COOPERATION BETWEEN COMMUNITY LAND TRUSTS AND LAND CONSERVATION TRUSTS

Robert Swann, Community Land Trust in the Southern Berkshires

Forest Land Trusts

Local Conservation Trusts, joined by national or statewide organizations such as the Audubon Society, can facilitate the development of local forest management through the establishment of a forest land trust on a regional basis.

An example of such joint sponsorship is in the Monadnock region of New Hampshire, where the Society for Protection of New Hampshire Forests, joined by the Monadnock Community Land Trust, is in the process of establishing a forest land trust demonstration project. Presently, some 20 landowners have been involved with over 4,000 acres of forest land, which may become jointly managed by the Trust.

The concept of the forest land trust is an effort to overcome some of the principal constraints that prevent forest landowners from engaging in long-term forest management. Such constraints include:

1) A short-term outlook on land holding based on uncertainty of tenure ("maybe I'll sell it in a few years").

2) Uncertainty about how to choose a forester or logger and fear of destroying woodland by making a wrong decision.

3) Relative high cost of forest management for the smaller landowner.

The forest land trust is designed for landowners who are not likely to work in the woods, are not interested or too busy to learn much about forestry, or may only own land for recreational purposes. Probably in most areas of New England this type of landowner is in the majority and the percentage of such landowners is increasing.

The Society for the Protection of New Hampshire Forests, a private, nonprofit organization, has long been concerned about protecting environmental quality in New Hampshire and helping the small wood-landowner hold onto his land. Recently, joined by two other charitable organizations, the Institute for Community Economics and the Monadnock Community Land Trust, we have developed a plan that will:

1) Help the woodland owner protect and manage his/her land and make money doing it;

2) Relieve the landowner, if desired, of the care and worry of direct involvement with the details of forest management;

3) Enable the landowner and his/her family to keep the land intact and continue to use and enjoy it; and

4) Encourage community-based economic development and increase local
employment.

How does the forest land trust work? Several landowners pool their forest resources into a common management program. A manager implements an ecologically sound, long-term, thoughtful forest management plan on all the parcels taking into account any specific objectives you have for your property.

The forest land trust is a method of managing combined parcels of forest land, thereby increasing their potential as a renewable resource. It has significant financial advantages for landowners and the community and enhances the aesthetic and ecological conditions of the land.

Up to the present, several factors have discouraged management of privately held forest land, resulting in only a small percentage of privately owned forest land being managed. These factors include:

1. Size of holdings
   Most holdings are too small for landowners to afford professional forest management. (A single professional forester can manage 5,000-10,000 acres intensively.)

2. Short term of holdings
   The average turnover in private land in the U.S. is 5-10 years. This is too short for long term efficient forest management.

3. High cost of management and low return
   During the early years of forest management the cost is high relative to the return.

The forest land trust addresses these issues in the following ways:

1. Management Plan
   The forest land trust combines several tracts of land, not necessarily contiguous, under a single management plan. Each trust would have 2,000-10,000 acres in total, making it possible to obtain the economy of scale necessary for efficient management and maximum returns. Forest landowners could participate without giving up rights of ownership.

2. Permanent Trust
   By placing conservation restrictions on the forested part of his/her property, the landowner ensures that the trust will be able to develop long-term ecologically sound management.

3. Income-Tax Savings
   The forest land trust offers landowners significant income-tax savings in the very first year and for several years thereafter. These savings come about in several ways:

   a) By making a donation of a conservation restriction of the forested land to a qualified tax-deductible organization, landowners may receive a tax deduction for the value of the
restriction. The donation may be spread out over a five-year period rather than taken all the first year. The value of such a deduction is generally 50 percent of the market value but can be much higher.

b) Under the forest land trust plan, landowners become partners in a limited partnership for forest management. As partners they can benefit from tax deduction for the depreciation of the original capital investment and expenses incurred in setting up the forest management operation.

c) Averaging of income from the entire pool of forest land means a steady yearly income rather than harvests of one year out of ten with resulting high tax in that year.

4) Property Tax Savings
The conservation restriction on land permits the landowner to request a reduction of property tax. This is comparable to property tax reductions under Act 51 in the state of Massachusetts and similar laws in other states.

