

Conservation Easement Glossary

Acquisition of easement. The holding or co-holding of land-use restrictions under a Deed of Conservation Easement, whether obtained through purchase, gift, bequest, grant or contract. Easements are held by qualified holder, see **Holder**.

Affirmative Rights. In the context of **conservation easements**: 1. Easement terms that require the property owner to maintain the resources protected by the easement (e.g. graze to maintain butterfly habitat) or that require the holder to maintain if owner does not 2. rights granted to the easement holder to perform physical acts on the property (e.g., build a trail or access the property for monitoring) (Byers and Ponti 2005).

Annuity. A payment that is made every year for a fixed number of years.

Appraisal. An opinion on the value of real property, usually its market value. The appraisal is performed by a licensed or certified appraiser. If the appraiser's opinion is based on market value, then it must also be based on its **highest and best use**. The IRS sets standards for appraisals used for federal tax purposes and other agencies may set other standards. The appraised value of an easement is determined by the difference between the value of the property without the easement and the value of the property encumbered by the easement.

Baseline Report. Information and documentation to give evidence to the condition of land and **conservation values** at the time a **conservation easement** is being established. It should be used for future monitoring and can be used to document compliance or easement violation.

Capitalization Rate. When calculating an **endowment**, the capitalization rate, or “cap rate”, is the assumed annual endowment return, as a percentage, less some portion of those returns, again as a percentage, retained with the endowment principal to offset inflation. Depending on the **endowment holder**, the cap rate can vary between approximately 2% and 4%. In simplest terms, an endowment is calculated by dividing the average annual cost to monitor and enforce the **easement** by the cap rate.

Charitable Contribution. A gift of cash or property to a tax-exempt 501(c) 3 organization (such as a land trust).

Conservancy. An organization dedicated to conserving or protecting natural resources through various means, which may or may not include the actual acquisition of land or easements.

Conservation Buyer. An individual who purchases land at full (or close to full price) and then places conservation restrictions on the land or a major portion of the land, ensuring its permanent conservation.

Conservation Easement. An agreement between a landowner and a private land trust or governmental entity, recorded on the deed of the property. For conservation purposes, the agreement limits certain uses on all or a portion of a property (negative easement) while keeping the property in the landowner's ownership and control. The agreement is usually tailored to a specific property and to the goals of the owner and conservation

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organization. It applies to present and future owners of the land. **Easement values** can be either donated or sold by the landowner. Easements may be sold at a bargain price or fair market value. Donations and bargain sales that meet IRS requirements can result in federal tax benefits.

Conservation Easement Stewardship. All aspects of a holder's management of a conservation easement after its acquisition, including: monitoring; landowner relations; recordkeeping; processing landowner notices, requests for approval and amendments; managing stewardship funds; and enforcement and defense (WV Land Trust).

Conservation Management Plan. A plan developed in conjunction with a conservation easement to define allowable uses, management and monitoring to maintain conservation values and verify compliance with easement restrictions. Tasks outlined in the conservation management plan are often used to determine annual revenue required to be provided by an endowment. Within the context of a mitigation easement, a conservation management plan may also be called a Long-term Management Plan, Habitat Management Plan, or Habitat Mitigation and Monitoring Plan.

Conservation Values. A valuation system based on the type and amount of natural resources, habitat, biodiversity, open space, historic, agriculture or recreational resources present in an area. For example, land may have a high conservation value if it contains habitat for endangered species or if it has open space in a highly developed area.

Development Right. The right to develop a property in accordance with local land use regulations. A development right can be extinguished or relinquished through a conservation easement or transferred to another property through a statutory transfer of development rights program (WV Land Trust).

Doctrine of Changed Conditions. In conservation easement work, a court-imposed doctrine that permits the modification or termination of restrictions on the land if the surrounding area or circumstances have changed so that the restrictions can no longer fulfill their original purposes. In conservation easements, economic changes are generally not considered justification for modification or termination (Byers and Ponti 2005).

