

LESS-THAN-FEE BEACHFRONT ACQUISITION STRATEGIES TO PROTECT AND ENHANCE SEA TURTLE NESTING HABITAT IN FLORIDA

- A FEASIBILITY STUDY AND PILOT PROJECT -



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DISCLAIMERS

This report and the legal information contained herein is not a substitute for legal advice. Factual circumstances surrounding less-than-fee property interests are highly variable based on circumstance. Property owners should consult with an attorney who specializes in conservation easements when considering placing a conservation easement on their property.

The views, statements, findings, conclusions, and recommendations expressed herein are those of the authors and do not necessarily reflect the views of the collaborating agencies or organizations or any of their sub-agencies.

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The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions of the National Fish and Wildlife Foundation or its funding sources. Mention of trade names or commercial products does not constitute their endorsement by the National Fish and Wildlife Foundation or its funding sources.

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Executive Summary

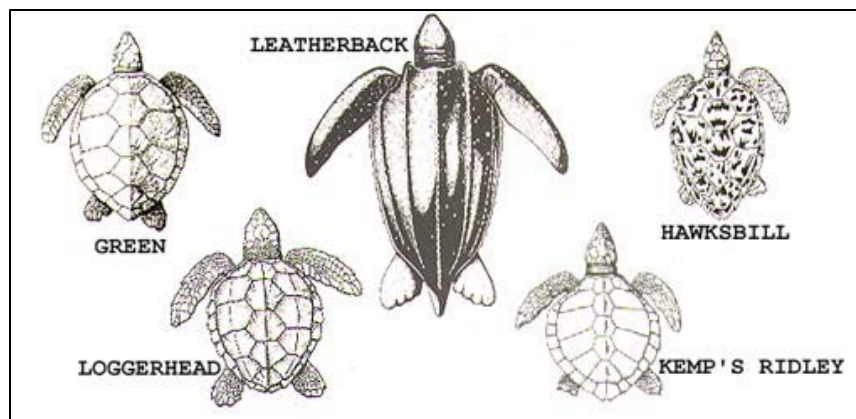
Florida's beaches, or more accurately, its beach-dune ecosystem, presents special conservation challenges due to its dynamic nature and close proximity to human inhabitation. Arguably, regulatory efforts to protect the beach-dune system have proved inadequate, a problem that is exacerbated by sea level rise. This report describes a project undertaken by Alachua Conservation Trust, the Conservation Clinic at University of Florida Levin College of Law, and the Sea Turtle Conservancy to explore the feasibility of using property law to supplement the current system of regulation. This project analyzes the use of less-than-fee property interests on coastal properties as a tool to protect Florida's beaches from anthropogenic effects, with the specific goal of preserving sea turtle nesting habitat. This project is currently in its pilot project phase, testing the theoretical efficacy of less-than-fee approaches to beach-dune conservation in Florida. This report concludes the pilot phase by identifying target areas based on habitat quality, surveying property owners within those target areas, conducting the legal research required to implement a less than fee approach, and drafting a model coastal conservation easement.

The main focus of this report is on a less-than-fee property interest called a conservation easement, an increasingly popular tool in land conservation. Since conservation easements have traditionally been used on large, relatively natural expanses of land, their use on coastal properties, which tend to be relatively small, expensive, and developed, has not been adequately tested. This report addresses the potential for conservation easements to supplement the existing suite of tools available to protect the beach-dune system generally, and sea turtles specifically. To do this we first sought to identify the areas of high density nesting where additional conservation would add value to existing measures. Once these areas were identified we mined property appraiser databases to find those properties that fit a suite of pre-determined criteria – residential beachfront properties within one mile of a protected area. We then created a survey to assess the level of knowledge of residential property owners concerning the beach-dune system, sea turtles, and conservation easements. The survey also tested the willingness of residential property owners to consider conservation easements on their property. The results are encouraging.

Conservation easements are a flexible tool used for voluntary private land conservation where a property owner retains some uses, while giving up those that are incompatible with a defined set of conservation values. Both the federal and state government provide tax and other incentives to encourage this form of conservation. While the tool has become increasingly popular, we found no examples of it being used specifically to protect sea turtle nesting habitat, and few for beach-dune habitat generally. In addition to legal and management issues that all easements confront, such as preexisting encumbrances, valuation, enforcement, access, and affirmative obligations, coastal conservation includes unique considerations. These include the dynamic nature of the beach-dune system, ambulatory beachfront property boundaries, the relative size and proximity of the conserved area to inhabited areas (e.g. backyards) and preexisting federal, state, and local beach management and regulatory programs. We conclude that while these issues increase complexity, the flexibility of the conservation easement tool remains well suited to the purpose of coastal conservation where coastal property owners demonstrate a willingness to forgo some, but not all, of their property rights in order to coexist with sea turtles. To this end we have identified a suite of implementation options that address both the generic and specific issues we identified. We have also drafted a model coastal conservation easement that can serve as a template for those seeking to use the conservation easement tool.

Introduction

Ninety percent of the suitable sea turtle nesting habitat in the entire United States is located in the state of Florida.¹ There are five species of sea turtles that nest on Florida's sandy beaches. The leatherback (*dermochelys coriacea*), green (*chelonina mydas*), hawksbill (*eretmochelys imbricata*), and Kemp's ridley (*lepidochelys kempii*) are all federally listed as endangered species.² The loggerhead (*caretta caretta*) is federally listed as a threatened species.³ Every summer thousands of nesting mothers will return to the beaches on which they were born to lay their clutch of eggs. More likely than not, humans occupy the area immediately landward of the beach where sea turtles nest and hatchlings emerge. As a result, important nesting habitat for these threatened and endangered species is being compromised along Florida's coastline due to erosion and sea level rise, coastal armoring,⁴ improper lighting,⁵ obstructions on the beach,⁶ and human-subsidized wild and domestic predators.⁷



Depiction of the five species of sea turtles that nest on Florida's Beaches.

Image from:
<http://seaturtleexploration.com>

¹ Florida Department of Environmental Protection, *Volunteering for Sea Turtle Patrols*, available at https://www.dep.state.fl.us/coastal/news/articles/2008/0805_TurtlePatrol.htm (April 6, 2015).

² U.S. Fish & Wildlife Service, *Leatherback sea turtle (Dermochelys coriacea)*, Environmental Conservation Online System, available at <https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=C00F>; U.S. Fish & Wildlife Service, *Green sea turtle (Chelonia mydas)*, Environmental Conservation Online System, available at <https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=C00S> (Green sea turtles are federally listed as endangered or threatened, depending on where they originate); U.S. Fish & Wildlife Service, *Hawksbill sea turtle (Eretmochelys imbricata)*, Environmental Conservation Online System, available at <https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=C00E>; U.S. Fish & Wildlife Service, *Kemp's Ridley sea turtle (Lepidochelys kempii)*, Environmental Conservation Online System, available at <https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=C00U>.

³ U.S. Fish & Wildlife Service, *Loggerhead sea turtle (Caretta caretta)*, Environmental Conservation Online System, available at <https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=C00U> (Loggerhead sea turtles are federally listed as endangered or threatened, depending on where they originate).

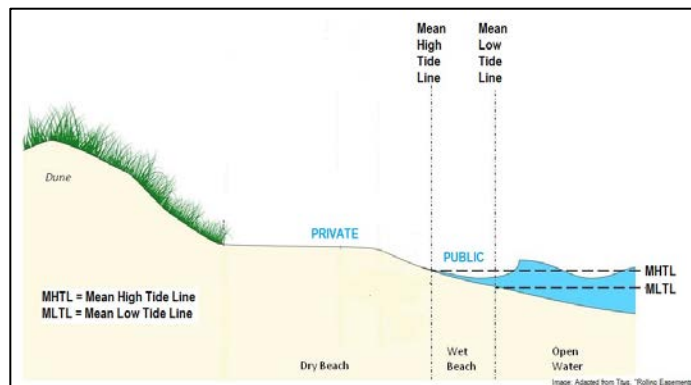
⁴ A. Mosier, & B. Witherington, *Documented effects of coastal armoring structures on sea turtle nesting behavior*. NOAA Technical Memorandum NMFS SEFSC 477 (2000); Mariana M. P. B. Fuentes et al., *Conservation hotspots for marine turtle nesting in the United States based on coastal development*, 26(8) *Ecological Applications* 2708, 2709 (2016).

⁵ Z. Weishampel, et al., *Sea turtle nesting patterns in Florida vis-à-vis satellite-derived measures of artificial lighting*, Remote Sensing in Ecology and Conservation (2015); Florida Fish and Wildlife Conservation Commission, *Marine Turtles and Lights*, available at <http://myfwc.com/wildlifehabitats/managed/sea-turtles/lighting/>; Mariana M. P. B. Fuentes et al., *Conservation hotspots for marine turtle nesting in the United States based on coastal development*, 26(8) *Ecological Applications* 2708, 2709 (2016).

⁶ Florida Department of Environmental Protection, *Florida's Sea Turtles- Surviving with a Little Help from their Friends*, available at <https://www.dep.state.fl.us/coastal/sites/gtm/seaturtles.htm>; Kendra L. Cope, *Habitat Conservation Plan for the Protection of Sea Turtles on the Eroding Beaches of Indian River County, Florida*, U.S. Fish and Wildlife Service, 15 (2015); Mariana M. P. B. Fuentes et al., *Conservation hotspots for marine turtle nesting in the United States based on coastal development*, 26(8) *Ecological Applications* 2708, 2709 (2016).

⁷ R. Engeman, et al., *Impact on predation of sea turtle nests when predator control was removed midway through the nesting season*, 417 *USDA National Wildlife Research Center- Staff Publications* 187 (2006).

The majority of Florida's coastal properties located on sea turtle nesting beaches are privately owned. With private beachfront property ownership, the mean high tide line (MHTL) generally delineates the boundary between the landward, privately owned property and the seaward, publically owned land.⁸ In cases, where a beach has been nourished pursuant to federal or state programs, the MHTL is fixed and is called the erosion control line (ECL), but the landward beach remains privately owned.⁹ Because of this designation, a substantial portion of the sandy nesting beach that sea turtles rely on is located on privately owned property, and is thus subject to impacts from individual property owner decisions. Many of these decisions can significantly affect sea turtle nesting habitat. Some of these decisions include whether to install hard shoreline armoring, whether to install outdoor lighting, whether to construct additional buildings and improvements (dune crossovers, swimming pools, etc.), whether to manage landscapes, use fertilizers and pesticides, let pets roam free, or maintain beach furniture.



The public trust doctrine is the principle that the sovereign (i.e. the state) holds in trust for public use some resources such as shoreline between the high and low tide lines, regardless of the landward private property ownership. The mean high tide line is generally the dividing line between state-owned land and private property. The area landward of the mean high water line is generally referred to as the dry sand beach and is owned by the upland property owner. The area seaward of the mean high water is generally referred to as the wet sand beach and is generally public property.

These threats to sea turtle habitat suggest that it is necessary to engage with beachfront landowners to conserve and protect sea turtle nesting habitat. Most of these threats have been addressed through regulatory programs, but enforcement has been problematic and the program measures may not be adequate to completely address the threats. Educational programs can also help.¹⁰ However, the transfer of less-than-fee property interests, including, more specifically, conservation easements, with its emphasis on incentivized voluntary action could be beneficial for both sea turtles and property owners,¹¹ and serve alongside current regulation and education as an important additional tool to conserve sea turtle nesting habitat.

⁸ The public trust doctrine is the principle that the sovereign (i.e. the state) holds in trust for public use some resources such as shoreline between the high and low tide lines, regardless of the landward private property ownership. Washington State Department of Ecology, *The Public Trust Doctrine*, Shoreline Management, http://www.ecy.wa.gov/programs/sea/sma/laws_rules/public_trust.html; William J. Bussiere, *Extinguishing Dried-Up Public Trust Rights*, 91 B. U. L. Rev. 1749, 1750-51 (2011); Deborah Mongeau, *Public Beach Access: An Annotated Bibliography*, 95 Law Libr. J. 515, 516 (2003). The mean high tide line is generally the dividing line between state-owned land and private property. The area landward of the mean high water line is generally referred to as the dry sand beach and is owned by the upland property owner. The area seaward of the mean high water is generally referred to as the wet sand beach and is generally public property. Art. X, §11, Fla. Const.; Forrest J. Bass, *Calming the Storm: Public Access to Florida's Beaches in the Wake of Hurricane-Related Sand Loss*, 38 STETSON L. REV. 541, 545-46 (2009); Gary K. Oldehoff, *Florida's Beach Restoration Program Weathers a Storm in the Courts: Stop the Beach Renourishment v. Florida Department of Environmental Protection*, 84 Fla. B. J. 10, 10 (2010).

⁹ Donna R. Christie, *Sea Level Rise and Gulf Beaches: The Specter of Judicial Takings*, 26 J. Land Use & Envtl. L. 313, 315 (2011); Ilya Shapiro & Trevor Burrus, *Judicial Takings and Scalia's Shifting Sands*, 35 Vermont L. Rev. 423, 425 (2011).

¹⁰ Florida Fish and Wildlife Conservation Commission, Marine Turtle Protection, available at <http://myfwc.com/wildlifehabitats/managed/sea-turtles/protection/>; Florida Fish and Wildlife Conservation Commission, Sea Turtles, available at <http://myfwc.com/wildlifehabitats/managed/sea-turtles/>.

¹¹ T. Kabi, & P. Horwitz, *A review of landholder motivations and determinants for participation in conservation covenanting programmes*, 33(1) Environmental Conservation 11-20 (2006).

Description of the Project

In February of 2016 Alachua Conservation Trust,¹² in collaboration with the University of Florida Levin College of Law Conservation Clinic,¹³ and the Sea Turtle Conservancy¹⁴ received a grant from the National Fish and Wildlife Foundation's Gulf Environmental Benefit Fund¹⁵ to undertake a project entitled "Less-Than-Fee Beachfront Acquisition Strategies to Protect and Enhance Sea Turtle Nesting Habitat." Additional financial support has been provided by the Archie Carr Center for Sea Turtle Research,¹⁶ the Sea Turtle License Plate Program,¹⁷ and the University of Florida School of Natural Resources and Environment.¹⁸ The project was divided into two phases.

The goals of Phase I were to create a foundation for the project through both biophysical and socio-economic survey research as well as legal and policy research. The biophysical and socio-economic survey research sought to determine the biophysical (nesting density and success, land use, and development pressure) and socio-economic (market valuation, willing seller, etc.) circumstances through a statistically valid statewide survey of coastal property owners. The focus of the legal research was to identify the less-than-fee property interests that could be donated or acquired, as well as to identify the legal and management issues associated with these interests. The findings of this research were used to draft a model coastal conservation easement for sea turtle protection that could be employed in Phase II. An annotated version of this model is attached as Appendix A.

Supported by the survey of coastal property owners, Phase II will utilize the results of Phase I to target and seek to acquire one or more coastal conservation easement(s) for the purpose of protecting sea turtle nesting habitat. Potentially willing property owners in the target areas will be identified through the survey responses and the Project team's outreach efforts. Lessons learned from the project will help to determine the feasibility of scaling up the effort. Ultimately, the goal of Phase II is to negotiate one or more conservation easement(s) that explicitly protect sea turtles and their nesting beach habitat, and serve as models for a more robust programmatic approach. Overall, the purpose of this pilot project is to determine whether a robust less-than-fee land acquisition program will satisfy the "net conservation benefit" criteria of the Gulf Environmental Benefit Fund. If determined to be feasible, less-than-fee land acquisition will add another tool in the conservation toolbox to help close critical gaps in coastal conservation.

¹² <http://alachuaconservationtrust.org/>.

¹³ <https://www.law.ufl.edu/areas-of-study/experiential-learning/clinics/conservation-clinic>.

¹⁴ <https://conserveturtles.org/>.

¹⁵ <http://www.nfwf.org/Pages/default.aspx>.

¹⁶ <https://accstr.ufl.edu/>.

¹⁷ <http://www.helpingseaturtles.org/>.

¹⁸ <http://snre.ufl.edu/>.

CHARACTERIZATION OF THE PROBLEM: THE COASTAL LAND CONSERVATION CONUNDRUM

Coastal land conservation generally, beachfront conservation specifically - and sea turtle nesting habitat conservation even more specifically – presents a unique suite of management and policy problems. These problems stem from overlapping biophysical, social, legal, and conservation strategy considerations.

Perhaps the most significant and intractable aspects of the coastal conservation conundrum can be summed up by the term “coastal squeeze.” Coastal squeeze refers to the inability of eroding shorelines to migrate when they confront developed (and hardened) coastlines - both residential and commercial structures - and the infrastructure (roads, bridges, etc.) that supports them.¹⁹ When an eroding shoreline can no longer migrate landward, it loses its readily accessible natural sand supply and disappears, along with the sea turtle nesting habitat it supports.²⁰ In addition, ocean shorelines are extremely dynamic, subject to massive and rapid geomorphologic change wrought by storms. Rising seas compound this dynamic, ensuring that the change is the only constant along the coast. This can be addressed in the short term by costly programs of sand replenishment (beach nourishment), but the long-term prospects are more daunting, and these are not without their own potential detrimental impacts, including impacts to sea turtles.²¹

Social considerations are also significant. Developed shorelines place human inhabitants in immediate proximity to, and sometimes right on top of, a narrow, linear ecosystem that is confined to the space between backyards and the ocean – the “beach-dune system.” Sea turtles, along with many other species, are abjectly reliant on this ecosystem. While not reliant on the beach-dune system, humans have an affinity for it that has resulted in a desire to live as close to is as possible, and to recreate in, on, and over it. In the global language of ecosystem services, this would be characterized as a “cultural service” – and it is not insignificant.²² Thus, human activity has the capacity to profoundly affect whether and where sea turtles nest. Sea turtles arriving on nesting beaches, and hatchlings leaving them, are notoriously vulnerable to the vagaries of the humans with whom they co-exist. Among the human activities and behaviors that threaten sea turtle survival on a nesting beach are shoreline hardening (armoring), lighting, obstructions, beach management and use, and subsidized feeding that encourages predation by wild, feral, and domestic animals.

The legal framework that governs the beach-dune system is especially complex, and includes both proprietary and regulatory aspects. In the absence of special considerations, the boundary line between public and private property at the shoreline is referred to as the “mean high tide line” (MHTL).²³ The land seaward of that line is generally held by the State under a public trust theory.²⁴ This includes the “wet-sand” beach, the area between mean high tide and mean low

¹⁹ Nigel Pontee, *Defining Coastal Squeeze: A Discussion*, 84 *Ocean and Coastal Management* 204-207 (2013).

²⁰ Antonios D. Mazaris, et al., *Evaluating the Impact of Coastal Squeeze on Sea Turtle Nesting*, 52(2) *Ocean and Coastal Management* 139-145 (Feb. 2009) available at <https://doi.org/10.1016/j.ocecoaman.2008.10.005>.

²¹ Aubree Ann Gallaher, *The Effects of Beach Nourishment on Sea Turtle Nesting Densities in Florida* (unpublished diss., Univ. of Fl. 2009) available at <http://nsgl.gso.uri.edu/flsgp/flsgpy09003.pdf>.

²² Sanna Stalhammar, *Recreational cultural ecosystem services: How do people describe the value?*, 26 *Ecosystem Services* 1-9 (2017) available at <https://pubs.usgs.gov/fs/2012/3125/FS12-3125.pdf>.

²³ Art. X §11 Const. (“The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people.”)

²⁴ Sidney F. Ansbacher et al., *The Public Trust Doctrine And Sovereignty Lands In Florida: A Legal And Historical Analysis*, 4(2) *Journal Of Land Use & Environmental Law* 337-375 (Winter 1989).

tide, and the land that is always beneath the water, known as sovereign submerged lands. The dry sandy beach and the dunes that comprise the “beach-dune system” remain private property, owned by the beachfront property owner. Because the MHTL changes over time, it is referred to as an ambulatory boundary.²⁵ While that change can result in the land moving seaward (accretion) or landward (erosion), rising seas compounded by inlet management and other anthropogenic practices, ensures that the boundary is more often than not moving landward, depriving the beachfront landowner of valuable real estate.²⁶ Because the dry sandy beach and dunes along developed shorelines are most often privately owned, this means that sea turtles are nesting in, and hatchlings are emerging from, private property. Thus, regulation forms the primary basis for sea turtle protection programs along developed shorelines, and for management of the beach-dune system.

The first regulatory line of defense for sea turtles stems from their classification as protected species under both federal and state law.²⁷ It is unlawful in each case to directly or indirectly “take” sea turtles. Direct take refers to harming individual animals, including nests. However, both jurisdictions also define take in a way that includes habitat modification.²⁸ Sea turtle advocates argue that take may include coastal armoring, inappropriate lighting, obstructions, and other indirect threats, but federal and state agencies have been reluctant to enforce this biologically complicated interpretation, especially when faced with desperate property owners seeking to prevent erosion from undermining their homes. Faced with litigation from third parties over direct and indirect takings claims, some local governments have agreed to create “habitat conservation plans” which mandate local regulatory and management programs for sea turtles.²⁹ In addition there has been nearly a decade long continuing effort to voluntarily create a statewide habitat conservation plan.³⁰

The state regulatory program that addresses many of the coastal development threats that nesting sea turtles and hatchlings face is known as the Beach and Shore Preservation Act (BSPA).³¹ Whether the Act’s regulations apply depends on whether the property owner is proposing to undertake construction activities seaward of a line known as “the coastal construction control line. (CCCL)”³² The location of the CCCL is determined by the Florida Department of Environmental Protection, and it often extends well into a coastal property.³³ A property owner seeking to conduct any construction activities seaward of the CCCL must seek approval from DEP, in the form of a permit, a variance, or an exemption. A common use of this program is

²⁵ Katrina M. Whman, et al., *Migrating Boundaries*, 65 Fla. L. Rev. 1957-1992 (2013).

²⁶ An exception to this ambulatory boundary regime is known as avulsion. When the loss of beachfront is sudden and perceptible the original boundary persists even if the private property is now submerged land. See Donna R. Christie, *Of Beaches, Boundaries and SoBs*, 25 J. Land Use & Env L. 19 (Fall 2009).

²⁷ *Id.* at notes 2-3; Fla. Stat. § 370.12(1)(b) (2014) (Florida Marine Turtle Protection Act).

²⁸ See *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 690 (1995); Fla. Stat. § 370.12(1)(c) (2014).

²⁹ These include St. Johns County (<http://www.co.st-johns.fl.us/hcp/>), Indian River County (http://www.ircgov.com/Departments/Public_Works/Coastal_Engineering.../HCP2010.pdf); Volusia County (<https://www.volusia.org/services/growth-and-resource-management/environmental-management/natural-resources/beach-and-sea-turtles/habitat-conservation-zone.stml>), and Walton County (<http://www.co.walton.fl.us/99/Habitat-Conservation-Plan>).

³⁰ <http://www.flbeacheshcp.com/>.

³¹ Fla. Stat. Chapter 161 (2016)

³² Fla. Stat. § 161.053(1)(a) (2016).

³³ To establish the control line DEP uses the “100-year storm surge,” which it defines as “that portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions.” *Id.*

consent to construct sea walls or other forms of coastal armoring. While seawalls are disfavored in policy, research suggests that in practice they are routinely permitted, especially after significant erosion events.³⁴ Property owners may also seek to construct buildings, gazebos, pools, dune crossovers, and other ancillary structures seaward of the CCCL. These may require the property owner to address other threats to sea turtles such as lighting and obstructions. An additional regulatory boundary under the BSPA is the 30 year erosion projection line (EPL).³⁵ The EPL, which must be located seaward of the CCCL to have regulatory effect, prohibits all construction except shore protection (armoring) and minor structures (e.g. dune crossovers) seaward of the line.³⁶

Activities that occur landward of the CCCL do not implicate the CCCL Program, but they may still invoke local sea turtle protection regulations – lighting in particular. Most coastal local governments have adopted some form of “sea turtle friendly” lighting ordinance,³⁷ sometimes based on a model created by the FDEP.³⁸ The quality of protection amongst local lighting ordinances for sea turtle protection varies considerably – many are outdated - and enforcement has proved problematic.³⁹ Most local lighting ordinances do not address existing structures, at least until there is a significant change to the building. A few local governments may also have additional setbacks and restrictions on sea walls above and beyond the DEP requirements.⁴⁰

Even in highly urbanized coastal areas, subsidized predators represent a significant threat to sea turtle eggs and hatchlings. Subsidized predators can be wild, feral, or domestic - and can include dogs and cats, as well as raccoons and other small mammals.⁴¹ Both dogs and cats that are left out of doors are threats to sea turtles, regardless of whether they are well-fed.⁴² Feeding pets outdoors and not securing refuse bins attracts feral and wild animals to nesting beaches and allows these populations to increase in number beyond what would be expected in an environment where the food supply is not subsidized.⁴³ These activities are, for the most part, either unregulated or not well-enforced.

The private – public interface that characterizes the beach-dune system, its dynamic and stochastic geomorphology, the fact that sea turtles nest and hatchlings emerge on private property, the practical and societal difficulty of creating and enforcing regulations that restrict

³⁴ Thomas K. Ruppert, *Eroding Prospects for Florida’s Beaches: Florida’s Coastal Construction Control Line Program*, 1(1) Sea Grant Law and Policy Journal 65- 98 (2009).

³⁵ Fla. Stat. §161.053(5)(b) (2016).

³⁶ *Id.*

³⁷ Florida Fish and Wildlife Commission, *Sea Turtle Protection Ordinances Adopted by Counties and Municipalities* (as of 3/8/17) available at <http://myfwc.com/conservation/you-serve/lighting/ordinances/>.

³⁸ Fla. Admin. Code R. Chapter 62b-55 (Model Lighting Ordinance For Marine Turtle Protection).

³⁹ University of Florida Conservation Clinic, *A Comparative Analysis of Existing Sea Turtle Lighting Ordinances* (2014) available at https://www.law.ufl.edu/pdf/academics/clinics/conservation-clinic/A_Comparative_Analysis_of_Existing_Sea_Turtle_Ordinances.pdf.

⁴⁰ E.g. Brevard County Comprehensive Plan, Coastal Management Element, Policy 4.1 (1988) available at <http://www.brevardfl.gov/PlanningDev/CompPlan>.

⁴¹ “Subsidized predators” are those animals, native or introduced, whose populations flourish as a result of close association with humans and human-altered habitats. The “subsidies” provided to these predators by humans include ready access to food, water, and shelter, which increase their chances of (1) survival during times when resources are limited, (2) greater reproductive success, and/or (3) expanding their geographic range. William I. Boarman, *Predation on Turtles and Tortoises by a “Subsidized Predator,” Proceedings: Conservation, Restoration, and Management of Tortoises and Turtles—An International Conference*, 103–104 (1997).

⁴² William M Twardek, et al., *Fido, Fluffy, and wildlife conservation: The environmental consequences of domesticated animals*, *Environmental Reviews* (2017) available at <https://doi.org/10.1139/er-2016-0111>.

