

Conservation Easements

as Tools for
Permanence and
Quality in Forestry Projects:

Fundamentals and Emerging Issues

March 19, 2024
North American Carbon World



CLIMATE
ACTION
RESERVE



Session Trail Map



What is a Conservation Easement



Relevant Project Types



What is a Land Trust



Land Trust Roles

Aggregator/Partner

CE Holder: Regulator

CE Holder: Consultant



Q&A



Conservation Easements

- Voluntarily granted, donated &/or sold, but ...
- Legally binding & perpetual
- Run with the land
- Protects conservation values and purposes
- Restricts development, intensive land uses
- Advances public purpose(s)

Conservation Easement Enabling Authority

Uniform Law Commission Uniform Conservation Easement Act (UCEA)

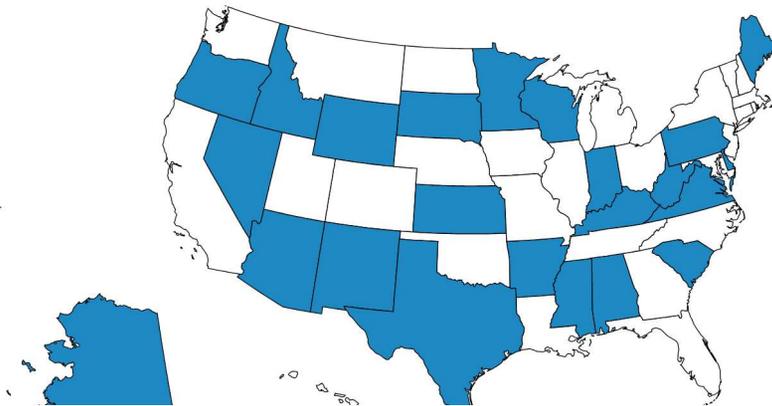
1981 | Conservation Easement Act
Real Property, Mortgages, & Liens | Environmental Law

Map

Bill List

Summary

Enactment History



Non- UCEA States

- 24 states have enacted easement enabling legislation that is not based on the UCEA
- North Dakota is the only state without conservation easement enabling legislation

Conservation Tools & Strategies: Common Easement Terms

Limited or Prohibited:

- Industrial or commercial activities
- Subdivision
- Structures or improvements
- Removing or disturbing soil surface
- Mining
- Dumping
- Commercial uses

Limited or Permitted:

- Agriculture
- Forestry
- Public access (*Rarely required*)
- Ecosystem services
- Other reserved rights

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Applicable Project Types

	Mandatory CE	Voluntary CE for Additional Benefit
CARB	Avoided Conversion (Forest)	IFM, Reforestation
CAR	Avoided Conversion (Forest & Grassland)	IFM, Reforestation
Climate Forward	Mature Forest Management	Reforestation
ACR	Avoided Conversion (Forest & Grassland)	IFM, Reforestation
Verra		IFM, Reforestation, Avoided Conversion



Grassland Protocol

- Required or optional?
 - Required – must follow requirements for qualified conservation easement (QCE)
- Purpose: Permanence assurance/oversight and additionality
- Timing:
 - If easement has been recorded prior to submittal:
 - Project submittal must occur within 12 months of easement date
 - Easement must be amended (if necessary) with terms following all protocol requirements prior to initial registration
 - If no easement at time of submittal:
 - QCE must be recorded prior to initial registration



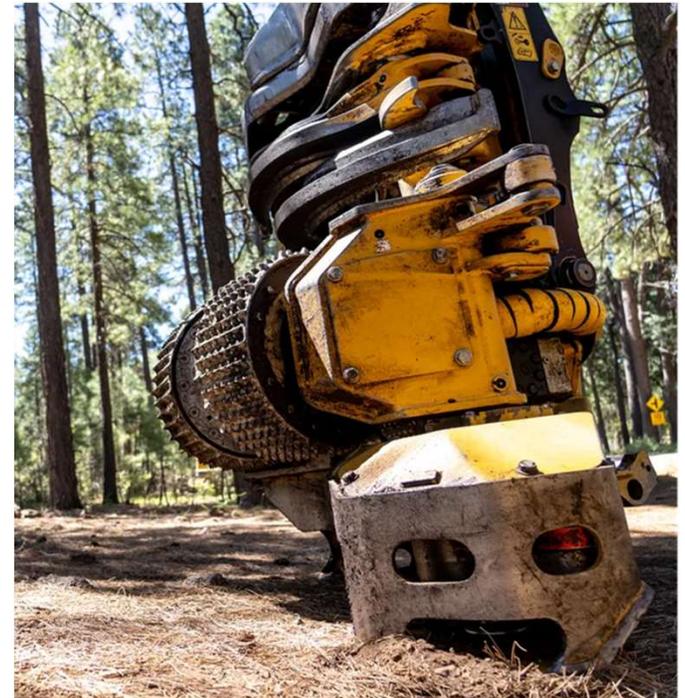
Calif. Air Resources Board - CAR Forestry Protocols

- Required or optional?
 - Optional for IFM
 - Required for Avoided Conversion
- Purpose: Permanence assurance/oversight
- Benefit: Potential risk rating reduction (8%)=higher credit yield
- Frequency: Qualified Conservation Easements rarely used in practice
 - However non-qualified easements are prevalent (~35%): indicates complementarity
- Timing: Easement must not predate the submittal by more > 12 months, or must be modeled into the baseline

Climate Action Reserve Voluntary Forestry Protocols

Same as ARB except:

- Avoided Conversion projects can have non-qualified CEs
- Non-qualified CE can satisfy sustainable harvest requirement
- Qualified CE is one that names the Reserve as a party to the easement and references and incorporates the Project Implementation Agreement



