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Environmental Easements: Legal Nature, Elements, and Implications for Iraqi Law

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Abstract

Environmental protection increasingly requires legal mechanisms that reconcile private property rights with the broader public interest in preserving land, biodiversity, natural resources, and environmental quality. This study examines the legal nature and principal elements of environmental easements and distinguishes them from traditional easements and general administrative restrictions imposed under environmental law. It applies a comparative doctrinal method centered on the conservation easement model developed in the United States, particularly the Uniform Conservation Easement Act and the related federal conservation framework, and evaluates that model against the relevant provisions of Iraqi constitutional, civil, environmental, and real-estate registration law. The analysis shows that environmental easements have a distinctive legal character because they may combine private-law restrictions on the use of property with environmental objectives that serve a wider public interest. Unlike traditional easements, which generally benefit a specified dominant estate, conservation-oriented en-

vironmental easements may protect environmental values without being limited to the private interests of an adjacent property owner. At the same time, environmental restrictions may be established between neighboring agricultural properties where particular uses, including the application of pesticides or activities harmful to adjacent land, need to be limited. Iraqi law already provides public-law environmental controls and a general framework for appurtenant easements, but the provisions examined do not expressly establish a specialized conservation easement that may be held independently of a dominant estate. The study therefore recommends a carefully defined statutory framework governing the purpose, eligible holders, creation, registration, monitoring, enforceability, modification, termination, and relationship of environmental easements with existing property rights and public environmental regulation.

Keywords: environmental easements, conservation easements, environmental protection, property law, agricultural land, Iraqi law

1. INTRODUCTION

Environmental protection increasingly requires legal mechanisms capable of reconciling the exercise of private property rights with the broader public interest in preserving the environment, biodiversity, natural resources, and agricultural land. In many legal systems, environmental protection has traditionally been achieved primarily through public-law mechanisms, under which administrative authorities impose statutory restrictions on property owners in order to prevent pollution, environmental degradation, and damage to natural resources. Such restrictions arise directly from legislation and administrative regulation and therefore differ in their legal nature from private-law easements created over immovable property.

At the same time, comparative legal experience demonstrates the development of conservation-oriented mechanisms that possess certain characteristics of easements while pursuing environmental objectives. The United States, in particular, has developed the concept of conservation easements as a specific legal instrument through which the use or development of land may be restricted in order to preserve environmental, ecological, agricultural, historical, or aesthetic values. This model differs from the traditional concept of an easement, which ordinarily exists for the benefit of a specified dominant estate. A conservation easement may instead protect broader environmental interests and may be held or administered by a governmental body, qualified organization, or other legally authorized entity.

This distinction is particularly important because environmental protection may involve two different categories of legal restrictions. The first consists of mandatory environmental restrictions imposed by public authorities under environmental legislation in the public interest. The second consists of private-law arrangements through which an owner voluntarily accepts restrictions on the use of land for environmental purposes. Although both mechanisms may contribute to the same objective of environmental protection, their sources, legal effects, beneficiaries, registration requirements, enforcement mechanisms, and conditions of modification or termination are not necessarily the same.

The issue also has practical significance in rural and agricultural areas, where the exercise of ownership rights over one property may directly affect neighboring land. For example, the use of certain pesticides, chemicals, or agricultural practices may contaminate or damage adjacent soil and crops. Similarly, construction or other land-use activities may adversely affect neighboring agricultural property, natural resources, or environmental conditions. In such circumstances, the owners concerned may have an interest in establishing a contractual restriction on particular uses of the property in order to prevent environmental damage and protect the legitimate interests associated with neighboring land. Once established in accordance with the applicable legal requirements and, where necessary, properly registered, such an arrangement may acquire characteristics comparable to a negative easement by requiring the owner of the burdened property to refrain from specified activities.

The legal difficulty arises from the fact that environmental easements do not always correspond to the traditional structure of easement law. Traditional easements generally presuppose a servient estate and a dominant estate, with the burden imposed on one property for the benefit of another. Conservation-oriented environmental easements, by contrast, may be established primarily to protect environmental values or the public interest without necessarily benefiting a particular neighboring property. Accordingly, environmental easements should not automatically be treated either as ordinary private easements or as administrative environmental restrictions. Their legal nature must instead be examined according to their purpose, beneficiary, method of creation, enforceability, and relationship with existing property rights.

