OPEN SPACE

protecting open space: tools and techniques

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CREDITS

Many folks participated in the preparation of this guide. Researchers and authors with the National Park Service's Rivers, Trails and Conservation Assistance Program included: Lacey Eckl McCormick, Thomas Butler, Dina Zamarripa, Stephanie Striefel, Russell McDowell, Marta de la Garza Newkirk, and Kathryn Nichols.

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For additional copies of *Protecting Open Space: Tools and Techniques for Texans,* contact:

National Park Service
Rivers, Trails & Conservation Assistance
300 E. 8th St., Ste. 578
Austin, Texas 78701-3222
Phone: (512) 916-5161
kathryn_nichols@nps.gov

OPEN SPACE FOR TEXANS

The availability of open space has always been close to the heart of Texans. When we think of Texas we often imagine vast expanses of untamed land. We think of endless dense pine forests in East Texas, canyons and live oaks stretching across the Hill Country, and the scenic grandeur of the mountains of West Texas. We think of these landscapes as infinite and everlasting. The reality, however, is that wild and natural places in our state are rapidly disappearing. As one of the fastest growing states in the country, Texas added over four million new residents between 1990 and 2000. It is not terribly surprising, then, that Texas leads the nation in the loss of prime agricultural farmland to development.

There are many advantages to preserving open space, and they affect people in all walks of life. Habitat preservation is just the beginning. For local governments, open space can mean big savings on infrastructure such as flood control measures. There are tax incentives for landowners that permanently protect their land or use it for wildlife habitat. Even real estate developers can benefit as access to open space has been shown to increase property values. There is no one easy solution to the loss of open space, however, individuals, landowners, real estate developers, the construction industry, local governments, and non-profit agencies can all make choices that will make a difference. And coordination of these broad-based interests are critical to accomplishing consensus on growth and open space conservation initiatives. This guide aims to show that existing open space conservation techniques can be both economically and environmentally beneficial here in Texas.

WHAT IS OPEN SPACE?

Open space is a broad and comprehensive term. Some people think of open space as land left in its natural, undisturbed state. Some consider agricultural land open space. Open space can include land for passive and active recreation, groundwater recharge, scenic preservation, and wildlife habitat; land areas and facilities for public, commercial, and non-profit recreation; and land protected by conservation easements or some other assignment of development rights.

Open space can be owned by private individuals, organizations, or governmental entities and may or may not be accessible to the general public. It can exist in rural or urban areas and may be subject to some level of protection. Other types of land fall under the umbrella of open space. Public parks, for instance, often have improvements in the form of recreation facilities, roads, drainage, recreation facilities, and bathrooms, and may have been cleared of much native vegetation, yet are certainly a form of open space. Agricultural lands, too, retain some of the prime characteristics of open space though they may not be accessible to the public.

ABOUT THIS DOCUMENT

This document was written for everyone who is concerned about the loss of open space in Texas, be they an individual landowner, a real estate developer, a government employee, an environmentalist, or just an interested citizen.

We begin by describing eleven techniques that are commonly employed for conserving open space in Texas. We list how and where they might be effectively applied. We then describe ten different case studies that illustrate how these techniques have been successfully used to conserve open space for Texans.

BARGAIN SALE OF LAND

OBJECTIVE:

A landowner can help conserve land (example: for a public park or to protect a scenic vista) while still receiving a profit from its sale.

WHO INITIATES IT:

The landowner, who receives incentives to sell land under federal tax codes, or a public agency or non profit organization that works with willing landowners.

HOW IT WORKS:

A bargain sale (also known as a "charitable sale") is an agreement to sell property to a non-profit or governmental agency at less than fair market value. Landowners are potentially eligible for two kinds of tax benefits from a bargain sale. The difference between the fair market value and the sales price is considered a charitable deduction. Bargain sales also have the potential to reduce capital gains tax.

For example, take a landowner that bought a piece of property for $10,000 and held onto it for several years while the fair market value of the property rose to $80,000. If the landowner sold the land to a 501(c)(3) for $50,000, he would be eligible for a charitable donation of $30,000 and would only need to pay capital gains tax on $40,000. Depending on several factors, including the landowner's tax bracket, this kind of sale can be competitive financially for the landowner with selling the property at market value.

ADVANTAGES:

Sellers profit from the sale of the land while receiving a reduction in capital gains tax. Sellers are frequently motivated by an intangible desire to see the land

protected. Municipalities, other agencies, and taxpayers benefit by purchasing desirable land at a reduced price.

DISADVANTAGES:

Sellers will frequently not profit as much from a bargain sale as they would from selling their property at fair market value. The tax code around bargain sales is complex, and sellers should consult with a tax advisor before entering into binding agreements. Conservation agencies such as land trusts have limited resources and may not be able to purchase properties that do not have significant conservation value.

USE IT IF:

- The agency is able to afford what the seller is asking for the land.
- The seller will receive significant tax benefits from selling the land at a bargain sale price.
- The seller is not solely motivated by profit but also desires to conserve the land.

NOT RECOMMENDED WHEN:

- The price of the land is out of reach of the prospective buyer.
- The land does not have enough environmental significance for its intended objectives or use(s) .

PARKLAND/TRAIL DEDICATION

OBJECTIVE:

To provide park and recreation facilities to a community without burdening existing residents with additional taxes.

WHO INITIATES IT:

A local government – municipal or county.

HOW IT WORKS:

A local government requires subdivision developers or builders to dedicate park/trail land or to pay a fee the government entity then uses to acquire and develop park and trail facilities. Sometimes called an exaction, this technique is often considered a type of user fee because the intent is for the cost of new parks to be paid for by the landowner, developer, or new homeowners who are responsible for creating the demand for the new facilities. Exactions are implemented through local ordinance, as a condition of approval for development permits. Ordinances may require one or a combination of the following forms of compliance:

Land dedication: An ordinance may require dedication of land. The amount of land to be dedicated may be determined as a fixed percentage of the total land area, or through a population-density formula (example: x acres per 1000 residents).

Fees in lieu: An ordinance may require developers to contribute cash instead of dedicating land. There are two methods of assessing these fees. First, the fee may be a percentage of the total fair market value of the land being developed. Second, the fee may be relatively equal to the fair market value of the land that would have otherwise been dedicated using the population-density formula.

Impact fees: Impact fees differ from *fees in lieu* because they are collected at the building permit stage rather than at the time of subdivision platting. Impact fees can be assessed upon condominium, apartment, and commercial developments which create the need for new park/trail development but which might escape *land dedication* or *fees in lieu* requirements because of the small land area involved.

