Easement GIS for Data in California:

Assessment and Guidelines for the California Conservation Easement Database (CCED)

Prepared by

Larry Orman and Amanda Recinos

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SUMMARY

Over 50 million acres of protected open space lands exist in California. While 49 million are in fee ownership, over one million more are protected through conservation easements – legal protections that limit development while leaving a property in private ownership. Conservation and open space easements can be held by public agencies as well as nonprofits (land trusts and other organizations), and typically run in perpetuity, although some are time-limited.

Easement-protected open lands are spread throughout the state and their locations are usually unknown to anyone other than the easement holders. Consequently, land use planning and routing efforts by public agencies, conservation plans by nongovernmental organizations or research by academic institutions are at risk of incomplete views of the areas being considered and possibly poor decisions because of this – in addition to inefficiencies of having to gather data from individual easement holders.

While there are some technical concerns with how to inventory aggregations of easement GIS data, whether and how easement data is made available is a more complicated issue. On the one side are concerns about privacy and on the other is the fact that easement data is important to many users and is clearly a public record.

To meet the California Strategic Growth Council's objective of an easement database, GreenInfo Network has created the California Conservation Easement Database (CCED) based on these guidelines:

- The purpose of the database is to serve a wide range of users needing a compiled inventory primarily for a regional or statewide planning or analysis
- GIS data in the first CCED is drawn from authoritative sources: agencies owning easements, reports/data from agencies that fund easements, and other credible compilations by agencies or organizations – this data is used as is, with no boundary adjustments and using holding titles from sources.
- CCED data will be released with guidance to show easements as privately owned lands inaccessible to the public (unless affirmative knowledge to the contrary) without any owner names, except when they may be indicated in source data's holding titles. CCED should not be used for legal or regulatory property determinations.
- Future improvements to CCED will be undertaken, assuming continued funding is made available.

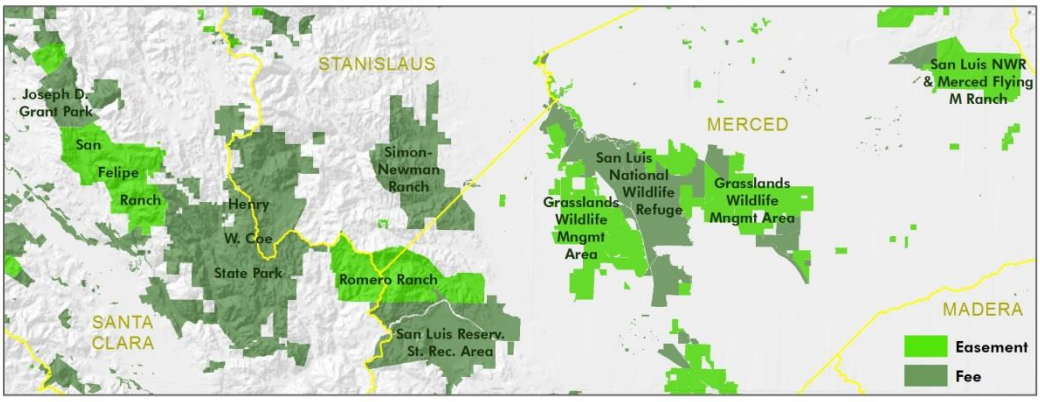
This report has been prepared by GreenInfo Network as part of a two year program to improve data on California's protected open lands, supported with funds from the state's Strategic Growth Council which has directed the development of a statewide GIS inventory of conservation easement lands.

I. INTRODUCTION

There are over 50 million acres of protected open space lands in California. While 49 million are in fee ownership, over one million more are protected through **conservation easements** – legal protections that limit development while leaving a property in private ownership. Conservation and open space easements can be held by public agencies as well as nonprofits (land trusts and other organizations), and typically run in perpetuity, although some are time-limited.

Although easements account for less than one percent of lands in a protected status, they are critical to a robust and evolving landscape. Easements provide not only conservation but also flexibility and cost-efficiency, and the process of securing easements can help build and strengthen rural communities.

However, when it comes to knowing where easements are, we face a lack of good spatial data on easements, leading to an incomplete picture for planners, land managers, researchers and others. In the image below, the protected landscape is a mix of fee and easement lands – to the extent we don't know where easements are, or have access to that GIS data, land protection efforts risk being poorly targeted.



