

Financing Community-Based Conservation of Working Land

A workshop at Stanford Law School, April 13-14, 2007

Workshop Proceedings

Executive Summary

On April 13 and 14, 2007, Stanford Law School hosted a two-day workshop exploring options for financing community-based conservation of working land. Invitees included leading community conservation advocates, land trust professionals, finance professionals, and academics with expertise in community-based natural resource management. The workshop focused on financial topics related to municipalities and local non-profit or for-profit corporations acquiring forests, rangeland, and irrigation systems for conservation and continued production.

Workshop presentations and discussions ranged widely. The workshop focused on community ownership and management of working land, not on collaborative management of public lands with federal or state agencies. Jeffrey Campbell of the Ford Foundation opened with a discussion of Ford's Community Forestry program, and Louise Fortmann of U.C. Berkeley offered a synopsis of academic research on community-based natural resource management. Case studies followed of community forestry in Montana (Anne Dahl of the Swan Valley Ecosystem Center) and northern California (Chris Kelly of the Conservation Fund), grassbanking (Courtney White of the Quivira Coalition), and irrigation (Paula Garcia of the New Mexico Acequia Association).

The workshop then shifted to finance. How do communities raise the capital to acquire natural resource assets? What capital sources are available? Tom Tuchmann of U.S. Forest Capital and Eileen Gallagher of Stone & Youngberg, LLC discussed and debated the potential of municipal "Community Forestry Bonds" in Oregon and Washington. Adam Davis of Ecosystem Investment Partners gave an outline of current and potential ecosystem service payments. Ernest Cook of the Trust for Public Land highlighted the billions raised for conservation by state and local government ballot initiatives. Carlton Owen of the U.S. Endowment for Forestry and

Communities discussed development offset commitments, using the example of Wal-Mart. Bill Ginn of The Nature Conservancy and Robert Keith of Beartooth Capital Partners gave presentations on partnering with private capital, while Deborah Brighton of Vermont Family Forests discussed small-scale equity investments in a community-based LLC as a financial vehicle. Keith Bisson of Coastal Enterprises, Inc. gave a presentation on CEI's Northern Heritage Development Fund, which has invested in community and landscape-scale forest acquisitions, and on the application of New Markets Tax Credits. Russell Read of CalPERS and Timothy Fritzinger of FLAG Capital Management discussed the circumstances under which institutional investors would consider investing in community-based conservation.

Authors' Recommendations.

As one of the first workshops on the topic, the April meeting created more debate and questions than consensus. The workshop participants as a group made no recommendations. On review of the workshop proceedings and presentations, however, the workshop organizers suggest a few points of action for those within the land conservation movement who wish to support community-based ownership and management of working land. These recommendations do not reflect the views of all of the participants in the workshop and should not be seen to reflect the views of any participant in particular.

1. Regional and national conservation organizations should consider selling or donating parcels from large-scale working land acquisitions to non-profit, municipal, or local for-profit community owners. Working land revenues would help support the local economy; a retained conservation easement and (perhaps) third-party certification could provide checks against poor management; and

local engagement with land conservation and management would help foster “an ethic of stewardship.”

2. National and regional organizations should consider offering more financial, legal, and strategic consulting services to community-based organizations seeking to acquire working land. This would involve assisting local organizations in building capacity to acquire and manage working land, encouraging local chapters to support community-based working land conservation, and engaging in meaningful and sustained dialogue with local organizations on working land conservation goals and outcomes.
3. Local and regional conservation organizations should consider as wide a range of conservation finance options as possible for any given acquisition. Many workshop participants valued the broad discussion of conservation finance techniques at the workshop, both the well-established and the recently developed. Workshops on conservation finance being developed at Yale and elsewhere might provide a vehicle for disseminating financing strategies and best practices.
4. The land conservation community should consider developing a “social easement” that would enable the sale of a set of use rights over working land to communities at less than the cost of fee ownership.

Workshop Proceedings

Brian Shillinglaw,¹ Peter Morgan,² Mehana Vaughan³

No matter what the legal protections on the ground, no land will be safe from harm without people committed to caring for it, year after year, generation after generation. All conservation must therefore aim at fostering an ethic of stewardship.

Scott Russell Sanders

Introduction

In early 2005, local realtors sold a small, 115-acre forest parcel near Monkton, Vermont.⁴ Situated on Little Hogback Mountain, the land was forested primarily with red oak, beech and maple stands. A footpath leading to a rocky promontory offered views of the valley. The parcel was prime real estate. Land prices had been rising steadily for more than a decade, as out-of-state buyers bought rural land for second homes and retreats. Local ownership of working land was declining, and Vermont's famed forests were facing development pressure. A number of out-of-state offers were made on the Monkton parcel, but the ultimate buyer was a surprising one: Little Hogback Community Forest, LLC.

