Conservation Easement Rulings and Guidance: Trends and Takeaways for Dealing with the IRS

Connecticut Land Conservation Council
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What We’ll Cover

- Fundamental Federal Easement Rules
- Required Easement Elements to Address Federal Rules
- Court Rulings and IRS Guidance Related to Easement Elements
- Trends and Takeaways
Fundamental Federal Easement Rules
Under IRC Sec. 170(h)

- IRC 170(h)(1)-(3), Reg 1.170A-14(a) – (c): A “qualified conservation contribution”:
  
  - Of a qualified real property interest -
  
  Entire interest other than minerals, or

  Remainder interest, or

  Perpetual restriction on the use that may be made of the property (conservation easement).

  - To a qualified organization -

  Publicly supported or governmental entity

  Requisite commitment (financial, organizational and operational)

  Simmons v. Comm., 646 F.3rd 6 (DC Cir.2011) aff’ing T.C. Memo 2009-208: Although org. could “abandon” the CE, both the CE and local law prevented the grantee from agreeing to inconsistent changes. Any failure to enforce is at grantee’s “peril”. Also Belk v. Comm, T.C. Memo 2013-154 (“Belk 2”).

  Requisite conservation/preservation purposes

  Not a patriotic singing group. Not an organization formed merely for the private gain of the founder, other “insiders”, or third parties. PLR 201405018: The president of a small tax exempt organization determined to be “publicly supported” by the IRS was a CPA in a private practice. He used the organization to help his clients obtain significant donation deductions through their donations to the organization of sparsely documented, inadequate conservation easements. While the details of the ruling are quite specific to the situation being evaluated, the ruling serves as an important reminder that activities of charitable organizations must be conducted in the public interest, and not for private gain. Also NAT issues.

  - Exclusively for conservation purposes -

Required Elements of Conservation Easements: Satisfy at Least One Conservation Purpose Test

• IRC 170(h)(4), Reg. 1.170A-14(d): Conservation Purposes
  - public recreation or education
  - significant natural habitat
  - open space for scenic enjoyment/significant public benefit
  - open space pursuant to clearly delineated governmental policy/significant public benefit
  - certified historic structure (new definition).

• Merely restricting development is not sufficient

• Use extensive recitals to describe conservation purposes

• Be sure recited conservation purposes relate to the property
  - RP Golf, LLC v. Comm., T.C. Memo 2012-282: Missouri “governmental conservation policies” referenced in recitals did not relate to the property or its area. Therefore easement was not pursuant to governmental policy.

• Make sure reserved rights don’t undermine or contradict recited conservation purposes. IRS: may independently evaluate through own experts
  - Turner v. Comm., 126 T.C. No. 16 (2006): HPE justified by scenic and historic preservation must do precisely that. The reservation of multiple building sites in the viewshed of Woodlawn Plantation, a historic property in northern Virginia, does not protect either conservation purpose.

Required Elements of Conservation Easements: Grant in Perpetuity

• The easement must “run with the land”, binding successors and assigns. Duel perpetuity requirements: IRC 170(h)(2)(C) (restriction on the use of the property)
and 170(h)(5)(A) (protection of conservation purposes)

- If state law doesn’t authorize perpetual easements, then easement doesn’t qualify
  
  - \textit{Wachter v. Comm.}, 142 T.C. No. 7 (2014): Because North Dakota law limits conservation easements granted since 1977 to a term that may not exceed 99 years, donors of conservation easements in North Dakota may not receive federal donation deductions. Conservation easements in the state cannot be granted in perpetuity as required under IRC 170(h). The 99 year limitation is not an event that is “so remote as to be negligible”, and therefore objectively impairs deduction. Case illustrates that there is sometimes a tension between state law, which defines legal rights, and the federal tax law treatment of such rights.

- All pre-existing mortgages and deeds of trust must be subordinated to the conservation easement (holder’s “right to enforce”). Reg. 170A-14(g)(2)
  
  - \textit{Kaufman v. Comm.}, 134 T.C. 182 (2010), 136 T.C. 294 (2011) and 687 F.3d 21 (1st Cir., 2012): This was an appeal of the Tax Court ruling at 136 T.C. 294 (2011) involving the donation of a historic preservation restriction in Boston. A mortgage subordination granting a priority interest in insurance and condemnation proceeds to the lender did not violate the “proceeds” requirements of Reg. 1.170A-14(g)(6)(ii). “Entitled” in the regulations does not mean “has an absolute right” as asserted by the IRS. “Given the ubiquity of super-priority for tax liens [and other reasons], the IRS’ reading of its regulation would appear to doom practically all donations of easements, which is surely contrary to the purpose of Congress.” p. 13.


