

OPEN SPACE

protecting open space: tools and techniques



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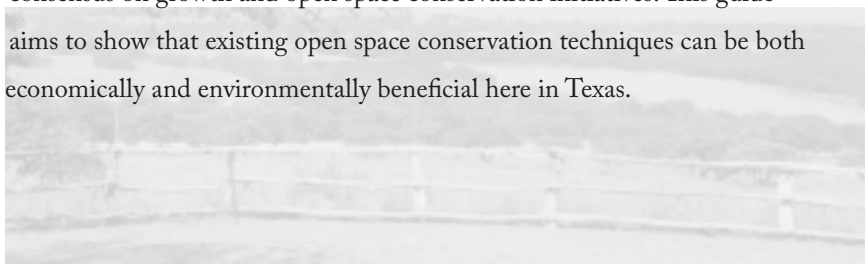
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OPEN SPACE FOR TEXANS

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 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:

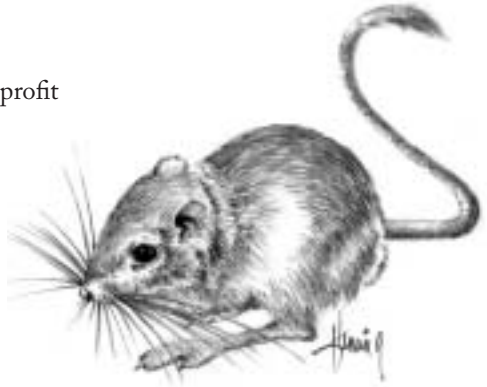
Purchase of development rights programs allow governments and non-profit organizations to protect land at a lesser cost than outright fee simple purchases.

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 be 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 off 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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GUIDE

CONSERVATION EASEMENTS

TEXAS LANDOWNERS



TEXAS
LAND TRUST
COUNCIL

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Introduction

BECAUSE OF ITS SIZE AND UNIQUE GEOGRAPHY, TEXAS IS BLESSED WITH A RICH NATURAL HERITAGE.

From the mountains in the west to bottomlands and bayous in the east, from the high plains in the north to the brush country down south, Texas private landowners manage more than 95 percent of the state's land. But the Texas landscape is changing. Today, about 80 percent of all Texans live in cities, compared to about 25 percent 50 years ago. As Texas cities grow, they are steadily displacing natural habitats and scenic open spaces.

The Texas countryside is changing too. One of the most significant factors affecting Texas' landscape is the continued breakup (or fragmentation) of family-owned property. Family-owned farms, ranches and recreational lands are affected by changing economics and the increasing tax burden of owning property. Passing on a family farm or ranch to the next generation is a time-honored tradition in Texas. However, estate taxes, which can be as high as 45 percent of an estate's total value, may force heirs to sell all or part of a family property.

For many Texas landowners, their property is more than a financial asset; it is part of the history of their family, their community and their state.

This guidebook is intended to help Texas landowners understand one of the most flexible and effective means available to conserve and protect

private property – the conservation easement. A conservation easement is a voluntary legal agreement that ensures a property will be maintained according to the landowner's wishes for years into the future and may also qualify the landowner for tax benefits. Every conservation easement document is individually crafted and reflects the special qualities of the land protected and the needs of the landowner. Conservation easements can assist landowners in protecting their farm or ranch land, wildlife habitat, open spaces, water resources, a scenic vista, historic buildings, or archaeological sites. Conservation easements can be tailored to meet a landowner's specific needs, whether he or she owns 5,000 acres in South Texas or five acres in the Texas Hill Country.

This guidebook also profiles nine landowners (including several individuals, a large cattle ranch operator and a residential real estate developer), each of whom has used a conservation easement to protect something the landowner values. These profiles illustrate how conservation easements can help people conserve wetlands, habitat for rare plants and animals, urban open space and family traditions. In all cases, the specifics of the conservation easement document are unique to the property and the landowner.

Part One: WHAT IS A CONSERVATION EASEMENT?

A **conservation easement** is a written agreement between a landowner and the “holder” of the conservation easement under which a landowner **voluntarily** restricts certain uses of the property to protect its natural, productive or cultural features. The holder of the conservation easement must be a governmental entity or a qualified conservation organization. With a conservation easement, the landowner retains legal title to the property and determines the types of land uses to continue and those to restrict. As part of the arrangement, the landowner grants the holder of the conservation easement the right to periodically assess the condition of the property to ensure that it is maintained according to the terms of the legal agreement.

Many rights come with owning property, including the rights to manage resources, change use, subdivide or develop. With a conservation easement, a landowner limits one or more of these rights. For example, a landowner donating a conservation easement could choose to limit the right to develop a property, but keep the rights to build a house, raise cattle and grow crops. The landowner may continue his or her current use of the property, provided the resources the conservation easement is intended to protect are sustained.

Texas’ landscape and its people are diverse. Because every landowner and every property is unique, a conservation easement agreement can be designed to meet specific, individual needs.

Why Use a Conservation Easement?

Landowners interested in conservation generally have two principal concerns. First is the desire to protect the natural or productive qualities of their property. The landowner is interested in conserving special features such as fertile soil, mature trees, wildlife habitat or a piece of history – even after his or her ownership comes to an end.

Along with conservation, landowners are also concerned about maintaining their property’s productivity. The economics associated with land ownership are changing and fewer family-owned properties are the primary source of a family’s income. Along with maintaining productivity, Texas landowners must also contend with the increasing tax burden associated with property ownership. Estate taxes, property taxes and the financial incentive to sell or develop are all economic factors that affect land use decisions.

Conservation easements enable landowners to protect resources they value for their children and future generations while maintaining private ownership. In Texas, conservation easements are generally donated to nonprofit conservation organizations, commonly known as **land trusts**. The donation of a conservation easement can have potentially significant tax benefits, which are discussed later in this guidebook.

Conservation easements are recognized for legal and tax purposes by the State of Texas (Chapter 183, Texas Natural Resources Code) and the Internal Revenue Service (Internal Revenue Code, Section 170(h)). This guidebook will answer general questions that a landowner might have about conservation easements. Before completing a conservation easement agreement, landowners should consult with their legal and tax advisors.

Part Two: QUESTIONS ABOUT CONSERVATION EASEMENTS

Does every conservation easement qualify for an income tax deduction?

No. To qualify as a charitable contribution, conservation easement donations must:

- be perpetual, meaning continuing forever;
- be donated to a qualified organization (a land trust or governmental entity); and
- be donated exclusively for recognized “conservation purposes,” as set out in the Internal Revenue Code.

Does every conservation easement have to be perpetual?

For the donation to qualify for income and estate tax benefits, the conservation easement must be perpetual and apply to all future owners. Some organizations, however, may be willing to purchase or otherwise accept conservation easements that are designed for a period of years. For example, the Wetlands Reserve Program administered by the Natural Resources Conservation Service (NRCS), pays landowners for limited-term conservation easements on restored or existing wetlands that provide significant habitat for birds and other wildlife. However, these term conservation easements do not qualify for federal tax benefits.

Can conservation easements be purchased?

Yes, conservation easements can be purchased. Purchased conservation easements are sometimes referred to as “PDRs,” which stands for “purchased development rights.” Often the amount available to purchase the conservation easement is less than the value of the conservation easement. In such cases, the transaction may qualify as a “bargain sale” transaction that can also result in a tax benefit to the



landowner. The amount of the benefit generally will be the value of the conservation easement. In such cases, the transaction may qualify as a “bargain sale” transaction that can also result in a tax benefit to the landowner. The amount of the benefit generally will be the value of the conservation easement less the amount paid. How conservation easements are typically valued is discussed later in this guidebook. In 2005, the Texas Legislature established the Farm & Ranch Lands Conservation Program which is housed in the Texas General Land Office. This program is intended

to facilitate the purchase of development rights (as funds are available) for eligible properties. (Interested landowners can contact the Texas Land Trust Council regarding program developments). Moreover, some Texas cities have passed local bond issues to buy conservation easements. Currently, the United States Department of Agriculture, through the Natural Resources Conservation Service (NRCS), has two programs – the Farm and Ranch Lands Protection Program and the Wetlands Reserve Program, through which the agency buys development rights or provides monetary matches to local governments and land trusts.

What are the “conservation purposes” recognized by the Internal Revenue Code?

The Internal Revenue Service Code Section 170(h) requires that conservation easement donations meet one or more of the following conservation purposes:

- preserves land for public outdoor recreation or education;
- protects relatively natural habitats of fish, wildlife or plants or similar ecosystems;
- preserves open space – including farms, ranches, pasture land or forests – either for public scenic enjoyment or in keeping with a clearly delineated federal, state, or local governmental policy; or
- preserves historically important land or certified historic structures.

Each conservation easement must meet at least one, but not all, of these recognized purposes. The conservation purpose of most conservation easement donations in Texas is derived from the protection of open space or wildlife habitat.

Can a conservation easement protecting open space in a real estate development qualify for an income tax deduction?



No tax deduction will be allowed if the donation is made under compulsion (e.g. required mitigation for a legal violation). If a donation of a conservation easement is made in exchange for a benefit that the landowner receives, the amount of the charitable donation (and resulting tax benefit) will be reduced by the value of the benefit or may be negated entirely depending on the nature of the benefit (e.g. required mitigation to receive a permit or other entitlement). Also, charitable income tax deductions for real estate developers are generally limited to the tax basis of the property. In some cases, the donation of a conservation easement as part of a

development can make economic sense for a developer who is motivated by conservation objectives. The developer is encouraged to begin conservation planning as early in the development process as possible in order to preserve the voluntary or charitable aspects of donating a conservation easement and the resulting charitable tax deductions.

Does a conservation easement grant public access to my property?

No. Landowners retain control of access to their property. They may choose to allow access to specific groups or the general public in their conservation easement agreement, but are not required to do so.

Can I still sell my property?

Yes. Property with a conservation easement can be bought, sold and inherited. However, the conservation easement is tied to the land and binds all present and future owners to its terms and restrictions.

What will a conservation easement mean for my children?

A conservation easement may reduce estate taxes paid by heirs. Future landowners, including family members, must abide by the terms of the conservation easement agreement and will continue the relationship with the organization that “holds” the conservation easement. Families should consider the trade-off between immediate tax benefits resulting from reduced property value and permanent restrictions on land use. Professional assistance is available and recommended for families considering this option.

What if the property is owned by more than one person?

All owners of a property must agree to the terms of the conservation easement before it can be legally granted.

Can I still build on my property?

The landowner may retain specified development rights in a conservation easement agreement. For example, a conservation easement protecting a farm or ranch may allow construction compatible with agricultural operations as well as changes in crop selection or management practices. A conservation easement can specify the location, size and type of one or more residences, barns or other development on a property.

What if my property is mortgaged?

If land is encumbered by a deed of trust, mortgage or other lien, the lien must be subordinated to the terms of the conservation easement in order for the donation of the conservation easement to qualify for federal tax benefit. Under a subordination agreement, the lienholder agrees to follow the terms of the conservation easement in the event of foreclosure.

What if I don't own the mineral rights to my property?

This is a complicated issue that should be discussed with professional advisors. However, a landowner who does not own the mineral rights to his or her property can qualify for income or estate tax benefits if:

- owners of the mineral rights waive their right to utilize the surface of the land to develop the minerals; or
- the owner proves that the probability of surface mining occurring on the property is “so remote as to be negligible.” Such proof may require a report from a qualified geologist based on an evaluation of the potential for mineral development on the land.

Where are conservation easements recorded?

Like a deed or other types of easements, conservation easement documents are recorded with other land records in the county in which the property exists.

Can conservation easements be changed or revoked?

Because conservation easements qualifying under IRS regulations are designed to be permanent, landowners should assume that it will not be possible to revoke an conservation easement. However, conservation easements can be amended if:

- both the conservation easement holder and the landowner agree to the terms of the change; and
- the IRS recognized “conservation purposes” of the conservation easement are not affected.

When a tax deduction has been received by a landowner, special care should be taken in amending the conservation easement to ensure that the value of the conservation easement is not reduced. Otherwise, the amount of the landowner’s tax deduction could be affected, requiring the filing of an amended tax return and the payment of additional taxes.

Can a conservation easement be donated by will?

Yes. The landowner must contact the intended conservation easement holder before conveying the conservation easement by will to ensure that the organization will accept the donation. If the conservation easement qualifies under federal tax law, its value is subtracted from the landowner’s taxable estate, reducing estate taxes for heirs. Also under Federal law, the executor or heirs of an estate can donate a qualified conservation easement after the death of the landowner, even if the landowner’s will does not donate an conservation easement. A landowner who might want their executor or heirs to be able to make this donation should clarify the intent on this matter by stating in their will that the executor and heirs have this power.

How is a conservation easement enforced?

The land trust or conservation organization that holds the conservation easement bears the responsibility of enforcing its terms. Typically, this means that the conservation easement holder will schedule a property visit with the landowner at least once a year to document any development or changed uses. Unless the landowner and conservation easement holder specifically agree to give enforcement rights to a third party, no outside group can enforce the terms of a conservation easement (other than possibly the Attorney General).

Is a conservation easement appropriate for every landowner?

Conservation easements are designed to meet the site-specific needs of the individual landowner and conservation easement holder. They may not, however, be appropriate for every situation. Landowners considering a conservation easement should consult with family members, professional tax and legal advisors, and a representative of the prospective conservation easement holder to determine whether this tool will help accomplish one’s long-term conservation and economic goals.

