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Environmentalists and Forest Landowners: Why We Must Work Together

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"If the 21st century is to be the time of healing the forests of the world, we must be willing to work together as people who care about our own future and that of our children and their children. To heal the forests, we must be willing to share openly and freely any and all knowledge necessary to achieve that end. In addition, we must be willing to cooperate with one another in a coordinated way, for cooperation without coordination is empty."[1]

"If a man walks in the woods for love of them half of each day, he is in danger of being regarded as a loafer, but if he spends his whole day as a speculator, shearing off those woods and making earth bald before her time, he is esteemed an industrious and enterprising citizen." -- Henry David Thoreau

Introduction

Despite all the rhetoric from groups controlled by multinational timber corporations, the reality is that environmental organizations have much more in common with individual forest landowners than the timber corporations do. While corporations decry government "regulations" limiting forestry, the reality is that there is virtually no regulation of the timber industry in the Southern United States at all. Indeed, the biggest threat to forests is the same threat to wildlife, water quality and other environmental interests: the loss of forests and habitat due to conversion to farms, pine plantations, strip malls, subdivisions and parking lots. Environmentalist organizations recognize that the individual forest landowner is a friend of the environment, a person who loves and cares for their land. Even a poorly managed forest is better for the environment than another parking lot and mega-mall surrounded by subdivisions. And a well-managed forest is a great environmental asset. Rarely does a landowner make bad decisions for their forests due to greed; usually, it is because of a lack of knowledge about alternatives or about ways that help them protect their land.

Private forest lands are the key to protecting biodiversity and other environmental resources in the United States, particularly the eastern part of the country. While publicly-owned forests are essential for their environmental functions and values, the majority of American forests are privately owned, and despite the vast holdings of forest land by a small number of corporations, a majority of the privately owned forests are owned by individuals. As summarized by the National Research Council:

> "America's nonfederal forests are extensive and important. Two-thirds of the nation's forestland--nearly 490 million acres--are owned and managed by nonfederal entities. These owners include: state, county, and tribal governments; corporations; and millions of individual private citizens, including more than nine million who each own fewer than 100 acres. This later group is referred to nonindustrial private forestland owners.... Forest industries own about 71 million acres of forestland, with particularly heavy concentrations in the South.
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> "About 75 percent of the nation's nonfederal forests are located in the eastern part of the nation. Four of 10 acres are in the South, and about one-third of the nonfederal forestland is located in the North. the remaining portion spreads across the western United States, where the dominant landowner is the federal government."[2]

The increasingly important role of all forests in society was well stated in Jenkins & Smith, *The Business of Sustainable Forestry: Strategies for an Industry in Transition*:

> "Sustainable forestry is emerging worldwide because the contexts and conditions of forests

> are changing at an unprecedented rate and in ways that were never before possible. Long viewed as hinterlands valued primarily for meeting the extractive needs of societies, or as preserves of wilderness, forests are now mainstream concerns in the United States and throughout most of the world. Increasingly, forests are recognized as pervasive and crucial features of the social landscape that supply fundamental human needs for wood, paper, water, food, jobs, medicines, minerals and energy. They form watersheds, agricultural systems, and reservoirs of genes, species, and ecosystems; and they regulate climate. In the process they distribute resources and services among groups, communities, and nations. In this new context, people have come to view forests as critically scarce systems within the bounds of direct human interest rather than as abundant resources beyond those limits."[3]

Thus, private forestlands in the United States are essential for protection of the environment. It is vital that private forest landowners learn more about options for forest management that will provide them with the economic returns they desire while protecting the environmental values the public and the landowners both need. Federal forest lands must be managed according to a host of federal laws and regulations, and thus environmentalists can use the courts to ensure that management is done properly when agencies will not do so of their own accord. But private forest lands do not have nearly so many laws and regulations applicable to them, and forcing private landowners to manage their lands in a particular way is simply not possible. The most laws can do on private forestlands is set outside limits on what landowners can do, such as not allowing them to build a toxic waste dump next to a school. Laws on private lands prohibit bad things, but they cannot mandate good things. For private landowners, the personal desire to manage land well is the key factor, but for that desire to become reality, the landowner must be provided good information and an honest range of options so that they can choose the management methods and techniques that meet their needs and best fit with their land. The landowner must also be provided the incentives and the resources to make good forest management a reality. Society cannot just expect the private landowner to do the best thing, and private landowners cannot just expect society to provide for them, either environmentally or economically. We all bear responsibility for making our world the best it can be.

As stated by the National Research Council:

> "Sustainable management of the nation's nonfederal forests is important because nonfederal forests are an important part of the nation's economic, community and environmental landscape. Expectations for the human and ecological benefits these forests are capable of providing are growing. If these expectations are to be met in a sustainable manner, greater financial and human investments in these nationally important forests must be made."[4]

While government can play some role in informing landowners and encouraging better and more sustainable management, its role is ultimately limited. If private forestlands are to managed sustainably, the energy for such an advancement must come from the landowners and from those who are concerned about the ecological values of the land.

