



# What is a Conservation Easement?

*A conservation easement is the legal glue that binds a property owner's good intentions to the land in perpetuity.*

"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," [CEO Blair Fitzsimons](#) said. "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 cherished land being broken up."

With their property, private landowners hold a bundle of rights, such as the right to subdivide or lease. A conservation easement allows landowners to voluntarily give away certain rights for the purposes of conservation, while retaining others – and retaining title to their property.

"When a landowner grants a conservation easement to the [Texas Agricultural Land Trust \(TALT\)](#), we become partners in perpetual conservation," said Fitzsimons, noting the land trust staff make an annual [monitoring visit](#). "As a land trust, we have a responsibility to ensure that the terms of the conservation easement are upheld, but the day-to-day management remains with the landowner who can continue to move toward their land management goals."

*"The conservation easement allows us to continue to use the land and enjoy its benefits, while prohibiting future development. It is a perfect fit for our family and the ranch."* ~ Mike Hughes, Owner – Prairie Dog River Ranch



Click the image to learn more about the Prairie Dog River Ranch and their conservation easement partnership with TALT.

Like all real estate transactions, a conservation easement is a negotiated document that spells out the uses that are consistent and inconsistent with the landowner's conservation values. Contrary to a widespread misconception, it is not a one-size-fits-all contract, Fitzsimons said. TALT and the donating landowner negotiate the terms of each easement.

"Anyone considering a conservation easement needs to clearly define their goal for the easement," 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."

A conservation easement is perpetual, meaning that it "runs with the land." Texas law authorizes the grant of conservation easements to qualified private organizations. It also requires that the deed of conservation easement be duly recorded. Property under a conservation easement may be sold, but the conservation easement will forever prohibit non-ag uses of the property.

"A conservation easement doesn't prevent landowners from selling their property, but it will hold future owners to the same conservation standards, thereby keeping the land undeveloped," Fitzsimons said.



## The Dixon Water Foundation

The Dixon Water Foundation Board specifically negotiated the right to sell some small parcels, which were not critical to the Foundation's mission, but important to the regional ecosystem. While these parcels are no longer owned by the Foundation, they are still bound by the terms of the conservation easement. Click the image to learn more.

Under federal law, the donation of an easement may qualify as a charitable contribution. As such, it may reduce income and estate taxes.

"Of course, every landowner's situation is different, so it is important to consult an attorney or someone knowledgeable of the federal requirements," Fitzsimons said.

## In general, the following major rules apply in order to receive a tax benefit:

1. The conservation easement must be granted in perpetuity (mortgage and/or contract holders must agree to subordinate to the easement).
2. The easement must provide at least one of the following four conservation purposes. TALT easements generally meet one or more of the following purposes:
  - \*Protection of relatively natural habitat for fish, wildlife, plants or similar ecosystems;
  - \*Preservation of open space (including farmland or forest land) for (a) scenic enjoyment of the general public and/or (b) significant public benefit pursuant to a clearly delineated government policy,
  - \*Preservation of land areas for the education of or outdoor recreation by the general public.
3. The easement must be granted to a qualified organization, such as a land trust, that is organized for the purposes of land conservation.

4. The easement must prohibit all surface mining. If the easement donor does not own all of the mineral rights, the possibility of surface mining must be determined “so remote as to be negligible.”
5. The property’s conservation values must be documented in a baseline report before the easement’s donation. This baseline report is then used for monitoring visits going forward.

The easement’s value is determined by a qualified appraiser, procured by the landowner, who values the property before and after the easement restrictions are applied.

“From an income tax perspective, the difference between these two values is the amount of the charitable gift for tax purposes,” Fitzsimons said. “This gift amount is treated as a charitable contribution.” The deduction can be taken against 50% of gross income and carried forward for 15 years. For those who derive their living from agriculture, the deduction can be taken against 100% percent of gross income.

***“This is one of the most generous charitable deductions available, and is geared to help protect the land that provides the country’s food and fiber,”*** said Fitzsimons.



Because the Klein family makes their living in agriculture, they were able to use enhanced tax incentives for donated conservation easements, and deduct the value of the conservation easement against 100% of their adjusted gross income (AGI). [Click the image to learn more.](#)

From an estate tax perspective, conservation easements typically reduce the property value for estate and gift purposes, which can ease the financial burden of passing the property on to heirs.

“A voluntary conservation easement is an important estate planning tool,” Fitzsimons said. “It can help family’s keep land intact as it passes to the next generation.”

*“By this time, I hoped that the next generation of our family would be ready to take on the joy and responsibility of stewardship. They’re not quite there yet, but that didn’t stop me from taking steps to keep the ranch intact. This land is too important for its future to be left to fate.”*

*~ Sarah Harte, Owner – Prairie Dog River Ranch*



Click the image to learn how the Harte family utilized the conservation easement as an estate planning tool.



## *Tailor-Made Solutions*

Conservation easements are as unique as the land they protect. Working within a broad framework, landowners craft an easement that allows them to achieve their conservation goals. To get an idea of the do’s and don’ts see below.

### *General examples of uses typically **restricted** by a conservation easement:*

- Subdivision for residential or commercial activities;
- Construction of non-agricultural buildings;
- Nonagricultural commercial activities;
- Dumping of non-compostable or toxic waste; and

- Surface mining.

### *General examples of uses **allowed** by a conservation easement:*

- Continued agricultural uses, as well as hunting and fishing;
- Constructing buildings, fences, water improvements, etc., necessary for agriculture and compatible with conservation objectives;
- Sale, gifting or other method of transferring parcels, subject to terms of the easement;
- Landowner control of access;
- Additional family and employee residences compatible with conservation objectives;
- Any and all uses not specifically prohibited.

*For more information, please contact Blair Fitzsimons, CEO, Texas Agricultural Land Trust, P.O. Box 6152, San Antonio, Texas 78209, 210-826-0074. [bfitzsimons@txaglandtrust.org](mailto:bfitzsimons@txaglandtrust.org).*

# Conservation Easement Application

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## About TALT

Concerned that Texas is losing its rural lands faster than any other state in the country, leaders of Texas' statewide agricultural, wildlife and landowner organizations came together in 2007 to create the Texas Agricultural Land Trust. With a Board of Directors who, as landowners themselves, understand the day-to-day challenges of farming and ranching, TALT promotes the conservation of open space, native wildlife habitats, and natural resources of Texas' private working lands. TALT, a private non-profit organization, today has partnered with landowners to conserve 226,957 acres. *Created by farmers and ranchers for farmers and ranchers*, TALT is proud to play a role in conserving part of Texas' legacy of wide open spaces.

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