ADVANTAGES:

Parkland/trail dedication ordinances allow local communities to conserve additional open space in step with the pace of land development. Some local governments have negotiated with developers to have the developers construct the facilities for which the fees were to be used. This is typically cost efficient for both parties because the developers can use their labor and equipment, which are already on site.

DISADVANTAGES:

While the courts have generally upheld the constitutionality of exaction ordinances, many developers resent being required to pay exactions for parks, and continue to file legal challenges.

USE IT IF:

- The community is experiencing significant growth and new land development.
- The local government has a strong park/trail master plan to guide the development of the new park/trail facilities.
- Developers have typically complied well with local development ordinances.

NOT RECOMMENDED WHEN:

- The exaction ordinances are difficult and costly to administer.
- The local government does not have the resources to pay for the maintenance of the newly dedicated/acquired lands.
- The cost of exactions becomes a deterrent to any development.

ZONING FOR CONSERVATION

OBJECTIVE:

Zoning ordinances can provide strong protection for specific natural or cultural resources.

WHO INITIATES IT:

A municipal government.

HOW IT WORKS:

One of the most common methods of using zoning to protect natural resources is through "overlay zones." This technique has broad application to a variety of contexts in addition to conservation; overlay zones are commonly used to protect floodplains, wetlands, watersheds, historic districts and archeological areas. Overlay zones are superimposed over existing zoning maps and have provisions that apply to a specific area in addition to the requirements of the existing zoning ordinance. Other communities designate special zoning categories with environmental restrictions such as larger setbacks or limits on impervious cover. These zoning categories are applied where needed. One example of this would be a zoning category that required a conservation subdivision design.

ADVANTAGES:

Zoning allows communities to isolate and conserve specific resources that are not adequately protected through existing regulations. These conservation zoning ordinances may both impose additional restrictions, and provide incentives and waivers to encourage certain types of development.

DISADVANTAGES:

As with all zoning regulations, conservation zoning can be circumvented or repealed, depending on the political climate in the community. Overlay zoning

in particular can be fairly complicated to administer; it requires maintaining accurate overlay maps and working with developers to explain the added regulations.

USE IT IF:

- There are natural and cultural resources in need of protection in the community.
- The city is prepared to accept the added administrative responsibilities that conservation zoning requires.

NOT RECOMMENDED WHEN:

- The added regulations cannot be clearly and specifically defined.
- The desired restrictions/regulations cannot be accomplished through minimal modification to existing zoning regulations.
- Citizens or city leaders perceive this technique as a "regulatory" approach.

TRAIL EASEMENTS

OBJECTIVE:

To obtain the use of a corridor across another landowner's property for public access purposes at a cost less than outright purchase of the corridor or tract in fee simple.

WHO INITIATES IT:

A landowner grants the easement to a trail sponsor who may be a government or a trail management organization.

HOW IT WORKS:

An easement constitutes a partial interest in a property, in this case, the right of the easement holder to enter onto another landowner's property, develop a trail facility within a designated corridor, and allow users onto the corridor to use the trail. Easements are recorded in the county deed records, and they run with the land, meaning they are legally binding on future owners of the land. Trail easements frequently grant access for a fixed number of years, rather than in perpetuity, the way most other easements are done.

Trail managers typically identify tracts of land that are desired for a trail corridor and negotiate an access arrangement with the owners. Some property owners are interested in earning extra income and may be willing to allow access in exchange for a fee. Some civic-minded landowners may be willing to donate the easement. Most property owners will have concerns about liability, interference with their use of the land, and potential problems such as litter and vandalism. They will also want to know the plans for managing the trail, including the types and hours of anticipated use.

These easements also serve to allow one public land manager to obtain control over another public landowner's property. This might happen when a city or

county is willing to manage public use of a trail developed on property owned by agencies that do not have recreational duties, such as utilities or flood control districts.

ADVANTAGES:

Since easement acquisition typically costs less than outright purchase of land, trail managing entities are able to make their funds go further using easements. Like roads and rail lines, trails can be developed in relatively narrow corridors of land, meaning trail corridors can be accommodated within larger tracts without disrupting many of the existing land uses. Leaving private land on the tax rolls is another advantage.

DISADVANTAGES:

Easements over other landowners' property place the grantor and grantee in an on-going relationship. Terms or covenants that seemed reasonable in the beginning may create tensions later if the arrangement does not meet expectations. Term easements pose a special disadvantage if the property owner does not choose to renew the agreement. In that case, the trail manager will have expended development and maintenance funds on a lost facility.

USE IT IF:

- There are substantial cost-savings in acquiring an easement rather than land in fee simple (full purchase).
- The easement is in perpetuity, and the terms and conditions are defined well enough for future owners to conform to the original intent if the land changes hands.
- The granting landowner is already a public entity, and adding public use would be easy.

NOT RECOMMENDED WHEN:

- The granting landowner is leery of government and/or public use.
- Landowner's terms and conditions prove too restrictive to provide a reasonable amount of trail use access.
- The trail manager does not have sufficient staff to effectively manage the trail easement to prevent negative impacts on the landowner.

CONSERVATION EASEMENTS

OBJECTIVE:

Conservation easements permanently protect land from development while allowing ownership to remain in private hands.

WHO INITIATES IT:

The property owner initiates conservation easements in partnership with a qualified recipient – a 501(c)(3) organization with a stated conservation mission, or a public agency.

HOW IT WORKS:

A conservation easement is a legal restriction voluntarily placed on a property by its owner. The right to enforce this restriction is granted to a public agency or a qualified charitable organization, usually a land trust.

Each easement document is customized to meet the landowner's individual needs. . The landowner can determine if farming, wildlife management, or other activities will continue, and to what to degree. The landowner may retain the rights to a certain amount of subdivision. For example the landowners may retain the right to build residences on the property, if desired. The owner retains ownership of all rights to the property not specifically restricted by the easement.

There also exist limited term conservation easements, particularly under federal agricultural programs. These may carry financial incentives but not the same set of tax considerations as conventional conservation easements.

ADVANTAGES:

Landowners can permanently protect their land while maintaining ownership of the property. Conservation easements can mean significant savings to

landowners on three types of taxes: property tax, income tax and estate tax or inheritance. Without the potential for development, the market value of land is considerably decreased, and property taxes are consequently reduced. A landowner donating a conservation easement to a land trust can count the developable value of the land (calculated as the difference between the market value of the land with and without the conservation easement) as a charitable donation, reducing income tax. Finally, a conservation easement may reduce the value of the land to the point the landowner's heirs may experience a lower estate tax burden.

