hold harmless clause. The grantor hold harmless clause is of particular interest when the forestland easement provides for grantee or public access. The access considerations differ between donated and sold forestland easements.

Nearly all the donated forestland easements (96%) allow the grantee to enter the property to perform compliance inspections. A grantor held harmless clause is present in only 8% of the deeds for forestland easements that allow this type of grantee entry. The frequencies of these two variables in the donated forestland easements data set are shown in Table 4-11. A chi-square test indicates these variables are correlated, though this test may be inconclusive because of low expected values.

A grantee held harmless clause is present in 20% of the deeds for donated forestland easements that allow grantee entry for compliance inspection. The frequencies of these two variables in the donated forestland easements data set are shown in Table 4-12. A chi-square test indicates that these variables are correlated, though this test may be inconclusive because of low expected values.

Table 4-12. Actual and expected occurrences of right of entry for compliance inspections and grantee held harmless clauses in forestland easement donations deeds.

<b>Right of Entry for Compliance Inspections</b>					
		Actual		Expected	
<b>Grantee</b>		<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
<b>Held</b>	Yes	10	0	9.6	.4
<b>Harmless</b>	No	38	2	38.4	1.6

$\chi^2 = .521$  Reject independence of these two variables.  
The test may be inconclusive because of low expected values.

Table 4-13. Actual and expected occurrences of right of entry for scientific and nature study and grantor held harmless clauses in forestland easement donations deeds.

<b>Right of Entry for Scientific and Nature Study</b>					
		Actual		Expected	
<b>Grantor</b>		<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
<b>Held</b>	Yes	1	3	1.36	2.64
<b>Harmless</b>	No	16	30	13.60	30.36

$\chi^2 = .157$  Fail to reject independence at the 10% level of significance.

Grantee entry for scientific and nature study is allowed in 34% of donated forestland easements. Of this group, only one contains a grantor held harmless clause. The frequencies of these two variables in the donated forestland easements data set are shown in Table 4-13. A chi-square test fails to reject the null hypothesis that these variables are independent at the 10% level of significance. Only one of the forestland easements that allows grantee entry for scientific and nature study contains a grantee held harmless clause. The frequencies of these two variables in the donated forestland easements data set are shown in Table 4-14. A chi-square test indicates these two variables are correlated.

Two donated forestland easement have provisions for public access to trails on the property, but neither contains a grantor held harmless clause. In both cases, interviews with the grantors revealed that including trail access in the forestland easements simply formalized what had been going on for years.

The majority (79%) of sold forestland easements allow public access to the property for recreation uses comparable to those allowed on State lands. Of this group, 87% contain a grantor held harmless clause. The frequencies of these two variables in the sold forestland easements data set are shown in Table 4-15. A chi-square test indicates these two variables are correlated.

Six of the forestland easements that allow public recreation use of the property contain a grantee held harmless clause. The frequencies of these two

Table 4-14. Actual and expected occurrences of right of entry for scientific and nature study and grantee held harmless clauses in forestland easement donations deeds.

		<b>Right of Entry for Scientific and Nature Study</b>			
		Actual		Expected	
		Yes	No	Yes	No
<b>Grantee</b>					
<b>Held</b>	Yes	1	9	3.4	6.6
<b>Harmless</b>	No	16	24	13.6	26.4

$\chi^2 = 3.209$  Reject independence of these two variables.

Table 4-15. Actual and expected occurrences of public recreation rights and grantor held harmless clauses in forestland easement sales deeds.

		<b>Public Recreation Use</b>			
		Actual		Expected	
		Yes	No	Yes	No
<b>Grantor</b>					
<b>Held</b>	Yes	20	4	19.03	4.97
<b>Harmless</b>	No	3	2	3.97	1.03

$\chi^2 = 1.373$  Reject independence of these two variables.

variables in the donated forestland easements data set are shown in Table 4-16. A chi-square test indicates these two variables are correlated.

Two of the remaining sold forestland easements that deny public recreation access but do allow grantee entry for compliance inspections, lack a grantor held harmless clause.

Some of the donated forestland easements reserve the right to use the property for recreation. This indicates something about the reasons the grantor owns the property. On site enjoyment of the property is diminished if the general public has access to the property. Nearly three quarters of the deeds to donated forestland easements contain a clause that states nothing in the deed will be construed to give the general public the right of access to the property where unless this right existed prior to the forestland easement grant. These two variables should occur in combination with one another, but many deeds lack one or the other. Only seven of the forestland easements contain both provisions. The frequencies of these two variables in the sold forestland easements data set are shown in Table 4-16. A chi-square test indicates these two variables are correlated, but the relationship appears to be the opposite of the expected one. Considerably fewer than the expected number of the deeds contain both provisions.

One other combination of deed variables warrants examination. Many of the

Table 4-16. Actual and expected occurrences of public recreation rights and grantee held harmless clauses in forestland easement sales deeds.

		<b>Public Recreation Use</b>			
		Actual		Expected	
		<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
<b>Grantee</b>					
<b>Held</b>	Yes	6	5	8.72	2.28
<b>Harmless</b>	No	17	1	14.28	3.72

$\chi^2 = 6.624$  Reject independence of these two variables.

Table 4-17. Actual and expected occurrences of reserved right of use for recreation and clauses prohibiting public access in forestland easement donations deeds.

		<b>Reserved Right of Use for Recreation</b>			
		Actual		Expected	
		<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
<b>No</b>					
<b>Public</b>	Yes	7	30	16.65	20.35
<b>Access</b>	No	10	3	10.35	12.65

$\chi^2 = 26.528$  Reject independence of these two variables.

donated forestland easements (56%) contain an affirmative right of the grantee to view the property in its natural condition. This right of view is poorly defined, but that point of discussion is left for the next section. If a right to view the property in its natural condition exists, there should be some common understanding or definition of the natural condition. One way of accomplishing this is a baseline report of the property that is completed before or soon after the forestland easement is granted. Twenty-three of the forestland easements that contain the right of view also contain a baseline data report requirement. The frequencies of these two variables in the sold forestland easements data set are shown in Table 4-18. A chi-square test indicates these two variables are correlated.



Table 4-18. Actual and expected occurrences of right of view rights and baseline data report requirements in forestland easement donations deeds.

		<b>Right of View in Natural Condition</b>			
		Actual		Expected	
		Yes	No	Yes	No
<b>Baseline</b>					
<b>Data</b>	Yes	23	8	17.36	13.64
<b>Report</b>	No	5	14	14.28	3.72

$\chi^2 = 10.959$  Reject independence of these two variables.

## **DONOR INTERVIEW RESULTS**

This section contains information gathered from telephone interviews with donors of forestland easements in the study area. The responses to the interview questions are grouped into several categories. These categories include reasons for ownership, land ownership history and use, reasons for donation, investigating forestland easements and donations, retained development rights, negotiations, tax issues, changing the forestland easement, compliance costs, attitudes toward future donations and purchase, grantees, and demographic information. References to donors throughout this section apply only to those 21 donors who were interviewed.

### **Reasons for Ownership**

One aspect of understanding the decision of landowners to donate a forestland easement is identifying their reasons for owning the land in the first place. Each donor interviewed was asked to name their top three reasons for owning the land they encumbered with the forestland easement. The reasons they gave were grouped into several categories. The frequency of their reasons for falling into these categories, ranked by order of preference - first, second, and third - is reported in Table 4-19. The reasons are listed in rank order of importance, based on a weighted score for each reason. Weighted scores take into account the total number of times a reason was given as either a first, second, or third response. The actual responses that form the basis for the category groupings are shown in Appendix F.

Table 4-19. Forestland easement donors' top three reasons for land ownership.<sup>1</sup>

<b>Reason</b>	<b>Responses given as a:</b>			<b>weighted score</b>
	<b>1st choice</b>	<b>2nd choice</b>	<b>3rd choice</b>	
	<b>(#)</b>	<b>(#)</b>	<b>(#)</b>	
Family and tradition	5	4	1	24
As a primary residence	5	1	1	18
As an investment	5	1	0	17
Protect the land from development	3	1	2	13
Second homesite	2	0	0	6
Beauty of the land	0	3	0	6
Source of raw material for mill	1	1	0	5
To enjoy wilderness qualities	0	1	2	4
Likes the forest	0	0	2	2
To raise horses	0	1	0	2
Likes the buildings on the property	0	0	1	1

1. The results of 21 interviews were used to compile this table. Weighted scores are computed by multiplying the number of responses for each reason as a first, second, or third reason by 3, 2, and 1 respectively, and then summing them for each reason.

The most common first responses to the question “What are your top three reasons for owning your land?” are family and tradition, primary residence, and investment.

Most of those who cited investment as their top reason for owning the land are corporations or industrial owners. Protecting the land from development, as a second homesite, and as a source of raw material for a mill are also among the top reasons cited by donors who were interviewed.

The category “family and tradition” was the most common among second and third reasons cited for ownership. After this, the beauty of the land, protecting the land from development, and enjoying wilderness qualities are the reasons most often cited.

### **Land Ownership History and Use**

Grantors were asked if they would be using the land any differently than they are now if they had not donated the forestland easement. The majority of these grantors (81%) replied “no”. The remaining four grantors had three different responses to this question. Two of them said they might have more building sites on the property. Another said the land would have no dedicated use (this grantor is a town). The remaining one said there might be more hunting leases on the property in the absence of the forestland easement.

Nineteen of the donors were able to name the year they acquired the property and only two were not. Based on these 19 responses and the dates of the grant in the

forestland easement deeds, landowner tenure prior to the forestland easement donation averaged 16 years. The time between land acquisition and the forestland easement grant ranged from zero (simultaneous fee purchases and forestland easement grants) to 61 years. The average tenure between acquisition and forestland easement grant is 7.5 years among the four industrial landowners and 18 years among the non-industrial landowners.

All donors acquired their property through a purchase, inheritance, or as a gift. Purchase is the most common form of acquisition (15), followed by inheritance (4), and gifts (2). In all but one case, when the property was acquired as an inheritance or gift, it came from a family member.

Four of the grantors were considering selling the property prior to their decisions to donate the forestland easement. Of these four one is a timber company, another is a real estate investment company, and two are private non-industrial owners. The rest of the grantors were not considering a sale. All donors still owned the encumbered properties at the time of the interview, with the exception of the timber and real estate investment companies.

### **Reasons for Donations**

Each donor was asked to name their primary and secondary reasons for granting the forestland easement. The reasons they gave were grouped into ten general categories. The frequency of reasons that fall into these categories - ranked

as primary or secondary reasons - is reported in Table 4-20. The reasons are listed in rank order of importance, based on a weighted score for each reason. Weighted scores take into account the total number of times a reason was given as either a primary or secondary response. The actual responses that were grouped into the categories used in the table are shown in Appendix F.

Preventing or limiting development of the property was by far the most common primary reason cited for granting the forestland easement. Tax reasons (including estate, income, and property taxes) were the second most commonly cited primary reason. Among secondary reasons cited for making the forestland easement donation, tax reasons are the most common, followed by preventing or limiting development, and philosophical reasons. In all, the reasons given for granting the forestland easement are grouped into ten different categories. The donation of one forestland easement was actually an exaction. The grantor was required by local government authorities to make the forestland easement donation in order to exercise his development rights on another property.

### **Investigating Forestland Easements and Donations**

Each donor was asked how they first became familiar with conservation easements. Nine of the responses involved some connection to the grantees of forestland easements. These responses include being approached by a grantee, working with the grantee's organization, attending meetings held by the grantee,

Table 4-20. Reasons for donating forestland easements given by donors in the Northern Forest Region of New York State and the frequency of the response as a primary or secondary reason.<sup>1</sup>

<b>Reasons for selling the forestland easement:</b>	<b>primary</b>	<b>secondary</b>	<b>weighted score</b>
	<b>(#)</b>	<b>(#)</b>	
Prevent/limit development	12	4	28
Tax reasons	3	6	12
Philosophical	1	3	5
Connected to the sale of another property	1	1	3
Public relations	1	1	3
Ensure proper on-site use of the property	1	1	3
Others nearby landowners are doing it	0	3	3
Gain access to other property they own	1	0	2
Required by local government (exaction)	1	0	2
Keep down price in case of a sale	0	1	1

1. The results of 21 interviews were used to compile this table. Weighted scores are computed by multiplying the number of responses for each reason as a primary by 2 and the number of responses given as a secondary by 1, and then summing them for each reason.

friend or family involvement with a grantee. Others learned of them through a town board member (2); through their professions (2); through their local property owner's association; from a county planner (1); through inquiries about a fee donation of land (1); or through public debate over them (1). Some donors were more vague about where they learned about conservation easements. One donor replied that he was an earlier promoter of conservation easements. Another of the donors reported being approached by the government. The remaining donor simply remembered becoming aware of them in the early 1980's.

The donors first investigated granting a conservation easement in a variety of ways. Seven of them approached the grantee. Three looked into it through their local property owner's association. Three had a friend or relative who was involved with the grantee. Two were approached by the grantee. One had an on-going working relationship with the grantee. One looked into it through a neighbor who had made a conservation easement donation. One was approached by a county planner about it. One had his lawyer look into it. Two others could not recall how they first investigated making the donation.

In response to a separate question about experience, two of the donors had sold or donated conservation easements in other states.



### **Retained Development Rights**

Eleven of the donors retained some development rights as reserved rights in their deeds. Each of these eleven was asked what determined the development rights they retained. Six donors wanted to provide building sites for their children or grandchildren. One reserved the number of development rights they thought was appropriate for the parcel. One reserved the number of development rights suggested by the grantee. One wanted to provide some growth potential from the property for the future. Another anticipated and reserved the future building needs at their second homesite.

### **Negotiations**

Each grantor was asked if there were any aspects of the forestland easement agreement that were difficult to negotiate. Only one of them reported any difficulty in negotiations. In this case, it was the specific items related to forest management that were difficult to negotiate.

Donors were asked whose lawyer drew up the forestland easement deed. Nearly half of the grantors (10) responded that their lawyers drew up the deed. Eight grantors responded that the grantees' lawyer drew up the deed. One grantor responded that the deed was drawn up jointly by both parties' lawyers, and another responded that a single lawyer representing both parties drew up the deed. One grantor could not remember.

In addition to a lawyer, donors were asked if they had any other professional advice on what to include in the forestland easement agreement. Two grantors responded that they did have professional help with this. In both cases, they received advice from a forester.

Each grantor was asked why they chose the particular grantee for their donation. Two were involved in the organization they used for their donation. Three more had a friend or relative or were otherwise influenced by someone involved in the grantee's organization. Two cited, in part, knowing the staff of the grantee as a reason for choosing them. Three chose the grantee because it was active in their area. Similarly, one noted that this grantee was in the closest proximity to the property and another cited a desire to deal with someone local, and a third explained that his property was in the grantee's region. Three thought of the grantee they chose as being their only options. Other reasons cited include liking the direction the grantee was moving in (1); being familiar with the grantee's purposes (1); a previous fee sale of land to the grantee (1); and because the grantee said they would transfer the forestland easement to New York State, resulting in a property tax break for the grantor (1). Another donor reported having no choice in the selection of the grantee because the donation itself was an exaction.

Each donor was asked if they had considered donating the forestland easements to any organizations other than the ones that eventually received the donation. Four donors reported they had considered other organizations.

Twelve of the donors said they had not anticipated the possibility of a future sale of the property when they were designing the terms of the forestland easement, but nine said that they did. Of the nine who had anticipated a future sale of the property, seven indicated they made sure selling the property was unprohibited under the forestland easement agreement, one responded that he knew he might want to sell sometime, and one failed to respond.

Each donor was asked to categorize the donation process as fast and forthright, long and tedious, or somewhere in between. Ten characterized the process as “fast and forthright” or with words to that effect. Five called the process “long and tedious” and two said it was somewhere in between. Three others chose to call the process “reasonable”, “easy”, or “not too bad”.

### **Tax Issues**

Eleven donors reported they took a charitable deduction on their income tax return, based on the value of the forestland easement. The remainder of the donors failed to take a deduction. Each of those who took a deduction was asked how they first learned that the donation was tax deductible. Two learned about the income tax deduction possibilities from the grantee. Two others learned about it from other

grantees they had spoken to before selecting their grantee. Two learned of it through their local property owners' association. One recalled learning about it from both his accountant and from the grantee. One learned that it was deductible by asking the grantee. One was told about it by a former employee of a grantee. One of the grantors is a lawyer and knew about the income tax deduction through his profession.

Six donors who took charitable donation deductions on their federal income taxes estimated the potential tax benefits prior to making the donation. All who took an income tax deduction had the value of the forestland easement appraised. This is required under IRS guidelines. In addition, one of the grantors who did not take an income tax deduction had the forestland easement appraised.

Seven donors reported that the donation of the forestland easement was a factor in their estate planning decisions.

Two donors reported that they spoke with their local assessor about the effect of the forestland easement donation on their property taxes prior to making the donation. They were asked what they learned from their discussion with the assessor. One learned that the donation should lower the property's assessed value. The other was told by the local assessor that any reduction in the property's assessment was up to the county to decide. Eight donors applied for a reduction in their property tax assessment after making the forestland easement donation. Four who applied for a reduction in their assessment were successful. One successful applicant added that he

has had to appeal each year in order to keep the assessment down at an acceptable level.

### **Changing the Forestland Easement**

Each donor was asked if, in hindsight, they gave up any rights they really would have preferred to keep. Only two said yes. In one case, the grantor regretted the wording of restrictions related to forest management practices, especially since monitoring by a third party can be a problem. In the other case, the donor thought he should have retained more development rights.

When asked, none of the donors reported having amended the forestland easement since it was donated. As a follow-up to this question, they were asked if there were any amendments they would like to make to the forestland easement. Two of them responded that there are amendments they would like to make. In one case, the grantor would like to drop the requirement for grantee approval of timber sales on the property. In the other, the grantor wanted to give up more development rights and change the designated sites where lean-to construction is allowed.

### **Compliance Costs**

All donors were asked how much of their time is spent each year on matters pertaining to the forestland easement. Nearly all replied “none”. Three replied, “probably none”, “very little”, or “five minutes”. One donor (an industrial owner) reported one day of one person’s time each year.

**Grantees**

Donors were asked to rate their satisfaction with the grantee's enforcement of the forestland easement, including stipulated compliance inspections. The following scale was given from which they could select a response:

very satisfied;

satisfied;

somewhat satisfied;

somewhat dissatisfied;

dissatisfied;

very dissatisfied.

Eleven donors replied they were very satisfied with the grantee in this respect. Seven said they were satisfied. Two said they were somewhat satisfied. In the course of one interview it was learned that the encumbered property had been sold, so this question was irrelevant and not asked of this donor.

Donors were asked to rate their overall satisfaction of their experience in working with the grantee's, from the time they first began talking with them up to the time of the interview. The same scale as in the previous question was used. Fourteen reported being very satisfied. The others reported being satisfied (4), somewhat satisfied (1), dissatisfied (1), and very dissatisfied (1).

Each donor was asked to name any specific management concerns in which they would like the grantee's performance to improve. Fourteen of them replied "none". Four of the grantors were without a response to this question. One suggested that the grantee could do a better job with more staff, adding that this was not the grantee's fault. Two had specific comments, although they did not seem to relate to management concerns. One said "don't look a gift horse in the mouth", in reference to some problems he had in settling on the terms of the forestland easement agreement. Another stated that the grantee should have transferred the forestland easement to New York State by now.

Donors were asked if they would donate a forestland easement to the same grantee again. Seventeen said that they would, although three qualified their responses. One grantor said it depended upon the circumstances. Another said they would prefer to donate to New York State or a smaller local group if possible. The third also preferred to donate to a smaller local group if it were possible. One grantor replied "possibly" in response to this question. Two grantors would not donate a forestland easement to the same grantee again, with responses of "no" and "never again".

Those donors who said they would donate a forestland easement to the same grantee again were asked what changes, if any, they would make. One said he would be more restrictive on development of the property. Another said he would know the

appraised values prior to making the donation. Six said any changes would depend upon the property and purposes involved.

### **Attitudes Toward Future Donations and Purchases**

Ten of the donors own other forestland unencumbered by a forestland easement. Eight said they would consider donating a forestland easement on their unencumbered property. Another said that he would, although he added that he intended to keep it unencumbered at the time.

Donors were asked if they would consider buying forestland encumbered by a forestland easement similar to the one they donated. Thirteen replied that they would buy land of this type. Two replied that they would, depending upon their purpose for purchasing the land. Two others replied that the decision would depend upon their purpose for purchasing the land. One would not buy land encumbered by a forestland easement and another could not say for sure if they would or not. Two grantors did not respond to this question.

### **Demographic Information**

Four demographic questions were asked of the non-industrial donors. These questions included age, whether or not they were retired at the time of the grant, education level, and income. The age they gave at the time of the interview and the date of the forestland easement grant in the deed were used to determine the age of each donor interviewed at the time of the grant.



The average age of the donors at the time they granted the forestland easement is 59.9 years. Five of the donors were retired when they granted the forestland easement and sixteen were not. Six of the them had advanced degrees, including three lawyers, one with a Ph.D. and two with masters degrees. One had completed some graduate school. Five hold bachelor's degrees. Three had completed some college and one was a high school graduate. Six donors did not wish to reveal their incomes. The median income level in the year they granted the forestland easement of those who did respond to this question was \$135,000.

## **SELLER INTERVIEW RESULTS**

This section contains information gathered from telephone interviews with sellers of forestland easements in the study area. A list of the questions asked each donor interviewed is included in Appendix B. The responses to these questions are grouped into several categories. These categories include reasons for ownership, land ownership history and use, reasons for selling the forestland easement, investigating forestland easements and sales, negotiations, third party sales, retained development rights, grantees, property tax issues, compliance costs, attitudes toward future sales, donations, and purchases, and demographic information.

### **Reasons for Ownership**

The 11 forestland easements sellers can split in a broad sense into 4 non-industrial and 7 industrial owners. The ten parties interviewed gave nine different answers for their top reason for owning the property. Two of the industrial owners reported security of timber supply for their mills as the top reason. Some of the other answers also pertained to the core purpose of the organization involved. These include use in education by a college, use in hydroelectric production by a utility, timber management, and as a long term timberland investment. One grantor owns the property as a homesite. Another grantor owns the property primarily because it adjoins family property. Two other reasons given are enjoyment of the outdoors and having a primitive place to go. Three of the parties interviewed could not name a

second or third reason for owning the property. Two others could not name a third reason for owning the property. The frequency of each response to the three reasons for ownership interview questions is seen in Table 4-21. The reasons are listed in rank order of importance, based on a weighted score for each reason. Weighted scores take into account the total number of times a reason was given as either a first, second, or third response.

### **Land Ownership History and Use**

Each of the grantors was asked what year they had originally acquired the properties on which they sold the forestland easements. This information was used to determine how long they had owned the properties before the easements were sold. In four cases, the easements were granted at the same time the property was acquired. One respondent could not name a specific year the property was acquired, but stated that the company had owned the property since the early 1900's. Aside from this case and the simultaneous acquisitions and easement grants, the grantors owned their properties for an average of 18.6 years before selling the easements. Ownership tenure for these nine properties includes a range from two to 47 years. All but one of the forestland easements sold by Paul Smith's College were agreed upon at a single time, even though the actual grants took place over several years. For this reason, the ownership tenure prior to the grant was calculated using the date of the earliest grant among this group.

Table 4-21. Reasons for ownership of forestland given by forestland easement sellers, and the frequency of the response, by rank of importance.<sup>1</sup>

<b>Reasons for Ownership</b>	<b>1st (#)</b>	<b>2nd (#)</b>	<b>3rd (#)</b>	<b>weighted score</b>
Enjoy the outdoors	1	1	2	7
Security of timber supply for mill	2	0	0	6
Timber management	1	0	0	3
Educating college students	1	0	0	3
Long term timberland investment	1	0	0	3
Quiet, primitive place to go	1	0	0	3
In connection with hydroelectric production	1	0	0	3
Primary homesite	1	0	0	3
Land adjoins family property	1	0	0	3
For hunting	0	1	0	2
Enjoy solitude and wilderness	0	1	0	2
Recreation opportunities for students	0	1	0	2
For access to other family property	0	1	0	2
Return on investment	0	1	0	2
Long term property and timber appreciation	0	1	0	2
Recreation lease income	0	0	1	1
Likes to study different tree species	0	0	1	1
For use of college athletic department	0	0	1	1
Recreation use	0	0	1	1
Prevent development near family property	0	0	1	1
None as second or third reason	0	3	5	NA

1. Interviews were conducted with grantors of sold forestland easements or their representatives. A total of 10 interviews were needed for the 11 sales grantors. Weighted scores are computed by multiplying the number of responses for each reason as a first, second, or third reason by 3, 2, and 1 respectively, and then summing them for each reason.

Sellers were asked if they would be using their property any differently than they are now if they had not sold the forestland easement. Six of the forestland easement sellers replied “no”. Two of the sellers would have sold the property outright. One seller would not be following the restrictions and would be doing more leasing of recreation rights. Similarly, another seller would have a few more cabins and hunting leases.

All of the four private non-industrial owners purchased their property. None of these properties were in their family prior to their ownership of them. Two of the sellers were considering a fee sale of their property before the opportunity to sell the forestland easement came about.

Sellers were asked if they considered the possibility of a future sale of the encumbered property when they were in the process of negotiating the forestland easement agreement. Seven of the sellers had. Two parties were not considering the possibility of a future fee sale while negotiating the forestland easement agreement. The remaining seller was insufficiently familiar with the details of the sale to respond to this question. Six of those who considered the possibility of a sale reported that, in the normal course of designing and negotiating the forestland easement, they made sure that the encumbered property could be sold. The remaining one who had considered the possibility of a sale made sure the property could be sold before they committed to the forestland easement. Both of those who did not consider the

possibility of a future sale of the encumbered property are private, non-industrial owners.

A question was included on whether the sellers had sold any of the encumbered property since the forestland easement was granted. One of the properties had been sold outright at the time of the interviews. Another of the properties was partially sold and was being subdivided for further sales. Three other of these encumbered properties, all belonging to Lyons Falls Pulp and Paper, were sold after the interviews took place. All four properties that have been sold outright were purchased by John Hancock Timber Resource Group.

#### **Reasons for Selling the Forestland Easement**

Each of the sellers gave different answers when asked the primary reason for granting the forestland easement. For the most part, the reasons given can be grouped into protection of open space and financial decisions. The frequency of each response to the questions of primary and secondary reasons for selling the forestland easement is shown in Table 4-22. The reasons are listed in rank order of importance, based on a weighted score for each reason. Weighted scores take into account the total number of times a reason was given as either a primary or secondary response.

