

Private Land, Public Good

by John Hart



TAKING STOCK OF CONSERVATION EASEMENTS

Sometimes nothing much happening is the biggest news of all.

East of Tomales Bay in Marin County is a world of humpbacked ridges and hidden valleys, Irish green in the spring, in the summer yellowed by sun and cooled by fog. Unless it is that the grass is a little thicker and the fences a little better maintained, the scene has hardly altered in 50 years. Driving along some wandering road, you wouldn't dream how close this region came to being just another slice of suburbia, nor recognize what forces are operating to keep it intact. A small sign hanging at the gate of a ranch road gives a clue. "This farmland is preserved in perpetuity by the owners and the Marin Agricultural Land Trust," it reads. "Private Property. No Trespassing."

"Preserved. . . . No trespassing." This combination of concepts, a little unfamiliar perhaps, is a sign of the land use times.

The hottest tool in landscape protection these days is the conservation easement. It is a contract by which a landowner gives up the right to develop property, and usually agrees to other restrictions, in return for money (or a tax deduction). Once made, the contract runs with the land and is valid forever. Easements are acquired and held by government agencies or by private nonprofit organizations called land trusts. Easement holders visit to make sure promises are kept, but the public comes onto the land by arrangement only.

Land under conservation easement has many of the qualities we expect of public open space. It is scenery, enjoyed by drivers, bicyclists, or walkers on public roads and trails nearby. It is habitat, providing living space for plants and animals and corridors for wildlife movement. It is watershed and airshed, absorbing rainfall, yielding streams, and helping to clean the air. It may be farm or ranch land, supporting agriculture as a livelihood and a source of locally grown food. It is greenbelt, setting limits to urban sprawl. And while easement land is not accessible parkland, it is a great deal cheaper than parkland to set aside and to maintain.

REMARKABLE GROWTH

Easements—voluntary modifications of ownership—have existed since the 16th century as transactions between neighbors. One owner may buy an easement from another, for instance, to run a power line or access road across adjoining land. By the 1970s, easements were beginning to be tailored to foreclose development and protect farmland and wildlife habitat. Most states and the federal government passed laws endorsing and codifying this practice; California's Conservation Easement Enabling Act dates to 1975.

In the 1980s the use of conservation easements grew; in the 1990s, it exploded. Just how much land is now under contract nationwide is unclear, but it is not less than

9 million acres and possibly double that when government-owned easements are counted. Indeed, easements appear to be supplanting acquisition (often called “fee title” or “fee simple”) as the nation's number one land protection tool.

The pattern repeats itself in the Bay Area: slow beginnings in the 1970s, healthy growth in the 1980s, and a veritable boom thereafter. As of 1999, at least 85,000 acres were under easement in the region; by 2005, that figure had surpassed 150,000 acres (out of a total of 1.07 million acres of protected lands in the nine-county region). The largest single easement holder is the Sonoma County Agricultural and Open Space Conservation District, followed by the Marin Agricultural Land Trust, the Land Trust of Napa County, and the Peninsula Open Space Trust. More than half of the region's easement acreage is found in the North Bay. Of the acreage protected by easements, about half was purchased for cash and about a quarter was donated (with tax deductions); the rest was dedicated as a condition of development, or represents easements retained when a wholly owned conservation property was sold. “Agriculture,” “open space,” and “natural resources” are cited about equally as the values to be protected.

Nobody quite realized the scale of this phenomenon until the late 1990s, when the San Francisco Bay Area Open Space Council

(a working alliance of private and public land management entities) set out to build an inventory of protected open spaces. “We were astonished,” researcher Darla Guenzler recalls, “to find that more than half of the new land protection in the 1990s had been by conservation easement.” With so much reliance on this tool, it was obviously time for a look at its effectiveness. The resulting study of easements and the organizations that hold them, “Ensuring the Promise of Conservation Easements,” did much to codify good practice—and to point out certain areas for improvement.

Since then the easement movement has only continued to grow, lately attracting attention outside traditional conservation circles, some of it very critical.

It is plain that all citizens have an interest here. Even when government money is not directly spent on easements, the public purse is inevitably affected: through lower property tax receipts, for example, or by federal income tax write-offs taken by easement donors or contributors to land trust treasuries. It is therefore not out of order to ask: Are we getting our money's worth?

