

EXPLORATORY WORKSHOP ON PRIVATE CONSERVATION INSTRUMENTS AND POLICY IN A CHANGING CLIMATE COMPILED NOTES AND ACTIONS ITEMS

FEBRUARY 23 & 24TH, 2009

THE NATURE CONSERVANCY AND THE WOODS INSTITUTE FOR THE ENVIRONMENT

I. RELEVANT SCIENCE

What do we know about the potential impacts of climate change on biodiversity, ecosystem processes, and conservation generally? How might climate change affect the goals of conservation easements and private conservation efforts?

A. CONSERVATION EASEMENTS AND CLIMATE CHANGE IN CONTEXT

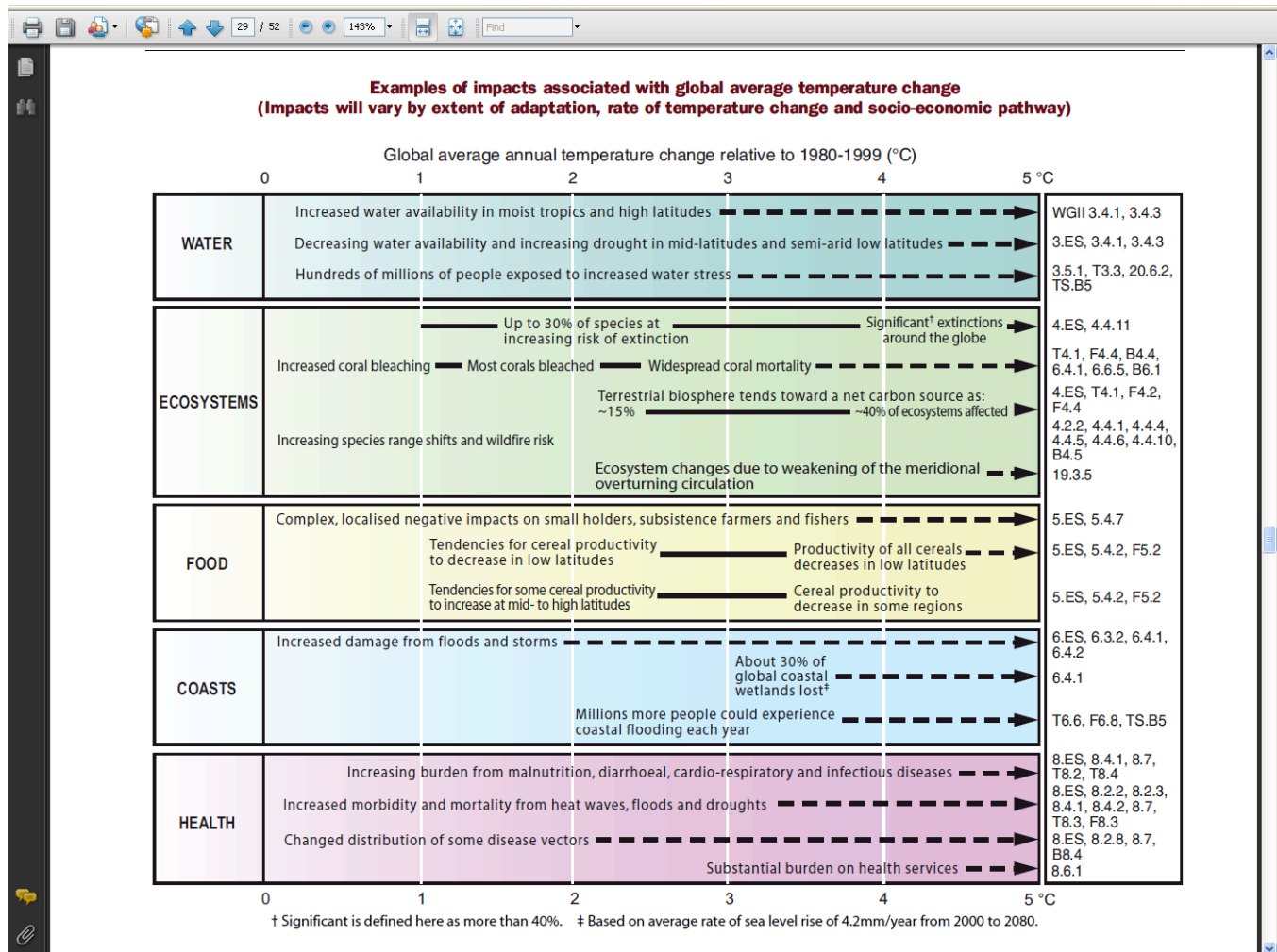
There are 1,500 land trusts in the U.S., holding over 18,000 conservation easements across 8+ million acres of land. In a survey of 250 land trusts, most were neutral about the ability of society to deal with climate change. Of those land trusts that identified their work with climate change, most were focused on increasing carbon storage in natural lands to slow the rate of increase of greenhouse gases in the atmosphere – or carbon mitigation. In this workshop, we focused on *adaptation*. We focused on the ability of conservation easement to aide or hinder implementation of adaptation strategies in a rapidly changing world, whether flexibility is desired, and whether other tools exist that would better facilitate adaptation. How to adapt conservation easements to address climate change threats? How do conservation easements help society adapt to the threats of climate change?

B. EXPECTED CLIMATE CHANGE IMPACTS

The concentration carbon dioxide (CO₂, a potent greenhouse gas) at the onset of the industrial era was 280 parts per million (ppm). Currently, the concentration is 385 ppm, or 38% higher than pre-industrial, which has caused a 0.7°C increase in global mean temperature. At this current, level of temperature increase, impacts are measurable significant and comprehensive (See summary from Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report's *2007 Synthesis Report*). In addition, annual rates of carbon global dioxide emissions have been increasing every year since the year 2000 and are far higher than any emissions scenario contemplated by the IPCC in the 2007 Report. Based on IPCC emissions trajectories, all the policies currently implemented or proposed to curb greenhouse gas emissions are not aggressive enough to keep the atmosphere below 550 ppm CO₂, which will likely result in a 3°C (5.4°F) increase in global mean temperatures by the end of the century, and will likely result in concentrations beyond 600ppm. According to the IPCC, carbon dioxide concentration this high will result in several meters of sea level rise, widespread coral mortality, 50% permafrost thaws, and extinction of species. This may have significant implication for the conservation community and its use of conservation easements to retain conservation values in perpetuity.

With a 3°C increase in global mean temperature, California's can expect increases in mean sea level rise up to 1 meter with up to 4m in storm surge during extreme events (Elkhorn Slough example), major shifts in the climate that support iconic keystone species (Blue Oak example) and shifts in conservation targets within conservation projects that have utilized conservation easements as a conservation tool (Mount Hamilton Project example). Costs to meet current goals of conservation of biodiversity would nearly triple.

See summary below from “Climate Change 2007: Synthesis Report” by Intergovernmental Panel on Climate Change (http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf, p51.)



