

TEXAS PARKS AND WILDLIFE



CONSERVATION EASEMENTS

A GUIDE FOR
TEXAS LANDOWNERS



CONSERVATION EASEMENTS: A GUIDE FOR TEXAS LANDOWNERS

TABLE OF CONTENTS

Introduction	1
Part One: What is a Conservation Easement?	2
Part Two: Common Questions About Conservation Easements.	3
Part Three: Financial Benefits of Conservation Easements	7
Part Four: Conservation Easement Profiles	11
Part Five: Land Trusts	30
Part Six: What Next?	31
Appendix	
Contents of a Conservation Easement	32
Books on Conservation Easements.	33
Texas Land Trusts.	33

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INTRODUCTION

For many Texas landowners, their property is more than a financial asset; it is part of the history of their family, their community and their state.

This guidebook is intended to help Texas landowners understand one of the most flexible and effective means available to conserve and protect private property – the conservation easement. A conservation easement is a legal agreement that ensures a property will be managed according to the landowner's wishes for years into the future and may also qualify the landowner for tax benefits. Every conservation easement document is individually crafted and reflects the special qualities of the land protected and the needs of the landowner.

Conservation easements can assist landowners in protecting their farm or ranch land, wildlife habitat, a scenic vista or historic buildings. Conservation easements can be tailored to meet a landowner's specific needs, whether he or she owns 5,000 acres in South Texas or five acres in the Texas Hill Country.

Nine Texas landowners who have used conservation easements are profiled in this handbook. Each landowner, including several individuals, a large ranch operation and a residential real estate developer, has used a conservation easement to protect something the owner values. These profiles illustrate how easements can help people conserve wetlands, habitat for rare plants and animals, urban open space and family traditions. In all cases, the specifics of the conservation easement document are unique to the property and the landowner.

Because of its size and unique geography, Texas is blessed with a rich natural heritage. From the mountains in the west to bottomlands and bayous in the east, from the high plains in the north to the brush country down south, Texas private landowners manage more than 95 percent of the state's land. But the Texas landscape is changing. Today, about 80 percent of all Texans live in cities, compared to about 25 percent 50 years ago. As Texas cities grow, they are steadily displacing natural habitats and scenic open spaces.

The Texas countryside is changing too. One of the most significant factors affecting Texas' landscape is the continued breakup of family-owned property. Family-owned farms, ranches and recreational lands are affected by changing economics and the increasing tax burden of owning property. Passing on a family farm or ranch to the next generation is a time-honored tradition in Texas. However, estate taxes, which can be as high as 50 percent of an estate's total value, may force heirs to sell all or part of a family property.

PART ONE: WHAT IS A CONSERVATION EASEMENT?

A conservation easement is a restriction landowners voluntarily place on specified uses of their property to protect natural, productive or cultural features. A conservation easement is recorded as a written legal agreement between the landowner and the “holder” of the easement, which may be either a nonprofit conservation organization or government agency.

With a conservation easement the landowner retains legal title to the property and determines the types of land uses to continue and those to restrict. As part of the arrangement, the landowner grants the holder of the conservation easement the right to periodically assess the condition of the property to ensure that it is maintained according to the terms of the legal agreement.

Many rights come with owning property, including the rights to manage resources, change use, subdivide or develop. With a conservation easement, a landowner permanently limits one or more of these rights. For example, a landowner donating a conservation easement could choose to limit the right to develop a property, but keep the rights to build a house, raise cattle and grow crops. The landowner may continue his or her current use of the property, provided the resources the conservation easement is intended to protect are sustained.

Texas’ landscape and its people are diverse. Because every landowner and every property is unique, a conservation easement agreement can be designed to meet specific, individual needs.

WHY USE A CONSERVATION EASEMENT?

Landowners interested in conservation generally have two principal concerns. First is the desire to protect the natural or productive qualities of their property. The landowner is interested in conserving special features such as fertile soil, mature trees, wildlife habitat or a piece of history – even after his or her ownership comes to an end.

Along with conservation, landowners are also concerned about maintaining their property’s productivity. The economics associated with land ownership are changing and fewer family-owned properties are the primary source of a family’s income. Along with maintaining productivity, Texas landowners must also contend with the increasing tax burden associated with property ownership. Estate taxes, property taxes and the financial incentive to sell or develop are all factors that affect land use decisions.

Conservation easements enable landowners to protect resources they value for their children and future generations while maintaining private ownership. In Texas, conservation easements are generally donated to nonprofit conservation organizations, commonly known as land trusts. The donation of a conservation easement can have potentially significant tax benefits; these are discussed later in this handbook.

Conservation easements are recognized for legal and tax purposes by the State of Texas (Chapter 183, Texas Natural Resources Code) and the Internal Revenue Service (Internal Revenue Code, Section 170(h)). This handbook will answer general questions that a landowner might have about conservation easements. Before completing a conservation easement agreement, landowners should consult with their legal and tax advisors.

PART TWO: COMMON QUESTIONS ABOUT CONSERVATION EASEMENTS

Does every easement qualify for an income tax deduction?

No. To qualify as a charitable contribution, conservation easement donations must:

- be perpetual;
- be donated to a qualified organization (a nonprofit land trust or public agency); and
- meet one of the “conservation purposes” tests outlined in the Internal Revenue Code.

Does every easement have to be perpetual?

For the donation to qualify for income and estate tax benefits, the conservation easement must be perpetual and apply to all future owners. Some organizations, however, may be willing to purchase conservation easements that are designed for a period of years. For example, the Wetlands Reserve Program administered by the Natural Resources Conservation Service, pays landowners for limited-term conservation easements on restored or existing wetlands that provide significant habitat for birds and other wildlife.

Can easements be purchased?

Yes, this is typically known as “purchase of development rights” or PDR. This conservation method pays willing landowners to restrict development of their land. After selling the development rights, the landowner retains all other rights of ownership, including water rights, using the land for agriculture or conserving it, preventing trespass, or selling or transferring the land to others. Typically, landowners sell their development rights to a private conservation organization or government entity. These organizations do not acquire the right to build anything on the land, but only the right and responsibility to limit develop-

ment of the property as described in provisions of the agreement. Public access is not permitted without landowner consent.

PDR programs generally pay landowners the difference between the value of the land as restricted and its value on the open market. This is usually determined through a “before and after” real estate appraisal. Because restricting development lowers the overall land value, PDR programs can reduce estate taxes. Texas does not currently have a statewide PDR program. However, some Texas cities have passed local bond issues to buy development rights. The United States Department of Agriculture, through the Natural Resources Conservation Service (NRCS) has two program – the Farmland Protection Program and the Wetlands Reserve Program, which buy development rights or provide monetary matches to local land trusts.

What are the “conservation purposes” recognized by the Internal Revenue Code?

The Internal Revenue Service Code Section 170(h) requires that conservation easement donations meet one or more of the following conservation purposes:

- protects relatively natural habitats of fish, wildlife or plants;
- preserves open space – including farms, ranches or forests – either for scenic enjoyment or in keeping with a clearly delineated public policy;
- preserves land for public outdoor recreation or education; or
- preserves historically important land or certified historic structures.

Each conservation easement must meet one, but not all, of these recognized purposes. The conservation purpose of most conservation easement donations in Texas is derived from the protection of open space or wildlife habitat.

Can a conservation easement protecting open space in a real estate development qualify for an income tax deduction?

