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Texas Wetlands

Plan Update

Government Publications
Texas State Documents

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Governor Signs Texas Wetlands Conservation Plan

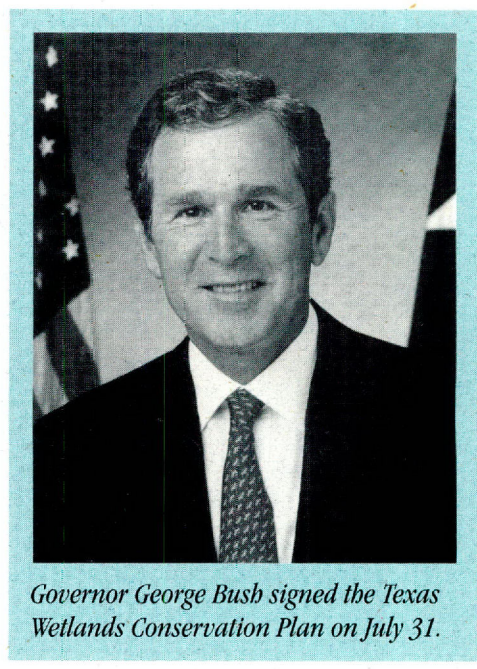
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Copies of the plan now available

On July 31, 1997 Governor George Bush signed a letter supporting the Texas Wetlands Conservation Plan. In his letter, Governor Bush called wetlands conservation an integral part of a sound water policy. He cited the enormous ecological and economic benefits of wetlands, which provide nursery areas for multi-million dollar sport and commercial fisheries, provide critical wildlife habitat, minimize flooding and erosion and support outdoor recreation and nature tourism. The Governor praised the non-regulatory, incentive based nature of the Plan, which invites voluntary private landowner participation in resource management. He was also supportive of the

project's bottom-up, grass-roots approach, in which landowners, business interests, agriculture, conservation groups and governmental agencies worked together for more than a year to develop the Plan. The Governor's signature, in addition to the Parks and Wildlife Commission's approval last April, finalizes the development of the Plan.

If you would like a copy of the Plan, please contact Julie Anderson, Texas Wetlands Conservation Program, Texas Parks and Wildlife, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4328 or fax (512) 389-8058.



Governor George Bush signed the Texas Wetlands Conservation Plan on July 31.

Voluntary Wetlands Restoration Site Registry Now Being Developed

Wetlands restoration in Texas is becoming easier with the help of conservation groups, government agencies, businesses and individuals concerned about the future of the State's natural resources. However, hurdles in the process still exist, especially in finding appropriate restoration sites. Texas Parks and Wildlife recently received a \$60,000 grant from the U.S. Environmental Protection Agency to develop a voluntary registry of private and public lands available for mitigation or restoration. Developing such a registry is one of the Texas Wetlands Conservation Plan's primary recommendations.

Part of this project is to identify, consolidate and prioritize potential wetlands restoration sites on public land. Once this list is complete, the process of matching projects with potential funding sources for wetlands mitigation will be streamlined and critical projects on public lands can be identified.

The other piece of this project is a voluntary Wetlands Restoration Site Registry for private landowners. Landowners in Texas are becoming more interested in restoring or enhancing wetlands to improve hunting or

Continued on page 6



The Straight Facts about Landowner Liability

The leader of a boy scout troop calls and asks if his scouts can spend the weekend fishing and camping on your property.

You are considering leasing your ranch to hunters for the first time.

You want to invite a biology professor from the local college to check your trees for oak wilt.

You are considering charging mountain bikers and bird watchers a daily fee to use your property during the summer.

You want to join the Texas Parks and Wildlife's public hunting lease program.

You find evidence of trespass on property you own near a shopping center, a popular hangout for local teenagers.

You invite several friends to swim in the creek that runs through your farm.

Suppose an accident happens. What is your liability as a landowner? First, let us consider the law as it relates to public access to private land.

Landowners everywhere are interested in their liability as property owners. Thankfully, the past few sessions of the Texas Legislature have done much to assuage landowners' fears and limit the potential for damaging lawsuits. Common law recognizes four categories of individuals entering private land; invitees, licensees, trespassers and children under the attractive nuisance doctrine.