  - \textit{Graev v. Comm}, 140 T.C. 17 (2013) (condition subsequent): A side letter between the donor of a historic preservation restriction and the restriction grantee assured the donor that the donee organization would join with the donor to release the restriction in the event the promised favorable charitable deduction was denied. The court ruled that the gift was conditional and therefore not complete. Also, because recent litigation developments made the likelihood that a deduction would be denied more than “remote” – resulting in possible termination under the terms of the letter - the tax court determined that the CE was not perpetual. The donation was disallowed as a charitable deduction.

- Allowance for swaps (“substitutions”) violates perpetuity rule
IRS Information Letter (3/5/2012), 2012 TNT 66-25


In the event of unexpected change in the condition of the property making its continued use for conservation purposes impossible or impractical, then the easement may be extinguished, but only in a judicial proceeding and in accordance with state law. Reg. 1.170A-14(g)(6)(i)

IRS General Counsel Information Letter, GENIN-131378-12 (9/18/12)

Carpenter v. Comm., T.C. Memo 2012 – 1 (“Carpenter 1”), T.C. Memo 2013-172 (“Carpenter 2”): In Carpenter 2 the tax court clarified its ruling in Carpenter I by stating unequivocally: “extinguishment by judicial proceedings is mandatory” for the contribution of a conservation restriction to be deemed “qualified” under Section 170(h). The ruling also affirmed, at least with respect to Colorado law, that the charitable trust doctrine does not apply to the donation of a conservation easement. With respect to judicial extinguishment, see also Mitchell v. Comm., T.C. Memo 2013-204.

The Carpenter 2 ruling, and related dicta in Belk 1, likely led to the withdrawal of Vermont Bill S. 119.

Required Elements of Conservation Easements: Prohibited Uses

- No use may be permitted that is destructive of other significant conservation “interests” (values) unless necessary for promotion of conservation purposes. Reg. 1.170A-14(e)

- No use may be permitted that is inconsistent with conservation purposes. Reg. 1.170A-14(g)(1)

- Notice of intention to undertake certain permitted activities the exercise of which may impair conservation interests (values) of the property. Reg. 1.170A-14(g)(5)(ii)

- No surface mining; other mineral extraction only if temporary and localized impact. IRC 170(h)(5)(B), Reg. 1.170A-14(g)(4)

Great Northern Nekoosa Corp. v. U.S., 38 Fed. Cl. 645 (1997): The donor corporation was not entitled to a donation deduction for a conservation easement because the corporation retained the limited, “localized” right to
extract “subsurface” soil and gravel for the permitted construction of roads and a hydroelectric power generation facility. Given the limited application of the reserved right, this has been a controversial holding.

**Required Elements of Conservation Easements: Reserved Rights**

- Baseline documentation to identify conservation interests that could be adversely affected by exercise of reserved rights. Must be completed “prior to the time the donation is made”. Reg. 1.170A-14(g)(5)(i)
  - Technically, donor’s responsibility, but in practice generally completed by grantee for a number of reasons
  - Certification: “an accurate representation of the property at the time of the transfer”. Reg. 1.170A-14(g)(5)(i)(D)
  - The baseline documentation of the protected property’s conservation values factored in the anti-swap ruling of Belk 1

**Required Elements of Conservation Easements: Grantee’s Remedies**

- Right of entry for inspection with notice. Reg. 1.170A-14(g)(5)(ii)
- Right to enforce. Reg. 1.170A-14(g)(1) and 14(g)(5)(ii)
- Right to require restoration to condition at donation. Reg. 1.170A-14(g)(5)(ii)

**Required Elements of Conservation Easements: Restrictions on Assignment**

- Easement deed must require that any assignment can be only to another “qualified organization” that agrees to fulfill original conservation purposes. Reg. 1.170A-14(c)(2)

**Required Elements of Conservation Easements: Property Right Vested in Donee**

- Donor must agree that a property right is immediately vested in the donee with a
FMV based on proportionate value of easement to unrestricted property at the time of donation. Reg. 1.170A-14(g)(6)(ii)

- On sale of property after termination/upon condemnation, donee must be “entitled” to sale proceeds based on proportionate value unless state law provides otherwise. Reg. 1.170A-14(g)(6)(ii)
  - See Kaufman v. Comm., supra, and dicta in Belk 1.