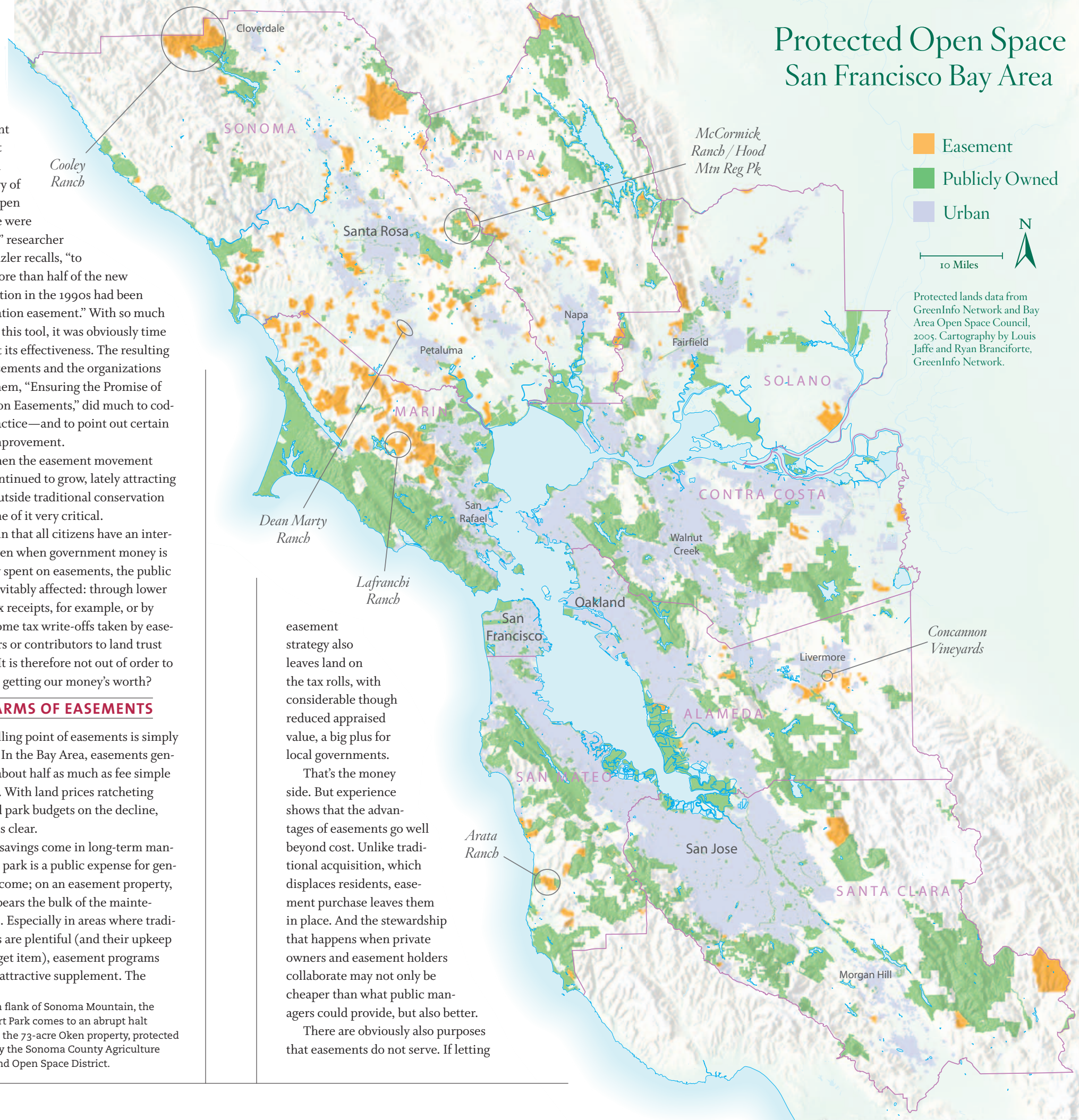
THE CHARMS OF EASEMENTS

The first selling point of easements is simply their price. In the Bay Area, easements generally cost about half as much as fee simple acquisition. With land prices ratcheting upward and park budgets on the decline, the appeal is clear.

Further savings come in long-term management. A park is a public expense for generations to come; on an easement property, the owner bears the bulk of the maintenance costs. Especially in areas where traditional parks are plentiful (and their upkeep a large budget item), easement programs become an attractive supplement. The

On the western flank of Sonoma Mountain, the town of Rohnert Park comes to an abrupt halt where it meets the 73-acre Oken property, protected in perpetuity by the Sonoma County Agriculture Preservation and Open Space District.

Protected Open Space San Francisco Bay Area



STEPHEN JOSEPH, WWW.STEPHENJOSEPHOTO.COM

the public onto the property is a priority, the land should be bought outright. Fee simple ownership is also often the best way to ensure protection of key habitats for rare, threatened, or endangered species.

Where conservation easements really shine is in the protection of agricultural landscapes and livelihoods. When farmers receive cash for easements—the usual case in the Bay Area—agriculture is supported in two ways: by the restriction itself, which removes the temptation to subdivide or sell for development; and by the infusion of cash, which usually goes to improve the operation. More subtly, the knowledge that some farmers have made the easement commitment encourages others to think in terms of remaining on the land for the long haul. Rural communities and economies are thus strengthened, not weakened, by this form of preservation.

SOME CHALLENGES

For all their selling points, easement programs have their detractors. One fundamental challenge comes from those in the environmental movement who long for stronger land use regulation in the United States and see easements as an expensive substitute that overvalues private property rights. Thus, John Echeverria, director of the Georgetown Environmental Law and Policy Institute in Washington D.C., complains, “The message to landowners is that they’re only required to do what they want to do and are paid to do.”

Indeed, among conservatives, the easement approach has generally passed muster with property rights advocates. The Bush administration, for example, supports it. But a few voices denounce even voluntary land use restrictions. Carol LaGrasse of the Property Rights Foundation of America writes, “This is just one more nail in the coffin of private property ownership in rural America.”

Unlike these broad attacks, other criticisms point to growing pains in this area of practice and identify problems that are in principle fixable. Three main challenges seem to face the acquirers and holders of easements: making sure that the tool is not abused as a tax shelter without corresponding public benefit; gearing up for long term stewardship; and balancing the pub-



WILLIAM K. MATTHIAS, WWW.WKMPHOTO.COM

lic’s need for information with the landowner’s wish to keep private property private and the steward’s duty to keep some sensitive facts obscure.

Tax Issues

Easements cost the taxpayers money, one way or another. Most are plainly worth it; some may not be. It’s the donation of easements that has shown potential for abuse. Unlike the landowner who sells an easement to a negotiating partner, the owner who gives an easement can shop around for an inflated appraisal and deduct that value, with no one to cry foul. Games have been played, as when the developers of golf-centered communities “donate” conservation easements on the fairways. Congress has made noises about limiting deductions, which alarms those in charge of land trusts

Conservation easements, like the one that protects the Arata Ranch near the San Mateo coast, allow for the protection of entire watersheds at a fraction of the cost of outright public purchase.

that rely on tax incentives to get legitimate donors in the door.

Experts see the solution in a tightening up of appraisal practices. The Internal Revenue Service could, for instance, require the use of state-licensed appraisers, as (astonishingly) it now does not. Umbrella groups like the national Land Trust Alliance and the state California Council of Land Trusts plan to offer courses to help appraisers unfamiliar with easement practice get up to speed.

The Long Haul

The 1999 Bay Area Open Space Council report challenged easement holders to come to grips with what it means to be responsible for an easement forever. The

study found that only about half of the agencies holding easements had good inventories of the lands they had undertaken to protect, and only about half of the properties were regularly visited by the easement holders. Private land trusts, as well as the Sonoma County Agricultural and Open Space District, were doing the best job; state and federal agencies were sloppiest. The study also found that property owners (and sometimes their neighbors) were more inclined than expected to do things on the land that violated easement terms. As the original contracting landowners are replaced by heirs or buyers, the report concluded, “disputes are inevitable for most easements.” The authors urged land trusts to establish permanent endowments to make sure that their investments could be defended on the ground and in the courts well into the future.

Public Information

The summary figures used in this article are little more than educated guesses. Even in a well-studied region like the Bay Area, nobody knows where all the easements are or how many acres are covered. The larger land trusts track and trumpet their accomplishments, but the same is not true of most government bodies. State and federal agencies that hold just a few easements tend to forget about them. Local governments often require developers to dedicate easements as “mitigation” for environmental damage done, but rather rarely keep tabs on the results over time.



BRAD PERIS, WWW.PCIIMAGEWORK.COM

Most easements are recorded, of course, and reside as public records in county assessors’ offices. In 2002, a state law required counties to keep indexes making it easier to locate easement documents. Research is still laborious, so the thought arises: why not put this information online?

Here caution flags go up. Land trusts are nervous about having too much data too accessible. Easement documents often give details about vulnerable features like rare plants or archeological sites, already difficult enough to protect from poachers and artifact hunters. Landowners have their privacy concerns as well.

The Bay Area Open Space Council faced this issue as it assembled its database of

One alternative to conservation easements: The Crystal Ranch housing development in Concord was built over the past decade on former ranchland just north of Mount Diablo. Black Diamond Mines Regional Preserve is in the background.

holdings, and settled on a compromise format that shows location, size, and ownership, but does not describe the properties in any way, and invariably includes the line “no public access”—although one third of owners in fact do allow some form of controlled public visitation.

