

# Expanding options for habitat conservation outside protected areas in Kenya:

## The use of environmental easements



**African Wildlife Foundation**

**Technical Papers**

**Number: 2**

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**March 2010**



**AFRICAN WILDLIFE FOUNDATION®**





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## List of Acronyms

|           |   |
|-----------|---|
| AWF       | African Wildlife Foundation   |
| EMCA      | Environmental Management and Coordination Act                             |
| FMV       | Fair Market Value   |
| IRS       | Internal Revenue Service  |
| IUCN      | International Union for Conservation of Nature                            |
| KLCT      | Kenya Land Conservation Trust   |
| KPLC      | Kenya Power and Lighting Company  |
| KWS       | Kenya Wildlife Service  |
| LCA       | Land Control Act  |
| NEMA      | National Environment Management Authority                                 |
| NGO       | Non Governmental Organization   |
| RLA       | Registered Land Act   |
| USA       | United States of America  |
| UNEP/WCMC | United Nations Environment Programme/World Conservation Monitoring Centre |

## Acknowledgements

This publication was funded by the Royal Netherlands Embassy through the African Wildlife Foundation's Heartlands Program. A large thank you to the AWF initiated Environmental Easement Working Group for making this paper happen – Ms. Nyokabi Gitahi, Ms. Kathleen Fitzgerald, Dr. Rupert Watson, Prof. Patricia Kameri-Mbote, Dr. Helen Gichohi and Dr. Julian Fennessy. Additionally, we would like to thank all those who participated and provided invaluable input into the AWF Environmental Easement Workshop in Nairobi in 2008. Finally, we would like to thank Ms. Bernadette Gitari of Knight Frank, Ian Illingworth of Ryden International, Dr. Migai Aketch of the University of Nairobi, and Mr. Sam Lawson of The Nature Conservancy, who all reviewed the paper.

## Summary

Kenya is renowned for its national parks and the abundance and diversity of wildlife; however, Kenya's protected areas are too small, fragmented and not viable to maintain the current wildlife populations which rely on larger ecosystems than protected within the national parks. The threats against wildlife in Kenya continue to escalate due to an increase in habitat fragmentation, change in land use and human population pressure in areas outside parks. To secure Kenya's ecological integrity and maintain viable populations of wildlife, land outside protected areas must be preserved through innovative conservation measures such as environmental easements. Kenya currently lacks the enabling legal framework to use environmental easements as a voluntary conservation mechanism. However, legislative changes regarding the current environmental easement framework can be used to provide for their (voluntary) establishment.

This paper examines wildlife conservation in Kenya on land outside protected areas. It presents a context within which environmental easements as a mechanism to conserve wildlife habitat outside protected areas can be considered based on property rights over land and the management of wildlife resources and their implication for habitat conservation. This paper also describes easements, the legal environment needed in Kenya for adopting environmental easements and makes specific legislative recommendations. A sample environmental easement, adapted for Kenyan circumstances from an American model, is presented. Also outlined are methods of valuing environmental easements, a critical link in establishing a solid framework and process for having an environmental easement granted.



## 1.0. Introduction

Kenya is home to a large abundance and diversity of wild species of birds, mammals and plants across a myriad of habitats. Kenya's wildlife is the basis of the country's tourism industry; an industry second only to agriculture as a national source of revenue. One of the major concerns for wildlife conservation, however, is the loss of wildlife habitat through change in land use and land cover outside protected areas.

The African Wildlife Foundation (AWF) has supported conservation of wildlife resources through various strategies including land and habitat conservation; species conservation and applied research; conservation enterprise; capacity building and leadership development; and, policy.

AWF has backed several initiatives including research on legal and economic mechanisms for conserving wildlife habitat outside protected areas. One of the outcomes of this process was the establishment of the Kenya Land Conservation Trust (KLCT) as a national land conservation organisation. The Trust brings together key partners in wildlife conservation and landowners to support land conservation across the country. KLCT aims to apply legal and economic tools including leases, easements, management support and land purchase to set aside and manage critical wildlife habitat outside protected areas in Kenya.

Recognizing the need for increased options for landowners to provide long-term conservation of wildlife habitat through legally, socially and economically sound and acceptable methods, AWF constituted a multi-disciplinary team experienced in economics, ecology, law, land management and habitat conservation to research and provide practical options for sustainable conservation of wildlife habitat outside protected areas using property-based rights mechanisms. The Environmental Easement Working Group examined environmental easement policies established under the Kenyan Environmental Management and Coordination Act (EMCA), 1999, as a mechanism for regulating land use and providing benefit to landowners whilst enhancing conservation and the environment, including the preservation of wildlife and their habitat.

This publication targets law and policy makers, non governmental organizations (NGOs) involved in wildlife and habitat conservation, and landowners in wildlife areas. It is the first output of an initiative seeking an enabling legal, institutional, policy and economic framework that encourages, promotes and supports the use of (voluntary) environmental easements for conserving wildlife habitat outside protected areas in Kenya; the development of the law and practice on easements as a habitat conservation mechanism; increased habitat conservation options for conservation organizations and landowners, and increased awareness on environmental easements as a habitat conservation option.



<sup>1</sup>Tourism accounts for approximately 12% of Kenya's GDP, providing about 400,000 jobs in the formal sector (and a further 600,000 in the informal sector). 80% of international visitors to the country are attracted by the opportunity to view wildlife in its natural habitat, particularly large mammals.

## **2.0. Expanding Options for Conserving Wildlife Habitat outside Protected Areas in Kenya through Environmental Easements**

### 2.1. Habitat loss

Kenya has established five national sanctuaries, 22 terrestrial national parks and 28 terrestrial national reserves that in total amounts to approximately 8% of the country's land mass as wildlife habitat. Various land use activities including agriculture, settlement and livestock keeping are prohibited in these areas and access to the protected areas is regulated by law. Kenya's protected areas that are famous for providing great viewing for wildlife include the Maasai Mara National Reserve, famous for the annual migration of wildebeests and zebras in the Mara-Serengeti ecosystem; Amboseli National Park in southeast Kenya; and the Tsavo East and Tsavo West National Parks.

Protected areas alone cannot sustain wildlife in Kenya. Many were set aside due to the large aggregations and migrations of wildlife that occurred in these areas either during wet or dry seasons, and which captured the attention of the colonial government. At the time there was little understanding of how ecosystems function. Consequently, the areas that were set aside were and continue to be inadequate to support wildlife within each of the ecosystems. As a result wildlife depends on land adjacent to these protected areas for continued viability with much of Kenya's wildlife known to spend at least a part of their seasonal or life cycle in open land adjacent to protected areas. They use these adjacent lands as critical dispersal areas, calving grounds and/or for seasonal movement between protected areas.

Loss of wildlife habitat is one of the main cause of declining species number and abundance in Kenya. Fifty one (51) mammal species in Kenya, out of a total of 376, are reported to be threatened with extinction. This loss directly undermines conservation efforts and the tourism industry, a significant contributor to poverty reduction in Kenya. It further denies some local communities living in wildlife areas the opportunity to earn a living out of these resources through tourism based enterprises.

Land outside protected areas is vulnerable and has been subject to unregulated change of use from open wildlife habitat to cultivated agriculture, settlement and urban development. Some examples include:

- ▶ the establishment of wheat farms north around the Maasai Mara National Reserve, impeding the historical annual wildebeest migration dispersal from the Maasai Mara National Reserve into community lands in the north before returning south to the Serengeti National Park in Tanzania;
- ▶ the development of industrial, as well as human, settlements in the Athi-Kapiti ecosystem (Kitengela area) south of Nairobi National Park, is blocking the seasonal migration of wildebeests and zebras in and out of the park and to the southern calving and seasonal grazing areas of the ecosystem. The once large migration is all but gone; and
- ▶ the declining numbers of the endangered Grevy's zebra in northern Kenya, is greatly affected by competition with livestock for water and grazing land.

Loss of wildlife habitat outside protected areas in Kenya should be halted to ensure: the viability and large abundance and diversity of species; maintaining existing and provide additional new areas for the growing

tourism industry to operate; and, sufficient space to provide resilience to critical ecosystems as well as species as climate changes and climate variability poses new threats.

## 2.2. Environmental easements

Conservation restrictions through environmental easements or conservation leases are valuable tools for addressing loss of wildlife and their habitat outside protected areas. These rights limit the use of land to activities that do not negatively impact wildlife habitat on the land. The limitations to land use include prohibiting the following: erection of fences or barriers that impede wildlife movement; conversion of land for development or cultivation; and, keeping livestock numbers above a level compatible with wildlife conservation based on available pasture and water. The limitation of use is granted to an institution or other party through a deed and the grantee has the legal right to enforce it against the land owner. In return, the land owner is entitled to compensation for the user rights foregone, at an appropriate economic value. This approach is used extensively, for example, in the United States of America (USA), through conservation easements that are backed by tax rebates for landowners who voluntarily limit the use of their land by donating a conservation (or environmental) easement to a legally designated conservation organization.

Environmental easements in Kenya could provide incentives for landowners in wildlife-rich areas to conserve their land for wildlife habitat. Currently, landowners largely bear the costs of hosting wildlife on their property. The loss is manifested through competition between livestock and wildlife for limited pasture and water, transmission of disease to livestock and costs of veterinary services, loss of crops and property, and at worst, loss of life as seen in many areas with high rates of human-wildlife conflict. In a number of cases, the government has resorted to erecting electric fences to keep wildlife away from human habitation to minimize conflict. To many landowners, wildlife is a pest. While the government, through national parks and reserves, may benefit from maintaining the wildlife resource through activities such as tourism.