- Donee must use proceeds in a manner “consistent” with conservation purposes. Reg. 1.170A-14(c)(2)
  - Irby v. Comm., 139 T.C. 14 (2012): Bargain sale of conservation easement with multiple government purchasers. Consistent = similar to. Therefore, extinguishment proceeds may be divided among qualified entities, even if not the actual easement grantee, because the entities would use the proceeds in a manner “consistent with” conservation purposes. In this case, the actual easement grantee would receive only 25% of post-termination sale proceeds.

**Required Elements of Easement Gift Substantiation: Gift Acknowledgment Letter**

- Gift acknowledgment letter. IRC 170(f)(8)(A): no goods, services, products or other reciprocal payments. Must accurately state reciprocal payment.


- IRS taking “strict compliance” position:
  - Gomez v. Comm., supra.
  - Schrimsher v. Comm., T.C. Memo 2011-71
  - IRS Chief Counsel Advice 2011-49 (May 23, 2011)

- Government entity recalcitrance: include acknowledgement in deed

**Required Elements of Easement Gift Substantiation: Qualified Appraisals**

- October 2006 – IRS Notice 2006-96 provided transitional guidance based on and
codified at IRC Sec. 170(f)(11) (PPA of 2006).

- An Appraisal that is
  - Prepared in compliance with applicable Treasury Regulations, particularly 1.170A-13(c)(3)(ii) and 1.170A-14(h)
  - Prepared by a qualified appraiser (requisite certification and experience and/or education) in accordance with generally accepted appraisal standards such as Uniform Standards of Professional Appraisal Practice (USPAP)
  - Prepared not earlier than 60 days before gift or anytime after gift and prior to filing of tax return, including extensions

- Must include required information
  - Specific description
  - Date of value and date of contribution
  - Any property-related agreements
  - Appraiser’s name, address, TIN, qualifications
  - Statement of purpose – federal taxes
  - Market value of the contribution based on determinations of “highest and best use in “before” and “after” conditions

*Esgar Corp. v. Comm.*, Ct. of Appeals, 10th Cir., No. 12-9009 (March 7, 2014), appeal of T.C. Memo 2012-35: In materially upholding the tax court’s determination of value attributed to the donation of a conservation easement on a ranch, the court rejected the taxpayer’s assertions that the “highest and best use” of the ranch for valuation purposes was based on gravel mining. The appeals court noted that the determination of “highest and best use” is “one of objective probabilities. . . . Valuation does not depend on ‘whether the owner actually has put the property to its highest and best use’ . . . rather . . . [whether] ‘the property is adaptable and needed or likely to be needed [for the most profitable use] in the reasonably near future.’

*Palmer Ranch Holdings Ltd. v. Comm.*, T.C. Memo 2014-79: highest and best use as determined in reasonably near future (“closeness in time”). Specifically, the taxpayer hired an expert to prepare a development plan and the expert provided the taxpayer with a letter confirming that proper zoning would likely be obtained if the taxpayer decided to proceed with development.
- Valuation method used and data considered

Not infrequently the tax court decides to apply the valuation methodology as it sees fit, rejecting the analyses of both the taxpayer and the IRS and calculating its own value while adopting and rejecting elements of each party’s model. See for example Schmidt v. Comm., T.C. Memo 2014-159 and Trout Ranch v. Comm, 493 Fed. Appx. 944 (10th Cir. 2012) aff’g T.C. Memo 2010-283 in which judges conducted their own subdivision development/discounted cash flow analyses.