IFM Examples

Protocol	Name	Acres	Min. Project Commitment	~ Credit Issuance	CE Benefits
CAR Voluntary transitioned to ARB IFM	Usal Redwood Forest	50,000 acres in California	125 years	3,918,000 Initial 200,000 annual	<ul style="list-style-type: none"> • Supports community-based forest restoration • CE brought additional funding
ARB IFM 2014	Mailliard Ranch	12,400 acres in California	125 years	764,000 initial, 25,000 annual	<ul style="list-style-type: none"> • Support sustainable management of a family-owned forest • CE brought additional funding



Climate Forward

Reforestation: CE's are optional but heavily incentivized for Reforestation

Example: 1,000 ac reforestation project

8,000 credits without CE

100,000 credits with CE

Why? Ex ante credits=>CE substantially buttresses permanence assurance

About 50% of reforestation projects have CEs

Some projects sought easements but encountered challenges

Easements can be added later for additional credits

Mature Forest Management: CE required



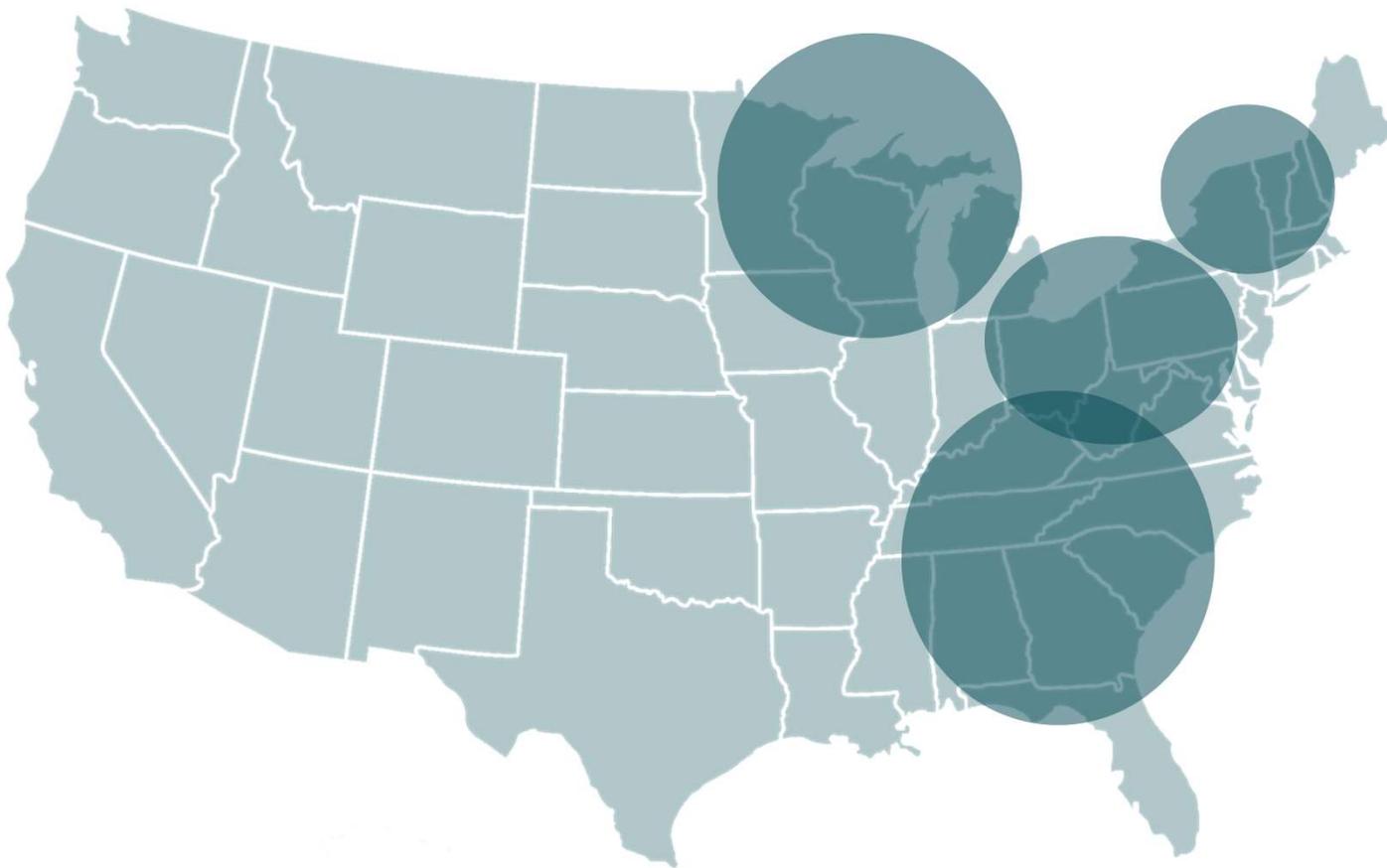
Climate Forward and Affirmative Obligations

Requirement to reforest in the event of a disturbance of >50% canopy cover on at least 10% of the project area