This issue is particularly relevant to Iraqi law, where environmental protection is principally addressed through public-law regulation, whereas a specialized private-law framework for environmental or conservation easements has not been clearly developed. The absence of a specific framework raises several legal questions concerning whether such restrictions may be established within the existing rules of property and easement law, whether they may bind subsequent owners, how they should be registered and enforced, and under what circumstances they may be modified or terminated. Comparative experience may therefore provide useful guidance for evaluating whether a specialized form of environmental easement could be incorporated into Iraqi private law while remaining consistent with its existing legal principles and social context.

Against this background, this study examines the legal nature of environmental easements and their relationship with both traditional easements and public-law environmental restrictions. It seeks to identify the principal legal elements required for their establishment, to determine the circumstances in which environmental restrictions may be characterized as negative easements, and to assess the relevance of comparative conservation easement models for the development of Iraqi law. The study therefore addresses three principal questions: first, what distinguishes an environmental easement from a traditional easement and from an administrative environmental restriction; second, what legal elements are necessary for the creation and operation of an environmental easement; and third, to what extent may environmental easements be classified as negative easements within private property law.

The remainder of the study first examines the concept and legal nature of environmental easements, followed by an analysis of their essential elements. It then considers the extent to which environmental easements may operate as negative easements and evaluates the implications of these findings for the possible development of an appropriate legal framework

in Iraq.

2. RESEARCH METHODOLOGY

This study employs a comparative doctrinal legal method. Its purpose is not to compare entire national environmental-law systems, but to examine how a specific private-law mechanism—the conservation or environmental easement—may be understood within the structure of Iraqi property law. The analysis therefore proceeds functionally: it identifies the legal problem addressed by conservation easements, examines the legal form through which the United States has responded to that problem, and then evaluates whether existing Iraqi rules can accommodate an equivalent mechanism or whether additional legislation is required.

The principal comparative reference is the Uniform Conservation Easement Act of 1981, supplemented by Section 170(h) of the United States Internal Revenue Code and legal scholarship addressing the creation, public benefit, enforcement, amendment, and termination of conservation easements [2, 3, 12–14, 19, 20]. These materials were selected because they distinguish conservation restrictions from conventional appurtenant easements and provide an established model in which public bodies and qualified private organizations may hold and enforce restrictions for environmental purposes.

The Iraqi analysis is based primarily on Article 33 of the Constitution of the Republic of Iraq, the Environmental Protection and Improvement Law No. 27 of 2009, the Civil Code No. 40 of 1951, and the Real Estate Registration Law No. 43 of 1971 [15–18]. Particular attention is paid to the Civil Code provisions governing the definition, creation, exercise, and extinction of easements, and to the statutory rules requiring the registration of real-property rights. The study also considers the provisions of environmental legislation relating to land protection, pesticide use, remediation, and compensation for environmental damage.

The comparison distinguishes three legal mechanisms: mandatory administrative restrictions imposed by public law; conventional appurtenant easements benefiting an identified dominant estate; and conservation-oriented restrictions serving broader environmental interests without necessarily requiring a dominant estate. Selected French examples reported in the secondary sources are used only to illustrate the relationship between harmful land use and civil liability; they are not treated as a comprehensive or independent survey of French case law [7, 8].

The study is limited to doctrinal and comparative legal analysis. It does not evaluate the practical administration of land trusts, measure the environmental outcomes of particular easements, or provide an empirical assessment of Iraqi registration practice. In addition, English translations of Iraqi legislation are used where available; where a discrepancy arises, the official Arabic text remains authoritative. These limitations do not prevent the study from identifying the principal structural gap between the existing Iraqi framework for appurtenant easements and a specialized conservation easement capable of protecting broader environmental interests.

3. CONCEPT AND LEGAL NATURE OF ENVIRONMENTAL EASEMENTS

Environmental easements constitute a distinctive legal mechanism because they combine characteristics of property law with objectives that extend beyond the protection of purely individual proprietary interests. Their development is particularly evident in the United States, where conservation easements have been recognized as legal instruments through which restrictions may be imposed on the use or development of real property for conservation purposes. Such arrangements may involve governmental bodies or qualified non-governmental and non-profit organizations, including land trusts, which may acquire, hold, monitor, and enforce conservation easements in accordance with the applicable legal framework [1]. This model introduces an important private-law dimension into environmental protection while preserving the broader public objective of conserving natural resources and environmentally valuable land.