In cooperation with Vermont Land Trust and Vermont Family Forests, two regional non-profit organizations devoted to land conservation, local residents bought "shares" in a limited liability company that holds title to the forest. The Vermont Land Trust owns a working forest conservation easement on the land, which prevents the land from being subdivided and developed and which requires

sustainable harvesting of the forest. The cost of a share is less than \$3,000, and Vermont Family Forests retains a "first offer" option to buy shares back when they are offered for resale, with the goal of keeping forest ownership within the community. A revolving loan fund was established to help lower-income members of the community purchase shares at a further discount. Revenues from timber sales are pooled in a fund that is managed to pay property taxes and meet maintenance costs. Shareholders can receive a monetized return on their investment through commercial sales or can receive actual timber and firewood. Estimated annual percentage return on a share is three percent, based on projected timber revenue and asset appreciation. In addition to timber and firewood rights, shareholders enjoy recreational access.

"As more land leaves the hands of locals and working people, a real resentment builds," noted Deborah Brighton of Vermont Family Forests. "A single, out of state second-home buyer would have locked up this land. A conservation buyer would have made it into a park. We wanted to reconnect people to the land and to give lower-income residents assets

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⁴ The workshop organizers would like to thank the Ford Foundation, the Woods Institute for the Environment at Stanford, the Stanford Environmental Law Society, and Stanford Law School's Environment and Natural Resources Law & Policy Program for their support of this event; all workshop participants for their time and engagement with this topic; Emma Yuen for her critical feedback and work on this document; and Karim Al-Khafaji for his work taking notes at the event. The views expressed in this document are the authors' alone and do not necessarily reflect the views of the workshop's sponsors or participants. Sidebars quote workshop participants.

– a tangible, low-risk asset that they can be proud of. A community forest makes people owners of working land in their community, and ownership changes the way people think about land. Owners can become stewards because ownership creates a real relationship with land.”

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Little Hogback Community Forest, LLC is an unusual form of land ownership and management in the United States, but it is not unique. Community ownership and management of working land is spreading. For example, in December

of 2001 the community of Randolph, NH – a township with fewer than 300 voting adults – acquired title to 10,000 acres of forest, creating the largest municipally-owned working forest in New Hampshire. In December of 2006, the Town of Errol, New Hampshire acquired title to 5,300 acres of forest land along the Androscoggin River with the assistance of the Trust for Public Land, a national non-profit organization. Under a conservation easement held by the state of New Hampshire, the land will be managed in working forest, with revenues accruing to the town and various access and usufruct rights available to town residents.

Community ownership and management of forestland is growing outside of New England as well. 2005 witnessed the creation of a community forest in the Blackfoot Valley of Montana, owned and managed by a non-profit. Oregon and Washington have recently passed laws enabling municipalities to create “Community Forest Authorities” that can issue revenue and general-obligation bonds to purchase and manage working forests. And at present The Conservation Fund is working to establish a 532-acre community forest in Hoke County, North Carolina, financed in part through the development of clustered affordable housing on the property.

Nor is community ownership and management limited to forest resources. Communities own and manage pasture and irrigation systems in America as well. In 2002, the Colorado Supreme Court vindicated the access and use rights of descendants of original Hispano settlers over the Sangre de Cristo Land Grant, concluding one of the longest legal battles in the state’s history. These rights include easements that enable community members to pasture animals and gather firewood on land that was once held in common by their ancestors. Conservation organizations have also begun creating a version of common pasture ownership in the United States. Led by The Nature Conservancy, numerous land trusts have experimented in recent years with “grassbanks,” which grant grazing rights on land owned by a non-profit in exchange for conservation easements and ecological restoration on neighboring ranches. Finally, the continuing community-based management of “acequia” irrigation systems in the American Southwest by Hispano communities illustrates an enduring form of agricultural water management, one that crosses cultural lines in the form of the widespread mutual water company.

Town forests in New England, community rangeland in Colorado, community-based irrigation in New Mexico—institutions like these have deep roots in the United States, and the conservation community is beginning to take notice. As one sign of this interest, leading land conservation practitioners, community activists, and financial professionals gathered at Stanford University on April 13 and 14, 2007 to discuss the question of how best to finance community-based conservation of working land.

The very topic of this workshop raises two important questions. First, why working land? Second, why *community-based* conservation?

Working land conservation protects ecosystem services and rural livelihoods.

The land trust movement shares roots with the environmental movement, and the environmental movement in America has long valued wilderness above “working” farms, forests, and ranches—farms that are cultivated, forests where timber is harvested, ranches where cattle graze. Nature has often been viewed as something that exists where people do not. The highest expression of nature is wilderness, and it is wilderness that the land conservation movement first worked to protect—for biodiversity, for charismatic wildlife, and for beauty.

