



Crozier Hogle Conservation Easement, 2005



Brochure Paid for by

Town of Los Altos Hills

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Crozier Hogle Conservation Easement, 2005

A Guide to Understanding Conservation Easements

Dedication

This 'Guide to Understanding Conservation Easements' is dedicated to **Lois Crozier Hogle**, who has worked over a lifetime for environmental causes.

Now, by preserving the natural state of her land (Oak Meadow) with a conservation easement, Lois is providing a permanent legacy for future generations.

In the words of her friend and fellow Co-founder of the Committee for Green Foothills, Wallace Stegner:

... "to leave for our children and grandchildren a heritage that has not been dug up and paved over and, *it's an ironic word*, humanized."



ACKNOWLEDGEMENTS

A Guide to Understanding Conservation Easements was prepared as a team effort of the Town of Los Altos Hills Open Space Committee.

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A special thanks to the Town of Woodside Open Space Committee for their leadership and support and to the Town of Los Altos Hills Planning Director, Carl Cahill for sharing his expertise and guidance in developing documentation for voluntary conservation easements.



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"We returned to Los Altos Hills from Illinois because the Hills provided something to lean our eyes against. . ."

— Robert Buss, Ph.D., longtime resident of Gerth Lane, off Old Page Mill Road and 45-year member of the Purissima Hills Water District Board.

"After all, we are only trying to save "God's Little Acre. . ."

—Wallace Stegner, stated at a 1956 incorporation meeting for the Town of Los Altos Hills

THE BENEFITS OF CONSERVATION EASEMENTS

What is a conservation easement?

A conservation easement is a legal agreement between a landowner and a qualified conservation organization or a public agency (e.g., Town of Los Altos Hills) that protects land in its natural, scenic, historical, agricultural, forested or open space condition in perpetuity.

- The landowner promises to keep the land in its natural condition without extensive disturbance.
- The conservation organization or public agency is granted the right to monitor the property to ensure that the terms of the easement are being respected.
- The natural conditions often provide unique terrain, vegetation, watersheds, wildlife habitats or wildlife corridors, and are fundamental to maintaining a rural, open space atmosphere, and thus the values that make our Town a desirable place to live.

A conservation easement is a voluntary contract (as opposed to easements required as a condition for development approval) that permanently limits the amount and location of future structures and defines the type of land use that can occur, while allowing landowners to retain ownership and control of their property.

Are conservation easements supported by local, state, and federal law?

The Conservation Easement Act (State Civil Code Sec-



purpose.

- Ethical or public image problems exist in association with the acceptance of this project.



tions 815-816) enables cities and counties to accept or purchase easements from private landowners for open space and resource conservation purposes.

- **815.** *The Legislature finds and declares that the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California. The Legislature further finds and declares it to be a public policy and in the public interest of this state to encourage the voluntary conveyance of conservation easements to qualified non-profit organizations.*

The General Plan of the Town of Los Altos Hills supports the Town in taking an active role in protecting land. In the Conservation Element, Incentive – 606.2e – “The use of incentive programs that could result in the conservation of important natural resource areas should be actively explored.” Since its incorporation in January 1956, the Town of Los Altos Hills has recognized the value and beauty of its open space lands and has endeavored to retain the rural character of the Town.

Because conservation easements provide a public benefit by preserving property in its natural, undeveloped condition (conserving open lands, forests, and significant resources) there are significant federal tax incentives for the landowner. Federal tax law confers both estate and gift tax benefits for donations of qualified conservation easements. In order to qualify as a tax-deductible charitable contribution, a conservation easement must meet the federal tax code requirement of permanently protecting important conservation resources.

How do conservation easements affect property rights?

Every landowner is the holder of certain rights related to the use of land and its resources. A conservation easement modifies certain of these rights in terms of how the land may be developed.

A conservation easement is created by a landowner (the “grantor”) to restrict certain rights and to grant the right to monitor conformance to these restrictions to a conservation organization or public agency (the “grantee”).

Working cooperatively, the landowner and the grantee identify appropriate uses for the land and detail activities which should be prohibited. They decide together what is needed to protect the land’s conservation value while, at the same time, meeting the financial and personal needs of the landowners and their family.

In some cases, the conservation easement may apply to just a portion of the property, leaving the remainder available for development. Or, it may allow limited building within the area under the easement.

Easement restrictions “run with the land” and bind the original landowner and all future landowners.

How do conservation easements differ from open space easements which towns may require?

Open space easements are permitted by the Open Space Easement Act of 1974 (California State Code Sections 51070-51097) and are often used by towns in the development process to protect sensitive lands. These easements can be required by a town for the purpose of protecting the natural vegetation, terrain, scenic vistas and wildlife and to prevent or limit drainage, erosion and geologic hazards. Such open space easements do not confer income tax and estate tax benefits because they are not voluntary.