Invitees have an expressed or implied invitation to enter a property. Invitees include business guests such as customers to a restaurant or fee paying hunters. Landowners have the highest legal duty to invitees; they must repair or warn invitees of known dangerous conditions or dangers that would be revealed after a reasonable inspection. However, if invitees are more than 50 percent responsible for causing their own injuries, Texas law negates any landowner responsibility. Dangerous conditions could be anything from a flood prone low water crossing to an open well or mine shaft.

Licensees have expressed or implied permission to enter property, but not for the landowner's financial gain. Social guests fit the category of licensees and landowners have a duty to warn guests or make safe all known dangerous conditions. Landowners are not obligated to do regular inspections for social guests.

Trespassers have neither an invitation nor permission to enter property. Landowners are not bound to issue warnings, inspect their property or repair dangerous conditions for trespassers. However, landowners do not have the right to intentionally injure trespassers, except to protect themselves or their property.

Landowners whose property is near a school or other places where children are likely to trespass have additional considerations. Under the attractive nuisance doctrine, landowners must keep their property safe in these areas. Attractive nuisances can be related to the property's proximity to a place children use, or a feature of the property that is attractive to children, such as a cave, a swimming pool or stock pond.

In Texas a fifth category exists, thanks to the Texas Legislature. The recreational guest category was added to Texas law in 1989 (Chapter 75, Texas Civil Practices and Remedies Code). A recreational guest is anyone that a landowner gives permission to use his or her property for recreation, including fee-paying hunters, school children, mountain bikers or bird watchers. Landowners owe no greater care to a recreational guest than they would a trespasser, provided he or she does not earn more than two times his or her property tax bill from recreational fees (this was changed to four times for landowners with agricultural exemptions beginning September 1, 1997).

Continued on the next page



In 1995, the Texas Legislature capped the amount a recreational guest can recover from injuries sustained on private property, regardless of legal classification and providing the landowner does not earn more than the allowed amount (again, two times property taxes or four times property taxes for landowners with agricultural exemptions beginning Sept. 1, 1997). In addition, the law requires that the landowner have liability insurance coverage equal to the set caps. The caps are \$500,000 for each person, \$1 million for each single incident of injury or death and \$100,000 for each single incident of damage or destruction to property. In the event of a lawsuit, the insurance company would pay up to the cap limits depending on the court's decision, but the landowner pays nothing.

As of September 1, 1997, landowners have even more protection. House Bill 2664 (Section 75.001(3), Civil Practices and Remedies Code), passed by the 75th Texas Legislature, put specific language into the law limiting agricultural landowner liability. Landowners

who invite or give permission to recreational guests to use their property do not assure that the property is safe or owe the person a greater degree of protection than a trespasser. The law also limits agricultural landowners' liability to \$1 million total for each incident, including property damage. Again, this \$1 million would be paid by the insurance company, not the landowner.

Landowners can also use waivers, or legal documents signed by guests, which release the landowner from liability. Waivers must meet certain criteria to be valid; before using a waiver, landowners should consult with an attorney.

For information about landowner liability insurance contact your local insurance agent. The Texas Wildlife Association (TWA), a nonprofit wildlife and property rights advocacy group, can answer more questions about landowner liability. TWA is affiliated with the Independent Insurance Company in San Antonio at (210) 821-5080.

Now let's look at our scenarios:

The leader of a boy scout troop calls and asks if his scouts can spend the weekend fishing and camping on your property. In this case, the boy scouts would be recreational guests and the landowner's liability would be covered by the required insurance in case of an accident.

You are considering leasing your ranch to hunters for the first time. Depending on the total amount earned from hunting leases, hunters could be either recreational guests or invitees. If the property has an agricultural valuation and the landowner only earns four times (two times if the property is not agriculturally exempt) his or her property tax, accidents would be covered by the required liability insurance. If the landowner earns more than the allowed amount, he or she would be required to warn of dangerous conditions and regularly inspect the property. The landowner may also consider using liability waivers.

You want to invite a biology professor from the local college to check your trees for oak wilt. In this case, the professor would be a licensee and the landowner would be required to warn the professor of any known dangers. In the event of a lawsuit, the legal liability limits would apply, providing the landowner has the proper insurance coverage.

