

Tensions among adaptation, permanence, and enforceability in private land conservation

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Organizations increasingly rely on conservation approaches that promise permanent protection through contractual agreements or property rights acquisition. These approaches highlight important tensions among adaptation, permanence, and enforceability in environmental governance. One of the primary appeals of conservation easements, in particular, is their promise of perpetuity, running with the land regardless of landowner preferences or political influences. Given change in social and ecological systems, this attempt at permanence is likely to lead to conflict and perhaps contradiction. Analysis of conservation interventions in diverse social-ecological systems across scales provides insights into their effectiveness and contributions to resilient communities. Conservation easements with an adaptive approach would link compliance terms with conservation goals, require monitoring of those terms, and have a mechanism for altering land management based on monitoring results. All three of these realms present challenges for the conservation easement structure. Conservation easements remain relatively fixed once they are established, whereas subsequent easements incorporate lessons learned from monitoring, enforcement, management, and applicable science. It is a mistake to assume that once an easement negotiation is complete, the land will remain in a static, “protected” status. Rather than providing an alternative to environmental regulation, conservation easements shift governance authority to negotiated, perpetual agreements subject to many of the same uncertainties common in environmental policy. Importantly, they lack a transparent, participatory process for updating over time. Furthermore enforcement capacity is limited and unevenly distributed. To avoid the challenges of perpetuity, short-term contracts or payments for ecosystem services have been suggested. Unfortunately many of these tools share similar weaknesses, and their short-term status may provide fewer conservation benefits. This analysis reveals the need for a broader rethinking of conservation property relations. Social conflict is inherent in property rights since “property is persuasion.” Enforcement is dependent on political will and sufficient resources to enforce. This is not a privatized vision of conservation but a context of interwoven public and private spheres. Designing appropriate processes for adaptation requires us to go beyond legal agreements to understand the effectiveness of environmental policy implementation in diverse social and ecological contexts.