One seller “believed land should be forever protected in the same state as he acquired it in”. Similar responses included help in a local greenbelt project,

Table 4-22. Reasons for selling forestland easements given by sellers in the Northern Forest Region of New York State and the frequency of the response as a primary or secondary reason.<sup>1</sup>

<b>Reasons for selling the forestland easement</b>			<b>weighted</b>
	<b>primary</b>	<b>secondary</b>	<b>score</b>
	<b>(#)</b>	<b>(#)</b>	
Financially the sale made sense	1	2	4
Capture development potential while still using it as forestland	1	0	2
Likes to see open space protected	1	0	2
To bring in revenue	1	0	2
Offset property tax burden	0	2	2
Threat of eminent domain by NYS	1	0	2
Help in greenbelt project	1	0	2
To forever protected in the same state as it was acquired	1	0	2
Felt obligated because areas livelihood depends on current land use	1	0	2
Prevent development	1	0	2
Make ownership of the property economically justifiable	1	0	2
Being a good citizen	0	1	1
Assure they would be able to keep the property	0	1	1
Preserve the land	0	1	1
Did not want to change site from a public perception standpoint	0	1	1
For corporate goodwill in the hydro-licensing process	0	1	1
To convince NYS of no development threat warranting eminent domain	0	1	1
Tied to fee sale of other property	0	1	1
Reduce administrative costs of hunting leases	0	1	1
It made the fee purchase more acceptable to regulatory authorities	0	1	1
Increase land base for supplying fiber to the mill	0	1	1

1. Interviews were conducted with grantors of sold forestland easements or their representatives. A total of 10 interviews were needed for the 11 sales grantors. Weighted scores are computed by multiplying the number of responses for each reason as a primary by 2 and the number of responses given as a secondary by 1, and then summing them for each reason.

preventing development, and liking to see open space protected. One corporate seller felt obligated to sell because the area's livelihood depends on the current land use.

A variety of financial reasons for selling came up in the interview. These include capturing development potential (value) while still using it as forestland, making ownership of the property economically justifiable (for a timber company), the sale making financial sense, and bringing in revenue.

One grantor sold the forestland easement under the threat of eminent domain proceedings by New York State. In this case, the forestland easement was granted on the same day as the grantor gained fee title to the property.

### **Investigating Forestland Easements and Sales**

The sellers first became familiar with conservation easements in a variety of ways. Two of them were knowledgeable about conservation easements because they had granted them in other states. Two learned about them during the process of planning for the future of their lands. Similarly, one reported learning about them when the organization looked into the development potential of their property and how to get the most out of it. Two learned about them from neighbors who had donated conservation easements. One learned about them by being approached by New York State about granting a forestland easement. One became familiar with them by following public debate over conservation easements over the past fifteen years. One became familiar with them as a consequence of a successful battle against



the State of New York's efforts to take his property through eminent domain proceedings.

Each seller was asked how they began investigating the sale of the forestland easement. In one case the grantor contacted all potentially interested groups, including the eventual grantee. In three other cases, the grantee contacted the grantor (New York State was the grantee of two of these and the Nature Conservancy was the other). In three cases the grantor was approached by the eventual grantee (two by New York State, one by Tug Hill Tomorrow). In two cases, discussions of a forestland easement sale with the grantor arose from a separate fee sale of property to New York State. Another grantor first investigated the possibility of granting a forestland easement through encouragement by neighboring landowners.

### **Negotiation**

Two of the sellers made the initial proposal to sell the forestland easement. In five cases, the grantee made the initial proposal. Two of the sellers reported that the proposal of the sale was mutual between them and the grantee. One seller was unable to remember who made the initial proposal.

In seven cases, the initial proposal included a detailed description of the rights and restrictions involved and in two cases the initial proposals were without detailed descriptions. One seller was unable to remember if rights and restriction were a part of the original proposal. Six of the sellers categorized the first proposal of

rights and restrictions as “very close” to what was finally agreed upon, while two called it “close”, one called it “different” and one did not know.

Five of the sellers reported that the original proposal of the sale included a price and five reported that the original proposal was without a price. Six of the sellers reported that the first price they discussed was “very close” to the final agreement. Three sellers categorized the initial price as “close” to the final price and one seller categorized the initial price as “different”.

Each person interviewed was asked if there were any portions of the forestland easement agreement that were difficult to negotiate. Six of them replied “no”. One said that the concepts were easy to agree upon, but the details were difficult to negotiate. Similarly, one of those who replied “no” added that it was very time consuming. One seller related two things that were difficult to negotiate. These were the question of how liability was to be shared and what would happen if hazardous materials were discovered on the property. One of those interviewed was not directly involved in the negotiations and so was unable to answer.

Sellers were asked if, in hindsight, they had given up anything in the forestland easements that they really would have preferred not to. Six replied “no” to this question, though one added that it had not been long enough to tell. One regretted giving up the recreation rights to the property. One regretted the ambiguity in the agreement that prevented uses of the property that are consistent with the

purpose of the forestland easement. One wished for clearer terms about public use of trails on the property and wanted to more clearly retain the right to use water on the property. One, as a manager, regretted the entire decision to sell because of the effect it has had on planning previously routine activities on the property. It should be noted that in several cases, the person interviewed was uninvolved in the ultimate decisions about the sale.

Each seller was asked whose lawyer drew up the forestland easement deed. In one case it was done by the grantor's lawyer and in three cases it was done by the grantee's lawyer. Four grantor's reported that the deed was drawn up jointly by both parties' lawyers. One grantor had their lawyer do most of the work on the deed, with input from the grantee's lawyer. In contrast, the remaining grantor reported that the grantee's lawyer had done most of the work on the deed, with input from the grantor's lawyer. Among the four sellers who are non-industrial landowners, three reported that the deeds were drawn up by the grantee's lawyer and one reported that the deed was drawn up jointly by both parties' lawyers.

### **Third Party Sales**

Three of the grantors were involved with third parties in making their sales (two involving the Nature Conservancy and one involving The Conservation Fund). These third parties acted as the original grantees and purchasers until the State of New York could arrange the funds for the purchase. Each of the three grantors was asked

what the advantages are of selling through a third party. One of these grantors responded that the third party was a great mediator who could move more quickly than the State. In this case the sale could have been left unaccomplished without the third party because this party purchased properties for exchanges that were essential to the deal. Both of the other grantors reported that the State of New York lacked funding at the time and funds from the third party allowed the deal to go through.

### **Retained Development Rights**

Two of the grantors retained some development rights to the protected property under the terms of the forestland easement. Both were asked what determined what development rights they retained. In one case the grantor kept some development rights in areas of higher zoning density in case the owners (a group of investors) wanted to do a commercial development in the future. The other grantor was looking ahead and preserving the option to build a better, newer camp at some point. One of the grantors, in the course of the interview, revealed that rather than retaining development rights on portions of the property encumbered by the forestland easement, the organization simply kept fee ownership of the parcels they wanted to develop so these parcels are unaffected by the forestland easement. Several of the other grantors are believed to have held back lands they were considering for development in a similar fashion, though this is unconfirmed.

**Grantees**

The interview contained three questions pertaining to the grantors' satisfaction with various aspects of the forestland easement agreement and sales process. For each question, grantors were asked to use the following scale:

very satisfied;

satisfied;

somewhat satisfied;

somewhat dissatisfied;

dissatisfied;

very dissatisfied.

Sellers were asked to rate their satisfaction with the grantee's enforcement of the forestland easement, including stipulated compliance inspections. Eight of the grantors reported that they were satisfied and the other two were very satisfied.

Eight of the sellers gave the grantee affirmative rights of public recreation, scientific and nature study, or both as part of the forestland easement. These eight were asked to rate their satisfaction with the grantee's exercise of these affirmative rights. One responded that it was too early to make a judgment on this issue. Two grantors responded that they were very satisfied, three that they were satisfied, and two that they were somewhat satisfied.

Sellers were asked to rate their overall experience in working with the grantee on the forestland easement(s) from the time they first began talking with them about the sale, up to the date of the interview. Four of the grantors reported that they were very satisfied with their overall experience in working with the grantee. Three of the grantors were satisfied and one was somewhat satisfied. The remaining grantor was very dissatisfied.

Those interviewed were asked if they could name any specific management concerns in which they would like the grantee's performance to improve. Most of the sellers were without suggestions for management concerns in which they would like to see the grantee's performance improve. One stated he was unconcerned because the grantee has left his organization alone up to this point. One would like to see the grantee (State of New York) improve its enforcement of recreation issues. One grantor would like to be present when the grantee makes its compliance inspections. Another grantor expressed satisfaction with the grantee's administration of the forestland easement, but dissatisfaction with the local group that was given responsibility for managing the trail system that crosses the encumbered property.

### **Property Tax Issues**

The State of New York, by law, must pay the property taxes that can be attributed to its interest in the overall value of a property encumbered by a conservation easement owned by the State within the boundary of the Adirondack

Park. The State Department of Environmental Conservation appraises its interest in the property in terms of a percentage of the total property value. The State then pays this percentage of the total property taxes. Six of the grantors benefit from this arrangement. Each was asked if they knew they would be getting a property tax break prior to the sale of the forestland easement. Five of the six were aware of this division of property taxes. Only one of these five that knew about the State's partial responsibility for property taxes negotiated the proportion that the State would pay as part of the sales agreement. All five had an estimate of how much lower their property taxes would be prior to the sale. These were estimates they worked up themselves or that were provided by the New York State DEC. When asked if the knowledge that they would be getting a property tax break lowered the price they were willing to accept for the forestland easement, all five responded that their willingness to accept a certain price was unaffected by this knowledge.

### **Compliance Costs**

Each grantor was asked how much of their staff or personal time is spent on matters relating to the forestland easements on their property. Five responded "none", "almost none", or "very little". Four of these five were grantors who had not sold broad public recreation access to their property. The replies of the other five respondents, in number of days labor, were 1, 6, 25, 100, and 155 days. While the forestland easements sold by each of these five grantors are very similar, the size of

the properties and the popularity of them for public recreation use varies. Also, as is the case for many forest properties, relatively long periods of time may pass between periods of intensive management activity.

Each of the five grantors who reported spending staff time on administering the forestland easements was asked what this time was spent on. Among the responses were compliance checks and field inspections, conflict resolution among those who lease camps on the property, explaining the terms of the forestland easements to those who lease hunting rights, working out administrative details with the grantee, giving required notifications, posting closure areas, sharing road maintenance, other required maintenance, and writing management plans required in the terms of the forestland easement. Some of the work related to maintenance, particularly road work, may be necessary regardless of whether the property is encumbered by a forestland easement. It is difficult to separate activities in the interview responses that are truly related to the forestland easement and those that would have to be done in any event.

#### **Attitudes Toward Future Sales, Donations, and Purchases**

Nine of the grantors would sell a forestland easement to the same grantee again. The other grantor said they would not if there were other willing buyers. As a follow up, they were asked what changes they would make if they were to sell another forestland easement. Four of them would make no changes. One would change the



terms of access to timber harvesting closure zones. One would build in longer time frames to get things like management plans done. One would not allow public recreation access on some portions of the property. One would more clearly retain the right to use water on the property. One would make sure that current land uses that were not inconsistent with the intent of the forestland easement would be allowed.

Nine of the ten grantors own other forestland within the study area. Each of the nine was asked if they would sell a forestland easement on their other property. Four said they would sell a forestland easement. Three would consider a sale. One responded “probably no” but it would depend on the price and terms. Another did not know if they would sell a forestland easement again.

Each of the grantors was asked if they would donate a forestland easement to the grantee they used in the sale. Six of them responded that they would and the other four said that they would not. Two of those who would donate, said they would donate to the particular grantee because they were now familiar with them. Two of those who unwilling to donate to their sale grantee added that they would instead donate to the Nature Conservancy. One added that it was against company policy to make donations of this type.

All ten of the grantors said that they would purchase forestland encumbered by a forestland easement similar to the one they had granted. Several of them cautioned that, despite their response, they were without plans to purchase property of

this type. Many of them also qualified their response by stating that it depended upon their intentions for the property.

### **Demographic Information**

Each of the non-industrial sellers interviewed were asked question about their age, income, education, and whether or not they were retired at the time of the grant. There were only four non-industrial owners among the sales group. The small number of non-industrial owners makes it difficult to ensure the confidentiality of these sellers' responses. For this reason, the answers to these interview questions are unreported.

## **FORESTLAND EASEMENT SALES INFORMATION**

### **General Information about Forestland Easement Sales**

Grantors who sold forestland easements include four individuals or related individuals, four forest products companies, one college, one real estate investment company, and one public utility. Among grantees, the State of New York purchased 18 forestland easements, the Nature Conservancy purchased nine, and Tug Hill Tomorrow, Inc. purchased two. Eight of those forestland easements purchased by the Nature Conservancy were subsequently sold to the State of New York. In each of these eight sales the Nature Conservancy acted on the State of New York's behalf, purchasing the forestland easement to give the State time to arrange funding and approval for the purchase. The price per acre paid for the forestland easements, adjusted to 1995 dollar terms using the Producer Price Index, ranges from \$76 to \$5,346. The weighted average price is \$221 per acre.

The relatively small number of forestland easement sales warrants a close look at each. Though there are 29 separate deeds for sold forestland easements in the data set, many of the sales were connected in some way or another. Profiles of each of the related sales are included in Appendix G. The profiles illustrate some of the details of the sales process. The prices for the forestland easements are divided into two distinct groups for the purpose of comparison in the next section. The largest group of comparable forestland easement sales includes all those purchased by the State of

New York in the Adirondack Park. This group of forestland easement sales is examined more closely in the final section of this chapter.

### **Contrasting High and Low Prices**

The prices per acre paid for forestland easements, when placed in 1995 terms, appear to consist of two distinct groups. All those forestland easement prices per acre of \$265 or less comprise the low price group. All those forestland easement prices per acre of \$395 or more comprise the high price group. Several parcel attributes that were anticipated as price determinants for forestland easement prices were measured for each property encumbered by a sold forestland easement. These attributes are parcel size, lake and pond frontage, river frontage, public road frontage, and the theoretical number of development rights extinguished by the forestland easement. A series of t tests were conducted to compare the mean values of each attribute between the two price groups. The results of the t tests are shown in Table 4-23. In all cases, the results were failure to reject the null hypotheses that there is no difference between the two price groups. In other words, there is no statistical difference between the parcel attributes of the low and high sales price groups.

Table 4-23. Results of t tests comparing the means of attributes for forestland easements selling for high and low prices in the Northern Forest Region of New York State.

<b><u>Property attribute</u></b>	<b>t statistic</b>	<b>test result ( <math>\alpha = 0.1</math> )</b>
Protected property size	0.0494	fail to reject $H_0$
Lake & pond frontage	0.5708	fail to reject $H_0$
River frontage	0.8731	fail to reject $H_0$
Public road frontage	0.6881	fail to reject $H_0$
Extinguished development rights	0.3868	fail to reject $H_0$

$H_0$  = There is no difference between the attribute means of the high and low prices groups

### **Forestland Easements in the Adirondacks Purchased by New York State**

It is difficult to make comparisons between all the prices and properties involved in the forestland easements because the terms and circumstances behind each vary considerably. The most comparable subset of the sales group is the one including all of the forestland easements purchased by the State of New York in the Adirondack Region. The forestland easements purchased by the State of New York that include public recreation rights and are inside or close to the Adirondack Park are all fairly comparable. This is a group of 23, including the forestland easements purchased from Lyons Falls Pulp & Paper, Lassiter Properties, the Franklin Falls Timber Company, Yorkshire Timber Company, and Paul Smith's College.

Among this group, prices range from \$161 to \$5,346 per acre. Removing the outlier price of \$5,346, the range becomes \$161 to \$940 per acre. The weighted average price, in 1995 terms, is \$217 per acre. The average price per acre for fee acquisitions of land in the Adirondack Park for addition to the State Forest Preserve is calculated from data reported by Dawson (1990b) for the purpose of comparison. The weighted average price for these fee acquisitions from 1986 through 1989 is \$239 per acre, in 1995 terms.

Some of the commonly accepted determinants of land value were measured for each of the properties encumbered by sold forestland easements. These include parcel size, amount of lake and pond frontage, amount of frontage on rivers classified

as wild, scenic or recreational, amount of frontage on public roads, and the number of potential development rights extinguished by the forestland easement. For the purposes of the following comparisons, the excessively high price of \$5,346 per acre that was paid for one of the forestland easements is treated as an outlier and removed.

The size of the encumbered properties varies considerably. The largest property is 19,809 acres and the smallest is only 107 acres. The average property size is 3,570 acres and the median property size is 800 acres. A property encumbered by a single forestland easement deed may include several parcels. In a few cases these parcels are some distance from one another. The price per acre (in 1995 terms) is plotted against the parcel size in Figure 4-6. The plot shows that the highest prices were paid for relatively small parcels and that prices close to the average were paid for parcels of all sizes.

Frontage on lakes and ponds is measured in feet. This measurement may not be the best way to capture the contribution of this variable to property or forestland easement value. Two hundred feet of developable frontage may be many times more valuable than 2,000 feet of frontage on a remote pond that must remain undeveloped. Eight of the forestland easements are without any lake or pond frontage, while the property with the most frontage had 55,380 feet. The average amount of lake and pond frontage is 12,844 feet and the median amount is 8,333 feet. The price per acre (in 1995 terms) is plotted against the amount of lake and pond frontage in Figure 4-7.

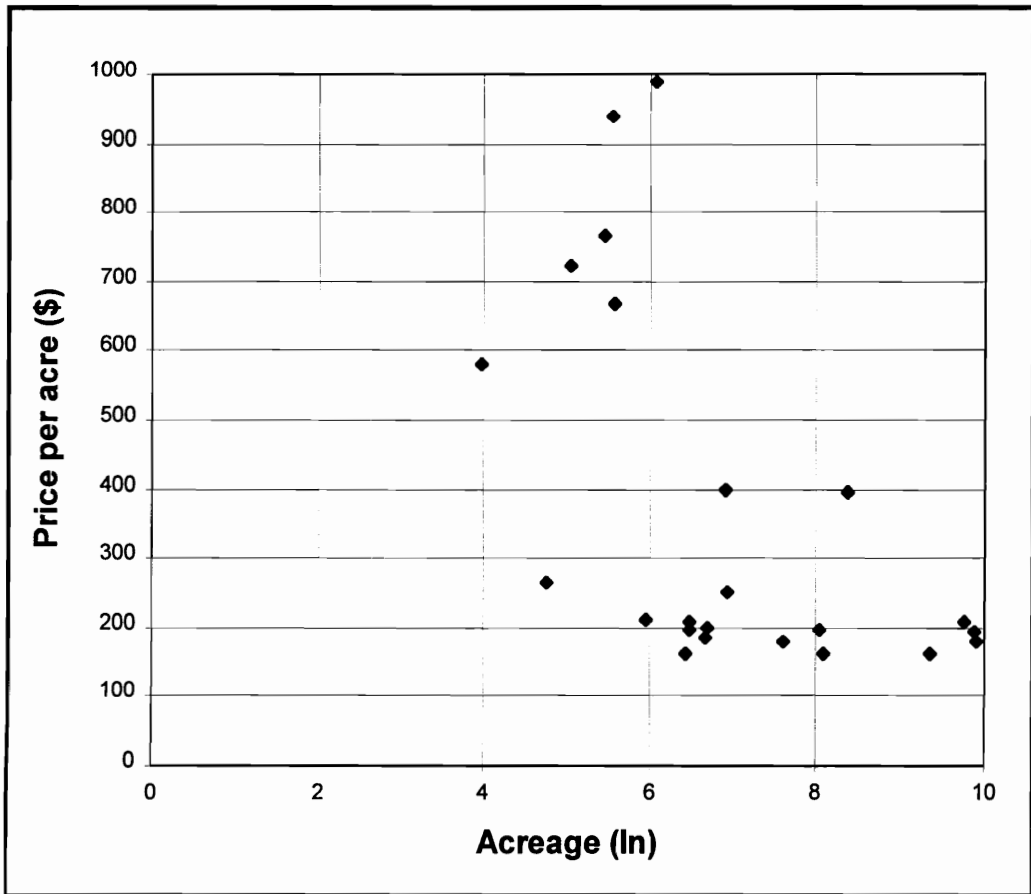


Figure 4-6. Price per acre for forestland easements by parcel size.



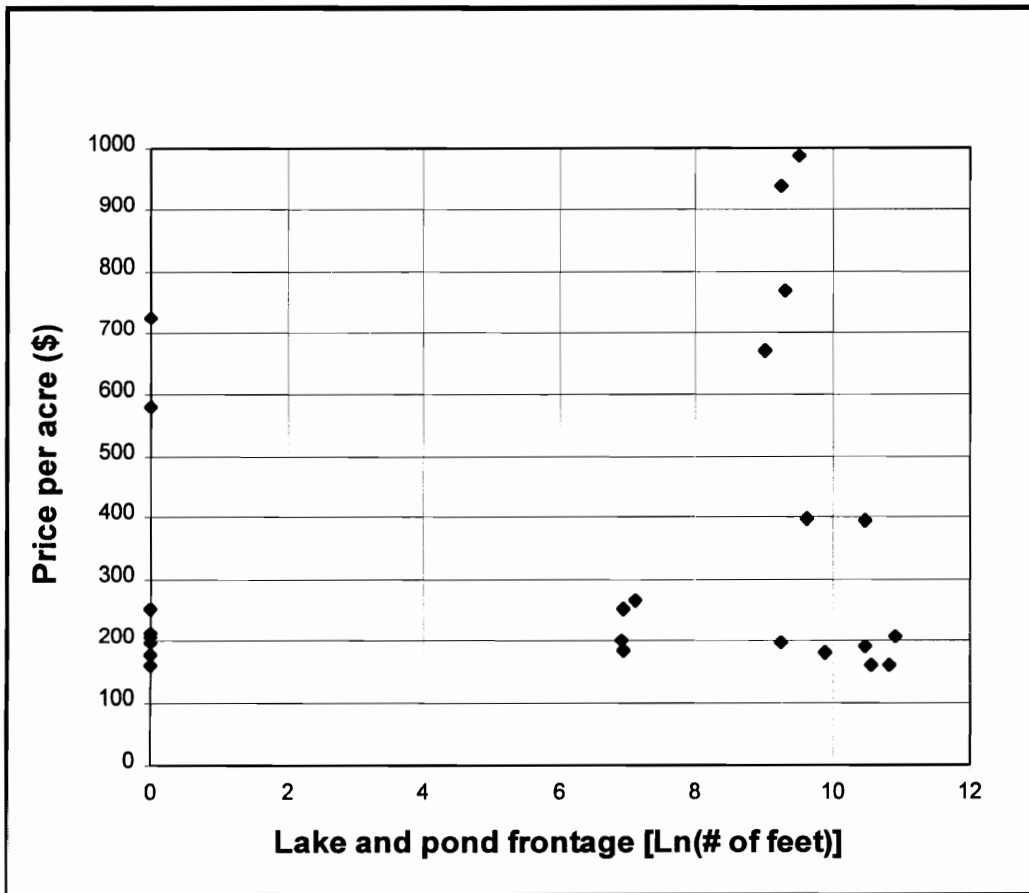


Figure 4-7. Price per acre for forestland easements by amount of lake and pond frontage.

The plot shows that the highest prices were paid for forestland easements on properties with close to the average amount of lake and pond frontage. Aside from this, no trend is apparent from this plot.

Frontage on public roads is measured in feet. A large number of the properties (10) are without public road frontage. On average, forestland easements have 7,455 feet of road frontage, with a median amount of 1,563 feet. The price per acre (in 1995 terms) is plotted against the amount road frontage in Figure 4-8. The highest prices were paid for forestland easements on properties with little or below average public road frontage.

Frontage on wild, scenic, and recreational rivers is measured in feet. Only those water courses having one of these classifications are measured because it is difficult to distinguish the size of the watercourse from the topographic maps used in the measurements. The majority of the properties are without river frontage. The property with the highest amount of river frontage contains 81,183 feet. The average amount of river frontage is 6,680 feet. The price per acre (in 1995 terms) is plotted against the amount of river frontage in Figure 4-9. Parcels with a lot of river frontage are the largest parcels. Having a lot of river frontage does not increase the price per acre of the forestland easement.

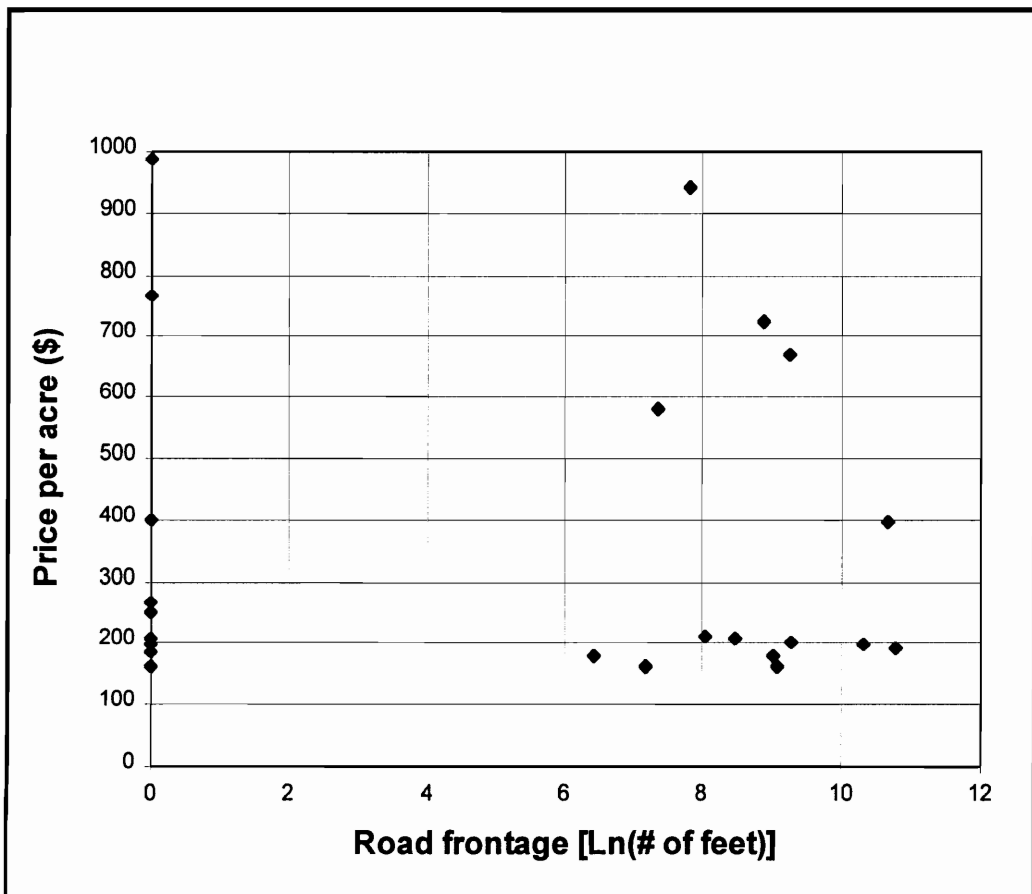


Figure 4-8. Price per acre for forestland easements by amount of public road frontage.

