

Revised Edition

A Citizen's Guide to Conservation Easements in Alabama and Mississippi

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Many landowners deeply love and profoundly respect the integrity of their land, and have a strong desire to protect the features and uses of the land that inspire their feelings of attachment. Their property may be productive farming or timber land, or pristine wilderness teeming with wildlife, or perhaps simply scenic open territory with soothing vistas that relieve the eye and refresh the spirit. They may want their grandchildren and great-grandchildren to be able to experience the land as they do. The conservation easement is a useful tool for landowners to ensure that the cherished characteristics of their land will be preserved and protected in the future.

The conservation easement is a special kind of property interest that differs significantly from the usual type of easement. An ordinary easement is a property right owned by someone other than the landowner that allows the non-landowner to use the land for certain purposes, such as a utility line or a footpath. A conservation easement, however, more closely resembles a “negative easement.” It operates as a restriction on the landowner, who gives up some aspect of his or her right to use the land but otherwise retains ownership. Typically the landowner forgoes the right to develop or use the land in some way - for instance, by subdividing it for houses, or clear-cutting it for timber. In exchange for giving up this right the landowner is assured that the land will be protected from such uses for the term of the easement, even if the land changes ownership. The landowner may also enjoy substantial tax benefits. Because of its somewhat unusual nature, many states have enacted statutes governing the creation and use of the conservation easement. The Alabama and Mississippi conservation easement statutes are modeled after the Uniform Conservation Easement Act, which in 1982 was recommended for enactment in the states by the National Conference of Commissioners on Uniform State Laws.

In addition to the granting landowner, there must be someone to hold the conservation easement. The statutes define qualified holders, who have the right to enforce the terms of the easement. Most conservation easements are held by non-profit land trusts or government agencies. A list of land trusts and relevant state agencies in Alabama and Mississippi is provided at the end of this guide.

The conservation easement is a flexible tool. It may be exchanged for money or donated to a charitable organization. The landowner conveys only the rights he or she chooses to convey and retains the rest. The landowner may choose to retain the rights to farm, hunt, harvest timber, or build a house, for example. The rights conveyed, and the rights retained, depend on the agreement the landowner reaches with the easement holder.

This guide is intended to acquaint Alabama and Mississippi landowners with the law applicable to conservation easements in their states. Summaries of the relevant state and federal statutes and regulations are provided, along with the text of the statutes and regulations themselves. Remember that this is only a guide; if you are considering granting a conservation easement you should obtain professional legal advice, and perhaps accounting advice for tax purposes, before proceeding.

ALABAMA LAW - SUMMARIES

Uniform Conservation Easement Act (Ala. Code §§ 35-18-1 through 35-18-6)

Conservation easements in Alabama are governed by Alabama’s version of the Uniform Conservation Easement Act (Ala. Code §§ 35-18-1 through 35-18-6). The Act:

- Defines “conservation easement,” declares what entities may hold a conservation easement, and provides for a third-party right of enforcement.
- Specifies how conservation easements may be created.
- Provides categories of parties with standing in actions affecting a conservation easement.
- Negates traditional common law restrictions on the enforcement of negative easements.
- Describes the relationship of conservation easements to other property interests.
- Codifies the Uniform Conservation Easement Act, with the following modifications:
 - The statute recognizes silviculture as a qualifying use and paleontological aspects as qualifying aspects of real property for conservation easement purposes.
 - The third-party right of enforcement must be provided expressly, and cannot extend beyond that expressly provided.
 - The statute declares that a government body cannot by eminent domain create or expand a conservation easement under the statute, but also declares that it does not impair or diminish any entity’s ability to acquire a conservation easement by eminent domain or condemnation.
 - If the instrument creating the easement does not specify a term, the easement will terminate at the end of thirty years or the life of the grantor, whichever is shorter, or upon the sale of the property by the grantor.
 - Real property interests that cannot be impaired by a conservation easement without the consent of the owner of the interest include, but are not limited to: subsurface property interests or leases and related rights of owners or leaseholders to remove or extract minerals; mortgages; deeds of trust; and security interests and other liens.
 - Conservation easements are not to be construed as diminishing the value of neighboring properties.
 - The statute specifically recognizes the courts’ power to modify or terminate conservation easements under the doctrine of changed conditions, as well as other principles of law and equity applicable to easements.
 - To create a valid conservation easement, the instrument must contain an explicit reference to the intent to do so. The statute omits the Uniform Act’s retroactive and prospective protection of interests that, although not explicitly called conservation easements, would otherwise qualify.
 - The statute is intended to be cumulative with and supplemental to Amendment 543 (the “Forever Wild Amendment”) of the Alabama Constitution.



Alabama Constitution of 1901, amendment 543 (the “Forever Wild” amendment)

The Alabama Conservation Easement Act is intended to be cumulative with and supplemental to amendment 543 of the Alabama Constitution, known as the “Forever Wild” amendment. The Forever Wild amendment:



- Creates the Alabama Forever Wild Land Trust to identify, acquire, manage, protect and preserve natural lands and waters that are of environmental or recreational importance. “Lands” includes less than fee simple ownership interests, such as conservation easements. Title is held in the Alabama Trust Fund for the State of Alabama.
- Establishes the Board of Trustees of the Alabama Forever Wild Land Trust, which is composed of the Commissioner of the Department of Conservation and Natural Resources, the State Forester, three college professors of the biological sciences, the Executive Director of the Marine Environmental Sciences Consortium, and nine regional representatives. The Trustees are chosen by the governor, lieutenant governor, and Speaker of the House of Representatives from a list of names provided by three categories of interest groups: environmental protection advocates (such as The Nature Conservancy of Alabama), business and industry associations (such as the Business Council of Alabama), and recreation and conservation groups (such as the Alabama State Advisory Council of Ducks Unlimited). Each category of interest group nominates three of the regional representatives. In addition to performing managerial and administrative duties for the Trust, the Board of Trustees reviews conservation proposals and creates a priority list of properties for acquisition by the Trust.
- Establishes a Final Approval Committee, composed of the governor, lieutenant governor, and Speaker of the House. The Board of Trustees must submit a proposal for any purchase, lease, sale, or acquisition of property to the Committee, which has authority to approve or disapprove the transaction.
- Provides that any person making a donation of property to the state for the amendment’s purposes will be entitled to twice the ordinary state income tax deduction.
- Funds the Alabama Forever Wild Land Trust by allotting to it a percentage of the income from the Alabama Trust Fund, not to exceed \$15 million annually. Funding for the Forever Wild Land Trust sunsets at the beginning of fiscal year 2012-2013 unless the legislature says otherwise.
- Creates a separate trust account (“Stewardship Account”) for funds to manage trust property. After the Forever Wild Land Trust sunsets, the Stewardship Account will be funded by income from the Alabama Trust Fund.
- Provides that conservation easements are valid interests in land and are not subject to certain traditional common law bars to their enforcement.
- Provides that the value for taxation purposes of land encumbered by a conservation easement is the cash value of the land less the reduction in value due to the easement.
- Establishes the Alabama Natural Heritage Program, which inventories and maintains data about natural heritage resources and develops a Natural Heritage Plan to prioritize protection, acquisition and management of dedicated natural area preserves.
- Authorizes the Department of Conservation and Natural Resources to acquire by gift, grant, or purchase, areas qualifying as natural area preserves.

ALABAMA LAW - TEXT

Uniform Conservation Easement Act (Ala. Code §§ 35-18-1 through 35-18-6)

Sec. 35-18-1. Definitions.

Sec. 35-18-2. Easement conveyed, recorded, assigned, etc.; term of easement; interest maintained; condemnation.

Sec. 35-18-3. Actions affecting a conservation easement.

Sec. 35-18-4. Validity of easement.

Sec. 35-18-5. Creation of instrument; other interests valid.

Sec. 35-18-6. Relation to "Forever Wild Amendment."

Section 35-18-1

Definitions.

As used in this chapter, the following words have the following meanings:

(1) **CONSERVATION EASEMENT.** A nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, silvicultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, paleontological, or cultural aspects of real property.

(2) **HOLDER.** Either of the following to whom a conservation easement is conveyed:

- a. A governmental body empowered to hold an interest in real property under the laws of this state or the United States.
- b. A charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, silvicultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, paleontological, or cultural aspects of real property.

(3) **THIRD-PARTY RIGHT OF ENFORCEMENT.** A right expressly provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

(Acts 1997, No. 97-715, §1.)

Section 35-18-2

Easement conveyed, recorded, assigned, etc.; term of easement; interest maintained; condemnation.

(a) Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements. A conservation easement may not be created or expanded under this chapter by any state, county, or local governmental body through the exercise of the power of eminent domain.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided in subsection (b) of Section 35-18-3, the term of a conservation easement shall be the term stated in the instrument creating the easement or, if no term is stated, the lesser of 30 years or the life of the grantor, or upon the sale of the property by the grantor.

(d) An interest in real property in existence at the time a conservation easement is created, including, but not limited to, any subsurface property interests or leases and any related rights of owners or leaseholders to remove or extract minerals or any mortgages, deeds of trust, security interests, or other liens, shall not be impaired or diminished in any way by a conservation easement unless all owners of the interests are parties to the conservation easement or consent to it and the consent is properly recorded. A conservation easement shall not be construed to impair or diminish in any way interests in adjacent or surrounding properties.

(e) Nothing in this chapter shall be construed to impair or diminish in any way the rights of any person, entity, or governmental body authorized by the laws of this state or under federal law to acquire property interests through the exercise of eminent domain or condemnation. A conservation easement may be condemned or appropriated through eminent domain in the same manner as any other property interest.

(Acts 1997, N o.97-715, §2.)

Section 35-18-3

Actions affecting a conservation easement.

- (a) An action affecting a conservation easement may be brought by any of the following:
 - (1) An owner of an interest in the real property burdened by the easement.
 - (2) A holder of the easement.
 - (3) A person having a third-party right of enforcement only to the extent provided in the instrument creating the easement.
- (b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity applicable to other easements and specifically including the doctrine of changed conditions.

(Acts 1997, N o.97-715, §3.)

Section 35-18-4

Validity of easement.

A conservation easement is valid even though any of the following apply:

- (1) It is not appurtenant to an interest in real property.
- (2) It can be or has been assigned to another holder.
- (3) It is not of a character that has been recognized traditionally at common law.
- (4) It imposes a negative burden.
- (5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder.
- (6) The benefit does not touch or concern real property.
- (7) There is no privity of estate or of contract.

(Acts 1997, N o.97-715, §4.)

Section 35-18-5

Creation of instrument; other interests valid.

- (a) Any instrument intended to create a conservation easement under this chapter shall contain an explicit reference to that effect.
- (b) This chapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under any other law of this state.

(Acts 1997, N o.97-715, §5.)

Section 35-18-6

Relation to “Forever Wild Amendment.”

The provisions of this chapter are intended to be cumulative and supplemental to the provisions of Amendment No. 543 of the Constitution of Alabama of 1901, commonly known as the “Forever Wild Amendment,” and any other provisions of law, and shall not be construed to repeal any law or part of law except for those in direct conflict herewith.

(Acts 1997, No.97-715, §7.)

Constitution of Alabama 1901, amendment 543 (Forever Wild Amendment)

Acquisition, Maintenance and Protection of Unique Lands and Water Areas.

- Sec. 1. Declaration of Purpose.
- Sec. 2. Definitions.
- Sec. 3. Establishment of Forever Wild Land Trust, Lead Management Agency, and Categories of Lands to be Acquired.
- Sec. 4. Establishment of Board of Trustees of the Alabama Forever Wild Land Trust.
- Sec. 5. Rights, Powers, and Duties of the Board.
- Sec. 6. Final Approval Committee.
- Sec. 7. Source of Funds.
- Sec. 8. Donations of Property.
- Sec. 9. Stewardship Account.
- Sec. 10. Enforceability of Conservation Restrictions; Recordation; Acquisition and Disposal of Interests.
- Sec. 11. Alabama Natural Heritage Program.
- Sec. 12. Dedication of Natural Area Preserves.
- Sec. 13. Sunset Provision.
- Sec. 14. Amendment Self-Executing.
- Sec. 15. Severability.

Section 1. Declaration of Purpose.

The Legislature of Alabama finds that Alabama is endowed with a rich diversity of natural areas having unique ecological systems, plant and animal life, geological formations, wildlife habitats, recreational values and scenic beauty. As a part of the continuing growth of the population and the economic development of the state, it is necessary and desirable that certain lands and waters be set aside, managed and preserved for use as state parks, nature preserves, recreation areas, and wildlife management areas. In order to meet the State’s outdoor recreation needs and to protect the natural heritage of Alabama for the benefit of present and future generations, it is the policy of the state to:

- (a) Protect, manage, and enhance certain lands and waters of Alabama with full recognition that this generation is a trustee of the environment for succeeding generations;
- (b) Protect, to the fullest extent practicable, recreational lands and areas of unique ecological, biological and geological importance; and
- (c) Promote a proper balance among population growth, economic development, environmental protection, and ecological diversity. Accordingly, there is hereby established the Alabama Forever Wild Land Trust for the purpose of identifying, acquiring, managing, protecting and preserving natural lands and waters that are of environmental or recreational importance.

Section 2. Definitions.

- (1) "Alabama Trust Fund" means the irrevocable, permanent trust fund created by Amendment 450 to this Alabama Constitution of 1901.
- 2) "Alabama Trust Fund Board" means the board of trustees of the Alabama Trust Fund as established by Amendment 450 to this Alabama Constitution of 1901.
- (3) "Appraised Value" means that price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or sell.
- (4) "Board" means the Board of Trustees of the Alabama Forever Wild Land Trust, as established by Section 4 of this Amendment.
- (5) "Commissioner" means the Commissioner of the Alabama Department of Conservation and Natural Resources or any other officer of the state who, by law, shall succeed to his responsibilities.
- (6) "Conservation Easement" means a right, whether or not stated in the form of restriction, easement, covenant or condition, in any deed, will, or other instrument executed by or on behalf of the owner of land providing for the retention of properties predominantly in their natural, scenic, open or wooded condition, or as suitable habitat for fish and wildlife, or as recreational lands.
- (7) "Dedication" means the transfer to the state of an estate, interest, or right in a natural area to fulfill the purposes of this Amendment.
- (8) "Department" means the Alabama Department of Conservation and Natural Resources or any other department or agency of the state that, by law, shall succeed to its functions and responsibilities.
- (9) "Final Approval Committee" means a Committee, as established by Section 6 of this Amendment, to be composed of the Governor, the Lieutenant Governor and the Speaker of the House of Representatives.
- (10) "Forever Wild Land Trust" means the Alabama Forever Wild Land Trust created by this Amendment.
- (11) "Instrument of Dedication" means any written document by which an estate, interest, or right in a natural area is formally dedicated as a natural area preserve.
- (12) "Land" or "lands" means real property and any interests therein, including, but not limited to, fee simple titles, ownership interests less than fee simple, leases, easements, licenses, restrictions and use agreements. Such property and interests therein shall also include wetlands, estuarine areas and submerged lands and the waters thereon.
- (13) "Natural Area" means any property, whether publicly or privately owned, (a) that retains or has generally reestablished its natural character, though it need not be completely natural and undisturbed, or (b) which is important in preserving rare or vanishing flora and fauna, native ecological systems, fish and wildlife habitats, geological, natural, scenic or similar features of scientific, recreational, or educational value benefitting the citizens of the state.
- (14) "Natural Area Preserve" means a natural area that has been dedicated pursuant to Section 12 of this Amendment.
- (15) "State" means the State of Alabama.
- (16) "Stewardship" means the maintenance, protection, operation, enhancement, and management of lands acquired for the Forever Wild Land Trust.
- (17) "Trustee" means a member of the Board of Trustees of the Forever Wild Land Trust.

(18) "Trust income" means the net income received by the state from the investment and reinvestment of all assets of the Alabama Trust Fund, determined in accordance with the provisions of Amendment Number 450 of the Constitution of Alabama of 1901.

(19) In dividing the State into geographical regions:

(a) "Central District" means the following counties of the state: Autauga, Bibb, Chambers, Chilton, Clay, Coosa, Elmore, Greene, Hale, Jefferson, Lee, Perry, Pickens, Randolph, Shelby, Sumter, Talladega, Tallapoosa, and Tuscaloosa.

(b) "Northern District" means those counties in the geographical region of the state north of the Central District, as defined above.

(c) "Southern District" means those counties in the geographical region of the state south of the Central District, as defined above.

(20) "Person" means any individual, firm, corporation, trust, partnership, or association.

Section 3. Establishment of Forever Wild Land Trust, Lead Management Agency, and Categories of Lands to be Acquired.

(a) For the purposes set forth in this Amendment, there is hereby established the Alabama Forever Wild Land Trust, which shall be a permanent trust to be funded and administered in accordance with the provisions of this Amendment. Title to all properties acquired for the Forever Wild Land Trust shall be vested in the Alabama Trust Fund for the State of Alabama. The Department shall serve as the lead management agency with respect to all lands acquired and shall have the responsibility of providing to the Board administrative support as necessary.

(b) In order to protect the natural heritage and diversity of Alabama for future generations, the state, acting through the Forever Wild Land Trust, will acquire lands, the title of which shall be held in the Alabama Trust Fund, to ensure their protection and use for conservational, educational, recreational or aesthetic purposes. These lands may include, but shall not be limited to, the following: Wetlands, river corridors, lakes and streams, and the banks and shores thereof, springs, riverine, montane, plain, coastal, and other kinds of terrain, geological systems, areas supporting threatened or endangered species, sensitive and ecologically important lands, unusual habitat types, forests and woodlands, fish and wildlife habitats, wilderness areas, unusual assemblages of wildflowers, natural lands, waters or wetlands that will provide public hunting and fishing, lands having other distinctive natural or recreational characteristics, and lands that will constitute suitable additions to the state's system of parks and fish and wildlife management areas.

(c) Property purchased with Forever Wild Land Trust moneys or which become part of the trust property through dedication or by some other means shall be subject to the condemnation of easements, rights-of-way and other necessary rights and estates in property by or on behalf of corporations that construct, own or operate railroads, pipelines for the transportation of oil, gas, fuel or water, hydroelectric or other electric generating facilities and electric lines, telephone transmission lines and other communication facilities, or any other public utility or method of transportation which serves, or is intended to serve, the public convenience and necessity to the same extent and under the same conditions that such lands, if owned by private persons, would be subject to condemnation by such corporations under federal or state law now in effect or hereafter enacted. No use of any such lands as determined by the Board shall constitute a use thereof for public purposes that will require proof of actual necessity by any corporation seeking to condemn such lands.

(d) Notwithstanding any other provision of this Amendment, no property shall be acquired for the Alabama Trust Fund or with moneys from the Forever Wild Land Trust through condemnation or the use of eminent domain.

(e) No funds or assets of the Forever Wild Land Trust derived from any source shall be expended or used to construct or improve buildings, structures or facilities used for human lodging, feeding or entertainment, including, without limitation thereto, hotels and other lodging facilities, restaurants, convention centers and meeting halls, golf courses, dancing or meeting pavilions, tennis courts, recreational dams, exhibition halls, and similar facilities that have a prin-

cipal purpose not related to the stewardship of properties of the Forever Wild Land Trust, the title of which is held in the Alabama Trust Fund, in their natural state; provided, however, that nothing herein contained shall be construed to prohibit the expenditure of funds allocated to the Stewardship Account for the construction and maintenance of roads, bridges, culverts, drainage facilities, hiking trails, boat launching ramps and other improvements located on Trust Lands to provide reasonable public access thereto, for the construction and maintenance of visitors' centers and facilities, interpretive displays and other facilities for the guidance and education of visitors, for the construction and maintenance of facilities and the acquisition of equipment necessary or appropriate in connection with the performance of stewardship responsibilities (including housing for custodial personnel), or for any other purpose reasonably related to the stewardship responsibilities of the Board.

Section 4. Establishment of Board of Trustees of the Alabama Forever Wild Land Trust.

(a) There is hereby established the Board of Trustees of the Alabama Forever Wild Land Trust, which shall consist of fifteen voting members as follows:

- (1) One member shall be the Commissioner of the Department who shall also serve as Chairman of the Board.
- (2) One member shall be the State Forester.
- (3) Three members which shall be appointed by the Alabama Commission on Higher Education from Departments of Biology, Zoology, Environmental Sciences and Wildlife Science from eligible four-year institutions of higher education in Alabama. An eligible institution shall consist of a public or private four-year college or university, offering a degree in biology or one of its divisions, and having an enrollment of at least 1500 undergraduate students. There shall be one professional biologist appointed to the Board from eligible institutions in the Northern District of the state, one from such institutions in the Central District of the state, and one from such institutions in the Southern District of the state, as said districts are defined in Section 2 hereof. Each eligible institution in the appropriate geographical region shall be entitled to submit one nomination to the Alabama Commission on Higher Education for the professional biologist trustee from that region on the Board.
- (4) One member shall be the Executive Director of the Marine Environmental Sciences Consortium.
- (5) There shall be three members from each of the three geographical regions of the state as defined in Section 2 of this Amendment, as follows. Provided, however, at least one appointee by the Governor, at least one appointee by the Lieutenant Governor and at least one appointee by the Speaker of the House of Representatives shall be black. If none of the recommending groups recommend a black to the appointing authority, said appointing authority shall appoint a black on his or her own initiative.
 - (A) One member from the Northern District shall be appointed by the Governor from a list of names presented by Group A and shall serve an initial term of six years. One member from the Northern District shall be appointed by the Lieutenant Governor from a list of names presented by Group B and shall serve an initial term of four years. One member from the Northern District shall be appointed by the Speaker of the House of Representatives from a list of names presented by Group C and shall serve an initial term of two years.
 - (B) One member from the Central District shall be appointed by the Lieutenant Governor from a list of names presented by Group C and shall serve an initial term of six years. One member from the Central District shall be appointed by the Speaker of the House of Representatives from a list of names presented by Group A and shall serve an initial term of four years. One member from the Central District shall be appointed by the Governor from a list of names presented by Group B and shall serve an initial term of two years.
 - (C) One member from the Southern District shall be appointed by the Speaker of the House of Representatives from a list of names presented by Group B and shall serve an initial term of six years.