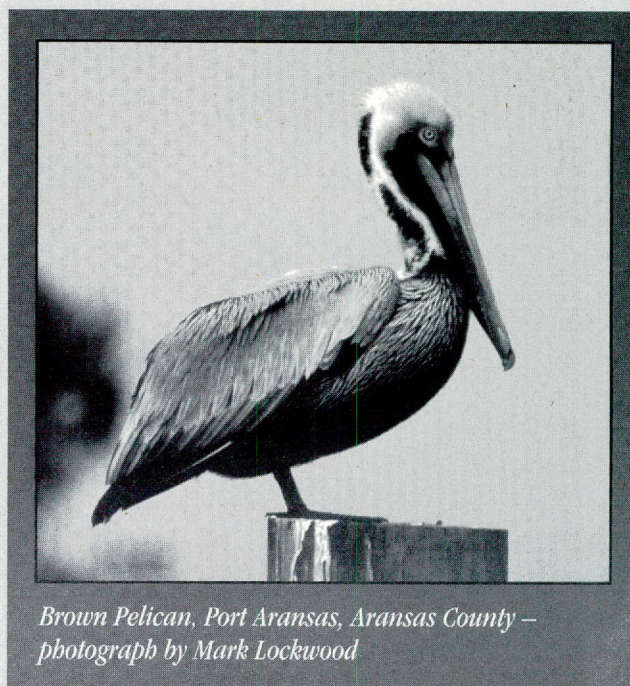
You are considering charging mountain bikers and bird watchers a daily fee to use your property during the summer. Same situation as the hunting lease; landowners should pay attention to their earnings from these activities, have the proper insurance coverage and consider using liability waivers.

You want to join the Texas Parks and Wildlife's public hunting lease program. When a landowner signs up with the Parks and Wildlife public hunting program, the

Department takes on all liability for hunters with the proper permit.

You find evidence of trespass on property you own near a shopping center, a popular hangout for local teenagers. Because the law recognizes that children have an inability to perceive dangerous conditions, the landowner in this situation is required to keep his or her property safe.

You invite several friends to swim in the creek that runs through your farm. In this situation your friends are licensees and you are responsible for warning them of any known dangerous conditions. In the event of a lawsuit, the legal liability limits would apply, providing the landowner has the proper insurance coverage.

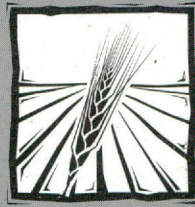


*Brown Pelican, Port Aransas, Aransas County –
photograph by Mark Lockwood*



Brien O'Connor Dunn, owner of Fennessey Ranch and Sally Crofutt, business manager for the ranch

LANDOWNER



profile:

Brien O'Connor Dunn ♦ Refugio, Texas

Texan Brings Home Another National Wetlands Award

Situated along the Great Texas Coastal Birding Trail (site 41) near Refugio, the Fennessey Ranch is a 4000 acre wildlife paradise. Its owner, Brien O'Connor Dunn, is taking advantage of a boom in birdwatching and the outdoors with one of the most aggressive private hunting/ecotourism operations in Texas. Visitors to the Fennessey Ranch can choose from "hummingbird hayrides," birding tours geared to the guest's expertise, river boat trips, fly fishing and a variety of hunting challenges. "Hunting in South Texas has been big business for years, but everybody is watching the results of the Fennessey's birding and nature tourism operation to see if it makes economic sense in other places," explains Dunn.

The Fennessey Ranch has been in Brien Dunn's family for 165 years. Brien is a fifth generation descendant of Tom O'Connor, a hero of the Texas Republic and the youngest participant in the Battle of San Jacinto. Brien Dunn took over the Fennessey in 1984, but it wasn't until 1991 than he decided to market the place for wildlife. "Close to three quarters of the state live in cities half a day's drive or less from my place. I want to reach the

segment of that population who enjoy bird watching, hunting, or who simply want a high quality outdoor experience," says Dunn.

To create this experience, Dunn has restored and enhanced the Fennessey's existing natural habitat, including several wetlands. His first project, the Kaiser Flat, is a 90 acre wetland restoration. The Texas Prairie Wetlands Project, a cooperative program of the U.S. Fish and Wildlife Service (USFWS), Texas Parks and Wildlife, the Natural Resources Conservation Service and Ducks Unlimited, helped Dunn supplement

"I want to reach the segment of that population who enjoy bird watching, hunting, or who simply want a high quality outdoor experience."

