

ENSURING THE PROMISE OF CONSERVATION EASEMENTS

Report on the Use and Management of Conservation Easements by
San Francisco Bay Area Organizations



Bay Area Open Space Council
May 14, 1999

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and
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530 Bush St., Rm. 303, San Francisco, CA 94108

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We also thank the many individuals who contributed their time, insight and comments to completing the questionnaire, participating in interviews, and reviewing drafts of the questionnaire, final report, and training materials.

About the Bay Area Open Space Council . . .

Initiated in 1991, the Bay Area Open Space Council is a unique collaboration among non-profit and public agency park and open space land conservation organizations and agencies with responsibilities in the San Francisco Bay Area. The underlying principle of the council is that inter-organizational collaboration will enable the more than 150 agencies and organizations involved in preserving and managing Bay Area open space lands to more readily and efficiently fulfill their individual and collective missions.

Two objectives are central to the Council's mission: first, to strengthen the technical capacity of the park and open space organizations and agencies active in the region, and second, to broaden public support and financial commitment to open space protection. The council has four programs: Interorganizational Communication, Research, Education and Legislation.

A few of the major projects undertaken by the Council include:

- Protected Open Space lands database and GIS mapping for the bay region.

- Regional Open Space Vision: Mapping of the open space lands that local organizations and agencies have identified as worthy of permanent protection.
- Drafting and passage of legislation establishing the Bay Area Conservancy Program with the State Coastal Conservancy.
- Campaign to develop funding for the Bay Area Conservancy Program.

This survey on the use and management of conservation easements was designed and conducted by Darla Guenzler, who authored the report. **For questions about the survey or report, or to request additional copies, please contact her at the postal or e-mail address below.**

For more information about the Council, please contact John Woodbury, Program Director (drjohnw@ix.netcom.com), or Darla Guenzler, Associate Director (dlg@conl.net).

Bay Area Open Space Council

530 Bush Street, Room 303 • San Francisco, CA 94108
707-469-0926 or 707-469-0927 fax

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EXECUTIVE SUMMARY

The use of conservation easements in the San Francisco Bay Area has exploded in this decade. Easements account for 10% of the 887,082 acres of protected open space lands in the Bay Area. More importantly, this proportion is growing: easements have accounted for half of all new land protection in recent years.¹ Two-thirds of all easements created since 1950 have been created in the past nine years. There are 315 conservation easements protecting nearly 85,000 acres, and the average size of an easement is 282 acres. And we know this is not the complete picture — there are more easements in the region. These figures incorporate only easements held by land trusts and public agencies whose mission includes land protection; they do not generally include the easements created through regulatory processes, such as land use approvals.²

Conservation easements enjoy tremendous popularity with conservation practitioners, decision-makers and the public. For some purposes, such as agricultural protection, easements are the superior choice. Because the management costs and purchase price are often less than fee simple acquisition, easements can protect many more acres. Interviews with practitioners throughout the Bay Area reveal that most expect their easement programs to grow, and a number of organizations anticipate beginning an easement program.

However, an organization assumes a *perpetual* stewardship responsibility when it acquires an easement. This includes a duty to monitor and enforce the easement terms. Unfortunately, stewardship has not kept pace with the acquisition of easements. Only 51% of the easements currently held are regularly monitored, and of these, not every monitoring program is fully functional. For instance, inadequate records may be maintained which can impair an organization's ability to defend the easement in the future. The study shows that the average cost of monitoring an easement is \$267 per year for well-established stewardship programs. While this figure may

underestimate an organization's indirect costs, clearly the cost is within reach. In addition to the annual cost of monitoring, there are the long-term costs of protecting the easements. One-half of organizations do not have endowments, but as the holding of easements is somewhat concentrated, only one-third of easements are not supported with an endowment.

Monitoring identifies violations of the easement conditions, but it also allows violations to be avoided by revealing potential problems. Even with only a 51% monitoring rate in the Bay Area, 14% of the easements have already experienced a violation. Problems are inevitable, and a comprehensive stewardship program must include baseline documentation and a record-keeping system to assist in the defense of the easement.

Our collective experience with easements is new and we have much to learn about their long-term management. We are fortunate in the Bay Area to have a number of organizations who are national leaders in using and managing easements. However, if we are going to depend on easements to protect regional open space and important resources such as agriculture and wildlife habitat over the long term, it is imperative that we build uniformly strong stewardship programs. Otherwise, easements will not prove to be durable instruments for protecting the San Francisco Bay Area landscape.

As a region, we are in an enviable and timely position to take action. Most of the region's easements are young, and concern about them is growing. There is a great opportunity to resolve current difficulties with monitoring and enforcement and prevent future problems. The strengths and weakness in current stewardship efforts are identified in this report, and they form the basis of a set of recommendations.

The first five recommendations address individual organizations and their own stewardship programs. The recommendations are fairly self-explanatory:

1. Develop and Improve Easement Stewardship Programs
2. Maintain High Standards for Easements and Monitoring Programs
3. Prepare for Violations
4. Partner with Others to Fulfill Stewardship Obligations
5. Support Regional Efforts to Improve Easement Stewardship

The next seven recommendations concern the regional land conservation community. The first three are directed at the funding community, and suggest where assistance and incentives can be offered to increase stewardship capacity and the defensibility of the region's easements. Recommendations 9, 10 and 11 are projects beyond the scope of any one organization but which are needed to respond to the areas of weakness in easement protection programs. Recommendation 12 concerns a regional discussion about the effectiveness and suitability of easements for accomplishing regional and organizational goals.

6. Increase Funding for Training and Organizational Development
7. Encourage Documentation and Monitoring
8. Create Incentives for Cooperative Efforts
9. Research Options for Pooled Endowment
10. Assess Easements Held by Non-Traditional Public Agencies and Organizations
11. Continue To Track Easement Use and Management
12. Evaluate Whether Easements Are Accomplishing the Goal

A critical first step has already been taken: this project and report will document the state of stewardship in the region. The next step includes a series of workshops and presentations to disseminate training materials, raise awareness, and encourage the creation and improvement of stewardship programs. An additional step is the creation of an easement task force to implement this project's recommendations, marshal resources for stewardship, respond to future issues, and sustain a focus on the topic as the region's stewardship evolves matures.

INTRODUCTION

The Project

By 1998, land protection specialists on the Bay Area Open Space Council believed that a comprehensive review of the use and management of easements in the Bay Area was urgently needed. With funding from two foundations secured, this project was launched. The project's objective is the protection of conservation easements as a viable technique for land conservation by understanding easement use, monitoring and enforcement.

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This enhanced understanding can assist private nonprofit organizations and public agencies understand easement responsibilities, and be better prepared to conduct monitoring and enforcement duties. Further, by better understanding long-term needs, private nonprofit organizations and public agencies can make future policy recommendations based on quantifiable resource projections.

To develop the needed information, two primary research tasks were undertaken. First, a detailed questionnaire was mailed to all organizations active in the Bay Area whose central mission involves land protection. We targeted land trusts, parks departments and open space districts at a local government level, the relevant state and federal park and resource agencies, utility companies, universities, and others who might hold conservation easements. The questionnaire asked questions of a general

nature about experiences with, and policies about, holding conservation easements, and questions specifically about each easement held or previously held. Second, detailed in-depth personal interviews were conducted with the staff of a substantial number of target organizations.

The overall response rate was very high. As Table 1 demonstrates, there were some important variations between types of organizations. We had the best response from non-profits, although public agencies responded well, too. The two remaining categories, utilities/education and other had significantly lower return rates.

The results of the study are reported in this final report. There will be two other products of this study. The first will be a workbook that will discuss how to create and maintain a monitoring program. The second is a series of events to inform both decision-makers and professionals about conservation easements, monitoring and enforcement. The events will take the form of presentations to decision-makers and training workshops designed for staff.

The usual cautions apply to the data in this study. For example, some percentages may not add to 100% because of rounding effects. Similarly, some numbers may not add up perfectly. For example, the number of responses and the total number of easements may not always be equal because of variations in responses.

Some Basic Definitions

Several terms will be used extensively throughout this report. Some readers may not be familiar with them. The definitions are drawn from "The Conservation Easement Handbook: Managing Land

Table 1. Questionnaire Rates

Type of Organization	Questionnaires Distributed <i>(number)</i>	Questionnaires Returned <i>(percentage)</i>
local non-profit land trusts	23	91%
national non-profit land trusts	13	92%
local parks agencies	50	80%
state agencies	11	73%
federal agencies	7	71%
utilities/education (i.e., water districts)	10	50%
other (other non-profits, associations)	22	64%
TOTAL	136	75%

Conservation and Historic Preservation Easement Programs” by Janet Diehl and Thomas S. Barrett and the “The Standards and Practices Guidebook: An Operating Manual for Land Trusts” by the Land Trust Alliance.

- A **conservation easement** is a legal agreement a property owner makes to restrict the type and amount of development that may take place on his or her property. The owner conveys the rights to enforce those restrictions to a qualified conservation recipient, such as a public agency or nonprofit organization. The term can include all similar restrictions on land use, whether it takes the form of an easement, restriction, covenant or condition. Easements are also often distinguished as agricultural preservation easements, scenic easements, open space easements, trail easements, forever-wild easements, conservation restrictions, or restrictive covenants. Conservation easement, as used here, should be understood to include all easements granted for a conservation purpose, however else they may be designated.

- **Baseline documentation** is a set of documents that describe easement’s conservation values. If a violation of the easement terms occur, the baseline documentation is vital evidence about condition of the easement. If the easement is a tax-deductible gift, baseline data must be developed, but it is highly recommended that every easement have baseline data. Ideally, baseline documentation is created at the time the easement is created, but later data can be useful. Baseline documentation will include a variety of information, but should contain “enough information to define each right and restriction written into the easement.”³
- **Monitoring** is the periodic checking to ensure that the terms of the easement are being followed.⁴ It is also the chief mechanism for maintaining a good relationship with the landowner. Monitoring policies and activities need to be regular, systematic and well-documented.
- **Enforcement** is necessary when the terms of the easements have been violated. Disputes are inevitable for most easements, and an organization must be prepared to respond and resolve them.
- **Stewardship** is a broad term that includes the different aspects of caring for an easement. A stewardship program includes developing baseline data, monitoring, enforcement, and maintaining the necessary documentation. It also involves the financial component of funding these activities.
- An **endowment** is a fund of money used to fund the stewardship activities. Organizations structure, manage and use the funds in a variety of ways. The purpose of an endowment is to assure that adequate resources are available to steward the easement in perpetuity.

- A **second-generation landowner** is any landowner other than the original one who conveyed the easement.

Why Use Easements?

Conservation easements are now a major land protection tool throughout the San Francisco Bay Area. A variety of organizations are using them: non-profits ranging in size and purpose from small, regional all-volunteer land trusts to nationals with large professional staffs; and public agencies at the local, regional, state and federal level. Easements protect a variety of natural resources and land uses: wildlife habitat, watersheds, agricultural uses, parks, trails, and scenic open space. Easements can be secured by purchase, donation and regulatory requirements.

