

# MAKE IT EASY FOR THE IRS TO SAY YES

Texas Land Trust Conference

March 2, 2017

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# OVERVIEW

- Properly Drawn Conservation Easement (CE) Document
- Properly Developed & Appropriately Presented Appraisal Report
- Properly Prepared Form 8283 & Other Requirements

# Conservation Easement Document

- Conservation Purpose
  - Desirable to have more than one of the IRS defined purposes cited and supported as well as Federal, State and Local programs and incentives which support the subject's specific conservation purposes.
  - Clear and Specific Delineation of the Property Rights extinguished (conveyed) and the Property Rights reserved to the owner

- Interesting Question – “Allowed Partitions” – At What Point does the number of partitions compromise the conservation preservation intent?
- Interesting Question – “Floating Building Sites” – Do they jeopardize the validity of the conservation easement donation?
- Interesting Question – “On Property/Ranch Gravel/Caliche Pits” – Do they jeopardize the No Surface Mining dictate?

- Interesting Question – “Oil and Gas Production”  
– Is any permitted and, if so, at what point does surface use for “deep mineral” production encroach on the Conservation Purposes of the Easement?

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Make Sure You or Your Prospective Donor is Represented by Legal Counsel who Understands the Importance of these and other Questions and is Familiar with IRS Guidelines and Recent Rulings.

# Appraisal Report

- Should the Appraisal Be Prepared from a Draft of the Conservation Easement or from the Final, Executed Document?
- If completed from Draft, Does the Appraiser need to verify that the Executed Document matches the Draft used to prepare the Appraisal?
- What if the Prospective Donor wants to know the numbers before he signs the Conservation Easement?

# IRS APPRAISAL REQUIREMENTS

- Date of Appraisal
- Market Value Definition
- Contiguous Family Ownership Parcel
- Potentially Enhanced Parcels
- Clear and Unequivocal Support of the Highest and Best Use Conclusion
- “After” Value Documentation Requirement

(see Handout No. 1)

# Date of Appraisal

- For federal income tax purposes, the date of contribution is the date the deed of easement is recorded pursuant to state law. The Qualified Appraisal must state, among other things, the date or expected date of the contribution.
- What is the 60-day Rule?



## Market Value Definition

- **REQUIRED** – “The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.”
- **Treas. Reg. Section 1.170A-1(c)(2)**

# DEFINING THE PROPERTY TO BE APPRAISED

- Contiguous family-owned parcels (CFOP) (Treasury Reg. 26 CFR Sec. 1.170A-14(h)(3)(i), 4<sup>th</sup> sentence:
- “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 is the difference between the fair market value of the entire contiguous parcel of the property before and after the granting of the restriction.”

# DEFINING THE PROPERTY TO BE APPRAISED

- Section 267(c) (4) defines **donor's family** as the following members (whether by whole or half blood):
  - Brothers
  - Sisters
  - Spouse
  - Ancestors (i.e. parents and grandparents)
  - Lineal descendants (i.e. children and grandchildren)

# DEFINING THE PROPERTY TO BE APPRAISED

- Potentially enhanced parcels (PEP) Treas. Reg. Sec. 1.170A-14(h)(3)(i), 5<sup>th</sup> sentence
- 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.**”

# DEFINING THE PROPERTY TO BE APPRAISED

- Donor or a related person is defined in IRS Section 267(b) as:
- In addition to family members as defined in Section 267(c)(4), related person also usually refers to corporations, partnerships, and trusts.
- In order to be recognized as a related person, donor must have a controlling interest (more than 50%) in the corporation, partnership, or trust.



ROAD

ROAD

300 Ac

SMITH

↑  
1/2 Mile  
↓

1,000 Ac



Improvement

SMITH

100 Ac

Conservation  
Easement

500 Ac

SMITH'S  
BROTHER

800 Ac

SMITH'S  
FATHER

ROAD

# CONSERVATION EASEMENT APPRAISAL ASSIGNMENT

- Valuing a Fractional Interest in Real Property

# “Take Away”

Landowner/Potential Donor – Consider the ramifications of CFOP and PEP in your CE decision making.

Land Trust Professional – Make prospective donor aware of CFOP and PEP requirements early on so they can properly evaluate the prospects of doing the CE – “Have the Discussion”.



## Highest and Best Use

- Must be well documented and supported – If the conservation easement is primarily giving up the development rights, the appraiser must demonstrate that, in fact, development is a present factor in the market place around the subject.
- Donor must give up something (rights that are market price sensitive) to have a basis to obtain a non-cash charitable donation.

## “After” Value Documentation

- Simple Percentage Diminution without support will not suffice.
- Preferable technique is to use conservation easement encumbered sales to do a Direct Sales Comparison Approach within the “After” Appraisal.
- If Ratio method is utilized (using encumbered sales), It must be well documented, tailored to the subject property and BELIEVABLE.

## Form 8283 & Other Requirements

- 8283 – Must attach conservation easement statement per Form 8283 Instructions (most professionals make this a page or two supplement summarizing the conservation purposes and a summary of the appraiser’s conclusions (“before” and “after” values, any enhancements, offsets to the donation and the final non-cash charitable donation amount).

(see handout No. 3)

# Other Requirements

- Contemporary Written Acknowledgement
- Baseline Study

(see Handout No. 4)

# Things to remember

- Is the Property receiving the conservation easement all of the contiguous family ownership at this location – Is there a potentially enhanced parcel?
- Consider the ramifications of CFOP & PEP in the Conservation Easement decision making – Have this discussion early with your Client.
- Involve experienced professionals early - "Team Effort"
- Appraiser – Select one with demonstrated credentials but more importantly one who has experience valuing CEs and understands the IRS requirements.

# Additional Materials

## IRS Conservation Easement Issue Identification Worksheet

(see Handout No. 2)

Conservation Easement Audit  
Technique Guide (59 pages)

# Questions and Discussion