Kaiser's water supply and restore a permanent marsh. McGuill Lake, a 200 acre lake with an average depth of 36

inches, was enhanced with the help of a USFWS cost share program. But Dunn's most ambitious project is the Fennessey Flats, currently a 200-acre wetland that will eventually stretch over 700 acres. The Fennessey Flat has tentative approval as a mitigation bank from the U.S. Army Corps of Engineers and the Texas Natural Resources Conservation Commission. Once the project is approved, Dunn will be one of Texas' first private "mitigation bankers." In other words, he will create wetlands habitat in return for future compensation from developers who damage wetlands elsewhere.

Dunn has been successful in part because he is his willing to partner with conservation agencies and private organizations who can assist landowners. "The government is starting to jump on the wildlife bandwagon. That's a good thing because changing land uses is an expensive proposition for most landowners," says Dunn. Besides improving wetlands, Dunn has restored native prairie grasslands, manages his cattle operation for the benefit of plants and wildlife and uses fire to keep invasive species under control.

For all this hard work, Brien Dunn was recognized by the Environmental Law Institute and the Environmental Protection Agency with the 1997 National Wetlands Award for Stewardship. This award, which was won last year by fellow Texan Bunker Sands, honors landowners who demonstrate excellence and dedication in wetlands protection and stewardship. "Brien Dunn is changing the way

landowners look at wetlands and endangered species on their property. In an area where many ranches are being subdivided, the Fennessey continues to thrive by combining traditional revenue with bird watching, photography, hiking, hayrides and educational tours," says Jessica Bennett, the Director of the National Wetlands Award Program for the Environmental Law Institute.

"...my number one goal is to set this place up as a self-sustaining conservation and nature tourism retreat."

Besides the created wetlands, the Fennessey's other habitats include riparian woodlands, coastal grasses and thorn scrub brush. These areas support an incredible array of birdlife including Mottled Ducks, Least Bittern, Purple Gallinule, Marsh Wren and Sandhill Cranes. In fact, the Fennessey has one of



The birdwatching is excellent over Fennessey Flat

the highest bird counts of any place in Texas at over 400 species. In the Fall, the forest along the Mission River is especially attractive to a Texas favorite, the hummingbird. Fall is when the hummingbirds come to feast on Turks Cap, a native plant that grows along the Mission River banks. Those who come to view the birds in action have several options, including a guided boat trip down the Mission River and hummingbird hayrides which take place every Saturday in September and October. In the winter, the Fennessey is nirvana for waterfowl hunters when its skies are filled with tens of thousands of geese and other waterfowl. Both hunters and birdwatchers can take advantage of specialty guided tours to the ranch arranged by the Redfish Lodge on Copano Bay, a place renowned for its sportfishing and lodging amenities, and the Hummingbird Lodge and Educational Center in Rockport.

"Everything we do is for wildlife," says Dunn, "the way people earn their livelihood in my area is changing and I want the Fennessey to be around long

after I'm gone. In fact, my number one goal is to set this place up as a self-sustaining conservation and nature tourism retreat." For its benefit to wildlife and wetlands, let's hope that Brien Dunn is successful.



Site Registry – continued

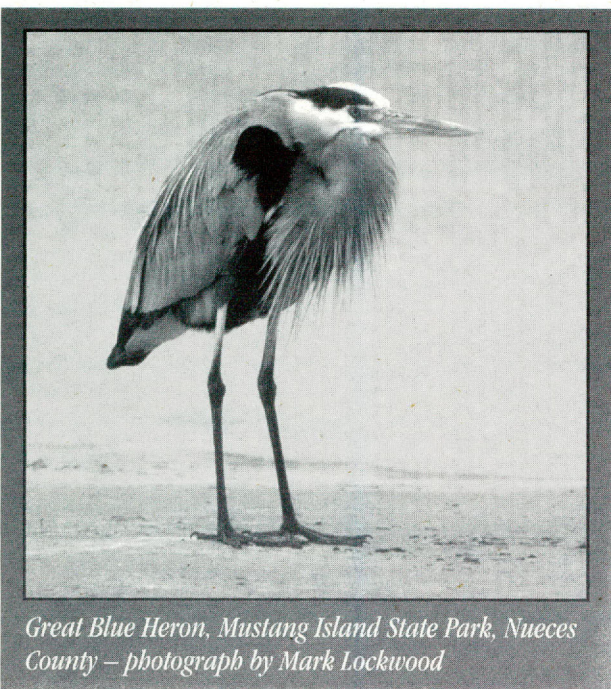
wildlife habitat. Additionally, federal law often requires business entities to restore wetlands to compensate for adverse impacts caused by construction projects affecting wetlands, which is referred to as mitigation. Often these entities do not own property appropriate for restoration projects and must search for places to restore.