DISADVANTAGES:

Once a conservation easement is in place, it is irrevocable. The landowner no longer has the option to sell the property for development as a source of income.

USE IT IF:

- Rapidly increasing land values are making farming or ranching unprofitable.
- The land must be sold in order to pay estate tax.
- There is a need to protect wildlife habitat, water quality, archeological resources, forestland, a scenic place, or other types of open space.

NOT RECOMMENDED WHEN:

- The land is not developable, for example, if it is in a floodplain.
- The land does not have any natural, aesthetic or agricultural features worth preserving – or if the amount of land in question is too small.
- The potential holder of the easement does not have adequate resources to monitor conditions on the property.

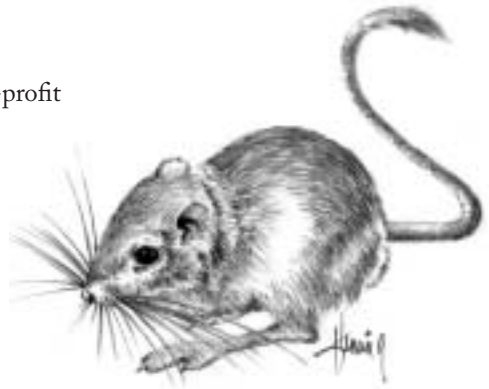
PURCHASE OF DEVELOPMENT RIGHTS

OBJECTIVE:

Purchase of development rights programs allow governments and non-profit organizations to protect land at a lesser cost than outright fee simple purchases.

WHO INITIATES IT:

City or county governments and non-profit organizations, working with private landowners and developers.



HOW IT WORKS:

In a purchase of development rights (PDR) program, a governmental or non-profit agency essentially purchases conservation easements from willing landowners. As with a conservation easement, the idea is to separate the development rights from the rest of the ownership rights so the land remains privately held open space.

ADVANTAGES:

For many landowners, finding an organization that is willing to purchase their development rights represents the best of both worlds: They are able to retain ownership of their land and profit from its development potential. Additionally, landowners may receive savings on both property and estate taxes.

A PDR program also has benefits for conservation agencies. With the rapid pace of land fragmentation in Texas, many landowners are faced with the

decision to try to stay on their land or sell it; therefore many are in a position to consider their development rights in order to continue on their land. Therefore, it is possible to protect farmland and natural open spaces on a larger scale. Purchasing development rights is less expensive than buying the land outright, and the conservation agency is not financially responsible for managing the property.

DISADVANTAGES:

The expense of PDR programs, including the need to monitor projects, makes them out of reach for many local governments and conservation organizations. Local governments may also face objections to spending tax revenues for lands that may not be publicly accessible. These programs may not protect critical wildlife habitat or agricultural lands, as participation is purely voluntary. Landowners selling the easement may have to pay a capital gains tax.

USE IT IF:

- Development is threatening wildlife habitat, agricultural property, environmentally sensitive land, or a scenic area.
- The conservation agency has a large enough budget to purchase the rights to a significant amount of land.

NOT RECOMMENDED WHEN:

- The conservation agency does not have the resources to handle the legal and financial complexities of the program.
- The general public does not understand the need for conservation.
- Landowners in the area are unwilling to sell the development rights to their property.

TRANSFER OF DEVELOPMENT RIGHTS

OBJECTIVE:

To create a mechanism for preserving environmentally sensitive land while concentrating development in more easily served, compact areas.

WHO INITIATES IT:

Local governments, working with private landowners and developers.

HOW IT WORKS:

The development rights attached to a piece of property are part of a bundle of rights the landowner has regarding the property. The landowner can sell the right to develop the property while maintaining ownership of the land itself.

A transfer of development rights (TDR) program designates two areas: a sending area and a receiving area. A sending area is a place where development would have negative impacts, perhaps due to the presence of sensitive ecological resources, a historic site, agricultural land, or an area of scenic beauty. Receiving areas are places deemed suitable for development. A TDR program may designate multiple areas of either type. The development rights are usually quantified based on the market value of property in the sending area or on the building density allowed under current zoning in the sending area.

Each TDR program is created to meet the needs of the region. In some, the sending areas are zoned for low-density development, and the landowner has the choice to develop the land himself or to sell the development rights to someone with property in the receiving area. Other programs prohibit all development in the sending area, requiring the landowner to transfer development rights in order to realize any economic gain. Some TDR programs create a bank of development credits to expedite the process for both potential buyers and sellers. A developer purchases the development rights to increase the allowable density on land in the receiving area. For example, if a developer owned ten acres of land in a receiving area zoned for two residential units per acre, he could build a total

of 20 homes. If he wanted to increase the density, he could purchase additional development rights from a landowner who had eight acres of land zoned for one unit per acre. This would allow him to build an additional eight homes on the receiving land. The landowner would receive compensation from the developer and would retain ownership of the undeveloped (and now undevelopable) land.

ADVANTAGES:

Landowners in the sending zone can protect their land while still realizing financial gain. Owners in the receiving zone will realize greater financial gain when enabled to develop at a higher density. Cities can conserve important resources without spending public money and can lower the cost of providing and maintaining infrastructure and services by concentrating development in a more compact area.

DISADVANTAGES:

As of publication of this guide, the State of Texas had not enacted enabling legislation to outline a model TDR program, so a locality wishing to create a program would have to write their own ordinance, which can be a complex task. Furthermore, TDR programs can be quite difficult and time-consuming to administer. In addition, these programs may face opposition from residents in both the sending and receiving areas because landowners in both areas may fear lowered land values.

USE IT IF:

- The local government in your area has the financial and legal resources to create and administer a TDR program.
- The local area has places that are more suitable for development than others.
- The public realizes the value of protecting the lands in question.

NOT RECOMMENDED WHEN:

- The entire area is in need of environmental protection and does not have areas where development can be concentrated.
- The local government does not have the power or resources to create, enforce and promote the TDR program.
- There is no long-term land-use plan in place.

LIMITED DEVELOPMENT OPTION

OBJECTIVE:

A landowner can mitigate the cost of conserving land by developing a limited portion of a property.

WHO INITIATES IT:

A landowner or developer, possibly in collaboration with a conservation organization.

HOW IT WORKS:

A landowner wishing to conserve a particular piece of land might determine that one portion of it has marginal environmental value or a particularly high commercial value. For example, previous commercial use might have degraded part of the land to a point where restoration would be difficult or costly. This section of land might also have a higher commercial value; for instance, it may be close to a highway. In this situation, a landowner might subdivide the land, and conserve one section and develop the other.