THE BIG PICTURE

The Bay Area Open Space Council website (though in need of an update) is a feast for the map junkie. Pick a county and start looking at what’s there, (continued on page 31)

SELECTED BAY AREA LAND TRUSTS AND EASEMENT HOLDERS DECEMBER 2005				
Organization	Easement holdings in nine Bay Area counties	Phone	Website	Headquarters
Agricultural Trust of Contra Costa County	950 acres	925-588-5351	(None)	Walnut Creek
Bodega Land Trust	290 acres	707-876-3093	www.bodeganet.com/landtrust	Bodega
Brentwood Agricultural Land Trust	21 acres	925-634-6738	www.brentwoodaglandtrust.org	Brentwood
The Land Trust of Napa County	34,000 acres	707-252-3270	www.napalandtrust.org	Napa
LandPaths	910 acres	707-544-7284	www.landpaths.org	Santa Rosa
Marin Agricultural Land Trust (MALT)	38,000 acres	415-663-1158	www.malt.org	Point Reyes Station
Midpeninsula Open Space District*	2,682 acres	650-691-1200	www.openspace.org	Los Altos
Muir Heritage Land Trust	210 acres	925-228-5460	www.muirheritagelandtrust.org	Martinez
The Nature Conservancy of CA	19,882 acres	415-777-0487	www.tnccalifornia.org	San Francisco
Peninsula Open Space Trust (POST)	4,924 acres	650-854-7696	www.openspacetrust.org	Menlo Park
Solano Land Trust	6,077 acres	707-432-0150	www.solanolandtrust.org	Fairfield
Sonoma Cty Agricultural Preservation & Open Space District*	59,576 acres	707-565-7360	www.sonomaopenspace.org	Santa Rosa
Sonoma Land Trust	4,862 acres	707-526-6930	www.sonomalandtrust.org	Santa Rosa
Tri-Valley Conservancy	4,100 acres	925-449-8706	www.trivalleyconservancy.org	Livermore
Trust for Public Land	(No Bay Area easements)	415-495-4014	www.tpl.org	San Francisco

*public agency

About three dozen organizations—both private land trusts and public agencies—own conservation easements in the Bay Area, with public and private holdings about equal. More than half the acreage was purchased for cash and about a quarter donated; the rest was dedicated as a condition of development, or represents easements retained when a wholly-owned conservation property is sold. “Agriculture,” “open space,” and “natural resources” are cited about equally as the values protected. The four programs described on the following pages illustrate what is happening on the ground.

EASEMENTS ON THE GROUND: WEST MARIN

FARMS FOREVER

Driving out to the coast among the seemingly endless ranks of Marin County hills, studded with rock outcrops and spotted with grazing cows, you can feel the calmness that flows from a stable landscape. It has always been this way, you feel; it will always be this way. The first thought is partially an illusion; the second is still essentially a hope.

In the 1960s it was taken for granted that the process that had already transformed East Marin—the rolling conversion of dairy ranches to suburbs—would repeat itself in the west. A general plan adopted in 1969 foresaw 125,000 people living along Tomales Bay and in the Olema Valley next to Point Reyes National Seashore. Speculators were busy buying up land to cash in on the inevitable.

But the political winds shifted in 1970, and soon the county reversed course. The western region, the Board of Supervisors now proclaimed, was to remain rural, a mixture of parkland and farms. Throughout the decade, the county struggled to make this decision stick with zoning, coupled with measures directly supportive of farmers. By 1980 it was pretty clear that no “blockbuster” development was going to occur in West Marin. It still seemed likely, though, that under relentless market pressures commercial agriculture would give way to a landscape of “ranchettes,” small hobby farms or rural estates around enormous houses.

The county considered further stiffening its zoning, but that step would have driven the farmers into renewed opposition. And zoning is always subject to change. Two remarkable women—rancher and



BARBARA COMNIS

community leader Ellen Straus and her friend Phyllis Faber, biologist and sometime coastal commissioner—set out to come up with something more permanent. The women turned for advice to the Trust for Public Land, which was working to seed land trusts around the country. Out of these conversations arose the idea of a new kind of trust: one devoted solely to agricultural land, working exclusively through the purchase of easements, and—most unusual of

all—run largely by ranchers, not environmentalists and lawyers. Ralph Grossi, an open-minded young dairyman, provided a vital bridge to the skeptical farm community. **The Marin Agricultural Land Trust (MALT)** was incorporated in 1980.

MALT got off the ground slowly. No one wanted to be first in the door; there was some feeling that selling one’s development rights was an admission of economic difficulties that many shared but no one wished

The conservation easement strategy of the Marin Agricultural Land Trust has helped preserve the pastoral landscape of working farms in West Marin.

to advertise. The first easement was secured in 1983. A second followed the next year. Two more in 1985; three in 1986. Three per year was the average pace thereafter. Aided by money from foundations and state bond issues, MALT was soon becoming a quiet power in west county. At this writing, 57 farms and ranches covering 38,000 acres are under easement, nearly one third of the privately owned agricultural land in Marin. Executive Director Bob Berner notes with

pleasure how scattered parcels are coalescing here and there into large coherent blocks. And two areas once thought natural targets for early development—the Chilen Valley southwest of Petaluma and the Nicasio Basin northwest of San Rafael—are steadily filling in with MALT’s reassuring green.

Over the next five years, MALT hopes to secure another 12,500 acres, at a predicted cost of \$30 million. If farmers continue to walk in the door at the current rate, the next quarter century could see something truly remarkable: the protection of an entire working landscape by conservation easement.

In keeping with the central purpose of the organization, MALT’s easement contracts name agriculture first; open space, scenic, and natural values follow. Language prohibits uses that degrade soil or water quality, a general standard that precludes, for instance, overgrazing. Recent contracts have included more specific provisions. One in the Chilen Valley, for instance, designates a special Creek Conservation Area along an important stream. To make sure that lands under easement do not after all become rural “estates,” some recent easements include language restricting the size of future houses. Such added provisions increase the price paid for the easement.

Most of MALT’s territory is in the watershed of Tomales Bay, one of California’s cleanest and healthiest large estuaries; agriculture in the region has faced special scrutiny as a result. Each decade brings higher standards for keeping animal waste away from streams. MALT has recently started a Stewardship Assistance Program of small grants, up to \$25,000, designed in part to help owners improve water quality.

More than any other force, MALT turned around the “story” of agriculture in West Marin. Fatalism has given way to hope and hope to something approaching confidence. As MALT’s easements have spread across the landscape, the feeling has settled in that farming is here to stay.

To stay, but hardly to stay the same. To keep their heads above water financially, more and more local farmers are turning away from traditional dairying and livestock raising and toward the production of specialties for the choosy metropolitan consumer: organic milk, grass-fed beef, lovingly made “farmstead” cheeses. The old scenery of pastures and barns is gaining other textures from vineyards, olive groves, and heirloom vegetable farms.

What we sense here is a new relationship between city and country. Farmers who once felt preyed upon by (continued on page 30)

PEOPLE & EASEMENTS

RANCHER, Randy Lafranchi

From a modern house on a knoll in the Nicasio Valley, Randy Lafranchi, fifth-generation Marin County dairyman and second-generation easement partner, surveys his family’s domain. Most of its 1,200 acres, from ridgetop to county road to water district reservoir, lie within view. Beyond, the bowl of Nicasio rises to rims of hills. North slopes are shaggy with redwoods; south slopes—like the one we’re on—sweeping and open, with grasses autumn-yellow but still softening the contours of the land. A tiny cluster of buildings off to the left is the village of Nicasio.