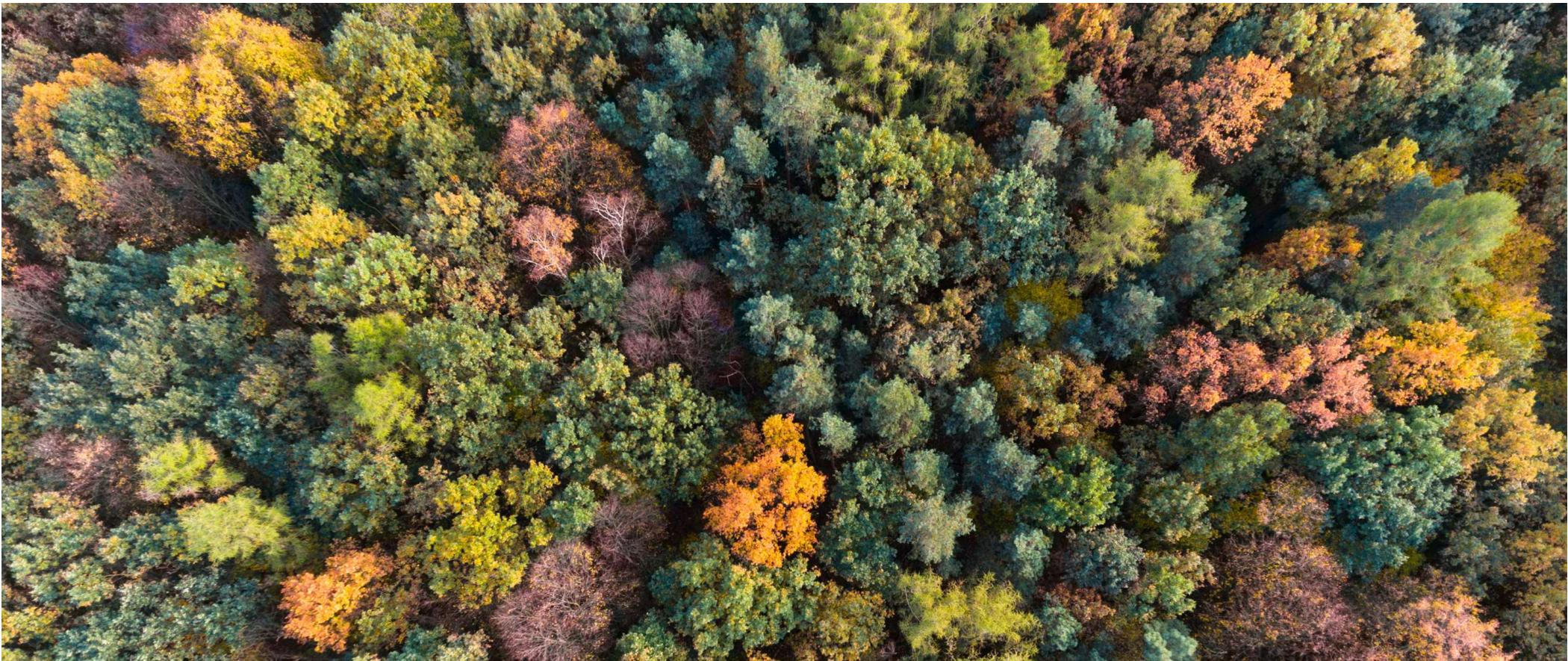
Climate Forward Examples

Protocol	Name	Acres	Project Commitment	~ FMU Issuance	CE Benefits
Reforestation	Sheep Creek Ranch (Montana)	2,500 of 5,200	200 years	In process	<ul style="list-style-type: none">• Unit/Credit yield• Permanence• Third-party oversight
Mature Forest Management	Clear Heart Forest (California)	648	Perpetual	177,271	<ul style="list-style-type: none">• Required• Permanence• Third-party oversight

Verra - Family Forest Carbon Program



1. PA Learning Pilot in 2020
2. Expanded in Central Apps 2022
3. Northeast Pilot launched in July 2022
4. Midwest launched Sept 2022
5. Northeast expansion 2023
6. ARR GA pilot 2023
7. Southern expansion 2024



Methodologies



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Family Forest Carbon Program - Eligibility

IFM

- 30 forested acres minimum (non-planted, naturally regenerating)
- Legal right to harvest
- Minimum volume and stocking requirements by forest type to ensure commercially harvestable

ARR – Field to Forest

- 40 acres minimum
- Cleared of native ecosystems (deforested) for at least 10 years