Part Three: FINANCIAL BENEFITS OF CONSERVATION EASEMENTS

Both federal and Texas laws provide tax benefits to landowners who protect natural or historic land with qualifying conservation easements. Conservation easements are not suited for every situation; it is important that landowners consult tax professionals for more specific information.

A conservation easement donation can qualify as a charitable contribution if:

- A. it is granted in perpetuity;
- B. it is granted to a qualified organization, either:
 - 1. a nonprofit, 501(c)(3) charitable organization (i.e., a land trust) with a conservation purpose and the means to enforce the conservation easement, or
 - 2. a local, state or federal governmental entity empowered to hold real property interests;
- C. it achieves at least one of the following conservation purposes:
 - 1. preserves land for public outdoor recreation or education,
 - 2. protects relatively natural habitats of fish, wildlife or plants,
 - 3. preserves open space, either for scenic enjoyment or in keeping with a clearly delineated public policy (such as a local open space plan), or
 - 4. preserves historically important land or certified historic structures.
 - 5. following the gift, the land trust must provide the landowner a letter of substantiation documenting the charitable gift.

For a conservation easement donation to qualify for a federal income tax deduction, the following items usually need to be prepared:

- the conservation easement document;
- a baseline inventory (including photographs) of the property's condition at the time of donation listing man-made structures, water resources, agricultural and ecological features; and other conservation values
- a qualified appraisal of the conservation easement prepared by an independent real estate appraiser working for the landowner, completed no more than 60 days prior to the donation and no later than the time the tax return claiming the deduction is filed;
- a title report, copy of the deed and copies of any title exceptions, including mortgages with subordination agreements from the mortgage holder;
- a legal land survey;
- a mineral remoteness report (if ownership of the surface and minerals are severed and the mineral owners do not waive their surface rights); and
- IRS Form 8283 (an attachment to the federal income tax return of anyone claiming charitable contributions of more than \$5,000).

Federal Income Tax Deduction

The federal income tax benefits of donating a conservation easement are similar to those of making other charitable contributions. A landowner may be able to deduct up to the full value of the conservation easement from his or her federal income taxes.

Tax laws require that the value of the conservation easement be determined by a qualified real-estate appraiser. The value of the conservation easement is generally the difference between the value of a property with the restrictions of a conservation easement in place and the same property's value without these restrictions. In general, the value of a conservation easement donation is greatest in areas where development pressure is most intense and lower in remote areas. Likewise, a conservation easement that prohibits any development will have a higher value than an easement that permits a property to be divided or developed.

For example, a tract of land may be worth \$120,000 as a potential residential development, but only worth \$20,000 as open space or recreational property. If a landowner donated a conservation easement to a land trust that prohibited new construction on his property and restricted its use to open space, the value of the conservation easement and charitable contribution would be \$100,000. The landowner may then be eligible for up to \$100,000 in federal income tax deductions.

If the conservation easement meets IRS criteria, the landowner may deduct the full value of the conservation easement donation from his or her adjusted gross income, up to 30 percent of the landowner's income for the year of the gift. If the donation exceeds this amount in the year of the donation, the excess balance of the donation may be deducted for up to five (5) succeeding years, subject to the same 30 percent limitation.*

A landowner with a \$60,000 adjusted annual income donates a conservation easement worth \$100,000 to a land trust. The landowner can deduct 30 percent of his \$60,000 income, or \$18,000, in each of Years 1-5 and the remaining \$10,000 in Year 6.

Should the value of the charitable donation exceed a landowner's ability to use the income tax deduction over the allowed six years, the landowner may consider donating the conservation easement in phases over different portions of the property. However, such phasing could reduce the overall value of the conservation easement and, as with all conservation easement transactions, tax and legal advisers should be consulted. Subject to certain limitations, some of the expenses incurred by a landowner in the donation process, including the cost for appraisals, surveys, tax advice, legal review and title insurance, can also be tax deductible.

** NOTE: Congress temporarily enacted an expanded tax incentive for donated conservation easements that expired in December 2009. The conservation community is working with Congress to make the expanded tax benefit permanent. Consult with your tax advisor for the most up-to-date conservation easement tax provision.*

Estate Taxes

Estimated federal estate taxes for an individual (Year 2009*)

Value of the Estate	Total Estate Taxes Paid
\$3,500,000	\$0
\$4,000,000	\$225,000
\$5,000,000	\$675,000
\$7,500,000	\$1,800,000
\$10,000,000	\$2,925,000

To calculate the value of inherited property for estate taxes purposes, federal law requires that the value of the land be based on that property’s “highest and best use,” instead of actual use. For example, a landowner owns a small family ranch near a growing city that might be more valuable as a residential development. When the landowner dies, taxes on the property will be based on the land’s value as several potential homesites, even if the heirs do not intend to develop.

A conservation easement can place restrictions on use of a property that limit its “highest and best use.” Because the property’s “highest and best use” is restricted, its value and the estate taxes are reduced accordingly. If the landowner in the example above donates a conservation easement on the family ranch that prohibits the construction of new homesites, estate taxes on her land would be based on the land’s value as a ranch, rather than a potential residential development. As noted earlier, there are limits on the income tax deduction for a conservation easement donation, but there are no such limits for estate tax purposes, so the savings can be substantial.

To realize estate tax benefits, landowners should donate the conservation easement during their lifetime, or in a legal will, or they should specify in their will that their heirs or estate executor has the power to donate an conservation easement after their death. Under federal law, in certain circumstances, executors or heirs can donate an conservation easement within a period after a landowner’s death and qualify for land value reduction. A landowner intending to convey a conservation easement by will should contact the potential holder to ensure that the organization will accept the donation.

** NOTE: The federal estate tax was repealed for the 2010 calendar year. Because of a provision in the bill repealing the tax, the federal estate tax is automatically reinstated on January 1, 2011 at a significantly higher rate and much lower exemptions. Many practitioners anticipate that the 2009 rates will be reinstated.*

For example, a widowed landowner purchased a property 30 years ago that has appreciated significantly. The property, which is located near a growing suburban community, has a current fair market value of \$1,200,000. The landowner donates a conservation easement to a local land trust that reduces the property’s value to \$700,000. Assuming the landowner has \$3,500,000 in taxable assets in addition to the property and that no prior taxable gifts have been made, the effect of the conservation easement on estate taxes for heirs would be as follows.

	Without Conservation easement Donation	With Conservation easement Donation
Value of the land	\$1,200,000	\$700,000
Other valuable assets	\$3,500,000	\$3,500,000
Total taxable estate	\$4,700,000	\$4,200,000
Total federal estate taxes	\$540,000	\$315,000

A conservation easement can also qualify an estate for an additional exclusion of land value up to the lesser of 40% of the remaining value of the land or \$500,000.

With the additional Exclusion:

Exclude 40% of Conservation easement Land Value \$700,000	(\$280,000)
Leaves Total Taxable Estate	\$3,920,000
Total Federal Estate Taxes - With exclusion	\$189,000
Tax Savings	\$126,000

Local Property Taxes

Conservation easements may reduce property taxes. However, property taxes on agricultural land in Texas are often already reduced based on a property’s productivity rather than fair market value. Conservation easements on land not classified as agricultural may reduce property taxes to the extent the value of the land is reduced. But it is important to remember that property taxes are determined by the county tax appraiser and, therefore, differ from county to county.

The Texas Comptroller of Public Accounts has recently advised Texas county appraisal districts to be prepared to answer landowners’ questions about the effect of conservation easements on agricultural-use status and taxable value.

Part Four: EASEMENT PROFILES

The ten landowners profiled in the next pages have used conservation easements to accomplish their land use objective for years into the future. The properties described in these profiles vary from a 71 acre county nature preserve to a 70,000-acre ranch with 29 miles of river frontage in the Texas Panhandle.

Any tax benefit associated with the use of a conservation easement is unique to the terms of the agreement and the landowner's tax situation. Landowners should discuss the benefits of conservation easements with professionals to determine their impact on specific tax situations.



SHIELD RANCH



“The bottom line is that we love the ranch, and really didn’t want to see it developed in a traditional way, ever.

We knew the ranch was special to us, but we also started to realize how important the ranch was ecologically.”

When Fred and Vera Shield began buying land along Barton Creek in 1938, they had no idea that their 6,700 acres would become a prized conservation project within 50 years. The San Antonio couple was looking for a place to run livestock and create a peaceful family retreat. With six miles of Barton Creek, spectacular views and several historic pioneer structures on the property, Shield Ranch was a slice of heaven.

The Shields cleared pastures, drilled wells and built fences to establish their modest livestock operation, but otherwise minimized their impact on the land. They began managing cedar, eventually clearing enough of the invasive trees that a mature plant community of oak, hackberry and cedar elm groves began to thrive. A low-impact grazing regimen preserved the ranch’s high quality native grasslands. Family members enjoyed hunting, fishing and exploring their rural ranch.

But as time went by, development started to creep toward the Shield Ranch. “I remember even when I was in high school, we could see the development coming out our way,” says Bob Ayres, Fred Shield’s grandson who now owns and operates the property with his mother Patricia Shield Ayres, father Robert M. Ayres and his sister Vera Ayres Bowen. “We’ve been watching Austin’s development move toward us since the 1970s.”

Sprawling development in the Barton Creek watershed prompted the Ayres family to start planning for the future in 1987. “The first thing we came to as a family is that we wanted to protect the features of the ranch that we valued, but also protect the land value as an economic asset,” Ayres said. “The question was – how can we do both?”

Over the next 10 years, the Ayres met with land planning consultants, financial advisers, the Texas Parks and Wildlife Department, the Natural Resource Conservation Service and the Nature Conservancy. They commissioned a study of the entire ranch, catalogued all of its natural and manmade features, and continued to manage the livestock and wildlife habitat according to their strong conservation ethic.

In researching the family's options, Ayres learned about conservation easements, and started talking to advisers about how conservation easements might work for their ranch. The Nature Conservancy was very interested in a donated conservation easement on the property because it is directly upstream from its Barton Creek Habitat Preserve.

"This is the largest private property in western Travis County – only 20 miles from downtown Austin, and it has lots of wildlife habitat and open space. Development of the Shield Ranch would impact (TNC) property downstream and Barton Creek all the way to Barton Springs," said Jeff Francell, of the Nature Conservancy. "This is one of few properties this size in this area that isn't cedar choked, not overgrazed and has a high diversity of trees and shrubs – it's in excellent condition."

The City of Austin was also interested in protecting water quality in Barton Creek. When city voters passed a bond initiative in 1998 to raise money for conservation easements in the watershed, the Ayres realized that the time was right. "We knew the ranch was special to us, but we also started to realize how important the ranch was ecologically," Ayres said. "It is in the exact center of the Barton Creek watershed, and has a great contribution to water quality in Barton Springs."

The Ayres family negotiated a conservation easement purchase with the City of Austin

on 1,600+ acres, donated a conservation easement to the Nature Conservancy on 4,700+ acres, and retained 300 acres along highway frontage for potential future development. By being able to sell the smaller conservation easement to the city, the family realized part of the development value of land, but without the development. Their other financial goal, reducing estate taxes for their heirs, was accomplished through the lowered fair market value of the property subject to a conservation easement. In addition, the donation to the Nature Conservancy qualifies as a charitable contribution for federal income tax purposes.

The family retained rights to continue operating the ranch as they had been: running cattle, operating deer leases and using it for family recreation. They also retained limited development rights for family members to build home sites, establish a youth camp and possibly even a non-profit retreat center. Each of these development possibilities was clearly spelled out in the conservation easement, along with a map of development areas and no-development zones. Both the City of Austin and the Nature Conservancy required that any development conform to impervious cover restrictions and creek setbacks, to protect water quality.

The Ayres family is pleased with the arrangement of the two conservation easements. "We all feel very excited, both to have it done and how it worked out," Ayres said. He admitted, however, that it was not easy for the family to reach the decision they made, just because it required a lot of soul searching and communication about the family's long-term desires for the ranch. "The bottom line is that we love the ranch, and really didn't want to see it developed in a traditional way, ever. We extinguished the possibility of any masterplanned community, residential subdivisions or retail development."

ALBERT & WILDA PECORE FARM



In 1955, Native Houstonian Albert Pecore was only 30 years old, fresh out of the University of Texas architecture program, and just beginning a lifetime career in both commercial and residential architecture.

But Bert had grown up sailing in Galveston, hunting in Rockport and fishing the streams and waterways of the Gulf Coast. He longed for a piece of the country to call his own. His dad and friends thought he was nuts: the city was the place to be. One college friend told him that a fellow who owed him some money had tried to sell him a farm hoping to get the commission to repay the debt. It turned out to be a bleak, forlorn looking place. Bert remembers, “There was little grass and two midsize hackberry trees near the house. There were two acres of broken down pens and out buildings, a small barn and an abandoned house built in 1857. But I spotted two very old live oak

trees as I walked around the farm. I knew they were significant and today they measure 15’ in circumference.”

The Texas Veteran’s Land Board was in turmoil at the time, but after a year finally processed his loan. In 1955, Bert became the proud owner of 85 acres in Fayette County, Texas. That same year, green hay stored in the barn combusted and burned down the barn. The farm was expanded to 196 acres in 1961 when a neighbor sold Bert his farm. That year Hurricane Carla blew down the barn on that tract.

