

FFS Workshop on conservation easements

April 26th 2024

ENPLC Event

A.3.1 Easements

AGENDA	
Time	
9:00- 9:30	Welcome coffee
9:30-9:40	Opening speech – <i>Alban de Loisy, Director General, Fondation François Sommer</i>
9:40-10:00	What is a conservation easement? Feedback from LIFE ENPLC Project - <i>Carolina Halevy, ENPLC LIFE project coordinator, Eurosite</i>
10:00-12:00	<p>Round table: the French experience Introduction and moderation: <i>Federation of Conservatories of natural areas, Renaud de Laâge</i></p> <p>Speakers:</p> <ul style="list-style-type: none"> - <u>Pascal Bargiarelli</u>, project officer projects impact on Natura 2000 site evaluation and “Obligations Réelles Environnementales”, ministère de la Transition Ecologique et de la Cohésion des Territoires - <u>Fabrice Normand</u>, Director of Conservatory of natural area of Pays de la Loire - <u>Yannick Barascud</u>, department Biodiversity, agriculture and territories, Regional natural park of Pyrénées-Ariégeoise - <u>Marie-Hélène et Christian Tanguy</u>, landowners <p>To conclude the round table, Romain Melot, Researcher director at INRAE and Guillaume Pain, teacher-researcher at ESA, will present a new project: LANDEV.</p>
12:00-12:30	Ambassadors ENPLC award ceremony
12:30-14:00	Convivial lunch
14:00-14:45	<p>Overseas feedbacks</p> <ul style="list-style-type: none"> - <u>Marie-Michèle Rousseau-Clair</u>, Chef of conservation, Nature Conservancy of Canada. - <u>Victoria Marles</u>, ex general director, Trust for Nature, Australia. <p>Moderator: Anne-Sophie Mulier, ELO</p>
14:45 -16:15	<p>Round table conclusion: how to spread the use of conservation easements across Europe</p> <p>Speakers:</p> <ul style="list-style-type: none"> - <u>Diarmaid O’Cuanachain</u>, in charge of Private land conservation at European Commission. - <u>Guillaume Sainteny</u>, President of Plan Bleu pour l’environnement et le développement en Méditerranée

	<ul style="list-style-type: none"> - Jurgen Tack, general secretary at ELO (European Landowners' Organization). - Gilles Martin, Professor emeritus of Côte-d'Azur University, GREDEG, CNRS <p>Moderator: Tilmann Disselhoff, NABU</p>
16:15-16:30	Closing speech - Michele Pappalardo , FFS Nature committee president
16:30-18:00	Free visit of the Hunting and Nature Museum

All ppt presentation are available here : [PPT Global ORE.pdf](#)

Questions ask via Zoom during the workshop are available here:

[Zoom discussion FFS Workshop.pdf](#)

Introduction

Friday 26th 2024, François Sommer Foundation organized a workshop on conservation easements for landowners, natural areas managers, students, researchers, stakeholders... Around 80 people in person and 150 online have attended the event. Thanks to the live translation, people from countries other than France were able to follow the workshop properly.

Conservation easements, largely used in Anglo-Saxon countries from decades, are still not widely used in Europe. This legal instrument is a powerful tool for long-term nature conservation and can be mobilized by landowners for private land conservation. During this one-day event, feedback and talks have enabled to know and understand better this tools. Indeed, round-table were about feedbacks from countries where the tool is used, testimonials from private landowners who have contracted an easement, practical explanations of how to set up an easement, who is involved, what type of obligation, what procedure, the advantages and disadvantages and how to develop more widely its use in countries where the tool exists and for countries that do not have the tool.

Fondation François Sommer (FFS) director, Alban de Loisy reminds us that conservation easements are still unknown but faced with biodiversity erosion and climate change, public action is not enough, and private actors must take action. It is a strong conviction at FFS that protecting biodiversity must also involve concrete and complementary action by private landowners. Conservation easements are part of a range of tools available for nature conservation so let's make the most of them!