There are limited incentives for landowners to conserve wildlife habitat on their land, instead, there is opportunity for pay-off if land is converted to other uses, such as wheat cultivation. This has been the case in Narok District, north of the Maasai Mara National Reserve. Agriculture, with large government incentives, e.g. on costs of fertilizer and access to credit and availability of market to sell their products, offers higher returns compared to wildlife conservation, hence the proliferation of wheat and flower farms in the area. There are no corresponding incentives for wildlife conservation and this presents the landowner with little choice but agriculture as a viable land use option. Even in drier areas where cultivation is not a viable land use, landowners still attempt subsistence farming despite repeated crop failure. Furthermore, in communities that enjoy returns from wildlife, a few members still opt for agriculture as tourism benefits does not always accrue to the community equally. Where livestock is the mainstay, their density is often high and often limits wildlife numbers due to competition for limited pasture and water resources. Environmental easements could provide an opportunity for landowners to set aside part of their land for wildlife conservation and receive a benefit in exchange for the user rights foregone.

While environmental easements as a property rights based mechanism provides an opportunity to conserve important wildlife areas outside protected areas in Kenya; for easements to truly succeed there must be

an enabling legal, institutional, policy and economic framework that encourages, promotes and supports easements as a voluntary mechanism for conserving wildlife habitat. This would in turn result in the law and practical application of easements as a habitat conservation mechanism or tool in Kenya which would increase habitat conservation options for AWF, KLCT, landowners and other conservation organizations.

Some of the 'gaps' on environmental easements as a habitat conservation mechanism in Kenya include:

- ▶ law enabling the creation of voluntary easements between willing parties;
- ▶ valuation mechanisms or principles to determine the appropriate value of an environmental easement;
- ▶ institutional framework to implement environmental easement mechanisms; and
- ▶ provision of an appropriate precedent in law, in form and practice, in the use of environmental easements that would be replicated and adapted for habitat conservation in Kenya.

Notably, it has been approximately a decade since the law on environmental mechanism was enacted in the Environmental Management and Coordination Act (EMCA) of 1999, but to this date the environmental easement component – Part IX of the Act, Sections 112 to 116, has not been implemented and as such has not benefited wildlife conservation in Kenya.

### 2.3. What is an easement?

Historically, under the English legal system, an easement was a right attached to one piece of land either to use other land in different ownership in a particular manner or to restrict the use of that other land by its owner. More recently, conservationists in USA and elsewhere are using easements to restrict the right to develop land or to limit its use in other ways inconsistent with environmental preservation. Rights, such as to fence or cultivate, are surrendered voluntarily or sold by the landowner without changing the actual ownership of the land. This has given rise to 'conservation easements' as is the case in the USA or to 'environmental easements' in Kenya – these are statutory easements that modify the requirements, characteristics and the use of the English common law easement to enable their use for purposes of conservation.

### 2.4. Kenya's environmental easement

In 1999, Kenya enacted EMCA as a framework law for environmental management and conservation, and also established the National Environment Management Authority (NEMA) as the key institution to implement the Act. Sections 112-116 of EMCA provide for the creation of environmental easements to facilitate the conservation and enhancement of the environment, by imposing one or more obligations on land use. While this statute provides an opportunity to place easements on land to secure natural resources, it is inadequate in promoting a viable and voluntary tool that landowners may use to preserve their land. To date, no environmental easements have been tested through the court as required by EMCA.

### 3.0. Using Easements to Preserve Wildlife Habitat in Kenya

#### 3.1. The general law on easements in England and Kenya

The English Common Law consists of ancient customs and usages, recognized over almost the past 1,000 years and given the force of law, usually through reported decisions of the courts. It has come to mean the entire body of English law other than Statute law is what exists in Kenya today, and as such the principal easement in use in Kenya is that from English Common Law. The easement was adopted into Kenyan law by the Kenya Order in Council of 1921, which approved the general application to Kenya of English Common Law as it was on 12 August 1897. The Order in Council was subsequently confirmed in independent Kenya by the Judicature Act of 1967.

Easements over land in England evolved to legalize the possibility of the owner of one piece of land enjoying certain rights over adjacent land owned by someone else. Thus, a right over one piece of land – like a right of way – would exist to benefit an adjoining piece of land. In legal terminology, the piece of land burdened with the easement constituted the ‘servient tenement’ and that enjoying the benefit of the easement was known as the ‘dominant tenement’. Such easements are passed on during the transfer of either the burdened or the benefiting land and, typically, are registered against title.

The Registered Land Act ((RLA) and Cap 300 of the Laws of Kenya) gives statutory recognition to the easement that in S3 it defines as:

*...a right attached to a parcel of land which allows the proprietor of the parcel of land either to use the land of another in a particular manner or to restrict its use to a particular extent, but does not include a profit.*  
(see later for reference to ‘profit’)

S94 RLA allows that: *‘The proprietor of land or a lease may, by an instrument in the prescribed form, grant an easement over his land or the land comprised in his lease, to the proprietor or lessee of other land for the benefit of that other land.’*

The RLA then goes on to specify how easements are created, documented and registered.

From both these statutory excerpts, it is clear that the historic requirement for an easement over land to benefit another piece of land is perpetuated (although of course the RLA only applies to land adjudicated under that Act and not to land registered under the Government Lands Act, Registration of Titles Act or Trust Land Act, none of which gives statutory recognition to easements).

Easements can be created voluntarily by owners of adjacent lands or acquired by prescription. S32 of the Limitation of Actions Act (Cap 22) allows that where a building has enjoyed ‘*access and use of light or air*’, or that the use of water or any other easement ‘*has been enjoyed peaceably and openly as of right, and without interruption, for twenty years, the right ... is absolute and indefensible.*’

Easements are better understood when considered as positive or negative. Positive easements include rights of way to attach telephone wires or name boards to adjoining buildings or to place advertising hoardings on neighboring land. Among negative easements are rights to light (so effectively creating a restriction on

building), water from a watercourse or to the support of a building on the dominant tenement from an adjacent building on a servient tenement.

### 3.2. In gross

Despite the fundamental requirement that an easement over land can only operate to benefit another piece of land, there has long existed the concept of a grant of rights over land that need not benefit any other land. This was known under Common Law as a 'profit' and covered such rights as extracting soil or rock, collecting wood or fishing. Any such right could be granted to a person, irrespective of whether he owned land. In other words the profit could exist 'in gross'.

S3 of the RLA also recognizes profits, defining them as:

*...the right to go on the land of another and take a particular substance from that land, whether the soil or products of the soil...*

It was only a small step from the notion of a profit, to what gradually became known as an 'easement in gross'. This extends the idea of profit – with no requirement to benefit another piece of land – to easements. In many jurisdictions based on the English legal system, these can now be granted to individuals or organizations with no connection to any adjacent property.

In Kenya, such rights may be conferred by statute in favor of service distribution companies, for example, the Electric Power Act (Cap 314) allowing the Kenya Power and Lighting Company Limited (KPLC) the right to traverse land with power lines without the consent of the landowner, or the Wayleaves Act (Cap 292) granting the government power to run '*...any sewer, drain or pipeline into, through, over or under any lands whatsoever...*'. These rights are absolute and can be enforced whether or not KPLC or the government owns any other land.

Providing water often depends on the right of an extractor to lay pipes across the land of several different owners and S2 of the Water Act of 2002 defines an easement as:

*...the right to occupy so much of the lands of another as may be necessary for or incidental to the construction or maintenance of works authorised, or the exercise of rights conferred by a permit...*

The only form of easement envisaged by the Water Act is one 'in gross' and it devotes all the eighteen sections of the Third Schedule to establishing a detailed system of easements to allow permit holders to construct and maintain water reticulation systems over land owned by other people. In addition to these formal easements 'in gross', there is nothing to stop any landowner from entering into a contract to grant rights over land to another party – whether a landowner or not. A landowner, therefore, could grant a *safari* operator the right to take visitors across his land on foot, by horse or vehicle or to collect dead wood for his camp. Such grants of rights do not operate as easements because they are not granted under any statute allowing the creation of an easement 'in gross'; rather they are private contracts affecting an area of land and they operate as profit. They can only be enforced by one party against the other as contracts, and being personal to the parties who enter into the contract, do not pass with the land on its transfer.

To stress the essence of an 'easement in gross' here is the definition from Black's Law Dictionary, emphasizing that the easement is:

*...not appurtenant to any estate in land or does not belong to any person by virtue of ownership of estate in other land but is a mere personal interest in or right to use land of another; it is purely personal and usually ends with the death of the grantee.*

Where interests or rights are granted to an organization, then the grant will last as long as permitted e.g. perpetuity or time bound, and may also contain a power of assignment to another institution.

### 3.3. Easements as tools of conservation

Once statute recognizes the right of easements to exist 'in gross', there is further opportunity for taking flexible and creative advantage of these instruments.

The USA makes considerable use of easements as conservation tools, having recognized their ability to exist 'in gross' in many states of the union. It is, therefore, appropriate to look at how easements can work to benefit conservation, if the enabling legal environment is in place, before returning to the changes to the Kenyan law brought about by EMCA.

