

The IRS produced this unofficial "Issue Identification Worksheet" to help revenue agents evaluate compliance with the laws and regulations related to conservation easements. Make sure you cover all these details!

**NOTE:** This worksheet is not intended to be an all-inclusive list of issues for donations of conservation easements. Users must review IRC 170, DEFRA section 155, the corresponding Treasury Regulations, Notice 2006-96 and case law.

**Conservation Easement  
Issue Identification Worksheet**

**Issues**

**Code/Regs**

<b>General Rules</b>	
Lack of charitable intent (including quid pro quo)	170(a); 1.170A-1(h)
Conditional gift	1.170A-1(e); 1.170A-7(a)(3)
Contemporaneous written acknowledgment (CWA)	170(f)(8); 1.170A-13(f)
<b>Qualified appraisal/Appraisal Summary</b>	170(f)(11) (donations after 6/3/04)
(Note: The Deficit Reduction Act of 1984 (DEFRA) and section 170(f)(11) outline the statutory appraisal requirements.)	DEFRA 155(a)(1)(A),(a)(4) 1.170A-13(c)(3)(i) Notice 2006-96 §3.02(1)
<ul style="list-style-type: none"> <li>Appraisal not attached to return (FMV &gt;\$500K)</li> </ul>	170(f)(11)(D) (donations after 6/3/04)
<ul style="list-style-type: none"> <li>Appraisal not prepared in accordance with generally accepted appraisal standards</li> </ul>	170(f)(11)(E)(i)(II) (returns filed after 8/17/06); Notice 2006-96 §3.02(2)
<ul style="list-style-type: none"> <li>Appraisal not timely</li> </ul>	1.170A-13(c)(3)(i)(A)
<ul style="list-style-type: none"> <li>Not a qualified appraiser</li> </ul>	170(f)(11)(E)(ii) (returns filed after 8/17/06) DEFRA 155(a)(5) 1.170A-13(c)(3)(i)(B); Notice 2006-96, §3.03
<ul style="list-style-type: none"> <li>Doesn't meet IRC, DEFRA, or Treas. Reg. requirements</li> </ul>	170(f)(11)(E)(i)(I) (returns filed after 8/17/06) DEFRA 155(a)(1) through (6) 1.170A-13(c)(3)(ii) 1.170A-13(c)(3)(i)(C); Notice 2006-96
<ul style="list-style-type: none"> <li>Appraisal fee based on percentage of value</li> </ul>	1.170A-13(c)(3)(i)(B) 1.170A-13(c)(6)
Form 8283 (appraisal summary) missing or incomplete	1.170A-13(c)(4) DEFRA 155(a)(1)(B) DEFRA 155(a)(3)
<b>Not qualified real property interest or exclusively for conservation purposes</b>	170(h)(2); 1.170A-14(a), (b)
<ul style="list-style-type: none"> <li>Lack of perpetuity/ <ul style="list-style-type: none"> <li>Failure to properly subordinate</li> <li>Judicial extinguishment</li> <li>Appropriate allocation of proceeds</li> </ul> </li> </ul>	170(h)(2)(C); 170(h)(5) 1.170A-14(g)(2), (g)(6)(ii) 1.170A-14(g)(6)(i) 1.170A-14(g)(6)(ii)
<ul style="list-style-type: none"> <li>Not a qualified organization or eligible donee</li> </ul>	170(h)(3) 1.170A-14(c)(1)
<ul style="list-style-type: none"> <li>Restrictions must be legally enforceable</li> </ul>	1.170A-14(g)(1)
<ul style="list-style-type: none"> <li>Surface mining prohibition/mining Requirements</li> </ul>	170(h)(5), (6); 1.170A-14(g)(4)
<ul style="list-style-type: none"> <li>Inconsistent use; impairment of conservation purposes; baseline documentation</li> </ul>	1.170A-14(e),(g)(5)(ii)
<ul style="list-style-type: none"> <li>Extinguishment must be "so remote as to be negligible"</li> </ul>	1.170A-14(g)(3)
<ul style="list-style-type: none"> <li>Restrictions on transfer</li> </ul>	1.170A-14(c)(2)
<b>Conservation purpose</b>	170(h)(4)(A) 1.170A-14(d)(1)
<ul style="list-style-type: none"> <li>Outdoor recreation or education of public <ul style="list-style-type: none"> <li>Lack of access</li> </ul> </li> </ul>	170(h)(4)(A)(i); 1.170A-14(d)(2) 1.170A-14(d)(2)(ii)
<ul style="list-style-type: none"> <li>Protection of environmental system (natural habit) <ul style="list-style-type: none"> <li>Significant habitat or ecosystem</li> </ul> </li> </ul>	170(h)(4)(A)(ii) 1.170A-14(d)(3) 1.170A-14(d)(3)(ii)
<ul style="list-style-type: none"> <li>Preservation of open space <ul style="list-style-type: none"> <li>Scenic enjoyment <ul style="list-style-type: none"> <li>Lack of visual access</li> </ul> </li> <li>Governmental conservation policy <ul style="list-style-type: none"> <li>Physical or visual access required if conservation purpose is frustrated without access.</li> </ul> </li> <li>Lack of significant public benefit</li> </ul> </li> </ul>	170(h)(4)(A)(iii); 1.170A-14(d)(4) 170(h)(4)(A)(iii)(I); 1.170A-14(d)(4)(ii) 1.170A-14(d)(4)(ii)(B) 170(h)(4)(A)(iii)(II); 1.170A-14(d)(4)(iii) 1.170A-14(d)(4)(iii)(C)
	170(h)(4)(A)(iii); 1.170A-14(d)(4)(iv)