The environmental movement’s nearly exclusive focus on wilderness has been challenged in the past decade. Conservation biologists increasingly highlight the importance of well-managed working land for wildlife habitat and for the maintenance of critical life-support systems provided by ecosystems—such as clean water, soil fertility, and carbon fixation. More visibly, working land faced new economic pressures. Between 1995 and 2006, for example, approximately 75% of the 79 million acres of privately-held industrial timberlands changed hands, land worth well over \$16 billion. Much of this land was bought by investors who might see higher returns in second home development than in forestry. Recognizing that carefully managed timberland can protect values like water quality and some wildlife habitat as well as set-aside parkland can, land trusts moved to protect these timberlands from development, retaining land as working forest, wildlife habitat, and recreational space. The recent investments by the conservation community in timberland echo the efforts of the many land trusts that have focused on farmland conservation since the 1980s. Elements of the land trust movement have been committed to conserving working land now for over two decades—for biodiversity, for charismatic wildlife, for beauty, and for human use.

Community-based conservation can help land trusts be more equitable and effective.

As land conservation organizations began to invest in working land, they often entered the market at as large a scale as possible, especially in the timberland market. It made little financial sense to purchase land or easements piecemeal from wholesale, industrial landowners. Instead, conservation organizations worked to take control of deals and enter the market on the same level as other institutional buyers. And so conservation dollars began to compete with development capital for control over timberland, ranchland, and farmland across America.

The question of community arises in the midst of this competition. What opportunities does community ownership present for raising funds and ensuring long-term management and monitoring? Can conservation outcomes be sustained if the needs and practices of local communities are not considered by the land trust movement? As well-capitalized conservation organizations bid over large tracts of land in some of the poorest counties in America, how will they value the livelihoods and well-being of local residents? Will working land revenues accrue to members of local communities or to non-resident owners?

“Working land conservation must conserve people’s livelihoods if the land is to be truly protected.”

The choice of topic for this workshop presumed that community ownership and management of working land can have significant advantages. First, as Deborah Brighton noted at the workshop, “ownership changes the way people think about land.” When local residents have the authority and responsibility to become involved in the acquisition and management of working land, when they have the ability to share in the revenues and benefits of that management, they may be more likely to become “committed to caring for it, year after year,

generation after generation.” Widespread ownership may help the land trust movement foster a land ethic, an ethic of stewardship. Absentee owners—whether governmental or private—have historically not credited themselves as long-term, effective stewards of land.

Second, widespread ownership of working natural assets may help low-income rural residents raise their standard of living. “Asset-based poverty alleviation,” which aims at increasing ownership of income-producing assets and not just increasing current income, should be a strategy for building wealth in low-income rural, resource-dependent communities as well as in urban centers.⁵ Community ownership of natural assets can help broadly distribute the wealth and value that natural systems create, and, with adequate checks against poor management, that broad-based ownership can help to foster a public commitment to conservation.

There was no formal consensus on these premises at the workshop. But there was certainly a lively debate over them, and over how best to implement community-based conservation of working land when and where appropriate.

Outline of the workshop.

These questions formed the context for the April workshop at Stanford on financing community-based conservation of working land. Workshop presentations and discussions ranged widely. The focus was on community ownership and management of working land, *not* on collaborative management of public lands with federal or state agencies. Jeffrey Campbell of the Ford Foundation opened with a discussion of Ford’s Community Forestry program, and Louise Fortmann of U.C. Berkeley offered a synopsis of academic research on community-based natural resource management. Case studies followed of community forestry in Montana (Anne Dahl of the

Swan Valley Ecosystem Center) and northern California (Chris Kelly of the Conservation Fund), grassbanking (Courtney White of the Quivira Coalition), and irrigation (Paula Garcia of the New Mexico Acequia Association).

The workshop then shifted to finance. How do communities raise the capital to acquire natural resource assets? What capital sources are available? Tom Tuchmann of U.S. Forest Capital and Eileen Gallagher of Stone & Youngberg, LLC discussed and debated the potential of municipal “Community Forestry Bonds” in Oregon and Washington. Adam Davis of Ecosystem Investment Partners discussed ecosystem service payments. Ernest Cook of the Trust for Public Land highlighted the billions raised for conservation by state and local government ballot initiatives. Carlton Owen of the U.S. Endowment for Forestry and Communities discussed development offset commitments, using the example of Wal-Mart. Bill Ginn of The Nature Conservancy and Robert Keith of Beartooth Capital Partners gave presentations on partnering with private capital, while Deborah Brighton of Vermont Family Forests discussed small-scale equity investments in a community-based LLC as a financial vehicle. Keith Bisson of Coastal Enterprises, Inc. discussed CEI’s Northern Heritage Development Fund, which has invested in community and landscape-scale forest acquisitions, and the application of New Markets Tax Credits. Russell Read of CalPERS and Timothy Fritzingler of FLAG Capital Management discussed the circumstances under which institutional investors would consider investing in community-based conservation.

