

# *Easements, Conservation Easements and “Rights of Nature” Easements*

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Center for Democratic and  
Environmental Rights





# Legal Services Disclaimer

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*Thomas Linzey is the presenter for this webinar. He is licensed to practice in the Commonwealth of Pennsylvania and is admitted to the bar of the Third Circuit, Fourth Circuit, and Eighth Circuit Court of Appeals, as well as the U.S. Supreme Court, but this presentation should not be considered to be the offering of legal advice.*



# The Roots: Land as Private Property

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# The European Doctrine of Land as Private Property

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Western legal systems treat land - and the ecosystems on that land - as capable of being owned as private property.

- As property, land is treated as a commodity.
- By virtue of that commodification, owners of land acquire a legal “bundle of rights,” rights which are protected by federal law:
  - the right to control the land.
  - the right to exclude others from the land.
  - the right to sell or lease the land.
  - the right to use the property as the owner sees fit.





# The Basics: What is an Easement?

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# Easements

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An Easement is a legal right to use another person's land for a specific purpose.

- Two most common types of Easements:
  - ***Utility Easements***: Used by utility corporations to reserve land for electrical transmission or other corridors; and
  - ***Access Easements***: Used to create a legal right of access to land, such as a shared driveway or other access road.




# Easements

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## What do Easements look like and where are they found?

- Easements will be recorded with the Deed of the land upon which the Easement exists. They will be in the form of a contract which will identify the holder of the Easement and a description of the Easement.
- Generally will be found with the Deed at the County land recording office. A title search will find all Easements on the land.





# The Basics: What is a *Conservation Easement*?

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# Conservation Easements

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A Conservation Easement is a special kind of Easement which restricts the landowner's ability to use the land in ways which would damage the conservation values of the land.

- Who can hold and enforce conservation easements?
  - Any **federal or state government agency** which has been given that authority by the state legislature or by Congress;
  - In most states, any **tribal government**;
  - Generally, any **nonprofit land trust or conservancy** if it meets state-specific rules for holding of easements.



# Conservation Easements

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## Why would a landowner create a conservation easement on their own property?

- Three primary reasons, or a combination of these three:
  - ***Tax benefits.*** Generally, the value of an easement is tax deductible to the landowner; and creation of an easement may reduce property taxes;
  - ***Income.*** In many states, state agencies will pay the landowner for the value of the easement;
  - ***Conservation interest.*** Landowner may want to protect the land into perpetuity against land development and leave it forever protected.



# Tribal Conservation Easements

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Conservation easements have been used in tribal land transactions in several ways.

- Before doing “land back,” current owners of land will often donate a conservation easement to a federal agency to guarantee non-development of the land; and
- Tribes will work with landowners who have private inholdings on reservation or trust land, to ensure that those inholdings are not developed in ways inconsistent with land owned by the Tribe.



# Creative New Uses - Conservation Easements

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Conservation easements are being applied in new ways by Tribal governments:

- For *Buffalo migration*, some tribes are considering working with property owners to enter into “right to roam” easements that would protect migratory routes, and which would recognize rights of Buffalo;
- For *protection of rivers* that run through traditional lands, easements can be used to guarantee access to tribal members and reinforce Treaty guarantees;
- For property owners unwilling to sell or donate land back to the Tribes, easements can offer another avenue to creatively *secure hunting, gathering, and fishing rights.*





# New Uses: “*Rights of Nature*” Easements

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# What is a “rights of nature” easement?

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Augments traditional conservation easements by recognizing legal rights for ecosystems on land.

- What is the “rights of nature” movement?
  - Starting in 2006, governments at the local, state, tribal, and national levels have been adopting laws recognizing that ecosystems and species have certain legal rights that can be enforced in tribal and other courts.



# Rights of Nature

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## Recognized legal rights include:

- The Right to exist.
- The Right to thrive.
- The Right to regenerate.
- The Right to evolve.
- The Right to perform natural species or ecosystem functions.
- The Right to be restored.
- The Right to habitat.
- The Right to clean water and the right to flow.
- The Right to a healthy environment and climate.



# Indigenous Origins

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The rights of nature movement is traceable back to indigenous understandings of nature as not being property.

- First Nations treat nature as something that cannot be owned.
- First Nations speak about nature as a living being, and as a relative.

# Tribal & First Nations

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Tribal and First Nations across the U.S. and Canada have adopted Rights of Nature laws and policies, including:

- Ho-Chunk Nation – 2015.
- White Earth Band of Ojibwe – 2018.
- Ponca Tribe of Oklahoma – 2018.
- Yurok Tribe – 2019.
- Menominee Tribe – 2020.
- Nez Perce Tribe – 2020.
- Oneida Nation – 2021.
- Innu Council of Ekuanitshit – 2021.
- Rappahannock Tribe – 2024 – first Tribal Constitution to enshrine the rights of nature.



# Rights of Nature Easements

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In addition to lawmaking, some landowners have used conservation easements to recognize the legal rights of ecosystems on their land.

- These “rights of nature” easements now exist in Hawai’i, Colorado, and Pennsylvania.
- Under those easements, the rights of ecosystems are recognized and can be enforced by the landowner and the easement holder against violators.
- On paper, those rights can be enforced against adjacent landowners.





*Using “Rights of Nature” Easements and Indigenous  
Guardianship to **Enable Land to Own Itself***

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*Traditional Tribal Lands Owning Themselves*

# *Land that Owns Itself: The Land as a Legal Entity*

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A legal entity is created which consists of the ecosystems that constitute the Land.

- A legal entity (an unincorporated association) is created through which the soil, air, water, plant, and animal ecosystems of the land parcel join together to become an “alter ego” of the land itself.



# *Land that Owns Itself: Creating an Indigenous Guardianship Council*

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An indigenous guardianship council is created by tribal members whose traditional territory includes a particular land parcel.

- Indigenous Guardians become trustees for the ecosystems that exist on the parcel - the soil, the air, the water, the plants, the animals.
- While not owning the Land, they are the voice for the various ecosystems for purposes of land management, signing of contracts, etc.
- The indigenous Guardians enter into an agreement on behalf of those ecosystems which recognizes the rights of those ecosystems, and which legally binds the Guardians to act in the best interests of those ecosystems.



## A Rights of Nature Easement Reinforces the Guardianship Council and the Rights of Ecosystems

Prior to the transfer of the deed to the Land - a “rights of nature” easement is placed on the deed which recognizes and protects the rights of nature on the parcel.

- Recognizes and protects indigenous cultural and ceremonial rights for the Guardians.
- The easement creates another layer of protection for the rights of the ecosystems on the land, with those rights then enforceable by the easement holder, as well as the guardians.
- Strips ability to develop property, and strips ability to act in ways which violate the rights of nature, into perpetuity.



# Projects - Land That Owns Itself

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Completed in Washington State (Forest) and in Colorado (Pyramid Mountain in Crestone).

- *Washington*: Land has been set aside for wildlife habitat and restoration of wetlands. Two acres of forest now “owns” its own deed.
- *Colorado*: Indigenous guardianship council now oversees “mountain that owns itself” - Pyramid Mountain in Crestone, Colorado. The thirty-acre mountain now “owns” its own deed.



# For more information

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Contact the Center for Democratic and Environmental Rights (CDER).

- CDER has developed template rights of nature easements and template materials to create ecosystem ownership legal entities.
- To learn more and contact CDER:
  - +1-509-474-9761
  - [info@centerforenvironmentalrights.org](mailto:info@centerforenvironmentalrights.org)
  - [www.centerforenvironmentalrights.org](http://www.centerforenvironmentalrights.org)





# *Questions*

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