

# Conservation Easements

## Introduction

An easement is a property right that allows access or use of a property to a third party. Environmentalists and enterprising property owners have adopted “conservation easements” to conserve land. These easements are voluntary legal agreements between a landowner and a qualifying organization (usually a land trust) in which the land owner places permanent limitations on the use of the owner’s property, often in exchange for money or a tax incentive, in order to sustain the natural function of the land.<sup>1</sup> These limitations typically promote a variety of conservation interests, such as scenic views, open space, wildlife habitat, etc., while maintaining other property rights like the right to farm or build a home.<sup>2</sup> Once created, the land trust is responsible for maintaining the stewardship and conservation values of the land as outlined in the contract.<sup>3</sup>

Conservation easement programs incentivize the conservation of private property in return for tax credits. California’s Natural Heritage Preservation Tax Credit Program,<sup>4</sup> and the federal government’s Federal Conservation Tax Deduction,<sup>5</sup> both grant tax benefits to property owners who choose to preserve all or parts of their land with a qualified conservation easement. Land trusts may also pay money or exchange something else of value in exchange for a conservation commitment from a landowner. This structure allows landowners to initiate conservation trusts by approaching land trusts, and vice versa.

Land trusts have utilized conservation easements to protect open space and agricultural properties throughout California’s central coast. Conservation easements provide

benefits to both parties. For instance, agriculturalists can ensure that their lands are utilized solely for agriculture in the future, while land trusts can maintain view sheds, remove the threat of future development, or even guarantee that future farming practices are organic.<sup>6</sup> As governments plan for sea level rise, these types of agreements can provide a means of prohibiting further development or protecting upland, migratory areas in a less expensive manner than outright land acquisition.

## Tradeoffs

Perhaps the greatest advantage of conservation easements is their flexibility. Conservation agreements can range from an outright ban on development to the preservation of sensitive habitat on one portion of a property. This flexibility allows conservation easements to be used to proactively plan for sea level rise by tailoring specific property agreements to their current and future risks, suitability for industry, and values.<sup>7</sup> For instance, conservation easement agreements can include prohibitions against shoreline armoring, preclusions against erosion-inducing agricultural activities, or the conservation of natural buffer areas.<sup>8</sup>

Because of their flexibility and because they can be tailored to specific properties and parties, conservation easements are an extremely useful tool in engaging private landowners who wish to benefit from the conservation of their individual parcels and the tax benefits that these easements provide. However, from a broader conservation perspective, conservation easements can be less than ideal because such individualized agreements tend to

1 *Conservation Easement Guide*, CALIFORNIA ASSOCIATION OF RESOURCE CONSERVATION DISTRICTS, [http://carcd.org/conservation\\_easements\\_guide0.aspx#whatCE](http://carcd.org/conservation_easements_guide0.aspx#whatCE) (last visited Nov. 2, 2017).

2 *Conservation Easement*, CALIFORNIA COUNCIL OF LAND TRUSTS, <https://www.calandtrusts.org/conservation-basics/conservation-tools/conservation-easement/> (last visited Nov. 2, 2017).

3 *Id.*

4 CAL. PUB. RES. CODE §§ 37000 *et seq.*

5 26 U.S.C. § 170.

6 Jane Ellen Hamilton, *Beyond Agricultural Conservation Easements: Ensuring the Future of Agricultural Production*, LAND TRUST ALLIANCE, <https://www.landtrustalliance.org/news/beyond-agricultural-conservation-easements-ensuring-future-agricultural-production> (last visited Nov. 2, 2017).

7 *Conservation Easements*, GEORGETOWN CLIMATE CENTER, <http://www.georgetownclimate.org/adaptation/toolkits/adaptation-tool-kit-sea-level-rise-and-coastal-land-use/conservation-easements.html> (last visited Nov. 2, 2017).