Fee-owned protected lands in California have been inventoried in the California Protected Areas Database (CPAD) for over five years. This comprehensive data set details parks and open space lands owned by nearly 1,000 public agencies and land trusts. The proven success of CPAD's tracking of fee lands is evident by its heavy use by government and non-governmental agencies in California.

The question for California, then, is *what will it take to develop an informed picture of the complete landscape of protected areas – fee lands from CPAD plus a spatial inventory of those protected by conservation easement?* What *obstacles* are in the way of this objective and what *guidelines* should be in place to address such concerns? This report sets out the issues, needs and nature of **the California Conservation Easement Database** (CCED) – a separate document describes the technical nature of the database.

II. EASEMENTS AND EASEMENT DATA IN CALIFORNIA

In very general terms, the following strategies are being used in California to establish protected area easements:

- The most prominent type conservation or open space easement is where the right to restrict a property's uses to open space (such as natural habitat, farming, forestry, etc.) is acquired through purchase or through voluntary dedication, or a combination thereof. These easements are typically owned by state or federal agencies, or by a nonprofit land trust.

- Many conservation easements in California are secured through habitat conservation planning processes (HCPs, including the NCCPs, or Natural Communities Conservation Plans), where easements are acquired in defined conservation areas by those seeking to build in defined development areas. These easements are normally transferred to public agencies or land trusts.

- Finally, many local governments require the dedication of open space easements as a condition of residential or other development, with many of these easements held by home owner associations, or even developers. The lands under such easements are often the "back yards" of condominium developments, or open space areas threading through and around developments of any type.

As noted below, data on the first two types of easement strategies is reasonably available. Data on local easement dedications appears to only be inconsistently available. For example, San Diego County has very good data on these types of easements, often done through NCCP processes. No estimate appears to exist on the total acres in development-dedicated easements.

Efforts to Collect Easement Data

There have been two efforts to collect easement data in California, not including the recent National Conservation Easement Database which is described in the next section. The first of those was the Public Conservation Trust Lands Easement (PCTLE) data effort in the 2005, which was created along with the PCTL fee lands data set. PCTLE was an internal Resources Agency data product and never distributed.

From the early 2000s, GreenInfo Network has maintained easement GIS data for the Bay Area, in collaboration with the Bay Area Open Space Council, which guided the agreements among contributing agencies. This GIS data was frequently displayed on maps at public events and in 2010 was broadly distributed by the Council as part of the Bay Area Protected Area Database (BPAD), with updates every year or two since.

In the late 1990s, GreenInfo began assembling a statewide easement database for its internal use in support of public agencies and nonprofits needing more complete

protected area information for planning and programming purposes. This data work (and the creation of CPAD itself) was initially supported through a program of the Resources Legacy Fund (RLF) to support open space preservation in the state, but the easement data was never fully developed into a robust statewide product. It was used by GreenInfo working with those planning appropriate sites for fee and easement purchases, and offered selectively to some state agencies who asked for it, as they had no other options for such information unless they were to compile it themselves.

The 2012-2014 Strategic Growth Council-funded project on protected areas data has enabled GreenInfo Network to develop this initial work into a more complete easement data set.

III. NATIONAL INVENTORY OF EASEMENTS - NCED

In 2010, a consortium of non-governmental organizations received funding to develop the first national inventory of conservation easements. Forming themselves as the National Conservation Easement Database (NCED), Ducks Unlimited, the Trust for Public Land, Defenders of Wildlife, Conservation Biology Institute and NatureServe have developed this GIS inventory of available information on easements. Public agency easements as well as land trusts and related groups' holdings are included.

Parallel to NCED is the USGS Protected Areas Database of the U.S. (PAD-US), which only covers fee land, similar to CPAD (NCED is therefore analogous to the proposed California Conservation Easement Database).

To date, the NCED project has been mainly funded by foundations, with some support from federal agencies. The lead groups are now TPL and Ducks Unlimited.