FEASIBILITY CHECKLIST

Factors which may preclude involvement of Town and Open Space Committee: A property may meet the selection criteria favoring a land protection proposal and still may not be accepted if one or more of the following considerations apply.

- Values of the easement are primarily scenic; but are not readily visible or accessible to the general public.
- The property is small and there is little likelihood of adjacent properties being protected.
- The proposed easement is part of a development proposal which, overall, is likely to have significant adverse impacts on conservation resources.
- Adjacent properties are being, or are likely to be, developed in a manner that would significantly diminish the conservation values of the property in question.
- There is reason to believe that the easement would be unusually difficult to manage/enforce (i.e. because of multiple or fractured ownership, frequent incidence of destructive trespassing, fencing restrictions, irregular configuration, etc.).
- The landowner insists on provisions in a conservation easement that the Open Space Committee believes would seriously diminish the property’s primary conservation values or the Town’s ability to enforce the easement.
- The easement cannot be acquired by the Town with reasonable effort in relation to the property’s conservation value.
- The property is found to be irreparably contaminated.
- The property is not large enough to be significant for its

- Provides important wildlife habitat, corridor, or connection for avian, terrestrial, and/or aquatic wildlife species; prevents natural areas from becoming isolated “islands” of habitat
- Provides for protection of important natural plant communities or forest
- Contains natural features or ecosystems of educational, scientific, or historical value
- Is in active agricultural use or provides an example of historic agricultural use
- Has forestry significance
- Contains wetlands, floodplains, lakes, streams, riparian corridors, aquifer recharge areas, watershed or other lands necessary for protection of water supply, water resources or wetland habitat
- Shares a common boundary with publicly or privately preserved lands or other significant open space areas
- Protects scenic views or is part of a scenic vista visible to the general public
- Will permit public access for education or recreation
- Sets an important precedent for resource or open space protection in Los Altos Hills
- Provides connection to other natural areas or open space lands that are important for movement of wildlife between habitats or through developed corridors so that natural areas do not become isolated “islands”
- Contains important historical, geological, archeological or local landmark features
- Offers significant relief from urban crowding and/or helps define Los Altos Hills rural character

What are the Town’s responsibilities in accepting voluntary conservation easements?

The Town (or other qualified grantee) is ultimately the decision maker whether to accept a voluntary conservation easement. It evaluates proposals after careful investigation of the property, its resources, and its public benefits. Once an easement has been accepted, the Town has the responsibility of monitoring the property to ensure that the purpose and provisions of the easement will remain inviolate. Should there be an incursion or use of the property that is inconsistent with the purpose of the easement, the Town has the right to require the restoration of such areas or features of the property that are damaged by an inconsistent action or use.



BENEFITS OF CONSERVATION EASEMENTS

How do conservation easements confer income tax and estate tax benefits?

In addition to safeguarding their property in perpetuity, landowners who donate easements may gain substantial savings in income and estate taxes.

Conservation easements reduce the fair market value of the land because it can no longer be developed for its highest use. But the reduction in land value may be offset by tax benefits to the landowner.

For income tax purposes, the value of the easement is the difference between the land's value with the easement and its value without the easement. For example, a property worth \$500,000 without the easement and \$200,000 with the easement would provide a charitable income tax deduction of \$300,000 to the donor. The value of the easement must be established by qualified appraisal.

Federal income tax deductions for donations of conservation easements on land owned for more than one year are limited to 30% of adjusted gross income per year for a total of six years, or until the value of the donation is used.

Because the appraised value of the land may be lower after the easement is in place, it can also result in reduced estate taxes if the property is passed on to heirs, reduced capital gains taxes if the property is sold, and in some jurisdictions, lower property taxes.

Estate Taxes

The donation of a conservation easement can reduce the value of land for estate taxes. To the extent that the restricted value is lower than fair market value, the estate will be subject to a lower

SELECTION CRITERIA FOR CONSERVATION EASEMENTS

(The following criteria are intended to guide rather than limit the actions of the Los Altos Hills Open Space Committee.)

To qualify for conservation easement consideration by the Town of Los Altos Hills, the property must meet **ALL FOUR** minimum eligibility criteria listed below, and at least **ONE** of the "Public Benefit/Natural Resource Criteria" following.

MINIMUM ELIGIBILITY CRITERIA

(All four must be met)

- The property is located within the Town of Los Altos Hills (County of Santa Clara) California.
- The protection of this property (by donation of a conservation easement) is consistent with the Los Altos Hills General Plan and Zoning Ordinance.
- The property is in relatively undisturbed natural, scenic or historic condition; **OR** has recreational value; **OR** is in active agricultural use or has agricultural value.
- The protection of this property promotes land conservation, aids sound land use planning, and encourages careful stewardship of the land.