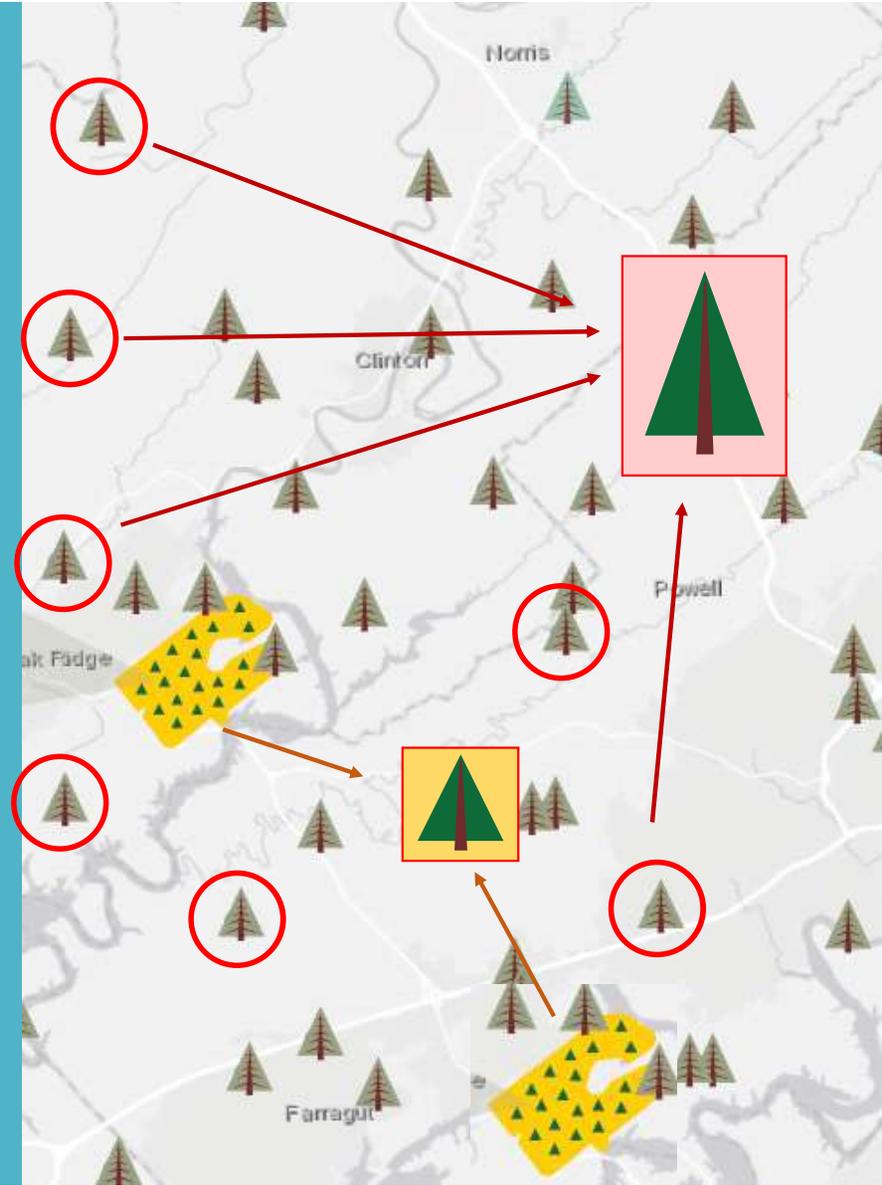
IFM Carbon Accounting

 • US Forest Service is constantly measuring forest carbon through its Forest Inventory and Analysis program plots

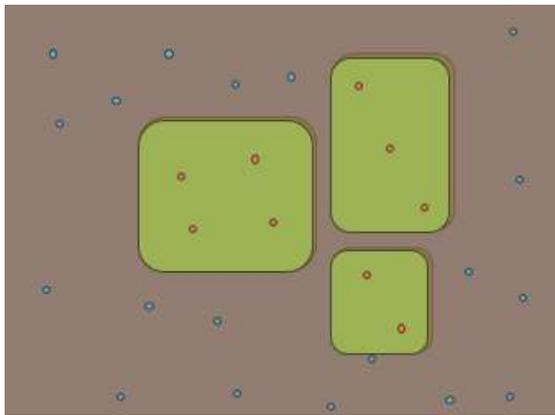
 • Giving us accurate data about how much carbon is in our forests

 • Randomly selected plots on FFCP land are averaged to show how much more carbon (if any) is in FFCP-enrolled forests 

• If  >  , then AFF sells that carbon into the carbon markets (withholding a buffer of credits to account for leakage, reversals)



