



What is Public Benefit under the Internal Revenue Code

Deductible conservation easements must comply with the provisions of Internal Revenue Code (IRC) Section 170(h) and with Treasury Regulations (Regs.) Section 1.170A-14 in order to qualify for tax benefits. A conservation easement must meet the “conservation purposes” test of the regulations set forth in Section 1.170A-14(d)(1).

Charitable Intent

IRS requires at the least the appearance of ‘charitable intent’ by the donor. This means that financial benefit to the donor cannot appear to be the predominant motivation for the gift, because then it isn’t a gift if the donor is receiving something tangible in return.

Four Categories of Qualified Purposes Under IRC Section 170(h)

The conservation purposes test set forth in the regulations is met if an easement is donated *exclusively* for **one** or more of the following purposes:

1. The preservation of land areas for outdoor recreation by, or the education of, the general public; **or**
2. The protection of a relatively natural habitat of fish, wildlife or plants, or similar ecosystem; **or**
3. Open space (including farmland and forestland) that is **either** preserved:
 - a. For the scenic enjoyment of the general public; **or**
 - b. Pursuant to a clearly delineated federal, state or local governmental conservation policy; **and**
 - c. That will yield a significant public benefit; **or**
4. The preservation of a historically important land area or a certified historic structure.

What is Significant Public Benefit

Specifically, the regulations list the following factors to consider:

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:
 - a. Programs for outdoor recreation;
 - b. Irrigation or water supply protection;
 - c. Water quality maintenance or enhancement;
 - d. Flood prevention and control;
 - e. Erosion control;
 - f. Shoreline protection; and,
 - g. Protection of land areas included in, or related to, a government-
 - h. 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 nonprofit organizations in close proximity;

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 or to appreciate the property;
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 land trust will acquire equally desirable and valuable substitute property or property rights;
9. The cost to the land trust of enforcing the terms of the conservation easement;
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.

Impermissible Private Benefit

Public benefit is also defined in part as what it is not — *a conference of impermissible private benefit*. Charitable organizations qualified under Section 501(c)(3) of the Internal Revenue Code are prohibited from conferring *any* benefit that constitutes private inurement or an impermissible amount of private benefit. Private benefit occurs when an organization provides *more than an incidental benefit* to a private entity, including an unrelated private party. Because organizations with tax-exempt status must demonstrate that they are organized and operated exclusively for charitable purposes, which contemplates *some* benefit to the public at large, the IRS considers an organization that benefits private interests in anything *more than* an insignificant or incidental fashion to have failed this test. From a land trust’s perspective, incidental benefits are activities that land trusts regularly engage in during the performance of their mission. So some private benefit is unavoidable in the operation of a conservation organization, but it must be *incidental* to the land trust serving the public as a whole.

Private Inurement

Private inurement occurs when part or all of the organization’s net earnings are distributed to a party *related to the organization*. A “related party” is an insider, generally defined as “any individual who has a personal and private interest in the activities of the organization or who is in a position to exercise substantial influence over the affairs of the organization, and their family members.” This definition covers both current and former land trust staff and board members, and may extend to major donors as well (donors of either money or land). The IRS prohibition on inurement is absolute. *No* private inurement is allowed — the amount is irrelevant.

State Laws

Easements that are not intended to qualify for federal tax benefits must still satisfy their state’s conservation easement enabling statute. For example, the Texas Natural resource Code, Chapter 183, allows conservation easements to be used to “maintain or enhance air or water quality.” Therefore, land trusts in Texas may well wish to include this item as one of the criteria they will examine when proceeding through their project selection process. State statutes, such as the Texas statute, may allow for additional resources or values to be protected by a conservation easement.

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