Haw Creek is an intermittent stream comprising one boundary of the farm, but old timers say it used to flow all the time. There were once water wells on the place, but they collapsed or dried up. There was one small tank on the new acreage when Bert purchased it. “During the drought of the late 50s,” Bert remembers, “the tank

went dry and I couldn't find anyone to drill a well. So I hired Sears & Roebuck. The driller quit when he hit a gas pocket and never came back to finish. I had to sell my cows because there was no water. Then Sears sent me a big bill for the well."

Now there are five surface water tanks on the place and a pipeline system for watering the livestock and house. The tank in front of the house is the most impressive. "It was muddy and chocolate brown for years. I did a lot of work and research and found out the problem was the pH levels. I fixed that and the water is now crystal clear. The pond has never dried up since it was built."

The farm is home to about 25 head of cattle. Bert and his wife Wilda are strong advocates for the preservation of ecosystems and they maintain the health of their grasslands with deferred grazing. Their cross fences and watering facilities enable the cattle to be moved more frequently, resulting in longer periods of rest for the pastures. As we walk through chest high grass, Bert proudly acknowledges that the area is now full of forbs and grasses. "Good soil is everything when it comes to farming. I'd like to raise the percentage of organic matter in the soil, so I keep as much vegetative cover on the place as I can."

The farm features two pristine, never-plowed blackland prairie pastures that are productive in good times and bad. "In a drought, these fields keep on growing," Bert said. The conservation easement that the Pecos donated to Pines and Prairies Land Trust (PPLT) strongly protects these 17 acres of rare prairie. Tom Dureka, Executive Director of PPLT, explains, "We were lucky to assemble a great team of botanists and biologists to inventory these remnants of a vanishing ecosystem. There's no doubt it was our most thorough and exciting baseline study to date."

Ribbons of forest meander through the farm, and the current home is surrounded on all sides by massive live oaks. It's hard to imagine that when the house was built there, on the highest point on the land, there were no trees. Bert started the trees as acorns in coffee cans and carefully transplanted them around the yard. Now taller than the two-story house, they provide highly-coveted shade. But the land keeps offering new surprises. Bert says, "I stumbled onto a native plum orchard two years ago when clearing around big live oaks. The trees bear a sweet yellow fruit."

In 1973, Bert designed the two-story pavilion-style home on the Pecos Farm in the fashion of historic southern Louisiana Pavilion-style homes. They fit the climate and had a lot of common sense, with large porches, breezeways and high-pitched roofs. The house was built in stages from 1974 to 1996. Bert himself did much of the work.

The Pecos's conservation easement prohibits any subdivision of the property. They love the land too much to ever want it cut into 10-acre ranchettes that are increasingly common as the Round Top, Texas area becomes "discovered". Their easement donation also allowed them to take advantage of the enhanced IRS tax incentives in place at the time.

"One of the things we enjoy the most about the farm is watching our kids and grandkids here," said Wilda. Bert agrees, "My wife and I have the vision of a family homestead that will be held in trust for future generations. In the future it will be a privilege to live in an area with such natural beauty. We want our vision to pass down through the years."

ROBERT ‘BOB’ MOORE WILDLIFE SANCTUARY

During 2007, Galveston Island was undergoing a period of unparalleled development and growth. Its sensitive west end was a primary focus for this growth. So when Jeff Blackard, the principle for a development company called Blackard Pirates LP, approached the Galveston Bay Foundation about donating an easement on some valuable coastal property, the organization jumped at the chance to discuss the benefits of a conservation easement with him.

Blackard Pirates LP has undertaken some successful housing development on the Island, but had also gotten bogged down in some wetland permitting matters that slowed its efforts. It was left with an undeveloped island tract of approximately 32 acres. Blackard had initially considered building a short bridge to the island and developing estate lots on the tract. But he realized both the complexities of such an effort and the value in maintaining the sensitive area in its pristine condition. Rather than moving forward with development plans, Blackard decided to donate a conservation easement on the property to the Galveston Bay Foundation and at the same time donate the fee rights to the property to a local land trust called the Cabeza de Vaca Center.



“The island is particularly valuable from a conservation standpoint because there is very little undeveloped island habitat like it adjacent to Galveston Island,” stated Galveston Bay Foundation President Bob Stokes. The island provides important natural habitat, and includes a number of important features, including coastal prairie, estuarine marsh, and a tidal sand flat complex. It also has significant value because the island is adjacent to a large scale marsh restoration project led by the Texas Parks & Wildlife Department. The Delehide Cove Marsh Restoration and Protection Project received a National Wetland Conservation Award from the United States Fish and Wildlife Service in June 2005. Over eight thousand feet of breakwater was constructed in close proximity to the island to simulate the functions of the spits and reefs that existed in the area prior to subsidence. The marsh restoration utilized a hydraulic dredge to pump sand into marsh mounds around the island. The constructed breakwater protected those restored marsh mounds, as well as over 200 acres of existing salt marsh and estuarine habitat including the island itself.

The conservation easement, signed and recorded on December 21, 2007, ensures that this island, now known as the “Robert ‘Bob’ Moore Wildlife Sanctuary,” will exist as part of this complex and remain undeveloped in perpetuity.



CANADIAN RIVER CATTLE RANCH



Attorney, cattle rancher, avid hunter and philanthropist David Nutt has donated one of the largest conservation easements in Texas history to the Parks and Wildlife Foundation of Texas, Inc. to protect the Canadian River Cattle Ranch. The conservation easement, located in Oldham County on the Texas/New Mexico border, contains 29 miles of Canadian River frontage and tens of thousands of acres of native prairie. The 70,000-acre ranch is over a tenth of the size of Rhode Island! The native plant communities on the property, particularly grasslands, are only marginally represented in existing public parks and wildlife areas in the Panhandle region.

The region where the property lies, known as the Canadian River Breaks because of the rough terrain along the river, is sparsely populated and thus remains largely the same as the first European settlers found it centuries ago. The region was identified as an area of unique natural and cultural significance in a series of natural area surveys done in 1973 by the LBJ School of Public Affairs in Austin.

The property also contains prehistoric and historic artifacts that tell the stories of successive waves of human cultures. A Texas Parks and Wildlife Department report says the region's earliest human inhabitants hunted bison, camels and mammoths about 12,000 years ago. Later came mesa-dwelling American Indians, followed by Spanish explorers in the 1600s who found nomadic Apache, Comanche and Kiowa living symbiotically with

bison herds. In the mid-1870s, colonizing Spanish sheepherders moved their flocks into the region from New Mexico. By 1887, barbed wire, windmills and the railroad put an end to the open range.

By choosing to give a conservation easement rather than donate the property outright, David Nutt was able to specify not only how the landscape would be protected, but also how he can continue to use it. He will continue to own and maintain the land and raise

“I am very proud to be an environmental partner with the Parks and Wildlife Foundation of Texas in the preservation of one of the premier ecologically rich areas in Texas,” says David Nutt. “I am particularly pleased to be able to assure the perpetual protection of this landscape for future generations.”

cattle there, plus he retains rights to maintain and improve fences and existing structures. The area will not be open to the public or be used for any public hunts. He will also have the right to build new structures on two smaller areas within the property. “This donation means the land will be permanently protected against development and can never be subdivided,” said Andrew Sansom, former Texas Parks and Wildlife Department executive director, who personally handled final negotiation of the donation. Nutt will also realize tax benefits. Texas Parks and Wildlife Department Executive Director Carter Smith says all of these are reasons why owners of rural land are increasingly eyeing the sale or donation of conservation easements as a way to protect a landscape’s wildlife, environmental values and views while retaining ownership and use rights.

The Parks and Wildlife Foundation of Texas, a private nonprofit foundation, was set up in 1991 to seek private donations for conservation work in Texas, and works closely with the Texas Parks and Wildlife Department.

The Foundation has been a partner in numerous private lands conservation efforts with the Texas Parks and Wildlife Department. “We’re pleased to have played a part in this historic conservation agreement,” said Paula Peters, president of the Parks and Wildlife Foundation. “In addition to the conservation easement, Mr. Nutt has also made a sizeable donation to endow the operating costs associated with administering the conservation easement.”

THE MONTGOMERY COUNTY PRESERVE

The dawn of March 2, 2002 awoke to see not only Texas Independence Day unfold, but several hours later the grand opening ceremony celebrating Texas' first conservation easement in partnership with a county. About one hundred and thirty Houston area residents braved the frigid weather to be among the first to set foot in the new 71-acre Montgomery County Preserve, protected by a conservation easement held by Legacy Land Trust. Snuggled in the confluence where Spring and Panther Creeks converge, the Preserve is home to numerous species of wildlife, including many birds, deer, opossum, butterflies and even rare species of violets.

"The special thing about the vegetation in Montgomery County is that many plants here are actually the farthest west that you find them... that's why people call it 'the Little Thicket,'" said April Proudfit, Native Plant Society of Texas member. Special flowers found on the site include the rare Walter's Violet as well as Green Dragons. The Preserve is also speckled with Sassafras trees, the very tree from which Indians and pioneers made tea long ago.

The land previously belonged to The Woodlands Land Development Company, who had set it aside as a flood mitigation site. In an exchange of four different properties, in January of 2002, Montgomery County became the owner of the 71-acre tract, with the intention of preserving the land for its flood protection benefits, its wildlife habitat and the opportunity to open it to area residents as a hiking trail.



Connected to this preserve, Legacy Land Trust, in partnership with Montgomery County Precinct 3, now staffs the Montgomery County Nature Education office. LLT's Environmental Education Coordinator is based there and runs daily as well as weekend naturalist programs. LLT's "No Child Left Inside" program puts the "field" back into field trips and helps pay for bus trips for Houston area middle schoolers for trips to this 72-acre preserve. There have been numerous boy scout troops and girl scout troops who have used the site and area residents are able to tour the property at any time of day, including early morning and dusk to better identify the numerous wildlife species. Area birder Damien Carey said, "Having access to the site at all times

is a rare treat... most public parks are only open at specific times and if you're trying to identify certain birds, you'll never see them during regular 'opening hours'." The eco-tourism boost for the area is already evident as planned group tours include the statewide Native Plant Society as well as area hiking groups.



“Setting aside land permanently for wildlife habitat as well as for low-impact public access is critical. Having a public entity agree to do this is an important conservation step for Texas.”

Jennifer Lorenz, the executive director of Legacy Land Trust, said the precedent of a conservation easement with a Texas county is an important one. “Setting aside land permanently for wildlife habitat as well as for low-impact public access is critical and having a public entity agree to do this is an important conservation step for Texas. Cities, counties and other public entities need to realize that a conservation easement is an available option for their use.” Public entities who agree to preserve lands with their local land trust also can receive benefits for what are usually low-funded parks departments. Legacy Land Trust provided volunteers for numerous functions at the Preserve, as well as carving a two-mile long hiking trail through the wooded wilderness of the Preserve.

Besides assisting with maintenance of the trail, Legacy Land Trust has also provided naturalist guides for events. For the grand opening event LLT tour guides led the way throughout the trail – providing birding, mushroom, native plant and animal expertise. Local natural historian Carmine Stall shared his knowledge of the interesting natural history of the Spring Creek area.

Legacy Land Trust will be helping to “preserve the Preserve” by performing its annual survey to ensure that no degradation is taking place. The land trust will be working with the county to guarantee that the integrity of the land will be preserved forever, as well as continuing to provide critical volunteer help for events and maintenance of the trail.

MONTGOMERY FARM CONSERVATION DEVELOPMENT



The City of Allen understands that a conservation easement affords the opportunity to retain a visible landscape feature to help preserve its rural identity – its ‘sense of place.’

MONTGOMERY FARM, ON THE BORDER OF ALLEN AND PLANO IN NORTH Texas, is an example of how thoughtful design and planning can result in a conservation development that creates a sense of place and ensures the protection of natural resources while meeting the needs of a rapidly growing community.

The Williams family has owned the farm since the 1940's. When it became necessary for various reasons to begin commercial development of the property, the family wanted to preserve the heritage of the farm while developing it in a sustainable way. The family recruited a planning team including a collection of leading national experts in land planning, architecture, landscape design and conservation development.

Philip Williams, one of the family members, owns Emerson Partners, which is developing the property. His mother, Frances Williams, believed passionately in land conservation. Under her leadership along with her daughter, Amy Monier, the Connemara Conservancy Foundation, one of the state's first land trusts, was created in 1981.

"At the time, our farm was surrounded by thousands of acres of undeveloped land and people wanted to know why there was a need to protect open space," says Philip Williams. "But my mother understood that development was moving north and she was concerned that an entire generation would be raised thinking that open space was a parking lot at a shopping mall."

The property features woodland habitats, prairie uplands, and Rowlett Creek that wind throughout the property. Approximately half of the 500+ acres have been set aside as open space and 140 acres were put into a conservation easement called Gardens of Connemara, held by Connemara Conservancy. Just across Rowlett Creek is the Connemara Meadow Preserve, a seventy-two acre permanently protected nature sanctuary owned by Connemara Conservancy. Both properties are part of a seven-city trail system that runs along Rowlett Creek. Between the Gardens of Connemara and the Connemara Meadow Preserve, over 225 acres are permanently protected in the midst of one of the most populated areas of North Dallas.

The conservation development appeals to people of all ages and at various stages of life. Homes include traditional single family, lofts, town homes, patio-style homes, and estates. A walkable retail and restaurant setting with natural spaces is also incorporated, as is a office complex, complete with a luxury spa, being designed for Platinum LEED certification. Homeowners are encouraged to visit and participate in Connemara Meadow Preserve activities and join Connemara Conservancy.

