

Acacia koa in Hawai'i: Facing the Future

Abstracts and Papers

COMMERCIAL FORESTRY

CONSERVATION EASEMENTS & SELLING OF KOA LOGS

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Conservation easements are an effective way for private koa forest landowners to protect traditional forest values, ensure long-term sustainable management of the forest, and advance the landowner's financial objectives. Forestland conservation easements can be used to protect forest landscapes that yield forest products, are used for education and recreation, or that are managed to provide ecological benefits. These easements have been used to conserve land as small as a few acres, to landscapes that are several tens of thousands of acres. Forestland conservation easements have been utilized by individuals, families, industrial corporations, and even non-profit landowners. By facilitating forestland conservation easements, communities benefit by securing their economic forestland base, improving air and water quality, ensuring the preservation of important viewsapes, and maintaining recreational open space.

The Parties to the Easement

Conservation easements are private agreements between a landowner and a holder of the easement, which is either a non-profit organization (i.e., a land trust) or a governmental entity. They are generally perpetual in duration and are regularly monitored for compliance. Given the long-term nature of a conservation easement, a positive relationship between the owner and the holder is critical to future collaboration, interaction and coordination. A landowner must work with an organization that has consistent values and shares the landowner's objectives for the conserved forestland. A holder must feel that it can trust the landowner and that there is a commitment to abiding by the terms of easement. Trust, respect and communication are vital to the success of the easement over time.

The landowner can only donate the easement to an organization willing to receive it. A non-profit might decline the donation because of the costs for monitoring and management in the future.

Furthermore, the landowner will only be able to claim a tax deduction for the easement if the receiving organization is “qualified” by the IRS on the basis of its mission and capacity as well as non-profit status. Non-profit entities in Hawai'i that hold conservation easements include: the [Hawaiian Islands Land Trust](#), the [North Shore Community Land Trust](#), [The Nature Conservancy](#), and the [Trust for Public Land](#).

Terms of the Easement

Conservation easements are negative servitudes, meaning that they are primarily comprised of restrictions agreed to between the landowner and the holder. These restrictions are carefully crafted to fit the individual circumstances of each property and the goals of the landowner. They must also fit the mission and objectives of the holder of the easement. The centerpiece of any easement is the acknowledgement of specific conservation values present on the property. Recognized conservation values include: (1) recreational and educational uses by the general public, (2) the protection of important habitat; (3) open space uses that advance clearly stated governmental objectives (such as the protection of flood plains, farmland, or productive forestlands); or (4) land that has significant cultural or historical features. Since the easement is a perpetual document, the terms of the easement need to be flexible enough to accommodate changes in management technique and in technology, while restrictive enough to ensure the protection of the conservation values.

These easements generally: eliminate subdivision of the conserved property; limit the construction of structures (including dwellings); prohibit mining; proscribe the manner in which roads, fences, and other infrastructure can be developed on the property; restrict high-intensity recreational uses; and control the introduction of invasive species. Of particular significance to koa landowners that intend to manage their property for forest products, the easement will outline the requirements for sustainable harvest of the trees. The document will also detail the manner in which the holder may monitor and enforce the terms of the easement.

Easement Economics

The potential financial benefit of a conservation easement can be substantial for a koa forest landowner. The value of the easement is determined by establishing the fair market value of the land before the easement is in place and then subtracting the value of the land encumbered by the easement (a before and after valuation). These values are determined by a qualified appraiser. The impact on value of the restrictions in the easement is generally related to the loss of subdivision and development rights, along with any tree harvest limitations. For example, let's say that lumberjack Phil does an easement on 300 acres of koa forestland with the Island Wide Land Trust. Though zoned AG-5 and currently composed of 6 individual parcels, the easement restricts all subdivision (and separate sales of the existing individual parcels) on the property, and Phil is only permitted to build two modest homes. Though moderately stocked with koa timber, Phil agrees to an easement that restricts harvest to 2.5% of his merchantable inventory every year. If the property were sold without the easement, the appraiser determines that it would sell for about \$3 million dollars. With the easement in place, however, the fair market value of the property is only \$1.2 million dollars. The value of the easement is, therefore, \$1.8 million dollars (\$3 million - \$1.2 million = \$1.8 million).

To realize financial benefit from the value of his easement, Phil would either need to sell his easement, or gift his easement to the holder and seek favorable tax treatment. There are a few programs, such as the Forest Legacy Program (a Federal/State cooperative forestland conservation program) that will pay for the purchase of conservation easements. The Forest Legacy Program is administered by DOFAW in Hawai'i and information is provided on their [website](#). Other programs include the [Legacy Land Conservation Program](#), and the Army's Compatible Use Buffer Program. Payments are often a percentage of the total easement value.

The tax code also provides financial benefits to those that contribute conservation easements to tax-exempt entities. The code enables many landowners to take a tax deduction for the value of the easement. Since the easement value is often much more than the income of the landowner, the code allows for the deduction to be carried forward to subsequent years. For specific information on the potential financial benefit of a tax favored easement, please contact an attorney or accountant with experience in advising on easement donations.

Conclusion

Conservation easements provide forest landowners the opportunity to protect important values they cherish on their land, perpetuate their thoughtful stewardship, and establish a lasting legacy for generations to come. Hawai'i's beautiful forests are an integral part of its magical landscapes, and an important contributor to its economy. Koa is a treasured species, highly valued for its remarkable wood and essential to Hawai'i's ecology. A conservation easement is an incentive-based tool for landowners and their communities to work together in ensuring the bright future of this important native tree species.