

# Incorporating the Value of Ecosystem Services in Legal Decision-Making

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I aspire to a legal regime in which landowners are compensated for the ecosystem services produced by their land and water. This will occur by market payments, tax incentives (conservation easements), statutory reform for trespass and condemnation, and judge made tort law.

# Conservation Easements

- There were 113,038 conservation easements covering 23,532,044 acres in the U.S. as of October 2015 according to National Conservation Easement Database <http://conservationeasement.us/> (last visited 1/29/16).



# Trespass Statutes

- State trespass statutes generally do not recognize ecosystem service damages.
- An exception is Connecticut – C.G.S. Section 52-560a allows damages for trespass on conservation easement lands, including attorney's fees with a damage multiplier of up to five times the cost of restoration.

# Tree Cutting Statutes



These statutes provide owners with restitution for damages beyond the lost economic value of the their property:

- Maine – Me. Rev. Stat. Tit. 17, § 2510
- Massachusetts – Mass. Gen. Laws ch. 242, § 7
- Illinois – 740 Ill. Comp. Stat. § 185



# Case Law





# Ecosystem Services Case Law

- There are several cases in which ecosystem services damages in tort have been awarded on fee land.

***Pila'a 400, LLC v. Bd. Of Land & Natural Resources, 320 P.3d 912 (Haw. 2014)***

- The administrative agency assessed \$3,963,000 in damages: “The value of Pila’a beach, bay and reef includes use value, option value, commodity value, existence value, bequest value, cultural values, including value to indigenous people, and intrinsic value. Economic and use (market) values alone cannot and do not capture the full value of Pila’a. Economic valuation alone understates the true social loss from natural resource damage.”

## ***United States v. CB & I Constructors, Inc.*, 685 F.3d 827 (9<sup>th</sup> Cir. 2012)**

- A construction company negligently set a forest fire that eventually burned 18,000 acres of National Forest in California. At trial, a jury awarded the United States \$7.6 million for fire suppression, emergency remediation, and resource protection costs, and awarded \$28.8 million (or \$1,600 per acre) in “intangible environmental damages.” Applying California law, the court concluded that “the government may recover intangible environmental damages because anything less would not compensate the public for all of the harm caused by the fire.”

***Phoenix Pinelands Corp. v. United States*, 2010  
U.S. Dist. LEXIS 40638 (D. N.J. 2010)**

- The landowner brought trespass claims against the United States under the Federal Tort Claims Act after fighter jets dropped flares on its property, causing several fires.
- The court concluded that "[t]he phrase 'services provided by the ecosystem' is somewhat vague, but it can easily be construed to refer to qualities of the land which are relevant to calculation under either the diminution measure or the cost of repair measure." Accordingly, the court denied the motion for summary judgment.

# Condemnation



# Condemnation Statutes

- There do not appear to be any state condemnation statutes that grant a landowner increased compensation for damages to ecosystem services. Even in states that allow for ecosystem services damages in the context of conservation easements, the condemnation statutes have no provisions for these types of damages.

# Conservation Easements - Remedies



- California, Colorado and Hawaii enabling acts allow damages for conservation easement violations to be calculated using, in part, “the loss of scenic, aesthetic, or environmental value.”



# Questions?

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