

Indicator 7.48:

U.S. Forest Sustainability Indicators <https://www.fs.fed.us/research/sustain/>

Clarity and security of land and resource tenure and property rights

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What is the indicator and why is it important?

Stable property rights and the assurance that those rights will be protected, or disputed through due process, are essential for sustainable forest management, particularly for those who depend on forests for sustenance or income.

With mounting pressures to convert forests to more profitable uses, such as agriculture or urban development, innovative ownership and tenure mechanisms have evolved to protect forest land in its natural state or managed condition. These mechanisms include the purchase and reservation of development rights, through payments for environmental services, or through fee-simple purchase by public owners.

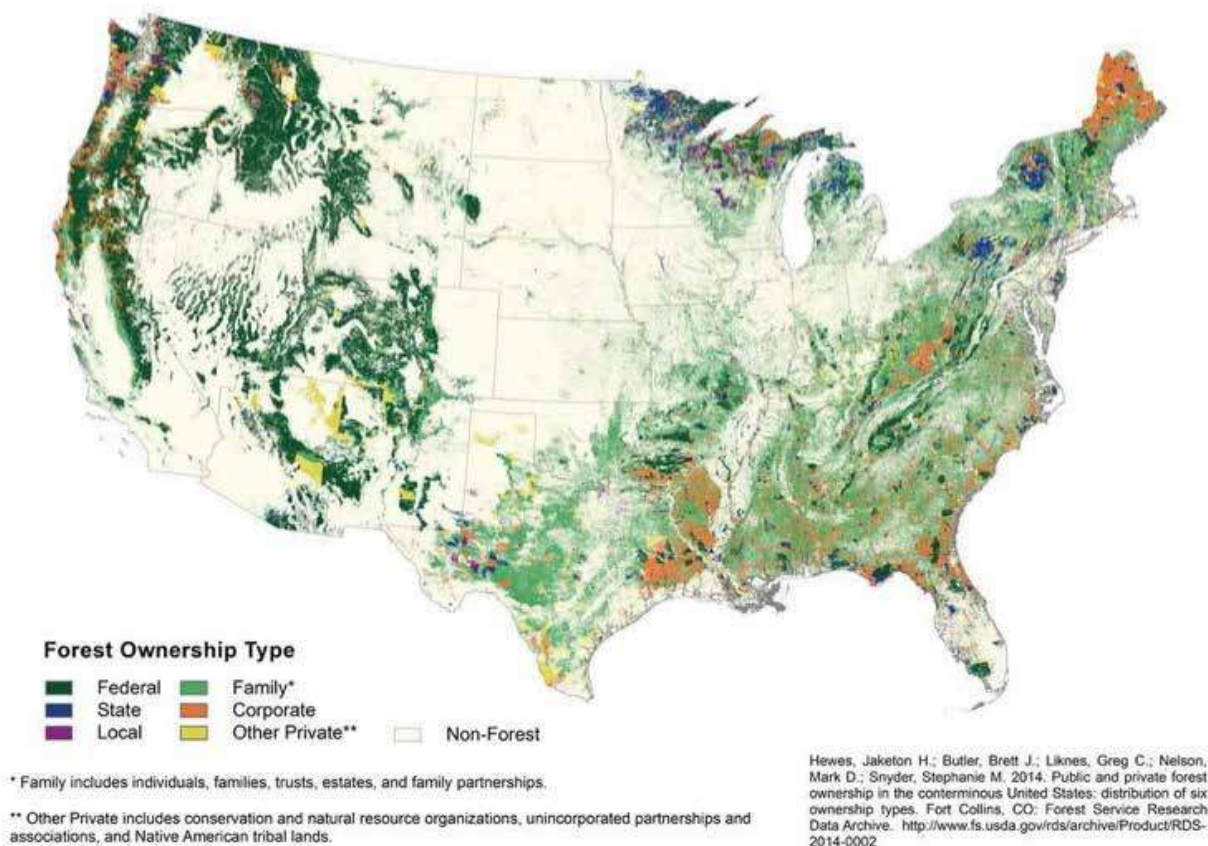


Figure 48-1—Distribution of forest ownership types in the United States (Source: Hewes et al. 2014).

What does the indicator show?

In the United States, property may be owned by any public or private organization, including local private property owners, corporations, Federal land management agencies, and Native American tribes. Of all land in the United States, private interests own approximately 65 percent, the Federal Government owns 28 percent, and State and local governments own 7 percent. Of the 766 million acres of forest land in the United States, the public sector holds 321 million ac (42 percent), including forest land held by the U.S. Department of Agriculture, Forest Service (19 percent of total forest land); the Bureau of Land Management (5 percent); and other Federal owners (7 percent) (fig. 48-1). States own 9 percent of U.S. forest land and county and municipal governments own an additional 2 percent. Of the 445 million acres of private forest land (58 percent), private noncorporate owners hold 298 million acres (39 percent of total forest area), and private corporate owners hold 147 million acres (19 percent).

Tribal forest lands in the United States exceed 18 million acres across 305 forested Indian reservations located in 24 States. Federal reservation lands held in trust for or owned by Native Americans may be controlled by separate treaties, tribal laws, and regulations for management, sale, and acquisition, but still are subject to Federal environmental restrictions or laws.

