



Conserving Texas Land For Future Generations

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Texas Agricultural Land Trust

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A native of San Antonio and South Texas, Blair Fitzsimons serves as the founding CEO of the Texas Agricultural Land Trust. Created in 2007 by leaders from the state's leading agricultural and landowner organizations, the mission of the Texas Ag Land Trust is to conserve the Texas heritage of agricultural lands, native wildlife habitats and natural resources. Ten years after its founding, the Ag Land Trust today holds easements on 227,000 acres throughout the state, thus making it Texas' largest non-national land trust.

Prior to joining the Ag Land Trust, Blair served as a consultant to American Farmland Trust. In 2005, she spearheaded the effort to create the Texas Farm & Ranch Lands Conservation Program, a state program that funds the purchases of conservation easements, and has continued to work to obtain funding for the program. She also helped to initiate the Texas A&M Texas Rural Land Trends Study, which documents trends in rural land use and has been a valuable tool in fostering land conservation policies in Texas.

A hallmark of the Texas Agricultural Land Trust is that its board and staff have deep understanding of ranching, farming and hunting issues. For the past 30 years, Blair has been actively involved with the family's cattle and hunting ranch, located along the Texas-Mexico border. In 2005, the ranch was named the regional winner of the National Cattlemen's Beef Association's environmental stewardship award. In 2015, Blair and her husband, Joseph, an attorney who specializes in natural resource law, received the Harvey Weil Sportsman of the Year award from the Rotary Club of Corpus Christi. Blair and Joseph have three grown children and enjoy quail hunting with their four Labradors.

Texas Agricultural Land Trust

Texas Agricultural Land Trust (TALT) will introduce members of the Corpus Christi Estate Planning Council to the conservation easement tool and familiarize them with the estate tax and income tax benefits that result. This tool can be a critical component of inter-generational wealth transfers for owners of rural land. In addition, more conservation easements are being purchased in Texas every year, providing income for conservation minded landowners.

TALT is a non-profit organization dedicated to the conservation of agricultural lands, wildlife habitats and natural resources in Texas. TALT has an active educational program. Recent presentations include the San Antonio Estate Planners Council, Amarillo Area Estate Planning Conference and the Texas Bar Association Advanced Agricultural Law Conference. A written paper is available as a supplement to this presentation as well.

A conservation easement (CE) memorializes a landowner's commitment to conservation. A CE is a voluntary agreement between a landowner and a qualified holder that limits future development of land in order to conserve its important natural resources. Each easement is uniquely tailored to the wishes of the landowner. When a CE meets federal requirements as a charitable gift, the donor of the easement may be entitled to a reduction in income and/or estate taxes. CEs are also purchased by local, state, and federal entities to conserve priority resources, such as water quality and quantity or prime farmland soils.

Income Tax

The value of the easement as a charitable gift is determined by a qualified appraiser who values the property before and after the easement restrictions are applied. The difference between these two values is the amount of the charitable gift for tax purposes. This gift amount is treated as a regular charitable contribution. There are limiting provisions. The deduction is limited to a maximum of 50 percent of the donor's adjusted gross income in that year. Any unused balance of the gift can be claimed as a deduction over the next fifteen years, subject to the same limitation of 50 percent of the adjusted gross income for each year. Qualified farmers and ranchers could deduct up to 100 percent of their adjusted gross income. Federal legislation to continue this enhanced treatment was passed in the House of Representatives in February 2015.

Estate and Gift Taxes

Conservation easements are a significant and useful estate planning tool. Conservation easements will ordinarily result in a reduction of the property value for estate and gift purposes. This can ease the financial burden of passing the property on to heirs. The amount of value reduction is unique to each property, but is generally the difference between its subdivision development value and its agricultural value. This reduction in value may enable a family to pass on property with little or no estate tax burden.

TALT-approved outreach programs have been held in Austin, Midland, Amarillo, Dallas, Ft. Worth, Abilene, Lubbock, Victoria, and Floresville.