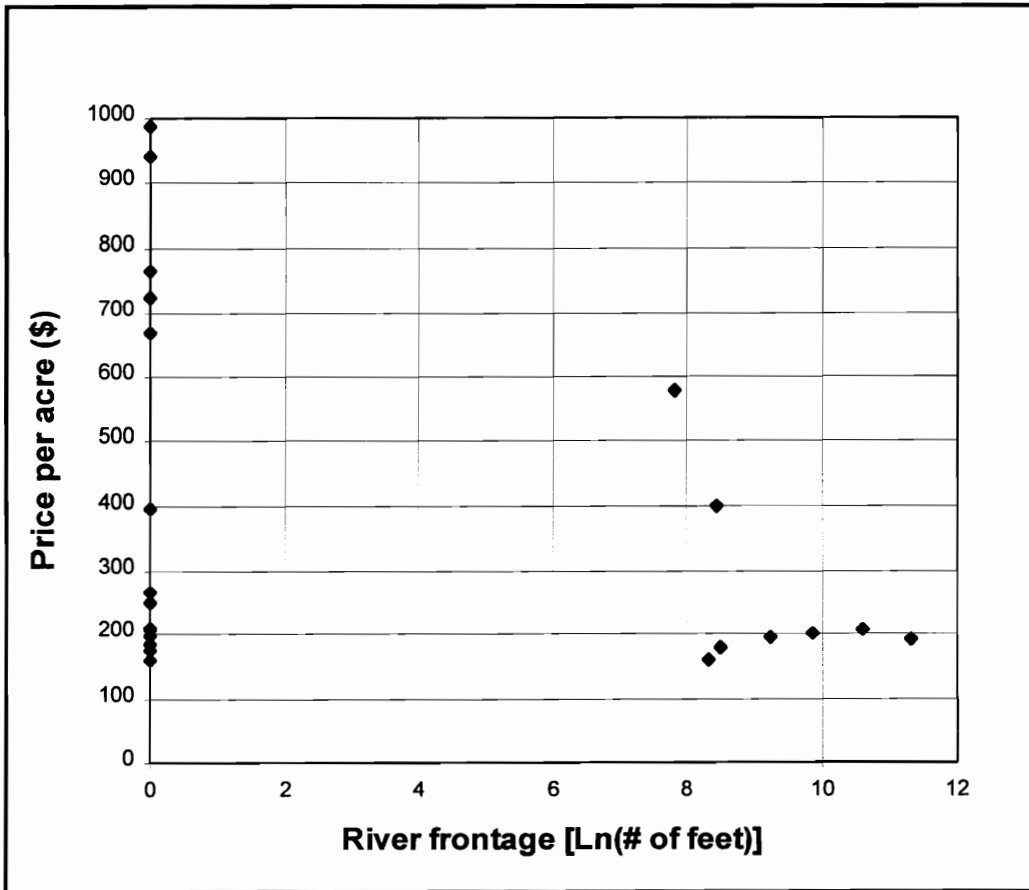


Figure 4-9. Price per acre for forestland easements by amount of wild, scenic, or recreational river frontage.

The number of development rights extinguished are measured in terms of the maximum allowable number of residences that could be built under the properties zoning, less any reserved development rights. There are some problems with this measurement. There is no data available on the number of development rights already exercised on these properties prior to the grant of the forestland easement. Some of the properties are just outside the Adirondack Park, where the zoning thresholds are far higher (one dwelling per acre versus one dwelling per 42.7 acres). Two of the forestland easements involving property just outside the Adirondack Park were thrown out for the purpose of this comparison. The number of development rights extinguished ranges from none to 495. The average number of development rights extinguished by these forestland easements is 86, but the median number is only 24. The price per acre (in 1995 terms) is plotted against the number of development rights extinguished in Figure 4-10. The price does not increase with the number of development rights extinguished. With one exception, the highest prices were paid for forestland easements that extinguished below average numbers of development rights.

### **Forestland Easement Prices and Actual Compensation**

The price paid by the State of New York for forestland easements inside the Adirondack Park is only one of the measurable financial benefits the landowner's received in exchange for the forestland easement. In addition, the State of New York

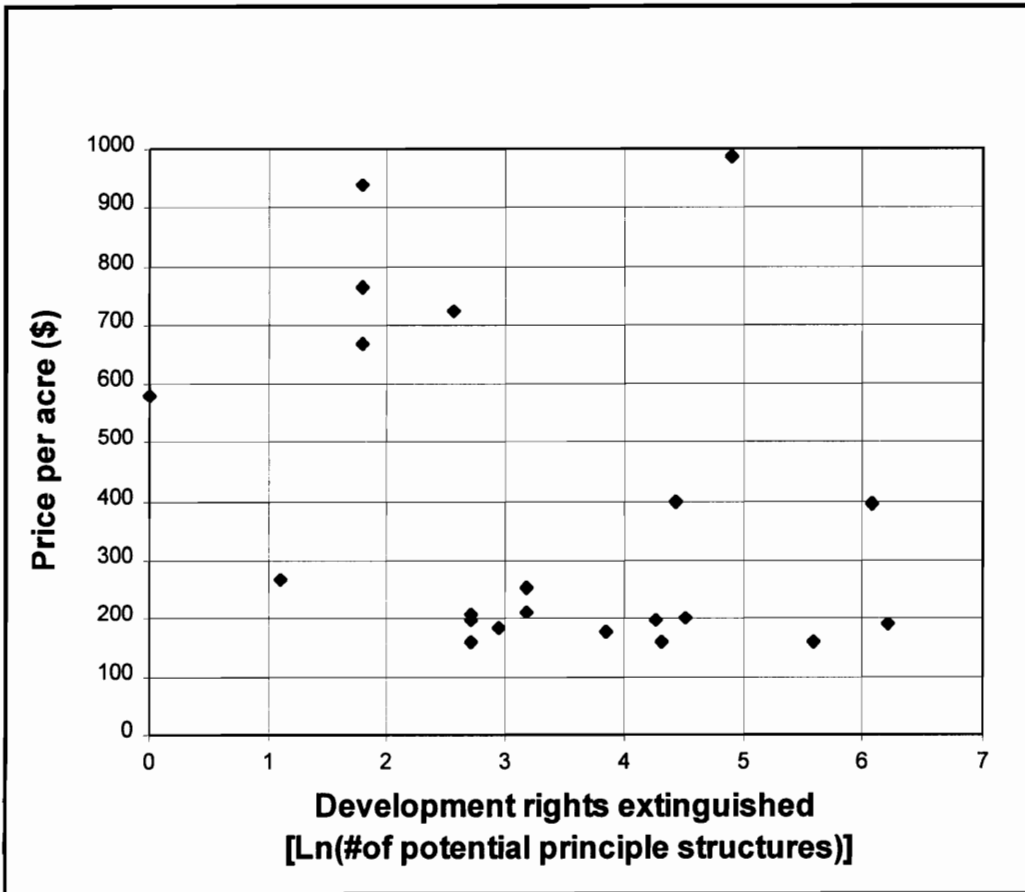


Figure 4-10. Price per acre for forestland easements by number of development rights extinguished.

pays a portion of the property taxes on the land encumbered by the forestland easements. The State's assumption of part of the property tax burden was done by policy at first and in 1986 was made part of the State's Real Property Tax Law. The DEC's Bureau of Real Property determines the allocation factor for each of the forestland easements. The allocation factor is simply the percent of the assessed value of the encumbered property for which the State assumes the property tax burden.

The allocation factors range from 20 to 97 percent of the assessed value. Using the per acre annual property tax burden of \$4.25 per acre reported for 1990 by Canham (1992), the annual value of this partial tax exemption ranges from \$.85 to \$4.13 per acre. The average financial benefit of this division of the property tax burden increases the forestland easement seller's compensation considerably. If capitalized at 5%, the weighted average annual value of the reduction in property taxes is \$71 per acre. This increases the actual compensation of forestland easement sellers from \$217 to \$287 per acre.

The actual value of a reduction in property taxes to the forestland easement sellers will depend upon the actual assessed value of the land, local property tax rates, and the individual discount rates appropriate for each. There is uncertainty in how the local assessor will value the property with two parties paying taxes on it. If the overall assessment of the property goes up disproportionately over time in response to

the forestland easement, the forestland easement seller may realize little or no value from the division of the property tax burden. As one local assessor related about one of these encumbered properties, “the land was only valued for it’s capacity to produce timber in the original assessment, not for its development or recreation potential”.

This reasoning by local assessors will lower the value of shared tax burden to forestland easement sellers. The State’s assumption of the other rights to the property in this case will only increase the local tax base, much as building new homes would, rather than lower the fee owner’s property tax burden.

When interviewed, all of the forestland easement sellers stated that the knowledge that the State would be paying a portion of the property taxes was not a factor in determining the price they were willing to accept for the forestland easement. In only one case did a grantor report that the allocation factor entered into the negotiations over the grant of the forestland easement. Five of the grantors reported having an estimate of how the property tax burden would change as a result of the sale. In three of these cases the estimate was supplied by the New York State DEC and in one case the grantor made his/her own estimate. One grantor was unable to recall who estimated the change in the property tax burden.



## CHAPTER FIVE

### DISCUSSION AND RECOMMENDATIONS

The results of this study require interpretation and discussion in order to more fully address the study purposes. Study Purpose #1 required a categorization and description of forestland easements in the study area. The information gathered from deeds is used to present a detailed series of forestland easement descriptions. A section comparing the results of this study to those from other studies, providing a more complete picture the type of landowners who grant forestland easements and the interests they convey. Study Purpose #2 was to investigate forestland easement granting opportunities. This purpose is addressed, in part, by a section discussing property rights and valuation as a means of landowner evaluation of forestland easement granting opportunities. Study Purpose #3 was to describe landowner behavior in evaluating a forestland easement grant. Landowner behavior is addressed by using the forestland easement decision process outlined in Chapter One as a framework for discussing some of the results of interviews with donors and sellers. Other information gathered in interview with donors and sellers is used to synthesize considerations for landowners after a forestland easement grant occurs. Study Purpose #3 also required recommendations for landowners use in evaluating and designing forestland easements. These recommendations are given in sections on improved landowner decision making and suggestions for deed content.

## **FORESTLAND EASEMENT DESCRIPTIONS**

As of 1995 there are 176,483 acres of forest properties encumbered by forestland easements in the Northern Forest Region of New York State. These forestland easements came from 58 landowners. There have been a small number of subdivisions and sales among these properties, making it difficult to identify the exact number of ownerships involved. The total acreage includes 84,209 acres of land encumbered by donated forestland easements and 92,274 acres encumbered by sold forestland easements. The variability of these forestland easements is evident in the results of the analysis of deeds. More meaningful descriptions of the existing forestland easements requires a look at how the use of the land is affected.

Approximately 88,026 acres are open to public access for wildland recreation uses. All of the forestland easements providing this public use came about from sales. The exact acreage is difficult to pin down because of small areas on two encumbered properties that have reserved rights precluding public recreation access.

There are 100,799 acres on which all development is prevented by the forestland easement, including 91,262 acres encumbered by sold forestland easements and 9,537 acres encumbered by donated forestland easements. Additionally, development is restricted on the remaining 75,684 acres (1,012 acres from sales, 74,672 acres from donations). Restricting development, as opposed to preventing it, means the forestland easement states that some development rights are reserved by the landowner.

All timber harvesting is prevented on some 23,586 acres encumbered by 27 different forestland easements. In addition, 24,129 acres of forestland, encumbered by 19 different forestland easements, prevent timber harvesting on a portion of the property. All timber harvesting must follow the Society of American Foresters' guidelines for timber harvesting in New York State on 68,233 acres, under the terms of the forestland easements.

## **COMPARISONS TO LANDOWNERS IN OTHER STUDIES**

Studies by Alden (1990) and Boelhower (1995) contain results that can be used to place the forestland easement grantors from this study in the context of other landowners. Alden (1990) characterizes resident and non-resident non-industrial forest owners in the Adirondack Park. Her findings provide a basis for making comparisons to the forest owners in this study. Boelhower's study examines forestland easements on forestland in New England that allow timber management.

### **Alden's Study**

The non-industrial forestland easement donors who were interviewed had an average age at the time they granted the forestland easement of 59.9 years. Alden found that resident and non-resident private forest owners in the Adirondack Park in 1989 had average ages of 57 and 53, respectively. The non-industrial forestland easement donors who were interviewed have a mean number of years of education of 16.5. The mean number of years of education of forest owners in Alden's study are 12 and 14, respectively. The median income of the forestland easement donors, in the year they made the donation, who were willing to respond to the income question was \$135,000. The mean incomes of resident and non-resident forest owners in Alden's study were \$34,500 and \$48,200. The mean size of properties encumbered by donated forestland easements in the Northern Forest Region of New York is 240.5 acres. The median number of acres owned by resident and non-resident forest owners in Alden's study are 177 and 129 acres. Forestland easements donors who were interviewed had owned their

land an average of 16 years prior to granting the forestland easements. Resident and non-resident forest owners in Alden's study had owned land in the Adirondacks for 25 and 19 years, respectively. In general, it appears that forestland easements donors are older, have more education, higher incomes, and larger land holdings in the region than the broader population of non-industrial forest owners in the Adirondack Park.

In Alden's study, resident non-industrial forest owners rated recreation and aesthetic enjoyment as very important reasons for owning forestland in the Adirondacks. Having a primary homesite in a wooded area, investment, timber production, and firewood, production were rated as moderately important reasons for ownership by this group. Non-resident non-industrial forest owners also rated recreation and aesthetic enjoyment as very important reasons, and rated having a second homesite in a wooded area, having a future retirement home, and investment as moderately important. In this study, the most common primary reasons for forestland ownership given by forestland easement donors are family and tradition, as a primary residence, and as an investment (see Table 4-6). Protecting the land from development and as a second homesite were also commonly given as primary reasons for ownership by this group. Recreation and aesthetic enjoyment did not come up as specific reasons for ownership among forestland easement donors who were interviewed.

The differences in ownership reasons between the broader group of non-industrial forest owners and forestland easement donors may be due, in part, to the different methods used in gathering the information. The absence of recreation and aesthetic

enjoyment as reasons for ownership among the forestland easement donors is a good example of this. In the telephone interviews with forestland easement donors, they were asked their reasons for land ownership as an open ended question. In Alden's study, landowners were asked to rate certain reasons for ownership that were supplied to them in a mail survey. Despite the different methods of asking about reasons for ownership, the reasons of the groups are somewhat similar. The single most important reason given by resident owners in Alden's study was having a primary homesite in a wooded area. Among non-resident forest owners in Alden's study, the most common single most important reason was recreation, followed by having a second homesite in a wooded area.

### **Boelhower's Study**

Boelhower (1995) examined forestland easements in Maine, New Hampshire, and Vermont. Her study is limited to forestland easements that allow timber harvesting and encumber properties 25 acres or greater in size. Sixty-three percent of the owners of properties encumbered by these forestland easements are over age 60. The average age of forestland easement donors in the Northern Forest Region of New York, at the time they granted the forestland easement, is 59.9, so the two groups are comparable in this respect. Three quarters of the forestland easement landowners in New England acquired their property by purchasing it, one-fifth inherited it, and one-fifteenth received the property as a gift. A similar distribution of acquisition methods exists among the forestland easement donors in this study. Seventy-three percent of the forestland easement donors interviewed acquired their property by purchasing it, 21% inherited it, and 10% received

it as a gift. One half of the forestland easement grantors in Boelhower's study have owned their land for more than twenty years. The average tenure of land ownership at the time of the forestland easement grant among donors interviewed in the Northern Forest Region of New York is 16 years. When the average time elapsed since the grant is considered, this suggests the New York group may have owned their property considerably longer than the New England group.

The distribution of ownership types among the total acreage of forestland encumbered by forestland easements is remarkably different between northern New York and New England. The distributions among four categories of ownership are shown in Table 5-1. In Boelhower's study, individual and family ownership is the most common among properties encumbered by forestland easements (80%). In northern New York, this group accounts for the greatest percentage of acreage as well, but by a much smaller margin. Larger parcels owned by commercial investors and the forest industry account for the difference. Some differences in the composition of the two groups are expected. The groups of forestland easements in each study are not directly comparable, as the Boelhower study used a minimum acreage of 25 and examines only forestland easements that allowed timber harvesting.

Boelhower's results include information on how the forestland easement came about. Landowners either granted the forestland easement through a donation or sale, or purchased the property after the forestland easement was granted. Eighteen percent of

Table 5-1. Type of ownership among forestland easement grantors in New England and New York, by percent of total acreage.

<b><u>Ownership type</u></b>	<b><u>Boelhower study in New England</u></b>	<b><u>Forestland easements in northern New York</u></b>
	(%)	(%)
Individual/family	80	41
Commercial Investor	5	23
Forest Industry	8	28
Other	7	8



the landowners acquired the land after the forestland easement had already been granted. Removing these landowners from Boelhower's results, I find that on properties still owned by the forestland easement grantors, 81% of the forestland easements were granted by donations and 19% by sales. In contrast, 63% of the forestland easements in northern New York were granted by donation and 37% were granted by sales. The proportions of sales and donations among the landowners in Boelhower's study who acquired the land after the forestland easement was granted (18% of the total) is not known, so it is difficult to know if the difference between the percentage of donations in sales between the forestland easements in the two studies is as large as it seems.

The encumbered properties in Boelhower's study range from 27 to 11,500 acres in size. The lower limit reflects the 25 acre cut-off point. The average property sizes in Maine, New Hampshire, and Vermont are 310, 391, and 243 acres, respectively. The median property sizes in these three states are 133, 143, and 193 acres. In northern New York, properties encumbered by forestland easements range from 1.1 to 27,124 acres in size. The average property size is 2,234 and the median property size is 385 acres. The properties encumbered by forestland easements in New York are, on the average, larger than those in New England. An intervening variable may explain some of the difference. Some landowners in northern New York encumber multiple parcels with a single forestland easement. Many times these parcels are unconnected or in different locations. Other landowners with similar holdings have granted a different forestland easement for each parcel they encumbered. If parcel sizes in New England are comparable to those in

New York, and forestland easement grantors generally avoided the practice of encumbering multiple parcels with a single forestland easement, this will make the average size of properties encumbered by forestland easements in New England smaller.

Three quarters of the forestland easements in Boelhower's study were granted since 1988. This trend holds for northern New York as well, where 71% of forestland easements were granted after 1987.

Boelhower found that 51% of the forestland easements on working forests in New England have some type of timber harvesting provisions. In northern New York, 53% of forestland easements contain some form of timber harvesting provisions. Of the smaller group in New York that allows timber harvesting, 81% contain some timber harvesting provisions. Though timber harvesting provisions vary between the two groups, forestland easements in New York that allow timber harvesting are considerably more likely to contain a some type of timber harvesting provisions. In New York these provisions are either area limits on timber cutting or a requirement that the Society of American Foresters' *Timber Harvesting Guidelines for New York State* be followed.

### **Other Studies**

Market Decision (1993) reported on the size and ownership distribution of timberland, for 1982-83, in 11 of the 13 counties in the Northern Forest Region of New York State. Eighty-two percent of landowners owned parcels of less than 50 acres, 7.9% owned parcels from 50 to 99 acres in size, 6.7% owned parcels from 100 to 199 acres in size, 2.6% owned parcels from 200 to 499 acres in size, and .8% owned parcels of 500

acres or more. Among forestland easement donations, 38% are less than 100 acres, 24% are from 100 to 500 acres, and the remaining 36% are greater than 500 acres. Among forestland easement sales, 10% are less than 100 acres, 28% are from 100 to 500 acres, and the remaining 62% are greater than 500 acres. Most forestland easement grants are clearly coming from the small portion of the larger population of timber owners who hold the larger properties. In particular, forestland easement sellers are concentrated among the less than 1% of owners who hold properties of 500 or more acres.

## **THE FORESTLAND EASEMENT DECISION PROCESS**

When a landowner grants a forestland easement, it is the result of a decision making process on the landowner's part. The landowner has a goal in mind. Granting a forestland easement accomplishes this goal and may contribute to a larger set of ownership objectives he/she has for the land. In Chapter One, Slade's (1994) general model of the decision-making process was adapted to the forest landowner's forestland easement decision making process. This revised model is used as a vehicle for discussion of some of the results of interviews with forestland easement donors and sellers.

The first step in Slade's model of the decision making process is identifying the problem. The second step is identifying alternative actions. There are two branches in the third step of the model. The decision maker can choose the usual action - a standard response that in effect avoids making a decision. The other branch in the third step is to evaluate alternatives. Slade states the evaluation may rely on consequences, likelihoods of outcomes, preferences, and past experience. The fourth step is to choose among alternatives. Decision makers either make a choice here and go on to the final step, or make no choice and move to a step of generating new alternatives. If there are no alternatives, the problem is abandoned. If new alternatives are found, the decision maker goes back to the third step of evaluating alternatives. If the decision maker makes a choice in the fourth step, the fifth step is to affect the choice.

The first step in the decision making process for landowners is encountering the opportunity to grant a forestland easement. This corresponds to Slade's initial step of identifying the problem in the general decision making model.

How do landowners encounter the opportunity to donate a forestland easement? First, they must know or find out about conservation easements. From the interviews with donors, their responses showed that many of them first found out about conservation easements through some connection to a grantee. Often it was a friend or family member who was connected to the grantee. While information gathered in this way is not necessarily one-sided, it is more likely to present the favorable side of conservation easement donations. Others learned of conservation easements through public meetings, property owners' meetings, or their professions. Two donors had sold or donated conservation easements in other states.

The sellers of forestland easements first became familiar with conservation easements in a variety of ways. Some had previous experience with conservation easements in other places. Some learned during the process of planning for the future of their lands. Others learned about them from neighbors. New York State involvement with forestland easements, including approaching landowners and public debate, also were cited by some forestland easement sellers as how they first learned about conservation easements.

Many of the donors first investigated granting a forestland easement by approaching the eventual grantee or through some previous relationship with the grantee.

Two were approached by the grantee. The remaining donors looked into the possibility of a donation through others who were in some way knowledgeable about conservation easements and this eventually led them to the grantee.

Sellers investigated granting a forestland easement in ways similar to those used by donors. Some contacted the eventual grantee and others were approached by the grantee. Others had a discussion of forestland easements arise from related fee sales of property or previous forestland easement sales. Encouragement from neighboring landowners also plays a role here. The relatively small number of parties involved in sales means that all the players are known to one another or are readily identified.

A discussion with one of the major grantees in the region revealed that many of the grantors seek their organization out, leaving the grantee limited time and resources to target properties and approach owners about granting a forestland easement. Many of the land trusts operating in the region turn down some of the forestland easement donations that are offered to them. Willing donors sometimes find that land trusts are unwilling to accept the forestland easement. The property and terms of the forestland easement must be of a type that interests the potential grantee, because these land trusts have limited resources to monitor forestland easements. In some cases, a significant factor in determining the opportunity to donate a forestland easement is willingness of the landowner to include a cash sum in the donation to establish a fund for administering monitoring costs.

The second step in the decision making process is to identify alternatives for the forestland easement content, grantee, and type of grant. This corresponds to Slade's step in the general model of identifying alternatives.

Only four of the donors considered alternative grantees. Donors gave a variety of reasons for choosing the particular grantee for the forestland easement. Often they, their relatives, or their friends were involved in the grantee's organization. Others simply chose them because their property was in the area where the grantee is active. Several donors cited a preference for donating directly to New York State, all other things being equal, because the State pays a portion of the property taxes on lands encumbered by forestland easements it owns in the Adirondack Park.

Sellers of forestland easements usually had only one option in the choice of a grantee because of the limited market for forestland easements. Most of the purchases were made by the State of New York. Only three sales were made to land trusts.

All of the donors interviewed indicated that the initial proposal of the rights and restrictions for the forestland easement agreement was close, very close, or the same as what was actually put in the final agreement. This implies that, among donations, there are few alternatives for the content of the forestland easements or that grantors and grantees are very like minded when it comes to reaching an agreement. More than half of the donors indicated that they made the initial proposal of the content of the forestland easement. It is interesting to note that, despite this claim, forestland easement content among donations seems to vary more by grantee than by individual grantor.

Among sellers, the majority of the first proposals of the forestland easement that included detailed descriptions of the rights and restrictions were described as “very close” to the content of the final forestland easement agreement. More often than not, it was the grantee that made the initial proposal for the forestland easement sale. Most sellers indicated that the initial price that was offered was close or very close to the final price they agreed upon. This implies that, as is the case with forestland easement donations, that grantors and grantees are very like minded when it comes to reaching an agreement. The content of the forestland easements varies more among sold forestland easements than donations. The lack of alternatives for forestland easement content indicated by the interview results may mean that the grantors and grantee both had compatible perspectives on the rights they wanted to specific properties.

Information on negotiations bears out the idea of compatible perspectives. Nearly all of the donors interviewed indicated there was nothing in the forestland easement that was difficult to negotiate. One reported some difficulty in negotiating specific items related to forest management. Most of the sellers indicated little difficulty in negotiating the terms of the forestland easement. One seller related that two things were difficult to negotiate. These items are the question of how liability is shared and what would happen if hazardous materials were discovered on the property.

At this point in the decision making process (the third step), both the forestland easement model and Slade’s general model contain two alternatives. One alternative is to continue the process. This is discussed next. The other alternative is to “choose usual



action”. The meaning of this alternative is undefined for the forestland easement decision process. Identification of landowners who followed this path is difficult, preventing their inclusion in this study. In the context of the forestland easement model, this alternative may embrace such things as abandoning the problem at this stage, waiting and starting the process over in the future, or going back and redefining the problem in broader terms.

The third step in continuing the forestland easement decision making process is to evaluate the forestland easement alternatives. This corresponds to Slade’s step of evaluating alternatives in the general model.

For most donors, it appears that the alternatives under evaluation are donating or not donating the forestland easement, rather than choosing from more than one alternative for forestland easement content and the alternative to decline granting the forestland easement.

Much of the information donors receive about conservation easements and donation possibilities comes directly from the eventual grantee. Only two of the donors reported seeking professional advice on the forestland easement from sources in addition to their lawyers. In both cases, the donor got advice from a forester. Appraisers are used by everyone who wishes to take a charitable contribution deduction on their income taxes, but often this is after the donation has been made. While the extent of deliberation and the considerations of each grantor are unknown, it is clear that more information for use in the evaluation stage could have been obtained from outside sources.

The sellers failed to seek outside professional help for advice in determining the terms of the forestland easement. This should be expected for many cases, since most of the sellers have professional staffs qualified to evaluate the resource management and financial considerations associated with the forestland easement sale. The exceptions to this are the four individuals who sold forestland easements. These private non-industrial owners could have benefited from professional advice from sources in addition to their lawyers.

Some of the forestland easement grantors examined their tax situation as part of their analysis. Six of the donors who were interviewed and who took charitable donation deductions on their federal income taxes, estimated the potential tax benefits prior to making the donation. Two of the donors spoke with their local assessor about the effect of the forestland easement donation on their property taxes prior to making the donation. In general, sellers did more evaluation of property tax consequences of the forestland easement grant than donors did. All but one of the grantors who sold forestland easements to the State of New York in the Adirondack Park were aware that the State would assume a portion of the property tax burden after the forestland easement grant. All of the sellers who knew about the State assuming some of the property tax burden had an estimate of the benefits of this situation prior to the forestland easement grant. One of these sellers negotiated what the percentage would be as part of the sale agreement. All of the sellers who were knowledgeable about the property tax situation stated that this knowledge did not lower the price they were willing to accept for the forestland

easement. This is somewhat surprising, because the reduction in tax benefits is a clear financial benefit that they appear to disregard. A possible explanation is the uncertainty over how much their actual tax burden would change, given that the overall assessment is subject to the control of a local assessor.

The most commonly cited reason for donating a forestland easement among those interviewed was to prevent or limit development of the property. Tax reasons are another common reason. The reasons for selling a forestland easement among those interviewed are more varied, but in general they involve financial reasons and a desire to protect open space. These reasons are an important part of the evaluation process and those who granted forestland easements must have determined this action would bring about the desired results.

The fourth step in the forestland easement decision making process is to choose among alternatives for forestland easement content. This corresponds to Slade's category of choosing among alternatives in the general decision making model. Since it was commonly reported among both donors and sellers in the interviews that the original proposals were close to the final forestland easement agreements, this step in the process may be theoretical or merely formal in nature. This step does, however, represent a juncture that leads to a choice to grant or reject the forestland easement (i.e., to make no choice).