What is a conservation easement in Europe? Feedback from LIFE ENPLC Project



Carolina Halevy @Fondation François Sommer

Carolina Halevy, from Eurosite, has presented the LIFE ENPLC Project and points out that this project brings people together: nature conservationists and private landowners and the importance of taking into account different point of view. ENPLC project has created a network of actors working for the same purpose: Nature conservation in Europe. The project showed that a tools box was necessary to create synergies between countries.

During the project, case studies on conservation easements were implemented, they have helped to identify barriers and solutions to increase the use of this tools. Indeed, in Europe, it is a new tool so it takes time to know and understand it, there are some legal uncertainties and financial incentives are not attractive enough. To remedy this, a solution could be education and training for landowners but also for notaries and more communication and ambassadors or pilot estate to develop trust.

[Replay of Carolina Halevy presentation](#)

Feedbacks from France – Obligation Réelles Environnementales

A round-table discussion moderated by Renaud de Laâge de Meux, ORE project manager for the Fédération des Conservatoires d'espaces naturels (FCEN), with :

- Pascal Bargiarelli, in charge of Evaluations des incidences des projets sur les sites Natu-ra 2000 et ORE at the French Ministry of Ecological Transition and Territorial Cohesion.
- Fabrice Normand, Director of the Pays-de-la-Loire Conservatoire d'espaces naturels (CEN).
- Marie-Hélène and Christian Tanguy, landowners of the Ferme de la Maison Neuve and signatories of an ORE (La Ferrière, Vendée).
- Yannick Barascud, coordinator of the Biodiversity, Agriculture and Territories division at the Parc naturel régional des Pyrénées Ariégeoises.

To conclude, Romain Melot, director of research at INRAE and Guillaume Pain, teacher-researcher at ESA, have presented the LANDEV multidisciplinary research project.

Inspired by the concept of conservation easements, France created in 2016 by the law *for the reconquest of biodiversity, nature and landscapes* (Article L.132-3 of the Environment Code) the Obligation réelles environnementales (ORE). ORE are more a contract than an easement. An easement requires the existence of two properties: a servient property and a dominant property. An ORE differs

in that there is no dominant property. In addition, while an easement can only create passive obligations (not to do), an ORE can provide for both active obligations (to do) and passive obligations.



From left to right: Renaud de Laâge de Meaux, Marie-Hélène and Christian Tanguy, Yannick Barascud, Pascal Bargiarelli and Fabrice Normand © Fondation François Sommer

Key Numbers

The first contracts were signed in 2018.

130 contracts known to date, including 117 in 2023 (60% "conservation", 40% "compensation").

It is difficult to have an exact number as there is no real database. Pascal Bargiarelli, from ministry of ecological transition said "we estimate of at least 200 contracts signed today". Since registration of ORE at Land registry service, more information are available (July 2022).

Thirty or so ORE in the Natural Regional Park network to date.

65 in the Conservatory of Natural Areas network to date.

ORE a new tool for nature conservation ?

Interesting fact: it took around twenty years for the OREs to be created! (see Gilles Martin's presentation).

- A relatively recent tool that had a hard time getting off the ground at first, but over the last few weeks/months has received increasing media coverage and has been taken up by various players (Conservatoires des Espaces Naturels, Fédérations Départementales des Chasseurs, Parcs Naturels Régionaux, associations, etc.).
- A strong contractual tool: a notarial deed attached to the property, but flexible enough to adapt to each situation on the ground. Indeed:
 - o Freedom of: duration, surface area, obligations
 - o Adapts to protection needs and the owner's wishes

Why nature NGOs sign ORE ?

For example, for Natural regional park of Pyrénées-Ariégeoise, they sign ORE for biodiversity protection and application of the national biodiversity strategy; to support landowners; and for the sustainability of their actions on private land (no questioning of actions if landowner change).