More information on NCED is at: http://www.conservationeasement.us

The NCED data set is developed as a voluntary contribution of data, with contributors able to limit certain aspects of what data is available. From their website:

> *The National Conservation Easement Database (NCED) does not contain any identifying information about landowners. Only publicly available information from land records and basic statistics is included, such as the easement boundary, purpose and holder. In addition, for special instances in which a land trust requests concealing the exact location of an easement, we will not display the location on the map and will withhold the location from downloads. For these easements, all other descriptive information is available for data reports, along with information on all the other easements, through the primary web site – the National Conservation Easement Portal on the Conservation Registry. To illustrate, if there are five easements in a county and two of these easements have requested privacy, only the three non-sensitive easements is shown on the map, while the data reports will summarize all five easements.*

Use of the data is shaped by this overall policy:

> *Users of several public web sites are able to view, analyze, and download data. The main access point for the easement data – the National Conservation Easement Portal – allows public users to view non-sensitive easements on a map and access accompanying information, while also providing the interactive ability to search and create reports. Additional websites, including LandScope America, Conservation Registry, Protected Areas Database of the U.S. (PAD-US CBI Edition), Data Basin, and the Conservation and Recreation Lands system, will include the non-sensitive easement data, letting users view information about easements in context with information about biodiversity and other natural resources. Partners have direct access to the easement database for internal*

analyses that support decisions in the course of their respective conservation missions. Any published reports or other documents that rely on internal analyses will not include information on any sensitive easement locations.

It should be noted that, as a nonprofit-run organization, NCED is not subject to public record requests. It is also important to realize that NCED does not have ongoing funding and its procedure of tracking a wide range of permissions is costly to maintain.

NCED DATA STRUCTURE

The NCED data model is related to the PAD-US data model but has a number of different fields to meet the requirements for easements (including beginning/end date of easement, type of easement, etc.). More details are in the NCED metadata.

NCED data is accepted "as-is", with no geometry adjustments, unless they are done in coordination with the easement holding organization.

NCED IN CALIFORNIA

GreenInfo Network has cooperated closely with NCED and assisted in developing data for its releases, using their protocols.

NCED for California as of September 2013 contains 1,800 easements totaling just over 1,000,000 acres, owned by about 50 agencies/organizations. This total includes NCED's detailing of easement acres within counties, when agencies did not agree to disclose the GIS data on the easements. For easements managed by the California Department of Fish & Wildlife, this includes 42,000 acres (in 85 holdings) that are only reported by county (CDFW holds many more acres than this). It does not including the state's largest easement holder, the California Rangeland Trust, with over 250,000 acres under easement. By adding in the remainder of Fish & Wildlife easements, the total Rangeland Trust acres, and approximately 50 more organizations, the actual California total is an estimated 1.4 million acres in easements.

OPPORTUNITIES WITH NCED

NCED does not have a secure funding base and its capacity to support state inventories beyond what any group in a state can do is unclear. However, NCED has defined a very workable strategy on data structure, and a general approach on data permissions that is helpful for developing guidance for California.

In general, GreenInfo believes that California should strive to create a statewide conservation easement GIS database (CCED) that can serve as a complete "building block" for the California element of NCED.

IV. CONCERNS AND CONTEXT FOR EASEMENT DATA

A California Conservation Easement Database, connected to the National Conservation Easement Database, is clearly a viable product:

- An overall database structure has been defined by NCED
- GIS data exists that covers most all conservation easements in the state, although spatial accuracy of this GIS data varies

There are key issues facing California, however, in developing a truly reliable and useful conservation easement data set. Most of these stem from the tension between views about prerogatives and concerns of private owners of the underlying land, in relation to the need for (and even the right of) publicly-focused organizations and agencies to use the data to guide key planning, acquisition and other decisions which can involve millions if not hundreds of millions of dollars in potential expenditures.