Easements have a number of advantages that make them popular with many organizations and the public agencies:

- Easements are a non-regulatory, negotiated way to assure appropriate stewardship of private lands, an important consideration when the protection of natural resources and species diversity depends heavily on what occurs on private property.
- Easements can be tailored to protecting only the specific resource(s) of concern to the grantor and grantee.
- The purchase price is can be substantially lower than acquisition of fee simple.
- Some property owners are willing to donate all or a portion of the easement in exchange for a less than dollar-for-dollar reduction in income taxes, property taxes, and estate taxes.
- The property is retained on the tax rolls, albeit at a lower rate.
- Ongoing maintenance and operational costs associated with conservation easements are typically less than with fee simple ownership.
- For commercial resource protection (such as agriculture), operational flexibility can be significantly easier to provide than when a government agency is the landlord.

- Easements enjoy political support from those who wish to keep property in private ownership.

Special Challenges

Despite their advantages, conservation easements are not without their own special challenges. Most importantly, conservation easements require active monitoring and enforcement programs. Failure to adequately monitor and enforce conservation easements will result in failure to achieve public purposes and protect the natural resources. This failure may be manifested in the following ways:

- *Easement extinguished or terminated.* Without proper, timely, and consistent monitoring, easements are difficult to defend legally, and violations become practically impossible to remedy.
- *Legal and tax liability.* Failure to plan for the long-term monitoring and maintenance of easement conditions exposes all parties involved to significant legal and tax liabilities.
- *Loss of public confidence.* Easements must be actively and effectively monitored to ensure that the resource protection and/or public access rights conferred by the easement are being realized. Failure to adequately monitor easements results in the public paying for non-existent benefits. This is not only damaging to the resources we are trying to protect, but also undermines our efforts to protect open space lands in the region.

If conservation easements are to play a significant role in accomplishing regional land protection goals, it is important to understand them better. Easements are a relatively new land protection tool. Many organizations have not fully recognized the perpetual responsibilities that accompany the acceptance of easements. We need to build the necessary stewardship resources to ensure that the easement protection is durable, and that organizations have the information they need to fulfill their obligations. For regional planning purposes, we also need to know how easements are being used and their long-term stewardship costs.

FINDINGS

Organizations and Easement Programs

Before this study, the extent of who held easements in the Bay Area was largely unknown. To identify who uses easements, we asked five screening questions: if they currently held any easements, if they had sold, donated or transferred any in the past, if they had accepted any transfer; if they co-held easements, or if they were a third-party beneficiary or served as another form of back-up holder. Thirty-eight respondents replied in the affirmative to one or more of these questions, leaving 67 who were not involved with conservation easements. Especially noteworthy, we found that many local parks departments did not know what easements were and had not used them.

***Nearly 1/3 of organizations
have not compiled
a list of their easements.***

Who Uses Easements? Non-profit land trusts at local, regional, state and national scales, public agencies at every level of government, utility companies, and other conservation organizations use conservation easements. The holding of easements is fairly straight-forward for most of these organizations. Most have not transferred an easement to another organization or accepted the transfer of an easement from another. Only a handful of organizations had utilized co-holding or third-party beneficiary arrangements.

Easement Inventories. Of those organizations with easements, most maintained a list of their easements. The significance of this may be easy

to miss, but it is also true that nearly a third of organizations have not compiled a list. We were surprised by the number of organizations who had to undertake extensive research through their files merely to identify easements, or ultimately could not fully complete the survey because they lacked the staff resources to identify all their easements. Clearly, the most fundamental step in managing easements is to be able to efficiently identify the organization's holdings.

Model Easements. Organizations were nearly split between those who had a model easement and those who did not. Slightly less than half used a model easement, although interviews showed that most organizations used the model as a starting point for negotiations rather than applying it uniformly. Again, we see a significant difference between types of organizations: Two-thirds of non-profits use a model easement, but only 1/4 of public agencies.

There appear to be several reasons for this difference. Land trusts are more likely to see themselves as having an "easement program" and creating a model easement to use. Also those organizations which tend to receive easements from other organizations do not have the opportunity to use a model easement.

Organizations report advantages to using a model easement. Developing it is a useful process for staff and governing bodies. It can ease the negotiation process. It minimizes or removes any perceptions of unequal treatment between landowners. Most importantly, perhaps, it also improves the ease and quality of monitoring because monitors do not have to track significant differences between easements.

***Model easements are used
by 2/3 of land trusts, and
by 1/4 of public agencies.***

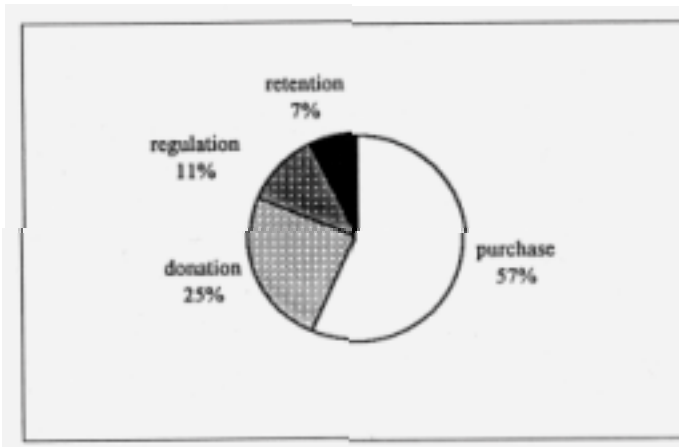
Easement Origins. Easements can be secured in four different ways: purchase, donation, regulation, or creation and retention of an easement when the organization is selling or transferring the underlying fee simple. Organizations are all over the map in terms of what they will consider doing. For example, half reported that they had purchased easements and a quarter have never purchased easements. More than half accept donations, including donations from other organizations. A number of groups are considering accepting donated easements, and 10% have never accepted donations. Nearly 40% have never accepted easements created through regulatory processes, and an equal number have. Only a small number of easements were created by an organization retaining an easement when it sold the fee simple.

In considering how the region’s easements have actually been created, the picture is clearer (see Figure 1). More than half of easements have been purchased and a quarter have been donated. Only 11% have been created through regulation, and less than 10% were retained in the process of selling fee simple.

These results show the diverse methods of creating easements; there is no dominant way that easements originate. This has important implications for some aspects of stewardship. For instance, an easement’s origins can affect how endowments are raised. Contributions to an endowment is more likely to be made for donated easements than purchased ones. Similarly, easements created through regulation may leave the landowner with a negative attitude toward the easement and easement holder which can make stewardship more difficult, expensive and time-consuming.

Endowments. Nearly two-thirds of the organizations had no endowment of any kind. However, due to concentrations of easement ownership, only one-third of easements are not supported by any endowment. Endowments can also be considered by organizational type. Of those with no endowment, 60% are public agencies and 30% are non-profits. In the interviews, the public agency staff noted the near impossibility of having general endowments. As one noted, “To have a reserved fund for long-term needs would be very difficult. Elected officials would see the pot of unused funds and appropriate it for other needs.” While public agencies may often not have endowments, they generally have access to legal and other services beyond those available to nonprofits, although the services may not be free and the agency may not enjoy independent discretion to draw upon them.

Of those organizations with endowments, the median endowment amount is \$26,611 per easement. However, this figure is problematic because of the some disproportionate endowments. For



Half of organizations had no endowment of any kind, leaving 1/3 of easements without endowment support.

example, several nonprofits have built endowments far in excess of their current holdings in anticipation of their eventual holdings. One national nonprofit with two local easements relies upon a single endowment for all its easements throughout the country.

Endowments can be of two types: general or dedicated. A general endowment is one that can be used for all easements, whereas a dedicated endowment is specific to one easement. No state or federal agencies had a general endowment, and only a few local agencies did. Dedicated endowments were much less frequently used. Thirteen percent of nonprofits had a dedicated endowment(s), and only 3% of both local and state agencies had a dedicated endowment(s).

Endowments were created from four primary sources. Donations from the fee simple landowner was the largest contributor at 29%. Donations from other private donations provided nearly 25%. Two other sources of endowment funds were specific fundraising campaigns and funds supplied as part of a regulatory endowment. The funds that arose from regulation were mostly likely to be for dedicated endowments although this was not always the case.

Respondents held mixed opinion about asking the fee-simple owners to contribute to the endowment. It was the policy of several organizations to *always* request a contribution, and several others to *never* ask. Yet several others would *sometimes* ask. Only slightly more have *plans* to ask. The decision is based upon the governing body and staff's assessment of their own organizational resources, preferences and landowner responses.

Some organizations view their endowments as a function of the number of easements it holds. With each new easement, the endowment is increased. The source of the increase could include a donation by the fee-simple owner, a fundraising campaign, or a contribution from the organization's general budget. Only two organizations used a formula for determining what the increase should be; others raise what they can in a variety of ways and hope to add to their endowment in the future.

At least three organizations have chosen a different strategy. They established a target endowment and work toward it. For example, the South Livermore Valley Agricultural Land Trust decided upon a \$1 million general endowment and \$10,000 is transferred to it each month from other accounts.

Table 2. Who Uses Easements?

	Volume of Easements		Acreage of Easements	
	#	%	#	%
NONPROFITS				
local	123	39%	38,432	45%
state & national	7	2%	163	1%
PUBLIC AGENCIES				
local	133	42%	31,878	38%
state & federal	44	14%	8,636	10%
Other	8	3%	5,634	7%
TOTAL	315		84,743	

Character of Easements

Holders. Three hundred and fifteen easements encompassing nearly 85,000 acres, were identified. Public agencies hold over half (56%) of these easements; this figure is dominated by the holdings of the Sonoma County Agricultural Preservation and Open Space District. Non-profit organizations, especially local land trusts, hold 41% of the region’s easements. In terms of total acreage, land trusts and public agencies hold nearly the same amount.

In terms of individual organizations, Sonoma’s Open Space District holds 102 easements, or nearly one-third of all easements. Other major holders of easements in the Bay Area are the Napa County Land Trust (42), Sonoma Land Trust (20), and the Marin Agricultural Land Trust (34). Of the public agencies, California Fish and Game Department has 28 easements in the Bay Area, and the California Coastal Conservancy and the Marin Open Space District each hold 12 easements.

***315 easements encompassing
nearly 85,000 acres were identified
in the San Francisco Bay Area.***

Location. When we look at where the easements are, more than two-thirds of the region’s easements are in the North Bay counties of Marin, Sonoma and Napa. Sonoma County has the largest number (125). This situation is chiefly due to several long established land trusts and a recent but very active easement program in Sonoma. Contra Costa, Alameda, and Santa Clara counties trail in the number of easements, although these counties did not have organizations with active easement programs until recent years. Only two easements were identified in San Francisco County, and both are historic buildings.

