



CONSERVATION LEGACY

# Conservation Easements

## Land Trust

BY LORIE WOODWARD CANTU

Determining whether or not to place a conservation easement on a property is a process that offers both opportunities and challenges. Landowners should approach the decision with their eyes open to both.

“A conservation easement is a tool that makes sense for some families and not for others,” said Blair Fitzsimons, executive director of the Texas Agricultural Land Trust (TALT). “Each family has to ascertain whether or not a conservation easement accomplishes the family’s goals. To do that effectively, it helps to recognize the opportunities and challenges of the process, so that surprises will be minimized and families can focus on the end result.”

Open, multi-generational communication is one of the process’s benefits. Because a conservation easement is a perpetual covenant, it is important the family comes together and discusses the mutual goals for the ranch.

“Considering a conservation easement prompts families to have conversations about the future that we all tend to put off,” Fitzsimons said. “It’s not easy to talk about succession, heirs and the future of the land,

but it’s not optional for families considering a conservation easement. Using a conservation easement as the impetus, families can embark on a strategic planning process, charting the course for the land and the family, and gaining the security of knowing that they all share the same vision.”

Additionally, a conservation easement can serve as the mechanism through which a family’s stewardship ethic can be communicated to succeeding generations.

“A conservation easement is a perpetual memorial to a family’s land ethic,” Fitzsimons said. “Family stories and family traditions may or may not be passed down and honored, but a conservation easement is a permanent way of commemorating a family’s commitment to the land. A conservation easement stands as a constant reminder to succeeding generations of what their forebearers considered important.”

While the concept of perpetuity offers

opportunities for a family legacy, it also creates some practical challenges.

“The concept of perpetuity is not always easy for people to wrap their brains around,” said Fitzsimons. “Because these restrictions will be in place forever, each decision regarding the family and the land’s future has to be carefully weighed and considered.”

Because nothing can be taken for granted, the process of implementing a conservation easement can be lengthy.

“Enacting a conservation easement is not quick, and it shouldn’t be,” said Fitzsimons. “Sometimes, people are overwhelmed by the depth and breadth of the decisions that have to be made.”

In addition, conservation easements require qualified legal and technical expertise, as well as specialized information. None of these things are inexpensive.

“When families are enacting restrictions that will be in place forever, they need good

**Editor’s Note:** This is the third 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](http://www.txaglandtrust.org).



advice and good advisors,” Fitzsimons said. “Depending on the complexity of the conservation easement, legal fees can be considerable.”

In addition to legal fees, there are transaction costs that include appraisals, title policies, baseline reports, and land trust staff fees.

Unlike a typical real estate transaction, a conservation easement requires two valuations to meet the Internal Revenue Service’s requirements. One is conducted to determine the land’s value before the restrictions are enacted, and the second is conducted to determine the land’s value after the restrictions are enacted. The difference between the two is the value of conservation easement recognized by the Internal Revenue Service.

“Because these appraisals are specialized, they require an appraiser who has experience working with conservation easements,” Fitzsimons said. “It may not be in the family’s best interest to choose their local appraiser, even if they have worked together on numerous occasions.”

Some land trusts, including TALT, also ask for a donation to a stewardship endowment, Fitzsimons said. Land trusts are charged with ensuring that a landowner’s goals are carried out in perpetuity, and it takes financial support to accomplish that. In the case of TALT, a mathematical formula is used to determine the amount of the donation, which is then placed in a restricted account and employed to uphold the landowner’s easement.

“Families who are considering a conservation easement should put a pencil to the decision to determine the financial benefit,” Fitzsimons said. “People need to evaluate the transaction costs, know what the reduction in value will be, and be confident that this makes sense economically.

She continued, “Families should also very actively involve the next generation in the decision making process because they are the people who will have to live with the easement. By design, conservation easements are very difficult to undo, so it is better to spend time and resources getting the agreement right the first time.”

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