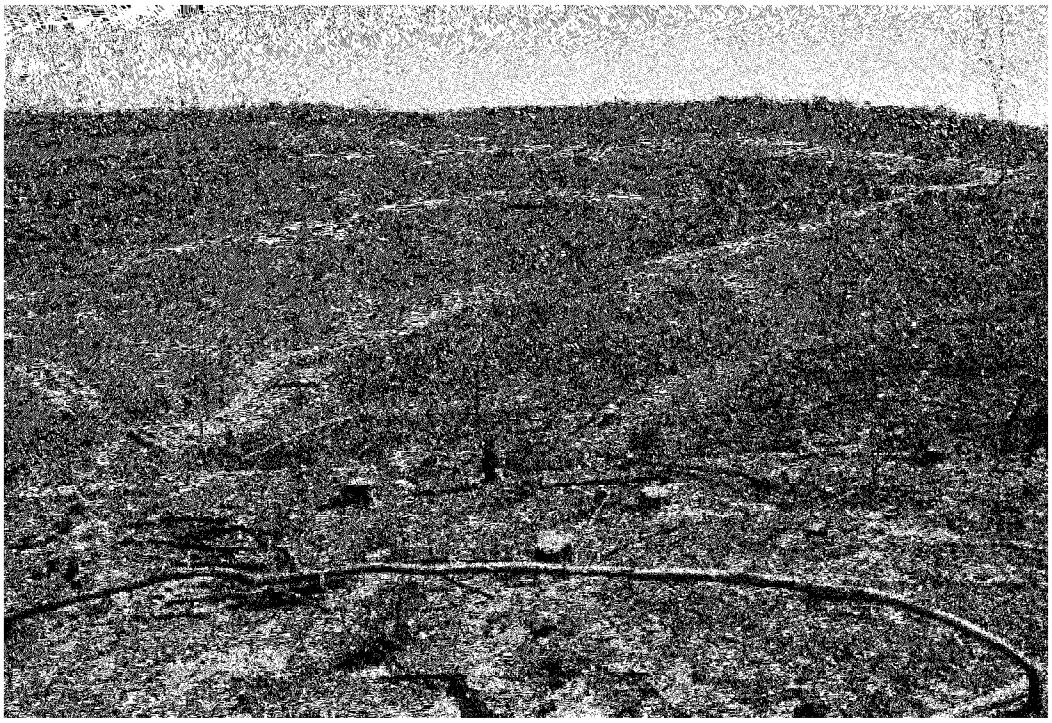
What is needed is for private landowners and people with environmental concerns to begin a better and deeper dialogue in order to learn from one another and to help each other achieve their goals. What we will find when we talk together instead of attacking each other for narrow political reasons is that we have a great deal in common. The goals of most environmentalists can be met while meeting the goals of most private forest owners. Good stewards of private land produce good environmental results. Good environmental practices produce good economic results for private landowners.

Bad Logging Hurts Private Lands and Public Lands

Why do so many logging operations damage the very land that is harvested? Simply put, the large multinational corporations that drive the world timber market demand that fiber be provided to them in the most efficient and profitable manner, for them. Massive cut-and-run clearcutting is the best way to get trees off land and into the hands of large pulp and timber corporations, but it is not the best way for an individual landowner to make money and maintain the integrity of their land. Industrial harvesting methods, such as clearcutting, cause great damage to land, wildlife, water quality and scenic beauty.

Clearcutting done wrong can also destroy a landowner's future chances of making good money from that land.

This clearcut on private land in central Alabama was done by a major multinational timber corporation and demonstrates how the landowner involved will not see any timber revenue from this land for decades to come.



Irresponsible logging practices on private lands can also adversely impact public forests. This clearcut below and associated pine plantation are on private lands in the middle of the Bankhead National Forest in northwestern Alabama. Every bit of sediment that runs off this clearcut goes into streams on public land. Thus, learning about better ways to manage forests can lead a landowner to being a better neighbor, both to other landowners and to the public at large.

When timber harvesting is not done in a responsible manner, the land and people suffer. Streams can be choked with sediment; wildlife can be killed. Neighboring landowners can have their lands and waters degraded and their property values diminished. The landowner whose forest is mangled through bad forestry practices suffers the most, losing soils, productivity, wildlife, the beauty of their land, and even future revenues.

But when land owners have more information about their choices, they can make better decisions about forest management and avoid the problems that come when improper methods are forced on them. Landowners can decide to manage their land in a way that maximizes revenue for them (as opposed to maximizing revenue for corporations) while also protecting the soils, wildlife, water and beauty that

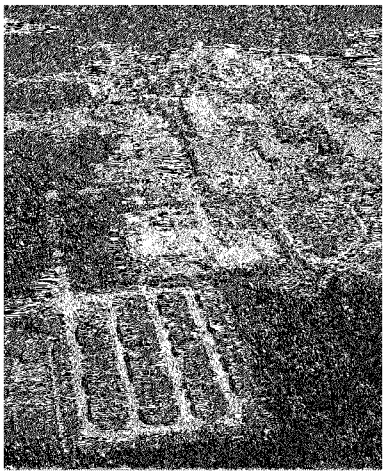
makes that land special to them. Methods such as selective logging can provide great revenue from sawtimber without ever removing the majority of the trees from the forest. Landowners who cut selectively and who wisely chose to take their timber to a quality sawmill have made more money from their land than neighbors who clearcut and just sold the trees for pulp to the nearest multinational pulp mill.

Sustainable forests come from knowledge and landowner care, and smart choices about forestry methods require research. A group called the Southern Sustainable Forests Alliance seeks to aid landowners in making intelligent choices about how to manage their forests for now and for future generations to come. Other environmental organizations from around the country also work to assist private land owners to make their lands as productive and sustainable as they can be.

Industrial Logging: The Problem

Industrial logging practices are not designed to benefit private landowners; they are not designed to protect forest lands. Industrial logging practices are designed to benefit the timber and pulp industry by getting trees off the land and into the mills as quickly and cheaply as possible. The huge multinational timber corporations are not concerned with whether the forest landowner makes as much money from their land as they could have or even whether the forest landowner's land is still viable after logging. The corporations' concerns are maximizing next quarter's profits and driving up share prices.

Industry has huge investments in facilities and processes that are designed for mass manufacturing of consumable goods. Their goals are maximizing short-term profits. People who make unique products from wood also suffer when forests are not managed sustainably, as the multinational corporations absorb so much of the available timber. As shown below, a typical paper mill is a tree-consuming machine.