Table 3. Easement Purposes and Acreage

Primary Purpose of Easement	Volume		Acreage	
	#	% of total	median	range
intensive agriculture (allows tillage and other buildings, e.g., wineries)	49	16%	196	2 - 7,877
intermediate agriculture (allows tillage but no buildings other than farm)	11	4%	63	7.5 - 1,270
restricted agriculture (rangeland)	54	18%	460	7 - 1,270
natural resource protection	91	30%	62	7 - 1,578
open space, scenic	74	24%	23	0 - 3,917
public access	14	5%	7	1 - 743
forever wild	5	2%	47	0.5 - 14

Size. Those easements identified in our survey encompass 84,743 acres, with an average size of 282 acres. The average easement size varies considerably when broken down into primary purposes (see Table 3).

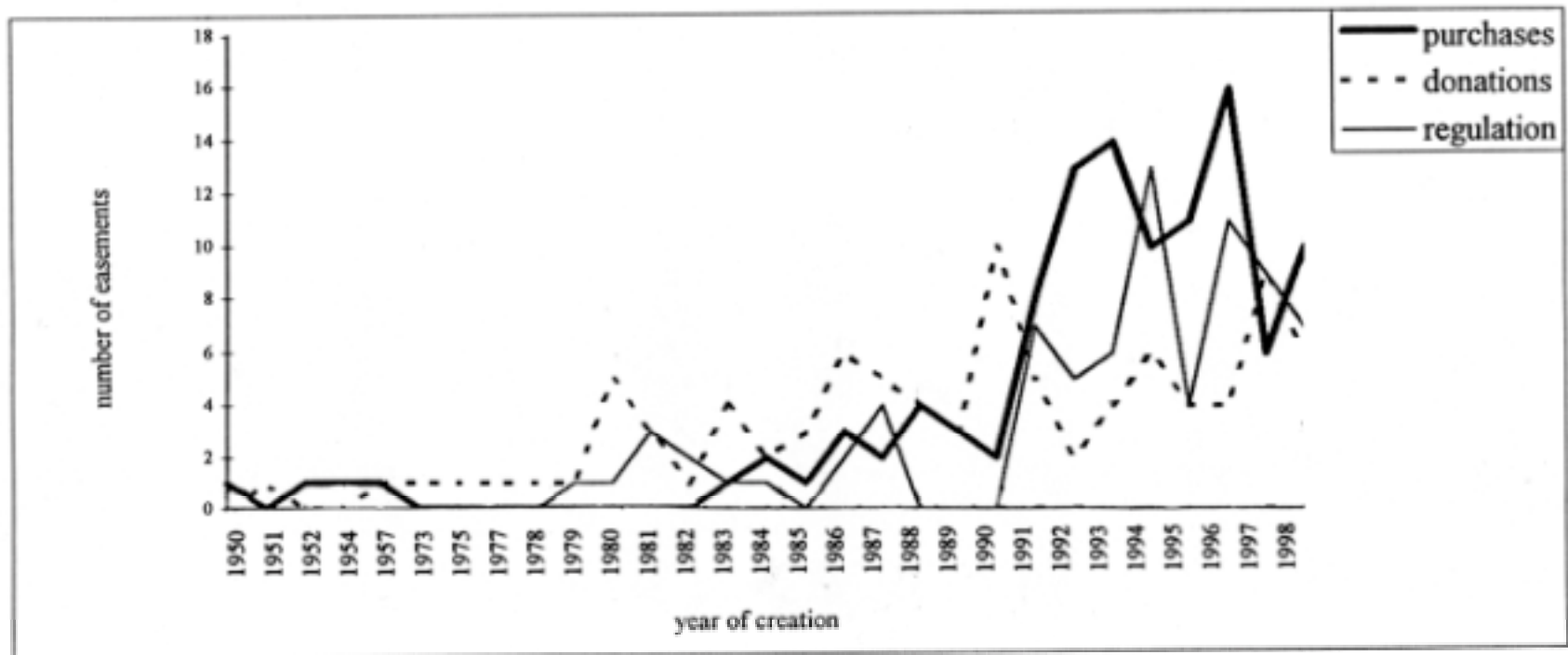
Primary Purpose. We asked easement holders to identify the primary purpose of each easement from the categories of (1) intensive agriculture, (2) intermediate agriculture, (3) restricted agriculture, (4) natural resource protection, (5) open space and scenic, (6) public access, (7) forever wild or (8) other.⁵ Open space was the primary purpose of nearly one-third of the easements (30%). When combined, the three agriculture categories accounted for 38% of the easements. Natural resource protection was the primary purpose of 30% of easements. There were only 14 easements whose primary purpose was public access, and they are held by a variety of non-profits and public agencies.

Purchase Price. The median price of purchased easements was \$342,000, and the median price per acre was \$1,625.⁶ This can be broken down in a number of ways, but analysis by county is of limited value because most of the purchases have occurred in Sonoma and Marin. The price can be more usefully analyzed by primary purpose. The median price for intensive/intermediate agriculture is \$3,000 per acre; natural resource protection is \$3,400; open space is \$18,300; and public access is \$49,500. It is beyond the scope of this project to quantitatively analyze the location of easements, such as their proximity to developed areas, and the effect of this on cost. Further, it is important to remember that these figures only apply to easements that are *purchased*.

Only 34 of the easements were bargain-sale purchases. With regard to financing an easement acquisition program on either an organizational or regional basis, it doesn't appear warranted to depend upon a large proportion of bargain sale purchases.

Year of Creation. The data for the creation of each easement breaks down quite naturally along decade lines (see Figure 2). Only 11 easements were recorded during the period 1950-1979. California Fish and Game holds half of these. This period predates most

Figure 2. Type and Year of Easement Creation



nonprofits and even some public agencies, such as the California Coastal Conservancy. Sixty-seven easements were created during the next period, 1980-1989 — a nearly seven-fold increase over the previous thirty years. During this period, a number of organizations were started which hold the bulk of these easements. As Figure 2 depicts, the numbers do begin to pick up a bit after the mid 1980s, but the average number of easements acquired during this period is 6.7 per year. However, the growth of easements exploded during the 1990s, and 213 easements were created. This represents nearly 3/4 of all Bay Area easements. Acquisitions by Sonoma’s Open Space District account for approximately half of the growth during this period.

***The growth of easements exploded
during the 1990s when
213 easements were created.***

If we compare purchased, donated and regulatory easements, we see different trajectories (see Figure 2). Overall, there is a positive but erratic growth pattern. The number of easements secured during any one year is highly variable.

Assigning Easements. Generally, the ownership of easements has been stable. The vast majority of easements continue to be held by the organization originally involved in its creation. Only 43 easements have been transferred to another organization.⁷ Nearly all of these have been regulatory easements transferred from local government to special districts. However, a few easements have been assigned from non-profits to other non-profits or public agencies.

About half of those interviewed expressed considerable concern about assigning an easement to another organization, particularly public agencies. They felt a continuing interest in any assigned easement, but were not

confident that the easement would be properly stewarded over time or that they could remain informed about it. Some who had assigned easements were dissatisfied with the resulting easement management, and felt that the new easement holder disregarded their obligations, such as monitoring and keeping the original organization informed. This was typically the view of local non-profits who are actively stewarding their easements, although one public agency expressed similar concerns about other public agencies. Several persons interviewed were struggling with how to judge the capability of the receiving organization and determine whether easement stewardship was occurring.

Interestingly, a few respondents expressed the opposite view. That is, when property was being assigned to a public agency, they expressed confidence that the land would be maximally protected. They had little or no ongoing concern about the property. Only one individual in this group expressed concern that future public policy might result in the sale of public holdings. Generally, this group tended to consist of regional or national non-profits whose mission is land protection but who do not normally retain and manage property.

Fee Simple Ownership. Ownership of the underlying fee simple has also remained fairly stable. As ownership is assumed by the second generation landowner, problems and violations appear to become more likely. All property will eventually be sold or inherited, so a low turnover at present indicates that a large number of turnovers is to be expected in the future.

Only 13% of the properties subject to easements were reported to have changed ownerships; nearly half have not changed. There were large numbers of “don’t know” and “no response” answers to the question, suggesting that this may be a difficult item for organizations to track. This difficulty was confirmed in interviews. Some felt hopeless about keeping track of it; others were more confident and found that frequent contact with the landowner was the best strategy for learning about changing ownership of the property.

***More than 2/3 of easements
allowed no public access.***

Public Access. More than two-thirds of easements allowed no public access of any kind. Various kinds of restricted access (such as only certain days of the year) were allowed in less than 10% of the cases. Unlimited access was also permitted in less than 10% of easements. Where access was allowed, low impact recreation, such as hiking, was the most frequent use (nearly 40%). Education and research were the next two most permitted activities, although they were allowed only less than half as frequently as low impact recreation. Active non-motorized recreation, such as bicycling, was allowed on only 11% of the easements.

For those easements with no public access, we investigated their primary purposes. Natural resource protection accounted for a third of easements with no access. The two agricultural purposes that allow soil tillage accounted for another third. Restricted agriculture (rangeland) followed closely.

The most frequently noted limitation of easements noted by respondents was the lack of public access. As practitioners know, whether access is allowed or not is a matter bound up with the creation and intended purposes of the easement.

Admittedly, public access is not the *sine qua non* of land protection. It is one goal among many, and each land protection tool has its own strengths and weaknesses. Public access is not suitable in many cases. However, with regard to increasing the amount of protected land available for public use, extra effort and/or funds appear necessary to negotiate public access where easements are the preferred tool.

Monitoring

As mentioned in the introduction, easements must be regularly checked to ensure that the terms of the easement are being followed. Monitoring is also the vehicle for maintaining a relationship with the landowner. A primary objective of this project was to learn the real-world picture of monitoring activities — what *is* done, how much it costs, and the obstacles to monitoring.

Choosing to Monitor. In general, monitoring and other stewardship activities were seen as a stand-alone element within an organization. It was not a common element in the discussions surrounding the creation of the easement, and the funding of these activities was not seen as a high priority in the overall budget.

Respondents depend equally upon “regular visits to the site” and “reports by neighbors” for determining if easement terms are being honored. Only slightly more than 10% depend upon another party visiting the site.

***51% of the region’s
easements are monitored.***

Some organizations used reports by neighbors as a supplement to regular monitoring. With the typical annual monitoring visit, the easement holder has very limited contact with the property in comparison to neighbors who may view the property each day and notice changes. Others used neighbor reports in lieu of monitoring. They do not visit the easement unless a report of some problem is received.

Many respondents, however, were aware that the use of neighbor reports can not substitute for monitoring. After all, it is not necessarily true that neighbors are aware of the easement and its terms, or would be willing to inform on their neighbor. Most importantly, reports will often come too late to avoid a violation. Some organizations have specifically informed neighbors about an adjoining easement property, but others avoided recruiting neighbors.

Monitoring Rates. Of the region's easements, fifty-one percent are monitored.⁸ When breaking the easements down by the type of organization holding it, 75% of easements held by non-profits were monitored, and 30% of public agency easements were monitored. Of the public agencies, a far greater percentage of its' easements were monitored than those held by state or federal agencies.