Forest ownership types vary across the United States at the regional level. Federal and some corporate lands predominate in the West. The Lake States have a diverse mix of public and private lands, including the most State and local government owners. The South and Northeast are mostly private land—family forest owners and corporate, with some State land in the Northeast.

New private forest ownership types in the United States—real estate investment trusts (REIT) and timber investment

management organizations (TIMO) have developed since the end of the 20th century. REITs are publicly traded forest land owning companies, most commonly spun off from the major vertically integrated forest products companies, and focus on land investment. TIMOs, on the other hand, focus on timber management and typically buy and hold timberland on behalf of other investors, such as insurance companies, pension funds, wealthy individuals, foreign interests, and others. By 2014, the 30 largest TIMOs and REITs had acquired about 57 million acres of forest land in the United States.

U.S. property rights govern the ability of forest and other landowners to acquire, manage, use, and dispose of their land and its products and services. These rights are exclusive, but not absolute. Government determines property and tenure rights and may change them with due process that takes into account community and landowner interests. Generally, for most forest land in the United States, property rights govern the ownership of all the resources associated with a forest, both above ground and below ground. Notable exceptions exist for mineral rights such as oil, gas, and coal, which often are sold separately from the land rights to the forest, and in fact, frequently hold superior claims. For instance, with due compensation, forests can be cleared against owners' wishes to mine coal or drill for oil or gas at the behest of the Government.

Property rights may encompass the right to access the land, harvest and remove resources, manage the land for products and services, exclude others from any or all of these activities, and to sell the property (table 48-1). How these rights are bundled or separated has implications for forest use and conservation. According to property rights theorists, a complete owner of property or products and services can do as they wish with the property and resources, as long as they do not violate any laws or regulations that protect other owners, society, or future owners from environmental damage or loss of land productivity. A proprietor—one who is leasing the land—can use, manage, harvest, and exclude others, but may not

Table 48-1—Bundles of rights associated with land users (Source: Schlager and Ostrom 1992, Ostrom and Hess 2007)

Level of Rights / Title	Owner	Proprietor	Claimant	Authorized User	Entrant/ Viewer
Access	X	X	X	X	X
Withdrawal	X	X	X	X	
Management	X	X	X		
Exclusion	X	X			
Alienation/Sale	X				

sell his or her land rights. Claimants have rights only up to management, authorized users only up to access and withdrawal, and viewers may only access land, but take no products.

On both public and private lands, rights to access, manage, and protect forests may be separate from rights to exploit minerals or extract oil or water, with the former rights often being secondary to the latter, more economically valuable rights. The rights to land and its uses differ among private and public owners. Private owners may own a fee-simple complete ownership with all rights from access to alienation. Public owners may also hold all these rights, but the users of public lands generally hold smaller bundles of these rights.

Recent shifts in forest property rights holdings in the United States have included the separation and sale of the right to convert or develop forested land using conservation easements and other similar instruments. Easements allow landowners to sell some or all of their land rights for a fixed period of time, or in perpetuity, through a restriction in the title to the land. Conservation contracts and permanent easements may allow only passive uses such as recreation and hunting, or may permit more active uses such as timber management. In return for the conservation contracts or easements, owners receive financial payments for environmental services (see Criterion 6, Indicator 6.27 for a summary of these payments).

The Land and Water Conservation Fund (LWCF), created by Congress in 1964, provides funds to Federal, State, and local governments to acquire land, water, and conservation easements in critical areas. Congress appropriates up to \$900 million a year for the acquisition of these key areas and finances the fund mostly from offshore drilling fees. Since its inception, the LWCF has distributed more than \$9 billion to purchase or acquire conservation easements on more than 7 million acres of wild and scenic rivers, wilderness, scenic and recreation areas, scenic trails, and other natural areas—including 1.5 million acres of land and water within or adjacent to existing national forests and grasslands.

Conservation contracts for a fixed time period provide a mechanism for implementing a large number of programs listed under the 2014 Farm Bill (see Indicator 7.47). Furthermore, a wide variety of land trusts and State conservation programs buy permanent easements to protect forest and farm land in perpetuity. For example, The Nature Conservancy and Conservation International buy land outright throughout the United States and either maintain and manage it for natural and ecosystem values or transfer

it to other public long-term conservation owners and managers. Additionally, Federal income tax rules enacted in 2015 allow qualifying farmers and ranchers who donate a conservation easement to deduct up to 100 percent of the value of the easement (increased from 50 percent in the previous rules). The new rules also extend to 15 years (previously 5 years) the carry-forward period for a donor to take a tax deduction for a conservation agreement.

What has changed since 2010?

U.S. forest ownership has changed markedly in the last three decades, and tenure rights have evolved, though much more slowly. Since 2005, TIMOs and REITs acquired at least 10 million acres of land from forest products industries, and now hold about 57 million acres of forest land. Government and nongovernmental organizations have more actively encouraged conservation and protection of forests through short-term conservation contracts of 10 to 30 years, or permanent conservation easements with registered development restrictions as part of the land title. Government also continues to buy moderate amounts of forest lands for public ownership and conservation. Increased sales and gifts of land may be related to favorable tax treatment at the State and Federal levels, which allow the deduction of the value of conservation gifts. Some States have eliminated this tax treatment, but conservation easement deductions are now a permanent part of Federal tax law (barring specific action to repeal those provisions).

References

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