CONCERNS ABOUT EASEMENT DATA VISIBILITY AND SHARING

The concerns that most seem to animate objections to making available easement data are the following:

- Trespass – land owner concerns about people going onto their property and causing damage or incurring injury adjudicable through litigation are a frequently noted objection to easement data being made available. It is unclear there is any record of this being an actual problem in states that already make this data available (mostly via web portals).
- Perception – some land owners who sell or donate conservation easements wish this information to not be public, out of concern for perceptions by neighbors or others about their political views or how such a decision might affect nearby property choices.
- Broader Perceptions – in some rural areas, political volatility around public-private relationships can be focused on the idea of easement data being public, particularly when it concerns ranching or farm property. These pressures may not be easily susceptible to facts about the public nature of easements or the lack of data showing any problems with the availability of this information. For some land trusts, these concerns can pose significant challenges to overall land trust programs and outreach.
- Privacy - most rural landowners wish to limit their exposure to the public eye and might feel that an easement database would simply be another avenue for reducing personal privacy. It should be noted that, particularly in cities, property ownership records are extremely public, both through assessors' data

portals (which allow searching for parcels) and more significantly through web sites like Zillow.com, which have extensive information on virtually all urban and many rural parcels (though not including actual owner name, which of course is not part of any potential easement data framework). Finally, it should be noted that there are at least three national companies who compile and resell for high prices parcel data for every county in the U.S. for which it is available – this data includes owner name and almost all collected information on any property, including its tax and improvement records, resales, etc.

- Disclosure Agreements – some agencies and land trusts may have agreements governing easements that limit disclosure of information about the easement, potentially including its exact location/boundaries and other information. As noted below, these conflict directly with public records procedures.

THE CASE FOR EASEMENT DATA VISIBILITY

Conservation easements are almost always forever – while some are time restricted (e.g., some NRCS easements), most are in perpetuity. This means that the public value that enabled the easement must be sustained, literally forever. This core fact about easements drives a need to know where they are and who holds them – and underscores the value of having GIS data available on their location. The general issues of perpetuity, monitoring and long term stewardship are part of ongoing and complicated consideration and debate in the easement community, particularly among land trusts – related to but much broader than the narrower question of GIS data on easements.

In principle, no data on boundaries or other attributes of easements is private – easements must be recorded on deed instruments and filed in public records offices, subject to title search and other review. Anyone can, with effort, locate this data and use it to whatever (legal) purpose they desire.

In practice, however, gathering easement GIS data this way is challenging – it first requires finding which properties have easements, and then translating paper documents into digital map boundaries.

Easements are recorded in County Recorder offices. Since 2002, Recorders have been required by state law to make lists of easements available:

> *Government Code 27255: (a) The county recorder in each county shall develop and maintain, within the existing indexing system, a comprehensive index of conservation easements and Notice of Conservation Easement on land within that county. The conservation easement index developed and maintained pursuant to this subdivision shall include all conservation easements recorded on and after January 1, 2002.*

However, not many Recorders do this and there appears to be little enforcement of the requirement. Further complicating this is that many easements are recorded with names other than “conservation easement” – e.g., “easement agreement”, or

"agricultural easement", etc. These alternative names apparently prevent proper tracking of easements, although if easement holders transmitted the parcels that were under conservation easement to the Record, bulk changes could be made to their records to indicate them as "Conservation Easements" (Communication from Napa County Recorder, 10/15/13).

However, non-compliance with a legal requirement does not mean that it disappears from discussion about easement data availability. If county recorders' offices maintained these indexes (which must include assessor parcel numbers), creating GIS data from parcel layers would be straightforward and certainly was understood as a use when the state law was passed.

See the Appendix of this document for more information about this requirement.

A second requirement to track easements in California came in 2006, with the establishment of the California Conservation Easement Registry (http://easements.resources.ca.gov/). This registry tracks those easements acquired with State funds after 2000, but its establishing law was amended to specifically bar tracking specific location of these easements. Since then, however, as noted below – most of these easements' locations have been made publicly visible in their funding processes.

Most of those organizations and agencies involved in developing and using protected areas data share a strong agreement that such data should generally not recite the names and other personal information of property owners, even if such data is readily available, as noted above. Similarly, there is universal agreement that lands under easement should be presumed to have no public access and that fact should be noted prominently in any use of this data.

