



# 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



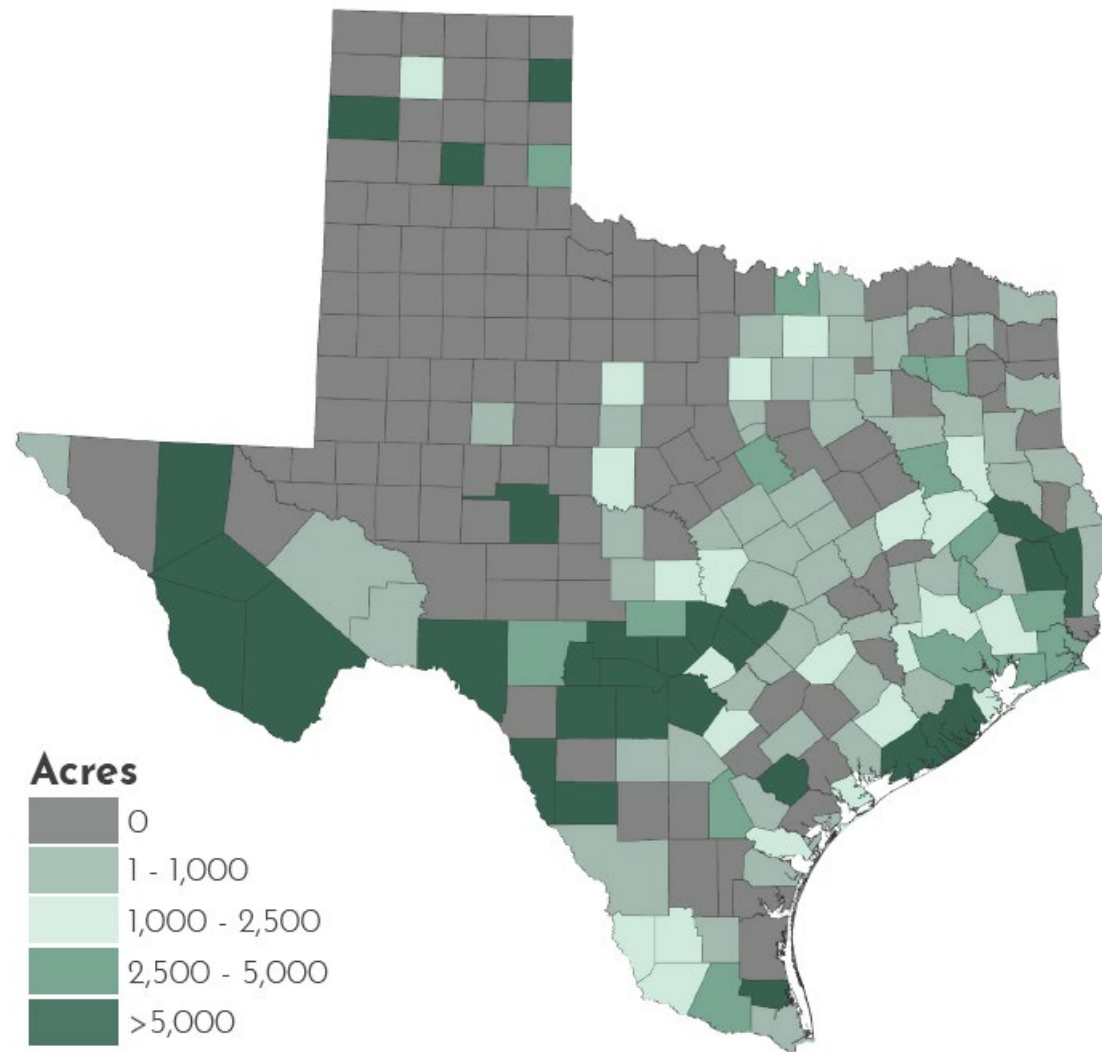
# Purpose of CEs – 170(h) IRC

- ▶ 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



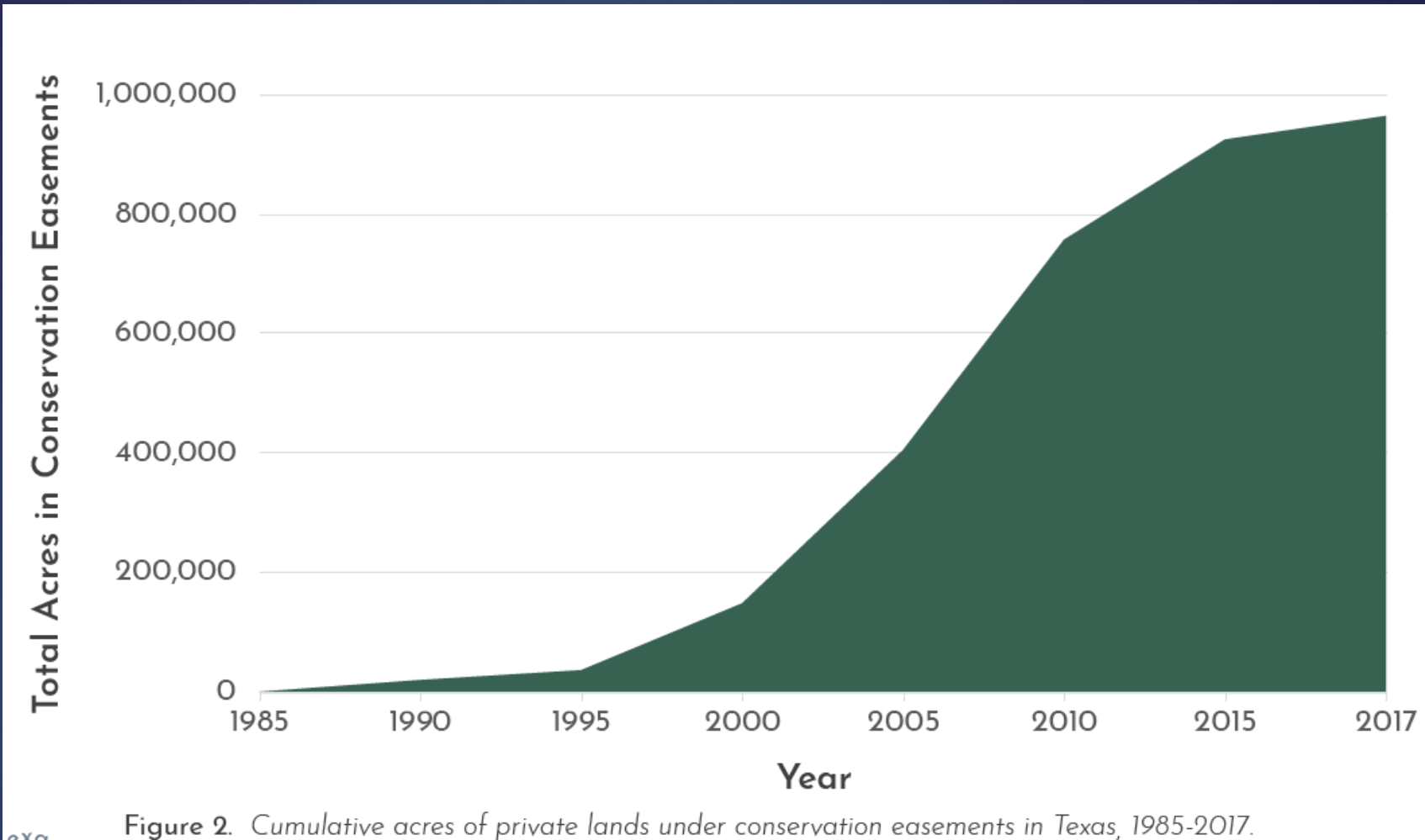
# Types of Conservation Easements

- ▶ 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

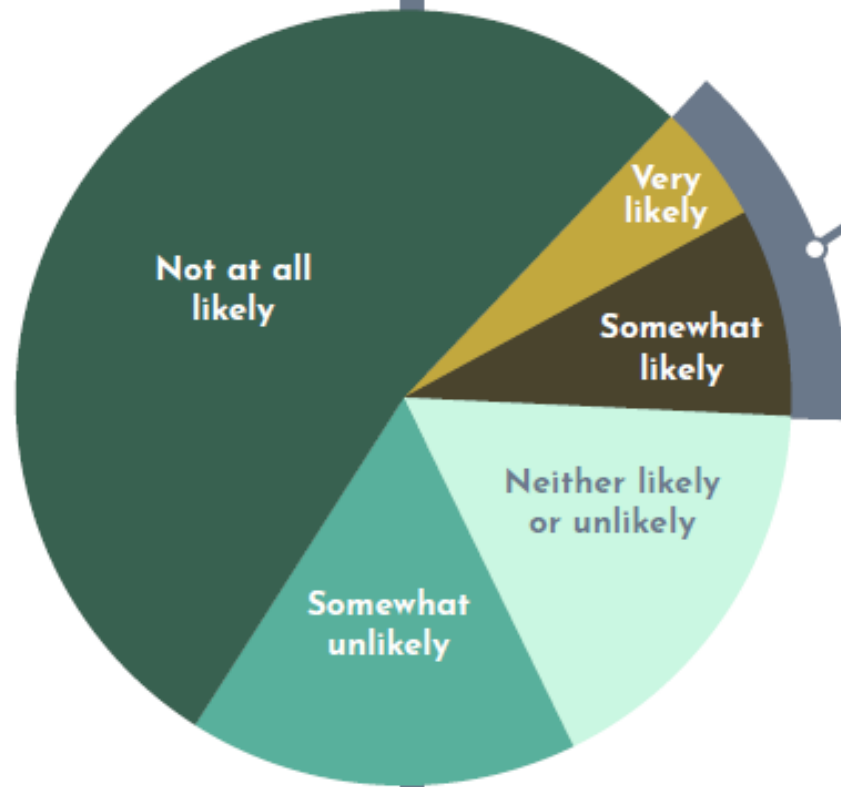


**Figure 1.** Distribution of private lands under conservation easements by county, 2018.