One member from the Southern District shall be appointed by the Governor from a list of names presented by Group C and shall serve an initial term of four years. One member from the Southern District shall be appointed by the Lieutenant Governor from a list of names presented by Group A and shall serve an initial term of two years.

- (D) Any successor appointments and appointments to vacancies shall be made in the same manner as described in subparagraphs (A), (B) and (C) above, and members appointed after the initial term of that office has expired shall serve for six-year terms, except that no member shall serve consecutive six-year terms.
 - (E) It is the intent of this Amendment that the eastern and western areas of the three geographical regions of the state shall be represented on the Board of Trustees.
- (6) Each person appointed to the Board shall be and remain an Alabama resident and shall have a demonstrated knowledge of and commitment to land acquisition for the purposes of conservation and recreation. Organizations making recommendations to the appointing officials shall be Alabama organizations or the Alabama chapter of national organizations in order to ensure that the decisions affecting Alabama's future are made by Alabama residents. The recommending groups are composed as follows:
- (A) "Group A" shall consist of non-profit organizations, each having its principal programs extending generally throughout the State, whose demonstrated primary concerns are environmental protection for the state and its citizens and non-consumptive use and preservation of natural areas, and whose membership exceeds 750 individual residents of Alabama, including, but not limited to, The Nature Conservancy of Alabama, the Alabama Audubon Council (comprising the chapters in Alabama of the National Audubon Society), The Alabama Conservancy, the Alabama Chapter of the Sierra Club, and their respective successor organizations.
 - (B) "Group B" shall consist of business, industry, trade associations and professional organizations, each having its principal programs extending generally throughout the state, and having a demonstrated concern for balancing economic growth with protection for the environment and increased recreational opportunities, including, but not limited to, the Business Council of Alabama, the Alabama Forestry Association, Alabama Forest Resources Center, the Alabama Farmers Federation, the Petroleum Council of Alabama, the Association of County Commissions of Alabama, and their respective successor organizations.
 - (C) "Group C" shall consist of non-profit organizations, each having its principal programs extending generally throughout the state, whose demonstrated primary purposes are to promote hunting, fishing, camping or other compatible recreational activities or conservation for such purposes, and whose membership exceeds 750 individual residents of Alabama, including, but not limited to, the Alabama Wildlife Federation, the Alabama State Advisory Council of Ducks Unlimited, Bowhunters of Alabama Inc., the Coastal Land Trust, Inc., the Gulf Coast Conservation Association, the Tennessee Valley Waterfowl Association, the Alabama Rifle and Pistol Association, the Alabama Chapter of the Safari Club International (whether or not those named organizations meet the membership requirement), and their respective successor organizations.
 - (D) In order to qualify as a recommending organization, each organization not specifically listed in this section must file with the Secretary of State and with the named organizations within the same "group", by January 1 preceding the date of expiration of term of office of Trustees hereunder, a written statement of intent to nominate persons to serve on the Board. This statement must include a request for designation of the "group" within which the organization plans to nominate Trustees and information demonstrating that the organization qualifies to make such nominations. It shall also include a copy of the organization's charter, stating its purpose. Should the Secretary of State or any of the named organizations within the same group oppose in writing the eligibility of the new organization to nominate members of the Board or the designation of the "group" within which it proposes to nominate members, then the Secretary of State shall determine the eligibility of the applying organization to submit nominations for membership on the Board and, if determined eligible, the "group" within which it shall submit nominations. In making this decision, the Secretary of State shall give due consideration to the

views submitted to him by the organizations in the “group” within which the new organization proposes to submit nominations. An organization, together with its affiliates, cannot recommend names to the appointing officials as a member of more than one “group”.

Each organization submitting nominations may submit, to the appropriate appointing official for that position on the Board, the names of not more than two of its members who have the qualifications to serve in the position for which they are being nominated. In the event that no organization within a group recommends names to the appointing official, then that official may appoint a Trustee from that group solely of his own choice.

- (E) Terms of office of the initial Trustees shall begin on the January 1 following ratification of this Amendment, or on the first day of the third month following said ratification, whichever shall first occur. Terms of office of successor Trustees shall begin and end on anniversaries of that date. In the case of the initial appointments of Trustees, nominations shall be made to the appropriate appointing officials not later than one month after ratification of this Amendment, and appointments by said officials shall be made by the date of beginning of the initial Trustees' terms of office. Nominations of successor Trustees shall be made to the appropriate appointing officials not later than two months prior to the expiration of the Trustees' terms of office, and said officials shall appoint new Trustees within 30 calendar days after the expiration of said terms. In the event a Trustee resigns or dies, or otherwise vacates his office, the Commissioner or the Secretary of State shall promptly notify the appropriate nominating organizations and shall publish notice of such vacancy once a week for three successive weeks in three newspapers of regional circulation in this state with a request for new nominations from any group that may qualify to do so under the provisions of this Amendment. Nominations for a replacement Trustee shall be made to the appointing official during the 30 calendar days following such death, resignation or other vacation of office, and the appointing official shall appoint a replacement Trustee not later than the end of the next succeeding 30 calendar days thereafter. In the event the appropriate appointing official fails to make an initial appointment or an appointment within said 30-day periods for appointment after expiration of term of office or after death, resignation or other vacation of office, the right to make an appointment to fill that vacancy shall fall to the next appointing official in line of rotation of the Governor to the Lieutenant Governor to the Speaker of the House (with the Governor then to follow the Speaker); and, if that successor appointing official fails to make such appointment within 30 days, then the right to make the appointment shall fall to the next succeeding appointing official, all to the end that there will, as nearly as possible, always be a full complement of Trustees on the Board. Trustees appointed to fill a vacancy other than by reason of expiration of term of office shall serve the remainder of the unexpired term of the Trustee being replaced.

Section 5. Rights, Powers, and Duties of the Board.

(a) The Board is to meet at least quarterly each year for the transaction of its business and to review the progress of the Forever Wild Land Trust. It shall review written requests from state agencies, private organizations, and private citizens proposing that certain properties or interests therein be acquired. For purposes of establishing a quorum, there must be present at least three-fifths (3/5) of the members of the Board then in office at any Board meeting in order to conduct business; provided, however, that in absence of a quorum, the members present, by majority vote, may adjourn the meeting from time to time until a quorum shall attend. Any Board action or recommendation must be approved by at least three-fifths (3/5) of the members of the entire Board then in office, unless specified otherwise in this Amendment. Using its own knowledge and expertise, as well as the knowledge and expertise of the scientific community and state and federal agencies, the Board shall adopt a priority list of properties to be considered for acquisition. Recognizing that real estate transactions must involve willing sellers and may involve complicated procedures that could affect the availability of property, the Department shall, to the extent practicable, follow the directions of the Board in acquiring lands or waters. Provided, however, the Forever Wild Land Trust may only purchase or acquire an interest in property from the priority list of properties adopted by the Board.

(b) In addition to the site-specific management and allowable use guidelines referred to in Section 9, the Board may recommend to the Department rules, regulations and management criteria, which the Board feels would be beneficial to carrying out the goals and purposes of this Amendment.

(c) The Board shall assist the Department in developing and maintaining an inventory of areas and sites which through acquisition become state natural and/or recreational areas and shall make public as desirable information regarding their location, management, regulation, and permissible public uses.

(d) The Board shall prepare and submit to the Governor and the state Legislature, on or before February 1 of each year, a report which shall describe and account for all expenditures and acquisitions by the Forever Wild Land Trust for the preceding fiscal year, as well as plans for the current fiscal year. The Board shall present this annual report to the public at a public meeting to be held within ten days after February 1 of each year. The public meeting shall be an informal process to present information on the Forever Wild Land Trust to the public and give the public an opportunity to have a dialogue with the Board regarding its future plans and operations.

(e) Before purchasing or acquiring any interest in lands with moneys from the Forever Wild Land Trust, the Board, acting through the Commissioner, or the Commissioner on his own initiative, shall obtain at least two appraisals from certified real estate appraisers. In no event shall the Board expend more than the "appraised value", as defined in Section 2 of this Amendment, in purchasing such lands; provided, however, that by affirmative vote of at least three-fourths (3/4) of the members of the Board, the Board may expend up to 125 percent of the appraised value for such purchase where such action is necessary to accomplish the purposes and goals of this Amendment.

(f) The Board may assume indebtedness on behalf of the Forever Wild Land Trust that may be owed with respect to real or personal property given, donated, contributed or devised to the Forever Wild Land Trust, or that may be secured by a mortgage, deed of trust or security interest covering such property, and to agree to pay such indebtedness from current assets or future revenues of the Forever Wild Land Trust; provided that the present value of all installments of principal and of interest on such indebtedness at the time of the assumption thereof, determined in accordance with accepted principles and using a discount rate equal to the rate of interest payable on such indebtedness, shall be less than 80% of the fair market value of such property as determined by an active public market for such property or an appraisal performed by an independent, professionally qualified appraiser.

(g) The Board may contract for the purchase of tracts or parcels of land in which the purchase price shall be payable in future installments, together with such rate of interest on the unpaid balance of such purchase price as the Board shall determine to be reasonable, and to secure the payment of such installments, together with the interest thereon, by purchase money mortgages on the land so acquired and by a pledge of future revenues committed to the Forever Wild Land Trust, including, without limitation thereto, any portion of the trust income allocated to said trust by Section 7 of this Amendment; provided that such installments shall in no event exceed 80% of the fair market value of such property determined as set forth in the preceding subsection and provided further that the total cumulative indebtedness assumed each year under the preceding sub-section (f) together with the total cumulative indebtedness incurred each year by purchase money mortgages as provided in this sub-section (g) shall be limited to no more than 25% of the trust income allocated to said trust for the preceding year.

(h) The Board may enter into contracts with any person, nonprofit organization, corporation, governmental entity or other entity concerning tracts or parcels of land that constitute desirable acquisitions for the Forever Wild Land Trust pursuant to which such person, nonprofit organization, corporation, governmental entity or other entity will agree to acquire and hold such land, or to hold such land if theretofore acquired by such person, nonprofit organization, corporation, governmental entity or other entity and to sell or donate such land to the Forever Wild Land Trust at some future date, in the interim preserving and managing such land in its natural state subject to such conditions, including the reimbursement of expenses, as the Board shall deem advantageous for the ultimate acquisition and preservation of such land.

(i) The Board may sell, lease or exchange specific properties or interests therein acquired or held by the Alabama Trust Fund for the Forever Wild Land Trust. Any such sale or exchange shall be made at not less than the "appraised value", as defined in Section 2 of this Amendment; provided, however, that by affirmative vote of at least three-fourths (3/4) of the members of the Board, the Board may authorize and direct the Commissioner to sell or exchange property of said trust for not less than 85 percent of the appraised value where such action is necessary to accomplish the purposes and goals of the Amendment. All moneys received from any such sale or lease shall be paid into the Forever Wild Land Trust.

(j) The Board shall establish a technical advisory committee, consisting of the State Forester, the President of the Alabama Chapter of the Wildlife Society, the State Geologist, and any other person whom the Board may desire to appoint, for the purpose of obtaining advice and assistance in performing the Board's functions and duties under this Amendment.

(k) In addition, the Board is authorized at its discretion:

- (1) to establish procedures relating to the confidentiality of information where necessary to accomplish the purposes and goals of this Amendment;
- (2) to cooperate or contract with any federal, state or local government agency, private organization, or individual to accomplish any of the purposes and goals of this Amendment, paying any reasonable fees or expenses in connection with such cooperation or contracts from moneys held under or within the Forever Wild Land Trust;
- (3) to recommend that moneys paid into the Forever Wild Land Trust be allowed to accumulate, with only the income thereon being spent, or that the corpus or principal of the Forever Wild Land Trust be expended in whole or in part;
- (4) to do any and all things necessary to take advantage of federal, state, or local government or private funds donated or obtainable through the use of the Forever Wild Land Trust; and
- (5) to adopt, alter and repeal bylaws, regulations and rules in accordance with the provisions of the Administrative Procedure Act for the regulation and conduct of its affairs and business in accordance with the provisions of the Alabama Administrative Procedures Act.

(l) Members of the Board and the technical advisory committee shall be entitled to receive the per diem allowance and travel expenses provided by law to state employees. These expense payments shall be for the sole purpose of travel to and from their places of residence to meetings and for travel involving official business of the Forever Wild Land Trust. Those members who are state officials or employees shall serve without compensation or expense allowances other than that to which they are otherwise entitled in the positions they hold.

(m) The Commissioner and the Department are hereby specifically authorized and empowered to carry out all directions and recommendations of the Board made hereunder to accomplish the purposes of the Forever Wild Land Trust and this Amendment.

Section 6. Final Approval Committee.

There is hereby established a Final Approval Committee to be composed of the Governor, the Lieutenant Governor and the Speaker of the House of Representatives.

Before purchasing or leasing any property, or acquiring any interest therein, with any funds from the Forever Wild Land Trust or selling any properties previously purchased from the Forever Wild Land Trust, the Board shall submit to the Final Approval Committee a written proposal of the purchase, lease, sale or acquisition of any other interest in property. Said proposal shall include a legal description of the property to be purchased, leased or sold; the proposed purchase, lease or sale price; and any additional terms of the sale, purchase, lease or other interest therein. The Final Approval Committee shall approve or disapprove the proposal by a majority vote of the full membership of said Committee within 30 days after the date of submission of the proposal. Failure of the Committee to act within 30 days of submission shall constitute approval of said proposal.

Section 7. Source of Funds.

(a) Beginning with the state's 1992-1993 fiscal year, there shall be allocated and paid into the Forever Wild Land Trust the percentage of trust income earned from the Alabama Trust Fund that would have been reinvested in the Alabama Trust Fund under Section 4(c) of Amendment Number 450 to this Alabama Constitution of 1901.

Notwithstanding Section 4(c) of Amendment Number 450 to the Alabama Constitution of 1901, the percentage of trust income earned from the Alabama Trust Fund shall be allocated to the Forever Wild Land Trust as follows:

- (1) For the 1992-1993 fiscal year, four percent (4%) of the trust income earned from the Alabama Trust Fund.
- (2) For the 1993-1994 fiscal year, five percent (5%) of the trust income earned from the Alabama Trust Fund.
- (3) For the 1994-1995 fiscal year, six percent (6%) of the trust income earned from the Alabama Trust Fund.
- (4) For the 1995-1996 fiscal year, seven percent (7%) of the trust income earned from the Alabama Trust Fund.
- (5) For the 1996-1997 fiscal year, eight percent (8%) of the trust income earned from the Alabama Trust Fund.
- (6) For the 1997-1998 fiscal year, nine percent (9%) of the trust income earned from the Alabama Trust Fund.
- 7) Thereafter, ten percent (10%) of the trust income earned from the Alabama Trust Fund; provided, however, that in no event shall such trust income paid to the Forever Wild Land Trust exceed \$15 million in any one fiscal year.

(b) The Alabama Trust Fund Board shall provide the Board of Trustees of the Forever Wild Land Trust with advice and assistance in the investment of funds in the Forever Wild Land Trust.

(c) Title to the property acquired from funds in the Forever Wild Land Trust shall be held in the Alabama Trust Fund for the State of Alabama. Provided, however, the Alabama Trust Fund Board shall not have any responsibility for nor any control over the approving or disapproving of the acquisition, disposition or use of any such property. Nothing in this Amendment or Amendment 450 to this Alabama Constitution of 1901 shall be construed so as to require the Alabama Trust Fund Board to have a fiduciary responsibility for the investment of Forever Wild Land Trust funds or the production of income from property acquired by the Board of Trustees of the Forever Wild Land Trust.

(d) The amounts allocated to the Forever Wild Land Trust shall be included in determining whether the trust income received by the state from the Alabama Trust Fund equals or exceeds \$60,000,000 for the purposes of the County Government Capital Improvement Act (codified at Sections 11-29-1 through 11-29-7 of the Code of Alabama, 1975, as amended) and the Municipal Government Capital Improvement Act (codified at Sections 11-66-1 through 11-66-7 of the Code of Alabama, 1975, as amended). In no event shall any provision hereof serve to decrease the amount of income from the Alabama Trust Fund which is to be appropriated to the Municipal Government Capital Improvement Fund and the County Government Capital Improvement Fund under the above-referenced acts.

Section 8. Donations of Property.

Any person making a donation of any property or any interest therein, to the state for the purposes of this Amendment, shall receive, irrespective of any other provisions of the income tax laws of the state, twice the ordinary deduction for state income tax purposes for the taxable year in which the property or interest is donated. Provided, however, the value of any such property or interest therein, subject to this double deduction, shall be limited to the actual value of the property, or any interest therein, donated to the state which shall not include any indebtedness, encumbrances or liens assumed by the Forever Wild Land Trust or the value of any interests or rights retained by the donor.

For the purposes of this section, the "actual value" of property shall be the appraised value for ad valorem taxation purposes, averaged over the preceding five years.

Section 9. Stewardship Account.

The Alabama Trust Fund Board shall establish a separate account within the Alabama Trust Fund to be known as the Forever Wild Land Trust Stewardship Account. When the Forever Wild Land Trust acquires property or an interest in property pursuant to this Amendment, the Board of Trustees of the Forever Wild Land Trust shall set

aside an amount from the Forever Wild Land Trust equal to fifteen percent (15%) of the appraised value of the land acquired, or the land affected if less than a fee interest was acquired. The Alabama Trust Fund Board shall provide for the investment of the Stewardship Account. The Board of Trustees of the Alabama Forever Wild Land Trust may authorize the Department to expend any interest income generated from the investment of funds within the Stewardship Account by the Alabama Trust Fund Board. Provided, however, the Commissioner shall notify the Board of Trustees in writing if he determines that the interest income projected to be generated from the Forever Wild Land Trust Stewardship Account for the next fiscal year will be insufficient to properly manage property acquired by the Forever Wild Land Trust. The Board may authorize by a three-fifths (3/5) vote that funds within the corpus of the Forever Wild Land Trust Stewardship Account be expended by the Department for management purposes for the next fiscal year, provided that funds from the Stewardship Account may not be expended to purchase additional property or interests therein. Within one year after the Forever Wild Land Trust acquires any properties pursuant to this Amendment, the Board of Trustees of the Forever Wild Land Trust shall develop management and allowable use guidelines which shall be followed by the Department in the administration and stewardship of that piece of property. The Lands Division of the Department shall, in accordance with such general directions as may be given by the Board of Trustees, coordinate management of properties acquired pursuant to this Amendment and expenditures from the Stewardship Account. All lands will be managed under the multiple-use management principle; to insure that all resource values including recreation, hunting, fishing, boating, hiking, aesthetics, soil, water, forest management and minerals are protected or enhanced. No use will be allowed that is not compatible with the primary purpose for acquiring the land. In coordinating such management within the Department, the Game and Fish Division of the Department shall manage wildlife and fisheries programs; the State Parks Division of the Department shall manage parks programs; the Lands Division of the Department shall manage natural areas programs through its Natural Heritage Program; and the Lands Division of the Department shall manage other activities and programs relating to Forever Wild Land Trust properties. The Forestry Commission shall serve as consultant to the Department for the purpose of managing the forest and forestry resources programs. Any income that may be generated from the property or from any use of said property acquired through the Forever Wild Land Trust shall be treated as interest income of the Alabama Trust Fund and shall accrue to the credit of the general fund of the State of Alabama.

The right of the public to hunt and fish on the lands and easements acquired under the provisions of this act shall not be abridged or restricted, subject to such rules, regulations, seasons and limits as are established by the Department of Conservation and Natural Resources.

Section 10. Enforceability of Conservation Restrictions; Recordation; Acquisition and Disposal of Interests.

(a) No conservation restriction or easement as defined in Section 2 of this Amendment held by any governmental body shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of the benefit being assignable to or being assigned to any other governmental body with like purposes. All such restrictions and easements shall be duly recorded and indexed in the manner of other conveyances of interests in land, and shall describe the land subject to the restrictions or easements by adequate legal description or by reference to a recorded plat showing its boundaries.

Such conservation restrictions are interests in land and may be acquired by any governmental body which has power to acquire interests in land, in the same manner as it may acquire other interests in land. Such a restriction or easement may be enforced by injunction or proceeding in equity, and shall entitle the holder of it to enter the land in a reasonable manner and at reasonable times to assure compliance. Such a restriction or easement may be released in whole or in part, by the holder for such consideration, if any, as the holder may determine, in the same manner as the holder may dispose of land or other interest in land, subject to such conditions as may have been imposed at the time of creation of the restriction.

This section shall not be construed to imply that any restriction, easement, covenant or condition which does not have the benefit of this section shall, on account of any provision hereof, be unenforceable. Nothing in this Amendment shall diminish the powers granted by any law to acquire by purchase, gift, eminent domain or otherwise as restricting the use of an existing or future easement, express or implied, in favor of any utility or other holder of an easement for public purpose. The existence of conservation easements or restrictions shall not of itself be proof of value as a measure of damages in any eminent domain proceedings.

(b) When a conservation restriction or easement is held by public body under the program established by this Amendment, the real property subject thereto shall be assessed for taxation purposes on the basis of the true cash value of the property or as otherwise provided by law, less such reduction in value as may result from the granting of the conservation restriction or easement. The value of the interest held by the public body shall be exempt from property taxation to the same extent as other public property.

Section 11. Alabama Natural Heritage Program.

(a) The Alabama Natural Heritage Program is hereby established as a part of the Lands Division of the Department, or its duly designated successor, and shall be funded from the Forever Wild Land Trust or the Forever Wild Land Trust Stewardship Account as provided by the Board, and from private donations.

(b) For purposes of this program, the Department, subject to approval by the Board, shall:

- (1) Produce an inventory of Alabama's natural heritage resources, including their location and ecological status.
- (2) Maintain a natural heritage data bank of inventory data and other relevant information for ecologically significant sites supporting natural heritage resources. Information from this data bank may be made available to public agencies and to private institutions or individuals for environmental assessment and land management purposes.
- (3) Develop a Natural Heritage Plan which suggests priorities for the protection, acquisition and management of dedicated natural area preserves.
- (4) Establish procedures relating to the confidentiality of data and inquiries for information in order to protect natural resources and encourage use by public agencies and private organizations and individuals in planning or conducting their activities.