⁴³ R. Engeman, et al., *Dramatic reduction in predation on marine turtle nests through improved predator monitoring and management*. 39(3) *Oryx* 318–326 (2005).

private property, extend into backyards and seek to modify behavior, along with the changeability of those regulations, all suggest a complementary role for a property-based conservation strategy. Replete with robust federal and state incentive programs, conservation easements provide a tool with the flexibility to address this complexity. Conservation easements have been used to protect architectural features in crowded downtowns,⁴⁴ and they have been used to protect managed natural and cultural landscapes.⁴⁵ The developed coastal landscape that sea turtles rely on includes all three. Some studies suggest that easements can also promote behavioral change.⁴⁶

Coastal conservation through land acquisition has not been a priority in Florida in recent years, particularly in and around the developed coastlines where sea turtles nest. A number of factors coalesce to create this disfavored status. These include the prudent policy preference to get the “biggest bang for buck” when spending public dollars. This preference can be characterized from both an economic and conservation biology perspective. Economically, beachfront property is likely the most expensive real estate in Florida,⁴⁷ often measured for valuation purposes in linear feet of beachfront rather than acres or square feet. Already stretched thin, it can be difficult to justify spending conservation dollars on this kind of real estate. From a conservation biology perspective, the beach-dune system represents a narrow linear strand where the width is measured in feet and the length is measured in miles. This means that the edge to interior ratio is extremely high, making conservation and management especially difficult.⁴⁸ Moreover, available parcels along highly developed shorelines tend to be small and fragmented. Conservation biologists seeking to achieve the “bang for the buck” rightfully prefer the strategy of “big, wild and connected,” to the coastal reality of “small, developed and fragmented.” Evidence that this bias is enshrined in public policy can be seen in the criteria for the use of state funds for land acquisition. Land that comprises less than 40 contiguous acres does not qualify for the Florida ad valorem property tax exemption for conservation easements unless, the use of the land for conservation purposes is determined by the Acquisition and Restoration Council (ARC) to fulfill a clearly delineated state conservation policy and yield a significant public benefit.⁴⁹

⁴⁴ See Trust for Architectural Easements available at <https://architecturaltrust.org/>.

⁴⁵ Jessica Owley, *Cultural Heritage Conservation Easements: Heritage Protection with Property Law Tools*, 49 Land Use Policy 177-182 (Dec. 2015).

⁴⁶ Adena R. Rissman et al., *Conservation Outcomes and Social Relations: A Comparative Study of Private Ranchland Conservation Easements*, 25(6) Society & Natural Resources 523-538 (2011) available at <http://dx.doi.org/10.1080/08941920.2011.580419>.

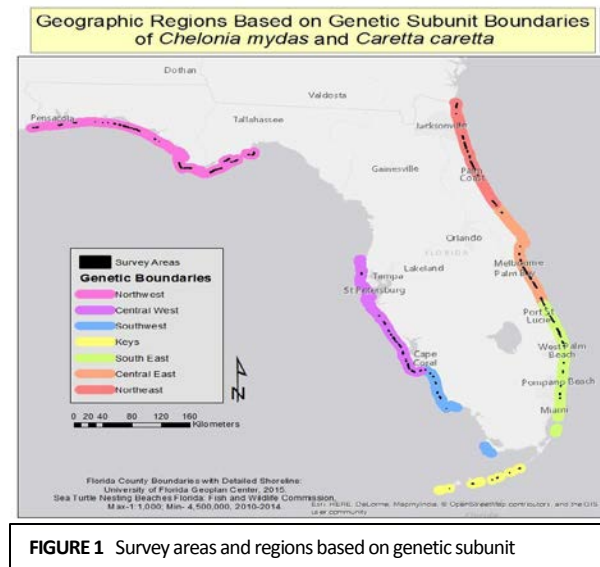
⁴⁷ Randy E. Dumm, et al., *Price Variation in Waterfront Properties Over the Economic Cycle*, 38(1) Journal of Real Estate Research 1-25 (2016).

⁴⁸ Fred Van Dyke, *Conservation Biology: Foundations, Concepts Applications* (2nd Ed., Springer 2008).
⁴⁹ Fla. Stat. §196.26(4) (2016).

Approach to the Problem: Testing Property Owner Knowledge and Willingness

The overarching goal of the project is to determine the feasibility of acquiring conservation easements to protect sea turtle habitat in Florida where acquiring fee simple interests in coastal property would be too expensive or infeasible because it is already developed. Key considerations toward achieving this goal include identifying appropriate habitat, and testing property owner willingness to entertain giving up some of their property rights to that habitat. These coupled parameters serve both to limit the scope of the project to a manageable degree, identify those nesting beaches where property owners would be most likely to consider a conservation easement, and most efficiently contribute to sea turtle conservation.

To accomplish this we first identified all nesting beaches throughout the state based on FWC data. These were then segregated into regions based on the genetic subunits of sea turtles that nest on Florida beaches. (Because sea turtles have high site fidelity to nesting beaches, seven distinct genetic populations have been identified excluding the Dry Tortugas due to its small and undeveloped nature).⁵⁰ Figure 1 illustrates these regions. We then created our target areas by identifying privately owned beachfront within or within a mile of a beachfront protected area. Protected areas were identified using the Florida Natural Areas Inventory.⁵¹



Once the target nesting habitat was identified and refined we then used local government land use data to focus on occupied single-family residential parcels. Although vacant residential parcels can contain significant conservation values, we focused on single-family residential homes in order to explore all of the components of the conservation easement, including those that may affect the residential dwelling area. We also excluded multifamily units because the beachfront property is ordinarily owned by an association comprising many individual owners, all or most of whom would have to agree to an easement. Commercial properties were also excluded for the pilot phase of the project. A geospatial analysis utilizing ArcGIS was then conducted to map the target areas for this study.

The next step entailed accessing county property appraiser parcel data for the target areas. We identified 7,560 individual parcels that met our criteria and narrowed this 4,588 parcels through a hand-checking process using Google Earth to eliminate vacant lots, multi-family complexes that were missed by the land use overlay, parcels that did not have significant beachfront, and parcels where the ownership address was out of the country. Based on these criteria, there remained 4,588 parcels within the target nesting beaches for this project. We further reduced the parcel data, proportionately by subregion, using a randomized reduction method in order to arrive a final number of 1,274 parcels for further analysis, a number that was adequate to achieve

⁵⁰ Sea Turtle Nesting Beaches Florida: Fish and Wildlife Commission, Max-1:1,000; Min- 4,500,000, 2010-2014.

⁵¹ Florida Conservation Lands: Florida Natural Areas Inventory, 1:10,000, September 2016.

statistically valid result for the purpose of testing property owner knowledge and willingness to consider conservation easements for sea turtle conservation on their property.⁵²

Survey Methods and Results

In order for a voluntary conservation easement program of this kind to be viable there must be a requisite knowledge base and willingness among coastal property owners with regard to both sea turtle conservation and conservation easements. Once the target nesting beaches were identified and the parcel data analysis was complete, a survey was developed and implemented in accordance with accepted social science methods. The survey was broken down by three main objectives:

1. Understand target population demographics
 - a. Age, sex, education, employment, and conservation group membership
 - b. Beach use, annual months at property, and frequency of beach visits
 - c. Property type, acreage, assessed value, length of ownership, inheritance, mortgage, and loan
 - d. Acquaintance with sea turtle monitors and sea turtle interaction and knowledge
2. Explore the target population’s understanding of coastal armoring
 - a. Current and future status of their property
 - b. Attitudes
 - c. Perceived control
3. Gauge the target population’s understanding of conservation easements
 - a. Understanding and attitudes
 - b. Perceived control
 - c. Likelihood to agree to certain conservation easement provisions, motivating factors, and interest in a conservation easement

After pilot testing, the survey was administered pursuant to “the Dillman Method” in spring of 2017.⁵³ Out of 1,274 surveys mailed, 373 useable surveys were returned, providing a robust and statistically valid response rate of 33%. Figure 2 shows the response rate breakdown by region.

The key findings of the survey broken down by demographics, property details and survey objectives are summarized below. The comprehensive results of the survey, including regional breakdowns, are included in Appendix B.

Figure 2 Survey response by region (N=373)

Geographic Region	Sample		Population	
	<i>n</i>	<i>%</i>	<i>N</i>	<i>%</i>
Northeast	97	26.0	299	23.5
Central East	42	11.3	146	11.5
Southeast	25	6.7	121	9.5
Keys	7	1.9	32	2.5
Southwest	14	3.8	39	3.1
Central West	45	12.1	161	12.6
Northwest	143	38.3	476	37.4
Total	373	100.0	1274	100.0

FIGURE 2 Response rate of each geographic region compared to the population breakdown showing that the response rate was similar to the population sample.

⁵² The sample size of 1,274 landowners assumed a 28% response rate for an appropriate sample of 355 survey respondents and a confidence level of 95% at a 5% margin of error.

⁵³ D.A. Dillman, et al., *Internet, phone, mail, and mixed-mode surveys: The tailored design method* (4th ed., Hoboken: John Wiley & Sons) (2014).

Demographics

- Almost 80% of respondents hold at least a college bachelor's degree
- 57.1% of respondents were born between 1946 and 1964
- 39.5% of respondents consider their coastal home their primary residence
- 53.1% of respondents are retired
- The average length of property ownership is 19.3 years
- 55.5% of respondents visit the beach on a daily basis

Property Details

- The average assessed property value is \$1.2 million
- The average parcel size is .705 acres
- 66.2% of respondents did not have a mortgage on their property
- 60% of owners consider the property to be something other than the "main home"

Objective 1: Sea Turtle Interaction and Knowledge

Most respondents resided at their property during sea turtle nesting season, and overall had relatively high levels of knowledge relating to sea turtles. However, some confusion did exist regarding the impact of artificial lighting, with respondents knowing the detrimental effects for hatchlings, but not for nesting mothers.

- Most respondents reside on the beach during nesting season and have a high level of knowledge about sea turtles generally, but there was some confusion regarding the effect of artificial lighting on nesting mothers
- 65% of respondents did not know who does the sea turtle monitoring on their beach
- 30% of respondents did not know that brightly lit beaches discourage sea turtles from nesting
- 89% of respondents have seen marked sea turtle nest
- Less than half of respondents have seen either a nesting sea turtle or a hatchling

Sea turtle interaction and knowledge was aggregated based on the percentage of correct answers to the five survey questions addressing sea turtle conservation. Figure 3 shows this breakdown.

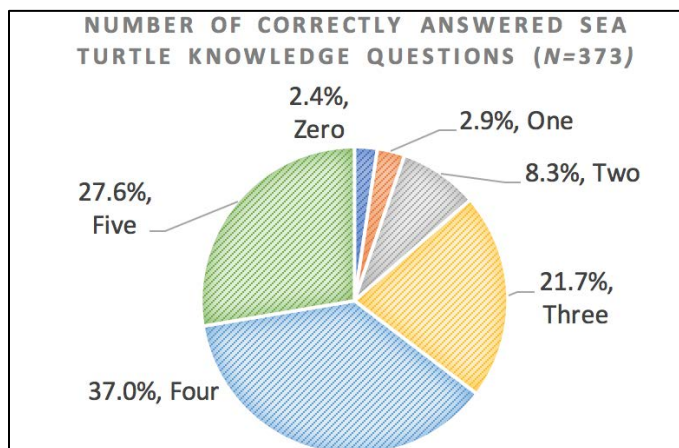


FIGURE 3 Correct answers to the lighting knowledge question and the four "true or false" questions were aggregated to determine sea turtle knowledge. Only 27.6% of respondents answered all five questions correctly.

Objective 2: Coastal Armoring

Attitudinal questions about coastal armoring averaged near neutral, but free response answers reveal some of the underlying contention surrounding coastal armoring. Coastal residents either did not have a clear understanding of what coastal armoring was, suggesting sand dunes or dune fencing as coastal armoring in free response questions, or felt strongly about their right to armor while mostly remaining ambivalent to environmental impacts.

- Attitudes regarding coastal armoring were generally neutral (See Figure 4)
- 81% of respondents did not have coastal armoring
- 6% of the respondents that did not have coastal armoring were considering installing it

Figure 4 Questions representing attitude of coastal armoring ($N= 314$; Question 3.5; Scale: 1-5)

What is the likelihood that coastal armoring on your property is a good way to...	<i>M</i>	<i>SD</i>
... protect your house from erosion damage.	3.05	1.546
... keep your beach looking similar to the way it does today well into the future.	2.54	1.459
... protect your neighbor's property.	2.53	1.424
... protect sea turtle nesting habitat.	2.38	1.375

Note. Valid cases ($n=314$, 84.2%); excluded cases ($n=59$, 15.8%)

FIGURE 4 Four questions gauged respondent attitudes toward coastal armoring. A 1-5 scale was used where 1 = strongly disagree and 5 = strongly agree.

Objective 3: Conservation Easements

While most respondents had never heard of a conservation easement and felt that the decision to establish a conservation easement on their property was in their control, confusion still existed regarding what a conservation easement truly entails. The misconceptions mentioned would be detrimental if a large-scale project for coastal conservation easements are desired.

Misconceptions included thinking that conservation easements are a type of land grabbing, government control, or in general, a forced program. Additionally, although respondents averaged a likely response to engaging in sea turtle friendly actions on their property that are also potential conservation easement provisions, interest to establish a conservation easement on their property was held by about a third of respondents (29.9%).

- 57.9% of respondents had never heard of a conservation easement
- Most respondents indicated that a conservation easement would be likely to protect sea turtle nesting habitat
- Most respondents indicated that the preservation of sea turtle nesting habitat would motivate them to place a conservation easement on their property
- Respondents were more motivated to place a conservation easement on their property to protect sea turtles than they were to receive financial incentives.
- 45.5% of respondents indicated that they would like additional information regarding coastal conservation easements

- 30% of respondents answered either “Very” or “Somewhat” interested in placing a CE on their property (See Figure 5)
- The greatest level of interest by region occurred in the Keys (57.1%) followed by the Central East (45%) (See Figure 6)

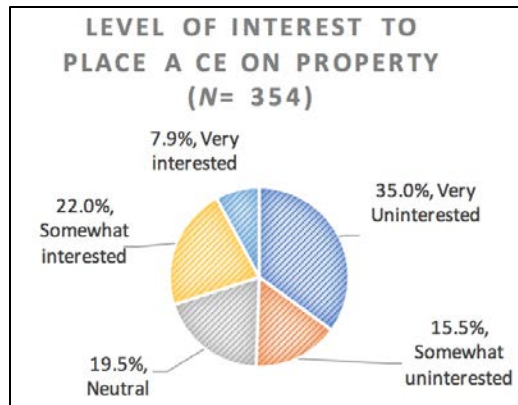


FIGURE 5 30% of respondents answered either “Very” or “Somewhat” interested in placing a conservation easement on their property. Just over one-half of the respondents were “Very” or “Somewhat” uninterested, and the remaining 19% remained “Neutral.”

FIGURE 6 The greatest level of interest by region occurred in the Keys (n= 4, 57.1%) followed by the Central East (n= 18, 45%). The greatest level of reported disinterest within region was reported by the Central West (n=27, 62.8%).

Figure 6 Geographic region by level of interest in CE (N=354)

Geographic region	Level of Interest							
	Uninterested		Neutral		Interested		Total	
	<i>f</i>	%	<i>f</i>	%	<i>f</i>	%	<i>f</i>	%
Northeast	43	48.3	23	25.8	23	25.8	137	100
Central East	14	35	8	20	18	45	40	100
Southeast	14	58.3	5	20.8	5	20.8	24	100
Keys	1	14.3	2	28.6	4	57.1	7	100
Southwest	7	50	3	21.4	4	28.6	14	100
Central West	27	62.8	9	20.9	7	16.3	43	100
Northwest	73	53.3	19	13.9	45	32.8	137	100
Total	179	50.6	39	19.5	106	29.9	354	100

Note. Chi-square = 19.045, df = 12, *p* = .087

Summary

The survey provides useful data that will help guide the process of identifying promising property owners and testing their willing to participate in the project. The high response rate suggests that coastal property owners are very invested in their beachfront. The survey results suggest that the project should focus on residents who consider their coastal parcel their main home; are without a mortgage; hold high levels of sea turtle knowledge; reside at their property during sea turtle nesting season; know their beach’s sea turtle monitor; do not intend to armor their property; are more motivated by protecting sea turtles than by receiving money for a CE; hold high level of interest in a CE; would like learn more about CEs; and reside near larger swathes of protected nesting beaches. Additionally, concentrating efforts on parcels in the target population that are of larger acreage for lower cost will also be beneficial if a formal program is desired.

Approach to the Problem: Constructing a Less-than-Fee Instrument for Coastal Conservation

Private Land Conservation & Less-Than-Fee Property Interests

In English property law, fee simple or fee simple absolute is an estate in land that represents the highest possible ownership interest that can be held in real property. First year law school property law classes invariably use the famous “bundle of sticks” metaphor used to describe property interests, where each stick represents an individual property right.⁵⁴ For example one stick could represent the right to possess the land, one stick could represent the right to develop the land, and another the right to mine the minerals located beneath the surface of the land. When someone owns all of the sticks in the entire bundle, that owner is said to have fee simple absolute ownership of the property. It is both possible and common for landowners to give up certain sticks while still retaining the remainder of the bundle (i.e. the underlying fee). A common example of this is a situation in which a landowner is leasing a home to a tenant. The landowner still owns the land and the building, but they have relinquished the right to possession to the tenant for the term of the lease. When some property rights are held by a party other than the landowner, the property is said to be *encumbered*.

Conceptually, conservation can be viewed as one or more of the sticks in the bundle that can be transferred to a third party.⁵⁵ A landowner may choose to relinquish certain property rights to further a conservation value for conservation purposes on their property while still retaining the underlying ownership rights to their property, including the right to possess. There are many different types of less-than-fee property interests each with many different characteristics. This project focuses mainly on the use of a less-than-fee property interest called a conservation easement.

Conservation Easements

Conservation easements have been increasingly utilized as a tool for land conservation in the United States since the 1980s.⁵⁶ The term “conservation easement” can be difficult to define because it has a wide scope and encompasses a broad array of scenarios involving a variety of different types of lands, participants, and purposes.⁵⁷ Simply put, a conservation easement is a voluntary, legally binding agreement between a landowner and a qualified organization that restricts the use and development of the land in order to protect its conservation values.⁵⁸ The landowner is usually referred to as the Donor or Grantor and the entity that holds the easement is usually referred to as the Easement Holder or Grantee. Easement holders or Grantees come in a variety of forms ranging from government entities at the local, state, or federal level, to

⁵⁴ Robert C. Ellickson, *Two Cheers for the Bundle-of-Sticks Metaphor, Three Cheers for Merrill and Smith*, 8(3) *Econ Journal Watch* 215-222 (Sept. 2011).

⁵⁵ Adena R. Rissman, *Rethinking Property Rights: Comparative Analysis of Conservation Easements for Wildlife Conservation*, 40(3) *Environmental Conservation* (2013).

⁵⁶ Laurie A. Ristino, et al., *A Changing Landscape: The Conservation Easement Reader*, Environmental Law Institute (2016).

⁵⁷ Federico Cheever, et al., *An Introduction to Conservation Easements in the United States: A Simple Concept and a Complicated Mosaic of Law*, 1 *Journal of Law, Property, and Society* 107 (May 2015).

⁵⁸ The 1981 Uniform Conservation Easement Act defines a Conservation Easement as: “(1) “Conservation easement” means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property” *available at* <http://www.uniformlaws.org/Act.aspx?title=Conservation%20Easement%20Act>.

charitable organizations, including conservation land trusts.⁵⁹ Like many states, the State of Florida has adopted a conservation easement statute,⁶⁰ modeled largely after the Uniform Conservation Easement Act.

Conservation easements can be created through a diverse variety of legal instruments. In the state of Florida these include a restriction, easement, covenant, will, or a condition in a deed.⁶¹ Additionally, the method by which a conservation easement is transferred can vary. Landowners have the option of selling a conservation easement to an easement holder at market value, donating the conservation easement, or selling it via a bargain sale (i.e. selling it for less than the fair market value).

Perhaps the most beneficial quality of conservation easements is their versatility, which allows each conservation easement to be tailored to the individual requirements of the land, the landowner, and the easement holder. Most state and federal statutes require that conservation easements last in perpetuity, at least in order to qualify for tax incentives,⁶² and Florida is no exception.⁶³ Conservation easements can be created for a wide variety of purposes including, among many others, the protection of wildlife habitat, wetlands, forests, agricultural land, historic sites, and scenic landscapes. The purpose of a conservation easement may be intensely specific (i.e. protecting critical nesting habitat for a specified species) or extremely broad (i.e. the preservation of open space).

An important characteristic of conservation easements is the fact that the underlying fee in a property with a conservation easement remains in private ownership. Conservation initiatives that retain land in private ownership, on the tax rolls, and in productive use (consistent with conservation values) are often viewed more favorably than programs that seek to convert land into public ownership solely for conservation purposes. Because the land remains in private ownership, easement holders (such as land trusts) have less control over the property than they otherwise would if the land were owned by the land trust outright. Since the land remains in private ownership, the costs associated with conservation easements are often considerably less than the costs associated with outright acquisition of conservation property. Instead of active land management, the typical practice is for the easement holder to conduct annual monitoring of the property to ensure that the terms of the easement are being abided by.⁶⁴ Furthermore, the long-term financial expenses such as property taxes, insurance, and management costs ordinarily remain the responsibility of the landowner. While the easement holder will still have some associated costs for monitoring and enforcing easement violations, these expenses are still substantially less than the cost of buying property outright and then having to manage it.

Another characteristic of conservation easements is that they are generally perpetual. While easements, in theory, can govern for virtually any set period of time, Florida law defines

⁵⁹ Conservation land trusts are private, nonprofit organizations that conserve land by wholly undertaking or assisting with land or conservation easement acquisition and land stewardship. Dominic P. Parker, *Land Trusts and the Choice to Conserve Land with Full Ownership or Conservation Easements*, 44(2) *Natural Resources Journal* 483-518 (2004) available at JSTOR, www.jstor.org/stable/24888944.

⁶⁰ Fla. Stat. §704.06 (2016).

⁶¹ Fla. Stat. §704.06(2) (2016).

⁶² Fla. Stat. §704.06(2) (2016); Nancy McLaughlin, *Internal Revenue Code Section 170(h): National Perpetuity Standards for Federally Subsidized Conservation Easements, Part 2, Comparison to State Law*, 46 *Real Prop. Tr. & Est. LJ* 1 (2011).

⁶³ Susan Roeder Martin, *Conservation Easements, A Benefit to the Environment and the Landowner*, 89(6) *Florida Bar Journal* 91 (2015).

⁶⁴ Land Trust Alliance, *Land Trust Standards and Practices: Ethical and Technical Guidelines for the Responsible Operation of a Land Trust*, Standard 11 Practice (C)(2) (2017).

conservation easements as perpetual.⁶⁵ Conservation easements also *run with the land*, which means that the conservation easement will be binding on the landowner that enters into the agreement as well as any subsequent owners of the property.⁶⁶ A perpetual conservation protection has the benefit of being immune from changes in landownership and therefore offers greater protection to a property and its conservation values than a shorter-term conservation tool such as a lease or limited term easement.⁶⁷

Financial Incentives

Because conservation easements burden the underlying fee in perpetuity, and because they provide a net public benefit in the form of conservation, numerous financial incentives exist that make conservation easements financially attractive to property owners. When a landowner conveys a conservation easement on their property to an organization that is qualified to hold that easement, the landowner may be entitled to both state and federal tax benefits.

Florida Property Tax Exemption

Florida's tax laws provide two avenues of property tax relief for the conservation of land: conservation land *classification* and property tax *exemption*. Pursuant to Florida law, property subject to a conservation easement may be assessed at a lower rate than it would be without the conservation easement.⁶⁸ Specifically, when appraising land encumbered by a perpetual conservation easement, a property appraiser cannot consider factors other than those relative to the land's value for the present use as restricted by the conservation easement.⁶⁹

Alternatively, land that is encumbered by a conservation easement⁷⁰ (dedicated in perpetuity for conservation purposes and that is used exclusively for conservation purposes⁷¹) is generally exempt from ad valorem taxation (property taxes).⁷² It is important to note that there are several exceptions to this exemption. For example, land that is dedicated in perpetuity for conservation purposes and that is also used for allowed commercial uses (as defined by the statute) is exempt from ad valorem taxation only to the extent of 50 percent of the assessed value of the land.⁷³ Buildings, structures, and other improvements situated on land receiving the exemption provided in this section are assessed separately from the underlying land.⁷⁴ More pertinent for relatively small parcels, like those with beachfront, land that comprises less than 40 contiguous acres does not qualify for this exemption unless the use of the land is determined by the State of Florida Acquisition and Restoration Council to fulfill a clearly delineated state conservation policy and

⁶⁵ Fla. Stat. §704.06(2) (2016).

⁶⁶ Fla. Stat. §704.06(4) (2016).

⁶⁷ In an effort to conserve farmlands, Florida has created a program to acquire "agricultural protection agreements" that have a 30 year duration. Fla. Stat. § 570.71 (2016).

⁶⁸ Fla. Stat. §193.501 (2016).

⁶⁹ Fla. Stat. §193.501(3)(a) (2016).

⁷⁰ Fla. Stat. §704.06 (2016).

⁷¹ Fla. Stat. §196.26(1)(c) (2016) ("Conservation purposes" means: 1. serving a conservation purpose, as defined in 26 U.S.C. §170(h)(4)(A)(i)-(iii), for land which serves as the basis of a qualified conservation contribution under 26 U.S.C. §170(h); or, 2.a. Retention of the substantial natural value of land, including woodlands, wetlands, watercourses, ponds, streams, and natural open spaces; b. retention of such lands as suitable habitat for fish, plants, or wildlife; or c. Retention of such lands' natural value for water quality enhancement or water recharge.")

⁷² Fla. Stat. §196.26(2) (2016).

⁷³ Fla. Stat. §196.26(3) (2016).

⁷⁴ Fla. Stat. §196.26(6) (2016).

yield a significant public benefit.⁷⁵ This additional requirement will be further discussed in the Key Issues section below.

Federal Income Tax Deduction

As previously mentioned, a landowner may choose to transfer a conservation easement to an easement holder via donation, sale, or bargain-sale. The Internal Revenue Code provides for a charitable income tax deduction for the outright donation or bargain-sale of a qualifying conservation easement.⁷⁶ A bargain sale is a transaction in which a conservation easement is sold for a price that is less than the fair market value of the conservation easement.⁷⁷ In addition to making the conservation easement more affordable to the easement holder than outright purchase, the landowner receives compensation for the transaction and may also be eligible for a charitable income tax deduction for the amount represented by the difference between the conservation easement's fair market value and the sale price.

Under the Internal Revenue Code, in order to be considered a 'qualified' conservation contribution, the contribution must be:

- Of a qualified real property interest,
- To a qualified organization, and
- Exclusively for conservation purposes.⁷⁸

“Qualified real property interests” include “restriction(s) (granted in perpetuity) on the use which may be made of the real property,”⁷⁹ ‘Qualified organizations’ include an array of both governmental and non-governmental entities so long as they meet specific operating, income, and tax qualifications.⁸⁰ ‘Conservation purposes’ are defined as either:

- The preservation of land areas for outdoor recreation by, or the education of, the general public,
- The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- The preservation of open space (including farmland and forest land) where such preservation is—
 - For the scenic enjoyment of the general public, or
 - Pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or
- The preservation of a historically important land area or a certified historic structure.⁸¹

In order for the conservation purposes to be considered ‘exclusive,’ the conservation purpose must be protected in perpetuity.⁸² Additionally, for the conservation purposes to be considered ‘exclusive,’ surface mining must be prohibited.⁸³ Furthermore, if a qualified mineral interest⁸⁴ is

⁷⁵ Fla. Stat. §196.26(4) (2016).

⁷⁶ 26 U.S.C. §170 (2016).

⁷⁷ *Bargain Sale*, Black's Law Dictionary (10th ed. 2014); See 26 C.F.R. 1.1011-2 (2016).

⁷⁸ 26 U.S.C. §170(h)(1) (2016).

⁷⁹ 26 U.S.C. §170(h)(2)(C) (2016).

⁸⁰ 26 U.S.C. §170(h)(3) (2016).

⁸¹ 26 U.S.C. §170(h)(4)(A) (2016).

⁸² 26 U.S.C. §170(h)(5)(A) (2016).

