



Conservation Easements in Texas

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Conservation Easements

What is a Conservation Easement?

A **voluntary** legal agreement, between a landowner and a qualified holder, that allows a **landowner** to permanently limit the type or amount of development on their property in order to protect the property's conservation and agricultural values while retaining private ownership of the land.



What is a Conservation Easement?

- A real property interest
- Filed at the courthouse
- Runs with the land



What is a Conservation Easement?

- ▶ Mortgaged Property
 - ▶ Mortgage is “subordinated” to the conservation easement
 - ▶ Lender agrees to allow CE to remain after foreclosure

What is a Conservation Easement?

- ▶ Part of the title of the land
- ▶ Land can be sold or gifted
- ▶ Will be binding on all future owners
- ▶ Selectively removes rights from the title of the land
- ▶ Very little is required
- ▶ Each easement is individually tailored



Jackson Nature Park

What is a Conservation Easement?

- ▶ Provided for in the state law by Texas Natural Resources Code Section 183



Purpose of CEs – 170(h) IRC

- ▶ Conservation easements have different purposes
 - ▶ Protection of significant natural resources including water and/or endangered species and their habitats
 - ▶ Protection of historical resources
 - ▶ Public access, for recreation and/or education
 - ▶ Open Space

Types of Conservation Easements

- ▶ Donated easements, governed by IRS regulations – must be perpetual to qualify for a deduction (Section 170(h) IRC)
- ▶ Purchased easements (a.k.a Purchase of Development Rights – PDR; or Purchase of Agricultural Conservation Easement – PACE), governed by the rules of the organization making the purchase; depending on the funder, can be for a term of years
- ▶ Bargain Sale, or a combination of a donated and purchased easement, most commonly used to offset tax considerations

