

# Protecting Your Land



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## **Learn more about the Guadalupe-Blanco River Trust**

- What is a Land Trust?
- Is the Guadalupe-Blanco River Trust a government agency?
- What are the advantages of working with the Trust?
- What does the Trust do?

## **Conservation Easements**

- What is a conservation easement?
- Why should I grant a conservation easement to the Trust?
- How can a conservation easement be tailored to my needs and wishes?
- How long does a conservation easement last?
- What are the Trust's responsibilities regarding conservation easements?
- What kind of land can be protected by conservation easements?
- What are the legal requirements for conservation easements?

## **Taxes and how they are affected by a conservation easement**

- New conservation options for heirs to land
- I.R.C. 2031 (c)
- What land qualifies?
- What easements qualify?
- Who claims the benefit?
- What else should I know?

## **The conservation easement process**

- The conservation easement process
- Now What?

## **Other Conservation Options**

- Purchased Conservation Easements
- Land Management Programs
- Land Donations
- Stock Donations
- Estate Planning

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## **Learn more about the Guadalupe-Blanco River Trust**

### **What is a Land Trust?**

A land trust is a 501(c)3, nonprofit, organization that actively works to conserve land by undertaking or assisting in land or conservation easement acquisition, or by its stewardship of such land or easements.

### **Is the Guadalupe-Blanco River Trust a government agency?**

No. The Guadalupe-Blanco River Trust (Trust) is a local non-profit organization that works in the Guadalupe watershed for water and land preservation. The Trust works with landowners who are interested in protecting open space, and is an independent, entrepreneurial organization. However, the Trust works cooperatively with government agencies, such as the US Fish and Wildlife Service, Texas Parks and Wildlife, Guadalupe-Blanco River Authority and other local and counties agencies. Together we can acquire or manage land, research open space needs and priorities, or assist in the development of open space plans.

### **What are the advantages of working with the Trust?**

The Trust is closely tied to the communities in which it operates. The Trust understands the concerns of the communities and the needs of the landowners. Local landscapes differ and have different requirements in our region of focus from the San Antonio Bay to the Hill Country. In addition, a land trusts' nonprofit tax status brings a variety of tax benefits; through donations of land, conservation easements or money may qualify you for income or gift tax savings.

### **What does the Trust do?**

The Trust is a regional land trust, organized as a charitable organization under federal tax law, is directly involved in conserving land for its natural, recreational, scenic, historical and productive values. There are multiple ways that the Trust can preserve land. Such as accept donations of land or the funds to purchase land, accept a bequest, or accept the donation of a conservation easement.

If you are interested in learning more about conservation easements or would like to know if your property would be eligible, contact the Trust at 830-372-5077 or email [jreneaud@gbtrust.org](mailto:jreneaud@gbtrust.org). The Trust Staff will be happy to discuss with you your situation, concerns and wishes in a confidential manner.

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## **Conservation Easements**

### **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. It allows you to continue to own and use your land and to sell it or pass it on to heirs.

When you donate a conservation easement to a Guadalupe-Blanco River Trust (Trust), you give up some of the rights associated with the land. For example, you might give up the right to build additional structures, while retaining the right to ranch. Future owners also will be bound by the easement's terms. The Trust is responsible for making sure the easement's terms are followed on a long-term basis.

Conservation easements offer great flexibility. If the donation benefits the public by permanently protecting important conservation resources and meets other federal tax code requirements it can qualify as a tax-deductible charitable donation. The amount of the donation is the difference between the land's value with the easement and its value without the easement. Placing an easement on your property may or may not result in property tax savings.

### **Why should I grant a conservation easement to the Trust?**

People execute a conservation easement because they love their open space land, and want to protect their land from inappropriate development while keeping their private ownership of the property. Perhaps most important, a conservation easement can be essential for passing land on to the next generation. By removing the land's development potential, the easement lowers its market value, which in turn lowers estate tax.

### **How can a conservation easement be tailored to my needs and wishes?**

The Trust and the landowner(s) work together to write a conservation easement that reflect both the landowner's desires and the need to protect conservation values. A conservation easement restricts development to the degree that is necessary to protect the significant conservation values of that particular property. The conservation easement does not allow for public access unless otherwise stated and the conservation easement can be placed on a portion of the land or the entire land. Every conservation easement is unique, tailored to a particular landowner's goals and their land.

### **How long does a conservation easement last?**

Most conservation easements "run with the land," binding the original owner and all subsequent owners to the conservation easement's restrictions. Only gifts of perpetual conservation easements can qualify for income and estate tax benefits. The conservation easement is recorded at the county or town records office so all future owners and lenders will learn about the restrictions.

## **What are the Trust's responsibilities regarding conservation easements?**

The Trust is responsible for enforcing the restrictions that the easement document spells out. The Trust monitors the property once a year to determine that the property remains in the condition prescribed by the easement document. The Trust maintains written records of these monitoring visits.

## **What kind of land can be protected by conservation easements?**

IRS regulations require that the property have "significant" conservation values. This includes forests, wetlands, endangered species habitat, ranches, scenic areas and more.