A particularly important development in this field was the adoption of the Uniform Conservation Easement Act (UCEA) in 1981. The Act treats a conservation easement as a non-possessory interest in real property held for one or more conservation purposes. Such purposes include retaining or protecting the natural, scenic, or open-space characteristics of property; ensuring the availability of land for agricultural, forest, recreational, or open-space uses; protecting natural resources; maintaining or improving air and water quality; and preserving the historical, architectural, archaeological, or cultural characteristics of real property [2]. The conservation easement therefore does not transfer possession of the land to the holder. Rather, it limits or regulates specified uses of the property in order to preserve identified environmental or cultural values.

The federal tax framework uses a related but more specific formulation. Section 170(h) of the United States Internal Revenue Code defines a qualified conservation contribution as the contribution of a qualified real-property interest to a qualified organization exclusively for conservation purposes. A qualified real-property interest may include a restriction, granted in perpetuity, on the uses that may be made of the land, while conservation purposes include habitat protection, open-space and agricultural preservation, public recreation or education, and the preservation of historically important property [12]. The federal tax provision does not itself replace state property law, but it illustrates the institutional

relationship among the landowner, the qualified holder, the protected property, and the public conservation purpose.

The UCEA also recognizes that, unless otherwise provided by applicable law, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in a manner generally comparable to other easements [3]. This characteristic is important because it places the conservation easement within the broader framework of property law while at the same time recognizing its special conservation purpose. The legal instrument therefore differs from a general administrative restriction imposed directly by environmental legislation. An administrative restriction derives its binding force from public law, whereas a conservation easement is normally created through a legally recognized transaction or instrument concerning a particular property.

One of the principal distinctions between a traditional easement and a conservation easement concerns the requirement of a dominant estate. In the traditional structure of easement law, a servient estate is burdened for the benefit of another identified property, commonly referred to as the dominant estate. The benefit of the easement is therefore connected to a specific parcel of land. In the conservation-easement model, however, the existence of a particular dominant estate is not always required. The restriction may instead be held and enforced by an authorized governmental body, charitable organization, or other qualified holder for the purpose of protecting the conservation values of the burdened property [4]. This characteristic distinguishes conservation easements from conventional appurtenant easements and explains why their legal recognition often requires specific statutory provisions.

This distinction also demonstrates why environmental easements should not be confused with general public-law restrictions on ownership. Environmental legislation may prohibit or regulate certain activities because they threaten public health, biodiversity, water, soil, air quality, or other environmental interests. Such restrictions apply by operation of law and do not depend on an agreement between private parties. By contrast, an environmental or conservation easement creates a legally enforceable interest or restriction associated with specified real property. Although its ultimate purpose may serve the public interest, its creation and enforcement may operate through mechanisms that are characteristic of private property law [5].

The public-interest character of environmental protection does not, therefore, prevent private-law mechanisms from contributing to its achievement. On the contrary, allowing appropriate private or non-governmental entities to participate in the establishment, monitoring, and enforcement of conservation restrictions may complement the activities of public authorities. Such participation can expand the institutional capacity available for environmental protection without eliminating the regulatory and supervisory responsibilities of the state. The relationship between public regulation and private environmental agreements should consequently be understood as complementary rather than mutually exclusive.

The literature nevertheless cautions that the public benefits of conservation easements depend on careful institutional design. Perpetual or long-term restrictions may become difficult to administer when environmental conditions, land uses, or community needs change, while weak monitoring or unclear amendment powers may undermine the original conservation purpose. Scholars therefore emphasize the need for transparent holder qualifications, baseline documentation, monitoring duties, enforcement capacity, and legally controlled procedures for amendment or termination [13, 14, 19–21]. These concerns are directly relevant to any attempt to adapt the model to a new legal system.

At the same time, it is necessary to distinguish conservation easements created for broader environmental purposes from environmental restrictions established specifically between neighboring properties. In rural and agricultural areas, for example, the owner of one parcel may engage in activities that create a risk of environmental damage to adjacent land. The use of particular pesticides, chemicals, irrigation practices, construction activities, or other forms of land use may affect neighboring soil, crops, water, or other environmental conditions. In such circumstances, the owners may establish a contractual restriction under which the owner of the burdened property undertakes to refrain from specified harmful activities for the benefit of the neighboring property.

Where such a restriction is established for the benefit of an identified adjacent property, it more closely resembles a traditional appurtenant easement because both a servient estate and a dominant estate can be identified. Where, however, the restriction is established to preserve environmental values independently of any particular neighboring property, it is conceptually closer to the conservation easement model developed in the United States. These two situations should not be treated as legally identical, even though both may serve environmental objectives.