This new registry program will function like “want ads,” linking those who do not own land, but need or want to do wetlands restoration, with property owners who have similar goals. Currently these two groups have no formal way of matching need with availability. Using private land for mitigation not only improves the diversity of potential wetlands restoration projects, but can also provide an economic return to landowners. The purpose of this registry is only to identify potential sites for wetlands restoration; it does not guarantee that all registered sites will be restored.

If you would like to list property in the Wetlands Restoration Site Registry or would like more information, please contact:

Julie Anderson
Texas Wetlands Conservation Program
Texas Parks and Wildlife
4200 Smith School Road
Austin, TX 78744

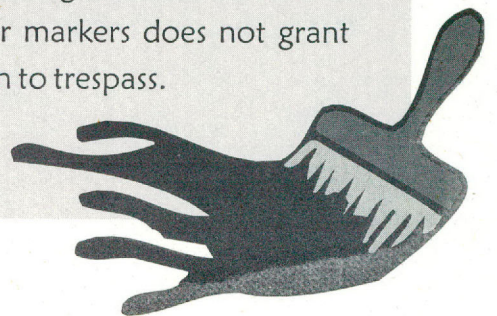
(512) 389-4328
or fax (512) 389-8058



Great Blue Heron, Mustang Island State Park, Nueces County – photograph by Mark Lockwood



A new Texas law allows landowners to mark their property boundaries with a vertical stripe of purple paint. The new law, which went into effect September 1, gives landowners a new option for marking property boundaries that may be helpful in areas where signs are too expensive or impractical. Typically, landowners are hesitant to put up fences or post signs along creek bottoms or river fronts, which serve as natural boundaries for livestock anyway. Now, instead of posted signs, landowners place a vertical stripe of purple paint on a tree or post. The marking must be made between three and five feet above ground, and must be at least eight inches long and one inch wide. If they want to use the new system, landowners are required to post signs at entrances to their property notifying trespassers of the purple markings, however, absence of signs or markers does not grant permission to trespass.



If you are interested in receiving future information about the Great Texas Coastal Birding Trail please contact:

**Great Texas Coastal Birding Trail
c/o Texas Parks and Wildlife
4200 Smith School Road
Austin, TX 78744**

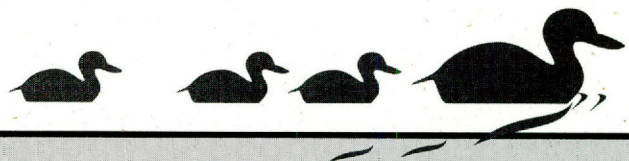


Great Egret, J. D. Murphree Wildlife Management Area, Jefferson County

Forested Wetlands Video Available

Forests of the River Bottom, a video produced by Gwen Mercado of Texas Parks and Wildlife, is now available. The video is intended to give Texans an appreciation of the ecological value of bottomland hardwood forests. "Forested bottomlands are essential to the health of our state's waterways and wildlife," says TPWD Waterfowl Biologist Carl Frentress. For a free copy of this twenty-five minute video, please call the Wildlife Division at (512) 389-4407.

Publications Available



To receive any of the following Wetland Materials, please check the appropriate box and return to: Resource Protection Division, Texas Wetlands Plan Update, 4200 Smith School Rd., Austin, Texas 78744.

Name: _____

Mailing Address: _____

City/State/Zip: _____

- Yes, please add my name to the mailing list.
- No, please remove my name from the mailing list.
- Wetlands Assistance Guide for Landowners
- Wetlands Video
- Private Lands Incentives Brochure
- Texas Wetlands Conservation Plan
- Conservation Easements: A Guide for Texas Landowners

Texas Wetlands Plan Update is produced by Texas Parks and Wildlife's Resource Protection Division. ***We welcome short articles or notices of coming events concerning wetlands or wetlands-related activities.*** Address submissions to Texas Parks and Wildlife, Resource Protection Division, Texas Wetlands Plan Update, 4200 Smith School Rd., Austin, Texas, 78744; or telephone (512) 389-8196.

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