Given all this, there are a number of key arguments for making easement GIS data accessible:

- As noted above, data on easements are a matter of public record, as easement documents are filed with County clerks/recorders and easements are a function of public support (tax status of land trusts, deductibility of donations, sometime use of public funds, etc.)
- Conservation easements are both for the value of the individual property protected and for the mosaic of protected lands that individual easements often contribute to – a land mosaic that almost always needs to be visible to be planned and implemented. The permanent nature of most all easements greatly magnifies this importance of visibility to public processes.
- Given budget and related challenges for both public agencies and land trusts, ensuring that the public value (tax credits/offsets, funds directly expended) of any easement is secured for the term (usually forever) of an easement challenging. Transparency of easement data – in this case core information about location and easement holder - helps safeguard against the possibility of institutional instability or inattention leading to an erosion of public trust and purpose. As mentioned

above, easement data can easily remain hidden from view if left solely to individual easement owning organizations.

- Public planning and decision processes that need conservation easement GIS data cannot effectively research this through parcel by parcel title search. Similarly, because there are so many and varied public planning and land use decision processes needing this data in any area, preparing this information de novo each time is hugely inefficient and creates the potential for costly mistakes if key easement holdings are missed or unknown.

- Similarly, any individual public agency or organization that holds back easement data creates a highly inefficient framework for those seeking to use that data. There are over 165 easement holding organizations in California and collecting relevant data from even a fraction of them every time it is needed is simply unrealistic and costly to public processes in any case. Related to this are rationales about a composite statewide easement data set not being completely up to date – while this is always true of most data aggregations, it does not moot the value of such data for planning purposes (project siting tasks are a different matter, but those are not foreseen as a use of CCED) – taken to its logical extent, this argument would preclude any aggregate data of any sort.

- Any easement purchased entirely or in part with public funding in California (and elsewhere) is subject to public records laws, and documents with explicit data on easement location(s) are always part of public records provided in such public funding approval processes. For example, Calif. Wildlife Conservation board staff reports show detailed maps of proposed easement acquisitions and often have detailed data about those acquisitions.

- Many land trusts and public agencies print and display maps of showing the boundaries parcels they have protected via easements – these are often displayed on web sites, at conferences and in brochures and other publicly-distributed materials (one particular public agency example is the California Farmland Conservancy Program which publishes online reports showing exactly mapped boundaries of its funded easements as well as a spreadsheet of each, often showing partial owner names).

- Prominent site markers or signs are often posted on land trust-held easement properties and appear to have not created trespass or other inappropriate use issues. Two of the major funding sources for easements (and fee lands) in California have been Propositions 12 (2000) and 84 (2006), both of which have requirements that all acquisitions of fee and or easement lands (and other projects) have posted signs on-site - e.g., Prop. 12: *5096.309. Pursuant to guidelines issued by the secretary, all recipients of funding pursuant to this chapter shall post signs acknowledging the source of the funds."*

- Many large land trusts and related nonprofits already make available GIS data on easement property boundaries, with no known problems. In the Bay Area, the Bay Area Protected Areas Database (CPAD fee plus easement lands) has been published to hundreds of users over the past five years and contains GIS data on all easement lands in the region, with no known problems of use.

- For land trusts, public trust and confidence is vital. Aggregations of land trust easement data such as CCED help protect against erosion of this trust, by: a) enabling public agency audits and oversight; b) providing crucial information to public planning and decision processes that could make expensive errors without the data; and c) protecting against the consequences of land trust dissolutions or serious losses of operational effectiveness.

- While there are definitely real concerns about perceptions of easement data availability by landowners, neighbors, and others in an area, most of these circle back to access which has been dealt with in many parts of both California and the U.S. as noted above (clear use of data showing "no access"), and to a sense of privacy (concerns about neighbors knowing, concerns about feeling subject to public scrutiny). For public agency easements, these issues are transcended by the fact that specific location data about easements are already widely available without indications of any significant trespass issues, and by the needs and benefits of such data being available for public processes, with proper protections (access, owner names, etc.). While some may claim privacy rights when it comes to easements, this is simply not the case legally or in practice, particularly for those funded with public resources.

Finally, and perhaps most significantly:

- GIS data on many public agency and even nonprofit-held easements over private property in California are already widely available to GIS users as data downloads and in publicly available, online map applications that have been online for years.

- GIS data on easements over private lands in other states held by public agencies are widely available (see next section for examples).

The next section describes this situation more fully.

EASEMENT DATA POLICY AND PRACTICES

PUBLIC AGENCIES IN CALIFORNIA: Federal agencies make easement GIS data available without restriction, mainly the Natural Resources Conservation Service, and the U.S. Fish & Wildlife Service, which hold the vast majority of federally easements in the state.