Easement. An easement is generally affirmative in that it grants certain rights for specified purpose to someone other than the owner of the property. An easement may apply to the entire property or a portion of it, may be in the form of an agreement, deed restriction or covenant. Unlike a lease or license, an easement may last forever, but it does not give the holder the right to possess, take from, improve, or sell the land. The primary recognized easements are: (1) a right-of-way; (2) a right of entry for any purpose relating to the dominant estate; (3) a right to the support of land and buildings; (4) a right of light and air; (5) a right to water; (6) a right to do some act that would otherwise amount to a nuisance; and (7) a right to place or keep something on the servient estate.

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Easement Value. The difference between a property's value before the easement is placed on it and the value after the easement is placed on it.

Ecosystem Services. The benefits people obtain from ecosystems. These include provisioning services, the products obtained from an ecosystem (such as food, fresh water, biological raw materials, biochemicals and pharmaceuticals); regulating services, the benefits obtained from an ecosystem's control of natural processes (such as maintenance of air quality, climate regulation, water purification, pest mitigation and flood control); cultural services, the nonmaterial benefits obtained from ecosystems (such as recreational opportunities and educational and inspirational values); and support services, the natural processes that maintain the other ecosystem services, (such as nutrient and water cycling, habitat and primary production.) (World Resources Institute).

Endowment. A permanent fund (non-wasting) established to support the costs of a named project or purpose. Restricting withdrawals of principal and generally relying on investment income for support assures permanence. If the endowment is established as a condition of **environmental mitigation** approved by the California Department of Fish and Wildlife, the endowment holder must meet certain requirements stipulated in California law (CA Government Code section 65968, subdivision (e), paragraphs (1) - (5)).

Environmental Mitigation. Steps taken to reduce or reverse the impact of earlier environmental changes or damage, usually caused by human activities. Environmental mitigation is typically required by permits and regulatory approvals issued from local, California, or federal government agencies for land development and similar activities.

Extinguishment. The termination of a conservation easement (Byers and Ponti 2005).

Fair Market Value. The hypothetical most probable price that could be obtained for a property by average, informed purchasers.

Fee Simple Title. The maximum degree of legal ownership of a parcel of land. The owner of the fee has the right to use the land, to transfer it, to exclude others from it, to sell it, and pass it on to one's heirs, subject to any lawful restrictions that the present or prior owners may have created (e.g., by an easement).

Gift in Fee Simple. Transfer of a property by deeding it directly to a charitable organization for conservation or other purposes. Tax benefits may apply to the donor (Land Conservation Strategies).

Grantee. The party who receives title to real property (buyer, recipient, donee) from the seller (grantor) by grant deed or quit claim deed. Also known as a holder.

Grantor. The party who transfers title in real property (seller, giver) to another (buyer, recipient, grantee) by grant deed or quit claim deed. Also known as the landowner.

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Highest and Best Use. Highest and best use is a concept in real estate appraisal. It is the reasonably probable use that produces the highest property value. The highest and best use may or may not be the current use of the property. The exact definition of highest and best use varies, but generally the use must be: legally allowable, physically possible, financially feasible, and maximally productive (profitable).

Holder. Also known as a grantee. A grantee or easement holder in the Deed of Conservation Easement is defined as (a) a governmental body empowered to hold an interest in real property under the laws of the state of California; or (b) a charitable corporation, association or trust registered with the Secretary of State and exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, or other federal or state statutes or rules, the purposes or powers of which include retaining or protecting the natural, scenic, agricultural or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational or open-space use; protecting natural resources and wildlife; maintaining or enhancing land, air or water quality; or preserving the historical, architectural, archaeological or cultural aspects of real property.