Discussion:

- We shouldn't abandon the conservation of land we hold today, as those species are important for establishing future population but you may need to identify priority locations for current conservation target to have suitable climate in the future. But where and by what criteria would you select new sites?
- Species will not be evenly impacted migrate and adapt at the same rate and there will be a new bio-interaction of species who are suddenly thrown together because of climate migration.
- How do you protect source populations for species? When do you abandon them, give up on a species/habitat? How to modify easements that are no longer a benefit to the purposes of the conservation easements?

C. CONSERVATION EASEMENT VALUES, PURPOSES AND RESTRICTIONS

There are three characteristics of conservation easements, all of which could be affected by climate change – values, purposes and restrictions. There are many reasons that a non-profit will utilize an

easement, all dependent on its mission and goals. The reasons are captured in Conservation Values. According to the Internal Revenue Service, there are five primary conservation values on which to base an easement: 1) public recreation/education, 2) significant conservation values, 3) scenic enjoyment, 4) open space (particularly for agriculture and forestry), and 5) historic preservation. For the purposes of this presentation, we focus on conservation easements as utilized by The Nature Conservancy which are largely focused on significant natural habitat. Natural habitat values are likely to be dramatically altered by climate change.

But not all conservation easements are employed to preserve the significant conservation values. Often conservation easements are employed in a larger landscape context, and it is the landscape context that determines the purpose of the easement. In a survey of conservation easements held by The Conservancy in six states, there were a variety of purposes identified included:

- **Retain undisturbed habitat in natural state/condition**
- Prohibit development fragmentation
- **Protect endangered species**
- **Protect communities**
- **Protect habitat for migration routes/connectivity**
- Protect unique physical features
- Buffer for habitat or feature
- **Manage in accordance with a landscape conservation plan**
- **Restore habitat/ecosystem**

Some of these purposes for an easement will not be affected by climate change. Of this list, the item in bold will be affected by a changing temperature and precipitation.

Once the purpose of an easement is determined and the conservation values are identified, the restrictions and the prescriptive management requirements written into an easement may or may not help protect the conservation values in the context of climate change. Restrictions are generally of three types:

- Subdivision development
- Land use including agriculture
- Resource extraction/modification, including
 - harvest rates
 - invasive species introduction
 - water source development and export
 - use/destruction of specific species

II. WHAT ARE THE IMPLICATIONS OF CLIMATE CHANGE FOR PRIVATE CONSERVATION INSTRUMENTS AND POLICY?

How do the scientific changes discussed in the first session affect the viability of private conservation easements and policy? Are current conservation easements, for example, sufficiently broad to permit conservation organizations to take the actions needed to respond to climate change? Do conservation easements need to be more flexible in order to permit adaptation to climate change (e.g., by changing the land areas needed to be

protected)? Conversely, will climate change put existing conservation easements at risk by giving land owners a new defense?

A. PROVOCATEURS: ANDY DANA, BILL WEEKS AND MEG CALDWELL

B. KEY QUESTIONS: Is perpetuity a worthy and realistic goal? Are conservation easements sustainable in the context of climate change? Are they sustainable when social values change? Which social purposes can they or do they fulfill? What are the scientific and policy implications of perpetuity given that land is always changing and will change faster in the context of climate change?

a. EXAMPLE: In Montana, many conservationists working to defeat a bill that would preclude perpetual easements. The bill has a climate change thrust: There have been massive die-offs in forest and easements preclude energy development, leaving a parcel that no longer sustains conservation values but also precludes renewable energy development. To defend the value of easements in the long run, we need easements that are flexible to meet the future ecological and social goals to serve the public interest. Since easements are currently written and administered strictly, we will have many problems in the future under climate change.

b. Potential Solution: Apply the bundle of sticks theory and recast conservation easements as a transfer of conservation property rights. Just as a farmer has the ability to change the crop mix - we need to be able to adapt conservation easements through time. We could write into easement laws to redefine conservation values after twenty years with community and we could create short-term easements.

C. KEY ISSUES OF WHICH TO BE AWARE WHEN ADDRESSING NEED FOR IN PERPETUITY:

a. CAUTION: We need to be careful of what might happen when we open a Pandora's box of allowing easements amendments - even in the context of climate change.

b. RATE OF CHANGE: Ecological changes happen slowly relative to the economic activity, even in the context of climate change.

c. CONSERVATION COMPLEXITY: These systems are extraordinarily complex and our knowledge is limited about the impact on conservation values

d. CLIMATE CHANGE vs. OTHER STRESSORS: Why would choose to amend easements for climate change and not other ecological stressors of change, such as invasive species? There are no areas that are free of intentional or unintentional human activities. Because of that, you can't just leave land trusts alone and it will remain as is. Systems are dynamic and all systems are affected by human activity. Consequently, doing nothing is sometime leaving the land to the affects of these human activities. There is continuing value for an easement area even if the target species is gone, perhaps there are new species taking up residence there, or perhaps the target species will return to that area in the future when the climate returns to the current position.

e. NARROW CONSERVATION VALUES: Most conservation easements written to include all potential outcomes bind its potential for flexibility so we need a broader statement of conservation values.

D. WHAT IF WE DO ABANDON IN PERPETUITY – what would that look like? It would be possible to more fully utilize public trust instead. Public entities have more flexibility and latitude for governing public trust outcomes than private entities do through the use of

easements. A shift like this would be a more direct exercise of public trust responsibilities by the government. Public trust may be a more flexible way to deal with future public interests. In some cases, the best solution is to the current-day use of easements maybe option easements to maximize flexibility.

E. DISCUSSION

- **FLEXIBILITY & LONGEVITY:** In order to achieve species survival, species will need to migrate where suitable climate persists and where there is least impact by other stresses. The goal should be identifying and retaining conservation lands that provide habitat resilient to climate change impacts and acquire new lands to facilitate species survival.
 - **Rising Conflict between the Easement Goals Due to Climate Change?** If the land trusts community and conservation easements are inflexible and non-responsive to the changing needs in the public interest—a threat to easement longevity: If easements are unable to adapt and be flexible, legislators will surely act to amend or dissolve them. Easement management resources are limited and will continue to be limited and demands flexibility as these changes take place.
 - **Public trust managers of conservation easements currently serve two masters:** (1) the stated public interest/policy as set forth by the government and (2) the individual landowners' stated restrictions and conservation goals in the case of donated easements. When the two goals are in conflict should the interest of the public take precedence? Do statutes compel prioritization of the public interest to that of the land conservation easement donor? May need to establish policies/parameters to accept the conditions of property donations
 - **Can perpetual easements still serve the public interest even in changing climate?** When you create perpetual easements, and you make those easements adaptable, then there is no reason that the public interest will lose. The needs of the public can change and the easements could be amended to adapt to those needs, or management can change to meet those changing needs. In flexible easements, shift value of public good and mix of conservation values. Flexibility to redefine value of public gift. Lack of information speaks to need for flexibility (not perpetuity). To what degree does it undermine the incentives of property owners?
- **POLICY IMPLICATIONS:** Does current policy present limits to instrument longevity?
 - Need to get ahead of the policy curve because otherwise the decisions will be made for the conservation community. May need to consider changes in policy through legislation and/or drafting best practices that include drafting for multiple, broad purposes, or possible future purposes.
 - May need to broaden statutorily recognized conservation easement purpose for meeting **climate change adaptation and mitigation goals**. The lack of recognition of climate change as a policy driver for conservation easements use within local and state policies, and federal tax regulations might need to be changed to meet future public good outcomes including development of renewable energy.
 - In the case of donated easements, the statute states that the goals of the individual landowner (if within certain parameters) are by definition in the public interest today even can't accept all conditions in the future. Due to the need to satisfy donor intent, donated easements may need to remain inflexible in the context of climate change

whereas purchased easements for conservation purposes that are unattainable under climate change may offer opportunity for flexibility.