The landowner can manage conservation lands himself, or he can convey the deed to the land to an organization such as a land trust. Likewise, he can choose to develop, then lease or sell the development lands, or he could sell them to another party for development. In any case, deed restrictions or conservation easements can be placed on both parcels to ensure they are used in accordance with the wishes of the landowner initiating the conservation effort.

ADVANTAGES:

A limited development option can defray the costs of conserving land by allowing the landowner to realize some financial return. Because the landowner

can control—through deed restrictions or conservation easements—the manner in which the development lands are used, limited development options allow for the creation of a buffer between the conservation land and other land.

DISADVANTAGES:

Some land that might have been conserved is lost to development. Landowners are unlikely to realize the full economic potential of the land.

USE IT IF:

- A property has a developable section of land that is of minimal ecological value.
- The revenue derived from the development is the only way to make conservation of the remaining land possible.

NOT RECOMMENDED WHEN:

- Any development in the area is likely to impact sensitive habitat.

CONSERVATION SUBDIVISIONS

OBJECTIVE:

Conservation subdivision design refers to developments where a significant portion of the "buildable" land area is designated as undivided, permanent open space.

WHO INITIATES IT:

Real estate developers or landowners usually initiate conservation subdivisions. A local jurisdiction can create ordinances to promote conservation subdivisions.

HOW IT WORKS:

Conventional zoning specifies the number of dwellings per acre that can be built in a particular area. Conservation subdivisions group the dwellings together on smaller lots, leaving a significant percentage of the acreage undeveloped. The undeveloped area typically becomes shared open space for use by the development's residents. The open space can be used to protect natural features, sensitive areas, cultural resources, or to provide for recreational enjoyment. The developer typically passes title or easement for the open space land to a public agency or homeowners association. These developments are often "density neutral," meaning that the overall number of dwellings allowed is the same as would have been permitted in a conventional layout.

ADVANTAGES:

Conservation subdivisions create open space close to residences without requiring the developer or the local jurisdiction to incur the cost of purchasing additional land. The consolidation of lots means reduced capital costs to the developer because there is less land to clear, and fewer streets, storm sewers, water lines, and sanitary sewers to build. It also provides savings to the

local jurisdictions in that the consolidated infrastructure will reduce long-term maintenance costs. Additionally, conservation subdivisions that reduce impervious cover lower the potential for water contamination and downstream flooding.

Another advantage is that attractive developments sell more rapidly and at higher market prices. Many people place a high value on views of and access to permanently protected open space. Studies have shown that local housing markets value a one-acre house lot with adjacent open space as equal to a typical three-to-five acre house lot without adjacent open space. Also, shared open space may have a reduced property tax valuation.

DISADVANTAGES:

If a municipality does not have ordinances enabling conservation subdivisions or planned unit developments, the developer may have to expend considerable time and expense to work with the zoning commission to receive approval of a cluster development plan.

USE IT IF:

- The developer sees the value in providing open space for the development's residents.
- A management entity is in place that accepts the long-term responsibilities of managing the open space (typically a local government agency or a homeowners association).
- The percentage of land conserved as open space is significant enough to warrant added planning and administrative costs to the local jurisdiction, if any.

NOT RECOMMENDED WHEN:

- The percentage of land set aside as open space is insignificant.
- The developer proposes to set aside land that is not developable to begin with (i.e. steep slopes, floodplain, etc).

DEED RESTRICTIONS

(also commonly known as Restrictive Covenants)

OBJECTIVE:

Deed restrictions can be used to conserve natural areas on a piece of property or in a subdivision.

WHO INITIATES IT:

Developers and homeowners' associations. Residents in a subdivision can also enact deed restrictions by petition.

HOW IT WORKS:

Deed restrictions require homebuyers upon purchase of a home to agree to certain terms that place restrictions and limits on certain uses of a property. Homeowners associations commonly use deed restrictions to ensure that specific qualities are retained as long-term characteristics of the community. For instance, a developer could write a deed restriction limiting the amount of a property that can have impervious cover or requiring that a specific section of a property be left in a natural state. Since the deed restrictions are a private agreement, they supplement less-restrictive zoning regulations. Cities that are politically unable to impose certain regulations may offer incentives to developers to include the desired restrictions in the deeds of properties being developed.

Most deed restrictions have a time limitation; for example, "effective for a period of 25 years from this date." After that time, the restrictions become inoperative unless they are extended by majority agreement of the people who then own the property. Before they expire, however, deed restrictions "run with the land," meaning they pass from seller to buyer. A developer may use deed restrictions

as a selling point for homes in a subdivision, and homebuyers may rely on their presence to guarantee some stability in the character of a neighborhood and in property values. Homeowners associations are usually responsible for enforcing the deed restrictions by fining property owners that fail to comply. Extreme cases have ended up in court.

ADVANTAGES:

Deed restrictions are very flexible. Purchasers of a property agree to the terms prior to purchase, and enforcement is self-imposed by the members of the community. Deed restrictions may also enhance property values.

DISADVANTAGES:

Deed restrictions are not effective when they are not enforced; however, enforcement can sometimes lead to bad feelings between neighbors. Deed restrictions are not commonly thought of as a conservation tool; they are more frequently used to ensure visual harmony in a subdivision and protect property values. Deed restrictions are legally binding, and homeowners should fully understand the details of the agreement before they purchase the property. Restrictions could also affect the marketability of a property.

USE IT IF:

- Restrictions will have a neutral or positive impact on property values.
- Local regulations do not effectively protect environmental resources.

NOT RECOMMENDED WHEN:

- Homeowners are not likely to recognize the value of restrictions resulting in lack of enforcement.

WILDLIFE PROPERTY TAX VALUATION

OBJECTIVE:

Open space taxation assessments lower a landowner's tax burden, making it possible for landowners to retain their land as open space.

WHO INITIATES IT:

The property owner initiates the tax valuation with the local taxing jurisdiction under the authority of state law.

HOW IT WORKS:

There are several ways property owners in Texas can manage open space land and pay taxes based upon the land's productivity value rather than the full market value of their property. Most landowners are already aware that land primarily used for agriculture or timber has a much lower tax burden than non-agricultural land. It is less widely known, however, that the same part of the tax code – Article VIII, section 1-d-1 – can also lower taxes on land used for two non-agricultural purposes: wildlife management and ecological research by a college or university. A different tool for lowering taxes on open-space land is to place a 10-year deed restriction on the property limiting all uses outside of park, scenic and recreational ones.