More than 2,000 trees in the line of construction were moved and replanted in an onsite tree farm. Trees have also been rescued from other construction projects throughout Dallas and brought onto the Farm. Wood, recycled from the demolition of a Dallas shopping mall, was used for bridges, signage and other structural and decorative needs. Fourteen acres of water storage ponds were created to collect runoff and for use and irrigation. The family worked extensively with City of Allen, the Allen Economic Development Corporation, and others to create the city's first Tax Increment Finance (TIF) district and help shape new zoning ordinances that did not previously exist before this development. What did the Williams do when the City's rule books did not include the conservation development model they hoped for? They helped write a new set of rules that will be used for similar future projects throughout Allen.

"We are very proud of this center of conservation located right in the heart of North Dallas. We hope to use this conservation development as an example for other North Texas landowners interested in this model," says Luanne Samuel, Executive Director of Connemara Conservancy.

The result is a landmark development exemplifying how developers, a land trust, and communities can work together to create a legacy for future generations while conserving a community's resources and heritage.

THE BAIRD FAMILY PRESERVE



The concept of a conservation easement was just what the Bairds had been looking for; it would ensure that their property remained in the family in the future, and would offset the rising property values affecting other Hill Country landowners.

When Faye and Roland Baird bought their Blanco County ranch in 1952, they wanted a place to care for and enjoy in their retirement. Mr. Baird was an avid outdoorsman; he loved to hunt and fly-fish. Mrs. Baird, who grew up in rural northwest Texas, loved the plants, birds and other wildlife of the Texas Hill Country.

Mr. and Mrs. Baird spent the next 35 years together enjoying their Hill Country ranch. When they bought the land, it had been noticeably over-grazed and was thick with Ashe juniper. The Bairds went to work clearing juniper on the flats of the property, but kept the deeply rooted trees on the hillsides to prevent erosion.

The Bairds ran cattle on the ranch, but limited the number so that native plants could recover. Roland Sr. built a low head dam on Miller Creek to improve the fishing on the property. Hardly anyone fishes the pond anymore, but the clear water betrays the size of its bass and catfish.

The Bairds had four children, and, so far, 12 grandchildren, 15 great-grandchildren and 4 great-great grandchildren. Over the years, the Baird kids' house, about 400 yards from the main house, has seen much use. The Baird family has spread out across the country, but all occasionally return to the Blanco County ranch to recharge their batteries. There is even a reservation system for the kids' house, which is full of sleeping bags and young children during the holidays. As Mr. and Mrs. Baird grew older, they began to realize how much the ranch meant to their entire family.

When Roland Baird, Sr. died in 1988, Mrs. Baird started looking into methods of preserving the family ranch into the future. She enlisted the help of her son, Roland Jr., who talked to people at both Texas A&M and the University of Texas about donating his mother's property as a place for agricultural research or as a writer's retreat. A year later, a member of the now Texas Land Conservancy told Roland Jr. about conservation easements. The concept of a conservation easement was just what the Bairds had been looking for; it would ensure that their property remained in the family in the future, and would offset the rising property values affecting other Hill Country landowners.

In 1990, Mrs. Baird donated a conservation easement to the Texas Land Conservancy. The entire family is aware of the restrictions that protect the family property. If they have any questions, the terms of the conservation easement are posted on the door in the kids' house.

The Baird's conservation easement prohibits most commercial activities on the property. The conservation easement restricts new construction, but allows for the maintenance and upkeep of existing roads and buildings. The two houses on the ranch can be rebuilt and added to, but they cannot be enlarged more than 50 percent. The Bairds have reserved the right to graze cattle, but any sheep, goat or exotic animal grazing on the ranch is prohibited. The conservation easement prohibits recreational hunting and tree cutting except for ongoing Ashe juniper removal necessary to maintain pasture land.

The conservation easement that Mrs. Baird donated to Texas Land Conservancy reduced the property value of the ranch because of these restrictions. The donation was eligible for a federal income tax deduction and, more importantly, the wishes of Faye and Roland Baird, Sr. are preserved in perpetuity.

Roland Jr. says that the family got their conservation interests from Faye Baird. He tells the story of a beautiful spring that flows in a far corner of their ranch. When Roland Sr. was alive, a fence was put up that accidentally placed the spring on a neighbor's property. After Roland Sr. died, Mrs. Baird told Roland Jr. to go talk to the neighbor about moving the fence so the spring would be back on Baird property. The fence was moved and Faye Baird was content knowing that the springs would be protected forever. The conservation easement that Faye Baird donated to Texas Land Conservancy protects not only that beautiful spring, but all of the special qualities of the ranch that Roland Sr. and Faye Baird cherished.

Conservation is important to the entire Baird Family. Roland Jr.'s sister, Dorothy Mattiza, has a 540-acre conservation easement on her property in Bandera County with Texas Land Conservancy and is also on Texas Land Conservancy's board of advisors. The conservation easement sits on the southern edge of the Balcones Escarpment in the rugged hill country of Central Texas. The purpose of Mrs. Mattiza's natural area conservation easement is to reintroduce and protect native plants, such as maple, beautyberries, spicebush and Texas styrax from brushfires and cattle grazing. With the help of a grant from the Texas Parks and Wildlife Department, plant pens were put up to help introduce native plants back onto the land where they had once thrived.

The conservation easement that Dorothy Mattiza donated to Texas Land Conservancy ensures that native plants will be able to survive and flourish eternally on the hill country property.

DR. YTURRIA'S HIDDEN PLACES

As a young man growing up on the Punta Del Monte Ranch, established by his great-grandfather, Dr. Frank Yturria was a first-hand witness to the clearing of native Rio Grande Valley brushlands. "I remember camps of men who cleared land by hand to make way for farms, livestock and people. My father and grandfather, who taught me the value of conservation, pointed out that after land was cleared, there were fewer dove, deer and other animals."

Like many South Texas ranches, Frank Yturria's San Francisco Ranch teems with white-tailed deer, wild turkey, javelina, waterfowl and neo-tropical birds. The ranch is home to predators like bobcats and mountain lions. But the San Francisco is different from most other area lands in two unique aspects. First, unlike most of the Valley, some parts of the ranch have never been cleared. On land he cleared, Yturria left many one to three-acre "mottes," or hidden places, as well as several hundred contiguous acres of virgin brush. Second, Yturria's ranch is home to more ocelot than any other privately owned property in the United States.

The ocelot is a small, native wild cat that lives in the thick brush of the Lower Rio Grande Valley. The numbers of this beautiful and rare animal have declined to possibly no more than 100 in Texas – largely because their habitat has been lost to agriculture and urban development. Ocelots survive in greater numbers in Mexico, Central and South America.

Seeing ocelot on his ranch had always been important to Yturria, who set out to ensure that he and his descendants would continue to have that opportunity. He entered into a cooperative research agreement with the Caesar Kleberg Wildlife Research Institute at Texas A&M University in Kingsville to study the animal's behavior on his ranch. Since 1982, fourteen San Francisco Ranch ocelots have been captured and fitted with radio collars. Still, Frank Yturria realized that providing sufficient habitat was the key to the ocelot's survival in South Texas.

The F. Yturria family, cooperating with the U.S. Fish and Wildlife Service, sold parcels of their land to help create the Lower Rio Grande Valley National Wildlife Refuge Corridor in the 1980s. Yturria's interaction with USFWS biologists during this process convinced him that he could secure the ocelot's habitat and its future on his ranch, with a conservation easement.

The decision to donate a conservation easement to The Nature Conservancy and fence 475 acres of prime brushland on the San Francisco Ranch was not an easy one for Dr. Yturria. The agreement with the USFWS would mean the loss of potential ranching income and perhaps a depreciation in the value of the entire ranch. But Yturria also realized that tax incentives and a natural progression from hunting to ecotourism in South Texas could offset the income loss. With the growing interest in endangered species, birds and other wildlife, Dr. Yturria believes that ecotourism could eventually bring in more revenue than cattle ranching. "I did not expect it at the time – I was only interested in protecting the ocelot, but the property I preserved with the conservation easement, along with the entire ranch, has income potential from ecotourism."

With the growing interest in endangered species, birds and other wildlife, Dr. Yturria believes that ecotourism could eventually bring in more revenue than cattle ranching.



LAREDO TOWN CENTER

In January of 2007, a representative from Merchants Holdings, LLC walked into the Valley Land Fund and asked Amy Spaulding, the Land Trust Director, about conservation options for wetlands near a shopping mall they were building. The building site was in Laredo, Texas and sat on Lake Casa Blanca.

After months of hard work, meetings and rough drafts, a conservation easement was granted by the Valley Land Fund to protect 42.2 acres of pristine wetland on Lake Casa Blanca. The main purpose for the conservation easement is to assure that the property will not be developed and will be perpetually preserved in its predominately natural, scenic, wet land, and open space condition. Other purposes of the Conservation Easement are to protect the property's natural resource and watershed values, biodiversity, relatively natural and high quality habitat for native plants and animals and to maintain and enhance the natural features of the property.

The land possesses natural, scenic, open space, scientific, biological, and ecological values of prominent importance to the owner, the Valley Land Fund and the public, and include the following: the land lies within an area of South Texas that is undergoing a rapid rate of land fragmentation due to an escalation of the subdivision and development of former ranch land, it provides relief from urban closeness, and lies adjacent to a State Park which contains a public water fresh lake. The land also contains significant natural habitat in which fish, wildlife, plants, or the ecosystems that support them, thrive in a relatively natural condition. The property contains and supports sustainable habitat for a biologically diverse collection of animals and plants, including rare, endangered or threatened species. The land has a significant amount of undeveloped frontage on or near the banks of Lake Casa Blanca, which is a State Park and public recreation area. The property contains additional natural wetland areas that provide habitat for aquatic invertebrates, reptiles, amphibians, and aquatic and/or emergent vegetation. Valued native forested wet land exists on the property, which includes diverse native species, and trees of varying age classes and structural diversity. The property also provides important natural land within the watershed and contributing area of the Rio Grande River, which is a source of drinking water for numerous communities between Laredo, Texas and the Gulf of Mexico.

The main purpose for the conservation easement is to assure that the property will not be developed and will be perpetually preserved in its predominately natural, scenic, wet land, and open space condition.



THE ROY E. LARSEN SANDYLAND SANCTUARY



At the beginning of the 20th century, the Pineywoods of southeastern Texas and western Louisiana supported a diverse network of forests and wetlands. At the heart of this network were longleaf pine forests and associated grasses, wildflowers and shrubs. Periodic fires enabled this ecosystem to thrive by limiting the encroachment of hardwood species and clearing open areas for longleaf seedlings to germinate. Many of the wildflower and grass species that lived on the forest floor also thrived on the light and space that fires created.

More than 98 percent of the original longleaf forests have been replaced, a process that began with clearing by the timber industry at the turn of the last century. Preferring faster growing trees, timber companies supplanted native longleaf pine habitat with slash and loblolly pine plantations. Fire suppression further hindered the ability of longleaf stands to regenerate naturally.

By the mid-1970's, longleaf pine forests were too fragmented and isolated to survive without intervention. In the absence of fire, the longleaf pine ecosystem was diminished in size and condition. Recognizing the need to preserve this system, The Nature Conservancy and Temple-Eastex (later Temple-Inland Inc.) joined forces in 1977 to create the 2,138-acre Roy E. Larsen Sandyland Sanctuary in Hardin County.

In 1994, Temple-Inland donated an additional 2,778 acres and a conservation easement on neighboring working forest lands, creating a 5,654-acre protected area.

The Sandyland Sanctuary is situated on alluvial sandhills and its dry, sandy environment supports widely-spaced longleaf pines and unique plants such as the scarlet catchfly, white firewheel and the endangered Texas trailing phlox.

Once a part of Temple-Inland's forest products operations, the Sanctuary's loblolly and slash plantations are now being restored to native longleaf habitat. With replanted trees now maturing, visitors to the Sanctuary's six-mile trail system can experience the rich natural heritage of the upland longleaf forest, as well as beech-magnolia forest, wet longleaf pine savanna, bottomland hardwood forest and bald cypress-water tupelo swamps.

Restoring longleaf forest is much as issue of economics as it is ecology. Wendy Jo Ledbetter, Southeast Texas Project director, explains, "We recognize that for public and private landowners to want to restore longleaf pine systems, there must be multiple benefits, including an economic incentive." Thanks to the conservation easement donation by Temple-Inland, the lands buffering the preserve serve as a demonstration site, where sustainable forestry practices and resource conservation are explored and balanced.

THE AGREEMENT CONSISTS OF THREE PARTS:

The Conservation Easement

The conservation easement protects the property and its bottomland hardwood forests by limiting commercial and residential development of the land.

The Management Agreement

The management agreement addresses mutual goals and defines policies that are both economically and ecologically beneficial. Existing loblolly and slash pine plantations are commercially harvested and replanted with longleaf pine seedlings. As they mature, longleaf forests will be managed for a variety of forest products.

The Management Plan

The five-year management plan is updated annually. Planned management activities for forest compartments are negotiated by both parties. The plan describes daily operations, including prescribed burning, timber harvesting, site preparation, reforestation, invasive species, hunt leases, rare species management and scientific studies.

