

BRAUN & GRESHAM
ATTORNEYS AT LAW

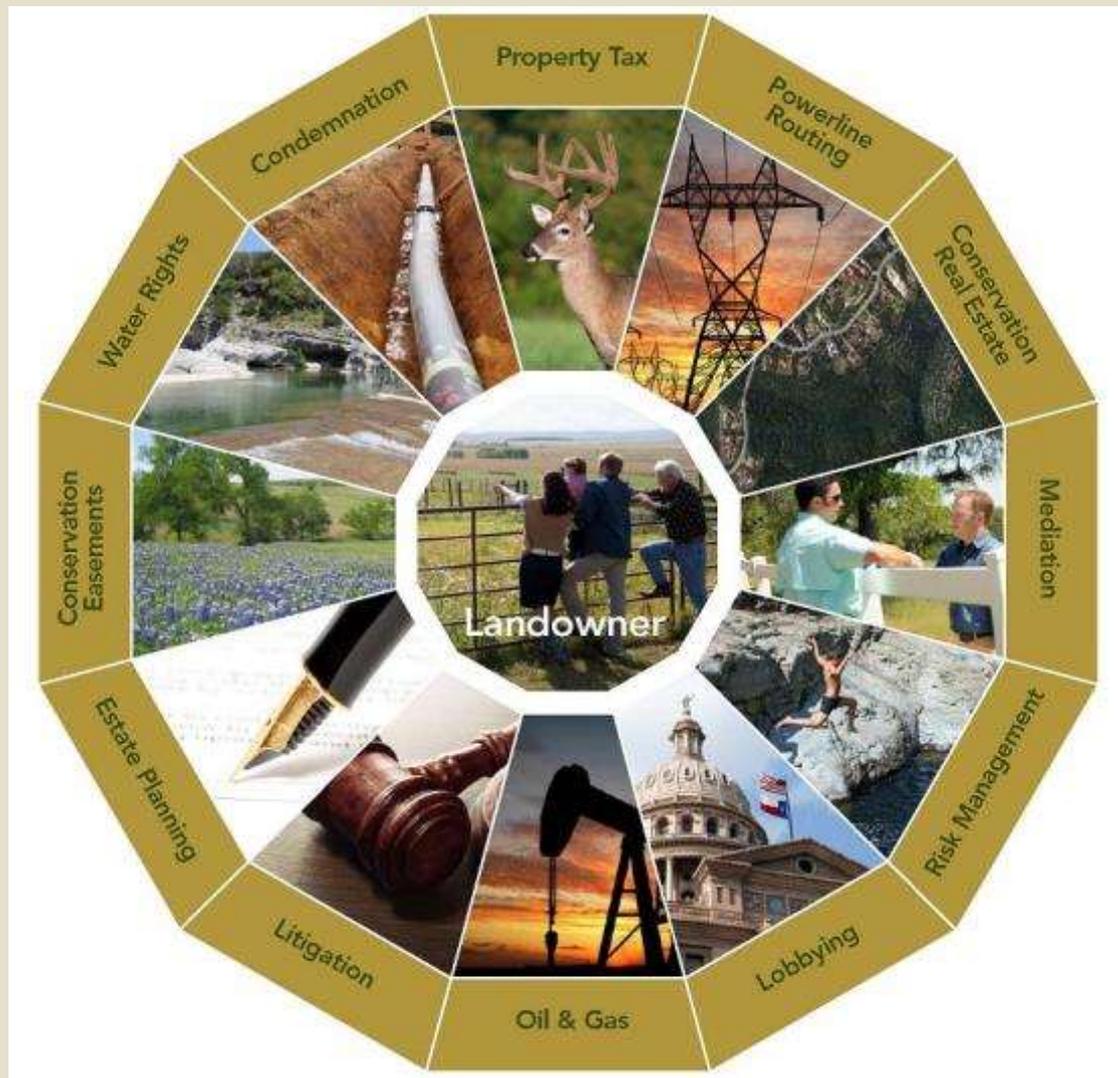
Planning with Conservation Easements

Succession, Tax & Estate Planning Issues
& Ideas for Legacy Land

October 23, 2015

WE ARE ADVOCATES FOR YOU AND YOUR LAND





Intergenerational Planning for Legacy Land



Begin with the end in mind.

