



Conserving Texas Land For Future Generations

Myths and Facts

About

The Texas Agricultural Land Trust and Conservation Easements

The Texas Agricultural Land Trust was founded and is run today by landowners who understand what it means to own and operate a farm or ranch. Concerned that Texas is losing its prime agricultural lands *forever* to fragmentation and development, these folks----many of whom previously opposed conservation easements----examined how to make them work for farmers and ranchers. With guidance from organizations like the Colorado Cattlemen's Agricultural Land Trust and the Wyoming Stock Growers Ag Land Trust, these skeptics came to understand that a conservation easement is a negotiated document and that the landowner has considerable flexibility to adapt it to his or her family's goals and needs.

Today TALT's mission is to serve as a resource for the landowner who *voluntarily* chooses to place a conservation easement on his or her farm or ranch. Typically this person is motivated by a love of the land; by a desire to see it stay in agriculture or to conserve its native wildlife habitats; and by the hope of passing his or her legacy down to future generations.

TALT recognizes that conservation easements aren't for everyone. But for those who are interested, we endeavor to provide information, to separate fact from fiction. The following is our effort to dispel many of the myths surrounding conservation easements in the hopes that a landowner can make up his own mind whether one is right for his land and his family.

MYTH #1: *"You are like a serf or tenant and the land trust has just become your landlord controlling all that you do on your own land."*

FACT: Conservation easement donors retain the right to sell, lease, borrow against, bequeath and manage their land. The easement holder does not control all that you do on the land.

Conservation easements do place restrictions on the land that are mutually agreed to by the landowner and the land trust. **DO YOUR HOMEWORK.** The landowner chooses the land trust; the landowner also negotiates the terms of the easement. Anyone considering a conservation easement should hire experienced legal counsel to ensure that an easement meets the needs and desires of your family, and should not sign an easement that does not.

MYTH #2: *"Selling is not really an option because no one will buy it with those mandatory management restrictions."*

FACT: If your motivation is to develop your land, a conservation easement is not for you. If your motivation is a desire that your children, grandchildren and great-grandchildren continue to farm, ranch, hunt and enjoy the land, then you might consider an easement. Talk to land trusts about their mission: Each one is different. TALT's mission is to keep land in agriculture and open space, and in private hands. As a result, we don't involve ourselves with day-to-day management decisions. Make sure you're comfortable with the management restrictions that you agree to.

MYTH #3: *"Your land will likely end up in the hands of the federal government."*

FACT: Only if you let it. Have your attorney check the document carefully. For donated easements that are held by private non-profit organizations like TALT, nothing in an easement document should provide for a transfer to the federal government.

MYTH #4: *Conservation easements prevent any appreciation in value and leave the landowner with nothing but title to the land, the ability to prevent trespass, and the privilege of paying taxes.*

FACT: A conservation easement does affect appreciation in value, which can benefit those who are faced with an estate tax burden. A conservation easement should be pursued only when it fits a landowner's goals. (See MYTH #2 above.) If negotiated properly, a conservation easement protects the conservation values of the property (water, wildlife, open space, etc.) while allowing the landowner to continue to graze, hunt, lease, bequeath, sell and enjoy the other benefits of ownership.

MYTH #5: *The holder of the easement becomes the dominant owner of the property, the managing partner of the owner's land, and can make any decision regarding its management.*

FACT: The holder of a conservation easement does not become a managing partner with the owner and cannot make decision regarding management unless stipulated in the conservation easement agreement. When there is a conflict between the terms of the easement and what the landowner may want to do, yes, the easement prevails just as in any other real estate agreement. But again, it all depends on what is negotiated in the document. The land trust can only do what is spelled out in the easement document. One of TALT's guiding principles is that the landowner knows best how to manage their property, and that we do not interfere with day-to-day management.

MYTH #6: *"The landowner, in the agreement, promises never to perform any act 'inconsistent with the purposes of the conservation easement.' This becomes extremely important in the future because the Land Trust may decide to change the priorities or the 'conservation purposes' of the easement and has the sole discretion as to what is required of the landowner and the landowner is at the mercy of any changes made to the easement."*

FACT: It is true that the landowner promises to manage his or her land in a way that is consistent with the purposes of the conservation easement. If the conservation easement is negotiated properly, with the assistance of experienced attorney, those purposes support the landowner's goal for the property and the needs of his or her family. The easement holder (land trust) cannot legally change the terms of the conservation easement agreement once it is signed.

MYTH #7: *"The holder of the easement can, at any time, transfer the conservation easement to a third party. However, it can only be a government entity or another land trust and they then become the partner in your land and have sole discretion as to what can and cannot be done on your land."*

FACT: The easement document spells out the terms for a transfer of an easement in the event that a land trust ceases to exist. The landowner should pay careful attention to the terms that are negotiated. TALT is committed to keeping land in private ownership; our guiding principles prohibit us from taking easements that will end up in public hands.

MYTH #8: *"Any third party (normally another environmental organization) can enforce the terms of the agreement by taking the landowner to court to have the easement enforced. If, in the future, someone doesn't like the irrigation practices on a farm that has a conservation easement and it is determined not to be consistent with the conservation purposes of the easement, a third party can use the court system to stop those farming practices."*

FACT: In cases where third parties have tried to impose enforcement on a conservation easements, the Courts have consistently denied standing to bring enforcement where it is not specifically granted, meaning that only named holders in the restrictions have any right to enforce them. For more information, please see:

<http://www.landtrustalliance.org/conservation/conservation-defense/conservation-defense-news/trusteeswin>

MYTH #9: *"A conservation easement can be condemned and used to replace (mitigate) habitat being destroyed by development or a government agency that is building a road or a transmission line. In today's environmental laws, if habitat of an endangered species is being 'taken' (destroyed), replacement habitat must be found (mitigated) to replace it. There are computer lists or databanks called 'mitigation banks' that store information about where specific kinds of habitat exist created from conservation plans required under conservation easements. If*

you have a conservation easement on your land, chances are you are part of a mitigation bank and your land could potentially be condemned for mitigation purposes."

FACT: Any land, whether it has a conservation easement on it or not, can be condemned. The downside to conservation easements, especially in areas of dense development, is that they are designed to protect open space, and often it is cheaper for a utility company to go through that open space. A landowner should carefully consider this possibility when deciding to place a conservation easement on his or her property.

MYTH #10: *"If the government or land trust holding the easement decides to purchase the remaining estate and own title to the land outright, the conservation easement vanishes."*

Fact: A conservation easement "runs with the land," regardless of who buys the land. Nothing in a conservation easement, if negotiated properly, will force the landowner to sell out. He or she still owns title to the land and can sell as he or she deems fit. The new owner must observe the terms of the easement. TALT does not hold fee title to any land.

For more information on the Texas Agricultural Land Trust, please visit www.txaglandtrust.org, or contact Blair Fitzsimons, Executive Director, bfitzsimons@txaglandtrust.org or 210-826-0074.