

## 9.0 Conservation Easement and Stewardship

### 9.1 In General

The conservation easement can be many things. In the City of Dallas, it has the added benefit of being a resource for the conservation of urban woodland and a means of providing relief of tree mitigation associated with new development. It is best used when applied with sustainable development practices where the land resources are considered for conservation and protection during the conceptual design stages. Dallas encourages the protection of sensitive land areas where the older forest stands protect creeks and streams and escarpment areas. The protection of these greenbelts and open spaces can be associated with Parkland Dedication and other means of development and tree mitigation (see Section 3.0). Before we look further into this, let's look at the concept of the conservation easement in general. The LTA is a great resource.

#### LAND TRUST ALLIANCE

<http://www.landtrustalliance.org/what-you-can-do/conserves-your-land/questions>

What is a conservation easement?

A conservation easement is a voluntary legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values. Landowners retain many of their rights, including the right to own and use the land, sell it and pass it on to their heirs.

What are the benefits of conservation easements?

Conservation easements allow people to protect the land they love. They are the number one tool available for protecting privately owned land. All conservation easements must provide public benefits, such as water quality, farm and ranch land preservation, scenic views, wildlife habitat, outdoor recreation, education, and historic preservation.

## 9.2 Regulation

Article VIII.

The conservation easement was initiated in the City of Dallas development code through Article VIII platting regulations. **Section 51A-8.511** allows for the property owner to 'provide an easement on all or part of the property to conserve trees and other natural features, subject to acceptance by the city, to the city or jointly to the city and a nonprofit association dedicated to the conservation of land.'

There are two main distinctions to this process which differ from Article X standards:

- The grantor has the option of receiving a property tax benefit on the assessed value of the conservation easement area.
- The conservation easement should be accessible to the public for walking, upon trails if the area exceeds 30 acres, unless this activity poses a risk to endangered species.

Article X.

The conservation easement in Article X was initiated to provide the added benefit of a process for relieving development-related tree mitigation associated with the removal of trees for construction. The offset for the owner may be that certain tax benefits are no longer applicable when the purpose of the easement is for the relief of a city mitigation requirement. Also, public access to the site can be controlled through a preservation strategy determined acceptable to both the grantor (the owner) and the grantee (the City of Dallas). The details of the City of Dallas Article X conservation easement should be reviewed with your own legal counsel for decisions of land use and for discussing items related to the IRS or state regulations.

The process for creating a conservation easement for mitigation reduction is applied in tandem with the building permit processes, or may be completed prior to permitting. The timing of the mitigation associated with conservation easements is subject to the Article X regulations in Section 51A-10.132. The determination of how mitigation is resolved is discussed herein.

In 2018, the conditions for the procedure of creating a conservation easement, and for the manner of determining tree mitigation relief, were amended to encourage more use of the conservation easement to protect more suitable city woodland, and to encourage more sustainable development efforts. For the purposes of mitigation, the new provisions compared the easement area to the development impact area (DIA):

**Conservation Easement Area**

**Development Impact Area**

Protected trees with combined diameter = or > Classified diameter inches for which replacement tree credit requested.

**AND**

Easement area must be a minimum of 20% of the size of the development impact area.

## Ordinance

51A-10.135: (f) Conservation easement. Tree mitigation requirements may be reduced by granting a conservation easement to the city in accordance with this subsection.

(1) The conservation easement area must contain protected trees with a **combined diameter** equal to or exceeding the **classified diameter inches** for which replacement tree credit is being requested.

(2) The conservation easement area **must be a minimum of 20 percent of the size of the development impact area** on the tree removal property and **must be:**

(A) configured primarily for **urban forest conservation and preservation** by protecting natural topography, waterways, forest vegetation, and wildlife habitation; and

(B) a suitable size, dimension, topography, and general character for its intended purpose.

(3) No portion of the conservation easement may be narrower than 50 feet in width.

(4) A conservation easement must have frontage on an improved public street or have public access through private property to a public street.