Your goals should guide the planning process

Love and protect the land - unwanted development potential

“Keep it in the family”

Financial security, but also other values: family identity
cohesion, stewardship

Treat our children fairly (not equally)

No heirs – charitable gifting

Save on taxes



Succession Planning

Step 1: Vision and Goals

- Intergenerational planning –
 - Your mental image of the future?
 - What does succession mean to G1 . . . to G7?
 - How does the vision relate to your community?
- Legacy vision statement
- Process, Communication, ground rules, time limits
decision-making, exit strategies
- Identifying goals and gaps & strategies to succeed



Dahlstrom Ranch on Onion Creek



Dahlstrom Ranch Heritage



Cecil and Eloise Ruby

- **5 generations in Hays County**
- **Began acquiring land in 1932 with last pasture added 1953**
- **Split with Ruby family in 1993**
- **Mrs. Gay Dahlstrom owned the Dahlstrom Ranch in LP**
- **Her brother developed Ruby Ranch into subdivision**
- **4 generations involved**
- **Since 2005 grazing reduced**
- **Quarry operation providing cash flow**

Dahlstrom Dilemma

- **Low tax basis**
- **Cash poor**
- **Land rich - Ranch worth \$30M**
- **Looming federal estate tax liability**
- **Provide family financial stability**
- **Anchor family identity**
- **Wanted Ranch to be preserved forever**
- **What to do with quarry operation?**



Succession Planning

Phase 1: Conduct resource inventory:

- **PEOPLE** – family owners and managers:

knowledge base

family history

values

culture

dynamics

cycle



Succession Planning

Phase 1: Conduct resource inventory:

- Production equipment & inventory; natural resources: soils, water, wind, minerals, habitat, wildlife, potential financial resources
- Financial resources: liquidity, insurance, investments, coordination



Succession Planning

Phase 2: Gathering Information

Build your knowledge base and your advisor team

Synergies & Strategies

- LLC or FLP or Multiple Owners
- Lifetime Gifting
- Installment Sales
- Multiple Users, Use Agreements
- Revocable and Irrevocable Trusts
- Asset Replacement Trust (ILIT)



Succession Planning

Phase 2: Gathering Information

Build your knowledge base and your advisor team

Synergies & Strategies

- Land Management Trusts
- Government Programs
- Compensation plans
- 1031 Tax Free Exchange
- Special Use Valuation
- 6166 Installment FET Payment



Succession Planning

Phase 2: Gathering Information

Build your knowledge base and your advisor team

Synergies & Strategies

- Post-Mortem Planning
- Deed Restrictions
- Conservation Easement Donations or Sales



Advisor Team

- Legal, accounting, financial, insurance, counseling



The Basics

What Conservation Easements Do:

- “Partnership” between landowner & land trust to accomplish goals of both
- Permanently protect land’s conservation values
- Provide income or tax savings to landowners



Conservation Easements: Income & Estate Tax Benefits



Form 8283
(Rev. December 2010)
Approved by the Treasury
Department

Noncash Charitable Contributions
▶ Attach to your tax return if you claimed a total deduction
of over \$500 for all contributed property.
▶ See separate instructions.

OMB No. 1545-0046
Attachment
Sequence No. 155
Identifying number

Name(s) shown on your income tax return

Note. Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A. Donated Property of \$5,000 or Less and Certain Publicly Traded Securities—List in this section only items (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also, list certain publicly traded securities even if the deduction is more than \$5,000 (see instructions).

Part I Information on Donated Property—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) Description of donated property (If a restricted stock, enter the year, name, model, expiration, last value, and attach Form 1095-C if required.)
A		
B		
C		
D		
E		

Note. If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (b), (c), and (d).

	(a) Date of contribution	(b) Date acquired by donee (Sec. 170)	(c) Date acquired by donor	(d) Donor's cost or adjusted basis	(e) Fair market value (see instructions)	(f) Method used to determine fair market value
A						
B						
C						
D						
E						

Part II Partial Interests and Restricted Use Property—Complete lines 2a through 2e if you give less than an entire interest in a property listed in Part I. Complete lines 2a through 2e if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

2a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶
If Part II applies to more than one property, attach a separate statement.

2b Total amount claimed as a deduction for the property listed in Part I: (1) For this tax year ▶
(2) For any prior tax years ▶

2c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):
Name of charitable organization (name) ▶
Address number, street, and room or suite no. ▶
City or town, state, and ZIP code ▶

2d If or tangible property, enter the place where the property is located or kept ▶

2e Name of any person, other than the donee organization, having actual possession of the property ▶

2a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property?