If no choice is made, the forestland easement decision process follows Slade's general model and the next step is to generate new alternatives. If new alternatives fail to

arise, the problem is abandoned. This study focused only on those who granted forestland easements, so mention of landowners who followed this path in the decision process is merely speculative. Theoretically, the landowner could go back to the drawing board and extend negotiations over forestland easement content with the potential grantee, if the grantee is willing to do this. Another alternative is to sell the land outright. A small number of both the donors and sellers interviewed were considering selling the property prior to the time when they decided to grant the forestland easement. Landowners can also wait and attempt the entire process again at a future date.

If a choice is made, the fifth and final step in the forestland easement decision making process is the actual grant of the forestland easement. This corresponds to Slade's category of affecting the choice in the general decision making model.

Most donors who were interviewed categorized the whole donation process as fast and forthright or with words to that effect. Some called the process "long and tedious" and others categorized it as somewhere in between the two. Most sellers categorize the whole forestland easement sale process as long and tedious, though a smaller number describe it as fast and forthright or somewhere in between. In general, when the State of New York was involved in the grant, affecting the choice to grant the forestland easement was called long and tedious.

Departures from rational decision making in this process are readily identified. Slade (1994) lists costless information and processing, complete knowledge of alternatives and payoffs, and a guarantee of an optimal expected result as the assumptions

of rational decision-making. In almost all cases encountered in this study, these assumptions are violated. A later section advances recommendations intended to bolster some of these assumptions.

## **POST FORESTLAND EASEMENT GRANT CONSIDERATIONS**

### **Forestland Easements in Practice: What Landowners Learned from the Grant**

After the forestland easement is granted, landowners have time to reflect on the process that led to the grant. They also gain experience from the everyday workings of the forestland easement. The results of several of the interview questions provide insight into landowner satisfaction with the grantee and the forestland easement.

Both sellers and donors of forestland easements were asked to rate their overall experience in working with the grantee on the forestland easement(s) from the time they first began talking with them about the grant, up to the date of the interview. The majority of donors responded they were very satisfied. Most sellers were satisfied or very satisfied, although there were exceptions. In cases where grantors were dissatisfied or very dissatisfied, there were usually extenuating circumstances such as an exaction or eminent domain proceedings.

Forestland easement grantors were also asked to rate their satisfaction with the grantees' enforcement of the forestland easement, including compliance inspections. Most donors were either very satisfied or satisfied. All of the sellers were either satisfied or very satisfied with the grantees in this respect. It appears that the approaches of the various grantees to enforcing the forestland easements and conducting compliance inspections are keeping the landowners happy at this point. This gives credibility to the general assertion of most forestland easement grantors that they would be using the land in the same manner as they are now if they had declined to grant the forestland easement.

Many of the sold forestland easements contain a right of the public to use the property for recreation. These sellers ranged from somewhat satisfied to very satisfied in their rating of the public's exercise of this right. One responded that it was too early to make a judgment on this issue. Another seller qualified his satisfaction with public recreation use with the statement that few people were aware they could recreate on the property. This statement may be true for several of the properties. Some of the properties have less appeal to the public than the many alternative recreation areas in the region. It may be that most of the public simply are unaware of the opportunities to use some properties.

Grantors were asked if they could name any specific management concerns in which they would like the grantee's performance to improve. Most donors were without management concerns, though a few made some general statements of dissatisfaction. One thought the grantee could do a better job with more staff. Another who had a mixed experience in working with the grantee said "don't look a gift horse in the mouth". Another was concerned that the grantee had thus far failed to transfer the forestland easement to the State of New York, which would result in property tax savings for the grantor. Most of the sellers were without management concerns in which they would like to see the grantee's performance improve. The few who did were concerned with improvement of New York State enforcement of recreation issues, or the timing of compliance inspections. Another grantor expressed satisfaction with the grantee's administration of the forestland easement, but dissatisfaction with the local group that

was given responsibility for managing the trail system that crosses the encumbered property. All of the sold forestland easements were granted in the past ten years. The limited time the grantees have had to administer the forestland easements may be insufficient for grantors to identify and confront some of the management concerns embedded in the forestland easements. Management concerns are likely to evolve further over time.

Compliance costs are an issue that the grantors should anticipate in evaluating the desirability of the forestland easement grant. Virtually all of the forestland easement donors who were interviewed stated that they spent no or almost no time on dealing with issues related to the forestland easement grant. The more complex forestland easements in the sales group take more of the landowner's time to administer. It is interesting to note that four of the sellers who granted public recreation access to the property replied they spent no, almost none, or very little time on administering the forestland easement. The other sellers spent between one and 155 individual work days annually on administering the forestland easement. While the forestland easements sold by each of these grantors who reported substantial administration time are very similar, the size of the properties and the popularity of them for public recreation use varies. Relatively long periods of time may pass between periods of intensive management activity on many forest properties. Only when each encumbered property has had to adhere to the forestland easement terms during management activities will the true administration costs be experienced.



Time spent on administering the forestland easements by sellers was used in compliance checks and field inspections, conflict resolution among those who lease camps on the property, explaining the terms of the forestland easements to those who lease hunting rights, working out administrative details with the grantee, giving required notifications, posting closure areas, sharing road maintenance, other required maintenance, and writing management plans required in the terms of the forestland easement. Some of these actions would probably occur in the absence of a forestland easement on the property. If so, the cost of administering the forestland easement is unaffected by these actions.

Among forestland easement donors who were interviewed, most would use the same grantee again if they were going to donate another forestland easement. Some of the donors indicated they would prefer to use different grantees, if it were possible. The majority of these donors who owned other forestland in the region would consider donating a forestland easement on it. If it suited their purposes, the majority of these donors would purchase forestland encumbered by a forestland easement similar to the one they granted. All of these assertions by the forestland easement donors are evidence that they are happy with their decisions to grant the forestland easements.

Forestland easement sellers are similarly happy with their decision to sell the forestland easement. Most would sell a forestland easement to the same grantee again, given the opportunity. Most of these grantors who own other forestland in the region would sell a forestland easement on these parcels if they had the opportunity. Many of

these sellers would also consider donating a forestland easement, though some might investigate alternative grantees if they did. All of the sellers indicated they would purchase forestland encumbered by a forestland easement comparable to the one they sold, if it suited their purposes.

Only two of the donors reported, in hindsight, that they gave up rights they now regret. In one case, the grantor regrets the wording of restrictions related to forest management practices, especially since monitoring by a third party can be a problem. In the other case, the donor thought he should have retained more development rights. A third donor, despite responding “no” to the question, went on to relate that he sometimes thinks it would have been a good idea to allow for another building or barn. The rest of the donors interviewed were all satisfied, in retrospect, with the make up of their forestland easement agreements. These donors’ forestland easements were without amendments at the time of the interview. Only 37% of the donated forestland easements contain a provision for amending the agreement, but two of the donors indicated there are amendments they would like to make. One would like to drop the requirement for grantee approval of timber sales on the property. The other wanted to give up more development rights and change the designated lean-to construction sites.

Only one forestland easement seller had amended a forestland easement as of the interview date. In this case it was done at the State of New York’s request, though the landowner got the State to give them a change they wanted in return. Only one of the

other sellers could name an amendment they would like to make, though this seller was reluctant to pursue it.

One other post forestland easement grant consideration is worthy of note. Eight of the interviewed donors applied for a reduction in their property tax assessment after making the forestland easement donation. Only half of them were successful. One of these successful applicants added that he has had to appeal each year in order to keep the assessment down at an acceptable level. This mixed result in gaining a property tax reduction underscores the need to meet with the local assessor prior to the forestland easement grant. A landowner hoping to benefit from a property tax reduction from the forestland easement grant can remove some of the uncertainty in the evaluation stage of the decision making process by getting the assessor's input.

## **PROPERTY RIGHTS AND VALUATION**

### **The Cost of a Forestland Easement**

Binkley and Hagenstein (1989) present a model showing the cost of a conservation easement. This cost is the net present value of the difference in land rent between allowing a property to reach an optimal time (while managing it for timber production) for conversion to second homes, and the rent from timber production. This study suggests that Binkley and Hagenstein's approach is correct, but the rent curves are defined differently in the Northern Forest Region of New York. In general, private, non-industrial landowners choose to sell the land when the sales price exceeds the rent of the land in its current use, rather physically undertake the conversion of the land to more developed uses. Current uses are often joint production of timber and amenity values. Rent from amenity values is more difficult to calculate than rent from timber. It can, however, be derived from the sales prices paid by landowners who give amenity and related reasons for their ownership. Most of the non-industrial landowners gave reasons other than timber production when asked their reasons for owning land. Despite this, the timber rent still exists as long as the landowner can capture it by exercising the option to sell and harvest timber. In many cases, non-industrial landowners in this region are unaware of the value of their timber until someone approaches them about purchasing it.

Based on the forgoing discussion, the timber production rent curve from Binkley and Hagenstein's model is changed to a curve for rent from the current land use. This current use embraces all of those things enjoyed by forest landowners that have financial

value in the sales price. The second home development rent curve in Binkley and Hagenstein's model is redefined as a rent from the next best alternative curve. Under current zoning in much of the study area, the option to convert the land to second home development is unavailable. Rather, it is the option to divide the forest into smaller ownership units, each containing a second home. The landowner will sell the property when the rent from the alternative use first exceeds the rent from the current use. This cost is the present value of the difference in land rent between allowing a property to reach the optimal time for sale, while continuing the current use of the land up to that point. An illustration of this situation, based on the one done by Binkley and Hagenstein, is shown in Figure 5-1. Non-market values derived from the land by individual landowners may cause them to delay or forego the alternative of this sale. This consideration is put aside for now.

The general explanation of the cost of a conservation easement is most applicable to industrial forest landowners who are more likely to base their decisions on financial considerations alone. Non-industrial landowners often incorporate non-financial considerations into their decision making. A look at the responses to the question on reasons for owning land by non-industrial forestland easement donors supports this idea. "Family and tradition" is one of the more commonly cited reasons for ownership (see Donor Interview Results in Chapter Four). The satisfaction these landowners receive from owning property is difficult to capture in land rent the way that timber production or even scenic beauty is captured.

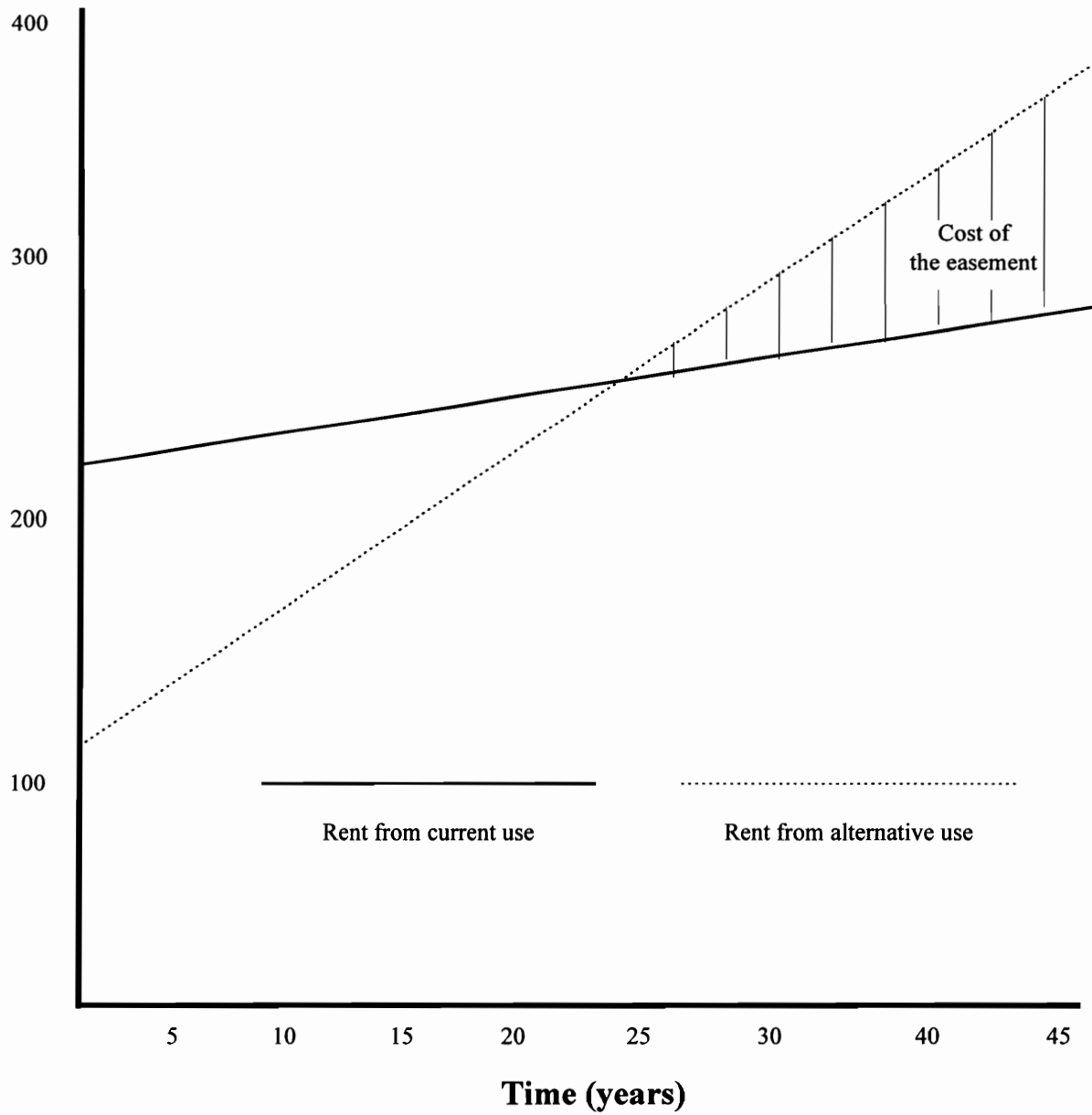


Figure 5-1. The cost of a forestland easement as the difference between the rent from land in its current use and the rent from a foregone alternative use.

Each landowner will realize this non-financial rent based more upon their personal utility function than on the physical attributes of the land. Suppose an informed landowner owns land at the optimal time to sell it to someone who will employ it in a more lucrative alternative use. The landowner may decline to sell. If this is the case, the combination of rent from the land in its current use and the non-financial rent that is specific to that landowner must exceed the rent from the alternative use.

### **Development Rights and Donated Forestland Easements**

A typical forestland easement grantor in the study area donates a forestland easement on 240.5 acres of forestland at age 60, and reserves the right to build three additional houses on the property. An example constructed from these facts demonstrates something about the true costs to the landowner of donating the development rights as part of the forestland easement.

Suppose a landowner meeting the profile outlined above donates the forestland easement in the Adirondack Park on land that is zoned “resource management”, meaning that a minimum of 42.7 acres are needed for each new dwelling. For simplicity, increase the parcel size in this example to 250 acres. The landowner can expect to live approximately 20 more years, according to IRS Mortality Table 5 (Commerce Clearing House 1995).

If this landowner donates a forestland easement, what does he/she give up in terms of the value of development rights? The property is theoretically large enough to build five new houses. Suppose the optimal schedule is a series of subdivisions and sales

at five year intervals. If each of the lots sells for approximately \$45,000 in real terms, net of inflation, then the present value of this series of subdivisions and sales, using a discount rate of 5%, is \$114,780. Under these assumptions, the landowner retains 74% of the total present value of the development potential of the property (\$84,531) by reserving three development rights. The three development rights reserved are the first three that could be exercised under the optimal schedule for subdivision. This \$84,531 also represents 100% of the development value the landowner is likely to realize in his/her lifetime. An average life expectancy of twenty years means that the last development right exercised, in the absence of the forestland easement, would occur in the same year as death.

Note that the hypothetical sales price of \$45,000 for each lot is unimportant. The percent of net present value represented by each development right under the various sale schedules remains constant as long as the sales price is the same for each subdivision (assuming no inflation). Under optimal subdivision schedules of ten and fifteen years, the landowner retains 84% and 91%, respectively, of the total present development value. The percent of the total present development rights represented by each development right using subdivision and sales intervals of five, ten, and fifteen years is shown in Figure 5-2.

Varying the discount rate under the five year schedule for subdivision and sale changes the results. Using a ten percent discount rate, the landowner retains 84% of the present value of the development rights. The percent of the total present development



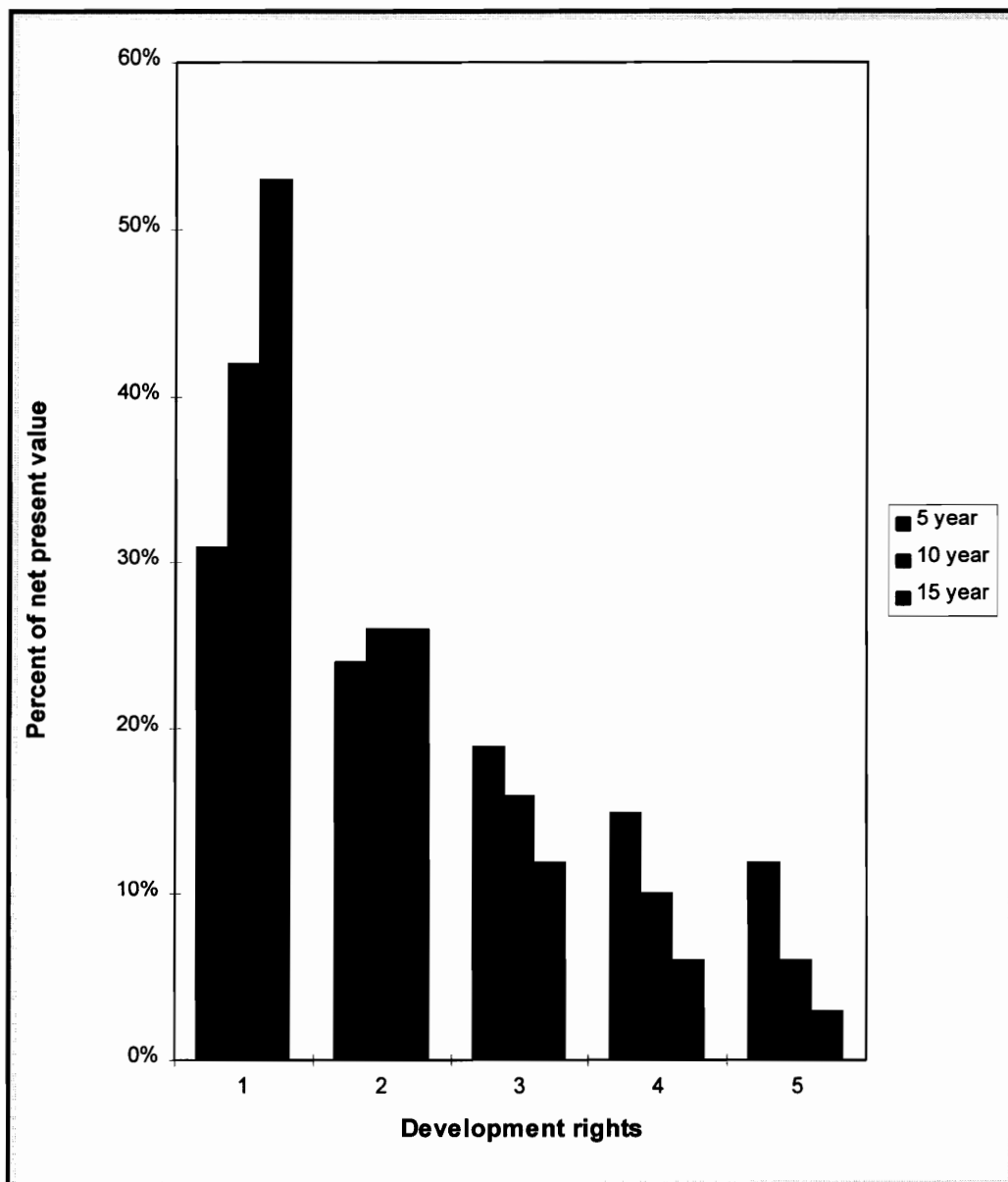


Figure 5-2. Percent of present value (5% discount rate) of total development rights represented by each development right if exercised at five, ten, or fifteen year intervals.

rights represented by each development right using three different discount rates is seen in Figure 5-3.

This example is unrepresentative of the relationship between development values and forestland easement donations in that it focuses on a market view of the development rights. Most donors reserved development rights for the purpose of allowing their children or grandchildren to build on the property, rather than for direct financial gain. Even if financial gain is their motive, it is often assumed that landowners have the objective of maximizing the value of their estate, rather than consuming all of their assets before death. This is particularly true if the land will go to a surviving spouse or if keeping the land in the family is an important goal. As noted earlier, one of the more common reasons for owning land cited by donors in this study is family and tradition (see Donor Interview Results in Chapter Four).

Suppose that Binkley and Hagenstein's model of conservation easement cost and land use conversion (more correctly subdivision in this case) is accurate. The optimal pattern is exercising all of the development rights at once in some future period. Further suppose that the optimal time for subdivision is within the landowner's lifetime. The landowner captures the development value of the reserved rights by selling the entire property in that optimal year. The landowner has retained 60% (3 of the 5 development rights) of the development value. Even if the optimal time for development is beyond the landowner's lifetime, he/she has the option of selling the land and capturing the net present value of the same proportion of the development value reserved in the forestland

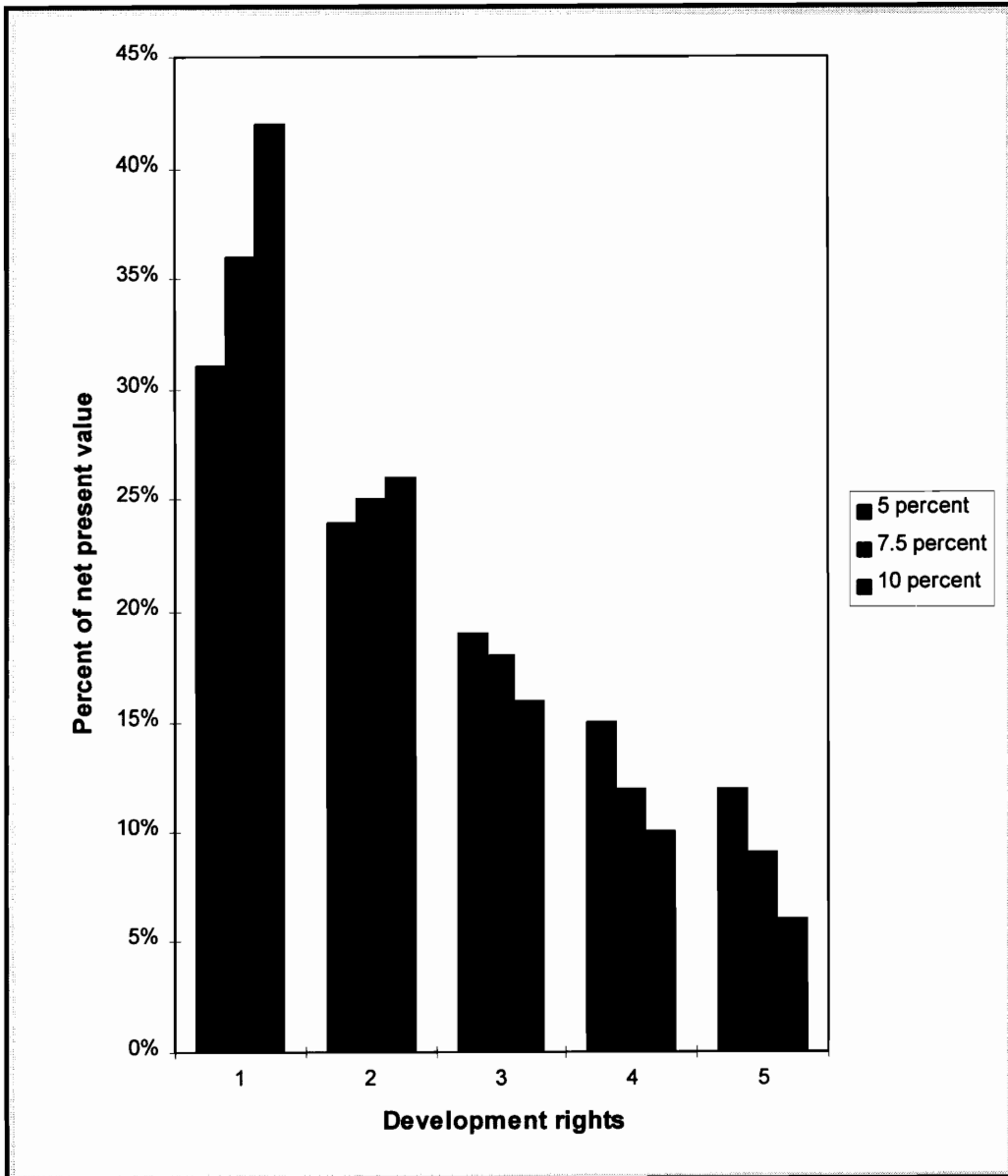


Figure 5-3. Percent of present value of total development rights represented by each development right, for three different discount rates, if exercised at five year intervals.

easement in the sales price.

Another contingency concerning reserved development value must be considered. The example assumes that the total development potential of the property is equal to the theoretical number of houses that could be built under the zoning guidelines. The Adirondack Park Agency is bound by these guidelines only as a minimum acreage. In many cases involving lands zoned “resource management” this agency has allowed building of fewer houses than the guidelines would permit. Suppose, for the property in the example, that the Adirondack Park Agency allows construction of only two new houses. In this case, the landowner has reserved all of the development value of the property.

The uncertainty of how the Adirondack Park Agency will view the development potential of a property is a consideration both for the individual landowner and the land trust. A landowner may benefit by donating a forestland easement containing all of the development rights he/she is unable to exercise. The land trust may decline to devote resources to securing and monitoring forestland easements on properties that are unthreatened by unacceptable levels of development. Zoning is impermanent. The landowner risks giving up something of value in the long term. The land trust risks losing an opportunity to protect land that may someday be shifted to uses it wishes to prevent.

Though this example is unrepresentative of how forestland easement donors are making decisions about their property, it does show an opportunity for those landowners

who want to strategically capture both market value and satisfaction from protecting the land. Some landowners will be able to protect the land without giving up very much that is of value to them. The land trusts are presumably less interested in the donor's intent than they are in the results they realize from accepting the donation. They may accept donations of forestland easements knowing that the development rights that are extinguished in the donation are unlikely to have been exercised by the current landowner. The benefit they receive is in knowing that subsequent landowners will be unable to develop the land beyond the density that the land trust finds acceptable. In other words, the risk in waiting until the rent from development is more valuable to see if there are willing forestland easement donors, outweighs the cost of holding forestland easements on land that is unthreatened in the short term.

### **Non-Financial Land Rents**

Some of the values that non-industrial forest landowners place on their property are difficult to capture in the property's market value. These values are hard to calculate and incorporate into the land's rent. Market value of the property can reflect the amenity values in some cases. There is a market for forestland purchased for enjoyment of amenities, or some combination of the enjoyment and timber production. The prices paid by landowners who acquired their land for these purposes are objective market values.

Some of the reasons cited for land ownership in the interviews with non-industrial donors are inconsistent with what is normally considered part of this amenity market. The best example of a non-market reason for ownership is "family and tradition".

Among donors who were interviewed, this reason is tied for the most common response as the primary reason for ownership and is the most common second reason given. The value placed on “Family and tradition” as a reason for ownership are variable. This value will change with each owner and constitutes a non-financial rent of land that must be considered when evaluating landowner behavior.