As one of the county’s oldest family ranches, the Lafranchi spread had come to have multiple owners, only one of whom, Randy’s father, Wilfred, actually stayed on and farmed the land. Nobody in

the family wanted development, but how could the value of this property be shared without dismantling it?

In the 1980s, the family took action. In a rather intricate deal, it gave an easement on the home ranch to the county in return for the right to build some houses on a nonagricultural parcel on the other side of Nicasio. This transaction allowed the urban family members to realize some gains. At the same time, Wilfred and Mary teamed up with MALT to add 460 acres of valuable adjoining pasture: MALT purchased the development rights, and the Lafranchis acquired the land itself at a price reflecting its farm value. As a result of these steps, the Lafranchi operation went on a more solid footing.

After the Lafranchis took the plunge, several

neighbors also sold easements to MALT, creating a belt of protected land along the north side of Nicasio Valley Road. The old uncertainty about the future—the “how much longer?” feeling—began to fade.

Lafranchi’s easement agreement with MALT, which dates to the beginning of what might be called the easement era, contains only broad language about maintaining soil and water quality and retaining the land profile. “They come around and check your pastures and so forth to be sure you’re not overgrazing or whatever,” says Randy. “We’ve had a good working relationship for 20 years. It doesn’t seem like a burden, not at all.” The county-owned easement, which merely requires the continuation of agriculture, receives no monitoring.



SUSAN ABRIE COLETTA

Randy Lafranchi on his ranch outside Nicasio

Dairying remains a fight for survival, and Randy Lafranchi, like many of his neighbors, has branched out. On one corner of his ranch is a composting operation, mixing animal waste with suburban garden clippings to make a garden soil amendment. Eight acres along the road are leased to organic vegetable grower Marty Jacobson, an enthusiastic fellow who raises oddly shaped and beautifully colored heirloom tomatoes and other specialties for outlets like Woodland Markets, the Market Bar, and the Slanted Door restaurant in San Francisco’s Ferry Building.

This roadside garden is one of those spots in West Marin where the urban and rural worlds meet. Drivers along the road stop off to look and buy and chat. In late September, the lot is merry with pumpkins. And for the last decade, the West Marin community and its East Marin friends have gathered here for MALT’s annual Harvest Day. Lafranchi is only too pleased to be the host. “It is wonderful that MALT came into our lives,” he says. “It’s made this all possible, really, to preserve the land that we love.”

PUMPKINS AND POST PRESERVING THE COAST

South of San Francisco, the Peninsula displays a kind of natural zoning-by-topography. On the east side, along the Bay, is where most people live. To the west is a chain of lofty, forested hills, the Santa Cruz Mountains; farther west is the coast, still largely unspoiled and agricultural, despite some of the highest rural land prices in the United States.

In 1972, South Bay voters established the Midpeninsula Regional Open Space District, supported by property taxes, to buy land on the mountain heights. Besides being a hiker's paradise, these open space preserves also set some limit to urban expansion. Five years later, the private, nonprofit **Peninsula Open Space Trust (POST)** was incorporated to work in the same area and beyond.

Such pairings of a tax-supported public agency and a nonprofit body with similar goals have often proved effective. The private organization can move quickly and work quietly with landowners in a way that a government body cannot; the public agency, for its part, has police powers and a tax base and often takes title to land secured by the private trust. Thus POST's first acquisition, the prominent peak above Portola Valley called Windy Hill, is now a popular



WILLIAM K. MATTHIAS, WWW.WKMPHOTO.COM

district preserve. Between them, the two organizations now have 75,000 acres in their care.

While the district remains the specialist in mountain parks, POST has evolved a distinct mission: to protect the vulnerable coastal belt, including some of its farms. With this focus has come an increased use of easements. POST now has easements on properties totaling 5,000 acres, approximately one fifth of its holdings. Vice President Walter Moore predicts that more than

half of acquisitions from here on out will take the easement form.

Most of the existing easements cover farmland and honor the agriculture that exists. Unlike MALT's easements, which actually mandate that farming continue, POST's merely permit it to continue, giving it equal but not superior billing with open space, wildlife habitat, and low-impact recreation.

POST's first easement, in 1983, was the Michelsen property above Pescadero, part

farm, part wild forest. Its most recent, completed in 2004, lies not far away: the 1,300-acre Arata Ranch on Pomponio Creek near San Gregorio, owned by brothers John and Clarence Arata.

The Arata family may have been the founders of the San Mateo pumpkin industry. Before the Depression, the round, colorful squash were grown here strictly as hog feed. One day in 1933, young Clarence Arata was hauling a cartful of pumpkins along the road when a driver pulled over

This view south of Half Moon Bay includes portions of two POST properties that reflect the land trust's strategy for preserving the rural character of the San Mateo coast: Purisima Farms (foreground) and Cowell South (center).

and offered him ten cents a piece. Soon the Aratas were growing 50,000 pumpkins. "We were the only ones for 25 years," says John. "Pumpkins are a funny thing. They didn't cost us anything but our work."

Over the decades the Aratas kept on farming: more pumpkins, dairy for a while, then beef cattle, some supplementary vegetables. Each brother married a girl from a neighboring farm and raised a family on Pomponio Creek. As the years passed, developers knocked on the door. Would they sell at least the flat land near the creek for a few houses? The Aratas weren't interested.

A significant portion of the lower Pomponio Creek watershed is protected by a conservation easement on the Arata Ranch, shown below.

"We didn't want to ruin the ranch," says Clarence. "Sell 20 acres, you get a neighbor to contend with." The quiet of the gentle coastal valley, the subtle colors of grassland and coastal scrub, remained undisturbed. Yet the brothers were getting older and the future was in doubt.

When POST began working on the coast, word of mouth was anything but favorable. It seemed an alien force, yet another of the predators hovering over a declining agricultural heritage. "We heard a lot of stories about POST," Clarence recalls, "and they weren't good."

Then, one day in 2001, John Arata saw a young woman standing on a roadside near the ranch, looking at a map. She was trying to find the best way into a property that POST had just bought in the area, Seaside School Ridge. John stopped the car to offer help. One conversation led to another, and soon the brothers found *(continued on page 30)*



WILLIAM K. MATTHIAS, WWW.WKMPHOTO.COM

In July, 2004, John Arata showed a reporter around his ranch near the San Mateo coast. Arata passed away on December 1, 2005, at the age of 87.



JOHN GREEN, WWW.JOHNGREENPHOTOGRAPHY.NET

PEOPLE & EASEMENTS

CONSERVATION PROFESSIONAL, Kellyx Nelson

Some easement owners, like MALT, use their own staff exclusively to monitor easements. Others, like the Peninsula Open Space Trust, train volunteers to be their eyes and ears. But when controversies arise, they wind up in the hands of a professional—perhaps those of Kellyx Nelson, whose title, conservation project manager, covers this and several other delicate and fascinating tasks.