No tax deduction will be allowed if the donation is made under compulsion, or in exchange for a benefit that the landowner expects to receive. Also, charitable income tax deductions for real estate developers are generally limited to the tax basis of the property. In some cases, the donation of a conservation easement as part of a development can make economic sense for a developer who is motivated by conservation objectives. The developer is encouraged to begin conservation planning as early in the development process as possible in order to preserve the voluntary or charitable aspects of donating a conservation easement and the resulting charitable tax deductions.

Does a conservation easement grant public access to my property?

No. Landowners retain control of access to their property. They may choose to allow access to specific groups or the general public in their conservation easement agreement, but are not required to do so.

Can I still sell my property?

Yes. Property with a conservation easement can be bought, sold and inherited. However, the conservation easement is tied to the land and binds all present and future owners to its terms and restrictions.

What will a conservation easement mean for my children?

A conservation easement may reduce estate taxes paid by heirs. Future landowners, including family members, will abide by the terms of the conservation easement agreement and will continue the relationship with the organization that “holds” the easement. Families should consider the trade-off between immediate tax benefits resulting from reduced property value and permanent restrictions on land use. Professional assistance is available and recommended for families considering this evaluation.

What if the property is owned by more than one person?

All owners of a property must agree to the terms of the conservation easement before it can be legally granted.

Can I still build on my property?

The landowner may retain specified development rights in a conservation easement agreement. For example, a conservation easement protecting a farm or ranch can allow construction compatible with agricultural operations as well as changes in crop selection or management practices. A conservation easement can specify the location, size and type of one or more residences or other development on a property.

What if my property is mortgaged?

In order for a donated conservation easement to qualify for an income tax deduction, the landowner must acquire a mortgage subordination agreement from the mortgage holder, often a bank. With this document, the mortgage holder agrees to follow the terms of the conservation easement in the event of foreclosure.

What if I don't own the mineral rights to my property?

This is a complicated issue that should be discussed with professional advisors. However, a landowner who does not own the mineral rights to his or her property can qualify for income or estate tax benefits if:

- ownership of the mineral rights has been separated from the land and remains separated today; and
- the owner proves that the probability of surface mining occurring on the property is “so remote as to be negligible.”

Where are conservation easements recorded?

Like a deed or other types of easements, conservation easement documents are recorded with other land records in the county in which the property exists.

Can conservation easements be changed or revoked?

Because conservation easements qualifying under IRS regulations are designed to be permanent, landowners should assume that it will not be possible to revoke an easement. However, conservation easements can be amended if:

- both the easement holder and the landowner agree to the terms of the change; and
- the IRS recognized “conservation purpose” of the conservation easement is not affected.

Can a conservation easement be donated by will?

Yes. The landowner must contact the intended easement holder before conveying the easement by will to ensure that the organization will accept the donation. If the easement qualifies under federal tax law, its value is subtracted from the landowner’s taxable estate, reducing estate taxes for heirs. Also under Federal law, the executor or heirs of an estate can donate a qualified easement after the death of the landowner, even if the landowner’s will does not donate an easement. A landowner who might want their executor or heirs to be able to make this donation should clarify the intent on this matter by stating in their will that the executor and heirs have this power.

How is a conservation easement enforced?

The land trust or conservation organization that holds the easement bears the responsibility of enforcing its terms. Typically, this means that the easement holder will schedule a property visit with the landowner at least once a year to document any development or changed uses. Unless the landowner and easement holder specifically agree to give enforcement rights to a third party, no outside group can enforce the terms of a conservation easement.

Is a conservation easement appropriate for every landowner?

Conservation easements are designed to meet the site-specific needs of the individual landowner and land trust. They may not, however, be appropriate for every situation. Landowners considering an easement should consult with family members, professional tax and legal advisors, and a land trust representative to determine whether this tool will help accomplish one’s long-term conservation and economic goals.

PART THREE: FINANCIAL BENEFITS OF CONSERVATION EASEMENTS

Both federal and Texas laws provide tax benefits to landowners who protect natural or historic land with qualifying conservation easements. Conservation easements are not suited for every situation; it is important that landowners consult tax professionals for more specific information.

A conservation easement donation can qualify as a charitable contribution if:

- A. it is granted in perpetuity;
- B. it is granted to a qualified organization, either
 1. a nonprofit, 501(c)(3) charitable organization (i.e., a land trust) with a conservation purpose and the means to enforce the easement, or
 2. a local, state or federal public agency;
- C. it achieves at least one of the following:
 1. preserves land for public outdoor recreation or education,
 2. protects relatively natural habitats of fish, wildlife or plants,
 3. preserves open space – including farms, ranches or forests – either for scenic enjoyment or in keeping with a clearly delineated public policy (such as a local open space plan), or
 4. preserves historically important land or certified historic structures.

For a conservation easement donation to qualify for a federal income tax deduction, the following items usually need to be prepared:

- the conservation easement document;
- an inventory (including photographs) of the property's condition at the time of donation listing man-made structures, water resources, agricultural and ecological features;
- a qualified appraisal of the conservation easement prepared by an independent real estate appraiser working for the donor, completed no more than 60 days prior to the donation and no later than the time the tax return claiming the deduction is filed;
- title report, copy of the deed and copies of any mortgages with subordination agreements from the mortgage holder;
- a legal land survey; and
- IRS Form 8283 (an attachment to the federal income tax return of anyone claiming charitable contributions of more than \$5,000).

FEDERAL INCOME TAX DEDUCTION

The federal income tax benefits of donating a conservation easement are similar to those of making other charitable contributions. A landowner may be able to deduct up to the full value of the conservation easement from his or her federal income taxes.

Tax laws require that the value of the conservation easement be determined by a qualified real-estate appraiser. The value of the easement is generally the difference between the value of a property with the restrictions of a conservation easement in place and the same property's value without these restrictions. In general, the value of a conservation easement donation is greatest in areas where development pressure is most intense and lower in remote areas. Likewise, a conservation easement that prohibits any development will have a higher value than an easement that permits a property to be divided or developed.

A tract of land may be worth \$120,000 as a potential residential development, but only worth \$20,000 as open space or recreational property. If a landowner donated a conservation easement to a land trust that prohibited new construction on his property, he would be making a charitable contribution of \$100,000. The landowner may then be eligible for up to \$100,000 in federal income tax deductions.

If the conservation easement meets IRS criteria, the landowner may deduct the full value of the conservation easement donation from his or her adjusted gross income, up to 30 percent of the landowner's income for the year of the gift. If the donation exceeds this amount in the year of the donation, the excess balance of the donation may be deducted for up to five succeeding years, subject to the same 30 percent limitation. However, for clarity, this calculation has been simplified. The actual results may be quite different, because of the complexity of the tax code.

A landowner with a \$60,000 adjusted annual income donates a conservation easement worth \$100,000 to a land trust. The landowner can deduct 30 percent of his \$60,000 income, or \$18,000, in each of Years 1-5 and the remaining \$10,000 in Year 6.

In some situations, landowners may opt to use the "step down election" which increases the limit of the deduction from 30 percent to 50 percent of an individual's annual adjusted gross income. However, the step down election generally requires that the deduction be based on the property's "tax basis," usually the amount paid for the property when purchased. Landowners should discuss the implications of both the 30 percent and 50 percent deduction limits with tax professionals.

Conservation easements can be phased in on portions of a property over time, should the value of the charitable donation exceed a landowner’s ability to use the income tax deduction over the allowed six years. Subject to certain limitations, some of the expenses incurred by a landowner in the donation process, including the cost for appraisals, surveys, tax advice, legal review and title insurance, can also be tax deductible.

