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Working forest easements: What are they/their worth?

April 08, 2009 - Appraisal & Consulting

In recent years the term "working forest easement" has been used with reference to conservation easements placed on large forested tracts that are managed for merchantable timber production. The primary purpose of these easements is to preclude or limit the subdivision of large managed forests into smaller tracts, which are more difficult to manage for long-term, sustainable production of forest products. As with conservation easements, working forest easements are typically sold or donated to governmental agencies or environmental non-governmental organizations such as non-profit land trusts. The donation of qualified conservation easements, including working forest easements, to qualified non-profits, can result in significant tax benefits for landowner donors.

Like all conservation easements, working forest easements are an encumbrance on land ownership and typically extinguish development and subdivision rights. They may also provide for some degree of public access, and/or impose limitations or requirements on the location, magnitude and timing of future timber harvesting (i.e., "sustainable" forestry restrictions).

Whereas agricultural preservation easements seek to protect working farms and fertile soils, working forest easements seek to protect working forests and forest ecosystems. The IRS "qualified purpose" of all conservation easements includes the protection of one or more of the ecological resources referenced in Section 170(h) of the Internal Revenue Code, such as clean air, clean water, wildlife habitat, rare and endangered habitat, etc. In addition to environmental protection, working forest easements can also serve the purpose of protecting economic and social values associated with working forests, including the sustained and sustainable production of merchantable timber, and recreation opportunities associated with undeveloped open space. For these reasons, working forest easements typically allow, and sometimes require the landowner to manage the forest for the production of commercial forest products, often subject to restrictions on harvesting within environmentally sensitive areas, such as riparian corridors, wildlife habitat, and public view sheds. For landowners committed to responsible, long-term management of their forest resource, who have no intention of developing their property, a working forest easement can allow a property owner to realize a portion of the economic value of their asset without having to convert the land from forest use.

Whether they are sold or donated, working forest easement transactions typically entail the need for specialized valuation services. The valuation of working forest easements is of importance to both buyers and sellers and, in the case of donations, to federal and state taxing authorities. LandVest has been involved in the valuation of dozens of such easements, including the largest (to date) in the country, which protects over 762,000 acres of forested land in northern and western Maine. In a future article, I will discuss the methods typically employed in the valuation of working forest easements.

Part two will appear in the May 8th edition of the NEREJ in the Appraisal & Consulting section.

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