

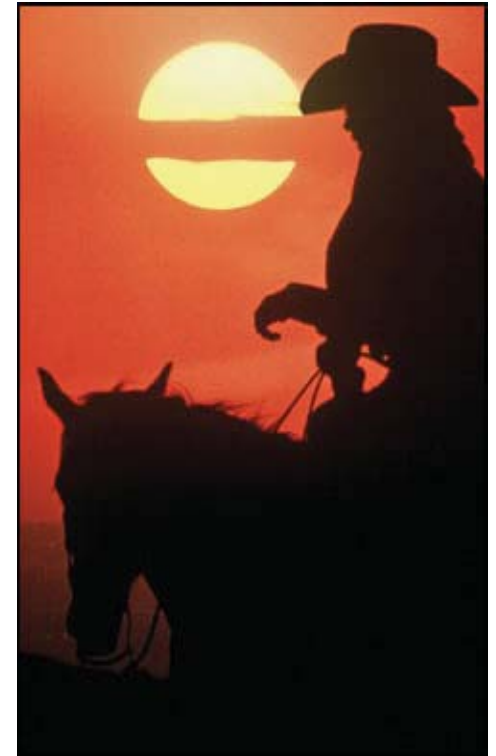
Protecting Texas with Conservation Easements



LAW OFFICE OF
BURGESS JACKSON
PRACTICING LAND CONSERVATION LAW

WHAT IS A CONSERVATION EASEMENT?

- Legal document (deed)
- Restricts use of land
- Enforced by government agency or land trust



WHAT IS A LAND TRUST?

- **Nonprofit organization**
- **Public charity (501c3)**
- **Conservation mission**



KEY CONCEPT:

With a Conservation Easement:

- Landowner retains title to the land
- Abides by conservation restrictions
- Maintains uses of land not prohibited by conservation easement



LANDOWNER CAN:

- Give the land to heirs, or
- Sell the property to anyone

**SUBJECT TO the Conservation
Easement**



KEY CONCEPT:

Contribution of a conservation easement to a land trust may entitle the landowner to federal tax benefits



KEY CONCEPT:

To be eligible for federal tax benefits the conservation easement must be **perpetual**



WHAT type of property is eligible for a (tax deductible) CE?

Four “Qualified Conservation Purposes:”

- 1) Education or outdoor recreation of
general public**
- 2) Protection of relatively natural habitat**
- 3) Open Space**
- 4) Historic preservation**



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WHAT type of property is eligible for a (tax deductible) CE?

Four “Qualified Conservation Purposes:”

**1) Education or outdoor recreation
of general public**

REQUIRE PHYSICAL PUBLIC ACCESS

4) Historic preservation

Four “Qualified Conservation Purposes:”

Most CEs in Texas are one of these two:

- 2) Protection of relatively natural habitat**
- 3) Open Space**



Four “Qualified Conservation Purposes:”

2) Protection of “significant habitat or ecosystem”

- Habitat for rare, threatened or endangered species**
- High quality example of natural community**
- Contribute to ecological viability of park or natural area**



Four “Qualified Conservation Purposes:”

3) Open Space

-The preservation of open space (including farmland and forest land) where such preservation is –

(I) For the scenic enjoyment of the general public, or

(II) Pursuant to a clearly delineated governmental conservation policy,

AND Will yield a significant public benefit





ELEMENTS OF A CONSERVATION EASEMENT DOCUMENT

Element 1: Purpose Clause



1. PURPOSE. The purpose of this Conservation Easement is to ensure that the Property will be **retained forever predominantly in its natural condition; to protect native plants, animals, or plant communities** on the Property; to **prevent any use of the Property that will significantly impair or interfere with the Conservation Values** of the Property, while **allowing for traditional uses** on the Property that may be compatible with and not destructive of the Conservation Values of the Property, such as **limited residential construction, agricultural/grazing, and recreational activities**, all subject to the terms of this Conservation Easement.

ELEMENTS OF A CONSERVATION EASEMENT DOCUMENT

Element 1: Purpose Clause

Element 2: State Conservation Values

Element 3: Restrictions & Reserved Rights



RESTRICTIONS AND RESERVED RIGHTS

- **Subdivision**
- **Construction**
- **Land Uses**
- **Surface Alteration**
- **Vegetation Management**



RESTRICTIONS AND RESERVED RIGHTS

- Subdivision
- Construction
- **Land Uses**
 - Limited residential
 - Agriculture/crops
 - Grazing
 - Hunting
 - Surface mining
 - Oil & gas development
 - Water extraction
- Surface Alteration
- Vegetation Management





RESTRICTIONS AND RESERVED RIGHTS

- **Subdivision**
- **Construction**
- **Land Uses**
- **Surface Alteration**
- **Vegetation Management**



ELEMENTS OF A CONSERVATION EASEMENT DOCUMENT

Element 1: Purpose Clause

Element 2: State Conservation Values

Element 3: Restrictions & Reserved Rights

Element 4: Administrative Sections



WHAT ARE WE CONSERVING?