ESTATE TAXES

Estimated federal estate taxes for an individual (Year 2003)

Value of the Estate	Total Estate Taxes Paid
\$1,000,000	\$0
\$1,500,000	\$205,000
\$2,000,000	\$435,000
\$2,500,000	\$680,000
\$5,000,000	\$1,930,000
\$10,000,000	\$4,430,000

To calculate the value of inherited property for estate taxes purposes, federal law requires that the value of the land be based on that property’s “highest and best use,” instead of actual use. For example, a landowner owns a small family ranch near a growing city that might be more valuable as a residential development. When the landowner dies, taxes on the property will be based on the land’s value as several potential homesites, even if the heirs do not intend to develop.

A conservation easement can place restrictions on use of a property that limit its “highest and best use.” Because the property’s “highest and best use” is restricted, its value and the estate taxes are reduced accordingly. If the landowner in the example above donates a conservation easement on the family ranch that prohibits the construction of new homesites, estate taxes on her land would be based on the land’s value as a ranch, rather than a potential residential development. As noted earlier, there are limits on the income tax deduction for a conservation easement donation, but there are no such limits for estate tax purposes, so the savings can be substantial.

To realize estate tax benefits, landowners should donate the conservation easement during their lifetime, or in a legal will, or they should specify in their will that their heirs or estate executor has the power to donate an easement after their death. Under federal law, in certain circumstances, executors or heirs can donate an easement within a period after a landowner’s

death and qualify for land value reduction. A landowner intending to convey a conservation easement by will should contact the potential holder to ensure that the organization will accept the donation.

A widowed landowner purchased a property 30 years ago that has appreciated significantly. The property, which is located near a growing suburban community, has a current fair market value of \$1,200,000. The landowner donates a conservation easement to a local land trust that reduces the property's value to \$700,000. Assuming the landowner has \$1,800,000 in taxable assets in addition to the property and that no prior taxable gifts have been made, the effect of the conservation easement on estate taxes for heirs would be as follows.

	Without Easement Donation	With Easement Donation
Value of the land	\$1,200,000	\$700,000
Other valuable assets	\$1,800,000	\$1,800,000
Total taxable estate	\$3,000,000	\$2,500,000
Total federal estate taxes	\$930,000	\$680,000

A conservation easement can also qualify an estate for an additional exclusion of land value up to the lesser of 40% of the remaining value of the land or \$500,000.

With the additional Exclusion:

Exclude 40% of Easement Land Value \$700,000	(\$280,000)
Leaves Total Taxable Estate	\$2,220,000
Total Federal Estate Taxes - With exclusion	\$542,800
Tax Savings	\$387,200

LOCAL PROPERTY TAXES

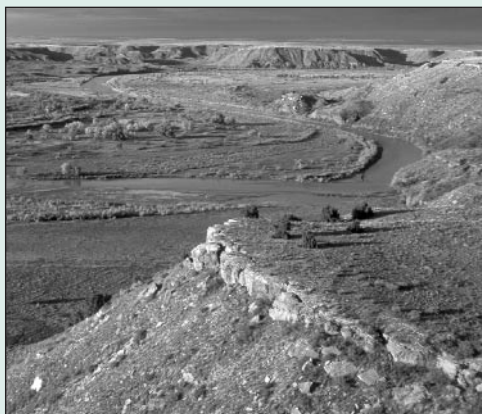
Conservation easements may reduce property taxes. However, property taxes on agricultural land in Texas are reduced because they are based on a property's productivity rather than fair market value. Conservation easements on land not classified as agricultural may reduce property taxes to the extent the value of the land is reduced. But it is important to remember that property taxes are determined by the county tax appraiser.

The Texas Comptroller of Public Accounts has recently advised Texas county appraisal districts to be prepared to answer landowners' questions about the effect of conservation easements on agricultural-use status and taxable value.

PART FOUR: EASEMENT PROFILES

The nine landowners profiled in the next pages have used conservation easements to accomplish land use objective for years into the future. The properties described in these profiles vary from 100 acres of virgin Blackland Prairie to a 70,000-acre ranch with 29 miles of river frontage in the Texas Panhandle.

Any tax benefit associated with the use of a conservation easement is unique to the terms of the agreement and the landowner's tax situation. Landowners should discuss the benefits of conservation easements with professionals to determine their impact on specific tax situations.





CHIMNEY ROCK CONSERVATION DEVELOPMENT

The Town of Flower Mound understands that a conservation easement affords the opportunity to retain a visible landscape feature to help preserve its rural identity – its ‘sense of place.’

Preserving a scenic vista while also providing new housing can be financially rewarding as well as ecologically compatible. That is the lesson being learned at Chimney Rock, north central Texas’ first conservation residential development.

The concept for Chimney Rock was conceived at the Town of Flower Mound’s first SmartGrowth and Conservation Development symposium that featured nationally renowned conservation development planner, Randall Arendt. Following that symposium, developer Willard Baker and his partners contacted Mr. Arendt for advice on how to apply those land planning principles to a 100-acre property located in the Town’s Cross Timbers Conservation Development District.

Flower Mound is the only municipality in north central Texas to specifically encourage the use of conservation easements and partnerships with local land trusts in its land use plan. “In our land development code, Flower Mound provides several incentives to encourage developers to preserve open space with a conservation easement,” says Town Manager Van James. “These incentives include expedited development review, permit fee waivers, and even a rebate of agricultural valuation rollback taxes,” he said.

Mr. Baker admits he had reservations about conservation development, but after getting ideas for Chimney Rock from Mr. Arendt he said he and his partners were won over.

“There are emotional and market demands for this type

of residential development,” said Baker. Clif Baker, a partner in his father’s development company, adds, “A homeowner will be able to enjoy the scenic and recreational benefits of the preserved open space without having the maintenance responsibilities or property tax liabilities associated with owning it.” In addition, the Bakers believe the conservation easement’s permanent protection will give homeowners a guarantee that this land will stay the way it is forever. “That’s unique,” concludes Clif.

The purpose of the conservation easement is to protect a scenic vista designated by the Town of Flower Mound along FM 1171 with the forested shorelands of Grapevine Lake visible in the distance. The easement prohibits obstruction of a view corridor that also overlooks the property’s grassland, which is dotted with clusters of native oak trees referred to as oak mottes.

Chimney Rock features more than 49 acres of preserved open space. This conservation development consists of 48 one-acre single-family lots while the remainder of the land, including a ten-acre single-family conservancy lot, is committed

to a perpetual conservation easement. The limited extent of residential development on the property is consistent with its scenic views, water features, wooded areas and wildlife habitat.

A segment of the western boundary of Chimney Rock adjoins property owned by the Corps of Engineers. The final plat of Chimney Rock designates the approximate location of a future hiking and equestrian trail to serve as the connection to a more extensive trail system planned for the Town of Flower Mound.

“You don’t see many views as beautiful as this,” says David Behm, Executive Director of Connemara Conservancy. Connemara, a local land trust serving north central Texas, will monitor and enforce – forever – the easement area to ensure that the preserved open space will be protected from any unauthorized uses. “Nothing can ever be built to block the view – that’s the significance of the conservation easement with this project,” Behm continued. “The Town of Flower Mound understands that a conservation easement affords the opportunity to retain a visible landscape feature to help preserve its rural identity – its ‘sense of place.’”



