

# A Realtors Guide To the Houston Toad



## **Bastrop County**

Bastrop County is one of the fastest growing counties in Texas and in the nation. As Austin continues to expand and home prices continue to rise, Bastrop County has become a very desirable and affordable submarket. The beautiful topography, central location, and abundance of available land make Bastrop County attractive to developers, as well as residential and commercial buyers. As demands increase for new development, it is important these buyers know that Bastrop County is home to the endangered Houston toad. They need to understand how land development and other planned activities can impact the species, and what they can do to stay in compliance. In addition, buyers who are purchasing more than 3 acres of land and are interested in wildlife management should be aware of the potential tax incentives available to landowners who participate in the long term recovery of the Houston toad.

## **Houston Toad**

The Houston toad is a federally endangered species of amphibian that is found in only 9 counties in Texas. The largest known populations of Houston toads reside in Bastrop County. The United States Fish and Wildlife Service (USFWS) designated approximately 124,000 acres in Bastrop County as critical habitat for the Houston toad. One of the largest and most immediate threats to the species is habitat loss. Construction and other planned activities that disturb the critical habitat of the Houston toad have a high potential for causing harm to the species. **Under section 9 of the Endangered Species Act (ESA), it is against the law to “take” an endangered or threatened species without a permit.**

## **What is “Take”?**

The purpose of the Endangered Species Act (ESA) is to protect and recover endangered and threatened species and the ecosystems upon which they depend. Under section 9 of the ESA, it is illegal for any private or public entity to “take” an endangered species without a permit. To “take” a listed species means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Through regulation, the ESA further defines **harm to include any activity, including habitat modification** that kills or injures a listed species. Property owners, potential buyers, and developers must consider the impact their activities can have on a listed species. They should be aware of the consequences for violating the “take” provision of the ESA and what they can do to insure compliance.

## **What are the Penalties for not Complying with the Endangered Species Act (ESA)?**

The US Fish and Wildlife Service of the Department of the Interior administers the ESA for land-based species. Because the ESA allows both the U.S. Attorney General and private citizens to seek an injunction to prevent the taking of an endangered species, landowners face the prospect of both government and private individual intervention when developing a property that contains a listed species. The USFWS may impose administrative, civil, and criminal sanctions for failure to comply with the ESA. Under the Endangered Species Act, individuals who knowingly take a listed species can be fined up to \$25,000 for each violation or instance.

## **How Can Property Be Developed and Stay Compliance with the ESA?**

Landowners can insure compliance with the ESA by obtaining an incidental take permit. An Incidental take permit allows the landowner to legally proceed with an activity that would otherwise result in the unlawful take of the Houston toad and its habitat. An Incidental Take Permit can be obtained through the US Fish and Wildlife Service (USFWS) or through the Lost Pines Habitat Conservation Plan (LPHCP) in the form of a construction certificate.

## **What is the LPHCP and What do They Do?**

The Lost Pines Habitat Conservation Plan (LPHCP) was developed to manage the long-term preservation, restoration, and management of habitat for the Houston toad in Bastrop County. The plan, under federal take permit (# TE-113500-0) from the U.S. Fish and Wildlife Service, is approximately 124,000 acres of known and potential habitat of the critically endangered Houston toad. The plan provides a framework for promoting the protection and recovery of the Houston toad, while streamlining the permitting process for planned development. The LPHCP offers a simplified alternative process for obtaining an incidental take permit that eliminates the regulatory hurdles involved in seeking a permit directly through the US Fish and Wildlife Service (USFWS). The LPHCP promotes the recovery of the Houston toad through our Conservation Program and Land Management Guidelines. Landowners who are conducting wildlife, agricultural, or forestry activities on their property can participate in the LPHCP by following specific land management guidelines that reduce the risk of harm to the Houston toad. Landowners who are willing to manage their property for the benefit of the Houston toad can join the LPHCP Conservation Program and qualify for a wildlife management tax valuation. Participation in this program does not require a current 1-D-1 open space agricultural appraisal. *Program qualifications and requirements can be found on page 6 of this guide.*

## **How Do I know if a Property is Located within the LPHCP?**

A searchable map is located at <https://www.co.bastrop.tx.us/page/co.maps> under interactive maps, Lost Pines Habitat Conservation Plan. You can also use your camera phone to scan the QR code below. This will take you directly to the searchable map. A physical map is located in the back of this guide.



