

TWO APPROACHES TO CONSERVING KANSAS LANDS: AOK Sanctuaries and Kansas Land Trust Conservation Easements



*Gary and Carolyn Haden,
owners of Far West Farm.
Photo by Kelley Hurst*

AOK SANCTUARIES SEEN FROM TWO PERSPECTIVES by Gary Haden

The author, Gary Haden, is Chair of the Audubon of Kansas Board of Trustees. Far West Farm, with a riparian corridor of bur oaks, sycamores, hackberries and walnuts dating back to the 1860s along Clark's Creek in western Morris County, is a prospective addition to AOK's planned archipelago of sanctuaries throughout the state.

Spring rains, excessive wind, winds from the wrong direction, and conflicts with the busy schedules of our tenant and myself led to a failure to complete planned burning at Far West Farm this past spring, so when I saw tree seedlings poking up through a filter strip holding dry grass from the previous year, I decided to undertake some tree control before new growth among the grasses hid the invaders.

Since we had burned the weedy filter strip a year earlier and I had done some preventive spraying after the burn, I thought I could handle the situation with one batch of broadleaf herbicide mix in my backpack sprayer. Three batches of spray later, I was tired of spraying and I was contemplating what it means when Audubon of Kansas makes a commitment to landowners to manage their property in perpetuity if the land is gifted or bequeathed to AOK.

My wife Carolyn and I have had our debates about what the best decision is for our land to assure that it is preserved as we like after we are gone.

Some landowners aren't concerned about the land's legacy: they may have purchased it solely for the purpose of "developing" it, or as an investment. Others are oblivious to the natural potential of their property or to the trees, flowers, grasses, and wild creatures that live on it. Some inhabit property only briefly, assuming as renters that the future of the property is someone else's responsibility.

Those described in the previous paragraph are not the ones who place a conservation easement on their land or offer their land as a valued sanctuary to be forever managed. The individuals who contact AOK about donating or bequeathing their property are unique; likewise, their ideas of how their farm, ranch or other land should be managed in perpetuity are highly individualized.

Each person or family that approaches AOK about possibly offering their land has idealized reasons for doing so. Some are interested in maintaining the property in something resembling its current condition. That might mean a pasture or prairie would never be developed, that the family name be retained, or that certain specific features be protected. In some instances, individuals have bought property with high natural values—old growth forests, virgin prairie, threatened wetlands—and have undertaken further efforts to enhance these natural features; they want to see their handiwork passed on undamaged to future visitors.

What is the best way for landowners to assure their property is managed in perpetuity as they would like it to be? Conservation easement? A donation or bequest to an organization? A combination of the two? The best answer is not the same for everyone, and like so much in life, there is probably no perfect solution.

In our case, Carolyn and I are most interested in preserving magnificent bur oak trees that apparently sprouted shortly after the trees along Clark's Creek were clear cut for lumber, railroad ties and firewood in the 1860s. Moreover, the property has historical significance for the family, as some of Far West Farm was homesteaded by Carolyn's great-great-grandfather after he had spent a couple of years as a wagon master for Seth Hayes on the

Santa Fe Trail. Carolyn and I did not have children, so there is no pressure to provide for our posterity.

We have chosen ownership by AOK, rather than donation of a conservation easement, because of the enhanced management AOK can provide.

Carolyn and I have thought long and hard about how AOK approaches the issue of sanctuary management and where we fit into the process. I'd like to share some of my thoughts on AOK's sanctuary management. Elsewhere in this issue of *Prairie Wings* is additional information from The Land Trust on the strategy of conservation easements (pp. 27-28).

AOK's promise to manage land in perpetuity is not one that is taken lightly. Discussion of sanctuary management is a constant within AOK—management strategies evolve within discussions among the Sanctuaries Committee and other trustees as issues arise. Fundamentally, sanctuary management is guided by agreements between donors and Audubon of Kansas, and those agreements have gotten more detailed as each property has been acquired. No matter how detailed an agreement is, however, no agreement can anticipate all of the necessary day-to-day tasks . . .

Audubon of Kansas first promise to manage property in perpetuity was made shortly after the turn of the century, when rancher Harold Hutton was looking for a permanent home for the 5,000-acre ranch he and his wife Lucille owned along the Niobrara River near Bassett, Nebraska. Harold approached several organizations to see whether they were interested in permanently owning the ranch. He was familiar with the National Audubon Society (NAS), which through its regional director Ron Klataske had been involved with efforts to secure National Wild and Scenic River status for the Niobrara River, which was under threat of being dammed.