Accordingly, environmental protection easements cannot always be classified as easements in the traditional sense. Their legal characterization depends on the identity of the beneficiary, the nature of the protected interest, the method through which the restriction is created, and the legal rules governing its enforcement. Where the restriction protects broader conservation interests without a traditional dominant estate, specific legislation may be necessary to define its legal status, permitted holders, object, method of creation, registration, duration, modification, termination, enforcement, and relationship with existing property rights [6]. Such regulation would also prevent uncertainty or conflict with the established rules governing conventional easements.

For the purposes of this study, the term “environmental easement” is therefore used to describe a non-possessory restriction affecting the use of real property for the purpose of preventing environmental damage or preserving environ-

mental values. Two forms should be distinguished. The first is a conservation-oriented environmental easement, which protects environmental interests without necessarily requiring a specific dominant estate. The second is an appurtenant environmental easement, under which restrictions are imposed on a servient estate for the environmental protection or benefit of an identified neighboring dominant estate. This distinction provides a clearer basis for examining the elements of environmental easements and determining the extent to which particular environmental restrictions may be characterized as negative easements.

4. LEGAL ELEMENTS OF APPURTENANT ENVIRONMENTAL EASEMENTS

Based on the general principles governing easements, an environmental easement established between neighboring properties may be analyzed through three principal elements: the existence of a servient estate, the existence of a dominant estate, and the existence of a legally recognizable utility or benefit. These elements are particularly relevant where the environmental restriction is created for the benefit of an identified neighboring property rather than for a broader conservation purpose. In such cases, the environmental easement retains the basic structure of a traditional appurtenant easement while serving a specific environmental-protection function.

4.1. THE SERVIENT ESTATE

The first element is the existence of a servient estate, namely the property upon which the environmental restriction is imposed. The owner of the servient estate remains the owner of the property and generally retains the right to possess and use it. However, the easement limits certain forms of use where those activities may cause environmental damage to the neighboring property that benefits from the easement.

In the agricultural context, such a restriction may require the owner of the servient estate to refrain from using a particular pesticide, chemical substance, or agricultural practice where its use creates a risk of contamination or damage to neighboring soil, crops, water, or other environmental resources. The restriction therefore does not necessarily deprive the owner of the general use of the property. Instead, it limits a specific activity whose consequences may extend beyond the boundaries of the servient estate.

The legal relevance of such restrictions can also be observed in cases involving damage caused by agricultural activities. The secondary sources relied upon in this study report French judicial examples in which liability was recognized where pesticides used by one landowner contaminated or damaged neighboring agricultural production [7]. They also report a decision attributed to the French Court of Cassation concerning damage to neighboring animals and agricultural crops caused by the use of pesticides in agricultural production [8]. Because the complete primary case citations are not available in the materials examined, these examples are used only to illustrate the broader legal principle that the exercise of property rights is not unlimited where the use of one property causes identifiable harm to another; they are not presented as a comprehensive statement of French case law.

Although liability for environmental damage and the creation of an easement are legally distinct mechanisms, such cases illustrate the type of recurring environmental risk that may justify the establishment of a preventive contractual restriction. Liability normally operates after damage has occurred, whereas an environmental easement may operate prospectively by limiting an activity before damage takes place. Accordingly, an appurtenant environmental easement may function as a preventive private-law mechanism that complements the ordinary rules of civil liability and environmental regulation.

4.2. THE DOMINANT ESTATE

The second element is the existence of a dominant estate, namely the property for whose benefit the restriction imposed on the servient estate is established. In the type of environmental easement considered in this section, the dominant estate must have an identifiable connection with the environmental benefit created by the restriction.

For example, an agricultural property may require protection from pesticide drift, soil contamination, interference with irrigation, damage to crops, or other harmful activities originating from a neighboring parcel. The benefit attached to the dominant estate consists in the preservation of its agricultural productivity, environmental quality, soil conditions, biodiversity, or other characteristics necessary for its proper use.

The relationship between the two properties may also concern forms of land use other than pesticide application. Construction activities on a neighboring property may, in particular circumstances, interfere with sunlight, drainage, access to water, or other conditions affecting the use of agricultural land. Where such interference produces legally recognizable damage, the applicable civil-law rules may require the harmful condition to be removed, the previous situation to be restored where possible, or compensation to be provided for the resulting damage [9].