8 *Id.*

create fragmented “patchworks” of protected properties.<sup>9</sup> While this potential drawback is less of a concern in rural undeveloped areas, prohibiting development of individual properties in largely residential communities will not create the unified front of open coastal areas sought to confront rising seas. Additionally, landowners or third-party monitors might not be the environmental stewards that the conservation easement agreement requires.<sup>10</sup> These concerns have led some critics to question the efficiency of purchasing easements to protect lands.<sup>11</sup>

## Legal Considerations

California law requires conservation easements to be created with the purpose of retaining land “predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition.”<sup>12</sup> It also requires conservation easements to run with the land, meaning they are tied to the land by deed restrictions, in perpetuity.<sup>13</sup>

Legally, only certain nonprofit and governmental organizations are permitted to acquire and hold conservation easements.<sup>14</sup> These qualifying organizations, in partnership with the private landowner, then determine the individual obligations and protective covenants to include within the conservation contract. The protective nature of these provisions, as well as the overall change in the uses of the property before and after the easement applies, will determine the extent to which tax credits are granted.<sup>15</sup> Generally, conservation easements which fully cede development rights in an area are subject to the largest tax benefits.<sup>16</sup>

## Examples

There are several notable examples of conservation easements throughout California. In 2005, the State of California and the Hearst Ranch agreed to a \$95 million deal to conserve 80,000 acres of coastal habitat that was previously in danger of development in San Luis Obispo County.<sup>17</sup> Elsewhere, land trusts like the Peninsula Open Space Trust and The Nature Conservancy are actively involved in acquiring scenic and agricultural lands along the California coast.<sup>18</sup>

In 2013, a first-of-its-kind “coastal resilience” easement was created in Maryland as a response to sea level rise.<sup>19</sup> The state and a coalition of land trusts set aside 221 acres of wetlands near the Blackwater National Wildlife Refuge specifically to address the threats of climate change.<sup>20</sup> This coastal resilience form of conservation easement contained specific provisions “permanently eliminating development, restricting impervious surfaces, [and] protecting areas that allow wetlands to migrate...all of which can help natural areas more quickly recover from flooding.”<sup>21</sup>

## Researchers

**Jesse Reiblich**, Early Career Law & Policy Fellow: [jesselr@stanford.edu](mailto:jesselr@stanford.edu)  
**Eric Hartge**, Research Development Manager: [ehartge@stanford.edu](mailto:ehartge@stanford.edu)  
**Cole Sito**, Legal Intern

9 JUSTIN GUNDLACH & P. DANE WARREN, LOCAL LAW PROVISIONS FOR CLIMATE CHANGE ADAPTATION 9 (2016) (“Like land acquisition, however, conservation easement programs can result in a fragmentary approach to improving climate adaptation.”).

10 Kathe Tanner, *Hearst Ranch Conservation Project Marks 10-year Anniversary*, THE TRIBUNE, Feb. 18, 2015, <http://www.sanluisobispo.com/news/local/community/cambrian/article39512742.html>.

11 See, e.g., Nancy A. McLaughlin, *Amending Perpetual Conservation Easements: A Case Study of the Myrtle Grove Controversy*, 40 U. RICH. L. REV. 1031 (2006); see also Duncan M. Greene, *Dynamic Conservation Easements: Facing the Problem of Perpetuity in Land Conservation*, 28 SEATTLE L. REV. 883 (2005).

12 CAL. CIV. CODE § 815.1.

13 CAL. CIV. CODE § 815.2.

14 CAL. CIV. CODE § 815.3.

15 See generally TIMOTHY LINDSTROM, A TAX GUIDE TO CONSERVATION EASEMENTS (2016).

16 *Conservation Easements: Tax Consequences*, THE NATURE CONSERVANCY, <https://www.nature.org/about-us/private-lands-conservation/conservation-easements/all-about-conservation-easements.xml> (last visited Nov. 2, 2017).

17 CALIFORNIA NATURAL RESOURCES AGENCY, THE HEARST RANCH CONSERVATION PLAN, *available at* [http://resources.ca.gov/hearst\\_ranch.html](http://resources.ca.gov/hearst_ranch.html).

18 Press Release, Peninsula Open Space Trust, 313 Acres Protected on San Mateo Coast (Mar. 9, 2016), *available at* <https://openspacetrust.org/post-news/post-protects-313-acre-on-san-mateo-coast/>; *The Nature Conservancy*, California Council of Land Trusts, <https://www.calandtrusts.org/members/the-nature-conservancy/> (last visited Nov. 2, 2017).

19 *First-of-Its-Kind Easement Protects Historic Area from Sea Level Rise Impacts*, MARYLAND DEPARTMENT OF NATURAL RESOURCES, <http://news.maryland.gov/dnr/2013/08/21/first-of-its-kind-easement-protects-historic-area-from-sea-level-rise-impacts/> (last visited Nov. 2, 2017).

20 *Id.*

21 *Id.*



This research was completed in collaboration with Stanford Law School and the Natural Capital Project with support by the Stanford Woods Institute for the Environment through the Realizing Environmental Innovation Program.