

# Easement Does It

***Affluent landowners around the country are discovering the value of the conservation easement—a way to protect forever unspoiled lands and habitats and to save on taxes in the bargain.***

## ■ MICHAEL SEGELL

In the heart of Sonoma Valley's wine-growing country, where lush agricultural tracts are swiftly yielding to sprawling subdivisions, 700-acre Oak Hill Farm is an enchanting vestige of old California. Fields of vegetables and melons end at a dense forest of live oaks, bays and madrones, a hospitable cover for eagles, foxes, bobcats and a chorus of linnets and flickers. Euonymus, flowering quince, and zinnias mingle with stands of forsythia and blossoming magnolia and peach trees—all destined for the flower market. Speckled with shooting stars and buttercups, fields of native grasses extinct across most of the state stretch halfway up the slopes of the Mayacamas. Pesticides and chemical fertilizers do not touch the soil here because the owners, Otto and Anne Teller, instead introduce wasps, ladybugs and lacewings to control crop destroying insects.

Recently the Tellers took steps to ensure that their little bit of old California would remain in its current condition for a long time—forever, to be more exact. They donated a conservation easement on the property to the Sonoma Land Trust, which Teller helped found 13 years ago. The easement prohibits any subdivision of the land, limits future construction to that of out-buildings or the remodeling of the existing farmhouse, and restricts the commercial use of the land to agriculture. Protected from development by this easement, the farm, plus 300 acres Teller donated as an adjacent wildlife preserve 10 years ago, adds up to 1,000 pristine acres. This land,

adjacent to public, protected land, creates a large natural expanse crossing the valley ridgetop to ridgetop, from the top of Sonoma Mountain to the crest of the Mayacamas.

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Teller, 80, bought Oak Hill in 1954. He was president of Trout Unlimited (concerned with preserving trout habitats), founded a San Francisco chapter of Confréries des Chevaliers du Tastevin, and is director-at-large of the Montana Land Reliance. No mere gentleman farmer, he took on the plumbing, wiring, and carpentry work at Oak Hill himself. Gazing out at the woods and carefully plotted fields from the deck of his 1890s ranch house, he comments: "Fifty years from now I want people to be able to say, 'This is what the Sonoma Valley used to look like.' I just hope that, by then, it's not the *only* example of the valley as it was."

The Tellers are among a fervent, growing group of landowners who are taking steps

to preserve their own piece of the country's vanishing natural heritage. These quiet conservationists have discovered the efficacy of the conservation easement, which not only protects land forever but can provide considerable tax benefits to the donor.

**What is donated in an easement are certain rights on the land.**

Since what is donated in an easement is not the land itself, but certain rights on the land, such as development, the owner remains free to sell or will his or her property, and to keep it private: he or she is in no way obligated to welcome the public. But the restrictions he or she has elected to set forth in the easement remain in effect for future owners. With its economic potential thus limited, a property's assessed market value can be considerably reduced, resulting in lower taxes on inheritance, personal income (through a tax deduction on the donation) and, in some cases, even the property itself.

"Easements have something for everyone," says Joan Vilms, a consultant to the Sonoma Land Trust and adviser on the Oak Hill property. "They keep the conservationists, the local planners, and even some of the developers happy. They provide the landowner with a financial incentive to protect his land and the assurance that it will remain unchanged long after he's gone. They keep the property on local tax rolls, while preserving the owner's right to sell or bequeath it. And even the most rapacious developer recognizes the value of selling a parcel near open space that's guaranteed to remain open."

The easement—donated to a land trust or other body that agrees to administer it—is emerging as the conservation tool of the Eighties—and, its proponents hope, of the future as well. The last 3 to 5 years have seen a corresponding growth in land trusts nationwide—from 535 in 1985 to over 700 today. Although private land trusts conserve land any way they can, they are increasingly advising owners on easements. "It's a pretty sophisticated tool," comments Michael Dinkin of the American Farmland Trust, a national group founded in 1980, whose involved board includes such lumi-

naires as Mrs. David Rockefeller; Gilbert Grosvenor, president and chairman of *National Geographic*; and Frederic Winthrop Jr., former head of the Massachusetts Department of Agriculture.