(5) The city manager is authorized to accept and approve on behalf of the city a conservation easement to conserve trees and other natural features, upon:

(A) approval as to form by the city attorney;

(B) submission by the applicant of a metes and bounds property description prepared by a licensed surveyor; and

(C) a determination by the building official that the easement area is suitable for conservation purposes, based on:

(i) the submission of **baseline documents** prepared by a qualified professional describing the property's physical and biological conditions, the general age of any tree stands, locations of easements and construction, and the conservation values protected by the easement;

(ii) the likelihood that the proposed conservation easement area would preserve vegetation on a parcel **otherwise attractive for development**;

(iii) the overall health and condition of the trees on the conservation easement property, and the extent of invasive and exotic plants on the property and a strategy to manage the population;

(iv) the suitability of the area as a wildlife habitat;

(v) other unique features worthy of preservation, e.g. water channels, rock formations, topography, or rare herbaceous or woody plant species; **and**

(vi) the preservation of undeveloped areas located in a flood plain on a building site before and after construction, except as authorized by the director for engineering infrastructure.

(6) The conservation easement may be structured to be monitored and managed by a **nonprofit association** dedicated to the conservation of land, with the city as a joint grantee having the right, but not the duty, to monitor the management of the conservation area.

(7) The city manager may not accept a sole or joint conservation easement on behalf of the city, unless and until the owner provides the building official with:

(A) a **tree survey** as set forth in Section 51A-10.132, or an estimate of the caliper and type of protected trees documented in a manner determined to be reasonably accurate by the building official, **or a forest stand delineation (Appendix G)** verified and approved by the building official; and

(B) a **preservation strategy** for the conservation easement area.

(8) No person may place playground equipment or park amenities in a conservation easement area unless the building official has made a written determination that the amenities indicated on a site plan are unlikely to be detrimental to the conservation easement area.

(9) Conservation easement areas must be located wholly within the Dallas city limit.

## 9.3 Documentation

### Conservation easement template

The approved form of the conservation easement can be obtained through the City of Dallas attorney's office and in this section of the manual.

### Preservation strategy

The document is applied as an exhibit to the conservation easement deed record when filed with Dallas County. The preservation strategy provides a narrative to all interested parties on limitations of uses authorized by both the grantor and grantee (City of Dallas) that may not be spelled out in the main body of the deed restriction.

The Preservation Strategy spells out the administration duties for the preservation and protection of the conservation values of the easement. These include:

- City and state regulations
- The perpetuity of the easement and the strategy
- Permissions for use, including walking trails, flood control structures, utilities, pedestrian uses, emergency city access, fire and invasive plant suppression, etc.
- Prohibited activities and uses and hours of operation
- Conservation easement area designation by plat, contract requirements, stormwater management and trail design, etc.

### Legal description

The legal description and depiction of the easement property must be provided for approval by the department's GIS division prior to city staff approval. The easement boundaries will be recorded in the deed file as the first exhibit and will be recorded on the city's GIS zoning maps under Building Inspection.

### Baseline documentation

The core of the baseline documentation for the conservation easement is the forest stand delineation. The prescription for this should include:

A thorough narrative of a description of the conservation easement and surrounding area, with information on physical and biological conditions for the property;

The tree survey or forest stand delineation which best describes the details of the property. The FSD will be prescribed in consultation with the city arborist.

The general age of tree stands, stratified by species, slope, elevation, and age;

The location of easements and construction, past and future;

The conservation values of the property;

The overall health condition of the trees;

The current and potential impact of invasive and exotic plants, and recommendations on how to manage them;

The capacity of the land for wildlife habitat;

Unique aspects of the property, including streams, slopes, flora and fauna, and cultural and historical significance;

The location of floodplain or escarpment or other restrictive areas not suitable for development.