ERWIN BILLIG ON GOD'S GREEN ACRES

Sprawl from Austin already has caused increased land fragmentation in Bastrop County, especially along highways. Erwin Billig wants to ensure a different future for his land.

The 670-acre Erwin Billig farm near Paige, Texas has been in agricultural production for many decades. Part of the Spanish/Mexican land grants that began in Texas two centuries ago, the original survey of the land was measured in varas. At its current size, the farm is the equivalent of just over 756 varas. Over the years the property was assembled from smaller tracts to reach the current acreage. Since he acquired the property in 1971, Erwin Billig has worked the property as a cow-calf operation, woodlot, and wildlife refuge. He and his wife Delores reside in what they term the “new place” which has a beautiful view of the cow pastures, barns and a large pond to the south. The structure he laughingly refers to as the “old place” was built around the turn of the last century and remains as

a home for some of the many birds on the property.

The Billig farm contains the headwaters of Bluff Creek and Paint Creek. The land is rolling, and has virtually every soil type from blackland to clay to sandy loam. Over the years, the property has had many different uses – everything from peanut farm to dairy and turkey farm. At one point, a large pit was built near the fence to make it easier to sell BBQ turkey to people passing on the country road that is now Billig Lane.

Mr. Billig has done extensive work to bring the farm to its current condition. He explains, “When I bought the land you could not even see down to the first pond. I expect I spent 50 percent of my time working the land, on mesquite control.

I used every method you can think of to get rid of it.”

Among the many trees planted and tended by Mr. Billig are Live Oak, Bald Cypress, Mimosa, Mulberry, Pecan, Black Walnut, Persimmon, Red Bud, Fig trees, Pyracantha, Plum, Crepe Myrtle, and for a windbreak, Slash Pines. He also established a large Brazos Blackberry patch and has native Hickory trees on the property.

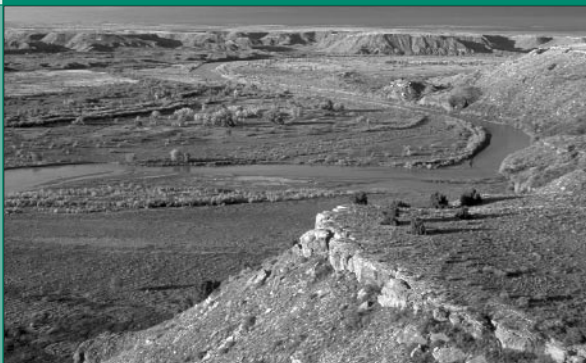
Wildlife habitat maintenance and improvement is a large part of farm operations today. Mr. Billig’s property is home to deer and a whole host of birds including turkey, dove, Scissor-tail Flycatcher and Cara Cara and songbirds such as Cardinal, Cuckoo and Chuck-will’s-widow. Habitat maintenance features include food plots, water access in the woods, and plenty of cover and forage areas. In the future, this aspect of the farm will be emphasized and enhanced. The farm will be protected and kept intact for the benefit of multiple animal species in the region.

Maintaining the natural condition of the land and its wildlife benefits is a priority for Mr. Billig. His desire to keep the property together and forever preserve the land

for wildlife is being implemented by Pines and Prairies Land Trust (PPLT). The conservation easement developed for Mr. Billig’s property represents the first such agreement for PPLT.

Now 88, Mr. Billig fears that someday down the line his beloved landscape might be eyed for a large-scale subdivision. Although the area around Paige is not at this moment under such a threat, the land is located near US Highway 290, a major corridor between Austin and Houston. Sprawl from Austin already has caused increased land fragmentation in Bastrop County, especially along highways. Erwin Billig wants to ensure a different future for his land. Mr. Billig’s vision is for his property to remain as healthy rangeland and wildlife habitat.

“Protected by the conservation easement, the farm will remain as wide open space with scenic wildlife habitat benefiting the people and animals in Bastrop County and beyond,” said Carrie Knox, President of the Pines and Prairies Land Trust. “We are proud to partner with a gentleman of such vision and generosity as Erwin Billig.”



CANADIAN RIVER CATTLE RANCH

I am very proud to be an environmental partner with the Parks and Wildlife Foundation of Texas in the preservation of one of the premier ecologically rich areas in Texas.

Attorney, cattle rancher, avid hunter and philanthropist David Nutt has donated the largest conservation easement in Texas history to the Parks and Wildlife Foundation of Texas, Inc. to protect the Canadian River Cattle Ranch. The easement, located in Oldham County on the Texas/New Mexico border, contains 29 miles of Canadian River frontage and tens of thousands of acres of native prairie. The 70,000-acre ranch is over a tenth of the size of Rhode Island! The native plant communities on the property, particularly grasslands, are only marginally represented in existing public parks and wildlife areas in the Panhandle region.

The region where the property lies, known as the Canadian River Breaks because of the rough terrain along the river, is

sparsely populated and thus remains largely the same as the first European settlers found it centuries ago. The region was identified as an area of unique natural and cultural significance in a series of natural area surveys done in 1973 by the LBJ School of Public Affairs in Austin.

The property also contains prehistoric and historic artifacts that tell the stories of successive waves of human cultures. A Texas Parks and Wildlife Department report says the region's earliest human inhabitants hunted bison, camels and mammoths about 12,000 years ago. Later came mesa-dwelling American Indians, followed by Spanish explorers in the 1600s who found nomadic Apache, Comanche and Kiowa living symbiotically with bison herds. In the mid-1870s, colonizing

Spanish sheepherders moved their flocks into the region from New Mexico. By 1887, barbed wire, windmills and the railroad put end to the open range.

By choosing to give a conservation easement rather than donate the property outright, David Nutt was able to specify not only how the landscape would be protected, but also how he can continue to use it. He will continue to own and maintain the land and raise cattle there, plus he retains rights to maintain and improve fences and existing structures. The area will not be open to the public or be used for any public hunts. He will also have the right to build new structures on two smaller areas within the property. "This donation means the land will be permanently protected against development and can never be subdivided," said Andrew Sansom, former Texas Parks and Wildlife Department executive director, who personally handled final negotiation of the donation. Nutt will also realize tax benefits. Texas Parks and Wildlife Department Executive Director Robert Cook says all of these are reasons why owners of rural land are increasingly eyeing the sale or donation of conservation easements as a way to protect a landscape's wildlife, environmental values

and views while retaining ownership and use rights.

The Parks and Wildlife Foundation of Texas, a private nonprofit foundation, was set up in 1991 to seek private donations for conservation work in Texas, and works closely with the Texas Parks and Wildlife Department. The Foundation has been a partner in numerous private lands conservation efforts with the Texas Parks and Wildlife Department. "We're pleased to have played a part in this historic conservation agreement," said Paula Peters, president of the Parks and Wildlife Foundation. "In addition to the easement, Mr. Nutt has also made a sizeable donation to endow the operating costs associated with administering the easement."

"I am very proud to be an environmental partner with the Parks and Wildlife Foundation of Texas in the preservation of one of the premier ecologically rich areas in Texas," said David Nutt. "I am particularly pleased to be able to assure the perpetual protection of this landscape for future generations."



THE MONTGOMERY COUNTY PRESERVE

Setting aside land permanently for wildlife habitat as well as for low-impact public access is critical and having a public entity agree to do this is an important conservation step for Texas.