Section 12. Dedication of Natural Area Preserves.

(a) The Department shall, in the name of the State and upon the recommendation of the Board, accept the dedication of natural areas on lands deemed by the Board and the Commissioner to qualify as natural area preserves under the provisions of this Amendment. Natural area preserves may be offered for dedication by voluntary act of the owner. The owner of a qualified natural area may transfer fee simple title or other interest in land to the State. Natural area preserves may be acquired by gift, grant or purchase.

(b) Dedication of a natural area preserve shall become effective only upon acceptance of the instrument of dedication by the Board and the Commissioner.

(c) The instrument of dedication may:

- (1) Contain restrictions and other provisions relating to management, use, development, transfer, and public access, and may contain any other restrictions and provisions as may be necessary or advisable to further the purposes of this Amendment;
- (2) Define, consistent with the purposes of this Amendment, the respective rights and duties of the owner and of the state and provide procedures to be followed in case of violations of the restrictions;
- (3) Recognize and create reversionary rights, transfers upon condition or with limitations, and gifts over; and
- (4) Vary in provisions from one natural area preserve to another in accordance with differences in the characteristics and conditions of the several areas.

(d) Public departments, commissions, boards, counties, municipalities, corporations, colleges, universities and all other agencies and instrumentalities of the state and its political subdivisions may dedicate suitable areas within their jurisdiction as natural area preserves in accordance with the powers and authorities granted to such organizations by existing state legislation.

(e) The Board may enter into amendments to the instrument of dedication upon finding that such amendments will not permit an impairment, disturbance, use, or development of the area inconsistent with the provisions of this Amendment. If the fee simple estate in the natural area preserve is not held by the state under this article, no amendment may be made without the written consent of the owner of the other interests therein.



Section 13. Sunset Provision.

Beginning with the state's 2012-2013 fiscal year and each succeeding fiscal year, all moneys to be paid into the Forever Wild Land Trust shall be paid to the Alabama Trust Fund in the event the Legislature has not provided for the continuation of payments into the Forever Wild Land Trust Fund as provided for in this section, provided that 2.5% of the trust income earned from the investment of funds in the Alabama Trust Fund shall continue to be paid to the Forever Wild Stewardship Account established in Section 9 of this Amendment until such time as the Legislature, by legislative act, determines that interest income earned from the investment of funds within the corpus of the Stewardship Account is sufficient for the proper administration and stewardship of properties acquired from the Forever Wild Land Trust. And provided further, that the Legislature, by legislative act, or by the enactment of a constitutional amendment may continue payment of the revenues provided in Section 7 hereof, or at any time provide for the payment of other revenues, into the Forever Wild Land Trust. At such time as the payment of trust income into the Forever Wild Land Trust shall cease, the percentage of trust income accruing to said trust fund shall be paid into the Alabama Trust Fund each year to become a part of the corpus of the Alabama Trust Fund.

Section 14. Amendment Self-Executing.

This Amendment shall be self-executing, but the Legislature shall have the right and power to enact laws supplemental hereto and in furtherance of the purposes and objectives hereof, provided that such laws are not inconsistent with the provisions of this Amendment.

Section 15. Severability.

If any provision of this Amendment, or the application of any provision to any entity, person, or circumstance is for any reason adjudged by a court of competent jurisdiction to be invalid, the remainder of this Amendment and its application shall not be affected.

MISSISSIPPI LAW - SUMMARIES

Mississippi Conservation Easement Act (Miss. Code §§ 89-19-1 through 89-19-15)

Conservation easements in Mississippi are governed by the Mississippi Conservation Easement Act (Miss. Code §§ 89-19-1 through 89-19-15). The “Department of Wildlife Conservation” is the Department of Wildlife, Fisheries and Parks. The Act:

- Defines “conservation easement,” declares what entities may hold a conservation easement, and provides for a third-party right of enforcement.
- Specifies how conservation easements may be created.
- Provides categories of parties with standing in actions affecting a conservation easement.
- Negates traditional common law restrictions on the enforcement of negative easements.
- Describes the relationship of conservation easements to other property interests.
- Codifies the Uniform Conservation Easement Act, with the following modifications:
 - The statute recognizes historical value as a qualifying value, educational use as a qualifying use, and the natural aspect as a qualifying aspect of real property for conservation easement purposes.
 - The class of corporations, associations, and trusts that may hold conservation easements includes educational as well as charitable corporations, associations, and trusts, but either type must be both private and nonprofit.
 - “Person” includes any legal entity, as well as natural persons.
 - Sec. 2(a) of the Uniform Act provides that “[e]xcept as otherwise provided in this Act, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.” Sec. 89-19-5(1) of the Mississippi statute deletes the words “released, modified, terminated, or otherwise altered or affected.”
 - A conservation easement will continue in effect if the easement holder becomes the owner in fee simple of the subject property.
 - Rather than conferring standing for actions “affecting” conservation easements, the statute confers standing for actions “to enforce” conservation easements.
 - The statute confers standing to the state attorney general and the Mississippi Department of Wildlife Conservation.
 - An easement holder is entitled to compensation if a court modifies or terminates the easement.
 - Public money may not be expended for capital improvements on encumbered land except when the easement is perpetual, the easement is held by a government body, and the capital improvements are solely for that government body’s use and benefit. Exceptions to that rule are “Mississippi Landmarks” designated under the Antiquities Law of Mississippi, and properties on the National Register of Historic Places.
 - The statute is declared to be cumulative with and supplemental to other provisions of law.
 - The clerk of the recording court must mail certified copies of instruments conveying conservation easements to the state attorney general and the Department of Wildlife Conservation; any such instrument executed after the statute goes into effect must make note of that requirement; conservation easements conveyed prior to the statute must abide by this requirement in order to qualify for protection under the statute.

Mississippi State Income Tax Credit (Miss. Code § 27-7-22.21)

Sec. 27-7-22.21, enacted in 2003, gives the donor of a conservation easement a tax credit in the amount of fifty percent of the transaction costs of the donation.

The donor may be a private individual, group, or association, but cannot be

- A private corporation or subsidiary that manufactures products, or
- A private corporation or subsidiary that provides public utility services.

The donated property interest must qualify as a conservation contribution under § 170(h) of the U.S. Internal Revenue Code.

The subject property must be nonindustrial private land, and

- Adjacent to and alongside a stream that is fully nominated to the Mississippi Scenic Streams Stewardship Program (Miss. Code §§ 51-4-1 through 51-4-23.6), or
- A priority site for conservation under the Mississippi Natural Heritage Program (Miss. Code §§ 49-5-141 through 49-5-157).

The purpose of the easement must be either:

- Preservation of stream bank habitats and stream bank stability, or
- Protection of land made necessary by
 - High biodiversity significance, or
 - Urgent need for protection due to the presence of
 - Exemplary natural communities, or
 - Species of special concern, including threatened or endangered species.

Costs that may be credited are:

- Property appraisals.
- Baseline surveys of natural features, animals, and plants.
- Engineering and surveying fees.
- Maintenance fees.
- Monitoring fees.
- Legal fees.

A donor cannot claim more than ten thousand dollars by this credit in his or her lifetime.

Mississippi Scenic Streams Stewardship Act (Miss. Code §§ 51-4-1 through 51-4-23.6)

The Mississippi Scenic Streams Stewardship Act creates the State Scenic Streams Stewardship Program, a nonregulatory, voluntary program to protect streams that possess unique or outstanding scenic, recreational, geological, botanical, fish, wildlife, historic or cultural values.

Income tax credits under Miss. Code § 27-7-22.21 are available to donors of conservation easements on nonindustrial, private land adjacent to and alongside streams that have been fully nominated to the program.

Sec. 51-4-11(4)(a) authorizes the Department of Wildlife, Fisheries and Parks to receive donations of conservation easements.

Mississippi Natural Heritage Law (Miss. Code §§ 49-5-141 through 49-5-157)

The Mississippi Natural Heritage Law creates the Mississippi Natural Heritage Program, whereby owners of natural areas may voluntarily agree (1) to manage and protect the areas according to rules set forth by the Mississippi Commission on Wildlife, Fisheries and Parks, or (2) to convey interest in the property to the State of Mississippi to be managed and protected. The statute defines “natural area” as “an area of land, water or air, or combination thereof, which contains an element of the state’s natural diversity, including, but not limited to, individual plant or animal life, natural geological areas, habitats of endangered or threatened species, ecosystems or any other area of unique ecological, scientific or educational interest.”

Income tax credits under Miss. Code § 27-7-22.14 are available to donors of conservation easements on nonindustrial, private lands that are “considered to be priority sites for conservation” under the program. Neither statute describes a process for prioritizing potential conservation sites.

Sec. 49-5-155(2) authorizes the Mississippi Commission on Wildlife, Fisheries and Parks to receive donations of conservation easements.

Sec. 49-5-155(6) declares that the assessment of encumbered property is to be reduced by the value of the property interest conveyed to the commission.

MISSISSIPPI LAW - TEXT

Mississippi Conservation Easement Act (Miss. Code §§ 89-19-1 through 89-19-15)

Sec. 89-19-1.Short title.

Sec. 89-19-3.Definitions.

Sec. 89-19-5.General provisions relating to conservation easement; acceptance; recordation; duration.

Sec. 89-19-7.Actions affecting easements.

Sec. 89-19-9.Validity of easements not affected by certain conditions.

Sec. 89-19-11.Capital improvements on property upon which easements have been granted.

Sec. 89-19-13.Interests to which chapter applies; relation to other laws.

Sec. 89-19-15.Recorded easements to be filed with Attorney General and Department of Wildlife, Fisheries, and Parks.

Sec. 89-19-1. Short title.

This chapter shall be known as the "Mississippi Conservation Easement Act of 1986."

Sources: Laws, 1986, ch. 404, Sec. 1, eff from and after passage (approved March 27, 1986).

Sec. 89-19-3. Definitions.

For purposes of this chapter, the following words shall have the meaning ascribed herein unless the context otherwise requires:

- (1) "Conservation easement" shall mean a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, historical or open-space values of real property, assuring its availability for agricultural, forest, recreational, educational or open-space use, protecting natural features and resources, maintaining or enhancing air and water quality or preserving the natural, historical, architectural, archaeological or cultural aspects of real property.
- (2) "Holder" shall mean either:
 - (a) A governmental body empowered by the law of this state or the United States to hold an interest in real property; or
 - (b) A private, nonprofit, charitable or educational corporation, association or trust, the purposes or powers of which include retaining or protecting the natural, scenic, historical or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, educational or open-space use, protecting natural features and resources, maintaining or enhancing air or water quality or preserving the natural, historical, architectural, archaeological or cultural aspects of real property which is the recipient or grantee of a conservation easement.
- (3) "Third-party right of enforcement" shall mean a right granted in a conservation easement to a governmental body or private, nonprofit charitable corporation, association or trust, which is not a holder but which is eligible to be a holder, to enforce any of the terms of the conservation easement.
- (4) "Person" shall mean any natural person or legal entity.

Sources: Laws, 1986, ch. 404, Sec. 2, eff from and after passage (approved March 27, 1986).

Sec. 89-19-5. General provisions relating to conservation easement; acceptance; recordation; duration.

- (1) Except as otherwise provided by this chapter, a conservation easement may be created, conveyed, recorded and assigned, in the same method and manner as other easements.
- (2) No right or duty in favor of or against a holder and no right of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.
- (3) Except as provided in subsection (2) of Section 89-19-7 of this chapter, a conservation easement is unlimited in its duration unless the instrument creating it otherwise provides.
- (4) An interest in real property in existence at the time a conservation easement is created is not impaired by the conservation easement unless the owner of the interest is a party to the conservation easement or consents to it.
- (5) A conservation easement shall continue to be effective and shall not be extinguished if the easement holder is or becomes the owner in fee of the subject property.

Sources: Laws, 1986, ch. 404, Sec. 3; 1988, ch. 379, Sec. 2, eff from and after passage (approved April 18, 1988).

Sec. 89-19-7. Actions affecting easements.

- (1) Any action to enforce a conservation easement may be brought by:
 - (a) An owner of an interest in the real property burdened by the easement;
 - (b) A holder of the easement;
 - (c) A person having a third-party right of enforcement; * * *
 - (d) The Attorney General of the State of Mississippi;
 - (e) The Mississippi Department of Wildlife, Fisheries and Parks; or
 - (f) A person otherwise authorized and empowered by law.
- (2) This chapter does not, and shall not be construed to, affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity. In such proceeding, the holder of the conservation easement shall be compensated for the value of the easement.

Sources: Laws, 1986, ch. 404, Sec. 4; 1988, ch. 379, Sec. 3, eff from and after passage (approved April 18, 1988). Amended by Laws 2000, Ch. 516, Sec. 132, HB666, eff. from and after passage (approved April 30, 2000).

Sec. 89-19-9. Validity of easements not affected by certain conditions.

A conservation easement shall be valid despite the following:

- (a) It is not appurtenant to an interest in real property;
- (b) It may be or has been assigned to another holder;
- (c) It is not of a character that has been traditionally recognized at common law;
- (d) It imposes a negative burden;
- (e) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (f) The benefit does not touch or concern real property; or
- (g) There is no privity of estate or contract.

Sources: Laws, 1986, ch. 404, Sec. 5, eff from and after passage (approved March 27, 1986).

Sec. 89-19-11. Capital improvements on property upon which easements have been granted.

With the exception of "Mississippi Landmarks," as defined by the Antiquities Law of Mississippi (Section 39-7-1 et seq., Mississippi Code of 1972) and of properties entered in the National Register of Historic Places, no public money, derived either from a special fund or the General Fund, shall be expended for capital improvements on any real property upon which a conservation easement has been granted unless the conservation easement is perpetual, a governmental body is the holder of the easement and the capital improvements are solely for the use and benefit of such holder.

Sources: Laws, 1986, ch. 404, Sec. 6, eff from and after passage (approved March 27, 1986).

Sec. 89-19-13. Interests to which chapter applies; relation to other laws.

- (1) This chapter shall apply to an interest created after the effective date of this chapter, whether the interest is designated as a conservation easement or as a covenant, equitable servitude, restriction, easement or otherwise, as long as such interest complies with the provisions of this chapter.
- (2) This chapter shall apply to any interest created prior to the effective date of this chapter if the interest would have been enforceable had it been created after the effective date of this chapter unless retroactive application would contravene the Constitution or laws of this state or the United States.
- (3) This chapter shall not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement or otherwise, that is enforceable under any other law of this state.
- (4) The provisions of this chapter are cumulative and supplemental to any other provision of law.

Sources: Laws, 1986, ch. 404, Sec. 7, eff from and after passage (approved March 27, 1986).

Sec. 89-19-15. Recorded easements to be filed with Attorney General and Department of Wildlife, Fisheries, and Parks.

Whenever any instrument conveying a conservation easement is recorded after the effective date of this section, the clerk of the court recording it shall mail certified copies thereof, together with notice as to the date and place of recording, to the Attorney General of the State of Mississippi and the Mississippi Department of Wildlife, Fisheries and Parks. The requirement that certified copies be mailed to the Attorney General and the Mississippi Department of Wildlife, Fisheries and Parks shall be stated in any instrument which conveys a conservation easement after the effective date of this section. The holder of any conservation easement created prior to the date hereof wishing to qualify such easement for the benefits provided under this chapter shall provide to the Attorney General and the Mississippi Department of Wildlife, Fisheries and Parks, within one (1) year after the effective date of this section, a certified copy of the instrument creating such easement, indicating the date and place of the recordation.

Sources: Laws, 1988, ch. 379, Sec. 1, eff from and after passage (approved April 18, 1988). Amended by Laws 2000, Ch. 516, Sec. 132, HB666, eff. from and after passage (approved April 30, 2000).

Mississippi State Income Tax Credit

Miss. Code Sec. 27-7-22.21.

- (1) As used in this section, the following words and phrases shall have the following meanings, unless the context clearly indicates otherwise:
 - (a) “Eligible land” means nonindustrial private lands in the state that are adjacent to and along a stream which is fully nominated to the Mississippi Scenic Streams Stewardship Program, or nonindustrial private lands in the state which are considered to be priority sites for conservation under the Mississippi Natural Heritage Program.
 - (b) “Eligible owner” means a private individual, group or association other than a private corporation, or any subsidiary thereof, which manufactures products or provides public utility services of any type.
 - (c) “Interest in land” means any right in real property, including access thereto or improvements thereon, or water, including, but not limited to, a fee simple easement, a conservation easement, provided such interest complies with the requirements of the United States Internal Revenue Code Section 170(h), partial interest, mineral right, remainder or future interest, or other interest or right in real property.
 - (d) “Land” or “lands” means real property, with or without improvements thereon, rights-of-way, water and riparian rights, easements, privileges and all other rights or interests of any land or description in, relating to, or connected with real property.
 - (e) “Allowable transaction costs” mean the costs of the appraisal of the lands or interests in lands, including conservation easements, that are being donated, of the baseline survey of the natural features, animals and plants present on the site, of engineering and surveying fees, of maintenance fees, of monitoring fees and of legal fees, including the costs of document preparation, title review and title insurance.
 - (f) “Specified conservation purposes” mean the preservation of stream bank habitats and the stability of stream banks, or the protection of land necessary because of high biodiversity significance or high protection urgency due to the presence of exemplary natural communities or species of special concern, including threatened or endangered species.
 - (2) For the taxable years beginning on or after January 1, 2003, for any income taxpayer who is an eligible owner, a credit against the taxes imposed by this chapter shall be allowed in the amounts provided in this section upon the donation of land or an interest in land for specified conservation purposes.
 - (3) The credit provided for in this section shall be fifty percent (50%) of the allowable transaction costs involved in the donation for the tax year in which the allowable transaction costs occur. The aggregate amount of the credit provided in this section for allowable transaction costs shall not exceed the lesser of Ten Thousand Dollars (\$10,000.00) or the amount of tax imposed upon the taxpayer for the taxable year reduced by the sum of all other credits allowable to such taxpayer under this chapter, except credit for tax payments made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for ten (10) succeeding tax years. The maximum dollar amount of the credit provided for in this section that an eligible owner may utilize during his lifetime shall be Ten Thousand Dollars (\$10,000.00) in the aggregate.
 - (4) To be eligible for the credit provided for in this section, an eligible owner must demonstrate that the donation qualifies as a conservation contribution under Section 170(h) of the United States Internal Revenue Code of 1986, by means of being a donation in perpetuity, for conservation purposes and made to a qualified holder or donee. A letter from the donee indicating acceptance and a completed copy of the appropriate United States Internal Revenue Service form shall constitute proof of acceptance. The eligible owner also must submit any other documentation that the State Tax Commission may require.
- (Added by Laws 2003, Ch. 453, § 1, eff. January 1, 2003.)

Mississippi Scenic Streams Stewardship Act

- 51-4-1. Short title.
- 51-4-3. Definitions.
- 51-4-5. Legislative findings.
- 51-4-7. Creation.

- 51-4-9. Nomination.
- 51-4-11. Designation.
- 51-4-13. Construction and application.
- 51-4-15. Regulations.
- 51-4-17. Pilot program.
- 51-4-19. Unauthorized use.
- 51-4-21. Eligibility of portion of Magee's Creek for nomination to Program.
- 51-4-21.1. Eligibility of portion of Tangipahoa River for nomination to Program.
- 51-4-21.2. Eligibility of portions of Chunky Creek and Chunky River for nomination to Program.
- 51-4-23. Designation of portion of Wolf River as State Scenic Stream.
- 51-4-23.1. Designation of portion of Tangipahoa River as State Scenic Stream.
- 51-4-23.2. Designation of portion of Magee's Creek as State Scenic Stream.
- 51-4-23.3. Designation of portion of Chunky Creek and Chunky River as State Scenic Streams.
- 51-4-23.4. Designation of portion of Black Creek in Lamar, Forrest, Perry, Stone, George and Jackson Counties as State Scenic Stream.
- 51-4-23.5. Designation of portion of Pascagoula River as State Scenic Stream.
- 51-4-23.6. Designation of portion of Bear Creek as State Scenic Stream.

Sec. 51-4-1. Short title.

This act may be cited as the "Mississippi Scenic Streams Stewardship Act."

Sources: Added by Laws 1999, Ch. 381, Sec. 1, eff July 1, 1999.

Sec. 51-4-3. Definitions.

Except as otherwise required by the context:

- (a) "Department" means the Department of Wildlife, Fisheries and Parks.
- (b) "Stream" means any free-flowing stream or segment of stream that is a public waterway under Section 51-1-4, Mississippi Code of 1972, and has not been channelized within the last five (5) years.

Sources: Added by Laws 1999, Ch. 381, Sec. 2, eff. July 1, 1999.

Sec. 51-4-5. Legislative findings.

The Legislature finds that certain selected streams and stream segments of this state possess unique or outstanding scenic, recreational, geological, botanical, fish, wildlife, historic or cultural values. It is the policy of the Legislature to provide for the protection of these streams and to conserve the state's natural heritage for the benefit and enjoyment of present and future generations, while preserving the private property rights of riparian landowners.

There is a necessity for a rational balance between the use of these streams and the conservation of the natural beauty along these streams. The Legislature finds that this balance will best be achieved through a nonregulatory voluntary stewardship program emphasizing local education, participation and support. The primary goal of the program is to maximize voluntary private conservation efforts and to build and maintain a sense of stewardship among stream users and riparian landowners. To accomplish this goal, the program must provide a nonregulatory framework to obtain cooperative, voluntary management agreements with riparian landowners to maintain scenic values while ensuring the rights of riparian landowners to continue customary uses along the stream.

Sources: Added by Laws 1999, Ch. 381, Sec. 3, eff. July 1, 1999.

Sec. 51-4-7. Creation; eligibility; recommendations.