Working with easements on the San Mateo coastside, Nelson is an enforcer of sorts. She is also—with every move she makes—a roving ambassador to a largely skeptical community. "I spend a lot of my time building relationships with farmers, landowners, equipment dealers, busi-

nessmen, hunters. People feeling under pressure," she says. "They don't know where to place their frustration with the world that's changing around them." It is part of her job to demonstrate that POST is sometimes in a position to help.

Nelson has now watched several easements take shape—most recently on the Arata Ranch—and observed that the process is best undertaken slowly. "You have to really know the owner; you have to really know the land." If any issues arise later on, it is important to be reasonable and flexible. It is also important to be explicit with landowners and to make sure that the values for which an easement was created stay intact. "You are not their best friend. There's a fine line, and I walk it all the time."

But the conversation, she hastens to add, goes



SAUL CHAIKIN

both ways. Nelson emphasizes how much she has learned from people on the land. She was impressed, for instance, to see how the manager of San Gregorio Farms, an easement property next

door to the Aratas, made grazing cattle a tool against erosion on a slope with incipient gullies. The heavy animals recontoured the ground and crushed gopher holes that were serving as water conduits ("pipes"). Nelson is now incorporating this idea into a carefully managed grazing program on one of POST's fee simple properties.

Nelson's background equips her for these complex roles at the trust. She has driven a truck, run youth programs at summer camps, and during seven years at the California Academy of Sciences, launched a program to bring inner-city youths into hands-on science. When she signed on with the trust in 2004, she thought she would now be working "with the land itself—it wouldn't be all about people. I couldn't have been more wrong."

STOPPING SPRAWL WITH SAUVIGNON

Along Tesla Avenue at the south edge of Livermore, rows of grapevines angle from the roadside, showing a trace of fall color on their taut wires. Almost within earshot of the bustle of town, it's the kind of place you'd expect to see For Sale signs. Instead at many gates you read this notice: "This land preserved in perpetuity by the owner and Tri-Valley Conservancy."

Livermore was once California's premier wine region. At the end of World War I, there were 50 wineries in the southern arc of this valley, with about 5,000 acres in grapes. Then came Prohibition, the Depression, another war. The wine district shrank and didn't rebound. What boomed in the valley was housing. Year after year the suburban front moved southward.

Third-generation vintner Jim Concannon, taking care of business at one of the two major surviving wineries, did not find it a good omen when a new boulevard nearby was named Concannon Avenue. "We

STEVE STEWART

thought they named it after our family because they wanted to put it right through our vineyard," he says. Pressures mounted; the possibility of selling out and relocating the business to lower-cost Salinas or Monterey beckoned. But somehow the Concannons stayed put, and so did their neighbors the Wentes, whose operation was, and is still, the valley's largest.

All around the Concannons, development skirmishes swirled. Sentiment in the City of Livermore turned toward preservation; Alameda County, the key planning authority, wasn't so sure. Matters came to a head in a courtroom in 1991. Directed by a judge to work out their differences, the two governments spent a year devising a new joint program for South Livermore. Its

The cabernet sauvignon grapes being harvested at the Madden Ranch vineyard in Livermore will be used in wine made by Wente, the largest winery in the Livermore Valley.

essence was to declare a firm, final limit to urban growth, and to construct, along that line, a rampart of flourishing agriculture, locked in place through conservation easements.

With no major funding in sight, the plan set up a kind of bootstrap operation in which the development of land just north of the future boundary would pay for the preservation of farmland just south of it. Builders of housing near the edge of town had to purchase easements in the farm zone at the rate of one acre per unit developed (and an additional acre per *acre* developed). Fees collected from developers also paid for the founding of a South Livermore Land Trust (now the Tri-Valley Conservancy) to receive and administer these easements.

A second route to protection was also set up. Rural landowners in the planning area are permitted to split properties down to 20-acre parcels—smaller than the pre-

In the 1880s, the Livermore Valley was California's major commercial wine-growing region. Today, with the help of conservation easements, the vineyards are making a strong comeback in this area of South Livermore.

vailing zoning—provided that 18 acres of each 20 are planted with vines or orchards and likewise placed under easement.

The original South Livermore Valley Area Plan had two targets: to put 5,000 strategically located acres under easement, and to foster the creation of 24 new small wineries. The wineries goal has already been met, and the acreage goal is within sight: 3,800 acres of easements are held by the land trust. More important, those holdings are on the verge of forming a continuous bastion along the urban-rural boundary.

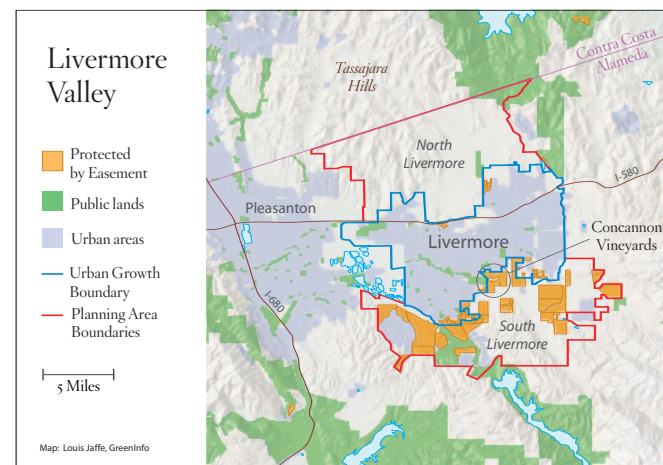
Intensively managed vineyard lands are not to be confused with nature preserves, but the wine belt serves to protect natural areas both within and outside its limits. Easement lands adjoin and buffer several large parks. As a condition of easement, creek banks must be revegetated if necessary and in no case farmed. Simply by halting sprawl, too, the program gives a measure of protection to open lands far south of its formal limits, down into the wild interstices of the Diablo Range.

How the pieces fit can be seen along Arroyo Mocho, a big tributary of Alameda Creek that crosses the Concannon property (and which over the aeons laid down the vineyard's valuable rocky soil). As a child, Jim Concannon played on the arroyo's banks and caught turtles in its pools. Formerly intermittent, the stream now serves as part of a regional water supply system and flows all year round, "which brings tremendous wildlife," he says. "We've got cranes, we have mallards, we've got fish in the creek." The Zone 7 Water Agency, on whose board Concannon sits, envisions a public trail all along the stream; one stretch already exists,

The vineyards in South Livermore—protected by easements held by the Tri-Valley Conservancy—act as a buffer against encroaching sprawl development.

through the winery and into the city's Robertson Park downstream.

In the spring of 2005 the conservancy expanded its zone of operations to include all of Alameda County east of the bayside rank of hills. How it will get traction outside South Livermore remains to be seen, as the mandated financing that worked there



does not apply more widely, and the agency's independent budget is small.