## Construction in the Houston Toad Habitat

One of the largest and most immediate threats to the Houston toad is habitat loss. Construction and other planned activities that disturb the habitat of the Houston toad have a high potential of causing harm to the species. Property owners can insure compliance with the ESA and minimize development impacts to the Houston toad by permitting and mitigating their projects. Landowners can obtain permitting for small-scale commercial and residential development as well as conservation subdivision development through the LPHCP. Projects that do not meet LPHCP permit requirements or are too large in scope are referred to US Fish and Wildlife for individual consultation.

### Who Needs Incidental Take Coverage (Construction Certificate)?

Participating in the LPHCP is voluntary; however, compliance with the Endangered Species Act is not. Any development or land management activity that could result in take of the Houston toad should obtain an incidental take permit through the LPHCP or USFWS. Whether through the LPHCP or USFWS, incidental take coverage allows landowners to comply with the federal laws and regulation associated with the Endangered Species Act. In addition, it provides assurances through the “No Surprises Policy” that no additional mitigation will be required as long as the landowner fully and completely implements the terms of the permit.

### What Type of Development Can Be Permitted Through the LPHCP?

The LPHCP can provide incidental take permits in the form of construction certificates for activities that are expected to result in permanent habitat loss. These include but are not limited to

- **Single Family Construction** -traditional “stick and mortar”, manufactured homes and cabins for private use
- **Other structures and improvements related to residential use** -garages, sheds, small barns, manufactured home pads, small guest houses, pools, tennis courts, driveways, paths, fountains, gardens, yards, septic systems, waterlines, other utilities, and similar features
- **Small scale commercial**
- **multi- family construction.**
- **Conservation subdivisions**

### What are the Requirements to Permit through the LPHCP?

Construction Certificates from the LPHCP may be obtained on legally subdivided lots that have a recorded subdivision plat prior to October 1, 2003 or on unplatted tracts of land. Upon completion of an LPHCP Construction Application and payment of a **mitigation fee**, the applicant will be required to sign an **Implementing Agreement (IA)** that will be approved in Commissioners Court and recorded with the Bastrop County Clerk’s office. **Any development that requires a subdivision plat** (*subdivided, resubdivided, or amended*) must be platted and developed as a **Conservation Subdivision** to qualify for permitting through the LPHCP unless the purpose of the plat is to combine lots. Development that does not qualify for permitting through the LPHCP will be referred to USFWS for individual consultation.

### What Is an Implementing Agreement?

An **Implementing Agreement (IA)** is a recorded legal document that requires land not impacted by your development to remain in its natural vegetation state. Essentially, the IA requires that the landowner does no harm to Houston toad habitat, but it does not require active management of the habitat. The IA is perpetual and binding upon any heirs and/or new owners of the property.

## **What is a Conservation Subdivision?**

A Conservation Subdivision is a design strategy that promotes land development that is compatible with land conservation. By clustering development into a specific area of a lot or parcel, you can conserve a larger area of natural undeveloped land. These natural areas can have some human use, but are primarily meant to preserve and protect native plant and animal species. In addition to benefiting wildlife, they tend to have a higher marketability and lower infrastructure cost.

Conservation Subdivisions in the LPHCP are specifically designed and platted around protecting and maintaining habitat for the Houston toad. This type of development allows for up to 20% of the lot or tract to be developed. The remaining portion of the land is preserved in its natural state and is managed for the Houston toad. Design options can be a low density, large lot design or a high density cluster design. **Each subdivision design has its own specific requirements that must be met in order to receive incidental take (Subdivision Certificate).** Please see the LPHCP Conservation Subdivision Guidelines for the specific requirements of each design.