The existence of a dominant estate is important because it distinguishes this form of environmental easement from a conservation easement created for a general environmental purpose. Where a particular neighboring property receives the direct and identifiable benefit, the arrangement more closely reflects the traditional structure of an appurtenant easement.

By contrast, where the restriction protects biodiversity, landscape values, natural resources, or other environmental interests without benefiting a specific neighboring property, the legal mechanism is more appropriately analyzed as a conservation-oriented environmental easement rather than as a conventional appurtenant easement.

4.3. THE REQUIREMENT OF UTILITY OR BENEFIT

The third element is the existence of a utility or legally recognizable benefit resulting from the easement. Under the general logic of easement law, the restriction imposed on the servient estate must provide a benefit connected with the dominant estate rather than merely impose an arbitrary limitation on the neighboring owner.

In the context of environmental easements, this utility may consist of protecting agricultural soil, maintaining crop quality, preventing contamination, preserving biodiversity, protecting water resources, or avoiding another form of environmental interference that would impair the use or value of the dominant estate. For example, an agreement may restrict the use of specified pesticides on the servient agricultural property where those substances create a foreseeable risk of damaging crops or soil on the neighboring dominant property [10].

Such agreements remain subject to the general requirements of private law. The parties may regulate their respective property interests through contractual arrangements insofar as those arrangements do not violate mandatory legal provisions, public order, morals, environmental legislation, or the rights of third parties. The environmental purpose of the agreement does not exempt it from these general legal requirements.

The utility requirement also helps establish proportionality between the burden placed on the servient estate and the benefit obtained by the dominant estate. The restriction should therefore correspond to a legitimate environmental or property-related interest and should be defined with sufficient precision to identify the prohibited or limited activities. An excessively broad or undefined restriction may create uncertainty concerning the rights of the servient owner and the scope of enforcement.

Compensation may be agreed upon where the restriction substantially reduces the economic use or value of the servient estate, depending on the nature of the agreement and the applicable legal rules. However, monetary payment should not itself be regarded as an indispensable element of every environmental easement. The essential legal element is the existence of a recognizable benefit associated with the restriction and the property or environmental interest that the easement is intended to protect.

Accordingly, an appurtenant environmental easement may be understood as a legally recognized restriction imposed upon a servient estate for the environmental benefit of an identified dominant estate. Its essential elements are therefore the existence of the burdened property, the existence of the benefiting property, and a sufficiently identifiable environmental utility connecting the two. These characteristics provide the basis for determining whether the restriction can properly operate within the traditional structure of easement law and, in particular, whether it may be characterized as a negative easement.

5. ENVIRONMENTAL EASEMENTS AS NEGATIVE EASEMENTS

An environmental easement may be characterized as a negative easement when its principal legal effect is to require the owner of the servient estate to refrain from carrying out a particular activity that could cause environmental harm to the dominant estate or to the environmental interest protected by the easement. In this respect, the restriction does not require the servient owner to transfer possession of the property or permit another person to occupy it. Rather, it limits the exercise of certain ownership powers in order to prevent harmful uses of the land.

In the context of neighboring agricultural properties, a negative environmental easement may arise where the owner of the servient estate undertakes not to perform an activity that could adversely affect the dominant estate. Such restrictions may include refraining from using certain pesticides or chemical substances, avoiding activities that contaminate agricultural soil or water, or limiting particular forms of construction or land use that could cause identifiable environmental damage to the neighboring property. The purpose of such a restriction is therefore preventive: it seeks to preserve agricultural soil, biodiversity, crops, natural resources, and other environmental conditions before actual damage occurs [11].

This prohibitory character corresponds to the traditional concept of a negative easement, under which the owner of the servient estate is required to abstain from exercising a particular use of the property that would otherwise fall within the ordinary powers of ownership. The environmental character of the easement does not alter this basic legal structure. Instead, it changes the nature of the interest being protected by linking the restriction to the prevention of environmental harm and the preservation of environmentally valuable conditions.

However, not every environmental easement should automatically be classified as a negative easement. Some conservation-oriented environmental easements may also contain affirmative obligations, such as requirements concerning restoration, maintenance, monitoring, or other measures intended to preserve the environmental characteristics of the property. Accordingly, the legal classification of an environmental easement should depend on the substance of the obligations

created by the relevant agreement or legal instrument. Where the principal obligation is to refrain from a specified activity, the easement has a negative character; where the owner is also required to perform specific acts, the legal arrangement may contain both negative and affirmative elements.