Landowners may request a wildlife management designation if their land was appraised as 1-d-1 agricultural land (Timber appraisal is currently excluded from qualifying) in the previous year and if the property is principally used to "propagate a sustaining breeding, migrating, or wintering population of indigenous wild animals for human use, including food, medicine, or recreation." In order to qualify for the wildlife management use appraisal, the land must be actively managed in at least three of the following seven ways:

1. habitat control
2. erosion control
3. predator control
4. providing supplemental supplies of water
5. providing supplemental supplies of food
6. providing shelters
7. making of census counts to determine population.

Printed copies of these guidelines are available from the Comptroller of Public Accounts (1-800-252-9121). Landowners must complete a wildlife management plan and submit it along with a new 1-d-1 Open Space Appraisal Application to the county tax assessor's office before May 1 of the tax year. The county tax assessor's office approves the plans and can provide landowners with a standard application.

The other way non-agricultural land can qualify for 1-d-1 status is if it is used "principally as an ecological laboratory by a public or private college or university." This usage is not widely practiced.

A Recreational, Park and Scenic Land Valuation is a lowered tax valuation based on a voluntary deed restriction on all uses except for park, scenic or recreational uses. To qualify, the parcel must be at least five acres, and the deed restriction must have a term of at least 10 years.

ADVANTAGES:

These assessments significantly decrease the amount of tax owed on a particular property, making various forms of open space preservation economically feasible for landowners. The 1-d-1 valuations do not preclude other uses, such as recreational or other traditional agricultural practices.

Groups of landowners managing their land under 1-d-1 Open Space Appraisal may choose to manage their lands cooperatively for the benefit of wildlife. These wildlife management groups offer one of the most effective and practical means of mitigating the negative effects of habitat fragmentation.

DISADVANTAGES:

Land under all these forms of tax valuations is subject to "rollback" taxes to discourage the development of agricultural land. In addition, since wildlife management is not yet recognized by the Federal Government as an agricultural practice, many related expenses may not by allowed by the Internal Revenue Service.

Some experts feel these lowered tax assessments are not effective in conserving open space lands and that they may, in fact, operate as a sort of short-term subsidy for land speculators.

USE IT IF:

- The landowner is committed to an active wildlife management program or operating an ecological laboratory in cooperation with a college or university.
- The landowner plans to use the land in this capacity for longer than a five-year period.

NOT RECOMMENDED WHEN:

- The ecological laboratory is only a secondary use of the land, or if the landowner is not able to consistently provide the intensity of management necessary to satisfy the qualifying criteria.

GOVERNMENT CANYON STATE NATURAL AREA

[Tools: Conservation Easement, Bargain Sale, and Limited Development Option]
[Public Objectives: Water Quality, Habitat Preservation, Recreation, Interpretation and Education]

San Antonio, like so many cities in the southwest, is growing at an explosive rate. Unlike many other places, however, San Antonio's growth has the potential to pollute and theoretically deplete its main source of drinking water, the Edwards Aquifer. Protecting the underground water supply is critical to the long-term health of the city, but it is a difficult task. The Edwards Aquifer is unusual in that it recharges extremely quickly, carrying urban pollutants such as motor oil and pesticides directly into the aquifer, with very little filtration. Preserving water quality and quantity is largely a matter of protecting the area in the recharge zones from intense development.

Government Canyon State Natural Area, just twenty minutes outside of San Antonio, is one major attempt to prevent harm to the aquifer and to conserve open space near the city. The area is currently comprised of 8,201 acres, making it one of the largest urban natural preserves in the country. Most of the preserve lies in the aquifer recharge zone. Along with preserving water quality, the land also provides habitat for two endangered species, the golden-cheeked warbler and the black-capped vireo.

Putting the land together was no small task. An impressive number of governmental agencies and non-profits—among them, Texas Parks and Wildlife Department, Edwards Aquifer Authority, the San Antonio Water System, the Trust for Public Land and the Government Canyon Coalition—worked together for nearly a decade to make the preserve happen.
The land was acquired in four different purchases and the various agencies used a number of innovative techniques to make it work. For example, the first parcel of

4717 acres was bought in a bargain sale from the Resolution Trust Corporation. The Edwards Aquifer Authority, San Antonio Water District and Texas Parks and Wildlife all contributed to the purchase price, but even together they were not able to raise quite enough money. The Trust for Public Land, who was negotiating the deal, funded the difference by selling around 450 less environmentally sensitive acres to a developer. The income from the sale of this land helped cover the expense of the original acquisition.

Each parcel has one or more conservation easements placed on it. The easements are tailored to meet the need of the agency holding it. For example, the U.S. Fish and Wildlife Service holds the easement on one 1000-plus acre parcel of land that is home to the golden-cheeked warbler. This strict easement allows for very little human use. Hikers and birdwatchers will be allowed on the property only when it is not nesting season for the warblers.

There will be greater public access to other sections of the property. The preserve will have picnic areas, a few rough camping sites, and there are tentative plans for an interpretative center. The International Mountain Biking Association says the planned 41-mile multi-use trail network has the potential to become some of the most exciting trails in the country. Government Canyon itself has a lot of potential: it has become a model of cooperation between different governmental and non-profit organizations working together to protect the environment and our quality of life.

photo: Government Canyon. credit: Government Canyon Staff

CONSERVATION SUBDIVISIONS IN THE TEXAS HILL COUNTRY

[Tool: Conservation Subdivision Design]

[Public Objectives: Recreation, Habitat Preservation]

The idea of living surrounded by nature appeals to a lot of people. Buying a house in a rural area, however, can be something of a risky proposition. For one thing, there is no way to insure the area surrounding the house will remain undeveloped. The family farm across the road might turn into a subdivision. The woods behind the property could be cleared to make way for a strip mall.

A few Texas developers see an opportunity and have begun to offer homebuyers access to permanently protected fields and forests as an amenity, just like another development might offer a golf course or a swimming pool.

Mike Halpin of the Meridian Group is one example of such a developer. He is in the process of developing The Preserve at Walnut Springs, a 2000-acre site near Johnson City in the Hill Country. The community will have over 1500 acres of protected open space; homeowners will be able to fish and hunt in designated areas of the property and walk or ride on miles of trails. According to Halpin, homeowners will have "all the benefits of owning a ranch, except you share it with 50 other families."

The environmental benefits of this kind of development over a traditional subdivision can be significant. At The Preserve, wildlife biologists found a number of Black-capped Vireo, a bird on the endangered species list. Normally, such a discovery would be a developer's worst nightmare. But Jane Jones, property manager at The Preserve, was delighted. "It only helps us to have those. People love to say they own property with an endangered species." Halpin and Jones plan to leave the area where the birds were found as open space.