Ledbetter offers that in order to achieve the best possible conservation outcome, a management plan should compliment a conservation easement. "A conservation easement's strength lies in the ability of both parties to work cooperatively toward mutually desired goals. A management plan is a flexible and practical tool that serves as a reference and guide for the best possible management actions on a particular property."

With the divestiture of Temple-Inland lands in 2007, the conservation easement lands are now managed by the Campbell Group. The Nature Conservancy continues to strive to maintain biological diversity and sustainable forestry practices in the Pineywoods of Texas. The Roy E. Larsen Sandyland Sanctuary and lands managed by the Campbell Group are now adjacent to lands managed by the National Park Service within Big Thicket National Preserve. This increase in land under conservation management increases the ability of future generations to enjoy the diverse and wonderful natural heritage of East Texas.

Part Five: LAND TRUSTS

To qualify for tax benefits, conservation easements must be granted to either a governmental entity empowered to hold real property interests or a charitable organization as defined by the Internal Revenue Code created for one or more conservation purposes, commonly called a land trust.

What is a land trust?

A land trust is a local, regional or national charitable organization that protects land for its natural, recreational, scenic, historic or productive value. Land trusts have varying conservation objectives; some work in specific geographic areas or concentrate on protecting different natural or cultural features. A directory of Texas land trusts and their contact information is maintained by the Texas Land Trust Council. The Texas Land Trust Directory is available online at <http://www.texaslandtrustcouncil.org>. Landowners should get to know the organizations that work in their area before making a conservation easement donation.

What does a land trust do?

Initially, the land trust works with the landowner to tailor the terms of the conservation easement to protect the land's conservation values and meet the landowner's personal and financial goals. Land trusts can also refer landowners to legal, tax or natural resource professionals familiar with conservation easements.

Land trusts that accept conservation easements are responsible for monitoring that property and ensuring that the terms of the conservation easement are followed. Representatives from the land trust make scheduled, usually annual, visits to the property to document the condition of the property and will notify the landowner of any potential violation of the conservation easement. If the terms of the conservation easement are violated, the land trust can take legal steps to stop or correct the violation.

The land trust is responsible for stewardship of the conservation easement for as long as the conservation easement exists. It is important that a landowner select an organization that can demonstrate that it has the financial resources and staying power to handle these responsibilities long-term. Because the stewardship responsibilities are perpetual, many land trusts request financial contributions (also tax deductible) to help defray some of the costs involved in administering a conservation easement agreement.

A land trust may also work with a landowner to develop a management plan as part of a conservation easement. Management plans include flexible goals and objectives relating to conservation of the property's natural and cultural features. Management plans, which should be updated periodically, are especially important for productive agricultural or recreational property or for property susceptible to invasive species.

Part Six: WHAT NEXT?

Landowners interested in learning more about conservation easements have several additional resources to assist them.

1. The land trust organizations in Texas can answer questions about conservation easements. A list of land trust contacts with phone numbers can be found on the land trust directory located on the Texas Land Trust Council's website.
2. The Texas Land Trust Council publishes the Texas Land Trust Directory, offers additional resources and can answer additional questions about conservation easements.

The Texas Land Trust Council hosts an annual statewide conference for landowners and land trusts every spring. Contact the Texas Land Trust Council for the date of its next conference.

Texas Land Trust Council
P.O. Box 40505
Austin, Texas 78704-0505
(512) 236-0655
E-mail: info@texaslandtrustcouncil.org
Web site: www.texaslandtrustcouncil.org

3. The Land Trust Alliance, a national organization for land trusts, publishes books and other materials related to private land conservation. A description of several of these publications is listed in an appendix.

The Land Trust Alliance
1660 L Street NW, Suite 1100
Washington DC 20036
(202) 638-4725
www.landtrustalliance.org

The Land Trust Alliance hosts an annual nationwide conference (Rally) for landowners and land trusts every fall. Please visit www.landtrustalliance.org for information about its next Rally.

4. Landowners should discuss the potential advantages and disadvantages of conservation easements with their own legal and tax advisors.

CONTENT OF A CONSERVATION EASEMENT

Parties – Grantor (landowner) and Grantee (conservation easement holder)

Date of Conveyance

Recitals (“whereas” clauses)

Title representation (assures that grantor owns the property)

Conservation values of the property

Legal description of property

Documentation of “pre-easement characteristics” of property (called a baseline inventory)

Continuation of existing uses

Conveyance of rights to protect conservation values to grantee

Qualifications of grantee to hold the conservation easement

Grant (transfer of property interest)

Consideration: nominal dollar amount or gift language

Citation of statutory authority (Texas Natural Resource Code Chapter 183)

Duration: perpetual

Provisions

1. Purpose: only uses consistent with protection of conservation values are permitted
2. Ingress and Egress: access to property by grantee as reasonably necessary for monitoring
3. Prohibited Land Uses: the three methods for defining prohibited land use are:
 - Exclusive: any land use not expressly prohibited is permitted
 - Unreserved: any land use not expressly reserved is prohibited
 - Inconsistent: any land use inconsistent with the conservation easements’ purpose is prohibited
4. Reserved Rights (the landowner’s rights which are reserved for possible future use)
5. Granted Rights (the conservation easement holder’s rights to inspect and monitor compliance with the conservation easement and enforce its terms)
6. Access (the public is typically denied access)
7. Amendment (if mutually agreeable between conservation easement holder and landowner at the time, certain provisions of the conservation easement may be modified in the future as long as the original intent is achieved)
8. Assignment (the grantee retains the right to transfer the conservation easement to another eligible holder)
9. Subordination (if property is mortgaged, the mortgage holder must guarantee that it will uphold the conservation easement provisions in the event of the foreclosure)
10. Subsequent transfers or Successors (the conservation easement “runs with the land,” i.e., the provisions bind all future landowners in perpetuity, even if the property is sold or inherited to another owner)
11. Recordation (the conservation easement documents recorded in the county in which the property is located)



RESOURCES & PUBLICATIONS

Available by request from the Texas Land Trust Council at (512) 236-0655 or online at <http://www.texaslandtrustcouncil.org>:

Conservation Easements: A Guide for Texas Landowners

Guidance on the Conservation Tax Incentive

A brochure from the Land Trust Alliance

Natural Resource Conservation Programs and Services for Texas Landowners

Protecting Open Space: Tools and Techniques for Texans

Available for purchase from the Land Trust Alliance online at <http://www.landtrustalliance.org>:

Conservation Options: A Landowners Guide

A Tax Guide to Conservation Easements by C. Timothy Lindstrom

Preserving Family Lands: Books I, II and III by Stephen J. Small

Working Forest Conservation Easements by Brenda Lind

Working Ranchland Conservation Easements by Brenda Lind and Marty Zeller

Available by request from Texas Parks & Wildlife Department at 1(800) 792-1112 or online at <http://www.tpwd.state.tx.us/publications/landwater/land/>:

Landowner Services (brochure)

Partners in Conservation (brochure)

TEXAS LAND TRUSTS

For a list of Texas Land Trusts, please refer to the Texas Land Trust Council's land trust directory, found on its website at www.texaslandtrustcouncil.org.





United States Department of the Interior

FISH AND WILDLIFE SERVICE

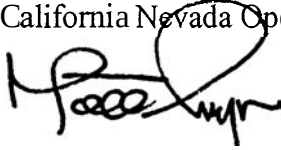
WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

MAY 2 2003

Memorandum

To: Regional Directors, Regions 1-7
Manager, California Nevada Operations

From: Director 

Subject: Guidance for the Establishment, Use, and Operation of Conservation Banks

This memorandum transmits guidance that will help Service personnel evaluate proposals to establish conservation banks (attached). This guidance provides a collaborative incentive-based approach to endangered species conservation, which if used in coordination with other tools available to the Service, can aid in the recovery of the species. Due to the beneficial aspects derived from this guidance we are establishing it effective immediately. As with any program, however, the Service will review and monitor use of this guidance for the establishment of conservation banks, and may choose to revise, update, and improve this guidance in the future. Consequently, when implementing this guidance, Service personnel should encourage discussion and obtain feedback from landowners, applicants, owners of conservation banks, or other members of the public.

This memorandum is intended to be applied to conservation bank proposals submitted for approval on or after the date of this guidance and to those in early stages of planning or development. It is not intended for the guidance to be retroactive for banks that have already received agency approval. While it is recognized that individual conservation banking proposals may vary, it is the intent of this guidance that the fundamental concepts be applicable to future conservation banks.

Attachment

Guidance for the Establishment, Use, and Operation of Conservation Banks

I. Introduction

A. Purpose and Scope of Guidance

This document provides guidance on the establishment, use, and operation of conservation banks for the purpose of providing a tool for mitigating adverse impacts to species listed as threatened or endangered under the Endangered Species Act of 1973, as amended. This guidance can also be used to aid in the establishment of banks for candidate species. The Service envisions that banks will mainly be used for candidates in conjunction with Candidate Conservation Agreements with Assurances or as a precursor to a multiple species Habitat Conservation Plan effort that covers listed and non-listed species.

The policies and procedures discussed herein are applicable to the establishment, use, and operation of public conservation banks, privately sponsored conservation banks, and third party banks (i.e., entrepreneurial banks). The guidance they provide is intended to help Service personnel; (1) evaluate the use of conservation banks to meet the conservation needs of listed species; (2) fulfill the purposes of the ESA; and (3) provide consistency and predictability in the establishment, use, and operation of conservation banks. In this regard, it is important to apply consistent standards and principles of mitigation whether mitigating through conservation banks or through other means. The purpose of this policy is not to set the bar higher for conservation banks than for other forms of mitigation, but articulate generally applicable mitigation standards and principles and to explain how they are to be accomplished in the special context of conservation banks.

Conservation banks are a flexible means of meeting a variety of conservation needs of listed species. The use of conservation banks should be evaluated in the context of unavoidable impacts of proposed projects to listed species. In some cases, the use of off-site banks may be the only mitigation option when on-site conservation measures are not practicable for a project or when the use of the bank is environmentally preferable to on-site measures. In general, no two conservation banks will be used or developed in an identical fashion. However, as demand for conservation banking increases, it is important that the essential components and operational criteria of conservation banks are standardized to ensure national consistency.

B. Background

Conservation banking is attractive to landowners and land managers because it allows conservation to be implemented within a market framework, where habitat for listed species is treated as a benefit rather than a liability. From the Service's perspective, conservation banking reduces the piecemeal approach to conservation efforts that can result from individual projects by establishing larger reserves and enhancing habitat connectivity. From a project applicant's perspective, it saves time and money by identifying pre-approved conservation areas, identifying "willing sellers," increasing flexibility in meeting their conservation needs, and simplifying the regulatory compliance process and associated paperwork. From the landowner's perspective, it provides a benefit—an opportunity to generate income from what may have previously been considered a liability.

Directing smaller individual mitigation actions into a bank streamlines compliance for the individual permit applicants or project proponents while providing a higher benefit to the natural resources. Banking allows a collaboration of private/public partnerships to maintain lands as open space, providing for the

conservation of endangered species. Local communities as a whole benefit by being assured that their natural resources will be protected and open space maintained.

Conservation banking can bring together financial resources, planning, and scientific expertise not practicable for smaller conservation actions. By encouraging collaborative efforts, it becomes possible to take advantage of economies of scale (both financial and biological), funding sources, and management, scientific, and planning resources that are not typically available at the individual project level.

1. What Is a Conservation Bank?

A conservation bank is a parcel of land containing natural resource values that are conserved and managed in perpetuity, through a conservation easement held by an entity responsible for enforcing the terms of the easement, for specified listed species and used to offset impacts occurring elsewhere to the same resource values on non-bank lands. Bank parcels are typically large enough to accommodate the mitigation of multiple projects. A project proponent will secure a certain amount of natural resource values within the bank to offset the impacts to those same values offsite. The bank is specifically managed and protected by the banker or designee for the natural resource values. The values of the natural resources are translated into quantified "credits." Typically, the credit price will include funding for the long-term natural resource management and protection of those values. Project proponents are, therefore, able to complete their conservation needs through a one time purchase of credits from the conservation bank. This allows "one-stop-shopping" for the project proponent, providing conservation and management for listed species in one simplified transaction.

A bank can be created in a number of different ways: (1) acquisition of existing habitat; (2) protection of existing habitat through conservation easements; (3) restoration or enhancements of disturbed habitat; (4) creation of new habitat in some situations; and (5) prescriptive management of habitats for specified biological characteristics. Banks can be created in association with specific projects, or can proceed from a circumstance where a project proponent sets aside more area than is needed for the immediate project, or where the specific project and is willing to protect the remaining area and thus generate credits, or where the specific project is implemented over a longer period of time. A conservation bank can also be created as an entrepreneurial effort in anticipation of an independent customer base with a number of different potential projects.

Once conservation banks are established, conservation banks each credit they sell is considered to be part of the environmental baseline. As a result, future project evaluations and listing or delisting decisions can be made in a more stable ecological context. This stability is one of conservation banking's greatest assets, both from the an ecological and economic standpoint. For this reason, it is particularly important that conservation banks be established in perpetuity, regardless of the future status of the species for which the bank was initially established.