Closer examination of the nonprofit-held easements reveal that the larger land trusts are doing the best in terms of monitoring. They tend to have professional staff and sufficient financial resources to create and maintain viable easement monitoring programs. The smaller organizations with little or no staff as well as the larger national organizations tend to have somewhat lower monitoring rates. (The reasons for this will be discussed in subsequent sections.)

Seventy percent of easements held by public agency easements are not monitored. These public agencies appear to fall into two groups. The first group is comprised of public agencies which do not monitor in any respect. As one local agency staff person said, "If we monitor, we are likely to find problems and would have to take action. That is a great incentive *not* to monitor." This extreme position is not indicative of this group as a whole. Most do not monitor because of lack of resources or knowledge.

The second group acts more responsibly toward their easements, but their actions do not reach the level necessary for easement stewardship. These agencies typically have significant fee simple holdings and a land

management staff. While their usual activities are suitable for managing fee-simple lands, easements require different oversight techniques. Easements are a different property right than fee simple and specific activities are need to ensure an easement's continuation. The field staff may irregularly drive by the property, but they do not visit with the landowners, inspect the property, or document observations. Baselines rarely exist, although information on easements are sometimes included in management plans. Years may go by without any documentation on the easement. These agencies have taken a first step by assuming some responsibility, but their current actions do not constitute monitoring and may be insufficient to defend a variety of future disputes.

Easements require different oversight techniques than the management of fee simple lands.

Obstacles to Monitoring. Responses to the questionnaire can be grouped into four different categories listed in Table 4. Lack of resources was the most frequent obstacle for both public agencies and nonprofits. Lack of time, staff, or funds can all be seen as a function of funding. However, there were some notable exceptions to this. For instance, one public agency with no coordinated stewardship program has a staff person who assumed responsibility for monitoring the portion of easements which fall into her domain. There is no policy or requirement that the easements be monitored, but she recognized the need and created some resources — notably her time and recruitment of volunteers — for monitoring. The easements are not monitored every year and more documentation could be developed and maintained, but she has taken action where there is a lack of resources. Nevertheless, the unsupported, part-time efforts of a single individual cannot substitute for a systematic easement stewardship program.

For many organizations, stewardship of protected land continues to be a low priority in contrast to conserving unprotected land. This is understandable. At the current rates of loss and fragmentation, aspirations for land protection exceed time and financial resources. Even some organizations with strong stewardship programs admit they do not consider stewardship as part of the protection effort. If they can protect it today, they will worry about how to monitor it tomorrow. This attitude may work with fee simple holdings, but if easements are not monitored, their benefits can be lost. The good news of this study is that with relatively limited resources, a monitoring program can be created and maintained. An organization does not need to sacrifice its conservation program to safeguard its easements.

***For many, stewardship is a low priority
in contrast to conserving
unprotected land.***

The most surprising response, made by a fifth of responding organizations, is that they don't need to monitor because their easements are in good shape. Interviews revealed that a common reason for this belief is the landowner's identity. Where the landowner was a public agency, many were confident the public agency would not undertake actions contrary to the easement. Some organizations held an easement to public land only to prevent sale of the property. Otherwise, they were not interested in the easement itself. Neither attitude is justified because agency policies and personnel change, and it is important to remain aware of what is happening with the easement.

A few organizations, particularly the nonprofits, were confident that the easement did not need to be monitored if the land was owned by the individual who had created the easements. The nonprofit had

Table 4. Obstacles to Monitoring

Percentage of Occurrence	Obstacles to Monitoring
39%	inadequate organizational resources
32%	monitoring not important or low priority
21%	monitoring unnecessary because easements in good shape
7%	easements physically difficult to access

normally worked with the landowner to create the easement, and believed that the landowner would not act contrary to the terms of the easement. While this may be true in many cases, circumstances change. Children or lessees may assume management of the property, neighbors can trespass or dump garbage, erosion problems can begin, agreements are forgotten, and unexpected needs or events may emerge. Monitoring also creates a historical record of conditions in the event of problems with future landowners. Additionally, there is a need to maintain a relationship with the landowner. All these were reasons most organizations still monitored even if unconcerned that a violation would occur.

In interviews, most organizations noted that their stewardship programs began some years after acquiring their first easements. This was often due to an organization's lack of resources in the beginning, its desire to focus on land protection projects, and a lack of knowledge about easement stewardship. For the older organizations, their stewardship programs got underway as professional staff were hired, board members educated, and increased information became available on the topic. One nonprofit noted that they had really become aware of stewardship when considering its first fee simple acquisition; the long discussions about management responsibilities rubbed off on their easement program. Several land trusts noted a proselytizing effect of conferences and written materials on their staffs and board members about the importance of stewardship. The Land Trust Alliance played a prominent role in this regard, and other large regional organizations nearer-to-home were instructive as well. Now, with

a strong level of expertise in the region and increased access to publications and training opportunities, nonprofits and some public agencies are considering stewardship from the beginning of their easement acquisitions.

A mismatch between easement purposes and an organization's core mission will often cause monitoring to be a low priority.

Undoubtedly, conservation easements often suffer from a lack of resources. There is also an urgency about achieving new protection that can push the less glamorous tasks of monitoring into the background. But the interviews revealed that other organizational factors can be just as important. One factor is the mismatch between easement purposes and an organization's core mission. These easements were less likely to be monitored or even exist in an inventory. These easements were accepted for a variety of reasons, such as donations the organization did not want to turn away and changing missions or modes of operation. When limited organizational resources must be prioritized, these easements are a low priority.

A similar situation exists with those organizations who prefer to own land in fee simple and view conservation easements as inferior or even undesirable. They often do not explicitly seek easements, and may be forced to accept easements for political or statutory reasons. In these situations, the staff are skeptical about the usefulness of easements and the contribution of easements to the overall organizational goals. Unsurprisingly, these easements tend to be the last in line for receiving any monitoring resources.

The larger nonprofits and public agencies tend to have easement holdings that are widely dispersed. Far-flung properties increase the cost and difficulty of monitoring. For most organizations, stewardship is not part of the calculus in determining whether to accept an easement. The stewardship burden accumulates as multiple easements are secured, although any one easement 150 miles from the nearest office may not individually appear to be a significant obstacle. Partnerships with local organizations can be beneficial, and organizations with this problem tended to view this possibility favorably. For example, The Nature Conservancy is working with local organizations to transfer ownership and/or management responsibilities for a number of their holdings.

Another important obstacle that applies to both public agencies and nonprofits appears to be whether the organization conceived of itself as a land holder or as a "deal-maker." Some public agencies and nonprofits organize and fund land conservation projects, but try to avoid holding any property. These deal-makers are often organized along project lines and no one person is responsible for the few, often dispersed, properties they retain. Stewardship responsibilities fall to the person who effectuated the project although their attention is on creating new projects. Monitoring and record-keeping is ad-hoc and largely absent. If the person leaves the organization, someone else must voluntarily assume responsibility for those properties. However, because some easements will be retained, the organization should create a stewardship program and identify a responsible party for managing the program.

Many organizations do not include stewardship as a factor in accepting an easement.

Monitoring Tasks. Questionnaire respondents indicated what monitoring tasks had been performed for each easement. A long list of possible tasks was offered. Unsurprisingly, the vast majority of organizations tended to perform the same tasks for all their easements regardless of the type of easement. Table 5 shows the percentages of monitoring tasks performed on the easements which are actively monitored. For example, of the monitored easements, 94% have a written report prepared.

The four tasks most commonly performed were preparing a written report, walking the property, comparison to the baseline documentation, and on-site photography. The ones least utilized were vegetation, wildlife and water quality measurements. When

Table 5. Monitoring Tasks*

Percentage	Monitoring Tasks
94%	preparation of written report
90%	walking the property
90%	comparison to baseline data
66%	on-site photographs
64%	narrative description
52%	monitoring report sent to owner
34%	aerial photographs
29%	driving by the property
27%	other
13%	crop measurements
7%	vegetation measurements
6%	wildlife measurements
5%	monitoring report sent to another individual or organization
1%	water quality measurements
1%	soil measurements

**These percentages are based upon the tasks employed on the easements which are monitored.*

combined, these three tasks were used on only 22 easements. In contrast, the most frequently used tasks were used on nearly all of the easements monitored.

Another task deserves particular mention. Several organizations indicated “driving by the property” as the sole monitoring task performed. Interviews revealed only a handful of easements that could responsibly be monitored by using this task. To be monitored in this way, an easement must be small in acreage or at least fully visible from the road. Further, the purposes of the easement would have to be very limited and few uses prohibited if a passerby is to determine whether any problems exist. Even in the few such cases that exist, it may still be worth visiting the property to maintain the relationship with the landowner.

Overall, the questionnaire data and interviews reveal that the region’s monitoring practices are oriented toward identifying and preventing gross violations as opposed to assessing and maintaining the underlying conservation values. Consider, for example, the 91 easements whose primary purpose is natural resource protection. Of those which are monitored, vegetation, wildlife or water quality measurements were used only 22 times. On the agricultural easements, only one nonprofit organization made crop measurements or required the removal of detrimental weeds. In general, monitoring practices are aimed at finding gross violations, such as construction, disallowed uses, earth moving, and vegetation removal. The common assumption is that if the gross violations are prevented, the resources protected by the easement will remain intact. However, off-site activities can impact these resources, so gradual declines may be missed if unmonitored.

Monitoring Time and Costs. Easement holders had some difficulty answering the questions about the time and funds involved in monitoring. More than one quarter could not estimate the time spent monitoring, or the costs. Many have never bothered to make a very exact calculation. Unless the organization holds enough easements to justify a half- or full-time stewardship person, the work is folded into existing duties and not easily

divisible. Further, the indirect costs of monitoring are not easily identified. Indirect costs are the infrastructure necessary to perform organizational tasks, and they tend to be rather invisible. For instance, a phone and filing cabinet are necessary to maintain a monitoring program, and although they cost money, it is hard to discern their proportional use for stewardship activities.

Most local land trusts with stewardship programs do not find monitoring to be an overwhelming responsibility or one which consumed significant resources.

Nevertheless, most local land trusts with stewardship programs do not find monitoring to be an overwhelming responsibility or one which consumed significant resources. Oftentimes, the monitoring program did not get underway until staff were hired. Then there would be some time (from a few months to a couple of years) to establish a program. This included deciding how they wanted to monitor (e.g., using volunteers, designating staff), creating the checklists and forms, preparing baselines (if not already completed), going through a cycle or two of monitoring, and final adjustments. Although this did constitute a considerable effort, once a system was created and responsibility for it assumed, it functioned efficiently.

For those organizations who currently hold easements but do not have a stewardship program, the initial investment will vary. For example, if no baseline documents have been prepared, the costs will be much greater. If baselines exist, then the primary costs will be designing the program and implementing it, creating record-keeping systems, recruiting and training volunteers (if applicable), and starting the monitoring.