Yes	No

2b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire?

2c Is there a restriction limiting the donated property for a particular use?

For Paperwork Reduction Act Notice, see separate instructions. Out No. 8283-10
Form **8283** (Rev. 12-2010)

The Basics

How CE Provides Financial Benefits:



- Donation of CE = tax savings
- Sale of CE = cash
- Bargain sale = \$ + tax savings
- Estate taxes = reduced estate
- Phasing in CE over multiple tax years

The Basics

How CE Provides Tax Savings:



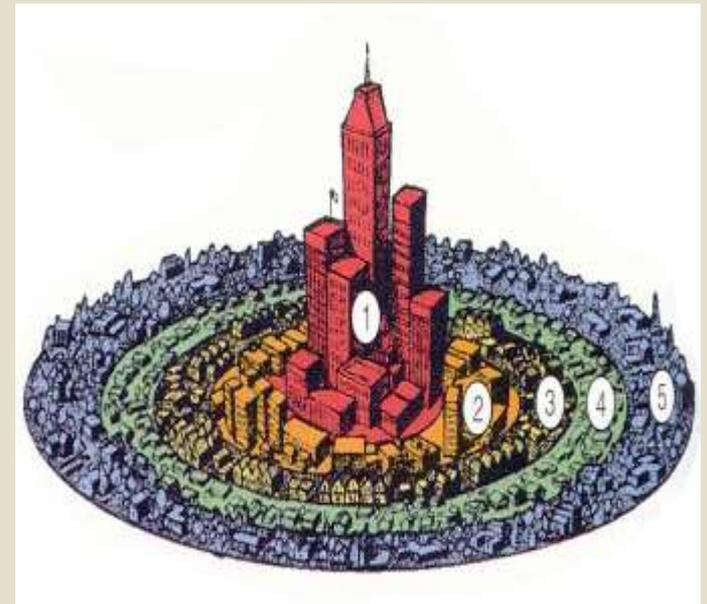
- Income tax deduction when donated
- Lower appraised value of land in estate
- Exclude part value from estate tax
- Property tax relief in some cases
- Tax credit in some states

The Basics

RULE OF THUMB -- How CE Impacts Land Value:

Near cities reduction/deduction can be 50-90% of land's appraised value

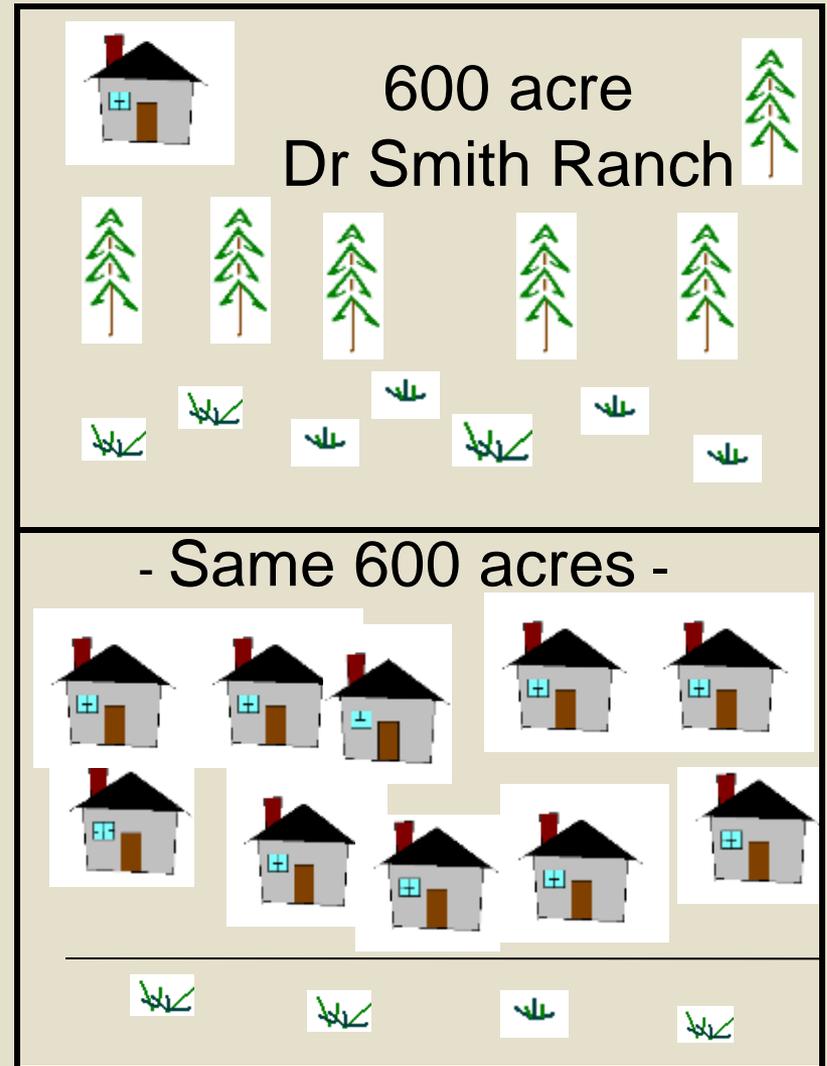
Rural land reduction/deduction can be 20-60% of land's appraised value



