



CONSERVATION LEGACY

Conservation Easements

Responsibilities

BY LORIE WOODWARD CANTU

“Conservation easements cannot exist without trust between landowners and land trusts,” said Blair Fitzsimons, CEO of the Texas Agricultural Land Trust. “And trust is built when partners communicate openly and uphold their responsibilities. Of course, it is imperative that the responsibilities are delineated and understood early on.”

Several of the responsibilities are foundational. For instance, the land trust must not do anything to jeopardize its 501 (c) 3 status.

“As a land trust, we are responsible for holding a conservation easement in perpetuity,” Fitzsimons said. “We cannot perform that function if we lose our non-profit status; therefore, we must conduct our business in an ethical manner that not only follows the letter of the law, but recognizes its intent. It’s up to us to understand and implement the industry’s best management practices and complete every transaction at the highest possible standard.”

A land trust must minimize its risk and maximize its longevity.

“A land trust has a responsibility to all of its easement donors,” Fitzsimons said. “Each and every agreement has to be thoroughly evaluated and vetted, because a land trust cannot afford to do one bad deal. A single bad deal could undermine the organization’s financial viability and damage our relationship with landowners.”

By the same token, landowners have a responsibility to evaluate the feasibility of a conservation easement for their family and to communicate its impacts with future generations.

“A conservation easement will exist long after the people who negotiated it are gone,” Fitzsimons said. “The only way to ensure that the agreement stands the test of time is to involve the people who will eventually live with the land under the agreement and to give every decision in the process very careful, deliberate consideration.”

When it comes to enacting conservation easements, there are, for all practical purposes, two phases for both the landowners and the land trust: pre-agreement, when the parties are negotiating the easement’s provisions, and post-agreement, when the provisions are being upheld.

During the pre-agreement phase, the land trust first explains the process and everything that is involved in a conservation agreement.

The land trust also asks questions and evaluates the land under consideration to determine if it meets the trust’s conservation mission.

“Every land trust has a specific conservation mission,” Fitzsimons said. “The land trust has an obligation to review any property and make a determination early on whether or not that property helps accomplish the mission. If it doesn’t, the land trust must notify the landowners as soon as possible, so they can seek out an appropriate partner.”

If the land meets the criteria of the land trust’s mission and the landowners are interested in proceeding, then, in the case of TALT, the land trust and the landowners sign a Memorandum of Understanding that spells out the process and identifies the key decisions that must be made. The final step is negotiating the conservation agreement. This stage begins with a template. After conversations with the landowner, the land trust tailors the template to the project. The modified template is the starting point for the negotiation phase. Enacting a conservation easement can be complicated, so landowners considering implementing a conservation easement need expert advice. It is the landowners’ responsibility to hire an attorney and an appraiser who have experience with conservation easements. This is particularly important for landowners who are donating a conservation easement and intending to utilize the benefits of a tax deduction.

“The Internal Revenue Service has very stringent requirements, including very specific language, for the both the conservation agreement and the appraisal, that must be incorporated for the agreement to be eligible for a tax deduction,” Fitzsimons said. “There have been cases where landowners have not received the tax benefits because their conservation agreement was missing one required sentence.”

Editor’s Note: This is the fourth installment in a six-part series focusing on conservation easements as a tool that can help keep ranches intact and facilitate their passage to the next generation of land stewards. The series has been developed in collaboration with the Texas Agricultural Land Trust (TALT). Created by landowners for landowners, TALT’s mission is to protect private working lands, thus conserving Texas’ heritage of wide open spaces. For additional information about TALT, see the organization’s website at www.txaglandtrust.org.



In addition, the conservation agreement represents a legal contract between the landowners and the land trust; therefore, the land trust cannot advocate on behalf of the landowner during negotiations.

“The land trust can explain the process, answer questions and share experiences, but we cannot give any tax advice,” Fitzsimons said. “As a party to the agreement, we are represented by our own very experienced attorney.”

From the outset to the agreement’s completion, the land trust is responsible for making sure that things are done correctly. This responsibility includes everything from delivering clear, accurate information and conducting business transparently to reviewing required documents, such as the baseline report. Baseline reports establish the condition of the property at the date the assessment was donated or purchased. A good baseline report is an essential reference document that sets the stage for proper monitoring.

“The baseline report is critical for the landowner and the land trust,” Fitzsimons said. “Because it is the measuring stick upon

which all future evaluations will be made, it has to be right, and it’s up to the land trust to make it right.”

Once the conservation easement is enacted, the landowners must abide by its terms. While the family is likely to be aware of the provisions, it is incumbent upon them to inform anyone who uses or manages the land, such as ranch managers, energy developers, or lease hunters, of any restrictions.

The land trust has the responsibility of upholding the wishes of the original donor in perpetuity. The trust monitors the property, generally conducting an annual site visit. If everything is in order, no further action is necessary. If there is an infraction of the easement, the trust tries to remedy it with the family first, knowing that the legal system is the final arbiter.

“When all is said and done, a land trust’s ultimate responsibility is to uphold a donor’s conservation wishes in perpetuity,” Fitzsimons said. “Every step of the process is designed to identify those wishes, communicate those wishes, and codify those wishes, so there is no question about how they will be implemented for generations to come.” 🌱



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