- (1) There is hereby created the State Scenic Streams Stewardship Program. The department shall coordinate the program. The department shall establish and publish minimum criteria for assessing a stream's eligibility for the State Scenic Streams Stewardship Program. To qualify as eligible, the stream must possess unique or outstanding scenic, recreational, geological, botanical, fish, wildlife, historic or cultural values. The level of pollution of a stream's waters must be considered in determining eligibility for qualification as a scenic stream. A stream with relatively polluted waters may qualify as eligible as a scenic stream if other values are considered outstanding.
- (2) (a) The department shall inventory and evaluate Mississippi streams and identify the streams or stream segments which possess unique or outstanding scenic, recreational, geological, botanical, fish, wildlife, historic or cultural values based on the criteria established under this section.
 - (b) Any Mississippi organization, resident, state agency or local government may request the department to evaluate a stream.

- (3) If the department determines that a stream meets the eligibility criteria, the department may recommend to the Legislature that a stream or stream segment be listed as eligible for nomination to the State Scenic Streams Stewardship Program. The recommendation must be filed as a bill and must be adopted by the Legislature.

Sources: Added by Laws 1999, Ch. 381, Sec. 4, eff. July 1, 1999.

Sec. 51-4-9. Nomination; advisory council; public meeting and notice.

- (1) After the eligibility assessment of a stream is completed by the department, and the Legislature enacts legislation approving the eligibility, the stream may be nominated as provided in this section. The department, through the executive director, shall establish an advisory council for that stream. The advisory council must be appointed as early as possible to assist the work of the department. Each council must consist of members who represent a broad range of interest in the vicinity of the eligible stream and shall include, but not be limited to, at least one (1) member from the department, local government, agricultural interests, forestry interests, business interests, conservation interests, recreational interests and riparian landowners who shall constitute a majority of the council. The advisory council shall elect a chairman. The advisory council shall assist and advise the department concerning the nomination of the stream for the program.
- (2) The department shall hold a public meeting in the vicinity of the eligible stream proposed for nomination to the State Scenic Streams Stewardship Program. This public meeting must be conducted before any action by the department to nominate the eligible stream for inclusion in the State Scenic Streams Stewardship Program. The purpose of this meeting is to receive public comments concerning the proposed nomination of the eligible stream. Notice of this meeting must be published at least thirty (30) days before the meeting in a newspaper having general circulation in each county containing or bordering the eligible stream under study and in a newspaper having general circulation in the state. The department shall notify, in writing, the landowners along the eligible stream. The department and the advisory council shall consider the public comments in its decision whether to nominate the stream.
- (3) Following the public meeting and after consideration of the public comments, the department and the advisory council may nominate the eligible stream for designation as a scenic stream and inclusion in the program. The nomination must be filed as a bill and adopted by the Legislature. No stream shall be designated as a scenic stream and placed in the program until the Legislature has duly enacted legislation designating the stream as scenic and placing it in the State Scenic Streams Stewardship Program.

Sources: Added by Laws 1999, Ch. 381, Sec. 5, eff. July 1, 1999.

Sec. 51-4-11. Designation; notice; cooperative voluntary stewardship plan; contents; land donation

- (1) After the Legislature has designated a stream as a state scenic stream, the department shall publish a notice of the designation and provide written notice to the affected units of local government and landowners. Notice of the designation also must be published in a newspaper of general circulation in the state to apprise interested parties of the opportunities under this chapter. The notice must describe the boundaries of the stream or stream segment.
- (2) (a) The department and the advisory council shall develop a cooperative voluntary stewardship plan for the scenic stream. The department shall consult and cooperate with the State Soil and Water Conservation Commission and the State Forestry Commission in developing the stewardship options utilizing current best management practices. Any other affected state agency may also make recommendations to the department. The plan shall identify current and traditional uses along the stream and outline goals, objectives and action strategies to address the management of resources along the stream.
- (b) The plan shall utilize best management practices to maintain the scenic values of the stream while ensuring the rights of riparian landowners to continue existing agriculture, forestry, water supply, recreational, commercial and industrial uses and any other uses identified in the plan.
- (3) (a) The plan shall provide several stewardship options for a landowner. The options shall vary in length of commitment, degree of involvement and enforceability. An option may be modified to meet the needs of a landowner based on the individual attributes of the stream.
- (b) Participation in the stewardship plan is voluntary. A landowner is under no obligation to participate in the plan. A participating landowner must give at least thirty (30) days' notice of his intent to terminate a nonbinding option and to withdraw from the program.
- (4) (a) The department may receive by gift, devise, grant or dedication, conservation easements or other interest in real property for the State Scenic Streams Stewardship Program.
- (b) If any land is donated to the state for the Scenic Streams Stewardship Program and the land ceases to be used in the program, the title to the land reverts to the donor.

- (5) Any lands placed in the State Scenic Streams Stewardship Program may be obtained only from private or corporate owners voluntarily. Land placed in the State Scenic Streams Stewardship Program shall not be obtained by eminent domain.

Sources: Added by Laws 1999, Ch. 381, § 6, eff. July 1, 1999.

Sec. 51-4-13. Construction and application.

This act shall not be construed to prohibit or restrict the continuation of any existing uses in the scenic streams area and shall not be construed to prohibit or restrict the operation, repair, improvement or maintenance of any facility, road, bridge, utility, pipeline, structure or any other crossing in the scenic stream area.

Sources: Added by Laws 1999, Ch. 381, Sec. 7, eff. July 1, 1999.

Sec. 51-4-15. Regulations; mutual management.

- (1) The department shall administer this act and may promulgate regulations for the specific powers granted under this act. In the process of administering the Scenic Streams Stewardship Program, the department shall consider, protect and ensure protection of the rights of private ownership and of the voluntary participants in the scenic streams stewardship programs.
- (2) The department may enter into agreements with local, state and federal agencies, and private landowners, for the mutual management of a scenic stream. An agency which has administrative jurisdiction over lands or interests in land along a state scenic stream must assist the department to implement the policies and practices of this act.

Sources: Added by Laws 1999, Ch. 381, Sec. 8, eff. July 1, 1999.

Sec. 51-4-17. Pilot program; eligible streams.

- (1) The department is authorized to conduct a pilot program for the following streams designated as eligible for inclusion in the State Scenic Streams Stewardship Program:
- (a) Wolf River in Pearl River, Hancock, Stone and Harrison Counties beginning at Mississippi Highway 26 in Pearl River County to the Bay of St. Louis in Harrison County;
 - (b) Black Creek in Lamar, Forrest, Perry, Stone, George and Jackson Counties beginning at Mississippi Highway 589 in Lamar County to the Pascagoula River in Jackson County;
 - (c) Okatoma Creek in Simpson and Covington Counties beginning at the Illinois Central Gulf Railroad in Simpson County to the Bowie River in Covington County;
 - (d) Strong River in Smith, Rankin and Simpson Counties beginning at the confluence of Beech Creek in Smith County to the Pearl River in Simpson County;
 - (e) Pearl River in Winston and Neshoba Counties beginning at the origin, confluence of Nanih Waiya Creek and Bogue Chitto Creek in Winston County to MS Highway 15 in Neshoba County; and
 - (f) Buttahatchie River in Monroe and Lowndes Counties beginning at the Mississippi-Alabama state line in Monroe County to U.S. Highway 45 in Lowndes County.
- (2) The department shall follow the requirements in this act for the nomination of these streams to the State Scenic Streams Stewardship Program. The department shall report annually to the Legislature on the status of the pilot program.
- (3) Any landowner entering into a binding agreement for the management of lands in a pilot project shall be eligible for any subsequent incentives that are offered for participation in the State Scenic Streams Stewardship Program.

Sources: Added by Laws 1999, Ch. 381, Sec. 9, eff. July 1, 1999.

Sec. 51-4-19. Unauthorized use; trespass.

This act does not confer upon any member of the public the right to the use of or access to private lands within the boundary of a designated scenic stream area and any unauthorized use is trespass and subject to the penalties provided for trespass offenses.

Sources: Added by Laws 1999, Ch. 381, Sec. 10, eff. July 1, 1999.

Sec. 51-4-21. Eligibility of portion of Magee's Creek for nomination to Program.

In accordance with Section 51-4-7, Magee's Creek in Walthall County from the confluence of Varnell Creek to the Bogue Chitto River is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

Sources: Added by Laws 2000, Ch. 308, Sec. 1, HB461, eff. from and after passage (approved March 17, 2000).

Sec. 51-4-21.1. Eligibility of portion of Tangipahoa River for nomination to Program.

In accordance with Section 51-4-7, Tangipahoa River in Pike County beginning at U.S. Highway 51 and extending to the Mississippi-Louisiana state line is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

Sources: Added by Laws 2000, Ch. 310, § 1, eff. from and after passage (approved March 26, 2000).

Sec. 51-4-21.2. Eligibility of portions of Chunky Creek and Chunky River for nomination to Program.

In accordance with Section 51-4-7, Chunky Creek in Newton County from the confluence of Chunky Creek and Tallasher Creek, and the Chunky River in Newton, Lauderdale and Clarke Counties to the junction with the Chickasawhay River in Clarke County, are designated as eligible for nomination to the state Scenic Streams Stewardship Program.

Sources: Laws, 2002, ch. 431, §§ 1, HB 952, eff from and after passage (approved Mar. 20, 2002).

Sec. 51-4-23. Designation of portion of Wolf River as State Scenic Stream.

The Wolf River in Pearl River, Hancock, Stone and Harrison Counties from Highway 26 in Pearl River County to the Bay of St. Louis in Harrison County, which was initially designated as eligible for inclusion in the scenic stream program under Section 51-4-17, is designated as a state scenic stream and is included in the State Scenic Streams Stewardship Program.

Sources: Added by Laws 2000, Ch. 309, Sec. 1, HB462, eff. from and after passage (approved March 17, 2000).

Sec. 51-4-23.1. Designation of portion of Tangipahoa River as State Scenic Stream.

In accordance with Section 51-4-9, the Tangipahoa River in Pike County beginning at U.S. Highway 51 and extending to the Mississippi-Louisiana state line, which was designated as eligible for nomination to the scenic streams stewardship program under Section 51-4-21.1, is designated as a state scenic stream and is included in the State Scenic Streams Stewardship Program.

Sources: Laws, 2001, ch. 346, §§ 1, eff from and after passage (approved Mar. 11, 2001.)

Sec. 51-4-23.2. Designation of portion of Magee's Creek as State Scenic Stream.

Magee's Creek in Walthall County from the confluence of Varnell Creek to the Bogue Chitto River which was designated as eligible for nomination to the scenic streams stewardship program under Section 51-4-21, is designated as a state scenic stream and is included in the Mississippi Scenic Streams Stewardship Program.

Sources: Laws, 2002, ch. 358, §§ 1, SB 2677, eff from and after passage (approved Mar. 18, 2002).

Sec. 51-4-23.3. Designation of portion of Chunky Creek and Chunky River as State Scenic Streams.

Chunky Creek in Newton County from the confluence of Chunky Creek and Tallasher Creek, and the Chunky River in Newton, Lauderdale and Clarke Counties to the junction with the Chickasawhay River in Clarke County, which were designated as eligible for nomination to the state Scenic Streams Stewardship Program under Section 51-4-21.2, are designated as state scenic streams and are included in the Mississippi Scenic Streams Stewardship Program

Sources: Added by Laws 2003, Ch. 350, § 1, eff. from and after passage (approved March 12, 2003).

Sec. 51-4-23.4. Designation of portion of Black Creek in Lamar, Forrest, Perry, Stone, George and Jackson Counties as State Scenic Stream.

Black Creek in Lamar, Forrest, Perry, Stone, George and Jackson Counties from Mississippi Highway 589 in Lamar County to its confluence with the Pascagoula River, which was designated as eligible for nomination under Section 51-4-17, is designated as a state scenic stream and is included in the Mississippi Scenic Streams Stewardship Program.

Sources: Laws, 2004, ch. 402, § 1, SB 2725, eff from and after passage (approved Apr. 22, 2004).

51-4-23.5 Designation of portion of Pascagoula River as State Scenic Stream.

In accordance with Section 51-4-7, the Pascagoula River from the confluence of the Chickasawhay and Leaf Rivers in George County to its mouth in Jackson County is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

Sources: Laws, 2004, ch. 459, § 1, SB 2727, eff from and after passage (approved Apr. 29, 2004).

51-4-23.6. Designation of portion of Bear Creek as State Scenic Stream.

In accordance with Section 51-4-7, a loop of Bear Creek in Tishomingo County from the Mississippi-Alabama state line where it enters Mississippi to the Mississippi-Alabama line where it reenters Alabama is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

Sources: Laws, 2004, ch. 459, § 2, SB 2727, eff from and after passage (approved Apr. 29, 2004).

Mississippi Natural Heritage Law

- 49-5-141. Short title.
- 49-5-143. Legislative findings and declaration.
- 49-5-145. Purpose.
- 49-5-147. Definitions.
- 49-5-149. Powers and duties of commission.
- 49-5-151. Register of natural areas.
- 49-5-153. Registration of natural areas.
- 49-5-155. Dedication of natural areas to commission; exemption from ad valorem taxation.
- 49-5-157. Management, protection and inspection of natural area preserves.

Sec. 49-5-141. Short title.

Sections 49-5-141 to 49-5-157 shall be known and may be cited as the “Mississippi Natural Heritage Law of 1978.”

Sources: Laws, 1978, ch. 415, Sec. 1, eff from and after passage (approved March 23, 1978).

Sec. 49-5-143. Legislative findings and declaration.

- (1) The legislature finds and declares that there is a need for additional organized, accessible information to identify and make known the types and locations of plant and animal life, geological areas and other natural areas in this state.
- (2) The legislature further finds and declares that a system of protection and management of these areas should be implemented and maintained through a procedure of voluntary action by the owners of the property on which these areas may be located.

Sources: Laws, 1978, ch. 415, Sec. 2, eff from and after passage (approved March 23, 1978).



Sec. 49-5-145. Purpose.

- (1) The Legislature states that the purpose of Sections 49-5-141 through 49-5-157 is to establish a registration procedure by which owners of natural areas may voluntarily agree to manage and protect the areas according to rules set forth by the Mississippi Commission on Wildlife, Fisheries and Parks.
- (2) The Legislature states that the purpose of Sections 49-5-141 through 49-5-157 is also to establish a dedication procedure by which owners of natural areas may voluntarily agree to convey any or all of their right, title and interest in the property to the State of Mississippi to be managed and protected by an appropriate agency designated by the Mississippi Commission on Wildlife, Fisheries and Parks for the people of Mississippi.

Sources: Laws, 1978, ch. 415, Sec. 3; 1984, ch. 488, Sec. 318, eff from and after July 1, 1984. Amended by Laws 2000, Ch. 516, Sec. 55, HB666, eff. from and after passage (approved April 30, 2000)

Sec. 49-5-147. Definitions.

For the purposes of Sections 49-5-141 through 49-5-157, the following words shall have the meaning ascribed herein unless the context shall otherwise require:

- (a) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.
- (b) "Committee" or "Wildlife Heritage Committee" means the Mississippi Commission on Wildlife, Fisheries and Parks.
- (c) "Dedicate" means the transfer to the Mississippi Commission on Wildlife, Fisheries and Parks of any estate, interest or right in any natural area to be held for the people of Mississippi in a manner provided in Section 49-5-155.
- (d) "Natural area" means an area of land, water or air, or combination thereof, which contains an element of the state's natural diversity, including, but not limited to, individual plant or animal life, natural geological areas, habitats of endangered or threatened species, ecosystems or any other area of unique ecological, scientific or educational interest.
- (e) "Natural area preserve" means a natural area which is voluntarily dedicated.
- (f) "Register" means the act of agreement between the owner of a natural area and the Mississippi Commission on Wildlife, Fisheries and Parks for designation of the natural area and for its placement on the register of natural areas by voluntary agreement between the owner of the natural area and the commission.
- (g) "Register of natural areas" means a listing of natural areas which are being managed by the owner of the natural area according to the rules and regulations of the Mississippi Commission on Wildlife, Fisheries and Parks.

Sources: Laws, 1978, ch. 415, Sec. 4; 1984, ch. 488, Sec. 319, eff from and after July 1, 1984. Amended by Laws 2000, Ch. 516, Sec. 56, HB666, eff. from and after passage (approved April 30, 2000)

Sec. 49-5-149. Powers and duties of commission.

The commission shall have the following powers and duties:

- (a) To utilize inventory data compiled by the Mississippi Wildlife Heritage Program concerning the natural areas of the state;
- (b) To accept on behalf of the people of Mississippi any right, title or interest to any natural area;
- (c) To establish and maintain a register of natural areas;
- (d) To select natural areas for placement on the register of natural areas or for dedication as a natural area preserve, or both;
- (e) To provide for the management of natural area preserves by designating an appropriate agency to manage the preserve in accordance with the provisions set forth in the articles of dedication which establish the natural area as a natural area preserve;
- (f) To cooperate with any agency of the United States, the State of Mississippi and any other state, any political subdivision of this state and with private persons or organizations to implement the provisions of Sections 49-5-141 through 49-5-157;
- (g) To discharge any other duty or action necessary to implement the provisions of Sections 49-5-141 through 49-5-157.

Sources: Laws, 1978, ch. 415, Sec. 5, eff from and after passage (approved March 23, 1978). Amended by Laws 2000, Ch. 516, Sec. 57, HB666, eff. from and after passage (approved April 30, 2000)

Sec. 49-5-151. Register of natural areas.

The commission shall publish and revise at least annually a register of natural areas using the inventory of natural areas compiled by the Mississippi Wildlife Heritage Program.

Sources: Laws, 1978, ch. 415, Sec. 6, eff from and after passage (approved March 23, 1978). Amended by Laws 2000, Ch. 516, Sec. 58, HB666, eff. from and after passage (approved April 30, 2000)

Sec. 49-5-153. Registration of natural areas.

- (1) The owner of any natural area on the registry may, if the commission so agrees, register the natural area by executing a voluntary agreement with the commission for the owner to manage and protect the natural area according to the rules and regulations promulgated by the commission and to give the commission first option to purchase the natural area. If the owner agrees to register the area, he shall be given a certificate of registration and shall be committed to manage the area according to the terms of the agreement with the commission. The agree-

ment may be terminated by either party after thirty (30) days written notice. The owner, upon termination, shall surrender the certificate; provided, however, the first option to purchase shall remain with the commission unless the commission shall relinquish the option in writing.

- (2) Any property acquired by the commission or any other agency of the state or political subdivision thereof pursuant to any other authority in law may be registered according to * * * this section.

Sources: Laws, 1978, ch. 415, Sec. 7, eff from and after passage (approved March 23, 1978). 2000-HB666

Sec. 49-5-155. Dedication of natural areas to commission; exemption from ad valorem taxation.

- (1) The owner of any natural area may dedicate that area as a natural area preserve by executing with the commission articles of dedication. The articles shall transfer such portion of the owner's estate as agreed upon by the owner and the commission to the commission for the people of Mississippi.
- (2) The commission may acquire articles of dedication for consideration or by donation, devise or bequest. The articles of dedication shall be recorded in the office of the chancery clerk of the county in which any or all of the natural area is located before the area shall become a natural area preserve.
- (3) The commission may dedicate any property owned by the commission as natural area preserve by filing and recording articles of dedication in the office of the chancery clerk of the county in which any or all of the area is located.
- (4) The articles of dedication shall contain:
 - (a) Provisions for the management, custody and use of the natural area preserve;
 - (b) Provisions which define the rights and privileges of the owner and the committee or the managing agency; and
 - (c) Such other provisions as the owner or commission shall deem necessary to discharge the provisions of Sections 49-5-141 through 49-5-157 or to complete the transfer.
- (5) The commission shall agree to no articles of dedication which do not provide for the protection, preservation and management of the natural area in a manner consistent with the intent and purposes of Sections 49-5-141 through 49-5-157.
- (6) Any interest in real property owned by the commission in a natural area preserve shall be exempt from all ad valorem taxation levied by the State of Mississippi or any county or municipality or other political subdivision of this state. Any person who shall convey any interest in real property to the commission for the purposes set forth in Sections 49-5-141 through 49-5-157 shall be entitled to have the assessment of such property reduced by the amount of the value of the interest conveyed to the commission. The authorities responsible for determining and making the assessment shall also determine the value of the interest conveyed to the commission. This reduction in the assessment of such property shall terminate when the interest conveyed to the commission terminates.
- (7) The commission shall be the agency of the State of Mississippi primarily responsible for acquisition of natural area preserves, but no provision of Sections 49-5-141 through 49-5-157 shall be construed to limit the commission's authority to acquire other property. Any property acquired by the commission or any other agency of the state or political subdivision thereof pursuant to any other authority in law may be dedicated according to * * * this section.
- (8) No provisions of Sections 49-5-141 through 49-5-157 shall be construed to limit the authority of any other agency to acquire and dedicate natural areas according to the provisions of Sections 49-5-141 through 49-5-157.

Sources: Laws, 1978, ch. 415, Sec. 8, eff from and after passage (approved March 23, 1978). Amended by Laws 2000, Ch. 516, Sec. 60, HB666, eff. from and after passage (approved April 30, 2000)

Sec. 49-5-157. Management, protection and inspection of natural area preserves.

- (1) A natural area preserve is held in trust by the State of Mississippi for present and future generations and shall be managed and protected according to the rules and regulations set forth by the commission. A natural area preserve is hereby declared to be at the highest, best and most important use for the public.
- (2) The commission shall inspect or provide for the inspection of at least annually, each natural area preserve to insure that the terms of the articles of dedication are being respected.