Its next theater may lie on the north side of the Livermore Valley, where the grass-covered, rolling Tassajara Hills are in the hands of speculators and developers with plans at the ready. Livermore voters have just declined to give their blessing to a greenbelt-busting proposal from Pardee Homes, but the vote provides only a respite. Vintners and open space advocates alike hope to repeat the South Livermore model here in North Livermore. Again they envision a band of high-value agricultural land, under easement, creating a tangible urban edge. Under one possible plan, developers, in return for permission to build more units in town, would fund the conservancy's purchase of easements in the Tassajara Hills.

The Livermore Valley model is exciting wider interest, partly because it is largely self-financing, not dependent on grants or taxes. The fast-growing City of Brentwood in Contra Costa County, for instance, is looking it over with an eye toward starting something similar.

"We have a chance to save this valley," Jim Concannon says. He's speaking of South Livermore, but people in many another "valley" can take note. 🐦



PAUL FRANK, WWW.COASTVISIONS.COM



PAUL FRANK, WWW.COASTVISIONS.COM

PARTNERS FOR PUBLIC ACCESS

Like San Mateo County, Sonoma County has both a private nonprofit land trust and a government body working to protect the landscape, though here the trust came first. The Sonoma Land Trust set up shop in 1976 and acquired some key properties. The pace of preservation picked up in 1990 when county voters established a **Sonoma County Agricultural Preservation and Open Space District** and funded it with a quarter cent county sales tax. It was a bold step in a county that still had less protected open space, in overall acreage and in acres per citizen, than any other in the region except San Francisco itself.

In order to get moving quickly, the district traveled light for its first 15 years. Following the terms of its initial charter, it has focused its energy on setting aside land; the district is actually restricted from managing property for public use. Similarly, the district has invested most of its money in conservation easements, which make up 80 percent of the acreage protected.

The strategy has yielded rich returns. The map of the Bay Area's largest county is now speckled with protected areas totaling over 67,000 acres. They include dairy farms and tree farms, crucial greenbelt properties



CRAIG ANDERSON



STEPHEN JOSEPH, WWW.STEPHENJOSEPHPHOTO.COM

between cities, and grand stretches of near-wild hills. But public access remains at a premium. Into this void has stepped a highly unusual organization called Land Partners Through Stewardship, known by its approximate acronym as **LandPaths**.

LandPaths arose in 1996 to meet a temporary need. The district had bought McCormick Ranch adjacent to Sugarloaf Ridge State Park near Kenwood for resale to the California Department of Parks and Recreation. But DPR did not have the funds to manage the park addition at the time. Two citizen friends of the district, Caryl Hart and Dee Swanhuysen, joined the landowner, Sandra Lerner Perry, in setting up an independent caretaker, LandPaths.

LandPaths took a look at the property—an old cattle ranch at the rugged headwaters of Santa Rosa Creek—and started doing some chores that could not be deferred, like cleaning culverts to prevent washouts into steelhead spawning streams. It also began bringing small groups of citizens to see the future park. Soon it became apparent that these visitors—enchanted by the land—were more than willing to lend a hand in weed control or trail building. Then and there, LandPaths discovered its threefold mission: to get people onto land protected by the district, to teach them about it, and to tap their energy in taking care of it.

In 1999, LandPaths signed a contract

Dean Marty on his ranch east of Highway 101 outside Petaluma

with the district to introduce the Sonoma County public to easement properties, subject to agreement with the owners. The first such outing went to the Dean Marty Ranch along Highway 101 between Petaluma and Cotati. An important greenbelt piece, this flowery hillside had been the district's first acquisition; now Marty was the pioneer in allowing the public to see what its tax dollars were saving.

With the help of grants from the district and other sources, LandPaths today runs some 50 free trips a year to properties under easement, for young and old, for people in boots and people in wheelchairs, for English speakers and Spanish speakers. Director Craig Anderson is especially proud of the district-funded program called In Our Own Backyard, which brings students and teachers from 18 classrooms onto the land. The approach is not so much nature education as nature immersion. Each youngster, for instance, adopts a particular "sit spot," gives it a name, and returns there several times during the school year to "observe and conserve"—for example pulling exotic plants and nurturing native ones.

A showcase for the joint work of the Open Space District and of LandPaths is the Cooley Ranch west of Cloverdale, where 19,000 acres went under easement in 2001.

The ranch occupies a large part of the watershed of Dry Creek, a Russian River tributary that is dammed just downstream in Lake Sonoma for flood control and water



CRAIG ANDERSON

supply. The property is a microcosm of the Coast Ranges: mixed hardwood and conifer forests, some fine old redwoods and valley oaks, serpentine barrens and chaparral, and native animals including river otter, bald eagles in winter, and the occasional wandering Mendocino County bear. There is at least one rare plant species, the beaked *tracyina* of oak savanna grassland.

To tour the ranch with Crawford Cooley in his memorably battered jeep, up precipitous hill and down shady dale, is to watch an owner beaming with stewardship. Cooley points with pleasure and knowledge to every sign of land health: the burgeoning strips of alder and willow along the creeks, the greening-up of once-denuded hillsides. He also notes problems he wants to correct: a road to be relocated out of a stream, a

plantation of ponderosa pine, unsuited to the area, that will be removed in time. He grins at his success in fighting the weeds that wash in from outside ranch boundaries, where a highway crosses the higher reaches of Dry Creek. "I don't think we have a yellow star thistle anywhere," he says.

Under the conservation agreement, most of the Cooley Ranch is to be "forever wild," but intensive agriculture is permitted on a few thousand acres. This will allow the Cooleys to plant grapes on one lofty hilltop where soil, slope, drainage, and climate are just right. It will be one of the highest-elevation vineyards in the county and surely one of the most spectacularly situated. You can

Andrea Mackenzie of the Sonoma County Agricultural Preservation and Open Space District and Craig Anderson of LandPaths visiting the Willow Creek state parks acquisition in western Sonoma.

(above) Taken together, the Cooley Ranch and the publicly owned land around Lake Sonoma (seen in the distance, right side of photo) represent 35,000 contiguous acres of nearly pristine protected open space in northern Sonoma. (left) A group of hikers on a LandPaths outing at the Cooley Ranch stops for lunch by a waterfall.

imagine a bed and breakfast, an overlook. But nothing of the sort will be here, and only the Cooleys, their workers, and their guests will get the benefit of these views.

That category "guest," however, is pretty broad. One provision in the Cooley easement authorizes "a nonprofit organization qualified to conduct such activities" to enter the property "no less than six times a year" with guided parties. And enter they do: birders and botanists and trail riders and groups from the schools, including Cloverdale High. Once or twice a year, public campouts are on offer. One LandPaths group disassembled a collapsing shed and neatly stacked the irreplaceable old-growth redwood lumber for re-use in building trails.