Whit Hanks is seeking to create a conservation subdivision in Dripping Springs, also in the Hill Country. The land borders property that has been in Hanks' family for generations. He describes himself as a "benevolent despot" and says that he bought the property primarily to make sure it remained unspoiled.

Hanks is using several techniques to preserve the aesthetics and the open space of the property. Four of the largest lots (out of 23 total) have deed restrictions requiring that much of the land be used for agricultural purposes or for wildlife uses. All of

photo: Conservation Subdivisions. credit: Lacey Eckl McCormick

the lots have large setbacks and only a small area where building is permitted. Lots with steep slopes have easements prohibiting any kind of inference with the slopes; homeowners may not even trim trees or build fences without the permission of the homeowners association. The homeowners association will own common areas that can be used for trails. Both of these developments are aiming at a high-end market and differ significantly from a classic cluster development. Both of the developers chose to create a low-density development, instead of concentrating the maximum number of units allowed on smaller lots.

Hanks and Halpin feel that even a large lot conservation subdivision design is something new for Texas. Halpin is confident that The Preserve will do well "numbers-wise" but admits that he "is not sure if Texans are ready to share." Hanks concurs, saying, "Until recently, most Texans would have thought this was a crazy idea." He is confident, however, that once small-scale developers like himself and Halpin are successful in this market, corporate developers will follow their lead.

THE U UP U DOWN RANCH

[Tools: Conservation Easement, Bargain Sale]
[Public Objectives: Habitat Preservation, Scientific Research, Interpretation and Education]

The Davis Mountains are an ecologically unique "sky island" rising above the Chihuahuan Desert. The mountains—which receive nearly twice as much rainfall as the desert below—are rich with unique species found nowhere else in the world. Until now, the large ranches that have made up this land for over a century have protected this biodiversity. But ranching is an endangered way of life in much of the state, and nowhere is this truer than in places like the Davis Mountains where the recreational value of the land is skyrocketing.

For people like Don McIvor, it is the end of an era. His ranch, the U Up U Down, has been in his family since 1882; his grandmother donated the land for the University of Texas' McDonald Observatory. He lived on the U Up U Down and worked its 38,000 acres for forty years, but in the late-1990s his sisters—co-owners of the ranch—were ready to sell. McIvor didn't want to see the ranch carved up into a subdivision of summer homes. He wanted to protect the land from development, and he wanted to keep the night skies around the observatory dark.

The solution was to sell most of the ranch—almost 32,000 acres—to The Nature Conservancy at less than market value. McIvor says, "I could have sold it for a much higher figure if I did commercial" but selling the land in a bargain sale to The Nature Conservancy worked out just as well since he received tax breaks for five years after the sale.

McIvor kept over 6000 acres and donated a conservation easement on the property to the Nature Conservancy. "I just wanted to do it so there will always be dark skies here, and the land will always be ranched...there are very few observatories left with no light pollution."

McIvor doesn't find the terms of the easement restrictive for what he wants to do with the land. "I can ranch but I cannot split it up and build stuff on it.... I can do fences; I can do roads where we need to. I can do all of the regular ranch things."

Roughly half of the 32,000 acres he sold the Nature Conservancy is managed as the Davis Mountains Preserve. The rest was divided into three large tracts and sold to ranchers who agreed to place conservation easements on the property. The Nature Conservancy used the income from these sales to offset the cost of the original purchase.
Today, McIvor says he has no regrets. "The higher country here is wonderful, and it's being taken care of beautifully."

photo: The U Up U Down Ranch, Jeff County. credit: Kene Haywood, The Nature Conservancy

McKINNEY ROUGHS

[Tools: Limited Development Options and Conservation Easement]
[Public Objectives: Recreation, Habitat Preservation, Interpretation and Education]

The Lower Colorado River Authority has a vision of a system of parks, nature preserves and heritage sites along 400 miles of the Colorado. According to Jeff Singleton, project manager at LCRA, "The idea is to get people back on the river" and to use the river as a trail to connect the communities in its path.

A decade ago, however, LCRA was a long way from making this vision a reality. Over 70% of the agency's land was on Lake Travis, and they didn't own any property whatsoever downstream from Austin. So LCRA changed its land acquisition policy, sold of some of its holdings on Lake Travis, and began to buy properties up and down the Colorado.

In 1995, the agency bought 1,348 acres in Bastrop County known as McKinney Roughs. This area has a series of picturesque canyons that create five distinct ecological environments and provide habitat for 11 endangered or threatened species. This biodiversity makes the property ideal for educating the public about the role of the natural world in our lives.

The majority of the property was in pristine condition; however, two 40-acre sections of land along Highway 71 had been previously scraped for roadfill and were seriously environmentally degraded. LCRA determined that these lands could be sold for development and the revenues used to create an Environmental Learning Center on the preserved section of the property.

One of the two 40-acre parcels was sold to a biopharmaceutical company, BioCrest, which agreed to restrict the amount of development on their property and build structures on a scale compatible with the nature preserve. LCRA reserved the right to enforce the subdivision restrictions on the BioCrest property. The agency has retained the second parcel for sale at a later date.
The land to the north of the property was threatened by a potential residential development, which would have disturbed wildlife and damaged the sensitive ecosystems of the preserve.

To prevent this, LCRA purchased three additional parcels totaling around 500 acres. The agency combined this property with another 135-acre tract they had purchased earlier. The agency placed a conservation easement on these acres that required LCRA's approval of any proposed development and severely limited the amount and type of development that could take place.

LCRA then sold this 635-acre parcel to a resort developer, Woodbine Development Corporation of Dallas, who plans to build a hotel and equestrian center on the 50 acres farthest from the McKinney Roughs property. Construction is slated to begin in 2003. The remaining acreage will contain trails and open space for use by the resort guests, as well as a golf course approved by the Audubon Society.

photo: McKinney Roughs, Bastrop County. credit: Billy Moore

McKinney Roughs not only provides hikers and equestrians with recreational opportunities, the Environmental Learning Center also hosts school groups, teacher workshops, nature education and informal science outreach programs for the community. Singleton says that the learning center and the park itself are important because they are "teaching people, particularly school kids, about the important role the natural world plays in our lives."