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Working with national or regional land trusts—or, like the Tellers in Sonoma Valley, setting up a local one themselves—private conservationists around the country have protected endangered wildlife, preserved farmland and watersheds, and guaranteed that vast tracts of virgin forest, seashore, or prairie will remain wild. Nationally, nearly two million acres are under easement today—a third of them through private donations. The lands protected range from granitic islands off the coast of Maine to 10 percent of California's Big Sur; from the rolling hills of Virginia hunt country to isolated pothole wetlands along the West's central flyway. Easements have even been used to protect small urban parks and gardens. An example of the instrument's versatility is the saving of the Candler Oak in Savannah, a majestic 300-year-old tree draped in Spanish moss: it was spared by a developer, who donated an easement on the tree and 6,500 square feet surrounding it to the Savannah Tree Foundation.

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Conservation easements have been held by the states and the federal government for nearly a century—to protect scenic

parkways and rivers, flyways, and wetlands. But it wasn't until the 1970s that the concept of privately donated easements really began to take hold. William Whyte, author of *The Organization Man*, is credited with promoting the idea in his 1959 bulletin for the Urban Land Institute and in his 1968 book *The Last Landscape*. The Nature Conservancy has held donated easements on private lands that provide habitat to threatened plant and animal life since 1961; more recently, it has also protected land by purchasing easements. But the movement really took off with the formation in 1973 of The Trust for Public Land. Originally a group of San Francisco lawyers and businessmen who organized to prohibit development of the Marin County side of the Golden Gate Bridge, TPL has expanded into a national organization with satellite offices in six cities. Calls from desperate landowners facing local crises come in from all over; within weeks a TPL organizer is there to help. TPL has helped found some 100 local land trusts in the last 15 years.

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It's not surprising that conservation easements caught on first on the West and East Coasts, where the pressure of development and land speculation are intense. Back in 1970, Bostonian Thomas Cabot, founder of the multinational Cabot Corporation, and Mrs. David Rockefeller had the foresight to form the Maine Coast Heritage Trust, one of the earliest groups to recognize the efficacy of easements. "The coast of Maine is one of the most beautiful and

primeval sections of the Atlantic coastline," says Cabot, who has cruised the coast all his life and preserved more than a score of wild islands he once owned there. "Its headlands and uninhabited islands should be saved for posterity. Peggy and David [Rockefeller] funded the trust and have been among our warmest sponsors ever since."

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But then, Rockefellers were saving Maine as far back as the Teens. With his gift of 11,000 acres, John D. Rockefeller Jr. contributed one third of the land that forms Acadia National Park on Mount Desert Island. Today MCHT preserves many of the rugged little islands clustered off the shores of the park, which are important nesting grounds and migratory stops for terns, eider duck, herons, and other seabirds. Up and down the coast, the trust holds easements on entire islands; but it prefers to foster local land trusts to hold and monitor local easements. In other cases, the trust has conveyed easements to The Nature Conservancy, the Audubon Society, and the state and federal governments.

Director of the Office of International Security Affairs under Truman, philanthropist Thomas Cabot has been a lifelong conservationist. A former president of the Appalachian Mountain Club, a trustee of The Trustees of Reservations in Massachusetts (formed in 1891, it is probably the nation's first land trust), he works closely with land trusts protecting New England forests. He has protected 27,000 acres in Colorado through The Nature Conservancy. "The donated easement," he believes, "is the most economical instrument for all concerned. With land values going up the way they are, your children have to practically buy the land back from Uncle Sam through inheritance taxes. The conservation easement makes good sense, be-

cause you can save some wilderness in this world and save on taxes at the same time."

Although New England and West Coast conservationists have led the way, in Big Sky Country easements are also proving effective, though on a vastly different scale. The Montana Land Reliance, a private trust, has accepted easements on 55,000 acres of valuable ranchland, more acreage than any other local trust in the country, yet considers the situation in Montana critical. "This is the last of the Old West," says Jan Konigsberg, lands director of the Reliance. "Colorado went 15 years ago, Wyoming in the last ten. We're faced with the immediate task of saving open country in Montana now, or watching it disappear forever."