## 9.4 Procedure

In preparing for a conservation easement for tree mitigation, first determine the purpose and function of the easement. The scope of the easement should be to design it for conservation purposes and to have the dimensions and woodland capacity to achieve its goal. Suggestions before pursuing this task might include:

- Consider if more land can be attained to hold in conservation to make ready the development area needed for the proposed use. A heavily wooded stand is not subject to tree mitigation if the trees are safely retained on the land.
- Determine if the incentives for sustainable construction would help benefit the costs of the development.
- Determine if the conservation easement can relieve a portion of the overall tree mitigation required while implementing other options of Section 51A-10.135.
- Review the land area with a land resource consultant for options of protecting sensitive areas and where development should be centered to have a minimal site impact.
- Assure there are no expectations for future use of the land to be set aside into an easement. Demonstrate that the area is large enough to achieve the purpose.

### Determining the level of reduction of mitigation

The assessments may be done in the time prior to submitting for plat, city contracts, and platting. The FSD should be among the first site surveys completed once a property is prospected for development.

Contact the city arborist to discuss the initial objectives and to discuss options in how to analyze the property. We recommend you keep the city arborist in communication through the process and on a regular basis.

The site analysis by tree survey and FSD will provide general assessments of the distinct land areas for development and preservation. The site analysis may determine initial perceptions about the property may not hold true and that different considerations may be made for that section of land.

If the 'old-field succession assessment' is applied, some areas of the property may be found to not require tree mitigation. This may impact decisions on developing and preserving some areas.

Once the analysis is completed, it is recommended that this data is used throughout the planning stages for design of the development. Determine if any of the incentives of Article X can be made applicable to your construction plans.

#### Application for the easement

Submit the baseline documents and all other related information to the city arborist for review. Show the areas that are floodplain or escarpment and the proposed conservation easement. The city arborist will consult with other city officials on the proposed dimensions of the easement while also reviewing the baseline document contents for preservation suitability. If the preservation criteria assessments are accepted, then the process may continue.

The boundary description of the property must be forwarded to the city arborist who will relay the information to the GIS division for confirmation of closure.

A copy of the conservation easement template will be made available for the owner to work with their team to form up the deed restriction. Once the easement document and a preservation strategy are completed, the owner should forward the documents to the city arborist who will provide it to the assistant city attorney for review. The city attorney's office will return the documents for final editing and for preparing for signatures of the grantor.

The grantor must complete the final document with all exhibits and provide the required signatures. The document is then submitted to the building official who will sign and forward to the assistant city attorney and the city manager for final signatures.

Once the signatures are completed, the document is returned to the grantor who then files the conservation easement into the County deed record.

When the filing is completed, two copies of the stamped conservation easement document must be provided to the building official. The building official will provide written notification to the grantor of the completion of the measure of tree mitigation applied to the conservation easement for the specific project. The information will also be recorded in the applicable building permit record.

**The conservation easement is intended to be retained in perpetuity. If there is any consideration that a decision to place a portion of any property under an easement may be retracted in the future, then the conservation easement should not be considered for that area. An extinguishment of a conservation easement will likely require the action of a district court, as stated under the requirements of the agreed upon deed restriction.**

## **9.5 Managing the conservation easement**

Each conservation easement is unique for its size, location, natural condition, and purpose. It's important that the preservation strategies and selected uses of the land area are well-considered before completion of the easement process. Amendments are possible but requires the consent of the City Council.

Providing for the regular monitoring and management of the land should be considered so that issues pertaining to city code violations such as dumping can be properly handled. The grantor has the primary responsibility for the protection of the land area and the continued application of the preservation strategy.

As with any conservation easement, for whatever purpose it is created, there are resources to help the landowner to make proper decisions in maintenance. Consult with the city arborist before implementing any significant management activities on the site, or conducting any work which may conflict with the preservation purposes of the conservation easement.

The following provides guidelines for developing a management plan for a property that is designated a Conservation Easement.

The Management Plan is based on the best available information, and provides a foundation for long-term adaptive management of the property and its resources. It is a working document which will change and evolve with the Property and should be updated at least every five years. As recommended actions are implemented, and as objectives change, the Management Plan should reflect these changes.

Although certain items are not applicable to a small easement, the process for a management plan will help in keeping the property secure and may help in setting a strategy.

