



## Qualification of Easement Donation for Federal Income Tax Deduction

The properly appraised value of an easement donation is considered a "qualified conservation contribution" and is deductible for income tax purposes if it is for "Conservation Purposes," "Enforceable in Perpetuity," "Donated to a Qualified Organization," and "Follows the Appraisal Requirements for Charitable Gifts."

### THE EASEMENT IS FOR CONSERVATION PURPOSES

An easement is for conservation purposes if it falls under at least one of the following alternative Conservation Purposes Tests:

- A. Conserves land areas for outdoor recreation by, or education of, the general public; or
- B. Protects relatively natural habitat of fish, wildlife, or plants or similar ecosystem; or
- C. Preserves certain open space if it is (1) pursuant to a clearly delineated governmental policy and will yield a significant public benefit or (2) for the scenic enjoyment of the general public and will yield a significant public benefit; or
- D. Preserves a historically important land area or a certified historic structure.



*NOTE: A deduction will not be allowed if the terms of the easement, while protecting some conservation interests, permit use of the land that will interfere with other significant conservation interests. (for instance a farmland protection easement that doesn't protect important riparian resources from harm will not qualify.)*

# CONSERVATION PURPOSES TESTS

The following are guidelines to be used in determining whether an easement is for "Conservation Purposes." AN EASEMENT IS FOR CONSERVATION PURPOSES, under at least one of the following alternative Conservation Purposes Tests:

## RECREATION OR EDUCATION

- A. Access for regular and substantial use by the general public is required.
- B. *Examples:* Nature or hiking trail, access to boating or fishing area.

## PROTECTION OF ENVIRONMENTAL SYSTEMS

- A. Must be a relatively natural habitat; some prior alteration of habitat by man may be permissible and access by general public may be limited or prohibited.
- B. *Examples:* Protection of habitat of rare, endangered, or threatened native species of animal, fish or plants; areas that contribute to the ecological viability of a local, state or national park, nature preserve, wildlife refuge, wilderness area or other similar conservation area; areas which represent high quality examples of terrestrial or aquatic communities such as relatively undeveloped islands where the coastal ecosystem is relatively intact.



## PRESERVATION OF OPEN SPACE

Open space easements *must yield a significant public benefit* and be qualified under either A or B below:

- A. Pursuant to a clearly delineated federal, state or local government policy.
  - General declaration of conservation goals by one representative or legislative body is not sufficient.
  - Donations which further a specific, identified conservation project are most clear, but identification by a governmental agency of specific parcels of land is not necessary.
  - *Example:* Conservation of farmland pursuant to state program of farm preservation or flood prevention and control; protection of the scenic, ecological, or historic character of land that is contiguous to or an integral part of the surroundings of existing recreation or conservation sites; conservation of land abutting a certified wild and scenic river.
- B. For the scenic enjoyment of the general public and yields a significant public benefit.
  - Development would impair the scenic character of the rural or urban landscape or would interfere with a scenic panorama that can be enjoyed by the general public.
  - Visual (rather than physical) access to or across the property by the general public is sufficient.
  - Entire property need not be visible to the general public, but if only a small portion is visible this may not be sufficient.
  - Factors applied to determine "Scenic" include:
    - ◇ The compatibility of the land use with other land

- in the vicinity;
- ◇ The degree of contrast and variety provided by the visual scene;
- ◇ The openness of the land (more significant if located in densely settled or heavily wooded area);
- ◇ Relief from urban closeness;
- ◇ The harmonious variety of shapes and textures;
- ◇ The degree to which the land use maintains the scale and character of the urban landscape to preserve open space, visual enjoyment, and sunlight for the surrounding area;
- ◇ The consistency of the proposed scenic view with a methodical state scenic identification program, such as a state landscape inventory; and
- ◇ Consistency of the proposed scenic view with a regional or local landscape inventory made pursuant to a sufficiently rigorous review process.

C. Factors considered in determining significant public benefit include:

- Uniqueness of the property to the area;
- Intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development);
- Consistency of the proposed open space use with public programs for conservation in the region, including flood prevention; and protection of land included in, or related to, government--approved comprehensive plan or land management area;
- Consistency of the proposed open space use with existing private conservation programs in the area, as evidenced by other land protected by easement or donation in close proximity to the property;
- The likelihood that development of the property would lead to or contribute to degradation of the scenic, natural, or historic character of the area;
- The opportunity for the general public to use the property or to appreciate its scenic values;

- The importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;
- The cost to the Holder of enforcing the terms of the conservation restrictions;
- Population density in the area of the property; and
- Consistency of the proposed open space use with a legislatively mandated program identifying particu-



lar parcels of land for future protection.

D. Interrelationship of open-space conservation tests:

- Clearly delineated governmental policy and significant public benefit tests.
  - ◇ Each test must be met independently; but
  - ◇ The more specific the governmental policy with respect to the Protected Property the more likely it is that the government decision itself will tend to establish the existence of a significant public benefit.
- Scenic enjoyment and significant public benefit.
  - ◇ These tests must be met independently and cannot be treated as interrelated for purposes of determining the allowance of a deduction.