- CONCERNS: Unintended consequences of attempting to change policy
 - If you open the door to reconsideration of federal tax incentives to conservation easements, need to consider unintended consequences including
 - Can the stated purpose be used by the landowner to defend against the continuation of a conservation easement? (see below)
 - Who gets to decide about how to adapt the easement or the land trust - the trustee or the donor, land trust, public agencies, the public, and/or land owners who own the property burdened by easements?
 - **Increasing uncertainty may encourages abandonment:**
 - Term easements are bad easements for the public trust. Instead it should be terminable, where the holder of the easement can opt out and sell the development rights back to the land owner and use that money to conserve another area.
 - Undermine the potential of future donations. We have promised perpetuity to our previous donors. We can not ethically abandon those previous obligations and trading parcels will undermine the donation tradition.
 - Could create a futures market that doesn't already exist. Can lead to development you don't want.
 - "Do we move our easements around" or other things they could be doing to adapt to climate change
 - Once you do term easements, no incentive for permanent easement.
 - Benefits
 - Lack of information speaks to need for flexibility (not perpetuity). To what degree does it undermine the incentives of property owners?
 - Flexibility on how you manage the easement in the future (Needs to be defined)
 - Flexibility to exchange the land and exterminate rights elsewhere.
 - Terminable easement
 - Land trust movement has allowed us to think more broadly about the values. What are we trying to accomplish? Need to be specific: Want to accomplish ability to deal with climate change
 - If can agree on structure of easement today that would allow adaptation can draft easements, legislative to contemplate changes in conservation values and then only resort redress terms of easements.
 - In drafting new easements,
 - Different motivation of land owners. Term easements: donors have different motivations. Mistake to talk broadly about easements: tax-motivated easements vs. purchased easements.
 - Issues
 - Easements becoming increasingly complex to include prescriptive ecological outcomes in lieu of management plans because management plans are not enforceable.

- There is a defined public interest when the easement is donated or sold. How would that public interest change? Under what conditions can an easement be terminated? Under what circumstances would you want to allow for termination? This is a question of process. Who get to decide? What are the criteria? What is the process?
- May need to deny certain rights to protect public trust resources in the future and insulate from a takings claim. “Rolling easement” – manifestation of public trust rights that government has right now. In context of sea level rise, allowing conservation values (species, habitats) to migrate upland will be important but who bears responsibility of maintaining that original conservation value maintains over time?

II. DRAFTING CONSERVATION EASEMENTS IN AN ERA OF CLIMATE CHANGE

How do the scientific changes discussed in the first session affect the viability of private conservation easements and policy? Are current conservation easements, for example, sufficiently broad to permit conservation organizations to take the actions needed to respond to climate change? Do conservation easements need to be more flexible in order to permit adaptation to climate change (e.g., by changing the land areas needed to be protected)? Conversely, will climate change put existing conservation easements at risk by giving land owners a new defense?

FROM THE HANDOUT: Drafting RULES

- ✓ Clarity and Lack of Ambiguity yield longevity. Owner’s understanding and acceptance are higher, monitoring and enforcement are easier
- ✓ Defined terms are valuable: review the draft easement once looking solely for terms that should be defined (in the easement or by reference to a different source); review again for defined terms that are used inconsistently with their definitions
- ✓ Know the land before starting to draft; protect everything that is reasonable to protect, even if there is a specific easement purpose (like endangered species habitat). A specific species may not survive, but the land is still habitat and likely meets other tests (scenic, open space)
- ✓ Draft comprehensive and detailed, project-specific recitals; if the prohibitions are unusual, include recitals to support and explain the prohibitions. Take every opportunity to ensure that the reader (perhaps the judge in an enforcement action) understands what and why.
- ✓ If sever restrictions strip substantially all economic value from the land, include strong explanatory recitals and/or backup restrictions and other protection (e.g. If agriculture land is organic only, add a backup agriculture provision to govern if a future court finds organic requirement can not be met).
- ✓ Prevent severely restricted parcels from being sold separately from less restricted parcels – formal merger may be impractical but easement terms may create an effective merger
- ✓ Don’t restrict unnecessarily, especially as to picky details, and keep in mind the fundamental purposes of the easement in drafting the restrictions
- ✓ Consider a carefully drafted and carefully limited discretionary consent provision
- ✓ Consider the title on the easement document. A title that reveals the easement’s permanent restrictions is better than a generic title because the title search will usually pick up the document title. Prospective purchasers may not know what “Deed of Conservation Easement” means but adding “Limiting Owner’s Uses” to the end of it is more likely to attract attention. “Permanent Use Restriction and Deed of Conservation Easement” is also harder to ignore. New owners who do ignore the easement will be less able to elicit sympathy for their claimed ignorance.
- ✓ Include an express provision that the easement is held in trust to the benefit of the

public.

Recognize the Reality that Change will Happen

- ✓ Consider whether some restrictions should float over time based on changing standards and practices in agriculture, forestry, and land management. If so, define the critical requirements in the easement and provide for details to change over time in conformity with a recognized source of rules (and backup for that source), coupled with land trust approval of a management plan.
- ✓ Consider whether requirements in the easement that look to law should float (owner may engage in home occupations as permitted under current Zoning Code section 1234 (locking in current law) or under Zoning Code section 4321 as it may be amended from time to time. If the referenced law does not float, attach a copy as an exhibit because it may be very hard to prove in 50 years what a particular local jurisdiction's zoning law was in 2009. Many restrictions cannot float without danger to conservation values, so use prudently.
- ✓ Distinguish restrictions that must be absolute from those that can be qualified such that the land trust (or other identified and qualified body) can be given power to permit exceptions.
- ✓ Provide for land trust discretion to amend the easement in manners consistent with its stated conservation purpose, with caveats appropriate to the particular easement and grantor.
- ✓ Provide that the easement can be terminated or modified contrary to its stated purpose only with court approval with full compensation to the land trust, requiring use of that compensation to accomplish similar conservation purposes. Compensation should reflect appreciation in the value of its property rights over time (land trusts cannot agree to accept less than required by Tax Regulations, but they can negotiate to get more). If a grantor objects, negotiate for the provision to govern once the grantor and heirs no longer own the land (reducing new owner's incentive to seek extinguishment)

A. PROVOCATEURS: LESLIE RATLEY-BEACH, JESSICA LIPPMAN

Looking to the future, it is clear the conservation and land trust community needs to identify changes to drafting guidelines for easements to ensure their long-term viability in the context of climate change that meet the following criteria: (1) Take changing conditions in the future and adaptation to those conditions specifically into account, (2) adhere to land trust values and are consistent with its mission, (3) identify criteria for amendments including Land trust values, Consistent with mission, Make sense in larger context, Acts of God, Third Party actions, Criteria for defense and enforcement, Effective Organizational Culture for Drafting, and Strictly enforce vs. spirit or intent.