PUBLIC BENEFIT/NATURAL RESOURCE CRITERIA

(At least one must be met)

- Contributes to protection of lands or conservation values in accordance with the
- Town's General Plan goals and policies
- Provides habitat for endangered, threatened, or rare species of wildlife, as identified in the California Endangered Species Act

The Town Staff and Town Council complete the process:

1. Town Attorney reviews the baseline documentation and proposed easement language and provisions
2. The LAH Open Space Committee, after approval from the Town attorney, sends easement and baseline documentation to the Town Council for review
3. Town Council votes to accept or reject the easement. If accepted, documents are signed and the easement is recorded.

Lastly, a monitoring schedule is established that will be implemented by the LAHOSC to ensure that the terms of the easement are maintained.



tax. In some cases, an easement can reduce the value of an estate below the level that is taxable, effectively eliminating any estate tax liability.

Recent changes to federal estate law, enacted as part of the Taxpayer Relief Act of 1997, provide an additional incentive for landowners to grant conservation easements. Executors can elect to exclude 40 percent of the value of land subject to a donated qualified easement from the taxable estate. This exclusion will be phased in over a five-year period. In 1998, landowners could exclude up to \$100,000 under the provision, which will increase to a maximum of \$500,000 in 2002. The full benefit offered by the new law is available for easements that reduce the fair market value of a property by at least 30 percent. Smaller deductions are available for easements that reduce property value by less than 30 percent. *(from Tax Benefits of Conservation Easements – Aquidneck Land Trust)*

These estate tax incentives have come about to counteract the high taxes on unrestricted land which often force the sale of land just to pay the taxes. Conservation easements can enable heirs to retain property that would otherwise have to be sold.

While tax and estate tax benefits can be substantial, they should not, however, be the motivating factor in creating a conservation easement.

What are the benefits to the Town in accepting voluntary conservation easements?

Conservation easements are good for communities because they preserve conservation values for the community at large and for generations to come. They preserve the rural character. They may increase the value of neighboring lands. They save communi-

ties from having to deal with the planning costs if the property were subdivided and developed. Most importantly, they protect the conservation resources of the property.



Place Quote Here

STEPS TO CREATING A CONSERVATION EASEMENT

The Open Space Committee of the Town of Los Altos Hills (LAHOSC) facilitates the donation of conservation easements by acting as liaison between property owners and the Town. The LAHOSC oversees the easement donation process including easement monitoring after the donation is made. Although each easement is unique, the general procedures the Landowner will complete to convey an easement to the Town of Los Altos Hills are:

1. Contact the Town's Open Space Committee (LAHOSC)
2. Meet with the member(s) of the LAHOSC to discuss objectives and goals
3. Walk through the property with member(s) of the LAHOSC
4. Review the selection criteria for acceptance of an easement by the Town
5. Outline the desired easement provisions with the LAHOSC
6. Verify records associated with the property (title report, property survey)
7. Retain an attorney to oversee the completion of an appraisal pre and post easement donation if tax benefits are sought
8. Review easement language drafted by the LAHOSC
9. Review baseline documentation drafted by the LAHOSC listing the current resources of the property relating to the easement goals

Q: Can I grant a conservation easement when I still have a mortgage on the property?

A: In most cases, yes. Assuming the value of the property with the easement is still more than the remaining mortgage liability, the mortgage holder should agree to subordinate their claim.

Q: If I grant a conservation easement, does that mean that I can't build the pool in the backyard that I've always wanted?

A: The conservation easement does represent your giving up development rights on the property. However, every easement is custom, so you can specify rights that you wish to withhold from the easement, such as specific areas that can be developed. Obviously such reserved rights affect the overall financial structure and tax effects of the easement; but the key is that you can structure the easement to fit your situation.



FREQUENTLY ASKED QUESTIONS:

Q: If I grant a conservation easement, does that mean there are going to be hikers walking through my land?

A: No. A conservation easement does not grant any rights to the general public; this should not be confused with a path easement or a public recreation designation.

Q: If I grant a conservation easement, who owns the land? Who owns my house? Does this mean the Town can sell my property?

A: Granting a conservation easement does not affect the ownership of the property; You as the owner are still free to own, enjoy, or sell it as you wish. You still have ownership of the property and all the structures, just as before. No one can sell the property and house but you.

Q: Does this mean that when I sell the property, someone else gets a cut?

A: No. You are the sole owner of the entire property. No one else is involved in the sale of the property.

Q: If I grant a conservation easement, aren't we just throwing away our children's inheritance?

A: No. Depending on the situation, a conservation easement can actually be advantageous to your estate plans.