An accompanying document offers one-paragraph summaries of each presentation. In this document, we offer a rough synthesis of the discussions, seeking to highlight areas of consensus, areas of disagreement, and outstanding questions. We group the workshop’s discussions under four

⁵ Economist James Boyce has recently championed this argument. See James Boyce, *From Natural Resources to Natural Assets*, in NATURAL ASSETS: DEMOCRATIZING ENVIRONMENTAL OWNERSHIP 7 (James Boyce and Barry Shelley eds., 2003).

headings: institutional structure, scale, capital, and capacity.

I. Institutional Structure

Existing models of community-based conservation of working land use a wide variety of institutional structures to accomplish community acquisition, ownership and management. Each structure has its own advantages and disadvantages. These legal forms can be broadly grouped into a) local government, b) local non-profit corporations, and c) for-profit corporations that use some mechanism to maintain local ownership of the corporation (a “place-limited corporation”). A fourth institutional structure, the trust, remains uncommon today in community-based conservation, but it has been used for such purposes in the United States in the past.

The place-limited for-profit corporation.

Little Hogback Community Forest, LLC (discussed above) is an example of a ‘place-limited’ corporation. Local residents capitalize the LLC through the purchase of equity stakes. These shares are subsidized for lower-income community members through a revolving loan fund. Vermont Family Forests retains a “first offer” option to buy shares back when they are offered for resale, with the goal of keeping forest ownership within the community.

The LLC structure simplifies the process of raising private capital and disbursing revenue. It complicates the process of receiving charitable donations or “conservation equity” for an acquisition, even if the LLC partners with a charitable non-profit. This legal form may make it more difficult to ensure continued local ownership and control. First-offer options are of little use if the non-profit does not have the capital to buy back equity shares on resale. Restraints on the sale of such equity interests outside

a certain geographic area can be legally complicated and possibly problematic.

Non-profit ownership.

There are more examples of non-profit ownership of community-scale working lands. The Swan Valley Ecosystem Center’s recent acquisition of a forest parcel in Montana was discussed at the workshop, as was the Conservation Fund’s purchase of a significantly larger forest parcel in Mendocino County, California. The Blackfoot Challenge’s community forest also provides an example of non-profit ownership. Non-profit ownership better ensures continued conservation management – there is no buy-out or merger mechanism for non-profits. At the same time, non-profit governance standards may not be as clearly defined and enforceable as in the for-profit sector. Depending on the structure of the non-profit, it may be difficult for a community to maintain control over the non-profit’s board and thereby its management of the natural resource. This is particularly true if the non-profit has national holdings and may choose to sell the asset and prioritize its conservation activities elsewhere. As for finances, non-profit ownership clearly eases the process of raising charitable donations, but it may complicate the process of raising private capital for acquisition and management.

Local government ownership.

Municipal ownership of working land is perhaps the most common of the legal forms—consider the town forests of New England, such as the recent working forest acquisition by Errol, New Hampshire. Municipal acquisition and management has clear governance advantages: existing democratic structures give residents clear control over management of the working land, and that democratic process provides a check against the sale of the asset to a non-resident owner should the majority of the residents wish to block such a sale. Municipalities

also have access to extremely deep markets for low-cost municipal debt, and they may receive charitable donations. They lack, however, direct access to equity capital markets. Insofar as working land acquisitions require low-cost capital due to low and delayed revenue streams, municipal acquisition has strong financial advantages.

II. Scale

Working land conservation is proceeding at vastly different scales. At the same time as national organizations work to achieve conservation at the “scale of nature,” many community organizations seek to conserve locally-important working land.

Workshop participants noted that local and national priorities may differ. Community-based acquisitions may be marginal compared to the overall market, or they may target land that is of low conservation value from a regional perspective. At the same time, landscape-scale acquisitions may overlook locally-important parcels. Landscape-scale conservation efforts also can and have triggered local opposition as communities resist the potential disruption of existing livelihoods and patterns of use. A number of participants noted how such conflicts perpetuate the reputation of land trusts as “elite” and separate from the local community. Some participants described situations in which that reputation was improved through better communication with local communities to discover areas of overlapping priorities.

Conservation at multiple scales can be complementary. Landscape-scale working land conservation is critical to the continued viability of rural livelihoods, for example: town forests or isolated ranches will have difficulty sustaining a forest products or ranching economy alone. Smaller community-scale acquisitions, on the other hand, can contribute meaningfully to the local economy, build broad-based support for land conservation, and in aggregate add to landscape-scale conservation

outcomes. Organizations like Coastal Enterprises have worked at both scales, for example: their Northern Heritage Development Fund has invested in landscape-scale deals to ensure sustainable forestry covenants and community benefits, in addition to supporting community forest acquisitions.

Community and national conservation groups have different advantages and core competencies and can either support or undermine each other’s goals.