In Figure 5-1 it is shown that the landowner will sell the property when the rent from an alternative use first exceeds the rent from the current use. These are financial rents and are relatively straightforward to calculate. If a landowner declines to sell the land or convert the land use, when, in the eyes of a disinterested observer, the rent from the alternative use appears to exceed the current use, there must be a reason. The non-financial rent, in combination with the rent from the current use, must exceed the rent from the alternative use. This determination is based on the personal utility function of the landowner. If the land is thought of as an investment made in whole or in part for non-financial returns, decisions that are based on more than financial criteria can be expected.

Suppose the combination of rent from the current land use and non-financial rent enjoyed in connection with this use exceed the expected rent from the alternative use in all time periods. In this case, a forestland easement that only prevents the alternative use is without cost to the landowner. There is evidence in the results of this study indicating that this general reasoning holds for some of the forestland easement donors.

The majority of the forestland easement donors interviewed (81%) indicated that they would be using the land in the same way they are now if the forestland easement was never granted. The responses of the remaining donors indicate that the land uses would remain more or less intact, without drastic changes. To the extent landowners are able to anticipate future consequences, the grant of the forestland easement leaves their enjoyment of the property unimpaired. Instead, it affords them the potential added satisfaction of knowing their plan for the future of the land will be carried out into perpetuity.

Some forestland easement grantors have the opportunity to retain much of the market value of development rights they would have experienced if the property remained unencumbered. This concept was discussed and illustrated in the previous section. In practice, few landowners made strategic decisions of this type. Instead, these forestland easement donors made decisions related to the non-financial rent of the land. They acted to guarantee an uninterrupted flow of the non-financial benefits. Reserved development rights are a perfect example of this activity. When asked what determined the development rights they chose to retain, six of the 11 forestland easement donors who reserved some development rights responded it was to provide building sites for their children or grandchildren. This is clearly part of some forestland easement donors' plans for the ideal use of their property and is at least in part a non-financial satisfaction.

As noted in an earlier section comparing forestland easement donors to other landowners in this region, forestland easement donors are unrepresentative of the larger

group of landowners. Donors have higher incomes and more education. These factors are linked with the importance placed on non-financial values among the non-industrial landowners who donated forestland easements.

### **A Note on Forestland Easement Sales Prices**

It is difficult to make comparisons between all the prices and properties involved in the forestland easements because the terms and circumstances behind each vary considerably. The most comparable subset of the sales group is the one including all of the forestland easements purchased by the State of New York in the Adirondack Region. Among this group, prices range from \$160.94 to \$5,346.47 per acre. Removing the outlier price of \$5,346.47, the range becomes \$160.94 to \$940.06. The weighted average price, in 1995 terms, is \$216.87 per acre. The average price per acre for fee acquisitions of land in the Adirondack Park for addition to the State Forest Preserve, is calculated from data reported by Dawson (1990b), for comparison. The weighted average price per acre for these fee acquisitions from 1986 through 1989 is \$238.88, in 1995 terms (adjusted for inflation). If the two forestland easements that lack public recreation rights are removed from the data set, the weighted average price per acre of the forestland easements is \$210.47. The most fundamental right or use of the property retained by these grantors is that of timber production. The implication is that the value of the land for growing timber is the difference between the fee sale prices and the forestland easement sale prices, or \$28.41 per acre. At a discount rate of 5%, this represents a land expectation value of \$1.42 per acre, before property taxes are considered. Stumpage



values have increased considerably since the late 1980's, so these values are unrepresentative. Another way of looking at it is that the sum of the parts are worth more than the whole, which can be proven by calculating the land expectation value, adding it to the forestland easement price, and comparing to see if this exceeds the fee sale values of comparable properties. Presently, there have been an insufficient number of sales of encumbered properties in the region to make a realistic comparison. The acquisitions of the Yorkshire Timber and Lyons Falls Pulp & Paper properties by Hancock Timber Resource Group are the only transactions that have established values for comparisons.

## **RECOMMENDATIONS FOR IMPROVED LANDOWNER DECISION MAKING**

An improved approach to the forestland easement decision making process discussed in the previous section builds on the information gathered in the interviews with forestland easement grantors. By taking into account the information on the process followed by others, adding professional inputs, and including recommendations for enhancing the evaluation tools, forest landowners should be able to make superior decisions regarding forestland easement grants. A step by step canvas of the process in Figure 4-1 in Chapter One bears this out.

In the first step of the decision making process, the landowner encounters or identifies an opportunity to grant a forestland easement. Much of the information donors receive about conservation easements and donation possibilities comes directly from the eventual grantee. One of the conclusions from the literature review is that most of the available information on conservation easements is promotional, rather than descriptive. There is very little critical information available on conservation easements. In the absence of readily available written material on forestland easements from sources other than the grantee, landowners may benefit from consulting professional help earlier in the decision making process. Specifically, this means contacting their lawyer sooner, consulting an appraiser experienced with forestland easements at the outset of the process, seeking guidance from their tax advisor, and possibly getting help from a land management professionals.

The second step in the process is that of identifying alternatives. Most forestland easement grantors considered only one grantee. Though there are a limited number of grantees in the region, some landowners will have more than one to choose from if they are able to identify them. Alternatives for forestland easement content should be of interest to any landowner selling a forestland easement, and especially donors who may want to give up less than what the grantee would prefer to receive. By bringing in professional help in the initial stage of the decision making process, and using this help in identifying alternatives, a landowner will be better able to identify an alternative that will best serve his/her ownership goals.

Forestland easement sellers who are informed about the potential grantee's previous forestland easement purchases will be better prepared to negotiate a favorable forestland easement agreement and price. Likewise, landowners who are considering a forestland easement donation will be more informed in identifying how to couple the common interest they and the grantee have in protecting the land, with an agreement that is consistent with their management or operational goals. Because forestland easements are generally permanent, it is essential to think ahead to ensure the owner's uses and potential uses of the property are still allowed. Many uses that might inadvertently be prohibited are still consistent with the forestland easement's intent.

Evaluation of alternatives is the third step in the process. Professional assistance can be crucial at this stage. Appraisers must be used by everyone who wishes to take a charitable contribution deduction on their income taxes. Landowners should contact the

appraiser at this stage of the decision making process or sooner. Both foresters and appraisers can supply valuable advice to landowners before the forestland easement is donated. Foresters can work with the a landowners and his/her lawyer in ensuring the terms of the forestland easement permits management of the property to allow the landowner to meet his/her objectives. Appraisers can give estimates of the value of alternative compositions of the forestland easements, particularly with regard to development rights. Potential forestland easement donors should work closely with their tax advisor in calculating the income tax benefits from the charitable deduction for a forestland easement donation. This information should assist the landowner in weighing the benefits and costs associated with the forestland easement grant. Only two of the donors reported seeking professional advice on the forestland easement from sources in addition to their lawyers. In both cases, the donor got advice from a forester. Appraisers were always brought in after the forestland easement was granted.

The effect of a forestland easement grant on the property tax burden should be estimated in this evaluation stage. Forestland easement grantors have had mixed success in lowering their property taxes. A landowner can meet with his/her local assessor to determine how the property's assessment will be affected if a particular forestland easement is granted. Some uncertainty over the property tax burden remains even after an estimate is made because the assessment may change disproportionately over time. This uncertainty is reduced by having the assessor's evaluation in advance.

If an income tax deduction or lowering the estate tax burden of heirs, or both, are goals of the landowner, it is important to consult with a tax advisor at this stage of the process. The tax advisor, working with the appraiser and possibly the forester, should be able to estimate the potential tax benefits of the grant. These benefits can be entered into the valuation method of the landowner, whether it is the unique utility approach attributed to private, non-industrial landowners or the particular financial approach of a corporate landowner.

From a market standpoint, development rights are often the most valuable items given up in a forestland easement. Most non-industrial grantors in this study identified the number of new buildings they will need on the property to meet their goals. Often this involves providing building sites for their children. If a forest landowner has a relatively undeveloped property, three possibilities exist. The three possibilities are illustrated in Figure 5-4. The level of development compatible with an open space condition can exceed the level of development needed for landowner objectives. In this case, a forestland easement grant is possible and surplus development rights should be an issue in the landowner decision making process. Careful examination of the benefits and costs to the landowner of retaining or extinguishing these surplus development rights is worthwhile. The second possibility occurs when the level of development under which the land remains in an open space condition is the same as the level of development needed for landowner objectives. In this case, the landowner is without surplus development rights for consideration in the decision making process. The third

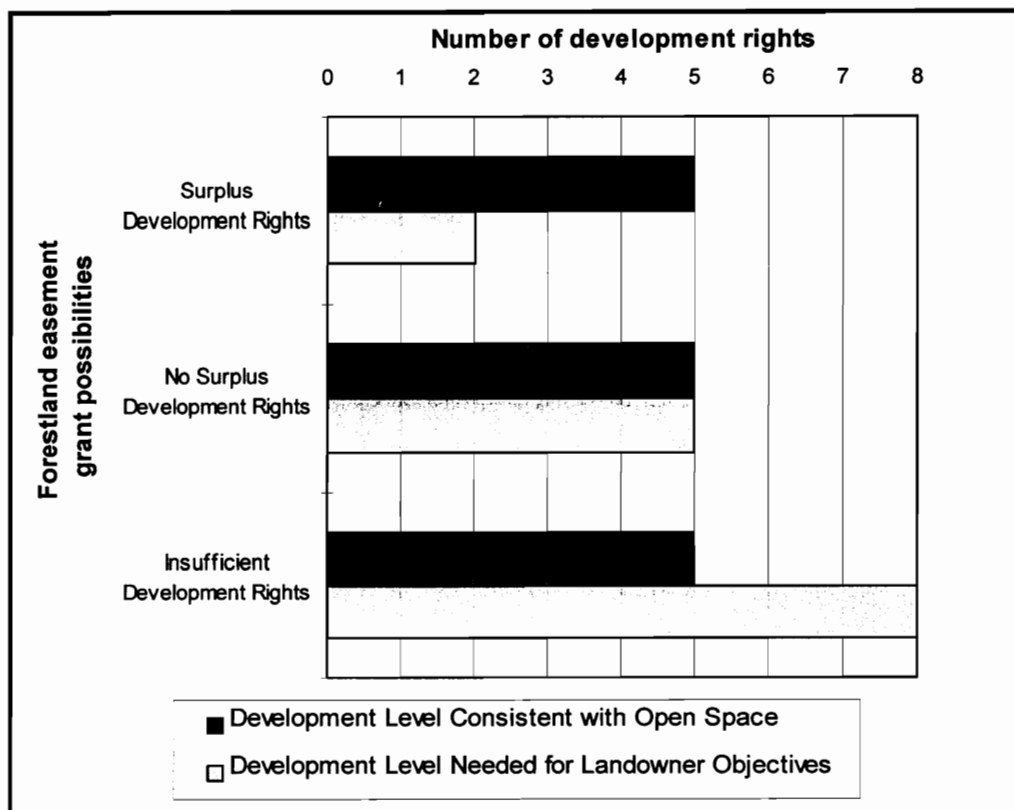


Figure 5-4. A generalized representation of forestland easement grant possibilities in relation to development rights needed for open space and landowner objectives.

possibility occurs when the level of development needed for landowner objectives can exceed the level of development under which the land remains in an open space condition. This means that the grant of a forestland easement is inconsistent with the landowner's goals.

If there are surplus development rights, the appraiser can place financial values on them. The tax advisor can use these values in showing the financial benefits and costs of retaining or extinguishing them. Ultimately, the landowner must decide the relative importance of these financial benefits. This leads to the point of choosing among alternatives - the next step in the decision making process.

Choosing among alternatives is the fourth step in the process. This involves selecting the best opportunity to grant a forestland easement that emerges from the evaluation stage and negotiations with the potential grantee. The choice should always include the option of deciding against the grant. This decision is subject to the personal valuation process of the landowner. In general, industrial landowners and investors are expected to make their choice based upon financial criteria. Non-industrial landowners each have a unique valuation process that may take financial and non-financial benefits and costs into account, and arrives at a utility maximizing result. This is an economic view of the decision. An observer cannot gauge how the effect of intervening factors indirectly related to the land or the forestland easement will enter into an individual's decision.

The choice to decline granting the forestland easement may send the landowner back to the drawing board to examine other possibilities for meeting their goals. These possibilities may include forestland easements or exclude them. It may also lead them to abandon the problem.

If the decision is made to grant the forestland easement, the fifth and final step is to affect this choice. Timing can be important. Many of the donors related that they had to push to get the grant completed in order to take the income tax deduction at an opportune time. Forestland easement donors should take a close look at when the grant will benefit them the most from an income tax standpoint. Timing can be a consideration for forestland easement sellers as well, if capital gains taxes are a problem in a certain year. It is less likely forestland easement sellers will have the luxury of delaying the grant transaction. Forestland easement donors can act more strategically in ensuring that the timing of the grant is most beneficial. It may be best to delay the grant until a year when the income tax deduction is really needed. The grantee loses nothing by the delay, since it is the landowners actions that protect the property.

The actions of some forestland easement donors follow a different process than the general one presented here. The decision to donate the forestland easement is sometimes made ahead of time and the other steps in the decision making process are ignored. What appears as a decision making process may be the formalization of the details to affect this decision. While most forestland easement donors reported being happy with their decision, some of these decisions are less than optimal. These donors



made good decisions within the confines of the limited information they gathered, but could have made superior decisions by gathering additional information and conducting a more complete evaluation.

## **RECOMMENDATIONS TO GRANTORS FOR FORESTLAND EASEMENT DEED CONTENT**

The information gathered from the deeds provides a basis for recommendations on content of forestland easements for other landowners to consider. These should be treated as educational or management recommendations rather than legal advice. The purpose of the deed, from the landowner's perspective, is to have the best formal legal agreement that conveys their intentions for the property. Some of the landowners in the study have forestland easement agreements that are superior to those of others. Regardless of the particular purposes of individual landowners, two qualities in the forestland easement deeds are desirable - consistency and unambiguity. A consistent deed will have clauses that match the stated purpose of the forestland easement and allow the landowner the uses that contribute to his/her ownership goals. An unambiguous deed avoids broad rights or restrictions that are subject to multiple interpretations and are difficult to value. In general, it is desirable to have all rights and restrictions in the forestland easement well defined. The purpose of recommendations on forestland easement content are to assist any landowner who is drawing up a forestland easement agreement, in order to ensure his/her personal utility remains intact without detracting from the intent of the forestland easement. A landowner may logically pursue an agreement that satisfies the grantee and leaves the open space character of the land unimpaired, while at the same time protecting his/her own interests. A good deed

accomplishes these multiple goals and serves as a capstone to improved landowner decision making.

### **Affirmative Rights**

The most common affirmative right in the data set is the right of the grantee to enter the property for compliance inspections. Grantees are naturally expected to want this right to ensure that the terms of the forestland easement are upheld. Some of the deeds also include a provision that prior notice must be given to the landowner before inspections are done. Additionally, some deeds require that the landowner give consent before the inspection takes place, stating that consent will not be unreasonably withheld. Adding these conditions to the grantees right to on-site compliance inspections is advisable for landowners who place a high value on their privacy.

A substantial number of the donated forestland easements (34%) allow the grantee the right to enter the property for scientific and nature study. Similarly, some donations allow the grantee to monitor and manage rare plant and animal populations and some sold forestland easements allow the grantee to manage the fish and wildlife on the property. Each of these affirmative rights may be potentially troubling to the landowner if details are lacking. Rights for scientific and nature study may be construed to allow the grantee to collect samples or enter the property at inopportune times. Managing various biological populations may impinge upon the landowner's use of the property for hunting and fishing, or constrain allowable timber harvesting practices. If the landowner wishes to convey these rights, it is advisable to require the grantee to identify their interests in

these activities more specifically. The rights in the deeds may then be tailored to the specific scientific interests and the landowner will know what to expect. Requiring prior notice or consent, or both, in the compliance inspection right, is also advisable. A landowner may allow the grantee new scientific uses of the property as they arise, but retaining the decision allows the landowner to consider each new use on a case by case basis.

The right to view the property in an unimpaired state is subject to varying interpretations. A landowner should require the grantee to more accurately express the actions they intend by including this affirmative right. The absence of this right from a deed fails to impair the property in any quantifiable way, so it is reasonable for the landowner to insist upon clarification. Impairment implies violation of other provisions in the forestland easement. Violations of the provisions of the forestland easement are adequately addressed by other components of the deeds.

An affirmative right with similar potential for conflict as the right of view is the right to restore the property to the condition that occurred at the time of the grant. A grantor should link both these rights to a baseline data report. Ideally, the baseline data report would be completed prior to the grant of the forestland easement. If it is done after the forestland easement grant, the deed should specify that the report is subject to the landowner's approval. In the absence of any objective standards to define the condition of the property at the time of the grant, grantors or subsequent landowners may find the initiation and results of restoration arbitrary and unacceptable.

At least eight of the affirmative rights in the data set involve some type of on-site construction or light development of the property by the grantee. A landowner who has certain areas he/she wishes to protect from these activities should specify these areas in the deeds. Similarly, a landowner can specify the areas where he/she would prefer these activities to take place. Another option is requiring the landowner's approval of the locations of such things as roads, trails, parking lots, and gravel pits.

### **Restrictions**

In general, most of the restrictions in the data set are better defined than the affirmative rights. Restrictions prevent or restrict various forms of development to keep land in forested uses, and then shape what those uses will be.

In granting restrictions that are designed to prevent or restrict development of the property, a landowner must be careful to retain sufficient rights to go along with his/her reserved development rights. For example, a deed may broadly prevent all development, including structures, roads, utilities, and lighting, but retain the right to construct one home. The landowner should make explicit in the reserved rights section all those things that are necessary to the construction and enjoyment of the home. Outbuildings, such as a garage or shed, may be desirable. If utility lines or roads must be extended to service the home, the rights to extend these things should be reserved. The wording in one of the common restrictions prevents commercial, industrial, or institutional activities. A landowner who works in a home office will wish to reserve the right to this use to preclude an undesirable interpretation of this restriction.

Restrictions on subdivision are prevented in many deeds. Subdivision is also a reserved right in many other deeds. Since the forestland easements run with the land, regardless of subdivisions, this restriction is unconnected to prevention of development. With this in mind, even a landowner who is keenly interested in preventing future development of the property may wish to give subdivision careful scrutiny. In light of the other restrictions, the ability to subdivide the property leaves the land's open space condition unimpaired. Leaving out restrictions on subdivision, or reserving the right to a specific threshold of subdivision, may be convenient for the landowner at some future time. Forestland easement grantees may prefer to limit or prevent subdivisions because multiple owners can increase monitoring costs. Each additional owner of the subdivided property effectively creates a new forestland easement for grantees to monitor for compliance.

Many on-site activities are prevented in the deeds. Among these are hunting, fishing, trapping, use of firearms, powerboating, camping, and agricultural uses. Few landowners would give up these rights if they were currently enjoying them. These activities determine the open space character, rather than condition, of the land. If these uses represent a threat to the property in the mind of the landowner, he/she will avoid or disallow them. The true purpose of these restrictions is in preventing subsequent owner's of the property from doing these things. If this is the landowner's intent, including these restrictions is a useful strategy. A landowner should carefully consider whether any of these activities actually represents a threat to the land in his/her view, and only include

restrictions on those activities he/she believes are real threats. The reason for this lies in the appeal of the property to potential future buyers or, if it is the landowner's intention to keep the property in the family, the utility of the property to the landowner's heirs.

Nearly half of the donated forestland easements restrict all timber harvesting on the property. Some forestland easements place this restriction on only specific portions of the property. This situation is essentially the same as the previous one, but it is discussed separately because of the substantial portion of the market value of forestland that comes from its timber producing capacity. A landowner with a strong convictions against cutting trees who wishes to ensure that harvesting never takes place on the property will want to include a restriction of this type. A landowner who wishes to leave timber standing during his/her ownership tenure or lifetime, but otherwise has few convictions against timber harvesting, should carefully consider the ramifications of including this restriction. The value of most forested properties will be substantially less if all timber harvesting on it is forbidden. It is possible to calculate the difference in values that result from this restriction and use the information in making a decision. If retaining value of the property for a planned future sale, or the value of the property to the heir is important, timber cutting rights should be retained. In some cases, placing timber harvesting restrictions on specified areas may serve the landowner's objectives just as well.

Grantors who restrict timber harvesting on all or part of the property should consider several contingencies. What if the forest is damaged by insect infestations, fire,

or windthrow in the future? If trees cutting or removal is prohibited, personal hazards or detriments to forest health may result. Many of the forestland easements that forbid timber harvesting reserve the right to remove dead and damaged trees and other vegetation. This is a desirable reserved right for all landowners who forego the right to harvest timber. Another important reserved right for some landowners to couple with restrictions on timber harvesting is the right to cut trees for on-site firewood use. This is particularly true for remote properties with poor camp access.

A substantial number of forestland easements state that all logging will comply with the Society of American Foresters' *Timber Harvesting Guidelines for New York State*, or its equivalent. At the present time these guidelines are reasonable. Requiring timber harvesting to adhere to these guidelines, however, may lead to future problems. The guidelines will undoubtedly change over time. The forces within the Society of American Foresters that set these guidelines may change as well. In the future, these guidelines or their equivalent may place an undue or unreasonable burden on the landowner. Freezing the restriction to the guidelines as they currently exist is a poor solution for this dilemma. Harvesting and land protection technologies will evolve, possibly in areas that are difficult to foresee. If the intent of the grantor and grantee is to ensure that timber harvesting is done in a manner that protects the resource, this can be accomplished by stipulating that a consulting forester be retained by the landowner to oversee all timber harvesting. It is inadvisable for the landowner to agree to any restriction that gives the grantee control or consent over timber harvesting. The



professional staff of land trusts are typically biologically oriented, rather than land managers, and are unqualified to evaluate or oversee timber harvesting practices.

Moreover, the landowner cannot foresee how the positions of the grantee with regard to timber harvesting may change over time.

### **Reserved Rights**

Reserved rights are used to guarantee the landowner will be able to continue with planned uses of the property. Most of the specific recommendations for these were made in conjunction with the previous discussion of restrictions. The two most common reserved rights, the right to sell, transfer, lease, or mortgage the property, subject to the terms of the forestland easement and the right to use the property for all purposes not inconsistent with the stated restrictions, are advisable for all landowners to include in forestland easements deeds. In both cases, these reserved rights leave the open space character of the land unimpaired, but help ensure the landowner's utility will remain intact.

### **Terms, Conditions, & Other Provisions**

The terms, conditions, and other provisions category of deed components contains some items that should be considered by all landowners.

Nearly all sold forestland easements contain amendment clauses, while only 37% of donated forestland easements had such provisions. Given that most forestland easements are granted in perpetuity, it is desirable from both the grantors' and grantees' standpoints to specify a process that allows both parties to reach an agreement to change

the terms of the forestland easement. One forestland easement also included specified reserved rights to amend the forestland easement. Reserving specific amendment rights is advisable for landowners who foresee contingencies they will have to address. The one deed reserving specific amendment rights did so to allow changes that would enable the landowner to take advantage of modifications in taxation programs.

A substantial number of the donated deeds contain clauses that specify nothing in the forestland easement shall be construed to grant the general public a right of access to the property unless the right existed prior to the grant. This is an important consideration for all potential forestland easement grantors. For a landowner who wants to ensure his/her private enjoyment of the property is unimpaired, this is a particularly useful clause. "The existence of recreational land value requires a careful specification of what rights are conferred by owning development rights" (Buist 1995). Even if a landowner is unopposed to the public using the property, from a liability standpoint it is better to give permission for use on an individual basis than to be construed as a provider of public recreation. Buist (1995) points out that when a public agency acquires a conservation easement, and the development value far exceeds the value of the residual property rights, citizens may expect that they should have the right to use those lands for recreation. With this in mind, it is better to prevent any openings for misinterpretation.

Including the qualifying contribution clauses of Section 170 of the Internal Revenue Code is a good idea for forestland easement donors who want to take a charitable contribution deduction on their federal income tax return. Having a reference

to IRC Section 170 may strengthen the evidence of the contribution in the event of an audit.

Baseline data reports are mentioned earlier in connection with some other recommendations. Ideally, these reports would be completed and agreed upon by both parties prior to the forestland easement grant. It should be clear to the landowner up front who will bear the expense of completing the baseline report.

Liability is a consideration with which all forestland easement grantors should be concerned. A lawyer was consulted about the desirability of grantor held harmless and grantee held harmless clauses in combination with several affirmative rights that are included in many of the deeds in the data set. Calli (1996) provides the following opinion:

It is always a good precaution to include a Grantor held harmless clause whenever any affirmative right is granted to someone else. Since affirmative rights benefit the Grantee, it would not be wise for a grantor to remain legally unprotected from an endless variety of pitfalls which the grantee may become subject to.

This is especially true in light of the fact that no one can foresee the future, and accordingly, the Grantor cannot actually predict what injuries or damages the Grantee might experience during the use of the affirmative right.

When determining what clause should be included in any particular document, many parties tend to underestimate the potential for problems in the future. One party usually believes that since the relationship with the other party is friendly and productive at the moment that will continue in this fashion indefinitely. However, when drafting a legal document, one should try to imagine the "worst case scenario". Unfortunately, the Grantor and the Grantee will probably have different ideas as to what the "worst case scenario" is, and what clauses needed to be proposed to protect each party. In such cases, it is very easy for each party to propose clauses which are the opposites of each other. When

this occurs, the parties need to try to weigh the risks involved and to determine what clauses they believe to be “absolute necessities”.

Calli goes on to recommend that informed grantors should prefer to leave out a grantee held harmless clause, if it is possible to get the grantee to agree to this. Having both grantor and grantee held harmless clauses in the deed creates uncertainty over where the liability falls in the event either party suffers a loss. Determining this liability under uncertain conditions may lead to litigation.

In general, the more activities that are permitted under an affirmative right, or the more affirmative rights included in the agreement, the greater the risk that an event will occur that calls liability into question. While the risk increases with broadening affirmative rights, the costs of liability of a particular incident, in the absence of a grantor held harmless clause, remain constant. Calli recommends that landowners contemplate the costs of the “worst case scenario” and insist that part of the compensation by the grantee to the grantor for granting affirmative rights is the inclusion of a grantor held harmless clause.

## CHAPTER SIX

### SUMMARY AND CONCLUSIONS

This study has provided a significant advance in understanding forestland easements. Though this study was designed to be descriptive, it is at least equally exploratory in that very little information has been documented about forestland easements in the past. Thus the information contained in the results can be useful in shaping future studies. If this study is a starting point for future empirical research on forestland easements, then a useful way to conclude it is by summarizing the things the study accomplished and stating conclusions that are evident from the results.

#### SUMMARY

##### Fulfilling The Study Purposes

The goal of this study was to describe forestland easements in the Northern Forest Region of New York and to develop an understanding of landowner behavior in considering a forestland easement grant. With this broad goal in mind, three specific purposes were identified in Chapter One. The rest of Chapter One was dedicated to explaining the physical, economic, and land use environment of the Northern Forest Region of New York State as a reference for the context of this study.

