Texas Conservation Easements

TSPS 2017
Agenda

- What is a conservation easement?
  - Resources for conservation easements and land trusts
  - Real Property – Bundle of Rights
  - Conditions
- Landowner Benefits
  - Tax deductions
  - Funding Options
- Required Information
- Surveyor Involvement
- Digital data sharing
What is a land trust?

Their mission is to preserve land via conservation easements and/or acquisition.
What is a land trust?

There are 30 land trusts in Texas that hold conservation easements and 1,100 land trusts in the U.S.
Land Trust Membership Criteria

Non profits public charity IRS
Land Protection and Stewardship focus
Up to date on annual dues

Individual Membership

Professional Membership
Inclusion in the resource guide for landowner and land trusts

Land Trust Membership Criteria

Non profits public charity IRS
Land Protection and Stewardship focus
Up to date on annual dues
Find a land trust for your county
Prairies and Lakes Region

Select a county to view the land trusts in that area.
## Collin County

### Regional Land Trusts Serving Collin County

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
<th>Web site</th>
</tr>
</thead>
<tbody>
<tr>
<td>Connemara Conservancy</td>
<td>(214) 351-0990</td>
<td><a href="http://www.connemaracconservancy.org/">www.connemaracconservancy.org/</a></td>
</tr>
<tr>
<td>The Nature Conservancy (East Texas)</td>
<td>(409) 385-0445</td>
<td><a href="http://www.nature.org/texas/">www.nature.org/texas/</a></td>
</tr>
<tr>
<td>Upper Trinity Conservation Trust</td>
<td>(972) 219-1228</td>
<td>utct.org</td>
</tr>
</tbody>
</table>

### Statewide Land Trusts Serving Collin County

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
<th>Web site</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ducks Unlimited</td>
<td>(832) 451-4801</td>
<td><a href="http://www.ducks.org">www.ducks.org</a></td>
</tr>
<tr>
<td>Native Prairies Association of Texas</td>
<td>(512) 772-4741</td>
<td><a href="http://www.texasprairie.org/">www.texasprairie.org/</a></td>
</tr>
<tr>
<td>Texas Agricultural Land Trust</td>
<td>(210) 828-0074</td>
<td><a href="http://www.txaglandtrust.org">www.txaglandtrust.org</a></td>
</tr>
<tr>
<td>Texas Cave Management Association</td>
<td>(210) 699-1388</td>
<td><a href="http://www.texascaves.org/">www.texascaves.org/</a></td>
</tr>
<tr>
<td>Texas Land Conservancy</td>
<td>(812) 301-6363</td>
<td><a href="http://www.texaslandconservancy.org">www.texaslandconservancy.org</a></td>
</tr>
<tr>
<td>The Nature Conservancy</td>
<td>(210) 224-6774</td>
<td><a href="http://www.nature.org/texas/">www.nature.org/texas/</a></td>
</tr>
</tbody>
</table>

### TLTC Partner Organizations Serving Collin County

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
<th>Web site</th>
</tr>
</thead>
</table>
what we do

Faster, better and lasting

The Alliance brings its more than 1,100 member land trusts together — and increases each one’s success.

We advocate for the policies and incentives that it takes to save millions of acres every year. We’re the go-to source for training for people who work in conservation — so land trusts get more done. We back up land trusts when the places they promise to protect are threatened. And we support land trusts in connecting more people to the land.

for land trusts

Land Trust Standards and Practices

The land trust community is committed to excellence in our work. We’re committed to upholding the public’s trust. And we support each other in that commitment.

Together, land trusts have established a set of guidelines for how to run a land trust responsibly: Land Trust Standards and Practices (the Standards). These guidelines describe how to operate a land trust legally, ethically and in the public interest, with a sound program of land conservation in mind.
Understanding Real Property Rights
Land
Earth’s surface to the center of the earth and the airspace above the land, including the trees and water

Real Estate
Land plus permanent human-made additions

Real Property
Real estate plus “bundle of legal rights”
Bundles of Rights

Each stick represents a separate, distinct ownership right:

**Possession:** Owned by whomever holds title
**Control:** Controls the use of the property
**Exclusion:** Others can be excluded
**Enjoyment:** Use the property in any legal manner
**Disposition:** Sell, rent or transfer ownership
What is an Easement?