Here is a new kind of relationship between citizens and (continued on page 30)



JOHN BURGESS

(MARIN: continued from page 23) diverse urban interests—developers, county planners, environmentalists with little grasp of agriculture—now see urban people as their allies and urban markets as their salvation. Families who might have bought tract housing on Tomales Bay (and then complained



(above) Prince Charles chats with Bob Berner, executive director of MALT, during his recent visit to the farmers' market at Point Reyes. Behind them, Camilla, Duchess of Cornwall, talks to Constance Washburn and Elisabeth Ptak of MALT. (right) Rancher Richard Respini talks to a group of hikers on an outing organized by MALT at his easement-protected sheep ranch near Marshall (May 1998).

about animal smells) instead are here as customers and guests, buying the yields of the land and enjoying by car or bicycle or on horseback the scenery the farms preserve. In 1999, local growers launched a Marin Organic label to cement their claim on the market "over the hill."

The West Marin example has attracted notice nationwide and beyond. This past November, Charles, Prince of Wales, and his wife Camilla put a royal stamp of approval on the experiment. The itinerary of their American tour included the farmer's market in Point Reyes, an organic vegetable farm in Bolinas, and a visit with Bob Berner, head of the Marin Agricultural Land Trust. 🐾



DAVID WIMPFHEIMER, WWW.CALNATURALIST.COM

(SONOMA: continued from page 29) property owners. The landowner gets to be seen, not as a distant and privileged landlord, but as host, caretaker, and storyteller; and the visitor gets to be seen, not as a potential trespasser, but as a guest, a listener, and an occasional helping hand.

At \$6 million, the price the Cooleys received for the easement was half its appraised valuation. Nonetheless, this acquisition came in for question in the local press. Did the family really need payment for preserving what it had no plans to develop? Did the public really benefit proportionately? A kind of class resentment came into play, as it often does when land conservation programs write checks to the well-to-do.

Such arguments can resonate in the short term, but die away when you consider the long. Preservation opportunities on this scale are rare and sometimes fleeting. On this land, 105 homes could have been built someday. Neighboring properties in these hills are already fragmenting into rural estates. This one great spread will remain intact—and continue to anchor something even larger. Together with state-run lands

around Lake Sonoma, partly open to recreation, the ranch rounds out a 35,000-acre reserve. The protection afforded the county's water supply alone is probably worth the price paid.

The value for wildlife is also undeniable. As Anderson recalls, "On one tour with Crawford, we saw a bobcat, followed shortly by an adolescent male mountain lion jumping directly across the trail in front of the group. This made the three golden eagles that flew by at eye level later that day seem almost commonplace!"

Unlike the private land trusts, the Sonoma County Agricultural Preservation and Open Space District is looking at a deadline. By 2010, the voters must approve an extension of the sales tax that funds the district. At the same time it will probably seek permission to use some funds for direct management and access. A two-thirds majority is now required, a daunting hurdle. If that kind of support can be assembled—and the odds look pretty good right now—it is thanks partly to LandPaths, which has given so many Sonomans a personal connection with the places their generosity has helped to save. 🐾

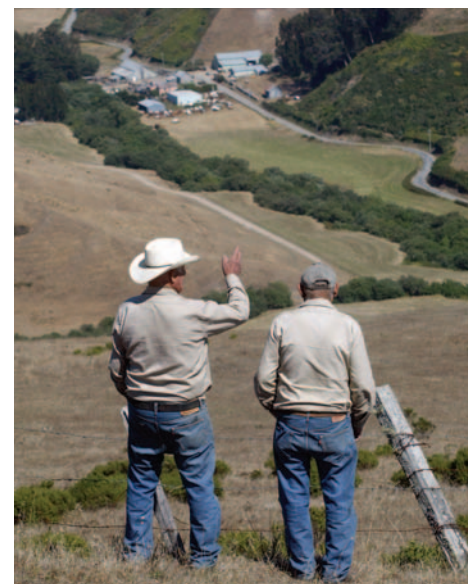
(SAN MATEO: continued from page 25) themselves in negotiations with POST about their own property. When things got serious, they made sure to talk to their neighbors, sharing every detail.

In the end they sold, for \$4.75 million, a conservation easement on almost two square miles. As part of the deal, the brothers were able to add to the ranch some useful acreage they had only been able to farm under lease before: Seaside School Ridge. This piece is under easement too.

This particular setup—outright purchase, followed by a resale under easement—is a tool POST has used several times, notably at the North and South Cowell ranches south of Half Moon Bay. It has the advantage giving the trust a free hand in writing an easement to its specifications.

Both the Cowell properties and the Arata Ranch take their place in larger assemblages of protected land. On Purisima Creek, a green corridor has been built linking mountaintop open spaces to the sea. The same is hoped for at Pomponio Creek, though a couple of pieces are still missing. These corridors protect watersheds, provide routes for wildlife movement, and will eventually serve hikers as well. Easement contracts in both places contain an unusual paragraph: permission for an eventual hiking trail, sited out of the way of farm operations.

Traditional attitudes die hard, but POST's stock on the coast appears to be rising. Certainly the reports from owners like the Aratas are good. "The only mistake we made," John Arata says, "was not doing this ten years ago." 🐾



JOHN GREEN, WWW.JOHNGREENPHOTOGRAPHY.NET

HOW EASEMENTS (SHOULD) WORK

Conservation easements are created by complex contracts in widely varying formats. The essential point, found in every such document, is the renunciation of whatever level of building would be allowed under local zoning, present or future, perhaps with the exception of one or a few individual dwellings. Contracts that go no further than extinguishing development rights are sometimes called open space easements. Agricultural easements actively foster, and may even require, farming of the land. Natural resources easements put the emphasis squarely on plants, animals, and streams. The boundaries between the types are not clear, however, and most contracts include at least some language about environmental management. Owners usually pledge to control soil erosion and water pollution, for example. Tree cutting is typically limited. Land grading, road construction, and new building require the easement holder's approval. General though they sound, such provisions are powerful, for they make reasonably sensitive management a matter of duty, no longer only of good will.

In recent years, contracts have become more detailed and specific. For instance, they may require the protection of stream banks so that riparian vegetation can flourish. Sensitive plant and animal species may be identified and measures for their protection required. About one third of Bay Area easement contracts make some provision for public access by specifying corridors for future trails or by providing for guided public visits. It's all a matter of negotiation—and of willingness to pay, because added stipulations add to the easement price.

To determine the value of the easement, an appraiser estimates the sales price of the property with and without the restriction. The owner may receive a check for the difference, or choose to donate part or all of this value, taking a charitable deduction on the federal tax return.

Other tax benefits accrue to the owner. Assessed valuation and property tax will either fall or, if already low due to Proposition 13 tax provisions, be left alone. On the owner's death, estate taxes will also be less, due to lowered value as well as a higher base exemption for properties under easement.

To administer the contract, a two-step process has evolved. At the outset, an inventory, called the baseline, is made of the property and the resources the easement is designed to protect. Details are noted: the layout and condition of buildings and roads, the state of woods and grasslands, the health of streams, plant and animal species of concern, the presence of invasive plants, and so on. Good baselines are vital, both to avoid misunderstandings and because the cast of characters is going to change over the years, on both sides; general impressions and informal understandings won't do.