⁸³ 26 U.S.C. §170(h)(5)(B) (2016).

retained by the landowner or possessed by some party other than the grantee of the conservation easement, the contribution is not considered to be exclusively for conservation purposes unless the probability of surface mining occurring on such property is determined to be “so remote as to be negligible.”⁸⁵

In December of 2015, Congress enhanced federal tax incentives for the donation of conservation easements.⁸⁶ The donor of a conservation easement may take a deduction for the value of the easement up to 50% of the donor's adjusted gross income for the year of the donation.⁸⁷ Additionally, if the value of the conservation easement exceeds 50% of the grantor's annual adjusted gross income, then the donor may carry over the balance of the deduction for up to 15 years.⁸⁸

Estate Taxes

An estate tax is a tax on the value of the estate assets at the owner's death.⁸⁹ The donation of a conservation easement can reduce estate taxes in two ways. The first way is by reducing the value of the estate to be taxed. As previously mentioned, conservation easements will generally lower the value of property. Since estate taxes are based on the value of property, this consequently results in lower estate taxes. The second method by which conservation easements lower estate taxes is through federal estate tax implications. While Florida does not impose state estate taxes, a decedent might still be liable for federal estate taxes. However, this provision will only apply to large estates because there is an exemption from federal estate taxes for estates under \$5.45 million per individual.⁹⁰ Thus if an estate is worth less than \$5.45 million, it will not be subject to any estate taxes in the state of Florida, and therefore a conservation easement that decreases the value of the estate would not have an effect on the estate taxes.

Constructing a Model Coastal Conservation Easement

The Model Coastal Conservation Easement is intended to serve as a template from which to draft individually tailored coastal conservation easements for sea turtle nesting habitat protection. This document was created with input from sea turtle biologists, coastal ecologists and managers, conservation easement attorneys, property appraisers and landowners. It was written to be broadly inclusive so that provisions can be removed or edited in order to tailor it to the specific circumstances of each coastal property.

The model conservation easement considers a hypothetical residential beachfront parcel in three segments: the beach portion, the dune portion (collectively the beach-dune system), and the inhabited/developed portion. The beach zone extends from the seaward property boundary to the toe of the most seaward dune. The dune zone extends from the toe of the dune to the landward toe of the most landward dune, and the inhabited/developed portion extends from the landward toe of the most landward dune to the landward-most property boundary, and ordinarily contains the residential structure, outbuildings, pool and the managed lawn. Since the conservation easement is intended to

⁸⁴ “Qualified Mineral Interest” means subsurface oil, gas, or other mineral and the right to access those minerals. 26 U.S.C. §170(h)(6) (2016).

⁸⁵ 26 U.S.C. §170(h)(5)(B)(ii) (2016).

⁸⁶ 26 U.S.C. §170(b)(1)(E) (2016).

⁸⁷ 26 U.S.C. §170(b)(1)(E)(i) (2016).

⁸⁸ 26 U.S.C. §170(b)(1)(E)(ii) (2016).

⁸⁹ *Estate Tax*, Black's Law Dictionary (10th ed. 2014).

⁹⁰ 26 C.F.R. §601.602: Tax Forms and Instructions available at <https://www.irs.gov/pub/irs-drop/rp-15-53.pdf>.

protect conservation values associated with sea turtle nesting habitat -while simultaneously allowing for human occupation, the easement restricts activities in each zone of the property, based on the impacts those activities may have on nesting sea turtles. For example, beach furniture or other obstructions left in the beach zone overnight can cause entanglement of both nesting sea turtles and hatchlings, so the easement prohibits leaving furniture on the beach overnight. Constructing at grade paths in the dune zone degrades dunes, increasing the potential for overwash by storm surge and for light trespass into the beach zone. Therefore, new paths are prohibited in the dune zone.

Additionally, the model easement has a temporal component. Many provisions of the conservation easement will operate only during the sea turtle nesting season (which varies depending on the county in which the property is located). For example, lighting restrictions need only apply during sea turtle nesting season, and landowners are free to use lighting as they please during the remainder of the year. Other provisions, such as the restriction on chemical pesticides and fertilizers, operate year round because they have long-lasting detrimental impacts that can affect sea turtles regardless of when they are actually applied. The goal of restricting certain provisions to certain times and locations within a property is to allow the landowner as much autonomy as possible while still protecting the conservation values of the property.

The model easement is designed to be compliant with federal and state laws governing conservation easements sold or donated by property owners seeking the tax advantages that those laws allow, and with the standards and guidelines of the Land Trust Alliance. This may make certain provisions seem out of place in a residential beach environment. For example, the model easement prohibits mining, something unlikely to be associated with a beachfront home. However, IRS regulations require that all easements include a provision prohibiting mining, so that provision is included here. The Grantor and Grantee have much greater drafting flexibility where the Grantor is less concerned about receiving the tax and assessment benefits that federal and state law afford. However, Grantees who are members of the Land Trust Alliance must still consider compliance with the LTA standards and Guidelines when holding an easement.

Key Issues

Mortgages

It is fairly common for purchasers of real estate to finance their purchase through a mortgage. This can create a significant hurdle for the creation of a conservation easement, since the mortgage holder, usually a bank, would be first in line in the event of foreclosure, and the conservation easement could be extinguished. Perhaps because beachfront property is typically owned by people of considerable means, our survey research found that only 33.8% of the property owners surveyed were subject to a mortgage. This is almost the reverse of the national average, which suggests that only 40% of owner-occupied homes are mortgage free.⁹¹

A mortgage is a lien against property that is granted to secure an obligation (such as a debt) and that is extinguished upon payment or performance according to stipulated terms.⁹² Mortgages operate according to a legal rule referred to as the principle of “first in time, first in right.”⁹³ This means that an entity that establishes an interest in property first will have priority over any

⁹¹ United States Census Bureau, American Housing Survey, *2015 National Mortgage Characteristics Owner-occupied Units* (2015) available at www.census.gov.

⁹² *Mortgage*, *Black's Law Dictionary* (10th ed. 2014).

⁹³ Fla. Stat. 695.11 (2016).

entities that subsequently establish an interest.⁹⁴ The earlier interest is referred to as a senior interest and the later interest is referred to as a junior interest.

Florida, like most other states, operates under what is known as the *lien theory* with regard to mortgages.⁹⁵ Under the lien theory, a mortgage is a lien on the property and the legal title to a mortgaged property remains with the mortgagor (i.e. the landowner/ borrower) unless there is foreclosure.⁹⁶ Additionally, with regard to priorities of interests, Florida is a *notice* state, which means that a mortgagee must record its interest in order to retain priority over subsequent liens.⁹⁷ In the event of foreclosure, an easement that is junior to (i.e. recorded after) the mortgage being foreclosed upon will be extinguished.⁹⁸ This means that a conservation easement recorded after a mortgage that is foreclosed upon will be eliminated.⁹⁹ There is a legal process called a *mortgage subordination* wherein an entity with a senior interest can agree to make their interest *subordinate* to a previously junior interest.¹⁰⁰ By way of illustration, if an easement was placed on a property that was subject to a previously existing mortgage, and the property was foreclosed on, the easement would be extinguished. However, if a conservation easement was placed on a property that was subject to a previously existing mortgage *and* the mortgage was subordinated to the easement, *and then* the property was foreclosed on, then the easement would survive the foreclosure proceedings because the easement was senior (or superior) to the interest being foreclosed upon. While mortgagees are generally reluctant to subordinate their interest if an easement will result in a severe financial burden on the property, lenders may be willing to subordinate if the value of the property subject to the mortgage remains high enough to satisfy their lending requirements after the easement is placed on the property.

The process of mortgage subordination ensures that even in the event of foreclosure, the conservation easement is protected will not be extinguished. Because of this, the Land Trust Alliance, the national accrediting agency for land trusts, strongly encouraged not to accept conservation easements on mortgaged properties that do not have mortgage subordination agreements.¹⁰¹ Furthermore, a property that is subject to a mortgage cannot qualify for a federal income tax deduction unless the lien holder subordinates its rights to the rights of the conservation easement holder.¹⁰² Otherwise, the IRS has held, the easement would not be considered perpetual to satisfy the requirements of a “qualified real property interest.”¹⁰³

⁹⁴ *Id.*

⁹⁵ Thomas E. Baynes, *Fla. Mortgages*, §1-1 (2016).

⁹⁶ Thomas E. Baynes, *Fla. Mortgages*, §5-4 (2016).

⁹⁷ Thomas E. Baynes, *Fla. Mortgages*, §9-1 (2016).

⁹⁸ See *United States v. Roberts*, 788 F. Supp. 555 (S.D. Fla. 1991) holding that an access easement obtained subsequent to a mortgage, was extinguished when the mortgage was foreclosed on.

⁹⁹ Although there is no statutory or case law that applies these principles to conservation easements specifically (as opposed to other types of easements), the same result is assumed by leading conservation easement authorities. See Elizabeth Byers & Karin Marchetti Ponte, *The Conservation Easement Handbook* at 17-18, 61 (2nd ed. 2005).

¹⁰⁰ Thomas E. Baynes, *Fla. Mortgages*, §5-8 (2016).

¹⁰¹ See Elizabeth Byers & Karin Marchetti Ponte, *The Conservation Easement Handbook* at 17-18, 61 (2nd ed. 2005); Land Trust Alliance, *Land Trust Standards and Practices: Ethical and Technical Guidelines for the Responsible Operation of a Land Trust* Standard 9 Practice (F)(2) (2017).

¹⁰² 26 C.F.R. §1.170A-14(g)(2) (2016).

¹⁰³ 26 U.S.C. §170(h)(2)(C) (2016).

Valuation

In order to take advantage of the tax benefits resulting from the donation or bargain-sale of a conservation easement, a monetary value must be assigned to the easement.

Treasury Regulations govern the methods by which conservation easements are valued for the purposes of federal tax benefits.¹⁰⁴ Generally, the value of the charitable contribution of a conservation easement is the *fair market value* of the conservation easement at the time of the contribution.¹⁰⁵ Treasury Regulations define “fair market value” as “the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.”¹⁰⁶

Treasury Regulations outline several methods by which conservation easements may be valued for the purpose of obtaining a federal income tax deduction.¹⁰⁷ The preferred method as designated by the Regulations is the *Sale of Comparable Easements* method.¹⁰⁸ As the title implies, this method looks to preexisting comparably restrictive conservation easements on similarly situated properties in order to extrapolate the value of a conservation easement.¹⁰⁹

Recognizing that comparable conservation easements may not exist, the Treasury Regulations offer an alternative valuation method known as the *Before and After* valuation method.¹¹⁰ This method calculates the value of a conservation easement by determining the difference between the fair market value of the property before the granting of the conservation easement and the fair market value of the encumbered property after the conservation easement is granted.¹¹¹ The calculation of the value of the property before it is encumbered by the conservation easement must consider the property’s *highest and best use*.¹¹² *Highest and Best Use* has been defined as “the reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value.”¹¹³ Furthermore, the calculation of the fair market value of the property before it is encumbered by a conservation easement must take into account not only the current use of the property, but also an objective assessment of how immediate or remote the likelihood is that the property, absent the restriction, would in fact be developed.¹¹⁴ It must also consider any effect from zoning, conservation, or historic preservation laws that already restrict the property’s potential highest and best use.¹¹⁵ When calculating the fair market value of a property after it has been encumbered by a conservation easement, the appraiser must take into account the effect of the

¹⁰⁴ 26 C.F.R. §1.170A-14(h)(3) (2016); Nancy A. McLaughlin, *Trying Times: Important Lessons to Be Learned from Recent Federal Tax Cases* (July 11, 2016) available at <http://dx.doi.org/10.2139/ssrn.2808234>.

¹⁰⁵ 26 C.F.R. §1.170A-14(h)(3) (2016).

¹⁰⁶ 26 C.F.R. §1.170A-1(c)(2) (2016).

¹⁰⁷ 26 C.F.R. §1.170A-14(h)(3) (2016).

¹⁰⁸ 26 C.F.R. §1.170A-14(h)(3)(i) (2016).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*; See also *Hughes v. Commissioner*, 97 T.C.M. (CCH) 1488, 2009 T.C.M. (RIA) ¶ 2009-094, at 703 (“because conservation easements are typically granted by deed or gift rather than sold, comparable sales [of easements] are rarely available. As an alternative, the so-called before-and-after approach is often used” (citation omitted)).

¹¹¹ 26 C.F.R. §1.170A-14(h)(3)(i) (2016).

¹¹² 26 C.F.R. §1.170A-14(h)(3)(ii) (2016).

¹¹³ Appraisal Institute, *The Appraisal of Real Estate*, 333 (14th ed. 2013); The Appraisal Institute is a global professional association of real estate appraisers, with nearly 19,000 professionals in almost 60 countries throughout the world. Its mission is to advance professionalism and ethics, global standards, methodologies, and practices through the professional development of property economics worldwide.

¹¹⁴ 26 C.F.R. §1.170A-14(h)(3)(ii) (2016).

¹¹⁵ *Id.*

restrictions that will result in a reduction of the potential fair market value represented by highest and best use but will, nevertheless, permit uses of the property that will increase its fair market value above that represented by the property's current use.¹¹⁶ Additionally, the effect on the value of any reserved development rights must also be considered.¹¹⁷

It is also noteworthy that if there is a situation in which the placement of a conservation easement on a property either has no effect on the value of the property or, increases the value of the property, then no deduction would be allowed.¹¹⁸ Properties that are proximately located to conservation land tend to have a higher value than properties that are not.¹¹⁹ Because of this, the placement of a conservation easement may have the effect of increasing the value of proximately located properties.¹²⁰ The Treasury Regulations prohibit a property owner from recouping the full fair market value of a conservation easement when the conservation easement has the effect of increasing the value of other land owned by the property owner or by a relative of the owner.¹²¹

Appraisal

An appraisal is required to determine the value of a conservation easement. Differences in education, experience, and preference inherently lead to different outcomes with regard to conservation easement valuation. Due to a recent increase in fraudulent tax deductions based on inflated values assigned to conservation easements, the Internal Revenue Service has become more scrutinizing of the valuation of conservation easements.¹²²

For contributions in excess of \$5,000.00, the Internal Revenue Code requires that a “qualified appraiser” prepare a “qualified appraisal.”¹²³ A “qualified appraisal” is defined as an appraisal conducted by a “qualified appraiser” in accordance with generally accepted appraisal standard and any regulations.”¹²⁴ A “qualified appraiser” is defined as an individual who:

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ 26 C.F.R. §1.170A-14(h)(3)(ii) (2016).

¹¹⁹ See Jacqueline Geoghegan, *The Value of Open Spaces in Residential Land Use*, 19 Land Use Policy 1, 91-98 (Jan. 2002), showing that the value of residential parcels near permanent open spaces was, on average, three times higher than the value of comparable properties located proximately to developed land.

¹²⁰ See generally *Id.*

¹²¹ 26 C.F.R. §1.170A-14(h)(3) (2016); In situations in which the properties are adjacent, the *Contiguous Parcel Rule* states that the amount of the deduction shall be the difference in the fair market value of the entire contiguous parcel of the properties before and after the granting of the conservation easement. (26 C.F.R. §1.170A-14(h)(3)(i) (2016)) For the purposes of the *Contiguous Parcel Rule*, “family” is defined as brother and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants. (26 U.S.C. §267(c)(4) (2016)) Alternatively, according to the *Enhancement Rule*, if the grant of a conservation easement has the effect of increasing the value of land owned by the donor, or a related person that is *not adjacent* to the property bound by the easement, then the amount of the deduction must be reduced by the increase in the value of the other property. (26 C.F.R. §1.170A-14(h)(3)(i) (2016)) For the purposes of the *Enhancement Rule*, “related person” includes “family” as defined under the *Contiguous Parcel Rule*, as well as various trusts and corporate entities. (See 26 U.S.C. § 267(b) (2016))

¹²² See generally IRS, *Conservation Easements – Abusive Transactions Involving Charitable Contributions of Easements available at <https://www.irs.gov/charities-non-profits/conservation-easements>*; Nancy McLaughlin, *Conservation Easements and the Valuation Conundrum*, 19 Florida Tax Review 4 (2016).

¹²³ 26 U.S.C. §170(f)(11)(C) (2016).

¹²⁴ 26 U.S.C. §170(f)(11)(E)(i) (2016); Additionally, the Land Trust Alliance requires accredited land trusts to obtain an independent appraisal by a qualified appraiser when buying land or a conservation easement to support the purchase price (*LTA Standards and Practices*, Standard 9 Practice (H)(1) (2017)) and, in cases of donations, to notify the donor of the Treasury Regulation requirement that they obtain a qualified appraisal in order to claim a federal income tax deduction (*LTA Standards and Practices*, Standard 10 Practice (A)(1)(C) (2017)).

- Has earned appraisal designation from a recognized professional appraisal organization,
- Regularly performs appraisals for which the individual receives compensation, and
- Meets such other requirements as may be prescribed by the Secretary of the Treasury in regulations or other guidance.¹²⁵

As mentioned above, the preferred method of valuation as determined by the Internal Revenue Service is to refer to the sale of comparable easements. Because few (if any) currently exist for the sort of coastal conservation easement we are proposing, it is important that an appraiser have extensive experience with both conservation easement valuation and coastal property valuation. When more coastal conservation easements are placed on coastal parcels, appraisers will be able to begin using the *Sale of Comparable Easement* method.

Conservation Easements and Government Regulations

A conservation easement may contain restrictions that address matters that are already governed in some way by municipal or state regulation. A conservation easement has the authority to impose provisions that are *more* restrictive than the applicable government regulations, but it cannot undermine regulations with provisions that are *less* restrictive. If the provisions of a conservation easement are in fact less restrictive, then the government regulation will still control. For example in a coastal context, a conservation easement might contain a provision that requires sea turtle friendly lighting, which is regulated at the local level in many Florida counties.¹²⁶ If the provisions contained in the easement are more protective than the ordinance, then the easement would control. If the ordinance is more protective, then the ordinance would control.

The presence of governmental regulations that address similar subject matter to easement restrictions may also affect valuation of the easement. Courts have held that historic preservation façade easements that contain restrictions similar to local government historic district regulations would not be entitled to claim value from the added restrictions.¹²⁷ However, in another case, a court concluded that where the easement restriction is more protective, value could be claimed.¹²⁸

¹²⁵ 26 U.S.C. §170(f)(11)(E)(ii) (2016).

¹²⁶ For a list of Florida municipalities with sea turtle lighting ordinances, see Florida Fish and Wildlife Conservation Commission's webpage on Wildlife Lighting available at <http://myfwc.com/conservation/you-protect/lighting/ordinances/>.

¹²⁷ See *Chandler v. C.I.R.*, 142 T.C. 279 (2014) sustaining the IRS's disallowance of deductions claimed with regard to two façade easement donations. The court reasoned that although there were minor differences (in scope, monitoring, and enforcement) between the easement restrictions and the restrictions already imposed by local law, those differences do not affect property values because a typical buyer would perceive no difference between the two sets of restrictions.

¹²⁸ In *Evans* (*Evans v. Commissioner*, 100 T.C.M. (CCH) 275 (2010)), *Dunlap* (*Dunlap v. Commissioner*, 103 T.C.M. (CCH) 1689 (2012)), *Foster* (*Foster v. Commissioner*, T.C. Summ. Op. 2012-90 (2012)), *Scheidelman* (*Scheidelman v. Commissioner*, 755 F.3d 148 (2014)), *Kaufman* (*Kaufman v. Commissioner*, 784 F.3d 56 (2015)), *Chandler* (*Chandler v. Commissioner*, 142 T.C. 279 (2014)), and *Reisner* (*Reisner v. Commissioner*, 108 T.C.M. (CCH) 518 (2014)), façade easements on residential properties were found to have no value. However, courts have determined that façade easements reduce the value of the properties they encumber, albeit by less than the taxpayers' claimed, in some cases. In *Simmons* (*Simmons v. Commissioner*, 646 F.3d 6 (D.C. Cir. 2011)), *Zarlengo* (*Zarlengo v. Commissioner*, 108 T.C.M. (CCH) 155 (2013)), and *Gorra* (*Gorra v. Commissioner*, 106 T.C.M. (CCH) 523 (2013)), the Tax Court held that façade easements reduced the value of the subject residential properties by 5%, 3.5%, and 2%, respectively. In *Seventeen Seventy Sherman Street* (*Seventeen Seventy Sherman Street v. Commissioner*, 107 T.C.M. (CCH) 1599 (2014)), the IRS argued that a façade easement had no effect on the value of a historic shrine because of already existing local historic preservation restrictions. The Tax Court disagreed, holding that the easement was more protective of the shrine than local law. In *Whitehouse Hotel* (*Whitehouse Hotel v. Commissioner*, 755 F.3d 236 (2014)), after two appeals, the 5th Circuit affirmed the Tax Court's holding that a façade easement encumbering the historic Maison Blanche building (which is located in the French Quarter in New Orleans and is now used as a Ritz Carlton hotel) reduced the value of the building by 14.9%. For a comprehensive discussion of the valuation case law, see Nancy A. McLaughlin, *Conservation*

As we have noted, the beach-dune system is subject to a complex set of regulations, many of which overlap with the conservation restrictions set forth in the model easement – sea turtle friendly lighting being the most obvious. However, most of the easement restrictions are arguably stricter than state and local law, and hence may create additional value. Property owners seeking a charitable contribution tax deduction for their easement should be certain their appraiser carefully analyzes and documents these in accordance with IRS guidance and case law.

40-Acre Rule: The Acquisition and Restoration Council and Property Taxes

Land that comprises less than 40 contiguous acres does not qualify for the Florida ad valorem (property) tax exemption unless, the use of the land for conservation purposes is determined by the State of Florida Acquisition and Restoration Council (ARC) to fulfill a clearly delineated state conservation policy and yield a significant public benefit.¹²⁹ In making this determination, ARC is required to consider a variety of statutorily enumerated factors including:

- Land that provides habitat for endangered or threatened species;
- Land that provides nursery habitat for marine and estuarine species;
- Land that provides protection or restoration of vulnerable coastal areas; and
- Land that preserves natural shoreline habitat.¹³⁰

Furthermore, any land approved by ARC under this subsection must have a management plan and a designated manager who will be responsible for implementing the management plan.¹³¹ This exception reflects the traditional conceptualization of conservation easements as ‘big, wild, and connected,’ and subjects smaller parcels to greater scrutiny, even though they may still possess considerable conservation benefits. While this exception does not foreclose the possibility of utilizing this property tax exemption for beachfront protection easements, it does present an additional hurdle. Residential beachfront parcels are often fractions of an acre in size and few if any would meet the 40-acre threshold for the automatic property tax exemption. See Figure 7. This means that property owners seeking this tax exemption would have to apply and qualify under the ARC review process.¹³² Nonetheless, many of the statutory factors that the ARC review board is required to consider, coincide with the conservation values that would be protected on parcels pursuant to this project.¹³³

Figure 7 Respondent Acreage by Region (n=373)			
Region	Sum	Mean	SD
SW	15.5	1.11	1.452
SE	27.0	1.08	1.469
CW	36.1	0.80	0.472
NW	102.8	0.72	1.242
CE	29.9	0.71	0.642
Keys	4.3	0.62	0.189
NE	47.2	0.49	0.635
Total	262.9	0.70	1.004

FIGURE 7 The average size of the respondents’ properties was .705 acres (SD=1.00). The smallest parcel was .075 acres, and the largest 12.12 acres. Table 4 shows the geographic breakdown of respondent’s properties in order of mean acreage from largest to smallest.

Easements and the Valuation Conundrum, 19 Fla. Tax Rev. 225 (2016) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2704576.

¹²⁹ Fla. Stat. §196.26(4) (2016).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *See id.*

Access

Beaches throughout the state have historically been treated as an “open access” resource. In the past, private beachfront property owners, many of them absentee landowners, were either ignorant of, or tolerant of, the public use of privately owned dry sand. As the State’s population swelled and beaches have developed, issues regarding public beach access have been steadily increasing.¹³⁴ Ancient legal doctrines support the public right where the facts demonstrate “customary use” of the dry sand beach, but this must be proved in court.¹³⁵ Once a beach has been nourished with federal or state funding, the new dry sand below the mean high tide line becomes publically accessible.¹³⁶

Access is often addressed in conservation easements, with the easement granting access to only the easement holder on the one hand, or conferring rights of access to the public or a specified group on the other.¹³⁷ Including an access restriction provision in a beachfront easement would purport to restrict access rights that the landowner may not have, and require the easement holder to enforce such a restriction if the beach is being accessed by the public. For example, in some parts of the state local jurisdictions permit driving on the dry sand beach,¹³⁸ despite the fact that the dry sand beach is presumptively private. Courts have affirmed this right under a dedication theory, buttressed by statute.¹³⁹ Given this uncertainty it may make sense to remain silent on public access, at least within the beach zone of the easement. The model easement takes this approach.

At the same time easement holders need to retain access rights for the purpose of monitoring the easement, subject to advance notice.¹⁴⁰ However, in addition to the easement holder, the model easement grants a right of access to the beach-dune system (beach and dune portion of the property) to a third party – a representative of a “qualified sea turtle monitoring organization” – during the nesting season only.¹⁴¹ Sea turtle monitors possess a state-issued permit to patrol the beach regularly during the nesting season and their use of the beach and dune is consistent with the conservation purposes.

Land Trust Alliance Standards and Practices

The Land Trust Alliance (LTA) is a national organization that certifies lands trusts that demonstrate a commitment to the nationally vetted Land Trust Standards and Practices.¹⁴² The

¹³⁴ See generally Jennifer Sullivan, *Laying Out an “Unwelcome Mat” to Public Beach Access*, 18 J. Land Use & Envtl. L. 331 (2003); Carly Grimm, Et al., *Feeling the Squeeze: The Troubled Future of Lateral Beach Access In Florida*, XXXV(3) Environmental and Land Use Law Section of the Florida Bar (March 2014); *City of Daytona Beach v. Tona-Rama, Inc.*, 294 So. 2d 73 (Fla. 1974).

¹³⁵ *City of Daytona Beach v. Tona-Rama, Inc.*, 294 So. 2d 73 (Fla. 1974).

¹³⁶ See e.g. *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, 560 U.S. 702 (2010) (FDEP’s issuance of a permit to renourish a critically-eroded section of beach after damage from a hurricane was challenged by a group of landowners who asserted that the renourishment and subsequent public access allowance would deprive them of littoral rights without just compensation.)

¹³⁷ According to a 2007 survey of conservation easements held by the Nature Conservancy, 19% (19 of 100) easements on private land allowed access for public recreation. Adena R. Rissman, et al., *Conservation Easements: Biodiversity Protection and Private Use*, 21 Conservation Biology 3, 709-718 (Jun. 2007).

¹³⁸ E.g. St. Johns County – Beach Driving & Passes *more information available at* <http://www.co.st-johns.fl.us/HCP/Cars.aspx>.

¹³⁹

¹⁴⁰ A conservation easement must provide a right for the easement holder to enter the property at reasonable times for the purpose of inspecting the property to determine if there is compliance with the terms of the donation. 26 C.F.R. §170A-14(g)(5)(ii) (2016).

¹⁴¹ F.A.C. Ch. 68E-1 (2016).

¹⁴² <https://www.landtrustalliance.org/>.

