

RESOURCES FOR EASEMENTS



WHY DO I NEED AN APPRAISAL?

ANSWERS TO SOME COMMON QUESTIONS ASKED BY DONORS TO ALACHUA CONSERVATION TRUST



Our sincere thanks for your donation to Alachua Conservation Trust (ACT). And our apologies that making a gift is so complicated. We wish it could be easier for all concerned, but compliance with state and federal regulations is necessary and imperative. Thank you for your patience.

Once again, we must emphasize that ACT cannot give advice regarding legal matters and taxes; to do so would be illegal as an unauthorized practice of law. You must seek your own independent advice from qualified advisors. The purpose of this handout is simply to outline a few of the principles involved in seeking an income tax deduction for your donation to ACT.

Do I need an appraisal?

Yes! Unless you are certain that your gift of real property (either in fee or as a conservation easement) is of a value of less than \$5,000, you absolutely should obtain a qualified ap-

praisal. If you have any doubt about the value, err on the side of caution and obtain the appraisal.

Why do I need an appraisal?

The specifics of the answer will depend on whether your gift of real property is in fee simple or is a conservation easement. The rules relating to conservation easements are much more complex than those for a fee simple gift. In order to claim a federal income tax deduction for a charitable gift of a conservation easement to ACT, the gift must satisfy all requirements of Internal Revenue Code §170 and the accompanying Treasury Department regulations. A summary of those is attached for the convenience of your tax advisor.

I am making a gift to ACT in fee simple; where do I get information?

You and your tax advisor should consult Internal Revenue Service Publications 526, Charitable Contributions, and 561, Determining the Value of Donated Property. You should also consult Internal Revenue Service Publication 950, Introduction to Estate and Gift Taxes, and the instructions for Form 709.

I am donating a conservation easement to ACT; what is the purpose of the appraisal?

The value of the conservation easement will be the market value of the property rights and restrictions you convey to ACT. The qualified appraisal you obtain will estimate the value of those rights by calculating the impact of the easement on the overall value of the protected property. This appraised value will determine the amount of your income tax deduction.

How does an appraiser estimate the value of a conservation easement?

Typically an appraiser determines the value of an easement by comparing the value of the property without the easement restrictions in place and the value of the property with the restrictions in place.

Does it matter who does the appraisal?

A relative of mine is an appraiser; can that relative appraise my conservation easement? You must use a qualified appraiser who follows Uniform Standards of Professional Appraisal Practice, is certified by the Florida Department of Professional Regulation, and who is not disqualified by the Treasury Department regulations. The purpose of an appraisal is to obtain an independent assessment of the value of the easement, so an appraiser should not be someone who might bring his neutrality into question.

When should the appraisal be done?

For charitable deduction purposes, the appraisal must be completed no earlier than 60 days before the date of the gift and no later than the date on which the income tax return for that year is due.

Who is going to pay for the appraisal?

Obtaining the appraisal is the donor's responsibility.

Won't ACT also be using my appraisal?

ACT policy is to value conservation easements at \$1.00 per acre for accounting purposes, whether there has been an appraisal or not.

Do I file the appraisal with my income tax return?

Your advisor will give a more specific answer, but generally you will need only to complete a summary of the appraisal, Form 8283, and attach it to your return. In the event you are claiming a deduction in excess of \$500,000, you will file the entire appraisal. In any event, you should retain all records containing information required for property contributions in general, including complete copies of the written appraisal. ACT will also ask for a copy of your appraisal, as the ACT executive director must sign your completed Form 8283.

Why does the ACT executive director sign the form?

In signing, ACT acknowledges your donation and agrees to

notify the Internal Revenue Service if it disposes of the donated property within two years. However, signing does not constitute an endorsement of the claimed income tax deduction nor is it a guaranty that the deduction will be allowed by the IRS.

Is it necessary to be concerned about the appraisal process?

The IRS views this issue very seriously and may impose substantial penalties on both a donor and the appraiser for gifts that are overvalued for tax purposes. Additionally, ACT realizes that there is a need to protect its reputation. ACT will not knowingly participate in projects where it has significant concerns about the legitimacy of a donor's valuation of a charitable gift. Accordingly, ACT urges donors to choose their tax advisor and their appraiser carefully, and agrees to work with these parties throughout the process of completing a conservation easement.

I don't have enough income to make a charitable donation deduction worthwhile; should I still get an appraisal?

Again, you should consult with your advisor. Under certain circumstances, not getting an appraisal might obligate you to pay a gift tax.

What about my property taxes?