Sources: Laws, 1978, ch. 415, Sec. 9, eff from and after passage (approved March 23, 1978). Amended by Laws 2000, Ch. 516, Sec. 61, HB666, eff. from and after passage (approved April 30, 2000)

FEDERAL LAW - SUMMARIES

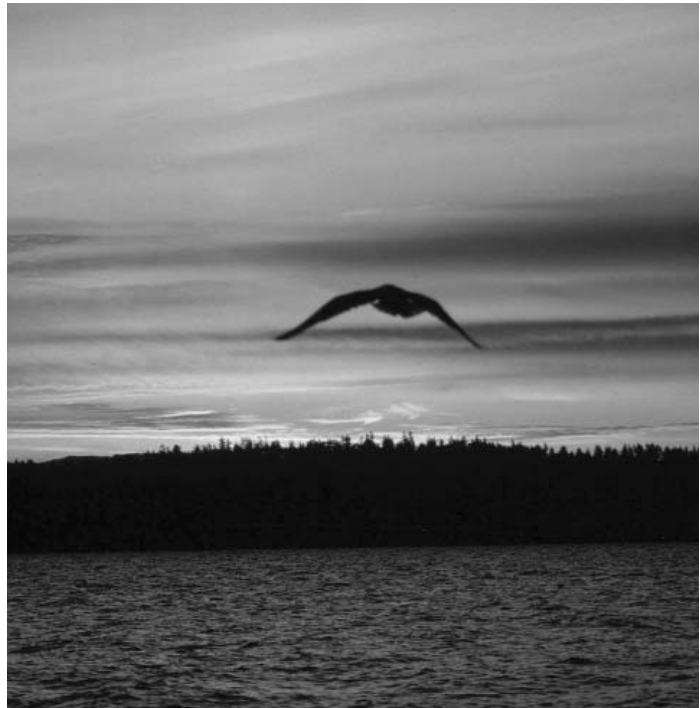
Internal Revenue Code § 170(h) (26 U.S.C. § 170(h)) (income tax deduction)

Treasury Regulations § 1.170A-14 (26 C.F.R. § 1.170A-14)

Charitable contributions of conservation easements are deductible from federal income taxes just like other charitable contributions. The Internal Revenue Code (IRC) restricts the deduction of charitable contributions of partial property interests; however, IRC § 170(f)(3) excludes “qualified conservation contributions” from those restrictions. Conservation easements that meet the statutory criteria are “qualified conservation contributions” and are deductible.

IRC § 170(h) defines “qualified conservation contribution” for purposes of IRC § 170(f)(3). Sec. 1.170A-14 of the Department of Treasury regulations provides the Internal Revenue Service’s detailed interpretation of IRC § 170(h). Under the statute and regulation, a qualified conservation contribution requires the following elements:

- It must be a contribution of a **qualified real property interest**.
 - The statute provides that “a restriction (granted in perpetuity) on the use which may be made of the real property” is a qualified real property interest.
 - The regulation adds that such a restriction may be in the form of “an easement or other interest in real property that under state law has attributes similar to an easement (e.g., a restrictive covenant or equitable servitude).” A conservation easement that conforms to the Alabama or Mississippi statutes and is granted in perpetuity is, therefore, a qualified real property interest.
- It must be made to a **qualified organization**.
 - “Qualified organization” is defined by reference to other sections of the IRC.
 - Government agencies and non-profit land trusts are usually qualified organizations; however, the potential grantor of a conservation easement should seek professional legal or accounting advice to ensure that the potential grantee is a qualified organization for federal tax purposes.
- It must be **exclusively for conservation purposes**.
 - The statute provides an exclusive list of four “conservation purposes”:
 - The preservation of land areas for outdoor recreation by, or the education of, the general public.
 - The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem.
 - The preservation of open space (including farmland and forest land) where such preservation will provide a significant public benefit and is (1) for the scenic enjoyment of the general public, or (2) pursuant to a clearly delineated federal, state, or local government conservation policy.
 - The preservation of an historically important land area or certified historic structure.
 - For each conservation purpose, the regulation describes the level of public access that must be allowed. A potential donor should consider how much public access is acceptable when deciding on the easement’s conservation purpose.
 - This requirement does not absolutely preclude other uses of property by the donor. For example, depending on the circumstances, timber harvesting and farming may be allowed.
 - Existing human alteration of the landscape does not automatically disqualify a contribution.



- The regulation provides examples of qualifying habitats and ecosystems.
- Scenic enjoyment is, of course, subjective; however, the taxpayer bears the burden of establishing the requisite scenic enjoyment.
- Scenic enjoyment is determined on a case-by-case basis. The regulation provides a non-exclusive list of factors to consider.
- A government conservation policy must “involve a significant commitment by the government” to qualify. Broad declarations about the importance of conservation, for example, are not by themselves adequate.
- An easement that is made for scenic enjoyment, or pursuant to a clearly delineated government conservation policy, is not automatically considered to confer a “significant public benefit.” Significant public benefit is an independent requirement that must be met in every case. The regulation provides consideration factors for ascertaining the presence of significant public benefit.
- The regulation provides detail on qualifying historically important areas and structures.
- A private residence may qualify as a certified historic structure.
- It must be **protected in perpetuity**.
 - If property is mortgaged, the mortgagee must subordinate its rights to the right of the conservation easement donee to enforce the easement.
 - The easement will not be disqualified simply because it may be negated by an unlikely future event.
 - With limited exceptions, a conservation easement is disqualified if the donor retains an interest in subsurface oil, gas, or other minerals, and the right of access to such minerals.
 - If the donor reserves rights that could impair the conservation purpose of the easement, the donor must make available to the donee documentation establishing the property’s condition at the time of the donation.
 - The instrument of conveyance must prohibit the donee organization from transferring the easement other than to another qualified organization for the same conservation purposes.
 - Changed conditions in the future may make it impossible or impractical to manage the property for the original conservation purposes. Nonetheless, an easement will be treated as “protected in perpetuity” if certain conditions are met.

Valuation of conservation easements for federal income tax purposes is based on the sale prices of comparable easements, if there is a substantial record of such sales. If there is not a substantial record of sales of comparable easements, value is generally to be determined by the difference in the encumbered property’s fair market value before and after the easement.

Note that the federal tax deduction does not explicitly require compliance with a state conservation easement statute. A conservation easement-type interest that does not comply with the state statute (for example, in Alabama, by not explicitly declaring itself to be a “conservation easement”) may still qualify for the federal income tax deduction. Likewise, a conservation easement that does comply with the state statute may nonetheless fail to qualify for the federal income tax deduction (for example, by having a limited term).

A landowner considering taking advantage of the tax benefits of a conservation easement should obtain professional legal and/or accounting advice.

Internal Revenue Code § 2522 (26 U.S.C. § 2522) (gift tax deduction)

The donor of a conservation easement may be relieved from paying gift tax on the donation. IRC § 2522 allows the value of charitable gifts to be deducted from the donor’s total taxable gifts for that tax year. Sec. 2522 disallows a deduction for certain gifts of partial property interests, but § 2522(d) explicitly allows a deduction for irrevocable gifts of perpetual restrictions (such as conservation easements) as defined in § 170(h)(2)(C). Special rules apply to fractional gifts, as described in § 2522(e).

Internal Revenue Code § 2055 (26 U.S.C. § 2055) (estate tax deduction)

Donation of a conservation easement may relieve the donor’s heirs of some estate tax liability. IRC § 2055 allows the value of charitable bequests, legacies, devises, or transfers to be deducted from the decedent donor’s gross estate

when determining the value of his or her taxable estate. Sec. 2055(f) explicitly allows a deduction for irrevocable gifts of perpetual restrictions (such as conservation easements) as defined in § 170(h)(2)(C). Thus, for estate tax purposes, the value of the encumbered land will be reduced by the value of the conservation easement.

The gift may be made during the decedent's lifetime or by will.

**Internal Revenue Code
§ 2031 (26 U.S.C. §
2031) (estate tax exclu-
sion)**

There is an additional method by which the heirs of the donor of a conservation easement may be relieved of some estate tax liability. IRC § 2031 allows a percentage of the value of land subject to a qualified conservation easement (reduced by the amount of any deduction taken for a charitable contribution of the easement under IRC § 2055) to be excluded from a decedent's taxable estate. The maximum exclusion is \$500,000.



IRC § 2031 has a specific definition of "qualified conservation easement" that incorporates the § 170(h)(2)(C) definition of a perpetual restriction but differs as follows:

- Preservation of an historically important land area or certified historic structure does not qualify for this exclusion.
- The conservation easement must prohibit more than de minimis use of the property for commercial recreational activity.

In addition, the encumbered property must meet certain requirements unique to this section:

- It must be located in the U.S. or one of its possessions.
- It must have been owned by the decedent or a member of the decedent's family for all of the three years preceding the decedent's death.
- The conservation easement must have been granted on or before the date the election is made for this exclusion. (The election must be made on or before the due date for filing of the estate tax return.)

To the extent the encumbered property is debt-financed, the exclusion does not apply.

A qualified conservation easement may be granted after the decedent's death by a member of the decedent's family, the executor of the decedent's estate, or the trustee of a trust that holds the subject property. This provision gives the decedent's heirs the option of reducing their estate tax burden in exchange for granting a conservation easement. As noted above, the easement must be granted on or before the filing date of the estate tax return.

FEDERAL LAW - TEXT

Internal Revenue Code § 170(h) (26 U.S.C. § 170(h)) (income tax deduction)

TITLE 26 - INTERNAL REVENUE CODE

Subtitle A - Income Taxes

Chapter 1 - Normal Taxes and Surtaxes

Subchapter B - Computation of Taxable Income

Part VI - Itemized Deductions for Individuals and Corporations

Sec. 170. Charitable, etc., contributions and gifts

(h) Qualified conservation contribution

(1) In general

For purposes of subsection (f)(3)(B)(iii), the term "qualified conservation contribution" means a contribution -

- (A) of a qualified real property interest,
- (B) to a qualified organization,
- (C) exclusively for conservation purposes.

(2) Qualified real property interest

For purposes of this subsection, the term "qualified real property interest" means any of the following interests in real property:

- (A) the entire interest of the donor other than a qualified mineral interest,
- (B) a remainder interest, and
- (C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) Qualified organization

For purposes of paragraph (1), the term "qualified organization" means an organization which -

- (A) is described in clause (v) or (vi) of subsection (b)(1)(A), or
- (B) is described in section 501(c)(3) and -
 - (i) meets the requirements of section 509(a)(2), or
 - (ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) Conservation purpose defined

(A) In general

For purposes of this subsection, the term "conservation purpose" means -

- (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
- (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- (iii) the preservation of open space (including farmland and forest land) where such preservation is -
 - (I) for the scenic enjoyment of the general public, or
 - (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or
- (iv) the preservation of an historically important land area or a certified historic structure.

(B) Special rules with respect to buildings in registered historic districts.--In the case of any contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in subparagraph (C)(ii), such contribution shall not be considered to be exclusively for conservation purposes unless--

- (i) such interest--
 - (I) includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and
 - (II) prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior,
- (ii) the donor and donee enter into a written agreement certifying, under penalty of perjury, that the donee--
 - (I) is a qualified organization (as defined in paragraph (3)) with a purpose of environmental protection, land conservation, open space preservation, or historic preservation, and
 - (II) has the resources to manage and enforce the restriction and a commitment to do so, and

- (iii) in the case of any contribution made in a taxable year beginning after the date of the enactment of this subparagraph, the taxpayer includes with the taxpayer's return for the taxable year of the contribution--
 - (I) a qualified appraisal (within the meaning of subsection (f)(11)(E)) of the qualified property interest,
 - (II) photographs of the entire exterior of the building, and
 - (III) a description of all restrictions on the development of the building.
- (C) Certified historic structure.--For purposes of subparagraph (A)(iv), the term "certified historic structure" means--
 - (i) any building, structure, or land area which is listed in the National Register, or
 - (ii) any building which is located in a registered historic district (as defined in section 47(c)(3)(B)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.
- (5) Exclusively for conservation purposes
 - For purposes of this subsection -
 - (A) Conservation purpose must be protected
 - A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.
 - (B) No surface mining permitted
 - (i) In general
 - Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.
 - (ii) Special rule
 - With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.
- (6) Qualified mineral interest
 - For purposes of this subsection, the term "qualified mineral interest" means -
 - (A) subsurface oil, gas, or other minerals, and
 - (B) the right to access to such minerals.

Treasury Regulations § 1.170A-14 (26 C.F.R. § 1.170A-14)

CODE OF FEDERAL REGULATIONS
TITLE 26 - INTERNAL REVENUE
CHAPTER I - INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY
SUBCHAPTER A - INCOME TAX
PART 1 - INCOME TAXES
NORMAL TAXES AND SURTAXES
COMPUTATION OF TAXABLE INCOME
ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS
Current through October 1, 2003; 68 FR 56764

Sec. 1.170A-14 Qualified conservation contributions.

- (a) Qualified conservation contributions. A deduction under section 170 is generally not allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust (see § 1.170A-6 relating to charitable contributions in trust and § 1.170A-7 relating to contributions not in trust of partial interests in property). However, a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of this section are met. A qualified conservation contribution is the contribution of a qualified real property interest to a qualified

organization exclusively for conservation purposes. To be eligible for a deduction under this section, the conservation purpose must be protected in perpetuity.

(b) Qualified real property interest--

(1) Entire interest of donor other than qualified mineral interest.

(i) The entire interest of the donor other than a qualified mineral interest is a qualified real property interest. A qualified mineral interest is the donor's interest in subsurface oil, gas, or other minerals and the right of access to such minerals.

(ii) A real property interest shall not be treated as an entire interest other than a qualified mineral interest by reason of section 170(h)(2)(A) and this paragraph (b)(1) if the property in which the donor's interest exists was divided prior to the contribution in order to enable the donor to retain control of more than a qualified mineral interest or to reduce the real property interest donated. See Treasury regulations § 1.170A-7(a)(2)(i). An entire interest in real property may consist of an undivided interest in the property. But see section 170(h)(5)(A) and the regulations thereunder (relating to the requirement that the conservation purpose which is the subject of the donation must be protected in perpetuity). Minor interests, such as rights-of-way, that will not interfere with the conservation purposes of the donation, may be transferred prior to the conservation contribution without affecting the treatment of a property interest as a qualified real property interest under this paragraph (b)(1).

(2) Perpetual conservation restriction. A "perpetual conservation restriction" is a qualified real property interest. A "perpetual conservation restriction" is a restriction granted in perpetuity on the use which may be made of real property--including, an easement or other interest in real property that under state law has attributes similar to an easement (e.g., a restrictive covenant or equitable servitude). For purposes of this section, the terms "easement", "conservation restriction", and "perpetual conservation restriction" have the same meaning. The definition of "perpetual conservation restriction" under this paragraph (b)(2) is not intended to preclude the deductibility of a donation of affirmative rights to use a land or water area under § 1.170A-13(d)(2). Any rights reserved by the donor in the donation of a perpetual conservation restriction must conform to the requirements of this section. See e.g., paragraph (d)(4)(ii), (d)(5)(i), (e)(3), and (g)(4) of this section.

(c) Qualified organization--

(1) Eligible donee. To be considered an eligible donee under this section, an organization must be a qualified organization, have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the restrictions. A conservation group organized or operated primarily or substantially for one of the conservation purposes specified in section 170(h)(4)(A) will be considered to have the commitment required by the preceding sentence. A qualified organization need not set aside funds to enforce the restrictions that are the subject of the contribution. For purposes of this section, the term "qualified organization" means:

(i) A governmental unit described in section 170(b)(1)(A)(v);

(ii) An organization described in section 170(b)(1)(A)(vi);

(iii) A charitable organization described in section 501(c)(3) that meets the public support test of section 509(a)(2);

(iv) A charitable organization described in section 501(c)(3) that meets the requirements of section 509(a)(3) and is controlled by an organization described in paragraphs (c)(1) (i), (ii), or (iii) of this section.

(2) Transfers by donee. A deduction shall be allowed for a contribution under this section only if in the instrument of conveyance the donor prohibits the donee from subsequently transferring the easement (or, in the case of a remainder interest or the reservation of a qualified mineral interest, the property), whether or not for consideration, unless the donee organization, as a condition of the subsequent transfer, requires that the conservation purposes which the contribution was originally intended to advance continue to be carried out. Moreover, subsequent transfers must be restricted to organizations qualifying, at the time of the subsequent transfer, as an eligible donee under paragraph (c)(1) of this section. When a later unexpected change in the conditions surrounding the property that is the subject of a donation under paragraph (b)(1), (2), or (3) of this section makes impossible or impractical the continued use of the property for conservation purposes, the requirement of this paragraph will be met if the property is sold or exchanged and any proceeds are used by the donee organization in a manner consistent with the conservation purposes of the original contribu-

tion. In the case of a donation under paragraph (b)(3) of this section to which the preceding sentence applies, see also paragraph (g)(5)(ii) of this section.

(d) Conservation purposes--

(1) In general. For purposes of section 170(h) and this section, the term "conservation purposes" means--

- (i) The preservation of land areas for outdoor recreation by, or the education of, the general public, within the meaning of paragraph (d)(2) of this section,
- (ii) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, within the meaning of paragraph (d)(3) of this section,
- (iii) The preservation of certain open space (including farmland and forest land) within the meaning of paragraph (d)(4) of this section, or
- (iv) The preservation of a historically important land area or a certified historic structure, within the meaning of paragraph (d)(5) of this section.

(2) Recreation or education--

- (i) In general. The donation of a qualified real property interest to preserve land areas for the outdoor recreation of the general public or for the education of the general public will meet the conservation purposes test of this section. Thus, conservation purposes would include, for example, the preservation of a water area for the use of the public for boating or fishing, or a nature or hiking trail for the use of the public.
- (ii) Access. The preservation of land areas for recreation or education will not meet the test of this section unless the recreation or education is for the substantial and regular use of the general public.

(3) Protection of environmental system--

- (i) In general. The donation of a qualified real property interest to protect a significant relatively natural habitat in which a fish, wildlife, or plant community, or similar ecosystem normally lives will meet the conservation purposes test of this section. The fact that the habitat or environment has been altered to some extent by human activity will not result in a deduction being denied under this section if the fish, wildlife, or plants continue to exist there in a relatively natural state. For example, the preservation of a lake formed by a man-made dam or a salt pond formed by a man-made dike would meet the conservation purposes test if the lake or pond were a nature feeding area for a wildlife community that included rare, endangered, or threatened native species.
- (ii) Significant habitat or ecosystem. Significant habitats and ecosystems include, but are not limited to, habitats for rare, endangered, or threatened species of animal, fish, or plants; natural areas that represent high quality examples of a terrestrial community or aquatic community, such as islands that are undeveloped or not intensely developed where the coastal ecosystem is relatively intact; and natural areas which are included in, or which contribute to, the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area, or other similar conservation area.
- (iii) Access. Limitations on public access to property that is the subject of a donation under this paragraph (d)(3) shall not render the donation nondeductible. For example, a restriction on all public access to the habitat of a threatened native animal species protected by a donation under this paragraph (d)(3) would not cause the donation to be nondeductible.

(4) Preservation of open space--

- (i) In general. The donation of a qualified real property interest to preserve open space (including farmland and forest land) will meet the conservation purposes test of this section if such preservation is--
 - (A) Pursuant to a clearly delineated Federal, state, or local governmental conservation policy and will yield a significant public benefit, or
 - (B) For the scenic enjoyment of the general public and will yield a significant public benefit.

An open space easement donated on or after December 18, 1980, must meet the requirements of section 170(h) in order to be deductible.

(ii) Scenic enjoyment--

- (A) Factors. A contribution made for the preservation of open space may be for the scenic enjoyment of the general public. Preservation of land may be for the scenic enjoyment of the general public if development of the property would impair the scenic character of the local rural or urban landscape or would interfere with a scenic panorama that can be enjoyed from a park, nature preserve, road, waterbody, trail, or historic structure or land area, and such area or transportation way is open to, or utilized by, the public. "Scenic enjoyment" will be evaluated by considering all pertinent facts and

circumstances germane to the contribution. Regional variations in topography, geology, biology, and cultural and economic conditions require flexibility in the application of this test, but do not lessen the burden on the taxpayer to demonstrate the scenic characteristics of a donation under this paragraph. The application of a particular objective factor to help define a view as "scenic" in one setting may in fact be entirely inappropriate in another setting. Among the factors to be considered are:

- (1) The compatibility of the land use with other land in the vicinity;
 - (2) The degree of contrast and variety provided by the visual scene;
 - (3) The openness of the land (which would be a more significant factor in an urban or densely populated setting or in a heavily wooded area);
 - (4) Relief from urban closeness;
 - (5) The harmonious variety of shapes and textures;
 - (6) 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;
 - (7) The consistency of the proposed scenic view with a methodical state scenic identification program, such as a state landscape inventory; and
 - (8) The consistency of the proposed scenic view with a regional or local landscape inventory made pursuant to a sufficiently rigorous review process, especially if the donation is endorsed by an appropriate state or local governmental agency.
- (B) Access. To satisfy the requirement of scenic enjoyment by the general public, visual (rather than physical) access to or across the property by the general public is sufficient. Under the terms of an open space easement on scenic property, the entire property need not be visible to the public for a donation to qualify under this section, although the public benefit from the donation may be insufficient to qualify for a deduction if only a small portion of the property is visible to the public.
- (iii) Governmental conservation policy--
- (A) In general. The requirement that the preservation of open space be pursuant to a clearly delineated Federal, state, or local governmental policy is intended to protect the types of property identified by representatives of the general public as worthy of preservation or conservation. A general declaration of conservation goals by a single official or legislative body is not sufficient. However, a governmental conservation policy need not be a certification program that identifies particular lots or small parcels of individually owned property. This requirement will be met by donations 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; the preservation of a wild or scenic river, the preservation of farmland pursuant to a state program for flood prevention and control; 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. For example, the donation of a perpetual conservation restriction to a qualified organization pursuant to a formal resolution or certification by a local governmental agency established under state law specifically identifying the subject property as worthy of protection for conservation purposes will meet the requirement of this paragraph. A program need not be funded to satisfy this requirement, but the program must involve a significant commitment by the government with respect to the conservation project. For example, a governmental program according preferential tax assessment or preferential zoning for certain property deemed worthy of protection for conservation purposes would constitute a significant commitment by the government.
 - (B) Effect of acceptance by governmental agency. Acceptance of an easement by an agency of the Federal Government or by an agency of a state or local government (or by a commission, authority, or similar body duly constituted by the state or local government and acting on behalf of the state or local government) tends to establish the requisite clearly delineated governmental policy, although such acceptance, without more, is not sufficient. The more rigorous the review process by the governmental agency, the more the acceptance of the easement tends to establish the requisite clearly delineated governmental policy. For example, in a state where the legislature has established an Environmental Trust to accept gifts to the state which meet certain conservation purposes and to submit the gifts to a review that requires the approval of the state's highest officials, acceptance of a gift by the Trust tends to establish the requisite clearly delineated governmental policy.

