

**PLR 200836014 - Section 170 - Charitable, etc., Contributions and Gifts**

**IRC Section 170**

**Document Date: June 3, 2008**

Internal Revenue Service  
Department of the Treasury  
Washington, DC 20224

Number: 200836014

Release Date: 9/5/2008

Date: June 03, 2008

Dear :

This responds to your letter dated Date X, requesting a ruling on the proper federal income tax treatment of a proposed grant of a conservation easement (Easement) by Grantors to Donee.

Applicable Facts

The Grantors

Parent is engaged in Business, principally owned through its wholly owned subsidiary, Subsidiary A. Subsidiary B, is a wholly owned subsidiary of Subsidiary C, which is a wholly owned subsidiary of Parent. Subsidiary A and Subsidiary B are referred to as "Grantors." The Parent, Subsidiary A, and Subsidiary B are accrual basis taxpayers located in State 1.

The Real Property

Grantors are the owners in fee simple of approximately X acres of real property known as Forest 1 located in County, State 2. Of the approximately X acres comprising Forest 1, approximately Y acres (Protected Property) are proposed to be subject to the Easement. There are no state or local zoning, conservation, or historic preservation laws which would significantly impair the ability of Grantors to develop or use Forest 1 for commercial or other purposes. Forest 1 is not held for sale to customers in the ordinary course of trade or business. Forest 1 is located in the Basin, which has historically been a largely undeveloped landscape consisting of extensive and diverse habitats, such as saltwater and brackish-water marshes, maritime forest, upland pines, and hardwoods.

The Terms of the Easement

The Easement will grant and convey to the Donee an easement in perpetuity over the Protected Property exclusively for Conservation Purposes. The Easement defines the Conservation Values to be protected to include the significant ecological and natural resources, including, but not limited to the Birds and the associated Tree ecosystems, various other forested ecosystems, a wide diversity of wildlife habitat, water quality values, open space and scenic value, and historical

and cultural values. These Conservation Values are further documented and incorporated by reference in the Easement in the baseline documentation on file in the Donee's office. Section 2 of the Easement provides the purposes of the Easement are to: (1) protect and preserve the Conservation Values; (2) prevent any use or activity that will significantly impair the Conservation Values; and (3) conserve and protect in perpetuity the protected area as a "relatively natural habitat of fish, wildlife or plants or similar ecosystem" under section 170(h)(4)(A)(ii) and as an "open space" under section 170(h)(4)(A)(iii). Section 3 provides for Grantors' reserved rights. Section 4 provides the rights of the Donee including rights to visual access, monitor, prevent prohibited uses, require restoration, discretionary consent, and notification. Section 5 provides restrictions and limitations on Grantors. Section 7 provides for Donee's remedies.

#### The Charitable Donee

Donee is a land conservation organization that is focused on preserving the natural and rural land along the coastal plain of State 2, in which Basin and Forest 1 are located. Donee has sought to preserve and protect properties by accepting and monitoring conservation easements. Donee has been determined by the Internal Revenue Service (IRS) to be an organization described in section 501(c)(3), whose principal activity is the conservation and preservation of natural resources. The Donee has been classified by the IRS as an organization which is not a private foundation within the meaning of section 509(a), but which is a publicly supported organization within the meaning of section 170(b)(1)(A)(vi).

#### Law and Analysis

Section 170(a)(1) of the Internal Revenue Code (Code) permits a deduction for a charitable contribution, as defined in section 170(c), that is made within the taxable year. Section 170(c) defines a charitable contribution as a contribution or gift to or for the use of certain qualifying organizations.

Under section 170(f)(3)(A), a taxpayer who contributes, not in trust, less than the taxpayer's entire interest in property generally is not allowed a deduction. However, section 170(f)(3)(B)(iii) provides an exception to this rule in the case of a qualified conservation contribution. Section 170(h)(1) of the Code and section 1.170A-14(a) of the Income Tax Regulations (regulations) define a "qualified conservation contribution" as a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes.

##### 1. Qualified Real Property Interest

Section 170(h)(2)(C) of the Code defines the term "qualified real property interest" to include a restriction granted in perpetuity on the use of real property. Section 1.170A-14(b)(2) of the regulations states that a qualified real property interest includes a perpetual conservation restriction, which is a restriction granted in perpetuity on the use that may be made of real property -- including an easement.