1. Problems → Examples of the problems to be confronted

- a. Elkhorn slough where 80% is underwater now.
 - Landowner benefit:
 - Public trust servitude takes over on the water.
- b. Old growth forest parcel, but the old growth forest is decimated by the pine beetle. →
 - Perhaps you draft the easement with the understanding that old growth would grow back within 100 years or so.
 - Perhaps you actually allow timber development to cut down the trees that will be decimated by the pine beetle.
- c. Dense scrub habitat will change to open habitat, restriction on the use of lights to protect predator species (corridor for mountain lions) but now that the land is open, it is no longer a viable corridor for mountain

lions and other species that are affected by lights. Other species use the territory, but are unaffected by lights. Then perhaps this is the sort of easement which can be abandoned, or sold.

2. Purpose & Goals → Drafting Options

- a. **Drafting a hierarchy of Purposes/Values** – perhaps the climate change future should be a primary value.
- b. **Drafting Easements with Broad Statements of Purpose/Goals** →
 - Specificity in the easement: We are using a tool- in great specificity- in a way that it is not appropriately designed for. They are getting excessively long and verbose. We can't account for everything, and we have been trying to do so.
 - ✓ Helps ensure greater compliance in the present
 - ✓ However the restrictions that ensure greater compliance now can make compliance in the future impossible. The more narrowly constrained a conservation easement to deal with the current climate makes the easement less appropriate for the future climate. It might result in decreasing compliance.
 - A broader statement of goals and purposes of the easements should help increase the utility of easements in the long run and reduce the need for abandonment:
 - **Catch-All Clauses**: A lot of conservation easements do NOT sufficiently protect land in light of climate change. One must draft for the largest Bio-Net possible.
 - ✓ We don't really know what is going to be moving and where and how fast.
 - ✓ Would the best thing possible be open-space easements, no fragmentation, and no development- to allow for the variability to meet the demands of climate change?
- c. **Variable Goals**:
 - One possibility is that the easement can dictate parameters of change in the easements—
 - ✓ Clauses: future technologies clause, migration clauses, valuation changes
 - ✓ i.e. drought restrictions which have categorical variables (x inches rainfall – rule, 2x inches rainfall – rule)
 - The Concept of **Mobile Conservation Easements**: to achieve dynamic refuges, rolling refuges that allow or facilitate the migration of species to the permanent/stable conservation areas.

- ✓We are going to lose 400K species if we increase 2°s C. And we are in a situation of TRIAGE. So we have to preserve...
- ✓The land that is currently protected is under less stress.
- ✓There are certain crown jewel lands that will likely NEVER be given up.
- ✓But in those areas where there is limited species protection and perhaps those areas can be targeted for mobility, termination, etc.

d. **Regular Revisitation of Goals/Purposes:** Redefine conservation values, interests and instruments every 30 years.

3. Management Options →

- a. **Management Flexibility Options** → drafting and administering land trusts to make them more adaptable by including provisions that:
- allow express discretionary administration
 - Recommended: include land trust “in its sole discretion” discretionary approvals.
 - Reasonable standard of discretion within the purpose.
 - Be able to articulate the purposes and the management policies respective of those purposes.
- b. **Triggering Actions** → Drafting with Conditions Subsequent which trigger changes.

B. DRAFTING FOR FLEXIBILITY: POLICY

1. **Tension caused by flexibility:** The land trusts generally do that which is required by public agencies in order to acquire a permit and hence they prefer greater specificity. Consequently flexible terms can cause some trouble among land trust holders as well as donors (risk adverse clients)
2. **Redefine perpetuity** – avoid undermining the definition of perpetuity – for as long as this gift carries out the stated purpose, and if it fails to support its stated purpose, then under judicial action may set aside the gift.
3. With Increased Flexibility, will this undermine the intent of a donation? So if there is a specific concern iterated by the original landowner, it must be respected and given deference to.

C. PROVOCATEUR DETAIL

1. LESLIE RATLEY-LIPPMAN

- a. Specific drafting clauses
- Drop baggage on flexibility
 - Future technologies clause w sole discretion standard.
 - Migration clauses
 - Management plans tied to restrictions in easement
 - Discretionary approvals
 - Changes in real estate values (for land swaps)
 - Transferrable development rights

- Floating development zones to address changes in agriculture, forestry, housing (deal with human migration.)
- Swapping restrictions as habitats evolve over time (as it change, changes the purposes).
- Transfer all rights
- b. General drafting guidelines
 - Adapt or die
 - Land trust values
 - Consistent with mission
 - Does it make sense in larger context
 - Acts of God
 - Third Party actions
- c. Criteria for defense and enforcement
- d. Effective Organizational Culture for Drafting
 - Strictly enforce vs. spirit or intent.

2. JESSICA LIPPMAN

- a. Drafting Conservation Easement in Climate Change
- b. Specific easement to address/combat climate change (agencies)
 - Prospective conservation easement
 - Restrictions to protect value sin 50 years
 - Tiered restrictions
 - ✓ Right now do something about development rights
 - ✓ Management plans to deal with change – draft conditions when and identify when those conditions are likely to occur.
 - ✓ Land trust clients want to get out of easements and use climate change as an excuse. Look at change of conditions. Not clear what to do.
 - ✓ Drafting purposes that are clear
- c. Drafting easements knowing the impacts will happen (developers)
 - Developers don't care about climate change
 - View conservation easement they are required to do and will just do what public agency tells them to do. The public agency issuing the permit is most important.
 - Flexible terms not welcome. Want to comply with the terms of the permit. Risk adverse. Resistant to “amendment” or “termination” as it will impact donation tax break and/or mitigation obligation

D. DISCUSSION

1. Prospective Conservation Easement
2. What can TNC do?
 - a. Insert hierarchy of multiple purposes values with triggers for change. If change reorder conservation values