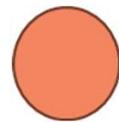
ARR - Dynamic Performance Benchmark



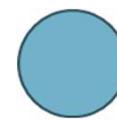
Virtual Project Area



Control Donor Pool

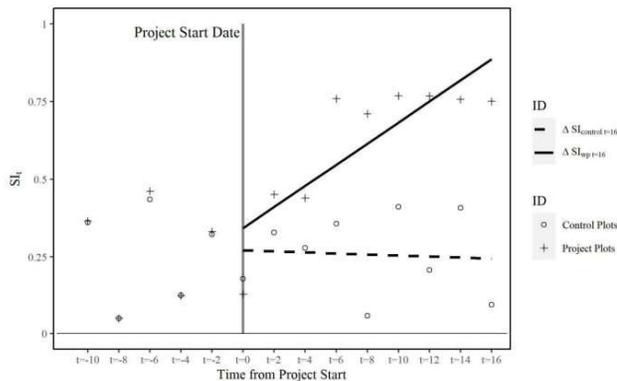


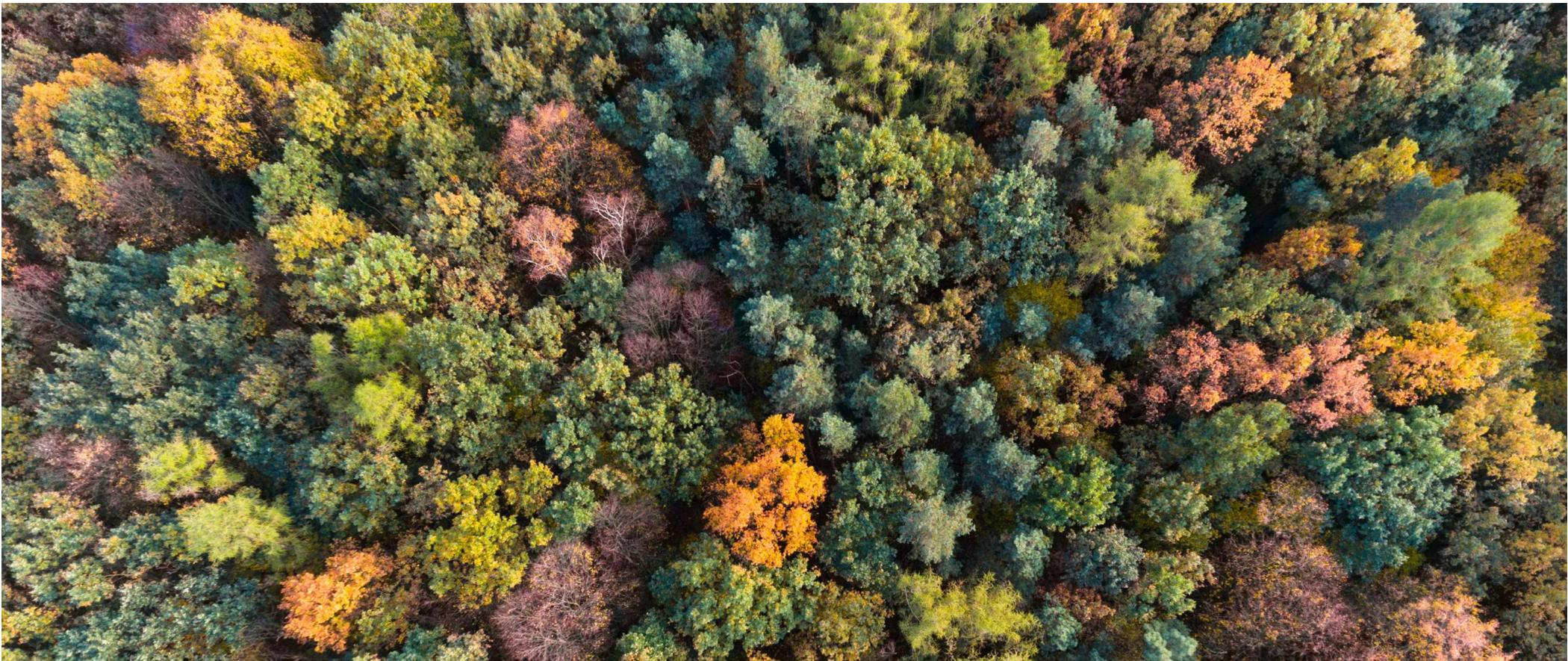
Virtual Project Plot



Match Control Plot

- Create virtual project plots.
- Layer in GIS data to assess whether other properties are going to implement ARR activity outside project to create control plot donor.
- For each project plot, assess site index trend at 3 points in time over past 10 years.
- Match control plots within donor pool that are closest to site index trend for project plot. Most similar trends at three points in time will become match control plot for project plot.
- Ultimately this benchmark gives us a % change in site indices over time to which we can compare our on-the-ground measured impact.





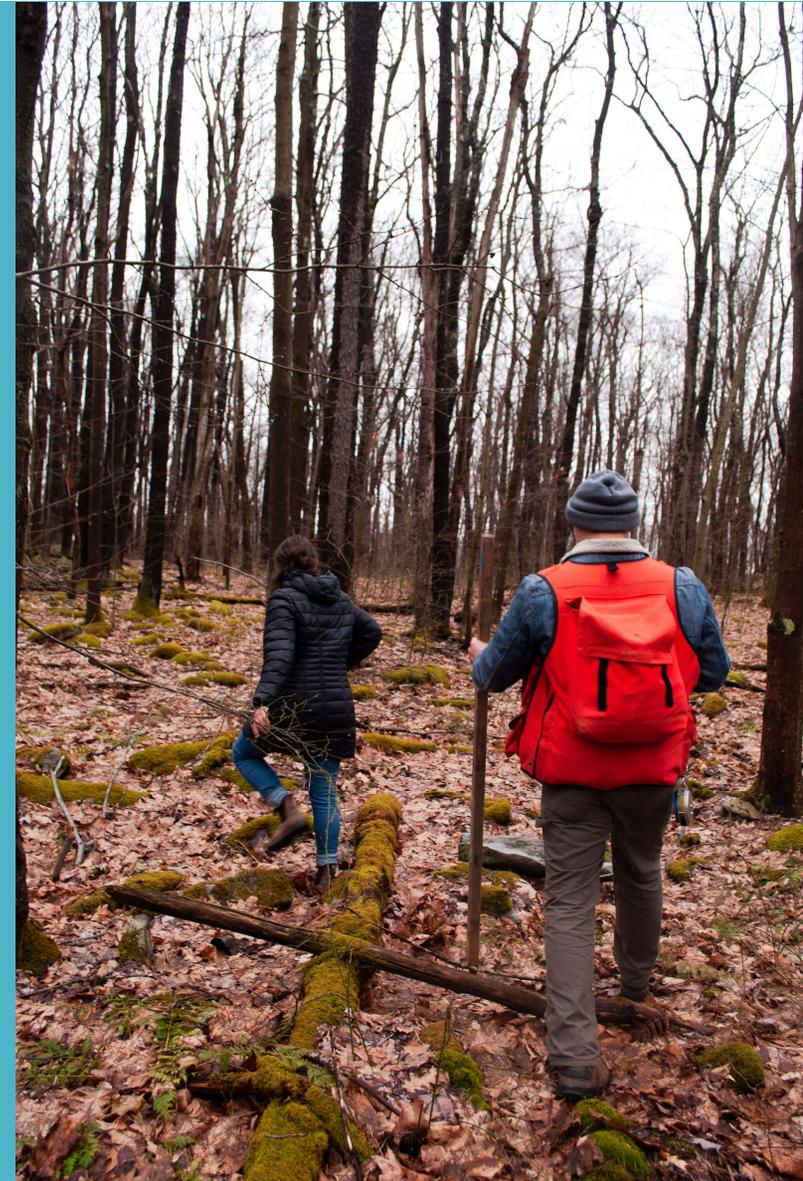
Conservation Easements and FFCP



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How do easements fit with FFCP

- Conservation Easements are not required
- Easements recorded after FFCP enrollment
 - Cannot completely prohibit timber harvesting, tree cutting, and/or dead wood removal, however they can prohibit harvest in ecologically sensitive areas
- Easements recorded before FFCP enrollment
 - Easements must allow relatively unrestricted timber harvest so that all the additional carbon stocks in the project area can be attributed to FFCP



Easements with Forest Management Restrictions

Which Easements Are Compatible?	Which Easements Are Not Compatible?
<ul style="list-style-type: none">• Language that allows for harvest per a forest management plan• Language that requires Best Management Practices to be followed• Provisions that require approval of heavy cuts without specific volume language or restrictions• General language that addresses intent of forest management without specific volume/frequency restrictions	<ul style="list-style-type: none">• Specific areas that are off-limits to timber harvest• Quantitative limits on harvest or targets for stocking• Specific requirements for tree sizes• Specific requirements for standing timber volume• Specific requirements for harvest frequency or intensity

Conservation Easements Impact on Carbon Project

- Impact permanence – maintain benefits accrued during carbon project across landscape after 20 or 30-year contract term
- Permanence Fund – created to support long-term stewardship to protect benefits accrued at landscape level for decades into future
- Protected acres could produce more credits because easements reduce non-permanence risk
- Assuming easement executed after term of contract, achieve ~10% increased credit yield



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Q&A

What Is a Land Trust?