- Easement: ROW, pipeline, utility, ingress egress, conservation…
- An easement is commonly defined as a nonpossessory interest in another person's land.
- An easement is a property interest that allows the holder of the easement to use property that he or she does not own or possess.
- An easement does not allow the easement holder to occupy the land, or to exclude others from the land.

- realestate.findlaw.com
Sec. 183.001. DEFINITIONS. In this chapter:
(1) "Conservation easement" means a nonpossessory interest of a holder in real property that imposes limitations or affirmative obligations designed to:

(A) retain or protect natural, scenic, or open-space values of real property or assure its availability for agricultural, forest, recreational, or open-space use;

(B) protect natural resources;

(C) maintain or enhance air or water quality; or

(D) preserve the historical, architectural, archeological, or cultural aspects of real property.
What is a Conservation Easement?

- Voluntary legal agreement between a landowner and conservation organization that places restrictions on specified future land uses.

- A landowner can give up one or more of their ‘bundle of rights’ for a purpose such as conservation while retaining ownership of the remainder of the rights.

- In ceding a right, the landowner "eases" it to another entity, such as a land trust. EX) a landowner may give up the right to build additional structures while retaining the right to grow crops.

- Land Trust holds the defined RIGHTS, often termed DEVELOPMENT RIGHTS.
What is a Conservation Easement?

Federal charitable income tax deduction under Internal Revenue Code IRC section 170(h):

Donated to a qualified organization and granted in perpetuity

Perpetuity
• Permanently restricts the use of the property

• Conservation easement must state:
  • The restriction remains on the property forever
  • Is binding on current and future owners of the property.
What is a Conservation Easement?

Federal charitable income tax deduction under Internal Revenue Code IRC section 170(h):

The easement must be created by deed and be exclusively for conservation purposes. Donations of conservation easements may meet more than one conservation purpose.

- Achieves at least one of the following conservation purposes:
  - Preserves land for public recreation or education
  - Protects natural habitat
  - Preserves open space for scenic enjoyment, or for public policy (open space plan)
  - Preserves historically important land
Benefits to Landowners


Example:
Land is worth $500,000 for potential residential development but only $200,000 as open space or recreational use.
A conservation easement reduces the value of the land by $300,000.

\[
\text{LAND WHOLE} - \text{DEVELOPMENT RIGHTS} = \text{REDUCED VALUE of LAND}
\]

\[
(\text{unencumbered}) - (\text{tax deduction value}) = (\text{land value with CE})
\]

\[
$500,000 - $300,000 = $200,000
\]
Benefits to landowners

Benefits to the landowner are therefore:

- Reduced property taxes because of the lower value of land

- A $300,000 charitable donation

- Deducted from their taxes up to 50% of their income in the year of the gift for up to 16 years.

- Farmers and Ranchers deduct up to 100% of their income
Prior to 2015, a landowner earning $50,000 a year who donated a $1 million conservation easement could take a $15,000 deduction (30% of his or her income) for the year of the donation and for an additional five years, generating a total of $90,000 in tax deductions.

The new, permanent incentive allows that landowner to deduct $25,000 (50% of income) for the year of the donation and for each of an additional 15 years. This would result in a total of $400,000 in deductions.

If the landowner is a farmer or rancher, he or she can deduct $50,000 (100% of income) in the first year and then for each of the following 15 years, realizing a maximum of $800,000 in deductions.
Break Time!
Demonstration
conservation easement value
LEAKEY, TX
100 ACRE
$1,000,000 VALUE
SAN ANTONIO, TX
35 ACRES
$650,000
FORT DAVIS, TX
3,000 ACRES
$12,000,000
Conservation Easement Options

Donation: The landowner donates the value of the conservation easement to the land trust and benefits from the charitable donation with federal tax deductions.

Purchase: The land trust raises funds and purchases the value of the conservation easement from the landowner. No tax deductions are taken for purchased easements.
Conservation Easement Options

Purchased Easements

Funding through:

Capital Campaigns
Grants – NRCS, TPWD, USFWS
Environmental Offsets
Governmental Bonds/ Propositions
Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and mining projects. Section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities).
What are conservation banks?

Conservation banks are permanently protected lands that contain natural resource values. These lands are conserved and permanently managed for species that are endangered, threatened, candidates for listing as endangered or threatened, or are otherwise species-at-risk.

