



Conservation Easements

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What is a Conservation Easement?

- An easement interest granted by a landowner to a land trust or governmental entity
- Voluntarily restricts the development and use of the land.
- An easement in gross - a real property interest created by state statute.



What is a Land Trust?

- Non-profit, tax exempt organization under I.R.C. § 501(c)(3).
- Formed for the purpose of holding conservation easements.



Legal Authority for Conservation Easements

- Each state has a statute authorizing conservation easements.
- A conservation easement must comply with the applicable statute in the state where the land is located to be eligible for federal and state tax benefits.



What is the duration of a conservation easement?

- Perpetual, unending forever. Perpetual terms are required to be eligible for federal tax benefits.
- A term of years less than forever. These term easements do not qualify for federal tax benefits.



Legal Rights Unaffected by Conservation Easement

- Landowner retains full ownership of the land.
- Can sell the land.
- Can obtain a loan secured by the land.



Land Trust Rights

- Monitor the land to check for violations.
- Enforce the terms of the conservation easement.
- Require restoration of land if damaged in violation of the conservation easement.



Value of the Conservation Easement

FMV – Fair Market Value

CE – Conservation Easement

FMV of the land before the CE

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FMV of the land after the CE

= Value of the CE



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Value of the Conservation Easement

Fair market value of the land before the grant of the CE

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Fair market value of the land after the grant of the CE

= Value of the Conservation Easement



Federal Tax Benefits

- Charitable income tax deduction, taken as an itemized deduction on the federal income tax return.
- Estate tax reduction and exclusion.



Income Tax Deduction

- Can deduct an amount equal to the value of the conservation easement up to a maximum of 50% of your Adjusted Gross Income (AGI).
- Carry forward remainder until used or 15 years, whichever occurs first.



Special Rules for Farmers and Ranchers

- Qualified farmers or ranchers who donate a conservation easement can deduct the value of the conservation easement up to 100% of their AGI with a 15 year carry forward.
- Property must be used in agriculture or livestock production and easement must provide that the property remain available for such production.



What is a qualified farmer or rancher?

A taxpayer whose gross income from the trade or business of farming is greater than 50% of the taxpayer's gross income for the taxable year that the conservation easement is donated.



Reduction in Estate Taxes

- Conservation easement reduces the value of the land that will be included within the estate of the landowner upon death.
- Landowner's estate and heirs pay less in estate taxes.



State Tax Benefits

- Many states have existing income tax incentives for large
- Five of those states have tax credits that are transferrable



Purchase and Bargain Sale

- Purchase the conservation easement for fair market value - no charitable deduction available.
- Purchase the conservation easement for less than fair market value, a bargain sale - charitable deduction available for the difference between the fair market value of the conservation easement and the purchase price.



**STEPS IN A
CONSERVATION EASEMENT
TRANSACTION**



Step 1- Understand the Land

- Identify the land to be included in the conservation easement.
- Order a title commitment for the identified land.
- Order a survey (if not cost-prohibitive).
- Tour the land to determine if there are boundary discrepancies or environmental issues.



Review of Title: Looking for Fatal Flaws

- Review legal description
 - Does it match the vesting deed?
- Review encumbrances to title
 - Deeds of Trusts or Mortgages affecting title?
 - Severed mineral rights?
 - Rights of first refusal?
 - Development restrictions?
 - Rights granted to third parties that could otherwise harm the conservation values?



Step 2- Mineral Report

- If title to minerals has been severed from the land, a mineral report is required. *Treas. Reg. § 1.170A-14 (g)(4)(ii)*.
- Mineral report must show that the “probability of surface mining occurring on such property is so remote as to be negligible.” *Treas. Reg. § 1.170A-14 (g)(4)(ii)(3)*.



Remoteness Test

“Whether the probability of extraction or removal of minerals by surface mining is so remote as to be negligible is a question of fact to be made on a case by case basis . . . [considering] [g]eological, geophysical or economic data showing the absence of mineral reserves on the property, or the lack of commercial feasibility at the time of the contribution of surface mining the mineral interest.”
Treas. Reg. § 1.170A-14(g)(4)(ii).



Oil and Gas

“However, a deduction under this section will not be denied in the case of certain methods of mining that may have [a] limited, localized impact on the real property but that are not irremediably destructive of significant conservation interests. For example, a deduction will not be denied in a case where production facilities are concealed or compatible with existing topography and landscape and when surface alteration is to be restored to its original state.” *Treas. Reg. § 1.170A-14(g)(4)(i)*.



Step 3-Baseline Report

- Provides biological information about the land and must be completed prior to the grant of the conservation easement.
- Consists of maps, aerial images, photos, inventory of flora and fauna, and analysis of biological features of the land.
- Provides basis for determination of conservation values.