5) Timber Revenue Insured
Professional management can increase the value of a landowner's forest by several times through careful selective thinning and by knowledgable marketing of timber.

Local Community Benefits

1) Ecology
Good forest management and selective cutting opens up the forest to permit greater penetration of sunlight, which both enhances the growth of good timber trees as well as the growth of low-growing bushes and shrubs on which wildlife feed. Such well-managed forests, as can be seen in Europe but only rarely in the United States, are beautiful and add value to the entire community.

2) Energy and Employment
Initial high cost of selective thinning is offset through selling wood waste as fuelwood. Dead trees and tree tops from harvesting trees can be sold as wood chips by knowledgable foresters to the growing waste-wood-energy market. A dependable supply of waste wood for energy and quality lumber can encourage other wood-related industries and provide jobs.

How Does It Work

Step One: Several landowners within a region of 25-30 mile radius donate a perpetual conservation restriction on their forested land (or a portion thereof) to a public or qualified nonprofit organization. This procedure is commonly used by conservation organizations to preserve wild land and open space from development. Under the forest land trust plan, timber rights are retained by the landowner in addition to the fee simple
title. For income-tax purposes the value of the donation is determined by
tax assessors. Such donations produce a deduction in the amount of full
value up to 50 percent of adjusted gross income; and the balance of the
deduction may be carried for up to five succeeding years. This is true for
both federal and state income taxes wherever those apply.

Example: A parcel of land without restrictions is appraised at
$50,000. After the development rights have been taken from the land
and the land can be used only for open space or timber production, the
appraiser values the land at $320,000. This leaves a difference of
$350,000, which is the value of the restriction. It is this restriction
that is donated to the public or nonprofit organization, while the
landowner retains title to the land.

As the assessed value of the land is now only $320,000, the estate taxes
and property taxes on the land would be lowered accordingly.

Step Two: A limited partnership is established by a local community
land trust possibly in conjunction with a nonprofit conservation organi-
ization. These nonprofit organizations become the general partners. The
landowners become the limited partners. The value of each landowner's
share in the limited partnership is determined by the standing value of the
forest at the time it is put into the trust. The general partners serve as
general manager of the forest partnership and receive a management fee as
well as a share of the partnership. Income to the partnership from
harvesting of timber, fuelwood, wastewood, or any other source, is divided
each year among the partners according to his/her share of the partnership.

Step Three: The general partners and the limited partners will select
one or more forester(s) to draw up a forest management plan and begin
implementation.

**PROJECTIONS OF INCOME**

Based on the assumption of 2,000 acres of mixed hardwood at 4,000 board
feet (BF) per acre, or a total of 8,000,000 BF and assuming a conservative
annual growth rate of 4.5 percent (based on the steady upward trend of
prices since 1959), these projections of timber sales alone (timber stand
improvement could average $10-$15 per acre yearly) should net the following
income to the partnership:

Year 1 $127,000 (asset value for standing timber $400,000)
Year 5 $89,200
Year 10 $109,100
Year 15 $145,360 (asset value for standing timber $790,000)

Some of the research and development costs for this program have been
advanced by grants from organizations and individuals. Additional funds
will be needed initially, however, to cover assessments of the conservation
restriction value and standing value of each landowner's forest holdings,
as well as other associated costs in setting up the limited partnerships.
These costs will be met by a charge to each landowner, which should not exceed $5-$10 per acre.

Communal Land Trust in the Southern Berkshires

The Community Land Trust in the Southern Berkshires is now structured as a nonprofit corporation without tax-exempt status. There are some community land trusts that have limited themselves to serving strictly low-income persons, and these have received tax-exempt status based on that purpose. But generally our purposes are broadly economic, and though we mean to "subsidize" farmland, and therefore the farmer, through housing and commercial property wisely and ecologically planned, the main purpose is not strictly conservation nor strictly low income or disadvantaged. Rather it is a concern with fair access to and productive use of land within ecological concerns. We assume that this interest involves people of all economic conditions and includes the conservation minded as well as development minded.