Montana has the best trout waters in the lower Forty-eight and breathtaking mountains. But more than scenery is at stake. Grasslands and waterways are essential to the future of cattle ranching in the state. As ranchers find it more difficult to turn a profit, the temptation to turn their ranches into subdivisions—which would disrupt these intricate ecosystems—is powerful. "There are challenges made to this environment every day," says Konigsberg.

The Hilger Hereford Ranch, the state's second-oldest family-owned ranch, represented one such challenge when siblings Bryan and Babe Hilger, neither of whom had ever married, decided to retire from ranching in 1984. Fifteen miles north of Helena, at the foot of the Big Belt Mountains, the 5,500-acre ranch is rich with history, lore, wildlife—and development potential. Guided by Sacajawea, Meriwether Lewis and his men bivouacked here when they charted the Missouri River in 1805. Grazing cattle regularly kick up arrowheads and other artifacts in the chaparral, once a prime hunting ground for the Shoshone, Blackfoot, and Nez Perce tribes. The forested foothills of the Rockies, teeming with deer, moose, elk, antelope, coyotes, badgers, and bald eagles, slope down to the shore of Upper Holter Lake, a stop on the Pacific flyway for migrating ospreys, herons, pelicans, and swans. And right across the lake has sprouted Gates of the Mountains Lakeshore Homes, a 95-homesite subdivision.

To the Hilgers, whose ranch had been in the family since 1873, the subdivision was a disturbing vision of the future. Knowing the elderly siblings had no heirs, real estate agents began approaching them in 1984. "One of them said, 'How does a million dollars sound?'" Bryan Hilger recalls.

"Then we noticed people measuring off the property, fixing its dimensions. Babe and I knew then what they had in mind. We decided we would sell only to another rancher."

**The Montana Land Reliance, a private trust, has accepted easements on 55,000 acres of ranchland.**

A conventional deed of sale, however, includes nothing to prevent a future owner from subdividing the ranch or converting it into a campground. A friend put the Hilgers in touch with the Montana Land Reliance, which helped them draw up an easement that guaranteed the preservation of the ranch and, as an extra, also provided them with a life estate on the property. The Hilgers' particular easement allows for the addition of a dude ranch and sensible logging of the forests. It also calls for respon-

sible soil and water management—none of which presents a problem to Cathy Campbell, who now owns the ranch.

Texas-born Campbell is quickly learning the cattle business from the Hilgers; she raises polled Herefords and Black Angus on the property. "The bottom line is that the easement made certain that ranching would continue here, and it preserved for all time the wide-open character of the land," she says, sitting in the living room of her renovated stone ranchhouse. "If the price of the ranch had included development rights, the cost would have been prohibitive."

Easements don't always pit the conservationists against the developers in cattleman-sheepman style. Indeed, suburban developers who understand the value—both aesthetic and financial—of preserving open land near housing sites are increasingly using this tool. In such cases, both preservation and real estate interests conquer—by dividing. For example, via an easement, the Brandywine Conservancy of Chadds Ford, Pennsylvania, united both developers and conservationists in a limited partnership that provides permanent protection for a former King ranch in southeastern

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Pennsylvania. The conservancy holds a 4,500-acre easement on the tract that permits large-lot subdivision while allowing for continued farm operation and protection of both historic structures and streams that supply water to Wilmington, Delaware, on the rest. Other so-called conservation development plans, however, such as one now under consideration for a historic 600-acre farm in Solebury, Pennsylvania, mix far denser housing with easement-protected farmland and open space—a type of plan now dubbed “limited development.”

To the wealthy estate owners of Virginia’s prime hunt country, housing developments—with or without easements—are anathema. “Limited development is exactly what we’re trying to avoid,” says Tyson B. Van Auken, executive director of the Virginia Outdoors Foundation, which holds easements on 20,000 acres surrounding historic Middleburg, Virginia.