The content and subject matter of the program is as follows:

An Introduction to Conservation Easements, One Hour Program:


1. Introduction to conservation easements (*20 minutes*)
 - a. Statutory Authority: Texas Natural Resource Code Section 183
 - b. Impact on the title of property
 - c. Common restrictions
 - d. Common types of conservation easements
 - e. Purposes of conservation easements recognized by Internal Revenue Code 170(h)
 - f. Agricultural conservation easements
 - g. Oil & gas development within the conservation easement
 - h. The role of the easement holder
 - i. Benefits and drawbacks of agricultural easements
2. Valuation of conservation easements (*5 minutes*)
3. Income tax deductibility of donated conservation easements (*5 minutes*)
4. Estate tax benefits of conservation easements (*5 minutes*)
5. Purchased conservation easements (*10 minutes*)
 - a. The Texas Farm & Ranch Lands Conservation Program
 - b. The Federal Agricultural Conservation Easement Program
 - c. Examples of local and resource specific programs
6. Questions and Answers (*5 minutes*)


The presenter for this program will be Blair Fitzsimons, TALT's Chief Executive Officer. Prior to joining TALT, Ms. Fitzsimons spearheaded the legislative effort to establish a Purchase of Development Rights program in Texas for American Farmland Trust (AFT), and to create a database documenting rural land loss and trends in Texas.

Prior to her work for American Farmland Trust, Blair worked for the Bill and Melinda Gates Foundation to establish a \$100 million Texas High School Project, and chaired the Telecommunications Infrastructure Fund Board; a \$1.5 billion fund established by the Texas Legislature to make grants for telecommunications to rural schools, hospitals and libraries.

In addition to TALT, Blair supports her husband and sister-in-law with the management of the family's cattle and hunting ranch, located along the Texas-Mexico border. In 2005, the ranch was named the regional winner of the National Cattlemen's Beef Association's environmental stewardship award.

Introduction to Conservation Easements




Blair Calvert Fitzsimons
Chief Executive Officer

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 **What is a Conservation Easement?**

A voluntary, legal agreement between a landowner and a qualified holder that permanently limits a property's uses in order to protect the property's conservation values.




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 **What is a Conservation Easement?**

- A real property interest
- Filed at the courthouse
- Runs with the land



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What is a Conservation Easement?

- Part of the title of the land
- Land can be sold or gifted
- Will be binding on all future owners



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What is a Conservation Easement?

- Selectively removes rights from the title of the land
- Very little is required
- Each easement is individually tailored



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What is a Conservation Easement?

- Provided for in the state law by Texas Natural Resources Code Section 183



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 **Types of Conservation Easements**

Donated easements, governed by IRS regulations – must be perpetual to qualify for a deduction (Section 170(h) IRC)

Purchased easements (a.k.a Purchase of Development Rights – PDR; or Purchase of Agricultural Conservation Easement – PACE), governed by the rules of the organization making the purchase; depending on the funder, can be for a term of years

Bargain Sale, or a combination of a donated and purchased easement, most commonly used to offset tax considerations

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 **Purpose of Conservation Easements**

Conservation easements have different purposes

- Protection of significant natural resources including water and/or endangered species and their habitats
- Protection of historical resources
- Public access, for recreation and/or education

The purpose of an **agricultural conservation easement** is to protect the viability and productivity of agricultural lands while also protecting other conservation values such as wildlife habitat, water quality; and/or scenic landscapes.

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 **Agricultural Conservation Easement**

- Limits future non-ag use of the land
- Encourages the business of ranching or farming
- Flexibility allows ranch or farm to adapt to changing economic conditions
- Permits construction of new ag buildings and residential dwellings;
- Does not require public access
- Landowner retains private ownership of the ranch or farm subject to the easement restrictions
- Allows for oil and gas activity as long as there is minimal permanent damage to the surface

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Oil & Gas Production

Sub-surface extraction is allowed if there is minimal permanent damage to the surface

- Driven by IRC requirements
- "Limited and Localized"
- Restoration after production
- May involve surface use agreements

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Other Minerals

- Surface Mining is Prohibited
- Required by the IRC
- Techniques to deal with borrow pits

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Agricultural Conservation Easement


The process is essentially the same for donated and purchased easements

- Determine reserved rights (how many partitions will be allowed, how many "building envelopes", etc.)
- Get an appraisal, preferably from an appraiser who has experience appraising conservation easements
- Develop a "baseline report" that documents the condition of the property at the time of the transaction

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TEXAS AGRICULTURAL LAND TRUST **Other considerations**

- Term or perpetual
- Condemnation
- Termination



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TEXAS AGRICULTURAL LAND TRUST **Tax Savings: An Overview**

How a CE provides tax savings

- Income tax deduction when donated
- Lower appraised value in estate

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TEXAS AGRICULTURAL LAND TRUST **Tax Incentives – Donated Easements**