When forest land is logged recklessly just to maximize timber and pulp production in the present, the land suffers over the long term. Wildlife, biodiversity, water quality, air quality, and scenic beauty all suffer as well. The forest landowner also suffers by not realizing the maximum economic return from their land and from the loss of all the non-economic values and resources that make a person's land mean much more to them than just property.

When land is treated as nothing but industrial resources and forests are managed merely as commodities, the environment and the private landowner both suffer. Industrial demand for cheap fiber has caused massive clearcutting of southern forests. Instead of trees being allowed to mature and provide valuable sawtimber for local sawmills, forests are clearcut young and fed into chip mills. The chips are then shipped overseas to be made into paper and other products there. Value-added jobs are lost. Studies show that for every one job created by clearcutting and chip mill use of the timber, 40 jobs in the cabinet and furniture industries here in America are lost. This industrial row cropping of trees has also driven prices for timber to new lows, thus forcing many small operators, family sawmills and private

landowners into selling out to the multinational corporations cheaply. Causing a world glut of timber fiber benefits the multinational corporations by allowing them to buy up small competitors and timber at prices that allow them to consolidate power over the timber market. Doing business on a global scale, these corporations do not care if their practices cause harm to a regional economy.

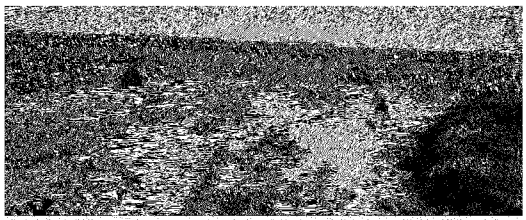
The chip mill below is located on the Tenn-Tom Waterway in eastern Mississippi. Such mill are increasingly used to liquidate natural forests and ship the chips to countries in Asia instead of having the wood be used here in America to make value-added products. Thus, loss of forests due to unsustainable logging levels also leads to a loss of the good jobs that depend on a constant flow of high-quality wood.

A chip mill on the Tenn-Tom waterway, which is a major route for shipping the chips of southern trees to Asia. The number of chip mills in the South has skyrocketed in the past ten years, most of which are used to funnel southern hardwoods to Asia.

Land is more than just property. Forests are more than just timber.

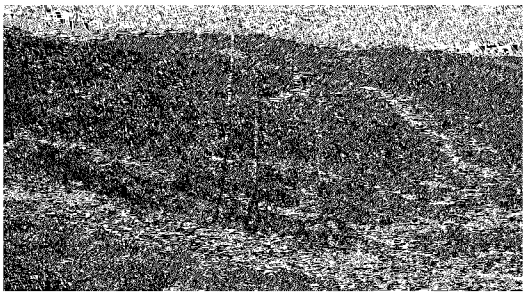
Individual landowners realize these truths. Local sawmills that produce the lumber than gets turned into products locally also know these things. Multinational corporations do not. Unfortunately, the private forest landowner often gets "advice" about how to manage their land only from those corporations and people who have a vested interest in the global timber market. Corporations and the foresters who work for the industry usually do not provide forest landowners information about real alternatives to industrial logging practices and do not give them assistance with long-term protection of their land. Environmental coalitions like the Southern Sustainable Forests Alliance do provide such information to landowners.

Below is massive soil damage caused by log skidders and trucks in a huge clearcut in northern Alabama. With even a small amount of concern, foresight and planning, damage such as this can easily be avoided. But the large corporation that logged this land was not interested in sustainability but in maximizing the next quarterly report's profit margin.



Trails for log skidders and log trucks can cause massive erosion and damage, like this incredible damage from a clearcut in northern Alabama.

Skid trails throughout this clearcut below in west-central below cause erosion, even many months (and even years) after the area was logged, and act as funnels sending sediment down into the stream below. Again, this damage could have been prevented while still harvesting virtually the same amount of timber off of this tract.



Landowners who are not given options are often talked into having their land clearcut and replant into a monoculture, in the South that means rows of loblolly pines. These tree farms are no longer forests in any sense of the word. They are farms, crops, and nothing else. According to Harvard professor (and Alabama native) Dr. Edward O. Wilson, conversion of natural forests to pine plantations can cause a loss of 95-99 percent of the biodiversity that was part of the forest. Wildlife suffers when natural forests are replaced with plantations or development.

A great exposé on the conversion of healthy natural forests into pine monocultures can be found in an article by Ted Williams in the May/June 2000 issue of *Mother Jones* magazine. The article is "False Forests". As stated by Mr. Williams so well:

> "Since mechanized forest removal became de rigueur in the 1960s, the industry has been excusing itself with ads that begin: 'Clearcuts may seem ugly at first....' As I gain the brow of the hill, I have to agree. But here, on this frozen, snag-littered mud flow salted with land snails roasted white, there is something even uglier -- a greener, more insidious threat to the environment apparent in the freshly planted pine seedlings that barely make it to my boot tops. Directly to my left, a rectangular plantation almost ready for harvest stretches to the next hollow like a roll of teased Astroturf. The plantation to my right is maybe two years old and just greening up. For miles in all directions, the earth is clad in genetically identical, genetically "superior" specimens of loblolly jammed into the dirt in straight rows -- trees the timber industry calls 'vigorous' and 'thrifty,' all goose-stepping their way to harvestable diameter.
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> "There is no genuine forest in sight, save a relict scrap to the north that contains hardwoods: oak, beech, dogwood, ash, sweet gum, magnolia, yellow poplar, hickory, cherry, and maple. It is a reservoir for wildlife, but also for what companies like Champion seek to correct -- 'deadwood, decadence, and disorder.' With a pine plantation, the forest has not only been removed, it has been prevented. Countless species of insects, arachnids, mollusks, amphibians, reptiles, birds, and mammals -- each as much a part of a forest as a tree -- are gone because the diverse vegetation on which they depend is gone. E.O. Wilson, a Harvard biologist and Pulitzer Prize winner, estimates that a pine plantation contains 90 to 95 percent fewer species than the forest that preceded it. He compares the effects of tree farms on biological diversity to 'building a line of Wal-Marts.'
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> "Over the past decade, tree farms have certainly proliferated like discount chains. The U.S. Forest Service estimates that plantations now make up 36 percent of all pine stands in the South and within 20 years will make up 70 percent. Like other industries, pine farming has migrated to the region for its mild climate, cheap labor, and low taxes. Trees grow more quickly here, and they cost less to plant, tend, and harvest. What's more, most of the pine conversion is taking place on private land, where regulation is virtually nonexistent. More than half of evergreens harvested in the U.S. come from the South, making it the world's largest pulpwood producer."[5]