- *Information from BLM.Gov*

#### Resource Management Considerations

*c) Recreation/Public Access. If outdoor recreation, including public access, and/or education by the public is a priority conservation value, the conservation easement must allow for public access to qualify for a charitable donation (Diehl and Barrett 1988, 243; Small 1997, 5-1). Potential adverse impacts of public access on other conservation values should also be addressed, and in some cases, it may be appropriate to prioritize conservation values in a manner similar to that previously discussed for agriculture. It may be necessary, for example, to identify areas of the property where recreation or public entry is prohibited or where it is a priority (e.g. – keep recreation out of sensitive areas such as wetlands or allow recreation along nature trails, greenways or river banks).*

#### *Stewardship*

*The word “stewardship” encompasses many discrete activities including: monitoring and enforcing conservation easements; actively managing lands to encourage and sustain ecological health and diversity; and engaging a community in activities that sustain the natural resources it values or on which it depends.*

- *One-time start-up costs,*
- *Annual costs, and*
- *Occasional replacement costs.*

*These management costs include capital expenses, staff and partner/consultant/volunteer time.*

*1. One-time start-up costs. When BLM acquires land or an easement interest in land, it needs to take some actions immediately. Possible start-up activities include the following:*

- *Contacting neighbors,*
- *Surveying and posting boundaries and hazards,*

- *Garbage cleanup,*
- *Conducting natural and cultural resources inventories,*
- *Holding a dedication ceremony,*
- *Locating rare species,*
- *Fencing,*
- *Installing gates or cattle guards at trail heads or to block roads,*
- *Trail and parking area construction,*
- *Removal of buildings or known hazards,*
- *Erecting entrance signs,*
- *Preparing maps and aerial photographs,*
- *Preparing a management plan, and*
- *Preparing a project area brochure.*

*These start-up costs listed above are expenditures that are generally one-time costs.*

*2. Annual costs. Most stewardship costs are for annual, reoccurring expenses for monitoring and managing the property. Annual monitoring is recommended. Annual costs might include the following:*

- *Monitoring for compliance, trespass, overuse, hazards, etc.,*
- *Maintenance of facilities (trails, signs, parking areas),*
- *Resource maintenance or restoration,*
- *Records management, and*
- *Administration.*

*3. Replacement costs. Finally, BLM needs to consider replacement costs that occur on a periodic (but not annual) basis. These costs might include replacement, repair, or maintenance of the following:*

- *Brochures,*
- *Trailhead or road barriers,*
- *Equipment purchase and maintenance,*
- *Signs and registration box,*
- *Boundary signs/brushing out boundaries,*
- *Trails, roads, bridges and walkways, and*
- *Buildings and other structures.*

*Replacement costs should be calculated and extrapolated to an annual cost.*

*The costs and workload should be determined both individually (for the specific acquisition) and cumulatively (for multiple easements in a project area for example), if applicable.*

CONSERVATION EASEMENTS – pertaining to Article X Section 51A-10.135.