Land Trust Standards and Practices are the ethical and technical guidelines for the responsible operation of a land trust.¹⁴³ Specific elements of the Land Trust Standards and Practices are required for a land trust to receive accreditation.¹⁴⁴ While these elements promote effective and ethical procedures, compliance may make certain situations more difficult from a practical standpoint. For example, the standards require that accredited land trusts address mortgages so that they will not result in extinguishment of the conservation easement or significantly undermine a property's important conservation values.¹⁴⁵ While this provision ensures the long-term viability of the conservation easement, it can be prohibitive in situations where a mortgage exists and subordination is not possible.¹⁴⁶

Internal Revenue Service

As federal tax incentives associated with conservation easements have increased, so have the number of incidents of fraud and abuse.¹⁴⁷ In turn, this has led to heightened suspicion of all conservation easement-based federal income tax deductions by the Internal Revenue Service. A common abuse associated with federal income tax deductions for the donation of conservation easements is inflated conservation easement values.¹⁴⁸

As previously mentioned, the process for assigning a value to a conservation easement is complex and highly variable. As such, it is often difficult to distinguish between what may be a reasonable, albeit high, value assigned to a conservation easement and a fraudulently inflated value. Consequently, ill-intentioned donors have taken advantage of this fact and colluded with appraisers in order to get an overstated conservation easement value and to obtain fraudulently high tax deductions.¹⁴⁹ Repeated occurrences of this type have led to stricter appraisal standards that affect both honest and swindling property owners equally. Because of the novel nature of this application of conservation easements, it is important that the process used to assign value to these conservation easements is thorough and supported by sound research in order to establish reasonable, replicable valuation precedence.

Because conservation easements often operate in perpetuity, sometimes amendments are necessary to keep the conservation easement effective as circumstances change over time.¹⁵⁰ However, land trusts must operate for the public benefit and as such cannot participate in amendments that create any private inurement or allow impermissible private benefit.¹⁵¹ In recent years, the IRS has publicly asserted that the inclusion of an amendment clause could

¹⁴³ Land Trust Alliance, *Land Trust Standards and Practices: Ethical and Technical Guidelines for the Responsible Operation of a Land Trust* (2017) available at <http://s3.amazonaws.com/landtrustalliance.org/LandTrustStandardsandPractices.pdf>.

¹⁴⁴ *Id.*

¹⁴⁵ Land Trust Alliance, *Land Trust Standards and Practices: Ethical and Technical Guidelines for the Responsible Operation of a Land Trust*, Standard 9 Practice (F)(2) (2017).

¹⁴⁶ See above section "Mortgages."

¹⁴⁷ See generally IRS, *Conservation Easements – Abusive Transactions Involving Charitable Contributions of Easements* available at <https://www.irs.gov/charities-non-profits/conservation-easements>; Nancy McLaughlin, *Conservation Easements and the Valuation Conundrum*, 19 Florida Tax Review 4 (2016).

¹⁴⁸ See generally Nancy McLaughlin, *Conservation Easements and the Valuation Conundrum*, 19 Florida Tax Review 4 (2016).

¹⁴⁹ *Id.*

¹⁵⁰ Leslie Ratley-Beach, *How Land Trusts are Using Amendments to Address Future Changes*, Land Trust Alliance available at <https://www.landtrustalliance.org/news/how-land-trusts-are-using-amendments-address-future-changes>.

¹⁵¹ Land Trust Alliance, *Land Trust Standards and Practices: Ethical and Technical Guidelines for the Responsible Operation of a Land Trust*, Standard 9, Practice (H)(2) (2017).

disqualify a conservation easement from a federal tax deduction.¹⁵² Without any official regulation to clarify, this statement has created a lot of legal confusion about the permissibility of an amendment clause in a conservation easement where the donor is seeking a federal income tax deduction.¹⁵³ It is recommended that each situation be evaluated on a case-by-case basis to determine whether the inclusion of an amendment clause is proper. If no tax deduction is sought, then an amendment clause should be included and the easement holder should have amendment standards in place to ensure that any amendments made pursuant to the provision further the conservation purposes of the easement.¹⁵⁴

Affirmative Obligations in Conservation Easements: Restoration and Maintenance

The dynamic beach-dune system on high-energy shorelines favored by sea turtles has evolved to accrete, erode, and even avulse.¹⁵⁵ Because of sea level rise and the compounding effect of storms, the possibility exists that an individual beachfront property owner's beach dune-system will suffer damage, possibly even catastrophic damage. In the absence of an upland structure such as a residential home, an eroding beach would continue to migrate and the beach-dune system would persist, albeit further landward.¹⁵⁶ Structures, including seawalls, buildings, and urban infrastructure tend to lock the beach-dune system in place. In such cases, restoration and maintenance may be required to replace or mimic coastal processes.

Coastal dune restoration and maintenance are invaluable tools in erosion control and the protection of upland property.¹⁵⁷ In many cases, "restoration" is done pursuant to regularly scheduled government programs for beach nourishment, ordinarily conducted seaward of the mean high tide line, creating a new government-owned dry sand beach between the private property and land beneath the tide.¹⁵⁸ This has the effect of buffering the property owner's beach-dune system and reducing the need for extensive property-owner management. However, in some instances it may be too little or too late, and the property owner or easement holder may need to restore and maintain the privately held beach-dune system. In other instances both the property owner and the easement holder may wish to improve degraded beach-dune habitat.

¹⁵² The IRS's 2016-2017 Priority Guidance Plan indicated that they would focus resources on creating guidance under §170 regarding charitable contributions of conservation easements. See https://www.irs.gov/pub/irs-utl/2016-2017_pgp_initial.pdf. Conversations with the Land Trust Alliance indicated that the guidance relates specifically to the audit division practice of challenging all amendment clauses. See <https://www.landtrustalliance.org/amendments>.

¹⁵³ *Id.*

¹⁵⁴ The LTA Standards and Practices require that accredited land trusts adopt and follow a written policy addressing conservation easement amendments that is consistent with LTA Amendment Principles. LTA Amendment Principles state that an amendment should meet the following criteria: (1) clearly serve the public interest and be consistent with the land trust's mission; (2) comply with all applicable federal, state and local laws; (3) not jeopardize the land trust's tax-exempt status or status as a charitable organization under federal law; (4) not result in private inurement or confer impermissible private benefit; (5) be consistent with the conservation purpose(s) and intent of the easement; (6) be consistent with the documented intent of the donor, grantor and any funding source; and (7) have a net beneficial or neutral effect on the relevant conservation values protected by the easement. (Land Trust Alliance, *Land Trust Standards and Practices: Ethical and Technical Guidelines for the Responsible Operation of a Land Trust*, Standard 11 Practice (H)(1) (2017))

¹⁵⁵ Heather Weitzner, *Effects of Erosion and Accretion on Coastal Landforms*, New York Sea Grant available at <http://www.seagrant.sunysb.edu/glcoastal/pdfs/CoastalLandforms.pdf>; Sigren, et al., *Coastal Sand Dunes and Dune Vegetation: Restoration, Erosion, and Storm Protection*, 82 *Shore and Beach* 5-12 (2014); Pushpa Dissanayake, et al., *Effects of Storm Clustering on Beach/Dune Evolution*, 370 *Marine Geology* 63-75 (2015).

¹⁵⁶ Chris Houser, et al., *Controls on coastal dune morphology, shoreline erosion and barrier island response to extreme storms*, 100 *Geomorphology* 223-240 (2008).

¹⁵⁷ L.C. van Rijn, *Coastal Erosion Control*, 54 *Ocean & Coastal Management* 867-887 (2011); F.A. Wilcock & R.W.G. Carter, *An Environmental Approach to the Restoration of Badly Eroded Sand Dunes*, 11 *Biological Conservation* 279-291 (1997).

¹⁵⁸ Donna R. Christie, *Sea Level Rise and Gulf Beaches: The Specter of Judicial Takings*, 26 *J. Land Use & Envtl. L.* 313, 315 (2011).

Traditional easement law disfavored affirmative obligations. However, the Uniform Conservation Easement Act, which Florida adopted, specifically permits them.¹⁵⁹ In the cases of habitat that is already degraded at the time of transfer, restoration and management can be included as an explicit conservation purpose.¹⁶⁰ A coastal conservation easement has the flexibility to assign an obligation to restore and maintain to either party, or to both parties jointly; or it can make restoration aspirational, something that can be addressed in the future. In such cases, notice and consent to proceed prior to undertaking restoration activities should be included. While it includes no affirmative obligation to conduct beach-dune restoration or maintenance, the model coastal conservation easement does make allowances and exceptions for restoration and management related activities such as chemical application and topography alteration.

Conclusion: Less than Fee Options to Protect Sea Turtle Nesting Habitat on Private Property

The composition and characteristics of each less-than-fee coastal conservation instrument will be highly variable based on each specific circumstance. The following represent just some of the options for less-than-fee coastal land acquisition that could be utilized in differing circumstances. We focus on the perpetual conservation easement due to the tax and conservation advantages that are conferred by this instrument. However, other options such as limited term easements, conservation leases, and management agreements may also be appropriate.

Conservation Easement on Property Unencumbered by a Mortgage

The ideal and most straightforward scenario would be one in which a coastal conservation easement is placed on a parcel that is not encumbered by an existing mortgage. The non-existence of a mortgage on the property would mean that the conservation easement is not at risk of extinguishment due to foreclosure and also that the mortgage subordination process is not necessary. This mechanism could be used if the property owner was seeking a federal income tax deduction or also if they chose not to. If the property is less than 40 acres, the state property tax exemption will remain contingent on approval by the State of Florida Acquisition and Restoration Council.

Conservation Easement with a Subordinated Mortgage

In a scenario in which a property owner wanted to place a conservation easement on their beachfront property and the property was encumbered by a mortgage, the mortgage could be subordinated to the conservation easement. In this situation, the property owner would be able to seek a federal income tax deduction, which requires that if a mortgage exists, that it be subordinated to the interests of the easement holder.¹⁶¹ Even if the landowner elected not to seek a federal income tax deduction, mortgage subordination would be required if the grantee is

¹⁵⁹ See generally Fla. Stat. §704.06(1) (2016).

¹⁶⁰ D.M. Greene, *Dynamic conservation easements: facing the problem of perpetuity in land conservation*, 28 Seattle UL Rev. 883 (2004).

¹⁶¹ See 26 C.F.R. §1.170A-14(g)(2) (2016).

subject to the standards and practices of the Land Trust Alliance, the private certification body for not-for profit organizations engaged in conservation land acquisition and management.¹⁶²

It is important to note that obtaining a mortgage subordination agreement can be lengthy and difficult undertaking. Generally, a mortgagee (e.g. the lending institution or lender) does not have a legal or financial incentive to subordinate their interest to that of any other party. From an investment perspective, the safest option for the lender is to remain as the highest ranked interest so that in the event of a foreclosure, the lender will take the property free and clear of any other encumbrances that would negatively affect the value of the property. However, if the value of the conservation easement is such that the property as encumbered by the conservation easement continues to have a higher value than the outstanding mortgage balance, then the lender/mortgagee may be willing to subordinate their interests. Depending on the valuation of the easement, this may be quite possible.

Compensating Mortgagee for Subordinating Mortgage to the Conservation Easement

In the same scenario as referenced above, it may be possible to incentivize a mortgagee (lending institution/ lender) to subordinate their interests by offering to compensate them directly for the value of the conservation easement. For example, if a property owner wanted to place a coastal conservation easement on their property that was encumbered by a mortgage, an appraiser could be hired to determine the value of the conservation easement and the easement holder could pay the mortgagee/lender that amount in exchange for a subordination agreement. This would ensure the perpetuity requirement of the conservation easement by elevating it as a superior interest to the mortgage and thereby protecting it from the possibility of extinguishment by foreclosure. Additionally, this would mitigate the risk borne by the lending institution by compensating them outright for the reduction in property value caused by the conservation easement.

Conservation Easement Remains Subject to a Superior Mortgage

In a situation in which a property owner wants to place a coastal conservation easement on a property that is encumbered by a mortgage and subordination cannot be achieved, it remains possible to place a conservation easement on the property. Although mortgage subordination is not required under Florida conservation easement laws, the existence of an unsubordinated mortgage would preclude the property owner from obtaining a federal income tax deduction for the donation of a conservation easement, because the specter of foreclosure means there can be no guarantee of perpetuity.¹⁶³ Furthermore, this type of arrangement would be unworkable for LTA accredited land trusts since they are required to address mortgages in such a way that they will not result in the extinguishment of a conservation easement.¹⁶⁴

Despite the fact that this scenario strips a conservation easement of the financial incentives that attract property owners and runs contrary to LTA guidance, it could prove to be a useful tool for property owners who are less interested in the incentives than they are in the conservation values of their property. While extinguishment as a result of foreclosure compromises the longevity of a conservation easement, there is still the likelihood that the mortgage will not be foreclosed and

¹⁶² <https://www.landtrustalliance.org/>.

¹⁶³ 26 C.F.R. §1.170A-14(g)(2) (2016).

¹⁶⁴ Land Trust Alliance, *Land Trust Standards and Practices: Ethical and Technical Guidelines for the Responsible Operation of a Land Trust*, Standard 9 Practice (F)(2) (2017).

the conservation easement will become the senior interest once the mortgage is satisfied. While this scenario carries a considerable risk associated with the potential extinguishment of the conservation easement, it does offer some protection in situations where the property would not otherwise have any conservation protection available to it.

Non-Perpetual Less-than-Fee Property-Based Arrangements

In addition to statutory conservation easements, there are other less restrictive conservation tools that, under appropriate circumstances, could be utilized to conserve beachfront property for sea turtle nesting habitat. These include non-perpetual easements, deed restrictions, leases, management agreements, contracts and licenses. There is substantial overlap between these instruments in terms of how the law treats them, but the distinctions can be important.¹⁶⁵ Deed restrictions, or restrictive covenants, operate in a similar manner to easements and this has engendered considerable confusion. Deed restrictions are most commonly employed by a landowner who is subdividing property in order to bind the subdivided properties to a common set of restrictions.¹⁶⁶ These can also be created after the fact by a group of willing property owners. For example, a group of neighbors could get together and agree that none of them would build a seawall, and each could then enforce that provision against the other.¹⁶⁷

Conservation leases and management agreements represent another less-than-fee option to accomplish the goals of sea turtle habitat protection. A lease is a recordable transaction for a specified term that transfers property interests. Leases typically include reciprocal restrictions and duties on the landlord and tenant. While some of the sea turtle protection restrictions and duties included in the model conservation easement may seem unusual when characterized as a lease, they do fall within the ambit of ordinary contract law, and there is precedent for using this sort of mechanism for land conservation purposes.¹⁶⁸ A management agreement is a contract between a property owner and an oversight authority that governs the development, management, preservation, or conservation of land. Like conservation easements, land management agreements can contain a wide variety of provisions to be specifically tailored to each individual circumstance.

Management agreements can either obligate the land owner to perform certain activities on their property or alternatively, management agreements can serve as a contract for services wherein a conservation organization is contracted to complete certain management activities on the property.¹⁶⁹ These agreements can operate for a set term of years and contain mutually agreed upon terms for conservation. In the context of this project, management agreements could operate such that property owners agree to do or to abstain from certain predetermined activities for the purpose of conserving sea turtle nesting habitat, or authorizing a conservation organization to conduct management activities on the property. Conservation leases and management agreements would be a good option for landowners who want to be good stewards

¹⁶⁵ Kevin F. Marchetti Ponte, *Conservation Easements v. Deed Restrictions*, LTA fact sheet (2001).

¹⁶⁶ Gerald Korngold, *Private Regimes in the Public Sphere: Optimizing the Benefits of Common Interest Communities*, 27 Land Lines 15-23 (Winter 2015).

¹⁶⁷ James G. Titus, *Rolling Easements*, Climate Ready Estuaries Program, United States Environmental Protection Agency (2011) available at <http://water.epa.gov/type/oceb/cre/upload/rollingeasementsprimer.pdf>.

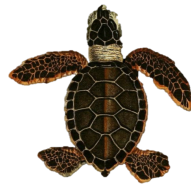
¹⁶⁸ Jacob T. Cremer, *Fighting the Lure of the Infinite: Lease Conservation Easements at the Urban Fringe*, 40 Environmental Law Reporter 10687 (2010).

¹⁶⁹ Carol I. Bocetti and J. Michael Scott, *Using Conservation Management Agreements to Secure Postrecovery Perpetuation of Conservation-Reliant Species: The Kirtland's Warbler as a Case Study*, 62(10) BioScience 874-879 (2012).

of the coast, but are not in a position to commit to a perpetual conservation easement, especially if they may be willing to do so in the future.

APPENDIX A

- ANNOTATED MODEL COASTAL CONSERVATION EASEMENT -



Jen Lomberk, Staff Attorney, Alachua Conservation Trust
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Tom Ankersen, Director, Conservation Clinic at the
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Tom Kay, Executive Director, Alachua Conservation Trust

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Trust

*Less-Than-Fee Beachfront Acquisition Strategies to Protect and Enhance Sea Turtle
Nesting Habitat in Florida: A Feasibility Study and Pilot Project*

October 2017

Annotated Model Coastal Conservation Easement

The Model Coastal Conservation Easement is intended to serve as a template from which to draft individual coastal conservation easements. This document was created with input from sea turtle biologists, ecologists, conservation easement attorneys, and property appraisers. The Model Coastal Conservation Easement was written to be overly broad so that portions can simply be removed or edited in order to tailor it to the specific circumstances of each coastal conservation easement. This version of the Model Coastal Conservation Easement is annotated with drafting tips and commentary.

The conservation easement considers each property in three segments: the beach portion, the dune portion, and the developed portion. The beach portion is the seaward most portion, and extends from the seaward property boundary to the toe of the dune. The dune portion extends from the toe of the dune to the landward extent of the dune, and the developed portion extends from the landward extent of the dune to the landward-most property boundary and contains the residential structure and the yard. Since the conservation easement is intended to protect conservation values while simultaneously allowing for occupation, the easement restricts certain activities based on each portion of the property. For example, furniture left on the beach overnight can cause entanglement and entrapment of both nesting sea turtles and hatchlings, so the easement prohibits leaving furniture on the beach overnight. However, we still want to allow people to have outdoor furniture on the developed portion of the property, such as the patio, so the restriction on leaving furniture out overnight is limited to the beach portion of the property and still allowed on the developed portion of the property.

Additionally, certain provisions of the conservation easement will operate only during the sea turtle nesting season (which varies depending on the county in which the property is located) and some provisions will operate year-round. For example, lighting restrictions need only operate during sea turtle nesting season in order to be effective, and landowners are free to use their lights as they please during the remainder of the year. Other provisions, such as the restriction on chemical pesticides and fertilizers, operate year round because they have long-lasting detrimental impacts that can affect sea turtles regardless of when they are actually applied. The goal of restricting certain provisions to certain times and locations within a property is to allow the landowner as much autonomy as possible while still protecting the conservation values of the property.

The model coastal conservation easement is composed in such a way that that it can easily be amended to reflect the specific needs of each property owner, their property, and the easement holder. The footnotes provide guidance and insight for the designated provisions and indicate sections that need to be tailored to each individual conservation easement. When drafting a conservation easement from the Model Coastal Conservation Easement, it is important to keep in mind that the purpose of the document is to provide a template that can be used to construct a coastal conservation easement that protects sea turtle nesting habitat while meeting the specific wants and needs of the property owner as well as the easement holder. As such, extensive revisions will likely be required. Additionally, the legal information contained herein is not a substitute for legal advice. Factual circumstances surrounding less-than-fee property interests are highly variable based on circumstance. Property owners should consult with an attorney who specializes in conservation easements when considering placing a conservation easement on their property.

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This instrument prepared by and returned to:

DEED OF CONSERVATION EASEMENT

This GRANT OF CONSERVATION EASEMENT is made this _____ day of _____, _____¹ by _____² whose address is _____³ ("Grantor") and _____⁴ a Florida not for profit corporation, whose address is: _____ ("Grantee").

The terms "Grantor" and "Grantee" shall include the singular and the plural, and the heirs, successors, and assigns of Grantor and Grantee, and the provisions of this easement shall be binding upon and to the benefit of Grantor, Grantee, and their heirs, successors, and assigns.

RECITALS⁵

- A. The state of Florida has approximately 825 miles of sandy coastline.⁶
- B. Scientific investigations have demonstrated that marine turtles can nest along the entire coastline of the state.⁷
- C. Four species of Florida's nesting sea turtles - the Leatherback (*Dermochelys coriacea*), Green (*Chelonia mydas*), Hawksbill (*Eretmochelys imbricata*), and Kemp's Ridley (*Lepidochelys kempii*) - are federally listed as endangered. The Loggerhead (*Caretta caretta*) is federally listed as threatened.⁸
- D. Anthropogenic activities including artificial lighting, coastal development, dune and beach modification, and both terrestrial and marine pollution negatively impact sea turtle nesting.
- E. The protection of Florida's sea turtles is a priority of the State of Florida as evidenced by Florida Statute §379.2431 which states that "a person, firm, or corporation may not knowingly possess, take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass

¹ Date of the signing of the conservation easement

² Landowner's first and last name

³ Physical address of the Landowner

⁴ Name of the easement holder

⁵ The purpose of the Recitals section is to provide both a general and property-specific conservation context for the easement, as well as basic background information on the property and the parties. Here, the recitals broadly state the context for the coastal conservation easement program generally and the issues that it seeks to remedy through the model easement. Specific details relating to individual properties should be incorporated when the model is adapted for use with those properties.

⁶ See <http://www.dep.state.fl.us/beaches/>.

⁷ F.A.C. 62B-55.003 Marine Turtle Nesting Areas (2017).

⁸ This provision will need to be modified if any of these species are delisted or downlisted in the future.

any marine turtle species or hatchling, or parts thereof, or the eggs or nest of any marine turtle species...”

- F. Grantor is the sole owner in fee simple of certain real property located in _____ County, Florida, more particularly described in Exhibit A ("Property").
- G. Grantor and Grantee recognize the special character and conservation values of the Property and have the common purpose of conserving the special character and conservation values of the Property by conveyance to the Grantee of a perpetual conservation easement over, upon, under, and across the Property.
- H. The specific conservation values of the Property are documented in the “_____” (“Baseline Documentation”), which consists of reports, maps, photographs, and other documentation that the parties agree will collectively provide an accurate representation of the Property at the time of this grant. The Baseline Documentation will serve as the baseline for monitoring compliance with the terms of this grant. The Baseline Documentation is maintained in the offices of the Grantee and is incorporated by this reference. A copy of the Baseline Documentation is available upon request. Exhibit B is a copy of a map of the Property as contained within the Baseline Documentation.⁹
- I. Grantee is an entity authorized under the provisions of Florida Statutes Chapter 704 to hold conservation easements for the preservation and protection of lands in their natural, scenic, historical, agricultural, forested, or open space condition. Grantee is an accredited land trust by the Land Trust Alliance, a national organization that certifies those land trusts that demonstrate a commitment to the nationally vetted Land Trust Standards and Practices.
- J. This Easement is intended to constitute a “qualified real property interest” pursuant to Internal Revenue Code §107(h)(2)(C) as a perpetual restriction on the uses that may be made of the real property.
- K. Grantee is a “qualified organization” as defined in the Internal Revenue Code §107(h). References to the Internal Revenue Code in this Easement shall mean the United States Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent federal tax laws, and the applicable regulations and rulings.
- L. The Property is intended to qualify as a “relatively natural habitat of fish, wildlife, or plants, or similar ecosystem” as the phrase is used in Internal Revenue Code §170(h)(4)(A)(ii) because:¹⁰
 - i. The Property in its current state serves as critical nesting habitat for the endangered/threatened Leatherback Sea Turtles (*Dermochelys coriacea*), Loggerhead Sea Turtles

⁹ A Baseline Documentation Report serves as a timestamp to memorialize the condition of the Property at the time that the conservation easement is conveyed, and additionally, serves as a baseline for the condition in which the Property must be maintained. In addition to being a standard practice for most easement holders, a Baseline Documentation Report is required for parcels under 40 acres that seek to qualify for a state property tax exemption under Fla. Stat. §196.26(5).

¹⁰ Section 26 U.S.C. §107(h)(4)(A) of the Internal Revenue Code defines allowable conservation purposes to satisfy the qualified conservation contribution standard. Subsections can be added to this provision to highlight any additional characteristics indicative of relatively natural habitat.

- (*Caretta caretta*), Green Sea Turtles (*Chelonia mydas*), Hawksbill Sea Turtles (*Eretmochelys imbricata*), and Kemp’s Ridley Sea Turtles (*Lepidochelys kempii*);¹¹
- ii. The Property contains intact portions of primary and secondary dune ecological communities, which are increasingly rare on Florida’s Gulf/Atlantic Coast due to excessive coastal development and erosion;¹²
 - iii. The Property contains habitat suitable for the re-establishment and enhancement of threatened and endangered native species of coastal fauna including:¹³
 - a) [*Insert applicable species of animal by common and scientific name*]
 - iv. The Property contains habitat suitable for the re-establishment and enhancement of rare and endangered species of native flora including:¹⁴
 - a) [*Insert applicable species of plants by common and scientific name*]
 - v. Development of the Property or certain uses or activities on the Property would significantly impair the habitat contained therein and the ability of such habitat to support sea turtles and other desirable species and ecological communities.
- M. The Property is intended to qualify as “open space” as the phrase is used in Internal Revenue Code §107(h)(4)(A)(iii) to mean preserved for the scenic enjoyment of the general public **OR** pursuant to a clearly delineated Federal, State, or local governmental conservation policy **AND** will yield a significant public benefit because:¹⁵
- i. The scenic value of beach and dune landscape such as that on the Property is an important factor in the local economy, drawing tourism and contributing to the value of properties in the surrounding area;¹⁶
 - ii. Development of Gulf/ Atlantic coastal property has occurred at a rapid rate in _____ County and is expected to continue in the foreseeable future, and development of the Property would contribute to the degradation of the beach and dune landscape in _____ County;¹⁷
 - iii. The Property is designated as a critically eroded beach by the Department of Environmental Protection, Division of Water Resource Management pursuant to Fla. Stat. §161.101.¹⁸

¹¹ This provision should be amended to contain only the species of sea turtles that have an established nesting occurrence on the beach on which the Property is located. This information can be found at <http://myfwc.com/research/wildlife/sea-turtles/nesting/nesting-atlas/>.

¹² This provision should be amended to reflect the location of the Property (Atlantic coast or Gulf coast) and to include the ecological communities located on the Property. Information about the classification of ecological communities can be found at: <http://fnai.org/naturalcommguide.cfm>.

¹³ This provision should be included in situations in which the Property has potential for restoration. An expert in coastal natural resources should be consulted to provide input regarding specific species.

¹⁴ *Id.*

¹⁵ 26 U.S.C. §107(h)(4)(A)(iii) outlines one of the designations of conservation purposes as “open space.” Under this subsection, the open space must be either I. “for the scenic enjoyment of the general public” *or* II. “pursuant to a clearly delineated Federal, State, or local governmental conservation policy” *and* (in addition to either I or II) will yield a significant public benefit. Either section I, section II, or both could be included in the coastal conservation easement. Scenic characteristics and local conservation policies will vary based on location. Consequently, these subsections should be drafted to reflect the circumstances of each individual property.

¹⁶ This provision is an example of a general provision that could be used to support the open space provision.

¹⁷ This is another example of a generally applicable provision that could be included in circumstances pertaining to an area with high development pressure.

¹⁸ The Florida Department of Environmental Protection has been compiling information on coastal erosion in the state of Florida since 1989. Eroded beaches are classified as either non-critically eroded or critically eroded. The

- iv. The Property is located in a Coastal High-Hazard Area pursuant to Fla. Stat. §163.3178(2)(h) and the _____ County Comprehensive Plan Objective _____.¹⁹

N. Grantor warrants to Grantee that:

- i. Grantor has not relied upon information or analysis furnished by Grantee with respect to either the availability, amount, or effect of a deduction, credit, or other benefit to Grantor under applicable law; or the value of the Conservation Easement or the Property;
- ii. Grantor has relied solely upon their own judgment or professional advice furnished by a legal, financial, appraising or accounting professional engaged by Grantor;
- iii. This Conservation Easement is not conditioned upon the availability or amount of a deduction, credit, or other benefit under applicable law.²⁰

O. Grantor warrants to Grantee that the Property is, as of the date of signing, free and clear of all liens or, if it is not, that Grantor has obtained and recorded in the Public Records the legally binding subordination of the liens affecting the Property as of the date of signing.²¹

P. In accepting this grant, Grantee agrees to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and generations to come.