**NOTE:** This worksheet is not intended to be an all-inclusive list of issues for donations of conservation easements. Users must review IRC 170, DEFRA section 155, the corresponding Treasury Regulations, Notice 2006-96 and case law.

**Conservation Easement  
Issue Identification Worksheet**

<b>Issues</b>	<b>Code/Regs</b>
<b>Conservation purpose (continued)</b>	170(h)(4)(A) 1.170A-14(d)(1)
<ul style="list-style-type: none"> <li>• Failure to comply w/ PPA for buildings not individually listed. <b>(façade only)</b> <ul style="list-style-type: none"> <li>▣ No restriction for entire exterior</li> <li>▣ Lack of written agreement between donor/donee</li> <li>▣ Failure to attach appraisal, with photos and description of restrictions.</li> <li>▣ Failure to pay \$500 filing fee <b>(façade only)</b></li> </ul> </li> </ul>	170(h)(4)(B)(i) (donations after 7/25/06) 170(h)(4)(B)(ii) (donations after 7/25/06)  170(h)(4)(B)(iii) (tax years beg. after 8/17/06)  170(f)(13) (contributions on or after 2/13/07)
<ul style="list-style-type: none"> <li>• Not exclusively for conservation purpose               <ul style="list-style-type: none"> <li>▣ Inconsistent Use</li> </ul> </li> </ul>	170(h)(5); 1.170A-14(e) 1.170A-14(e)((2) and (3)
<ul style="list-style-type: none"> <li>• Preservation of historic land or certified historic structure               <ul style="list-style-type: none"> <li>▣ Historic land</li> <li>▣ Certified historic structure                   <ul style="list-style-type: none"> <li>▪ (1) Individually listed or (2) in historic district and NPS certifies</li> </ul> </li> </ul> </li> <li>• Lack of visual access</li> </ul>	170((h)(4)(A)(iv) 1.170A-14(d)(5) 1.170A-14(d)(5)(ii) 170(h)(4)(C) (donations made after 8/17/06); 1.170A-14((d)(5)(iii)  1.170A-14(d)(5)(iv)(A)
<ul style="list-style-type: none"> <li>• Insufficient or lack of documentation for conservation purpose (baseline study)</li> </ul>	1.170A-14(g)(5)(i) 1.170A-13(c)(4)(ii)(M)
<b>Valuation</b>	
Overvaluation	170(a) 1.170A-14(h)(3)
Deduction not based on FMV	170(a) 1.170A-1(c) 1.170A-14(h)(3)
Deduction limited to basis	170(e)(1)(A)
Contiguous parcel/noncontiguous parcel	1.170A-14(h)(3)(i)
<b>Miscellaneous</b>	
Percentage limitations not computed properly	170(b)
Rehabilitation credit-reduction of deduction <b>(façade only)</b>	170(f)(14)
Rehabilitation credit-recapture <b>(façade only)</b>	50(a); Rev. Rul. 89-90
<b>Penalties</b>	
Taxpayer penalties	6662(a), (e), (h) 6664(c)(1) - (3)
Appraiser penalty (Returns filed after 7/25/06 if facade easement on a building in a registered historic district; returns filed after 8/17/06 for all other easements.)	6695A

**Comments/Notes:**

---



---



---



---



---