<https://www.co.bastrop.tx.us/upload/page/0094/docs/ConservationSubdivisionGuidelinesAppendixCRev.pdf>

A copy can also be found on the Bastrop County website under the LPHCP Department. Projects that are unable to meet Conservation Subdivision requirements will need to seek incidental take permitting directly through USFWS. This process can be significantly longer than working with the LPHCP, and developers should plan their projects accordingly.

**Please note any project that will require land division must follow Bastrop County Subdivision Regulations in addition to the Conservation Subdivision Guidelines. Developers are strongly encouraged to review both documents and contact the LPHCP Administrator prior to planning their project.**

<https://www.co.bastrop.tx.us/upload/page/0108/SD%20Regs%20Bookmarked%20-%20Adopted%2004-24-17.pdf>

## **How Much Land Can Be Developed?**

- Lots less than 5 acres can develop up to ½ acre (21,780 sq. ft.).
- Lots of 5 acres or more can develop up to 1 acre (43,560 sq. ft.).
- Commercial construction can develop up to 1 acre, regardless of lot size.
- Any development exceeding 1 acre will be referred to USFWS for individual consultation, unless it meets conservation subdivision requirement.

*Conservation Subdivisions may develop up to 20% of each lot or tract. This type of development has very specific requirements. Please contact the LPHCP to discuss your project and how it can meet Conservation Subdivision Guidelines.*

## **What is a Mitigation Fee and what is it for?**

When land is developed in an endangered species habitat, it can no longer be used by that species. Mitigation is the process of restoring or setting aside habitat to compensate for impacts. **Mitigation fees are collected by the LPHCP and placed into a fund that is used to directly benefit the Houston toad's recovery.** Mitigation fees can be used to purchase land in the Houston toad habitat that will not be developed. In addition, mitigation fees can be used as matching grant funds to assist qualified land owners with enhancing and restoring habitat to benefit the Houston toad.

## How Much Is the Mitigation Fee? Are There Any Additional Fees?

\$1,500 for ½ acre

\$3,000 for 1 acre

\$120 application fee

\$54 recording fee

Expansion - Mitigation Fee will be based on the area of expansion as a percentage of \$1,500 for 0.5 acres

*On single tracts or adjoining tracts under common ownership that contain at least five acres, participants have the option of waiving the mitigation fee and conveying a Conservation Easement on at least four acres to protect and manage habitat for the Houston toad in perpetuity. In addition, property owners who convey Conservation Easements on qualified land may be eligible for wildlife management tax status. Please contact the LPHCP for additional information.*

## Where Can I Get A Construction Application?

Applications can be downloaded from the county website <http://www.bastropcountytexas.gov> under the Lost Pines Habitat Conservation Plan or can be obtained at the Development Services office located at 211 Jackson Street, Bastrop, Texas 78602.

## What Happens When a Property Owner Declines Participation (Permitting) through the LPHCP?

Participation in the LPHCP is voluntary; however, compliance with the Endangered Species Act is not. **It is up to the property owner to determine if they need to permit. Any development activity that could result in take of the Houston toad should obtain a permit through the LPHCP or USFW.** Please be aware that if you are located in the LPHCP area and check NO on the Bastrop County Developmental Service application for participation in the LPHCP, you could possibly face penalties under Section 9 of the ESA **when a listed species is harmed as a result of your development.** In addition, by declining participation, your property will no longer be eligible for a wildlife tax exemption provided through House Bill 604 now or in the future. **The LPHCP is required to report all development located in the Houston toad habitat to the US Fish and Wildlife Service.**

## Wildlife Management Tax Valuation

### What Is Wildlife Management Tax Valuation?

Wildlife management tax valuation is similar to an agricultural exemption. A property owner can receive a reduction in property taxes when the primary use of their land is wildlife management. Typically, this type of tax valuation requires the property to have a current agriculture exemption before moving to wildlife management. Due to the critically endangered Houston toad, property located within the LPHCP plan area does not have to meet this requirement. Property owners can go directly from market value to wildlife management valuation by participating in the LPHCP.