**Qualified Appraisals of Conservation Easements (Only) Must Also Consider:**

- Contiguous donor and family-owned parcels

- Potentially enhanced property owned by a “related person”, whether contiguous or not


“The value of the contribution under section 170 in the case of a charitable contribution of a perpetual conservation restriction is the fair market value of the perpetual conservation restriction at the time of the contribution. See section 1.170A-7(c). **(1)** If there is a substantial record of sales of easements comparable to the donated easement (such as purchases pursuant to a governmental program), the fair market value of the donated easement is based on the sales prices of such comparable easements. **(2)** If no substantial record of market-place sales is available to use as a meaningful or valid comparison, as a general rule (but not necessarily in all cases) the fair market value of a perpetual conservation restriction is equal to the difference between the fair market value of the property it encumbers before the granting of the restriction and the fair market value of the encumbered property after the granting of the restriction. **(3)** The amount of the deduction in the case of a charitable contribution of a perpetual conservation restriction covering a portion of the contiguous property owned by a donor and the donor's family (as defined in section 267(c)(4)) is the difference between the fair market value of the entire contiguous parcel of property before and after the granting of the restriction. **(4)** If the granting of a perpetual conservation restriction after January 14, 1986, has the effect of increasing the value of any other property owned by the donor or a related person, the amount of the deduction for the conservation contribution shall be reduced by the amount of the increase in the value of the other property, whether or not such property is contiguous. If, as a result of the donation of a perpetual conservation restriction, the donor or a related person receives, or can reasonably expect to receive, financial or economic benefits
that are greater than those that will inure to the general public from the transfer, no deduction is allowable under this section. However, if the donor or a related person receives, or can reasonably expect to receive, a financial or economic benefit that is substantial, but it is clearly shown that the benefit is less than the amount of the transfer, then a deduction under this section is allowable for the excess of the amount transferred over the amount of the financial or economic benefit received or reasonably expected to be received by the donor or the related person. For purposes of this paragraph (h)(3)(i), related person shall have the same meaning as in either section 267(b) or section 707(b).”

IRS CCA Memo 2013334039 (August 23, 2013)

• In addition to expected clarifications, also concluded as follows:
  - Apply contiguous property rule when have adjacent “disregarded” LLC or partnership of which donor or a family member (vertical) is sole member
  - Apply enhancement rule when adjacent LLC, partnership or corporation is NOT “disregarded” even if donor or vertical family members are sole or majority member(s)

Common Appraisal Problems

• Valuation more than 60 days prior to the date of the gift

• Avoid use of a percentage of the property value as the amount of the contribution for a conservation easement
  - Key to Scheidelman v. Comm, T.C. Memo 2010-151, in which tax court determined that the appraisal was not qualified because of formulaic use of percentage diminution. While vacated and refined in subsequent appeals through 2nd Cir., No. 13-2650 (2014), underlying premise remains intact. See also IR 2014-13 (3/19/14) in which IRS banned 5 appraisers for applying percentage diminution as sole methodology.

• Not using the before/after technique for diminution in value from donating easement

• Not recognizing ‘quid pro quo’
  - Seventeen Seventy Sherman Street LLC v. Comm., T.C. Memo 2014-14: “Expectation” of reciprocal benefit for easement donation (development
agency recommendation of zoning change) can vitiate donation in its entirety. This was not only a “donative intent” case, but also hinged on the value of the expected reciprocal benefit as an offset to the donation value. See also Pollard v. Comm., T.C. Memo 2013-38 involving an easement granted as part of 21 lot subdivision approval.

- Not recognizing ‘enhancement/contiguity’ issues (see above)
- No purpose statement – federal taxes
- No copy of recorded conservation easement

**Appraisal Overvaluation Penalties**

- “Substantial” ≥ 150% overvaluation. “Reasonable cause/good faith” exception to imposition of penalties
- “Gross” ≥ 200% overvaluation. Strict liability, no “reasonable cause” exception to imposition of penalties
  - A 20% accuracy-related penalty can be asserted pursuant to IRC 6662(e)(1) if the underpayment of tax is attributable to a substantial valuation misstatement.
  - A 40% accuracy-related penalty can be asserted pursuant to IRC 6662(h) if the underpayment of income tax is attributable to a gross valuation misstatement.

Whitehouse Hotel LP v. Comm., 755 F.3d 236 (5th Cir. 2014), aff’g and vacating in part a succession of tax court and court of appeal cases. Re: reasonable cause/good faith exception for “substantial” overvaluation: “When an accountant or attorney advises a taxpayer on a matter of tax law, such as whether a liability exists, it is reasonable for a taxpayer to rely on that advice.” Similar: Palmer Ranch Holdings Ltd. v. Comm, supra. and Zarlengo v. Comm., T.C. Memo 2014-161.

