

# Introduction to Conservation Easements: Statutory Requirements & Qualified Conservation Contribution

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# Conservation Easement

- For purposes of section 170(h), a deductible conservation easement is an easement granted for preservation of land areas for outdoor recreation, protection of habitat, preservation of open space, or preservation of historically important land area or buildings
- Permanent restrictions on use of land or buildings

# Deed of Easement

- Describes the conservation purpose(s), restrictions, and permissible use of the property.
- To be effective it must contain legally binding restrictions enforceable by the donee organization. Treas. Reg. § 1.170A-14(g)(1).
- Enforceable, e.g. by recordation in land records of the jurisdiction where the property is located.

# Charitable Contribution

## Section 170(c)

- Contribution or gift to or for the use of a qualifying organization
- Made with charitable intent and without receipt of adequate consideration. Treas. Reg. § 1.170A-1(h)
- Made without expectation of a direct or indirect benefit to the donor (no quid quo pro)

# Amount of Deduction

## Section 170(b)

- For charitable contributions of capital gain property, generally limited to 30% of an individual's contribution base. Section 170(b)(1)(B).
- Contribution base of an individual is generally adjusted gross income. Section 170(b)(1)(G).
- An individual may deduct a qualified conservation easement contribution up to 50% of the individual's contribution base. Section 170(b)(1)(E)(i).
- Special rule (100%) for qualified farmers and ranchers. Section 170(b)(1)(E)(iv).

# Carryovers

- In general, taxpayers (both individuals and corporations) can carry over unused charitable contributions for up to 5 years. Section 170(d)(1).
- For conservation easements, the carryover period is 15 years. Section 170(b)(1)(E)(ii).

# Partial Interest Rule

## Section 170(f)(3)

- In general, no charitable contribution deduction shall be allowed for a contribution of a partial interest, which is an interest that consists of less than the donor's entire interest in the property. Sec. 170(f)(3)
- Section 170(f)(3)(B)(iii) permits a deduction for a partial interest provided that it is a qualified conservation contribution.

# Qualified Conservation Contribution

## Section 170(h)(1)

- Qualified real property interest
- Granted in perpetuity (Section 170(h)(2)(C))
- Qualified organization
- Exclusively for conservation purposes

# Qualified Real Property Interest

## Section 170(h)(2)

Any of the following interests in real property:

- Transfer of an entire interest in property except for qualifying mineral interest
- A remainder interest in real property
- A restriction on the use of the real property granted in perpetuity.
- Easement, conservation restriction, and perpetual conservation restriction have the same meaning. (Treas. Reg. § 1.170A-14(b)(2)).

# Qualified Organization

## Section 170(h)(3)

- Generally, a qualified organization is a public charity described in section 501(c)(3) or a government unit described in section 170(b)(1)(A)(v) and (vi).

# Granted in Perpetuity

## Section 170(h)(2)(C)

- Perpetuity is a fundamental requirement.
- A CE must be granted in perpetuity.

# Protected in Perpetuity

## Section 170(h)(5)(A)

- Second perpetuity requirement.
- A qualified conservation contribution must be exclusively for conservation purposes. Section 170(h)(1)(C).
- A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity. Defined in Section 170(h)(5)(A).

# Enforceable in Perpetuity

## Treas. Reg. § 1.170A-14(g)

- Donor's interest in the property must be subject to legally enforceable restrictions (e.g., deed recordation) that will prevent uses of the property that are inconsistent with the conservation purposes of the donation.

# Conservation Purposes

## Section 170(h)(4)(A)

- Outdoor recreation
- Protection of a natural habitat
- Preservation of open space (must yield significant public benefit)
  - for scenic enjoyment of general public, **or**
  - pursuant to a clearly delineated Federal, State, or local governmental conservation policy
- Historically important land area or certified historic structure
- Donor must satisfy one or more of these purposes.

# 5 Key Documents for Audit

- Deed of Easement
- CWA
- Appraisal
- Form 8283
- Baseline Documentation Report

# Deed of Easement

# Contemporaneous Written Acknowledgment

# Appraisal

# Form 8283

# Baseline Documentation Report

Questions?