The proposed contribution is of an easement providing for restrictions to be imposed in perpetuity on the use of the real property. Therefore, the contribution is of a qualified real property interest within the meaning of section 170(h)(2)(C) of the Code and section 1.170A-14(b)(2) of the regulations.

##### 2. Qualified Organization

Under section 170(h)(3)(A) of the Code, the term "qualified organization" includes an organization which is described in section 170(B)(1)(A)(vi). It is represented that the Service has determined

that Donee is a publicly supported charitable organization described in section 170(b)(1)(A)(vi) and, therefore, constitutes a qualified organization.

Section 1.170A-14(c)(1) of the regulations provides that for a qualified organization to be an eligible donee of a qualified conservation contribution, it must also have a commitment to protect the conservation purposes of the donation, and the resources to enforce the restrictions. It further provides that an organization 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 required commitment.

It is represented that Donee is organized and operated primarily for the purpose of being involved in the conservation and preservation of natural resources and has the necessary resources for enforcement. Therefore, the Donee is an eligible donee.

Under section 1.170A-14(c)(2) of the regulations, the donor must prohibit transfers of the easement by the donee, unless, subsequent to the transfer, the donee organization requires that the conservation purpose continue to be carried out, and the subsequent transferee qualifies as an eligible donee under section 1.170A-14(c)(1). Sections 16 and 17 of the Easement contain such restrictions, and therefore, this requirement has been satisfied.

### 3. Conservation Purpose

Section 170(h)(1)(C) of the Code provides that a qualified conservation contribution must be exclusively for conservation purposes. Section 170(h)(4) provides that 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 (11) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and where it will yield a significant public benefit; or (iv) the preservation of an historically important land area or a certified historic structure.

Grantors contend that the Easement in this case qualifies as a donation for the protection of an environmental system under section 170(h)(4)(A)(ii), and preservation of certain open space under section 170(h)(4)(A)(iii).

#### A. Protection of an Environmental System

Section 1.170A-14(d)(3)(i) of the regulations generally provides that 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 dike would meet the conservation purposes test if the lake or pond is a natural feeding area for a wildlife community that included rare, endangered, or threatened native species.

Section 1.170A-14(d)(3)(ii) provides, in part, that significant habitats and ecosystems include, but are not limited to, habitats for rare, endangered, or threatened species of animal, fish, or plants.

Section 1.170A-14(d)(3)(iii) provides that 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.

In the present case, the Easement satisfies the conservation purpose requirement under the ecosystem protection criterion of section 170(h)(4)(A)(ii) of the Code and section 1.170A-14(d)(3) of the regulations. The Easement will protect both a natural ecosystem and an endangered species. The Protected Property is home to a significant concentration of endangered Bird groups and a significant Tree ecosystem, which is the Bird's native habitat. The limitations to access by the public to roadways near and through the Protected Property area will not adversely affect the qualification of the donation.

#### B. Preservation of Open Space

Another conservation purpose that Grantors contend is pertinent in this case is defined in section 170(h)(4)(A)(iii)(I) of the Code and section 1.170A-14(d)(4)(i)(B) of the regulations as the preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public, and will yield a significant public benefit.

Section 1.170A-14(d)(4)(ii) provides that scenic enjoyment will be evaluated by considering all pertinent facts and circumstances germane to the contribution. In part, the regulations provide that the 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, water body, trail, or historic structure or land area, and such area or transportation way is open to, or utilized by, the public. To satisfy the requirement of scenic enjoyment by the 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 of scenic property, the entire property need not be visible to the public, 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.

Section 1.170A-14(d)(4)(ii)(A) provides that scenic enjoyment is evaluated on the basis on all pertinent facts and circumstances. 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;
- (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 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.

In this case, a number of scenic enjoyment factors are applicable. The compatibility of land use with other land in the vicinity factor is relevant since the surrounding land uses include rural residential, rural agricultural, recreation retreats (primarily hunting retreats), forestry, and other traditional uses of rural land in State. In addition, Donee already protects a very significant number of other properties within Basin in a manner that ensures compatible land use. The visual aspects are varied and range from old-growth Tree, to regenerating Tree, planted pine strands, open fields (wildlife management areas), wild grasses and bottomland hardwood habitats, thus meeting the degree of contrast and variety provided by visual scene factor. The openness of the land factor is applicable because the low level of disturbance permitted by the Easement assures that the scenic view will be retained. In addition, the relief from urban closeness factor is relevant since the Protected Property is situated in a growing rural community area and the Easement will assist in preventing urban sprawl. Furthermore, the Protected Property lies in a "core area" for protection under the State Conservation Vision, thus, the consistency of the proposed scenic view with a methodical state scenic identification program factor is applicable.