The actual time spent monitoring is modest, even when the pre-arrangements (usually a phone call to make an appointment) and post activities (usually, report writing and updating files) are included. The average time spent monitoring each easement is 10 hours per year, although in interviews, staff would often mention “one day per easement.” They also consistently noted that that the time would usually be spread out over a few days or even weeks, as they exchanged phone calls with the landowner, reviewed the easement document, physically visited the site, and memorialized the visit for their records.

We collected information about the annual costs for monitoring (see Table 6). When this is calculated for each easement, the average cost is affordable: \$190 per easement, although there was a range of between \$10 and \$10,000 for easements that require differing levels of work. These costs can include staff time, photographic film and developing, and supplies to document the monitoring. The costs of creating baseline documentation is separate. At least one organization plans to use aerial photography each year which will increase the annual expenditures. The easements can cost \$10,000 per year are for several large easements for endangered species mitigation. They involve extensive detailed wildlife measurement tasks.

The average time spent monitoring each easement is 10 hours per year.

We also calculated another average: the “preferred” average. It is the average based upon the monitoring costs of those organizations with established and regular monitoring activities. For the planning purposes of individual organizations, it is probably a more realistic figure for a typical easement. It assumes that the monitoring costs for currently unmonitored easements will be similar to that incurred by nonprofit organizations.⁹ Actual costs may vary due to a variety of factors, such as

the proportion of easements that require detailed and expensive measurements, and dispersion of easement locations. Also, organizational differences can affect the costs, such as economies of scale enjoyed by larger organizations or public agency variables.¹⁰

Table 6. Annual Monitoring Costs

	Annual Costs Per Easement	
	Typical Cost	Range of Cost (low to high)
average calculation	190.00*	147.00 – 1,033.00
maximum calculation	10,000.00	500.00 – 10,000.00
minimum calculation	10.00	10.00 – 100.00
“preferred” average	267.00	n/a

**The data included one organization who listed \$10,000 as the typical monitoring cost, which produced an average of \$925. Therefore, we calculated the average typical cost without this outlier.*

Collectively, organizations are currently investing \$84,700 in monitoring easements each year. This is based on what each claimed its typical monitoring expense was per year; the preferred average was used for those which had not indicated a typical cost. Since half of easements are not monitored, we can estimate that this same amount would be required each year. This produces a total of \$169,400 that would ideally be expended annually for monitoring for the current number of easements.

The grand total is conservative due to the limitations already discussed about the preferred average, as well as the existence of unidentified easements. Further, the figure will continue to grow as new easements are created. Additional research could provide a more precise estimation of those easements likely to have above-average costs. Nevertheless, this figure provides a basis for planning by the region and individual organizations.

The funds to pay for monitoring comes from several different sources. General funds were used in half of the cases, and a third came from endowments. Special appropriations and donations were used in a small number of cases. Most organizations report that they try to cover these annual costs from their general budget rather than dipping into their endowments.

Staff or Volunteer Monitors? Paid staff were involved in the actual monitoring nearly half of the time, but volunteers were used by a quarter of the organizations. With only one exception, public agencies did not use volunteers for monitoring. The California Coastal Conservancy has used a volunteer several different years to monitor some of its easements, primarily those created by Coastal Commission’s Offers to Dedicate. Several public agencies who do not monitor expressed an interest in using volunteers.

Interviews revealed considerable debate about the comparative advantages of using staff and volunteers for monitoring. First, it was clear that staff will always be necessary. No monitoring program consisted entirely of volunteers, and there was wide variation in the extent to which volunteers were used for monitoring. It is important to note that non-profit land trusts with no staff would, of necessity, rely upon all volunteers. However, in this study, such organizations either did not monitor or did not complete the questionnaire.

No monitoring program consisted entirely of volunteers — some staff involvement is always necessary.

For those organizations which depended on volunteers to the maximum extent, staff coordinated the volunteers and managed any problems and violations discovered. For example, Napa County Land Trust has a long history of using volunteers and select board members to monitor its easements. The volunteers visit the site and often discuss their observations with the property owner. The board members and the Executive Director coordinate the monitoring, and the Executive Director follows up on any problems discovered.

Volunteers can be involved in a more limited way. Volunteers can accompany staff and assist in monitoring, or they can perform a limited set of tasks. For example, volunteers with the Peninsula Open Space Trust visit easement properties and record their observations and measurements. However, they do not interact with the landowners on any substantive issues. Staff coordinate all the monitoring activities, analyze the information collected and prepare reports, revisit the site if necessary, interact with landowners, and address all problems.

None of the organizations interviewed used volunteers for efficiency's sake. Most found that more staff time was consumed in organizing volunteers than would be involved in having staff perform all the monitoring. For example, one organization with 12 easements estimated that 2-3 weeks of staff time would be needed to monitor their easements, but that using volunteers spread out the time to several months.

For these organizations, there were other important reasons for involving volunteers. One is that monitoring is seen as a part of organizational development. It is an opportunity for members to be directly involved in the organization's activities. Members can get out on the protected landscapes and experience what the organization is trying to accomplish. These volunteers are enthusiastic and more likely to talk about their monitoring experiences with friends, who, in turn, often become members of the organization.

Another reason cited for using volunteers is that this increases the public's and landowner's perception of the "community nature" of the land trust. It

was important that the land trust have a large volunteer involvement to reinforce the identity of the land trust as not being just a handful of individuals but rather a community-owned and community-run institution.

Some organizations think staff can best maintain the landowner relationship and provide quality and consistency in monitoring.

Some organizations took a much different approach and did not use volunteers at all. There appear to be several rationales for this choice. The first and most dominant one is that monitoring by these organizations was seen as the primary vehicle for maintaining a relationship with the landowner. These organizations believe it important that staff be the ones meeting with the landowner and discussing the property. This relationship is critical in avoiding or minimizing problems.

Another motive for using staff concerns the quality and consistency of the monitoring. If one person is monitoring all easements over a number of years, s/he will notice more subtle changes in the property and will provide more consistency in measurements and interpretations. Some volunteer programs attempt to achieve this result by assigning each volunteer to the same easements year after year. Of course, this increases the coordination tasks. Monitoring some easements may require specialized knowledge or expertise which staff can provide.

Third, there was considerable agreement that staff tended to take a more balanced approach to monitoring. Volunteers were more likely to be "zealous" in dealing with landowners and activities on the property. Often times, monitors are faced with circumstances that require interpretation and must be viewed as part of a larger picture of easements, land protection and the organization's goals. Volunteers can be more inflexible and likely to

find violations in circumstances staff would find questionable. A few other reasons also surfaced for using staff. At least one nonprofit was convinced that their landowners would not accept volunteer monitors. A few also noted that with a limited number of easements, it wasn't worthwhile to recruit and train volunteer monitors.

Training. The two most common methods for training monitors were in-house training by staff (23%) and reading of written materials (22%). Training at conferences and workshops and college/university training were both under 15%. In the interviews, reading materials and attending conferences figured prominently as the most useful for creating a stewardship program. Local contacts were also useful in a "sounding-board" capacity.

Staff were the most likely to receive training at conferences and by reading. Unless an organization had a pre-existing monitoring program, staff were usually required to figure out how to monitor based on information gathered at conferences and by reading.

Volunteers for land trusts were usually trained by staff. Of those land trusts who have significant number of volunteers, they have either annual or periodic training events. For example, one organization has an annual training day that all their volunteers attend. Staff provide information and then the entire group monitors a property and discuss their findings. Another organizes training sessions as the need arises. Additionally, more training also occurs informally by pairing inexperienced and experienced volunteers. Other programs team staff and volunteers which provides training on an individual basis.

What the organization is monitoring for determines the skills needed in monitors. In most cases, staff thought it is important not to exaggerate the skills or knowledge needed to perform the monitoring tasks. The main skills needed are map-reading and how to look at the land. Common sense is also important in understanding the activities taking place on the land. However, it is clear that greater technical skills and knowledge

would be needed if more sophisticated monitoring tasks were used, such as vegetation or wildlife measurements or employing global positioning technologies.

***40% of the Bay Area easements
do not have baselines.***

A few nonprofits use board members in monitoring tasks. However, in most interviews, the knowledge of governing bodies in both public agencies and nonprofits was rated low to intermediate regarding easements, stewardship, and the role of the board in relation to these things. Governing bodies could benefit from training opportunities about stewardship, especially in those organizations which lack a monitoring program or have only skeletal one.

Baseline Documentation. Baseline documentation is an organized collection of materials that depict the characteristics and conditions of the easement property at the time the easement is created. Ideally, the baseline is the basis for comparison for each monitoring trip, and it can be used in enforcement actions as evidence of change.

Creating the baseline document is generally the most time-consuming and expensive part of stewardship for most easements. Forty percent of the Bay Area easements do not have baselines. This breaks down quite differently by organizational type. The nonprofit land trusts have been the most diligent and only 28% of their easements do not have baselines. Local public agencies have not prepared baselines for 42% of their easements, and 91% of state and federal agency easements do not have baseline documents. Some public agencies have "management plans" for easements which they view as a substitute. However, it is unclear if the information included in a management plan is comparable to that collected for a baseline or sufficient for easement defense.

The “preferred” average cost of a baseline is \$1,731, but the cost can range up to \$30,000.

In a third of the cases, organizations use their own staff to prepare the baselines; consultants are used nearly 20% of the time. Other alternatives include preparation by the fee simple owner, staff of another involved organization, consultant paid by the fee simple owner or by another involved organization, and volunteers. These options were used approximately 5% each. Some organizations combined several different strategies to produce baselines; others used different alternatives for different cases. For instance, easements created by regulation may have funds specifically for a consultant to prepare the baseline.

Baselines are expensive documents to create, and as we saw with monitoring costs, organizations have a difficult time estimating the full costs. The median cost was \$900 but the preferred average cost was \$1,731. The difference in the two reflects the increased cost of more recently prepared baselines and numerous inexpensive baselines. The range of costs varied from \$1 to \$30,000.

There appeared to be significant variation in the detail of the baselines for two reasons. The first is the baseline content is somewhat dependent upon the purpose of the easement and the conservation values it was designed to protect. Therefore, easements for protecting biological resources, such as wildlife or vegetation communities, have tended to be much more extensive than those for agricultural uses.

Second, baselines have evolved as professional understanding of easement stewardship has increased. The earlier baselines were far simpler documents than more recent ones. This is due to an evolving appreciation

of, and desire for, a well-documented baseline. Interviews showed that staff rely upon baselines for annual monitoring tasks but they are also trying to prepare for enforcing easement terms when problems arise. Interestingly, many organizations that provide landowners with a full copy of the baseline document believe it increases the landowner’s appreciation for the property. Further, they found that landowners will refer to the baseline in contemplating changes, and that some view the baseline as a sort of management guide.

Baseline documentation has evolved as professional understanding of easement stewardship has increased.

On average, baseline preparation lags 3 years behind easement creation. That is, for each easement created, the average time before the baseline document is prepared is 3 years, although for some early easements, there was a delay of up to 12 years. The lag time is partially a manifestation on the low priority put on stewardship in comparison to new land protection, and is also due to a lack of financial resources.