Unwanted “Development Value”

1975 - \$300,000 (\$500/ac)

- 70% recreation or agriculture value



2015 - \$7,200,000
(\$12,000/ac)

- 70% potential unused “development” value

Calculating Income Tax Savings

2015 ONLY – SUBJECT TO CHANGE

- 30% 2015 AGI Limitation – 50% or 100% ?
- 5 Year 2015 Carryover Rule – 15 years ?
- Tax Rates & Brackets



Income Tax Savings 2015 - 2020

Donor's AGI	\$ 500,000
Tax Rate	39.6%
Value of CE (69% FMV)	\$ 5,000,000
Max. Annual Deduction (<u>30%</u> AGI*)	\$ 150,000
Annual Tax Savings	\$ 55,013
Number Years to Use Deduction*	6
TOTAL TAX SAVINGS	\$ 330,078

If Tax Incentives Return Income Tax Savings 2015 - 2030

Donor's AGI	\$ 500,000
Tax Rate	39.6%
Value of CE (69% FMV)	\$ 5,000,000
Max. Annual Deduction (<u>50%</u> AGI*)	\$ 250,000
Annual Tax Savings (33% tax rate)	\$ 88,013
Number Years to Use Deduction*	16

TOTAL TAX SAVINGS

\$ 1,408,208

Difference = \$1,078,130

FET TAX LAW: For Charitable Deductions



30% or 50% of AGI Rule IRC § 170(b)(1)(C)
5 or 15 Year Carryover Rule IRC § 170(D)(ii)

Federal Estate Tax Exclusion Election IRC § 2031(c)
Allows for exclusion from the gross estate up to 40%
of the value of the land subject to qualified CE
BUT capped at \$500,000

RESTRICTIONS TO THE SEC. 2031(c) EXCLUSION ELECTION



- CE must qualify under IRC Sec 170(h)
- At DOD taxpayer owned at least 30% of any entity
- Land owned by decedent/family for at least 3 years prior to date of death
- Can't Retain Development Rights
- Only “de minimus” commercial recreation uses
- Keep it in the Family Rule
- Exclusion works with “post-mortem” CE

Calculate FET Savings with \$5M CE Donation



Single Donor Taxable Estate before CE = \$11.2M

FET liability ($\$11.2 - \$5,430,000 = \$5,770,000 \times 40\%$) = \$2,308,000

Ranch Value after CE = \$2.2M + \$4M cash = \$6.2M Taxable Estate

- Estate Tax before CE = \$2,308,000
- Estate Tax after CE = \$ 81,000

\$2,200,000 (Ranch value after CE)

- \$ 500,000 (Additional CE 2031(c) EXCLUSION)

\$ 1,700,000 (taxable value of Ranch)