Under section 1.170A-14(d)(4)(iv)(A), all contributions made under the preservation of open space must yield a significant public benefit. Public benefit will be evaluated by considering all the pertinent facts and circumstances germane to the contribution. Factors germane to the evaluation of the public benefit from one contribution may be irrelevant in determining public benefit from another contribution. No one 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 section 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.

A number of significant public benefit factors are applicable in this case. The uniqueness of the property to the area factor is applicable since it encompasses thousands of acres of Tree and related habitats supporting a wide array of birds and other wildlife. There are over Y acres that are a part of the Protected Property which supports more clusters of Bird than any other private property in State. The intensity of land development in the vicinity of the property (existing and foreseeable) factor is present since State ranks high in the rate of conversion of farmland and forestland to urban uses and County is the fastest growing county in State for the last three years. Currently, there is no zoning on Forest 1 or the land surrounding it to limit development.

The Easement also satisfies the consistency of the proposed open space use with public programs (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 factor, as well as, the consistency of the proposed open space use with a legislatively mandated program identifying particular parcels of land for future protection factor. The Easement will help ensure healthy drinking water for county residents, most of whom rely on well water. The Easement will also contribute to the work of County Commission, which envisions thousands of acres of protected land in County and miles of road-side protected public view ways beside roads which pass through County farms and forest areas. In addition, the Easement will contribute to the work of State Agency, which includes protecting and restoring Tree habitat to benefit birds and other wildlife. Moreover, Federal Agency coordinates a multi-partner, multi-state program called Program A. A specific goal in State's participation in Program A is to restore and manage Tree forest to stabilize or increase populations of high priority breeding, transient, and wintering bird species. Program B is also a nation-wide, multi-partner bird conservation project that is coordinated by the Federal Agency. One of State's overall conservation objectives in Program B is to protect, expand, and manage Tree forest, for the benefit of the priority bird species, including Bird. The Protected Property has 4 of the 15 highest priority species listed in the Program B. The Protected Property is located at the headwaters of the Basin, in which substantial federal investments have been made for the protection of the habitat. The Easement also contributes to the success of the Bird Plan promulgated by the Federal Agency.

The consistency of the proposed open space with existing private conservation programs in the area, as evidenced by other land, protected by easement or fee ownership by organizations referred to in section 1.170A-14(c)(1), in close proximity to the property factor is also applicable in this case. The Easement will complement the efforts of Organization 2 and Organization 1 in the Swamp and Forest 2, which are in proximity to the property. In addition, the Easement will complement the work of Organization 3 which has protected over Z acres, southeast and downstream of the Protected Property. The Easement will also complement the work of Organization 4.

The Protected Property is located within the watershed of River, the nation's river, and serves as a major filter of storm-water and other runoff areas. In addition, Grantors argue that there is a likelihood that development of the Protected Property would lead to or contribute to degradation of the scenic, natural, or historic character of the area. The Easement will contribute to the protection of the water quality of the River since the Protected Property is a large parcel in the Watershed. The Easement will contribute to storm water management, which is a major concern in County, since the Protected Property collects and naturally processes storm water.

The Easement will provide the opportunity for the general public to use the property or to appreciate the scenic values since thousands drive through the protected area every day, traveling on Highway. The Protected Property has approximately P miles of frontage to public roads. Supporters of the proposed contribution maintain that this donation will increase the likelihood that the Donee will acquire additional and equally desirable and valuable property or property rights, since there is a strong interest among the landowners to maintain the traditional uses, and this proposed contribution will inspire many of the Forest's adjoining and nearby landowners to place conservation easements on their lands. Furthermore, the population density in the area of the property factor is applicable in this case because State has one of the fastest growing populations in the United States.

#### 4. The Exclusivity and Perpetuity Requirements

Section 170(h)(5) of the Code and section 1.170A-14(e)(1) of the regulations provide that the contribution must be exclusively for conservation purposes. Section 170(h)(5)(A) of the Code provides that a contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity. Section 1.170A-14(g)(1) of the regulations provides that any interest 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 use of the donor's retained interest that is inconsistent with the conservation purposes of the donation.