- Example:
 - ✓ Blue Oak
 - ✓ Open Space
 - ✓ Recreation
 - ✓ Climate change afterlife value
- b.** Termination Provisions
 - Any way to change the existing termination provisions
 - Land Trusts should get Value of Market Property upon extinguishing easement
- c.** Thirty percent fixed or rolling? Mobile 30% example in LA and NYC. Buy maximum amount of land and lease out what don't need.
- d.** Time series or time steps. Take into account targets, threats opportunities. Invest in lease according to annual goals, Lean more toward mobile
- e.** Don't make assumption that protected lands are under lower stress than unprotected areas
- f.** Drafting Questions:
 - Hierarchy
 - Termination provisions, exchanges of land
 - Catchall clauses
 - ✓ Discretionary approval clauses
 - ✓ Scientific community could way in as indicator species. Define conservation values that would have a single statement that you could capture.
- g.** Affirmative duties vs. negative prohibitions. Affirmative duty on land owner to enhance redwood tree habitat.
- h.** Protect land for biodiversity value and retain the flexibility in the future
- i.** Conservation best in Climate change context as corridors and buffers – wouldn't pay as much for them if just corridors and buffers
- j.** Easements are not a liquid market. Not amendable to flexibility.
- k.** Something to learn from Conservation Forestry model
- l.** Deal with uncertainty by buying options. How long? What price?
- m.** Nail down if easements appropriate for conservation easements
 - Structure purposes so biodiversity conservation up front
 - Clear process for adaptation
 - ✓ Hammer out how adaptation process will work. Public review. Public notice.
 - ✓ Amendment policies
 - Easements don't work for biodiversity. Preventing developments
- n.** Conservation Easements in core area may be more important because gives the owners the biggest stake.

III. WHAT LEGAL CHANGES MIGHT BE WORTH PURSUING

Do any of the concerns raised in the second session require changes in the law, including tax law, underlying future conservation easements or other private conservation instruments? For example, should the law provide for greater flexibility or make it easier for conservation organizations to “swap” protected land? What are the pros and cons of potential legal changes? (Fred Cheever

A. PROVOCATEURS: FRED CHEEVER, NANCY McLAUGHLIN

B. ALLIES IN LEGISLATION

1. 2,000,000 people in the U.S. hold land that would be viable to take advantage of for conservation easements. How to romance this tiny group of people. What do these people care about?
 - a. Intent of grantor
 - b. Property is sacred in the U.S. and ownership is king.
 - c. Landowners also want perpetuity, but they also are realist, and they just want our best effort.
 - d. We are trying to romance these people with promises to protect the specific land that they love.
2. If these people are ON your side, they are going to do much in your favor. They have legislative and fundraising power.
3. **Mapping:** One of the things that we could do legislatively is to encourage these people to provide the information about what is out there to ID areas where future conservation activity is likely. – When we figure out where those places are, then we can actually create BIODIVERSITY goals and mapping.

C. PARADIGM SHIFT

1. Where climate change becomes increasingly important to the global community. Not ready to resign to the current level of development, biodiversity loss, etc.
2. In most states (not cal) easements are not required to be perpetual—perpetuity is driven by the trusts or the landowners.
3. Development of a NEW instrument –that is not a conservation easement. Need to find something that is more appropriate to the demands of conservation of habitat and biodiversity.

D. SUGGESTIONS FOR LEGAL CHANGES

1. **Paid easements** → if you are paying fair market value for that easement, then you should dictate the terms of that easement.
2. **Tax incentives for the donation of conservation easements (perhaps new that are better contoured for climate change?)**
 - a. Tax incentives can change – there is a limit in tax incentives at 350K in tax deductions, and in many cases people are giving up a great deal when they give above that amount.
 - b. The valuation/appraisal process is the value of the development rights.
 - c. Must figure out the appraisal process to adjust to the value of biodiversity so that the homeowner may get that benefit as a tax deduction.

- d. Currently the govt. sets the value of a property, and usually arbitrarily. IF the govt actually set the value rationally to incorporate the value of biodiversity, then you would have a useful base point.
 - e. If TNC wants to readjust easements that are no longer in the public benefit, then policy needs to be shifted now – to change attitudes at the congressional level. Those are the types of legal changes we need to be discussing.
 - f. The land trust community needs to education/ give feedback to the IRS to make sure that laws and amendments make sense.
3. **INFORMATION COMPILATION at the national level:** There are states that have **databases** that compile the valuation and protection goals of various easements. (i.e. MT → GIS mappable values)
- a. Aside: Easements that aren't being monitored, they fade away.
 - b. Without compliance to such reporting laws, they are pointless; the law must have forced compliance.
 - c. These databases, if accurately reporting the existing conservation easements and what they are protecting and to what level, then you can ID for subsidies –and **focus funding** to areas which are in critical condition or are better subjects for funding and management, and can report the benefit to the public good. Crucial when you are talking about the possible termination or adaptation of the property/easement.
4. Management plans- enforceable management plans, amended state or federal laws.
5. Create a **Climate Change easement**- where state/federal law were adapted to change the purpose/create a purpose for adaptation for climate change. (section 178)
- a. Valuation of biodiversity for tax deductions.
 - b. Some state /local provisions could be written to key into specific provisions of 178.

E. TRIBUNAL v. COURTS FOR ADAPTATION/TERMINATION

- 1. Shift away from a charitable gifts proceeding. As the judiciary doesn't always know/understand the easement law.
- 2. Tribunal: administrative review/panel to look at these easements. (They could be article III courts).

F. COMPLIANCE AND ENFORCEMENT ACTIONS

- 1. Prevent, by educating landowners, that they will be subject to enforcement actions and that the trust is ready, willing and able to follow through on enforcement actions.
- 2. Many of these easements are subject to mining and subsurface rights and those rights, if triggered or exercised will result in the complete destruction of the surface easement.
- 3. Subordinate the easements in the event of condemnation.

G. PROVOCATEUR DETAIL

- 1. FRED CHEEVER:

- a. 2 M people could take advantage of the CE. They hold the keys to conservation of biodiversity
- b. Care about:
 - Intent of grantor
 - Like their privacy
 - Property is sacred thing
- c. If on your side, provide a lot of good things. Have enormous financial power and resources.
- d. Need to know what's out there in order to put effective networks together.
- e. MANDATE EASEMENT MAPPING
 - Montana required all Land Trusts to report under the Natural Resources Inventory.
- f. No one invented CE movement. Unnatural accretion of laws and incentives.
 - Term easements
 - Mitigation banking
 - Perpetuity not forever

2. NANCY McLAUGHLIN

- a. Set aside mitigated and exacted easements and focus on easements acquired by land trusts.
- b. Not willing to accept that this is a zero sum gain.
- c. Much judicious in use of perpetual easement.
- d. Legislative changes: In most states, easements not required to perpetual. Might want to think about making non perpetual in

H. DISCUSSION

1. Appraisal process gives no credit for conservation values.
2. More honesty about the notion in perpetuity. Other opinion backlash: Look at what the environmental justice community says about easements. Look what Bill Gates said about environment making case for polar bear and not people. Prospectively looking forward and making sure it is easy for land trusts not to be embarrassed by easements.
3. Map everything. Tax code subsidies for easement where you actually need them. Needs ways of manifesting the public good. Some other tribunal to make decision
4. What's a sufficient level of public benefit and who makes the case?
5. At the mercy of a court system that has no idea about CE. Funding mechanisms for economic development areas. Focus funding on areas that are critically in need of protections.
6. Land Trust community needs to take the lead on what should and shouldn't be amendable as consistent with conservation values and intent
7. SUMMARY:
 - a. interest in finding ways to get a national set of maps to know what is there to assemble into

- b. Interest in incentives that are given that could be better contoured to conservation needs
- c. Explicit in authorizing CE deductions for climate change easements
- d. Q for existing law for drafting easements
 - Empirically, interested in track record of easement challenges by next generations.
 - Principle grounds for challenge: passage of time,
 - Valuation when loss of conservation value (treble damages). Replacement cost of damages.
 - Ever a termination because of loss of conservation values?
 - Easement functionally subsumed by oil and gas drilling
 - Subordinate easement when land is condemned

IV. EXISTING CONSERVATION EASEMENTS

The last two sessions have dealt with changes in the drafting of, and law underlying, future conservation easements? Do the concerns raised in the morning call for modifications of existing conservation easements or the law underlying them? If so, what special issues do such modifications raise? How might those issues be addressed?