2. Wetland Mitigation Banking vs. Conservation Banking

The wetland mitigation banking policy was finalized in November of 1995(60 FR 58605). The main concept behind wetland mitigation banking is similar to that of conservation banking; to provide compensation for adverse impacts to wetlands and other aquatic resources in advance of the impact. Under the guidelines established for section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act, impacts to wetlands are mitigated sequentially by avoiding impacts, minimizing impacts, and then, as a last resort, compensating for those impacts. Compensatory mitigation involves creating, restoring, or enhancing lost function and values of the wetlands. In the absence of mitigation

banking, this often led to small, isolated wetlands being restored without long-term value. Wetland mitigation banking was used to consolidate smaller mitigation requirements for wetland impacts. Typically, the mitigation bank policy focused on establishing credits based on the restored or enhanced value of the area, and discouraged the establishment of "preservation" banks. This makes sense when the functions of wetlands on the landscape are considered in the context of a no net loss policy.

Conservation banking transferred the concept of wetland mitigation banking into endangered and threatened species conservation with a few slight differences. While in wetland mitigation banking the goal is to replace the exact function and values of the specific wetland habitats that will be adversely affected by a proposed project, in conservation banking the goal is to offset adverse impacts to a species. These different goals account for differences in the policies guiding operations of the two banks. In contrast to mitigation banks, an appropriate function of conservation banks is the preservation of existing habitat with long-term conservation value to mitigate loss of other isolated and fragmented habitat that has no long-term value to the species. It forces the Service to evaluate all issues surrounding banking in the context of the benefit to the species a sharply contrasting standard to that of wetland banking, where the focus of mitigation is on maintaining function and values present in a particular watershed.

Endangered species conservation banking has been implemented in California since 1995, where the Service has worked with the State of California Department of Fish and Game (CDFG). The CDFG policy on conservation banking describes conservation banks as:

A conservation bank is privately or publicly owned land managed for its natural resource values. For example, in order to satisfy the legal requirement for mitigation of environmental impacts from a development, a landowner can buy credits from a conservation bank, or in the case of wetlands, a mitigation bank. Conservation banking legally links the owner of the bank and resource agencies, such as the Department of Fish and Game or the U.S. Fish and Wildlife Service.

II. Policy Considerations

The Services intent is that this guidance be applied to conservation bank proposals submitted for approval on or after the effective date of this guidance and to those in early stages of planning or development. We do not intend for the policy to be retroactive for banks that have already received agency approval. While we recognize that individual conservation banking proposals may vary, our intent for this guidance is that the fundamental concepts be applicable to future conservation banks.

Conservation banking can assist both the section 7 and section 10 processes in reaching their goals. Many activities authorized under these processes result in adverse effects to listed species, including habitat loss or modification. One way to offset these types of impacts is to include in the project design a plan that involves the restoration and/or protection of similar habitat on- and/or off-site. Purchasing credits in conservation banks is one method of protecting habitat off-site or on-site.

A. Authorities

1. Section 7

Section 7(a)(1) of the ESA requires that all Federal agencies ...in consultation with and with the assistance of the [Service], utilize their authorities in furtherance of the purposes of [the ESA] by carrying out programs for the conservation of [listed species]. Section 7(a)(2) of the ESA also requires each Federal agency to consult with the Service regarding effects of their actions to insure that the continued existence

of listed species will not be jeopardized and that designated critical habitat will not be destroyed or adversely modified. Impacts to listed species are minimized by including conservation measures for the listed species in the Federal agency's project description. These conservation measures could include, if appropriate, protection of off-site listed species habitat through purchase of credits in a conservation bank.

2. Section 10

Section 10(a)(1)(B) of the ESA authorizes the Service to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species. A habitat conservation plan, or HCP, must accompany an application for an incidental take permit. The purpose of the HCP is to ensure that the effects of the permitted action on covered species are adequately minimized and mitigated and that the action does not appreciably reduce the survival and recovery of the species. Mitigation may include off-site protection of the listed species and its habitat and may take the form of purchasing credits in an approved conservation bank. Credits must be acquired by the permittee prior to commencement of actions authorized by an incidental take permit and intended to be mitigated by those credits.

B. Planning Considerations

1. Goals and Objectives

The overall goal of any conservation bank should be to provide an economically effective process that provides options to landowners to offset the adverse effects of proposed projects to listed species. The goal of a bank should be focused on producing conservation benefits for the species for which the bank is being established. For instance, many species are facing the threat of habitat loss and fragmentation. By consolidating and managing the high-priority areas in a reserve network, the threat of fragmentation may be reduced and the species can be stabilized. The species recovery plan and conservation strategy can help provide are among the tools available to develop the goals and objectives for establishing conservation banks. The important point in establishing a bank is to site banks in appropriate areas that can reduce the threat of fragmentation and provide management measures that address other threats that a species might encounter, such as cowbird parasitism, non-native invasion, or disruption of natural disturbance regimes.

2. Conservation Strategy

Any conservation strategy that the Service develops should identify threats, conservation needs and actions that address those threats and needs in the service area. This information can then help the Service evaluate whether the banking concept, the geographic location, the size, and management for the species is appropriate. The recovery plan can help guide the Service in evaluating whether creation of a bank will contribute to the conservation needs of the species. However, in instances where the recovery plan is not specific, is not available or is outdated, the Service may consider options to assess bank effectiveness. One option is to develop a local step down approach or strategy to addressing the needs of the species.

The conservation strategy or species conservation needs should address the factors which caused the species to be listed and must be based on sound scientific principles. The main threat to a majority of the listed species is habitat loss and fragmentation of the remaining habitat. To reduce this threat,

conservation biology principles have often been used to conserve populations of species in a reserve network, consisting of core populations that are interconnected by dispersal corridors. Conservation banking can aid in such a strategy by adding conservation areas that are permanently managed to the reserve network.

3. Principles of Conservation Bank Evaluation

Both section 7 and section 10 require the evaluation of a project's adverse effects to a species and determine whether proposed project, together with any offsetting measures, will jeopardize the continued existence of the species. The adverse effects and offsetting measures are evaluated in the context of the current status of the species and the threats to the species. Implicit in the approval of a conservation bank, is the recognition that adverse effects to a species may be offset by the conservation improvements offered by the bank. The Service is agreeing that projects which include adequate mitigation of impacts through the purchase of bank credits are consistent with the conservation needs of the species covered by the bank.

For the Service to determine whether to approve a proposed bank, the Service should determine whether the bank will provide adequate mitigation for the species. When the Service evaluates a proposed mitigation package that is intended to offset adverse effects to listed species, the Service evaluates whether the mitigation will fit within the conservation needs of the species.

For instance, if a proposed project involved habitat loss, the offsetting measure may be to conserve habitat in a location that contributes to the overall conservation strategy of the species, which may be located in a corridor or core area that supports essential breeding habitat. The conservation bank will provide mitigation to offset impacts and therefore should be evaluated in the same fashion. The best way to justify approving a bank is to evaluate whether the bank fits into the overall conservation needs of the listed species the bank intends to cover.

Two issues of paramount importance in evaluating any conservation bank are the siting of the bank and its management program. Although recovery plans for individual species will rarely, if ever, identify particular parcels as desirable sites for conservation banks or other conservation actions, they often identify broader areas within which recovery efforts will be focused. Conservation banks sited in these areas can create mitigation opportunities that both increase the options available to regulated interests and contribute to the conservation of the species. For species without recovery plans, or with plans that do not clearly identify those areas where recovery efforts will be primarily focused, conferral with the Service is especially important, to identify those areas it regards as of particular value in conserving the species.

For many species, individual conservation banks are seldom large enough, by themselves, to support a viable population of a threatened or endangered species over the long term. But if the bank is located next to an existing area managed for the conservation of that species, even a small conservation bank may increase the likelihood that a viable population can be maintained there. Similarly, if a bank is sited to encourage dispersal between two areas managed for the conservation of the species, the bank may increase the likelihood of the species surviving at both locations and thus provide a benefit proportionally larger than its actual area. In some instances, banks may be able to provide replacement habitat for species currently occupying nearby unmanaged habitats at risk of becoming unsuitable because of succession. Sites that otherwise appear to be good locations for conservation banks may turn out, on closer examination, to be inappropriate because of anticipated land-use changes in the surrounding area. These and other considerations relevant to the siting of a conservation bank should be taken into account at the outset and discussed with the would-be banker's to ensure that needs for species conservation is compatible with the banker's objectives.

No less important than siting is the bank's management program. Seldom will the needs of a threatened or endangered species be met on a completely unmanaged piece of property. More commonly, an active management program--to control invasive exotic species, replicate natural disturbance regimes; prevent an area's use by off-road vehicles, illegal garbage dumpers or others; and address myriad other threats--is essential to ensure that the potential conservation value of a particular property is realized and maintained. These management needs should be anticipated and provided.

4. Eligible Lands

Conservation banks may be established on Tribal, local, private, or State lands where managing agencies maintain or will maintain habitat in the future. Use of conservation banks on Federal lands is not precluded under this guidance, although there may be special considerations concerning applicability of conservation banks on Federal lands. Therefore, future guidance will be forthcoming on this point. Until such time, use of conservation banks on Federal lands would occur only on a case-by-case basis after review and approval by the Director.

Land used to establish conservation banks must not be previously designated for conservation purposes (e.g., parks, green spaces, municipal watershed lands), unless the proposed designation as a bank would add additional conservation benefit. For instance, it may be advantageous to place in a conservation bank the biological and habitat benefits that a species has gained under a Safe Harbor Agreement, where the landowner would agree to maintain those resource values in perpetuity.

Where conservation values have already been permanently protected or restored under other Federal, State, Tribal, or local programs benefitting federally listed species, the Service will not recommend, support, or advocate the use of such lands as conservation banks for mitigating impacts to species listed under the ESA. This includes programs that compensate landowners who permanently protect or restore habitat for federally listed species on private agricultural lands, as well as easement areas associated with inventory and debt restructure properties, lands protected or restored for conservation purposes under fee title transfers, lands protected by a habitat management agreement (unless the agreement is extended in perpetuity by a bank agreement), or habitats protected by similar programs. For example, lands conserved under the section 6 habitat conservation plan land acquisition grant program would not be available for conservation bank establishment. Where Federal funds have been used in the establishment of a bank, the allocation of credits to the bank will be proportionate to the non-Federal contribution. A bank capable of sustaining 10 credits, but with a 50 percent Federal contribution, will be allocated 5 credits.

5. Site Selection

The Service will give careful consideration to the ecological suitability of a site for achieving mitigation. The Service will evaluate the location, size, and configuration of the proposed bank. Additional items to consider when determining the suitability of an area as a conservation bank might be topographic features, habitat quality, compatibility of existing and future land use activities surrounding the bank, and species use of the area.

Conservation biology principles suggest that conserving large, unfragmented habitat blocks, to reduce the edge effect, in a reserve network will help to maintain viable populations. A conservation bank could be large enough to maintain a viable population within its boundaries or be situated in a strategic location that would add to an already established conserved area. The conserved area might be a privately owned

mitigation site established under an habitat conservation plan, or a State park . Banks could also be sited between two larger areas in a corridor that will maintain connectivity for dispersing individuals.

Bank boundaries should ordinarily be drawn so as to exclude developed areas or other areas that cannot reasonably be restored. Potential banks that encompass such areas should only be approved if the activities that will occur on these areas will not impact the value of the bank for conservation or if the resulting value will be sufficient to warrant conservation in spite of the developed areas. However, if the latter is the case, we must have the assurance that the impacts will not change over time in a manner that will decrease the value of the bank. Factors to consider include, but are not limited to, activities that may result in incidental take, habitat degradation, and contamination.

It is also possible to establish conservation banks within the boundaries of a proposed project, such as an HCP planning area, if it is both feasible and appropriate given the habitat type and species needs. If the project plan area contains sufficient land and the project impacts are fairly localized, it may be possible, or even desirable, to designate a conservation bank within its boundaries. Ultimately, the credits purchased from a conservation bank must provide biologically comparable habitat to the area affected by the activity to be mitigated.

6. Inclusion of Buffer Area

In general, it is important that banks be of sufficient size to ensure the maintenance of ecological integrity in perpetuity. However, the minimum or maximum sizes of parcels of land designated as a conservation bank will be determined on a case-by-case basis depending on the needs of the species proposed to be covered in the bank, the location of the bank, and the habitat values that are provided. Bank boundaries must encompass all areas that are necessary to maintain the habitat function specific to the species covered by the bank, which may include the appropriate buffer against edge effects from adjacent land use.

These buffer areas may not always consist of habitat that is necessary for the species included in the bank. However, limited credits may be given for the inclusion of these buffer areas only to the degree that such features increase the overall ecological functioning of the bank.

7. Role of Restoration, Enhancement, and Creation of Habitat

Conservation banks will rely on a range of strategies to achieve and maintain mitigation in perpetuity on existing functioning and occupied habitat for a majority of those species facing threats of habitat loss and fragmentation. Such strategies include preservation, management, restoration of degraded habitat, connecting of separated habitats, buffering of already protected areas, creation of habitat, and other appropriate actions. The preservation strategy will be employed for those species in which the habitat is not easily restored or created, or the information on how to accomplish the restoration or creation of habitat is either not known or unreliable. Other species may rely heavily on creation or restoration of habitat as part of a conservation bank. The reliance on restoration, enhancement, or creation of habitat as part of a bank strategy will be species specific. All conservation banks will must have an element of management that will maintain the habitat for the species in the bank.