None of the national or Nebraska organizations that Harold approached would promise "Never to sell the ranch." After the NAS closed its regional operation, the Kansas Audubon Council grew to form Audubon of Kansas, with Ron Klataske as its Executive Director. To the surprise of many, including the recently formed AOK, Harold Hutton offered his ranch to the fledgling nonprofit, but only with the provision that the ranch function in perpetuity as a working ranch and wildlife sanctuary.

Hutton Sanctuary came with a significant endowment, because managing a 5,000-acre ranch, especially one eight hours away from AOK's center of operations in Manhattan, requires a lot of hands-on effort. Eastern red cedar trees the scourge of Flint Hills ranches, are a persistent problem at the Hutton property. The ice jams and flooding on the Niobrara during the winter of 2019-2020 tore out fences. Managing rangeland for cattle and wildlife can produce conflicts, and poachers find the deer and turkeys on the sanctuary tempting. The Hutton ranch house and the adjacent Lazy Easy Ranch always have structural needs. Briefly stated, management is an ongoing, and evolving, process.



Gary contemplates one of the massive bur oaks on his property in western Morris County. Photo by Kelley Hurst

Managing the land also has its rewards. The Hutton sanctuary is now home to a resident pair (and two adolescent) Sandhill Cranes. Bobolinks are annual nesters. Elk have become regulars on the property. Trail cameras on the sanctuary have recorded a mountain lion and in 2020 the sanctuary was used as a release location for a bobcat that had been rehabilitated after being hit by a car. An ongoing major effort at Hutton will result in placement of a significant portion of a wetland along the Niobrara River in the federal Wetland Reserve Program.

AOK's second holding came to us as a result of an organization not planning for managing land in perpetuity. Early this century the Kansas State Historical Society concluded that it did not have the resources to manage all of the various properties that had been bequeathed to it over time. Among those properties was Mount Mitchell, a hilltop prairie a few miles south of Wamego that was deeded to the Kansas Historical Society in 1953 by the son of Beecher Bible and Rifle Colony leader Captain William Mitchell. Captain Mitchell's home, located a half mile from Mount Mitchell, was a stop on the Underground Railroad, which helped escaped slaves on their trek to freedom.

In 2006, the Kansas Legislature approved transfer of Mount Mitchell to Audubon of Kansas, as a 501 (c) (3) not-for-profit

organization. Since the 30-acre parcel did not come with an endowment, and AOK was operating with only one staff member, AOK welcomed the involvement of a local group, the Mount Mitchell Prairie Guards, which had recently organized, and the Kansas Hiking Association.

The Mount Mitchell Prairie Guards have done invaluable work over the years, but their primary interest is in history and for a prairie duplicating the condition of the land in the 1850s, with no hint of woody vegetation. AOK's traditional priorities have called for a more holistic approach that takes varied wildlife habitat into consideration. The only guidance in the legislation transferring the property from the Kansas Historical Society to AOK is that the land should be open as a public park. The lack of carefully considered, detailed management directives in the legislative transfer of ownership of this property has rendered the satisfactory resolution of differing ideas about what is to be done in management a recurring difficulty. The questions about how to manage the park put a spotlight on the need for carefully considered directives as donor and beneficiary plan for perpetual management.

AOK's third sanctuary is the Connie Achterberg Wildlife-Friendly Demonstration Farm in Lincoln County, a 240-acre working farm

that comes with farm neighbors and all the associations with state and federal agricultural agencies common to modern farming. The employees at the USDA's Farm Service Agency offices are extremely helpful to all farm owners and operators. AOK has increased its ties to the Natural Resources Conservation Service (NRCS) through planting of Conservation Reserve Program (CRP) plots and Pollinator Plots. AOK's management resulted in the return of Northern Bobwhite quail to the property while Connie Achterberg was still alive—particularly rewarding as they were Connie's favorite bird.