## **What are the legal requirements for conservation easements?**

Federal law governs only the tax treatment of a conservation easement as a charitable gift. While you should consult your attorney or a person knowledgeable of federal requirements, in general the following rules apply in order to receive a tax benefit:

- The conservation easement must be granted in perpetuity (mortgage and/or contract holders must agree to subordinate to the easement).
- The easement must provide at least one of the following three conservation purposes:
  - Protection of relatively natural habitat for fish, wildlife, plants or similar ecosystems,
  - Preservation of open space (including farmland, ranchland or forest land) for (1) scenic enjoyment of the general public and/or (2) significant public benefit pursuant to a clearly delineated government policy,
  - Preservation of land areas for the education of or outdoor recreation by the general public.
- The easement must be granted to a qualified organization.
- The easement must prohibit all surface mining. If the easement donor does not own all of the mineral rights, the possibility of surface mining must be determined "so remote as to be negligible."
- Resource data documenting the conservation values of the property must be collected prior to donation of the easement.

If you are interested in learning more about conservation easements or would like to know if your property would be eligible, contact the Trust at 830-372-5077 or email [jreneaud@gbrtrust.org](mailto:jreneaud@gbrtrust.org). The Trust Staff will be happy to discuss with you your situation, concerns and wishes in a confidential manner.

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## Taxes and how they are affected by a conservation easement

The below information describes new estate tax benefits and has been reprinted from the Land Trust Alliance. For more information please log on to [www.lta.org](http://www.lta.org).

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### New Conservation Options for Heirs to Land

The donation of a conservation easement by a landowner can be an effective means to reduce estate taxes on lands. Section 2055(f) of the Internal Revenue Code (I.R.C.) allows donations of qualifying easements to a public charity such as a land trust to be deducted from the taxable value of an estate.

Section 508 of Public Law 105-34 (the Taxpayer Relief Act of 1997) created another benefit for donations of easements, I.R.C. section 2031(c). This benefit can reduce the taxable value of an estate an additional amount, up to \$500,000. This section of the code can be confusing because of the way it is worded. But it does work, and the IRS has confirmed its operation in letter rulings and in practice. Taken together, 2055(f) and 2031(c) create a powerful incentive for conservation which no one who owns land with public value for open space, agricultural preservation, wildlife habitat or recreation should ignore.

Section 6007(g) of the Internal Revenue Service Reform Act (H.R. 2676), signed into law on July 22, 1998, extended these benefits in a new way. Under this provision, when a landowner dies without having donated a conservation easement, his or her heirs may be allowed to elect to donate a conservation easement on the inherited lands and get these estate tax benefits post-mortem.

Getting this post-mortem option requires qualifying for the 2031(c) benefit, and this requires some attention to detail. These provisions have requirements beyond those that qualify conservation easements for income tax deductions under I.R.C. 170(h).

### I.R.C. 2031(c)

Section 2031(c) of the Internal Revenue Code allows beneficiaries to exclude from the taxable estate 40% of the otherwise taxable value of land subject to a qualifying conservation easement. The exclusion is limited to \$400,000 in 2001, and increases to \$500,000 in 2002.

Under I.R.C. 2031(c), the percentage of the value of a piece of land that can be excluded from an estate is reduced below 40% when the easement itself is worth less than 30% of the total value of the land. Retained development rights are fully subject to estate tax, but payment of the tax can be deferred for up to two years.

## **What land qualifies?**

As passed in 1997, IRC 2031(c) applied only to certain geographic areas near metropolitan statistical areas, national parks, federally-designated Wilderness Areas, or Urban National Forests (a designation of the U.S. Forest Service). But section 551 of the tax bill enacted in 2001 (H.R. 1835, P.L 107-16) eliminates those restrictions, making property anywhere in the United States eligible. That law also makes it clear that the values to be used to determine what percentage of the property's value is encumbered by the easement are the values at the time of donation.

The land must have been owned by the decedent or a member of his family for three years prior to death. Property subject to a mortgage is eligible for the 1997 exclusion only to the extent of the net equity in the property. The value of structures cannot be counted in any way in applying these provisions -- only the value of the land.

Generally, the value of rights retained to use the land for commercial purposes cannot be excluded from the taxable estate. However, the value of retained rights that are "subordinate to and directly supportive of the use of land as a farm" may be excluded. Such uses include timber cultivation and harvest.

## **What easements qualify?**

To qualify for these benefits, easements must first qualify for a deduction under section 170(h) of the I.R.C. They must be perpetual conservation easements, donated to a public charity such as a land trust, or to a governmental entity. The easement must protect outdoor recreation or education resources, wildlife habitat, or open space "for the scenic enjoyment of the general public or in fulfillment of a clearly delineated public conservation policy." Easements solely for the purpose of historic preservation qualify under section 170(h), but they do not qualify for the benefits of IRC 2031(c).

To qualify for IRC 2031(c), an easement must also prohibit all but "de minimus" commercial recreational activities. The authors of the provision, however, did specify in the legislative history of the 1997 bill that they did not intend hunting or fishing to be considered "commercial recreational activities."