Landowners with a minimum of 3 acres (no structures) of suitable land who are willing to manage their property for the Houston toad are eligible to join the LPHCP. Through the development and implementation of a Wildlife Management Plan that supports the Houston toad and other native wildlife, landowners can qualify for a wildlife management tax valuation through the Bastrop County Central Appraisal District.

### What Are the Requirements to Participate in the LPHCP and Receive Wildlife Management Tax Valuation?

- The property must be located within the LPHCP designated area.
- A minimum of 3 acres (with no structures) of **suitable** habitat is required for enrollment.
- The property owner must follow LPHCP Wildlife Management Guidelines.
- Property Owners must prepare and turn in a 1-D-1 Wildlife Management Plan and written plan to both the LPHCP and the Central Appraisal District. The LPHCP can provide guidance on how to complete a 1-D-1 Wildlife Management Plan.
- The Property owner must agree to have their property placed into a wildlife Conservation Easement and recorded with Bastrop County. Conservation Easements can be canceled with a 60 day notice if the property owner chooses to no longer participate in the program (property tax will revert back to market value). Any land use change is subject to roll back taxes from the Central Appraisal District.
- The Property owner must manage their property in accordance with their Wildlife Management Plan and implement a minimum of 3 of the 7 wildlife management activities on a 1-D-1 Wildlife Management Plan annually.
- Property owners who have declined participation in the LPHCP for development on past Bastrop County Development applications are not eligible.

### How Does A Landowner Join the LPHCP?

Landowners who meet the above qualifications and would like to participate in the Conservation Program should contact the LPHCP to schedule an onsite appointment. An LPHCP staff member will meet with the landowner to walk their property and answer any questions about the program. If the property is suitable for wildlife management, the landowner will be provided with an enrollment package. An LPHCP staff member will provide guidance on how to complete the paperwork and create a wildlife management plan for the property.

### **How Difficult Is It To Develop and Maintain a Wildlife Management Plan?**

A 1-D-1 Wildlife Management Plan should be developed with the property owner's interests in mind. Participants are required to manage for the Houston toad, but they can choose one or more species to include in their wildlife management plan. Songbirds, deer, owls, bats, and native pollinators are just a few examples of what LPHCP participants manage for in our Conservation Program. Landowners are required to complete at least 3 of 7 management activities annually that benefit the species they choose to manage. There are many different activities with different intensity levels to choose from and each plan will be unique to the individual property owner.

### **Are There Any Fees to Join the Program?**

<u>Application fee</u>	<u>\$100.00</u>
<u>Recording fee</u>	<u>\$66.00</u>
<u>Yearly renewal Fee</u>	<u>\$20.00</u>



## Buying or Selling Properties Enrolled in the LPHCP

### What If I Am Listing a Property That Is Already Enrolled in the LPHCP?

If you are listing a property that is enrolled in the LPHCP Conservation Program, please know that **Participants are required to notify the LPHCP they are selling the property.** Any potential buyers and/or Realtors need to know that the property is located within the critical habitat of the Endangered Houston Toad, and the listing is currently enrolled in the LPHCP. In order to maintain the wildlife management tax appraisal on the property, the new owners must contact the LPHCP after closing to enroll. If they do not contact the LPHCP to enroll, the property tax will revert back to market value. In addition, if there is a land use change after the property is purchased, it is subject to roll back taxes from the Central Appraisal District.

### What If There Is a Conservation Easement On The Property I'm Listing?

If the property you are listing has a Conservation Easement on a single lot or tract, it will convey with the property. The current owners do not need to do anything. The new owners have the option of enrolling with the LPHCP and continuing wildlife management tax valuation or they may remove the conservation easement. If the conservation easement is removed, the property tax will revert back to market value.