Conservation banks can be used in instances where significant restoration, enhancement, or creation of habitat are necessary. However, an appropriate credit system will need to must be developed to address these situations. If restoration is proposed as part of the conservation bank, appropriate measures should be implemented to increase the likelihood of success. One way to increase the likelihood of success is to

require some method of ensuring performance, such as authorizing sale of credits only upon completion and verification of restoration outcomes.

One strategy is to designate preservation credits for the protection of existing habitat and restoration credits for the restoration, enhancement, and preservation of areas not currently providing suitable habitat. The need for this type of distinction will vary depending on the specific ecological situation and the conservation strategy being employed. For example, we may determine that a species cannot afford any reduction of its total available habitat. For this reason, we may require the development of a process that provides for one acre to be protected and one acre to be restored for every acre of habitat destroyed. Taken to its full extent, this conservation strategy would result in half of the existing habitat being protected with the remaining habitat being replaced through habitat restoration.

C. Criteria for Use of a Conservation Bank

1. Project Applicability

Activities regulated under section 7 or section 10 of the ESA may be eligible to use a conservation bank, if the adverse impacts to the species from the particular project are offset by buying credits created and sold by the bank. Credits from a conservation bank may also be used to compensate for environmental impacts authorized under other programs (e.g., State or local regulatory programs, transportation projects, NEPA or State equivalent). In no case may the same credits be used to compensate for more than one activity; however, the same credits may be used to compensate for an activity that requires authorization under more than one program. In other words, once a credit is sold to offset an adverse impact, that same credit cannot be sold again.

2. Service Area

In general, the Service Area of a conservation bank is identified in the bank agreement and defines the area (e.g., recovery unit, watershed, county) in which the bank's credits may be used to offset project impacts. In other words, if proposed projects fall within a specific conservation bank's Service Area, then the proponents of those projects may offset their impacts, with the Services approval, by purchasing the appropriate number of conservation credits from that bank. In the event that the proposed projects fall within the Service Area of more than one conservation bank, then the project proponents would have the option of using any of the banks or perhaps even more than one bank.

Designation of the Service Area should be based on the conservation needs of the species being conserved. For this reason, banks generally should be located within areas designated in recovery plans as recovery units or other applicable recovery focal area, and their Service Areas should correspond to the recovery areas in which they are located. If there is no applicable recovery plan, banks should be sited, and Service Areas should be designated, to serve a comparable purpose.

Two exceptions to the preceding general guidance should be noted. First, some projects may be located outside a recovery unit. Banks located within recovery units should be able to provide credits for such projects. In such situations, the project to be mitigated will have little or no detrimental impact on recovery prospects, and the mitigation bank will aid those prospects.

A second exception to the general guidance regarding Service Areas concerns projects located in recovery units and undertaken *after* the recovery objectives for those areas have been achieved. Such projects should be able to buy mitigation credits from banks located in other recovery units. Allowing such

projects to do so will help achieve the recovery objectives in the recovery unit where the bank is located, without hurting these objectives in the area of the project requiring mitigation.

The Service Area is an important component for the bank owner who will need to evaluate the marketability of their banks, i.e., the potential demand for their conservation credits. The individual bank owner has the responsibility to determine if a bank will be profitable. The bank agreement should clearly define any constraints that are found within the Service Area. These might include exclusion of areas that are key to a regional reserve system, such as projects that occur within corridors or core reserve areas. Or, a particular bank in a county could have a Service Area corresponding to the regional plan boundary, yet limit projects using the bank to those that are in fragmented, isolated, highly urbanized areas not contributing to the regional reserve system.

3. Credit System

Credits are the quantification of a species' or habitat's conservation values within a bank. The conservation values secured by a bank are converted into a fixed number of credits that may be bought, sold, or traded for the purposes of offsetting the impacts of private, State, local, or Federal activities. In its simplest form, one credit will equal one acre of habitat or the area supporting one nest site or family group. Credit values are based upon a number of biological criteria and may vary by habitat types or management activities. When determining credit values, some of the biological criterion that may be considered include habitat quality, habitat quantity, species covered, conservation benefits, including contribution to regional conservation efforts, property location and configuration, and available or prospective resource values.

In general, the credit system for a conservation bank should must be expressed and measured in the same manner as the impacts of the development projects that will utilize the bank. For instance, if a development project will permanently remove some amount of habitat acreage and a number of pairs of a species, then the bank's credits should be expressed in terms of acreage and pairs. If effects are evaluated in terms of losses of family groups due to timber activities, then the bank credits should be established in terms of the number of family groups being conserved. The method of calculating bank credits should be the same as calculating match project impact debits.

In some instances a bank may contain habitat that is suitable for multiple listed species. When this occurs, it is important to establish how the credits will be divided. For instance, once a project buys a credit for one species, that credit cannot be sold again for another species. If the proposed project impacts multiple species and the bank contains the same multiple species, then the credits can be sold for in-kind replacement. As a general rule, overlapping multiple species credits can overlap for a single project, but not multiple projects.

If the bank is a preservation bank, the credits should be based on the biological values of the bank at the time the bank agreement is established. Because some populations may vary in size due to natural dynamics, an agreement should be made, before the bank agreement is finalized, as to the number of credits in the bank, especially if the credits are based on the number of individuals or nesting pairs. This is a risk both for the Service and the banker. The risk to the Service is that the credit overestimates the average populations of the bank. The risk for the banker is that the agreement could be made in a low population year, depressing the amount of credits that the bank could have received. A study might be undertaken to determine the average populations occupying the bank, but this would be time consuming and expensive for the banker and the Service.

An alternative would be to use incentives to arrive at a fair accounting for both the banker and the Service. An initial allocation of credits could be made to the bank based on the best available information on species average population sizes. This number would be set on the low end of the spectrum. Additional credits would then be awarded to the banker based on subsequent performance. When mutually agreed-upon mitigation outcomes or conservation milestones are reached the standards that must be met in order to earn credits above the initial allocation the Service would authorize the additional credits.

At the time that the first credit in a bank or phase of a bank is sold, the land within the bank or its phase must be permanently protected through fee title or a conservation easement, with any land use restrictions set in perpetuity for the land legally established. Consequently, once any credit in a given bank or phase is sold, the entire area is automatically and legally protected, regardless if the rest of the credits in the bank or phase are sold, thereby eliminating future fragmentation of habitat.

Every conservation banking agreement should specify the methods for determining credits within the bank and debits outside the bank, setting performance standards to calculate credit availability, and devising accounting procedures to track the creation and use of such credits. If several conservation banks are created for the same species, the Service will use a consistent methodology for determining credits in each of them and make that methodology publicly available. That methodology should also be consistent with the methodology used to determine mitigation requirements for activities mitigated by means other than the purchase of credits from conservation banks.

Credits associated with a mitigation activity (as well as debits associated with an activity requiring mitigation) should reflect an assessment of the degree of beneficial (or detrimental) impact of the activity on the prospects for the affected species' survival. In theory, population viability analyses could be used to quantify the degree of impact on survival prospects. In practice, however, the information needed for rigorous population viability analyses is often unavailable. As a result, the units of currency may take the form of surrogates for the extent of impact on population viability, such as occupied acres or nesting pairs beneficially or detrimentally affected. In determining credits or debits, the same types of activities may be weighted differently depending on where they occur (e.g., nearby or far from existing protected areas), or other factors (e.g., quality of habitat at the affected site). The rationale for any differential weighting schemes should be clearly articulated in the mitigation agreement or elsewhere.

4. Phased Establishment

Conservation banks may be divided into sub-areas and implemented in phases. This approach is useful and appropriate in many circumstances. A prospective bank manager may not be sure there will be sufficient demand to use all of the potential credits. Therefore, the banker may decide to implement a conservation bank on only a portion of the habitat area during the first phase of the bank. Later phases of the bank would be added if and when the credits from this first phase are exhausted. Other situations justifying a phased approach include those in which a potential banker can only afford to enhance or manage a portion of the entire habitat area until revenue from the first phase is received, or when a potential project proponent is uncertain about the level of impact he or she will be creating over time and thus is uncertain how many conservation credits will be required.

Alternatively, the Service may want to seek the implementation of a bank in a phased manner. For example, in a situation where there is uncertainty regarding the level of future biological need within a specific area, it may be desirable to implement a process in which high-quality habitat receives priority designation for protection, and lands of lesser quality habitat or lands targeted for ecological restoration or enhancement activities would be designated for secondary phase protection. This would increase the likelihood of protecting habitat of the greatest ecological value, with habitat of lesser ecological value

being protected only if needed.

A non-phased approach with a similar outcome would be to use weighted credits. Preservation of an acre of high-quality habitat might earn one credit, while preservation of an acre of low-quality habitat might earn half a credit. This would eliminate the need to prioritize land types for mitigation purposes. So long as the credit and debit methodology ensures that adverse impacts are fully compensated by corresponding beneficial actions of banks, it will not matter whether the first phase of a bank is high-quality or low-quality habitat. As a general rule, if the differences in habitat quality are sufficient to justify prioritization, then they are also sufficient to justify weighted credit valuations.

If a phased approach is to be taken, each phase must be evaluated on the assumption that its conservation value can stand on its own in the event that the additional phases are not added to the conservation bank in the future. For instance, if the species conservation strategy identifies the need for conservation areas to be established with a minimum size of 200-acres for the species population to be viable and the first phase of the bank is proposed for only 100-acres, then the Service may not want to approve the proposed phasing structure.

5. Relationship of the Bank to the mitigation requirements

The most important consideration for any mitigation requirements - irrespective of variation between species and site specificity - is that they should be proportionate to be proportional to the extent of the impact and consistent from project to project. Mitigation requirements for individual projects may or may not be compatible with use of conservation banks. For example, the most appropriate mitigation for a particular project may involve emphasizing on-site preservation or restoration due to important local functions such as habitat protection for a species with a limited geographic range. There may be circumstances warranting a combination of on-site and off-site conservation measures, and, in these circumstances, conservation banks could be a useful tool. Conservation banks will only be available for use by projects that affect a species covered by the bank. In general, a bank established to provide credits for one group of species cannot be used to offset impacts to a species not part of the group, unless the Service establishes that the bank can provide the necessary conservation values to additional species, and implements the legal instruments to effect the change. The Service will approve the use of the conservation bank and establish the number and type of credits to offset impacts from a particular project.

In many situations, mitigation ratios are used to establish the amount of credits that will need to be purchased. While use of ratios may be based initially on a general knowledge of the relationship between the amount of habitat remaining and what should be conserved to achieve the site-specific conservation strategy, every adverse impact will need to be evaluated individually. In some circumstances, the ratios can be based on qualitative factors such as scale of impact or quality of habitat. This allows different ratios to be applied to ensure mitigation proportionate to the impact. For example, a project involving loss of habitat that is small in magnitude and low in quality due to isolation might be expected to mitigate at a ratio of 1:2 (one bank acre to two project acres), while a project with a large area in high quality habitat might be expected to mitigate at a ration of 2:1 (two bank acres to one project acre). Any mitigation ratio used, regardless whether the ratio is greater than, less than, or equal to 1:1, must be based on sound biological rationale that is easily explained, readily understood, and consistently applied by the Service.

6. Coordination with Other Levels of Government

Conservation banks covered by this policy are those established to meet the requirements of the ESA. State or local laws may also impose requirements that can be met by the measures provided for in a conservation bank. When that is the case, the Service requires that the relevant state or local government

entity be given an opportunity to participate in the development of a conservation banking agreement and to become a party to it. The Service will coordinate its requirements with those of State or local government entities to the extent possible in order to minimize expenses, burdens, or duplicative requirements for bank sponsors, project proponents, and other governmental agencies. Although the Service will encourage the appropriate State and local governmental agencies to participate in the development of conservation banking agreements and to become parties to them, the failure of such other agencies to participate in developing, or to sign an agreement that otherwise meets the requirements of this policy and of the ESA, shall not preclude the Service from entering into such an agreement. Any State and local agencies that participate in the bank agreement should be part of the Conservation Bank Review Team (CBRT) established to monitor the establishment, use, and operation of the conservation bank

7. Public Review and Comment

The bank credits will be sold in conjunction with incidental take of listed species exempted under section 7 or authorized under section 10 of the ESA. Both of these processes have opportunities for public review. Section 7 consultations are conducted when Federal agencies propose projects that have adverse effects to listed species. The Federal action agencies are required to consider reasonable alternatives and analyze those impacts through the National Environmental Policy Act, which includes public review of the project including mitigating factors. Through the section 10 process, all applications for permits authorizing the taking of listed species must be noticed by the Service for at least a 30-day public comment period. The use of credits from an established bank to mitigate actions in a HCP will require a permit application, notice, and opportunity for public comment.

If approving the bank agreement is controversial, the Service may want to publish in the Federal Register advance notice of its intent to do so and invite public comment on the proposed agreement. If there are significant public concerns about the design or operation of a conservation bank, it is better to discover them before approving a banking agreement than afterward.

D. Long-Term Management and Monitoring

1. Management

Incorporating management into the bank agreement is key to the bank's success. With few exceptions, listed species and their habitat cannot be conserved without management of the conservation property. An active management program may consist of halting and removing illegal trash dumping, preventing trespassing that might include off-road vehicle use, and/or imitating the natural disturbance regimes that might include prescribed burns. The ultimate goal for any management plan will consist of maintaining the habitat for the continued use by the listed species conserved on site.