The first study purpose was to categorize and describe the existing types of forestland easements. Necessary parts of fulfilling this purpose included an inventory of all the forestland easements in the study area and a description of the contents of the deeds to these forestland easements. Chapter Three explained the procedures used in the

inventory and description of Forestland Easements. The results of the inventory and description of forestland easements deed contents and are presented in Chapter Four (Deed Information). In all, 79 forestland easements were identified. Fifty of these forestland easements were granted as donations and the remaining 29 were granted as sales. Notable elements of the forestland easement deeds included restrictions on development, public recreation rights, various land management standards, and reserved rights for development and timber production. Further discussion and descriptions of the forestland easements were presented in Chapter Five (Forestland Easement Descriptions)

The second study purpose was to investigate and describe the opportunities for forestland owners to grant forestland easements in the study area. Necessary parts of fulfilling this purpose included a description of the grantees of forestland easements and information about properties and deed content that are accepted in sales and donation. The grantees of forestland easements in the study area are identified in Chapter Four (Deed Information). Several aspects of the study results and discussion contribute to describing donations and sales opportunities. The contents of existing easements (Deed Information, Chapter Four) show the conditions that grantees have accepted in forestland easements. The results of interviews with donors and sellers (Chapter Four) give some insight into landowner experiences in negotiating easement terms with grantees. Grantees for donated forestland easements have limited funds for administering the agreements, and so must be selective in the forestland easements they accept. Furthermore, they may require a cash endowment along with the donation to defray administration costs. The discussion of funding sources for forestland easement

purchases (Chapter One) explains a key limitation to opportunities for forestland easement sales. The section on forestland easement sales information (Chapter Four) demonstrates the types of properties the State of New York targets in purchasing forestland easements and further delineates the opportunities for forestland easements sales in the region.

The third study purpose was to describe forest landowner behavior in evaluating a forestland easement grant. This purpose required an examination of economic aspects of forestland easement grants and recommendations for landowners to use in evaluating and designing forestland easements. Landowner behavior and economic aspects of forestland easement grants are introduced in Chapter One. This introduction is built on with a discussion of results of grantor interviews in Chapter Five (The Forestland Easement Decision Process). Economic aspects of forestland easement grants are revisited in Chapter Five with a section on property rights and valuation. Two sections provide recommendations for landowners who are contemplating forestland easement grants (Recommendations For Improved Landowner Decision Making, Recommendations To Grantors For Forestland Easement Deeds Content; Chapter Five).

This study begins to fill the information void on forestland easements that exists in the absence of comparable previous studies of forestland easements. The descriptions of existing forestland easements in the Northern Forest Region can serve as a model for approaching descriptions of forestland easements and other types of conservation easements in different parts of the country. The preliminary understanding of landowner behavior in granting forestland easements coming from this study raises as many

questions as it answers, and can serve as a point of departure for future research into landowner decision making. In addition to fulfilling the purposes of this study, the information and insight of this research leads to several conclusions about forestland easements. These conclusions are presented in the following section.



## CONCLUSIONS

### **Forestland Easement Differ**

There is considerable variation within the population of forestland easements in the Northern Forest Region of New York. The deeds to these forestland easements prove this point. Forestland easements may be granted through sales or donations. Both these types of grants are found in this region. Aside from the variation in the type of grant, this study identified 155 variables in the forestland easement deeds. In addition to the variations in the legal agreements that compose the forestland easements, each encumbered property is different from the next. This suggests that a landowner considering the sale or donation of a forestland easement must carefully tailor the agreement if he/she expects the results to achieve his/her goals.

### **Forestland Easements Deeds for Descriptions**

The distinction between conservation easements and forestland easements as a subset of this larger group was made at the beginning of this study. The considerable variation among even this subset requires further description to provide a meaningful understanding of how these forestland easements affect the landscape. A section of Chapter Five (Forestland Easement Descriptions) gave a complete description of forestland easements in the region. In general, it is desirable to state both the number of properties and number of acres encumbered by forestland easements. With these two variables as a reference, descriptions can then state how many acres and properties are encumbered by any of the restrictions, affirmative rights, or other provisions that are of interest. Thus knowing how many acres and properties are encumbered by a restriction

preventing all timber harvesting conveys useful information. The only descriptions of forestland easements encountered prior to this study simply state how many acres and properties are encumbered by the larger population of conservation easements. Few noted any detail other than that development rights are extinguished by these forestland easements. All descriptions failed to qualify development restrictions by acknowledging the presence of reserved development rights in the forestland easement agreements. To convey useful information about forestland easements, descriptions should include details about how the forestland easement changes or constrains the land use in ways different from fee simple ownership.

### **Grantees Play Large Role in the Landowner Decision Making Process**

Most forestland easement grantors, particularly donors, received much of their information from the eventual grantee. This in itself can be a positive thing, as the high reported level of grantor satisfaction with the forestland easements indicates. Alternative sources of information, especially those that critically evaluate forestland easement content and alternatives, are more difficult to find than promotional information on forestland easements. Forest landowners could benefit from advice and evaluation by tax advisors, appraisers, and foresters earlier in the decision making process. Those who donate or sell a forestland easement could gain greater satisfaction as a result. Acceptable agreements benefit them, but optimal agreements should naturally be the preference of informed landowners.

### **Forestland Easements as Plans**

Forestland easement deeds can be viewed as plans that prevents future uses and changes in the property that would impair the grantor's and grantee's common goal of ensuring the property will remain as open space. Restrictions serve to constrain the use of the property in ways that ensure natural processes will be the dominant force of change over time. Some deeds serve to affect immediate changes that are then carried out within the context of the land as open space. This is the case when affirmative rights allow use of the property for public recreation. In the broadest context, the forestland easement deeds states the limits of allowable changes to the land by the landowner, and may also dictate some of the new uses. For many landowners, this plan simply formalizes their intentions for the property and extends these intentions beyond their tenure into perpetuity.

### **Some Forestland Easement Deeds Could Be Better from the Grantor's Perspective**

Within the context of the forestland easement deed as a plan for the property, the grantor's goal in devising the deed should be to guarantee that the common goal is ensured, while at the same time allowing all uses necessary for him/her to achieve their personal goals in owning the property. With this in mind, a few guidelines for forestland easement content can help to protect the grantor's interest. If affirmative rights are granted, the landowner should require a grantor held harmless clause and resist including a grantee held harmless clause. Ambiguous or poorly defined rights that are unrelated to any aspect of land protection should be omitted. Clearly defined rights avoid the problem of embedding future conflicts into the forestland easement deeds. These

conflicts arise when an issue requiring interpretation of poorly defined rights and restrictions comes about. Grantors should refuse to consent to grantee approval of activities that are commonly associated with open space, such as timber harvesting. Inserting references to guidelines that may change unpredictably over time is also a bad idea.

Embedded problems in deeds may detract from future enjoyment of the property by the grantors or their heirs. These problems may also cause difficulty or loss of value in future sales of the property to informed buyers.

### **Prices of Forestland Easements and Fee Title to Forestland Are Similar**

The weighted average price of forestland easements purchased by New York State, in 1995 terms (adjusted for inflation), is \$216.87 per acre. The weighted average price per acre for these fee acquisitions from 1986 through 1989 is \$238.88, in 1995 terms. Comparing these two prices, the forestland easements sold for 91% of what the fee title did on roughly comparable properties. One of the often publicized advantages of conservation easements is the lower price of acquisition. This advantage is greatly overstated for forestland easements in the Northern Forest Region of New York.

### **Net Public Benefits from Purchased Forestland Easements are Questionable**

The focus of this study has been management by individual landowners, rather than the broader question of public policy. Nevertheless, the results of this study provide sufficient information to raise public policy questions. The group of forestland easements purchased by the State of New York in the Adirondacks may provide less in public benefits than they are worth. The landowner's who sold these forestland easements, for

prices that averaged 91% of what New York State paid for comparable land in fee, clearly benefited. Three public benefits from these forestland easements have been widely promoted. These benefits are open space protection, public recreation opportunities, and keeping the land in timber production. The forestland easements clearly provide these benefits, in various combinations. Would these benefits be available in the absence of the forestland easements?

Open space protection for most of the encumbered properties is already accomplished through zoning. The question is more one of the degree of open space providing the optimal level of public benefits. The weakest data measurement in this study is the number of development rights extinguished by purchased forestland easements in the Adirondacks. The estimates used represent the highest conceivable number of development rights for the property. The constraints imposed by both the terrain and regulatory concerns lower the number of development rights in question to numbers that are difficult to quantify. One telling piece of evidence on the value of the development rights is the assertion of many forestland easement sellers that they would be using the land in the same manner as they are now if the property were unencumbered.

Wildland public recreation opportunities on encumbered properties are a public benefit only if there is an unmet demand for them. With over 2.5 million acres of public land in the Adirondacks open to public recreation, and more in the surrounding region, the marginal benefits of opening new lands are less than their cost. Much of the forest preserve in the Adirondacks is under-used in terms of its recreational potential. Moreover, unmet demands for public recreational opportunities in this region have never

been quantified. The cost of administering public recreation on lands encumbered by forestland easements, should the State of New York actually choose to bear these costs, is nearly as high as the costs on forest preserve lands. At a time when the State of New York fails to accept the burden of properly administering the forest preserve, adding new lands to the public domain is a very poor stewardship.

Perhaps the clearest public value of encumbering lands with forestland easements in the Adirondack Park, rather than purchasing them outright, is that these lands may be kept in timber production. An outright purchase of the land by New York State would require classifying the land as forest preserve. Yet two of the purchased forestland easements prohibit timber harvesting. The most important force driving lands out of timber production in the region is high property taxes. High property taxes can result in conversions to other, less desirable land uses. The tax burden is shared by New York State when a forestland easement is purchased. The forestland easement purchase, at prices averaging 91% of the fee value of comparable properties, is a subsidy to the landowners. Rather than use a subsidy that is meant to correct the result of other public policies, an alternative is to change the original policies causing the problem. The quickest route to the package of real public benefits that comes with a forestland easement in this region is to remove the costly burden of high property taxes. In this way, public policy goals could be achieved without the higher costs of promoting and administering forestland easements. By targeting forest landowners throughout the region, the question of favoritism that arises from doling out the limited funds for forestland easement purchases is avoided.

### **Financial and Non-financial Values Allow Strategic Forestland Easement Use**

Most forestland easement grantors stated that, in the absence of the forestland easement, they would be using the property in the same manner as they are now. This implies that any market values they surrendered by granting the forestland easement were exceeded by non-financial values they placed on the land in its encumbered state. In effect, donors surrendered rights that would go unexercised. In exchange, donors could take advantage of financial incentives from potential income tax deductions and gain non-financial satisfaction from knowing their plan for the property is binding in perpetuity. Avoiding the potential drawbacks of forestland easements is a case of careful design of the forestland easement agreement that will leave the grantor's use and enjoyment in the future, including anticipated and unanticipated events, unimpaired. Landowners who want to donate forestland easements should go through the decision making process and include time as one of the variables in the evaluation. If their enjoyment of the property is the same with or without the forestland easement in place, and the grantee is willing, they can make the donation in a year that provides them with optimal financial benefits from income tax deductions or possibly when they are more certain of their estate planning strategies.

Most forestland easement donors intended to leave their property relatively undeveloped. This means foregoing some of the possible financial gains from their property. For other landowners who are concerned both with financial gain and protecting open space, a forestland easement donation may still be compatible with their

goals. Evaluation of the market value for the development rights to the property can result in the knowledge that it is possible to retain some or all of the properties development value, while still keeping it as open space.



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## APPENDIX A

## CONSERVATION EASEMENT INFORMATION

**Selected List of Sources of Information Publicizing Conservation Easements**

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## APPENDIX B

## EASEMENT DONOR PHONE INTERVIEW MATERIALS

Sample Letter Sent To Easement Donors

## Department of Forestry

College of Forestry and Wildlife Resources  
Blacksburg, Virginia 24061-0324 USA  
(540) 231-5483 Fax: (540) 231-3330 or (540) 231-3698

Date

Grantor's Name  
Grantor's Address

Dear M. (Grantor's Name):

I am a research assistant in forest management and economics here at Virginia Tech. I am conducting a USDA Forest Service sponsored study of conservation easements on forestlands in New York State for my Ph.D. dissertation. My records show that you donated a conservation easement on some of your forestland. I am attempting to interview everyone who has sold or donated an easement and so I would like to ask you some questions. This letter is just to let you know that I will be phoning you sometime in the next two weeks.

Participation in the interview is voluntary and all information that comes from it is confidential. The results reported from this study will not be attributed directly to specific individuals or organizations that were interviewed. Your participation in this interview could greatly assist other forest landowners who are considering the sale or donation of a conservation easement. If wish you, I will send you a copy of the study summary.

I look forward to speaking with you.

Sincerely,

Steven Bick  
Research Assistant



**Easement Donor Phone Interview Questions**

1. What are your top three reasons for owning forestland? How would you rank them in order of importance?
  
2. If you had not donated the easement, would you be using your land any differently than you are now?
  
3. What year did you originally acquire the land?
  - a) Was it purchased, or a gift, or an inheritance?
  
  - b) Was this land in the family prior to your ownership?
    1. If yes, for how long?
  
4. Were you thinking of selling your land before you decided to donate the easement?
  
5. Do you still own all of the parcel you donated the easement on?
  - a) If not, what did you do with it?
  
  - b) Did you anticipate a future sale of the property when you were designing the terms of the easement?
    1. If yes, in what way?
  
6. What do you consider the primary reason why you donated the easement?
  - a) Were there other reasons (secondary or not as important) for donating the easement? What were they?
  
7. How did you first become familiar with conservation easements?
  - a) How did you first begin to investigate the donation of an easement?

8. Did you or the grantee first propose specific rights and restrictions to be included in the easements?

a) How close was the first offer to the final agreement?

9. Did you retain any development rights to the property?

a) If so, how did you determine which development rights to retain?

10. For third party grantee situations, only - Did you make the donation to a third party environmental organization with the knowledge that this party would then transfer it to New York State?

11. I am going to ask you about several of the rights and terms in the easement(s) you donated. I would like to know how important each of these things was to you in reaching an agreement. Please select one of the following responses that best describes how important each thing is to you:

Not at all important

Somewhat important

Important

Very important

Extremely important

Name specific items from the deeds of each particular grantor.

a) Of the things that I mentioned, were there any that were difficult to negotiate?

1. If so, why?

12. Are there any other rights, terms, or conditions of the easement that I have not mentioned, that you believe were important in negotiating your donation(s)?

a) If so, what were they?

b) If so, using the same ratings as before:

Not at all important

Somewhat important

Important

Very important

Extremely important

how would you rate them in terms of their importance to you?

13. In hind sight, did you give up anything you really would have preferred not to?

a) If so, what?

14. Whose lawyer drew up the easement deed?

15. Aside from a lawyer, did you hire any other outside professionals, such as a forester, wildlife biologist, financial analyst, or landscape architect, to advise you on devising the conservation easement agreement?

a) If so, what was their profession or expertise?

16. What made you choose \_\_\_\_\_ as the grantee for this donation?

17. Did you consider donating the easement to any organization other than \_\_\_\_\_?

18. Did you take an income tax deduction, based on the value of the donation?

a) If so, how did you first learn that the donation was tax deductible?

b) If so, did you estimate the potential income tax benefits prior to making the donation?

c) Did you have the value of the conservation easement appraised?

19. Did the donation enter into your estate planning decisions?

20. This question has two options; one or the other applies to each grantor

For those who donated to New York State within the Adirondack Park - Did you know in advance that you would get a property tax break because the State would pay taxes on their interest in the property?

a) If so, did you have an estimate before the donation of how much lower your property taxes would be?

For all others - Did you discuss the property tax implication of the donation with your local assessor prior to making the donation?

a) If so, what information did you come away with?

21. After you granted the easement, did you apply for a reduction in the assessed value of your land for property tax purposes?

a) If so, was your application successful?

b) If successful, was the reduction as much as you thought it would be?

22. In your recollection of reaching the final agreement, was the process relatively fast and forthright, a long tedious and protracted negotiation, or somewhere in between?

23. Have you amended the easement since it was granted?

a) If so, when and why?

b) If so, in what way?

24. Are there amendments you would like to make to the easement agreement that you have not?

a) If so, how likely is it that the grantee would agree to each of these amendments?

25. How much time per year (staff time, paid consultant time, or personal time) goes into management for compliance with the easement agreement?

a) Specifically, what is this time spent doing?

Now I am going to ask you several questions about your satisfaction with different aspects of the conservation easement. Please answer each with one of the following choices:

Very satisfied

Satisfied

Somewhat satisfied

Somewhat dissatisfied

Dissatisfied

Very dissatisfied

26. Since the easement was created, how would you rate your satisfaction with the grantee in their enforcement of the easement, including stipulated compliance inspections?

27. Ask only when applicable - Since the easement was created, how would you rate your satisfaction with the grantee's exercise of any affirmative rights to the property, including things like on-site recreation, scientific and educational uses?

28. Overall, how would you rate your experience in working with the grantee on this easement, from the time you first began talking with them about it, right up to now?

29. Can you name any specific management concerns you have in which you would like the grantee's performance to improve?

30. If you were doing to donate another conservation easement on forestland, would you donate to \_\_\_\_\_ again?

a) What changes would you make, if any?

31. Do you own any other forestland that is not encumbered by an easement (inside or outside the study area)?

a) If so, would you donate an easement on it?

b) Would you change the terms agreement from those that you have used previously?

1) If so, in what ways?

32. If you wanted to buy more forestland, would you buy forestland encumbered by an easement similar to the one on your forestland?

33. Have you donated conservation easement on forestland in other states?

a) If so, where and when?

34. This section is for private nonindustrial landowner - Now I am going to ask you a few demographic questions:

a) How old are you?

b) Were you retired at the time you donated the easement?

c) What is your educational background?

d) What was your income level to the nearest \$10,000 at the time of easement donation?

35. Are there any other aspects of donating conservation easements on forestland that you think I should be looking into?

39. Do you have any specific suggestions for individuals or organizations who are considering the sale of a conservation easement on their forestland?

## APPENDIX C

## EASEMENT SELLER PHONE INTERVIEW MATERIALS

Sample Letter Sent To Easement Sellers

## Department of Forestry

College of Forestry and Wildlife Resources  
Blacksburg, Virginia 24061-0324 USA  
(540) 231-5483 Fax: (540) 231-3330 or (540) 231-3698

Date

Grantor's Name  
Grantor's Address

Dear M. (Grantor's Name):

I am a research assistant in forest management and economics here at Virginia Tech. I am conducting a USDA Forest Service sponsored study of conservation easements on forestlands in New York State for my Ph.D. dissertation. My records show that you sold and donated conservation easements on some of our forestland in New York. I am attempting to interview everyone who has sold or donated an easement and so I would like to ask you some questions. This letter is just to let you know that I will be phoning you sometime in the next two weeks.

Participation in the interview is voluntary and all information that comes from it is confidential. The results of the study will not be attributed directly to specific individuals or organizations that were interviewed. Your participation in this interview could greatly assist other forest landowners who are considering the sale or donation of a conservation easement. If wish you, I will send you a copy of the study summary.

I look forward to speaking with you.

Sincerely,

Steven Bick  
Research Assistant



**Easement Seller Phone Interview Questions**

1. What are your top three reasons for owning forestland? How would you rank them in order of importance?
2. If you had not sold the easement, would you be using your land any differently than you are now?
3. What year did you originally acquire the land?
  - a) Was it purchased, or a gift, or an inheritance?
4. Were you thinking of selling your land before you decided to sell the easement?
5. Do you still own all of the parcel you sold the easement on?
  - a) If not, what did you do with it?
  - b) Did you anticipate a future sale of the property when you were designing the terms of the easement?
    1. If yes, in what way?
6. What do you consider the primary reason why you sold the conservation easement?
  - a) Were there other reasons (secondary or not as important) for selling the easement? What were they?
7. How did you first become familiar with conservation easements?
  - a) How did you first begin to investigate the sale of an easement?
8. Did you or the grantee propose the first offer of the easement?

- a) Did this offer include a price?
- b) Did this offer include a detailed description of the rights and restrictions?
- c) How close was the first offer of price to the final agreement?

(Ask them to use scale - Very close, Close, Different, Very Different)

- d) How close was the first offer's rights and restrictions to the final agreement?

(Ask them to use scale - Very close, Close, Different, Very Different)

9. Did you retain any development rights to the property?

- a) If so, what determined which development rights you retained?

10. For third party grantee situations, only - What were the advantages of using a third party in the easement sale?

11. I am going to ask you about several of the rights and terms in the easement(s) you donated. I would like to know how important each of these things was to you in reaching an agreement. Please select one of the following responses that best describes how important each thing is to you:

Not at all important

Somewhat important

Important

Very important

Extremely important

Name specific items from the deeds of each particular grantor.

- a) Of the things that I mentioned, were there any that were difficult to negotiate?

1. If so, why?

12. Are there any other rights, terms, or conditions of the easement that I have not mentioned, that you believe were important in negotiating your donation(s)?

a) If so, what were they?

b) If so, using the same ratings as before:

Not at all important

Somewhat important

Important

Very important

Extremely important

how would you rate them in terms of their importance to you?

13. In hind sight, did you give up anything you really would have preferred not to?

a) If so, what?

14. Whose lawyer drew up the easement deed?

15. Aside from a lawyer, did you hire any other outside professionals, such as a forester, wildlife biologist, financial analyst, or landscape architect, to advise you on devising the conservation easement agreement?

a) If so, what was their profession or expertise?

16. Ask Grantors within the Adirondack Park who sold to New York State - Did you know in advance you would get a property tax break?

a) If so, did you negotiate the proportion of the State's interest in the land for tax purposes as a part of the agreement?

b) If so, did you have an estimate in advance of how much lower your property taxes would be?

17. In your recollection of reaching the final agreement, was the process relatively fast and forthright, a long tedious and protracted negotiation, or somewhere in between?

18. How much negotiation was there over price? (Number of meetings, phone calls, offers, give and take, etc.)

19. Have you amended the easement since it was granted?

a) If so, when and why?

b) If so, in what way?

20. Are there amendments you would like to make to the easement agreement that you have not?

a) If so, how likely is it that the grantee would agree to each of these amendments?

21. How much time per year (staff time, paid consultant time, or personal time) goes into management for compliance with the easement agreement?

a) Specifically, what is this time spent doing?

Now I am going to ask you several questions about your satisfaction with different aspects of the conservation easement. Please answer each with one of the following choices:

Very satisfied

Satisfied

Somewhat satisfied

Somewhat dissatisfied

Dissatisfied

Very dissatisfied

22. Since the easement was created, how would you rate your satisfaction with the grantee in their enforcement of the easement, including stipulated compliance inspections?

23. Ask only when applicable - Since the easement was created, how would you rate your satisfaction with the grantee's exercise of any affirmative rights to the property, including things like on-site recreation, scientific and educational uses?

24. Overall, how would you rate your experience in working with the grantee on this easement, from the time you first began talking with them about it, right up to now?

25. Can you name any specific management concerns you have in which you would like the grantee's performance to improve?

26. If you were doing to sell another conservation easement on forestland, would you sell to \_\_\_\_\_ again?

a) What changes would you make, if any?

27. How about if you were going to donate a conservation easement on forestland, would you use \_\_\_\_\_ again as the grantee?

28. Do you own any other forestland that is not encumbered by an easement (inside or outside the study area)?

a) If so, would you sell an easement on it?

b) Would you change the terms agreement from those that you have used previously?

1) If so, in what ways?

29. If you wanted to buy more forestland, would you buy forestland encumbered by an easement similar to the one on your forestland?

30. Have you sold or donated conservation easement on forestland in other states?

a) If so, where and when?

31. This section is for private nonindustrial landowner - Now I am going to ask you a few demographic questions:

a) How old are you?

b) Were you retired at the time you donated the easement?

c) What is your educational background?

d) What was your income level to the nearest \$10,000 at the time of easement donation?

32. Are there any other aspects of selling or donating conservation easements on forestland that you think I should be looking into?

33. Do you have any specific suggestions for individuals or organizations who are considering the sale of a conservation easement on their forestland?

**APPENDIX D**

**A DEED TO A DONATED FORESTLAND EASEMENT**

CONSERVATION EASEMENT

THIS INDENTURE, made this \_\_\_\_\_ day of \_\_\_\_\_ 1991,

W I T N E S S E T H

residing at

WHEREAS,

\_\_\_\_\_ hereinafter called the Grantor, is the owner in fee simple of certain real property, hereinafter called the "Protected Property," which has ecological, scientific, educational and aesthetic value in its present state as a forested area, which property is described as follows:

see Schedule A attached

WHEREAS, the ADIRONDACK LAND TRUST, INC., hereinafter called the Grantee, is a non-profit corporation within the meaning of Article 49, Title 3 of the Environmental Conservation Law of New York State (the "Conservation Law") and is qualified to receive conservation easements within the meaning of Section 170(h)(3@ of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Protected Property is characterized by scenically and environmentally sensitive land, including productive forest land of exceptional character, and land which provides significant habitat for flora and fauna; and

WHEREAS, the conservation of the Protected Property will yield significant benefits to the public by preserving forest land open scenic enjoyment of the public; space for the scenic enjoyment of the public;

WHEREAS, the Protected Property is located along Trout Pond Road, a public thoroughfare;

WHEREAS, the Protected Property is within the Adirondack Park and conservation of the Protected Property is consistent with the

intent of the Adirondack Park Agency Act, (New York State Executive Law, Article 27) to 11 ... insure optimum overall conservation, protection, preservation, development and use of the unique scenic and aesthetic, recreational, open space, historical, ecological and natural resources of the Adirondack Park";

WHEREAS, the Protected Property is zoned for "resource management" under the Adirondack Park Land Use and Development Plan (New York State Executive Law 805 (3) [g] [1]), which "...are those lands where the need to protect, manage and enhance forest, agricultural, recreational and open space resources is of paramount importance because of overriding natural resource and public consideration"; and

WHEREAS, the Legislature of the State of New York has declared the public policy of the State to be conservation, preservation and protection of its environmental assets and natural and man-made resources, and in furtherance thereof, has enacted Article 49, Title 3, of the Environmental Conservation Law to provide for and encourage the limitation and restriction of development, and use of real property through conservation easements; and

WHEREAS, the Grantor and Grantee recognize the natural, scenic, aesthetic, and special character of the Protected Property and region and have the common purpose of conserving the natural and scenic values of the Protected Property by the conveyance to the Grantee of a Conservation Easement on, over and across the Protected Property which shall conserve the natural and scenic values of the Protected Property, and prevent the use or development of that property for any purpose or in any manner which would conflict with the maintenance of the Protected Property in its current natural, scenic, productive and open condition for this generation and future generations; and

WHEREAS, Grantor and Grantee have the common purpose of conserving and protecting in perpetuity the Protected Property as forest land open space "for the scenic enjoyment of the general public", as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(iii), as amended and in regulations promulgated thereunder; and

WHEREAS, for the purposes of this document, forest management shall include the right to clear for reforestation; to plant trees in non-forested areas; to reforest, plant, grow and harvest forest products and other vegetation; to clear or restore forest cover damaged or destroyed by fire, water or natural disaster; to selectively prune or trim trace, foliage and other vegetation; to harvest forest products with mechanical equipment and/or with domestic animals; and maintain fields, meadows and landing yards; and



WHEREAS, for the purposes of this document, timber harvest shall include, but not be limited to, the removal of forest products such as trees, logs, poles, posts, pulpwood, firewood, chips, seeds, pinestraw, stumps, seed cones ' shrubs, lesser vegetation, and all sugar maple products; and

WHEREAS, "educational and aesthetic value", "natural, scenic and open condition" and "natural values" as used herein shall, without limiting the generality of the terms, mean the condition of the Protected Property at the time of this grant evidenced by reports', photographs, maps and scientific documentation possessed (at present or in the future) by the Grantee and which the Grantee shall make available on any reasonable request to the Grantor, Grantor's Successors and assigns, and which more particularly may include, but are not limited to, the following described items:

a) the appropriate survey maps from the United States Geological Survey, showing the property lines and other contiguous or nearby protected areas;

b) a map of the area drawn to scale showing all existing manmade improvements or incursions (such as roads, buildings, fences or gravel pits), forest cover types, land use history (including present uses' and recent past disturbances) , and distinct natural features;

c) an aerial photograph of the property at an appropriate scale taken as close as possible to the date the donation is made;

d) on-site photographs taken at appropriate locations on the property; and

a) an easement documentation report including, among other things, an owner acknowledgment of condition, background information, legal information., ecological features information, and land-use and man-made features information.