Workshop discussions highlighted the fact that transaction costs differ significantly depending on scale. Community groups have inherently higher collective action costs—the costs of organizing and building consensus on conservation priorities and actions to be taken. Community groups also often lack the “front money” and financial or legal expertise to engage quickly and effectively in the appraisal and negotiation process. The public nature of community organizing can also signal interest in a particular land parcel and tend to drive up the seller’s price.

At the same time, community groups have inherently lower transaction costs for mobilizing community engagement and support for a given conservation project. Social networks and political relationships that may be invisible to national groups are well-known locally. National organizations that engage in landscape-scale conservation have the capital and expertise to engage rapidly and effectively in market transactions, but they may lack the ability to foster community engagement and a long-term commitment by local residents to land stewardship.

“The land conservation movement needs to partner more with community development groups.”

Working land owned and operated at a “community” scale may also lack access to traditional

high-volume markets and lack economies of scale. At the same time, owners of smaller scale parcels may be better positioned to access value-added and niche markets.

Due in part to these complementary advantages, some participants suggested that improved collaboration between community-based and national conservation organizations has the potential to achieve meaningful conservation outcomes and create a significant source of conservation finance. Visions for that collaboration varied.

Model I: Community-based organizations purchasing working land from larger conservation organizations.

In one model that emerged from the workshop discussions, well-capitalized regional and national organizations continue to specialize in large-scale land transactions, entering the market quickly with adequate front money, expertise, and lower transaction costs. They engage in “conservation at the speed of business.” Community-based conservation groups, on the other hand, mobilize long-lasting local support for land stewardship and provide after-market exit options for regional and national land trusts. For example, community-based groups might purchase land outright from the larger organizations or purchase a set of access and use rights—a “social easement” (to be discussed below).

Landscape-scale conservation acquisitions “create huge aftermarket opportunities for communities.”

These smaller, local sales would free up capital for national and regional groups to use in further conservation acquisitions. Conservation easements could be retained by the national and regional organizations. Working land revenues would help support the local economy; the conservation easement and (perhaps) third-party certification could provide checks against poor management; and local

engagement with land conservation would help foster “an ethic of stewardship.”

As an illustration of this model, consider a hypothetical landscape-scale timberland conservation deal: a large area of timberland is purchased by a national conservation organization. A conservation easement is sold to the state or to a third party. Some of the underlying land is sold to a timber company with third-party certification for sustainable harvesting, but some of the land is sold to community-based organizations—municipalities, non-profit organizations, or corporations that limit share ownership to local residents. Other community-based organizations buy access and use rights rather than land outright. The property sale could include a reversion clause should the community owner break the conservation easement or fail third-party certification repeatedly. The slightly higher price for such retail land sales—and improved relationships with local residents—may outweigh the higher transaction costs involved for the national conservation organization.

This model requires adequate and effective access to alternative sources of conservation finance by community-based organizations. Furthermore, developing the ability of community-based organizations to effectively finance small-scale working land acquisitions will often require capacity building. These topics are discussed in more detail below.

Model II: Collaboration for acquisition and/or management.

In another model discussed at the workshop, community-based conservation groups provide information and deal flow that influences and helps guide a portion of the regional or national conservation agenda. National or regional conservation organizations might assist community groups or municipalities in acquiring property. Alternatively, national/regional organizations retain

title, with community-based groups advising on management of working lands after acquisition.

This model would reflect and refine current practice. Numerous municipalities and local conservation organizations have acquired property with the financial and technical assistance of the large land conservation groups—from Errol, NH to the Blackfoot Challenge in Montana. Similarly, some conservation groups hold title to working land and consult with local residents on management—the Conservation Fund’s forest holdings in Mendocino County are one example.

Some workshop participants noted that there are sound reasons for this approach: local partners can be difficult to identify, and they often lack the capacity to purchase property from larger conservation organizations and manage it. Conservation organizations that have purchased working land may need to arrange a sale of the property (with a conservation easement in place) to recover their capital on a rapid schedule that precludes taking the time to identify and work with potential local, retail purchasers. Furthermore, in the case of timberland, smaller, community-scale properties may not currently be economical when a region’s processing infrastructure is geared towards large volume harvests rather than small-volume, value-added processing.

The land conservation movement, as it continues to invest in working land conservation, is currently geared towards this model. Major national organizations—The Nature Conservancy, the Trust for Public Land, the Conservation Fund, American Farmland Trust—have local chapters and contacts that enable the prioritization of local easement and fee acquisitions, and which can engage communities on land management issues. The Land Trust Alliance facilitates communication and networking within the movement at a national level. This structure could continue to slowly increase support for community-based acquisition and management of working land.

These two models for collaboration are not, of course, mutually exclusive. The land conservation movement will likely continue to engage in both models of cross-scale collaboration and organization for the foreseeable future.