Clearcutting for conversion to pine plantation exposes the soil and causes great loss of nutrients and soil microbes that make the whole forest ecosystem work. Below is a typical industry clearcut in Alabama, showing exposed soils and a total loss of vegetative cover.

This conversion of natural forests into plantations is devastating to the environment and can be devastating to the landowner as well. What was once a diverse and beautiful landscape capable of producing steady income forever is reduced to a farm that will not produce a dollar to its owners for decades to come. Of course, getting any income at all from a monoculture plantations assumes a big gamble that the packed pines survive attacks from southern pine beetles, wind storms, ice storms for decades. Such natural "disasters" are all things that have little impact on a natural and diverse forest, as diversity enables a natural forest to withstand such impacts well.

Pine plantation conversion also hurts communities far beyond the actual tract of land that is converted. As Ted Williams wrote:

> "What the companies neglect to mention is that pine farming, like other large-scale, industrial agriculture, harms the environment and the economy. Pine plantations require enormous amounts of fertilizer and herbicide, much of which winds up in streams and drinking water. They impoverish soil and destroy habitat, including wetlands. And they rob communities of valuable sawtimber for lumber and of real forests that produce clean water and provide recreation. Few of the profits end up in local communities, and many of the companies are multinational. Champion, for example, is owned by a firm based in Helsinki.
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> "....
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> "Alabama is particularly generous to pine converters. Among the benefits bestowed by the state is a tax exemption on almost $4 billion worth of timberland -- an arrangement that, together with other tax breaks, deprives public schools of an estimated $50 million per year. So pine conversion is being underwritten in part by the future enlightenment and earning potential of Alabama's children. An Auburn University study reveals that rural counties most dependent on the forest-products industry have the highest levels of unemployment, poverty, and infant mortality. They also spend $200 less per student for public education than rural counties less reliant on timber. Tax revenue that would have gone to schools and other social services goes instead for such industry accommodations as road maintenance for fleets of logging trucks.
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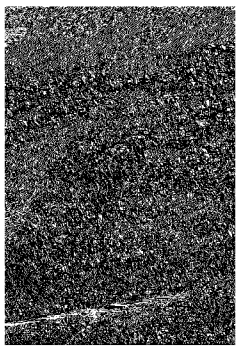
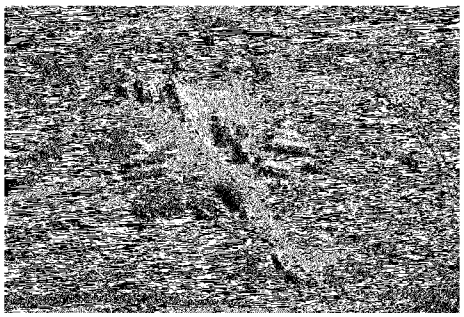
> "Another hidden cost of pine conversion is that young hardwood trees are ground into chips before they have a chance to mature into valuable sawtimber. Unlike Western logging, which is often conducted on public land, pine conversion happens mostly on private property where regulations are lax or nonexistent. Foresters for companies like Champion routinely pass out free seedlings and free advice to landowners, encouraging them to sell their timber before it matures and to "reforest" with loblolly. The landowner gets quick cash, the company gets wood for chips, and workers at local sawmills get laid off. Lamar Marshall, director of Wild Alabama, one of the state's largest and most active environmental groups, showed me the results of this system as we toured the countryside in his truck. "Look there," he exclaimed as we passed someone's back 40, a once-diverse woodlot replaced by a monotonous expanse of young pine. "If the forester isn't real ethical, he'll cut every stick of hardwood for chips. He'll pay $5 for a red oak, which might have been worth $50 or $75 in five years." All trees look the same by the time a Japanese fax machine spits them into the holding tray."[6]

Below are two examples of pine monocultures on the landscape of Alabama.



Another threat to private forest lands is the use of forests for biomass energy production; this is currently a small but fast-growing problem. Large corporations are advocating that the current manufactured "energy crisis" be addressed, in part, by using biomass energy. Biomass is the removal of all living things from a tract of land and converting that biomass into pellets or chips which are fed into a boiler to produce steam to power electric turbines. This process literally vacuums all plant matter off a piece of land, making it even more devastating that clearcutting. While some limited biomass energy production is currently fueled by biomass from private lands, there are proposals to start using the National Forests (especially those in the West, like in California) to produce biomass energy.



The photo[7] above shows a Bowater Paper Company clearcut in Morgan County, Tennessee. The inwoods chipper, in the upper left center, is capable of filling up 15 trailer truck loads per day for boiler fuel. All trees and all parts of the trees are devoured by these small efficient land clearing machines. The resultant desert has far-reaching negative environmental effects far beyond it's borders.

What makes the conversion of natural forests into pine plantations so particularly tragic for Alabama is that Alabama's forests and waterways once supported the most diverse biodiversity anywhere in the continental United States. Half of all known extinctions in the continental U.S. since white settlement have occurred in Alabama. Alabama has experienced more extinctions than any other state in the lower 48, almost twice as many as the number two state, and more than 25% of its remaining 3,800 species are

in danger of extinction. As stated in the Sept./Oct. 1997 Nature Conservancy magazine, which published the map above, Alabama is "America's monster of biological diversity," and "is lately drawing comparisons to the legendary treasures of the tropics."

