



An Introduction to the Garden Conservancy's Conservation Easement Program

Conservation Easements: An Overview

A conservation easement is a legal agreement between a landowner and a conservation organization or government agency (referred to as a holder) that permanently limits a property's uses to protect its conservation values, such as its special gardens. Each easement's restrictions are tailored to the particular property, to the interests of the individual owner, and to the policies and purposes of the easement holder. Landowners conveying conservation easements retain title to their lands and continue to enjoy all the benefits of land ownership, subject to the easement's restrictions, local codes, and other applicable governmental regulations.

When an easement is signed and recorded, the owner conveys the right to enforce these restrictions to a qualified recipient, such as the Garden Conservancy. By granting an easement in perpetuity, an owner is assured that the resource values of his or her property will be protected indefinitely. A perpetual easement runs with the land—that is, the original owner and all subsequent owners are bound by its restrictions. Because an easement is a partial interest in real estate, it must be recorded at the county or town office where deeds are filed.

Over the last few decades, conservation easements have been used extensively by both nonprofit organizations and government agencies to achieve a variety of conservation purposes. Today, conservation easements have been used in every state and protect millions of acres. These protected properties include lands that are scenic, contain significant plant or animal habitats, are used for agriculture or commercial forestry, or have historic or cultural significance.

An easement should restrict activities to the degree necessary to protect the significant conservation or historic preservation values of the property. An easement may cover all or part of the property, and can contain different restrictions for various parts of the property. Some easements prohibit all activities except for the continuation of current uses; these restrictions are based on the wishes of the owner and the sensitivity of the resources. Other agreements allow for a variety of uses that both the owner and easement holder have determined are appropriate and allowed by federal easement donation deduction rules. All easements must provide some documented public benefit.

The majority of conservation easements are donated, often to nonprofit conservation organizations such as the Garden Conservancy. In some cases, easements are purchased; these purchases are typically funded under public-agency programs. Even when easements are purchased, a landowner often donates some of the easement's value.

Donating an easement may yield tax savings. Only gifts of perpetual easements that comply with the Internal Revenue Service code and regulations qualify a donor for income- and estate-tax benefits. The easement's value—or the charitable contribution—is based upon the difference in the land's fair market value before and after it is restricted by the easement, as determined by a qualified appraiser. An easement's value may be minimal or significant, depending on the development potential of the property and the restrictions in the easement. Although tax benefits can provide a strong incentive for donating a conservation easement, most donors grant easements for other reasons, namely to protect a cherished landscape.

Holding an easement is a substantial, long-term responsibility. The easement holder must be prepared to protect in perpetuity the conservation values of the property. To fulfill its responsibilities, the holder visits the property on a regular basis, typically once a year, to monitor its condition and to ensure that the landowner complies with the easement's terms and conditions. Regular visits have the added benefit of maintaining communication

between the landowner and the holder. Also, in some cases, the easement requires the holder to review and/or approve a management plan and/or activities on the land.

If a monitoring visit reveals there has been an easement violation, the easement holder has the legal right and responsibility to enforce the easement according to its terms, which usually includes the right to require the owner to correct the violation and restore the property to its condition prior to the violation. Easement violations can be minimized with good easement drafting, diligent ongoing monitoring, and regular communication with the landowner. To cover the costs of monitoring and enforcing the easement over time, the easement holder needs to secure funding for stewardship and enforcement.

The Garden Conservancy's Conservation Easement Program

The Garden Conservancy holds seven garden conservation easements in the United States. These easements protect the gardens in perpetuity by assuring that they will be retained predominantly in their current condition as historic, horticultural, and educational resources. The easements prevent any uses that would significantly impair or interfere with the land's identified conservation values.

A conservation easement can protect an exceptional American garden where private ownership is a more feasible option than public ownership. It provides assurance that responsible stewardship will continue when the garden is no longer owned by the easement donor.

When considering whether to acquire a conservation easement over a private garden, the Garden Conservancy asks the following questions:

- Can an easement protect the essential characteristics of the garden, yet be sufficiently flexible to allow for future creativity and changing circumstances?
- How will the Conservancy's mission of garden preservation and public access be served by the easement?
- What is the probability that the garden will be properly maintained in private ownership?
- Does the Conservancy have the capability to effectively monitor and enforce the easement?
- How will the Conservancy cover its easement acquisition and ongoing stewardship costs?

Once the landowner and the Garden Conservancy agree to proceed with an easement project, the Conservancy—with input from the landowner—carefully drafts the conservation easement to ensure protection of the garden. The easement identifies the property's conservation values and clearly defines enforceable restrictions and any permitted uses. Some of the Conservancy's easements allow for visitors' facilities, subject to the Conservancy's approval, and some allow for the maintenance, renovation, expansion, or replacement of buildings, or the construction of additional buildings in locations that would not impact the property's conservation values.