**The Bottom Appraisal Line**

- To avoid challenges from the IRS, make sure:
  - Conclusions are always based on facts rather than unsupported opinion
  - Assumptions are reasonable and/or supported by the market
- Good data and fully supported analysis are included

- Credible explanations for the absence of potential comparable sales are included

- Comparables are not all adjusted in one direction

- Comparables from outside the geographic area of the subject property are avoided to the extent possible

Where these practices are followed, the trend appears for the tax court to apply a “substantial compliance” (in contrast to “strict compliance”) appraisal review standard, even where flaws are material. See Zarleno v. Comm., supra; Friedberg v. Comm., T. C. Memo 2011-238: In dicta, the court appears to recognize that the donation and resulting extinguishment of transferable development rights in association with what would otherwise be a qualified historic preservation easement donation under Section 170(h) may be factored into the valuation of the easement.

**Required Elements of Easement Gift Substantiation: Qualified Appraiser**

- Earned an appraisal designation or has met minimum education/experience

- Regularly performs appraisals for $

- Demonstrated experience and education in the type of property being appraised

- Not prohibited from practicing before the IRS for prior 3 years

- Known to the public as an appraiser

- Qualified to appraise property type
  - Demonstrated experience
  - Specialized education

- Must NOT be
  - Owner of land appraised
- Donee/CR holder
- Taxpayer claiming deduction
- Previous broker of land appraised
- Fulltime employee of or related to any of above

See Friedberg v. Comm., supra.: while the appraiser may not have provided a qualified appraisal, it does not automatically mean he is not a qualified appraiser.

**Form 8283**
*(See generally the Supplemental Handout Materials, pages 1 – 2)*

- To substantiate noncash gifts over $5,000
- Filed with donor’s tax/information return
- Signed by appraisers and donee organization

  - Mohamed v. Comm, T. C. Memo 2012-152: Another harsh ruling a la Gomez, supra. Also stands for the proposition that where more than one appraiser contribute to a single appraisal, then each participating appraiser must sign the Form 8283. See also Treas. Reg. 1.170A-13(c)(5)(iii).

- Best practice: irrespective of instructions, donee organization should only sign completed Form 8283, including the Supplemental Statement, infra.

**Form 8283 – Key Items**

- Correct donor must be shown (note rules for “disregarded entities”)
- Detailed property description
- IRS focuses on acquisition entries (including basis)
- Appraiser certification of experience
- Appraiser overvaluation penalty statement
• All appraisers must sign (see above)

• Note the limitations of the Part IV Donee acknowledgment: gift only, not FMV

**Form 8283 Supplemental Statement for Conservation Restriction Contributions**
(See generally the Supplemental Handout Materials, pages 3-4)

• Describe conservation values under IRC Sec. 170(h) being protected

• Valuation approach: enhancement/contiguity?

• “Quid pro quo” – approvals or contract?
  - See “quid pro quo” discussion and Seventeen Seventy Sherman, supra.

• Reference baseline (to demonstrate organizational capacity)

• As of 2012, also need to attach copy of CR document (or detailed summary)

• $500,000 rule for filing of full appraisal report

**Form 990 Schedule D Conservation Easement Questions**

• Form 990: Annual return of non-profits

• Triggered by responses to Core Form Parts IV and IX

• Schedule D questions are governance items. Those questions related to easement holdings include:
  - number held (not an estimate) and acreage
  - number held on certified historic structures
  - number amended or terminated (to address perpetuity)
  - monitoring, inspection and enforcement policies?
  - for HPEs in NR districts, all elevations protected and was there certification of donee qualification
  - hours spent monitoring/enforcing, and expenses
  - how easements reported: zero value asset?
Form 990 Schedule M

• Schedule M is to list all non-cash contributions if aggregate ≥ $25K

• Report all easement donations, including especially on “historic structures” (line 13). Line 14 entries are for those easements “other than those entered on line 13”

• Instructions for columns c and d appear to allow for entry of “zero-value” for easements
Supplemental Materials, “Conservation Easement Rulings and Guidance: Trends and Takeaways for Dealing with the IRS”

Sample documents and related materials discussed in this presentation follow on the next pages.

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Form 8283

Noncash Charitable Contributions

Attach to your tax return if you claimed a total deduction of over $500 for all contributed property.

Information about Form 8283 and its separate instructions is at www.irs.gov/form8283.

Note: Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A: Donated Property of $5,000 or Less and Certain Publicly Traded Securities—List in this section only items (or groups of similar items) for which you claimed a deduction of $5,000 or less. Also, list certain publicly traded securities even if the deduction is more than $5,000 (see instructions).