For Natural Area Conservatory of Pays de la Loire, they sign ORE to secure management contracts, taking advantage of the fact that ORE are attached to the land. It is a flexible tool depending on the wishes of the landowners. It is an interesting tool for forgotten elements in conservation policies like bocage. This tool fills the gap in regulatory framework and allow a partnership approach.

Why landowners sign ORE ?

Testimonial for M&Ms Tanguy, landowners in Vendée, France

They discovered that their land was a true biodiversity place thanks to several fauna and flora inventories. And more they were aware of this richness more they wanted to protect their land.

They read an article in a local newspaper about the tool and were interested in the idea of giving a status to the land. The ORE is the result of this perception and will. It was the culmination of all the work done in the field and the desire to pass on this potential to the next farmers (in their case, their children).

Signing an ORE with Conservatory of Natural Areas of Pays de la Loire was interesting for the landowners because they give them the possibility to receive advice and they have the willingness to share and welcome people on their land (researcher, students, ...).

They have no fear of a possible loss of value of their land, on the contrary, they see ORE as a source of richness and the constraint is in fact a commitment they have accepted.

Generally, landowners sign ORE 1) to protect their land with a long term contract attached to the land; 2) they want to be sure that all the energy and all investments made will endure, will be preserved; 3) the tool is flexible; 4) no obligation imposed; 5) have access to advice and support from nature conservation organizations.

What does a landowner who signs an ORE contract commit to?

To respect the obligations to do or not to do set out in the contract (the obligations are adapted to each area and each landowner). For example, they must

- Maintain permanent grassland
- Maintain a linear hedge
- Allow access to the co-contractor
- Not to fill in ponds
- Not using pesticides
- ...

ORE always aims to conserve/restore nature (biodiversity and ecological functions) in a sustainable way.

ORE have a purpose of long-term conservation as it is linked to the real estate.

What compensation for landowners?

Exemption from deed registration fees and charges

Possible exemption from the municipal share of the TFNB (Property tax on undeveloped land). Few requests because 1) there is very little incentive and 2) it is left to the discretion of the municipalities, which in most cases are unaware of the tool and this financial incentive.

➔ More substantial financial incentives would enable the tool to be used more widely.

How long is the commitment?

The maximum long-term commitment is 99 years (French law), but the duration is free and there is no minimum.

In the event of an inheritance or sale, can an ORE be an obstacle to find new buyers?

It can, because there is no case law.

Many people are also wondering about the value of property under an ORE. To date, there is no data, but according to some signatory landowners, the ORE contribute to the increased value of the land. It also depends on the definition of value: economic value or ecological value.

The lack of knowledge about the tool can be an obstacle.

ORE and National Strategy on protected areas ?

Possible contribution but not mandatory of ORE to national strategy on protected areas.

In some cases and depending on the context, if lands present important ecological challenges, lands under ORE may be recognized as high protection area after (10% under strict/strong protection - biodiversity goal) a case by case analysis by the regional prefect after consulting the municipalities and the Region concerned.

ORE and farmers – How work together ?

When the farmer is the landowner, the matter is settled. When the landowner is different from the farmer: there is a necessity to find matches between the rural environmental lease and the ORE. The landowner has to convince the farmer. If no compromise is found, there will be no ORE but the farmer, according to the law must give reasons for his refusal.

Research project LANDEV

Presentation of a new research project on ORE was done by two researchers, Romain Melot, INRAE and Guillaume Pain (ESA Angers). The main objective is to have a dual perspective on ORE: sociological and ecological; to have a better idea of how ORE fit into strategies.

From an ecological point of view, the aim is to work on the real positive contribution of the ORE, particularly agricultural practices.

In social terms, ORE are also about the attachment and sensitivity to the land.