It is also necessary to distinguish the duration of an environmental easement from its classification as negative. A negative easement is not necessarily irreversible merely because it restricts the use of property. Its duration, amendment, release, or termination must be determined by the applicable legislation, the terms of the instrument creating the easement, registration requirements, and the general rules governing property rights. Comparative scholarship demonstrates that perpetual conservation restrictions require a controlled mechanism for responding to genuinely changed conditions without allowing private amendment or termination to defeat the protected public purpose [13, 14, 20]. Therefore, the legal framework should clearly specify the circumstances, decision makers, procedures, and substantive standards under which an environmental easement may be modified or terminated.

Accordingly, an appurtenant environmental easement may be regarded as a negative easement when the owner of the servient estate is legally required to abstain from specified activities for the environmental benefit of the dominant estate. This characterization is particularly appropriate where the restriction is designed to prevent foreseeable damage to neighboring agricultural land, soil, crops, water, or other environmental resources. At the same time, the broader category of environmental or conservation easements may include both negative and affirmative obligations and should therefore be classified according to the specific legal content of each arrangement.

6. ENVIRONMENTAL EASEMENTS WITHIN THE EXISTING IRAQI LEGAL FRAMEWORK

6.1. CONSTITUTIONAL AND ENVIRONMENTAL-LAW FOUNDATIONS

The constitutional basis for environmental protection in Iraq is express. Article 33 of the Constitution recognizes every individual's right to live in safe environmental conditions and assigns the state the responsibility to protect and preserve the environment and its biological diversity [15]. This provision establishes the public importance of environmental protection, but it does not by itself define a private real-property instrument comparable to a conservation easement.

The Environmental Protection and Improvement Law No. 27 of 2009 develops this public-law framework. Article 1 states that the Law aims to protect and improve the environment, address existing and anticipated damage, and preserve public health, natural resources, biodiversity, and natural and cultural heritage in a manner consistent with sustainable development. Article 17 prohibits conduct that directly or indirectly damages, degrades, or pollutes land and impairs its productive capacity, and Article 20 regulates the use of pesticides and other agricultural chemicals in order to avoid direct and indirect risks to human beings and environmental elements. Article 32 further requires a person who causes environmental damage to pay compensation, remove the damage, and, within an appropriate period, restore the previous condition [16].

These provisions are directly relevant to the examples considered in this study, particularly pesticide use, soil contamination, and harmful land-use activity. They provide regulatory, remedial, and compensatory mechanisms, but they operate primarily through public duties, administrative supervision, and liability after or in anticipation of environmental harm. They do not expressly establish a voluntary real right through which an owner may burden land for a continuing conservation purpose in favor of a qualified public or private holder.

6.2. APPURTENANT EASEMENTS UNDER THE IRAQI CIVIL CODE

The Iraqi Civil Code No. 40 of 1951 provides a developed general regime for appurtenant easements. Article 1271 defines an easement as a right that limits the utility of one immovable property for the benefit of another property owned by a different owner. This definition reflects the conventional relationship between a servient estate and an identified dominant estate. Article 1272 recognizes contract, inheritance, and will as means of acquiring an easement and permits reliance on prescription for visible easements. Article 1273 also recognizes creation by destination of the original owner [17].

Article 1274 is especially significant for the present analysis. It provides that restrictions limiting the manner in which an owner may build—for example, restrictions on height or building area—may constitute easements benefiting the properties for whose protection the restrictions were imposed. This provision demonstrates that Iraqi law already recognizes negative land-use restrictions as real easements when they benefit identified properties. By analogy, a precisely drafted restriction on pesticide use, polluting activity, drainage, or another harmful use could potentially fit within the existing appurtenant easement structure where a dominant estate receives an identifiable benefit.

The Civil Code also regulates the exercise and extinction of easements. Article 1275 gives priority to the instrument creating the right and to applicable custom, while Article 1276 requires the dominant owner to use the easement in a manner causing the least possible harm and prevents new needs of the dominant estate from increasing the burden. Articles 1281–1284 provide for extinction upon expiry, total destruction, merger, non-use, impossibility of use, or loss of utility, including where the remaining benefit is disproportionate to the burden [17]. These provisions confirm that an Iraqi

easement is neither unlimited nor inherently irreversible.