In the USA a conservation easement may be defined as:

*... a legal agreement which a property owner makes to restrict the type and amount of development that may take place on his or her property.*

From a more fiscal angle, it can also be defined as:

*...a legal agreement between a landowner and qualified organisation (as defined by the IRS) that permanently limits uses of the land in order to protect its conservation value...*

To understand the concept of an environmental easement, it is useful to think of land ownership as the ownership of a bundle of different rights. Some of these include: the right to build, fence, subdivide land, cut down trees or plant different species of vegetation (all always subject to the relevant planning and other local regulations).

A landowner may then sell or give away the whole bundle of rights – as an outright sale or gift of land – or otherwise convey certain rights, as would happen on the grant of an environmental easement. The conveyance of rights takes effect when the landowner prohibits specific uses on the land. The organization that accepts these rights may choose not to use them and must enforce the prohibitions. Under enabling legislation these rights may be extinguished or in some cases 'traded'.

An easement may deprive the landowner of rights, such as building structures, hunting game birds and mammals, harvesting timber, constructing fences or extracting soil and minerals. By forfeiting these rights, the owner is foregoing the possibility of fully using or developing the property. The rights that need to be given up to protect the land depend on the purposes of the conservation easement, the conservation goals of the parties and the extent to which the parties intend to use the land or the types of development to be restricted. In some cases, for example, cattle ranching may be acceptable and not interfere with the conservation of an

area, whereas in others it may not be so.

Conservation easements vary significantly. Those designed to protect the land as a nature reserve prohibit development, resource extraction and vehicular access. At the other end of the spectrum an easement may be designed to protect scenic views and so it can be less restrictive.

The rights foregone by the owner are set out in an easement as restrictions on the use of the property. The power to enforce these restrictions is granted to the easement holder that could be a non-governmental organization (NGO) or other conservation-centered entity legally entitled to accept conservation easements. Enforcing easements involves monitoring the state of the property through regular visits, often in the company of the landowner, who, if living on the property at the time the easement was granted, may continue to do so pending the easement language. Most easement holders conduct site visits at least annually and record details that the landowner signs as a true reflection of the state of the land. The purpose of such visits is to ensure that the landowner, or third parties, has not breached any of the provisions of the easement. If the provisions have been breached then the landowner is requested to remedy the infringement. If the landowner, for example, has constructed buildings that breach the conditions of the easement, they would be requested to take them down and potentially restore the area appropriately.

Before a conservation easement is conveyed, the prospective holder will normally prepare what is known in the USA as a Baseline Documentation Report, describing, inter alia, the land, its current use, existing buildings and infrastructure. The landowner and easement holder then sign the report that, from then on, acts as a reference for the state of the land at the start of the easement.

An easement usually lasts in perpetuity. In Kenya, under EMCA 112(3) 'An environmental easement may be imposed on and shall thereafter attach to the burdened land in perpetuity or for a term of years or for an equivalent interest under customary law as the court may determine.' However, much of Kenya's rural land is on leasehold and an easement would, therefore, be restricted by the period of the leasehold.

In the USA and elsewhere, granting an easement may reduce the value of the land for estate or property tax purposes, the gift also qualifying for deduction from income tax. Under the present tax regime in Kenya, there are no such advantages, not least because there is neither estate nor capital gains tax.

### 3.4. The essence of an environmental easement

Fundamental to the creation of an easement is a basic understanding of its purpose:

- ▶ What is the grant of easement intended to protect?
- ▶ Is it designed to preserve a wilderness area for local communities to enjoy, or does it have more specific objects, such as securing the use by migratory birds of a wetland, conserving ideal rhino habitat or is it one of the last refuges of a rare orchid?

These conservation values need to be appraised and then detailed in the recitals of the easement document. Such values will act as the basic reference point against which the successful working of the easement – whether it is actually achieving its aim – can be measured.

The opening section of an environmental easement includes a clear statement of purpose that will also help to interpret the success, or otherwise, of the easement in the future. The purpose statement of an easement designed to maintain wilderness in as pristine a condition as possible might read:

*To maintain, preserve and restore the wilderness character of the Protected Property in a natural condition, with minimum interference by humans in order to conserve plant and wildlife habitats and biological diversity, native flora and fauna, and the environments and ecological processes that support them, as those values exist on the Protected Property on the date of this easement as described in the Conservation Values set out below.*

*An environmental easement should consist of four essentials:*

- ▶ *the recital of the purpose statement and conservation values;*
- ▶ *the conveyance of certain rights to the grantee to enforce the provisions of the easement;*
- ▶ *a prohibition of certain uses inconsistent with the purposes of the easement (for example, various forms of development); and*
- ▶ *the reservation of certain rights to the landowner (perhaps the right to continue living on the land and farming it in a particular way).*

In order to facilitate the negotiation of sound environmental easements in Kenya, a framework (or template) for a proposed easement agreement is provided as an Annex to this paper. Clause 4 of this annexed framework contains the rights that the grantor or landowner retains ('reserved rights'), but these reservations cannot be fully understood in isolation from the prohibited uses set out in Clause 3 ('prohibited uses'). These uses can be set out in detail, or a more broad brush approach applied. One could imagine that retained rights are the right to use the property in all ways that are not prohibited, or vice versa, but it is much easier to appreciate the essence of an easement by setting out the prohibited uses and the rights reserved to the owner.

The rights conveyed by the easement are set out in Clause 2 of the annexed framework ('rights of grantee'). The extent of these rights depends on the purpose of the easement. Easements that, for example, merely restrict development, may only require that the grantee has the right to occasionally inspect the land and enforce these rights. If an easement creates public access to land, the grantee will need the corresponding right to monitor and control such access.

In drafting any environmental easement it is important to take account not just of the present, but also the future. While the grantor of the easement remains the owner of the land, and perhaps knows the grantee and its staff, the enforcement of the easement is likely to ride on a tide of goodwill, the intentions of both parties remaining as they were from the outset. However, when the land changes ownership, whether by sale, gift or inheritance, or the easement is assigned to another holder, different actors take the stage, often with different agendas and sets of values. A new landowner may be seeking to exploit every available loophole in the easement document. This is why an easement should be drafted right from the outset as if the parties were complete strangers to each other with no intentions of cooperating.

A word might be added about the identity of the grantee and the cost of enforcing easements. Historically, the active life of an institution is short, and it would be salutary to include a wide power for the grantee to

assign its rights or even to incorporate a second back-up grantee in the deed. Further, the cost of enforcing an easement – to ensure that the provisions for prohibited uses are not breached – can be high, and institutional grantees often request an endowment from the landowner with an assignment of rights over the land. The exact details of such have yet to be determined in Kenya. However, a formula is used to determine the amount of the endowment based on the land area, use, accessibility and easement details. The high cost of enforcing easements can also make it difficult to find institutions prepared to take them over from the original grantee.

The general principles relating to the granting, documenting and enforcing conservation easements as defined in USA can be adapted to Kenyan circumstances once the necessary legislation enabling the creation of voluntary environmental easements is in place. The easement ‘industry’ in USA is aided by considerable tax incentives for donors. Easements, therefore, tend to be donated rather than sold, resulting in the emergence of many suitable grantees that can hold and enforce easements satisfactorily. This, however, is not yet the case in Kenya.

### 3.5. Environmental Management and Coordination Act (EMCA) 1999

The Common Law easement was never designed as a nature conservation tool, and historically, being confined to benefiting only adjoining land was hardly suitable. However, EMCA has significantly modified this Common Law easement and introduced a form called ‘environmental easement’ intended to protect biodiversity and the environment and, most importantly, can exist ‘in gross’.

EMCA makes provision for environmental easements in Part IX of the Act, sections 112 to 116, S112(6) that:

*...an environmental easement may exist in gross; that is to say the validity and enforcement of the easement shall not be dependent on the existence of a plot of land in the vicinity of the burdened land which can be benefited.*

In some respects, this may seem no more than a variation on the legal theme allowing for the creation of a power line or pipeline wayleaves. However, it is a major innovation because there are no restrictions on the identity of the grantee, unlike the grant of wayleaves that are confined to particular interested parties, such as KPLC or anyone with a water permit.

### 3.6. Grant of environmental easements under EMCA

Environmental easements are intended to ‘*further the principles of environmental management set out in this Act by facilitating the conservation and enhancement of the environment ... through the imposition of one or more obligations in respect of the use of the land*’, and may last in perpetuity or for a limited term (S112).

Under S113, ‘*a person or a group of persons may make an application to the court for the grant of one or more environmental easements*’, the court imposing, ‘*such conditions on the grant ... as it considers to be best calculated to advance the object of an environmental easement*’.

Only the grantee of the easement may issue proceedings to enforce it (S114), and these may request the court to ‘*grant an environmental restoration order*’, or to, ‘*grant any remedy available under the law relating to*

*easements in respect of land;*’ this is assumed to be under any law other than EMCA relating to easements since EMCA contains no other appropriate remedies.

Section S115 addresses registering easements against land titles. This ensures that the existence of an easement is apparent on a search against a title, and also that the easement passes with the land on its transfer. The registration procedures depend on and are in accord with the system of title under which the burdened land (the land upon which the easement is imposed) is registered.