[Replay of the French experience roundtable.](#)

ENPLC Ambassadors ceremony



Ambassadors ceremony ©Fondation François Sommer

Following the morning presentations, ENPLC ambassadors received their diploma. ENPLC ambassadors are landowners or managers passionate by nature protection and committed to make a change. They took responsibility for private land and are willing to share their stories and inspire others. Three ambassadors have received their diploma:

- Bertrand Monthuir, landowner of Domaine du Bois Landry in Eure et Loir, France

To know more about Bertrand Monthuir, watch his story here:

https://www.youtube.com/watch?v=-a16b_hkYaU

- Jean-Philippe Tamarelle, landowner of Bois Léon et Ginette, Seine-Maritime, France
To know more about Jean-Philippe Tamarelle, watch his story here:
<https://www.youtube.com/watch?v=1ImpNygMn58>
- Allan Philips, landowner of Scherpenbergen – De Hutten, Belgium

None of these 3 landowners have signed ORE but after the day they know more about the tool and one ambassador is interested in signing an ORE on his land. They realized that :
“ ORE are not a constraint but an opportunity notably it enables landowners to have access to advise and support” and “Psycho-sociological aspects are important, indeed, the commitment, the motivation, the trust, it takes time to build it and to achieve personal satisfaction.”

Overseas feedbacks

A videoconference round-table discussion moderated by Anne-Sophie Mulier, Project Manager at the European Landowners’ Organization (ELO), with:

- Marie-Michèle Rousseau-Clair, Head of Conservation at the Nature Conservancy of Canada.
- Victoria Marles, Ex-Chief Executive, Trust for Nature Australia.



Anne-Sophie Mulier and Marie-Michèle Rousseau-Clair © Fondation François Sommer

What lessons learnt from Quebec ?

In Quebec, easements are linked to Quebec Civil Code but it is an interpretation, it is not expressly defined by it.

Conservation easements in Quebec answer to the definition of an easement with a servient property and a dominant property with the notion of a service rendered. Restrictions on servient land that provide greater protection for ecological features of the dominant land.

In Quebec, there are 75 000ha under protection including 10 000ha under conservation easements.

There is a legal risk as it is an interpretation of the Civil code, it can be rejected.

The contract allows clear conservation objectives and precise restrictions link with conservation goals. It strengthens the relationship and cooperation between landowners.

What lessons learnt from Australia?

Conservation easements in Australia are legal agreement protecting the land. It is flexible and measures can be adapted to the land. For example, no destruction of native vegetation, no introduction of invasive species, ...

One particularity for the Victorian Government, only the organization Trust for Nature is authorized to support these agreements with landowners concerned. About 1600 contracts have been signed in this Government.

At this date, 6000 conservation agreements have been signed for 10 million of hectares in Australia. The challenge in Australia is to carry out action on a vast scale and encourage landowners with contiguous land to agglomerate areas and multiply the benefits.

Very few financial incentives in Australia for landowners but a program exists to encourage landowners to enter into this type of agreement.

To achieve the 30x30 objective, Australia needs the private landowners.

About incentives, Australian Government has launched a Nature Repair Market in December 2023. The Nature Repair Market will mobilize private finance to repair and protect our unique natural environments.

<https://www.dcceew.gov.au/environment/environmental-markets/nature-repair-market>

[Replay of the international feedback roundtable.](#)

How conservation easements can be widely deployed in Europe?

A round-table discussion moderated by Tilmann Disselhoff, project coordinator at NABU and Eurosite President:

- [Diarmaid O’Cuanachain](#), in charge for private land conservation at the European Commission.
- [Guillaume Sainteny](#), President of Plan Bleu for environment and development in Méditerranée
- [Jurgen Tack](#), Secretary General of ELO (European Landowners’ Organization).
- [Gilles Martin](#), Professor Emeritus, Université Côte-d’Azur, GREDEG, CNRS.



From left to right: Tilmann Disselhoff, Guillaume Sainteny, Gilles Martin and Jurgen Tack ©Fondation François Sommer

From European Commission, conservation easements roles are network of sites, nature conservation, monitoring, long term conservation benefits and partnerships.