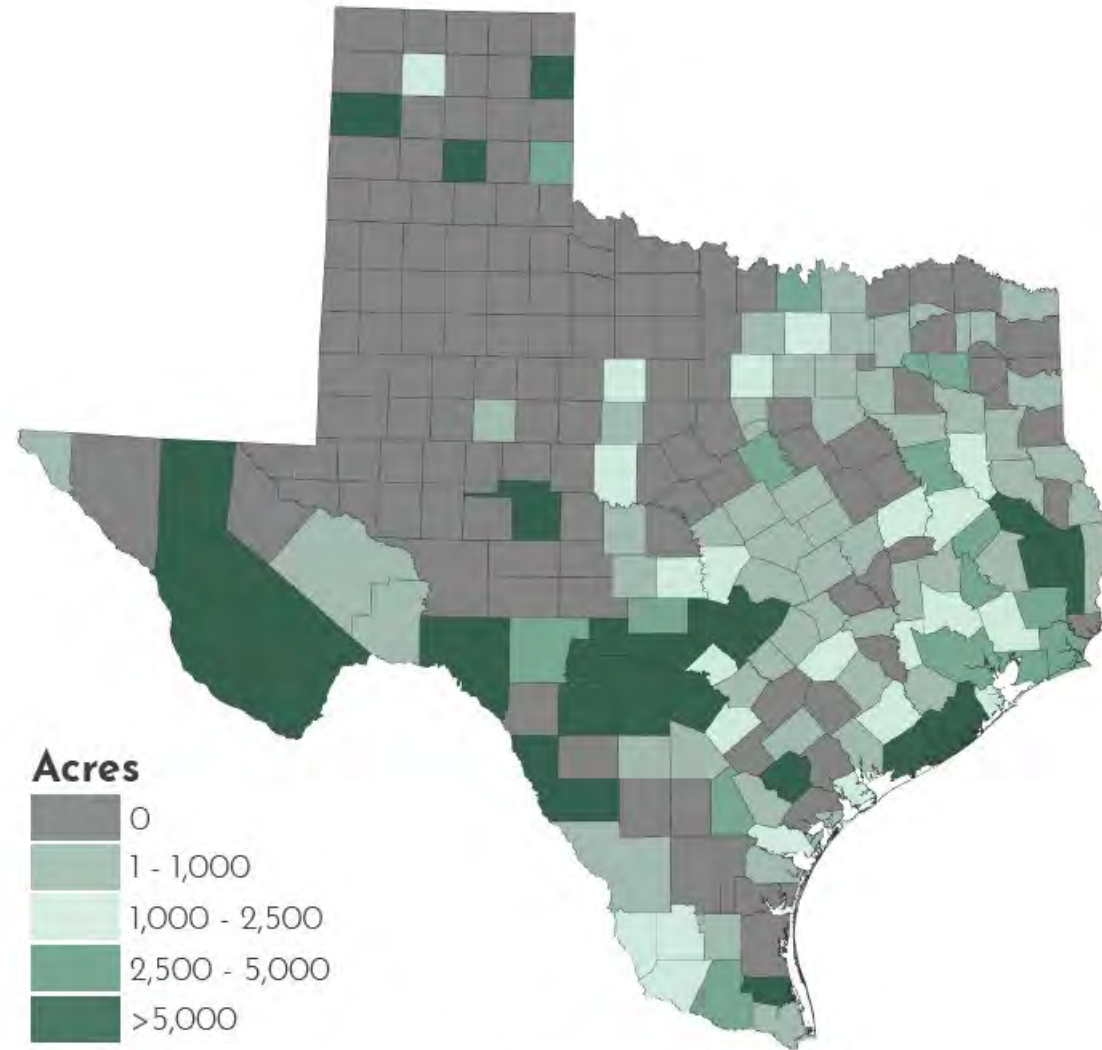


Figure 1. Distribution of private lands under conservation easements by county, 2018.

Source: Texas A&M Natural Resources Institute, Texas Land Trends, Jan. 2019, available at txlandtrends.org.

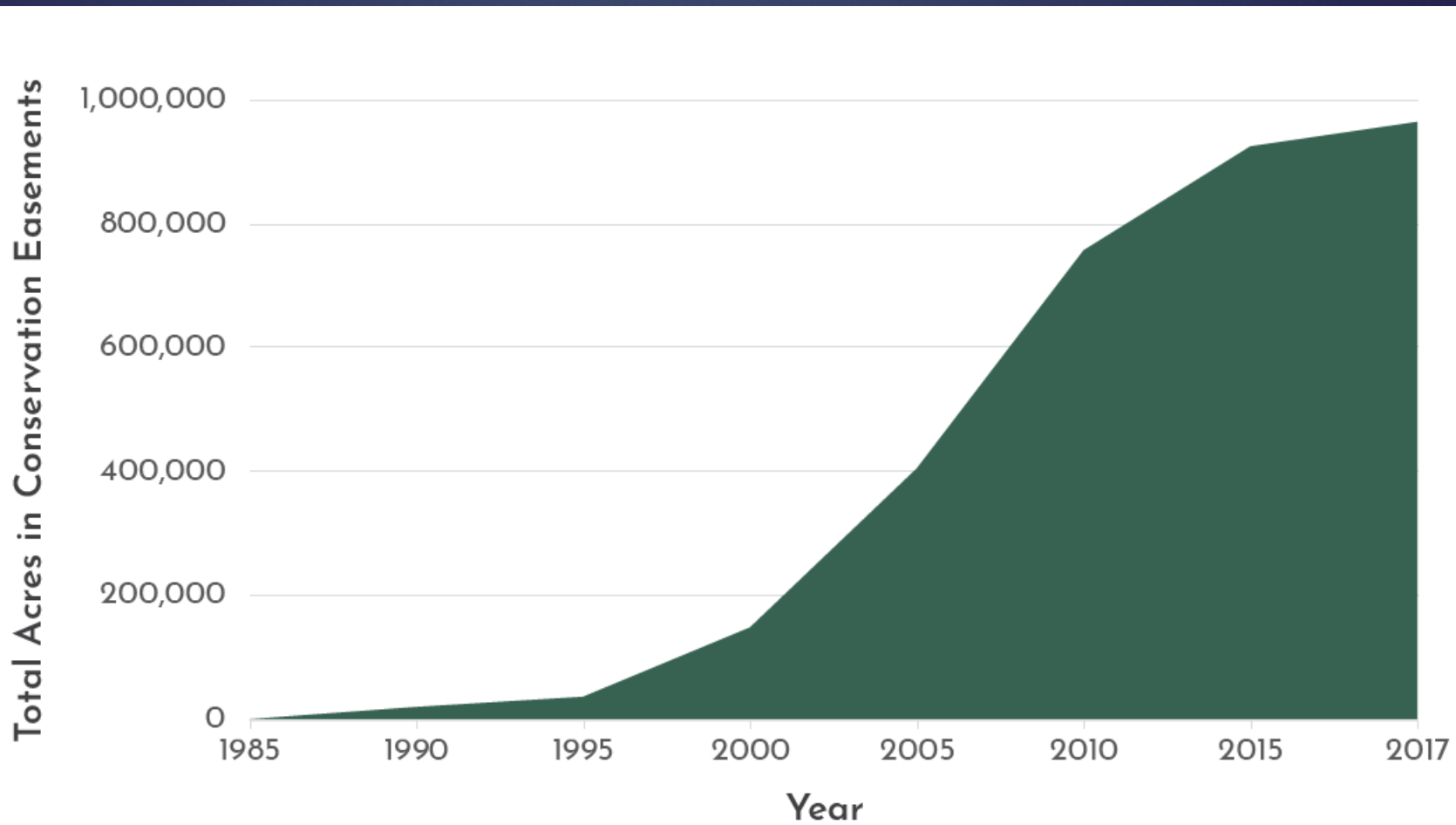
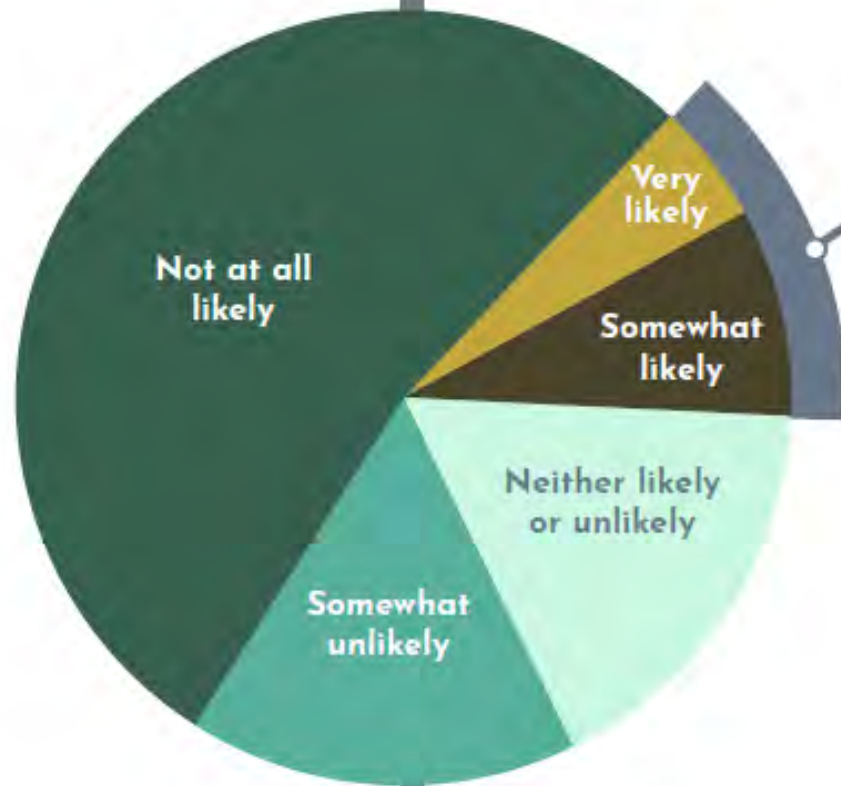