That section also addresses the registration of easements over land, such as trust lands or group ranches that is not recorded under any system of land registration. It provides that, ‘the District Environmental Committee of the area in which that land is situated shall register the environmental easement on a register maintained for that purpose ...’, and that registration shall be in the name of the applicant for the easement. This is a welcome provision, but its practical application may be difficult because there is no provision for recording customary user rights over unadjudicated land.

Unfortunately, the tenor of the Act presupposes contentious applications for the grant of environmental easements and does not refer to their creation by mutual agreement between parties. The involuntary nature of creating easements is reinforced by S116 governing compensation, ‘commensurate with the lost value of the use of the land’, for any person with a legal interest in the land. The court may require the grantee of the easement to pay compensation, or, ‘if satisfied that the environmental easement sought is of national importance’, order that the government compensates them. In each case, account should be taken of, ‘the relevant provisions of the Constitution and any other laws relating to compulsory acquisition of land’. This latter provision may create an impression that the acquisition of an easement is tantamount to the acquisition of full title to the land. However, after granting an easement, the landowner may still be free to exercise many of the valuable rights associated with ownership of the land, including continuing to reside there.

Conservation-minded landowners and NGOs may bemoan the lack of any provision in EMCA allowing them to create consensual easements. However, other less environmentally conscious landowners find the possibility of an easement being imposed on their land by a third party’s unilateral application to the court most unnerving. Notwithstanding that the law intends that they be compensated, landowners are perhaps justified in perceiving these provisions as opening the door to the compulsory purchase of rights over their land.

### 3.7. Consensual easements

According to EMCA, the only way to create an environmental easement under the Act is to apply to the court to grant it. Unfortunately, having introduced the concept of an environmental easement, the drafters of EMCA did not foresee the need to enable the voluntary creation of consensual easements under the Act. Kenya is, therefore, left with a situation whereby, on the strict interpretation of the Act, an easement can only be created under it by submission to the court. There are no procedural rules relating to the imposition of environmental easements in the Act, so any court application would presumably have to follow the Civil Procedure Rules. These are predicated upon the existence of a dispute, and even consent orders follow upon contested proceedings. So if there is no dispute, how can one even issue proceedings?

This is a disorganized and uncertain state of affairs, and one might be forgiven for suggesting that the law cannot possibly intend parties to litigate if they are in full agreement. However, the law is clear and when landowners and conservation organizations are investing time and money in trying to make more use of easements to secure long-term conservation interests over land, it is dangerous to assume that the benefits of the Act would obtain to easements not brought in accord with its provisions. By analogy, one would not expect to create a wayleave over another person's land by invoking the powers conferred by statute on KPLC, but without actually involving that company.

### 3.8. The Wildlife Bill 2007

Whether or not EMCA's drafters intended that, as a requirement, all environmental easements need to be approved by the court, the existence of this anomaly has been well recognized in the 2007 draft Wildlife Bill. Sections 50-53 of the draft Wildlife Bill are almost identical to sections 113-116 of EMCA but S49 opens with the heartening statement that:

*Any person may enter into negotiations with a land owner for an easement to be imposed on his land to further the principles of sustainable wildlife conservation and management ... provided that an easement agreed upon through a private agreement shall be registered in accordance with the provisions of the Act applicable to that particular system of registration for easements or where an easement is agreed upon on any communally held land, the regional wildlife conservation committee of the area in which that land is situated shall register the easement on a register maintained for that purpose in accordance with the provisions of this Act.*

One other distinction between EMCA and the draft Wildlife Bill is worth mentioning. S112(4) of EMCA sets out a list of specific reasons for imposing an environmental conservation order. The Act may have intended the list to also guide the imposition of environmental easements, but did not say as much. The draft Wildlife Bill's S49(5) specifically provides that without prejudice to the general objects of an easement (being, 'to further the principles of sustainable wildlife conservation and management as embodied in this Act by facilitating the enhancement of a wildlife conservation area') one, 'may be imposed on burdened land so as to...':

- a. preserve flora and fauna;
- b. create or maintain migration corridors and dispersal areas for wildlife;
- c. preserve the quality and flow of water in a dam, lake, river or aquifer;
- d. preserve any outstanding geological, physiographical, ecological, archaeological, cultural or historical features of the burdened land that are important to wildlife conservation;
- e. preserve scenic view, natural contours and features of the burdened land;
- f. prevent or restrict the scope of any activity on the burdened land that has as its object the mining and working of minerals or aggregates that may adversely affect wildlife conservation;
- g. prevent or restrict the scope of any agricultural or other activity on the burdened land; and
- h. create and maintain works on burdened land to limit or prevent harm to the environment.

Like EMCA, the draft Wildlife Bill (S51) only allows subsequent proceedings for enforcing an environmental easement to be brought by 'the person in whose name the easement has been issued'. There may be no reason why this should not be the case, but it stresses the importance of finding the right grantee in the first instance, who will be financially able and willing to enforce it.

The draft Wildlife Bill is unlikely to be enacted without some revision, and it remains to be seen whether the provisions relating to easements are altered. While those covering consensual easements are welcome, there seems little point in exact duplication of many of EMCA's easement provisions in any new Wildlife Bill. In the long term it would make better sense to amend EMCA to allow consensual easements to be created. However, so long as the draft Wildlife Bill stands a better chance of enactment than any changes to EMCA, its easement provisions should be welcomed.

### 3.9. Land Control Act (Cap 302) and its implications for the use of easements for conservation

The Land Control Act (LCA) (Cap 302) is designed to control transactions in agricultural land. 'Land' is defined to include, 'an estate, interest or right in land', and an easement is certainly a, 'right in land'.

S6(1) outlines the transactions requiring the consent of the local land control board.

*Each of the following transactions-*

- a. *the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area ... is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.*

To paraphrase the essence of the LCA as it relates to easements, the sale, transfer or other disposal of or dealing with any easement over agricultural land will require that the relevant land control board gives consent. 'Agricultural land' defines land by where it is, rather than the activities undertaken on it, and almost all wildlife outside protected areas is found on land defined as agricultural land by the LCA.

S9(1) then places restrictions on the exercise of the Land Control Board's (LCB) powers to grant or refuse consent to controlled transactions, providing that:

*In deciding whether to grant or refuse consent in respect of a controlled transaction, a land control board shall:*

- a. *refuse consent in any case in which the land or share is to be disposed of by way of sale, transfer lease, exchange or partition to a person who is not:*
  - i *a citizen of Kenya*
  - ii *a private company or co-operative society all of whose members are citizens of Kenya.*

Does the granting of an easement amount to a 'sale, transfer, lease, exchange or partition' of an interest in land? This question is not easy to answer. If it does, the grantee must conform to the above provisions. If it does not amount to such, then the grant of an easement over agricultural land would still require the LCB's consent, but there are no restrictions on the identity of the grantee.

It is worth noting the provisions of S148 of EMCA, which provide that:

*Any written law, in force immediately before the coming into force of this Act, relating to the management of the environment shall have effect subject to modifications as may be necessary to give effect to this Act, and where the provisions of any such law conflict with any provisions of this Act, the provisions of this Act shall prevail.*

The definition of 'environment' in EMCA includes land. How this overriding provision in EMCA will affect the provisions of the LCA has yet to be tested. Commencing on 12 December 1967, LCA was clearly enacted with no thought to environmental easements, and statutorily removing environmental easements from its scope would certainly remove the uncertainties surrounding their grant.

### 3.10. Nature of user

Most land that has been adjudicated under one of the different land registration systems in Kenya, and is used either directly or indirectly for conservation, is designated for 'agricultural use'. One of the consequences of being so designated is a low annual land rent and a long lease. The definition of 'agriculture' in the Agriculture Act (Cap 318) has been extended to include, 'conservation and keeping of game animals', and this could be a good line of defense against allegations that the land was not being used in the designated manner. Whether wildlife tourism is an extension of 'conservation' is debatable.

One way of lifting land out of the scope of the LCA is to potentially change its use from 'agricultural' to, for example, 'environmental conservation'. Under the provisions of S2 this would entail ensuring that it was, '*... by reason of any condition or covenant in the title thereto or any limitation imposed by law, subject to the restriction that it may not be used for agriculture ... or that it shall be used for a non-agricultural purpose*'. The user change could be effected by inserting the relevant condition or limitation in an easement that is then registered against the title. This would also have the advantage of describing the precise use to which the land in question was being put. Incidentally, it might make it more difficult for the government to repossess the land for settlement of people if the condition or covenant in the title contradicts with this e.g. opposed to conservation activities.

The disadvantage of applying to the relevant authority for a formal change of user, rather than imposing it by easement, would be the risk of a reduction in the term of long leaseholds to, most likely, 99 years. A much higher annual land rent, related to the potential income to be earned from tourism on the land, may be imposed.

### 3.11. A summary of the current state of easement law in Kenya

From the above review, it is apparent that a Common Law easement can only attach to adjoining land and the creation of an easement 'in gross' under EMCA requires an application to the court. However, a grant of rights, as a profit, could be created by a contract. This does not require the grantee to own adjoining land and would be enforced by the parties to the contract (but not by their successors in title), provided exchange for the rights is considered. Such a grant of rights cannot be registered against the title of the land that it affects.