However, if the Trust merely accepts such gifts without a review process, the requisite clearly delineated governmental policy is not established.

- (C) Access. A limitation on public access to property subject to a donation under this paragraph (d)(4)(iii) shall not render the deduction nondeductible unless the conservation purpose of the donation would be undermined or frustrated without public access. For example, a donation pursuant to a governmental policy to protect the scenic character of land near a river requires visual access to the same extent as would a donation under paragraph (d)(4)(ii) of this section.
- (iv) Significant public benefit--
 - (A) Factors. All contributions made for the preservation of open space must yield a significant public benefit. Public benefit will be evaluated by considering all pertinent facts and circumstances germane to the contribution. Factors germane to the evaluation of public benefit from one contribution may be irrelevant in determining public benefit from another contribution. No single factor will necessarily be determinative. Among the factors to be considered are:
 - (1) The uniqueness of the property to the area;
 - (2) The intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development);
 - (3) The consistency of the proposed open space use with public programs (whether Federal, state or local) for conservation in the region, including programs for outdoor recreation, irrigation or water supply protection, water quality maintenance or enhancement, flood prevention and control, erosion control, shoreline protection, and protection of land areas included in, or related to, a government approved master plan or land management area;
 - (4) The consistency of the proposed open space use with existing private conservation programs in the area, as evidenced by other land, protected by easement or fee ownership by organizations referred to in § 1.170A-14(c)(1), in close proximity to the property;
 - (5) The likelihood that development of the property would lead to or contribute to degradation of the scenic, natural, or historic character of the area;
 - (6) The opportunity for the general public to use the property or to appreciate its scenic values;
 - (7) The importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;
 - (8) The likelihood that the donee will acquire equally desirable and valuable substitute property or property rights;
 - (9) The cost to the donee of enforcing the terms of the conservation restriction;
 - (10) The population density in the area of the property; and
 - (11) The consistency of the proposed open space use with a legislatively mandated program identifying particular parcels of land for future protection.
 - (B) Illustrations. The preservation of an ordinary tract of land would not in and of itself yield a significant public benefit, but the preservation of ordinary land areas in conjunction with other factors that demonstrate significant public benefit or the preservation of a unique land area for public employment would yield a significant public benefit. For example, the preservation of a vacant downtown lot would not by itself yield a significant public benefit, but the preservation of the downtown lot as a public garden would, absent countervailing factors, yield a significant public benefit. The following are other examples of contributions which would, absent countervailing factors, yield a significant public benefit: The preservation of farmland pursuant to a state program for flood prevention and control; the preservation of a unique natural land formation for the enjoyment of the general public; the preservation of woodland along a public highway pursuant to a government program to preserve the appearance of the area so as to maintain the scenic view from the highway; and the preservation of a stretch of undeveloped property located between a public highway and the ocean in order to maintain the scenic ocean view from the highway.
- (v) Limitation. A deduction will not be allowed for the preservation of open space under section 170(h)(4)(A)(iii), if the terms of the easement permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land or with the governmental conservation policy that is being furthered by the donation. See § 1.170A-14(e)(2) for rules relating to inconsistent use.
- (vi) Relationship of requirements--
 - (A) Clearly delineated governmental policy and significant public benefit. Although the requirements of "clearly delineated governmental policy" and "significant public benefit" must be met independ-

ently, for purposes of this section the two requirements may also be related. The more specific the governmental policy with respect to the particular site to be protected, the more likely the governmental decision, by itself, will tend to establish the significant public benefit associated with the donation. For example, while a statute in State X permitting preferential assessment for farmland is, by definition, governmental policy, it is distinguishable from a state statute, accompanied by appropriations, naming the X River as a valuable resource and articulating the legislative policy that the X River and the relatively natural quality of its surrounding be protected. On these facts, an open space easement on farmland in State X would have to demonstrate additional factors to establish "significant public benefit." The specificity of the legislative mandate to protect the X River, however, would by itself tend to establish the significant public benefit associated with an open space easement on land fronting the X River.

- (B) Scenic enjoyment and significant public benefit. With respect to the relationship between the requirements of "scenic enjoyment" and "significant public benefit," since the degrees of scenic enjoyment offered by a variety of open space easements are subjective and not as easily delineated as are increasingly specific levels of governmental policy, the significant public benefit of preserving a scenic view must be independently established in all cases.
 - (C) Donations may satisfy more than one test. In some cases, open space easements may be both for scenic enjoyment and pursuant to a clearly delineated governmental policy. For example, the preservation of a particular scenic view identified as part of a scenic landscape inventory by a rigorous governmental review process will meet the tests of both paragraphs (d)(4)(i)(A) and (d)(4)(i)(B) of this section.
- (5) Historic preservation--
- (i) In general. The donation of a qualified real property interest to preserve an historically important land area or a certified historic structure will meet the conservation purposes test of this section. When restrictions to preserve a building or land area within a registered historic district permit future development on the site, a deduction will be allowed under this section only if the terms of the restrictions require that such development conform with appropriate local, state, or Federal standards for construction or rehabilitation within the district. See also, § 1.170A-14(h)(3)(ii).
 - (ii) Historically important land area. The term "historically important land area" includes:
 - (A) An independently significant land area including any related historic resources (for example, an archaeological site or a Civil War battlefield with related monuments, bridges, cannons, or houses) that meets the National Register Criteria for Evaluation in 36 CFR 60.4 (Pub.L. 89-665, 80 Stat. 915);
 - (B) Any land area within a registered historic district including any buildings on the land area that can reasonably be considered as contributing to the significance of the district; and
 - (C) Any land area (including related historic resources) 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 property.
 - (iii) Certified historic structure. The term "certified historic structure," for purposes of this section, means any building, structure or land area which is--
 - (A) Listed in the National Register, or
 - (B) Located in a registered historic district (as defined in section 48(g)(3)(B)) and is certified by the Secretary of the Interior (pursuant to 36 CFR 67.4) to the Secretary of the Treasury as being of historic significance to the district.

A "structure" for purposes of this section means any structure, whether or not it is depreciable. Accordingly easements on private residences may qualify under this section. In addition, a structure would be considered to be a certified historic structure if it were certified either at the time the transfer was made or at the due date (including extensions) for filing the donor's return for the taxable year in which the contribution was made.

- (iv) Access.
 - (A) In order for a conservation contribution described in section 170(h)(4)(A)(iv) and this paragraph (d)(5) to be deductible, some visual public access to the donated property is required. In the case of

an historically important land area, the entire property need not be visible to the public for a donation to qualify under this section. However, the public benefit from the donation may be insufficient to qualify for a deduction if only a small portion of the property is so visible. Where the historic land area or certified historic structure which is the subject of the donation is not visible from a public way (e.g., the structure is hidden from view by a wall or shrubbery, the structure is too far from the public way, or interior characteristics and features of the structure are the subject of the easement), the terms of the easement must be such that the general public is given the opportunity on a regular basis to view the characteristics and features of the property which are preserved by the easement to the extent consistent with the nature and condition of the property.

- (B) Factors to be considered in determining the type and amount of public access required under paragraph (d)(5)(iv)(A) of this section include the historical significance of the donated property, the nature of the features that are the subject of the easement, the remoteness or accessibility of the site of the donated property, the possibility of physical hazards to the public visiting the property (for example, an unoccupied structure in a dilapidated condition), the extent to which public access would be an unreasonable intrusion on any privacy interests of individuals living on the property, the degree to which public access would impair the preservation interests which are the subject of the donation, and the availability of opportunities for the public to view the property by means other than visits to the site.
- (C) The amount of access afforded the public by the donation of an easement shall be determined with reference to the amount of access permitted by the terms of the easement which are established by the donor, rather than the amount of access actually provided by the donee organization. However, if the donor is aware of any facts indicating that the amount of access that the donee organization will provide is significantly less than the amount of access permitted under the terms of the easement, then the amount of access afforded the public shall be determined with reference to this lesser amount.
- (v) Examples. The provisions of paragraph (d)(5)(iv) of this section may be illustrated by the following examples:

Example 1. A and his family live in a house in a certified historic district in the State of X. The entire house, including its interior, has architectural features representing classic Victorian period architecture. A donates an exterior and interior easement on the property to a qualified organization but continues to live in the house with his family. A's house is surrounded by a high stone wall which obscures the public's view of it from the street. Pursuant to the terms of the easement, the house may be opened to the public from 10:00 a.m. to 4:00 p.m. on one Sunday in May and one Sunday in November each year for house and garden tours. These tours are to be under the supervision of the donee and open to members of the general public upon payment of a small fee. In addition, under the terms of the easement, the donee organization is given the right to photograph the interior and exterior of the house and distribute such photographs to magazines, newsletters, or other publicly available publications. The terms of the easement also permit persons affiliated with educational organizations, professional architectural associations, and historical societies to make an appointment through the donee organization to study the property. The donor is not aware of any facts indicating that the public access to be provided by the donee organization will be significantly less than that permitted by the terms of the easement. The 2 opportunities for public visits per year, when combined with the ability of the general public to view the architectural characteristics and features that are the subject of the easement through photographs, the opportunity for scholarly study of the property, and the fact that the house is used as an occupied residence, will enable the donation to satisfy the requirement of public access.

Example 2. B owns an unoccupied farmhouse built in the 1840's and located on a property that is adjacent to a Civil War battlefield. During the Civil War the farmhouse was used as quarters for Union troops. The battlefield is visited year round by the general public. The condition of the farmhouse is such that the safety of visitors will not be jeopardized and opening it to the public will not result in significant deterioration. The farmhouse is not visible from the battlefield or any public way. It is accessible only by way of a private road owned by B. B donates a conservation easement on the farmhouse to a qualified organization. The terms of the easement provide that the donee organization may open the property (via B's road) to the general public on four weekends each year from 8:30 a.m. to 4:00 p.m. The donation does not meet

the public access requirement because the farmhouse is safe, unoccupied, and easily accessible to the general public who have come to the site to visit Civil War historic land areas (and related resources), but will only be open to the public on four weekends each year. However, the donation would meet the public access requirement if the terms of the easement permitted the donee organization to open the property to the public every other weekend during the year and the donor is not aware of any facts indicating that the donee organization will provide significantly less access than that permitted.

- (e) Exclusively for conservation purposes--
 - (1) In general. To meet the requirements of this section, a donation must be exclusively for conservation purposes. See paragraphs (c)(1) and (g)(1) through (g)(6)(ii) of this section. A deduction will not be denied under this section when incidental benefit inures to the donor merely as a result of conservation restrictions limiting the uses to which the donor's property may be put.
 - (2) Inconsistent use. Except as provided in paragraph (e)(4) of this section, a deduction will not be allowed if the contribution would accomplish one of the enumerated conservation purposes but would permit destruction of other significant conservation interests. For example, the preservation of farmland pursuant to a State program for flood prevention and control would not qualify under paragraph (d)(4) of this section if under the terms of the contribution a significant naturally occurring ecosystem could be injured or destroyed by the use of pesticides in the operation of the farm. However, this requirement is not intended to prohibit uses of the property, such as selective timber harvesting or selective farming if, under the circumstances, those uses do not impair significant conservation interests.
 - (3) Inconsistent use permitted. A use that is destructive of conservation interests will be permitted only if such use is necessary for the protection of the conservation interests that are the subject of the contribution. For example, a deduction for the donation of an easement to preserve an archaeological site that is listed on the National Register of Historic Places will not be disallowed if site excavation consistent with sound archaeological practices may impair a scenic view of which the land is a part. A donor may continue a pre-existing use of the property that does not conflict with the conservation purposes of the gift.
- (f) Examples. The provisions of this section relating to conservation purposes may be illustrated by the following examples.

Example 1. State S contains many large tract forests that are desirable recreation and scenic areas for the general public. The forests' scenic values attract millions of people to the State. However, due to the increasing intensity of land development in State S, the continued existence of forestland parcels greater than 45 acres is threatened. J grants a perpetual easement on a 100-acre parcel of forestland that is part of one of the State's scenic areas to a qualifying organization. The easement imposes restrictions on the use of the parcel for the purpose of maintaining its scenic values. The restrictions include a requirement that the parcel be maintained forever as open space devoted exclusively to conservation purposes and wildlife protection, and that there be no commercial, industrial, residential, or other development use of such parcel. The law of State S recognizes a limited public right to enter private land, particularly for recreational pursuits, unless such land is posted or the landowner objects. The easement specifically restricts the landowner from posting the parcel, or from objecting, thereby maintaining public access to the parcel according to the custom of the State. J's parcel provides the opportunity for the public to enjoy the use of the property and appreciate its scenic values. Accordingly, J's donation qualifies for a deduction under this section.

Example 2. A qualified conservation organization owns Greenacre in fee as a nature preserve. Greenacre contains a high quality example of a tall grass prairie ecosystem. Farmacre, an operating farm, adjoins Greenacre and is a compatible buffer to the nature preserve. Conversion of Farmacre to a more intense use, such as a housing development, would adversely affect the continued use of Greenacre as a nature preserve because of human traffic generated by the development. The owner of Farmacre donates an easement preventing any future development on Farmacre to the qualified conservation organization for conservation purposes. Normal agricultural uses will be allowed on Farmacre. Accordingly, the donation qualifies for a deduction under this section.

Example 3. H owns Greenacre, a 900-acre parcel of woodland, rolling pasture, and orchards on the crest of a mountain. All of Greenacre is clearly visible from a nearby national park. Because of the strict enforcement of an applicable zoning plan, the highest and best use of Greenacre is as a subdivision of 40-acre tracts. H wishes to donate a scenic easement on Greenacre to a qualifying conservation organization, but H would like to reserve the right to subdi-

vide Greenacre into 90-acre parcels with no more than one single-family home allowable on each parcel. Random building on the property, even as little as one home for each 90 acres, would destroy the scenic character of the view. Accordingly, no deduction would be allowable under this section.

Example 4. Assume the same facts as in example (3), except that not all of Greenacre is visible from the park and the deed of easement allows for limited cluster development of no more than five nine-acre clusters (with four houses on each cluster) located in areas generally not visible from the national park and subject to site and building plan approval by the donee organization in order to preserve the scenic view from the park. The donor and the donee have already identified sites where limited cluster development would not be visible from the park or would not impair the view. Owners of homes in the clusters will not have any rights with respect to the surrounding Greenacre property that are not also available to the general public. Accordingly, the donation qualifies for a deduction under this section.

Example 5. In order to protect State S's declining open space that is suited for agricultural use from increasing development pressure that has led to a marked decline in such open space, the Legislature of State S passed a statute authorizing the purchase of "agricultural land development rights" on open acreage. Agricultural land development rights allow the State to place agricultural preservation restrictions on land designated as worthy of protection in order to preserve open space and farm resources. Agricultural preservation restrictions prohibit or limit construction or placement of buildings except those used for agricultural purposes or dwellings used for family living by the farmer and his family and employees; removal of mineral substances in any manner that adversely affects the land's agricultural potential; or other uses detrimental to retention of the land for agricultural use. Money has been appropriated for this program and

some landowners have in fact sold their "agricultural land development rights" to State S. K owns and operates a small dairy farm in State S located in an area designated by the Legislature as worthy of protection. K desires to preserve his farm for agricultural purposes in perpetuity. Rather than selling the development rights to State S, K grants to a qualified organization an agricultural preservation restriction on his property in the



form of a conservation easement. K reserves to himself, his heirs and assigns the right to manage the farm consistent with sound agricultural and management practices. The preservation of K's land is pursuant to a clearly delineated governmental policy of preserving open space available for agricultural use, and will yield a significant public benefit by preserving open space against increasing development pressures.

(g) Enforceable in perpetuity--

- (1) In general. In the case of any donation under this section, any interest in the property retained by the donor (and the donor's successors in interest) must be subject to legally enforceable restrictions (for example, by recordation in the land records of the jurisdiction in which the property is located) that will prevent uses of the retained interest inconsistent with the conservation purposes of the donation. In the case of a contribution of a remainder interest, the contribution will not qualify if the tenants, whether they are tenants for life

or a term of years, can use the property in a manner that diminishes the conservation values which are intended to be protected by the contribution.

- (2) Protection of a conservation purpose in case of donation of property subject to a mortgage. In the case of conservation contributions made after February 13, 1986, no deduction will be permitted under this section for an interest in property which is subject to a mortgage unless the mortgagee subordinates its rights in the property to the right of the qualified organization to enforce the conservation purposes of the gift in perpetuity. For conservation contributions made prior to February 14, 1986, the requirement of section 170 (h)(5)(A) is satisfied in the case of mortgaged property (with respect to which the mortgagee has not subordinated its rights) only if the donor can demonstrate that the conservation purpose is protected in perpetuity without subordination of the mortgagee's rights.
- (3) Remote future event. A deduction shall not be disallowed under section 170(f)(3)(B)(iii) and this section merely because the interest which passes to, or is vested in, the donee organization may be defeated by the performance of some act or the happening of some event, if on the date of the gift it appears that the possibility that such act or event will occur is so remote as to be negligible. See paragraph (e) of § 1.170A-1. For example, a state's statutory requirement that use restrictions must be rerecorded every 30 years to remain enforceable shall not, by itself, render an easement nonperpetual.
- (4) Retention of qualified mineral interest--
 - (i) In general. Except as otherwise provided in paragraph (g)(4)(ii) of this section, the requirements of this section are not met and no deduction shall be allowed in the case of a contribution of any interest when there is a retention by any person of a qualified mineral interest (as defined in paragraph (b)(1)(i) of this section) if at any time there may be extractions or removal of minerals by any surface mining method. Moreover, in the case of a qualified mineral interest gift, the requirement that the conservation purposes be protected in perpetuity is not satisfied if any method of mining that is inconsistent with the particular conservation purposes of a contribution is permitted at any time. See also § 1.170A-14(e)(2). However, a deduction under this section will not be denied in the case of certain methods of mining that may have 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.
 - (ii) Exception for qualified conservation contributions after July 1984.
 - (A) A contribution made after July 18, 1984, of a qualified real property interest described in section 170(h)(2)(A) shall not be disqualified under the first sentence of paragraph (g)(4)(i) of this section if the following requirements are satisfied.
 - (1) The ownership of the surface estate and mineral interest were separated before June 13, 1976, and remain so separated up to and including the time of the contribution.
 - (2) The present owner of the mineral interest is not a person whose relationship to the owner of the surface estate is described at the time of the contribution in section 267(b) or section 707(b), and
 - (3) The probability of extraction or removal of minerals by any surface mining method is so remote as to be negligible.

Whether the probability of extraction or removal of minerals by surface mining is so remote as to be negligible is a question of fact and is to be made on a case by case basis. Relevant factors to be considered in determining if the probability of extraction or removal of minerals by surface mining is so remote as to be negligible include: Geological, 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.
 - (B) If the ownership of the surface estate and mineral interest first became separated after June 12, 1976, no deduction is permitted for a contribution under this section unless surface mining on the property is completely prohibited.
 - (iii) Examples. The provisions of paragraph (g)(4)(i) and (ii) of this section may be illustrated by the following examples:

Example 1. K owns 5,000 acres of bottomland hardwood property along a major watershed system in the southern part of the United States. Agencies within the Department of the Interior have determined that southern bottomland hardwoods are a rapidly diminishing resource and a critical ecosystem in the south

because of the intense pressure to cut the trees and convert the land to agricultural use. These agencies have further determined (and have indicated in correspondence with K) that bottomland hardwoods provide a superb habitat for numerous species and play an important role in controlling floods and purifying rivers. K donates to a qualified organization his entire interest in this property other than his interest in the gas and oil deposits that have been identified under K's property. K covenants and can ensure that, although drilling for gas and oil on the property may have some temporary localized impact on the real property, the drilling will not interfere with the overall conservation purpose of the gift, which is to protect the unique bottomland hardwood ecosystem. Accordingly, the donation qualifies for a deduction under this section.

Example 2. Assume the same facts as in example (1), except that in 1979, K sells the mineral interest to A, an unrelated person, in an arm's-length transaction, subject to a recorded prohibition on the removal of any minerals by any surface mining method and a recorded prohibition against any mining technique that will harm the bottomland hardwood ecosystem. After the sale to A, K donates a qualified real property interest to a qualified organization to protect the bottomland hardwood ecosystem. Since at the time of the transfer, surface mining and any mining technique that will harm the bottomland hardwood ecosystem are completely prohibited, the donation qualifies for a deduction under this section.

- (5) Protection of conservation purpose where taxpayer reserves certain rights--
- (i) Documentation. In the case of a donation made after February 13, 1986, of any qualified real property interest when the donor reserves rights the exercise of which may impair the conservation interests associated with the property, for a deduction to be allowable under this section the donor must make available to the donee, prior to the time the donation is made, documentation sufficient to establish the condition of the property at the time of the gift. Such documentation is designed to protect the conservation interests associated with the property, which although protected in perpetuity by the easement, could be adversely affected by the exercise of the reserved rights. Such documentation may include:
 - (A) The appropriate survey maps from the United States Geological Survey, showing the property line and other contiguous or nearby protected areas;
 - (B) A map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences, or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas);
 - (C) An aerial photograph of the property at an appropriate scale taken as close as possible to the date the donation is made; and
 - (D) On-site photographs taken at appropriate locations on the property. If the terms of the donation contain restrictions with regard to a particular natural resource to be protected, such as water quality or air quality, the condition of the resource at or near the time of the gift must be established. The documentation, including the maps and photographs, must be accompanied by a statement signed by the donor and a representative of the donee clearly referencing the documentation and in substance saying "This natural resources inventory is an accurate representation of [the protected property] at the time of the transfer."
 - (ii) Donee's right to inspection and legal remedies. In the case of any donation referred to in paragraph (g)(5)(i) of this section, the donor must agree to notify the donee, in writing, before exercising any reserved right, e.g. the right to extract certain minerals which may have an adverse impact on the conservation interests associated with the qualified real property interest. The terms of the donation must provide a right of the donee to enter the property at reasonable times for the purpose of inspecting the property to determine if there is compliance with the terms of the donation. Additionally, the terms of the donation must provide a right of the donee to enforce the conservation restrictions by appropriate legal proceedings, including but not limited to, the right to require the restoration of the property to its condition at the time of the donation.
- (6) Extinguishment.
- (i) In general. If a subsequent unexpected change in the conditions surrounding the property that is the subject of a donation under this paragraph can make impossible or impractical the continued use of the property for conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if the restrictions are extinguished by judicial proceeding and all of the donee's proceeds

(determined under paragraph (g)(6)(ii) of this section) from a subsequent sale or exchange of the property are used by the donee organization in a manner consistent with the conservation purposes of the original contribution.