\$ 270,000 TAXABLE ESTATE after exemption

x @ 30% = \$81,000 FET

TAX SAVINGS \$2,227,000

Summing Up The Tax Benefits

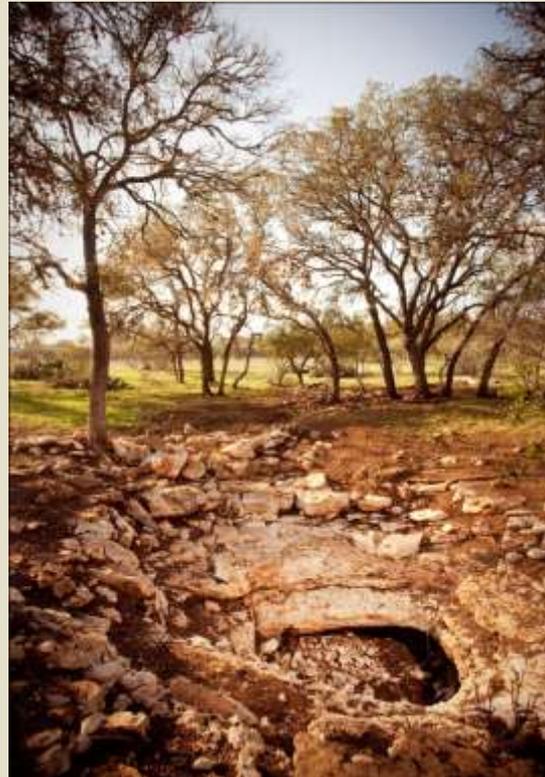
Strategy: Donate CE worth \$5,000,000 in 2015 (69%)

Possible Tax Savings:

- Income tax savings - \$330,078
- Estate tax savings - \$2,227,000
- Capital gain tax savings - \$1,240,837
 - Capital gain tax before CE = \$1,642,200 (23.8%)
 - Sell land after CE donation: \$ 401,363 (18.8%)
- Property tax savings – Market or Rollback



Sale of Conservation Easement



Sources of Funding

- **Local Programs**

 - County Open Space Bond

 - Eg: Travis and Hays Counties

 - San Antonio Aquifer Protection Bond

 - County Habitat Conservation Plans and Mitigation Banks

- **State wide Programs**

 - TX Farm & Ranchland CP

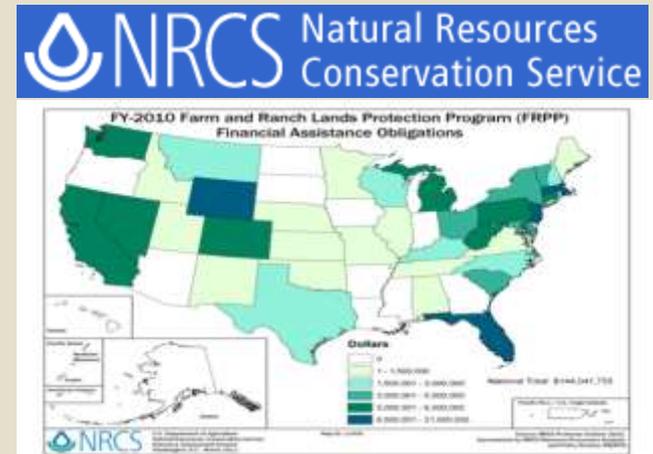
- **Federal Programs**

 - NRCS ACEP =

 - Agricultural Land Easement

 - Wetland Reserve Easement

 - 2015 = \$5.4M TEXAS



The Basics

How CE Can Be Sold:

- **Highly Motivated Buyer**
- **Competitive Process**
- **Negotiated Price**
- **Cash or Trade**



Dahlstrom Success Story

- Sold \$21.8M Conservation Easement for \$9.9M
- Partner with NRCS, Hill Country Conservancy, Hays County and City of Austin
- Family donated \$11.9M & paid no capital gain tax
- Eliminated Federal Estate Tax



Conservation Easement Terms

- **2,275 acre ranch; includes quarry**
- **Protect archeological sites**
- **Water quality and quantity is the priority**
- **No subdivision**
- **Limited building**
- **Allows agricultural and eco-tourism business**
- **Allows existing quarry operations until 2060**



Using Conservation Easements

Leaving a Legacy: Protect “Homeplace,” provide
community benefit, demonstrate values

Using CE to control size of Gross Estate:

- FET strategy

- Contract or Letter of Intent
- Post-Mortem Donation in Will or Trust
- Urge landowner to involve next generation

Synergies And Strategies

- **FLP or Multiple Owners**
- **Asset Replacement Trust (ILIT)**
- **Land Management Trusts**
- **Post-Mortem CE Donation**
- **1031 Tax Free Exchange**
- **Special Use Valuation**
- **Comprehensive Estate Planning**