Q. The fact that (i) certain uses of the Property which are expressly prohibited by the terms of this Easement may become more valuable economically than uses allowed by the terms of this Easement, or (ii) neighboring properties may, in the future, be put entirely to uses that are not allowed by this Easement, have been acknowledged and accepted by Grantor and Grantee and will not affect the enforceability of this Easement.

NOW THEREFORE, to achieve these purposes, and in consideration of \$10.00 and other good and valuable consideration, including without limitation the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, the receipt and sufficiency of which is acknowledged, and pursuant to the laws of Florida, and in particular Florida Statute §704.06, but without intending the

appropriate classification should be used in adapting this model to a specific property. The most recent report is broken down by county. <https://www.dep.state.fl.us/beaches/publications/pdf/CriticalErosionReport.pdf>.

¹⁹ We recommend looking through the comprehensive plan for the county in which the Property is located to see if there are any land use classifications or restrictions that encourage or require the conservation of the Property or restrict development. For example the St. Johns County Comprehensive Plan Objective A.1.5 states that the County shall limit increases in population density within the Coastal High-Hazard Area. Maps delineating coastal high-hazard areas and other sensitive regions can generally be found within a county's comprehensive plan or on a county's website.

²⁰ During the course of negotiation and drafting, the attorney for the easement holder should not provide legal advice to the Property Owner as they are separate parties in a contractual transaction. The easement holder should advise the Property Owner to have the conservation easement reviewed by an attorney who specializes in conservation easements and tax deductions if they intend to pursue one.

²¹ It is a standard practice of easement holders to ensure that mortgages and other liens are subordinated with regard to a conservation easement in order to verify that the conservation easement will not be extinguished if the lien forecloses. Additionally, the subordination of prior interests is required under the Internal Revenue Code for Property Owners that wish to seek a federal income tax deduction. Furthermore, the Land Trust Alliance Standards and Practices require that accredited land trusts have an attorney or title company investigate title for each property that the land trust intends to acquire an interest in and address encumbrances so that they will not result in the extinguishment of the land trust's interest.

validity of this Easement to be dependent on the continuing existence of such laws, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement (“Easement”) in perpetuity upon, over, under, and across the Property of the nature and character and to the extent hereinafter set forth.

ARTICLE I. INCORPORATION OF RECITALS; DURATION OF EASEMENT

Grantor and Grantee agree the foregoing recitals are true and correct, and said parties incorporate the Recitals herein by reference. This Easement shall be perpetual. It is an easement in gross, runs with the land, and is enforceable as provided herein against Grantor, Grantor’s personal representatives, heirs, successors, assigns, lessees, agents, and licensees.

ARTICLE II. CONSERVATION PURPOSES OF EASEMENT

The purpose of this Easement is to ensure that the Property’s Beach-Dune System will be retained forever in its natural, scenic, and open space condition as a relatively undisturbed natural coastal area providing favorable sea turtle nesting habitat as well as habitat for other species of flora and fauna native to this region of Florida, and to manage and conserve the ecosystems guided by the following principles:

- A. To maintain and, if appropriate, to restore and enhance the relatively natural and undeveloped condition of this Property, which is part of an important coastal ecosystem that provides nesting habitat for sea turtles and life history habitat for many other species of native wildlife.
- B. To provide valuable areas for conservation, monitoring, and research of nesting sea turtles.
- C. To protect nesting marine turtles and hatchlings from the adverse effects of anthropogenic activity in order to provide for overall improvement in nesting habitat and to increase successful nesting activities and production of hatchlings on the beaches located in the state of Florida.
- D. To protect the unique, fragile, and dynamic Beach-Dune System and associated natural areas, and the native species that inhabit them.
- E. To preserve the natural, scenic, and open characteristics of the Beach-Dune System.
- F. To protect the surface water quality of the property and the contiguous Atlantic Ocean OR Gulf of Mexico, along with any associated aquatic ecosystems on the property.²²

Grantor intends that this Easement will confine the use of the Property to such activities as are consistent with these Conservation Purposes.

²² This provision must be amended to reflect the geographic location of the Property. There may be instances where a coastal conservation easement includes several ecosystems or habitat types in addition to the beach dune system.

ARTICLE III. DEFINITIONS²³

When used in this Easement, the following terms shall be defined as follows:

- A. **Beach.** The portion of the Property consisting of unconsolidated material that extends landward from the seaward most property boundary to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves as depicted in the Baseline Documentation.²⁴
- B. **Beach-Dune System.** The aggregate area comprising the Beach portion and the Dune portion of the Property.
- C. **Dune.** The portion of the Property consisting of a mound or ridge of loose sediments, usually sand-sized sediments, lying landward of, and adjacent to, the beach and deposited by any natural or artificial mechanism as depicted in the Baseline Documentation.²⁵
- D. **Landward.** Tending toward the land and away from the ocean.
- E. **Developed Portion of the Property.** The portion of the Property extending from the most landward edge of the Dune to the most landward boundary of the Property generally encompassing any building(s) and the surrounding yard, as depicted in the Baseline Documentation.
- F. **Qualified Sea Turtle Monitoring Organization.** An organization holding a Marine Turtle Permit issued by the Fish and Wildlife Conservation Commission pursuant to Florida Administrative Code Rule 68E-1 or its successor.²⁶
- G. **Sea Turtle Nesting Season.** For the purposes of this Easement, sea turtle nesting season means the period from March 1/ May 1 through October 31 of each year.²⁷

²³ The Pennsylvania Land Trust Association's Model Grant of Conservation Easement divides properties into categories entitled Highest Protection Area, Standard Protection Area, and Minimal Protection Area to differentiate between activities allowed on each portion of the Property. We have adopted a similar system to divide the Property into the Beach, the Dune, the Beach-Dune System (comprising the Beach plus the Dune), and the Landward portion of the Property. These designations accommodate the placement of different restrictions on specific portions of the Property where they will be most beneficial to the protection of sea turtle nesting habitat without restricting the Property Owner's freedom to conduct activities on portions of the Property where the restrictions would not contribute to nesting habitat protection.

²⁴ This definition is adapted from the definition of "beach" from Fla. Stat. 161.54 Coastal Zone Protection and may need to be adapted to reflect the actual composition of an individual Property. Additionally, the Baseline Documentation Report should visually depict the boundaries of the Beach portion of the Property.

²⁵ This definition is adapted from the definition of "dune" from Fla. Stat. 161.54 Coastal Zone Protection and may require adaptation in order to accurately reflect the actual composition of an individual Property. Additionally, the Baseline Documentation Report should visually depict the boundaries of the Dune portion of the Property.

²⁶ Sea turtle monitoring organizations are an invaluable partner in this project. The idea here is to alert monitors about coastal conservation easements in their area and have them act as an additional set of eyes on the beach that could alert the easement holder if there was a suspected easement violation.

²⁷ Similar to the system used to designate distinct geographic regions of the Property in which certain activities are and are not allowed, the coastal conservation easement restricts certain activities only during sea turtle nesting season when the prohibition of such activities would be beneficial to sea turtles, allowing Property Owners the freedom to engage in these activities during the remainder of the year. The Model Lighting Ordinance for Marine

H. **Seaward.** Tending toward the ocean and away from the land.

ARTICLE IV. AFFIRMATIVE RIGHTS OF GRANTEE²⁸

To accomplish the Conservation Purposes of this Easement, the following rights are hereby granted, conveyed, relinquished, released, quitclaimed, and transferred from Grantor to Grantee:

- A. **Enforcement.** The right to enforce the terms of this Easement by proceedings at law and in equity in order to accomplish the Conservation Purposes and protect the conservation values of the Property.²⁹
- B. **Preservation.** The right to preserve the conservation values of the Property and to prevent any actual or threatened activity on, or use of, the Property that is inconsistent with the Conservation Purposes and to require the restoration of, or to restore, such areas or features of the Property that may be damaged by any inconsistent activity or use, all at Grantor's expense, notwithstanding acts beyond Grantor's control as described in section VII(D).³⁰

The right, but not the obligation, to conduct restoration activities on the property to correct damage caused by acts beyond Grantor's control as described in section VII(D) at no expense to the Grantor.

- C. **Access.** The right of Grantee as well as Grantee's employees and agents, of legal ingress and egress to the Property in order to monitor compliance, to make scientific and educational observations regarding the condition of plant and animal populations, and, if necessary, to enforce the terms of this Easement, provided that such entry shall be upon prior reasonable written notice to Grantor, and in doing so Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.³¹

The right of any Qualified Sea Turtle Monitoring Organization as well as such organization's employees and agents, of legal ingress and egress to the Property and the right to enter upon the Beach-Dune System in accordance with their Marine Turtle Permit in order to make scientific and educational observations regarding the presence or condition of sea turtle populations and their

Turtle Protection (F.A.C. Chapter 62B-55) defines "nesting season" as the period from May 1 through October 31 of each year for all counties except Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward. Nesting season for Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward counties means the period from March 1 through October 31 of each year due to the earlier arrival of nesting leatherback sea turtles. This clause should be tailored to the county in which the parcel is located.

²⁸ This Article lays out the specific rights of the easement holder. These provisions are generally required by state enabling statutes and/or the Internal Revenue Code and as such do not vary considerably among conservation easements.

²⁹ An enforcement provision is required by Treasury Regulations §170A-14(g)(5)(ii).

³⁰ As per Treasury Regulations §170A-14(g)(5)(ii), the terms of the conservation easement must include the right of the easement holder to enforce the terms of the easement by appropriate legal proceedings, including, but not limited to, the right to require the restoration of the Property to its condition at the time of the donation.

³¹ As per Treasury Regulations §170A-14(g)(5)(ii), the terms of the conservation easement must provide a right of the easement holder to enter the Property at reasonable times for the purpose of inspecting the Property to determine if there is compliance with the terms of the donation.

habitat, provided that such entry shall be during sea turtle nesting season and shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.³²

- D. **Development.** The rights to all future residential, commercial, industrial, and incidental development or construction that are now or hereafter allocated to, implied in, inherent in, reserved to, granted to, conveyed to, or otherwise relating to the Property except those specifically reserved to the Grantor in section VI(A) (the "Development Rights"). Neither the Property nor any portion thereof may be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open space requirements, under any applicable laws, regulations, or ordinances controlling zoning, land use, or building density. No Development Rights in the Property shall be transferred by any party to any other lands pursuant to a transferable development rights scheme, cluster development arrangement, or otherwise. No Development Rights or density credits shall be transferred by any party onto the Property from any other property.³³
- E. **Baseline Documentation.** The right to have the Property maintained as reflected on the Baseline Documentation, as the Property may change through the forces of nature, subject only to the exercise of Grantor's Reserved Rights and the Affirmative Rights of the Grantee as described in this Easement.
- F. **Taxes.** The right to have ad valorem taxes, fees, assessments, and any other charges or encumbrances on the Property paid by Grantor.³⁴
- G. **Signage.** The right, but not the obligation, to install and maintain small, unlighted signs visible from boundary lines to identify Grantor and Grantee and inform the public and abutting property owners that the Property is under the protection of this Easement, after consultation with Grantor.
- H. **Notice to Grantee.** The right to be provided notice by the Grantor of any planned federal, state, or local programs, projects, or activities that may affect the Property, where the Grantor has been given notice, including, but not limited to, beach nourishment, restoration, or shoreline stabilization.
- I. **Beach-Dune Management.** The right, but not the obligation, to develop and implement a beach-dune management plan on the Property that is consistent with the Conservation Purposes of this Easement with the approval of the Grantor. Under no circumstances shall this right conveyed to Grantee be construed to diminish Grantor's responsibilities under this paragraph or as an obligation of the Grantee.

³² This provision explicitly ensures that sea turtle monitors are allowed to enter the Property in order to conduct sea turtle monitoring and research.

³³ This provision transfers the development rights on the Property to the easement holder who will not exercise the right to develop the Property. Additionally, it prohibits Transferable Development Rights. Transferable Development Rights programs allow landowners to sell development rights to their land to a developer who can in turn use these rights to increase the development density at another location. While this mechanism can prevent development on the protected property, it inevitably increases development in proximate areas. This clause ensures that the development rights are extinguished rather than transferred.

³⁴ This is standard precautionary language, explicitly stating that the easement holder is not responsible for the payment of taxes on the Property.

ARTICLE V. RESTRICTED USES³⁵

Grantor shall maintain the Property to preserve and achieve the Conservation Purposes of this Easement. Restrictions shall apply to the entire Property and throughout the entire year unless otherwise indicated. Grantor agrees that the following uses and practices, though not an exhaustive recital of uses and practices that are inconsistent with the Conservation Purposes, are expressly prohibited on the Property:

- A. **Subdivision.** Any voluntary or involuntary partition, division, or other subdivision of the Property.³⁶
- B. **Commercial Activity.** Subject to the Reserved Rights of the Grantor as outlined in Article VI,³⁷ any commercial, agricultural, or industrial activity maintained or conducted on the Property by any person; or using the Property for ingress, egress, or other passage, across or upon the Property in conjunction with any commercial, agricultural, or industrial activity by any person.³⁸
- C. **Dumping.** Any dumping, placement, or maintenance of trash, liquid or solid waste (including sludge and septic tank drainage), or unsightly, offensive, or hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants, including, but not limited to, those now or hereafter defined by federal or Florida law as hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants. This prohibition shall not be construed to include reasonable amounts of waste or hazardous materials generated as a result of allowed activities that are contained in appropriate receptacles nor any activities explicitly allowed in Article VI.³⁹
- D. **Topography.** Any ditching, draining, diking, filling, excavating, dredging, drilling, addition or removal of topsoil, sand, gravel, rock, peat, minerals, or other materials, or any other intentional, material change in topography of the Beach-Dune System, except as necessary for:

³⁵ As previously mentioned, some activities are only restricted on certain portions of the Property or during nesting season, while others are year-round. This ensures that the conservation easement offers ample protection to sea turtles while allowing the Property Owner to retain the most freedom possible.

³⁶ Since conservation easements have traditionally been geared towards large parcels, many conservation easements prohibit the subdivision of properties into smaller developable lots. This preserves the unified management of the land and makes long-term monitoring and easement enforcement easier by constraining the number of landowners that must be accounted for.

³⁷ Article IV outlines the reserved rights of the Grantor. This ensures that any activities that the Grantor would like partake in are explicitly allowed under the terms of the conservation easement.

³⁸ Commercial activities generally create an increase in traffic, light, and noise that can be detrimental to nesting sea turtles and hatchlings. This provision prohibits any commercial, agricultural, or industrial activity on the Property as well as any associated activity.

³⁹ An inherent function of land conservation is to ensure that the land remain free of harmful pollutants. Furthermore, physical impediments caused by dumping may obstruct nesting mothers' access to the beach and increase the risk for entanglement. This provision prohibits the addition of any substance to the Property that might be harmful to native plants or animals but allows the generation of reasonable amounts of waste to be properly disposed of (i.e. yard waste generated as a result of lawn maintenance that is left by the curb for pick-up). This provision does not prohibit any activity that is explicitly reserved to the Grantor in Article VI such as the addition of sand for dune maintenance in compliance with local and state regulations.

- i. The maintenance of existing footpaths as depicted in the Baseline Documentation; or
 - ii. The use of sand and vegetation as necessary for Beach-Dune System maintenance on the Property consistent with the Reserved Rights of the Grantor as outlined in Article VI.⁴⁰
- E. **Mining.** The exploration for, or extraction of, oil, gas, minerals, dolostone, peat, muck, marl, limestone, limerock, kaolin, fuller's earth, phosphate, common clays, gravel, shell, fill dirt, sand, and similar substances on the Property except for restoration, enhancement, or maintenance as explicitly allowed pursuant to the Reserved Rights of the Grantor as outlined in Article VI.⁴¹
- F. **Water Resources.** Activities that will be detrimental to drainage, flood control, water conservation, erosion control, or water quality as it relates to fish, sea turtle or other wildlife habitat preservation, unless otherwise expressly provided in this Easement. However, in accordance with the Reserved Rights of the Grantor as outlined in Article VI, Grantor or Grantee may conduct restoration, enhancement, and maintenance activities including soft stabilization, which may have short-term impacts on water quality.⁴²
- G. **Vegetation.** The removal, destruction, cutting, trimming, alteration, or spraying with biocides of native trees, shrubs, grasses or other native coastal vegetation on the Beach-Dune System, except as otherwise specifically provided in this Easement. Removal of native vegetation for the purposes of lawn care or landscaping may be conducted on the Developed portion of the Property so long as it is consistent with the Conservation Purposes of this Easement. There shall be no introduction of invasive exotic or non-native plants as listed by the Florida Exotic Pest Plant Council or its successor on any portion of the Property.^{43 44}

⁴⁰ While extremely graceful in the water, sea turtles have some difficulty moving around on land. Steep slopes, irregular terrain, and incompatible types of fill material can impede or deter nesting sea turtles and hatchlings. This provision generally disallows any alteration of the terrain on the Beach-Dune System except for the purpose of maintaining existing paths, or conducting an activity that is explicitly allowed in Article VI such as dune maintenance performed in accordance with state laws. *See* Fla. Stat. 161 (2016).

⁴¹ Although this provision prohibiting mining may seem out of place in the context of coastal properties, it is included because the Internal Revenue Code requires a prohibition on exploration and mining of subsurface mineral rights in order to qualify for a federal income tax deduction. *See* 26 U.S.C. §170(h)(5)(B) (2016).

⁴² The geology of the state of Florida makes it particularly susceptible to groundwater contamination. Furthermore, the proximity of coastal properties to the ocean inherently increases the potential for marine pollution resulting from activities taking place on the Property. This provision seeks to ensure the protection of both fresh and saltwater by generally prohibiting any activity that may be detrimental to water resources.

⁴³ Invasive plant species pose a threat to native ecology by out-competing native species for resources such as space, nutrients, and sunlight and potentially causing or carrying disease. Dune vegetation also provides a spatial cue for sea turtles attempting to select a nesting location and can block light from upland structures. This provision governs the maintenance of vegetation on the Property by supporting the growth of native plants and prohibiting the intentional growth of non-native plants. Additionally, this clause provides a voluntary option that the easement holder may choose to exercise with regard to the maintenance of non-native plants in which the easement holder may choose to take responsibility for developing a plan to guide the removal of non-native vegetation. THE CLAUSE DOESN'T REFER TO A PLAN. I BELIEVE THAT IS ELSEWHERE IN THE DOCUMENT. The following species are examples of native dune vegetation: railroad vine (*ipomoea pes-caprae*), beach elder (*iva imbricata*), panicgrass (*panicum amarum*), salt joint grass (*paspalum vaginatum*), beach cordgrass (*spartina patens*), sea purslane (*sesuvium portulacastrum*), and sea oats (*uniola paniculata*).

⁴⁴ Florida Exotic Pest Plant Council's list of invasive plant species can be found at <http://www.fleppc.org/list/list.htm>.

- H. **Chemical Application.** The use of synthetic fertilizer or pesticide outside of structures on the Property, including, but not limited to, insecticides, rodenticides, fungicides, or herbicides, except as necessary for ecological restoration activities conducted outside of nesting season and in furtherance of the Conservation Purposes. This section shall not be construed to prohibit the use of non-toxic natural based fertilizers or pesticides.⁴⁵
- I. **Shoreline Armoring.** The installation, maintenance, or reconstruction of seawalls, riprap, revetments, dikes, bulkheads, groins, sills, geotextile tubes, or any other hard armoring method of erosion control that interferes with the natural migration of the shoreline.⁴⁶
- J. **Terrestrial Structures.** Subject to the Reserved Rights of the Grantor set forth in Article VI, the construction or placement of any new temporary or permanent buildings, mobile homes, or other structures in, on, or above the ground in the Beach-Dune System, including, but not limited to: decks, boardwalks, swimming pools, fences, tennis or recreational courts, billboards, asphalt or concrete pavement.^{47 48}
- K. **Coastal and Water-Dependent Structures.** Subject to the Reserved Rights of the Grantor set forth in Article VI, construction or placing of any new temporary, or permanent structures including, but not limited to: docks, bridges, slips, piers, anchorages, mooring structures, or boardwalks in, on, or above the Beach-Dune System or the water on or abutting the Property. This section does not preclude the construction of a dune walkover constructed to replace an existing footpath through the Beach-Dune System as depicted in the Baseline Documentation with approval from Grantee.^{49 50}
- L. **Lighting.** The use of lighting visible from the beach during the sea turtle nesting season except as required by applicable building code regulations, or as authorized by a qualified sea turtle monitoring organization. Grantor will take reasonable steps to mitigate the effects of lighting on sea turtles during nesting season including, but not limited to:⁵¹

⁴⁵ While the eradication of harmful invasive species is important to the protection of the ecology of the landscape, the chemicals used to manage those species are often just as harmful to the native plants and animals. This provision prohibits the use of synthetic chemical fertilizers and pesticides to ensure that beneficial, native plants and animals are not incidentally harmed by their use.

⁴⁶ The construction of seawalls and other forms of coastal shoreline armoring can degrade nesting habitat, deter sea turtles from nesting, increase beach erosion, and deprive the Beach-Dune System of its sand supply. Studies have shown that fewer turtles emerge onto beaches in front of seawalls than onto adjacent beaches without seawalls. Furthermore, when turtles emerge in front of seawalls, they are more likely to return to the water without nesting or dig their nest in a sub-optimal area (i.e. too close to the water where eggs will be washed away or drowned). This provision seeks to protect critical sea turtle nesting habitat by prohibiting of all types of hard shoreline armoring.

⁴⁷ Sea turtles cannot see well on land and have difficulty maneuvering. This provision is a general prohibition on the addition of any structure to the Property beyond seaward of the landward most edge of the landward most structure on the Property at the time the Conservation Easement was created.

⁴⁸ The list of prohibited structures in this provision is meant to be exemplary. Any examples of structures that do not apply to the specific Property in question should be removed.

⁴⁹ The construction and existence of structures disrupts coastal habitats by affecting plant and animal species and reducing the overall health of coastal ecosystems. This provision prohibits the addition of any permanent or semi-permanent structure in or abutting the water on the Property.

⁵⁰ The list of prohibited structures in this provision is meant to be exemplary. Any examples of structures that do not apply to the specific Property in question should be removed.

⁵¹ The subsections of this provision are adapted from the Model Lighting Ordinance for Marine Turtle Protection (F.A.C. Chapter 62B-55). Artificial lighting is extremely detrimental to both nesting females and hatchlings.

- i. limiting all outdoor lighting to fully shielded (constructed in such a manner that the point source of light of the fixture is not directly visible from the beach) and long wavelength (emitting light wavelength of 580 nanometers or greater);
- ii. modifying all outdoor lighting fixtures in such a manner that the point source of light of the fixture is not directly visible from the beach by installing:
 - a. Louvered wall fixtures, equipped with downward-directed louvers that completely hide the light source, with the bottom of fixture mounted 12 inches or less above the adjacent floor or deck, or
 - b. Bollard-type fixtures, which do not extend more than 42 inches above the adjacent floor or deck, measured from the bottom of fixture, equipped with downward-directed louvers that completely hide the light source, and externally shielded on the side facing the beach.
- iii. ensuring that all windows and glass on doors on the seaward and shore perpendicular sides of all structures shall be designed for a light transmittal value of 15% or less through the use of tinted glass, window film, or screens;
- iv. permanently removing or permanently disabling any fixture that cannot be brought into compliance with these standards;
- v. turning off all outdoors lights on the seaward and shore-perpendicular sides of the structure between 9:00 PM and sunrise during nesting season;
- vi. turning off interior lights or closing blackout curtains between 9:00 PM and sunrise during nesting season.

These modifications shall be completed before the beginning of Sea Turtle Nesting Season of the year following the signing of this Conservation Easement.⁵²

- M. **Roads.** The construction, creation, or maintenance of any paved or unpaved vehicular or pedestrian roads, trails, or paths on the Beach-Dune System not depicted in the Baseline Documentation.⁵³

Artificially lit beaches discourage females from nesting in the area, forcing them to lay their eggs on sub-optimal beaches or deposit them in the ocean. Additionally, artificial lighting disorients hatchlings, which may cause them to wander inland instead of towards the ocean, increasing the risk of death due to predation, dehydration, and other anthropogenic dangers. This provision outlines detailed modifications to be made to existing structures and practices to be followed in order to minimize the harm to sea turtles caused by artificial light. Subsections (i) through (iv) are structural modifications whereas subsections (v) and (vi) are behavioral restrictions. The Property Owner may choose to include either the structural modifications, the behavioral restrictions, or both. Upfront costs may be associated with structural modifications, but behavioral restrictions are inherently more difficult to enforce. Ordinances at the local or county level may also impose some structural and/or behavioral restrictions. In this case, placing comparable or more restrictive provisions in a conservation easement can offer additional conservation protection on the Property.

⁵² The Sea Turtle Conservancy actively works to retrofit problem lighting on beachfront properties and in some instances, offers grant funding to support the retrofitting. More information can be found at <https://conserveturtles.org/stc-beachfront-lighting-program/>.

⁵³ Coastal dunes play an important role in protecting land areas from coastal water intrusion and act as a barrier to potentially destructive winds and waves during storms events. Furthermore, sand dunes protect sandy beaches from erosion, thereby protecting the areas that sea turtles need to nest. The disruption of sand dunes caused by the creation of roads and pathways can cause long-lasting harm to the dune system. This provision prevents the addition of any new throughways across dunes on the Property.

- N. **Vehicles.** The operation of motorized vehicles, including, but not limited to, automobiles, dune buggies, motorcycles, or all-terrain vehicles, on the Beach-Dune System except on established trails and roads as depicted in the Baseline Documentation or as necessary for emergency purposes, municipal functions, ecological restoration projects, or sea turtle and other wildlife monitoring by qualified entities.^{54 55}
- O. **Domestic Animals.** Allowing domestic animals to roam loose or unsupervised on the Property. Domestic animals that may be disruptive or damaging to nesting turtles, hatchlings, or nests, as well as other native flora and fauna, include, but are not limited to: dogs, cats, snakes, lizards, iguanas, ferrets, and pigs.⁵⁶
- P. **Wild Animals.** Any activity that attracts wild animals that may have a negative impact on nesting turtles, hatchlings, nests, or other native flora or fauna including, but not limited to, actively feeding wild animals or storing garbage or other attracting products in non-animal proof containers. Wild animals that may be disruptive or damaging to nesting turtles, hatchlings, or nests include, but are not limited to: raccoons, opossums, foxes, feral cats or dogs, bobcats, and coyotes.⁵⁷
- Q. **Fire.** The ignition of fires at night on the Beach-Dune System, as well as in any area of the Property such that emitted light is directly or indirectly visible from the Beach at night during sea turtle nesting season.
- R. **Fireworks.** The ignition of fireworks on the Beach-Dune System or in any area of the Property such that emitted light is directly visible from the Beach at night during sea turtle nesting season.⁵⁸

⁵⁴ The operation of motor vehicles on the beach poses multiple threats to nesting sea turtles and their hatchlings. The operation of motor vehicles causes the accumulation of oil and other harmful chemicals in the sand and ocean. Furthermore, the operation of these vehicles poses the threat of crushing existing nests and causes the sand to become compacted, making it more difficult for nesting mothers to dig their nests. Ruts in the sand left by tires can serve as obstacles to hatchlings trying to make their way to the ocean, increasing their vulnerability to predators. This provision prohibits the operation of any type of motor vehicle on the dune and beach portion of the Property and restricts the operation of all motor vehicles to roads except in the above-mentioned situations for the remainder of the Property.