Section 1.170A-14(e)(2) sets forth specific rules relating to inconsistent use. It provides that 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.

Section 1.170A-14(g)(5)(i) of the regulations provides that 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."

Section 1.170A-14(g)(5)(ii) provides that the donee must have a right of inspection and legal remedies. It states that 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.

Section 1.170A-14(g)(6)(i) provides that if circumstances change making impossible or impractical the continued use of the property for conservation purposes, then the easement will be treated as protected in perpetuity if the restrictions are extinguished by judicial proceedings and all of the proceeds received by the donee are used by the donee in a manner consistent with the conservation purposes of the original contribution. Section 1.170A-14(g)(6)(ii) provides that the donor must agree that the donation of the perpetual conservation restriction gives rise to a property right 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. It further provides that proportionate value of the donee's property rights shall remain constant.

In the present case, the Easement is enforceable in perpetuity under section 1.170A-14(g)(1) of the regulations. The preamble and Section 3 of the Easement provides that the Easement is granted in perpetuity. Furthermore, the Easement will be filed in the land records of County, State. Thus, Grantors' retained interest will be subject to perpetual, legally enforceable restrictions set forth in the Easement that will become effective upon such filing.

The Easement satisfies the exclusively for conservation requirement under section 1.170A-14(e). The Easement provides that the Conservation Values to be protected include the significant ecological and natural resources, including, but not limited to the Birds and the associated Tree ecosystems, various other forested ecosystems, a wide diversity of wildlife habitat, water quality values, open space and scenic value, and historical and cultural values. Section 2 of the Easement provides the purposes of the Easement are to: (1) protect and preserve the Conservation Values; (2) prevent any use or activity that will significantly impair the Conservation Values; and (3) conserve and protect in perpetuity the protected area as a "relatively natural habitat of fish, wildlife or plants or similar ecosystem" under section 170(h)(4)(A)(ii) and as an "open space" under section 170(h)(4)(A)(iii). While section 3 of the Easement sets forth the Reserved Rights of the Grantors, the Easement expressly provides that the exercise of any Reserved Right must not be inconsistent with or detrimental to the purpose of the Easement. The Grantors reserve their rights to (A) plant, grow, harvest, sell, and manage forest resources in accordance with a Forest Management Plan (written plan prepared by Grantors and its forestry consultants, subject to periodic updates, current copies of which will be filed with the Grantee); (B) engage in Agricultural Activities (activities directly related to the production of plant or animal products on the Protected Property including crop production, animal husbandry, propagation of game animals, floriculture, horticulture, and aquaculture, in a manner that preserves the long-

term productivity of the soil); (C) engage in recreational activities including hunting, shooting, fishing, swimming, hiking, camping, birding and other animal observation, and outdoor recreational activities; (D) engage in scientific research activities including monitoring and data gathering; (E) conduct wildlife management activities to conserve, manage, maintain, or improve wildlife habitats or populations of game and non-game species; (F) construct new ponds limited in size to 400 acres. Each reserved right provides that the activities shall not significantly adversely impact the Conservation Values of the Protected Property. In addition, section 3(G) provides that notwithstanding anything in this Easement to the contrary, Grantors shall not (I) Harvest any forestland located within the Protected Property other than to the extent needed for the health and maintenance of (a) such forestland as determined by a licensed forester or (b) Bird; or (11) Take any action that is inconsistent with the health and maintenance of Birds located within the Protected Property.

Section 5 provides restrictions and limitations on Grantors. Section 5(A) of the Easement prohibits subdivision of the Protected Property and provides that if the Protected Property were ever sold or conveyed it would be held by one owner as a single undivided tract of land. Section 5(C) of the Easement imposes structural limitations relating to the construction, enlargement, and replacement of residential, agricultural, and other structures on the Protected Property. Section 5(D) of the Easement prohibits the use of impervious surfaces, other than fencing and gates, within Q feet of the centerline of Road and within Q feet of the centerline of Highway to provide an aesthetic and ecological transition zone. Section 5(E) of the Easement prohibits industrial uses, activities, and structures on the Protected Property. Section 5(F) provides that there shall be no commercial uses of or activities or structures on the Protected Property without prior approval by the Donee. Section 5(G) limits road construction and use, and requires the Grantor to use existing roads wherever possible. Paving of any road is limited to use of non-permeable materials and roads temporarily constructed or widened shall be allowed to return to their former size and state. Section 5(L) of the Easement prohibits all mining and recovery of oil, gas, or minerals from the Protected Property, except as otherwise permitted by section 170(h)(5)(B) of the Code and regulations thereunder, provided that following any mining activity, the site is returned to, or as closely as possible to, its previous state.