## **Who claims the benefit?**

IRC 2031(c) can be the result of a conservation easement donated in a will or prior to death. But where it is the heirs who are making the donation, the executor must make an irrevocable election to take these benefits. Such an election can be made only if the easement is placed on the land by the executor or beneficiaries before the filing of estate taxes -- generally nine months from the death of the decedent. Land excluded from estate tax under this provision will receive a carryover basis rather than a stepped-up basis for purposes of calculating any gain on a subsequent sale.

## **What else should I know?**

The existence of the post-mortem option is no substitute for good estate planning by a landowner. The power of an executor to make a post-mortem donation of an easement may be limited by state probate law<sup>1</sup>, and a disagreement among heirs could easily frustrate the use of these provisions to preserve family lands from development. In addition, good estate planning by a landowner can yield substantial additional benefits including income tax deductions under I.R.C. section 170(h), which are not allowed in cases where estate tax benefits are taken for easement donations made post-mortem.

Landowners should always consult a qualified attorney in dealing with the particulars of their own situation.

Russell Shay  
Director of Public Policy  
Land Trust Alliance  
August 16, 2001

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# The Conservation Easement Process

## The Conservation Easement Process

A conservation easement is a voluntary agreement between a landowner and the Guadalupe-Blanco River Trust (Trust) that defines how property will be managed in perpetuity. Landowner(s) work directly with the Trust to create a conservation easement that shows what the property may be used for as well as those uses that will be restricted. Each conservation easement is tailored to fit the unique character of the land and the desires of the landowner and the Trust's criteria.

Landowner(s) need to know why they want to preserve their land. Typically landowner(s) don't want to see their rural, farm and ranchland or wildlife habitat destroyed. About 80 percent of Texas farms and ranches are now less than 500 acres. Farms and ranches between 500 and 2000 acres in size are declining. As these open lands shrink, we face the dilemma of how to maintain the open land that sustains the rivers, lakes, aquifers and springs.

### Now What?

Once a landowner(s) has made the decision to place a conservation easement on their property with the Trust there are several steps that must take place. Trust Staff will walk the property with the landowner(s) to ensure the property meets the mission of the Trust. Landowners will need to have an appraisal and a survey maybe required.

During the conservation easement process the Trust encourages landowners to meet with their attorney and financial advisors to review the documents prior to being signed. Once all the documents have been prepared and the landowner completely understands and agrees with the uses and restrictions of the conservation easement the documents are signed and filed at the county clerk's office. At this point the conservation easement will "run with the land" binding the original owner and all the subsequent owners to the conservation easement's restrictions. A donation is requested from the landowner for the Trust's stewardship fund for perpetual annual monitoring of the land.

The Trust will hold the conservation easement and work with landowner(s) throughout the easement process. The Trust will conduct a baseline assessment of the property. The baseline assessment will record the current state and natural features of the land and will include the conservation benefits of the property, building envelopes, if any, and existing structures will be recorded.

The Trust will work closely with the landowner(s) to meet their needs. Below is an overview of the steps that the Trust works through with the landowner.

- Identify the Conservation Values of the Land to Determine if an Easement is the Appropriate Conservation Tool;
- Decide as an Organization Whether or Not to Pursue the Project;
- Advise the Landowner to Consult Legal and Tax Advisors;

- Identify the Goals and Objectives of the Landowner;
- Compile Baseline Data and Inventory of Property;
- Draft the Conservation Easement Document;
- Sign and Record the Final Conservation Easement;
- The Trust Committed to the Annual Monitoring of the land and the Long-Term Stewardship.

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## **Other Conservation Options**

### **Purchased Conservation Easements**

A land trust can also purchase "development rights" conservation easements. In effect, a trust pays property owners for restricting the future use of land. A trust purchases the right and responsibility to monitor and enforce the terms of the easement – the restrictions placed on the use of the land. All other rights of ownership are retained by the landowner. Purchased conservation easements may qualify owners for reduced estate taxes on inherited land.

### **Land Management Programs**

A variety of state, federal and private land management programs are also available to help landowners maintain, improve or create grazing land, wildlife and fish habitat, wetlands and recreational resources. The Guadalupe-Blanco River Trust can help you identify programs to help conserve and enhance your property.

### **Land Donations**

Landowners may receive significant tax savings by donating their land. The Trust accepts gifts of real property including homes, farms, ranches and commercial buildings.

### **Stock Donations**

The Trust also accepts gifts of stocks and mutual funds. Your donation of these securities will help to provide a lasting contribution to the Trust and allows you to receive income and capitol gain tax savings.

### **Estate Planning**

This is another opportunity to make a lasting contribution to the Trust according to the wishes of the owner. Estate planning may also help you to reduce your income tax. It can also help reduce or possibly eliminate capitol gain taxes.

*The Guadalupe-Blanco River Trust does not give tax or legal advice. We feel that it is important that you consult with your own qualified financial or legal advisor before making a gift.*