LITTLE BEAR CREEK

[Tool: Zoning for Conservation]
[Public Objective: Flood Management, Recreation]

North Richland Hills is a small suburb right in the middle of the Dallas-Fort Worth Metroplex, and it is under the same growth pressures as all the municipalities in that region. The story of how this local government made a small, timely change to its zoning ordinance and saved a unique creek corridor from uncontrolled development could be a lesson to municipalities everywhere. In doing so, the city not only saved itself from having to invest in expensive flood control infrastructure; it also created a several mile linear greenway that all its residents can enjoy.

At the time the Little Bear Creek development standards were approved in 1996, there was very little development in the creek corridor. According to Bill Thornton of the city's Parks and Recreation Department, the city had the foresight to recognize that development was moving in that direction. Unless the city acted quickly, one of North Richland Hills' unique natural features would be lost.

The first step to saving the corridor was to commission a study documenting the creek's 100-year floodplain and identifying all the environmentally significant areas within the floodplain. The ordinance regulates all development within 150 feet of the edge of the floodplain and prohibits development that would have any impact in the environmentally significant areas. Developments in non-significant areas have to prove that the construction will not cause any rise in the base floodplain elevation.

The ordinance also requires that the floodplain be dedicated as a drainage and access easement. Developers can donate the floodplain to the city if they choose. According to Thornton, "They'd be silly not to because otherwise they have to pay taxes on it."

While the original purpose of the ordinance was floodplain management, it has the ancillary benefit of creating a linear greenway through the city. To take advantage of this, the ordinance created design guidelines encouraging parkways that run parallel to the corridor and forbidding lots that back to the greenway. North Richland Hills also received a TXDOT transportation enhancement grant to build trails in the corridor and is currently creating preliminary trail designs.

Thornton estimates that over two-thirds of the corridor has been developed since the ordinance was passed, and he believes that it will be fully developed within a few years. Without the flood management ordinance, he says, the greenway and the trails "would never have happened."

BENTSEN PALM VILLAGE AND THE WORLD BIRDING CENTER

[Tool: Land Donation, Conservation Easement, Trail Easement]
[Public Objectives: Recreation, Flood Control, Habitat Preservation, Interpretation and Education]

The charms of the Rio Grande Valley are already well known to birdwatchers all over the world. Close to five hundred different species of birds have been spotted in the area. Most of those are migratory, while others live in the Valley year-round.

Birds aren't the only ones attracted to the Valley, however; the area is one of the fastest growing places in the nation. This development often threatens the birds' habitat. In response, the U. S. Fish and Wildlife Service and the Texas Parks and Wildlife Department have begun acquiring land along the Rio Grande to serve as a wildlife corridor.

In addition to protecting habitat, the corridor will have economic benefits as well. Currently, visitors to the nearby Santa Ana National Wildlife Refuge contribute over 34 million dollars to the economy annually. Once the corridor—and its planned trails and other recreational opportunities—is opened to the public that figure will doubtless increase.

At least one development company is willing to bet that it will. Bentsen Palm Development (BPD), based in Mission, TX, donated 175 acres of land to Texas Parks and Wildlife. Over a third of the land will become the headquarters of the planned World Birding Center, while the remainder will be added to the wildlife corridor.
Bentsen Palm Development agreed to donate the land for several reasons. The company knew that the land would be useful to the conservation efforts. The

company also felt the proximity of the open space would enhance the desirability of homes in the subdivision. Since the land was a charitable donation, Bentsen Palm was able to claim a tax deduction.

Apparently, the arrangement has been satisfactory for the company. BPD is also donating 100 acres of land to the North American Butterfly Association for a butterfly park and the company has also donated a trail easement in perpetuity to the city of Mission. The easement will be used for a 6-mile hike and bike trail that will run alongside roads on the property. The trail will link a city park, the proposed butterfly park, and the Bentsen Rio Grande State Park. Constructed with funding from the Texas Department of Transportation, the trail will be open to the general public.

Texas Parks and Wildlife and the U. S. Fish and Wildlife Service desire to attain many more acres of land to create a contiguous habitat corridor along the Rio Grande. Working with private companies allows these agencies to acquire land in innovative ways without dipping into their limited budgets.

photo: Bentsen Palm Village and the World Birding Center, Mission. credit: Jaime Guerra

HUGHSON-BLACKWELL PROPERTY

[Tool: Open Space Tax Assessments (1-d-1 wildlife exemption)]
[Public Objective: Habitat Preservation]

Karen Hughson and Terry Blackwell's property – all 212 acres of it – is just over a mile from Texas State University – San Marcos. The road to their land is lined with student apartments. New townhomes are going up just on the other side of their property line. It's not an overstatement to say that their property is some of the most developable in San Marcos. If the land were appraised at market value, the couple would mostly likely have to sell the land just to pay their property taxes.

Until recently they kept their taxes low by leasing out their land for farming purposes. But as Blackwell says, "It's hard to live on the same property as 400 goats." So several years ago they joined an increasing number of Texas landowners that are taking advantage of the Wildlife Management Use Valuation, which was passed by the Texas Legislature in 1995. This allows landowners that have previously had an agricultural exemption to manage their land for wildlife instead of keeping it under agricultural use. (The requirements for meeting a Wildlife Use Valuation are discussed in greater detail in the Tools and Techniques section under "Open Space Tax Assessments".)

Today hummingbirds hover at feeders a few yards from the windows of their house and you are more likely to hear the gobbling of wild turkeys than the braying of goats. Where they have removed the cedar trees, native grasses and wildflowers have begun to make an appearance. Since Blackwell has begun controlling for predators (mostly raccoons, but also foxes and feral cats) he has seen smaller animals—such as rabbits, birds and armadillos—in greater numbers than before.

According to Blackwell, the biggest change on the property was when he discovered an underground spring on the property. Using a bulldozer, he cleared out a small pond that now stays filled and fresh year-round. Deer often congregate around it.

Having the land primarily used for wildlife management does not prevent recreational uses. Blackwell and Hughson occasionally let friends hunt on the property during deer season. (According to a wildlife biologist, there are too many deer on the property to be sustainable.) In the future, they hope to allow the public to access their land by building trails and a few cabins.

Despite the amount of work he has done on the property, Blackwell does not believe that wildlife management requires a lot of money, but "it takes a lot of elbow grease. You have to enjoy the work."

photo: Hughson-Blackwell Property, San Marcos. credit: John Moffitt

FLOWER MOUND CITYWIDE TRAIL SYSTEM

[Tools: Trail Dedication and Trail Easement]
[Public Objectives: Recreation, Transportation]

The Dallas suburb of Flower Mound is growing at an astounding rate—its population more than tripled between 1990 and 2000. It is not surprising, then, that residents and city leaders have become concerned about loss of open space in the face of rapid growth. One way the city plans to maintain its quality of life is through a trail dedication ordinance designed to conserve open space and create a network of trails for all to enjoy.

