

Redwood Coast Land Conservancy FACT SHEET 1

CONSERVATION EASEMENTS: QUESTIONS & ANSWERS

What is a "conservation easement"?

A conservation easement is a legal restriction that a landowner voluntarily places on his or her property to permanently define and limit the type of development that may take place there. Conservation easements allow landowners to privately own and to permanently protect environmentally significant land. For example, lands may be conserved for ecological protection, agricultural use, scenic enjoyment, public recreation, or low density residential development.

Each easement is drafted individually, tailored to fit the natural characteristics of the land, the personal vision of the landowner for the property's future use, and the goals of the conservation organization. After a thorough review of the property's uses and natural characteristics, and discussions with the landowner, the terms of the easement are agreed upon. A legally enforceable agreement is then drafted between the landowner and the recipient organization according to relevant state and federal laws. The easement becomes part of the title to the property and all future owners must accept the property subject to the easement's restrictions, even if the land is thereafter sold, transferred to heirs or subdivided.

Generally conservation easements are donated to a non-profit conservation organization (such as the Redwood Coast Land Conservancy) or to a public agency, which is responsible for inspecting the land periodically and enforcing the conservation restrictions in perpetuity.

How does a conservation easement affect my property rights?

To understand the easement concept, think of owning land as holding a bundle of property rights. A landowner may sell or give away the whole bundle, or just one or two of those rights. Commonly these may include, for instance, the right to mine or quarry, the timber harvest rights, or water rights. A conservation easement is based on this same principle of separating out one or more of various ownership rights and selling or giving those rights to a third party. The underlying property and all the retained property rights are unaffected. The property can be mortgaged, transferred or sold just as it normally would, whether it is encumbered by a timber harvest agreement, a power-line right-of-way, or a conservation easement.

The specific rights that a property owner is restricting or retaining are spelled out in each easement document according to the agreement reached between the landowner and the recipient organization. Typically, with conservation easements certain development rights such as construction, subdivision, timber harvesting, or mining, are restricted. An organization, such as Redwood Coast Land Conservancy, receives these rights to ensure

continuing preservation of the character of the land. The land remains in private ownership and can be utilized in all the ways that have not been specifically restricted. Agriculture, silviculture, limited residential development, recreation, etc. can continue and, indeed, may flourish thanks to being freed from underlying speculative development pressure by the conservation easement.

What uses are prohibited on land with a conservation easement? What uses are allowed?

Every easement is customized to the land and the landowner, thus they come in all sizes and shapes. Permitted and prohibited uses are jointly developed by the landowner and the easement grantee. Most easements prohibit industrial and mining uses of the land. In addition, most usually limit commercial development, residential densities and subdivision rights. Other possible prohibitions may include: changing the topography, such as dredging and filling wetlands or altering watercourses; removing topsoil and other surface or subsurface materials; extensive road-building; disturbing certain wildlife habitat or particular species of plants or animals; clear-cutting forested lands; and erecting signs or outdoor advertisements.

That is not to say that all development is prohibited. That is up to the landowner, the land trust and the requirements of the natural characteristics being protected. Some limited development for residential or commercial purposes may be provided for, usually to a lesser extent than zoning allows, while preserving important open space, habitat or scenic views. Resource protection easements on agricultural and forestland permit activities and structures necessary and compatible with the preservation and responsible use of the natural resources.

On the other hand, many landowners identify significant parts of their property as areas that will remain "forever wild," where no development or alterations are permitted. Certain natural communities, habitat or species are so special that complete and permanent protection is considered appropriate by the easement drafters. Any uses not specifically prohibited in the easement are permitted, although permitted activities are usually required to be consistent with the conservation purposes of the easement. The landowner retains all ownership rights not expressly restricted by the easement, including the right to control access. Ownership and title to the property remains with the granting landowner.

The decisions relating to permitted, restricted and prohibited uses can be influenced by the landowner's interest in estate and income tax planning, family size, and financial needs, as well as by the conservation purposes which guide the recipient organization's activities.

Does granting a conservation easement give the general public the right to enter my property?

No - not unless the landowner expressly grants that right in the easement document. Most easements do not allow any public access. The landowner continues as usual to

decide whether or not to allow groups or individuals on the land. Sometimes landowners choose to give the public the right to cross the property in a specific area. The right is particularly appropriate when part of the land has been used traditionally for public access to the ocean or river, for instance, or where an established trail system traverses the land.

If an easement is given for recreational or educational purposes, public access is required by the IRS if the landowner wishes to claim a tax deduction. For scenic easements, the property must be visible to the public, but physical access is not necessary. For historic preservation easements, either visual or physical access is required, depending upon the nature of the property or building to be preserved.

Who grants the easement, and to whom can they grant it?

Only the owner of a particular property with conservation or historic resources may grant an easement. If the property belongs to more than one person, all owners must consent to granting an easement. **If a property is mortgaged, the owner must obtain an agreement from the lender to subordinate its interests to those of the easement grantee so the easement cannot be extinguished in the event of foreclosure.**

If an easement grantor wishes to claim tax benefits for the gift of an easement, he or she must donate it, or sell it for less than fair market value, to a public agency or to a land conservation organization qualified as a public charity under the IRS Code Section 501(c)3. The Redwood Land Conservancy is so qualified. A donated easement must provide for permanent or "perpetual" protection to be recognized by the IRS as a tax-deductible gift. The value of a donated easement is determined for tax purposes by a qualified appraisal.

What are the responsibilities of the grantee organization? How are easements enforced?