As one would suspect, there are rules to follow and a certain element of bureaucracy that AOK or anyone else dealing with USDA must meet. I thought of that while spraying unwanted trees in our filter strip when I came across three small wild plum trees at the intersection of tilled field and filter strip. I wondered whether NRCS would approve my allowing a plum thicket to develop in what appeared to be a perfect place to host a covey of bobwhites. At the Achterberg Sanctuary AOK has a filter strip purposely interspersed with shrub thickets, but when I had asked NRCS whether I could allow some black walnut trees to grow within the edge of the filter strip nearest the creek I was told that "NRCS is paying you to grow grass, not trees." I wondered: "Would a plum thicket pass muster when walnut trees wouldn't?"

The Achterberg Sanctuary operates like most other Kansas farms, which in this case means AOK works with a tenant, is involved with marketing the grain and soybeans grown on the property and juggles those responsibilities with efforts to make the property available to the public. One of the interesting management issues that has arisen is that AOK has a goal of developing a trail network that would make the Achterberg Sanctuary more accessible to the public, but NRCS rules do not allow construction of permanent trails across CRP plots. Clearly, only experience can produce awareness of all the additional considerations to address as we contemplate how to manage future sanctuaries.

We at AOK feel owning land is a responsibility.

Promising to manage land in accordance with someone else's ideas is by several orders of magnitude more difficult than temporarily owning land or monitoring it through a conservation easement. Ideas of what is natural for a particular piece of property vary greatly. Landscapes are constantly changing because of the natural forces affecting our environment: climate change, local weather events, ecological succession, events taking place on adjacent properties, insect pests, invasive weeds, and perhaps human population growth or decline in the immediate area or region.

A conservation easement can prevent a prairie from being ploughed, property from being subdivided or perhaps trees from being cut, but it offers no assurance that a pasture be kept free of *Sericea lespedeza*, that bush honeysuckle be kept out of a forest, or that hunting, trapping or other activities be allowed or precluded. As the owner of a sanctuary, AOK can do what is necessary to keep unwanted developments from happening. It also has the capacity to adapt to changing conditions.

Another consideration to gifting land to AOK or donating a conservation easement to another organization is that such an action comes with a price tag. Because of the costs associated with managing a property, AOK will typically seek establishment of an endowment to manage the land over the long term. The size of an endowment varies significantly for a variety of reasons: the size of the property, the complexity of habitats and uses of the property, and the proceeds generated from the crops, pasture rental, or other income-producing features of the property. AOK might also accept the responsibility for maintaining significant structures on the property. As a good-will gesture to neighbors and county ratepayers, AOK assumes responsibility for paying all taxes on its sanctuaries, even though as a nonprofit it would not be required to do so. A primary public benefit is that property owned by AOK can be accessed by the public for recreation or scientific research. Individuals who purchase land that comes with a conservation easement on it have no responsibility to make their property accessible to the public, though some do.

Any property offered to AOK is first evaluated by members of the Sanctuaries Committee. Priority is given to property with exceptional environmental values, such as the presence of important species, high quality natural habitat, recreational or educational attractions or other attractive qualities.

Once the Sanctuaries Committee has evaluated a property, AOK and the owners of property under consideration for the Sanctuaries program develop an agreement that defines how the property is to be managed in the future. At a minimum, the agreement covers such issues as any existing tenants, how any USDA program income should be shared with a tenant, and whether hunting, fishing, trapping, timber cutting, etc. would be allowed. The size of an appropriate endowment is discussed: properties with more complex management issues, such as maintenance of existing buildings or infestations of invasive plants like "old world" bluestems, *S. lespedeza*, etc., might necessitate a larger endowment. On the other hand, a property with higher management inputs might also generate more revenue from crops and grazing. While a home on a property might increase the necessary upkeep, it might also result in an opportunity to rent the home to an individual who could serve as a caretaker for the property. AOK recognizes that every property is unique and thus its management must be customized to fit. The final decision as to whether AOK will accept responsibility for permanent ownership and management of a property rests with the AOK Board of Trustees.

I know from personal experience that land management takes lots of planning and physical effort—something that has gotten more difficult as I have aged. AOK's commitment to manage our land as its sanctuary reassures Carolyn and me that the bur oaks and wildlife of Far West Farm will provide a habitat to be enjoyed by the descendants of the resident plants and creatures, as well as human visitors, long after we are gone.

Anyone interested in learning more about AOK's approach to gifting or bequeathing property to AOK under its Sanctuaries Initiative is encouraged to contact Jackie Augustine, AOK's Executive Director at jackie@audubonofkansas.org or 785-537-4385.