What are the benefits of creating an easement under EMCA and is it worth going to all the trouble of a somewhat confused court application to ensure that the environmental easement qualifies under the Act? Certainly, environmental easements can be registered against the titles of burdened land (S115) that ensures they remain attached to it on transfer. Further, the Act recognizes the concept of an easement 'in gross' and enforcing it would never be constrained by the possible impropriety of the original grant.

### 3.12. The institutional framework and how it might be improved

Laws are worthless unless there is the institutional strength and political will to enforce them. Where easements are concerned, over and above the enabling legislation, a streamlined system of granting, drafting, registering, enforcing and monitoring is necessary.

#### *To whom can easements be granted?*

Should there be any limitations on the grantee – the holder – of an environmental easement? Assuming conformity to LCA, EMCA and any other statutes relating to land holding, is there further need to restrict the identity of the grantee?

An easement comprises a grant of rights in land that amount to less than absolute ownership and there should be no need to place any greater restrictions on the owner of an easement than what existed on the owner of land. On the other hand, holding an easement brings considerable responsibilities. It may, therefore, be valid to argue that the grantee of an environmental easement should demonstrate an existing ability to conserve land and enforce easements and also have adequate resources to do so. How the eligibility of a grantee is assessed is another matter, although one of the advantages of having easements granted by the court is that the proceedings will create an opportunity for vetting the grantee.

Given the ephemeral nature of so many conservation organizations, it would be folly not to give an easement holder power to assign its rights to a new holder. It may even be prudent to introduce a back-up, long-term, grantee right from the start. More fundamentally effective would be to set up an environmental easement purchase fund and also establish a designated easement holder to ensure that money from the fund is properly spent on the purchase of easements over the most critical and strategic land.

#### *Drafting and registration*

Few Kenyan lawyers encounter easements anywhere other than in text books, least of all experiencing any which exist 'in gross'. Once the notion of a consensual easement gains statutory recognition, environmental easements will, hopefully, join the repertoire of legal conservation tools, and advocates must start to recommend their use. This will require a basic understanding of the *modus operandi* of an environmental easement. For advocates to gain this knowledge, it will require that easements become the subject of specific courses at the universities and in on-going legal education programmes.

One of the essentials of an easement is that it attaches to the land, irrespective of ownership, and should, therefore, if possible, be registered against the title. This is possible where land has been adjudicated. However, most land registrars have had little, if any, experience of registering any sort of easement. They should, therefore, be introduced to environmental easements; to the notion of their ability to exist 'in gross' and the procedures for registering them against titles so they pass with land on transfer.

#### *Enforcement and monitoring*

*Quis custodiet custodes?* Who will guard the guards?

The responsibility for monitoring and enforcing easements in Kenya rests with the grantee and there is no

other authority mandated to supervise these tasks. The only registration of an environmental easement over adjudicated land is against its title. If the land has no title, District Environment Committees are required to record easements and their holders (S115 EMCA) in a specific register. In neither case does the law imply that the registration is intended to do more than to identify the land burdened with the easement. There is no suggestion that NEMA or any other authority is directly concerned with monitoring the workings of easements.

Given that there is no need to create any new agency to oversee the operation of environmental easements, it may be prudent to give Kenya Wildlife Service (KWS) or NEMA additional powers to do so. Organizations that are keen to acquire easements easily overlook the need to have resources to enforce them, and long after the original grant of an easement, it may be difficult to enforce it due to lack of funds.

One of the most important purposes of an environmental easement is to preserve open spaces adjoining, or at least close to, protected areas. Would it, therefore, be prudent also to maintain a central register of environmental easements so that the degree of preservation accorded to particular lands can be easily ascertained? Additionally, KWS as the custodian of the country's wildlife should be involved in the process, as highlighted above.

### 3.13. Could the law be improved?

Easements represent a significant alternative to the outright purchase of land for conservation. They have the potential to combine the benefits of private ownership and stewardship with restrictions on development and as appropriate, a degree of public access. However, from the conservationist's perspective, how satisfactory is the law on easements as it stands now? Is there room for improvement, and if so, how could this best be effected?

The Common Law easement and the statutory easement recognized by the Registered Land Act are predicated on the historic notion of dominant and servient tenements. From the general legal standpoint, there is much to be said for standardizing the statutory law on easements so that the same law applies regardless of the system under which the land is registered. However, given that the essence of an environmental easement ability is to exist 'in gross', trying to play with or extend the use of these conventional easements is low on the priority list.

A higher priority should be given to amending EMCA to allow for the creation of voluntary easements. A well-drafted EMCA should also render redundant provisions for creating easements in any new Wildlife Bill.

EMCA addresses the registration of easements under established systems of land registration and where land has not been adjudicated. However, there are obvious difficulties in registering easements where land has not been adjudicated and also where the customary rights of users have not been documented.

In addition to a sound legal framework for environmental easements, awareness on their use as conservation tools and a more conducive social and legal environment for creating and enforcing them could be introduced.

Below are some ideas that if effected could help streamline the use of environmental easements as tools of conservation in Kenya:

- ▶ EMCA should be amended to allow organizations to create voluntary environmental easements without applying to the court.
- ▶ The granting of an environmental easement was not in the minds of the drafters of Kenya's LCA, and an amendment to that Act clarifying the required status of an easement holder would be welcome. NGOs, trusts and guarantee companies need to be recognized as legitimate holders of environmental easements (and agricultural land).
- ▶ Alternatively, the granting of an environmental easement could be excluded from the provisions of LCA entirely.
- ▶ An enabling tax regime that provided more liberal fiscal benefits for donations to charitable organizations could encourage the donation of environmental easements. Currently, there is no Estate Tax on death or any Capital Gains Tax in Kenya. However, under the present fiscal regime, land subject to environmental easements could be given other financial advantages, such as reduced land rents.
- ▶ There is a need to consider changing the law (S114(1) of EMCA) to recognize the possibility of someone other than the holder of an environmental easement enforcing it.
- ▶ While trust lands and group ranches are insulated from the external market, the customary rights among members are not recorded thus undermining the creation and enforceability of easements on such property. Recording customary tenure rights over trust lands and group ranches would only enhance the security of any environmental easement registered over such land.
- ▶ The public's and official's awareness of the existence and advantages of environmental easements needs to be raised, stressing how they work and that granting environmental easements does not entail a change in ownership of the land.
- ▶ Greater use of easements would generate a recognized system of valuing them that in turn, would enable landowners to appreciate better the potential conservation value tied up in their land, and the financial advantages of granting environmental easements over it while they continued to enjoy other benefits from ownership.

### 3.14. Easements in practice

It is appropriate to try and transplant the theory above onto the ground and show how environmental easements may be used in practice to aid the conservation of wildlife habitats in Kenya.

#### *The land between protected areas*

Land between two protected areas – perhaps a privately owned or group ranch between two National Parks – where animals from both parks are regularly using or seasonally migrating, and still remains an ideal wildlife habitat. The landowners are not prepared to sell the land, but become more enthusiastic when the notion of granting an environmental easement is explained to them.

Perhaps a conservation NGO that is willing to fund the purchase of an environmental easement by a local entity and also provide a lump sum to ensure efficient monitoring and enforcement of its provisions for the foreseeable future is found. Not only have the landowners realized money from the grant of the environmental easement, which in the case of a group ranch, can be distributed between the members, but they can also continue to reside there (as can their descendants) and to keep limited numbers of livestock (if that is the

easement prescription). The environmental easement, however, may prohibit them from killing wild animals, harvesting timber (other than dead trees for domestic firewood), agricultural production or constructing new buildings, fences and roads. They may also be required to take down all the fences on the land except those surrounding existing dwellings.

### *The elephant corridor*

Consider the problems facing elephants migrating from the lowlands of Laikipia up to Mount Kenya through two privately-owned areas. The owners of the critical land are happy to provide a corridor for the migrating pachyderms, but are concerned that after they die, their children or any new owners of the land may not continue to honor their wishes to keep open the migratory corridor. The owners' concerns could easily be assuaged if they grant an environmental easement and surrender the rights to fence, develop or farm the corridor in perpetuity (or at least as long as their lease from the government lasts) while still retaining ownership.



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## 4.0. Valuing Environmental Easements

### 4.1. Valuing easements

Section 116(1) of EMCA provides that any person with a legal interest in land on which an environmental easement is placed is entitled to compensation, '*commensurate with the lost value of the use of the land*'. Thus, if an environmental easement is registered, a landowner is entitled to compensation. Regardless of EMCA's stipulations on compensation, there are many reasons why environmental easements should be appraised, as outlined below.

### 4.2. Why appraise easements?

Easements should be appraised for the following reasons:

1. Assuming the environmental easement is in effect through EMCA, the statute requires fair compensation.
2. Compensating landowners for the rights they are giving up with the conveyance of environmental easements will help encourage more landowners to replicate this as a mechanism to secure their own land.
3. If an organization, such as the AWF, registered as a charity in the USA, wants to purchase an environmental easement, it cannot pay above the assessed value, as per the USA Internal Revenue Service (IRS) regulations. To determine the fair market value of the environmental easement, the organization must have an environmental easement valued by a professional valuer. If the organization pays above the assessed value, it is putting its charitable status in the USA in jeopardy. IRS interprets paying more than the assessed value as using charitable dollars for private benefit; thus, not serving the public's interest; this is referred to as private inurement.
4. If an environmental easement is registered in coordination with an NGO, such an organization holds or purchases the environmental easement or helps to fundraise for it. Most foundations, funding agencies and individual donors request a copy of the valuation to ensure that their donation is supporting a fair-market value and not unreasonably benefiting an individual.
5. The concept of environmental easements in Kenya is new. Substantiating environmental easement value and setting a precedent of fair and non-inflated value is critical to a successful long-term conservation programme.
6. Determining the value of an environmental easement, even if it is given without compensation in Kenya, will help substantiate what the landowner is conveying so that if there is debate in the future about an easement, parties will demonstrate the value conveyed and uphold the legality of an easement.