The Real Problems Facing Forest Landowners

Front groups for the multinational timber interests often claim falsely that environmentalists are coming for private land and want to take it away. They love to scare landowners with horror tales of environmentalists pushing laws that take away private property rights. Of course, when pressed for details and facts, these anti-environmental groups and the industry can almost never provide them, except for a few anecdotal stories, most of which can never be independently verified. Yes, environmental laws and regulations (just like tax laws, drug laws, speeding laws, and every other form of law) can occasionally cause harm to private rights, and such instances need to be corrected and compensated. One can find isolated instances of seat belts actually making injuries worse during a car accident, but should we get rid of all seat belts because of that? Just as the fact that rarely seat belts make things worse in an accident does not negate the reality that the vast majority of time they make things better, so too rare problems with environmental laws do not mean we should abandon all the good they do.

The reality is that every study done on the issue shows conclusively that environmental laws and regulations do not cause broad adverse economic impacts. Research into the impact of environmental laws has shown that these laws have no detectible adverse impact on the national economy or on the economy of any state.[8] These laws do have some occasional real impacts on the local scale, but in the vast majority of instances, these laws amount to nothing more than an additional cost of business such as compliance with labor laws, zoning requirements, engineering requirements, etcetera. Just as people do not want ten-year-old children working 16-hour days in factories, they do not want their children breathing unclean air. Environmental laws in general are not "unnecessary and excessive" regulations and limitations on the free market and private property; society has legitimate interests in limiting anything that conflicts with the values of society, whether it be child labor or toxic pollution, just so long as those limits do not infringe on constitutionally protected rights.

Indeed, to "prove" their case that environmentalists care "bad," anti-environmental groups have to make things up, sometimes going so far as to create false web sites claiming to be the web sites of environmental groups. A prime example is www.wildlandsproject.org, which masquerades as the web site of The Wildlands Project, a scientifically-based organization showing what is possible in protecting and restoring wildlands and biodiversity. The real web site of The Wildlands Project is www.twp.org. Whenever opponents of good land management want to scare people, they tell them "environmentalists want to take your land away; go look at the web site of The Wildlands Project," and then give them the address of the false site. The Wildlands Project does not advocate taking people's private property away. It sets forth idealistic but scientifically-sound visions of what a biologically-recovered North America might look like (after all, you cannot know you are making progress in any area unless you have a vision of what the final goal is), but nowhere does the organization call for those visions to be forced on anyone. But the false web site takes logos and materials from the real web site and changes them to make things appear "bad."

What the timber industry and their front groups are up to is scaring landowners into listening only to the industry, so that landowners will do what industry tells them to do, even if that is not what is best for the landowner. Making environmentalists into boogiemen is a way for industry to keep landowners from learning about different ways of managing their land and to keep them from making their own decisions about their land.

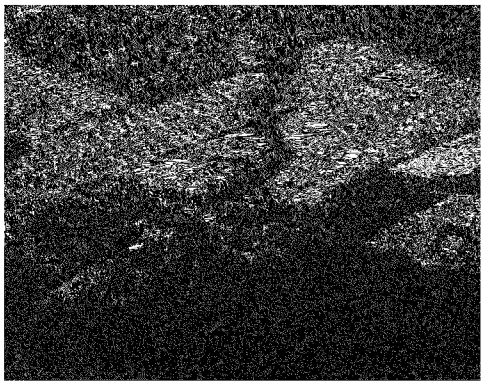
What is ironic is that it is very true that there are people who desire to take private forestlands away from their owners, but those people are not environmental organizations. While the timber industry tries to demonize environmentalists, they never inform landowners about people who really do want to take away forestlands and destroy their forests, by developing them.

Huge areas of American forest land are lost each year to development. Even forests that are not

converted to urban or suburban land are fragmented by the development that occurs around and near them. This fragmentation is bad for the general environment and bad for the health of private forests. Recent studies show that in the United States 1.5 million acres of private forest land are fragmented each year by development pressures and another 1.2 million acres are converted and lost forever to development.

Even if an individual does not sell his forest to developers, if his land gets surrounded or even encroached upon by development, the taxes on his land can rise dramatically, making it harder for him to keep his land. Indirect effects from the development can cause damage to his land through many impacts such as erosion, sediment runoff, pollution of both air and water, driving off of wildlife and many more.

Uncontrolled sprawl, such as this below in Atlanta, Georgia, eats into private forests at an alarming rate.



A recent conference of experts on forest fragmentation made some disturbing findings. The conference was "FRAGMENTATION 2000- A Conference on Sustaining Private Forests in the 21st Century," and it was held September 17-20, 2000, in Annapolis, Maryland.[9]

Some of the major findings of the conference were:

> "1. Fragmentation rates are increasing faster than population growth. Development-supporting economies keep expanding out over the landscape, replacing forest-and-farm-supporting economies. 2. A "bow wave effect" extends far in front of expanding development. It raises land prices, taxes, social and regulatory pressures that discriminate against rural land uses well before a development rush. 3. Subsidized development demands subsidized services, which increases demand for more development... Most residential development costs government more in services than it pays in taxes. 4. Plants and animals thriving on edge-and-disturbance effects expand; those needing large undisturbed expanses decline. 5. Exotics and invasive weeds replace native systems. Vulnerability to insects and diseases increases. Plantings at developed sites create 67% of the invasive exotics in the U.S. according to Alavalapati. 6. Timber harvests "go terminal" in and near developed areas. One last cut is made in preparation for development; then the infrastructures and economic incentives helping keep land in forests disappear. Since this is not accompanied by a reduction in U.S. demand for forest products, imports rise, driving up harvests outside the area while local forests are unused.
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> "FRAGMENTATION RATES ARE INCREASING FASTER THAN POPULATION GROWTH From1945 up to 1992 each new person added to the U.S. population caused the conversion of about half an acre of undeveloped land to urban uses. The rate more than doubled between 1992 and 1997 as each new person added to the population converted 1.2 acres of undeveloped land to urban uses. About 40% of the land used is forested, meaning that each new person converted .22 acres of forest prior to 1992 and converts about .50 acres now.