The dawn of March 2, 2002 awoke to see not only Texas Independence Day unfold, but several hours later the grand opening ceremony celebrating Texas' first conservation easement with a county. About one hundred and thirty Houston area residents braved the frigid weather to be among the first to set foot in the new 71-acre Montgomery County Preserve, protected by a conservation easement held by Legacy Land Trust. Snuggled in the confluence where Spring and Panther Creeks converge, the Preserve is home to numerous species of wildlife, including many birds, deer, opossum, butterflies and even rare species of violets.

"The special thing about the vegetation in Montgomery County is that many plants here are actually the farthest west that you find them... that's why people call it 'the

Little Thicket,'" said April Proudfit, Native Plant Society of Texas member. Special flowers found on the site include the rare Walter's Violet as well as Green Dragons. The Preserve is also speckled with Sassafras trees, the very tree from which Indians and pioneers made tea long ago.

The land previously belonged to The Woodlands Land Development Company, who had set it aside as a flood mitigation site. In an exchange of four different properties, in January of 2002, Montgomery County became the owner of the 71-acre tract, with the intention of preserving the land for its flood protection benefits, its wildlife habitat and the opportunity to open it to area residents as a hiking trail.

Since its opening this spring, the site has already been host to

numerous nature observation activities. On June 15, 2002 a National Butterfly Association Count was held with eighteen different species of butterflies discovered on the premises. There have been numerous boy scout troops and girl scout troops who have used the site and area residents are able to tour the property at any time of day, including early morning and dusk to better identify the numerous wildlife species. Area birder Damien Carey said, "Having access to the site at all times is a rare treat... most public parks are only open at specific times and if you're trying to identify certain birds, you'll never see them during regular 'opening hours'." The eco-tourism boost for the area is already evident as planned group tours include the statewide Native Plant Society as well as area hiking groups.

Jennifer Lorenz, the executive director of Legacy Land Trust, said the precedent of a conservation easement with a Texas county is an important one. "Setting aside land permanently for wildlife habitat as well as for low-impact public access is critical and having a public entity agree to do this is an important conservation step for Texas. Cities, counties and other public entities need to realize that a conservation easement is

an available option for their use." Public entities who agree to preserve lands with their local land trust also can receive benefits for what are usually low-funded parks departments. Legacy Land Trust provided volunteers for numerous functions at the Preserve, as well as carving a two-mile long hiking trail through the wooded wilderness of the Preserve.

Besides assisting with maintenance of the trail, Legacy Land Trust has also provided naturalist guides for events. For the grand opening event LLT tour guides led the way throughout the trail – providing birding, mushroom, native plant and animal expertise. Local natural historian Carmine Stall shared his knowledge of the interesting natural history of the Spring Creek area.

Legacy Land Trust will be helping to "preserve the Preserve" by performing its annual survey to ensure that no degradation is taking place. The land trust will be working with the county to guarantee that the integrity of the land will be preserved forever, as well as continuing to provide critical volunteer help for events and maintenance of the trail.



SHIELD RANCH

The bottom line is that we love the ranch, and really didn't want to see it developed in a traditional way, ever. We knew the ranch was special to us, but we also started to realize how important the ranch was ecologically.

When Fred and Vera Shield began buying land along Barton Creek in 1938, they had no idea that their 6,700 acres would become a prized conservation project within 50 years. The San Antonio couple was looking for a place to run livestock and create a peaceful family retreat. With six miles of Barton Creek, spectacular views and several historic pioneer structures on the property, Shield Ranch was a slice of heaven.

The Shields cleared pastures, drilled wells and built fences to establish their modest livestock operation, but otherwise minimized their impact on the land. They began managing cedar, eventually clearing enough of the invasive trees that a mature plant community of oak, hackberry and cedar elm groves began to thrive. A low-impact grazing regimen preserved the ranch's high quality native grasslands. Family members

enjoyed hunting, fishing and exploring their rural ranch.

But as time went by, development started to creep toward the Shield Ranch. "I remember even when I was in high school, we could see the development coming out our way," says Bob Ayres, Fred Shield's grandson who now owns and operates the property with his mother Patricia Shield Ayres, father Robert M. Ayres and his sister Vera Ayres Bowen. "We've been watching Austin's development move toward us since the 1970s."

Sprawling development in the Barton Creek watershed prompted the Ayres family to start planning for the future in 1987. "The first thing we came to as a family is that we wanted to protect the features of the ranch that we valued, but also protect the land value as an

economic asset,” Ayres said. “The question was – how can we do both?”

Over the next 10 years, the Ayres met with land planning consultants, financial advisers, the Texas Parks and Wildlife Department, the Natural Resource Conservation Service and the Nature Conservancy. They commissioned a study of the entire ranch, catalogued all of its natural and manmade features, and continued to manage the livestock and wildlife habitat according to their strong conservation ethic.

In researching the family’s options, Ayres learned about conservation easements, and started talking to advisers about how easements might work for their ranch. The Nature Conservancy was very interested in a donated easement on the property because it is directly upstream from its Barton Creek Habitat Preserve.

“This is the largest private property in western Travis County – only 20 miles from downtown Austin, and it has lots of wildlife habitat and open space. Development of the Shield Ranch would impact (TNC) property downstream and Barton Creek all the way to Barton Springs,” said Jeff Francell, formerly of the Nature Conservancy. “This is one of few properties this size in this area that isn’t cedar choked,

not overgrazed and has a high diversity of trees and shrubs – it’s in excellent condition.”

The City of Austin was also interested in protecting water quality in Barton Creek. When city voters passed a bond initiative in 1998 to raise money for conservation easements in the watershed, the Ayres realized that the time was right. “We knew the ranch was special to us, but we also started to realize how important the ranch was ecologically,” Ayres said. “It is in the exact center of the Barton Creek watershed, and has a great contribution to water quality in Barton Springs.”

The Ayres family negotiated an easement purchase with the City of Austin on 1,600+ acres, donated a conservation easement to the Nature Conservancy on 4,700+ acres, and retained 300 acres along highway frontage for potential future development. By being able to sell the smaller easement to the city, the family realized part of the development value of land, but without the development. Their other financial goal, reducing estate taxes for their heirs, was accomplished through the lowered fair market value of the property subject to a conservation easement. In addition, the donation to the Nature Conservancy qualifies as a charitable contribution for federal income tax purposes.

The family retained rights to continue operating the ranch as they had been: running cattle, operating deer leases and using it for family recreation. They also retained limited development rights for family members to build home sites, establish a youth camp and possibly even a non-profit retreat center. Each of these development possibilities was clearly spelled out in the easement, along with a map of development areas and no-development zones. Both the City of Austin and the Nature Conservancy required that any development conform to impervious cover restrictions and creek setbacks, to protect water quality.

The Ayres family is pleased with the arrangement of the two easements. “We all feel very excited, both to have it done and how it worked out,” Ayres said. He admitted, however, that it was not easy for the family to reach the decision they made, just because it required a lot of soul searching and communication about the family’s long-term desires for the ranch. “The bottom line is that we love the ranch, and really didn’t want to see it developed in a traditional way, ever. We extinguished the possibility of any masterplanned community, residential subdivisions or retail development.”



THE BAIRD FAMILY PRESERVE

The concept of a conservation easement was just what the Bairds had been looking for; it would ensure that their property remained in the family in the future, and would offset the rising property values affecting other Hill Country landowners.

When Faye and Roland Baird bought their Blanco County ranch in 1952, they wanted a place to care for and enjoy in their retirement. Mr. Baird was an avid outdoorsman; he loved to hunt and fly-fish. Mrs. Baird, who grew up in rural northwest Texas, loved the plants, birds and other wildlife of the Texas Hill Country.