A. PROVOCATEURS: BUZZ THOMPSON, NANCY McLAUGHLIN

B. ISSUES WITH CHANGING THE RULES ON EXISTING EASEMENTS

1. POLICY:

- a. Representations that land trusts have made to land donors, the notion of perpetuity, and the obligations incumbent upon the land trusts to those original donors.
- b. **How long do we want to be respectful of the donor's wishes? FOREVER?**

2. Legislation:

- a. Congressional records indicate that they didn't intend to subsidize fungible easements and certainly didn't intend to subsidize terminable easements.
- b. Con law forbids legislation to change the contract between a donor and a charitable organization. Hence any law enacted to make it easier to change/modify or terminate existing easements would likely be found invalid based on existing case law.

3. If we don't have flexibility in an existing easement, can we get modification in a cy pres proceeding to allow flexibility?

- a. **Cy Pres proceedings** already exist to terminate/modify a charitable gift.—designed to balance the intent of the donor and the use of assets for the public interests.
- b. Why pay any attention to the donor intent-
 - so as to not discourage donations

- A long history of respecting an individual's right to manage his property.
 - c. Termination should be a rare occurrence
4. **Condemnation** proceedings are also an option if the public interest demands condemnation.

C. SUGGESTIONS

1. We should start negotiating for non-perpetual instruments where appropriate.
2. Make sure that you negotiate for significant discretion on new conservation easements.
3. We need judicial, legislative and IRS clarifications on:
 - a. How to amend/ modify easements that do not have amendment provisions
 - b. What type of amendments fit within the typical amendment clauses?
 - c. Concerns: Don't ask the IRS, but let's lead the IRS to the conclusion that we think is right. (Later morning: how to do that)

D. ADDRESSING EXISTING CONSERVATION EASEMENTS

1. Termination by landowner is such a remote possibility because you can justify continuation for such a long time.
2. But how much **flexibility** do we have to change the purposes, but still to satisfy a Section 170H purpose. How much discretion to alter the purpose from one conservation purpose to another – i.e. from Blue Oak which is no longer a viable option on an existing property to the migrating blue butterfly.
 - a. You can get there provided that the donor gave you the discretion to begin with.
 - b. But if you don't have the discretion—then you can't restate the purpose.
 - c. **WHY AMEND AN EASEMENT?**
 - If you have a restriction that doesn't serve any public interest that was mistakenly added.
 - If you don't get the original mix right when negotiating the easement, then you might need to amend it.
 - If the property becomes unsuitable for the protected species, but you want to keep it for when it is again suitable for that species.
 - d. Back to drafting – draft more sparingly so that easements can be amended through interpretation over time.
3. Easements are hybrids of a lot of different law. Unlike the fee landholdings, you have to deal with the third party (the landowner) and we will need to tailor how to approach these, and while we learn from other organizations, it is going to have to be easement specific.

E. PROVOCATEUR DETAIL

1. BUZZ THOMPSON:
 - a. Joint science/policy working group
 - b. Frustrated by lack of concrete guidance from scientists

- c. How might those in the room on the legal side of things begin to develop of program of work?
- d. YESTERDAY
 - How much flexibility to we have right now to sustain CE in face of cc
 - To what extent does your purpose of the CE change in the face of CC
 - Is there the option to terminate conservation easements?

2. NANCY McLAUGHLIN

- a. In perpetuity representations by all land trusts including TNC
- b. Section 178: Charitable gift, congress didn't intend to subsidize temporary easements
- c. Termination should be rare.
- d. Constitutional limits to changes
- e. # things to do
 - Negotiating for non-perpetual easements where appropriate
 - Negotiate for significant discretion for amendments given climate change
 - Judicial or legislative clarifications of
 - ✓ The extent of the holders to amend when no amendment provision available
 - ✓ ID what type of amendments that fit within the amendment clause.

F. DISCUSSION

1. Science:
2. Shape instruments
3. Flexibility
 - a. You know what you need now
 - b. If you could predict the future, what you are doing today may need to change in the future
4. In the works of full price purchase, have a panoply of conservation instruments (short term, med term long term) including:
 - a. Options
 - b. Fee title
 - c. Leases
 - d. Conveyance
 - e. When public paying full price, should pull back and look at all possible tools
5. Do we have a problem of calling these things all the same thing?
6. They should be terminable
7. Issue we run into with alternative is that we don't have a uniform standard by state. Have to renegotiate with landowner. Leases with option to renew, etc. Or need amendments to CE to allow other instruments to be used.

8. Termination issue is a red herring because so few easements. Clarify extent of power to amend and types of amendments permitted. Need broad discretion to amend easements to change values.
9. Need a check list of things for easements that take into account climate change impacts and amendment
10. Most CE have amendment provisions. Should we modify model easement language? The issue of the conservation purpose changes
11. Always applies if trying to change the stated purpose of the easement. Should be able to amend easements without going to court. Under Section 178 and state charitable law, could change the purposes of the easement
12. Under what conditions are we compelled to amend an easement?
13. LRB: Easements fundamentally different than other charitable gifts.
14. Transparency about the public good of easement. EJ community response will get more extreme.
15. Land trust movement providing services through compliance monitoring, weed management, fire management. Service to land owners. Maybe we need to be serving a broader set of publics.

REVIEW: THE SCIENCE WHAT IS THE GOAL?

- ✓ We know we need at least 30% to have a chance of protecting biodiversity
- ✓ We also know that we have limited resources and must be strategic.
- ✓ We also know that there will be a lot of change and hence we need to be able to change as changes occur.
- ✓ The problem is that you don't know which land will be the best bet.
- ✓ Groups need a check list for what to ID the better land from the other properties in order to be strategic and in order to know WHAT to focus on.

V. NEW FORMS OF PRIVATE CONSERVATION INSTRUMENTS

Could new forms for conservation instruments help address some or all of the concerns raised during the first day? For example, could we develop "shifting conservation easements" that automatically move as climate change affects the environment (like a conservation easement that automatically moves inland with changes in sea level)? What types of new conservation instruments should be considered? Are new laws required to create such instruments? What are the pros and cons of such instruments?