"Death and taxes: people who inherit valuable land are forced to subdivide it to pay taxes. People who are 65 and older hold 48% of all private timberland acres, meaning that land keeps getting divided among heirs. Owners of high-value land who haven't made complex legal tax-avoidance arrangements before dying leave their heirs with the problem of being forced into selling land and timber to pay high estate taxes. According to Greene and others, the number and percent of estates owing federal estate tax has risen in recent years. At the same time, increased stumpage prices and urban expansion have driven up the value of both the timber and land components of forestland, pushing more land into higher brackets. Greene estimates that there are presently about 87,000 forest estate transfers annually. Ownerships forced to sell timber or land to pay the federal estate tax range from under 100 acres to several thousand acres of forestland, and average over 500 acres.

"The South is the next most densely populated region and very heavily forested. It contains 50% of the nation's private timberland. The population is growing rapidly, creating massive expansions of urban areas. Between 1960 and 1990, the South's share of the U.S. population increased by about 3%, but the amount of southern land covered by metropolitan areas more than doubled, increasing from about 10% to more than 23%. Florida is gaining population at the rate of nearly 900 people per day, decreasing timberland from 19.7 million acres in 1936 to 14.7 million acres in 1995 This is expected to increase, creating significant negative impacts on the environment and the economy. Georgia has the most timberland of any state in the country but also now ranks third in the annual rate of development (USDA FS 1999. US Department of Commerce, 1992). American forest industries have been concentrating in the south in recent decades because of the region's highly productive private forests, but many of those same forests are now under fragmentation pressure as urbanization increases."

Below is a photograph of sprawl near Birmingham, Alabama.

Another threat to private forest lands is their conversion into much more damaging resource extraction. Coal strip mining continues in many areas. The road and building construction industries need huge amounts of crushed stone, but it is rarely economical to ship such rock long distances. Therefore, the rock industry tries to develop rock quarries near places that are experiencing growth. What this means is that even if a landowner's forest is not itself lost to nearby development, it could be lost to a quarry that supports the development. Below is an example from Alabama of how a rock quarry literally eats away surrounding land.

What this shows is that the real threat to private forest landowners is NOT environmentalists and government regulations but the very loss of their forests to development and resource extraction that forever eliminates the forest. In facing this threat, the timber industry is useless to the individual private landowner, because the industry is not interested in what happens to individually-owned forest land. The industrial timber corporations want logs, and they will happily buy and process logs cut off land slated to be converting into a strip mall as from anywhere else. But in facing this ultimate threat to private forest land, environmental organizations are uniquely situated to help land owners. Indeed, environmentalists have spent decades learning how to oppose poorly planned development and mines.

A unique aspect of when private forest owners come into contact with the real threat of development is how they often embrace the very environmental laws and regulations that timber industry front men have told them are out to get them. For example, industry rails against the Endangered Species Act (ESA),[10] claiming that the ESA will prevent a landowner from realizing any revenue from his land. But the reality is that a tract of private forest with an endangered species is a rare thing, and if the species is there, that usually means that the landowner's preferred way of managing his land is compatible, even good, for the species, or else it would not normally be there. When threatened with suburban development, a forest with an endangered species can usually continue as a working forest but it cannot legally be converted into pavement. Thus, the forest landowner can find that the ESA will defend not just rare species but also his very land. I have personally had dozens of landowners approach me and ask if I could please find an endangered species on their land. Why? Because their land was being threatened with encroaching development. Of course, I could not magically put an endangered species on land that did not already have them. But the lesson is that when the real threat to private landowners appears, they instinctively realize that what they had been told was the threat is instead their hope of salvation.

Indeed, WildLaw has helped hundreds of private landowners defend their land from takings by corporations that have been given the power of eminent domain. Industry front groups that spent years telling these very same landowners that environmentalists and environmental laws would take their land from them never raised a finger to help these people when industry (not government) came to take their land away for a pipeline, a power line, a road or whatever. Instead, it was the environmentalists using the environmental laws and regulations who came to the defense of these private landowners. Unfortunately, due to the overwhelming power of the eminent domain given to corporations, we were unable to keep the majority of the lands from being taken, but we did prevent some takings. And those private lands that were spared in the case WildLaw brought for private landowners were spared because environmental laws such as the ESA, the National Environmental Policy Act and the Clean Water Act forced the corporation dong the taking to modify its plans and avoid certain lands.

Moving Toward Sustainable Forestry

Chris Maser discussed some causes of trouble in the forestry profession:

> "Ignorance might be excused in the absence of information, but to act in defiance of documented knowledge is inexcusable. The forestry profession is in trouble because of the resistance of many traditionally educated foresters to alter their thinking in terms of the world today. Five major causes of trouble in the profession of forestry are (1) the economic

myth of forestry, (2) dogmatization of forestry, (3) limitations of science, (4) informed denial, and (5) university training."[11]

Many of the problems that result from industrial forest practices come from the knowing refusal of the forestry profession to admit that forests are more than trees. The incredible dynamics of water, soil, soil organisms, wildlife and all forest plants are complex, difficult to predict and impossible reduce to economic terms. Taking into consideration what is a forest and what it takes to wring economic benefits from a forest without damaging or even destroying that forest can get in the way of "getting the cut" out. Maximizing long-term economic benefits from forest land demands that the totality of the forest and its needs be taken into account, but maximizing short-term profits requires only that one turn a blind eye to reality and just cut trees as fast as possible.