Conservation banks function to offset adverse impacts to these species that occurred elsewhere, sometimes referred to as off-site mitigation. In exchange for permanently protecting the land and managing it for these species, the U.S. Fish and Wildlife Service (FWS) approves a specified number of habitat or species credits that bank owners may sell. Learn More
Gov’t Bonds and Propositions

City of San Antonio
Edwards Aquifer Protection Program

Bexar, Medina & Uvalde Counties

Proposition 3 Properties  San Antonio Water System  Edwards Aquifer Artesian Zone
Proposition 1 Properties  Texas Parks and Wildlife  Edwards Aquifer Drainage Zone
City Parks  The Nature Conservancy  Edwards Aquifer Recharge Zone
Federal Managed Land  Conservation Land

Sources: ESRI Here, DeLorme, TomTom, OpenStreetMap, Increment P Corp., GECO, USGS, FAO, NPS, NRCan, GeoBase, IGN, Kadaster NL, Ordnance Survey, Elim, Japan, MCI, Eri China (Hong Kong), and MapmyIndia. © OpenStreetMap contributors, and the GIS User Community.

THE CITY OF SAN ANTONIO MAKES NO WARRANTY REPRESENTATION, OR GUARANTEE OF ANY KIND REGARDING THIS MAP OR INFORMATION PROVIDED HEREIN. THE CITY OF SAN ANTONIO ASSUMES NO LIABILITY FOR ANY ERRORS, OMISSIONS, OR INACCURACIES OR THE INFORMATION PROVIDED REGARDLESS OF THE CAUSE OF SUCH OR FOR ANY DECISION MADE, ACTION TAKEN, OR ACTION NOT TAKEN BY THE USER IN RELIANCE UPON ANY MAP OR INFORMATION PROVIDED.
Gov’t Propositions and Bonds

Water Quality Protection Land Program

26,000 acres
Conservation Easement Placement

1. Find willing landowners (Public or Private) to hold CE

2. Assess land to ensure it meets land trust ecosystem value standards

3. Documentation:
   - Survey and legal description
   - Title Report
   - Appraisal
   - Conservation Easement terms and conditions
   - Baseline Inventory
   - Subordination agreement (if lien is present)
   - Mineral Remoteness report (if severed mineral rights)
   - IRS form 8283 (if donated)

4. Annual survey monitoring ensures agreement is upheld and address violations found.
USED AT CURRY LAKE
AND OTHER SPRING CREEK PRESERVES
STRATEGIC WETLAND MITIGATION

77 Acres
19 Acres

STRATEGIC WETLAND MITIGATION
STRATEGIC WETLAND MITIGATION
128 ACRES TOTAL
CONNECTED, STRATEGIC PROTECTION
Why Preserve Texas Land?

Family land of emotional relevance
Guarantee of Protection
Relieve financial strain of ownership: property tax or estate tax

Access to Federal or State money for management or acquisition
Population: 26 Million...

- = 250,000
- = Rural (10%)
- = Landowners (<1%)

Texas A&M University - Institute of Renewable Natural Resources
Why Preserve Texas Land?

• 95.8% of land in Texas is privately owned.

• The population in Texas is expected to increase 82% by 2060, with development pressure heaviest near urban areas.

• Surface water - streams, reservoirs and rivers - are an increasingly threatened source due to drought, development pressure and population growth.

• Acreage known as "working lands" or "open space" helps the state retain water resources by letting rain infiltrate the ground and circulate into aquifers.

• The total acreage of protected land in Texas, including state and local parks, is only 3,000,000 (0.17%).

• Texas is losing its rural lands faster than any other state in the Nation.
171 Million Acres...

5% PUBLIC vs 95% PRIVATE

17% DEVELOPED vs 83% RURAL

...142 Million Acres

*Private Working Lands*

Texas A&M University - Institute of Renewable Natural Resources
HOW SURVEYORS CAN WORK WITH LAND TRUSTS

Survey and metes and bounds for conservation easement area is required for every CE purchased by landowner, or tax deductible if donated to land trust.

Boundary re-verification for existing CE’s is important for boundary dispute prevention to CE near boundaries.
Digital Data Needed!

Mapping of baseline conditions
Annual survey
Handheld GPS for monitoring and reporting
PLEASE PROVIDE GEOREFERENCED FIELD DATA!
Summary – Conservation Easements:

- Complex and diverse tool for permanently preserving land while retaining ownership
- Increasing in use with municipalities and counties for water quality protection
- Require surveyor involvement with boundary description, line clarification, and partition
Thank You!

steph.prosser@gmail.com