A garden easement requires that the property be made accessible to the public on a limited basis, either on a set schedule or by appointment, so that people affiliated with educational organizations, professional gardening associations, or garden societies may study the garden. If the landowner seeks a tax deduction for the gift of the easement, this public-access provision is essential. The Conservancy can work with the landowner to assure this public access, often through its Open Days Program. Most owners who appreciate the significance of their gardens and wish to protect them are also willing to permit access by students, garden historians, landscape architects, and other professionals.

To avoid an easement with overly restrictive provisions, sometimes the Conservancy's easements require the preparation of a separate garden management plan. The plan describes the garden's philosophical underpinnings, current conditions, and management needs, and can be updated to accommodate changing

circumstances over time. The plan is intended to provide guidelines for stewardship that will help both the garden owner and the Conservancy. For example, it might address such needs as repairing and replacing buildings and structures, installation of fencing, or the replacement of aging trees.

The Conservancy asks grantors to contribute funds to cover initial expenses, such as the costs of designing, drafting, and executing the easement; preparing a baseline documentation report and management plan; and paying for legal and closing fees. Once it acquires an easement, the Conservancy needs to manage it over a long period of time. To prepare for long-term stewardship, the Conservancy requests a donation to fund its ongoing expenses of easement monitoring and landowner relations, as well as for possible enforcement. Expenses associated with easement monitoring are relatively predictable; the need for enforcement and the associated costs, however, can be difficult to determine. Nevertheless, funds should be secured in the event that the Conservancy needs to enforce its easements.

For more specific information about conservation easements, including the easement acquisition process, the easement document, tax benefits, baseline documentation, and ongoing stewardship, please refer to more detailed handouts prepared by the Garden Conservancy.

The Garden Conservancy's Conservation Easements



The Ruth Bancroft Garden

Walnut Creek, California

In 1992, Ruth Bancroft donated an easement to the Garden Conservancy to protect her exquisite 2.5-acre dry garden, which created over a 40-year period. Her garden is an extraordinary collection of succulents and cacti and is nationally recognized as one of America's finest gardens. The Bancroft Garden is now owned and operated by a nonprofit the Conservancy helped establish. Visit facilities are planned for the site.



The Chase Garden

Orting, Washington

The Garden Conservancy acquired an easement from Emmott and Ione Chase in 1995. Started in the 1950s, the Japanese-inspired 4.5-acre garden sits high on a plateau. The Chase Garden is a significant example of the 1960s modernist garden style of the Pacific Northwest. The Conservancy helped create the Friends of the Chase Garden in 1998, which raises funds, plans for the garden's future, and coordinates public visitation.



Rocky Hills

Mt. Kisco, New York

In 2000, The Garden Conservancy received a conservation easement donation from Henriette Suhr. This 14-acre property in the northern suburbs of New York features an outstanding collection of trees and flowering shrubs, a woodland garden, a fern garden, a wildflower meadow, and extensive bulb plantings, all developed over the past 30 years by Mrs. Suhr and her late husband, William Suhr. This will eventually become a public garden, owned by Westchester County Department of Parks, Recreation and Conservation.



Kell Cove

Tiburon, California

The Garden Conservancy received an easement donation from the Keil family in 2002. The 34-acre Keil Cove property is located on the shores of San Francisco Bay. Its landscape garden was created by the family in the 1890s, and was designed by John McLaren, the landscape architect responsible for designing and developing Golden Gate Park. The property includes three houses, a quarter mile of beach, a five-acre lake, fourteen acres of developed garden and forests home to a number of rare or endangered species.



Green Gables

Woodside, California

In 2004, the Fleishhacker family donated an easement to the Garden Conservancy that protects a historically significant garden and architectural landscape. The 75-acre Green Gables estate, designed by famed architect Charles Sumner Greene in the early 20th century, is listed on the National Register of Historic Places. The easement restricts subdivision or further development of the property, and ensures that the historic gardens, buildings, and landscape will be preserved and maintained.



Eby Garden

San Francisco, California

In 2005, the Garden Conservancy acquired an easement over a vacant lot adjacent to the Greenwich Street pedestrian stairway in the Telegraph Hill Historic District. The lot is historically important as open space, and was once a garden started in the 1930s by Valetta Heslet, who also planted gardens in the adjacent public right-of-way. After preparing a landscape plan in consultation with the Garden Conservancy, the owners rebuilt a garden for the public to view and enjoy from the pedestrian stairway.



Elizabeth Lawrence Garden

Charlotte, North Carolina

The house and garden of Elizabeth Lawrence (1904–1985), listed on the National Register of Historic Places, was purchased by Wing Haven Foundation, a local nonprofit, in 2008. The Garden Conservancy acquired a conservation easement over the property when this transfer occurred. Lawrence, a celebrated garden writer and plantswoman in the South, began her garden in 1949 and transformed it into a living laboratory for her study of plants and landscape design. The easement protects the garden’s layout, hardscape, and woody plants, as well as the historic house.

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