### 4.3. How to value easements

To determine the compensation for rights conveyed, the court is required to take account of the provisions of the constitution and any other law relating to compulsory land acquisition (EMCA Section 116(5)). This statute, however, refers to compulsory land transactions. The environmental easement in discussion is voluntary in the sense of a willing seller, willing buyer. The assumption, therefore, is that the court will not dictate a method for valuing environmental easements. The subsequent method explored in this paper is recommending an approach that should be adopted to value environmental easements in Kenya.

### *Highest and best use*

One of the first steps for a valuer is to determine the highest and best use of a property. The highest and best use is the reasonable and probable use that will support the highest present value for the property at the date of the valuation. The highest and best use for a ranch in Laikipia, for example, may be cattle management and wildlife tourism. To determine the highest and best use, the valuer considers the property's current use under existing zoning and market conditions and estimates the reasonable likelihood of a change in use. They consider the property's potential for continuing with its current use or for realistic alternative uses generating greater value. When assessing the highest and best use, the valuer looks at what is legally permissible, physically possible, financially feasible and maximally productive. The valuer's assumptions must be grounded in realistic parameters. If a property has limited access and lacks electricity, for example, an appraiser cannot assume that the property's highest and best use is residential because the cost of accessing the premises and acquiring electricity is prohibitive.

### *Recommended approach for valuing easements*

To determine the value of an environmental easement, the 'before and after' approach is recommended. This approach entails three primary steps:

1. Determine a 'before' property value. This is an estimate of fair market value (FMV) of a property as if the landowner were to sell it without an environmental easement encumbering the property. The valuer is asking the question: "What would the landowner receive if the property was put on the market that day?" FMV is herein defined as: the price the property would fetch in the open market. It is the price that is agreed on between a willing buyer and willing seller, with neither being required to act, nor both having reasonable knowledge of the relevant facts. (For this example, the 'before' value is Kshs 80,000,000).
2. Determine an 'after' property value. This is an estimate of FMV of a property as if the landowner were to sell the property with the environmental easement restrictions in place; thus, an encumbered property. (So, the same property above once encumbered has an 'after' value of Kshs 32,000,000).
3. Subtract the 'after' value from the 'before' to arrive at the estimate value of the environmental easement:  $\text{Kshs } 80,000,000 - 32,000,000 = 48,000,000$  – the proposed environmental easement value.

A property is a bundle of rights. Through an environmental easement, the landowner is conveying certain rights. Each and every right to be conveyed through the environmental easement must be valued. This includes any restrictions on future development, uses, reserved rights and subdivision. By assessing the 'before' and 'after' value, the valuer is trying to derive the value of the 'bundles' the landowner is conveying through an environmental easement.

To assess the 'before' and the 'after' values, three approaches may be used – the Cost Approach, the Income Approach or the Sales Comparison Approach. Each of these methods is described here after.

The Cost Approach is inappropriate for vacant land. This approach is used for improved properties, and the premise is that an improved property will sell at a price reasonably related to the depreciated cost of a newly-constructed version of itself. The valuer estimates the value of land as if vacant, the replacement cost of the

improvements and the loss in value from all forms of depreciation. The amount of depreciated cost is deducted from the replacement cost. The value of any other improvements is assessed. The land value estimate is added to the depreciated cost value to arrive at the total property value.

The Income Approach is used when the highest and best use is determined to be income-producing properties. The valuer must determine if the property is predominantly income producing or held for speculation. Vacation homes, for example, may generate sufficient income to service a mortgage and support current market value. This approach is used to value commercial or industrial properties, or properties that are bought and sold by investors primarily because of their income producing potential. However, the income must be significant, steady and reliable. One may consider this approach in Kenya, for example, for a ranch that generates significant income from tourism. Importantly, the cost of maintaining the facilities, managing the property and advertising, among others, is incorporated into the assessment.

The Income Approach depends on reliable and detailed information on the income and the costs of doing business for a particular business or enterprise – the ‘income stream’ of the property. This approach defines value as, “the present worth of future benefits of owning a property”. These are composed of the annual income for an estimated number of years, the economic life of the property and a capital amount representing land value or land value and some remaining worth of the improvements. This approach emphasizes investment rather than physical components of a property. Risk, such as an economic crisis resulting in a decrease in tourism, must be considered. With this approach the valuer estimates the potential gross income, deducts vacancy and collection losses, adds miscellaneous income to derive effective gross income, deducts operating expenses to derive net operating income, selects appropriate capitalization rate and method and develops an estimated value.

The Sales Comparison Approach is recommended in Kenya for valuing environmental easements. With this approach, valuers base the assessment value on comparable sales. A valuer should only use completed sales. If a valuer, for example, learns that a property may sell or an offer has been made for Kshs 25,000 per acre, they should not use this as a comparable unless the transaction is complete. Valuers look for comparable parcels that are similar in scale, location and use. Adjustments are then made to the value based on the nature of the subject property, for example:

- a. Subject property: 100 acres of grassland, flat, accessible, outside Nanyuki, water and electricity, exceptional views of mountains.
- b. Comparable property: 100 acres of grassland, accessible, outside Nanyuki, water and electricity, no views, estimated price per acre is Kshs 24,000.

The valuer will adjust the value of the subject property (A) to, perhaps, Kshs 26,000 per acre because it has scenic views.

The valuer should strive to have a reasonable amount of comparables for the ‘before’ and ‘after’ values combined. In USA, for example, it is recommended to have at least five before comparables and five after comparables. This is challenging for large tracts in the rural areas of Kenya that are the most likely conservation targets because the number of transactions of this kind are few and the full details of a transaction, including

the actual value paid, can be difficult to obtain.

The valuer should strive to have as many comparables as possible, ensure comparables are of sales that have been completed and that the full details of the sale are obtained. In the end, the valuer will have to use their experience and knowledge to draw the right conclusions and put appropriate weight on available evidence. The 'after' value is assessed the same way as the 'before' value. However, the 'after' value is the restricted value hence the valuer must find properties that are restricted. If this is not feasible because of the scarcity of legally restricted properties in Kenya, the appraiser must be creative and practical. The valuer, for example, may use a property that cannot be developed because it is in a flood zone; thus, it is restricted by natural or zoning features.

Easement valuations must consider all the restrictions and reserved rights outlined in the environmental easement. This is assessed in the 'after' value. The valuation should cover the same legal area described in the environmental easement (an environmental easement may only cover a portion of a property). Valuations also need to consider all the other properties in the area owned by the landowners and their families because of 'enhancement' value. If a landowner places an environmental easement on land that is adjacent to a family member's property, then that member's property benefits (or is enhanced) from the environmental easement. It is assumed that the property value of the adjacent land increases by being next to protected land. Therefore, the appraiser may consider incorporating the increase in value to the adjacent property in the value of the environmental easement value because it is benefiting a family member.

The valuer needs to consider any funding generated from the property. If, for example, the property to be appraised generates income from safaris and wildlife enterprises, this must be incorporated into the appraisal. It is assumed, therefore, that the income generated on the property does not merit the income approach.

Valuers must be cautious about assumptions and these must be factual. If, for example, a property is zoned agricultural land, a valuer may not assess the property based on the assumption that the zoning will change and the property may in the future be zoned as commercial; thus, substantially increasing the value of the property.

The landowner's personal situation should not be a factor in the valuation. If, for example, a landowner is facing financial difficulties and is desperate for cash, the appraiser should not increase the value of the property.

### *Natural features and ecosystem services*

The presence of open space, mountains and rivers enhances the value of properties in Kenya, for example:

- a. Mr ABC owns 100 acres of grassland, flat, accessible, outside Nanyuki, water and electricity. No views, no rivers, no mountains.
- b. Mr XYZ owns 100 acres of grassland, accessible, outside Nanyuki, water and electricity. The property has lovely views of Mount Kenya, a small scenic stream and a hill.

Mr XYZ's property is valued at a higher price than Mr ABC's because of these natural features. Buyers in the Kenyan market are willing to pay more for scenery and natural features.

Ecosystem services, however, are different. There is much discussion about paying for ecosystem services, for example, paying someone for the amount of carbon their land sequesters. The market for these services in Kenya has yet to be developed to a point where they can be used for valuation. There are voluntary markets, but these are immature and payment cannot be guaranteed for an extended period.

While some places may value water and mineral rights for commercial purposes, in Kenya these rights are vested with the government and they cannot be incorporated into the valuation, unless it can be proven that the landowner has the rights to these resources and can generate substantial income from them. If, for example, a landowner has legal ownership to a spring and is generating income from bottled water, this would be incorporated into the valuation. If the valuer determines that the income generated from the water business is the highest and best use, then the valuer will use the Income Approach method. If the valuer determines another highest and best use of the property and uses the Comparable Approach method, then the valuer must incorporate the income from the water business as a component of the valuation.