## HISTORIC PRESERVATION EASEMENTS

### A. Historically important land area:

- Land which was the site of historically significant events, or, e.g., Civil War battlefield, or an archeological site;
- Land area within a registered historic district and any buildings thereon which contribute to the significance of the district; or
- Any land area adjacent to a property listed individually in the National Register of Historic Places (but not within a registered historic district) in a case where the physical or environmental features

of the land area contribute to the historic or cultural integrity of the structure.

### B. Certified historic structure:

- Any building listed in the National Register; or
- Any building within a registered historic district and certified by the Secretary of the Interior as contributing to the significance of the district.

### C. For additional information, consult a historic preservation agency such as Great Portland Landmarks, Inc. or Maine Citizens for Historic Preservation.



## THE EASEMENT IS ENFORCEABLE IN PERPETUITY

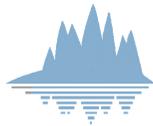
- A. Instrument of conveyance must require any future holder of the easement to promise to carry out the conservation purposes in perpetuity.
- B. Instrument should be recorded so as to be legally enforceable.
- C. Interest of any mortgagee must be subordinated to the rights of the Holder to enforce restrictions.
- D. Instrument must give the Holder the right to enter the property at reasonable times for inspection purposes, and the right to enforce the terms of the easement by legal proceedings, including the right to require restoration of the property.
- E. No person may have the legal right to use the property in a manner inconsistent with the conservation purposes of the donation; i.e., life tenants, lessees, those with surface mining rights, incompatible rights of way or easements, incompatible reserved rights. Subsurface

right may be retained by the owner or by others if previously severed from the dominant surface estate, as long as the likelihood of surface mining is “so remote as to be negligible.”

- F. If donor reserves any rights which may impair the conservation interests protected by the easement, the donor must provide data (Baseline Data) to establish the condition of the property as of the date of the gift and notify the Holder prior to commencing the exercise of such potentially incompatible rights.
- G. Easement may be judicially extinguished for unexpected changed circumstances which render the conservation purposes impossible or impractical, but the easement must provide that, in the event of extinguishment or termination, the Holder is entitled to a portion of the proceeds of any subsequent sale or exchange, proportionate to the value the easement bears to the unrestricted property as of the date of the conveyance.

## EASEMENT IS DONATED TO A QUALIFIED ORGANIZATION

- A. Must be a governmental unit, or a tax-exempt 501 (c)(3) organization that meets the public support test.
- B. Organization must have resources to enforce the restriction (not necessarily funds set aside for each parcel).
- C. Organization must be organized primarily, if not exclusively, for conservation purposes, or have a clear commitment to protect the conservation purposes of the donation.
- D. Assignment is expressly restricted to other qualified organizations which promise to carry out the conservation purposes.



## THE DONOR FOLLOWS THE APPRAISAL REQUIREMENTS FOR CHARITABLE GIFTS

- A. Required for easement gifts valued in excess of \$5,000.
- B. Appraisal cannot be made earlier than 60 days before the date of the gift, and must be received by the donor before the due date of the relevant annual tax return.
- C. [IRS Form 8283](#) requires a separate attached statement from the taxpayer disclosing the relevant conservation purposes of the gift, and the value of the entire property before and after the easement was granted.
- D. If the gift is valued at more than \$50,000, the IRS may require additional information, but regulations have not been promulgated on this issue to date.
- E. If the gift is valued at more than \$500,000, the donor/taxpayer must attach the entire qualified appraisal to the annual tax return. [ IRC Sec. 170(f)(11) ]

## ADDITIONAL STANDARDS - ESTATE TAX RECOGNITION

The donor is subject to different rules for estate tax recognition of conservation easements, whether granted as a gift or sold.

### 1. IRS SECTION 2055(F) - ESTATE TAX PROVISIONS

IRC Section 2055(f) provides a special rule that permits recognition of a perpetual easement granted to a qualified holder (donee), even if the easement may not qualify under the conservation purposes test of Section 170(h)(4)(A), which describes the requirements of the “conservation purposes” test for income tax deductible easements. Easements which qualify under 2055(f) will reduce the taxable estate based on the fair market value of the land *as restricted by the terms of the easement* as of the date of death of the decedent.

### 2. IRC SECTION 2031(C) – POST MORTEM ELECTION

IRC Section 2031(c) permits an additional reduction in the value of an easement restricted property in an estate. The fair market value of the land *as restricted by the terms of the easement* can be reduced by as much as 40% (but not below zero), if the executor elects this option, called the “post mortem election.” Under this election, an estate can, with the agreement of the beneficiaries of the land, grant an easement on land even if the decedent did not direct a gift in the will, and can even further restrict an easement donated by the decedent or another ancestor, to give up retained development rights or add restrictions. A beneficiary who inherits conservation land for which the post-mortem election was made will not get the “stepped-up” basis as usual, but will get a reduced basis for tax purposes, based on the provisions of the election. The easement, to qualify for this election, must prohibit more than a *de minimis* use of the property for commercial outdoor recreation.



The foregoing is based upon the final U.S. Treasury Department Regulations at Federal Register Volume 51, Number 9, dated January 14, 1986, Regulation 1.170A-14 interpreting the Tax Treatment Extension Act of 1980; IRC Section 2031(c); IRC Section 2055(f); and Revenue Ruling 200418005.



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