IRS Audits of Conservation Easements

Engineering Program Easement Audit Plan - For Engineering Program Use with Revenue Agent Areas of Responsibilities	
SECTION A Audit Steps: (Treas. Reg. §1.170A-13 Recordkeeping and return requirements)	Responsible Party*
1. 1.170A-13(a) – Contributions of money after 12/31/82 (maintenance of reliable records)	
2. 1.170A-13(b) – Contributions of property other than money after 12/31/82 and before 1/1/83	
3. 1.170A-13(c) – Contributions of property in excess of \$5,000 after 12/31/84	
4. 1.170A-13(c)(1) – General rule	
5. 1.170A-13(c)(2) – Substantiation requirements	
6. 1.170A-13(c)(3) – Qualified appraisal.	
7. 1.170A-13(c)(4) – Appraisal summary. Responsible party will review and verify the completeness and accuracy of Form 8283.	
8. 1.170-13(c)(5) – Qualified appraiser	
9. 1.170-13(c)(6) – Appraisal fees	
10. 1.170-13(c)(7) – Meaning of terms	
11. 1.170-13(d) – Donations made prior to 1/1/83	
12. 1.170-13(e) – Reserved	
13. 1.170-13(f) – Cash contributions of \$250 or more	
14. IRC §170(f)(8) – Contemporaneous written acknowledgement	

Rev. 8/98
Conservation Easements

Worksheet #: 500-2.2

Engineering Program Easement Audit Plan - For Engineering Program Use with Revenue Agent Areas of Responsibilities	
SECTION B Audit Steps: (Treas. Reg. §1.170A-14 Qualified conservation contributions)	Responsible Party*
1. 1.170A-14(a) – Qualified conservation contributions	
2. 1.170A-14(b) – Qualified real property interest	
3. 1.170A-14(c) – Qualified organization	
4. 1.170A-14(d) – Conservation purposes	
5. 1.170A-14(e) – Exclusively for conservation purposes	
6. 1.170A-14(f) – Examples	
7. 1.170A-14(g) – Enforceable in perpetuity, including mortgage subordination	
8. 1.170A-14(h) – Valuation. As a part of the examination, the appraiser will review the taxpayer's appraisal(s) and any other indicators of value. The appraiser will estimate the fair market value of the easement, providing the findings in a Form 886-A, with a review appraisal, appraisal, or other appropriate attachment, as required.	
9. 1.170A-14(i) – Substantiation requirement	
10. Other considerations – a. Quid pro quo b. Developer issues	
11. Involve SBSE or LMSB Counsel	
12. IRC § 6700/6701 appraiser penalty evaluation and consideration	

Rev. 8/98
Conservation Easements

Worksheet #: 500-2.2

Transaction Steps



1. Establish conservation, family & financial goals -- analyze outcomes
2. Select & negotiate with land trust
3. Create transaction team
4. Complete all due diligence steps
5. Record CE, complete any cash gift
6. Implement & file post-gift state / federal requirements
7. Monitoring & enforcement

Choose a “Qualified” Organization

- **Governmental agencies with conservation missions or policies**
- **Non-profit conservation organizations**



Select a Land Trust

- Partnership – values fit with landowner
- Capacity to do the deal
- Long term capacity
- Landowner resource
- Costs



Structuring The Deal

Transaction Structure:

- Donation
- Sale
- Combination
- Phasing in CE over multiple tax years
- Contract or letter of intent
- Donate CE after death



Basic Goals of Drafting

- Protect client's future rights in the property
- Maximize client's financial benefit
- Protect conservation values
- Meet organization's needs and goals



Possible Restrictions???



- Subdivision
- Additional buildings
- Commercial activities
- Agriculture or grazing
- Mineral development
- Hunting and fishing
- Habitat restoration
- Road building
- Motorized vehicles
- Exotic species
- Agency restrictions
- Recreation
- Outdoor education
- Care of scenic features
- Care of water features
- Care for historic features
- Land Trust monitoring & access
- Public access
- Trash & dumping practices
- Timber management
- Management plan
- Development plan

Special Issues

- **Mortgaged Property Reg. § 1.170A-14(g)(2)**
- **Severed Mineral Rights IRC § 170(h)(5)(B)**
- **Grazing and Property Tax Issues**

Tx Property Tax Code § 23.51



Creating the Transaction Team

- **Appraisal – Appraiser substantiates value**
- **Baseline Report – Biologist, ecologist documents conservation values**
- **Survey – Surveyor prepares legal descriptions, maps, exhibits, marks boundaries**
- **Land Planning – Land use planner for development plan**
- **Financial Planning & Analysis – CPA, CFP, etc.**
- **Legal Advice & Negotiation – Client's attorney**