Initial and Capital Period. Also known as the "I&C period". One of two cost components of a typical **PAR** analysis, the other being **endowment** costs. I&C costs are those costs incurred over the initial 3 – 10 years (approximately) following establishment of a **conservation or mitigation easement**. Unlike the endowment, I&C funds are not **capitalized**; rather, they are invested and held to preserve principal and to be fully spent by the end of the I&C period.

In Perpetuity. Always, forever.

Land Trust. A nonprofit organization that, as all or part of its mission, actively works to conserve land, in the public interest, through land transactions - primarily the purchase or acceptance of donations of land or conservation easements. Most land trusts are private charitable corporations. Some land trusts are governmental or quasi-governmental agencies that operate with much of the flexibility and freedom of a private land trust.

Legal Description. In conservation easement work: a written description of the property boundaries or easement boundaries that is part of the deed (Byers and Ponti 2005).

Less-than-Fee Interest. Less than full ownership of all the legal rights associated with a property. A conservation easement is a less-than-fee interest. See "fee simple title" (Byers and Ponti 2005).

Monitoring. The process by which the holder of a conservation easement regularly conducts property inspections to ensure that the conditions of the easement are being upheld. These inspections are often conducted on an annual basis.
[<http://attra.ncat.org>]

Mitigation Easement. A mitigation easement is an agreement between a landowner, land trust or other easement holder, permittee and regulatory agencies that is recorded on

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the deed for the property. The mitigation easement restricts certain uses of the property and requires management and monitoring of the property to conserve specific conservation values. The permanent protection, management and monitoring of the land paid for by the permittee allows the permittee to satisfy legal requirements to compensate for environmental impacts to a project site (e.g. public works or development project.). When a mitigation easement is created pursuant to a permit issued by the California Department of Fish and Wildlife, the **easement holder** must be approved by the Department (<https://www.wildlife.ca.gov/Conservation/Planning/Endowments>).

Mitigation Proponent. An agency or developer that needs to mitigate for environment impacts resulting from another construction project such as widening a road, constructing public infrastructure, developing a shopping center, or residential development, to name a few examples.

Monitoring Report. Documentation of the results a monitoring of a conservation easement. Land trusts should keep their reports in a permanent file.

Prohibited Uses. Prohibited uses meant to maintain the conservation values of a property are listed in a conservation easement. The listing of prohibited uses makes a conservation easement a negative easement. The easement with its prohibited uses is recorded on the deed of the property.

Property Analysis Record. A property analysis record, or PAR, is a financial analysis completed to determine the average annual costs to manage, monitor, and enforce a **conservation easement** or **mitigation easement**. A PAR consists of two separate costs: costs for an **initial and capital** period and **endowment** costs.

Qualified Conservation Contribution. A donation of a partial interest in land that is eligible for federal income and estate tax recognition as a charitable gift because it meets three basic tests under IRC §170(h): the interest is a qualified real property interest (including a perpetual conservation easement); it is granted to a qualified organization; and it is granted exclusively for conservation purposes (Byers and Ponti 2005).

Reconveyance. At times, a land trust may operate as a third party, first acquiring land from an original owner, and then transferring the ownership of the property to another entity for the sole purpose of conservation. Usually this entity is a governmental unit such as a state agency or municipality, but sometimes it is another land trust (Pennsylvania Land Choices, An Educational Guide).

Recording. When a copy of an easement deed is permanently recorded at the county or town office where deeds are filed (Byers and Ponti 2005).

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References:

Byers, E. and Ponti, K. 2005. The Conservation Easement Handbook. The Trust for Public Land and the Land Trust Alliance.

Land Conservation Strategies: Resource Protection Glossary of Terms, Heritage Conservancy, <http://www.heritageconservancy.org>.

Pennsylvania Land Choices, An Educational Guide, Pennsylvania Department of Natural Resources in partnership with Pennsylvania Land Trust Association.

West Virginia Land Trust, Frequently Used Terms: <http://www.wvlandtrust.org>.

World Resources Institute: http://pdf.wri.org/esr_definitions_of_ecosystem_services.pdf.