Baseline Documentation

“Documentation sufficient to establish the condition of the property at the time of the gift.”



ADMINISTRATIVE SECTIONS: KEY PROVISIONS

- **Land Trust right of entry to monitor compliance**
- **Land Trust right of enforcement**



SPECIAL ISSUE: MORTGAGED PROPERTY

- **Mortgage must be “subordinated”
to conservation easement**
- **Lender agrees to allow CE to
remain after foreclosure**





KEY CONCEPT:

Contribution of a conservation easement to a land trust may entitle the landowner to federal tax benefits



Donation of a conservation easement creates a federal income tax deduction for the value of the conservation easement



Value of a Conservation Easement =
Value of property before CE –
Value of property after CE

AKA = Amount CE reduces value of
property



Value of a Conservation Easement =
Value of property before CE –
Value of property after CE

Badlands Ranch

Value before CE (unrestricted) = \$1,000,000

Value after CE (restricted) = \$ 600,000

Value of CE = \$ 400,000



The owner of the Badlands Ranch receives a charitable deduction of \$400,000*

* There are some limitations on the amount that can be deducted



Charitable contribution of \$400,000*

INCOME TAX SAVINGS:

Joe Bob Bandlands AGI = \$100,000

Total Tax Savings = ~ \$100,000

Joe Bob Bandlands AGI = \$500,000

Total Tax Savings = ~ \$150,000



CONSERVATION EASEMENTS:

It's not about the money



PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS

Some federal, state, and local programs purchase a conservation easement from the landowner, often at less than the appraised value



BARGAIN SALE:

Hybrid Transaction

PART

SALE



PART

CHARITABLE GIFT



PDR program buys CE at 75% of appraised value
Conservation Easement is appraised at \$400,000

\$400,000

SALE



\$300,000

**PDR Program
pays owner
CASH \$300,000**

GIFT



\$100,000

**Owner has
CHARITABLE
CONTRIBUTION
\$100,000**

Value of a Conservation Easement =
Value of property before CE –
Value of property after CE