Holding an easement is a great responsibility. By giving an easement to a land trust or other qualified recipient, the grantee is authorized to enforce the specific terms of the easement on future use of the property. The grantee periodically monitors the property for compliance with the easement's restrictions and takes corrective action if its terms are violated. Enforcement can include legal action and restoration of the property. Procedures for correcting violations and rectifying damages are specified in the easement document itself. An easement does not give the grantee title to the property; title and all rights that are not inconsistent with the easement's conservation purposes are retained by the landowner.

A property owner should make sure that the recipient organization has the resources to monitor and enforce the terms of the easement through time on behalf of the grantor. Land trusts establish Land Stewardship Funds to provide for the on-going costs of easement maintenance and enforcement.

Can an easement be modified or amended?

A conservation easement cannot be changed at the sole wish of the grantor or subsequent owner. At minimum, the consent of the grantee organization is required and a court proceeding may be necessary. Tax benefits that may have accrued to the grantor must also be considered. In practice, a conservation easement is unlikely to be modified unless the change would strengthen the conservation value of the original easement.

Who has granted conservation easements?

Nationally, concerned landowners have granted easements on more than 3 million acres of private land. In California, the 76 land trusts have protected more than 30,000 acres, most in the last few years. Participating landowners include farmers, forestland owners, rural and urban residents - all people who share a desire to protect and enhance the natural, scenic and cultural resources of the community.

What are the advantages of a conservation easement?

For the landowner, a conservation easement offers means to protect the special attributes of a property without relinquishing the ownership and enjoyment of the land. In addition, the landowner gains the satisfaction of knowing that the land he or she values will be protected and preserved in perpetuity. Moreover, conservation easements meeting the standards of the Internal Revenue Code are deductible as charitable contributions.

Even easements not meeting the IRS standards may still provide tax benefits. For example, by reducing the size of a taxable estate a conservation easement may enable land to pass intact to future generations when it might otherwise have sold to pay estate taxes.

Conservation easements are an effective, private and low-cost means for the public to benefit from the protection of land for open space, wildlife habitat, ecological significance, responsible resource production and scenic enjoyment - all of which would be lost through unrestricted development. Conservation easements provide a means for individuals and families in rural communities like the Sonoma/Mendocino coast to protect their natural resources and traditional land uses from depletion, urbanization and wholesale development, while retaining private ownership.

Are there financial benefits to donating a conservation easement?

Income taxes: Donation of development rights and other conservation restrictions through an easement may constitute a charitable gift deductible for federal and state income tax purposes. The value of the gift, determined through a qualified appraisal, is equal to the difference between the fair market value of the property before the easement is granted and its after-easement value. To be deductible, an easement must be permanent, meet certain minimum conservation and public benefit tests established by the IRS, and be donated to a "qualified" organization, like the Redwood Land Conservancy.

Generally the Internal Revenue Code Section 170(h) defines the necessary "conservation purposes" of an easement to include at least one of the following:

- The preservation of land areas for outdoor recreation by, or the education of, the general public; or
- The protection of relatively natural habitats of fish, wildlife, or plants, or similar ecosystems; or
- The preservation of open space, including farmland and forestland, for scenic enjoyment or pursuant to an adopted governmental conservation policy; in either case such open space preservation must yield a significant public benefit; or
- The preservation of historically important land areas or buildings.

Estate Taxes: State and federal estate taxes on unrestricted land can be so high that the heirs are often forced to sell some or all of the land just to pay the taxes. An easement can reduce the appraisal value of property significantly, often to the extent that estate taxes are reduced or eliminated. Thus, an easement may enable heirs to keep land that they otherwise would have to sell.

Gift Taxes: When a person gives land to someone who is not his or her spouse, the gift is subject to federal gift taxes if its value exceeds the maximum tax-free amount that can be given to any one person per year. Lowering the appraised value of the land through a qualified easement may allow the owner to give more land in any one year without incurring a gift tax, or it may help to reduce the amount of tax imposed.

Property Taxes: The reduced value and restricted uses of land subject to easements has formed the basis for reduced property tax assessment in many states and some California counties. If a landowner's property is not presently in a special tax program like TPZ or under Williamson Act contract, and the easement significantly reduces the appraised value of the land, then the landowner may be able to obtain a reduced assessed valuation for property tax purposes.

Potential easement donors should consult with their legal and tax advisors in determining what tax benefits may be available in connection with an easement.

What are the disadvantages of a conservation easement?

A conservation easement is not appropriate in every case. Some parcels of land are not sufficiently valuable from a conservation standpoint to justify the restriction of an easement. In other cases, the conservation values may be so significant and fragile that outright fee ownership of the property is the best means of protection. The Redwood Coast Land Conservancy has a set of criteria for its Board to use in assessing the relative merits of proposed easements. Interested landowners may request a copy of these guidelines.

A potential disadvantage for the landowner is that a conservation easement, in restricting the use of the land, may reduce the land's market value. A landowner concerned about the financial implications of a conservation easement should carefully weigh the trade-off between possible reduced market value and any potential tax advantages.

For the conservation organization, an easement means the responsibility and expense of regularly monitoring the property and, if necessary, enforcing the easement in court. A conservation organization like the Redwood Coast Land Conservancy will accept an easement only if it meets the organization's objectives and only if the organization is able to fulfill the responsibilities involved.

What if I have more questions?

This information may have raised new questions for you.

Please contact:

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for additional assistance with your particular property and land conservation objectives. The Redwood Coast Land Conservancy is a private, non-profit corporation founded by local residents and devoted to the voluntary protection of the land that sustains us. We believe the rich array of natural qualities found on the Sonoma/Mendocino coast are important and should be preserved for future generations. The Redwood Coast Land Conservancy is volunteer-run and independent of all government agencies. Your membership and charitable contributions are welcome.

(Adopted March 1994, revised April 2011)