
SUMMARY OF SITE VISIT: CONSERVATION EASEMENTS

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1 INTRODUCTION

Well aware that millions of biodiversity-rich, forested acres lie in private hands, conservation groups in Latin America are developing creative ways to encourage landowners to safeguard the forests they own. With help from The Nature Conservancy (TNC), the Environmental and Natural Resources Law Center (CEDARENA by its Spanish acronym), first established a conservation easement in Costa Rica eight years ago and now has fostered 60 contracts with private landowners, protecting some 7,000 acres. "Conservation easements," are self-designed legal agreements in which a landowner voluntarily limits development and other activities on his or her property. While conservation easements are still new in the region, they are growing in popularity.

CEDARENA experts are helping landowners survey their acreage and devise a management plan that might, for example, keep much of the property in untouched forest, while permitting a few homes, low-impact farming, or sustainable logging on another portion. The agreed-upon plan is written up as a contract and transferred to anyone who might purchase the land, right along with the deed to the property.

2 CONSERVATION EASEMENTS

An increasingly common legal tool for land owners desiring to maintain certain portions of their land in an undeveloped state is the conservation easement, which is granted to a nonprofit land conservation organization or a government agency, giving that grantee the right to enforce the

terms of the easement. The potential positive income and estate tax benefits of donating a qualified conservation easement to an appropriate grantee, or possible revenues from the sale of an easement for lands with exceptionally high natural resource values, make the mechanism one worthy of consideration for individuals and businesses. A reduction in property taxes may also result from the restrictions imposed by the easement.

A conservation easement is a relatively simple and very flexible legal mechanism by which property owners voluntarily, and in writing; agree to certain use restrictions on their properties. These agreements may be between two or more individuals or organizations and may relate to several properties simultaneously.

Under an easement, landowners still own and use their land and can sell it or pass it on to their heirs, with future landowners bound by the easement's terms. The grantee remains responsible for monitoring the property to make sure the terms are followed.

No zoning ordinances are required and no governmental intervention is necessary, other than the filing of a simple legal document with the Civil Registry (this is the Costa Rican national property registry). These voluntary use restrictions "run with the land" until such time as all property owners involved in the easement mutually agree to a different arrangement. No modification or revocation of the agreement can be binding unless the parties subsequently file another written document memorializing the agreed upon change(s) or nullifying the easement in its entirety. In the event of sale and/ or subdivision of a property, the easement is not affected.

Lands of local significance may also generate funds raised by local land trusts, which purchase conservation easements when a landowner is willing to maintain land in a natural state, and local donors ante up adequate funds to conserve a local natural landmark. Land trusts are thus uniquely capable of tapping local concern for maintaining scenic views or protecting wildlife habitat.

Purchase of conservation easements by governmental agencies is increasingly common, although funding is usually reserved for land that has extremely high natural resource values.

3 THE EXAMPLE OF MONTEVERDE'S CONSERVATION EASEMENT

Fore example, many residents of the Monteverde community are advancing an initiative designed to provide corridors, or "stepping stones" of natural habitats between larger existing protected areas. This initiative, named Enlace Verde or "Green Link," was initiated in 1994 during a Monteverde Town Meeting. Initially, the idea of easements arose as an option that would allow private landowners to effectively determine the zoning of the community neighborhoods and common areas. A volunteer commission was established, and it was there that the idea of linking reserves was incorporated into the plan. It has evolved into a broadly supported initiative through which local landowners may dedicate all or discrete parts of their properties to conservation easements.

At this point, the biological corridor has become a central focus of many landowners, and is one point that everyone has agreed they would like to incorporate into their easements. During a July 1997 meeting of property owners, it was unanimously agreed that by establishing conservation easements to protect the forest corridor on some ten contiguous properties

bordering or near to the Guacimal and Maquina Rivers, the community could make a strong and lasting outward demonstration of inner beliefs about the importance of conserving certain critical areas of forest for current and future generations.

The Enlace Verde Commission, and CEDARENA, embrace the opportunity to be leaders in demonstrating thoughtful land use planning and conservation of critical habitats through the use of easements, as well as the opportunity to demonstrate through example the inclusion of creative and positive-focused provisions for monitoring and dispute resolution. For example, monitoring provisions for some properties will include students from the local high schools' science programs, and dispute resolution clauses include mediation and arbitration channels involving community members and NGOs rather than the traditional judicial processes which can be expensive and drag out for years without resolution.

4 CONSERVATION EASEMENTS AND THE AERIAL TRAM

The Tram's developers spent several years investigating possible sites to locate this new concept in conservation-oriented tourism. They selected the current site because of the extraordinary biological richness of the area and its proximity to San Jose (approximately one hour by car or bus). The site is old growth forest adjacent to Braulio Carrillo National Park, and is located in one of the most important corridors of biological diversity in Central America. The site is officially located in the Park's buffer area, however other buffer areas (those adjacent to the Tram site and in the surrounding area) are under pressure from agricultural and other less environmentally friendly tourism development.

The Tram's developers recognized the inseparable relationship between the

health of the ecosystem in which they are operating and the success of their business. With CEDARENA they established a conservation easement to ensure that a broad area of primary forest is protected in perpetuity to simultaneously protect the natural resources and help ensure the long-term success of their investment.

5 DISCUSSION QUESTIONS AND ISSUES

- Conservation easements have existed in many industrialized countries for at least two decades. Only recently have developing countries begun to use them as conservation instruments. What are the necessary conditions for a country to use this mechanism? How transferable are the concepts?
- Is there a potential role for conservation easements in environmental enforcement and compliance? Either through enforcement of the agreements, or in remedial actions?