- (ii) Proceeds. In case of a donation made after February 13, 1986, for a deduction to be allowed under this section, at the time of the gift the donor must agree that the donation of the perpetual conservation restriction gives rise to a property right, immediately vested in the donee organization, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift, bears to the value of the property as a whole at that time. See § 1.170A-14(h)(3)(iii) relating to the allocation of basis. For purposes of this paragraph (g)(6)(ii), that proportionate value of the donee's property rights shall remain constant. Accordingly, when a change in conditions give rise to the extinguishment of a perpetual conservation restriction under paragraph (g)(6)(i) of this section, the donee organization, on a subsequent sale, exchange, or involuntary conversion of the subject property, must be entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction, unless state law provides that the donor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restriction.

(h) Valuation--

- (1) Entire interest of donor other than qualified mineral interest. The value of the contribution under section 170 in the case of a contribution of a taxpayer's entire interest in property other than a qualified mineral interest is the fair market value of the surface rights in the property contributed. The value of the contribution shall be computed without regard to the mineral rights. See paragraph (h)(4), example (1), of this section.
- (2) Remainder interest in real property. In the case of a contribution of any remainder interest in real property, section 170(f)(4) provides that in determining the value of such interest for purposes of section 170, depreciation and depletion of such property shall be taken into account. See § 1.170A-12. In the case of the contribution of a remainder interest for conservation purposes, the current fair market value of the property (against which the limitations of § 1.170A-12 are applied) must take into account any pre-existing or contemporaneously recorded rights limiting, for conservation purposes, the use to which the subject property may be put.
- (3) Perpetual conservation restriction--

- (i) In general. 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 § 1.170A-7(c). 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. 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. 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. 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). (See example (10) of paragraph (h)(4) of this section.)

- (ii) Fair market value of property before and after restriction. If before and after valuation is used, the fair market value of the property before contribution of the conservation restriction must take into account not only the current use of the property but also an objective assessment of how immediate or remote the likelihood is that the property, absent the restriction, would in fact be developed, as well as any effect from zoning, conservation, or historic preservation laws that already restrict the property's potential highest and best use. Further, there may be instances where the grant of a conservation restriction may have no material effect on the value of the property or may in fact serve to enhance, rather than reduce, the value of property. In such instances no deduction would be allowable. In the case of a conservation restriction that allows for any development, however limited, on the property to be protected, the fair market value of the property after contribution of the restriction must take into account the effect of the development. In the case of a conservation easement such as an easement on a certified historic structure, the fair market value of the property after contribution of the restriction must take into account the amount of access permitted by the terms of the easement. Additionally, if before and after valuation is used, an appraisal of the property after contribution of the restriction must take into account the effect of restrictions that will result in a reduction of the potential fair market value represented by highest and best use but will, nevertheless, permit uses of the property that will increase its fair market value above that represented by the property's current use. The value of a perpetual conservation restriction shall not be reduced by reason of the existence of restrictions on transfer designed solely to ensure that the conservation restriction will be dedicated to conservation purposes. See § 1.170A-14 (c)(3).
 - (iii) Allocation of basis. In the case of the donation of a qualified real property interest for conservation purposes, the basis of the property retained by the donor must be adjusted by the elimination of that part of the total basis of the property that is properly allocable to the qualified real property interest granted. The amount of the basis that is allocable to the qualified real property interest shall bear the same ratio to the total basis of the property as the fair market value of the qualified real property interest bears to the fair market value of the property before the granting of the qualified real property interest. When a taxpayer donates to a qualifying conservation organization an easement on a structure with respect to which deductions are taken for depreciation, the reduction required by this paragraph (h)(3)(ii) in the basis of the property retained by the taxpayer must be allocated between the structure and the underlying land.
- (4) Examples. The provisions of this section may be illustrated by the following examples. In examples illustrating the value or deductibility of donations, the applicable restrictions and limitations of § 1.170A-4, with respect to reduction in amount of charitable contributions of certain appreciated property, and § 1.170A-8, with respect to limitations on charitable deductions by individuals, must also be taken into account.

Example 1. A owns Goldacre, a property adjacent to a state park. A wants to donate Goldacre to the state to be used as part of the park, but A wants to reserve a qualified mineral interest in the property, to exploit currently and to devise at death. The fair market value of the surface rights in Goldacre is \$200,000 and the fair market value of the mineral rights is \$100,000. In order to ensure that the quality of the park will not be degraded, restrictions must be imposed on the right to extract the minerals that reduce the fair market value

of the mineral rights to \$80,000. Under this section, the value of the contribution is \$200,000 (the value of the surface rights).

Example 2. In 1984 B, who is 62, donates a remainder interest in Greenacre to a qualifying organization for conservation purposes. Greenacre is a tract of 200 acres of undeveloped woodland that is valued at \$200,000 at its highest and best use. Under § 1.170A-12(b), the value of a remainder interest in real property following one life is determined under § 25.2512-5 of this chapter (Gift Tax Regulations). (See § 25.2512-5A of this chapter with respect to the valuation of annuities, interests for life or term of years, and remainder or reversionary interests transferred before May 1, 1999.) Accordingly, the value of the remainder interest, and thus the amount eligible for an income tax deduction under sections 170(f), is \$55,996 ($\$200,000 \times .27998$).

Example 3. Assume the same facts as in example (2), except that Greenacre is B's 200-acre estate with a home built during the colonial period. Some of the acreage around the home is cleared; the balance of Greenacre, except for access roads, is wooded and undeveloped. See section 170(f)(3)(B)(i). However, B would like Greenacre to be maintained in its current state after his death, so he donates a remainder interest in Greenacre to a qualifying organization for conservation purposes pursuant to section 170 (f)(3)(B)(iii) and (h)(2)(B). At the time of the gift the land has a value of \$200,000 and the house has a value of \$100,000. The value of the remainder interest, and thus the amount eligible for an income tax deduction under section 170(f), is computed pursuant to § 1.170A-12. See § 1.170A-12(b)(3).

Example 4. Assume the same facts as in example (2), except that at age 62 instead of donating a remainder interest B donates an easement in Greenacre to a qualifying organization for conservation purposes. The fair market value of Greenacre after the donation is reduced to \$110,000. Accordingly, the value of the easement, and thus the amount eligible for a deduction under section 170(f), is \$90,000 ($\$200,000$ less $\$110,000$).

Example 5. Assume the same facts as in example (4), and assume that three years later, at age 65, B decides to donate a remainder interest in Greenacre to a qualifying organization for conservation purposes. Increasing real estate values in the area have raised the fair market value of Greenacre (subject to the easement) to \$130,000. Accordingly, the value of the remainder interest, and thus the amount eligible for a deduction under section 170(f), is \$41,639 ($\$130,000 \times .32030$).

Example 6. Assume the same facts as in example (2), except that at the time of the donation of a remainder interest in Greenacre, B also donates an easement to a different qualifying organization for conservation purposes. Based on all the facts and circumstances, the value of the easement is determined to be \$100,000. Therefore, the value of the property after the easement is \$100,000 and the value of the remainder interest, and thus the amount eligible for deduction under section 170(f), is \$27,998 ($\$100,000 \times .27998$).

Example 7. C owns Greenacre, a 200-acre estate containing a house built during the colonial period. At its highest and best use, for home development, the fair market value of Greenacre is \$300,000. C donates an easement (to maintain the house and Green acre in their current state) to a qualifying organization for conservation purposes. The fair market value of Greenacre after the donation is reduced to \$125,000. Accordingly, the value of the easement and the amount eligible for a deduction under section 170(f) is \$175,000 ($\$300,000$ less $\$125,000$).

Example 8. Assume the same facts as in example (7) and assume that three years later, C decides to donate a remainder interest in Greenacre to a qualifying organization for conservation purposes. Increasing real estate values in the area have raised the fair market value of Greenacre to \$180,000. Assume that because of the perpetual easement prohibiting any development of the land, the value of the house is \$120,000 and the value of the land is \$60,000. The value of the remainder interest, and thus the amount eligible for an income tax deduction under section 170(f), is computed pursuant to § 1.170A- 12. See § 1.170A-12(b)(3).

Example 9. D owns property with a basis of \$20,000 and a fair market value of \$80,000. D donates to a qualifying organization an easement for conservation purposes that is determined under this section to have a fair market value of \$60,000. The amount of basis allocable to the easement is \$15,000 ($\$60,000/\$80,000 = \$15,000/\$20,000$). Accordingly, the basis of the property is reduced to \$5,000 ($\$20,000$ minus $\$15,000$).

Example 10. E owns 10 one-acre lots that are currently woods and parkland. The fair market value of each of E's lots is \$15,000 and the basis of each lot is \$3,000. E grants to the county a perpetual easement for conservation purposes to use and maintain eight of the acres as a public park and to restrict any future development on those eight acres. As a result of the restrictions, the value of the eight acres is reduced to \$1,000 an acre. However, by perpetually restricting development on this portion of the land, E has ensured that the two remaining acres will always be bordered by parkland, thus increasing their fair market value to \$22,500 each. If the eight acres represented all of E's land, the fair market value of the easement would be \$112,000, an amount equal to the fair market value of the land before the granting of the easement. ($8 \times \$15,000 = \$120,000$) minus the fair market value of the encumbered land after the granting of the easement ($8 \times \$1,000 = \$8,000$). However, because the easement only covered a portion of the taxpayer's contiguous land, the amount of the deduction under section 170 is reduced to \$97,000 ($\$150,000 - \$53,000$), that is, the difference between the fair market value of the entire tract of land before ($\$150,000$) and after ($(8 \times \$1,000) + (2 \times \$22,500)$) the granting of the easement.



Example 11. Assume the same facts as in example (10). Since the easement covers a portion of E's land, only the basis of that portion is adjusted. Therefore, the amount of basis allocable to the easement is \$22,400 ($(8 \times \$3,000) \times (\$112,000 / \$120,000)$). Accordingly, the basis of the eight acres encumbered by the easement is reduced to \$1,600 ($\$24,000 - \$22,400$), or \$200 for each acre. The basis of the two remaining acres is not affected by the donation.

Example 12. F owns and uses as professional offices a two-story building that lies within a registered historic district F's building is an outstanding example of period architecture with a fair market value of \$125,000. Restricted to its current use, which is the highest and best use of the property without making changes to the facade, the building and lot would have a fair market value of \$100,000, of which \$80,000 would be allocable to the building and \$20,000 would be allocable to the lot. F's basis in the property is \$50,000, of which \$40,000 is allocable to the building and \$10,000 is allocable to the lot. F's neighborhood is a mix of residential and commercial uses, and it is possible that F (or another owner) could enlarge the building for more extensive commercial use, which is its highest and best use. However, this would require changes to the facade. F would like to donate to a qualifying preservation organization an easement restricting any changes to the facade and promising to maintain the facade in perpetuity. the donation would qualify for a deduction under this section. The fair market value of the easement is \$25,000 (the fair market value of the property before the easement, \$125,000, minus the fair market value of the property after the easement, \$100,000). Pursuant to § 1.170A-14(h)(3)(iii), the basis allocable to the easement is \$10,000 and the basis of the underlying property (building and lot) is reduced to \$40,000.

- (i) Substantiation requirement. If a taxpayer makes a qualified conservation contribution and claims a deduction, the taxpayer must maintain written records of the fair market value of the underlying property before and after the donation and the conservation purpose furthered by the donation and such information shall be stated in the taxpayer's income tax return if required by the return or its instructions. See also § 1.170A-13(c) (relating to substantiation requirements for deductions in excess of \$5,000 for charitable contributions made after 1984), and section 6659 (relating to additions to tax in the case of valuation overstatements).

(j) Effective date. Except as otherwise provided in § 1.170A-14(g)(4)(ii), this section applies only to contributions made on or after December 18, 1980.

[T.D. 8069, 51 FR 1499, Jan. 14, 1986; 51 FR 5322, Feb. 13, 1986; 51 FR 6219, Feb. 21, 1986; T.D. 8199, 53 FR 16085, May 5, 1988; T.D. 8540, 59 FR 30105, June 10, 1994; T.D. 8819, 64 FR 23228, April 30, 1999]

Internal Revenue Code § 2522 (26 U.S.C. § 2522) (gift tax deduction)

TITLE 26--INTERNAL REVENUE CODE

Subtitle B--Estate and Gift Taxes

CHAPTER 12--GIFT TAX

Subchapter C--Deductions

Sec. 2522. Charitable and similar gifts

(a) Citizens or residents

In computing taxable gifts for the calendar year, there shall be allowed as a deduction in the case of a citizen or resident the amount of all gifts made during such year to or for the use of--

- (1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;
- (2) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;
- (3) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;
- (4) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

(b) Nonresidents

In the case of a nonresident not a citizen of the United States, there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of--

- (1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;
- (2) a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;
- (3) a trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; but only if such gifts are to be used within the United States exclusively for such purposes;

- (4) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;
 - (5) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.
- (c) Disallowance of deductions in certain cases
- (1) No deduction shall be allowed under this section for a gift to of [sic] for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.



- (2) Where a donor transfers an interest in property (other than an interest described in section 170(f)(3)(B)) to a person, or for a use, described in subsection (a) or (b) and an interest in the same property is retained by the donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a) or (b), no deduction shall be allowed under this section for the interest which is, or has been transferred to the person, or for the use, described in subsection (a) or (b), unless--
 - (A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or
 - (B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).
- (3) Rules similar to the rules of section 2055(e)(4) shall apply for purposes of paragraph (2).
- (4) Reforms to comply with paragraph (2)
 - (A) In general

A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) Rules similar to section 2055(e)(3) to apply

For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

(5) Contributions to donor advised funds.--A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if--

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not--

(i) described in paragraph (3) or (4) of subsection (a), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

(d) Special rule for irrevocable transfers of easements in real property

A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

(e) Special rules for fractional gifts.

(1) Denial of deduction in certain cases.

(A) In general.--No deduction shall be allowed for a contribution of an undivided portion of a taxpayer's entire interest in tangible personal property unless all interest in the property is held immediately before such contribution by--

(i) the taxpayer, or

(ii) the taxpayer and the donee.

(B) Exceptions.--The Secretary may, by regulation, provide for exceptions to subparagraph (A) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons.

(2) Valuation of subsequent gifts.--In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of--

(A) the fair market value of the property at the time of the initial fractional contribution, or

(B) the fair market value of the property at the time of the additional contribution.

(3) Recapture of deduction in certain cases; addition to tax.--

(A) In general.--The Secretary shall provide for the recapture of an amount equal to any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer's entire interest in tangible personal property--

(i) in any case in which the donor does not contribute all of the remaining interest in such property to the donee (or, if such donee is no longer in existence, to any person described in section 170(c)) before the earlier of--

(I) the date that is 10 years after the date of the initial fractional contribution, or

(II) the date of the death of the donor, and

(ii) in any case in which the donee has not, during the period beginning on the date of the initial fractional contribution and ending on the date described in clause (i)--

(I) had substantial physical possession of the property, and

(II) used the property in a use which is related to a purpose or function constituting the basis for the organizations' exemption under section 501.

(B) Addition to tax.--The tax imposed under this chapter for any taxable year for which there is a recapture under subparagraph (A) shall be increased by 10 percent of the amount so recaptured.

(4) Definitions.--For purposes of this subsection--

(A) Additional contribution.--The term "additional contribution" means any gift for which a deduction is allowed under subsection (a) or (b) of any interest in a property with respect to which the donor has previously made an initial fractional contribution.

(B) Initial fractional contribution.--The term "initial fractional contribution" means, with respect to any donor, the first gift of an undivided portion of the donor's entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).

(f) Cross references

- (1) For treatment of certain organizations providing child care, see section 501(k).
- (2) For exemption of certain gifts to or for the benefit of the United States and for rules of construction with respect to certain bequests, see section 2055(f).
- (3) For treatment of gifts to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 410; Pub. L. 85-866, title I, Sec. 30(d), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 91-172, title II, Sec. 201(d)(3), (4)(C), (D), Dec. 30, 1969, 83 Stat. 561, 562; Pub. L. 91-614, title I, Sec. 102(c)(2), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94-455, title XII, Secs. 1307(d)(1)(B)(iv), (v), 1313(b)(3), title XIX, Sec. 1902(a)(11), (12)(D), title XXI, Sec. 2124(e)(3), Oct. 4, 1976, 90 Stat. 1727, 1730, 1805, 1806, 1920; Pub. L. 97-34, title IV, Secs. 423(b), 442(c), Aug. 13, 1981, 95 Stat. 317, 322; Pub. L. 97-248, title II, Sec. 286(b)(3), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97-473, title II, Sec. 202(b)(7), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98-369, div. A, title X, Secs. 1022(c), 1032(b)(3), July 18, 1984, 98 Stat. 1028, 1034; Pub. L. 99-514, title XIV, Sec. 1422(b), Oct. 22, 1986, 100 Stat. 2717; Pub. L. 100-203, title X, Sec. 10711(a)(5), (6), Dec. 22, 1987, 101 Stat. 1330-464; Aug. 17, 2006, Pub.L. 109-280, Title XII, §§ 1218(c), 1234(c), 120 Stat. 1082, 1101.)

Internal Revenue Code § 2055 (26 U.S.C. § 2055) (estate tax deduction)

TITLE 26--INTERNAL REVENUE CODE

Subtitle B--Estate and Gift Taxes

CHAPTER 11--ESTATE TAX

Subchapter A--Estates of Citizens or Residents

PART IV--TAXABLE ESTATE

Sec. 2055. Transfers for public, charitable, and religious uses

(a) In general

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers--

- (1) to or for the use of the United States, any State, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;
- (2) to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;
- (3) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and such trustee or trustees, or such fraternal society, order, or association, does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;
- (4) to or for the use of any veterans' organization incorporated by Act of Congress, or of its departments or local chapters or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual; or

- (5) to an employee stock ownership plan if such transfer qualifies as a qualified gratuitous transfer of qualified employer securities within the meaning of section 664(g).

For purposes of this subsection, the complete termination before the date prescribed for the filing of the estate tax return of a power to consume, invade, or appropriate property for the benefit of an individual before such power has been exercised by reason of the death of such individual or for any other reason shall be considered and deemed to be a qualified disclaimer with the same full force and effect as though he had filed such qualified disclaimer. Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

(b) Powers of appointment

Property includible in the decedent's gross estate under section 2041 (relating to powers of appointment) received by a donee described in this section shall, for purposes of this section, be considered a bequest of such decedent.

(c) Death taxes payable out of bequests

If the tax imposed by section 2001, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this section, then the amount deductible under this section shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.

(d) Limitation on deduction

The amount of the deduction under this section for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(e) Disallowance of deductions in certain cases

- (1) No deduction shall be allowed under this section for a transfer to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.
- (2) Where an interest in property (other than an interest described in section 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described in subsection (a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in subsection (a), no deduction shall be allowed under this section for the interest which passes or has passed to the person, or for the use, described in subsection (a) unless--
 - (A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or
 - (B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).
- (3) Reformation to comply with paragraph (2).--
 - (A) In general.--A deduction shall be allowed under subsection (a) in respect of any qualified reformation.
 - (B) Qualified reformation.--For purposes of this paragraph, the term "qualified reformation" means a change of a governing instrument by reformation, amendment, construction, or otherwise which changes a reformable interest into a qualified interest but only if--
 - (i) any difference between--
 - (I) the actuarial value (determined as of the date of the decedent's death) of the qualified interest, and
 - (II) the actuarial value (as so determined) of the reformable interest, does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest,
 - (ii) in the case of--
 - (I) a charitable remainder interest, the nonremainder interest (before and after the qualified reformation) terminated at the same time, or
 - (II) any other interest, the reformable interest and the qualified interest are for the same period, and
 - (iii) such change is effective as of the date of the decedent's death.

A nonremainder interest (before reformation) for a term of years in excess of 20 years shall be treated as satisfying subclause (I) of clause (ii) if such interest (after reformation) is for a term of 20 years.

- (C) Reformable interest.--For purposes of this paragraph--
- (i) In general.--The term "reformable interest" means any interest for which a deduction would be allowable under subsection (a) at the time of the decedent's death but for paragraph (2).
 - (ii) Beneficiary's interest must be fixed.--The term "reformable interest" does not include any interest unless, before the remainder vests in possession, all payments to persons other than an organization described in subsection (a) are expressed either in specified dollar amounts or a fixed percentage of the fair market value of the property. For purposes of determining whether all such payments are expressed as a fixed percentage of the fair market value of the property, section 664(d)(3) shall be taken into account.
 - (iii) Special rule where timely commencement of reformation.--Clause (ii) shall not apply to any interest if a judicial proceeding is commenced to change such interest into a qualified interest not later than the 90th day after--
 - (I) if an estate tax return is required to be filed, the last date (including extensions) for filing such return, or
 - (II) if no estate tax return is required to be filed, the last date (including extensions) for filing the income tax return for the 1st taxable year for which such a return is required to be filed by the trust.
 - (iv) Special rule for will executed before January 1, 1979, etc.--In the case of any interest passing under a will executed before January 1, 1979, or under a trust created before such date, clause (ii) shall not apply.
- (D) Qualified interest.--For purposes of this paragraph, the term "qualified interest" means an interest for which a deduction is allowable under subsection (a).
- (E) Limitation.--The deduction referred to in subparagraph (A) shall not exceed the amount of the deduction which would have been allowable for the reformable interest but for paragraph (2).
- (F) Special rule where income beneficiary dies.--If (by reason of the death of any individual, or by termination or distribution of a trust in accordance with the terms of the trust instrument) by the due date for filing the estate tax return (including any extension thereof) a reformable interest is in a wholly charitable trust or passes directly to a person or for a use described in subsection (a), a deduction shall be allowed for such reformable interest as if it had met the requirements of paragraph (2) on the date of the decedent's death. For purposes of the preceding sentence, the term "wholly charitable trust" means a charitable trust which, upon the allowance of a deduction, would be described in section 4947(a)(1).
- (G) Statute of limitations.--The period for assessing any deficiency of any tax attributable to the application of this paragraph shall not expire before the date 1 year after the date on which the Secretary is notified that such reformation (or other proceeding pursuant to subparagraph (J)) has occurred.
- (H) Regulations.--The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing such adjustments in the application of the provisions of section 508 (relating to special rules relating to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations) as may be necessary by reason of the qualified reformation.
- (I) Reformations permitted in case of remainder interests in residence or farm, pooled income funds, etc.--The Secretary shall prescribe regulations (consistent with the provisions of this paragraph) permitting reformations in the case of any failure--
- (i) to meet the requirements of section 170(f)(3)(B) (relating to remainder interests in personal residence or farm, etc.), or
 - (ii) to meet the requirements of section 642(c)(5).
- (J) Void or reformed trust in cases of insufficient remainder interests.--In the case of a trust that would qualify (or could be reformed to qualify pursuant to subparagraph (B)) but for failure to satisfy the requirement of paragraph (1)(D) or (2)(D) of section 664(d), such trust may be--
- (i) declared null and void ab initio, or
 - (ii) changed by reformation, amendment, or otherwise to meet such requirement by reducing the payout rate or the duration (or both) of any noncharitable beneficiary's interest to the extent necessary to satisfy such requirement, pursuant to a proceeding that is commenced within the period required

in subparagraph (C)(iii). In a case described in clause (i), no deduction shall be allowed under this title for any transfer to the trust and any transactions entered into by the trust prior to being declared void shall be treated as entered into by the transferor.