Trying to “catch up” on baseline preparation usually coincides with increases in staffing and more information available. This is difficult to do and it can cause conflict with the landowner. Such a baseline cannot fully reflect the condition of the property at the time of easement creation, but for perpetual easements, it will have a benchmark value.

***On average, baseline preparation
lags 3 years behind easement
creation.***

The majority of organizations reported that they relied upon baselines for monitoring, but for those who didn't, the primary reason was that the baseline had insufficient data to be useful. Other explanations included a lack of confidence in the quality of the data, and that the baseline was lost or difficult to obtain.

Enforcing Easement Terms

Enforcement refers to the fact that circumstances may arise requiring the easement holder to force the landowner to comply with the terms of an easement. Those circumstances can range from potential problems the easement holder may identify that, if unchecked, could directly challenge the easement terms, to clear violations that are discovered.

An organization can respond to problems or violations in a variety of ways. They can negotiate with the landowner to rectify the situation. They can amend the easement (although an organization should be prudent in using this option). They can engage professional mediation services, and ultimately, they can litigate.

Not every easement will have problems. However, in the care of perpetual easements, fee simple owners will change many times. Economic conditions and social pressures will change. Clearly, violations are inevitable on a large proportion of easements.

Violation Rates. Forty-three, or 14%, of the region's easements have had some violation so far. Nonprofit land trusts had identified nearly

2/3 of the problems, and local public agencies had found nearly 1/3. State and federal public agencies had fewer than 10%. A variety of explanations could account for these differences, but among the reasons, the rate of monitoring must be included. Some percentage of violations will occur, and those organizations who are monitoring are more likely to discover the problems.

The extent of violations needs to be put in some context. First, 14% is significant when you consider that only 51% of the easements are being monitored. Presumably, if more easements were being monitored, a larger number of problems would have been found. Second, three quarters of the region's easements are less than a decade old, which increases the significance of the 14% figure.

Third, experience with easements around the country suggest that problems are more likely to occur with second generation landowners. As discussed earlier, ownership of the underlying fee simple has remained stable in the region, with only 13% definitely changing hands. Further changes of ownership in the future should be expected to increase the number of violations.

***14% of the region's easements
have had some violation.***

As awareness of easement stewardship has grown and several dramatic litigation cases have occurred in the region and nation, easement holders have increasingly taken actions to prevent future violations. A third of those acting have increased their contact with landowners. Others have increased both the frequency and level of detail in their monitoring. A few have also modified their model easement to reflect evolving professional standards. At least one organization has explicitly incorporated

stewardship issues into their easement template and negotiations with landowners.

Types of Violations. There is a wide diversity in the types of individual violations that have occurred, which is to be expected given different types of easements and easement terms. What is a violation in one easement may not affect another easement at all. Differences are also due to organizational differences. What one organization considers a problem or violation another organization may deem insignificant. Finally, it must be emphasized that if all easements were being monitored, the proportions and types of violations would probably be radically different. With these caveats in mind, violations were registered on more than 15 different issues. In order of frequency, the violations appear on Table 7.

An easement can have more than one problem at a time, or problems may arise at different times in the life of the easement. Nearly 40% of the easements with problems have had multiple problems. This can be due to a landowner not understanding or disregarding easement terms. A cluster of problems is also more likely when they are essentially about land management, such as overstocking cattle, erosion problems or spread of exotic species. Such problems are common land management issues and require persistence in addressing.

The average expense for resolving a violation was \$2,500, although one case exceeded \$30,000.

Enforcement Expenses. There was also a considerable variation in the expense and time the violations consumed. The maximum expense exceeded \$30,000 for a protracted legal action (which did

Table 7. Types and Frequency of Violations

Frequency	Types of Violations
9	exotic species proliferation
6	construction of buildings or structures
6	overstocking cattle
5	erosion
5	boundary relocation, reconfiguration
4	construction or poor management of roads
4	moving of earth (e.g., cut and fill)
4	garbage dumping
4	amendments for unanticipated circumstances
4	harvest of resources
3	water quality degradation
3	clearing vegetation
3	burning, applying pesticides or other disallowed activities
2	disallowed or excessive harvest of resources
2	trespass
1	exceeding building envelopes
1	did not seek required permission for action

**None of these activities are illegal per se, but they are violations if prohibited in the easement negotiated between landowner and organization.*

not go to court), but the average expense was \$2,500. A number of violations were quite easy to rectify through negotiation with the landowner, and the average staff time spent on a problem was 30 hours. However, if legal action is necessary, the time spent by staff and a governing body can be hundreds of hours.

Resolution. At the time of this report, half of all discovered violations have been resolved. A few are still being negotiated. Most interesting, perhaps, is that the problem was either unresolved or partially resolved in more than a third of the cases. This is especially true of the issues

concerning land management. These are often long-term problems rooted in personal and social beliefs about land use. The Marin Agricultural Land Trust, for example, finds that some types of problems in easement stewardship require a long-term approach to working with the landowner to correct or improve problems. These problems are not so immediate a threat to the conservation values as an unpermitted residential development. They are, rather, problems such as the spread of weeds that degrade agricultural productivity and/or threaten native vegetation, or water management around cattle watering areas. As one staff person stated “It is a process of incremental progress over time. If you went out and found several problems, and said they all had to be corrected at once, it would never happen.” As a consequence, they may work with a landowner for several years to remedy a situation or at least prevent it from worsening.

A few easement violations were unresolved and likely to remain so. These problems can be chronic. For example, one landowner is so hostile that the easement holder could not effectively access the property. Due to the particulars of the situations and the parties involved, the easement holder is hoping to remedy the situation when a new individual assumes ownership. However, such situations have caused at least one organization to include stewardship as an explicit element in its acquisition criteria.

General Easement Issues and Concerns about the Future

The interviews included a series of open-ended questions about easements in general and future concerns.

Strengths and Limitations. Generally, the individuals interviewed were positive about easements. They saw many benefits to easements, including lower purchase prices, and savings on maintenance and other expenses in comparison to fee simple. Further, many noted that keeping land in private ownership is the best strategy for protecting working landscapes. Several organizations interviewed were considering the creation of an easement program, and a majority of current easement holders expected their programs to grow. Many organizations have good

stewardship programs, and their governing bodies are committed to protecting their easements. Nearly all respondents also believed that easements would continue to be a strong and viable land protection tool in the future — if stewardship issues were addressed.

The typical limitations of easements were noted: the lack of public access, and that easements may not be suitable for protecting some resources. Respondents also noted the issue of working with landowners. An easement holder must address and acknowledge landowner issues, and face a future of maintaining that relationship which requires an organizational commitment. One noted that easements prevent an organization from being as proactive as it would prefer because it must accept what the landowner is willing to give or sell. Most interestingly, a few respondents noted that easements have much less public visibility than fee simple holdings of parks and preserves. This can increase the difficulty of communicating accomplishments to elected officials and the public.

***Nearly all believed that easements
would continue to be a strong and
viable land protection tool in the future.***

Lack of Stewardship. This caveat about stewardship issues was undeniably the greatest concern of those interviewed. Many were emphatic that easements are only as good as the stewardship an organization exercises. They were concerned about a lack of monitoring and saw this is as the “Achilles heel” of easements.

Some organizations who do monitor were concerned that the failure of other organizations to steward their easements could compromise their own easements and the use of easements as a land protection tool. Even a few organizations who do not typically retain easements in the long-term were

concerned about transferring an easement to another organization because of the lack of monitoring.

Respondents recognized that there are obstacles and reasons for the absence or weaknesses of stewardship activities. First, widespread usage of easements is only a few decades old, and in California, very few easements existed before 1979. The awareness of the stewardship obligations of easements has evolved, but cognizance and knowledge is far from ubiquitous. Organizations struggle with competing priorities, and some are crippled by a lack of resources. Nevertheless, there was a concern that if these conditions linger, the future of easements could be compromised.

***The future viability of easements
could benefit from more
informed governing bodies.***

Many organizations expressed a willingness to consider the sharing of resources to meet a communal interest in protecting easements. For instance, those organizations who do not have monitoring programs were enthusiastic about the creation of regional resources for monitoring. Some organizations with stewardship programs would consider monitoring nearby easements with particular conservation values under some circumstances. A variety of other possibilities were suggested, but the key point is that there is an interest in easement stewardship that extends beyond the confines of individual organizations.

Integrating Stewardship and Increasing Knowledge. Several of those interviewed noted that few organizations have succeeded in integrating stewardship into their entire land protection program. They saw this as a necessary step to ensure that stewardship resources are created and that the easements are as sound and enduring as possible. It is essential that stewardship considerations inform easement terms and negotiations. This

integration can increase the likelihood that the easement purposes are achieved. Stewardship also needs to be considered in financial management, staffing decisions, fundraising, and outreach efforts.

Although often overlooked, the governing body has a role to play in stewardship. Unfortunately, governing bodies of both public agencies and nonprofits were described as having a marked lack of knowledge about easements and stewardship. Some respondents were not excessively worried about this. They see the role of the governing body only as one of making general policy and fundraising. However, most were concerned. Admittedly the staff carries the responsibility for managing easements, but governing boards are responsible for policymaking, supporting the staff's implementation, and for making decisions such as enforcing the terms of an easement. The future viability of easements could benefit from more informed governing bodies.

Long Term Easement Management and Defense. Two issues with regard to holding easements in perpetuity deserve serious considerations. The first is the average endowment level. In general, endowments must be increased to ensure that resources are available for monitoring and defending easements in the future. Although many organizations pay for monitoring from their current general budget, there is no certainty that such funds can be depended upon in the future. Endowment levels sufficient to fully maintain easements are essential. If organizations fail to develop adequate endowments, they are undermining the effort and funds invested in the lands they have successfully protected. Further, organizations should consider identifying a recipient and a developing a general policy for easement disposal in the event the organization fails.

***Adequate record-keeping
is critical for defending
easements in the future.***

Another long-term issue concerns record-keeping. Even for many of those organizations who do monitor, the level of record-keeping needs to improve. This goes beyond the issue of baseline documentation. Many organizations did not have a set of records that were maintained at a separate location or unmodified in any way. No organization appears to have adopted a records policy. (These last two tasks can be essential in getting written records introduced as evidence in a legal proceeding.) Conversations and monitoring visits were not always memorialized. All this work is time consuming, but respondents noted its importance for defending easements in the future.

Inadequate Preparation for Second Generation Landowners. Few organizations are tracking or preparing for the turnover of their easement properties. Easement violations are more likely to begin after ownership changes because the new landowner may be unaware of, not understand, or be hostile to the easement. Two points of possible intervention exist. The first is that the organization can increase the likelihood of learning about sales or transfers of land, and have an opportunity to inform any potential landowners about the easement. The second is to work with the new landowners after the property is sold or transferred to ensure the owners understand the purpose and terms of the easement.