From Route 626, a state scenic biway that meanders through Virginia hunt country, the rolling pastureland and forested hillocks that rise toward the Bull Run Mountains appear free of commercial encroachment. Thirty miles to the east, though, Xerox and other corporate giants are erecting office buildings in a corridor around Dulles Airport, a change that is putting increasing development pressure on the Middleburg area. “There is, quite simply, an emergency here,” says Alice DuPont Mills, a leading figure in Middleburg’s attempt to defend its pastoral landscape. “I just feel very strongly that we must preserve some green space around our cities. I don’t want to see the East Coast become one big city from Maine to Florida.”

In 1968, 2 years after the state legislature created the Virginia Outdoors Foundation, Mrs. Mills placed an easement on 150 acres of her land. She and her late husband James P. Mills subsequently donated easements on three other parcels, for a total of 1,000 acres. Her efforts encouraged others in the area, including Paul Mellon, Jack Kent Cooke, and Carter Brown, to join the local preservation campaign.

Since land bordering already protected land is more readily accepted by a trust, the process, in Middleburg as elsewhere, has been like filling in a jigsaw puzzle.

“This landscape, so rich in history and natural beauty, shouldn’t just disappear from the face of the earth,” says Mrs. Mills at her Hickory Tree Farm, where she raises grain, cattle and Thoroughbred horses.

In hunt country, an estate like Hickory Tree Farm is worth almost as much intact as it would be were it subdivided; an easement may depreciate its value by only 20%. “Most people here are motivated more by the press of conservation concerns than by tax benefits,” says Mrs. Mills, who rarely lets a day pass without lobbying a neighbor about an easement donation.

Indeed, many of the new conservationists, like Pat and Lloyd Addleman of Big Sur, California, consider the financial benefits incidental. When the Addlemans bought 300 acres, in 1970, the area was still a largely undiscovered coastal wilderness. “When I came here,” says Addleman, 61, an electronics engineer, “you could go to sleep in the middle of Highway 1 and there was a good chance you’d survive until morning.” Today Big Sur is a tourist hot spot, and home to such luminaries as Ted Turner, Dr. Linus Pauling, and Allen Funt.

Addleman’s hexagonal house, which he built after selling a microwave electronics company he’d cofounded in 1957, sits on a bluff 1,000 feet above the Pacific. The view from his living room stretches 40 miles out to sea and, depending on the

season, takes in migrating gray whales, colonies of sea lions, and frolicking otters. Directly behind the house a dense stand of 600- and 700-year-old redwoods rises from the canyon floor. To the east the rugged wilderness of the Santa Lucia mountains is home to deer, wild boar, hawks, and falcons. “A mountain lion used to come out every afternoon and sit on those rocks,” says Addleman, pointing to a promontory above the ocean on the other side of the canyon. “We figured he liked to watch the sunset.”

The Addleman’s property contained two development possibilities. It was zoned for two other homesites, but it could also have yielded a redwood harvest of approximately 1.7 million board feet. Either choice would have brought in some \$250,000. Addleman couldn’t bear to harvest the virgin forest, and neither he nor Pat was interested in selling the homesites. “But we couldn’t be sure others after us would feel the same way,” he says. Because the homesites and the logging would have been visible from Highway 1, a scenic highway, the property qualified for a scenic easement.



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"The first time I came here with a realtor," says Addleman, after leading a visitor to the bottom of a redwood canyon, where a small waterfall splashes, "I rested and looked up through the trees. Shafts of sunlight were streaming down through the canopy, hawks were circling up above, birds were chirping, and I thought: I must be in heaven, I've got to buy this place."

Because of their easement, donated to the Big Sur Land Trust, the Addlemans can be sure their unspoiled heaven will remain on earth.

## Facts and Taxes:

### An Easy Guide to Easements

A conservation easement is a voluntary agreement filed with a deed that sets forth restrictions on the use and development of a parcel of land. Since an easement runs with the title to the property, future owners are bound by its terms. A highly flexible conservation tool, it can be tailored to a landowner's needs and desires. For instance, a landowner may reserve the right to develop specific sites on his/her property or log parts of it while protecting the rest. Though he/she is giving up certain devel-

opment rights, he/she can still lease, mortgage, farm, sell, or bequeath the protected land. The granting of an easement does not require that the public be given access to the land.