- (4) Works of art and their copyrights treated as separate properties in certain cases.--
 - (A) In general.--In the case of a qualified contribution of a work of art, the work of art and the copyright on such work of art shall be treated as separate properties for purposes of paragraph (2).
 - (B) Work of art defined.--For purposes of this paragraph, the term "work of art" means any tangible personal property with respect to which there is a copyright under Federal law.
 - (C) Qualified contribution defined.--For purposes of this paragraph, the term "qualified contribution" means any transfer of property to a qualified organization if the use of the property by the organization is related to the purpose or function constituting the basis for its exemption under section 501.
 - (D) Qualified organization defined.--For purposes of this paragraph, the term "qualified organization" means any organization described in section 501(c)(3) other than a private foundation (as defined in section 509). For purposes of the preceding sentence, a private operating foundation (as defined in section 4942(j)(3)) shall not be treated as a private foundation.
- (5) Contributions to donor advised funds.--A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if--
 - (A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not--
 - (i) described in paragraph (3) or (4) of subsection (a), or
 - (ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and
 - (B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

- (f) Special rule for irrevocable transfers of easements in real property



A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

(g) Valuation of subsequent gifts.

- (1) In general.--In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of--
 - (A) the fair market value of the property at the time of the initial fractional contribution, or
 - (B) the fair market value of the property at the time of the additional contribution.
- (2) Definitions.--For purposes of this paragraph--
 - (A) Additional contribution.--The term "additional contribution" means a bequest, legacy, devise, or transfer described in subsection (a) of any interest in a property with respect to which the decedent had previously made an initial fractional contribution.
 - (B) Initial fractional contribution.--The term "initial fractional contribution" means, with respect to any decedent, any charitable contribution of an undivided portion of the decedent's entire interest in any tangible personal property for which a deduction was allowed under section 170.

(h) Cross references

- (1) For option as to time for valuation for purpose of deduction under this section, see section 2032.
- (2) For treatment of certain organizations providing child care, see section 501(k).
- (3) For exemption of gifts and bequests to or for the benefit of Library of Congress, see section 5 of the Act of March 3, 1925, as amended (2 U.S.C. 161).
- (4) For treatment of gifts and bequests for the benefit of the Naval Historical Center as gifts or bequests to or for the use of the United States, see section 7222 of title 10, United States Code.
- (5) For treatment of gifts and bequests to or for the benefit of National Park Foundation as gifts or bequests to or for the use of the United States, see section 8 of the Act of December 18, 1967 (16 U.S.C. 191).
- (6) For treatment of gifts, devises, or bequests accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency as gifts, devises, or bequests to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.
- (7) For treatment of gifts or bequests of money accepted by the Attorney General for credit to "Commissary Funds, Federal Prisons," as gifts or bequests to or for the use of the United States, see section 4043 of title 18, United States Code.
- (8) For payment of tax on gifts and bequests of United States obligations to the United States, see section 3113(e) of title 31, United States Code.
- (9) For treatment of gifts and bequests for benefit of the Naval Academy as gifts or bequests to or for the use of the United States, see section 6973 of title 10, United States Code.
- (10) For treatment of gifts and bequests for benefit of the Naval Academy Museum as gifts or bequests to or for the use of the United States, see section 6974 of title 10, United States Code.
- (11) For exemption of gifts and bequests received by National Archives Trust Fund Board, see section 2308 of title 44, United States Code.
- (12) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 390; Aug. 6, 1956, ch. 1020, Sec. 1, 70 Stat. 1075; Pub. L. 85-866, title I, Sec. 30(d), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 91-172, title II, Sec. 201(d)(1), (4)(A), Dec. 30, 1969, 83 Stat. 560, 561; Pub. L. 91-614, title I, Sec. 101(c), Dec. 31, 1970, 84 Stat. 1836; Pub. L. 93-483, Sec. 3(a), Oct. 26, 1974, 88 Stat. 1457; Pub. L. 94-455, title XIII, Secs. 1304(a), 1307(d)(1)(B)(ii), (C), 1313(b)(2), title XIX, Secs. 1902(a)(4), (12)(A), 1906(b)(13)(A), title XX, Sec. 2009(b)(4)(B), (C), title XXI, Sec. 2124(e)(2), Oct. 4, 1976, 90 Stat. 1715, 1727, 1730, 1804, 1805, 1834, 1894, 1919; Pub. L. 95-600, title V, Sec. 514(a), Nov. 6, 1978, 92 Stat. 2883; Pub. L. 96-222, title I, Sec. 105(a)(4)(A), Apr. 1, 1980, 94 Stat. 219; Pub. L. 96-465, title II, Sec. 2206(e)(4), Oct. 17, 1980, 94 Stat. 2163; Pub. L. 96-605, title III, Sec. 301(a), Dec. 28, 1980, 94 Stat. 3530; Pub. L. 97-34, title IV, Sec. 423(a), Aug. 13, 1981, 95 Stat. 316; Pub. L. 97-248, title II, Sec. 286(b)(2), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97-258, Sec. 3(f)(1), (2), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 97-473, title II, Sec. 202(b)(5), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98-369, div. A, title X, Secs. 1022(a), 1032(b)(2), July 18, 1984, 98 Stat. 1026, 1033; Pub. L. 99-514, title XIV, Sec. 1422(a), Oct. 22, 1986, 100 Stat. 2716; Pub. L. 100-203, title X, Sec. 10711(a)(3), Dec. 22, 1987, 101 Stat. 1330-

464; Pub. L. 104-201, div. A, title X, Sec. 1073(b)(3), Sept. 23, 1996, 110 Stat. 2657; Pub. L. 105-34, title X, Sec. 1089(b)(3), (5), title XV, Sec. 1530(c)(7), Aug. 5, 1997, 111 Stat. 960, 961, 1078; Aug. 17, 2006, Pub.L. 109-280, Title XII, §§ 1218(b), 1234(b), 120 Stat. 1081, 1100.)

Internal Revenue Code § 2031 (26 U.S.C. § 2031) (estate tax exclusion)

TITLE 26--INTERNAL REVENUE CODE
Subtitle B--Estate and Gift Taxes
CHAPTER 11--ESTATE TAX
Subchapter A--Estates of Citizens or Residents
PART III--GROSS ESTATE

Sec. 2031. Definition of gross estate

(a) General

The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

(b) Valuation of unlisted stock and securities

In the case of stock and securities of a corporation the value of which, by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange.

(c) Estate tax with respect to land subject to a qualified conservation easement

(1) In general

If the executor makes the election described in paragraph (6), then, except as otherwise provided in this subsection, there shall be excluded from the gross estate the lesser of--

- (A) the applicable percentage of the value of land subject to a qualified conservation easement, reduced by the amount of any deduction under section 2055(f) with respect to such land, or
- (B) the exclusion limitation.

(2) Applicable percentage

For purposes of paragraph (1), the term "applicable percentage" means 40 percent reduced (but not below zero) by 2 percentage points for each percentage point (or fraction thereof) by which the value of the qualified conservation easement is less than 30 percent of the value of the land (determined without regard to the value of such easement and reduced by the value of any retained development right (as defined in paragraph (5))). The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B).

(3) Exclusion limitation

For purposes of paragraph (1), the exclusion limitation is the limitation determined in accordance with the following table:

In the case of estates of decedents dying during:	The exclusion limitation is:
1998.....	\$100,000
1999.....	\$200,000
2000.....	\$300,000
2001.....	\$400,000
2002 or thereafter.....	\$500,000.

(4) Treatment of certain indebtedness

(A) In general

The exclusion provided in paragraph (1) shall not apply to the extent that the land is debt-financed property.

(B) Definitions

For purposes of this paragraph--

(i) Debt-financed property

The term "debt-financed property" means any property with respect to which there is an acquisition indebtedness (as defined in clause (ii)) on the date of the decedent's death.

(ii) Acquisition indebtedness

The term "acquisition indebtedness" means, with respect to debt-financed property, the unpaid amount of--

(I) the indebtedness incurred by the donor in acquiring such property,

(II) the indebtedness incurred before the acquisition of such property if such indebtedness would not have been incurred but for such acquisition,

(III) the indebtedness incurred after the acquisition of such property if such indebtedness would not have been incurred but for such acquisition and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition, and

(IV) the extension, renewal, or refinancing of an acquisition indebtedness.

(5) Treatment of retained development right

(A) In general

Paragraph (1) shall not apply to the value of any development right retained by the donor in the conveyance of a qualified conservation easement.

(B) Termination of retained development right

If every person in being who has an interest (whether or not in possession) in the land executes an agreement to extinguish permanently some or all of any development rights (as defined in subparagraph (D)) retained by the donor on or before the date for filing the return of the tax imposed by section 2001, then any tax imposed by section 2001 shall be reduced accordingly. Such agreement shall be filed with the return of the tax imposed by section 2001. The agreement shall be in such form as the Secretary shall prescribe.

(C) Additional tax

Any failure to implement the agreement described in subparagraph (B) not later than the earlier of--

(i) the date which is 2 years after the date of the decedent's death, or

(ii) the date of the sale of such land subject to the qualified conservation easement,

shall result in the imposition of an additional tax in the amount of the tax which would have been due on the retained development rights subject to such agreement. Such additional tax shall be due and payable on the last day of the 6th month following such date.

(D) Development right defined

For purposes of this paragraph, the term "development right" means any right to use the land subject to the qualified conservation easement in which such right is retained for any commercial purpose which is not subordinate to and directly supportive of the use of such land as a farm for farming purposes (within the meaning of section 2032A(e)(5)).

(6) Election

The election under this subsection shall be made on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return. Such an election, once made, shall be irrevocable.

(7) Calculation of estate tax due

An executor making the election described in paragraph (6) shall, for purposes of calculating the amount of tax imposed by section 2001, include the value of any development right (as defined in paragraph (5)) retained by the donor in the conveyance of such qualified conservation easement. The computation of tax on any retained development right prescribed in this paragraph shall be done in such manner and on such forms as the Secretary shall prescribe.

(8) Definitions

For purposes of this subsection--

(A) Land subject to a qualified conservation easement

The term "land subject to a qualified conservation easement" means land--

(i) which is located in the United States or any possession of the United States,

(ii) which was owned by the decedent or a member of the decedent's family at all times during the 3-year period ending on the date of the decedent's death, and

(iii) with respect to which a qualified conservation easement has been made by an individual described in subparagraph (C), as of the date of the election described in paragraph (6).

(B) Qualified conservation easement

The term "qualified conservation easement" means a qualified conservation contribution (as defined in section 170(h)(1)) of a qualified real property interest (as defined in section 170(h)(2)(C)), except that clause (iv) of section 170(h)(4)(A) shall not apply, and the restriction on the use of such interest described in section 170(h)(2)(C) shall include a prohibition on more than a de minimis use for a commercial recreational activity.

(C) Individual described

An individual is described in this subparagraph if such individual is--

- (i) the decedent,
- (ii) a member of the decedent's family,
- (iii) the executor of the decedent's estate, or
- (iv) the trustee of a trust the corpus of which includes the land to be subject to the qualified conservation easement.

(D) Member of family

The term "member of the decedent's family" means any member of the family (as defined in section 2032A(e)(2)) of the decedent.

(9) Treatment of easements granted after death

In any case in which the qualified conservation easement is granted after the date of the decedent's death and on or before the due date (including extensions) for filing the return of tax imposed by section 2001, the deduction under section 2055(f) with respect to such easement shall be allowed to the estate but only if no charitable deduction is allowed under chapter 1 to any person with respect to the grant of such easement.

(10) Application of this section to interests in partnerships, corporations, and trusts

This section shall apply to an interest in a partnership, corporation, or trust if at least 30 percent of the entity is owned (directly or indirectly) by the decedent, as determined under the rules described in section 2057(e)(3).

(d) Cross reference

For executor's right to be furnished on request a statement regarding any valuation made by the Secretary within the gross estate, see section 7517.

(Aug. 16, 1954, ch. 736, 68A Stat. 380; Pub. L. 87-834, Sec. 18(a)(1), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XX, Sec. 2008(a)(2)(A), Oct. 4, 1976, 90 Stat. 1891; Pub. L. 105-34, title V, Sec. 508(a), Aug. 5, 1997, 111 Stat. 857; Pub. L. 105-206, title VI, Sec. 6007(g), July 22, 1998, 112 Stat. 810; Pub. L. 105-277, div. J, title IV, Sec. 4006(c)(3), Oct. 21, 1998, 112 Stat. 2681-913; June 7, 2001, Pub. L. 107-16, Title V, § 551(a), (b), 115 Stat. 86.)



APPENDIX

The lists of land trusts are for informational purposes only, and should not be considered endorsements or recommendations of particular land trusts. The lists should be reasonably comprehensive, but it is possible that land trusts exist that are not represented on the lists.

Land Trusts Operating in Alabama

Alabama Forest Resources Center

169 Dauphin St., Ste. 302
Mobile, AL 36602-3271
Phone: (334) 433-2372 Fax: (334) 433-2372

e-mail: info@ltea.org
<http://www.allandtrust.org/>

Alabama Land Trust

111 Pelham Rd. South
Jacksonville, AL 36265-2504
Phone: (256) 782-3737
Fax: (256) 782-3739
e-mail: katherine@chattawah.org
<http://www.allandtrust.org>

Land Trust of Huntsville & North Alabama

907 Franklin St.
Huntsville, AL 35801-4313
Phone: (256) 534-5263
Fax: (256) 536-6141
e-mail: justjill@landtrust-hsv.org
<http://www.landtrust-hsv.org>

Black Warrior-Cahaba Rivers Land Trust

2121 8th Ave. N #802
Birmingham, AL 35203-2318
Phone: (205) 214-8613
Fax: (205) 214-8614
e-mail: inglem@jccal.org

Lookout Mountain Land Trust

P.O. Box 76
Lookout Mountain, TN 37350-0076
Phone: (423) 424-3882
Fax: (423) 757-6383
e-mail: lmlt@bellsouth.net

Civil War Preservation Trust

1331 H St. NW Ste. 1001
Washington, DC 20005-4745
Phone: (202) 367-1861
Fax: (202) 367-1865
e-mail: info@civilwar.org
<http://www.civilwar.org>

The Nature Conservancy of Alabama

2100 1st Ave. N, Ste. 500
Birmingham, AL 35203
Phone: (205) 251-1155 Fax: (205) 251-4444
e-mail: ahill@tnc.org
<http://nature.org/wherewework/northamerica/states/alabama>

Coastal Land Trust

710 S. Mobile St. Apt. 18
Fairhope, AL 36532-1140
Phone: (251) 928-1655 Fax: (251) 928-1659

North American Land Trust

P.O. Box 467
Chadds Ford, PA 19317-0467
Phone: (610) 388-3670
Fax: (610) 388-3673
e-mail: jmckickar@nalt.org
<http://www.nalt.org>

Ducks Unlimited Conservation Easement Program

Southern Regional Office
193 Business Park Dr., Ste. E
Ridgeland, MS 39157-6026
Phone: (601) 956-1936
Fax: (601) 956-7814
<http://www.ducks.org/Conservation/LandProtection/2825/ConservationEasements.html>

South Cumberland Regional Land Trust

P.O. Box 3188
Sewanee, TN 37375-3188
Phone: (931) 598-5942 Fax: (931) 723-4100
e-mail: foreverwild@scrilt.org
<http://www.scrilt.org>

Land Trust of East Alabama

P.O. Box 225
Auburn, AL 36831-0225
Phone: (334) 737-2088

Southeastern Cave Conservancy

P.O. Box 71857
Chattanooga, TN 37407-0857
Phone: (770) 822-0003 Fax: (770) 682-5536
e-mail: info@scci.org
<http://www.scci.org>

Mississippi-Alabama Sea Grant Legal Program

Land Trusts Operating in Alabama - Cont.

The Trust for Public Land

Southeast Regional Office
306 North Monroe St.
Tallahassee, FL 32301
Phone: (850) 222-7911
Fax: (850) 222-3133
e-mail: kevin.mooney@tpl.org
<http://www.tpl.org/index.cfm>

Land Trusts Operating in Mississippi

Civil War Preservation Trust

1331 H St. NW, Ste. 1001
Washington, DC 20005-4745
Phone: (202) 367-1861
Fax: (202) 367-1865
e-mail: info@civilwar.org
<http://www.civilwar.org>

Delta Land Trust

P.O. Box 2052
Madison, MS 39130-2052
Phone: (601) 981-3865
Fax: (601) 981-3864
e-mail: info@deltalandtrust.org
<http://www.deltalandtrust.org>

Land Trust for the Mississippi Coastal Plain

P.O. Box 245
Biloxi, MS 39533-0245
Phone: (228) 435-9191
Fax: (228) 435-9191
e-mail: judyheckler@aol.com
<http://www.ltmcp.org>

Mississippi Land Trust

P.O. Box 187
Amory, MS 38821-0187
Phone: (662) 256-4486
Fax: (662) 257-9710
e-mail: dcoggin@wildlifemiss.org
<http://www.misslandtrust.org>

The Nature Conservancy, Mississippi Chapter

6400 Lakeover Rd, Ste C
Jackson, MS 39213-8007
Phone: (601) 713-3355
Fax: (601) 982-9499
e-mail: pwilliams@tnc.org
<http://nature.org/wherewework/northamerica/states/mississippi>

The Trust for Public Land

Southeast Regional Office
306 North Monroe St.
Tallahassee, FL 32301
Phone: (850) 222-7911
Fax: (850) 222-3133
e-mail: kevin.mooney@tpl.org
<http://www.tpl.org/index.cfm>

Wolf River Conservancy

P.O. Box 11031
Memphis, TN 38111-0031
Phone: (901) 452-6500
Fax: (901) 763-6541
e-mail: wrc@wolfriver.org
<http://www.wolfriver.org>

Wolf River Conservation Society, Inc.

c/o R.E. Fairbank
P.O. Box 447
Pass Christian, MS 39571-0447
Phone: (228) 865-5515
Fax: (228) 865-5616
e-mail: jphicks@southernco.com

Alabama State Government Contacts

Alabama Forever Wild Program

Alabama Dept. of Conservation and Natural Resources
State Lands Division
64 N. Union Street, Suite 468
Montgomery, AL 36130
Phone: (334) 242-3484
<http://www.outdooralabama.com/public-lands/stateLands/foreverWild/>

Alabama Natural Heritage Program

Alabama Dept. of Conservation and Natural Resources
State Lands Division
64 N. Union Street, Suite 468
Montgomery, AL 36130
Phone: (334) 242-3484
<http://www.outdooralabama.com/public-lands/stateLands/heritage.cfm>

 Mississippi State Government Contacts

Mississippi Department of Wildlife, Fisheries and Parks
 1505 Eastover Drive
 Jackson, MS 39211-6374
 Phone: (601) 432-2400
<http://www.mdwfp.com/>

Commission on Wildlife, Fisheries and Parks:
<http://www.mdwfp.com/Level2/Administration/commission.asp>

Scenic Streams Stewardship Program:
<http://www.mdwfp.com/level2/scenicStreams/Introduction.asp>

Mississippi State Tax Commission
 P.O. Box 1033
 Jackson, MS 39215-1033
 Phone: (601) 923-7000
 Fax: (601) 923-7334

Natural Heritage Program:
<http://www.mdwfp.com/museum/html/research/nhp.html>

<http://www.mstc.state.ms.us/index.html>

 Internet Resources

There are many resources on the World Wide Web that offer general information about conservation easements, as well as the text of statutes and regulations. Most of these are associated with land trusts and government agencies; their internet addresses are included in the lists above. Below are other useful web sites.

Mississippi Fish and Wildlife Foundation

- General information about conservation easements
- Guide to conservation easements in Mississippi
- Suggested books and additional references

<http://www.wildlifemiss.org/financial/easements/index.html>

Southeastern Sustainable Forestry Resources

A project of the Sustainable Forests Alliance

- Guide to conservation easements in Alabama and Mississippi
- Text of state and federal laws
- Sample easements

<http://www.southernsustainableforests.org/landowner.htm>

The Land Trust Alliance

- General information about conservation easements
- Land trusts grouped by state
- Online ordering of books and other reference material

<http://www.lta.org/conserve/options.htm#easement>

Alabama Statutes, including Constitution of Alabama

<http://www.legislature.state.al.us/CodeofAlabama/1975/coatoc.htm>

Mississippi Statutes

<http://www.mscode.com/free/statutes/toc.htm>

Internal Revenue Service

- Federal tax laws, regulations, forms, and instructions

<http://www.irs.gov>

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