#### 4.4. Who should value easements?

A qualified valuer should complete and sign appraisals. The Valuer's Act Cap. 532 of 27 October 2005 outlines the rules and regulations applying to valuers in Kenya and the amount they are required to charge per valuation.

The valuer should be a professional certified by an authorized body and holding membership in a professional organization. If this is not feasible, the valuer should be someone who is known to the public as a valuer and values property regularly. The valuer should be qualified to appraise the appropriate property based on their



qualifications as described in the appraisal. If, for example, a large ranch is to be assessed in northern Kenya, a valuer who handles small parcels of property in Nairobi is inappropriate. A valuer should not have any conflict of interest, for example, if the property owner is a relative or friend. As a result of the limited market in Kenya, if a valuer is highly qualified and yet has some conflict of interest, they should declare this from the onset and the client may determine whether this is problematic.

#### 4.5. Science or art?

Valuations are often described as part science, part art. Appraisals are only estimates of value; therefore, valuations may vary depending on the valuer and their methodology. Competent valuers using the same set of facts and similar guidelines should arrive at roughly similar results. Valuations with minor technical or formatting flaws can be corrected easily without major ramifications. However, grossly inaccurate or purposefully misleading overstatements of value are serious and should not be tolerated by any party to the transaction. To assess the accuracy of a valuation, a client may ask a different valuer to review the valuation and provide a professional opinion.

## 5.0. Conclusion

Increased pressure from growing human population and a commensurate demand for land for development has put open space for wildlife use at great risk of being converted to other uses. Large open spaces that provide habitat for wildlife are increasingly being subdivided, fenced, cultivated or developed for human settlement. This trend is of great concern to the survival of wildlife in Kenya because protected areas alone are not sufficient for wildlife to prosper. Land outside protected areas is essential for large mammals to migrate between protected areas and seasonal grazing areas. Loss of open space, therefore, presents a threat to the survival of wildlife species that are the basis of the tourism industry in the country. Additionally, there is a lack of appropriate tools, mechanism and benefits, for landowners to encourage them to keep their land open.

As a legal mechanism for restricting use of land, environmental easements provide an opportunity to increase the options for landowners to conserve wildlife habitat while receiving economic benefit. The Environmental Management and Coordination Act is the legal framework for using environmental easements in Kenya and provides for registration of easements against land titles. This makes environmental easements binding on subsequent land owners and also guarantees long-term legal arrangement for conserving habitats; however, this tool is not voluntary.

Environmental easements have, however, not been applied in Kenya and for them to be viable, it is recommended that EMCA should be amended to provide for their creation through voluntary use as opposed to an imposition through court. In other parts of the world, such as the USA, easements for conservation are applied as a voluntary mechanism negotiated between a willing landowner and a designated conservation organization. An example of a voluntary easement created by deed is presented in the Annex of this paper. The land tenure and land administration system plays a key role in creating, registering and enforcing environmental easements. For example, the absence of a registration system for customary land rights and the existence of unadjudicated parcels of land present a special challenge to using environmental easements in Kenya. It is, therefore, recommended that the necessary reforms are implemented to provide for a clear quantification and administration of land held in customary land tenure.

An objective method of determining the value of an environmental easement is needed to ensure fair compensation to a landowner. The most appropriate method for valuing easements, as discussed in this paper, is the difference between the market value of the land before and after the environmental easement is placed on the land. Valuation practice would also require that the value of the easement is determined through sales comparison to ensure a fair value. It is recommended that a standardized methodology for valuing environmental easements be developed and applied to ensure that compensation to landowners for land use rights foregone is fair and consistent. While anyone may currently hold an environmental easement, it is necessary to identify an institutional framework that would support the use of environmental easements, apply valuation mechanism and enforce the terms of the environmental easement to benefit wildlife conservation.

In environmental easements, Kenya has a great opportunity to embrace this new and innovative conservation tool for the conservation of land outside of protected areas while also benefitting landowners. Supportive legislation, willing landowners and capable conservation organizations – this is the key to Kenya leading land conservation across the continent.

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# Annexes

## Annex 1: Sample Easement

Below is the skeleton of a sample easement, adapted from precedents established internationally. It has been modified for registration against a title issued under the Registration of Titles Act in Kenya. The intention of providing a precedent is simply to help readers appreciate what is involved in the creation of an environmental easement and to show what one looks like. It is not intended to be a comprehensive document, and legal practitioners may need to go into a lot more detail. This precedent is for a donated (voluntary) easement, but the terms of an environmental easement for consideration would differ very little.

**REPUBLIC OF KENYA  
REGISTRATION OF TITLES ACT  
REGISTRY OF TITLES  
(INLAND REGISTRY)**

**GRANT OF ENVIRONMENTAL EASEMENT  
TITLE NUMBERS LR -----**

THIS GRANT OF ENVIRONMENTAL EASEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ by

- 1 (Name) of P O Box ("The Grantor") and
- 2 (Name) of P O Box ("The Grantee")
- 3 (Name) of P O Box ("The Second Grantee")

WHEREAS:-

- a. The Grantor is registered as proprietor as lessee from the Government of the Republic of Kenya ("the Government") of all that piece of land described in the First Schedule hereto and hereinafter referred to as "the Property";
- b. The Property possesses natural, scientific, aesthetic, ecological, educational, scenic and recreational values (together "the Conservation Values" set out in the Second Schedule hereto) of great importance to the Grantor and to the people of the Republic of Kenya;
- c. The Grantor intends that the Conservation Values of the Property be preserved and maintained by permitting only those land uses on the Property that do not significantly impair or interfere with them;
- d. The Grantor further intends, as the registered proprietor of the Property, to convey to the Grantee the right to preserve and protect the Conservation Values of the Property until the expiry of the Lease from the Government details of which are included in the descriptions of the Property in the Schedule;

- e. The Grantee is a \_\_\_\_\_ incorporated in for charitable purposes whose objects include environmental conservation and the education of the people in the protection of natural resources; and
- f. It is intended that this Grant of Environmental Easement be an Environmental Easement as defined and provided for in the Environmental Management and Co-ordination Act (No. 8 of 1999).

**NOW** in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the law of the Republic of Kenya and in particular the Registration of Titles Act and the Environmental Management and Co-Ordination Act the Grantor hereby voluntarily grants and conveys to the Grantee a Environmental Easement for so long as the lease of the Property from the Government is in existence (“the Easement”).

## 1. Purpose

The purpose of the Easement is to ensure that the Property is retained for as long as possible in its natural state and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values; the Grantor intends that this Easement will confine the use of the Property to such activities, including, without limitation, those involving conservation, tourism and education as are not inconsistent with the purpose of this Easement.

## 2. Rights of Grantee

To accomplish the purposes of this Easement the following rights are conveyed to the Grantee by this Easement;

- a. To preserve and protect the Conservation Values of the Property;
- b. To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Environmental Easement in accordance with clause 5; provided that, except in cases where the Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to the Grantor, and the Grantee shall not in any case unreasonably interfere with the Grantor’s use and quiet enjoyment of the Property; and
- c. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in clause 5.

## 3. Prohibited Uses

Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- a. The legal or de facto division, subdivision or partitioning of the Property for any purpose;
- b. Any commercial or industrial use of or activity on the Property other than those relating to tourism or photography;

- c. The construction of any buildings, or other improvements of any kind (including fences, parking lots, and utility lines and related facilities);
- d. Any alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel or rock other than in the course of removing murrum for road building;
- e. The draining, diverting, damming or otherwise interfering with the natural flow of any watercourses or wetlands;
- f. The pruning, cutting down, or other destruction or removal of trees on the Property except as necessary for the clearing of footpaths or access roads;
- g. The dumping of domestic waste;
- h. The installation of above ground telephone, electricity or other wired connections;
- i. The exploration for, or development and extraction of, minerals and hydrocarbons by any surface mining method or any other method that would significantly impair or interfere with the Conservation Values of the Property;
- j. Killing of any wild birds or animals on the Property other than in the course of licensed culling when this shall be the responsibility of the Grantee; and
- k. Keeping of any pet or domestic animals on the Property.

#### **4. Reserved Rights**

The Grantor reserves to itself, and to its successors and assigns, all rights accruing from ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, and subject to the terms of section 3, the following rights are expressly reserved:

- a. To engage in and permit others to engage in recreational uses of the Property, including, without limitation, walking and driving around the Property;
- b. To manage and engage in or allow others to manage or engage in a tourism ventures in accordance with plans agreed with the Grantee; and
- c. To retain all revenues derived from any business ventures conducted on the Property.

#### **5. The Grantee's Remedies**

##### **5.1. Notice of Violation; Corrective Action**

If the Grantee decides that a violation of the terms of this Easement has occurred or is threatened, the Grantee shall give written notice to the Grantor of such violation and demand corrective action sufficient to remedy the violation and, where the violation involves harm or damage to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the part of the Property so harmed or damaged to its prior condition in accordance with a plan approved by the Grantee.

##### **5.2. Injunctive Relief**

If the Grantor fails to cure the violation within 90 days of receipt of notice thereof from the Grantee, or under circumstances where the violation cannot reasonably be cured within such period, fail to begin curing such

violation within 90 days, the Grantee may bring an action to enforce the terms of this Easement in such manner as it deems fit, and to require the restoration of the Property to the condition that existed prior to any such violation.