Among state agencies, by far the largest easement holder is the California Dept. of Fish & Wildlife (CDFW). The lands division of CDFW currently has a data policy which restricts its GIS easement data from being incorporated into other data – the easement data is made available when requested by individual users, however.

At the same time, the California Wildlife Conservation Board (WCB), which is the land purchasing body for CDFW programs (and in fact is staffed by CDFW) has since at least 2005 maintained an online GIS database of all funded easement (and fee) acquisitions, including all CDFW acquisitions. This database is viewable through the CDFW BIOS system, down to the largest (closest) scale, and the GIS data itself is downloadable from WCB and from the federal data portal www.data.gov where is it marked "for use without restriction". WCB acquisitions are also copiously documented in publicly available staff reports and presentations prior to each WCB board meeting, including precise maps of property locations and names and other pertinent information on property owners.

The Dept. of Water Resources also holds easements on floodways in California and to date GreenInfo Network has not been able to secure their data for the inventory, and their lands are not in the WCB database.

CALIFORNIA NONPROFIT ORGANIZATIONS: In the San Francisco Bay Area, many land trusts and related non-governmental groups have contributed GIS data to the Bay Area Open Space Council which then publishes it as part of the Bay Area Protected Areas Database (BPAD), which is managed by GreenInfo Network and is a subset of CPAD (with the addition of easements). This data has been made available for download and has been used extensively in mapping (both print/display and some online use). While there was initially some resistance by several land trusts when the data program began in the early mid-2000s, this has long-since ceased to be an issue and all members support having this data available. There have been no reported issues of data misuse to the Council during the eight years it has been in use (generally with yearly updates).

The Nature Conservancy, the third largest easement holder in the state, has had an open data policy on its easement GIS data for at least five years, with no reported issues or concerns.

The largest easement holder in the state is the California Rangeland Trust. CRT has chosen to not to submit its data to a statewide inventory, citing concerns held by those it works with – primarily owners of ranchland – about possible trespass incitement, a feeling of easement information being private, and some broader views about property rights, public agencies and political perspectives. The complications of such issues for an organization like CRT are understandable but nonetheless are balanced by the

broader issues of public data described earlier – particularly the lack of any documented misuse of such data when it has been available in California or elsewhere in the U.S.

NOTE: In developing the guidelines in the following section of this report, GreenInfo Network has not received any easement data from CRT, and has instead simply incorporated already public GIS data from the Wildlife Conservation Board, described above in relation to CDFW. This data does not include any easements donated in full to CRT, but likely includes most of those acquired with public funds.

EASEMENT DATA PRACTICES IN OTHER STATES

The following is a limited summary of GIS easement data practices by several states, as well as by NCED generally. Information on practices in states is limited to summaries and some case studies in other publications, particularly work by Amy Morris and Adena Rissman, and James Olmsted (see references at the end of this report), as well as contemporary review of agency web sites.

The dominant conclusion from this general review is that there are extensive official GIS databases of parcel specific, private land easements that are available for download and use throughout the United States. For public agencies, there appear to be few that do **not** make easement data available. For nonprofit land trusts, the situation appears more mixed, though many of those states reviewed do indeed aggregate parcel level information on private land easements and publish it in their data sets.

NCED (see easement mapping at: http://www.conservationeasement.us/browse/map) can be used to ascertain that very large amounts of the national total of 40 million acres of private land under easement have detailed, parcel level GIS data available without only minor restriction (no owner name, no public access unless explicitly indicated).

Summaries of Selected State Practices

Virginia - GIS data on over 3,500 conservation easements (over 675,000 acres) for the state created and supported Virginia Outdoors Foundation is posted online in a web map application (https://vanhde.org/content/map) that allows site level views of private property lines (over street and air photo base maps), along with general attributes (not including owner name). More generally, (from Olmsted): “Virginia’s conservation easement enabling statute mandates that any holder conveying a conservation easement recorded after July 1, 1988, must send certified copies of the easement by certified mail to the local jurisdiction, the Attorney General of the Commonwealth, the Virginia Outdoors Foundation, and to any public body named in the conservation easement itself. The same procedure must be followed for instruments creating a conservation easement” (page 72, Olmsted, “The Invisible Forest”)

Colorado: Data on protected lands (fee and easement) are managed by the Colorado State University COMAP (Colorado Ownership, Management and Protection) project - http://www.nrel.colostate.edu/projects/comap/index.html While the COMAP web site has not been updated since 2011, detailed COMAP easement data (polygons) is available through NCED.