A. PROVOCATEURS: PETER KAREIVA, BUZZ THOMPSON

B. ACHIEVING LAND CONSERVATION

1. **GOAL:** (we need 30% of land conservation and there are just not enough conservation easements to meet that need)

2. **Solution:** So, you have to give private landowners rewards for meeting conservation goals with instruments that are less restrictive and difficult than easements. We need tools to address the fact that we can't achieve the 30% without more tools.

- a. Land trusts are wed to easements, but so are donors who wish to see perpetuity.
- b. There is an institutional bias for perpetuity.
- c. From a legal standpoint, there is nothing preventing us from doing what we need to do. The obstacle is figuring out what we should do. The common law is pretty flexible, and if common law becomes an obstacle, you have to have state law to pass laws that will allow what needs to be done.

3. **Not ready to give up on Easements Entirely:**

- a. They don't take up land out of the tax base for the local community which creates environmental social justice issues. (those can be tax concerns)
- b. The idea of preserving land, and rewarding the landowner for doing the right thing.
 - However there is a changing demography of ownership, so perhaps there is a natural end to this romantic concept. (greater corporate ownership)
 - ✓ Increasing corporate ownership of land – as opposed to family. The sentimentality of saving land is increasing unlikely?
 - ✓ Argument – these might be family corporations, though they are getting larger.
 - ✓ In those areas are going to be rural- areas of interest to us- there is probably not going to be a lot of corporate holdings. Corporations will be more likely to hold land in transitional areas.
 - **Do payments undermine regulation?** Studies thus far do not indicate that paid conservation undermines regulation, in fact quite the opposite. Studies show that if you give people positive incentives in conjunction with societal approval of the result, then there is an internalization of those social morals. By contrast if payment is received for something that society views as negative, they are less likely to do something – i.e. accepting a toxic waste dumps for money.

C. IDEAS: ALTERNATIVES TO EASEMENTS

1. FLEXIBILITY OPTIONS:

- a. If you focus on the need for flexibility over time, greater flexibility than we have needed in the past.
 - **Can you design an easement or other instruments that are automatically adaptive?**

- I.e. Marine reserves, drawing lines in the water, to establish boundaries. However could you instead establish the lines to follow isothermic lines because the fish care more about the temperature of the water? The problem with land is that the lines have been drawn, **but is there a way to go back and make those boundary lines more adaptive?**
- b. In light of flexibility, **fee ownership over the long run is going to make the most sense** because you are in potential conflict with the land holder. Even though cost is a significant concern. → Return to the **buy and lease back option**.
 - c. Can you come up with more creative flexible instruments?
 - **Reverse contract options:** conservation reserve programs. You have a lot of land that you might want to protect forever, but you also have land that is important for corridor purposes. If you have a lot of demand for it, the cost might go up.
 - **Prospective protection:** Term easement + perpetual option to change that term easement into something perpetual. (You may not want to use a term easement because there are some complications with those and perhaps lease options are better here.)
 - d. Should we be moving towards some sort of **perpetual, contract, affirmative covenant coupled with a performance payment**, getting property owners to think in conservation terms.
 - e. **Conservation Businesses:** working landscape that supports biodiversity. Conservation Forestry, Conservation farming, conservation ranching. So that there is income generation on land that is designated for conservation purposes.
 - TNC has a project with conservation farming that is also wildlife habitat and carbon mitigation.
2. **Designating national reserves on private land:** to pay for/subsidize national reserves on private land holdings. (as they do in Europe)
 3. **Green covenants** – interest in developers in creating more nature friendly development
 4. **Conservation leasehold**
 5. Habitat options.
 6. **Rolling Subsidies** → identify the areas for protection, and pay for those areas to be protected in the near and perhaps indefinite term. (cost equation?, hold-out issue?, reverse option you are less likely to get the hold-out problem)
 7. **Educate local governments on where the land is that needs to be preserved** using the GIS conservation mapping databases (that haven't yet been created).
 8. **Get a stronger govt. role in doing what is RIGHT.** Don't pay for things that don't necessarily need to be paid for. Increase govt' regulation. But if legislators are properly educated, they can think long term and can respond. If the govt is

ready to take action, then NGOs should cede responsibility to them to act when they intend to act.

9. **What about future interests and what can be done there?**

- a. **Future Interests:** Like a life estate and you have a future interest in the property and you have certain rights against the current owner as the future interest holder to influence the use of the land currently.
- b. **OPTIONS:** Perhaps we take OPTIONS out on various lands as the land or natural demands occur and you can exercise them on a as-needed basis)

10. **Public Easements?**

- a. **Do private conservation easements belong anymore, or should we be thinking instead of public easements?** (Perhaps public entities have more latitude to adapt and manage the land for the public trust. But public entities do have a rep of being poor stewards- perhaps that is something for reform.)

b. **Alternatives to Drafting:**

- **NON Easement Options for Protecting Biodiversity that can be used in conjunction with stable conservation easements.**

✓ **Assisted Migration:** transport the animals/plants to the new conservation areas. We are sure that that will happen. But introduction of new species to an area may be problematic since so many easements actually restrict the introduction of species to an area (to deal with invasive species)

✓ **Are easements being used appropriately?** Are there other tools that can be used?

1. Best utility – as corridors or buffers
2. Easements are not a liquid market, it can't be easily sold. They are not that flexible.
3. IF you were able to acquire minimalist corridor easements, and when it is necessary for the migration of a certain species, and then you negotiate the use of that rolling corridor. But these negotiations are difficult and costly.

✓ Using existing regulation (under the ESA) to allow for migration patterns in the interim phase.

✓ **OPTIONS**

1. **BUY and LEASE back options** may allow flexibility in these migration routes. So perhaps we buy as much as possible and lease back.
2. **Easement options** for the potential corridors, but that must be accompanied by

restrictions on the land under discussion so that land will be useful for that purpose in the future. --- In other words, must maintain the property more or less in its current state.

3. Options are limited for a certain term of years, and they are renewable.

- Hand OFF of property—just reassign the property

D. PROVOCATEUR DETAIL

1. PETER KAREIVA

- a. Problem with easement is perpetuity
- b. One tool of a suite of strategies. Whole spectrum of strategies for private land conservation. Accumulation of conservation easement will de-accelerate through time. Not going to get enough o get 30%. Need other tools to achieve our goal.
- c. Tools:
 - Private landowners rewards for accomplishing conservation goals that have more flexibility and less stringency than CE. (E.g. payments for ecosystem service.)
 - China: Establish different goals for protection and delivery of service with different tiers of rewards systems.
 - Other tools that we are not taking advantage of.

2. BUZZ THOMPSON

- a. ID what you need
 - Echo something FC said: From a legal standpoint, no impediments...its figuring out exactly what the land trust movement should be doing, when to do it and the obstacles to doing it.
 - If common law constraints persist, change laws (What we did with CE. Took 20 years to get common law statute in every state.)
- b. Greater flexibility
 - Can you identify other types of boundaries (e.g. isothermal vs. Euclidian lines). Possible in marine, harder in terrestrial
 - Choice among traditional property interests will change. Maybe fee ownership will make more sense than easements because divide property interests that ma put you in potential eternal conflict about use and value.
 - Potential tools
 - ✓ Reverse contract options (like in the conservation reserve programs). Each year put out 5 year bids for corridors and other climate change
 - ✓ Prospective protection: When not sure want to manage like CE but want protection over long term – Term easement plus perpetual option.