Some respondents noted strategies employed around the country to respond to this situation. At a minimum, changes in ownership are worth inserting as a discussion point with the landowner during monitoring visits. The organization should prepare a plan for how to proceed when there is a sale. A packet of information could be developed to give out when meeting with the new landowner. Some groups have tried to

familiarize area realtors with easements to increase the likelihood that the realtor will discuss the easement with potential landowners or notify the organization that the property is for sale. The larger national and state nonprofits and public agencies seemed to have more difficulty in being aware of ownership changes. Monitoring their properties would be a step forward, and they could also work with local organizations to keep informed about potential sales. Whatever the organization decides to do, the expected turnover of the region's easement properties could have far-ranging consequences for the stability of the region's easements.

***To responsibly hold and manage
easements, nonprofits need a stable
and large basis of support.***

Viable Nonprofits. A number of nonprofits were concerned about the creation of too many other land trusts. Each organization requires an adequate support base and financial resources to have a solvent and active organization. They worry that too many small trusts are being created and merger opportunities missed. This fragments the available resources for land protection and stewardship, and it increases competition between the organizations. This could result in a reduced level of quality of easements and stewardship. A very small land trust with no staff and a limited base of support is more likely to become inactive or defunct. This jeopardizes the future protection of any easements it owns.

These concerns are supported by the results of this study. Generally, the smallest land trusts did not consistently monitor their easements. At least one knew that it held easements, but could not identify them. The results also document that stewardship programs are created and maintained when organizations have sufficient financial resources to hire professional staff. To responsibly hold and manage easements, nonprofits need a stable and

sufficiently large basis of support. This capacity appears more likely to result with large local land trusts.

Strengthening Public Agency Stewardship. A number of respondents raised specific concerns about public agencies. They thought many public agencies did not steward their easements due to a lack of resources and other organizational impediments. They were concerned that violations could arise which would cast a shadow over easements as a whole. Second, historically, public agencies have been viewed as the superior holder of protected land. Land conveyed to a federal agency was viewed as the best protection possible. A belief existed that public lands would never be sold. However, recent years have shown this is not true, and further, that nonprofits may provide at least an equivalent level of management.

This study confirms that easements pose particular problems for public agencies. First, a weakness of easements is that many do not provide public access. Yet most agencies are under an obligation to provide some level of access on all public lands. Second, public land managers are less accustomed to the diminished control available with easements. These factors, in combination with regulatory requirements to accept easements under certain programs, gives easements a “second-class” standing within many agencies. Third, the chronic lack of funding for management and maintenance will frequently result in easement stewardship being ignored. Fourth, even when monitoring occurs, the public agency land managers can lack an appreciation for the difference between monitoring an easement and managing their fee simple lands. As one agency official described, the irregular occasions one of their rangers visits a property, he drives to the property, unannounced and without permission, and expects to do whatever he wants. The ranger is accustomed to the access and control he has over fee simple holdings, but this behavior and attitude is not acceptable to many landowners.

Training and education can correct some of these problems, but respondents worry that the chronic lack of funding and low priority of stewardship will jeopardize not only the conservation values of individual easements, but may undermine the use of easements generally.

***There are difference between monitoring
an easement and managing fee simple lands.***

The Value of Easements. Finally, there were mixed sentiments about what easements can accomplish in the long-term. Some felt that easements were only capable of preventing the development of a piece of land, and that resource protection or improvement is not truly possible. While the property may not be paved, there is ultimately little to prevent the landowner from destroying habitat. If the conservation values are of concern, then some respondents are convinced that protection other than by easement is needed.

Another larger group were more optimistic. They felt that easements could protect resources, and that stopping development allows the natural system to maintain itself. Further, they saw easements as an important expression of a landowner’s attitude toward land use and management and that this could result in general improvements and restoration possibilities. However, some noted that the second generation landowner could trump any such progress.

Regardless of these divergent views, easements are here to stay. In the Bay Area during the 1990s, at least half of new land protection has relied on easements. Many organizations expected their easement programs to grow, and new programs are being initiated. Consequently, we need to take the necessary steps to assist easement holders in assuming their stewardship responsibilities and protecting the conservation values of their easements.

RECOMMENDATIONS

Based on the findings of the study, we were able to formulate 12 recommendations. Half of these are directed to individual organizations. The other half are aimed to the land conservation community, including the public and private funding community.

Recommendations for Individual Organizations:

1 Develop and Improve Easement Stewardship Programs

Even organizations that are not monitoring are aware they should be. With increased emphasis and heightened visibility of this issue, it is hoped that monitoring programs will be developed where they are presently absent. This recommendation is equally relevant to those organizations who have a partial program. Perhaps they visit the property each year, but have never created baseline documents, or they do not memorialize each monitoring event. Or there may be difficulties in monitoring specific resources or land uses, such as riparian areas or agricultural uses.

Once the decision is made to create a program, these organizations will need resources to draw on. Books, articles, workshops, informal guidance, and consulting services can be utilized. There is a need for materials and training opportunities geared to two different audiences. One should be for governing bodies and focused on organizational policy and funding. Another should be oriented to staff and concern implementation and administration.

2 Maintain High Standards for Easements and Monitoring Programs

All monitoring and enforcement activities center upon the easement document. It should inform any reader about the purpose of the easement and guide monitoring activities. Therefore, it is critical that clear, high

quality, and enduring easements be executed with sound conservation values. Similarly, consideration of monitoring possibilities and realities should inform the drafting of easements. The processes of drafting easements and creating monitoring guidelines should inform one another.

High standards are necessary for both processes — not only for the durability of one's own easements and organization, but for the health of land conservation generally. If one organization executes poorly crafted, ill-defined or substantively weak easement agreements, this can lower the standard for all easements and organizations in a region. Such situations unavoidably impact monitoring and the legal viability of the easement. Maintaining high standards also means that organizations cannot relinquish their monitoring duties or look to landowners, neighbors or recreationists to perform the monitoring without the organization's involvement.

The right to buy and own land in fee simple is based on centuries of law and experience, and is unlikely to change in any substantial way. Conservation easements are not like fee simple. They are rapidly evolving, and are dependent upon public policy and legal support. Without care and attention, conservation easements could become so weakened or capable of dissolution, that, as a tool, it could be lost to conservationists. If this happens now, near the beginning, it would be unfortunate. If inaction now brings this result in the future — after widespread reliance on conservation easements — the result will be a major disaster.

3 Prepare for Violations

Problems and violations are inevitable. Even those who ignore this certainty and choose not to monitor may still have violations come to their attention through neighboring landowners or casual observers. Not correcting a problem sets a precedent for an organization. Other landowners will want to be excused from their actions too. Further, the failure of one organization or agency to uphold easement terms could have ramifications for easements elsewhere in the region and nation.

Therefore, organizations must prepare to enforce violations. First, this fact should be discussed and some general plan developed. For instance, at what point should a problem be brought to the attention of the full governing body? Who will take the lead in dealing with the landowner? Does the organization want to utilize mediation services? The purpose of this discussion is not to foresee every eventuality or develop a rigid protocol — that is not possible or even productive. The purpose is to create a level of awareness and preparedness so that the organization is not paralyzed with inaction or internal confusion when confronted with a problem or violation. When a problem arises, there should be as decisive and unified an approach as possible.

The second preparatory task is to create detailed baseline documentation at the time each easement is created. The baseline is the best evidence to demonstrate what changes have occurred to the easement property. Third, an organization needs a clear and consistent record-keeping system which encompasses all the correspondence, monitoring, and other activities relevant to each easement. The record-keeping system must be sufficient to be admitted into evidence if an enforcement action ever results in litigation.

Another critical task is the creation of endowment. The endowment can fund all elements of a stewardship program, or it can exist explicitly for enforcement activities. A majority of non-profit organizations prefer a general endowment. Such a general endowment can be difficult,

impossible or risky for a public agency to create. Strategies for addressing obstacle could be created. However, in the meantime, public agencies should insist on dedicated endowments whenever possible. Regardless of how the endowment is structured, it is imperative that it be created.

4 Partner with Others to Fulfill Stewardship Obligations

This study has documented the costs, staffing needs and other resources that Bay Area easement holders expend on monitoring and enforcement activities. Financially, monitoring is a prudent investment compared to the costs of protracted enforcement and litigation. For example, the cost of one baseline is less than the cost of three hours on the phone with many attorneys. We have seen that the smaller nonprofit organizations and public agencies are the ones most likely to *not* monitor. This was often attributed to lack of resources and other organizational priorities. Further, it presents a double threat, because smaller organizations can least afford enforcement actions.

These organizations and agencies should consider partnering with others to fulfill some of their obligations. This can achieve some economies of scale and benefit both parties. One obvious option is to contract with another organization who has an existing monitoring program. The monitoring organization could earn some additional funds to pay for its own monitoring activities. Resources other than cash could be exchanged, too.

Partnering would never excuse the easement holder from reviewing the monitoring activities and taking the necessary enforcement actions. It also deters the easement holder from maintaining a personal relationship with the landowner and increasing its program identity. However, the positive effect of having the property monitored and exhibiting interest in the easement (even if from afar) is preferable to complete inattention in most cases.

5 Support Regional Efforts to Improve Easement Stewardship

Many easement holders have expressed concern that the absence or weakness of stewardship activities may harm existing programs. This report has suggested many obstacles to strong stewardship programs can be addressed regionally. Therefore, as the San Francisco Bay Area organizations work to conceptualize, develop and fund these regional resources, it is important that as many organizations as possible participate in and support these efforts.

Such organizations will benefit directly by increased knowledge, training opportunities, and access to additional resources. They will also benefit indirectly through the improved management of easements which will decrease the likelihood of serious violations that can create harmful precedents.

Recommendations for the Land Conservation Community:

6 Increase Funding for Training and Organizational Development

Small grants should be available for training opportunities and building institutional capacity. Even some organizations with stewardship programs expressed a need for detailed training on particular topics, such as monitoring specific resources or land uses on their easements (i.e., riparian areas or agricultural practices). Some training of this sort could be useful regionally, but there is also a need for working with staff on their individual properties. Small funding grants could be useful to used to facilitate provision of such expertise and guidance to the easement holders.

Additionally, organizations faced a variety of capacity issues. Many smaller non-profits, for instance, have a need for organizational development. The larger non-profit can attract greater resources to hire staff, coordinate volunteers, and address problems that arise. They are able

to secure more easements that can justify dedicated stewardship staff and more monitoring resources. Managing multiple easements provides experience for staff and the board so that they become better managers. It would make sense to assist land trusts in evaluating their organization, and either create strategies for growing or merging with another land trust.

On the other hand, easements tended to be a lower priority for public agencies. Records of the simplest kind were often not maintained, and information about easement holdings were not communicated beyond the individual responsible for the acquisition. Although the agencies often have field staff, the field staff are too overburdened with other duties, the easements are often widespread, and the staff lacked knowledge about dealing with easements and landowners.