NOW, THEREFORE, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained and as an absolute and unconditional gift, does hereby give, grant, bargain, sell and convey unto the Grantee, its successors and assigns forever a Conservation Easement in perpetuity over the Protected Property consisting of the following:

#### 1.0 RIGHTS GRANTED TO GRANTEE:

1.1 The right of visual access to and view of the Protected Property in its natural, scenic and open condition.

1.2 The right of the Grantee, in a reasonable manner and at reasonable times, to enforce by proceedings at law or in equity the covenants hereinafter set forth, including but not limited to the right to require the restoration of the Protected Property to the condition at the time of this grant. The Grantee, or its successors or assigns, does not waive or forfeit the right to take action as may be necessary to insure compliance with the cove covenants and purposes of this grant by any prior failure to act. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, floods, storm or the unauthorized wrongful acts of third persons. In the event that the Grantee becomes aware of an event or circumstance of noncompliance with the terms and conditions herein set forth, the Grantee shall give notice to the Grantor, his successors or assigns, at his last known post office address, of such event or circumstance of non-compliance via certified mail, return receipt requested, and request corrective action sufficient to abate such event or circumstance of noncompliance and restore the Protected Property to its previous condition. Failure by the Grantor to cause discontinuance abatement or such other corrective action as may be requested by Grantee within thirty (30) days after receipt of such notice shall entitle Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this agreement; to require the restoration of the property to its prior condition; to enjoin such non-compliance by ex parte temporary or permanent injunction in a court of competent jurisdiction to enforce the terms of this agreement; and/or to recover any damages arising from such noncompliance. Such damages, when recovered, may be applied by the Grantee, in its discretion, to corrective action on the Protected Property, if necessary. If such court determines that the Grantor has failed to comply with this agreement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration or court costs and reasonable attorneys fees, in addition to any other payments ordered by such court. Grantor hereby waives any defense of laches with respect to any delay by the Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Easement.

1.3 Inspection: The right to enter the Protected Property at all reasonable times for the purposes of (a) inspecting the Protected Property to determine if the Grantor, or his successors or assigns, is complying with the covenants and purposes of this grant; (b) enforcing the terms of this Conservation Easement; (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof; and (d) observing and studying nature and making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by the Grantor, his successors and assigns.

## 2.0 COVENANTS

And in furtherance of the foregoing affirmative rights, the Grantor makes the following covenants, on behalf of himself, his successors and assigns, which covenants shall run with and bind the Protected Property in perpetuity:

The following restrictions are applicable to the Protected Property:

2.1 There shall be no construction or maintenance of buildings, camping accommodations or mobile homes, billboards or other structures, except for the following:

a) with sixty (60) days notice to Grantee, Grantor may construct and maintain two residential structures on the Protected Property, including hunting camps or other residences, together with the necessary driveways, utilities and appurtenances normally associated with a residence, provided that such structures are not located within 100 feet of wetlands, watercourses or public roads

b) such additional non-residential structures as are necessary for forest management uses of the Protected Property consistent with the purposes of this Conservation Easement; and

c) such permanent or temporary structures as are necessary or appropriate for roads and trails, such as bridges, culverts, gates and fences.

2.2 There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any change in the topography of the land in any manner excepting the maintenance and construction of forest management roads and trails and as necessary for the structures provided herein, without prior written consent of the Grantee.

2.3 Chemicals: There shall be no use of pesticides, insecticides, fungicides, rodenticides and herbicides, except as is necessary for agricultural and/or forest management purposes consistent with this conservation easement, provided that such use complies with all applicable laws.

2.4 Waste Disposal: There shall be no dumping or storage of ashes, trash, garbage, or hazardous waste, and no changing of the topography through the placing of soil or other

substance or material such as land fill or dredging spoils, except that slash from timber harvest operations may be left on the Protected Property.

2.5 Water courses: There shall be no manipulation or alteration of natural water courses, wetlands or other water bodies. In the event that water courses, wetlands or other water bodies are altered by natural causes, for which redemption is logical (e.g. beaver flooding), the Grantor may return the property to its original condition with prior written consent of the Grantee.

2.6 Changes in Land Use: Prior to undertaking any changes in the use of the Protected Property the Grantor shall consult with the Grantee regarding the proposed changes to determine the effect of such changes on the natural, productive and scenic values being protected on the property. Grantee shall have the right to approve such changes in use, such approval not to be unreasonably withhold.

2.7 Forest Management: Grantor may manage, cut or harvest timber for commercial purposes, provided that such management, cutting or harvesting is in accordance with sound conservation and generally accepted forest management practices, follows sustainable, yield principles, and complies with the Society of American Foresters' existing Timber Harvesting Guidelines for New York or its equivalent. In the event that the Protected Property is not enrolled in a forest use taxation program, such as NYS Real Property Tax Law Section 480-A its successor or equivalent that

considers the protection of roadsides, streams and wetlands, there shall be no removal or harvesting of timber within 50 feet of public roads, streams or other water courses, or wetlands except for the removal of dead, down and diseased trees. If the Protected Property is enrolled in such a program, Grantor agrees to submit a copy of approved enrollment documents to the Grantee for its files.

### 3.0 GRANTOR'S RESERVED RIGHTS:

NEVERTHELESS, and notwithstanding any of the foregoing provisions to the contrary and as expressly limited herein, the

Grantor retains the right to perform any act not specifically prohibited or restricted by this conservation easement, including, without limitation, the right of exclusive use, possession and enjoyment of the Protected Property, the right to sell, transfer, lease, mortgage or otherwise encumber the Protected Property, as owner, subject to the restrictions and covenants set forth herein.

#### 4.0 PUBLIC USE

Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Conservation Easement.

#### 5.0 TAXES AND ASSESSMENTS:

The Grantor, for himself and on behalf of his successors and assigns, agrees to pay any real estate taxes or other assessments levied by competent authorities on the Protected Property and to relieve the Grantee from any duty or responsibility to maintain the Protected Property. If the Grantor or his successors and assignees becomes delinquent in payment of said taxes or assessments, such that a lien against the land is created, the Grantee, at its option, shall have the right to purchase and acquire the Grantor's or his successor's or assign's, interest in said Protected Property by paying funds to discharge said lien or delinquent taxes or assessments provided that the oldest unpaid tax is more than one year past due, or to take other actions as may be necessary to protect the Grantee's interest in the Protected Property and to assure the continued enforceability of this Conservation Easement.

#### 6.0 TITLE:

The Grantor agrees that the terms, conditions, restrictions and purposes of this grant will be inserted by him in any subsequent deed, lease or any other legal instrument by which the Grantor divests himself of all or part of either the fee simple title to or his possessory interest in the Protected Property.

#### 7.0 NOTICES:

Any notices required in this Conservation Easement shall be 7.0 sent by registered or certified mail to the following address or such address as may be hereafter specified by notice in writing:

Grantor: \_\_\_\_\_

Grantee: Adirondack Land Trust, inc., Post office Box 65, Keene Valley, New York 12943.

#### 8.0 INVALIDATION:

If any provision of this conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or

circumstances other than those as to which it is found to be invalid shall not be affected thereby.

#### 9.0 BINDING EFFECT:

The covenants agreed to and the terms, conditions, restrictions and purposes imposed with this grant shall binding upon the Grantor but also his lessees, agents, personal representatives, successors and assigns, and all other successors to him in interest and shall continue as a servitude running in perpetuity with the Protected Property.

#### 10.0 FEE OWNERSHIP:

And the Grantor does further covenant and represent that the Grantor is seized of the Protected Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement, and that the Protected Property is free and clear of any and all encumbrances, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement.

#### 11.0 ASSIGNMENT:

The parties hereto recognize and agree that the benefits of this easement are in gross and assignable, and the Grantee hereby covenants and agrees, that in the event it transfers or assigns the easement it holds under this indenture, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h) (3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, and which is organized and operated primarily for one of the conservation purposes specified in Section 170(h) (4)A of the Internal Revenue Code, and further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance.

#### 12.0 CONSERVATION EASEMENT:

For purposes of compliance with Treasury Regulations Section 1. 170A-14 (g) (6) (ii) , the Grantor hereby agrees that at the time of the conveyance of this conservation easement to the Grantee, the donation of this conservation easement by the Grantor given rise to a real property right, immediately vested in the Grantee, with a fair market value of said conservation easement as of the date of contribution that is at least equal to the proportionate value that this conservation easement at the time of the contribution bears to the fair market value of the property as a whole at that time.

#### 13.0

That proportionate value of the Grantee's property rights 'shall remain constant. When a change in conditions which makes impossible or impractical any continued

protection of the Protected Property for conservation purposes, and the restrictions contained herein are extinguished by judicial proceeding, the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement. The Grantee shall use its share of the proceeds in a manner consistent with the Conservation purposes set forth herein or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," the preservation of "land areas for outdoor recreation, by, or the education of, the general public", and the preservation of "open space (including farmland and forestland where such preservation is for the scenic enjoyment of the general public, or pursuant to a clearly delineated Federal, State, or local government conservation policy)", as these phrases are used in and defined under P.L. 96541, 26 USC.170(h)(4)(A), as amended and in regulations promulgated thereunder.

Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Grantee's and Grantor's interests as specified above; all expenses incurred by the Grantor and the Grantee in this action shall be paid out of the recovered proceeds.

#### 14.0 TRANSFER OF RIGHTS:

This conservation easement is expressly intended to preclude the Grantor, his heirs, successors or assigns from transferring any right, including development rights, wh bered or extinguished by this conservation easement to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise, except that development rights as provided in Section 2.1 herein may be transferred to any other lands, if such transfer is allowable by law.

TO HAVE AND TO HOLD the said Conservation Basement unto the said Grantee its successors and assigns forever.

IN WITNESS Whereof, the Grantor has executed and sealed this document the day and year first above written.

Witness:

Grantor:

\_\_\_\_\_

\_\_\_\_\_

Witness:

Grantee:

\_\_\_\_\_

\_\_\_\_\_

ADIRONDACK LAND TRUST,

INC.

#### SCHEDULE A

-ALL THAT CERTAIN PIECE OR PARCEL OF LAND SitU&tS, lying and being in the To of Ch st@erfi-el , County o@Esaex and State of New York, and more particularly described as follows:-

-ALL THAT LAND lying in Great Lot 86 and 87, Maula's Patent, each of said lots containing 200 acres of land, more or less, fora total acreage of 400 acres.

"BEING the same property acquired by the grantor from the Orrin Kum-ney Estate, about 1945.



"EXCEPTING 50 acres of land which was heretofore conveyed to Riggs and further excepting 87 acres which was conveyed to Dintler.

As of the date of execution of this Deed, the Grantor is the owner of 263 acres, more or less, lying partly in Lots 86 and 87.

"BEING the same premises described in a deed dated September 16th, 1965, given by Roy Bashaw to Leo Mero, deed was duly recorded in the Essex County Clerk's September 17, 1965 in Book 436 of Deeds at page 12.

"BEING the same property described in a September 22, 1965, given by Leo Mero to Peter Paine, deed was duly recorded in the Essex County Clerk's March 6, 1968 in Book 463 of Deeds at page 59."

EXCEPTING AND RESERVING all mining rights heretofore conveyed to the Peru Iron Or\* Company, its successor and assigns.

Subject to an easement granted to American Telephone Company recorded at Book 197 of Deeds, page 311.

Subject to an easement heretofore granted to New York State Electric and Gas and recorded in the Essex County Clerk's Office at Book 321 of Deeds, page 456.

BEING THE SAME PREMISES conveyed to Peter Paine, Jr. by Peter Paine by a certain deed dated December 22, 1970 and recorded in the Essex County Clerk's office on February 10, 1971 at Book 496 of Deeds, page 175.

SUBJECT TO AND TOGETHER WITH all right, title and interests conveyed by Peter Paine, Jr. to Sam Marcotte, Ken Benway, Roger Jaquish, Bill Murphy, Jack Cross, Arnold Provost, Spencer Hathaway, Gordon Young and conveyed by them to Peter Paine, Jr. by a certain boundary line agreement dated December 30th, 1991 and intended to be recorded simultaneously herewith.

BEING THE SAME PREMISES described in a deed to the Adirondack Land Trust, Inc. by Peter Paine, Jr. by a deed dated December 31st, 1991 and recorded immediately prior to this conveyance.

BEING THE SAME PREMISES described in a deed to the party of the first part by Adirondack Land Trust, Inc. by a deed dated December 31st, 1991 and recorded immediately prior to this conveyance.

Subject to an easement granted by Peter Pains, Jr. to the current owners of the property located to the east of the subject parcel, said easement being more particularly described in a certain indenture recorded on the same date as this conveyance.

subject to certain hunting rights reserved by Peter Pains, Jr. for and during his natural lifetime.

Subject to certain hunting rights previously granted by Peter Pains, Jr. to Sam Marcotte, Ken Benway, Roger Jaquish, Bill Murphy, Jack Cross, Arnold Provost, Spencer Hathaway, and Gordon Young, all of whom are members of the Trout Pond Trotters Association.

This conveyance is made subject to all other covenants, restrictions, conditions and easements of record.

**APPENDIX E****A DEED TO A SOLD FORESTLAND EASEMENT****CONSERVATION EASEMENT**

THIS INDENTURE, made this 31st day of October, 1991 between FRANKLIN FALLS TIMBER COMPANY, INC., a Delaware Corporation having its principal office at (P.O. Box 128), Lyme, New Hampshire 03768, said corporation being registered to do business in New York, GRANTOR, AND THE PEOPLE OF THE STATE OF NEW YORK, acting by the New York State Department of Environmental Conservation, 50 Wolf Road, Albany, Now York 12233, GRANTEE.

**WITNESSETH:**

WHEREAS, the GRANTOR is the owner of certain real property hereinafter more fully described in Schedule A attached hereto, and hereinafter referred to as the "PROTECTED PROPERTY"; and

WHEREAS, the Legislature of the State of Now York has declared the public policy of the State to be conservation, preservation and protection of its environmental assets and natural and manmade resources, and in furtherance thereof, has enacted Article 49, Title 3, of the Environmental Conservation Law to provide for and encourage the limitation and restriction of development, and use of real property through conservation easements; and

WHEREAS, the PROTECTED PROPERTY in its present natural condition has substantial and significant natural resource value by reason of the fact that it historically has been managed for silvicultural purposes and for the production of timber, and that it has not been subject to any extensive development or Exploitation, and its value will not be affected by the continued maintenance in their present condition of such structures., and facilities as presently exist; and

WHEREAS, in view of the foregoing and pursuant to the provisions of the aforementioned Article 49 of the Environmental Conservation Law, the GRANTEE has determined it to be desirable and beneficial and has requested the GRANTOR, for itself and its successors and assigns, to grant a CONSERVATION EASEMENT to the GRANTEE in order to limit the further development of the PROTECTED PROPERTY while permitting compatible use thereof:

NOW THEREFORE, the GRANTOR for and in consideration of \$\$1,622,000.00 lawful money of the United States, paid by the GRANTEE, receipt of which is hereby acknowledged, grants, convoys and releases to the GRANTEE and its successors and assigns forever for the benefit of the GRANTEE, an easement in perpetuity in, on, over, under and upon the PROTECTED PROPERTY consisting of entry, inspection and limited public recreational access and use, an hereinafter more fully described.

The GRANTOR, however, reserves to itself and its successors and assigns the rights hereinafter more fully set forth in the section captioned RESERVED RIGHTS along with

all rights as fee owner including the right to use the property for all purposes not inconsistent with this Easement.

### AFFIRMATIVE RIGHTS

Those rights agreed to by the parties herein and running with the PROTECTED PROPERTY are more fully described as follows:

1. The GRANTOR grants to the GRANTEE and its successors and assigns the right to view the PROTECTED PROPERTY in its current state, including the right of public access to the PROTECTED PROPERTY for recreational purposes only, subject to the terms and conditions and reserved rights set forth herein. This right of Public recreational use includes the following

A. Access to and over the PROTECTED PROPERTY by bicycle or foot, including hiking, snowshoeing, cross-country skiing and/or horseback, the use of horses or other similar animals for riding or transportation of supplies is permitted.

B. Access to the PROTECTED PROPERTY by vehicle shall be limited to established roads for administrative purposes only to the GRANTEE.

C. Snowmobiles may use all existing roads which provide legal access to, or which cross, the property except those roads which are plowed by the GRANTOR and are being used for logging purposes. The GRANTEE is responsible for all necessary signs indicating trails open for public snowmobile use.

D. Canoes and other means of non-motorized access and travel streams or bodies of water crossing or situated on the PROTECTED PROPERTY.

E. Camping by the public is permitted and will be regulated in the same manner as on existing Forest Preserve land or in accordance with the Unit Management Plan as defined in Item 6a of the Terms and Conditions Section of the Agreement. Camping by those licensees of the GRANTOR when occupying the GRANTOR's structures are exempt provided that those exercising such rights shall leave the sites free of debris and garbage and shall not create a health hazard.

F. Firewood may be gathered from dead and downed trees only for "on site" use by the public to build fires for cooking or warmth only. Open fires will be regulated in the same manner as on existing Forest Preserve.

G. Fishing and trapping by the public is permitted in accordance with established seasons and applicable rules and regulations.

H. GRANTEE shall have the right to construct and maintain trails for non-motorized use and snowmobile use by the public and parties to this Agreement in addition to those which may already exist on PROTECTED PROPERTY as long as those trails do not mean to interfere with the GRANTOR's reserved right of Forest Management and subject to the GRANTEE's Unit Management Plan to be developed. The GRANTEE shall have the right to construct and maintain parking lots as necessary for the exercise of the recreational rights conveyed in this easement, provided, however, location of." by the public on any navigable at or situated on the PROTECTED PROPERTY.

I. The GRANTEE shall have the right to construct and maintain parking lots as necessary for the exercise of the recreational rights conveyed in this easement, provided, however, location of any parking lots described in Unit management Plan described in Item 6a of the Terms and Conditions portion of this Agreement. Any timber removed by the construction of these parking lots shall belong to the GRANTOR.

J. The GRANTEE shall have the right to manage the fish and wildlife resources on the PROTECTED PROPERTY for the long term use and benefit of the public.

K. In response to natural disaster, environmental hazard or threats to human safety, the GRANTEE may take any emergency action necessary to preserve the PROTECTED PROPERTY. The GRANTOR shall be immediately notified and consulted relative to any such emergency action.

#### DESCRIPTION OF RESTRICTIONS

The parties agree that the following restrictions shall apply to the PROTECTED PROPERTY in perpetuity:

1. The productive capacity of the property to produce forest crops shall be maintained. Accordingly, the GRANTOR agrees to manage the land in accordance with current scientifically-based Forest Management and Soil Conservation practices for the now present forest species, stand conditions, sites and soils. Forest Management activities will be guided by the New York State Department of Environmental conservation policies and procedures, Title 9409.12 Timber Management Handbook.

Harvesting activities shall conform to U. S. Soil Conservation Service standards and to "Timber Harvesting Guidelines for NY," LF-P185 as prepared by the New York Society of American Foresters.

2. No buildings, residences, mobile homes or other structures, fences, signs, billboards or other advertising material shall be constructed or placed in, on, over, under or upon the PROTECTED PROPERTY except to the extent provided in the Reserved Rights Section and Item 6b of the Terms and Conditions Section of this Agreement.

3. Except as provided in the Reserved Rights Section, no application of pesticides, including but not limited to insecticides, fungicides, rodenticides and herbicides shall be allowed.

4. Except to the extent provided in the Reserved Rights Section, no dumping or storing of ashes, sawdust, non-composted organic waste, "off-site sewage or garbage, scrap material, sediment discharges, oil and its by-products, leached compounds, toxic fumes or any other unsightly or offensive material shall be allowed in, on, over, under or upon the PROTECTED PROPERTY.

5. No snowmobiles, dune buggies, motorcycles, all-terrain vehicles or other recreational vehicles shall be operated on the PROTECTED PROPERTY by GRANTOR except as they may be used for inspection, maintenance, fire protection or other emergency needs and for the furtherance of the GRANTOR's Reserved Rights. No offroad or off-trail use of automobiles, trucks, vans, all terrain vehicles, snowmobiles or other motor vehicles shall be permitted on the PROTECTED



PROPERTY, except as is necessary for operations as described in the Reserved Rights Section. This restriction does not impair the public or the GRANTOR's access rights described in this easement.

6. No exterior artificial illumination shall be employed on the PROTECTED PROPERTY, other than that employed on the date hereof, without prior written consent of the GRANTEE, except as is reasonably required for enjoyment of the Reserved Rights by the GRANTOR.

7. No residential, commercial or industrial activities of any kind shall be permitted on the PROTECTED PROPERTY other than those specifically provided for in the Reserved Rights Section.

a. Except as may be specifically permitted in the Reserved Rights Section or pursuant to Environmental Conservation Law Section 49-0307, no new telephone, telegraph, cable television electric, gas, water or sewer or other utility lines shall be routed over, under, in, on, upon or above the PROTECTED PROPERTY without the prior written consent of the GRANTOR and the GRANTEE.

9. No mining will be conducted and no minerals, gas or oil mines will be extracted from the property except the "on-site" use of gravel for road construction as provided for in the Reserved Rights Section will be permitted, subject to any applicable laws and governmental regulation.

## TERMS AND CONDITIONS

The provisions upon which this easement is given accepted are more fully defined as follows:

1. The GRANTOR, for itself and its successors and assigns, and the GRANTEE hereby agree that the terms of this easement are to be construed so as to preserve perpetually the PROTECTED PROPERTY in its natural condition, provided, however, that nothing herein contained shall impair the exercise of the Reserved Rights.

2. GRANTOR and the GRANTEE shall make every reasonable effort to abide by the terms of the Agreement; however, the failure of the GRANTEE to insist upon the strict performance of any of the terms, conditions, covenants or restrictions contained herein shall not be deemed a waiver of any terms, conditions, covenants or restrictions contained herein, nor shall any such failure of the GRANTEE in any way bar its enforcement rights hereunder in the event of any subsequent breach of, or non-compliance with or fault in observance of any of the terms, conditions, covenant or restrictions contained herein.

3. The GRANTOR and the GRANTEE agree that within six (6) months of the recording of this easement a Report of Physical Inspection of PROTECTED PROPERTY will be completed by the GRANTEE at no expense to the GRANTOR except that the GRANTOR shall bear the expense of the involvement, if any, of its staff. Said Report

will accurately and completely describe the natural condition of the PROTECTED PROPERTY on the date thereof. Said Physical Inspection Report will be subscribed to by both the GRANTOR and the GRANTEE indicating their concurrence that such report accurately and completely describes the PROTECTED PROPERTY as of the date thereof.

4. In the event of a breach of any of the covenants, restrictions, terms or conditions of this easement, and notwithstanding any other language in this instrument to the contrary, the GRANTEE Shall notify the GRANTOR of any failure to comply with any of the terms of this instrument. Such notice shall not forth how the GRANTOR can cure such non-compliance and give the GRANTOR a reasonable time from the date of receipt of the notice in which to cure, based on the parties understanding that due consideration must be given for the severe weather conditions that exist during the months of November through April of each year. At the expiration of such period of time to cure, the GRANTEE shall notify the GRANTOR of any failure to adequately cure - the deficiencies set forth in -the initial notice..., The GRANTOR then shall have an additional fifteen (15) days from receipt of such notice to cure such deficiencies. At the expiration of said fifteen-day period, but not prior thereto, the GRANTEE may commence legal proceedings to require compliance with the terms of this easement. All notices required by this paragraph and by any other provisions of this easement, shall be in writing and delivered to the GRANTOR by personal service or delivered by certified mail return receipt requested.

The parties agree that, to the extent permissible, the provisions of section 3222 of the Civil Practice Law and Rules shall apply to and governing dispute between the GRANTOR and the GRANTEE arising out of this Agreement. It is understood and agreed by the parties hereto that the GRANTOR, its successors and assigns shall not be liable for any changes to the PROTECTED PROPERTY caused by any natural disaster or act, of God, acts of the GRANTEE, its agents and representatives or the acts of the public while on the PROTECTED PROPERTY pursuant to the public access rights granted by this easement.

5. In the event that any existing structure on the PROTECTED PROPERTY deteriorates to the condition that it is dangerous to occupy or be around, the GRANTOR, at its sole cost and expense, shall either correct the hazard or demolish and remove it. The GRANTOR may remove such hazardous structures by burning and burying the rubble subject to existing laws and regulations.

6. In order to provide for the safe and reasonable cooperative use of the PROTECTED PROPERTY, the parties agree as follows:

(a) GRANTEE will prepare a Unit Management Plan which will be subject to review and approval by the GRANTOR, which approval shall not be unreasonably withheld. Said Unit Management Plan will address the proposed use by the public of the PROTECTED PROPERTY. Said Unit Management Plan shall incorporate only the rights and privileges herein granted to the public.

(b) Both the GRANTOR and the GRANTEE way, but neither is under obligation to the other to mark boundaries or corners of the PROTECTED PROPERTY and may erect such signs as may be necessary to carry out their rights and obligations hereunder provided that all signs thus displayed by the GRANTOR shall conform to specifications contained in any applicable laws or governmental regulations.

(c) The GRANTOR and the GRANTEE shall jointly develop a method to be detailed in the Unit Management Plan for the removal of any new debris, such as papers, bottles, cans or other garbage or debris left on the PROTECTED PROPERTY by individuals utilizing the same and will cooperate with each other so that all such debris and garbage will be removed promptly. The GRANTEE, at its sole expense, subject to availability of funds, is obligated to remove such trash as is created by GRANTEE, its agents and invitees. If funding is not available for trash removal, the GRANTEE and GRANTOR may mutually agree to close the area to public use.

7. It is understood and agreed by the parties that the Underlying fee title to the PROTECTED PROPERTY remains in the GRANTOR, subject to the terms of this easement, and that the lands constituting the PROTECTED PROPERTY do not by the granting of this easement become a part of the Forest Preserve.

8. Nothing herein contained shall be construed to permit the removal of any trees, firewood or other forest products or the removal of any dead or downed trees by the general public, except for the purposes of "on-site" cooking and warming. Any other use of wood by the public is expressly prohibited.

9. Acquisition of this CONSERVATION EASEMENT does not remove the necessity of the GRANTOR obtaining any permit and/or approval from any governmental agency having jurisdiction which may be required for normal maintenance, construction, or any other activity permitted on the PROTECTED PROPERTY.

10. This easement may be amended by the parties hereto by mutual agreement in writing executed by both parties and recorded in the Franklin and Essex County Clark's office or in accordance with the provisions of Section 49-0307 of the Environmental Conservation Law.

11. Except as otherwise specifically provided for herein, it is mutually agreed that whenever a consent or approval is required from either the GRANTOR or the GRANTEE, the party seeking the consent or approval shall send a written request for such consent or approval by registered or certified mail to the address of the other party as hereinafter provided and said party shall respond to said request within sixty (60) days of its receipt. In the event that the consenting or approving party failure to respond within said sixty (60) day period, its consent or approval shall be implied. It is mutually agreed that such consent or approval shall not be arbitrarily or unreasonably withheld by either party.