Regarding France, ORE took 20 years to be born, at the beginning, farmers, NGOs and hunters were opposed to this mechanism. They have since evolved considerably. With their flexibility and

contractual freedom, OREs are shaking up traditional French easement law. Indeed, it does not establish a relationship between funds, but between the successive landowners and public or private partners with collective interest. It authorizes the landowner to assume “active” obligations to do.

What about financial incentives?

In Anglo-Saxon countries, value of an easement can be calculated with:

Value of the land before the easement – Value of the land after the easement = **Value of the easement**

Depending on the country, different types of financial incentives are available. For example, in USA, today there are around 200 000 conservation easements for 13 million hectares. For a gift of a conservation easement, there is a deduction from taxable income of 50% of the value of the donation (even 100% if more than 50% of incomes are coming from agriculture). Also there is transfer duties exoneration with a reduction in the value of the taxable assets via 1) value of the inheritance reduced by the value of the conservation easement and 2) 40% on the value of the land after the establishment of a conservation easement. Another example, in New-Zealand, for signing a conservation easement, there is a possibility to have 100% of exoneration (depending on the district) on the undeveloped property tax and an exoneration of land registration fee.

In USA, it also exists two special easements (closer to ORE than conservation easements):

- The Williamson Act: originally drafted to slow the loss of prime agricultural land, regardless of soil quality. In addition, it now provides protection for wildlife habitats, marshlands, salt flats and certain scenic highways.
The Act authorized local governments and property owners to commit land to specified uses of twenty years or more under a binding contract. In return for keeping the land agricultural, the owner may receive a property tax benefit because of a reduction in the assessed value. The land stay evaluates for its agricultural uses and not for its market value (property tax).

<https://www.countyofnapa.org/1088/California-Land-Conservation-Williamson->

<https://assessor.sacounty.gov/TopicsAtoZ/Pages/WilliamsonLandConservationActFAQs.aspx>

- Open-space easement: to preserve open space while allowing compatible uses and development of the land. Financial incentives are link to this easement. If the contract is for perpetuity, there is a reduction of the donation amount for federal income tax purposes; if it is not for perpetuity, the land stay evaluate for its real uses and not for its market value (property tax).
The landowner agrees to not build or to make any improvements to the land that are incompatible with preserving and maintaining its natural character.
Agricultural land are eligible if the activity does not degrade their scenic character.

Do these financial incentives have an effect?

Yes, they have, for example, in Virginia, the number of signed contracts increase by 4 times when a financial incentive was implemented. Same phenomenon when a financial incentive already exists but the amount is increased. Finally, when credits are transferable, the number of signed contracts increases.

Where does the funding come from? (USA)

Each state has its own system. It could be : sporting goods sales tax, deed recording fee, general fund, lottery, real estate transfer tax, ...

Regarding ORE in France

Reminder that ORE were created in 2016, in the law. art72 “Municipalities may exempt from undeveloped property tax land on which an ORE has been concluded”.

Art73. “within two years, the government shall submit to the National Assembly and the Senate a report on ways of making the ORE mechanism more attractive, in particular by means of tax incentives”.

→ First, this report has been submitted with 2 years late and second, the report says there is nothing to do.

What solutions?

Make the undeveloped property taxes exemption mandatory? Why not but what about the municipalities compensation? Municipalities are reluctant because they have precedents, particularly with Natura 2000.

Exemption should relate to a national tax, for example income tax and social security contributions. But this will not concern land with no income.

[Replay of the roundtable.](#)

Conclusion

ORE and conservation easements are in demand at European level. It is a great tool thanks to its flexibility, legal strength and it based on landowners’ will.

It reveals a change of approach and challenges the law. With conservation easements, challenges from the individual level are raised to the general interest. It is an unusual approach in particular in French Law.

Conservation easements bring together landowners and a wide range of players with shared ambitions and It shows that trust is essential to work all together.

In order to spread the tool, more communication is needed, knowledge must be spread and an increase of financial incentives link to this type of tool could be a good solution. For example, and in France some projects already exist, conservation easements could be link to payment for ecosystem services.



Michèle Pappalardo © Fondation François Sommer