Step 4-Phase I Report

- Phase I environmental report can identify any environmental hazards or contamination of the land.
- Not always required by the land trust.



Step 5-Conservation Easement

Recites the conservation values of the land and specifically sets forth the conservation purposes of the land pursuant to I.R.C. § 170(h).



Conservation Purposes

- The preservation of land for public outdoor recreation or education.
- The protection of the natural habitat of wildlife or plants.
- The preservation of open space, including farmland and forestland, for the scenic enjoyment of the general public or pursuant to a clearly delineated governmental conservation policy, that will yield a significant public benefit.
- The preservation of historically important land or a certified historic structure.



Conservation Easement

- Specifies rights reserved to landowner and rights conveyed to land trust.
- Lists expressly prohibited activities.



Common Reserved Rights

- Maintain existing or build new residence within a building envelope.
- Conduct ranching and other agricultural activities.
- Conduct certain limited recreational activities.
- Maintain infrastructure necessary for the exercise of reserved rights in



Typical Prohibited Activities

- No construction of buildings unless expressly permitted.
- No subdivision of title.
- No industrial uses.
- No commercial uses that harm the conservation values.
- No surface mining.
- No timber harvesting.
- No surface disturbance.
- No transfer of water rights.



Other Provisions

- Distribution of proceeds in the event of condemnation, termination or extinguishment.
- Enforcement.
- Amendment.
- No merger.
- Relinquishment of development rights.



Step 6- Appraisal

- Under *I.R.C. § 170(f)(11)(C)*, taxpayers are required to obtain a qualified appraisal for donated property for which a deduction of more than \$5,000 is claimed.
- Section 1219 of the Pension Protection Act of 2006 (PPA) amended *I.R.C. § 170(f)(11)(E)* and provides statutory definitions of a qualified appraisal and qualified appraiser.



Qualified Appraiser

- Defined and described in *Treas. Reg. § 1.170A-17(b)*.
- *I.R.C. § 170(f)(11)(E)(iii)* further provides that an individual will not be treated as a qualified appraiser unless that individual:
 - (1) demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and
 - (2) has not been prohibited from practicing before the Internal Revenue Service by the Secretary under § 330(c) of Title 31 of the United States Code at any time during the 3-year period ending on the date of the appraisal.



Qualified Appraisal

An appraisal will be treated as a qualified appraisal if the appraisal complies with the requirements of *Treas. Reg.*

§ 1.170A-17(a) (except to the extent the regulations are inconsistent with *I.R.C. § 170(f)(11)*), and is conducted:

- by a qualified appraiser,
- in accordance with generally accepted appraisal standards, consistent with the substance and principles of USPAP as developed by the Appraisal Standards Board of the Appraisal Foundation.



Step 7-Closing the Transaction

- Land trust will likely require a title policy to be paid for by the landowner to insure the conservation easement.
- Land trust typically charges fees to cover its transaction and recording costs, including a contribution to cover future costs of monitoring and enforcement.
- Closing will generally occur through a title company.
- Record the conservation easement.



Step 8-Documentation

- Form 8283
- Baseline Report
- Mineral Report (if required)
- Letter from land trust acknowledging donation
- Appraisal



Form 8283

- Required as part of income tax return to document charitable donation or bargain sale of conservation easement.
- Must be signed by land trust and appraiser.
- Must include information regarding the cost basis and acquisition date of the property.
- Requires an attachment specific to the conservation easement.
- New requirements set forth in *Treas. Reg. § 1.170A-16(d)(3)-(7)*.



Form 8283 Attachment

- Identify the conservation purposes.
- Show the fair market value of the property before and after the donation.
- State whether the donation was made in order to get a permit or other approval from a local or other governing authority and whether the donation was required by a contract.
- If the donor or a related person has any interest in other property nearby, describe that interest.



Acknowledgment Letter

- No deduction is allowed for a charitable donation of \$250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment obtained from the donee. *I.R.C. § 170(f)(8)(A)*.
- Must be obtained prior to the date of filing of the income tax return for the year of the donation, or the due date (including extension) for the filing of such return. *I.R.C. § 170(f)(8)(C)*.



Contents of Letter

- The amount of cash and a description (but not value) of any property other than cash donated.
- Whether the donee provided any goods or services in consideration for the donation.
- A description of any goods or services provided and a good faith estimate of the value of such goods or services.
- *I.R.C. § 170(f)(8)(B).*



Appraisal

If the value of the conservation easement is greater than \$500,000, a full copy of the qualified appraisal must be attached to the income tax return.
I.R.C. § 170(f)(11)(D).



QUESTIONS?