The value of an easement is determined by the appraised difference between restricted and unrestricted use of a property—in other words, how much the property was devalued.

**Who can accept a donated easement?** Easements are generally donated to a local land or historic preservation trust, a state or local government agency (say, for forests, agriculture or parks); or a variety of public and private national organiza-

tions—such as The Nature Conservancy, the Trust for Public Land, the Audubon Society, the U.S. Fish and Wildlife Service, or the Bureau of Land Management. Usually, only gifts that accord with the organization's purposes can be accepted.

The staffs of local land trusts work closely with donors, providing advice on legal and tax issues, and on long-term property planning. Some regional trusts do not hold easements but work as middlemen, negotiating with both the donor and a local land trust, which may be in a better position to monitor the protected land. Both the donor and the land trust should be represented by legal counsel at the transfer of the easement.

"Holding a conservation easement is a very time-consuming and expensive obligation for an organization," says Jean Hocker, executive director of the Land Trust Exchange in Alexandria, Virginia, an umbrella organization for land trusts nationwide. "It requires that they check the land—usually every year—and be prepared to defend the easement in court, if necessary."

**To qualify for a tax deduction**, an easement on a property must meet one or more of four Internal Revenue Service criteria:

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provide educational or recreational benefit to the public; provide undisturbed protection of a significant habitat or ecosystem; preserve property that is under the National Register of Historic Places or in a registered historic district; preserve open space (including some farmland and forest land) for the enjoyment of the general public.

**The value of an easement** is determined by the appraised difference between restricted and unrestricted use of a property—in other words, how much the property was devalued. Depending upon the community, the value of development rights can vary widely. Property taxes may or may not be substantially reduced.

**The charitable deduction.** A donor can deduct the value of the gift up to 30% of adjusted gross income and carry forward the remainder for the five succeeding years. By donating increments over a number of years—100 acres every 5 years, say—some landowners have taken even greater advantage of the tax benefits.

The Tax Reform Act of 1986, which

lowered the top tax rate to 28%, has reduced the potential benefits of easement donations for affluent owners. The new Alternative Minimum Tax, a complex formula taxpayers are required to figure when making charitable gifts of appreciated property, has also deterred some donors from protecting their land. But according to Stephen J. Small, an attorney who helped draft the 1983 regulations on conservation easements for the IRS and is now in private practice in Boston, the effect of the AMT is more imaginary than real. "In general," he says, "only those taxpayers who wipe out most of their taxable income through deductions will suffer through AMT. In the majority of situations, it won't apply."

**Estate Taxes.** With the explosive growth in the value of real estate over the past decade, many property owners are unwittingly "land-rich." "A lot of people are unaware of the potentially devastating impact of estate taxes," says Small. "Take a property that's skyrocketed to a value of \$5 million. Even if the family has \$1 million

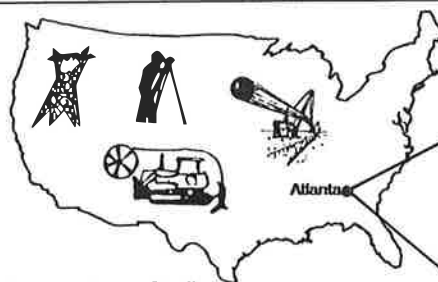
in the bank, it still has to sell the property to pay the taxes—which on the federal level alone can exceed 50%. Many people want to leave their land to their children, but they don't realize that if they don't plan properly, it's gone.

"So if you factor in the estate tax benefits, the income tax benefits, and the emotional and conservation value of protecting a beloved piece of property, the easement is one of the most significant tax/conservation tools we have." (IRMA)

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*A directory of land trusts nationwide will be available late this year from The Land Trust Exchange, 1017 Duke Street, Alexandria, Virginia 22314. A most useful booklet is Preserving Family Lands: A Landowner's Introduction to Tax Issues and Other Considerations. Send a check for \$5 made out to Preserving Family Lands to: P.O. Box 2242, Boston, Massachusetts 02107.*

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