Resolving the organizational obstacles to monitoring by public agencies is highly recommended for another reason. Traditionally, many non-profits looked to public agencies to assume the long-term holding and management of fee simple lands successfully protected by the nonprofit land trust. There has been a similar desire for agencies to assume ownership of easements, but, based on this survey, public agencies are currently ill-equipped to do so.

7 Encourage Documentation and Monitoring

Non-profits and agencies tend to concentrate on developing the funds and agreements to achieve new land protection, and then move on to the next deal. Developing baseline documentation and other records are often a low priority: some organizations have subsequently taken years to “catch up” on these tasks, and sometimes the documents are never developed.

Funders have an opportunity to influence this situation. Grants could be available, perhaps on a matching basis, to create the necessary documentation for easements. The importance of stewardship could also be reinforced if funding proposals required an explanation of how the easement will be monitored and the necessary documentation developed.

8 Create Incentives for Cooperative Efforts

Stewardship does not have to be an overwhelming responsibility or one that an organization cannot work with others to fulfill. Funding should be available to create cooperative ventures between any configuration of non-profits and public agencies. For instance, partnering relationships should be facilitated between those agencies and organizations unable to monitor and those with sufficient capacity. Similarly, partnerships could be organized with other entities capable of contributing to stewardship programs, such as developing baseline documentation or mediating disputes. In-kind support could also be used to trade services. For example, perhaps a land trust with a monitoring program needs vegetation surveys; it could offer monitoring services to a public agency in exchange for the agency's botanist performing the surveys. Such cooperative ventures focused on stewardship would have joint and regional benefits.

9 Research Options for Pooled Endowment

Unfortunately, some organizations are not going to have the resources or the support necessary to monitor their easements. This is especially true for public agencies who often have extensive and widely distributed land holdings with very limited funds for management. Further, the use of their funds may be constrained by law, or they may be overburdened with mandates.

To provide protection for the land and resources conserved by the easement, as well as the tool itself, we recommend that options for a regional stewardship endowment be developed. The options should consider funding strategies, how organizations would access the endowment, and staffing.

The critical point is to recognize our collective stake in the health of the region's easements, and to develop resources to compensate for those areas of weakness.

10 Assess Easements Held by Non-Traditional Public Agencies and Organizations

Numerous local, federal and state agencies are requiring easements as part of land use approvals or other regulatory programs. These easements are held by public agencies whose mandate does not include land management or conservation. The findings of this study reveal a particular reason to be concerned about the status of such easements. If organizations whose primary mission includes land conservation are experiencing obstacles to monitoring easements, how well can the regulatory agencies be faring?

A study similar to this one needs to be conducted to develop strategies for identifying these easements, prioritizing them in relation to the public benefits they offer,¹¹ developing monitoring resources, and making public policy recommendations for the use of easements to meet regulatory objectives.

11 Continue To Monitor Easement Use and Management

This study has been the first to systematically identify individual easements and monitoring and enforcement activities. We should build upon this foundation by periodically collecting and assessing information about the use and management of conservation easements in the region. These updates will allow us to judge our collective progress. Further, new concerns can be identified and addressed before any detrimental effects are realized.

The continual tracking of easements, monitoring and trends would be one portion of an overall program of sustaining a focus upon easements and stewardship. Another element would be ongoing regional training opportunities and information dissemination. These resources should be on both the basics of easement stewardship for new easement holders and upon emerging issues and strategies.

12 Evaluate Whether Easements Are Accomplishing the Goal

Easement purposes are typically broadly stated in phrases such as “protect agricultural uses” or “conserve wildlife habitat.” This describes the intent of the creators and can provide some cushion for errors of omission and unforeseen circumstances in the future. However, this study found that monitoring activities tend to consist of checking for gross violations to the prohibited uses: has a house been constructed?, has grading occurred? is there dumping? Few organizations have the incentive or resources to go beyond this.

Shouldn't we also be monitoring for the purposes of the easement? For example, should we monitor a riparian corridor only for the distance of the vineyard setback or should we include some indices of riparian health, such as no decline in native vegetation or water quality? Over time, a decline in riparian health may result in an easement whose prohibited uses have not been violated, but with little or nothing upon which the existence of the easement is based.

Clearly, the first priority has to be the creation and maintenance of basic stewardship programs. However, it is unclear if this is adequate to accomplish regional conservation goals in the long-term. Further consideration should be given to the possibility of increasing our stewardship of the basic resource values upon which the easement is based.

Additionally, the trend for using easements for land protection is growing, and half of new land protection is by easement. Are easements the most suitable tool for meeting area and regional objectives? Should easement use be uniformly encouraged, or is it more suitable for particular purposes and organizations? Such discussions will be facilitated by the Bay Area Open Space Council over the next few years, and we recommend that the staffs and governing bodies of individual organizations have similar discussions.

NEXT STEPS

1 Increase awareness of easement stewardship responsibilities.

The first task must be to increase awareness on the part of non-profit and public decisionmakers and staff about their stewardship obligations. As the findings revealed, some organizations can not list their easement holdings. Boards of directors, elected officials, and public agency decision-makers are often unaware and unconcerned about easements and stewardship. Staff tend to be more aware and concerned, but many do not receive the necessary support to invest their time or the organization's resources in stewardship activities. Generally, monitoring has taken a backseat to other organizational priorities.

Therefore, a priority action is to raise awareness about responsibly holding easements by creating and maintaining a stewardship program. BAOSC will undertake a number of efforts itself through disseminating this report, arranging conferences on the subject, and offering workshops and presentations on the subject to staff and governing bodies. We are developing training materials that will document specific stewardship programs, policies, volunteer training programs, baseline preparation, and board policies. We will also work with other organizations who can offer information or financial resources, and encourage organizations with stewardship programs to discuss stewardship programs with other organizations to encourage those without stewardship programs to one.

2 Create Easement Stewardship Task Force

As the regional association of land trusts and public agencies, BAOSC will create a committee to continue working on this topic. The committee will develop strategies for implementing the recommendations of this report. High priorities for this committee will be developing regional financial resources for stewardship programs, and assessing and creating regional training opportunities. The committee may also develop additional strategies for responding to the circumstances described in this report. For instance, a "Stewardship SWAT Team" could be created. It would consist of a team of professionals that could be invited to assess an organization's situation and work with it to develop a stewardship program.

CONCLUSION

The Bay Area region's agencies, organizations, and citizens have made a huge investment in conservation easements. Tremendous conservation values are being protected by conservation easements. However, this hard-won land protection investment requires continual monitoring. Furthermore, even if some organizations maintain a quality monitoring program, the success of their efforts could be undermined by poor management of easements elsewhere in the region.

Easements have not always been used judiciously throughout the Bay Area, and they are subject to a number of problems, including inadequate baseline resource surveys, the lack of consistent monitoring and a failure to correct violations in a timely way. Many organizations — both public and nonprofit — have not built the necessary funds to defend against challenges. This situation makes *all* easements vulnerable to attack, a vulnerability that increases when land changes hands. If easements are successfully challenged, a spillover effect will almost certainly involve others in costly protective action, either in or out of court.

Despite these problems, the Bay Area organizations are in a good position. Many of the region's land trusts are national leaders in using and managing conservation easements. Collectively, the Bay Area organizations have recognized the need for improved stewardship programs before serious setbacks have occurred and many share an interest in developing the financial and informational resources to improve the regional stewardship of easements.

NOTES

¹ Bay Area Open Space Council. 1998 and 1999. Analysis of regional open space database.

² The use and management of easements created in such circumstances will be the subject of a follow-up study beginning in July 1999.

³ Diehl, Jane and Thomas S. Barrett. 1988. **The Conservation Handbook: Managing Land Conservation and Historic Preservation Easement Programs.** Land Trust Alliance and National Trust for Historic Preservation. p. 72

⁴ Ibid, p. 87

⁵ The questionnaire described three different types of agricultural easements.

- intensive agriculture: permissible uses include tilling the soil, buildings, and associated activities, e.g., fruit stands, wineries
- intermediate agriculture: permissible uses include tilling of soil but no buildings unrelated directly to the farm operation
- restricted agriculture: no tilling of soil; would allow ranching

⁶ Because of several outliers in the data, the median calculation was more accurate.

⁷ We suspect this number is actually higher. There is some evidence that non-profits have not maintained the same level of records for

easements they assigned, nor do public agencies always have very good records about their holdings.

⁸ An easement was considered monitored if three or more monitoring tasks had been performed on it in the past year. A number of easements had one or two tasks performed, such as driving by the property. However, we did not include such minimal activities as sufficient to permit any understanding of what was happening on the property or maintaining the landowner relationship. There are only a few cases where an organization could be confident that the easement's conservation values are intact after performing only one or two of the monitoring tasks. Interestingly, the natural breaks in the data clearly supported this definition.

⁹ This figure is based entirely upon the costs of nonprofit land trusts and local open space districts because there is no reliable data on the monitoring costs of other types of organizations, notably public agencies. As more public agencies develop monitoring programs, this figure can be adjusted accordingly.

¹⁰ Even for public agencies who have field offices and staff, monitoring their easements would involve training for many employees. For nonprofits without field offices, there will be time involved in traveling to and from the site. Although monitoring rates by national or state-wide organizations are lower than rates of local organizations, a few are using alternative strategies. Some have a single person perform all the monitoring. This necessitates travel costs, but training is minimized and consistency high. Others have worked to find local groups to assume ownership of the easement or perform the monitoring.

¹¹ Some of these easements may have large public benefits, such as wildlife habitat protection or public access along riparian corridors. Others may have limited public benefit, such as a small common area in a subdivision. It will be necessary to prioritize them for receiving the limited monitoring resources that could be created.

APPENDIX
San Francisco Bay Area Conservation Easements

Name of Organization	# Easements	Acreage	Notes
CA Coastal Conservancy	12	1,674.00	<i>plus</i> 3 riparian buffers (two 50', one 20')
CA Department of Fish and Game	28	6,689.00	
CA State Parks and Recreation	3	272.50	
City of Palo Alto	2	31.82	
City of San Jose	1	0.60	
Contra Costa Water District Watershed	7	5,590.00	
Department of Water Resources	2	44.45	
LandWrights	3	997.00	
Marin Agricultural Land Trust	34	20,447.51	
Marin Co. Open Space District	12	1,693.55	
Martinez Regional Land Trust	3	370.00	
Midpeninsula Regional Open Space District	12	1,750.50	
Napa County Land Trust	42	9,185.37	
National Trust for Historic Preserv	2	0.75	
Peninsula Open Space Trust	12	2,718.41	
Santa Clara County Open Space Authority	1	20.00	
Save-the-Redwoods League	1	<i>nr</i>	
Sempervirens Fund	3	98	<i>plus</i> 3.5 miles of trail
Solano County Farmlands and Open Space Foundation	3	82.00	
Sonoma Co Regional Parks	3	95.00	
Sonoma County Agricultural Preservation and Open Space District	102	28,286.09	
Sonoma Land Trust	20	4,042.00	
South Livermore Valley Agricultural Land Trust	6	590.00	
Trust for Public Land: Western Region	1	64.00	
TOTAL	315	84,742.55	