The existing Civil Code therefore offers a plausible legal basis for an appurtenant environmental easement between neighboring properties. Nevertheless, Article 1271's property-to-property structure does not expressly accommodate a conservation restriction held independently of a dominant estate by a governmental body, charitable organization, land trust, or other qualified entity. The specialized conservation-oriented form identified in comparative law would consequently require clearer statutory authorization.

6.3. REGISTRATION AND EFFECT AGAINST SUCCESSORS

The Real Estate Registration Law No. 43 of 1971 is essential to the legal effectiveness of any proposed environmental easement. Articles 2 and 3 assign the Real Estate Registration Department responsibility for registering transactions affecting original and accessory real-property rights and provide that a real-estate transaction creating, transferring, modifying, or extinguishing such a right is not concluded without registration. Articles 239–243 specifically regulate the registration, appurtenant character, transfer, subdivision, and extinction of easements [18].

Article 239 permits the registration of easements between registered properties when they arise by contract, will, destination of the original owner, final judicial judgment, or another legally effective decision. Article 241 treats easements as appurtenant to the dominant property, so that they are transferred with that property and pass to heirs or other successors. Article 243 identifies circumstances in which extinction may be registered, including expiry, merger, waiver, loss of utility, destruction, and final judicial or legally equivalent decision [18].

Accordingly, a contractual environmental restriction intended merely to bind its original parties should be distinguished from a real easement intended to bind successors. To acquire the status and third-party effect of a real-property right under the existing framework, the restriction would need to satisfy the substantive requirements of the Civil Code and the formal registration requirements of the Real Estate Registration Law. Any future conservation-easement legislation should therefore be coordinated with the registration system rather than create an unrecorded parallel category of land restrictions.

6.4. THE LEGISLATIVE GAP AND AN APPROPRIATE REFORM MODEL

The combined analysis shows that Iraqi law is not devoid of legal tools relevant to environmental easements. The Constitution and Environmental Protection and Improvement Law establish environmental rights, prohibitions, administrative supervision, restoration, and compensation. The Civil Code recognizes appurtenant easements, including negative building restrictions, and the Real Estate Registration Law provides a mechanism for their creation and effect against successors. These rules could support an environmental restriction benefiting an identified neighboring property.

The principal gap is narrower but important: the reviewed legislation does not expressly create a conservation-oriented easement that may be held and enforced for a defined public environmental purpose without a traditional dominant estate. It also does not establish the specialized rules commonly required for that form of right, including eligible holders, conservation-purpose criteria, baseline documentation, monitoring duties, enforcement powers, treatment of public subsidies or tax benefits, and controlled procedures for amendment or termination.

Iraq could address this gap either through a special environmental easement statute or through coordinated amendments to the Civil Code, the Environmental Protection and Improvement Law, and the Real Estate Registration Law. The legislation should preserve the existing category of appurtenant easements while creating a separate conservation-oriented form. It should define the public environmental purposes that justify the restriction, identify the bodies authorized to hold and enforce it, require registration and public notice, protect the rights of mortgagees and other third parties, and provide judicial or administrative control over material amendment and termination. This approach would adapt the comparative model to Iraqi legal institutions instead of transplanting it mechanically.

7. CONCLUSION AND RECOMMENDATIONS

This study examined the legal nature of environmental easements and their relationship with traditional easements, conservation-oriented property restrictions, and public-law mechanisms of environmental protection. The analysis demonstrates that environmental protection may be pursued through distinct legal instruments that should not be treated as conceptually identical. Administrative restrictions derive directly from public law, while environmental easements operate through property-law mechanisms that attach defined restrictions to real property.

Environmental easements may assume different legal forms depending on the protected interest and the identity of the beneficiary. Where a restriction is imposed on a servient estate for the environmental benefit of an identified dominant estate, it may operate within the traditional structure of an appurtenant easement. This form is relevant where pesticide use, contamination, construction, drainage, or another activity on one property threatens neighboring land, soil, crops, water, or agricultural production. Conservation-oriented easements, by contrast, may protect biodiversity, open space, agricultural land, natural resources, scenic values, or cultural and historical features without benefiting a particular dominant estate.

The analysis also confirms that environmental easements should not be classified automatically as negative easements. They have a negative character where their principal effect is to prohibit specified harmful uses of the servient property. Some conservation instruments may, however, include affirmative duties relating to maintenance, restoration, monitoring, or management. Their classification must therefore follow the actual content of the instrument.