- “If you know a land trust... you know one land trust.”
- 501(c)3 – “organized & operated for an exempt purpose”
- Independent entities



Conserving Wildlife Habitat



Ensuring Clean Drinking Water



Providing Access to Land for All



Tackling Climate Change



Saving Family Farms & Ranches



Protecting Land for Future Generations



Land Trusts: Inner Workings

- Governed by a board of directors that sets strategic direction
- Guided by mission and strategic plans
- Responsive to local communities
- May or may not have staff doing day-to-day work

Land Trust Alliance

- Founded in 1982
- Represent about 938 member land trusts and their 6.3 million supporters, 233,000+ volunteers
- Provide training/capacity building, technical assistance and advocacy at the federal level

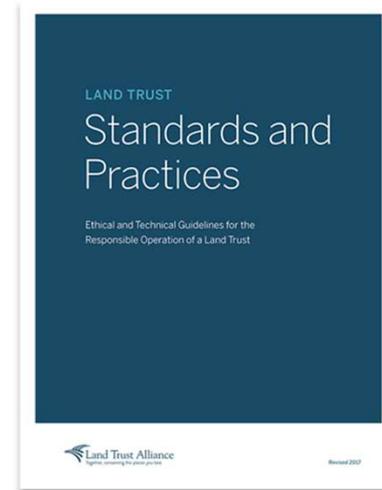
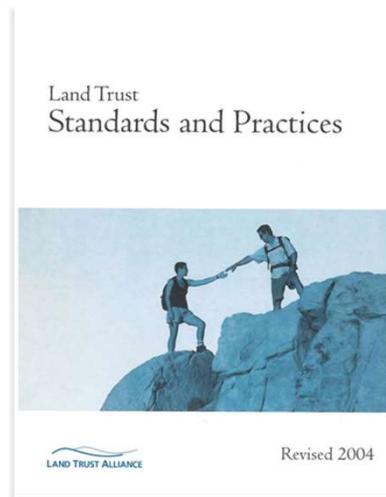
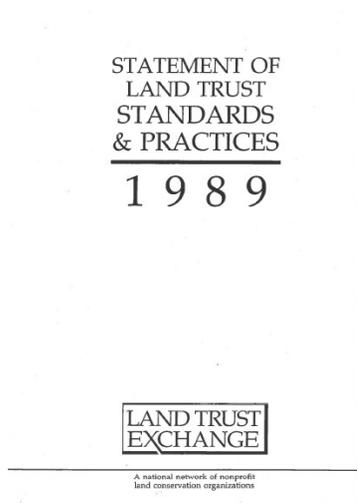


Conservation By the Numbers

- 1,281 active land trusts; 938 Alliance members; 471 Accredited LTs
- 61 million acres protected; Goal of protecting another 60M by the end of 2030

	2010	2015	2020	
 Total acres protected	45,813,150	54,891,951	61,072,596	+33%
 Under easement 	12,837,451	16,572,307	20,236,888	+58%
 Owned	7,231,273	7,941,081	8,489,036	+17%
 Acquired and reconveyed	10,562,844	12,207,155	13,057,348	+24%
 Protected by other means 	14,004,762	17,400,332	18,132,959	+29%

We build healthy, high-performing land trusts



Land Trust Standards and Practices

Governance

- Ethics, Mission and Community Engagement
- Compliance with Laws
- Board Accountability
- Conflicts of Interest

Strong Organizations

- Fundraising
- Financial Oversight
- Human Resources

Land Protection

- Evaluating and Selecting Conservation Projects
- Ensuring Sound Transactions
- Tax Benefits and Appraisals

Stewardship

- Conservation Easement Stewardship
- Fee Land Stewardship

Stewardship Considerations & Strategies:

- The Standards require land trusts to have a program of responsible stewardship for their CEs & fee lands
 - Baseline document reports for all properties
 - Annual monitoring
 - Establish, build, maintain landowner relationships
 - Enforce conservation restrictions against violators
 - Raise, save & expend funding sufficient to do all this...
- Land trusts should have robust funds to cover stewardship and defense costs

Land Trust Accreditation

A Mark of Distinction

The accreditation seal **AFFIRMS** national quality standards are met.



- SOUND FINANCES
 - ETHICAL CONDUCT
 - RESPONSIBLE GOVERNANCE
 - LASTING STEWARDSHIP
-

www.landtrustaccreditation.org



- Formed in 2011; first policy issued 2013
- Conservation defense liability insurance
- 555 members in 48 U.S. states and D.C.
- Over 38,900 conserved properties insured
- Over 11.5 million acres insured
- Handled over 2,400 filed claims
- Paid out over \$6.4 million in covered claim costs

Where to find the right conservation partner:



LAND TRUST ALLIANCE
RALLY 2024

September 25–28 | Providence, RI · Rhode Island Convention Center
National Land Conservation Conference