Section 5(B) of the Easement imposes structural limitations relating to the construction, enlargement, and replacement of residential, agricultural, and other structures on the Protected Property. Section 5(B)(I) provides that in total there shall not be more than W square feet of impervious surface. Impervious surfaces include, but are not limited to roofs, walkways, patios, porches and decks, storage areas, paved surfaces, pools, or other surfaces which similarly impede the natural infiltration of surface and stormwater runoff. Grantors represent that the impervious surface restriction equates to less than 1/2 of 1% of the total acreage protected. Section 5(B)(II) provides that no more than V additional residential structures may be placed on the protected property and that no residential structure shall exceed forty feet in height. Section 5(B)(III) allows agricultural structure but limits the height to fifty feet. Grantors represent that the one- owner requirement and the prohibition on subdividing the Protected Property foreclose the possibility of selling the permitted residential structures individually as private residences. Section 5(B)(V) provides that the construction, enlargement, or replacement of residential structures, agricultural structures, and all other structures on the Protected Property shall not significantly adversely impact the Conservation Values of the Protected Property described in the Easement or incorporated by reference.

Section 5(E) of the Easement prohibits commercial uses of the Protected Property without prior approval of the Donee (other than as otherwise permitted by the Easement). For purposes of this Easement the sale of timber and any related forest products produced on the Protected Property, the products from Agricultural Activities, and recreational activities are not considered commercial uses.

The Easement will meet the requirements of section 1.170A-14(g)(5)(i). As specified in the preamble to the Easement, Grantors will provide baseline documentation to the Donee prior to the conveyance of the Easement. The baseline documentation includes maps, reports, and photographs, which the parties agree provides an accurate representation of the condition of the Protected Property at the time of contribution.

The Easement will meet the requirements of section 1.170A-14(g)(5)(ii). Sections 4 and 7 of the Easement, empower the Donee to enter the Protected Property to monitor compliance and to legally enforce the terms of the Easement. The Easement grants enforcement rights to the Donee (including, but not limited to, the right to have visual access to the Protected Property, the right to enter upon the Protected Property in order to monitor compliance with the Easement, the right to prevent prohibited uses and activities). Section 7 provides that if the Donee determines that Grantors are in violation of the terms of the Easement or that a violation is threatened, the Donee shall notify Grantors of the violation and request voluntary compliance. In the event that voluntary compliance is not agreed upon within 90 days, the Donee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and restore the portion of the Protected Property if violation involves injury to the Protected Property. If Grantors fail to cure the violation within 60 days then the Donee, with notice to Grantors, may bring an action at law or in equity in a court to enforce the terms of the Easement. However, if the Donee, in its sole, but reasonable, discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Donee may pursue its legal and equitable remedies without waiting for the period provided for cure to expire.

The section 1.170A-14(g)(6)(i) and section 1.170-14(g)(6)(ii) requirements are also met since section 14 of the Easement provides for no means to extinguish the restrictions other than by judicial proceeding and all proceeds received by the Donee are to be used in a manner consistent with the original conservation purposes of the Easement. Furthermore, the portion of the proceeds of any subsequent sale or exchange (or condemnation) of the Protected Property payable to the Donee represents a percentage interest in the fair market value of the Protected Property (less an amount attributable to the value of a permissible improvement made by Grantors, if any, after the date of the contribution of the Easement).

#### Conclusion

Accordingly, based upon the facts submitted and the representations made in the ruling request, we rule that the proposed contribution will be a qualified conservation contribution within the meaning of section 170(h) and a charitable contribution within the meaning of section 170(c) of the Code.

This ruling is addressed solely to the taxpayers who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

No opinion is expressed as to the federal income tax consequences of the transactions described above under any other provision of the Code.

The taxpayers should attach copies of this ruling to their tax returns for the taxable year in which the transaction covered by this ruling is consummated. We are enclosing copies for that purpose.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Christopher F. Kane

Branch Chief, Branch 3

(Income Tax & Accounting) 