✓ Working Landscapes

1. Performance payment (Perpetual contract with land like an affirmative covenant; get property owner to think in conservation terms. establish goal
2. Ancillary management units that allow trusted partner to manage for conservation outcomes (e.g. Conservation Forestry). Could you have Conservation Farming LLC? Conservation Ranching LLC. Conservation Fishing LLC.

E. DISCUSSION

1. Funders are wedded to in perpetuity so will have to bring funders along.
2. Huge institutional bias in federal gov't for perpetual CE
3. (1) Conservation easements came in response to criticisms of zoning. Local gov'ts have enormous role to play. (2) Federal gov't owns 1/3 of the land, (3) Europeans designate national parks on private land. Give money to support the land owners. Negotiate where access and where payments go. (4) Green Covenant – interest in developers to develop more Nature friendly developments. Educate them, (5) Conservation lease holders (6) habitat covenant
4. Simple easements that simply prevent fragmentation.
5. Incentives like tax credits not deductions that give ability to engage in conservation
6. Reverse contract option: Rolling subsidies. ID areas need to protect. Pay to protect them as areas change. Pool of money and bid for those areas. Economic analysis of costs and benefits of rolling subsidies. Prospective protection – non-qualified partial interest donations so a problem. Not willing to give up on easements. Hate to lose romantic idea of reward to landowners for doing the right thing. Manifestation of conservation ethic.
7. CE have value because don't take land out of tax base.
8. Using payments have problems with ensuring perpetual value
9. Not tenable long term
10. Lots of unsupported legal literatures that suggest payments undermine regulation. Only empirical study that determined the correlation between gov't incentives and regulation. Positive correlation. Also a fair amount of evidence that when you give people incentives and make it clear it is the right public good thank to do, they internalize it.
11. What would land ownership look like 50 years from now.
12. Community-based sustainable agriculture trend that is economically sustainable
13. Williamson Act:
14. Expanding control of property by non profits by using flexible instruments. Or fee ownership and lease back programs. Social repercussions could be substantial in rural communities

15. National Conservation Easement database. Carleton Owen, US endowment for Forestry and Communities. Single system for the management of conservation easement data. Private donor.

VI. DEVELOPING A RESEARCH AND ACTION AGENDA

What needs to be done to advance the ideas developed during the earlier sessions of the workshop – and to develop and advance additional proposals that could effectively address the concerns? What research would be valuable in further developing the ideas, answering potential questions, and developing new proposals? What political, legal, or institutional obstacles will change confront? How might those obstacles be addressed? Who needs to be involved in moving the ideas of the workshop forward? How can they best be engaged? What are the useful steps to take next and who should take them?

Priority Next Steps: Conservation Easement and Climate Change

- a. **#1 Outline of priorities in a publication WHO: BT lead with draft with RS rewrite/review)**
 - i. Gap Analysis < What don't we know and what do we need to know and what do we need to do to have a productive system of conservation in the face of climate change >
 - ii. Product: Manuscript in *Science* policy
 - iii. *Typology of Conservation Easements* Defining what we are talking about. Define what's climate-sensitive
 1. Current make-up (*donated, exactions, purchased?)
 2. Differences between different types of easements
 3. Policy alignment to make all of those types work (are policies aimed at one or another?)
 4. Criteria for what needs to be preserved and where.
 5. Identify what is climate sensitive and what is NOT climate sensitive
- b. **#2 Develop Adaptation Strategy:** <Define what we are protecting and what the resources are for protection> **Develop a Distributed Graduate Seminar; Fund in Fall; Implement in Spring (WHO: Committee: RS, BT, TR, AR, FC)** Regional GIS based analyses with climate change analyses. Tease apart capacity for adaptation and historical adaptation. In more vulnerable climate, how have the people changed?
 - i. Distributed graduate seminar with regional foci
 1. Develop conservation land database
 2. Ask the following of each region
 - a. What is the current status of biodiversity?
 - b. What assets/tools are available to protect biodiversity?
 - c. What are the existing and future conservation priorities exist for protected lands among the various actors (federal, state, easements, other)
 - d. What do we need now and into the future to make best use of these assets and to coordinate activity? Do we have enough flexibility?
 3. Need to think in concrete terms about what can be done
 - a. Availability and use of data

- b. Flexibility?
 - c. Priorities? Integration across organizations
 - ii. Policy alignment (Do policies skew to one type or another?)
 - iii. Funding sources for adaptation strategies:
 - 1. Packard
 - 2. Dorris Duke
 - 3. Moore
 - 4. Hewlett
 - 5. RLFF
 - 6. NCEAS
 - 7. EPA, NSF for individual research agendas.
- c. **#3 Drafting guidelines for conservation easements in the context of climate change** **Drafting guidelines and typology**
 - i. **#3A Optimize easement law for climate change (WHO: Ann Schwing lead, Nancy McLaughlin review)**
 - 1. Develop draft optimal language easement language for responsiveness to climate change
 - a. Purposes
 - b. Parameters
 - c. Guidelines
 - i. Specific vs. broad
 - ii. Enforcement of management plans
 - iii. Flexibility:
 - 1. Termination
 - 2. Modification/ Amendment of Existing Easements
 - a. Federal/IRS requirements
 - b. State Statutes
 - c. Best practices/criteria for amendment
 - iv. Administration
 - ii. **#3B Design of Amendments of Existing Easements <Flows out of Distributed graduate seminar>**
 - 1. Restrictions
 - a. IRS
 - b. State statutes
 - 2. Best practices
 - 3. Timing of amendments
 - 4. Science to use
 - iii. **# 3C Design of New Instruments <Flows out of Distributed graduate seminar>**
 - 1. Combined into effective suites of instruments
 - 2. What are the relative goals of these new instruments?
 - a. Do a lot more with less money
 - b. Carbon mitigation
 - 3. Create new incentives for use of these instruments
- d. **#4 Practical assistance to land trusts confronting climate change (WHO LRB, RS, TR)**
 - 1. Science guidance for how to use climate change information in drafting conservation easements

2. Land trust Workshop at LTA (November 2009)
4. Follow-up workshop on the adaptation on the ESA in light of the need for **TRIAGE** in saving species protections
 - a. Public lands
 - b. Other issues

VII. NEXT STEPS TO IMPLEMENT ACTION AGENDA

- Identify Funders
 - o Packard
 - o RLG
 - o Moore
 - o Duke
 - o LTA
 - o Joyce
 - o MacArthur
 - o Mott
 - o EPA/NSF s
 - o Turner
- Communication amongst workshop participants:
 - Distribute workshop notes and priority actions items
 - Distribute contact list
 - Conference call in September