PROVIDENCE
RI

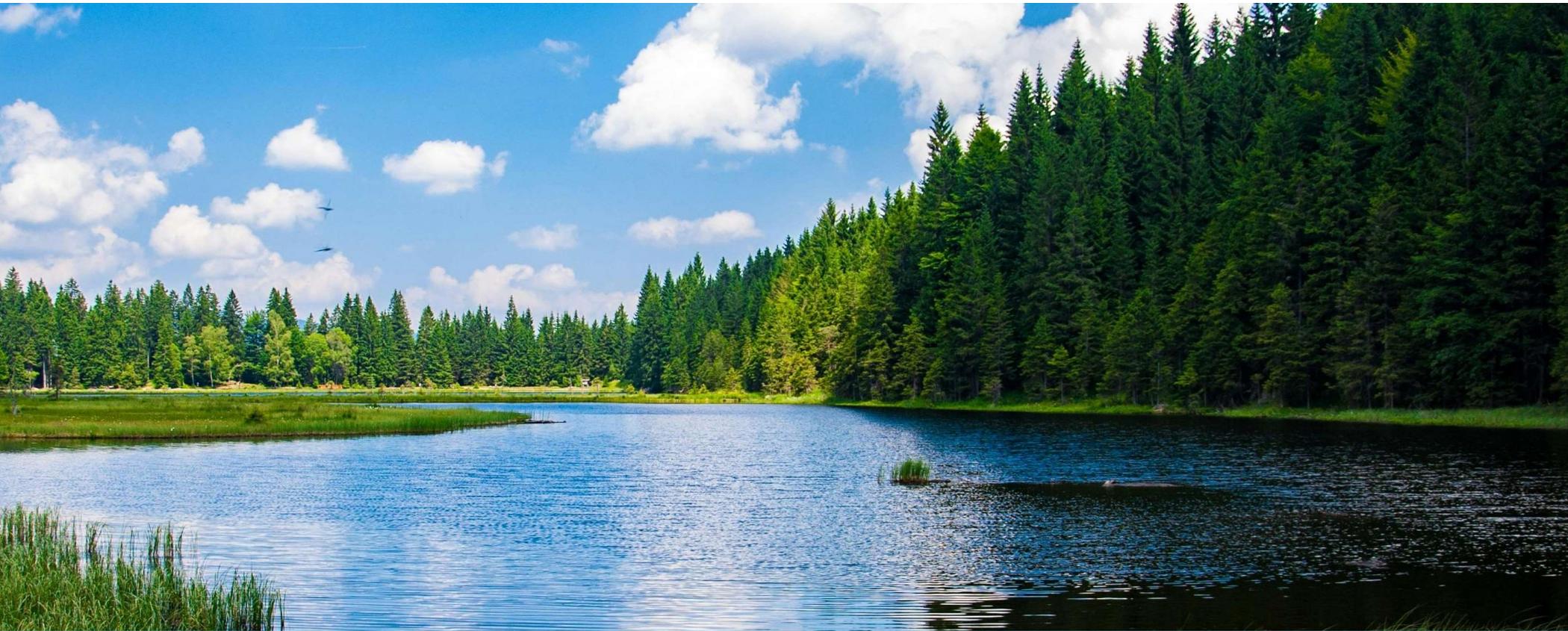
Find a Land Trust

Land trusts permanently conserve the lands we need and love, ensuring they will be there for today and tomorrow.

🔍 Search by name... →

📍 Search around a location... →

OR EXPLORE LAND TRUSTS NEAR ME >



Q&A Pause

Session Trail Map



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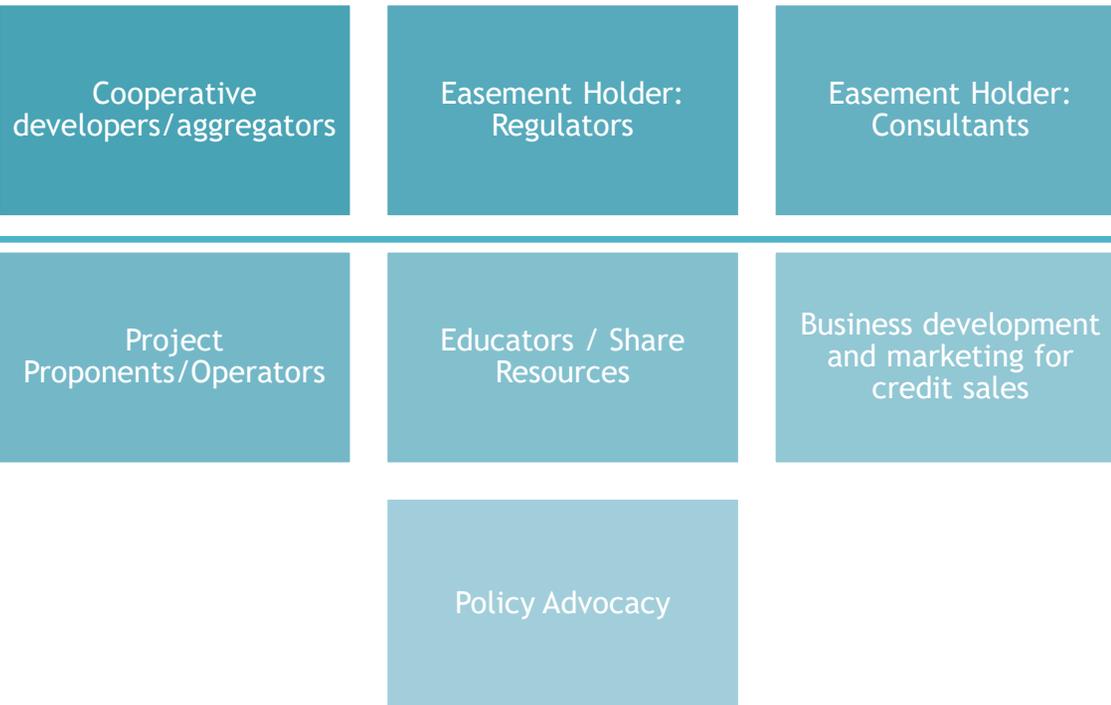
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Land trust roles



Sampling of land trusts in a carbon program

The Nature Conservancy	Southern Plains Land Trust
Ducks Unlimited	Colorado Open Lands
Colorado Cattlemen's Agricultural Land Trust	Vermont Land Trust
Pacific Forest Trust	Placer Land Trust
Northeast Wilderness Trust	Downeast Lakes Land Trust
Nisqually Land Trust	Natural Lands Trust
The Conservation Fund	Cooks Branch Conservancy
Lakes Region Conservation Trust	Tennessee River Gorge Trust
Massachusetts Audubon	Western Rivers Forestry

Land Trusts- Partnering with Developers

Serve as aggregator

- Ex. Cold Hollow Carbon – profit-sharing structure
- FFCP has annual fee structure with potential for profit-sharing