As stated in the book *Ecoforestry: The Art and Science of Sustainable Forest Use*:

> "Trees are only part of a forest. The monoculturalist, who wants to centralize control and standardize methods, requires no place-specific wisdom, does not recognize that it exists, and instead practices on abstract theories and piecemeal information. The monoculturalist relies primarily on imposing his or her will on the land and forest to control it, taking over its evolutionary destiny to replace it with plantation trees in cornlike rows."[12]

A landowner usually knows their land better than anyone. To turn that land over to the industrial foresters of huge corporations that care only about profit is to take a special place and have it ground down into somewhere just like a million other places. It is like a great family cook who wants to open a restaurant being forced to open a McDonald's and cook their food just like it is cooked everywhere else. To ignore the unique aspects and value of a piece of land is the surest way to degrade and devalue that land. Thus, a landowner must insure that they operate from more knowledge than what is parceled out to them by the timber industry if that landowner wants to protect and preserve the things about their land that they care about.

A good example of a vital forest component that is totally ignored by traditional forestry is the insect. Industry foresters lament long and loud about insects that damage trees crops, but they do not seem to realize that the very timber practices they use are the root cause of the insect outbreaks that plague them. Or if they do realize it, they dare not speak that truth for fear of being out of favor with the giant timber industry that drives forestry and most forestry jobs. As stated by Chris Maser:

> "The implications of 'homogenizing' forested landscapes as related to insect activity are interesting and instructive, but seldom discussed in the classroom. Taking a landscape of diverse, native forest and homogenizing it through clearcutting and planting single-species monocultural plantations has the effect of eliminating predators and such physical barriers to insect dispersal as fire-maintained habitat diversity. Loss of such habitat diversity increases both the survival of forest-damaging insects and the likelihood of regionwide outbreaks."[13]

> "By designing a forest based largely on a single-species short rotation that is intensively managed, we are grossly simplifying forest systems. We are speeding up early successional stages as much as possible and liquidating mature and old-growth stages. We are eliminating snags and large down woody material over time as we emphasize short-term economic expediency instead of sustainable forest diversity and stability. Intensively managed stands have little or no wood in the system."[14]

> "A biologically sustainable forest is a prerequisite for a biologically sustainable yield (harvest). A biologically sustainable yield is a prerequisite for an economically sustainable industry. An economically sustainable industry is a prerequisite for an economically sustainable economy, which, finally, is a prerequisite for an economically sustainable society.
>
> "....

> "We are not headed toward sustainable forestry because plantation managers rather than foresters are being trained. A forester manages a forest. Forests are being liquidated and replaced with short-rotation plantations. We will have foresters only when we have sustainable forests in which we manage not just trees, but the constantly changing processes."[15]

What is "sustainable forestry"? Chris Maser provides a good description of not only what is sustainable forestry but why we need it:

> "Liquidating old-growth forests is not forestry; it is simply spending our inheritance and stealing from our children. Nor is planting a monoculture forestry; it is simply plantation management, which more often than not is what we are practicing. Industry is trying very hard to make a gigantic, monotypic plantation out of most of the forested lands of the United States. In fact, the timber industry seems to be trying exceedingly hard to make plantations whenever and wherever they can anywhere in the world. We will practice 'forestry' only when we begin to see the forest and begin to restore its health and integrity – sustainable forestry. Sustainable forestry if the only true forestry. Sustainable means that the whole is greater than the sum of its parts. Forestry in this sense is scientific knowledge guided by a land ethic or ethos in its application to the art and business of manipulating the forested portion of the ecosystem in a manner that assures the maintenance and sustainability of biological diversity and ecological productivity throughout the centuries. The outcome of such forestry will be the perpetual production of amenities, services, and goods for human use.
>
> "In sustainable forestry, we use the forest by removing products, often in the form of biological capital, and then restore its vitality, its sustainability, so that we can remove more products in time without impairing its ability to function. From the time we cut the original old growth, we must continually practice sustainable forestry. Anything else is not forestry. It is simply abuse of the system for short-term economic profit."[16]

Helping Landowners Protect Their Land in Perpetuity

Groups such as WildLaw and the Southern Sustainable Forests Alliance seek to help private landowners protect their land for the uses their desire. One major tool used for protecting private land is the conservation easement.

In general, a conservation easement is a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, for the purposes of protecting or preserving the natural, scenic, historical or open-space values of the property. The easement permanently limits the uses of the land in order to assure its availability for forest, agricultural, recreational, educational, open-space or wildlife uses, maintain or enhance air and water quality or preserve the natural aspects of the property.[17] In other words, a conservation easement is a voluntary legal agreement between a private landowner and an easement holder, usually a public agency empowered to hold an interest in real property or a charitable organization such as a land trust.

Owning a piece of property comes with a number of rights. For example, a property owner generally has the right to construct buildings on his or her land, to subdivide the land, to allow or restrict access, or to harvest natural resources such as timber. A property owner can sell or give away any or all of these rights. If the property owner gives away some of these rights and retains others, he or she grants an easement of those rights given away to a third party. The third party (e.g., government agency or charitable organization) then has the right to enforce those property rights granted to them in the easement.

Each easement is specifically tailored to meet the landowner's interests and personal objectives for the property. Each conservation easement document contains the specific rights the property owner gives away in order to protect his or her land. For example, a property owner may give away the right to subdivide the land, to allow or limit access, or to harvest all or a portion of the timber resources. Most

conservation easements are granted in perpetuity, assuring property owners that the values of their land that they seek to preserve will be protected indefinitely.