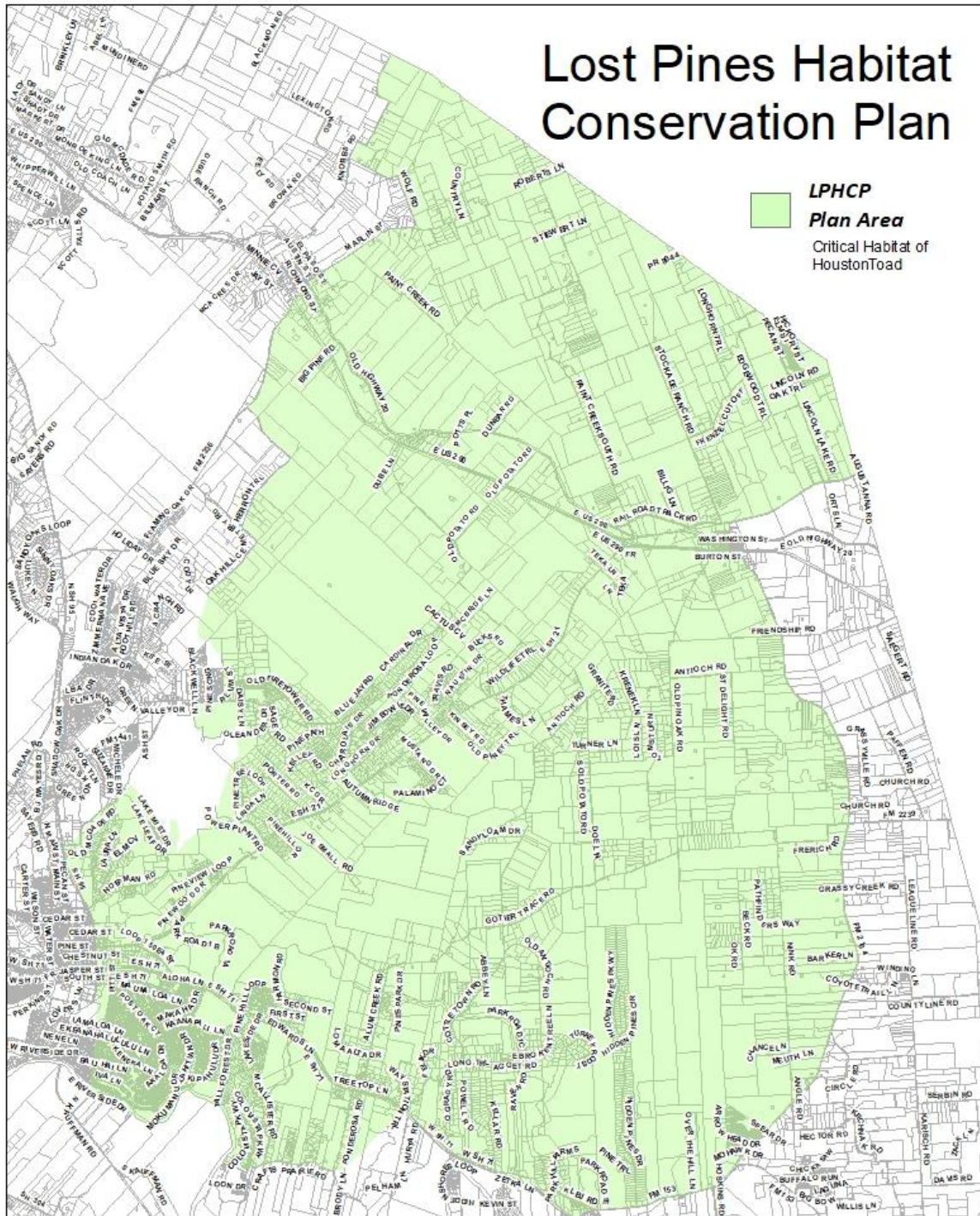
If you are listing a property with multiple lots that are under a single Conservation Easement, the current property owner should **REMOVE THE CONSERVATION EASEMENT PRIOR TO CLOSING.** Not doing so can create future problems if the lots are sold to different buyers. Multiple property owners cannot share a single Conservation Easement. After closing, if one or all of the individual lot owners would like to enroll in the LPHCP and receive wildlife management tax valuation, they can do so as long as the land still qualifies. A new Conservation Easement will be created for their individual lot or tract.