III. Capital

Most discussions in the workshop naturally focused on finance. Not all participants agreed that municipalities, local non-profits, or place-limited corporations could always effectively own and manage working land in a competitive market. Community-scale acquisitions of working land are clearly a reality and a growing trend, however, and most participants agreed that community ownership could be economical in certain circumstances. How, then, do communities raise the capital necessary to acquire natural assets?

Community-based working land acquisitions face financial challenges.

Workshop discussions highlighted the fact that working land acquisitions by municipalities, local non-profit organizations, or place-limited corporations face three core financial problems. These problems apply both to the efficient use of existing capital and to the potential for attracting outside investment. First, working land often requires significant post-purchase investment for environmental restoration before the asset begins to generate cash flows. A forest might have been clear-cut; a ranch might have been overgrazed for decades; a watershed might have been poorly managed. Environmental restoration can take years and it may be expensive. In the mean time, any debt incurred for the acquisition may have to be serviced regularly.

Second, revenues from working land may be not be generated until a significant time after acquisition of the asset. This may be due in part to prior poor management and in part to the reduced

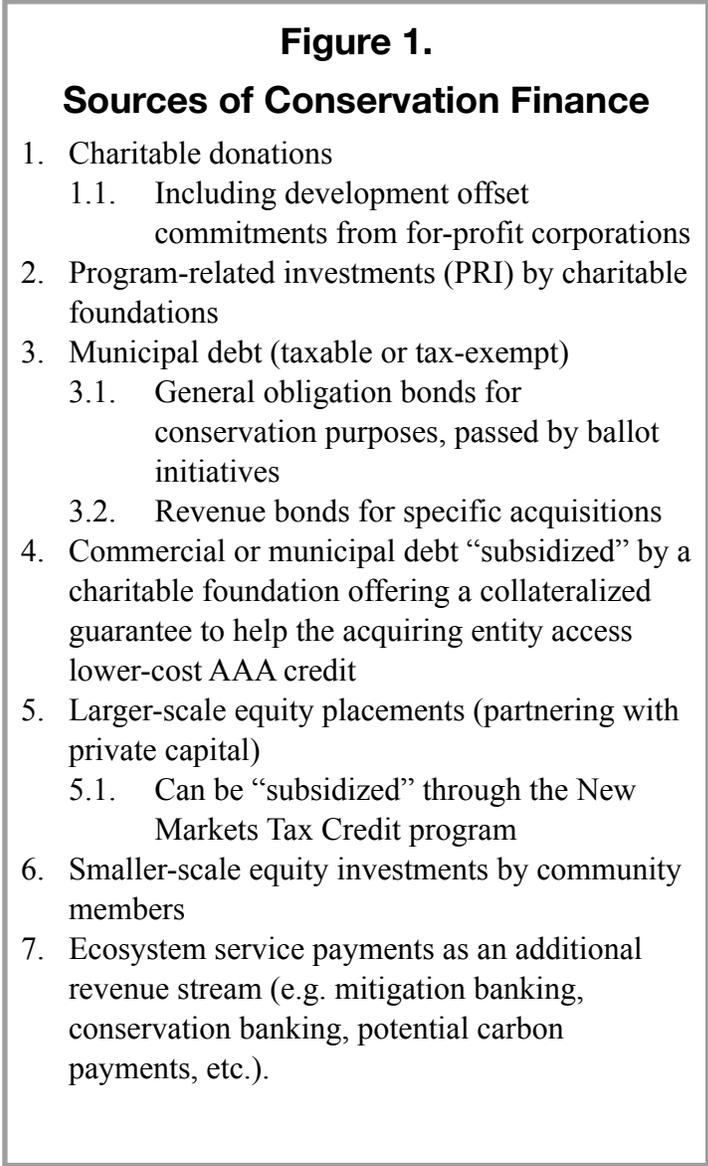
harvesting rate that is often necessary to meet conservation goals as well as production goals. Even a healthy forest can only endure selective harvesting at a certain rate if the goal is to avoid clear cutting; conservation management of a ranch can only contemplate a certain stocking density.

Third, revenue streams from the working land may be low and variable. Prices for natural resource commodities can be highly volatile, affecting the value of timber or cattle or farm products or water. And agricultural industries are not renowned for generating high cash flows even in the best of years.

Conservation acquisitions require low-cost and philanthropic capital.

These financial challenges highlight the need for low-cost capital for working land conservation acquisitions. “Low-cost” capital requires a lower rate of return. For example, true philanthropic capital has a 0% cost: donors to The Nature Conservancy do not ask for a return on their donation outside of a tax deduction. True equity capital invested in a working land acquisition might aim for a 7% return on investment, while debt might demand a 3-7% return (or more) depending on circumstances, as Tom Tuchmann noted in his workshop presentation on “Community Forestry Bonds.”