⁵⁵ Some Florida beaches allow recreational driving on portions of the beach that may technically be located on private property. This easement provision must comply with these allowances.

⁵⁶ Studies estimate that as few as one in 10,000 sea turtle eggs will reach adulthood. Because both nesting mothers and hatchlings are not agile on land and are unable to retract their heads and flippers into their shells, they are particularly vulnerable to attack by predators. Many of these predators have been known to destroy entire nests. By ensuring that domestic animals are supervised at all times, the risk of interference with turtles can be significantly decreased.

⁵⁷ In addition to domestic animals, wild animals also pose a significant threat to sea turtles and their nests. Feeding wild animals or leaving garbage in containers that are easily opened attracts wild animals to the Property and exposes sea turtles to an increased potential for predation. This provision disallows any activity that may attract wild animals to the Property.

⁵⁸ The light and sound created by fireworks can be confusing and harmful to nesting sea turtles and hatchlings. Furthermore, the trash and debris left by fireworks can be ingested by turtles, poisoning them and damaging their digestive tracts. While fireworks are still allowed by this easement on the Property during the remainder of the year, local laws and ordinances are controlling and debris should be properly disposed of after ignition.

- S. **Nesting Obstructions.** The placement of obstructions on the Beach-Dune System overnight during sea turtle nesting season, except objects determined to be necessary for the Conservation Purposes pursuant to authorization by a Qualified Sea Turtle Monitoring Organization. For the purposes of this section, obstructions include, but are not limited to: furniture, vehicles, beach umbrellas, free-standing signs, or watercrafts. Obstructions also include construction material, trash and debris, landscaping material, fill, holes, sand castles or other impediments to the movement of hatchlings or adults between the ocean and Beach-Dune System.⁵⁹

ARTICLE VI. RESERVED RIGHTS OF GRANTOR

Grantor's exercise of the following Reserved Rights shall be in full accordance with all applicable local, state, and federal laws, as amended from time to time, as well as in accordance with the Conservation Purposes. Grantor's Reserved Rights are limited to:

- A. **Reserved Development Rights.** The right to construct, improve, and maintain residential and ancillary structures including, but not limited to, permanent and temporary buildings, porches, decks, swimming pools, fences, and paved or unpaved driveways and footpaths within the building envelope on the Developed Portion of the Property as depicted in the Baseline Documentation so long as any such development complies with all provisions of this Easement and is not inconsistent with the Conservation Purposes. At least sixty (60) days before Grantor intends to begin or allow any improvement or activity pursuant to this section, Grantor must notify Grantee in writing of the proposed activity, including a description of the activity and any potential impacts to the Conservation Purposes. Within thirty (30) days of receipt of Grantor's notice, Grantee must notify Grantor of Grantee's determination to:

- i. Accept Grantor's proposal in whole or in part;
- ii. Reject Grantor's proposal in whole or in part;
- iii. Accept Grantor's proposal conditioned upon compliance with conditions imposed by Grantee; or
- iv. Reject Grantor's proposal for insufficiency of information on which to base a determination.

If Grantee gives conditional acceptance under clause (iii), commencement of the proposed improvement or activity constitutes acceptance by Grantor of all conditions set forth in Grantee's notice.^{60 61}

- B. **Natural Resource Management.** The right, but not the obligation, to continue natural resource management practices on the Property, including topography alteration (sand movement or

⁵⁹ As previously mentioned, sea turtles are not particularly agile on land and therefore have a hard time maneuvering around obstacles on the beach. Impediments by obstacles increase hatchlings' susceptibility to predation. Incidents of nesting sea turtles becoming ensnared in beach furniture are increasing. This provision prohibits the abandonment of foreign objects on the beach overnight that may obstruct the paths of nesting sea turtles or hatchlings.

⁶⁰ This section explicitly states that the Property Owner is allowed to construct, improve, and maintain the structures on the Property as they exist at the time that the conservation easement is placed on the Property. If the Property Owner wishes to retain the right to develop any additional structures on the Property that did not exist at the time that the conservation easement was drafted, they should be included in this provision.

⁶¹ This provision was adapted from both the Pennsylvania Land Trust's model easement as well as the Land Trust Alliance's conservation easement diagram.

placement), vegetation control, and fertilizer and pesticide use for the purposes of ecological restoration and soft shoreline stabilization conducted outside of Sea Turtle Nesting Season.

- C. **Beach-Dune System Maintenance.** The right, but not the obligation, to conduct beach and dune maintenance, restoration, soft shoreline stabilization, or otherwise authorized sand placement, as well as the planting and maintenance of native vegetation for the purpose of dune maintenance and erosion control in compliance with applicable law.⁶²
- D. **Invasive Flora and Fauna.** The right, but not the obligation, to control and prevent the spread of invasive exotics or non-native plants and animals as defined by the Florida Fish and Wildlife Conservation Commission or its successor on the Property using currently recommended best management practices, provided that such methods do not impair sea turtles, other coastal wildlife, or their habitat.
- E. **Native Flora and Fauna.** The right, but not the obligation, to introduce and stock native flora and fauna, as allowed by law and using currently recommended best management practices upon approval from Grantee. Grantor shall have the right to remove native vegetation from the Developed portion of the Property generally and on the Beach-Dune System only when such removal would enhance the Conservation Purposes or to trim for maintenance of scenic views so long as the structure and stabilization of the Beach-Dune System is not negatively impacted.
- F. **Recreational Activities.** The right to use the Property for all recreational activities that are not directly prohibited or otherwise inconsistent with the Conservation Purposes.⁶³
- G. **Structural Maintenance.** The right to maintain, repair, and reconstruct existing buildings, fences, roads, paths, trails, walkways, boardwalks, dune crossovers, drainage improvements, and other structures on the Property as depicted in the Baseline Documentation, and as authorized by law.
- H. **Mortgages and Liens.** The right to use the Property as collateral to secure the repayment of debt, provided that any lien or other right granted for such purpose, regardless of the date, is subordinate to Grantee's rights under this Easement. Under no circumstances may Grantee's rights be extinguished or otherwise affected by the recording, foreclosure, or any other action taken concerning any subsequent lien or other interest in the Property.⁶⁴
- I. **Taxes.** The right to contest taxes, tax appraisals, tax assessments, and other charges on the Property.

ARTICLE VII. DEFAULT AND REMEDIES

⁶² Florida Administrative Code Rule 62B-34 (2016) outlines the general permits required for activities seaward of the coastal construction control line. These types of activities will be governed by state and federal law as well.

⁶³ If there are certain recreational activities in which the Property Owner regularly engages, they may be explicitly included in this provision to ensure that the Property Owner will be able to continue partaking in these activities.

⁶⁴ This provision explicitly allows the Property Owner to use the Property as collateral to secure a mortgage or other lien. However, the interest in the Property created by the lien should be subordinate to the interests of the easement holder in order to ensure the permanency of the conservation easement.

- A. **Notice, Default, and Remedies.** If Grantee determines that Grantor is in violation of the terms of this Easement, or that a violation is threatened, Grantee shall deliver written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. If the violation involves injury to the Property resulting from any use or activity inconsistent with the Conservation Purposes, the Grantor will be required to restore the portion of the Property so injured at Grantor's expense upon written demand by the Grantee.

Grantor shall be in default if Grantor:

- i. Fails to cure the violation within thirty (30) days after delivery of Grantee's notice of violation;
- ii. Under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing such violation within the 30-day period; or
- iii. Fails to diligently continue to cure such violation until finally cured.

In the event of Grantor's default, Grantee may, in Grantee's sole discretion, bring an action at law or in equity in a court of competent jurisdiction seeking any or all of the following remedies:

- i. To enforce the terms of this Easement;
- ii. To enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction;
- iii. To recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Purposes protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values; or
- iv. To require the restoration of the Property to the condition that existed prior to any such injury.

In the case that any litigation, arbitration, or mediation relating to this instrument arises and Grantee is the prevailing party, Grantee shall recover its reasonable attorney's fees and costs from the other party for all matters, including, but not limited to, appeals.

Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Purposes of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.⁶⁵

⁶⁵ Treasury Regulations require that a conservation easement contain an explicit statement of the easement holder's right to enforce the terms of the conservation easement. This provision underscores that right and lays out the procedures for addressing a violation of the terms of the conservation easement. With regard to the types of legal redress discussed in this provision, at common law there were two types of legal proceedings: actions at law and

- B. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.⁶⁶
- C. **Waiver of Certain Defenses.** Grantor hereby waives any defense of estoppel, adverse possession, or prescription.⁶⁷
- D. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's reasonable control, including, without limitation, negligent or wrongful acts by third parties, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.⁶⁸
- E. **Hold Harmless Provisions.** Grantor shall retain all responsibilities and shall bear all costs and liabilities of any nature related to the ownership, operation, upkeep, improvement and maintenance of the Property. Grantor and Grantor's agents, members, employees, and guests shall hold Grantee and Grantee's agents, members, employees, and guests harmless against all claims resulting from or in any way associated with this Easement.⁶⁹

actions in equity. Actions at law generally seek monetary damages while actions in equity generally seek injunctive relief (a court order act or prohibition). With regard to injunctions, an *ex parte* injunction is an order entered on behalf of one party without notice or input from the other party and is generally issued in emergency circumstances.

⁶⁶ Easement holders such as land trusts and government organizations often operate with limited budgets and limited resources. As such, it may not be feasible to respond to every minor violation of a conservation easement with legal action. This provision gives the easement holder the discretion to immediately pursue enforcement of a violation or delay enforcement as they see fit without forfeiting the right to enforce the breach at a later date.

⁶⁷ This provision is intended to eliminate traditional defenses to enforcement of private restrictions on land. This ensures that the public interest served by the conservation easement will be protected even if the easement holder is not diligent in their stewardship of the conservation easement.

⁶⁸ "Force Majeure" or "Acts of God" clauses limit a Property Owner's liability in situations where an event completely beyond the Property Owner's control, such as a natural disaster, occurs, that damages the Property. In this context, a Property Owner will not be held responsible for damage to the Property caused by a hurricane that might have substantial erosive impacts.

⁶⁹ The purpose of this provision is to ensure that none of the liability associated with property ownership is shifted to the easement holder based on their interest in the conservation easement. Since this conservation easement does not require the easement holder to conduct any type of obligatory land management activity on the Property, the Property Owner is entirely responsible for the state of the property and will therefore assume the associated risks. This provision underscores Fla. Stat. §704.06(10) which states that the acceptance of rights by the easement holder does not subject them to liability for any damage or injury that may be suffered by any person on the Property or as a result of the condition of the Property encumbered by a conservation easement. This provision does not increase the risk assumed by the Property Owner; it only eliminates the risk borne by the easement holder.

ARTICLE VIII. ADMINISTRATIVE PROVISIONS

- A. **Costs and Liabilities.** 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. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.⁷⁰
- B. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory written evidence of payment upon request. Grantee is authorized, but in no event obligated, to make or advance any payment of taxes, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and shall then be entitled to reimbursement by the Grantor plus interest at the maximum rate allowed by law.⁷¹
- C. **Amendment.** Grantee and Grantor may, upon agreement of both parties, amend this Easement to enhance the Property's Conservation Values or add to the restricted property by an amended deed of easement, provided that no amendment shall:
- i. Affect this Easement's perpetual duration;
 - ii. Conflict with or be inconsistent with the Conservation Purposes of this Easement;
 - iii. Reduce the protection of the Conservation Values;
 - iv. Affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land;"
 - v. Affect the status of Grantee as a "qualified organization" or "eligible donee;" or
 - vi. Create an impermissible private benefit or private inurement in violation of federal tax law.

In the case that an amendment is requested by the Grantor, the Grantee reserves the right to require compensation for the actual and reasonable expenses, including those of its staff associated with processing the amendment, and to require a stewardship fee in accordance with the policies of the Grantee at the time the amendment is proposed. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded in the Clerk's Office of _____⁷² County, Florida.⁷³

⁷⁰ Some conservation easements are structured in such a way that an easement holder adopts specified financial and management responsibilities on and over a property. This structure allows the Property Owner to retain maximum ownership over the Property with regard to both autonomy and financial obligation. As such, this provision explicitly states that the financial costs and obligations related to the Property are the sole responsibility of the Property Owner.

⁷¹ Since conservation easements are an interest in real property, some jurisdictions shift a portion of tax liability to the easement holder. While that is not the case in Florida, this provision underscores the Property Owner's obligation to pay all taxes on the Property. Additionally, this provision allows (but does not obligate) the easement holder to pay delinquent taxes on the Property in order to avoid the placement of a tax lien on the Property, then seek compensation for the paid taxes from the Property Owner.

⁷² This should reflect the county in which the Property is located.

⁷³ As perpetual restrictions on property, conservation easements are supposed to remain unchanged in a rapidly changing world. Traditionally, the practice has been to include provisions in conservation easements that allow for

- D. Termination and Proceeds.** This Easement constitutes a real property interest immediately vested in Grantee, the fair market value of which is determined by subtracting the fair market value of the Property immediately after this Easement from the fair market value of the Property immediately before this Easement. If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Upon any sale, exchange, or involuntary conversion by exercise of the power of eminent domain or otherwise of all or any portion of the Property subsequent to such termination or extinguishment of this Easement, Grantee shall be entitled to receive the cash proceeds according to Grantee's proportional interest in the Property, as determined and required by Treasury Regulations §1.170-A-14(g)(6)(ii), unless such proceeds may be provided or calculated otherwise by Florida law at the time. Grantee shall use all such proceeds in a manner consistent with the Conservation Purposes of this Easement. Grantor believes that any changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability of Grantor to conduct or implement any or all of the uses allowed under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.⁷⁴
- E. Assignment.** This Easement is transferable by Grantee without Grantor's prior consent. Grantee may assign its rights and obligations under this Easement only to a nonprofit organization or a governmental body or agency whose purposes include the conservation of land or water areas or the preservation of sites or properties as provided by Florida law. As a condition of such transfer, Grantee shall require that the Conservation Purposes this grant is intended to advance will continue to be carried out.⁷⁵

an amendment to the conservation easement upon mutual agreement by both parties so long as the amendment either corrects a previous oversight or increases the conservation values. Recently, however, increased instances of fraud involving conservation easements have caused the IRS to become suspicious of conservation easements that contain amendment provisions. If the Property Owner has not elected to pursue a federal income tax deduction, there is no issue with the inclusion of an amendment provision. If the Property Owner has elected to pursue a federal income tax deduction, an attorney with expertise in conservation easement law should be consulted regarding the inclusion of an amendment provision.

⁷⁴ While conservation easements are intended to be perpetual interests and the public interests that they protect support their preservation and protection, there are limited circumstances in which a conservation easement may be terminated. The Treasury Regulations state that a conservation easement may be extinguished by judicial proceedings if an unexpected change in the conditions surrounding the Property makes the continued use of the Property for conservation purposes impossible or impracticable. In the interest of continuing to protect the public policy for which the conservation easement was originally created, the Treasury regulation states that the easement holder can use the proceeds from the subsequent sale of the Property in a manner that is consistent with the purposes of the original conservation easement. This provision ensures that the easement holder receives these funds.

⁷⁵ This provision allows the easement holder to transfer their interest in the easement to another qualified organization. The Treasury Regulations require that as a condition of transfer, the new easement holder continue to serve the conservation purposes. This would allow a land trust such as Alachua Conservation Trust to acquire a coastal conservation easement initially, then transfer it to another easement holder located closer to the Property. Additionally, this provision would allow the easement to continue to exist and be enforced by another organization in the event that enforcement by the original easement holder was rendered impossible.

- F. **Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement into any deed or other legal instrument by which Grantor divests any interest in the Property, including, without limitation, a leasehold interest. Specifically, in any such subsequent transfer, Grantor shall abide by the requirements of the Marketable Record Title Act (Florida Statutes Chapter 712), or any other similar law or rule, in order to preserve this Easement in perpetuity. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity or priority of this Easement or limit its enforceability in any way.⁷⁶
- G. **Non-Merger.** If the same owner holds the fee interest in the Property and this Conservation Easement, the Conservation Easement shall not merge into the fee, and the terms of this Conservation Easement shall survive as perpetual restrictions on the use of the Property.⁷⁷
- H. **Notice.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed to the parties as set forth above, or to such other addresses such parties may establish in writing to the other.⁷⁸
- I. **Recordation.** Grantee shall record this instrument in a timely fashion in the official records of _____⁷⁹ County, Florida, and may re-record this instrument, or notice thereof, at any time as may be required to preserve its rights in this Easement.⁸⁰
- J. **Controlling Law; Venue.** The laws of the State of Florida shall govern the interpretation and performance of this Easement. Proper venue for any litigation arising out of this instrument will be in _____⁸¹ County, Florida and nowhere else.⁸²

⁷⁶ Recording a conservation easement in the appropriate public record creates a legal presumption of notice of the existence of the restriction on the Property. Despite that fact, the existence of a conservation easement can be easily overlooked if thorough title research has not been conducted, which can lead to an ill-informed landowner breaching the terms of a conservation easement that they did not know existed. This provision seeks to remedy that issue by requiring that the conservation easement be incorporated into any legal instrument that transfers an interest in the Property. Furthermore, this provision contains a savings clause which explicitly states that the conservation easement will remain in effect even if a landowner neglects to include the conservation easement in an instrument that transfers an interest in the Property.

⁷⁷ In property law, the Merger Doctrine states that an easement generally will be extinguished if the owner of the dominant estate becomes the owner of the servient state or vice versa. Generally speaking, this would mean that if at some point in the future, an easement holder received the underlying fee (the Property Owner's interests), the conservation easement would be extinguished. Here, as in many situations, conservation easements are treated differently than other easements. Since the application of the Merger Doctrine would extinguish the conservation easement and thus negate the underlying public policy benefit that it served, it is typically not applied to conservation easements.

⁷⁸ Several provisions of this conservation easement require that one party provide the other party with notice before undertaking a certain activity. This provision lays out the manner in which notice is to be provided. The Internal Revenue Service requires that Property Owners *notify* the easement holder before they exercise certain reserved rights on the Property that may potentially pose a threat of harm. A conservation easement would offer more protection if the Property Owner was required to seek *approval* from the easement holder before undertaking these activities. This practice is often utilized in conservation easements, but creates an additional administrative burden on the easement holder.

⁷⁹ This should reflect the county in which the Property is located.

⁸⁰ Fla. Stat. §704.06(5) requires that all conservation easements be recorded in the same manner as any other instrument affecting title to real property. Recording the conservation easement in the appropriate public record provides constructive notice of its existence to any potential subsequent Property Owners.

- K. **Applicability of Other Laws.** Nothing herein shall be construed to supersede or exempt the Property from the application of laws and regulations affecting the use of the Property, or to permit any activity otherwise prohibited by existing or future laws and regulations imposed by any federal, state, or local government or governmental agency having jurisdiction over the Property. In the event that municipal regulations exist that govern the Property that are more restrictive or more protective of the Conservation Purposes than the terms of this Easement, then those regulations are deemed to be controlling. In the event that municipal regulations exist that govern the Property that are less restrictive or less protective of the Conservation Purposes than the terms of this Easement, then the terms of this Easement are deemed to be controlling.⁸³
- L. **Interpretation.** This Easement shall be liberally construed to effect the Conservation Purposes of this Easement and the policy and purpose of Florida Statute §704.06. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Conservation Purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.⁸⁴
- M. **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, 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 thereby.⁸⁵
- N. **No Forfeiture.** Nothing contained herein will result in a forfeiture of this Easement or reversion to Grantor of any rights conveyed herein.⁸⁶
- O. **Joint Obligation.** The obligations imposed by this Easement upon Grantor shall be joint and several.⁸⁷

⁸¹ This should reflect the county in which the Property is located.

⁸² Many common law principles regarding property favor the unrestricted use of private property. This provision ensures that the interpretation of the easement will be governed by the laws of the state of Florida, which explicitly give conservation easements legal power and protect the public policy benefits that they offer.

⁸³ A coastal conservation easement may contain some provisions that address matters already governed in some way by municipal or state regulation. This provision outlines how to address these situations. By way of illustration, this conservation easement contains a provision that addresses sea turtle friendly lighting, which is regulated at the county level in many Florida counties. If the provisions contained in the easement are more protective than the ordinance, then the easement is deemed to be controlling. If the ordinance is more protective, then the ordinance is deemed to be controlling. This ensures that all regulations are being followed and that the highest possible level of protection is offered.

⁸⁴ As a general rule, common law regarding property tends to disfavor restrictions on property and support a landowner's right to use their land freely. This provision ensures that if a provision in this conservation easement were to be disputed, the interpretation used would further the Conservation Purposes of the conservation easement, rather than the common law unrestricted use of property.

⁸⁵ Within the rules of legal construction, a severability clause allows a certain provision of a contract to be ignored if it is found to be invalid or unenforceable, while the remainder of the contract remains in tact. With regard to conservation easements, this means that if a court were to determine that a certain provision is unenforceable, then only that provision would be disregarded and the remainder of the conservation easement would remain in place.

⁸⁶ A non-forfeiture clause is generally required in order to enable title insurers to provide coverage to an easement holder.

P. **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 as a servitude running in perpetuity with the Property.⁸⁸

Q. **Termination of Rights and Obligations.** A party's personal rights and personal obligations under this Easement terminate upon valid transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.⁸⁹

R. **Captions.** The captions 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.⁹⁰

S. **Schedule of Exhibits.**

EXHIBIT A. Legal Description of Property Subject to Conservation Easement

EXHIBIT B. Map from Baseline Documentation for Donated Easement

[Signature pages follow]

⁸⁷ This provision states that in a case in which the Property is owned by multiple Property Owners, the Property Owners are jointly and severally (collectively and individually) liable for any breach of the conservation easement, regardless of who actually caused the breach.

⁸⁸ This provision serves to underscore the fact that the conservation easement is binding upon the current Property Owner as well as any future Property Owners.

⁸⁹ This provision serves to prevent a situation wherein one Property Owner causes damage to the Property, then escapes liability when the Property is transferred to a new Owner. This provision explicitly states that a Property Owner who causes damages to a Property by breaching the Conservation Easement is still liable to rectify the breach even after the transfer of the Property.

⁹⁰ This is a common clause in contracts that is intended to clarify that the captions (the bold words and phrases at the beginning of each provision) are meant only to serve as a reference within the document and that only the actual substantive provisions contain controlling language.

GRANTOR SIGNATURE PAGE

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

Witnesses as to Grantor:

Grantor:

Signature

Signature

Print

Print

Signature

Print

STATE OF FLORIDA
COUNTY OF _____

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid, to take acknowledgments, appeared _____, who has produced a state identification (Driver License Number: _____), and who did not take an oath, and executed the foregoing instrument and they acknowledged before me that they executed the same for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 20__.

Notary Public Signature

Notary Public Stamp

GRANTEE SIGNATURE PAGE

Witnesses as to Grantee:

Grantee:

Signature

Signature

Print

Print

Signature

Print

STATE OF FLORIDA
COUNTY OF _____

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid, to take acknowledgments, appeared _____, who has produced a state identification (Driver License Number: _____), and who did not take an oath, and executed the foregoing instrument and they acknowledged before me that they executed the same for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 20__.

Notary Public Signature

Notary Public Stamp

EXHIBIT A.
LEGAL DESCRIPTION OF PROPERTY SUBJECT TO EASEMENT

Parcel: _____

Sec-Twn-Rng: _____

Legal: _____

EXHIBIT B.
MAP FROM BASELINE DOCUMENTATION

<Baseline map showing boundaries>

APPENDIX B

- BIOPHYSICAL AND SOCIO-ECONOMIC RESEARCH -



Melissa K Hill, Project Coordinator, Alachua Conservation Trust

Martha Monroe, Professor, University of Florida School of Forest Resources and Conservation

Jen Lomberk, Staff Attorney, Alachua Conservation Trust
Director of Special Projects, Conservation Clinic at the University of Florida Levin College of Law

Tom Kay, Executive Director, Alachua Conservation Trust

Tom Ankersen, Director, Conservation Clinic at the University of Florida Levin College of Law

Less-Than-Fee Beachfront Acquisition Strategies to Protect and Enhance Sea Turtle Nesting Habitat in Florida: A Feasibility Study and Pilot Project

October 2017

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CHAPTER 2

- BIOPHYSICAL AND SOCIO-ECONOMIC RESEARCH -



Melissa K Hill, Project Coordinator, Alachua Conservation Trust

Martha Monroe, Professor, School of Forest Resources and Conservation

Jen Lomberk, Staff Attorney, Alachua Conservation Trust
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*Less-Than-Fee Beachfront Acquisition Strategies to Protect and Enhance Sea Turtle
Nesting Habitat in Florida: A Feasibility Study and Pilot Project*

July 2017

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Chapter Summary

This chapter of the *Less-Than-Fee Beachfront Acquisition Strategies to Protect and Enhance Sea Turtle Nesting Habitat: A Feasibility Study and Pilot Project* report covers the biophysical and socio-economic circumstances that were researched for this project.

The purpose of this portion of the project was to further understand single-family coastal homeowners' understanding of, attitude towards, motivations for, and interest in coastal conservation easements (CEs) to protect sea turtle nesting habitat. In addition, the research also sought to understand the target population's knowledge of and interaction with sea turtles, opinions and attitudes of coastal armoring, as well as geographic and demographic differences throughout the state of Florida. To accomplish this, a survey totaling 14-pages was sent to a random sample of 1,274 coastal homeowners throughout the state of Florida. A total of 425 surveys were returned, resulting in a 33% response rate. Once unusable surveys were removed, 373 surveys were analyzed (29%).

Survey findings suggest that coastal homeowners living within a mile of protected sea turtle nesting beaches hold high knowledge levels regarding sea turtles. Impacts of coastal armoring on sea turtle nesting or the appropriateness of coastal armoring for coastal properties did not have a consensus amongst coastal homeowners. Additionally, only a minority of survey respondents were familiar with conservation easements or their ability to protect sea turtle nesting habitat. Approximately 30% of respondents had interest to establish a conservation easement on their property.

Findings suggest that more education and information should be provided to acquaint coastal property owners with the concept of a coastal conservation easements. Thus, communicating clearly the purpose of CEs in both general structure and applicability for small parcels through further education for coastal property owners is recommended.

Due to the robust response rate and random selection of coastal homeowners, survey findings can be considered representative of 33% of the target population of 4,588 single family homeowners on sandy nesting beaches within a mile of a protected section of beach. Survey limitations include the unfamiliarity and confusion that exists regarding CEs in general.

A coastal CE is strong enough to ensure the preservation of sea turtle nesting habitat on privately owned property, but also flexible enough to fit the needs of both the individual property and the land itself. However, based on the research and survey findings in this chapter, if a statewide effort to protect nesting sea turtle habitat through conservation easements is to be pursued on a programmatic level it is recommended to continue the pilot project by focusing on residents that, consider their coastal parcel their main home; are without mortgage; hold high levels of sea turtle knowledge; reside at their property during sea turtle nesting season; know their beach's sea turtle monitor; do not intend to armor their property or have armoring on their property; are not motivated by receiving money for a CE; hold high level of interest in a CE; would like learn more about CEs; and reside near larger swathes of protected nesting beaches. Additionally, concentrating efforts on parcels in the target population that are of larger acreage for lower cost will also be beneficial if a formal program is desired.

Introduction

Florida holds 95% of the suitable sea turtle nesting habitat in the United States.¹ However, critical nesting habitat for these threatened and endangered species is being lost at high rates along Florida's coastline due to erosion and sea level rise, as well as human activities that are often determined by individual homeowners. Some of these activities that could be remedied through a CE include development projects, pollution, erosion, and coastal armoring.²

Through CE, together, the landowner and the conservation group can hold a commitment to protect important conservation values of a property while allowing the property owner to keep possession and use of the land.⁸ Unlike a typical CE on large properties, small coastal parcels will be a unique type of CE, that, prior to this project, have never explicitly protected sea turtle nesting habitat. CEs could be attractive to landowners who see themselves as good stewards of their lands, who wish to gain financial incentives from a CE, and who desire to protect sea turtle nesting habitat.

Marketing the opportunity of this legally binding agreement requires that we know something about the demographics and characteristics of the landowners who may be interested in this unique conservation tool. Not only do we need to know more about the language and concessions in the CE that would best meet their needs, but it would be beneficial to better understand the benefits and barriers landowners perceive to effectively attract interested landowners. The purpose of this project was to further understand single-family coastal homeowners' understanding of, attitude towards, motivations for, and interest in CEs to protect sea turtle nesting habitat. In addition, the survey also sought to understand the target population's knowledge of and interaction with sea turtles, opinions and attitudes of coastal armoring, as well as geographic and demographic differences throughout the state of Florida.

To research these questions, a statewide survey of single-family beachfront homeowners living within close proximity to protected nesting beaches was conducted.

Project Goal and Objectives

The project goal is to improve our understanding through survey research, to identify potential barriers, and to understand possible geographic differences of single-family coastal homeowners from the target population. The project is broken down into three main objectives:

1. Understand target population demographics
 - a. Age, Sex, Education, Employment, and Conservation Group Membership
 - b. Beach Use, Months at Property, and Frequency of Beach Visits
 - c. Property Type, Acreage, Assessed Value, Years of Ownership, Inheritance, Mortgage, and Loan
 - d. Acquaintance with Monitor, and Sea Turtle Interaction and Knowledge
2. Explore the target population's relationship with coastal armoring

¹ Turtle Expert Working Group. 1998. *An assessment of the Kemp's ridley (Lepidochelys kempii and loggerhead (Caretta caretta) sea turtle populations in the Western North Atlantic*. NOAA Tech. Memo. NMGS-SEFSC-409. 96pp.

² Mosier, A., & Witherington, B. (2000). *Documented effects of coastal armoring structures on sea turtle nesting behavior*. NOAA Technical Memorandum NMFS SEFSC, (477)

- a. Current and future status of their property
 - b. Attitudes
 - c. Perceived Control
3. Gauge the target population's relationship with CEs
 - a. Understanding and Attitudes
 - b. Perceived Control
 - c. Likelihood of Provisions, Motivators, and Interest

Methods

The project methods were divided into two phases. Phase I of the project was comprised of both a geospatial analysis of coastal Florida through Arc GIS, a mapping software, to identify the target population, and survey development. Survey development included interviews and pilot testing; extensive revisions to ensure construct and face validity of each question; and approval by the University of Florida Institutional Review Board (IRB # 201602013) to ensure quality and appropriate research methodology.

Phase II of the project involved implementation and survey analysis. The survey was implemented using the Dillman Methodology.³ In total, 1,274 property owners were sent an announcement of their selection on January 19, 2017, and the survey followed on January 30, 2017. Follow up mailings were sent to enhance response rate, and the survey closed on April 30, 2017. Data were compiled, checked, then analyzed with relevant statistical tests using SPSS, a statistical software.

Phase I

Phase I covers the geospatial analysis using Arc GIS and Google Earth to identify the target population of study and survey development.

Geospatial Analysis to Identify Target Population

A geospatial analysis utilizing Arc GIS was conducted to identify the target population for this study. An exploratory initial analysis of beachfront property types along the coast of Florida revealed that 61 property classifications exist on sea turtle nesting beaches. Of these different parcel classifications, the largest percent of acreage of these land use classification was "Condo Units" (65%), followed by "Single-Family" (16%), then "Vacant Residential" (6%). Due to the complex legal nature of conservation easements and the need for comprehensive consensus to the various provisions of the CE from the property owner(s), condominiums were excluded. Although undeveloped parcels can provide significant conservation value, single-family homes were chosen to be the focus of the target population because they more likely to have a resident who desires to establish coastal armoring to protect their home.

The target population for the study was further distilled to meet a search criteria that would ensure the greatest likelihood for feasibility of entering into a conservation easement as well as hold high levels of conservation value. Coastal properties were selected for the target population if all the following biophysical requirements were met:

³Dillman, D. A., Smyth, J. D., & Christian, L. M. (2014). *Internet, phone, mail, and mixed-mode surveys: The tailored design method* (4th ed.). Hoboken: John Wiley & Sons.

- a) the beach is a sea turtle nesting beach as defined by the FWC⁴
- b) the property falls in, or is within a mile on either side of a protected section of beach (i.e.- a wildlife refuge, state park, preserve, etc.) as identified by Florida Natural Areas Inventory⁵
- c) the land classification is a single-family residential or the equivalent in each county's zoning code ensuring condominiums, apartments, and businesses were excluded⁶

With these search parameters ArcGIS identified 7,650 parcels meeting these criteria. Then by hand-checking parcels using both GIS and Google Earth, properties were removed if:

- d) the property was a condo structure, duplex, or lacked a home/structure
- e) the parcel was split by a road thus placing the home landward of the road
- f) the homeowner was not in solo ownership of the beach (i.e., the beach/dune portion was owned by a HOA)
- g) the parcel did not include true beachfront property (i.e., the parcel was positioned behind beachfront homes but had a small access point to the beach itself)
- h) the owner's permanent address was listed as out of country

Using these additional constraints, the total number of parcels was refined to 4,588, and then grouped into seven different geographic regions. Geographic regions were created based on the combination of genetic subunit boundaries for green and loggerhead sea turtles, excluding the Dry Tortugas due its small and undeveloped nature.⁷ The seven geographic areas were the Northeast, Central East, Southeast, the Keys, Southwest, Central West, and Northwest.

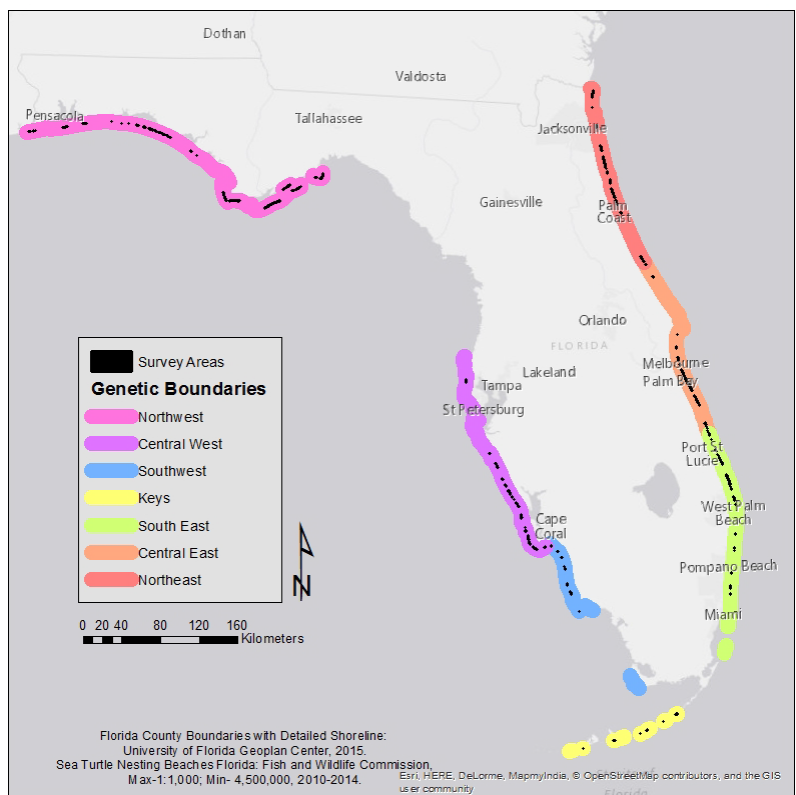


FIGURE 1 Survey areas and regions based on genetic subunit boundaries

⁴ Sea Turtle Nesting Beaches Florida: Fish and Wildlife Commission, Max-1:1,000; Min- 4,500,000, 2010-2014.
⁵ Florida Conservation Lands: Florida Natural Areas Inventory, 1:10,000, September 2016.
⁶ Florida Parcel Information: Southwest Florida Water Management District, Max-1:5,000; Min- 1:150,000,000, 2015.
⁷ S. Ceriani and A. Meylan, Florida Fish and Wildlife, personal communication, October 22, 2017

Using these distinct geographic areas, parcels were then sorted by geographic region and each parcel was assigned a unique randomly generated number. Next, based on these numbers, each geographic region was sorted in ascending order, and 1,274 parcels were selected to represent a proportional sample from each geographic region. The sample size of 1,274 landowners assumed a 28% response rate for an appropriate sample of 355 survey respondents and a confidence level of 95% at a 5% margin of error. Figure 1 shows the breakdown of the seven geographic areas and the surveyed areas.

Survey Development

The survey instrument was created based on recommended methodology. Development stages included interviews, pilot testing, and expert review.

Interviews

To help guide survey development, five qualitative interviews were conducted using qualitative interview guides.⁸ The interview guide was created based on questions from the survey instrument and modified as interview questions that allowed interviewees to “tell stories about experiences, relate memories, and offer reflections and opinions.”⁹ This guide underwent pilot testing and revisions by an expert panel from the University of Florida. Interviews were used to ensure question and topic validity of the survey, as well as check terminology used in the survey instrument. Two interviews were conducted in person, and three were conducted via phone. Interviews were performed between November 19, 2016 and December 16, 2016 ranging from 30 to 45 minutes. The interviewees included: one full time coastal resident, one sea turtle monitor, two part-time coastal residents, and one rental property owner. Two of the five property owners knew what a conservation easement was. These interviews provided valuable information regarding the questions used within this study regarding topics of beach/property, sea turtle nesting, CEs, and erosion/armoring.

Pilot Testing

Recommendations to pretest the survey instrument^{10,11} were followed through pilot studies. After initial survey questions were developed from relevant literature, a variety of experts within the field of natural resources, law, and social behavior were asked to review the draft survey and suggest additional items. Funders of the project and volunteer beach monitors were also asked to review the draft survey and make improvements. In total, six people pilot tested the survey. Two were experts in survey making, and four were coastal property owners. Once the surveys had been completed, participants were asked to provide feedback and clarification. Findings and suggested revisions from pilot testing were incorporated. Lastly, the survey was edited multiple times to fix errors and improve format.

⁸ Magnusson, E., & Marecek, J. (2015). Designing the interview guide. In *Doing Interview-based Qualitative Research: A Learner's Guide* (pp. 46-57). Cambridge: Cambridge University Press.
doi:10.1017/CBO9781107449893.005

⁹ Magnusson and Marecek 2015, p 47

¹⁰ Ajzen, I. 1991. "The theory of planned behavior." *Organizational Behavior and Human Decision Processes*, vol. 50, no. 2, 1991., pp. 179-211. doi:10.1016/0749-5978(91)90020-T.

¹¹ Dillman, D. A., Smyth, J. D., & Christian, L. M. (2014). *Internet, phone, mail, and mixed-mode surveys: The tailored design method* (4th ed.). Hoboken: John Wiley & Sons.

Expert Review

To determine face and content validity, relevancy, and clarity of the questions, the survey instrument was reviewed by a panel of experts. In addition, the survey underwent expert review and input from Florida Fish and Wildlife Conservation Commission, the Archie Carr Center for Sea Turtle Research, a panel of social scientists, the University of Florida Levin College of Law Conservation Clinic, and U.S. Fish and Wildlife Service. In total, the survey instrument underwent 14 rounds of formal revisions beginning in September 2016 and ending in January 2017.

Phase II

Phase II consisted of survey implementation and analysis of findings.

Survey Implementation

The sequence of the survey mailings followed the Dillman methodology of implementation.¹² The mailing timeline was as follows:

- January 19, 2017: Pre-notice postcard (APPENDIX A)
- January 30, 2017: Survey instrument (APPENDIX B)
- February 6, 2017: Reminder/thank you postcard (APPENDIX C)
- February 22, 2017: Replacement survey (APPENDIX D)¹³
- March 7, 2017: Final thank you/reminder postcard (APPENDIX E)
- April 30, 2017: Official close of survey

When selected property owners' mailings resulted in "Return to Sender" a replacement mailing was resent to the proper address or the property owner was replaced. Replacement property owners were selected using the same random stratified sampling methodology utilized in selecting the initial sample population, and the same timing sequence was utilized for all corresponding mailings. Updated addresses and replacement homeowners totaled 120 individuals. If mail was deemed unusable or was returned to sender on or after February 14, 2017, it was no longer replaced and the property owner was considered unreachable. In total, 72 or 5.7% of the sampled homeowners were considered "unreachable."¹⁴

Results

Study Response

1,274 surveys were mailed and 425 surveys were returned before the close of the study. This resulted in a 33% response rate. From the 425 received surveys, 13 were considered unusable due to the identifying number removed from the survey instrument. Additionally, surveys with less than 75% of the survey completed ($n = 39$) were also considered unusable due to item nonresponse. Thus, this analysis is based on a 33% response rate with 373 usable surveys.

¹² Dillman, D. A., Smyth, J. D., & Christian, L. M. (2014). *Internet, phone, mail, and mixed-mode surveys: The tailored design method* (4th ed.). Hoboken: John Wiley & Sons.

¹³ The only difference in the replacement survey was the cover letter seen in Appendix D.

¹⁴ If the returned mail was classified as "Temporarily away", "Deceased", or "No Mail Receptacle", then the homeowner was considered unreachable.

Regional Response

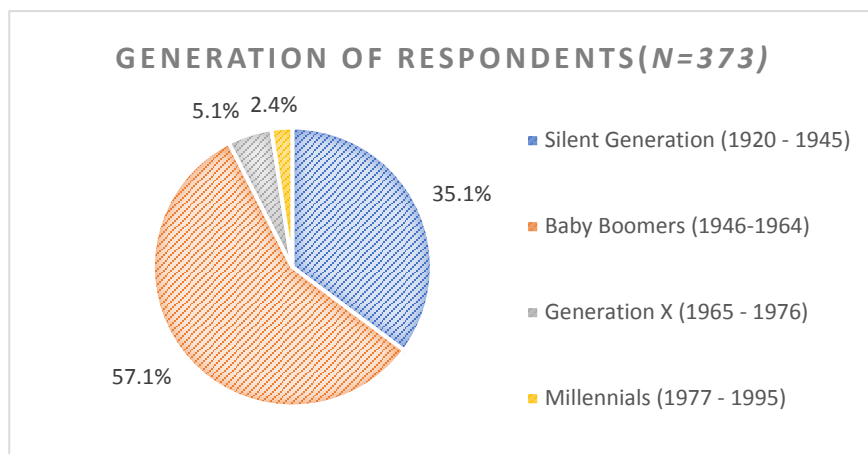
As previously mentioned, the target population was divided into 7 distinct geographic units (Northeast, Central East, Southeast, the Keys, Southwest, Central West, and Northwest). Table 1 shows the response rate of each geographic region compared to the population breakdown, which reveals that a similar response rate to population sample occurred.

Geographic Region	Sample		Population	
	<i>n</i>	%	<i>N</i>	%
Northeast	97	26.0	299	23.5
Central East	42	11.3	146	11.5
Southeast	25	6.7	121	9.5
Keys	7	1.9	32	2.5
Southwest	14	3.8	39	3.1
Central West	45	12.1	161	12.6
Northwest	143	38.3	476	37.4
Total	373	100.0	1274	100.0

Objective One

Understand target population demographics.

Age, Sex, Education, Employment, and Conservation Group Membership



Age:

Birth years of respondents ranged from 1920 to 1993, while the majority (53.6%) of people were Baby Boomers (1946-1964).

Sex:

The majority of participants were male ($n= 192, 53\%$), closely followed by female ($n=165, 45.6\%$), then other ($n= 1, 0.3\%$), and prefer not to say ($n= 4, 1.1\%$).

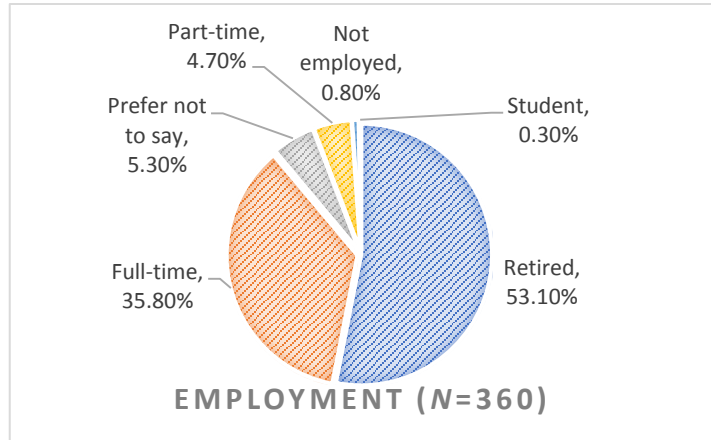
Education Level	<i>n</i>	%
Some high school or less	0	0.0%
High school graduate or GED	18	4.8%
2-year degree such as technical or community college	35	9.4%
College Bachelor's (4-year) degree	146	39.1%
Graduate degree (Master's, J.D., M.D. or PhD)	153	41.0%
Prefer not to say	13	3.5%
Nonresponse	8	2.1%
Total	373	100.0%

Education:

The majority of respondents held at least four-year degree, and the largest response was "Graduate degree" (41%).

Employment:

Approximately one-half of the respondents were retired (53.1%), and one-third of property owners worked full-time (36%).



Conservation Group Membership:

Approximately one-fourth of respondents reported being a member of at least one state/local/national conservation group (n=93, 25.6%), while the remaining respondents answered no (n=270, 74.4%).

Beach Use, Months at Property, and Frequency of Beach Visits

Question: *How important is it for you to do the following activities on your beach? (1 = “Not at all important” and 5 = “Very Important.”)*

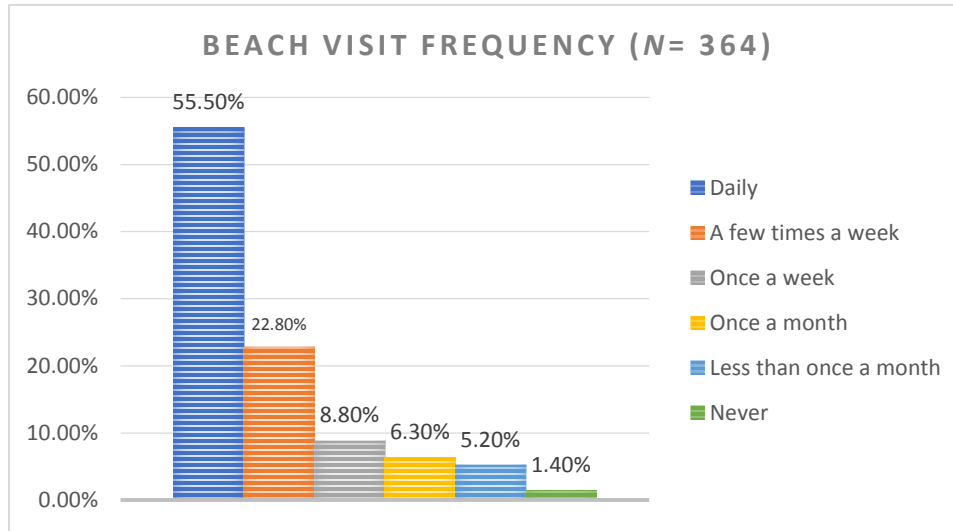
Answer: As seen in Table 3, the activity with the highest mean level of importance for beachgoers was “Walk or jog” followed by “Observe wildlife (birds, dolphins, etc.)”. The activity with the lowest mean level of importance was “Light a fire (grills, campfires, bonfires, etc.)”. The largest free response for the “Other” activity was “Beach Combing.”

Activity	Mean level of importance	N
Walk or jog	4.59	365
Observe wildlife (birds, dolphins, etc.)	4.52	360
Sit or Sunbathe	4.15	364
Pick up trash	3.96	369
Walk a pet	3.90	363
Look for sea turtles or evidence of sea turtles	3.76	370
Set up furniture (chairs, umbrellas, etc.)	3.51	369
Build sandcastles or dig in the sand	3.23	369
Fish	3.03	366
Launch a watercraft	2.53	360
Light a fire (grills, campfires, bonfires, etc.)	2.25	366
Drive a vehicle (car, ATV, golf cart, etc.)	2.16	366
Light fireworks	1.98	360
Other	4.92	50

Question: *During 2016, in what months did you reside or visit this property?*

Answer: 44% of respondents indicated that they resided at or visited the property for all twelve months of 2016, and the average was 8.21 months (SD= 4.040). Additionally, during sea turtle nesting season (March - October) 46.1% of coastal home owners visit or reside at their property all 8 months, and the average was 5.38 months (SD= 2.812).

Question: While residing or visiting your property, about how often did you or your family visit your beach?



Answer: The majority (55%) of coastal property owners responded that during the time they reside at or visit their property, they visit the beach “Daily”.

Property Type, Acreage, Assessed Value, Years of Ownership, Inheritance, Mortgage, and Loan

Table 4 Respondent Acreage by Region (n=373)

Region	Sum	Mean	SD
SW	15.5	1.11	1.452
SE	27.0	1.08	1.469
CW	36.1	0.80	0.472
NW	102.8	0.72	1.242
CE	29.9	0.71	0.642
Keys	4.3	0.62	0.189
NE	47.2	0.49	0.635
Total	262.9	0.70	1.004

Acreage:

The average size of the respondents’ properties was .705 acres (SD=1.00). The smallest parcel was .075 acres, and the largest 12.12 acres. Table 4 shows the geographic breakdown of respondent’s properties in order of mean acreage from largest to smallest.

Assessed Value:

Overall, the mean assessed value of respondents’ parcels was approximately \$1.2 million (n=373, SD= ~2.16 MM). The lowest assessed value for a parcel was \$62,160, and the highest price was \$34,730,616. By region, the highest mean price per parcel was in the Southeast and the lowest in the Northwest. Table 5 shows geographic breakdown in order of mean assessed property value.

Table 5 Respondent 2015 Assessed Property Value (n=373)

Region	Sum	Mean	SD
SE	~109 MM	~4.3 MM	~6.8 MM
SW	~40 MM	~2.9 MM	~2.1 MM
CW	~69 MM	~1.5 MM	~ 1 MM
Keys	~6 MM	~885 K	~449 K
CE	~37 MM	~871 K	~1.2 MM
NE	~77 MM	~797 K	~829 K
NW	~110 MM	~769 K	~634 K
Total	~449 MM	~1.2 MM	~2.2 MM

Question: What do you consider your property to be?

Answer:

“Main home” was selected by 39.5% of respondents ($n=146$), 24.6% selected “Rental property” ($n= 91$), 18.2% chose “Other” ($n= 68$), and 17.6% chose “Retirement home” ($n=65$). For those that considered their coastal property a “Rental property”, the majority of reported rental properties were in the Northwest region ($n=64$, 70.3%), followed by the Northeast ($n=13$, 14.3%). The average number of rental days for these properties was 217 days ($SD= 93.48$), and ranged between 56-365 days.

Ownership and Inheritance:

The mean length of ownership for respondents was 19.3 years ($n= 365$, $SD= 14.95$). The minimum years of ownership was 1.5 years, and the maximum was 85 years. Just less than half of respondents said they planned to pass their property on to an heir ($n= 166$, 45.3%). There is a positive correlation between years owned and intention to leave the property to an heir.

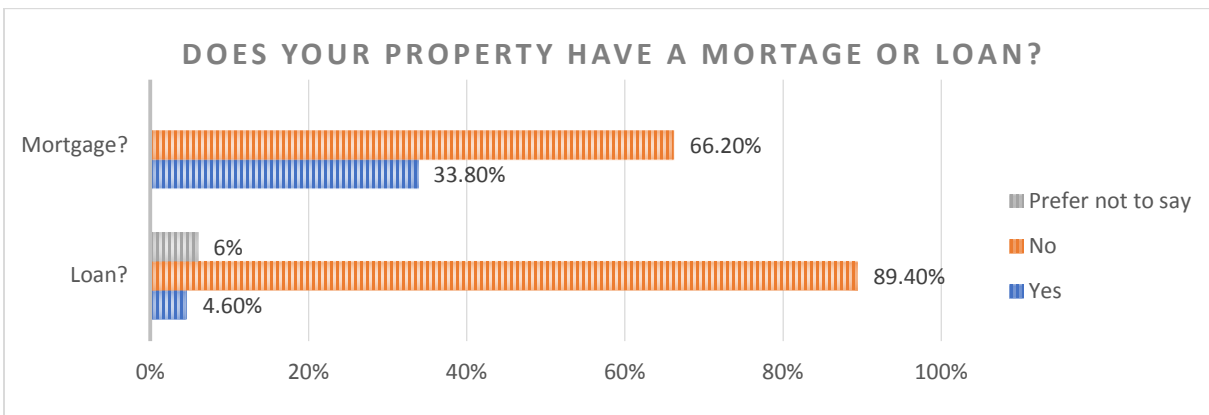
Table 6. Inheritance by ownership quartiles ($N=360$)

Do you intend to pass the property on to your heirs?	Years of Ownership								Total	
	1.5 – 7 yrs		7.1- 17 yrs		17.1 – 25.5 yrs		25.6 – 85 yrs			
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
Yes	41	41.8	30	34.9	38	43.7	54	60.7	163	45.3
Maybe	48	49.0	35	40.7	35	40.2	25	28.1	143	39.7
No	9	9.2	21	24.4	14	16.1	10	11.2	54	15.0
Total	98	100.0	86	100.0	87	100.0	89	100.0	360	100.0

Note. Chi-square = 20.395, df = 6, $p = .002$

Mortgage and Loan

Over half of respondents (66.2%) reported not having a mortgage on their property, which helps simplify the CE process. Additionally, the majority (89.4%) of respondents reported not having a loan on their property when asked, “Does this property have any other loan on it?”

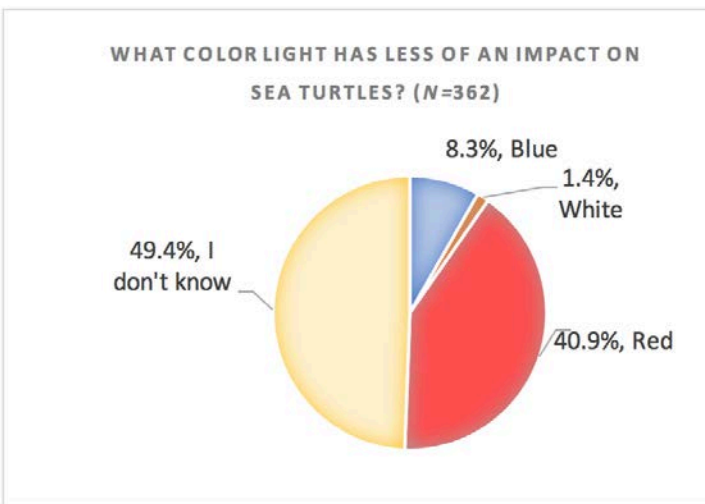
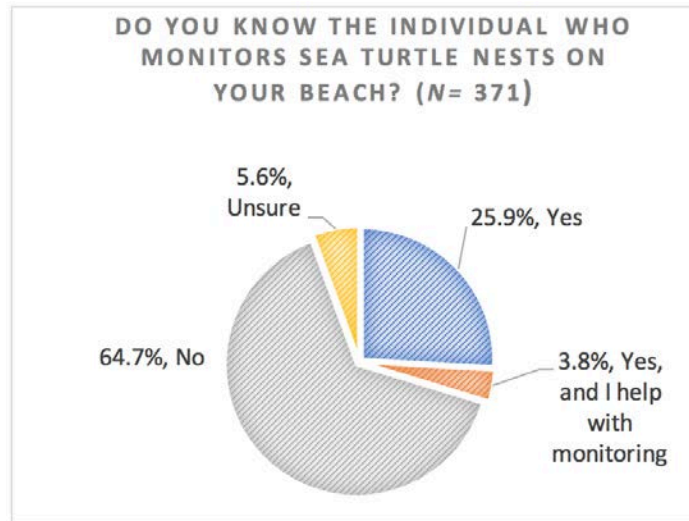


Sea Turtle Interaction and Knowledge

Section II of the survey sought to understand coastal property owners' interactions with and knowledge of sea turtles. Knowledge was gauged with four true or false questions and two multiple choice questions. Interactions were determined by common experiences with sea turtle interaction on their beach, and by if they knew their beaches sea turtle monitor.

Question: *Do you know the individual who monitors sea turtle nests on your beach?*

The majority of people responded that they did not know the individual who monitors their beach (64.7%), while close to a third of respondents either knew the monitor (25.9%) or helped with monitoring (3.8%).



Question: *What color light has less of an impact on sea turtles? (Correct answer: Red)*

Most respondents (60.3%) answered incorrectly, choosing "I don't know" "Blue" and "White." The correct answer, "Red," was selected by 40.9% of respondents.

True or False Questions: *Please mark each statement either True, False, or I don't know.*

- **Female sea turtles tend to return to nest on the same beach or the neighboring beach from which they hatched.** (Answer: True)

81.5% of respondents answered this question correctly with "True" (n= 304).

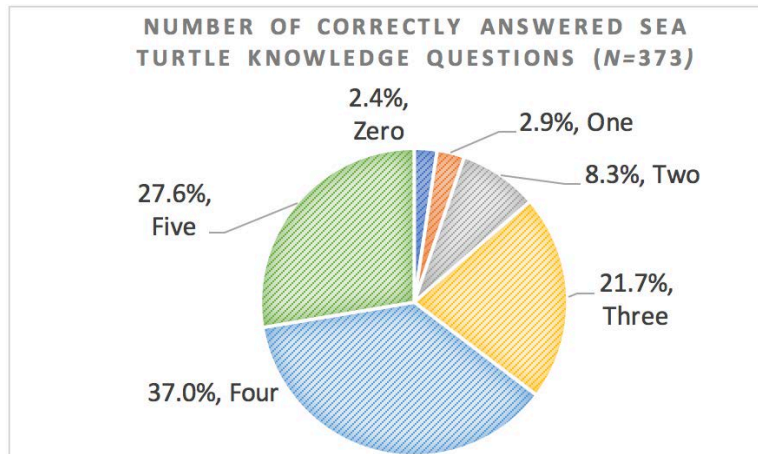
- **Brightly artificially-lit beaches discourage sea turtles from nesting.** (Answer: True)

The majority of respondents answered correctly with "True" (76.7%, n= 286)

- **Furniture left overnight on the beach can entrap sea turtles.** (Answer: True)
82.8% of respondents answered this question correctly with “True” (n=309).
- **Brightly artificially-lit beaches assist baby sea turtles to reach the ocean once they hatch.** (Answer: False)
The majority of respondents answered correctly by selecting “False” (90.1%, n= 336).

Aggregate Knowledge of Sea Turtles:

Correct answers to the lighting knowledge question and the four true or false questions were aggregated to determine the percent of respondents who properly answered all five questions. Just over a quarter of respondents answered all five questions correctly (27.6%).



Free Response Comments:

While most respondents answered at least 80% of the sea turtle knowledge questions correctly, free response questions reveal there is still misunderstanding and knowledge gaps for “why” these questions are important, as well as basic sea turtle nesting facts. Additionally, multiple free responses called into question permit holders use of ATVs, sea turtle friendly lighting, and nest management for predators. Some of these free responses can be seen below:

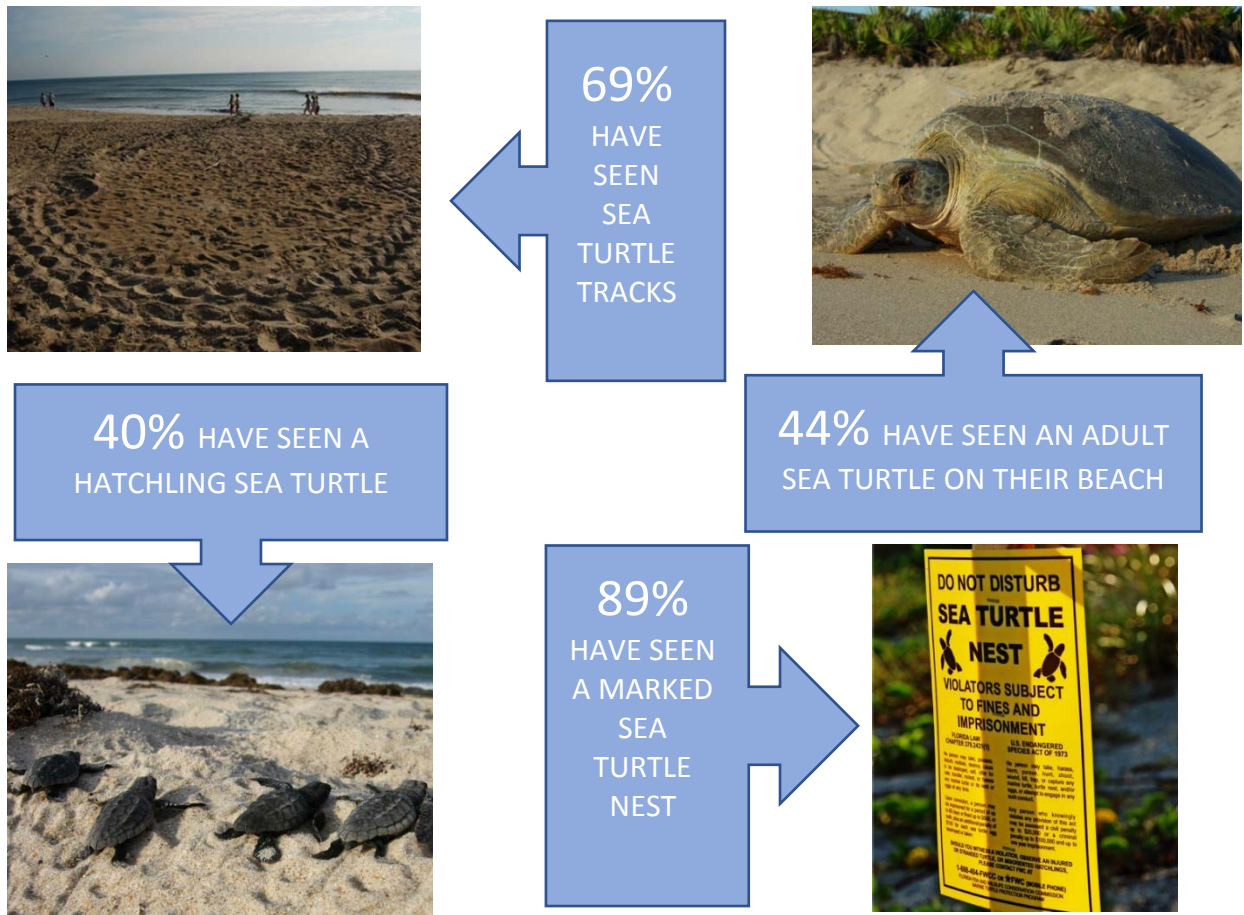
“Protection carried to an "extreme" with requests to shut off security property lighting. The chances of a sea turtle being able to see over a 6-8 ft. dune is like a human being able to see over a high-rise building...”

“Why don’t you gather all the eggs in one place and protect that way? So many eggs are washed away, eaten by animals etc. Need to do more education with homeowners. Don’t be turtle naïve!”

Sea Turtle Interaction:

To learn what interactions coastal home owners have had with sea turtles, survey takers were asked to select what they have seen on their beach from a list of options. These options included “Sea turtles,” “Marked sea turtle nest,” “Hatchling sea turtle,” and “Sea turtle tracks.” The most common interaction for coastal homeowners was seeing a marked sea turtle nest (89%). The least common interaction (40%) was seeing a hatchling sea turtle (Figure 2).

FIGURE 2 COASTAL PROPERTY OWNER SEA TURTLE INTERACTIONS (N= 373)



Objective Two

Objective two sought to explore the target population’s relationship with coastal armoring.

Before answering Section III questions survey takers were provided with a general definition of coastal armoring:

“Coastal armoring refers to physical structures such as sloping mounds of rocks (revetments); vertical seawalls made from wood, concrete, or steel; and geotubes placed seaward of a home to prevent erosion.”

Current and Future Status of Property

Presence of Coastal Armoring

Of those surveyed, 81% (*n*= 299) of homeowners reported not having coastal armoring, while the remaining 19% had some type of coastal armoring (*n*= 68).

Table 7 Geographic region by presence of coastal armoring on property (*N*=367)

Geographic region	Armoring on property				Total	
	Yes		No		<i>n</i>	%
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
Northeast	22	22.9%	74	77.1	96	100
Central East	5	12.2	36	87.8	41	100
Southeast	9	37.5	15	62.5	24	100
Keys	2	28.6	5	71.4	7	100
Southwest	3	21.4	11	78.6	14	100
Central West	7	15.9	37	84.1	44	100
Northwest	20	14.2	121	85.8	141	100
Total	68	18.5	299	81.5	367	100

Question: “Are you currently considering installing coastal armoring on your property?”

Answer: For those that did not report having coastal armoring on their property, 82.7% responded “No.” 5.8% responded “Yes” and 11.6% answered “Unsure.”

Question: “Do the parcels on either side of your property have coastal armoring?”

Answer: Most respondents answered “No, neither” (74.8%, *n*=279). Other responses included, “Yes, one” (8.8%, *n*=33), “Yes, both” (9.4%, *n*=35), and “Unsure” (4.6%, *n*=17).

Attitude

Questions Regarding Attitudes:

Four questions gauged respondent attitude regarding the likelihood of coastal armoring doing a good job of providing certain benefits. A 1-5 scale was used where 1 represented “Extremely unlikely” and 5 represented “Extremely likely.” The mean answer on most choices fell between “Unlikely” and “Neutral.” The lowest mean of 2.38 was for the likelihood to “... protect sea turtle nesting habitat.” The mean response to “...protect your house from erosion damage” was at 3.05, or “neutral.” Although the averages for these questions gauging attitude toward coastal armoring all fell close to “Neutral,” it should be noted that differences of opinions exist regarding the impact coastal armoring has on sea turtle nesting habitat, erosion, and effectiveness. The following free response answers further revealed these frustrations and confusion:

Table 8 Questions representing attitude of coastal armoring (*N*= 314; Question 3.5; Scale: 1-5)

What is the likelihood that coastal armoring on your property is a good way to...	<i>M</i>	<i>SD</i>
... protect your house from erosion damage.	3.05	1.546
... keep your beach looking similar to the way it does today well into the future.	2.54	1.459
... protect your neighbor’s property.	2.53	1.424
... protect sea turtle nesting habitat.	2.38	1.375
<i>Note.</i> Valid cases (<i>n</i> =314, 84.2%); excluded cases (<i>n</i> =59, 15.8%)		

“Turtles have nested near our armored seawall- so it seems the wall is not an impediment to some turtles.”

“IT WORKS!!! If we were told prior to purchasing our property we were unable to protect it why would anyone buy beach front land! Beach front owners want to protect their homes and beach yet have no decision-making capabilities.”

“It is total BS- lived on the beach 30 years and the corps of engineers has done more damage to our property than coastal armoring. Sea turtles have become top priority but I don't see them paying taxes!!”

“I am not aware of the positive or negative effects of coastal armoring. This survey is the first I have heard of it. I will research it further.”

“Florida wrongly decided to permit construction on dunes and should completely turn this policy around and only continue to do so under the strictest of standards. Coastal armoring should never be an option to correct poor planning.”

Perceived Control

To gauge respondents’ sense of control for coastal armoring, questions with 5-point scales ranging from negative (1) to positive (5) were averaged. The mean answer on most choices fell near 2. The lowest mean answer for likelihood of new or additional coastal armoring was 1.94, or “Unlikely.”

Table 9 Questions representing sense of control for coastal armoring ($N= 326$; Questions: 3.6 – 3.9)

Survey Questions	<i>M</i>	<i>SD</i>
To what extent do you agree that the decision to install coastal armoring is in your control?	2.75	1.429
To what extent do you believe that your property should have coastal armoring?	2.44	1.636
How feasible is it for you have coastal armoring on your property?	2.29	1.429
How likely is it that you will have new or additional coastal armoring installed?	1.94	1.181

Note. Valid cases ($n=326$, 87.4%); excluded cases ($n=47$, 12.6%)

Objective Three

Objective three sought to gauge the target population’s relationship with CEs. Sections V-VI of the survey sought to understand coastal property owners’ understanding, interest, sense of control, and attitudes toward a CE. Before answering questions, survey takers were provided with this definition of conservation easement:

“A conservation easement (CE) is a voluntary, legally binding agreement between a landowner and a nonprofit conservation organization. The purpose of a CE is to conserve certain values of that property, protect natural habitat, or conserve scenic values regardless of who may purchase or inherit the land in the future. A CE can provide financial incentives such as deductions or exemption in federal, state or local taxes.

With a CE, landowners voluntarily donate or sell their right to perform activities, such as those listed in Section V of this survey, that they believe will enhance the conservation value of their property.

Each CE agreement is customized to meet the landowner’s goals, is completely voluntary, and if desired, can protect the land’s conservation values forever.”

Understanding and Attitudes

Question: “How well does the above definition match your understanding of a CE?”

Answer: Close to one-fourth of respondents answered with “Extremely well” (n= 88, 24.7%). Over one-half of the respondents selected “This is the first time I have heard of a CE” (n= 206, 57.9%). The remaining answered included, “Not at all” (n=9, 2.6%) and “Somewhat” (n= 53, 14.8%).

Survey takers were provided an opportunity to comment on the definition, further revealing differences in opinions over the acceptability of the provided definition. In general, confusion on the applicability and implementation of CEs on the coast, and misconceptions regarding land grabbing or governmental control existed. Some of these comments can be seen below:

“We don't need any more government or special interest group interference in our "quiet enjoyment" of our property.”

“I didn't need the state or any government agency having any control of any property I own.”

“Don't understand who would hold the easement.”

“We have used conservation easements for ranch property in Colorado. They definitely protect the land from building and provide tax incentives. There's not enough land between us and the beach to consider a CE.”

“Do I need to pay a lawyer to get this? Does someone help me get this? Do you feel that I would add or decrease value because of this CE?”

Questions Regarding Attitudes:

Five questions gauged respondent attitude regarding the likelihood of CEs to accomplishing certain goals using a 1-5 point scale where 1 represented “Not at all important” and 5 represented “Extremely important.” The mean answer on most choices fell between “Neutral” and “Important” showing a slightly positive average from survey takers. The strongest response (3.70) was for using a CE to “protect sea turtle nesting habitat.”

Table 10 Questions for attitude of CE (N= 342; Section 6.3; Scale 1-5)		
How important would it be to you to use a CE to...	M	SD
... help preserve the natural beauty of Florida beaches.	3.55	1.266
... ensure that my beach looks similar to the way it does today well in the future.	3.59	1.271
... protect sea turtle nesting habitat.	3.70	1.232
... be a good neighbor.	3.43	1.279
... save money on taxes.	3.42	1.319
<i>Note.</i> Valid cases (n=342, 91.7%); excluded cases (n=31, 8.3%)		

Perceived Control

Control Questions:

Table 11 Questions for control of CEs ($N= 336$; Questions: 6.5 – 6.8)

Survey Questions	<i>M</i>	<i>SD</i>
To what extent do you agree that the decision to establish a coastal CE on your property is in your control?	3.52	1.309
How likely is it that you would enter into a customizable coastal CE specific to your property?	2.40	1.242
How feasible is it for you to enter into a coastal CE? ¹⁵	2.25	1.148
To what extent do you believe that your property should have a coastal CE?	2.10	1.263

Note. Valid cases ($n=336, 90.1%$); excluded cases ($n=37, 9.9%$)

To gauge sense of perceived control of obtaining a CE, questions with corresponding 5-point scales ranging from negative to positive were averaged. The mean answer on most choices fell near 2, with the highest mean of 3.52 for agreement on having control to establish a CE on their property.

Likelihood of Provisions, Motivators, and Interest

Likelihood of Provisions Questions:

Respondents selected the likelihood of performing certain actions that are also potential coastal CE provisions. Options ranged from 1, “Very unlikely,” to 5 “Very likely.” For all provisions or actions to help protect both nesting and hatchling sea turtles, mean responses fell between “Likely” and “Very likely,” showing high response for sea turtle friendly actions. The highest mean was to bring back disposable items (4.82) followed by bring back beach furniture (4.74). The lowest mean was to choose not to build coastal armoring structures (4.01). The full list of provisions includes actions pertaining to coastal armoring, pet care, fireworks, trash storage, lighting, beach obstructions, and vegetation management.

Motivator Questions:

The survey also gauged which aspects of a CE coastal property owners would find desirable. Answers could range from 1, “Very undesirable,” to 5, “Very desirable.” The most desirable motivator was “Providing nesting habitat for sea turtles” (3.70). The least desirable of the provisions was “Receiving a monetary payment for the CE” (3.09).

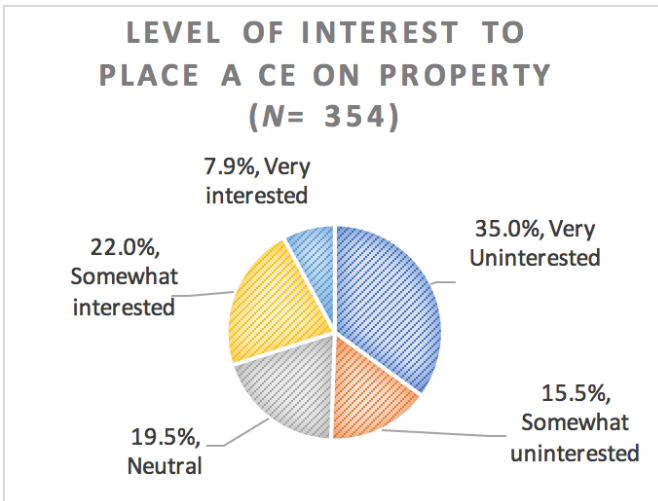
Table 12 Questions for participant motivation for CE ($N= 335$; Question: 6.10)

Survey Questions	<i>M</i>	<i>SD</i>
Providing nesting habitat for sea turtles	3.70	1.267
Knowing you are conserving beach habitat	3.62	1.265
Protecting the land forever	3.62	1.318
Obtaining annual tax deductions	3.51	1.221
Having trust in the organization administering a CE	3.35	1.481
If desired, receiving assistance from a conservation organization to manage my beach front land	3.19	1.383
Receiving a monetary payment for the CE	3.09	1.283

Note. Valid cases ($n=335, 89.8%$); excluded cases ($n=38, 210.2%$)

Question: “Based on what you’ve learned from this survey, how interested would you be in placing a conservation easement on your property?”

¹⁵ This question had six initial options “Extremely unlikely”, “Unlikely”, “Neutral”, “Likely”, “Extremely likely”, and “Unsure”. For analysis this question was recoded to combine the answers for “Neutral” and “Unsure” into the same answer “Neutral” (coded as 3).



30% of respondents answered either “Very” or “Somewhat” interested in placing a CE on their property. Just over one-half of the respondents were “Very” or “Somewhat” uninterested, and the remaining 19% remained “Neutral”.

The greatest level of interest by region occurred in the Keys (n= 4, 57.1%) followed by the Central East (n= 18, 45%). The greatest level of reported disinterest within region was reported by the Central West (n=27, 62.8%) followed by Southeast (n=14, 58.3%) (Table 13).

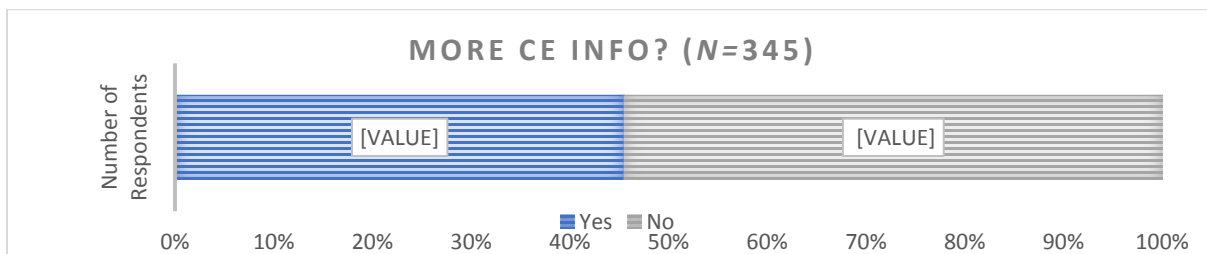
Table 13 Geographic region by level of interest in CE (N=354)

Geographic region	Level of Interest						Total	
	Uninterested		Neutral		Interested			
	f	%	f	%	f	%	f	%
Northeast	43	48.3	23	25.8	23	25.8	137	100
Central East	14	35	8	20	18	45	40	100
Southeast	14	58.3	5	20.8	5	20.8	24	100
Keys	1	14.3	2	28.6	4	57.1	7	100
Southwest	7	50	3	21.4	4	28.6	14	100
Central West	27	62.8	9	20.9	7	16.3	43	100
Northwest	73	53.3	19	13.9	45	32.8	137	100
Total	179	50.6	39	19.5	106	29.9	354	100

Note. Chi-square = 19.045, df = 12, p = .087

Question: “Would you like more information about coastal conservation easements?”

Just less than one-half of respondents said they would like more information on coastal conservation easements (45.5%), while the rest said they would not like more information (54.5%).



Key Findings and Discussion

The objectives of this study to understand target population demographics; explore the target population's relationship with coastal armoring; and gauge the target population's relationship with CEs were met. Survey results revealed a breadth of information, which is summarized below:

Respondent Demographics:

Survey respondents were mostly well educated with almost 80% holding at least a college bachelor's degree. The majority were Baby Boomers (57.1%), and 39.5% of respondents considered their coastal property their main home. Longer term property owners typically intended to pass their property onto their heir. Respondents reported frequent beach use and tended to value walking or jogging, viewing wildlife, walking a pet, and looking for signs of sea turtles.

Other key findings:

- 41% of respondents hold a graduate degree.
- A majority (53.1%) of respondents are retired.
- Average property ownership was for 19.3 years.
- 55.5% of respondents visit the beach daily when at their property.
- Close to one-fourth identified their property as a rental property.
- Rentals averaged 217 days per year, and 70.3% of rental properties are located in the Northwest region.

Respondent Property Details:

Typical of beachfront homes, the size of property was under one acre and held high assessed values averaging approximately \$1.2 million.

Other key findings:

- Average size of parcels is .705 acres.
- By region, the Southeast had the largest average size parcel at 1.08 acres, while the Keys held the lowest average of 0.62 acres.
- By region, the Southeast held the highest average assessed value at approximately \$4.3 million.
- In sum all of the respondents' parcels equaled about \$449 million.
- Most respondents did not have a mortgage (66.2%) or a loan (89.4%).

Respondents and Sea Turtles:

Most respondents resided at their property during sea turtle nesting season, and overall had relatively high levels of knowledge relating to sea turtles. However, some confusion did exist regarding the impact of artificial lighting, with respondents knowing the detrimental effects for hatchlings, but not for nesting mothers.

Other key findings:

- 65% of respondents did not know who does the sea turtle monitoring of their beach.
- 30% of respondents did not know that brightly artificially lit beaches discourage sea turtles from nesting.

- 89% of respondents have seen a marked sea turtle nest, while less than half have seen either a nesting or hatching sea turtle.

Respondents and Coastal Armoring:

Attitudinal questions averaged near neutral, but free response comments reveal some of the underlying contention surrounding coastal armoring. Coastal residents either did not have a clear understanding of what coastal armoring was, suggesting sand dunes or dune fencing as coastal armoring in free response comments. Additionally, some felt strongly about their right to armor and were ambivalent to environmental impacts.

Other key findings:

- 81% of respondents did not have coastal armoring. Only 6% of the 81% were currently considering installing coastal armoring.
- Most indicated that coastal armoring is “unlikely” to protect sea turtle nesting habitat.

Respondents and Conservation Easements:

While most respondents had never heard of a CE and felt that the decision to establish a CE on their property was in their control, confusion still existed regarding what a CE truly entails. Misconceptions included thinking CEs are a type of land grabbing, government control, or in general, a forced program. These misconceptions mentioned would be detrimental if a large-scale project for coastal conservation easements are desired. Respondents mostly felt “likely” to engage in sea turtle friendly actions on their property. Additionally, interest to establish a CE on their property was held by about a third of respondents (29.9%).

Other key findings:

- Most respondents (57.9%) had yet to hear of a CE, but approximately one-fourth said the provided definition matched their understanding “extremely well.”
- Unlike coastal armoring, respondents on average thought a CE would be “likely” to protect sea turtle nesting habitat.
- Of CE motivators, respondents were least motivated by the potential to receive money for a CE, and were most motivated by the potential to provide nesting habitat for sea turtles.
- Almost one-half of the respondents reported wanting more information of CEs (45.5%).

Conclusion and Recommendations

A coastal CE is strong enough to ensure the preservation of sea turtle nesting habitat on privately owned property, but also flexible enough to fit the needs of both the individual property owner and the land itself. However, if a statewide effort to protect nesting sea turtle habitat through CEs is to be pursued on a programmatic level, based on the survey findings, it is recommended that misconceptions regarding both CEs and coastal armoring be addressed through proper communication and education, while CEs be pursued with property owners and parcels that have favorable attributes.

Survey findings suggest that coastal residents living near protected sea turtle nesting beaches are fairly knowledgeable about sea turtles. However, relatively few of these residents are familiar with either the concept of conservation easements and its application to protect sea turtle nesting habitat or the impacts of coastal armoring on the coast and for sea turtle nesting.

The unfamiliarity and confusion that exists regarding CEs and coastal armoring leads us to suggest that more education and information should be provided to introduce the concept of a coastal CE if motivations and interest in CEs are to be properly assessed. Additionally, since this is a novel application of CEs, making sure property owners who have previous understanding of CEs comprehend the context and relevancy of a CE for a small coastal property is equally important. Thus, communicating the purpose of CEs in both their general structure and their context for small parcels will prove important. Further research may also be needed to understand those who are misinformed on the nature of coastal armoring.

Yet, interest of coastal Floridians to engage in CEs does exist. Due to the high response rate and random selection of coastal homeowners, the close to 30% of people interested in learning more about a coastal conservation easement can be considered representative of 30% of the target population of 4,588 single family homeowners on sandy nesting beaches within a mile of a protected section of beach. This leaves a lot of potential coastal property owners to engage with regarding CEs to protect sea turtle nesting habitat.

Thus to continue the pilot project, it is suggested to focus on residents that consider their coastal parcel their main home; are without a mortgage; hold high levels of sea turtle knowledge; reside at their property during sea turtle nesting season; know their beach's sea turtle monitor; do not intend to armor their property or have armoring on their property; are not motivated by receiving money for a CE; hold high level of interest in a CE; would like learn more about CEs; and reside near larger swathes of protected nesting beaches. Additionally, concentrating efforts on parcels in the target population that are of larger acreage for lower cost will also be beneficial if a formal program is desired.

In short, there are many possibilities for continuing this research and implementing coastal conservation easements. Coastal property owners care extensively about their beachfront property, and hold high levels of sea turtle knowledge. The capacity for continuing outreach and informing coastal Floridians about this unique tool exists. This survey may serve as a baseline for future focus areas for coastal CEs and as a reference for communication efforts.