Source: Texas A&M Natural Resources Institute, Texas Land Trends, Jan. 2019, available at [txlandtrends.org](http://txlandtrends.org).



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## Implementing CONSERVATION EASEMENTS

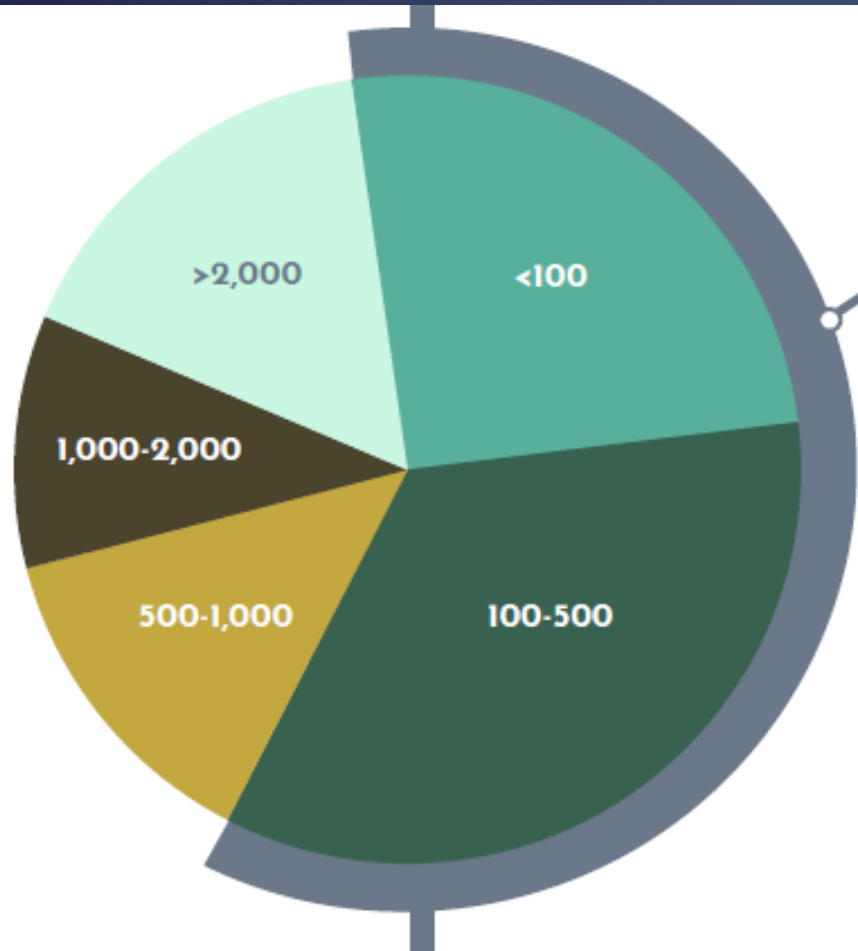
When asked about the likelihood of implementing a conservation easement in the next 10 years, approximately 15% indicated they were likely to implement a conservation easement.

Source: Texas A&M Natural Resources Institute, Texas Land Trends, Jan. 2019, available at [txlandtrends.org](http://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.

Source: Texas A&M Natural Resources Institute, Texas Land Trends, Jan. 2019, available at [txlandtrends.org](http://txlandtrends.org).

# 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.



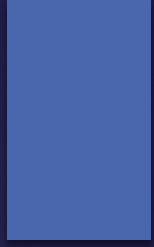
# Conservation Easements and Water

- ▶ Texas State Water Plan emphasizes state will be in a 9M acre-foot 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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