The method used by the community land trust is to purchase land, then lease the rights to use it based on a land-use plan of the piece. This might include use as house lots, commercial property, farming, or forestry. The commercial use would obviously have the highest use fee, the house lots next, then farming and forestry set at a low lease fee but varying with actual soil conditions, etc. The lease would be written for 99 years and be automatically renewable if the terms of the lease are kept. In this way housing would pay for the major cost of land in the rural areas. Any portion of a piece of land strictly suitable for conservation purposes would be given to a conservation land trust. A conservation land trust may also hold the conservation restriction on the farmland piece or forested piece, but the fee simple title would stay with the community land trust.

Buildings and other improvements (for instance the establishment of an orchard) would be owned by the leasee with a registered community land trust (basically cost of construction adjusted for inflation and deflation). But the land itself could not be sold. The lease could be transferable, therefore establishing the same terms of use with the new owner of improvements. This leasing arrangement then discourages tying up productive land for speculative purposes. House lots must be used as house lots -- orchards used as orchards, not let idle and held against future needs and speculations, thus serving the real needs in the region for productive use and not just individual interests. Original land-use plans would be designed, taking into consideration economic as well as ecological factors in the whole region.

The CLT in the Southern Berkshires has established a $50 per month lease fee per house lot on its 10-acre parcel. Such a fee would be charged whether or not a parcel of land was purchased or given to the community land trust. It is what was assessed as fair in the area for intense use of land as demanded by housing. Provision is made, when economically possible, to reduce that fee for elderly or low income persons, but basically the $50 per month fee stands. The fee interprets to about a $6,000 mortgage while actual land price in the area (when large amounts are bought is about $2,000 to $3,000 per acre). So that every house is financing about 1 1/2--2 acres of farmland through the lease.
Community land trusts therefore have an advantage in that they are not dependent on government funding for the eccentricities of donors to protect farmland. A CLT has a steady source of income from leases or anticipated leases to purchase or mortgage a piece of prime farmland when it comes on the market. The lease arrangement has another advantage: it ensures that farmland is used as productive farmland, not just kept as an open space backdrop to a wealthy development (a problem with the state’s current program of purchase of development rights). The land-use plan for a particular farm purchased by a community land trust could include orchard area or truck farming area, depending on the needs of the community. A farmer would not lease that piece unless it was his intention to work on an orchard or a vegetable farm. But those who would like to take on such farming would then have the opportunity without the huge capital outlay for land. This would be an affirmative step to encouraging food self-reliance in the region. In addition, any improvements that the farmer makes in terms of soil quality, new trees, or irrigation systems would remain the equity of that farmer and would be separable if the farmer should decide to retire from farming or move. Again, the lease arrangement with ownership of improvements takes an affirmative step in encouraging soil improvement — a major concern of environmentalists but discouraged in some of the short lease arrangements that are used currently by conservation land trusts.

As the farmer reaches retirement age, the same mechanisms of leased land and ownership of improvements allow for the smooth transfer of the farming aspects to a young farmer who could buy the improvements and take over the lease, leaving the older farmer still able to stay in his home but with some income for retirement.

There are a couple of problems with the community land trust form. It would be nice to receive gifts of land when offered, giving the donor a tax advantage in exchange, though not becoming dependent on donations. Secondly, currently IRS considers the lease fees as income to the community land trust, and therefore these lease fees are taxed as corporate income, reducing the kitty for purchase of additional farmland.

Suggestion: Establish two corporations, one to act as a familiar conservation land trust: receiving gifts of land, accepting conservation restrictions, purchasing new pieces of land, the other to be a 501(c)(3) title-holding company for the tax-exempt conservation land trust. The title-holding company (possibly the community land trust) would hold the fee simple title to the productive land (housing and commercial or farming and forestry once the development rights have been removed). All income from the lease fees to the title-holding company would go back to the conservation land trust. The conservation land trust could then purchase new land, which it would turn over to the title-holding company. In such a way, donations could come through the 501(c)3 Conservation Land Trust, but the income from the leases to the title-holding company would not be judged as taxable.

The Rural Land Foundation uses this method now with its commercial piece of land — but as I understand it would not want to greatly extend this leasing operation, if at all, because of possibly jeopardizing its 501(c) status. The 501(c) title-holding company would allow the same (c)(3)
purposes to be carried on within a solid tax standing.