Thereafter, a monitoring visit is made once a year to identify any changes. An eroded gully may be healing, for instance; but unwanted vegetation (like the hated pampas grass or broom) may be getting a grip. When problems arise a land trust may put the owner in touch with other organizations that can help, such as resource conservation districts or restoration volunteers. Though rare, overt violations, like bulldozing a new road or adding a building without approval, do happen occasionally.

Even when there is little to discuss, the annual visit serves to keep the lines of friendly communication open with owners or their representatives.

A tricky moment in the life of an easement comes when land ownership changes for the first time. Many successors are in the know, but some will be puzzled and displeased at the restrictions they must abide by. At a minimum, the working relationship between land owner and easement holder must be built anew—not just once, but many times over.

(continued from page 21) and you may be amazed at the scale of protection that exists. In Marin County, for example, easement-protected farmlands are steadily filling in the interior wedge between the great coastal parks, Point Reyes National Seashore and the Golden Gate National Recreation Area, and a thinner band of public open space that seals the border of the eastern urban zone. On the Peninsula, easements are helping to complete a vast arc of protected land that extends from the sea cliffs at Devil's Slide along the Santa Cruz Mountains crest, then down to the coast near Santa Cruz, with spokes of greenbelt extending to the shore at several points in between. Another vast expanse is coalescing in the Diablo Range east of San Jose. Here the Nature Conservancy is taking the lead in buying easements to fill the gaps in a 200,000-acre primitive stronghold, extending from the fringe of the Livermore Valley over the

Sunol-Ohlone ridge to Mount Hamilton and on south to Henry Coe State Park east of Morgan Hill. In northern Sonoma County, too, notable clusters are forming both east and west of the Russian River. In each case, parks and other public lands provide for access, while the easements help create greater wholes than could be achieved without them.

Easements are at their best when they take their place in even larger strategies of

land protection. Again the San Mateo coast offers an example. The goal that easements are helping to achieve—preservation of the rural landscape—is also honored in county plans and zoning, enforced on the immediate shoreline by the state Coastal Commission, buttressed by fee acquisitions, and supported by public and private funders. In an era of swelling land prices and omnipresent development pressure, it takes all hands and all tools to succeed. 🐾



JONATHAN GLASS

(facing page) Brothers John (on the left) and Clarence Arata survey their ranch in July 2004. (right) Many land trusts provide opportunities for public access to properties under easement. Here, hikers on a LandPaths outing explore the extensive grasslands of the Cooley Ranch near Cloverdale.

CONSERVATION EASEMENTS AROUND THE STATE

California leads the nation in the number of land trusts, with over 150. Similar to their Bay Area counterparts, land trusts throughout the state use conservation easements to protect a wide range of natural resources, from forests to farmland to desert. However, several distinctions can be made regarding the use of easements outside the Bay Area.

First, easements to conserve rangeland typically cover much larger acreages—10,000 acres and more—than we see in the Bay Area. Land trusts active in the Sierra, the foothills, and the Central Coast regions have used conservation easements to protect stunning rangeland properties with abundant wildlife. Examples include the Land Trust for Santa Barbara County, Sierra Foothill Conservancy, and the Sequoia Riverlands Trust.

Second, conservation easements are not as common in Southern California. This is particularly true of the coastal counties where pressures for both development and recreational uses are enormous. Conservation easements are used more in the inland counties, notably San Bernardino and Riverside.

Third, conservation easements are being employed in creative ways in the northern forests. For example, Pacific Forest Trust is spearheading an effort

to protect forests with easements and produce carbon credits as part of the California Climate Action program. In many of these, sustainable harvesting of timber is permitted. Farther north, the Northcoast Regional Land Trust uses easements to protect properties with a mix of rangeland, farmland, and working forests. One of California's oldest land trusts, Sempervirens Fund, focuses on the conservation of redwoods.

Fourth, land trusts around the state are using conservation easements as an important tool in their efforts to protect water quality and to create "river parkways"—linear, natural settings that allow public access along the river and also help protect water quality. The San Joaquin River Parkway and Conservation Trust was the first in this arena, but American River Conservancy and the Feather River Land Trust are also working to conserve their rivers and environs.

Finally, mitigation, as in the Livermore Valley, has become a significant impetus for conservation easements statewide, usually to offset the loss of wildlife habitat or prime agricultural soils to development projects. Public agencies with regulatory responsibilities determine when mitigation is required as a condition for develop-

ment; local land trusts are then called in to handle the transactions and oversight. In the greater Sacramento area, for instance, the Sacramento Valley Conservancy has designed and accepted conservation easements to mitigate for the loss of wildlife habitat.

With their growing importance in protecting California's open space, the land trusts recognized the need to coordinate their efforts and broaden their communication activities. As a result, they formed the California Council of Land Trusts in 2004. Among other functions, the council responds to legal and political challenges to ensure that conservation easements remain a viable and flexible tool for protecting natural resources. It seeks to broaden understanding of the strengths and limitations of conservation easements, and to show how voluntary land conservation fits within a spectrum that includes land use controls and regulation. Each mechanism has a role to play in protecting California's natural resources. The strength that conservation easements bring to this broader effort is threefold: they can be shaped to the particular needs of a property; they bring together willing landowners and experienced land managers; and they provide for conservation in perpetuity. That is a powerful combination!

Darla Guenzler



"Private Land, Public Good" is published by Bay Nature magazine as a special section in the January–March 2006 issue, an independent quarterly that explores the natural world of the San Francisco Bay Area.

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CONTRIBUTORS

- Marin County freelancer **JOHN HART** is the author of many articles and several books on environmental issues in the Bay Area, including *Farming on the Edge* (UC Press, 1992), *San Francisco Bay: Portrait of an Estuary* (UC Press, 2003) with photos by David Sanger, and the forthcoming *Legacy: Portraits of 50 Bay Area Environmental Elders* (UC Press, 2006) with photos by Nancy Kittle.
- **DARLA GUENZLER** is the founding executive director of the California Council of Land Trusts (www.calandtrusts.org). She was the chief researcher and author for *Ensuring the Promise of Conservation Easements* (Bay Area Open Space Council, 1999).

Edited by David Loeb
Design by David Bullen
Cartography by Louis Jaffe
and Ryan Branciforte,
GreenInfo Network

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Elisabeth Ptak, MALT
Anne Sharman, POST

SPECIAL CONSERVATION EASEMENT HIKE

Bay Nature, the Sonoma County Agricultural Preservation and Open Space District, and LandPaths are pleased to offer a "walk and talk" with Dean Marty at his ranch near Petaluma on Saturday, April 8, 10 a.m. to 2 p.m. This active ranch property, protected by the district through a conservation easement, serves as one of the original greenbelts in Sonoma County and offers beautiful vistas and abundant spring wildflowers. This private property is accessible only through guided tours. Space is limited and reservations are required. To sign up or for more details, please contact LandPaths at (707)524-9318 or outings@landpaths.org.