



Pilot Proposal for Market-based Conservation Easements

Background and Context

The economic growth in southern Alberta is creating significant pressure for residential and other development in the foothills and along the Eastern Slopes of the Rocky Mountains. Yet from these iconic landscapes originates much of the water necessary for personal, agricultural and industrial use downslope and downriver. The Southern Foothills Study¹ has shown the trend, and it leads to increased conflict over available water quantity, plus increased treatment costs due to decreased quality.

Without denying the importance of enlightened environmental regulation to deal with some of these challenges, there is an even more powerful instrument which can and must be harnessed to the task of environmental conservation, and in particular watershed protection: the market itself. In terms of protecting the hydrologic quality of the watershed landscape, we can ask a corollary question: “Is there an effective means to bring a market-oriented approach to bear on maintaining an appropriate low-intensity land use within the watersheds along the Eastern Slopes to protect and improve their ability to capture, store, and deliver a maximum amount of high-quality water to downstream rivers and aquifers?” A variation on the conservation easement concept and practice is the approach that will be explored in this pilot.

The concept of a conservation easement has been accepted and practiced for over a decade in Alberta. Enabling legislation exists in both the provincial and federal sphere, and a federal tax receipt can be issued to a conservation easement donor under the federal ecological gift program. Thousands of acres across Canada have been donated under this program and are held by a variety of land trusts and related conservation organizations, the two largest being the Nature Conservancy of Canada and Ducks Unlimited.

This program is a good one and will continue to attract those people with a strong conservation ethic and who are willing to forego the value of the easement in exchange for the satisfaction of protecting the ecological value of the land, and a charitable tax receipt. In particular, it is good for protecting smaller key ecological areas such as riparian zones and habitat for specialized species. **This current proposal is seen as an adjunct to the current conservation easement concept and not a replacement. What we are suggesting is simply another ‘tool in the toolbox’ of environmental protection.**

There are shortcomings in the current conservation easement program that limit the ability of conservation organizations to deal with large areas of high conservation value which are under significant economic and development pressure. In particular, the increasing cost of land along

¹ The Southern Foothills Study is a cooperative initiative between multiple stakeholders in the southwest Alberta foothills region. It is based on the cumulative effects work of Dr. Brad Stelfox and coordinated by the Southern Alberta Land Trust Society. For more information see: <http://salts-landtrust.org/sfs>



the Eastern Slopes has far outstripped its economic value in terms of agriculture. This makes it ripe for sale to land developers and investors who see it as a place to live or develop, but who don't have a connection to the local community and often do not have a stewardship ethic, let alone the knowledge to properly manage the ecosystem.

Many agricultural people would like to pass their operation and land to an heir within a proper succession planning model. A conservation easement can provide a one-time payment or tax receipt, but ultimately creates another potential barrier to succession planning as it limits the ability of future generations to make a good living from the land. Again, this encourages the sale of the land to people who will develop it for its economic potential and who may use it with little regard to its importance as a key watershed landscape.

A number of concepts have been developed and tried (and are being tried) with some success to encourage the protection of landscapes which have high conservation value. One concept is the use of "offsets" which allows the transfer of development "rights" from one area to another. This tool encourages high densities in one location while maintaining low intensity in another. A conservation easement is used to ensure the continuation of the low intensity land use, and the cost of the easement is paid for by the developer who gets the right to increase density within their development.

While the use of offsets can be valuable, it is limited in terms of protecting larger areas which would be necessary when dealing with watershed-size landscapes. Thus a new paradigm may be necessary, and a variation on the conservation easement concept may provide another tool for successfully meeting this challenge.

Market-based Conservation Easements

After considering the strengths and weaknesses of the conservation easement tool and related concepts, it is possible that a variation on the conservation easement concept may provide an answer to many of the current challenges. This is not to suggest that we replace the existing conservation easement paradigm, but rather add another dimension.

The concept of society paying landowners for the provision of ecological goods and services (EG&S) is not new. However it has never gained much traction for a variety of reasons. For example:

- It has been difficult to put a price on the value of the EG&S products. There is no ready market which will allow buyers and sellers to set a fair price.
- Governments are reluctant to add another layer of 'payment' to private landowners, especially when the value of the EG&S product is uncertain and the value of the land is high. Many rural landowners although being cash poor, are wealthy on paper due to high land values. Governments do not wish to be seen as paying 'rich' people when there are truly poor people in the urban areas who vote.
- There has been no market-based flexible mechanism to restrict land use in an effective way which would be acceptable to society and also attractive to the land owner.
- There are issues within NAFTA which may create challenges due to the perception of such programs as unfair trade subsidies.



The introduction of market principles into the concept of conservation easements is not a revolutionary concept. It is, instead, a combination of existing ideas put together in a slightly different way. The elements necessary to make this work are either in operation now, or have been the subject of experimentation in other jurisdictions. The essential elements of this approach are:

- Bring market principles into the provision of services valuable to society as a whole;
- Use the Conservation Easement concept but with the incentive of an annual payment rather than a lump-sum tax receipt or cash payment up front;
- Modify the Conservation Easement agreement so that it has a fixed term (for example: 50 to 99 years) with a possible mandate to renew;
- Empower an organization such as a land trust to operate as an agent in setting up and administering the market-based conservation easement;
- Leverage the fact that a land trust is already tasked with the responsibility of monitoring the condition of an easement on a continuous basis, or at least annually;
- The Government, as a representative of society, would agree to provide funding for market-based conservation easements through the land trust. Alternatively, funding could come from a river management partnership organization (see information on the other proposed Pilot) which would have the mandate to not own, but manage the water transfer (river and stream) system.

Advantages

While the concept of such an approach is still in its infancy, we would argue that it would provide significant benefits over the alternatives which include rigorous government regulation (land use zoning) and direct subsidies. Either of these alternatives would likely experience significant opposition from within society as a whole, or from the subject landowner community. The potential advantages are:

- It brings market discipline into the valuation and provision of ecological services from private land;
- It avoids the uncertainty of an up-front fixed payment into perpetuity for an annual service, and creates a flexible market-based annual payment system for something whose value will change over time. That is, moving from a capital sum to a cash-flow model;
- It deals with the current land value challenge to writing conservation easements where land owners are reluctant to commit to an easement in perpetuity for reasons of family succession planning and potential lost opportunity cost when land values are very high and the future is uncertain;
- It provides an annual income to landowners which compensates for the conservation easement restrictions, therefore making future sale of the land more attractive to buyers, especially those willing to accept the easement conditions;



- It reduces the risk to both government and the land owner. In a market system this reduction in risk generally produces a more accurate price valuation of the commodity;
- It helps to create a societal attitude for protecting watersheds and thus prepares the field for a type of land-use planning system (zoning) if it should be seen as necessary in future.

Conclusion

It is believed that such a methodology for using market-oriented mechanisms to protect watershed landscapes into the foreseeable future is worthy of investigation as a research and pilot project. It potentially creates another tool for protecting watersheds and wildlife habitat (including species at risk) without significant additional regulation or government funding