Florida – Conserved lands data including easements held by land trusts as well as public agencies are managed by the Florida Natural Areas Inventory program (data page: http://www.fnai.org/gisdata.cfm). Parcel specific GIS data is available for download and an web map with detailed property views is here: http://data.labins.org/imf2/FREAC/FNAI.jsp?

Maryland – Conservation easement data, including private landowner easements, is available from the Maryland Dept. of Natural Resources (http://dnrweb.dnr.state.md.us/gis/data/data.asp). In addition, a state web mapping system allowing detailed views of easement properties is here: https://data.maryland.gov/Energy-and-Environment/Maryland-Statewide-Forest-Conservation-Easements/3y3n-ez6k

Massachusetts – The statewide GIS program, MassGIS, maintains a detailed, parcel scale, downloadable database here: Data described and available at: http://www.mass.gov/anf/research-and-tech/it-serv-and-support/application-serv/office-of-geographic-information-massgis/datalayers/osp.html

From Morris and Rissman: "In fact, in Massachusetts, where the Division of Conservation Services maintains a publicly accessible map with statewide conservation easements, GIS staff have not received any complaints from landowners about public intrusions resulting from their properties' inclusion on maps of protected land." (pages 1267-68)

Minnesota – State funded easements (the Reinvest in Minnesota, or RIM, managed by the state's Board of Water and Soils resources) are mapped online with detailed property polygons at: http://maps.bwsr.state.mn.us/rimonline/

Montana – Montana requires that all land trusts and public agencies provide to the State Library (which maintains the state's GIS data) information on the location of all acquired conservation easements. This data is provided to the state's Natural Heritage Program and it is made available for public viewing and data download without restriction.

Fish and Wildlife Agencies in Other States

State fish and wildlife agencies play a key role with easements in many states. The NCED program noted above summarizes participation of these agencies in providing easement data to their inventory as follows:

- 31 fish & wildlife agencies provide their easement data to NCED
- 4 agencies do not hold easements or have easement data
- 16 agencies have not yet been included/contacted in NCED
- The California Dept. of Fish & Wildlife is the only such agency that declined to provide data to NCED

Note: these numbers are more than there are states as some states had multiple agencies.

V. GUIDELINES FOR EASEMENT DATA DEVELOPMENT & RELEASE

Based on the range of needs and concerns noted above, the following are the guidelines that will be followed by GreenInfo Network in meeting California's need for a statewide GIS inventory of conservation easements.

CCED OBJECTIVES

The data set will be known as the California Conservation Easement Database (CCED), which, together with the California Protected Areas Database (CPAD), provides a GIS data resource supporting a wide range of statewide and regional planning and analyses, and a collaborative framework to encourage data sharing among hundreds of agencies and organizations.

The intent of CCED is to provide a single source for aggregation of California's easement data, replacing the frequent ad hoc inventories done for particular regions or studies. Information on CCED's availability will be distributed to appropriate agencies, organizations and others to encourage use and stewardship of this data set. CCED will also be an element in the National Conservation Easement Database.

CCED is not a replacement for source agency data – it is a general guide to the presence and boundary location of conservation easements. The currency of CCED will depend on the funding resources available to support it into the future – users requiring the most current information will be directed to source agencies. Over time, CCED may develop faster cycles of updating, as data sharing improves.

DATA TO BE INCLUDED IN CCED

1. Easement GIS data will only be included in CCED when it is available from an authoritative source. Authoritative sources are those public agencies or other organizations that hold legal title to a conservation or other relevant easement, or those agencies that make public such data as a result of their role in funding the purchase of easements. In addition, data from other compilations may be used, where those sources have published it for a significant period of time.

2. CCED will use the source agency's title for the easement holding as is, without modification. Aside from what might be noted in a holding title from the data source, CCED does not include any data about the name or street address of a private property owner.