Figure 2. Cumulative acres of private lands under conservation easements in Texas, 1985-2017.

Source: Texas A&M Natural Resources Institute, Texas Land Trends, Jan. 2019, available at txlandtrends.org.



Implementing CONSERVATION EASEMENTS

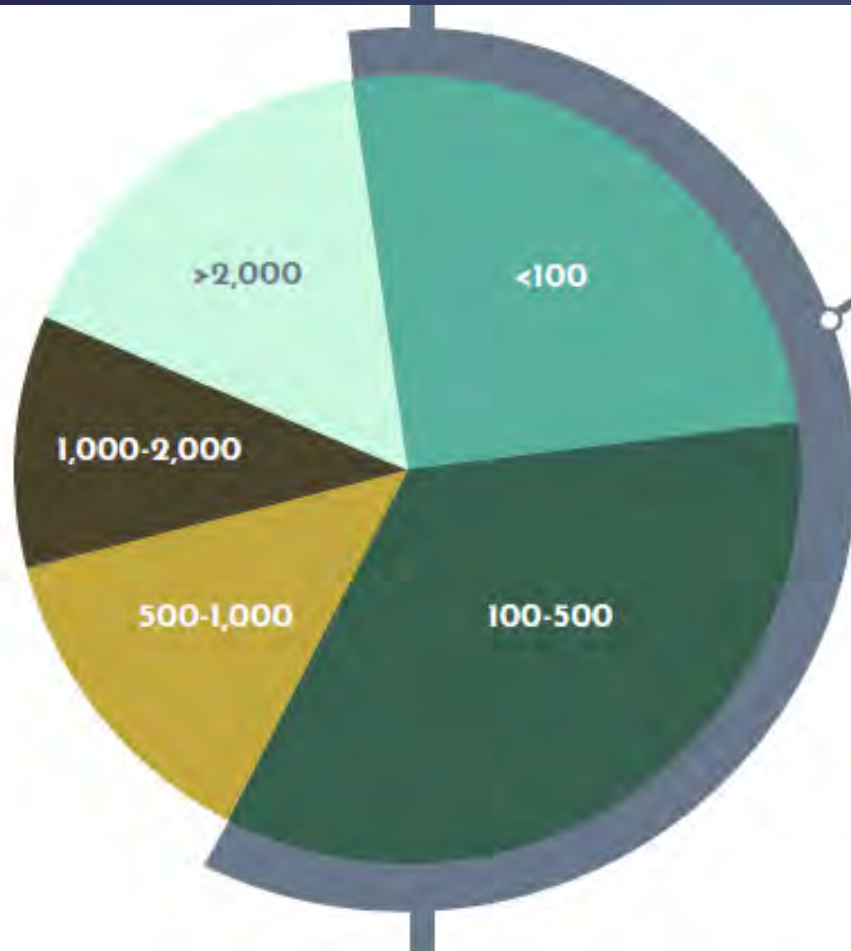
When asked about the likelihood of implementing a conservation easement in the next 10 years, approximately 15% indicated they were likely to implement a conservation easement.