Mr. and Mrs. Baird spent the next 35 years together enjoying their Hill Country ranch. When they bought the land, it had been noticeably overgrazed and was thick with Ashe juniper. The Bairds went to work clearing juniper on the flats of the property, but kept the deeply rooted trees on the hillsides to prevent erosion. The Bairds ran cattle on the ranch, but limited the number so that native plants could recover. Roland Sr. built a low head dam on Miller Creek to

improve the fishing on the property. Hardly anyone fishes the pond anymore, but the clear water betrays the size of its bass and catfish.

The Bairds had four children, and, so far, 12 grandchildren, 15 great-grandchildren and 4 great-great grandchildren. Over the years, the Baird kids' house, about 400 yards from the main house, has seen much use. The Baird family has spread out across the country, but all occasionally return to the Blanco County ranch to recharge their batteries. There is even a reservation system for the kids' house, which is full of sleeping bags and young children during the holidays. As Mr. and Mrs. Baird grew older, they began to realize how much the ranch meant to their entire family.

When Roland Baird, Sr. died in 1988, Mrs. Baird started

looking into methods of preserving the family ranch into the future. She enlisted the help of her son, Roland Jr., who talked to people at both Texas A&M and the University of Texas about donating his mother's property as a place for agricultural research or as a writer's retreat. A year later, a member of the Natural Area Preservation Association (NAPA) told Roland Jr. about conservation easements. The concept of a conservation easement was just what the Bairds had been looking for; it would ensure that their property remained in the family in the future, and would offset the rising property values affecting other Hill Country landowners.

In 1990, Mrs. Baird donated a conservation easement to the Natural Area Preservation Association. The entire family is aware of the restrictions that protect the family property. If they have any questions, the terms of the easement are posted on the door in the kids' house.

The Baird's conservation easement prohibits most commercial activities on the property. The easement restricts new construction, but allows for the maintenance and upkeep of existing roads and buildings. The two houses on

the ranch can be rebuilt and added to, but they cannot be enlarged more than 50 percent. The Bairds have reserved the right to graze cattle, but any sheep, goat or exotic animal grazing on the ranch is prohibited. The easement prohibits recreational hunting and tree cutting except for ongoing aspen juniper removal necessary to maintain pasture land.

The conservation easement that Mrs. Baird donated to NAPA reduced the property value of the ranch because of these restrictions. The donation was eligible for a federal income tax deduction and, more importantly, the wishes of Faye and Roland Baird, Sr. are preserved in perpetuity.

Roland Jr. says that the family got their conservation interests from Faye Baird. He tells the story of a beautiful spring that flows in a far corner of their ranch. When Roland Sr. was alive, a fence was put up that accidentally placed the spring on a neighbor's property. After Roland Sr. died, Mrs. Baird told Roland Jr. to go talk to the neighbor about moving the fence so the spring would be back on Baird property. The fence was moved and Faye Baird was content knowing that the springs would be protected forever. The conservation easement

that Faye Baird donated to NAPA protects not only that beautiful spring, but all of the special qualities of the ranch that Roland Sr. and Faye Baird cherished.

Conservation is important to the entire Baird Family. Roland Jr.'s sister, Dorothy Mattiza, has a 540-acre conservation easement on her property in Bandera County with NAPA and is also on NAPA's board of advisors. The easement sits on the southern edge of the Balcones Escarpment in the rugged hill country of Central Texas. The purpose of Mrs. Mattiza's natural area easement is to reintroduce and protect native plants, such as maple, beautyberries, spicebush and Texas styrax from brushfires and cattle grazing. With the help of a grant from the Texas Parks and Wildlife Department, plant pens were put up to help introduce native plants back onto the land where they had once thrived.

The conservation easement that Dorothy Mattiza donated to NAPA ensures that native plants will be able to survive and flourish eternally on the hill country property.



DR. YTURRIA'S HIDDEN PLACES

With the growing interest in endangered species, birds and other wildlife, Dr. Yturria believes that ecotourism could eventually bring in more revenue than cattle ranching.

As a young man growing up on the Punta Del Monte Ranch, established by his great-grandfather, Dr. Frank Yturria was a first-hand witness to the clearing of native Rio Grande Valley brushlands. "I remember camps of men who cleared land by hand to make way for farms, livestock and people. My father and grandfather, who taught me the value of conservation, pointed out that after land was cleared, there were fewer dove, deer and other animals."

Like many South Texas ranches, Frank Yturria's San Francisco Ranch teems with white-tailed deer, wild turkey, javelina, waterfowl and neo-tropical birds. The ranch is home to predators like bobcats and mountain lions. But the San Francisco is different from most other area lands in two unique aspects. First, unlike most of

the Valley, some parts of the ranch have never been cleared. On land he cleared, Yturria left many one to three-acre "mottes," or hidden places, as well as several hundred contiguous acres of virgin brush. Second, Yturria's ranch is home to more ocelot than any other privately owned property in the United States.

The ocelot is a small, native wild cat that lives in the thick brush of the Lower Rio Grande Valley. The numbers of this beautiful and rare animal have declined to possibly no more than 100 in Texas – largely because their habitat has been lost to agriculture and urban development. Ocelots survive in greater numbers in Mexico, Central and South America.

Seeing ocelot on his ranch had always been important to

Yturria, who set out to ensure that he and his descendants would continue to have that opportunity. He entered into a cooperative research agreement with the Caesar Kleberg Wildlife Research Institute at Texas A&M University in Kingsville to study the animal's behavior on his ranch. Since 1982, fourteen San Francisco Ranch ocelots have been captured and fitted with radio collars. Still, Frank Yturria realized that providing sufficient habitat was the key to the ocelot's survival in South Texas.

The F. Yturria family, cooperating with the U.S. Fish and Wildlife Service, sold parcels of their land to help create the Lower Rio Grande Valley National Wildlife Refuge Corridor in the 1980s. Yturria's interaction with USFWS biologists during this process convinced him that he could secure the ocelot's habitat and its future on his ranch, with a conservation easement.

The decision to donate a conservation easement and fence 475 acres of prime brushland on the San Francisco Ranch was not an easy one for Dr. Yturria. The agreement with the USFWS would mean the loss of potential ranching

income and perhaps a depreciation in the value of the entire ranch. But Yturria also realized that tax incentives and a natural progression from hunting to ecotourism in South Texas could offset the income loss. With the growing interest in endangered species, birds and other wildlife, Dr. Yturria believes that ecotourism could eventually bring in more revenue than cattle ranching. "I did not expect it at the time – I was only interested in protecting the ocelot, but the property I preserved with the conservation easement, along with the entire ranch, has income potential from ecotourism."



DR. REESE BROWN AND THE WETLANDS RESERVE PROGRAM

*I am excited
that I can keep
the property as
long as I want,
without having
to find a way
for it to pay
for itself.*

While in college at Baylor University in Waco, Reese Brown made several trips to the home of a friend whose family owned property near Liberty, on the Texas Gulf Coast Prairie. Brown and his friend would spend their mornings in the rice fields hunting ducks and their afternoons telling stories and relaxing by the fire. "I enjoyed myself so much on these trips, I knew I would come back to this area after I finished school." He moved to Liberty in the 1970s to practice medicine and a decade later, bought a 20 percent interest in a local rice farm. But Brown was more interested in duck hunting than farming.

The farm, near the Trinity River Bottoms, is part of a major flyway for migrating ducks and geese. Its wetlands,

some of which are created by flooded rice fields, are a favorite stop for wintering waterfowl. "I got involved in the farming business because the ducks on this property were super."