The amount of credits earned by a bank and available for sale to Service Area projects for mitigation are *implicitly* contingent on the banks exercise of appropriate management to safeguard in perpetuity the species or habitat conservation values upon which the credits are based. This may require a range of management practices and responses, including those customarily identified as adaptive management practices. The choice of management strategies and the responsibility for engaging them to meet bank goals reside with the bank sponsor. As a general rule, species or habitat conservation value outcomes (e.g., numbers of nesting pairs and family groups, or enhanced or created habitat) not the implementation actions that are causal to those outcomes and values are the standards by which the Service will evaluate banks and authorize issuance and sale of mitigation credits. In cases of phased development, banks that perform and produce good results earn more credits, and banks that perform poorly and produce inferior

results earn fewer credits. Such an outcome-based management framework provides a robust, market-driven incentive for bankers to engage appropriate management practices and to take all necessary action to safeguard the conservation values that constitute the bank's permanent capital. While conducting management activities on the bank, the bank owner should be cautious not to degrade the status of other sensitive species.

Management of conservation banking areas can also include other non-mitigation related activities which involve public access. If sound professional judgment is exercised in determining the compatibility of a particular use in a particular bank area, there is no reason to exclude the public from these areas. Exercise of common-sense consideration of the biological constraints, public safety, and conflicts between uses and compliance, can result in a property that satisfies the habitat requirements of the species protected, while providing enjoyment and education to the public. While each mitigation bank will have its own set of constraints, this guidance is intended to encourage public access where it is appropriate and does not impinge on the primary function of habitat preservation.

2. Monitoring

Monitoring is the responsibility of the conservation bank. The scope of the monitoring program should be commensurate with the scope of the conservation actions undertaken by the bank. Biological goals of the bank provide a framework for developing a monitoring program that measures progress toward meeting those goals. The appropriate protective measures and level of monitoring will vary by individual circumstance, and an effective monitoring program should be sufficiently flexible to allow modifications, if necessary, to obtain the appropriate information. Monitoring provisions to measure and assess habitat protection, restoration, or creation activities should be included in the conservation banking agreement. Those provisions will include components to: (1) evaluate compliance based on current levels of credit authorization; (2) determine if biological goals and objectives are being met; (3) provide feedback information for subsequent management changes and adaptations, including remedial actions if necessary; and (4) substantiate and authorize additional increases in bank credits resulting from habitat restoration or creation activities, including phase-in of additional bank lands.

The monitoring program will be conservation bank-specific and will be based on sound science. The monitoring methods and standards should be structured to compare the results from one reporting period to another period, or to compare different areas within the conservation bank. Monitoring should be conducted at time intervals appropriate to the bank's management strategy. Monitored units should reflect the units of measurement associated with the biological goals (e.g., if a biological goal is in terms of numbers of individuals, the monitoring program should measure the number of individuals). Standard survey or other previously established monitoring protocols should be used. Though the monitoring for each ecosystem and each situation may differ, some factors that may be important to monitor include vegetative growth, the presence of invasive species (both plant and animal), water quality, and listed species presence. Although the specific methods used to gather necessary data may differ depending on the species and habitat types, monitoring programs should use a multi-species approach when appropriate. In summary, the monitoring measures must be clearly identified in the bank agreement and they should be commensurate with the conservation goals of the bank.

To determine the level of success and identify problems requiring remedial action, the bank sponsor is responsible for monitoring the conservation bank in accordance with monitoring provisions identified in the bank agreement, and approved by the Service. The parties to the agreement should establish a CBRT that oversees the establishment, use, and operation of the conservation bank. Monitoring reports should be submitted to the CBRT in accordance with the terms specified in the bank agreement.

3. Remedial Actions

Every conservation banking agreement must include provisions for a dispute resolution process applicable if the owners of the conservation bank fail to meet their obligations under the conservation banking agreement. The dispute resolution process must also provide a method for disposal of the property to a third party capable of continuing the management of the property for species protection in the event of the current owners inability to continue the operation of the bank for any reason. If necessary, a bond equal to the present value of the management costs may be posted or some other mutually agreed to form of surety may be used to ensure performance. The Agreement must contain provisions for contingencies that a prudent man would plan for, however, not every single possible contingency need be addressed. The bank should not be held responsible for offsetting acts of nature that are unforeseen, or foreseeable but unpredictable, such as earthquakes, floods, or fires.

The conservation banking agreement will stipulate the general procedures for identifying, implementing, and funding remedial measures at a bank in the event of unexpected contingencies (fires, floods, etc.), particularly after credits have been sold by the bank. Contingencies that occur prior to the sale of credits may result in the temporary suspension of the recognition of those credits, pending full or partial remedial action. These remedial measures will be based on both information in the monitoring reports and the Services on-site inspections. The Service, in consultation with the bank sponsor, will decide on the need for remediation.

4. Funding Assurances

The bank agreement must identify and include a requirement for adequate funding to provide for the conservation bank's perpetual operation, management, monitoring, and documentation costs. Therefore, the amount of funding that will be necessary for the ongoing management program should be clearly articulated in the bank agreement. If the incentive/outcome based system is used, the funding to maintain the increased values on the site, on which an increase in credits is based, must also be assured.

The bank agreement should discuss the funding assurances for activities, including habitat management, taking place before, during, and after the sale of credits. A management plan should be prepared to help determine the appropriate amount of funding. The management plan should include the activities necessary to implement the biological goals and objectives. Funding for the start-up of the management program should be separate from the requisite endowment for ongoing actions. These initial costs may include up-front costs to the bank owner, including, but not limited to: purchase of the habitat, any enhancements or clean-up required, and property taxes. Additionally, there may be consultant or legal fees associated with developing and managing the conservation bank.

Since the management of the bank will be in perpetuity, a good strategy for long term funding is to establish a non-wasting management endowment (i.e., a fund that generates enough interest each year to cover the costs of the yearly management). This endowment could be established by including the cost of management into the price per credit. As credits are sold, an agreed-upon portion of the proceeds can be deposited into a non-wasting endowment fund or escrow. The size of the required endowment will depend on certain factors that could include the amount of habitat associated with each credit, the land management activities, the amount or degree of habitat restoration needed, the "risk" of such restoration failing over time, the rate of inflation, and the interest rate. For example, low interest rates and a significant active management of the bank lands will require a larger endowment. As a contingency, a time limit should be established for full funding of the non-wasting endowment. The bank owner may have to supplement the endowment at the end of the time limit, if all of the credits have not been sold.

It may also be possible for the conservation bank to support certain agreed upon revenue generating activities (e.g., bird watching, hiking, grazing, etc.), if these activities do not conflict with the conservation goals of the bank or the intent of the compensation for impacts (e.g., in certain ecological situations, grazing may be a needed management tool). Such monies may be held in escrow or other long-term money management accounts to insure they are available when needed.

E. Establishment of the Conservation Bank

A conservation bank agreement is a legal agreement between the conservation bank owner and a regulatory agency such as the Service or other participating State and/or Federal agency that identifies the conditions and criteria under which the bank will be established and operated. The agreement contains information on the exact legal location of the bank and its Service Area, how credits will be established and managed, and how the bank will be funded, managed, and protected in perpetuity. It will deal with issues such as allowable activities and access, and it will identify requirements such as environmental contaminants surveys and appropriate monitoring programs. The conservation bank agreement itself, once completed, should be signed by the Regional Director.

1. Management Plan

Conservation banking agreements must include a management plan identifying any habitat or other management activities that will be needed, the endowment necessary to carry out such management in perpetuity, activities allowed to occur on the lands, and monitoring and reporting requirements for management objectives. The bank manager is responsible for fulfilling the obligations of the final management plan. Therefore, it is important to accurately estimate budget needs up-front. If an increase in credits through management actions have been given the management plan should be updated to reflect the new management needs on the bank. The conservation bank management plan should at a minimum discuss the following issues:

1. Property description, including geographical setting, adjacent land uses, location relative to regional open space plans, geology, and cultural or historic features on-site.
2. Description of biological resources on-site, including vegetation map.
3. Identification of activities allowed and prohibited on the conservation banks land.
4. Identification of biological goals and objectives for the bank.
5. Management needs of the property, including control of public access, restoration or enhancement of habitats, monitoring of resources, maintenance of facilities, public uses, start-up funding necessary, budget needs and necessary endowment funds to sustain the budget, and yearly reporting requirements. Any special management requirements that are necessary to implement the biological goals and objectives of the bank should also be discussed in detail.
6. Any monitoring schedules and special management plan activities, including adaptive management practices.
7. Any decision trees or other structures for future management.

2. Agreement

The main components of a bank agreement are listed below. Because each conservation bank is unique, additional items not listed here may be requested for inclusion in the bank agreement by one or more of the parties as needed. When defining the terms of the bank agreement, keep in mind that both parties' implementation and involvement in the conservation bank will be governed by these terms, unless the conservation bank is further amended by agreement of both parties.

1. A general location map and legal description of the property, including GPS coordinates if possible.
2. Accurate map(s) of the bank property on a minimum scale of 7 minutes U.S. Geological Survey quad map or finer scale, if available.
3. Name of the conservation bank.
4. Name of the person(s)/organization(s) to hold fee title to the conservation bank.
5. Name of the person(s)/organization(s) who will have management responsibility for the conservation bank and for how long. This entity must have demonstrated experience in natural lands management.
6. Name of the person or entity who will hold a conservation easement on the property.
7. Preliminary title report indicating any easements or encumbrances on the property, including Native American hunting, fishing, and gathering rights. This information should be supplied early in the bank evaluation and development process to ensure that the conservation bank's goals are compatible with other current or planned activities on the property.
8. An enumeration of the types of potential activities that may include public access and that are compatible with the property's primary function as habitat for species.
9. A description of the biological value of the bank, including habitats and species. This may include a vegetation map and biological resources inventory.
10. Number and kind of conservation credits within the bank. Final credit numbers and any constraints on types of credits to be sold will be determined by the Service in accordance with a methodology clearly set forth in the agreement.
11. An accounting system to track credits, funding, and other reporting requirements.
12. Description of the Service Area of the bank. The appropriate Service Area will be determined by the Service and with the bank owner/manager.
13. Description and delineation of each bank phase, if more than one phase is proposed. The description will include phase boundaries, the number of conservation credits associated with each phase, explanation for why the use of phases is preferred, and the agreed upon process for terminating the bank prior to the implementation of all phases.
14. Compliance with applicable State and Federal laws such as State endangered species acts.
15. Results of a Phase I hazardous materials survey for the property.

16. A review of mineral and water rights associated with the property.
17. Discussion of any prescriptive rights on the property (e.g., road access, etc.),
18. An agreement to accurately delineate in the field all boundaries of the bank property, including any bank phases, and construct any required fences before the first conservation credit is sold, fee title transferred, or conservation easement granted.
19. An agreement to remove any trash, structures, or other items on-site that would otherwise reduce the long-term biological value of the site before the first conservation credit is sold, unless otherwise agreed to.
20. Provisions for the Service to enter the property for inspections, quality control/assurances and other duties as needed.
21. Performance standards that must be achieved.
22. Contingency management, funding, and ownership plans in the event that the bank owner and/or manager fails to fulfill the obligations as listed under the bank agreement and management plans, including an applicable dispute resolution process to address these contingencies.
23. A management plan for the bank property.

III. Definitions

For the purposes of this guidance document the following terms are defined:

Bank Sponsor - any public or private entity responsible for establishing and, in most circumstances, operating a conservation bank.

Conservation Actions - the restoration, enhancement, or preservation of species habitat for the purpose of reducing adverse impacts to listed species populations.

Conservation Bank - a site where habitat and/or other ecosystem resources are conserved and managed in perpetuity for listed species expressly for the purpose of offsetting impacts occurring elsewhere to the same resource values.

Conservation bank review team - an interagency group of Federal, State, tribal and/or local regulatory and resource agency representatives that are signatory to a bank agreement and oversee the establishment, use, and operation of a conservation bank.

Conservation Easement - a recorded legal document established to conserve biological resources in perpetuity, and which requires certain habitat management obligations for the conservation bank lands.

Credit - a unit of measure representing the quantification of species or habitat conservation values within a conservation bank.

Endowment Fund - an investment fund maintained by a designated party approved by the Service as a non-wasting endowment to be used exclusively for the management of the conservation bank lands in accordance with the management plan and the conservation easement.

Debit - a unit of measure representing the adverse impact to a listed or sensitive species at an impact or project site.

Enhancement - activities conducted in existing species habitat, or other resources, that increase one or more ecosystem functions.

Fee title - a fee title estate is the least limited interest and the most complete and absolute ownership in land; it is of indefinite duration, freely transferable and inheritable.

Management Plan - means the plan prepared to manage the conservation bank to, at a minimum, maintain the listed species value on the bank. This includes on-the-ground management activities, funding, and monitoring and reporting requirements.

Non-wasting management endowment - an account that generates enough interest each year to cover the costs of the yearly management.

Off-site conservation - conservation actions occurring outside the boundaries of a project site.

On-site conservation - conservation actions occurring within the boundaries of a project site.

Preservation - the protection of existing ecologically important habitat or other ecosystem resources in perpetuity through the implementation of appropriate legal and physical mechanisms.

Restoration - reestablishment of ecologically important habitat and/or other ecosystem resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

Service area - the geographic area (e.g., watershed, county) wherein a bank can reasonably be expected to provide appropriate conservation benefits for impacts to habitat and off-site impacts can be offset by purchase of credits in the bank. The geographic area for which a conservation banks credits may be applied to offset debits associated with development activities.