### 5.3. Damages

The Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement. Without limiting the Grantor's liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action.

### 5.4. Emergency Enforcement

If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the Grantee may pursue its remedies under this section 5 without prior notice to the Grantor or without waiting for the 90 day period provided for cure to expire.

### 5.5. Costs of Enforcement

All reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, costs and expenses of litigation and reasonable advocates' fees, and any costs of restoration necessitated by the Grantor's violation of the terms of this Easement shall be borne by the Grantor.

### 5.6. Forbearance

Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any provision of this Easement by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other provision of this Easement or of the exercise of any of the Grantee's rights under this Easement. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver.

### 5.7. Acts Beyond Grantor's Control

Nothing contained in this Easement shall be construed as entitling the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

## 6. Access

No right of access by the general public to any portion of the Property is conveyed by this Easement.

## 7. Costs, Liabilities, Taxes, and Environmental Compliance

### 7.1. Costs, Legal Requirements, and Liabilities

The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

### 7.2. Taxes

The Grantee shall pay all local authority rates, land rent and such other taxes and charges of whatever description levied on or assessed against the Property, and shall show the Grantor satisfactory evidence of payment upon request.

### 7.3. Representations and Warranties

The Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

- a. The Grantor has complied with all government and local authority laws, regulations, and requirements applicable to the Property and its use; and
- b. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property and no civil or criminal proceedings or investigations are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any government or local law, regulation, or requirement applicable to the Property or its use.

### 7.4. Control

Nothing in this Easement shall be construed as giving rise to any right of the Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of the Grantor's activities on the Property.

### 7.5. Indemnity

The Grantor and the Grantee hereby each releases and agrees to hold harmless, indemnify, and defend the other and its members, directors, officers, employees, agents, and contractors, successors, and assigns or each of them (collectively "the Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable advocates' fees, arising from or in any way connected with:

- a. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property in so far such injury, death or damage is due to negligence of the other;
- b. The violation or alleged violation by the Grantor or the Grantee of, or other failure to comply with, any government or local authority law, regulation, or requirement, in any way affecting, involving, or relating to the Property; and
- c. The breach by either the Grantor or the Grantee of any of its other obligations under this Easement.

## **8. Termination**

### **8.1. Termination**

If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, it can be terminated either by the mutual agreement of both parties, or by the purchase of the Property by the Grantee or extinguished, whether in whole or in part, by judicial proceedings in court. The amount of the proceeds to which the Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the fair value of the Easement, or proportionate part thereof, as determined in accordance with clause 8.2.

### **8.2. Valuation**

This Easement constitutes a real property interest immediately vested in the Grantee, which, for the purposes of clause 8.1, the parties stipulate to have a fair market value ascertainable as a proportion of the value of the Property by reference to the principles of land valuation in the Republic of Kenya.

### **8.3. Compulsory acquisition**

If all or any part of the Property is taken or threatened to be taken by exercise of compulsory acquisition whether by public, local, corporate, or other authority, or in any other way, so as to terminate this Easement, in whole or in part, the Grantor and the Grantee shall act jointly to protect the ownership of the Property and of the Easement and to recover the full value of the interests in the Property. All expenses reasonably incurred by the Grantor and the Grantee in connection with such joint action shall be paid out of any amount recovered or otherwise in the proportion referred to above.

### **8.4. Application of Proceeds**

The Grantee shall use any proceeds received under the circumstances described in this clause 8 in a manner consistent with its aims and objects.

## **9. Assignment**

This Easement is transferable, but the Grantee may assign its rights and obligations under this Easement only to an organization whose objects include environmental conservation and the education of the residents of the Republic of Kenya in the protection of its natural resources and which are authorised to acquire and hold conservation easements. As a condition of such transfer, the Grantee shall require that the purposes of this Easement continue to be advanced. The Grantee agrees to give written notice to the Grantor of any assignment at least 90 days prior to the date of such an assignment although failure to do so shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

## **10. Subsequent Transfers**

The Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property. The Grantor will give written notice to Grantee of the transfer of any interest at least ninety days prior to the date of such transfer. The failure of the Grantor to do anything required by this paragraph shall not affect the validity of any transfer or of this Easement or limit its enforceability in any way.

## 11. General Provisions

### 11.1. Controlling Law

The interpretation and performance of this Easement shall be governed by the laws of the Republic of Kenya.

### 11.2. Severability

If any provision of this Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

### 11.3. Entire Agreement

This instrument constitutes the entire agreement between the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

### 11.4. Amendment

The Grantor and the Grantee may not amend this Easement but by mutual agreement may strengthen it.

### 11.5. Successors

The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue to run with the Property. The terms "The Grantor" and "The Grantee," wherever used herein shall include, respectively, the above-named Grantor and its successors to the title of the Property and assigns, and the above-named Grantee and its successors as the holder of the Easement hereby created and assigns.

### 11.6. Termination of Rights and Obligations

A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

### 11.7. Dispute Resolution

If any difference or dispute arises between the parties concerning the interpretation of this Easement or any proposed use or activity which may impact thereon, the parties must first refer the same to a mediator appointed jointly by them and in default of agreement to such appointment then they shall each appoint a representative and the two representatives shall then select a mediator and in default of their agreement the Dispute Resolution Centre whom failing the Chairman for the time being of the East African Wildlife Society whom failing the Chairman for the time being of the Chartered Institute of Arbitrators or of such other organisation as is then the principal Arbitration organisation in Kenya shall select such mediator and if such mediation fails to resolve the difference or dispute the same shall be submitted to arbitration by a single arbitrator appointed as above.

### 11.8. Headings

The headings in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

**IN WITNESS WHEREOF** the parties hereto have caused their common seals to be affixed to this **GRANT OF ENVIRONMENTAL EASEMENT** the day and year first above written

**SEALED** with the Common

Seal of the Grantor

in the presence of

Director

Director / Secretary

**SEALED** with the Common

Seal of the Grantee

in the presence of

Director

Director / Secretary

THE FIRST SCHEDULE ("The Property")

All that piece of land \_\_\_\_\_ in District \_\_\_\_\_ of the Republic of Kenya comprising \_\_\_\_\_ acres or thereabouts having LR Number \_\_\_\_\_ delineated on Plan Number \_\_\_\_\_ deposited at the Survey Records Office at Nairobi, and held as lessee from the Government of the Republic of Kenya at the revisable annual rent of Kshs. \_\_\_\_\_ for the residue of the term of \_\_\_\_\_ years from and comprised in a Grant registered in the Land Titles Registry at Nairobi as LR Number \_\_\_\_\_.

THE SECOND SCHEDULE ("The Conservation Values")

## Annex 2: Relevant laws in Kenya

1. Constitution of Kenya (1963)
2. Limitation of Actions Act (Cap 22)
3. Government Lands Act (Cap 280)
4. Registration of Titles Act (Cap 281)
5. Land (Group Representatives) Act (Cap 287)
6. Trust Land Act (Cap 288)
7. Wayleaves Act (Cap 292)
8. Registered Land Act (Cap 300)
9. Land Control Act (Cap 302)
10. Electric Power Act (Cap 314)
11. Environmental Management and Co-ordination Act, 1999
12. Water Act 2002



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## Kenya Land Conservation Trust

The Kenya Land Conservation Trust (KLCT) is a registered charitable Trust in Kenya. KLCT has a mission to ensure the integrity of the natural habitat of land outside protected areas in Kenya whilst taking into account the socio-economic interests of local communities.

KLCT was founded with the aim to use innovative conservation tools such as environmental easements, long-term leases, management agreements and acquisition to achieve its objectives. These tools can help communities benefit directly from land protection and support the long-term viability of Kenya's existing protected areas. KLCT seeks to protect biologically significant land and supporting the formulation and implementation of policies and legislation relevant to biodiversity conservation in Kenya.

KLCT was established to:

- ▶ promote and facilitate the conservation of land, biological diversity and natural resources in Kenya for public land benefit through the use of different approaches and mechanisms.
- ▶ acquire and hold property rights in land from willing landowners to further the objects declared in the above that enable the Trust to conserve land and natural resources using innovative and existing legal instruments including but not limited to purchase, easements, leases, and management agreements.
- ▶ contribute to poverty reduction by promoting innovative economic activities in resource dependent communities.

Learn more about Environmental Easements in Kenya and KLCT at: [www.klct.or.ke](http://www.klct.or.ke)

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Kenya Land Conservation Trust

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# African Wildlife Foundation

The African Wildlife Foundation (AWF), founded in 1961, is an international non-governmental organization headquartered in Nairobi, Kenya. AWF, together with the people of Africa, works to ensure that the wildlife and wild lands of Africa will endure forever.

AWF has an integrated large landscape-scale approach, which addresses threats to conservation, sustainable natural resource management and improving livelihoods: the AWF Heartland Program. AWF's African Heartlands Program is currently operational in nine high-priority Heartlands, across 15 countries in central, eastern, southern and west Africa. Six of the nine Heartlands are trans-boundary landscapes.

In each Heartland, AWF implements its work through four main programs: land and habitat conservation; conservation enterprise; capacity building; and applied species research. Policy development and climate change are cross-cutting issues that are integrated into each of these programs. Through these programs AWF aims to facilitate practical, field-based solutions to global and local sustainable natural resource management challenges in Africa.

Learn more about the African Wildlife Foundation at: [www.awf.org](http://www.awf.org)

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