Donating a conservation easement can reduce a property owner's income tax. The donation of a conservation easement qualifies as a tax-deductible charitable gift, provided that the easement is donated to a qualified public agency or conservation organization "exclusively for conservation purposes . . . [and] protected in perpetuity."[18] For tax purposes, "conservation purpose" is generally defined as:

> "the preservation of land areas for outdoor recreation or public education; the protection of a relatively natural habitat of fish, wildlife or plants, or similar ecosystem; and the preservation of open space (including forest land) where the preservation is for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, state or local governmental policy.[19]

To determine the value of the conservation easement donation, the property owner has the property appraised at both its fair market value without the easement restrictions and its fair market value with the easement restrictions. The difference between these two values is the value of the conservation easement.

Granting a conservation easement can reduce a property owner's estate tax. Many heirs to large tracts of land face monumental estate taxes. Although heirs may want to keep the property in its existing condition, federal estate taxes are levied on the property's fair market value, not on the value of its existing use. The fair market value is usually the amount a developer or speculator would pay. The estate tax can be so high that the heirs must sell the property to pay the taxes or, at a minimum, clearcut the land to get enough money to pay the taxes.

Conservation easements can reduce estate taxes by decreasing the fair market value of the property. If an owner has restricted the development of the property through a conservation easement before his or her death, the property is then valued at its restricted value. Thus, the property will be subject to a lower estate tax. If owners do not want to restrict the property during their lifetime, they can specify in a properly structured will that a charitable gift of a conservation easement be made upon their death. The value of the easement will be subtracted from the value of the property, again resulting in lower estate taxes.

Granting a conservation easement can reduce a property owner's property tax. In general, property tax assessment is based on the property's market value, which reflects the property's development potential. If a conservation easement reduces the development potential of the property, it may reduce the amount of the property owner's property tax. However, state laws and the attitude of local property tax assessors may determine whether property tax relief will be granted to a conservation easement donor.

In short, a conservation easement is a flexible tool that protects land while leaving it in private ownership.

Environmental groups also help private landowners by providing them free forestry and legal advice. Some groups, like several in the alliance, are hiring their own foresters in order to provide unbiased advice to landowners about what techniques and what equipment would best meet their needs while having the least amount of adverse impact on their land. Often, landowners only hear from the large timber companies, and the advice those corporations give landowners is anything but comprehensive. Normally, it is nothing more than "you should clearcut it all," because that is the logging methods that benefits the corporation the most. Environmental groups can provide a valuable second opinion to landowners that will show them the true range of options they have when they want to manage their land for timber production.

Legal advice on things such as what contract clauses should go into a logging contract to make the logging company respect and care for a landowners land can make the difference between a profitable logging operation that leaves the land intact the way the landowner wants or a barren, sun-baked desert.

Many times, I have seen landowners find out too late that the logging contract they signed allowed the corporation to strip their land bare, even when the landowner specifically told them not to. Landowners who get good contract information before they agree to logging on their land can insure that better results occur and that unscrupulous companies are punished.

Conclusion

The Southern United States is currently the largest timber producing region in the world. To maintain the health of the land and to ensure that landowners get long-term benefits, other voices must become involved in the discussion over how land will be managed and how logging operations will occur. Despite the divisive rhetoric of multinational corporations and their puppet front groups, the reality is that a private forest landowner will, more often that not, find his desires and wishes more closely aligned with environmentalists than with the corporations that wish to profit off of his land and work.

Environmental organizations do not want to put private landowners out of business; they do not want to lock up their land. Anyone who says otherwise is, quite simply, lying. In fact, environmentalists want landowners to have a perpetual and significant source of income from their forest lands much more than multinational corporations do. What I advocate in this article is not that landowners stop listening to the timber industry that has demanded all their attention and their allegiance but only that landowners take the time to get all the facts. Listen to what environmentalists have to say about forests and timber management instead of what corporations tell you environmentalists are saying. A landowner who takes the time to learn the facts and find out what everyone involved is really after will be able to make better choices for the management of his land.

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Brett Paben, a staff attorney with WildLaw in our Florida office, assisted with parts of this article.

[1] Chris Maser, *Sustainable Forestry: Philosophy, Science and Economics*, xviii (CRC Press 1997).

[2] National Research Council, *Forested Landscapes in Perspective: Prospects and Opportunities for Sustainable Management of America's Nonfederal Forests*, 1 (National Academy Press 1998).

[3] Jenkins Smith, *The Business of Sustainable Forestry: Strategies for an Industry in Transition* 11 (Island Press 1999).

[4] National Research Council *supra* note 2, at 21.

[5] Ted Williams, *False Forests*, MOTHER JONES, May/August 2000, *available at* http://www.motherjones.com/mother_jones/MJ00/false_forests.html.

[6] *Id.*

[7] Photo by Cielo Sand and Southwings.

[8] Dr. Stephen Meyer, "Environmentalism and Economic Prosperity: Testing the Environmental Impact Hypothesis," Mass. Inst. of Tech. (Oct. 5, 1992).

[9] The summary report of the Forest Fragmentation 2000 Conference can be accessed here: http://www.sampsongroup.com/acrobat/fragsum.pdf. The website for the conference is available at: http://www.fragmentation2000.org/.

[10] 16 U.S.C. §§ 1531 et seq.

[11] Maser *supra* note 1, at 78-79.

[12] Alan Drengson & Duncan Taylor, eds., *Ecoforestry: The Art and Science of Sustainable Forest Use*,

270 (New Society Publishers 1997).

[13] Maser *supra* note 1, at 84.

[14] *Id.* at 185.

[15] *Id.* at 199.

[16] *Id.* at 277-78.

[17] *See, e.g.*, Miss. Code § 89-19-3; Ala. Code § 35-18-1.

[18] Internal Revenue Code § 170(h)(5)(A).

[19] Internal Revenue Code § 170(h)(4)(A).