That is a separate issue from the necessity of an appraisal. Once again, you should consult with your advisor and the local property appraiser, as ACT makes no assurances that your donation of a conservation easement will affect the amount you must pay in property taxes.

ACT gives no assurances as to whether a particular real property or conservation easement donation will be deductible, what value of the gift the Internal Revenue Service or any state department of revenue will accept, what any resulting tax benefits of the donation will be, nor whether the donor's appraisal is accurate or will be accepted by the respective agencies.

The mission of Alachua Conservation Trust is to protect the natural, historic, recreational, and scenic resources in and around Alachua County, Florida. ACT protects land through purchase, donation, conservation easement, and bargain sale.



Summary of Internal Revenue Code Deductibility Criteria **Donation of Conservation Easements**

A charitable income tax deduction will be available for the donation of a conservation easement only if it constitutes a **“qualified conservation contribution,”** as defined by Internal Revenue Code §170(h), and as interpreted by Treasury Regulation §1.170A-14. The Code and Regulations define “qualified conservation contribution” to mean:

A. A “Qualified Real Property Interest” --

- The donor's entire interest in the property.
- A remainder interest (personal residence, farm or conservation property).
- A perpetual conservation restriction.

B. Conveyed to a “Qualified Organization” --

- Governmental unit (U.S., State and political subdivisions), public charity, or supporting organization.
- With the commitment to protect the conservation values and the resources to enforce the restrictions.

C. Exclusively for conservation purposes -- Four recognized categories --

- 1) Preservation of land areas for outdoor **recreation or education of the public.**
 - “Substantial and regular use of the general public”
- 2) The protection of a relatively natural **habitat of fish, wildlife, plants, or similar ecosystem.**
 - Rare, endangered or threatened species
 - Natural areas which are high quality examples of a terrestrial or aquatic community
 - Natural areas included in, or which contribute to the ecological viability of a local, state, or federal park, preserve, refuge, wilderness area, or similar conservation area.
- 3) The **preservation of open space** (including farm and forestland) where preservation fulfills either the “scenic enjoyment” or the “governmental policy” test **and** the “significant public benefit” test.

Scenic Enjoyment. Preservation of the property as open space is for the scenic enjoyment of the general public:

- Development of the property would impair the scenic character of the local landscape or would interfere with a scenic panorama that can be enjoyed from one or more (usually public) locations, and the location(s) is open to or used by the public. (See Treas. Reg §1.170A-14(d)(4)(ii)(A) for a list of some factors to consider with regard to ascertaining “scenic character.”)

OR

Governmental Policy. Preservation of the property as open space is pursuant to a clearly delineated federal, state or local governmental conservation policy:

- This criterion is fulfilled by projects that further a specific, identified conservation project, such as the preservation of land within a state or local landmark district that is locally recognized as being significant to that district; preservation of a wild or scenic river; or the 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.

- Programs providing preferential tax assessment or preferential zoning for conservation purposes constitute significant commitment by the government.
- “Clearly delineated governmental policies” in the Tennessee context might include: lands enrolled or eligible for enrollment in the current use program; lands within a designated scenic highway corridor; conservation zones identified by a local town plan or zoning ordinance; sites identified by the Tennessee Heritage Program;

AND

Public Benefit. Preservation will yield significant public benefit. Consider such factors as:

- Uniqueness of the property to the area.
- 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 of 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 likelihood that the donee [land trust] will acquire equally desirable and valuable substitute property or property rights [presumably referring to neighboring properties].

4) Preservation of an **historically important land area or a certified historic structure.**

- “Land areas” include lands adjacent to National Register properties that contribute to historic integrity, land within a registered historic district, and other lands that meet national register criteria.
- “Certified structures” include those listed on the National Register and those located within a registered district (if certified as being of historic significance to the district).
- Regular opportunity for public view and limitations on development are required.

Other Limitations. The following miscellaneous limitations apply to all conservation restrictions:

1. The conservation easement cannot run afoul of the “inconsistent use” limitations set forth in Treas. Reg. §1.170A-14(e)(2).
2. The conservation easement must be enforceable in perpetuity as provided in Treas. Reg. §1.170A-14(g).
3. The conservation easement cannot permit the landowner to retain certain qualified mineral interests as provided by Treas. Reg. §1.170A-14(g)(4).
4. The easement donor must make available to the Land Trust documentation material sufficient to establish the condition of the property at the time of the gift as provided in Treas. Reg. §1.170A-14(g)(5)
5. The easement must be transferable only to another “qualified organization” as provided by Treas. Reg. §1.170A-14(c)(2).