12. Any notice required to be sent to the GRANTOR herein shall be sent by certified mail addressed to:

Franklin Falls Timber Company, Inc.  
P. O. Box 128,  
Lyme, NH 03768.

Any notice required to be sent to the GRANTEE herein shall be sent by certified mail addressed to:

Regional Director  
New York State Department of Environmental Conservation  
Route 86  
Ray Brook, NY 12977

with a copy to

Director, Division of Lands and Forests  
NYS Department of Environmental Conservation  
50 Wolf Road  
Albany, NY 12233-4250

provided however, either party may change the individual or address to which notice are to be sent by giving written notice thereof to the other party.

13. The GRANTOR and the GRANTEE will cooperate in the enforcement of the terms of this easement. In the event that the GRANTEE determines that legal proceedings are necessary against some party other than the GRANTOR, its successors, assigns, agents, contractors, invitees, then the GRANTOR may agree to join the GRANTEE in pursuing such legal proceeding provided that nothing herein contained shall obligate the GRANTOR to expend any funds other than for its review of papers and execution thereof.

14. The GRANTEE intends to schedule periodic inspections of the PROTECTED PROPERTY to determine compliance with the terms of this easement. In doing so the GRANTOR will be provided with three days notice and the GRANTOR will have the

14. The GRANTEE intends to schedule periodic inspections of the PROTECTED PROPERTY to determine compliance with the terms of this easement. In doing so the GRANTOR will be provided with three days notice and the GRANTOR will have the right to accompany the GRANTEE on said inspection trips. the GRANTOR will be provided with a copy of the Inspection Report within thirty (30) days of the inspection.

### RESERVED RIGHTS

Notwithstanding the foregoing, the GRANTOR reserves to itself, its successors, lessees, invitees, contractors and assigns the following rights with regard to the PROTECTED PROPERTY.

1. To conduct commercial activities related to the harvesting of timber and other forest products.

2. a) To exclusively occupy, use, repair, maintain, and improve, demolish, replace, abandon or vacate, but not expand or extend any of the 87 existing structures, outbuildings, facilities and dams, as now exist upon the Protected Property. Any structures presently utilized as camps which exceed 400 square feet and which are subsequently replaced shall not exceed 400 square feet. The GRANTOR shall have the exclusive right to the year-round use of a 11 presently existing structures, outbuildings and hunting camps. Furthermore, the GRANTOR reserves the right to construct at locations of GRANTOR's choice, a maximum of five (5) additional buildings not to exceed 400 square feet each for use an camps licensees of the GRANTOR. The



GRANTOR say remove any structures by burning and burying the rubble subject to existing laws and regulations.

b) The parties hereto will prepare, prior to closing, a location map depicting the approximate location of each existing structure together with the location of each of the five (5) Additional reserved building site and both parties will have a copy of said location map for future inventory and inspection purposes.

3. a) To exclusively retain all Recreation Rights on that portion of the 4309.93-acre parcel consisting of a 500-foot wide strip of upland located on the easterly side of Franklin Falls Pond and an irregular width strip of upland along the easterly side of Union Falls Pond. The 500 foot wide strip of land along the easterly side of Franklin rails Pond is bounded on the west by contour line 1463.20 (USGS Datum), and easterly by a line parallel to said contour line 1463.20 and 500 feet easterly therefrom, and runs through the northerly one-half of Lot 281, Township 11, Old Military Tract, Town of St. Armand, County of Essex and through Lots 120, 119 and 82, Township 10, Old Military Tract, Town of Franklin, County of Franklin. The irregular width strip of land along the easterly side of Union Falls Pond is bounded on the vast by contour line 1408.52 (USGS Datum) and on the east and southeast by a line which begins at a point in the center of the Franklin Falls Road where the same is intersected by the division line between the above-mentioned 4309.93 acre parcel on the east and lands of Niagara Mohawk Power corporation on the' west; thence easterly along the center of Franklin rails Road to a point

where said centerline intersects a line which is located 200 feet southeasterly from said contour 1408.52; thence running easterly, southerly and northeasterly along the line which is parallel with and always 200 feet northward from' said contour line 1408.52 an it winds and turns to a point of intersection with the end of the access road to Camp No. 4-781 thence continuing northerly along the center line of said access road through lots 78,43 and 44 to a point at the intersection of said access road with the center of French Brook thence along the center line of said French Brook as it winds and turns to a point 500 feet easterly from contour line 1408.52; thence northerly parallel with and always 500 feet easterly from said contour line an it winds and turns through Lots 44, 45, 46 and 35 to a point of intersection with the south line of Lot 34, being also the south bounds of State-owned land.

b) Further reserving to the GRANTOR the exclusive Recreation Rights on that portion of the 4309.93-acre parcel consisting of all that strip of land lying on the westerly side of Franklin Falls Pond, said strip of land being bounded on the west by the Franklin Falls County Highway and on the east by contour line 1463.20 which runs through Lot 261, Township 11, Old Military Tract, Town of St. Armand, County of Essex and Lots 121, 120 and 119, Township 10, old Military Tract, Town of Franklin, County of Franklin.

c) Further reserving to the Grantor the exclusive Recreation Rights on two small occupied islands - one being in Franklin Falls Pond in Lot 261, Township 11, old Military Tract, and occupied by existing Camp Number 2/261/11/C. The second island in

Union Falls Pond is identified as the J.B. Hough Island located in Lot 10 of Township 10, Macomb's Purchase, Great Tract 1 and is further identified as being occupied by Camp Number 7/10/10.

d) Further reserving to the Grantor the exclusive Recreation Rights on a two acre square parcel of land surrounding each of the fourteen camps and/or maintenance structures listed below. Each of these fourteen two acre parcels may be posted against trespass by the Grantor. The improvements need not be located in the geographic center of the posted parcel, but said posted area may not exceed two acres in size and in to be in the form of a square. These fourteen structures constitute a portion of the total 87 existing structures, outbuildings, facilities and data described in paragraph 2(a) of this Reserved Rights Section, an now existing upon the Protected Property. The remaining 73 existing improved sites as well as the five. additional proposed building sites reserved in 2(a) above, are located or shall be located in any area of retained Recreation Rights described in paragraph 3 (a) , paragraph 3 (b) or paragraph 3 (C) immediately above. The fourteen camps and maintenance structures to which this two acre recreational rights reservation pertain are identified as follows and are shown, along with the other 73 existing improved sites and the five proposed building sites, on the location map referred to in paragraph 2(b) above:

Lot	121	1	121	10
Lot	121	5	121	10
Lot	120	12	120	10

Lot	2	1	2	10
Lot	84	1	84	10
Lot	43	1	43	10
Lot	43	4	43	10 (shop)
Lot	8	1	a	10
Lot	8	2	8	10
Lot	9	1	9	10
Lot	9	3	9	10
Lot	9	4	9	10
Lot	10	1	10	10
Lot	82	7	82	10

4. To use, repair, maintain, improve or relocate any and all existing trails, paths and roadways on the Protected Property and to construct such new roads and trails as are necessary for the implementation of the GRANTOR's reserved right to harvest the forest products or to gain access to other lands of the GRANTOR subject to the following terms and conditions:

a. GRANTOR may utilize gravel from the property for "on-site" use on lands of the GRANTOR only for building and maintaining access, logging and skid roads. All such gravel or borrow pits located on the Protected Property shall be maintained in such a way as to minimize the adverse effects of open pit mining and shall be operated in accordance with all applicable laws and regulations. The GRANTEE may utilize, with GRANTOR permission surplus gravel from the property, when available, to build parking areas on the property.

b. in the event that the GRANTOR installs gates on any roads the GRANTEE shall be given a key for all locks for all gates for administrative use by the GRANTEE, its officers, employees and agents.

5. The exclusive right to clear for reforestation, to plant trees in non-forested areas, to reforest, plant, grow and harvest forest products and other vegetation, to clear or restore forest cover damaged or destroyed by fire, water or natural disaster, to selectively prune or trim trees, to harvest, selectively prune or trim foliage and other vegetation, to harvest forest products with domestic animals or mechanical equipment and maintain existing fields and meadows. Harvesting shall include, but not be limited to, the removal of forest products such as trees, logs, poles, posts, pulpwood, firewood, chips, seeds, pine straw, stumps, needles, shrubs, lesser vegetation and all sugar maple products. The harvesting and removal of any and all forest products as herein described shall be permissible by any and all current and future harvesting and removal techniques allowable under the law. All harvesting and related activities shall be conducted in accordance with any applicable rules and regulations of any governmental agency having jurisdiction under the Environmental Conservation Law. In conjunction with such forestry use, the GRANTOR reserves the right to apply, consistent with applicable statutes and regulations, any herbicides, pesticides, fungicides, rodenticides and insecticides as may be appropriate. The GRANTOR shall have the right to practice all accepted forest management practices allowable under the law.

6. To trim, cut, remove, use for firewood or otherwise dispose of any trees or vegetation which are diseased, rotten, damaged or fallen, or that are safety or health hazards to trim, cut, remove or otherwise dispose of any trees or vegetation as is necessary to maintain existing fire lanes, footpaths, roadways and utility rights-of-way.

7. To take action necessary to preserve water levels, to preserve the natural purity of the water or to prevent the erosion of any slope or shoreline on the PROTECTED PROPERTY, provided the written consent of the GRANTEE is first obtained and any appropriate permits are obtained.

8. To use the recreational rights under the same guidelines and restrictions as the public.

9. To give, sell, assign, lease, subdivide or otherwise transfer all or any portion of the PROTECTED PROPERTY by operation of law, by deed or by indenture, subject and subordinate to this easement. To give, sell, assign, lease, subdivide or otherwise transfer all or any portion of the GRANTOR's Reserved Rights as to all or any portion of the PROTECTED PROPERTY by operation of law, by deed or by indenture, subject and subordinate to this easement.

10. To maintain and repair existing trails and roads. To build new trails and roads for use by the GRANTOR IN furtherance of the GRANTOR's reserved rights.

11. To build, maintain and repair roads which create access over, through and across the PROTECTED PROPERTY to other properties now or hereafter owned by the

GRANTOR, together with the right of the GRANTOR to grant to its successors and assigns the rights of ingress and egress, for any lawful use, over, on and through such roads for access to adjoining properties provided, however, that any roads which provide access to adjacent lands now owned or hereafter acquired by the GRANTOR shall be routed across the PROTECTED PROPERTY by a reasonably direct route that is practical and feasible so as to lessen the impact on the recreational rights available on the PROTECTED PROPERTY.

12. Except as limited herein, the GRANTOR reserves to itself, its successors and assigns, all rights as owner to the PROTECTED PROPERTY including the right to use the property for purposes not inconsistent with this easement.

13. GRANTOR reserves the right to designate "Closure Zone" during logging operations. Notification of said closure will be provided to the GRANTEE thirty (30) days in advance. Areas being actively logged will be closed to public use and so posted by the GRANTOR. Those zones may be closed for a maximum of two years. No more than twenty (20) percent of the property may one time.

14. In response to natural disaster, environmental hazards or threats to human safety, the GRANTOR may take emergency action to preserve and protect the GRANTOR's reserved rights.

15. The GRANTOR has the right to construct new roads on the PROTECTED PROPERTY: the GRANTOR has the right to install gates or other barriers and otherwise prohibit public access to any roads over which the public has not been granted a right of

use by the rights designated earlier in this Agreement as affirmative rights. The public shall have the right to use such now roads for travel by foot, non-motorized vehicles or animals. The public may utilize the newly constructed roads for snow-mobile travel for such times and under such conditions as are specified in Paragraph 1, Sub C of the Affirmative Rights Section.

16. The right to use the PROTECTED PROPERTY for all purposes not inconsistent with this easement.

AND THE GRANTOR DOES FURTHER COVENANT AND REPRESENT AS FOLLOWS:

17. The GRANTOR, for itself, its successors and assigns, covenants and agrees to pay all taxes and assessments lawfully assessed against its interest in the Protected Property and to furnish to the Grantee copies of tax receipts showing such payment. Such tax receipts shall be provided by the GRANTOR within sixty (60) days from their receipt by the GRANTOR from the appropriate taxing authority. In the event that the GRANTOR, its successors or assigns fail to pay any such taxes or assessments within twelve (12) months of their original due date, then the GRANTEE may pay such, taxes or assessments. The GRANTEE shall seek to recover the cost of taxes through the appropriate legal means.

18. The GRANTOR for itself and its successors and assigns covenants and agrees that any subsequent conveyance of the Protected Property, except



one to the Grantee pursuant to the terms of the THIRD covenant hereof, or any lease, mortgage, or other transfer or encumbrance of the Protected Property shall be subject to this easement and that any instrument evidencing such transfer, lease, mortgage or encumbrance shall contain the following statement: “This (grant, leases, mortgage, easement, et cetera) is subject to a certain conservation easement entered into between FRANKLIN FALL TIMBER COMPANY, INC, and THE PEOPLE or THE STATE OF NEW YORK, dated and recorded in the Office of the Clerk of Franklin County in Book \_\_\_\_\_ of Deeds at Page \_\_\_\_\_ and in the Office of the Clerk of Essex County in Book \_\_\_\_\_ of Deeds at Page \_\_\_\_\_.”

19. The GRANTOR for itself and its successors and assigns, covenants and agrees to indemnify and hold the GRANTEE harmless against all claims, loss/ damage and expense the GRANTEE may suffer as a result of any dangerous condition created by the GRANTOR during its exercise of hunting or logging rights reserved hereunder.

The GRANTEE for itself and its successors and assigns, covenants and agrees to indemnify and hold the GRANTOR harmless against all claims, loss, damage and expense the GRANTOR may suffer as a result of the GRANTEE’s negligence in properly constructing, maintaining, repairing, replacing or managing any recreational amenities and any other actionable conduct of the GRANTEE as permitted by the Court of Claims Act and Section 17 of the Public Officers Law.

The duty to indemnify and save harmless prescribed by this paragraph shall be conditioned upon (i) delivery to the Attorney General by the GRANTOR of the original

or a copy of any summons, complaint, process, notice, demand or pleading within five days after it is served with such documents, (ii) representation by the Attorney General or representation by private counsel of GRANTOR's choice subject to the approval of the Attorney General, whenever the Attorney General determines-mines in his sole discretion based upon his investigation and review of the facts and circumstances of the case that representation by the Attorney General would be inappropriate, and (iii) the full cooperation of the GRANTOR in the defense of such action or proceeding and in defense of any action or proceeding against the GRANTEE based upon the same act or omission, and in the Prosecution of any appeal.

20. The parties agree that. the provisions of this Indenture are severable and that if any court of competent jurisdiction shall render a judgment voiding or nullifying any provisions hereof, the effect of said judgment shall be limited to the nullified or voided portion of this easement and the remaining provisions hereof shall continue in full force and effect.

TO HAVE AND TO HOLD THE ABOVE GRANTED EASEMENT UNTO  
THE GRANTEE AND ITS SUCCESSORS AND ASSIGNS FOREVER.

And the GRANTOR does covenant with the GRANTEE as follows:

FIRST: That GRANTOR is seized of said promises in fee simple, and has good right to convey these easement rights;

SECOND: That GRANT EE shall quietly enjoy the said rights;

THIRD: That the premises are free from incumbrances;

FOURTH: That GRANTOR will execute or procure any further necessary assurance of the title to the premises;

FIFTH: That the GRANTOR will forever warrant the title to said premises; and

SIXTH: That this conveyance is made subject to the trust fund provisions of Section 13 of the Lien Law.

This conservation easement has been executed in duplicate, each being an original, and one of each is to be filed in the Counties of Franklin and Essex.

IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

FRANKLIN FALLS TIMBER COMPANY, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

THE PEOPLE OF THE STATE OF NEW YORK  
acting by and through its Department of  
Environmental Conservation

By \_\_\_\_\_

LANGDON MARSH; Executive  
Deputy Commissioner

Appendices Omitted

**APPENDIX F****OWNERSHIP INFORMATION FROM DONOR INTERVIEWS****Reasons Given By Forestland Easement Donors For Owning Their Land**

- 1) for scenic protection next to his home;
- 2) speculation;
- 3) primary residence/homesite;
- 4)love the beauty of the land;
- 5)likes the buildings on the property;
- 6) investment;
- 7) timber supply for his mill;
- 8) investment for capital appreciation and inflation hedge;
- 9) interest in forestry and the environment;
- 10) wanted to protect it;
- 11) inherited, it had been in the family for years;
- 12) family tradition,;
- 13) private homesite for writing and working;
- 14) located close to family home;
- 15) preventing development in the area;
- 16) american indian tradition of being stewards of the land;
- 17) second homesite;

- 18) native of the area;
- 19) family tradition of owning property in the area;
- 20) it is beautiful property;
- 21) likes living on Lake Champlain;
- 22) in connection with subdivision of adjacent property;
- 23) family property for generations;
- 24) continue to management of forest resources that was started by his grandparents;
- 25) wanted a homesite in a rural area;
- 26) to raise horses;
- 27) likes the woods;
- 28) it's a beautiful place;
- 29) to own a piece of the wilderness;
- 30) because they have always lived in the country;
- 31) like uncrowded surroundings;
- 32) to control the land use around his property;
- 33) for family enjoyment;
- 34) remoteness;
- 35) fiber security for mills;
- 36) return on investment;

**Reasons Given By Forestland Easement Donors For Donating The Easement**

- 1) satisfaction that it will stay undeveloped;
- 2) for income tax deduction;
- 3) to ensure the forest would be managed as a single unit that would be looked over by a monitoring agent;
- 4) to incorporate potential from proper uses of the property;
- 5) didn't want the land developed ever;
- 6) estate tax purposes;
- 7) has a responsibility to look after the land;
- 8) as a condition of the sale of another property;
- 9) the desired light land use in this area;
- 10) consistent with their philosophy;
- 11) to gain access to other property he owns;
- 12) protect the property;
- 13) promote a style of growth in the community that allows growth and protection;
- 14) property tax advantages;
- 15) estate tax advantages;
- 16) drive down lakefront values for estate purposes;
- 17) family tradition of conservation;
- 18) keep land intact;
- 19) protect land for the future by preventing development;

- 20) to prevent subdivision of the property;
- 21) other nearby landowners are doing it as well;
- 22) wanted to keep the land as it is in perpetuity;
- 23) tax reasons;
- 24) an exaction, the town board forced him to do this in order to get approval for a subdivision;
- 25) wanted lake to remain as it is;
- 26) maintain unique character of the land and reduce development potential;
- 27) to make the land part of a local greenbelt;
- 28) so it would continue as rural land;
- 29) because the land deserved protection;
- 30) keep development to a minimum in this area;
- 31) believe in grantees (THT) purposes;
- 32) to preserve unique aspect of the lake community from future development;
- 33) to keep the price down in case of a sale;
- 34) as a gift to people of NYS as part of centennial celebration of Adirondack Park;
- 35) public relations;
- 36) to help in the negotiation for the sale of another property;

## APPENDIX G

### PROFILES OF FORESTLAND EASEMENT SALES

#### **Paul Smith's College**

Paul Smith's college sold its first easements to try out the concept, and then sold twelve others, including one sale that is still pending at the time of this study. All were sold directly to the State of New York with no third party involvement. Aside from the original easement they sold, all of the easements were sold in an agreement as a package for one lump sum price. The actual sales took place over several years as funding could be arranged by the State. Many of the encumbered properties are contiguous. Each of the easement deeds is identical, except in the property description and, in some cases, a short schedule of additional reserved rights that are specific to the individual property. The prices paid for the Paul Smith's easements encompassed the entire range of prices paid by the State for easements in the Adirondack Region, including the highest price of any easement (\$5,346.47). It is difficult to infer much from the prices paid for these easements because it was reported that a single price was agreed to for the package, and then individual prices were allocated to these easements as an afterthought.

#### **Lassiter Properties**

Lassiter Properties sold five forestland easements to the State of New York on the same day. This coincided with Lassiter Properties purchase of the land. Lassiter also sold some of the land in fee as part of this large transaction. The original grantee for these forestland easements was the Nature Conservancy. This group then sold the



easements to the State of New York once funding and other acquisition details were worked out. The terms of each of the easements were essentially the same, except that on some parcels exclusive recreation rights were retained.

The properties involved in the Lassiter easement sales are part of the former Diamond International Corporation lands. The former Diamond International lands in several Northeast states went on the market in 1988. These lands were off the market for so long they were thought of as being secure open space, and their sale stirred greater public debate over the fate of open space throughout the entire Northeastern US. There has been much speculation that the State of New York could have acquired all of the former Diamond International lands in fee if it had acted sooner. Lassiter Properties has been criticized for purchasing the lands when the State had already expressed an interest in them. For its part, Lassiter Properties believes that the State of New York put undue pressure upon them to sell the easements and some of the land to the State as a condition for being allowed to make the original purchase. Lassiter reportedly paid \$177 per acre for all of the Diamond International properties in New York in 1988. The easements were sold for prices ranging from \$151.77 to \$212 per acre.

### **Lyons Falls Pulp & Paper**

Lyons Falls Pulp & Paper, the Nature Conservancy, and the State of New York were involved in a somewhat unique and much publicized series of transactions. Lyons Falls Pulp & Paper owned the John Brown tract and was looking for ways to get the most from the value of this land and also looking for ways to expand their land base to supply

pulpwood for its mill. The Patten Corporation acquired the Three Lakes tract and wanted to subdivide it into smaller parcels. The J.P. Lewis tract came up for sale. A private conservation interest had first right of refusal on this property but declined to purchase all of it, buying three small portions of it instead. The Nature Conservancy purchased the Three Lakes tract and the bulk of the J.P. Lewis tract. The Nature Conservancy then traded the fee title to these two tracts, subject to conservation easements, to Lyons Falls Pulp & Paper. In exchange, the Nature Conservancy received an easement on the John Brown tract. The Nature Conservancy subsequently sold all three easements to the State of New York. The John Brown Tract easement sold for \$195.56 per acre and the Three Lakes and J.P. Lewis Tract easements sold for an average of \$149.99 per acre.

All three of these parcels (John Brown Tract, J.P. Lewis Tract, Three Lakes Tract) were sold by Lyons Falls Pulp & Paper to Hancock Timber Resource Group in 1996.

#### **Yorkshire Timber Company and Franklin Falls Timber Company**

Yorkshire Timber Company and Franklin Falls Timber Company are both related to Wagner Woodlands of New Hampshire. The forestland easements sold by these companies (one by Yorkshire, two by Franklin Falls) encumber only a portion of the lands these companies owned, with other nearby parcels retained unencumbered. All three of these forestland easements were sold directly to the State of New York without third party involvement. The Yorkshire Timber Company lands have since been sold to Hancock Timber Resource Group.

### **Tug Hill Tomorrow Purchases**

Tug Hill Tomorrow purchased two forestland easements in the Town of Trenton, Oneida County. This group also secured three similar easements through donations on properties close to the purchased easements. All five of these forestland easements are part of an effort to establish a local greenbelt. A charitable grant allowed Tug Hill Tomorrow to make the purchases. The amount of the grant was a significant determinant in the price that could be paid for the easements. The two forestland easements that were purchased were granted by a mother and her son. The mother's property is her homesite. Under current zoning laws, the mother's property was without any development rights for the forestland easements to extinguished and the son's property had only two development rights. The allowable development could change if additional roads were built and accepted by the town as public roads. The development pressure in this area is much different than it is for the rest of the Northern Forest Region. The Town of Trenton is outside the Adirondack Park. It is located very close to the Mohawk Valley. Suburban development is spreading throughout this area.

### **IP Timberlands**

The only other forestland easement that remains with a private organization, rather than the State of New York, was purchased by the Nature Conservancy. The Nature Conservancy and IP Timberlands, the land management division of International Paper Company, acted as partners in the purchase of a property. The result of the transaction was IP Timberlands owning the land in fee to manage for timber production,

and the Nature Conservancy holding an easement on the land to prevent development and allow them to manage for a rare species of bat on the property. Public involvement in this easement would probably have meant public recreation rights. Public recreation on the property could be deleterious to management for the rare bat species.

### **NM Holdings**

The State of New York purchased one forestland easement that was within the Northern Forest Region, but well removed from the Adirondack Park. This easement was purchased from NM Holdings, the land owning division within Niagara-Mohawk, a public utility. The terms of this easement are similar to those purchased in the Adirondacks, specifically preventing development and providing public recreation. The encumbered property is much different. Instead of a large block of working forest, this property is a river corridor. The Salmon River is a tributary of Lake Ontario. The salmon fishery in this river is a major attraction for tourism in the area. Niagara-Mohawk retained some adjacent lands away from the river, and is attempting to sell these lands in combination with subdivided lots of the encumbered property.

### **Forestland Easements on Non-industrial Land Purchase by the State of New York**

The State of New York purchased two forestland easements within the Adirondack Park that did not include public recreation rights.

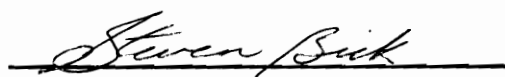
The Gross property has frontage on two large undeveloped lakes and is located in an area where many believe the State would like to increase its holdings. The price of this easement in 1995 terms is \$765.42 per acre, far above the average price of 216.97 per

acre paid for easements in the Adirondacks by the State of New York. This forestland easement is without any public recreation rights.

The Vaccaro property is an inholding, surrounded by a State wilderness area. The price of this easement in 1995 terms is \$399.53 per acre, considerably more than the average price of 216.97 per acre paid for easements in the Adirondacks by the State of New York. This forestland easement is without public recreation rights. The owner of the property has the right to access it using motor vehicles on a road that crosses the wilderness area. State wilderness areas are supposed to be roadless, so the classification of this portion of this unit is somewhat dubious. The Vaccaro property was the subject of a lengthy and much publicized attempt by the State of New York to take the property using eminent domain. The State of New York had expressed an interest in acquiring this property prior to Vaccaro's purchase of it. Some believed that Vaccaro acquired it in speculation, hoping to sell it to the State. During the course of this conflict, the landowner offered to donate a forestland easement on the property to the State as proof that he had no intention of developing the property. The State was unsuccessful in its eminent domain proceedings. This case opened public debate on the use of eminent domain for the protection of open space. The resulting policy is that, for most scenarios, eminent domain will not be used for open space protection. During the eminent domain battle, the State had expressed such interest in this property that, after being unsuccessful in condemning the property, it was logical to purchase a forestland easement on it from the willing seller.

**VITA**

Steven Bick was born in Utica, New York on July 6, 1966 and is the son of Henry A. and Phyllis A. Bick. He attended high school at Utica Free Academy, graduating in 1984. He received an A.S. in Conservation from Herkimer County Community College in 1986 and a B.S. in Environmental Studies from SUNY College of Environmental Science and Forestry in 1988. After completing his B.S., he worked as a forester for the Adirondack League Club for over a year before returning to graduate school. He received an M.S. in Forest Resources Management from SUNY College of Environmental Science and Forestry in 1990, working under the direction of Dr. Miklos Gratzner. He returned to work as the Adirondack League Club's forester until August, 1993. In 1993, he became consulting forester and principal in Northeast Resources. In the fall of 1993, he enrolled at Virginia Polytechnic Institute and State University to pursue a Ph.D. degree in Forest Management and Economics. His professional affiliations include the Society of American Foresters, the Northeastern Loggers' Association, and the Adirondack Research Consortium.

A handwritten signature in cursive script that reads "Steven Bick". The signature is written in black ink and is positioned above a solid horizontal line.

Steven Bick