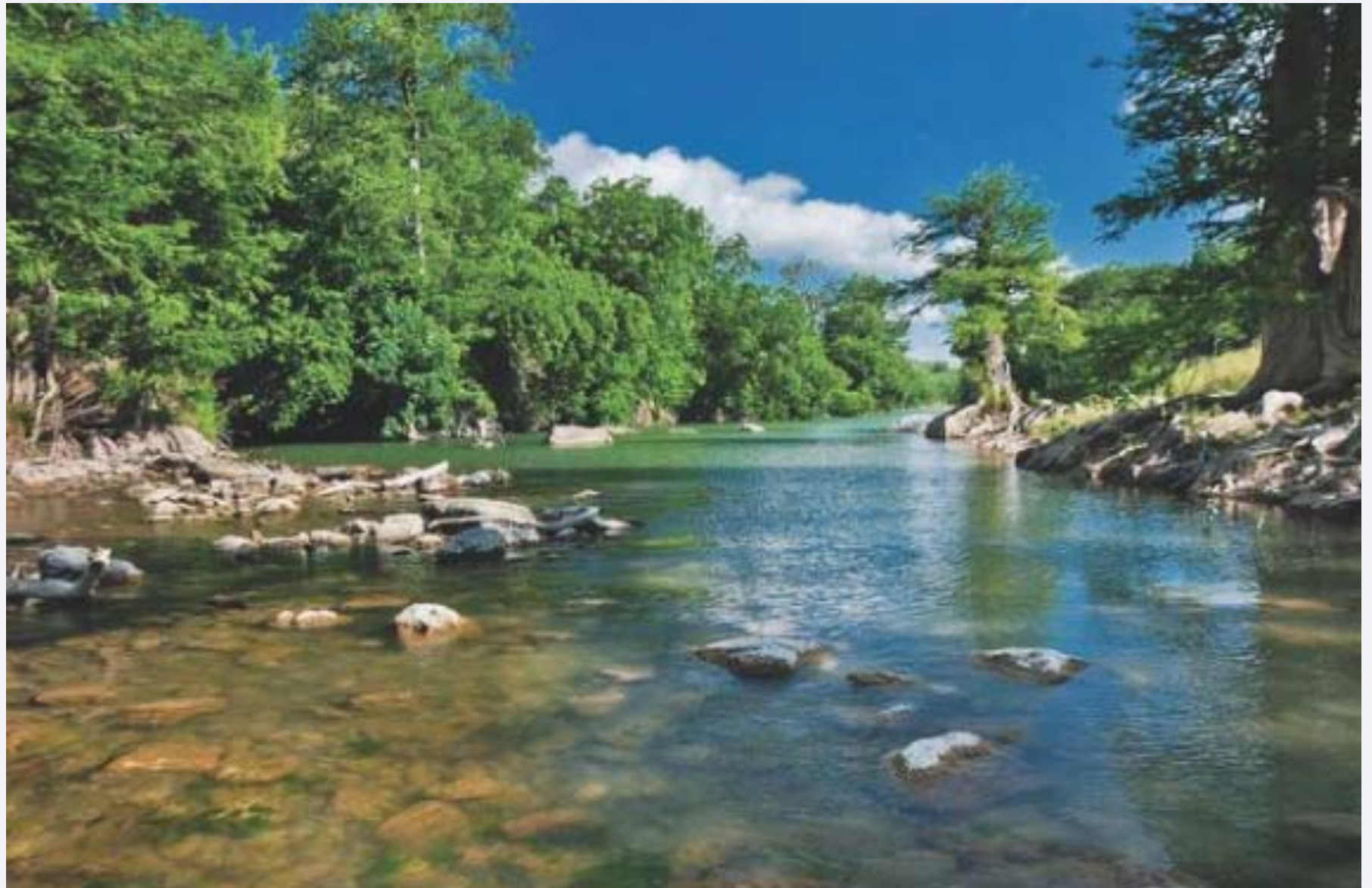
Badlands Ranch

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Value after CE (restricted) = \$ 600,000

Value of CE = \$ 400,000





ESTATE TAX

LARGE

Tax on [^]Decedent's Estates

- First \$5,490,000 of estate exempt from tax
- Real property in the estate subject to a conservation easement is valued at its RESTRICTED value



Value of a Conservation Easement =
Value of property before CE –
Value of property after CE

Badlands Ranch

Value before CE (unrestricted) = \$1,000,000

Value after CE (restricted) = \$ 600,000

Value of CE = \$ 400,000



Value of a Conservation Easement =
Value of property before CE –
Value of property after CE

Badlands Ranch

Value before CE (unrestricted) = \$10,000,000

Value after CE (restricted) = \$ 6,000,000

Value of CE = \$ 4,000,000



Badlands Ranch

Value before CE (unrestricted) = \$10,000,000

Value after CE (restricted) = \$ 6,000,000

- Estate tax on \$10,000,000 property
unrestricted = \$ 1,604,000
- Estate tax on \$6,000,000 property
restricted by conservation easement = \$ 4,000



UNIQUE!

Conservation Easement may be placed on property after passing of landowner to reduce estate tax



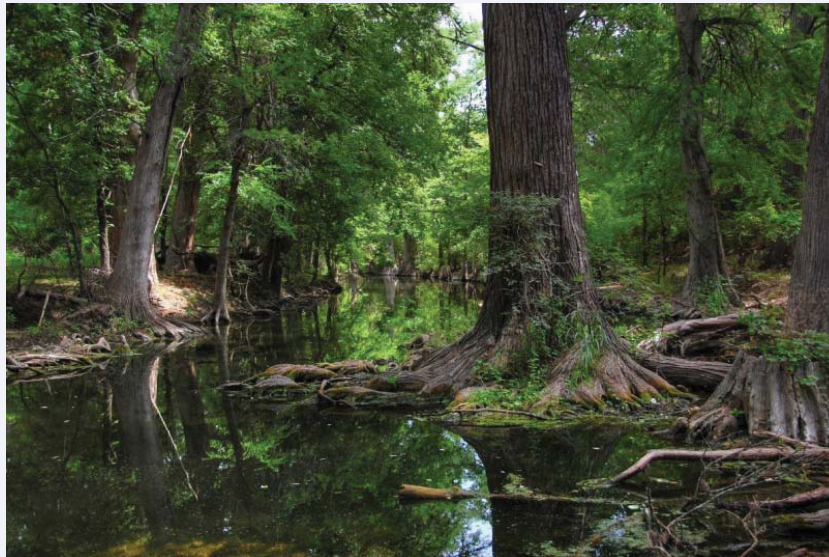
WHO WANTS A CONSERVATION EASEMENT?

- Protect family legacy
- Preserve important conservation values
- Unlock value in land
- Reduce estate tax



CONSIDERATIONS FOR LANDOWNERS

- Perpetual restrictions
- Ongoing relationship with land trust
- Transaction costs – appraisal, legal fees, title insurance, survey, stewardship contribution



LIFE WITH A CONSERVATION EASEMENT

- **Annual Compliance Monitoring**
- **Notice of Exercise of Reserved Rights**







ADDITIONAL RESOURCES

Texas Land Trust Council:

www.texaslandtrustcouncil.org

Land Trust Alliance:

www.lta.org

Conservation Easements: A Guide for Texas Landowners

<http://www.gbrtrust.org/documents/easements/ConservationEasements.pdf>

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