The direct examination of Iraqi law produces a more precise conclusion than the proposition that Iraq lacks all legal foundations for environmental easements. Article 33 of the Constitution and the Environmental Protection and Improvement Law No. 27 of 2009 establish public environmental rights, prohibitions, supervision, remediation, and compensation. Articles 1271–1284 of the Civil Code provide a general regime for appurtenant easements, while Articles 239–243 of the Real Estate Registration Law regulate their registration and effect against successors [15–18]. These provisions can support a properly defined environmental easement benefiting an identified neighboring property. The remaining gap concerns a specialized conservation-oriented right capable of being held and enforced for a public environmental purpose without a traditional dominant estate.

Accordingly, the principal findings of the study may be summarized as follows:

1. Environmental easements combine property-law restrictions with environmental-protection objectives, but they must be distinguished from mandatory administrative controls imposed directly by environmental legislation.
2. Existing Iraqi civil law can accommodate an appurtenant environmental easement where a servient estate, a dominant estate, and an identifiable environmental utility are present. Article 1274 of the Civil Code provides a particularly relevant analogy by recognizing certain negative building restrictions as easements benefiting other properties.
3. A conservation-oriented environmental easement differs from the existing appurtenant model because it may protect broader public conservation values without requiring a neighboring dominant estate or a private property beneficiary.
4. Environmental easements may include negative obligations, affirmative obligations, or both. Their duration and modification should be governed by the creating instrument and applicable law, subject to procedures that preserve the protected environmental purpose.
5. Registration is essential where the restriction is intended to constitute a real right and bind successors. Any specialized legislation must therefore operate through, and remain consistent with, the Iraqi real-estate registration system.
6. Environmental easements should complement rather than replace public environmental regulation, administrative enforcement, civil liability, and the statutory duty to remediate environmental damage.

On the basis of these findings, the study proposes the following recommendations:

1. The Iraqi legislator should consider establishing a specialized conservation-easement regime while preserving the existing Civil Code rules governing appurtenant easements. The comparative U.S. model may provide guidance, but it should be adapted to Iraqi constitutional, property, environmental, and institutional principles.
2. The legislation should distinguish expressly among public-law environmental restrictions, appurtenant environmental easements benefiting an identified dominant estate, and conservation-oriented easements protecting broader environmental interests.
3. The statute should define eligible conservation purposes and qualified holders. Potential holders may include designated public bodies and qualified non-profit entities possessing the independence, expertise, resources, and continuing capacity required to monitor and enforce the restriction.
4. The creating instrument should identify the burdened property, the protected environmental values, prohibited and permitted uses, monitoring arrangements, enforcement powers, duration, and the rights of mortgagees, occupants, successors, and other affected parties.
5. Every environmental easement intended to bind successors should be registered in the real-estate register. The legislation should specify the documents, maps, baseline environmental information, approvals, and notices required for registration.
6. Material amendment, release, or termination should not be left to uncontrolled private agreement where the easement protects a public environmental interest. The law should require an appropriate judicial or administrative determination that the original purpose has become impossible, impracticable, or no longer proportionate, and should direct any substitute value toward an equivalent conservation purpose.

7. The legal framework should clarify when compensation, purchase, donation, public funding, or tax incentives may be used. Monetary consideration should remain optional rather than an essential element of every environmental easement.
8. Environmental easements should be integrated with the Environmental Protection and Improvement Law No. 27 of 2009. Public authorities must retain their regulatory, inspection, remediation, and enforcement responsibilities even where a private-law conservation instrument exists.

In conclusion, Iraqi law already contains the constitutional, environmental, civil, and registration foundations necessary to support appurtenant environmental restrictions between neighboring properties. A carefully designed additional regime could extend that foundation to conservation-oriented easements serving broader public environmental purposes. Such legislation would provide a preventive instrument for reconciling private property rights with environmental protection while preserving legal certainty, public accountability, and compatibility with the existing Iraqi system of real-property rights.

DECLARATION OF GENERATIVE AI AND AI-ASSISTED TECHNOLOGIES IN THE WRITING PROCESS

In the course of preparing this manuscript, the authors employed ChatGPT to improve the linguistic quality and readability of the content. After utilizing this AI tool, the authors conducted comprehensive review and necessary revisions to ensure the accuracy, integrity, and scientific rigor of the manuscript. All authors bear full responsibility for the final content of the published work, including any errors or inconsistencies that may arise.

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