Working land holds an advantage over true wilderness and park acquisitions in that working lands can generate revenues while achieving conservation goals. More land can be conserved for the same amount of capital, and more sources of capital are available than charitable donations and tax revenues. If the cost of capital for an acquisition is too high, however, working land will come under pressure to service debt payments and meet the demands of equity holders, potentially leading to over harvesting and to the loss of conservation outcomes. The task for conservation finance in a working land context is to look to multiple sources of financing that, when blended, require a low enough rate of return from the



asset that harvesting remains low and conservation goals can be achieved.

Sources of low-cost conservation finance are varied.

Figure 1 lists some of the sources of conservation finance for working land acquisition that were discussed at the workshop.

Much discussion focused on the advantages and disadvantages of different sources of conservation finance, which could vary depending on the entity (charitable non-profit, for-profit

corporation, or governmental unit) that is seeking the financing. Charitable donations are, of course, unavailable to for-profit entities, and the market for philanthropic capital has a relatively limited supply, but such donations are often critical components of an acquisition, lowering the blended cost of capital. Program-related equity or debt investments made by charitable foundations often require lower rates of return, but accessing such capital can require established contacts with investment officers at foundations. Many foundations have also recently scaled back their PRI activities.

“I’ve been in this business for years, and it’s fantastic to learn of so many approaches to financing land conservation.”

Debt can leverage public and private money, potentially at a lower cost of capital than equity markets, but debt can also put pressures on the natural resource acquired and

involve significant transaction costs. State and local bond issues can be an excellent source of conservation finance, as Ernest Cook (Trust for Public Land) highlighted in his presentation on conservation finance raised by ballot initiatives. The use of tax-exempt public debt in partnerships with for-profit or non-profit entities can involve complex legal issues, however, raising the transaction costs involved in accessing such capital. In this light, Tom Tuchmann (U.S. Forest Capital) discussed his development of Community Forestry Bonds, a revenue bond product that involves a governmental entity partnering with a non-profit to enable access to municipal debt markets.

A few charitable foundations have lowered the cost of debt finance for certain conservation acquisitions by issuing a collateralized guarantee, backed by liquid assets in the foundation’s endowment. The foundation removes the risk to the lender, enabling the community or conservation organization to access AAA grade debt. With full repayment of the loan by the acquiring entity, the

foundation has furthered conservation goals at no cost to itself. Such arrangements require careful evaluation of the credit risk of a given working land conservation acquisition. This form of conservation finance has seldom been used, but with careful risk management it could become an established form of charitable activity among certain well-endowed foundations.

Partnering with private capital can provide an additional source of equity investment in conservation acquisitions. In a working land context, this can often involve limited development—developing a part of a parcel in order to help pay for conservation on the rest of the land. Robert Keith and Carl Palmer (Beartooth Capital Partners) discussed how their company engages in limited development to fund ranchland conservation in the intermountain West. The Conservation Fund is similarly engaged in limited development of affordable housing to help fund a community forest acquisition in North Carolina.

Large institutional investors—especially public pension funds—will rarely consider investing in smaller-scale community-based working land conservation, as Russell Read (CalPERS) noted. Institutional investors need to make investments at scale and often require a return on investment that smaller-scale investments in working land simply cannot meet. However, Bill Ginn’s (The Nature Conservancy) presentation documented that partnerships with institutional investors are certainly possible and profitable for landscape-scale conservation. Deborah Brighton (Vermont Family Forests), in contrast, noted that many local investors in a working land conservation acquisition do not demand as high a return on their investment. The investors in Little Hogback Community Forest, LLC, for example, were contented with a projected 3% annualized return on their equity investment.⁶ Smaller-scale, local equity investments can therefore be an attractive option for helping finance community-based conservation of working land.

⁶ Note that federal securities laws contain an exemption for the issuance of less than \$1M in securities to in-state residents by a corporation, lowering the transaction costs for such equity investments.

Finally, as Adam Davis (Ecosystem Investment Partners) noted, emerging markets for ecosystem services can improve the economics of working land conservation. Payments for carbon sequestration, water quality, wetland preservation and habitat for endangered species can increase revenue streams from natural resource assets. Communities and conservation organizations considering working land conservation acquisitions should pay close attention to potential value created by such opportunities.

A “social easement” on working land could provide a lower-cost alternative to full fee acquisition.

Given the financial challenges facing community-based working land conservation, however, some workshop participants noted that purchasing the full fee title to a working land parcel might be a greater expense than many conservation organizations or municipalities wish to bear. It might therefore be of considerable interest to the land trust movement to develop a model “social easement,” or a set of use rights to working land that would be held in trust by a non-profit or municipal corporation for the beneficial use of long-term area residents.

Such an easement would enable partial entitlement to the produce of working lands without fee ownership—and at a lower cost. This has, in reality, long been the *de facto* situation on the ground in many areas of rural America, particularly areas where land ownership is highly concentrated. Full fee title to a property might be owned by a corporation or

the State, but residents effectively retain access for subsistence and petty commercial purposes. Rural residents gather firewood and some lumber from Forest Service or large corporate timberlands. Similarly, wild mushroom gathering alone is estimated to be an industry worth \$5 *billion* annually on the western coast of the United States—little of it on land owned by gatherers. In the case of Native American groups, acequia associations, and other minority groups within the United States, access for gathering and other cultural practices may continue on ancestral lands long after land tenure has changed, and such access may be protected by federal and/or state law.

Such access and use by rural residents is necessarily tenuous without firm legal title, however; and as it occurs at the margins of legality it cannot be effectively managed, potentially threatening a resource with over use. Land trusts could play a crucial role in “titling” these property rights in low-income rural communities. This titling might not significantly diminish the value of the residual fee ownership to the land trust or ultimate buyer, especially in a context where such access and use is occurring with or without legal right and the land is to be kept in active agricultural or forest products management. A social easement would simply recognize, value, and provide a management mechanism for various forms of light extractive use that would tend to conflict only with housing or commercial real estate development.⁷

Some workshop participants noted, however, that potential legal challenges to these property rights and the high costs of implementation and enforcement

⁷ A social easement could include limited rights to gathering firewood, fish, game, mushrooms and other non-timber forest products, access to significant sites for cultural and/or religious purposes, and potentially limited grazing rights. The underlying land would be subject to a conservation easement that expressly limited the extent of such access, gathering and grazing. The sale of such an easement could be to a non-profit or municipal corporation to hold in trust for the beneficial use of long-term (>1 year) residents of the municipality. Trustees, who could be elected by local residents, could be required to immediately promulgate regulations limiting access and harvest rates. Regulations could include graduated sanctions for misuse or over harvesting. Right of appeal to state courts by users could be automatic. Ideally, the social easement would be subject to third party certification for sustainable management, and a right of reversion would be retained by the organization that sold the easement should management fail third-party certification for a few years in succession. Easements enabling use and extraction on another’s land (“profits a prendre”) were common in the past, and they still persist in some areas of the United States.

of a “social easement” program may limit the applicability of this approach.

The above discussions of capital and scale illustrate the need for capacity building. Communities continue to need additional support to effectively engage in working land conservation; national and regional conservation organizations need to continue to increase engagement and dialogue to work with and learn from community-level groups.

IV. Capacity

Workshop participants often discussed the need for capacity building to help communities effectively engage in working land conservation and national organizations effectively engage with communities.

As noted above, community-based actors often lack the financial and legal expertise to engage quickly and effectively in appraisals and negotiations over property. Community organizing quickly telegraphs interest in a property, potentially driving up the price. It makes no economic sense for local conservation organizations and working land users to hire the type of expertise that larger conservation organizations, with a significantly higher deal flow, retain in-house.

Some workshop participants noted that an intermediary was needed to provide financial, legal, and strategic consulting services for community organizations seeking to acquire working land properties. Such consulting services could be made available on a charitable or fee for service basis. In a sense, this is the bread and butter of many national conservation organizations when the subject is the acquisition of conservation easements or public parks. There likely is no need for a stand-alone intermediary non-profit offering consulting expertise, or a new division at a national non-profit. A change of emphasis may be all that is needed. Should these

organizations choose to provide further support to communities seeking to own and manage working land, the perceived shortage of assistance noted by many community-level organizations might rapidly disappear. The lack of dialogue and sustained engagement noted by some community and regional organizations at the workshop might also be ameliorated.

V. Authors’ Recommendations

As one of the first workshops on the topic, the April meeting created more debate and questions than consensus. The workshop participants as a group made no recommendations. On review of the workshop proceedings and presentations, however, the workshop organizers suggest a few points of action for those within the land conservation movement who wish to support community-based ownership and management of working land.

These recommendations do not reflect the views of all of the participants in the workshop and should not be seen to reflect the views of any participant in particular.

1. Regional and national conservation organizations should consider selling or donating parcels from large-scale working land acquisitions to non-profit, municipal, or local for-profit community owners. Working land revenues would help support the local economy; a retained conservation easement and (perhaps) third-party certification could provide checks against poor management; and local engagement with land conservation and management would help foster “an ethic of stewardship.”
2. National and regional organizations should consider offering more financial, legal, and

strategic consulting services to community-based organizations seeking to acquire working land. This would involve assisting local organizations in building capacity to acquire and manage working land, encouraging local chapters to support community-based working land conservation, and engaging in meaningful and sustained dialogue with local organizations on working land conservation goals and outcomes.

3. Local and regional conservation organizations should consider as wide a range of conservation finance options as possible for any given acquisition. Many workshop participants valued the broad discussion of conservation finance techniques at the workshop, both the well-established and the recently developed. Workshops on conservation finance being developed at Yale and elsewhere might provide a vehicle for disseminating financing strategies and best practices.
4. The land conservation community should consider developing a “social easement” that would enable the sale of a set of use rights over working land to communities at less than the cost of fee ownership.