The Town of Flower Mound passed the trail ordinance in 1994. The town's Master Plan outlines where the trails are to be built. If a development is planned in a location where the Master Plan shows a trail, the developer is responsible for building the public trail.

Initially, developers were not overly enthusiastic about the new ordinance. The expense is considerable: the developer must fund all the costs of building the trail to the town's specifications. In addition, developers in Flower Mound are required to dedicate at least 3.36 acres of parkland for every 100 units. Land used for trails on the Master Plan does not count towards this requirement. If, however, the developer decides to build additional trails, the land used for these trails can count as parkland.

Developers have warmed to the regulations over the past several years as they realized that trail amenities help sell homes. Today, subdivisions frequently boast of access to the trail system when marketing new residences.

Approximately 25 miles of multi-use trails have been built—roughly half of what the master plan calls for. There are also about eight miles of equestrian trails, approximately ten percent of the planned total. Developers frequently deed the trails over to the town, so the town is responsible for maintenance. However, there are several developments where a homeowners' association owns the land, and the town has been granted a public use trail easement.

The trail dedication ordinance is working well for Flower Mound. Developers have constructed over half of the trail system at no cost to the town or existing residents, and the ordinance ensures that more trails will be constructed as land is developed. If the ordinance has a disadvantage, it is that gaps in the network remain until development occurs.

photo: Citywide Trail System, Flower Mound. credit: Marilyn Drinjak

THE FRIESENHAHN TRANSFER

[Tool: Transfer of Development Rights]
[Public Objectives: Habitat Preservation, Water Quality]

Land development in Austin is often called a contact sport. Austin is one of the fastest-growing places in the nation, and some of the city's most attractive and desirable land lies over the environmentally sensitive Edwards Aquifer. There are innumerable non-profits in Austin dedicated to saving the aquifer and the aquifer-fed Barton Springs Pool. And there are just as many real estate developers looking to provide housing, retail and office space for the city's ever-increasing population.

It is surprising then that a real estate deal involving land over the aquifer would ever be considered "a perfect deal" and lauded by several local environmental groups. It's especially surprising when you consider that the land is important environmentally—the 60-acre tract lies just above Barton Creek and backs onto a 1200-acre greenbelt. The tract is also incredibly financially valuable; it sits at the intersection of two major highways and is across the street from one of Austin's busiest malls.

The tract in question is known as the "Friesenhahn tract" after the person who owned the land for nearly 20 years, but the deal was negotiated with Bill Walters, who had recently purchased a contract on the property. Walter's original plan for the property was to build 200,000 square feet of office space and four restaurants with views of downtown. Environmental groups were dismayed, despite the fact that Walters had voluntarily agreed to put less impervious cover on the property than he was legally allowed.

According to Walters, "at the eleventh and a half hour" the city came to him with an offer to buy the land, but they couldn't offer as much as he felt the property was worth. So a deal was struck. The city's property agent Junie Plummer offered Walters $6.9 million for the land.

To sweeten the pot, Walters was allowed to transfer the rights to 335,000 square feet of development rights to other properties, over and beyond what the zoning on those properties allowed. The square footage was divided into two parts: Walters could use 160,000 square feet to expand Oakhill Technology Park, an office complex he already owned. The remaining 175,000 square feet could be used anywhere outside of the "Drinking Water Protection Zone" – essentially the area of the city that lies over the Edwards Aquifer.

The deal was lauded by the press and was endorsed by the Barton Creek Wilderness Park Association, the Save Barton Creek Association and the Austin Metro Trails and Greenways. Bill Walters describes the idea of transferring development rights from environmentally sensitive land as "fantastic in theory" but he says that the process of negotiating with the city was "not for the weak-stomached or faint of heart."

THE CRANE HOUSE BED & BREAKFAST

[Tool: Purchase of Development Rights]
[Public Objective: Habitat Preservation]

The return of the Whooping Crane from the brink of extinction is one of the most fabled stories in the annals of conservation. In the 1940s, less than twenty of these unique birds – the tallest in North America and the rarest species of crane in the world – remained. With the creation of wildlife refuges such as Aransas National Wildlife Refuge on the Texas coast, the wild population of the birds has slowly risen to around 180. The "whoopers" are still at risk, however, as development continues to threaten their habitat.

Al and Diane Johnson did not set out to become a part of the story of the return of the whooping crane when they bought 800 acres on St. Charles Bay. Their dream was to run a small bed and breakfast on some of the most spectacular land in Aransas County. According to Diane Johnson, she and her husband knew the birds could be seen on the property but "the whooping cranes were not a focus of ours...we were not aware they had wintered there for over fifty years."

It turned out the Johnsons' property contained 240 acres of salt-water marshland that is critical habitat for the Whooping Crane. A few years after they bought the property, the couple entered into discussions with The Nature Conservancy who was interested in purchasing the marsh and turning it over to the Aransas National Wildlife Refuge. The Johnsons agreed to sell the salt marsh for an undisclosed sum. At that time, they began to consider what some would find an even more radical step: selling a conservation easement on the remainder of their land.

Permanently prohibiting the development of the property would clearly lower its market value. The Nature Conservancy believes that purchasing these rights makes the loss in value much easier for landowners to swallow. The Johnsons considered it

a "win-win situation." Not only did they receive a cash settlement for the easement, but it lowered their ad valorem tax value and made it simpler to qualify for a 1-d-1 wildlife exemption. Furthermore, Johnson says the terms of the conservation easement were written to meet their needs. The Nature Conservancy "lays out what they recommend and we have the right to say yes or no." She adds, "For someone who wants to do what we are doing with the property, this is an enhancement."

The couple has received one unexpected benefit from the sale of the marsh and conservation easement: the couple—and their bed and breakfast—have been written up not just in the local Rockport paper, but in the *San Antonio Express-News*, the *Corpus Christi Caller-Times*, and the *Houston Chronicle*. The publicity will doubtless have an effect on bookings at the B&B during whooper season for years to come. Johnson says, "The public response has been overwhelming. We've been touted as heroes, but we just don't feel that way."

Heroes or not, the sale of the salt marsh and the agreement to permanently protect the remainder of the property from development creates roughly 800 more acres that can be used by the Whooping Crane and many other species of wildlife for centuries to come.

photo: Crane House Bed & Breakfast Aransas County.
credit: Howard Murphy

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