In 1994, Brown bought the farm outright. Practicing medicine and operating a 1,600-acre farm was a lot of work, but Brown enjoyed taking care of the property and hunting ducks on cool winter mornings. His stewardship has been a blessing for migrating birds that winter on his property. Since the 1950s, waterfowl populations declined, in part, because of the loss of wetlands along the Texas Gulf Coast and other parts of the country. The Natural Resources Conservation Service (NRCS), the U.S. Fish and Wildlife Service, the Texas Parks and Wildlife Department

and Ducks Unlimited work to protect and restore habitat for these birds through programs like the Gulf Coast Joint Venture's Texas Prairie Wetlands Project. This program provides technical assistance and shares costs with landowners who enhance, create or restore wetlands.

As a participant in the Texas Prairie Wetlands Project, Dr. Brown developed a strong friendship with Tom Smith, the District Conservationist at the NRCS office in Liberty. With the help from the Texas Prairie Wetlands Project, Brown installed water control structures that flood large parts of his farm during the winter for migrating birds. When the 1990 Farm Bill created the Wetlands Reserve Program (WRP), Tom Smith immediately recognized that Dr. Brown's farm would be a good candidate for the program.

The WRP authorized the NRCS to restore and protect one million acres of agricultural wetlands on farms and ranches across the country. The NRCS can pay Texas land-owners the appraised agricultural value of their property, up to \$550 dollars per acre, for perpetual conservation easements. WRP

participants also receive technical and financial assistance for habitat restoration and improvement projects.

Dr. Brown and the NRCS worked to enroll 1,200 of the 1,600-acre farm in the WRP program. The easement is permanent, but Brown did not include the 400 acres that he plans to continue farming. Dr. Brown explains, "In the last few years, my payments kept me doing things that I didn't want to do; now I concentrate on what's best for the wildlife."

Dr. Brown still owns the property. He will continue his stewardship of the farm, including keeping the prolific Chinese tallow trees under control. He can plant food plots on about 60 acres a year for wildlife and continue to hunt and fish on his land. According to the requirements of the WRP program, the property can no longer be used for crops, but Dr. Brown retains income from hunting or fishing leases and ownership of mineral rights.

The WRP programs requires the NRCS, the U.S. Fish and Wildlife Service and the landowner to agree on a management plan for WRP property. Management plans take into account vegetation, hydrol-

ogy and soil types for wetlands restoration projects. Brown's plan divides his property into shallow wetlands, green tree reservoirs and upland forests. Financial assistance from the WRP will pay for the reforestation of 200 acres and a fence that separates the farm from the property under easement. "I am excited that I can keep the property as long as I want, without having to find a way for it to pay for itself. Without the WRP, I probably would have had to sell this place," explains Dr. Brown.

As of June 2003, seventy-six conservation easements totaling 51,074 acres have been enrolled in the Wetlands Reserve Program in Texas. The 2002 Farm Bill reauthorized the WRP program with a few changes. The law no longer requires that one-third of the acres be enrolled in permanent easement, one-third in 30-year easements and one-third enrolled in cost share restoration agreements.

For more information on the Wetlands Reserve Program contact Doug Sharer of the Natural Resources Conservation Service at 101 South Main Street, Temple, TX 76501-7682 or call (254) 742-9825.



THE ROY E. LARSEN SANDYLAND SANCTUARY

We realized that restoring the longleaf at Sandylands was only a start, and that we needed to look at managing this unique ecosystem in an economically sustainable manner.

At the beginning of the 20th century, the Pineywoods of southeastern Texas and western Louisiana supported a diverse network of forests and wetlands. At the heart of this network were longleaf pine forests and associated grasses, wildflowers and shrubs. Periodic fires enabled this ecosystem to thrive by limiting the encroachment of hardwood species and clearing open areas for longleaf seedlings to germinate.

More than 90 percent of the original longleaf forests have been replaced beginning with the timber boom at the turn of the century. Preferring faster growing trees, timber companies supplanted native longleaf habitat with slash and loblolly

pine plantations. Fire suppression limited the ability of longleaf pines to regenerate naturally. Many plants that live on the forest floor also need the light and space that fire creates.

By the mid-70s, longleaf pine forests were too fragmented and isolated to survive without intervention. In the absence of fire, the longleaf pine ecosystem cannot withstand encroaching hardwoods and other trees. Recognizing the need to preserve these forests, The Nature Conservancy (TNC), Temple-Eastex (now Temple-Inland Inc.) and Time Inc. joined forces in 1977 to create the 2,138-acre Roy E. Larsen Sandyland Sanctuary.

The Sandyland Sanctuary is situated on alluvial sandhills and its dry, sandy environment supports widely spaced longleaf pines and rare plants like the Texas trailing phlox, the scarlet catchfly and the white firewheel. Once a part of Temple-Inland's forest products operation, the Sanctuary's loblolly and slash pine plantations are now being restored to native longleaf habitat. As the trees mature, visitors to the Sanctuary's six-mile trail system can glimpse what East Texas looked like 100 years ago.

Still, restoring longleaf forests is as much an issue of economics as it is ecology. Ike McWorter, the Director of TNC's East Texas Field Office, explains, "We realized that restoring the longleaf at Sandylands was only a start, and that we needed to look at managing this unique ecosystem in an economically sustainable manner." In 1994, Temple-Inland donated a 2,778-acre conservation easement to TNC. This property, which buffers the Sandyland Sanctuary, serves as a demonstration project aimed at investigating sustainable forestry practices for longleaf pine plantations.

The agreement that established this longleaf demonstration project has three parts:

The Conservation Easement

The conservation easement protects the Temple-Inland property by prohibiting development and cutting of bottomland hardwoods.

The Management Agreement

The management agreement addresses goals and policies that are both economically and ecologically sensitive. Existing loblolly and slash pine plantations are commercially harvested and replanted with longleaf seedlings. As the longleafs mature, they are harvested by Temple-Inland and sold. These trees are then replaced with longleaf seedling using natural techniques that maintain biodiversity.

The Management Plan

The annually updated management plan is flexible and is negotiated between Temple-Inland and TNC. The plan deals with day-to-day operations including prescribed burning, timber harvesting, site preparation, replanting and hunting leases.

McWorter believes that a flexible management plan should accompany a conservation easement agreement. "A conservation easement that only lists things you can't do is a problem in areas that need active management. A management plan allows the easement holder and the landowner to develop strategies best suited for a particular property."

Today, the Roy E. Larsen Sandyland Sanctuary stands as the model for TNC's Pineywoods Conservation Initiative. This initiative strives to maintain biological diversity and sustainable forestry practices in the Pineywoods of Texas and Louisiana. Both Temple-Inland and TNC believe that Sandyland's unique cooperative management will encourage the stewardship of longleaf pine forests for future generations to enjoy.

PART FIVE: LAND TRUSTS

To qualify for tax benefits, easements must be granted to either a government agency or a publicly supported tax-exempt conservation organization, commonly called a land trust.

WHAT IS A LAND TRUST?

A land trust is a local, regional or national nonprofit organization that protects land for its natural, recreational, scenic, historic or productive value. Land trusts have varying conservation objectives; some work in specific geographic areas or concentrate on protecting different natural or cultural features. A list of Texas land trusts with contacts is included as an appendix to this directory. Also available is the Texas Land Trust Directory at tpwd.state.tx.us/tltc for additional information on each land trust. Landowners should get to know these organizations before making a conservation easement donation.

