



PROTECTING THE INVESTMENT: CONSERVATION EASEMENTS AND CONDEMNATION

The state of Texas leads the nation in land devoted to farms, ranches, grasslands and forests. Our rural lands provide abundant habitat for our wildlife, food and fiber for our communities, while benefitting water quality and quantity for all Texans. In fact, these lands provide the natural resources that will sustain our future generations.

These lands provide substantial economic, environmental and recreational resources that benefit the state's population. With over 95% of our state in private ownership, Texas depends on working in partnership with private landowners to accomplish its land and water conservation goals. To protect these resources, the state of Texas has adopted a policy to encourage and support land protection through the use of conservation easements. These easements, frequently held by land trusts and government agencies, limit the future commercial development and use of land in order to conserve its important attributes. Land trusts in Texas have protected over 1.5 million acres of land in Texas to ensure that these natural resources are available for future generations of Texans.

The state of Texas first adopted the policy supporting conservation easements in 1983 with the adoption of the conservation easement enabling statute. The policy to protect and preserve conservation easements was reinforced by the legislature in 2005, by providing that easements purchased under the Texas Farm & Ranch Lands Conservation Program are shielded from eminent domain absent a finding of "no feasible and prudent alternative."

Whether established through landowner donation or by purchase of development rights, the public has a significant and meaningful investment in the more than 800,000 acres of land in Texas protected by conservation easements. This investment is made in the form of purchase dollars as well as by federal income tax incentives afforded to the donors. Lands held in easement have been determined to have significant conservation resources of benefit to the public as identified in the Internal Revenue Code and related U.S. Treasury regulations, and they represent a significant investment of staff time and effort contributed by local nonprofit organizations and public agencies over many years.

As the population of Texas continues to grow at historic rates, and our loss of open lands to development continues at an average of 73,000 acres annually*, it is increasingly critical that condemning authorities recognize conservation easement lands in Texas and consider the public investments in these resources early on in their planning. These lands, conserved for their documented natural or cultural resources, represent pristine habitats, waterways, and working farm and ranch lands

*Source: Texas Land Trends, Texas A&M University Institute of Renewable Natural Resources. Annual open land loss (on average) from 1997-2012. (<http://txlandtrends.org/>)

that are vital to our state's economy and way of life. In most cases, the planning or condemning authority should completely avoid intersecting a property encumbered by a conservation easement as a part of the routing of highways, roads, pipelines, transmission lines or other projects. The taking of conserved lands protected by conservation easements should be avoided as a matter of policy, and made only as a last resort, in recognition of the public investment in these lands and the critical role they provide in safeguarding the wildlife, food, fiber, and waters of our state.

Furthermore, conservation easements are a compensable form of property under the Fifth Amendment to the United States Constitution, and as such, the holder of a conservation easement is entitled to just compensation for the taking of the easement-encumbered land. Conserved land should never be considered a low-cost source of property for a condemnation project. Land trusts in Texas will defend their holdings in accordance with the Land Trust Alliance's Standards & Practices, and support their landowner partners in their vigorous defense.

For more information on the Texas Land Trust Council's Conservation Lands Inventory of land trust conserved lands, visit: <http://www.texaslandtrustcouncil.org/index.php/what-we-do/cli>.

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