Enhanced tax incentives (Congress made permanent last year):

- Can deduct donation against 50% of adjusted gross income (AGI)
- Carry-forward = In addition to the year of the donation, 15 years

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TEXAS AGRICULTURAL LAND TRUST **Tax Incentive: How it works**

Hypothetical Example:

1,750 acre ranch in Central Texas

Average price per acre = \$2,969*

Market value: \$5,195,750

*source: Texas A&M Real Estate Center, Rural Land Values, Texas Region 7: Austin, Waco, Hill Country

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TEXAS AGRICULTURAL LAND TRUST **Tax Incentive: How it works**

Before Conservation Easement: \$5,195,750

Decrease in value: 30%

Charitable Contribution: \$1,558,725

After Conservation Easement: \$3,637,025

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TEXAS AGRICULTURAL LAND TRUST **Tax Deduction: Enhanced Incentive**

Let's assume that the landowner's annual adjusted gross income for income tax purposes is \$200,000 which remains constant.

The deduction resulting from the easement is as follows:
(50 percent of \$200,000 = \$100,000)

| | |
|-------------------------------|---------------------|
| Year of Contribution | \$100,000 |
| Carry Forward to Year 1 | \$100,000 |
| Carry Forward to Year 2 | \$100,000 |
| Carry Forward to Years 3 – 14 | <u>\$1,300,000</u> |
| TOTAL DEDUCTION | \$ 1,600,000 |

Bottom line: The Landowner is able to use up the entire deduction

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TEXAS AGRICULTURAL LAND TRUST Estate Tax Considerations

\$17 Million



Jones Ranch

~~\$17~~ 9 Million



Smith Ranch

FET / Sales to pay taxes / divisions for heirs

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TEXAS AGRICULTURAL LAND TRUST **Purchased Agricultural Conservation Easements**

Federal (Purchase of Development Rights)

- Agricultural Conservation Easement Program (formerly known as the NRCS Grasslands Reserve Program and the Farm & Ranch Protection Program)
- Passed within the 2014 Farm Bill
- FY18 Funding for ACEP is \$250 million

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TEXAS AGRICULTURAL LAND TRUST **Purchased Agricultural Conservation Easements**

State

- **Texas Farm & Ranch Lands Conservation Program**
 - Managed by Texas Parks & Wildlife Department
 - Oversight board = representatives from statewide agricultural organizations
 - Received a \$2m appropriation in last legislative session

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Purchased Agricultural Conservation Easements

Local / Resource Specific

- City of San Antonio \$360 million Aquifer Protection Initiative, 2000, 2005, 2010 and 2015 – to protect the Edwards Aquifer
- City of Austin \$50 million open space protection bond initiative, 2006 – to protect Barton Springs
- U.S. Army ACUB Program – to create open space buffers around military installations

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The Easement Holder

- A non-profit land trust whose mission is land conservation; or a governmental entity
- Has the right to monitor and enforce the easement
- Typically visits the property once a year to ensure that the terms of the easement are being upheld
- 26 Texas land trusts, each with a specific mission


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Texas Agricultural Land Trust

- Mission is to halt the loss and fragmentation of rural, agricultural lands in Texas
- Board comprised of landowners who understand the day-to-day challenges of working lands
- Holds agricultural conservation easements on rangeland, farmland and native wildlife habitat throughout the state
- Does not interfere in day-to-day management of farming or ranching

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 **Conservation Easements**

What are the benefits and drawbacks?




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 **Benefits**


- A voluntary mechanism to protect property from fragmentation or development – fits family's long-term stewardship goals for the farm or ranch
- Income tax deduction
- Estate tax benefits/facilitates inter-generational transfer
- Convert equity to cash (purchased easements)
- Can help landowners create a legacy for future generations

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 **Drawbacks**

- Transaction costs are high for many landowners
- Limited funding for purchased easements
- Sale of conservation easement is subject to capital gains tax
- Tax benefits are generally only available to the first generation of easement donors
- Use of property is limited for the future
- Value of the property is reduced by the conservation easement

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 **Resources**

Texas Agricultural Land Trust www.txaglandtrust.org


Texas A&M Land Trends Study www.texaslandtrends.org

Texas Land Trust Council <http://www.texaslandtrustcouncil.org/>

Land Trust Alliance www.lta.org

American Farmland Trust www.farmland.org;
www.farmlandinfo.org

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 **Introduction to Conservation Easements**

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