Part I Information on Donated Property—if you need more space, attach a statement.

<table>
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<tr>
<th></th>
<th>(a) Name and address of the donee organization</th>
<th>(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached)</th>
<th>(c) Description of donated property (For a donated vehicle, enter the year, make, model, condition, and mileage; unless Form 1098-C is attached)</th>
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Note: If the amount you claimed as a deduction for an item is $500 or less, you do not have to complete columns (a), (f), and (g).

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<th>(d) Date of the contribution</th>
<th>(e) Date acquired by donor (mo., yr.)</th>
<th>(f) How acquired by donor</th>
<th>(g) Donor’s cost or adjusted basis</th>
<th>(h) Fair market value (see instructions)</th>
<th>(i) Method used to determine the fair market value</th>
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Part II Partial Interests and Restricted Use Property—Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I, also attach the required statement (see instructions).

2a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶

If Part II applies to more than one property, attach a separate statement.

b Total amount claimed as a deduction for the property listed in Part I: (1) For this tax year ▶

(2) For any prior tax years ▶

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):

Address (number, street, and room or suite no.)

City or town, state, and ZIP code

d For tangible property, enter the place where the property is located or kept ▶

e Name of any person, other than the donee organization, having actual possession of the property ▶

3a Is there a restriction, either temporary or permanent, on the donee’s right to use or dispose of the donated property? ▶

Yes No

b Did you give it to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire? ▶

c Is there a restriction limiting the donated property for a particular use? ▶

For Paperwork Reduction Act Notice, see separate instructions.
Section B. Donated Property Over $5,000 (Except Certain Publicly Traded Securities)—List in this section only items (or groups of similar items) for which you claimed a deduction of more than $5,000 per item or group (except contributions of certain publicly traded securities reported in Section A). An appraisal is generally required for property listed in Section B (see instructions).

Part I
Information on Donated Property—To be completed by the taxpayer and/or the appraiser.

4 Check the box that describes the type of property donated
   a ☐ Art (contribution of $20,000 or more)
   b ☐ Qualified Conservation Contribution
   c ☐ Equipment
   d ☐ Art II (contribution of less than $20,000)
   e ☐ Other Real Estate
   f ☐ Securities
   g ☐ Collectibles*☆
   h ☐ Intellectual Property
   i ☐ Vehicles
   j ☐ Other

*Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

**Collectibles include coins, stamps, books, gems, jewelry, sports memorabilia, dolls, etc., but not art as defined above.

Note. In certain cases, you must attach a qualified appraisal of the property. See instructions.

5 a) Description of donated property (if you need more space, attach a separate statement)
   b) If tangible property was donated, give a brief summary of the overall physical condition of the property at the time of the gift
   c) Appraised fair market value

A Qualified conservation contribution under IRC, Section 170(h) of a conservation easement on 10 acres of undeveloped land to protect open space, agricultural land, woodland and wetland

B $13,420.00

C

D

a) Date acquired by donor (mm, dd, yy)
   b) How acquired by donor
   c) Donor’s cost or adjusted basis
   d) For bargain value, enter amount received
   e) Amount reported to donor
   f) Average basis in shares disposed

A Sept. 2002 Purchase $20,000,000

B

C

D

Part II
Taxpayer (Donor) Statement—List each item included in Part I above that the appraisal identifies as having a value of $500 or less. See instructions.

I declare that the following item(s) included in Part I above has to the best of my knowledge and belief an appraised value of not more than $500 (per item). Enter identifying letter from Part I and describe the specific item. See instructions.

Signature of taxpayer (donor) Date

Part III
Declaration of Appraiser

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.

Also, I declare that I perform appraisals on a regular basis, and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent misstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6079A (aiding and abetting the understatement of tax liability). In addition, I understand that I may be subject to a penalty under section 6079A if I know, or reasonably should know, that my appraisal is to be used in connection with a return or claim for refund and a substantial or gross valuation misstatement results from my appraisal. I affirm that I have not been barred from presenting evidence or testimony by the Office of Professional Responsibility.

Signature Date

Part IV
Donee Acknowledgment—To be completed by the charitable organization.