Source: Texas A&M Natural Resources Institute, Texas Land Trends, Jan. 2019, available at txlandtrends.org.



Permanent LAND PROTECTION

Approximately 80% of landowners surveyed were generally open to the possibility of participating in permanent land protection programs (i.e., no time horizon), such as conservation easements.



Smaller PROPERTY SIZES

Survey responses revealed an aging landowner base and smaller property sizes, with an average landowner age of 59 years (median 60 years) and approximately 60% of all surveyed owning 500 acres or less.

Conservation Easement Process

- ▶ The process is essentially the same for donated and purchased easements
- ▶ Determine reserved rights (how many partitions will be allowed, how many “building envelopes”, etc.)
- ▶ Get an appraisal, preferably from an appraiser who has experience appraising conservation easements
- ▶ Develop a “baseline report” that documents the condition of the property at the time of the transaction

Terms of the Conservation Easement Agreement

- ▶ Purpose Clause
- ▶ State Conservation Values
- ▶ Restrictions & Reserved Rights
- ▶ Administrative Sections

Terms of the Conservation Easement Agreement

Restrictions & Reserved Rights

- ▶ Subdivision of the property
- ▶ Construction on the property
- ▶ Surface Alteration
- ▶ Vegetation Management
- ▶ Land Uses
 - ▶ Agriculture/crops
 - ▶ Grazing
 - ▶ Hunting
 - ▶ Surface mining
 - ▶ Oil & gas development
 - ▶ Water extraction

Terms of the Agreement

Administrative Sections

- ▶ Gives the Land Trust right of entry to monitor compliance
- ▶ Gives the Land Trust the right to enforce terms of the Agreement

Limitations Regarding Minerals

- ▶ Surface Mining is Prohibited
- ▶ Required by the IRC



Other Considerations

- ▶ Term or perpetual
- ▶ Condemnation
- ▶ Termination



The Easement Holder

- ▶ A non-profit land trust whose mission is land conservation; or a governmental entity
- ▶ Has the right to monitor and enforce the easement
- ▶ Typically visits the property once a year to ensure that the terms of the easement are being upheld
- ▶ 30 Texas land trusts, each with a specific mission

Conservation Easements: Donor Profile

- ▶ Conservation-minded
- ▶ Interest in passing land on in the family
- ▶ Sufficient income to benefit from the deduction
- ▶ Diverse income sources, beyond the property
- ▶ Post-mortem can work

Ground Water Restrictions

- ▶ The terms of conservation easement agreements typically prohibit the property's ground water from being transported off-site.
- ▶ But most agreements do not restrict the use of ground water on the property itself.

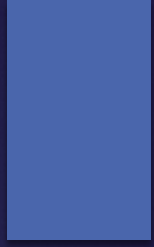


Conservation Easements and Water

- ▶ Texas State Water Plan emphasizes state will be in a 9M acre-feet water deficit by 2070
- ▶ Conservation easements can be a strategy to preserve undeveloped land to address both water scarcity and flood mitigation
- ▶ Conservation Easements estimated to have the potential to capture over 980,000 acre-feet of water annually
 - ▶ Water replacement cost of over \$1.7B annually for Texas

Value of Water Resources

- ▶ In December 2016, Texas A&M's Natural Resources Institute conducted a Return on Investment analysis of the Legislature's \$2m appropriation to the Texas Farm & Ranch Lands Conservation Program. The state's \$2m investment funded seven perpetual conservation easements, representing 10,500 acres. The use of 1.8MM in state program dollars leveraged purchases of 14MM, which cumulatively protect on an annual basis \$11.5m in water resources.



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