WHAT DOES A LAND TRUST DO?

Initially, the land trust works with the landowner to tailor the terms of the easement to protect the land's conservation value and meet his or her personal and financial goals. Land trusts can also connect landowners with legal, tax or natural resource professionals familiar with conservation easements.

Land trusts that accept conservation easements are responsible for monitoring that property and ensuring that the terms of the easement are followed. Representatives from the land trust make scheduled, usually annual, visits to the property to document the condition of the property and will notify the landowner of any potential violation of the conservation easement. If the terms of the conservation easement are violated, the land trust can take legal steps to stop or correct the violation.

The land trust is responsible for stewardship of the conservation easement for as long as the easement exists. It is important that a landowner select an organization that can demonstrate that it has the financial resources and staying power to handle these responsibilities long-term. Many land trusts request financial contributions (also tax deductible) to help defray some of the costs involved in administering a conservation easement agreement.

A land trust may also work with a landowner to develop a management plan as part of a conservation easement. Management plans include flexible goals and objectives relating to

conservation of the property's natural and cultural features. Management plans, which should be updated periodically, are especially important for productive agricultural or recreational property or for property susceptible to invasive species.

PART SIX: WHAT NEXT?

Landowners interested in learning more about conservation easements have several additional resources to assist them.

1. The land trust organizations in Texas can answer questions about conservation easements. A list of land trust contacts with phone numbers is included in the appendix.
2. The Texas Parks and Wildlife Department and the Texas Land Trust Council publishes the Texas Land Trust Directory, and can answer additional questions about conservation easements.

Texas Parks and Wildlife Department

Texas Land Trust Council

Carolyn Vogel, Contact

4200 Smith School Road

Austin, Texas 78744

(512) 389-4779

E-mail: carolyn.vogel@tpwd.state.tx.us

Web site: www.tpwd.state.tx.us/tltc

3. The Land Trust Alliance, a national organization for land trusts, publishes books and other materials related to private land conservation. A description of several of these publications is listed in an appendix.

The Land Trust Alliance

1331 H Street NW, Suite 400

Washington DC 20005

(202) 638-4725

www.lta.org

4. Landowners should discuss the potential advantages and disadvantages of conservation easements with their own legal and tax advisors.

CONTENT OF A CONSERVATION EASEMENT

Parties – Grantor (landowner) and Grantee (easement holder)

Date of Conveyance

Recitals (“whereas” clauses)

Title representation (assures that grantor owns the property)

Conservation values of the property

Legal description of property

Documentation of “pre-easement characteristics” of property

Continuation of existing uses

Conveyance of rights to protect conservation values to grantee

Qualifications of grantee to hold the easement

Grant (transfer of property interest)

Consideration: nominal dollar amount or gift language

Citation of statutory authority (Texas Natural Resource Code Chapter 183)

Duration: perpetual

Provisions

1. Purpose: only uses consistent with protection of conservation values are permitted
2. Ingress and Egress: access to property by grantee
3. Prohibited Land Uses: the three methods for defining prohibited land use are:
 - Exclusive: any land use not expressly prohibited is permitted
 - Unreserved: any land use not expressly reserved is prohibited
 - Inconsistent: any land use inconsistent with the easements’ purpose is prohibited
4. Reserved Rights (the landowner’s rights which are reserved for possible future use)
5. Access (public is typically denied access)
6. Amendment (if mutually agreeable between easement holder and landowner at the time, certain provisions of easement may be modified in the future as long as original intent is achieved)
7. Assignment (grantee retains right to transfer easement to another eligible holder)
8. Subordination (if property is mortgaged, the mortgage holder must guarantee that it will uphold easement provisions in the event of foreclosure)
9. Subsequent transfers (easement “runs with the land,” i.e., provisions bind all future landowners in perpetuity, even if the property is sold to another)
10. Recordation (easement documents recorded in county in which the property is located)
11. Successors (easement “runs with the land,” i.e., provisions bind all future landowners in perpetuity, even if property is inherited by another)

BOOKS AND REFERENCES

Available from Preserving Family Lands, P.O. Box 2242, Boston, Massachusetts 02107 (617 357-1644):

Preserving Family Lands: Book III, New Tax Rules and Strategies and a Checklist
by Stephen Small

Available from the Land Trust Alliance, 1331 H Street NW, Suite 400, Washington, D.C. 20005 (202 638-4725):

Working Forest Conservation Easements by Brenda Lind
The Federal Tax Law of Conservation Easements by Stephen Small
The Conservation Easement Handbook (with model conservation easement and historic preservation easement) by Janet Diehl and Thomas Bartlett
Conservation Options: A Landowner's Guide

Available from The Back Forty, Hasting College of Law, 200 McAllister Street, San Francisco, California 94102 (415 565-4857):

The Back Forty, a bi-monthly newsletter that focus on legal issues in land conservation
The Back Forty Anthology: Selected Articles from the Newsletter of Land Conservation Law

Available from the Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 (512 389-4779), and also available online at www.tpwd.state.tx.us/conserves/tltc/homepage/index.htm:

The Texas Land Trust Directory
Protected Lands Inventory Report

TEXAS LAND TRUSTS

American Farmland Trust

Julie Shackelford, State Director
(512) 396-5517

The Archeological Conservancy

James B. Walker, Southwest
Regional Director
(505) 266-1540, Albuquerque

Audubon Texas

Terry Austin, Executive Director
(512) 306-0225

Bat Conservation International

Robb Hankins, Director of
Development (512) 327-9721

Bexar Land Trust

Allison Elder, Executive Director
(210) 222-8430

Big Thicket Natural

Heritage Trust

Ellen Buchanan, President
(409) 384-1575

Cactus Conservation Institute

Martin Terry (254) 746-7968

Cibolo Conservancy

Brent Evans, Interim Executive
Director (210) 699-9290

Coastal Bend Land Trust

Patrick McGloin, Executive
Director (361) 882-5624

Connemara Conservancy

Dave Behm, Executive Director
(214) 351-0990

The Conservation Fund

Andy Jones, Texas Office Director
(512) 477-1712

The Cradle of Texas Conservancy

Darrell Schwebel, President
(979) 238-5001

Ducks Unlimited

Ed Ritter, Texas Contact
(832) 595-0663

Galveston Bay Foundation

Chuck Wimple, Executive Director
(281) 332-3381

Guadalupe-Blanco River Trust

Todd Votteler, Executive Director
(800) 413-4130

Gulf Coast Bird Observatory

Cecilia Riley, Executive Director
(979) 480-0999

Hill Country Conservancy

George Cofer, Executive Director
(512) 328-2481

Hill Country Land Trust

Bart English, President
(830) 997-0027

Hudspeth Directive for Conservation

Linda Lynch, Executive Director
(915) 964-2426

The Humane Society of the US Wildlife Land Trust

Karen Medicus, SW Regional Office (512) 358-7005

Katy Prairie Conservancy

Mary Anne Piacentini, Executive Director (713) 523-6135

Legacy Land Trust

Jennifer Lorenz, Executive Director
(713) 524-2100

National Trust for Historic Preservation

Daniel Carey, Southwest Director
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Native Prairies Association of Texas

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Natural Area Preservation Association

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The Nature Conservancy of Texas

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Panhandle Land Trust

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Parks and Wildlife Foundation of Texas

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Pines and Prairies Land Trust

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Rock Art Foundation

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Texas Cave Conservancy

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