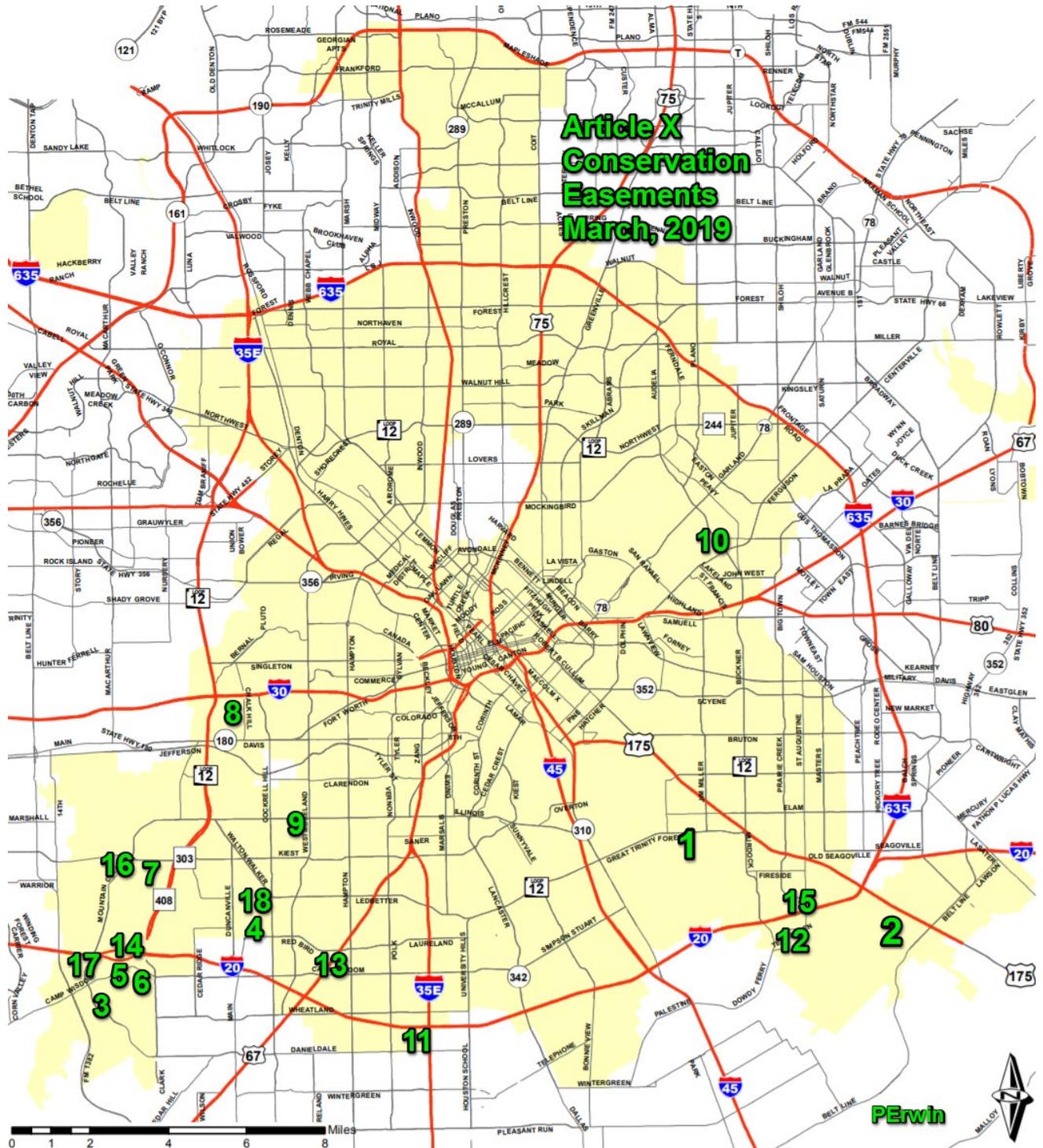
As of March 15, 2019 (map on next page)

1	Murdeaux	16.17 acres	2004
2	CMC South Oak	3.4044 / 0.97 acres	2004
3	Mountain Ridge Estates	2.92 acres	2005 (plat)
4	Paraiso Escondido CUD	2.952 acres	2005 (plat)
5	Forest View #1	6.0299 acres	2005
6	Forest View #2	3.8704 acres	2006
7	Capella Park	7.176 / 32.898 acres	2006
8	DISD Arcadia Park	3.896 acres	2008
9	JNR Development	3.833 acres	2008
10	Ash Creek/Casa Linda Forest	1.7894 acres	2009
11	Glendale Park CJW	1.193 acres	2009
12	Timbercreek/Dowdy Ferry	22.1 acres	2010
13	Concord Church	6.250 acres	2013
14	Courtland Farms	106.32 acres	2014
15	Sandyland	1.311 acres	2015
16	4006 Mountain Creek	15.904 acres	2016
16	First Industrial	21.804 acres	2018
17	First Industrial 1 – 5 Mile Creek	45.037 acres	2018

305.825 acres total

<http://gis.dallascityhall.com/zoningweb/>

Go to 'Building Inspection' in the Legend.



1. Article X Conservation Easements in Dallas. Sites may be found with <http://gis.dallascityhall.com/zoningweb/>