Managing Transaction Costs

- Appraisal
- Baseline Report
- Title Research or Policy
- Survey, Exhibits, Maps, Plans
- Mineral Remoteness Letter
- Environmental Hazards
- Closing / Recording Costs
- Stewardship Endowment
- Land Trust Reimbursement
- Professional Fees



Result After Easement



Land Trust:

- **Conserve**
 - Habitat
 - Scenic Views
 - Open Spaces
 - Historic Sites
 - Outdoor Recreation
- **Low Cost**

Landowner:

- **Create a Legacy**
- **Save Tax**
- **Creates Income Stream**
- **Still Use Land**
- **Land Appreciating & Marketable**
- **Unlocked Value**

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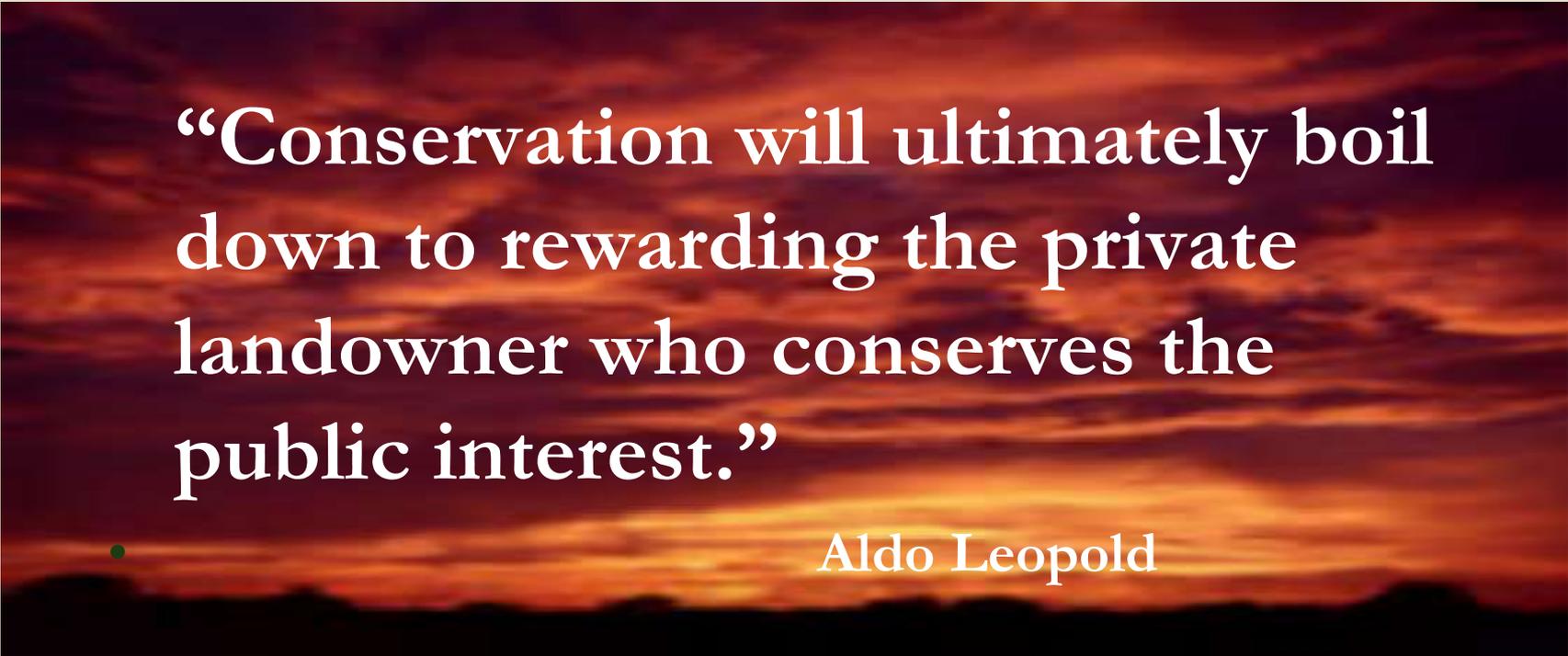


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“Conservation will ultimately boil down to rewarding the private landowner who conserves the public interest.”

• Aldo Leopold

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