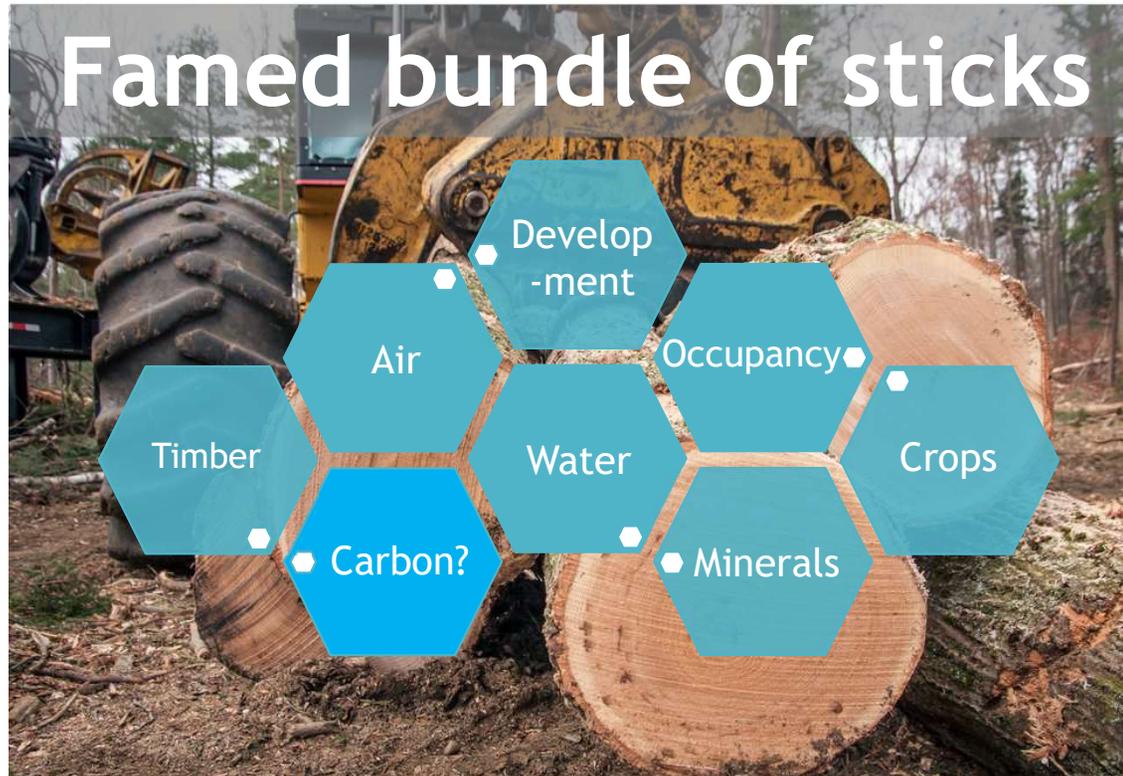


Easement Holder as Regulator:

Existing Carbon Project,
New Conservation Easement

- Simplest scenario for the carbon project developer
- Requirements for the CE:
 - Proving additionality
 - Addressing the carbon project in the appraisal

CEs and carbon: Double-dipping? Not if structured properly...



Land Trusts as Pre-Existing Regulator

- Subject property has an existing conservation easement
- Approval process
- Information to be provided
- Timeline



Examples of Existing Encumbrances at Enrollment

Government Programs

- Forest Legacy Program
- State Conservation Programs

Privately held easements



Easement Holder as Consultant:

New CE & New Project for
Joint funding or
methodology benefit
(voluntary)

-or-

Mandatory methodology
requirement

Most complicated scenarios

- Requires careful timing
- Requires careful drafting
- Requires funding

Timing and Drafting Considerations

Protocol Requirements: These are not identical between project types. Review closely, particularly with respect to timing and required minimum terms.



State Requirements: State easement requirements are not identical. Review closely and consult with the land trust and local counsel, particularly with respect to the term of the easement and permissible purposes.



Condition?: Consider whether you can include a provision in the easement that conditions the required minimum terms on the successful verification or confirmation of the project.



Plan Ahead: Work closely with the easement holder and any easement funders to ensure that all of the other easement terms are fully negotiated and approved before the project deadline. **Build in enough time!**



Timing and Drafting Examples

- *Drafting:*

- Some Public Funders will not permit language that ARB requires to be placed in the CE.
- Be careful about permanently extinguishing future carbon rights so that it is only for the term required in the protocol.

- *Timing:*

- California Air Resource Board issues
 - Phased easements are common, but not permissible for ARB.
 - Easement must be in place prior to project initiation to maximize utility.
- Carbon projects initiated in advance of easement can complicate easement funding and valuation
 - Potential funders misunderstand "*protections*" carbon projects provide.
 - Market data is lacking regarding carbon project-constrained properties.

Budgeting Considerations



Remember: The land trust is serving an important support role in these scenarios.



Land Trust Services Before Confirmation/Verification: Easement drafting and negotiation, easement exhibit and baseline preparation, coordination with any funders, diligence, participation in closing.



Land Trust Services After Confirmation/Verification: Annual monitoring and reporting, relationship management, notices and approvals, potential affirmative duties, enforcement.



These Services Are Not Free: Transaction Fee and Stewardship Endowment must be budgeted into the total project cost.

Budgeting Examples

- Consulting on forest harvest plans and post-harvest compliance.
 - IFM – Ensuring Permanence
 - Climate Forward Mature Forest Management
 - Climate Forward Reforestation
- Enforcement of Conservation Easement
 - Intentional reversals caused by landowners (e.g., overharvest)
 - Affirmative obligation to reforest

Big Picture:

- (1) Conservation easements add real permanence and
- (2) Land trusts take their responsibilities seriously.

Additional Resources

LTA Digital Publication:

“Carbon Offsets in Conservation Easements”

Available at The Learning Center: www.tlc.lta.org

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We'll try to
have answers!

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