

Protecting Texas with Conservation Easements



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PRACTICING LAND CONSERVATION LAW

WHAT IS A CONSERVATION EASEMENT?

- **Legal agreement (deed) between landowner and land trust**
- **Protects conservation values and limits some uses of land**



WHAT IS A LAND TRUST?

- **Nonprofit organization**
- **Public charity (501c3)**
- **Conservation mission**
- **Monitors and enforces conservation easement**



KEY CONCEPT:

- 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**

**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

Perpetual Conservation Easement



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**
 - **Agriculture/crops**
 - **Grazing**
 - **Hunting**
 - **Surface mining**
 - **Oil & gas development**
 - **Water extraction**
- **Surface Alteration**
- **Vegetation Management**

RESTRICTIONS AND RESERVED RIGHTS

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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**





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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