3. All easement data gathered will be presumed to be closed to public access unless affirmatively indicated as open or restricted (permit required or limited operating hours) by the source agency.

4. While the long term objective of CCED is to be aligned to county ownership boundaries, early editions of the data set will use the geometry provided by the source agency or organization without modification. This may result in some overlaps and other alignment issues, which will be addressed in the future.

5. Holdings with multiple easement holders will be shown to the extent feasible – over time, technical approaches will be developed as to how best to address easements held by more than one agency or organization over the same property.

DATA USE GUIDELINES

1. CCED will be made available for download as a GIS file on the California GeoPortal, and its use will be clearly noted as subject to user compliance with conditions attached in the CCED Database Manual. Consideration of whether CCED should be provided as a data service will be made in the future.

2. CCED data is provided to users "as is" with a full disclaimer to this effect.

3. CCED data is not suitable for any decisions regarding legal determinations of property location or status – users will always be directed to the easement holding agency or organization for such information, or to the appropriate county recorder's office.

4. Any mapped display of CCED data shall clearly and prominently indicate that these lands are private property and are not open to any public access. The only exception to this condition is when an easement-protected property is affirmatively noted to be open for public use – this status will be shown in the CCED "access" field.

FUTURE STEPS FOR CCED

The following are the intended future steps for CCED:

- Secure funding for ongoing maintenance and improvement of CCED, including twice yearly updates and outreach to expand use of data
- Continue development of data sharing options and protocols with key agencies and organizations, especially those with over 10,000 acres in easement holdings
- Expand CCED inventory to include smaller land trusts and agencies not currently accounted for
- Address issues of boundary alignment to parcels – work with selected agencies and organizations to define best practices
- Develop online tool for reporting easement data additions and corrections for CCED

APPENDICES

REFERENCES

In the report above, reference is made to three particular documents which are the primary reviews available of policies and practices on easements and easement geographic data:

Morris, A. W. (2009). *The Changing Landscape Of Conservation Easements: Public Accountability & Evolving Oversight.* (Doctoral dissertation). University of California, Santa Cruz.

Morris, A. W. & Rissman, A. R. (2009). Public Access to Information on Private Land Conservation: Tracking Conservation Easements. *Wisconsin Law Review, Nov.-Dec. 2009*, 1237-1282.

Olmsted, J.L. (2011). The Invisible Forest: Conservation Easement Databases and the End of the Clandestine Conservation of Natural Lands, *Law and Contemporary Problems*, 74, 51-82.

INFORMATION ON CALIFORNIA EASEMENT DATA TRACKING REQUIREMENT

Further information California requirement for tracking easements at the county level:

Excepts from: Amy Wilson Morris & Adena R. Rissman, Public Access to Information on Private Land Conservation: Tracking Conservation Easements, 2009 WIS.L. REV. 1237 (2009)

The requirement that county recorders maintain indexes of conservation easements was signed into law in October 2001. The law is intended to help identify conservation easements at the county level by standardizing the ways that conservation easements are tracked by recorders. (Page 1260)

The language in the final county-indexing law notes that to require indexing by recorders, a conservation easement must be "properly labeled" or a separate "Notice of Conservation Easement" must also be recorded. Fees for the indexing are supposed to be included with the recording fee for the document. The law does not require indexing of conservation easements recorded before 2002. However, it states that conservation easements created through California's open-space and agricultural-easement laws should be indexed along with those created under the state's conservation easement enabling statute. (Page 1261)

Page 1260 on:

From fall 2007 through summer 2008, we conducted interviews with supervisors from the recorders offices in all fifty-eight California counties. We found that 29 percent of counties (seventeen) had no separate indexing code for conservation easements, and thus no way to generate a list of the county's (post-2001) recorded easements… We also found that there was no way to search land records online for 43 percent of counties (twenty-five counties).

Currently, even searching land records county by county would not provide a full listing of conservation easements. We found that almost one-half of counties do not have records online. Nearly one-third are not indexing conservation easements at all, despite the legal requirement to index since 2001. Most counties are mis-coding some conservation easements, and most conservation easement indexes only include properly labeled conservation easements recorded after 2001. Additionally, land records provide no information about the public's financial investment.