



CONSERVATION EASEMENTS

Conservation Easements

A Tool for Preventing the Fragmentation of Family Lands

BY LORIE WOODWARD CANTU

Land stewards can use conservation easements to help manage the future.

"In the most literal sense, a conservation easement is a perpetual restriction that prohibits future development and non-agricultural commercial uses, while allowing ag producers to continue doing what they do, whether it's grazing, growing cotton or running a hunting operation," said Blair Fitzsimons, executive director of the Texas Agricultural Land Trust (TALT). "In application, though, a

conservation easement is often a land steward's expression of their love of the land, enacted because they cannot bear the thought of their beloved property being broken up."

Like all real estate transactions, a conservation easement is a negotiated document. Contrary to a widespread misconception, they are not a one-size-fits-all contract, Fitzsimons said.

"Anyone considering a conservation easement needs to consider and clearly define the easement's goal," she said. "The goal will help dictate the way the easement is drafted, because the agreement will be crafted to help the easement donor achieve that goal."

Conservation easements can be created to protect different natural assets ranging from endangered species and water sources to productive, open space agricultural land. In the case of TALT, the organization holds conservation easements for the latter.

"When it comes time to negotiate a conservation easement, there are certain parameters that must be met to satisfy the IRS, but within that framework, landowners have a great deal of latitude to shape an agreement that works best for their family," she said. In all conservation easements, landowners retain title to the property. As owners, they can lease out their property or sell it if their goals or life situations change.

Common negotiated options include allowing a limited number of property divisions within the family; creating a limited number of home sites for family use on the property; and making provisions for future oil and gas development.

"Enacting a conservation easement is a philosophical decision with business ramifications," Fitzsimons said. "It can affect a family for generations, so it's important for donors to include the next generation in the decision-making process. It is an opportunity to identify and protect what is most important to the family."



From a business standpoint, conservation easements also offer income and estate tax benefits.

"Conservation easements remove the possibility of development, thereby reducing the market value of the property," Fitzsimons said. To determine the easement's value, two appraisals are conducted. A "before" appraisal that estimates the value of the property before the easement is enacted and an "after" appraisal that calculates the property's value after the easement is enacted. The difference between the "before" and "after" is the value of the donated conservation easement.

For instance, a family owns a ranch in the Hill Country with high development potential. The market value is \$20 million. After the conservation easement, the value may be \$10 million. The \$10 million reduc-

tion in value can also be used as a \$10 million income tax deduction. The tax deduction may be applied to income tax liability over a number of years.

From an estate tax perspective, the reduction in value due to the conservation easement reduces the value of the land asset included in the overall estate. In the case of the above example, if the land was the only asset, the taxable estate value would be \$10 million instead of \$20 million. Under the 2012 tax code, that reduction would cause the estate value to fall below the threshold that triggers estate taxes. (Federal Estate tax laws have changed in 2013, and the tax rate on estates above the exemption level has increased, but the reduced valuation will still be a benefit.)

"Estate taxes are the number one factor contributing to land fragmentation," Fitzsi-

mons said. "Conservation easements provide a tool that allows landowners to keep control of their property, while addressing estate tax concerns."

While conservation easements provide business advantages, their primary benefit is more intangible and arguably more important.

"Farmers and ranchers are bound by a common desire to leave their land better than they found it," Fitzsimons said. "A conservation easement is a concrete, perpetual expression of that stewardship ethic. By conscientiously protecting their land from fragmentation, it is a declaration of what is important to them and their family." 🌱

Editor's Note: This is the first 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.



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