### What If My Buyer Is Purchasing a Property That Is Enrolled In The LPHCP?

Buyers should contact the LPHCP after closing. If they would like to continue participation in the program, they will need to complete enrollment paperwork and develop a wildlife management plan for the property. The LPHCP can meet with the property owner to answer any questions and provide guidance on creating a plan. If the new owner does not want to continue with wildlife management tax valuation, they will need to provide the LPHCP with a written request to remove the Conservation Easement. The LPHCP will create the required release documents for the owner to sign. The documents will be placed on next available commissioners court for approval and recorded with the County Clerk's office. The property tax will revert back to market value. If you know that your buyer does not want to participate in the LPHCP, you can request the property owner release the easement prior to closing. **Please note that any land use change (example wildlife to commercial) is subject to roll-back taxes from the Central Appraisal District. Please contact the Central Appraisal District for more information on roll-back taxes.**



# Lost Pines Habitat Conservation Plan



**LPHCP**  
**Plan Area**  
Critical Habitat of  
HoustonToad

Disclaimer: Bastrop County provides this map "as is" and assumes no liability for its completeness or accuracy. Information shown on this map is derived from public records that are constantly undergoing change and do not replace a site survey. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



This QR code will direct you to a searchable electronic map of the LPHCP. Please use your cell phone camera to be directed to this website. You can also go to <https://www.co.bastrop.tx.us/page/co.maps>. The map is located under interactive maps, Lost Pines Habitat Conservation Plan (LPHCP)

# Glossary of Terms

**Endangered Species Act (ESA):** Act passed 1973 that is the primary law in the United States for protecting imperiled species such as the Houston toad.

**Incidental Take Permit (ITP):** permit that provides assurances through mitigation to a property owner that they will not be fined or prosecuted if a listed endangered species is accidentally harmed as a direct result of their development project. The LPHCP can issue ITPs for development projects with disturbance area of up to one acre. This permit is separate from a Bastrop County Development Permit.

**Lost Pines Habitat Conservation Plan (LPHCP):** the habitat conservation plan developed by Bastrop County to manage the long-term preservation, restoration, enhancement, and management of habitat for the critically endangered Houston toad. Plan area encompasses 124,000 acres within Bastrop County.

**Mitigation:** the process of restoring or setting aside Houston toad habitat to compensate for impacts such as development.

**Mitigation Fee:** Fees collected by the LPHCP for Incidental Take Permits that are used for land acquisitions or land restoration projects that directly benefit the Houston toad. LPHCP mitigation fees are \$1,500 for ½ acre or \$3,000 for one acre.

**Notice of Intent:** Form that is filled out and submitted to the LPHCP upon enrollment and is then submitted each year by December 31<sup>st</sup> to maintain active enrollment status.

**Notice of Receipt:** Form that a participant in the LPHCP receives after submitting enrollment or renewal paperwork (Notice of Intent). This document provides a participant with incidental take for management activities. It should be submitted to the appraisal district before April 30<sup>th</sup> annually as proof of active status as a participant in the LPHCP.

**Take:** “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.” Through regulation, the **USFWS further defines *harm* to include any activity, including significant habitat modification that actually kills or injures a listed species through impairing essential behavior such as breeding, feeding, or sheltering.**

**Wildlife Management Tax Valuation:** A wildlife tax valuation is an exemption that lowers your property taxes in exchange for you performing wildlife management activities that benefit native Texas wildlife. Typically, you are required to have a current agricultural exemption to qualify, but participants in the LPHCP Conservation Program are able to move from market value to wildlife management when they manage their property for the endangered Houston toad.