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I above on the following date January 1, 2014

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file Form 8283, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use? ☐ Yes ☐ No

Name of charitable organization (donee) Employer identification number

Generic Land Trust, Inc. 44-4444444

12 Pocahontas Drive

Authorized signature

Form 8283 (Rev. 12-2012)
Form 8283  
Conservation Contribution Donor: Peter __________
Soc. Sec. No: 000-00-0000

Supplemental Statement, Qualified Conservation Contribution

[Example only – additional detail recommended, particularly in describing conservation purposes]

On January 1, 2014 Peter ______________ completed the qualified conservation contribution of a conservation easement under the provisions of I.R.C. § 170(h) on 100 acres +/- of his 200 acre +/- property located in Generic, All States. That portion of the property protected by the easement (hereinafter, the “property”) is characterized by a combination of open fields and agricultural, forest, riparian and low density residential land. The property affords stunning views of and from the adjacent navigable Local River and State Road, and constitutes an important connection between other conservation lands protected by the grantee/donee. Resource documentation concludes that the property contains habitat for an avian species listed on the State Rare Native Animal List and, according to the State Natural Heritage Program, has historically included breeding habitat for the Upland Sandpiper, which is listed on the state’s endangered species list. The property also has significant agricultural resource values, including “Prime Farmland Soils and Farmlands of Statewide Importance”, as mapped and ranked by the U. S. Department of Agriculture, Natural Resources Conservation Service. The streams running through the property to the Local River are protected by the easement. Additional conservation values have been attributed to the property through independent evaluations, including important historic values.

Therefore, the conservation purposes, under § 170(h), furthered by the donation of the conservation easement include the following: (i) the preservation of open space (including farmland and forest land) for the scenic enjoyment of the general public, which yields a significant public benefit; (ii) the preservation of open space (including farmland and forest land) pursuant to clearly delineated local and state governmental policy, which yields a significant public benefit; (iii) the preservation of significant relatively natural habitat of fish, wildlife, plants and similar ecosystems; and (iv) the protection of water quality. [Note: in some cases would have (i) the preservation of a certified historic structure and/or (ii) the preservation of historically important land].

Because the donor also owned contiguous land at the time of the donation, the appraisal included the value of the entire 200-acre property – including the contiguous land and the conserved land – in accordance with Treasury Regulations Reg. § 1.170A-14(h)(3)(i) and CCA Memorandum 201334039 (Office of Chief Counsel, Internal Revenue Service, Release Date August 23, 2013) Also addressed by the appraiser was the possible effect on easement value of the ownership, by a person related to the donor, of other, non-contiguous, property. This other property is located nearly a mile from the subject property, and the appraiser concluded that there was no enhancement to the value of this other property.

Applying the Sales Comparison and Cost of Development appraisal methodologies to the property’s “before and after” easement conditions, the appraiser concluded that the fair market values of the entire property were:

   | Before the donation of the conservation easement | 25,420,000 |
   | After the gift of the conservation easement | 12,000,000 |
   | Donation, equal to the decrease in value | 13,420,000 |

The donation was not made for the purpose of obtaining any permit or approval from a local or other governing authority, nor was it required by a contract. The condition of the property at the time of the donation was documented and established through extensive baseline documentation acknowledged by all parties to the donation. The easement donee, the Generic Land Trust, has represented that it has the resources and commitment to monitor and enforce the subject conservation easement as a “qualified organization” under I. R. C. § 170(h).
April ___, 2014

Mr. Peter G. ________

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Re: Property/Conservation Easement Donation

Dear Mr. ____________:

On behalf of the Generic Land Trust, Inc., I want to thank you for your generous donation of (describe land donation/conservation easement donation) in Generic, Generic County, All States, to the Generic Land Trust, Inc. The donation of your land/easement will (e.g.: protect the rural character of this portion of Town and benefit wildlife as well as future generations to come).

In accordance with federal tax law, individuals making a charitable contribution of $250 or more must have the gift acknowledged in writing by the receiving organization. This letter will serve to verify that Generic Land Trust, Inc., is a publicly supported tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code. No goods, services, products or other reciprocal payments were provided to you for any portion of your contribution. Your donation was accepted by the Land Trust, Inc., on January 1, 2014. Please retain this letter for your tax records. It serves as a receipt of your generous gift. You are, however, required to provide the Internal Revenue Service with an appraisal summary of the value of this gift on Form 8283, which Generic Land Trust, Inc. will sign documenting receipt of the gift.

Sincerely,

Generic Land Trust, Inc.

By:_______________________________

Its: