

# Taking control of conservation

In the US, private landowners have been taking conservation of the environment into their own hands for years, with notable success. Alejandro Quintana of Grasty Quintana Majlis & Cia explains how Chile is now following the same path



Conservation easements are one of the most powerful, effective tools available for the permanent conservation of private lands. In the US, the use of conservation easements has successfully protected millions of acres of wildlife habitat and open space, generating significant public benefits.

The establishment of conservation easements by private persons or non-profit organisations facilitates the financing of the management and protection of conservation areas and biodiversity. The instrument allows private persons to complement the role of the state to make real and long-standing contributions in the protection of natural landscapes and, above all, to fill the gaps where resources are not sufficient to protect under-represented ecosystems, mitigating threats and promoting the territorial and biological connectivity of the already existing protecting areas. By using this instrument, private persons,

natural and legal, can also ensure that their conservation vision is not thwarted by future generations and heirs who may have a change of mindset or face new economic or other pressures.

The need to introduce this new legal tool to Chile was evident. A major part of the terrestrial territory in the Chilean central region is private property and in general lacks environmental protection. The extractive activities of natural resources (forestry, agricultural, mining, etc) predominate in Chile and these industries are carried out across important environmental territory.

Costa Rica was the first Latin American country to use this instrument and we are hopeful that Chile's leadership in promulgating this new law can provoke other Latin American countries to take the same step, so we can make a real regional impact.

## The road to private conservation in Chile

It all started at the end of 2006, when Henry Tepper, then director of New York Chapter of the Nature Conservancy, an environmental NGO, came to Chile, sponsored by the Chilean American Chamber of Commerce (AMCHAM), with the purpose of establishing an alliance and creating formulas that would allow Chileans to develop conservation projects voluntarily.

The Nature Conservancy and Grasty Quintana Majlis & Cia commenced a process to search for mechanisms and ideas that would incentivise conservation initiatives in the private sector, especially considering the conservation easement method broadly accepted in the United States.

Clear similarities were identified between the environmental and economic situation of Chile and that of the US 30 years ago, when the private conservation

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movement started to consolidate there. The Chilean economy was strong and stable, with great leadership from the private sector.

At the invitation of the Nature Conservancy and Harvard Forest of Harvard University, a group of lawyers, conservationists, and Chilean house representatives visited the US to learn about conservation easements and land trusts. Jim Levitt, researcher and director of the Harvard Forest's innovation programme in conservation, inspired the group to create a new in rem right in Chile, which was ultimately named the real right of environmental conservation.

This was to be a reliable and efficient instrument to allow private land owners to voluntarily partially or fully assign their property to environmental conservation purposes for a perpetual period without losing the freehold right of ownership and even allow such landowners to continue with productive economic activities on that land, as long as they were compatible with the conservation purpose.

Once the premise was defined, it was decided to work on a legislative proposal to establish the right. A team was created and led by the Nature Conservancy's Chilean coordinator of private lands, Victoria Alonso, and country manager, Francisco Solis. José Manuel Cruz, an associate of Grasty Quintana Majlis & Cia, prepared various drafts that were revised by law professors such as Jorge Baraona, Álvaro Ortúzar, Miguel Luis Amunátegui and Daniel Peñailillo. The latter property law

expert provided particular support in the technical aspects.

Other individuals and organisations also actively participated in this project, such as Marcelo Ringeling, director of Parques para Chile (a non-profit organisation), Rafael Asenjo, current president of the environmental court of Santiago and then coordinator of the Global Environment Facility national protected areas project, World Wildlife Fund Chile, AMCHAM, and Roberto Peralta of Peralta Gutiérrez Abogados.

As a next step, a strategy was designed in order to receive parliamentary support from different political parties, which would present the proposal in a united manner. This was how the bill that established the in rem right of conservation (Bulletin No. 5823-07) entered Chilean Congress in April 2008.

Together with diverse organisations, house representatives, academics and interested persons, and external counsel worked for many years to ensure that the law reform bill moved through the different parliamentary steps and processes.

Finally, Chile and Latin America can now reap the benefits of this hard work. On 10 June 2016, President Michelle Bachelet, accompanied by the Minister for the Environment, Pablo Badener, promulgated the law that establishes the conservation easement.

## How it works

Chile adapted the model of the conservation easement that exists in other

countries, notably the US, and adjusted it to its national situation. The concept is as follows: the conservation easement is a real property right, constituted voluntarily by a property owner, which establishes certain duties to the benefit of environmental conservation of land or certain attributes or functions of it, and whose exercise is delivered to a determined natural or legal person. It is transferable, cannot be embargoed, and "runs with the land" to bind future owners and generations.

In practical terms, the easement is constituted by a contract that is signed by public deed and registered in the real estate registry, through which the parties may agree upon at least one of the following prohibitions, restrictions or obligations:

- (i) restriction or prohibition to destine the land to real estate, commercial, touristic, industrial, agricultural, forestry or other purposes; or
- (ii) obligation to maintain or contract service to conserve and manage the land, including the possibility to agree upon specific management plans, so that sustainable activities may be carried out on the land.

Grasty Quintana Majlis & Cia as a law firm is now working to assist private persons and NGOs who wish to make use of the law to protect tracts of land and ecosystems, so it can establish precedents that will subsequently motivate others to make use of the tool.