

Conservation Easement Issue Identification Worksheet for IRS Agents

General Rule Issues	Code/Regs
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)
Qualified Appraisal Issues	Code/Regs
(Note: The Deficit Reduction Act of 1984 (DEFRA) and section 170(f)(11) outline the statutory appraisal requirements.)	170(f)(11) (donations after 6/3/04) DEFRA 155(a)(1)(A),(a)(4) 1.170A-13(c)(3)(i) Notice 2006-96 §3.02(1)
Appraisal not attached to return (FMV >\$500K)	170(f)(11)(D) (donations after 6/3/04)
Appraisal not prepared in accordance with generally accepted appraisal standards	170(f)(11)(E)(i)(II) (returns filed after 8/17/06); Notice 2006-96 §3.02(2)
Appraisal not timely	1.170A-13(c)(3)(i)(A)
Not a qualified appraiser	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
Doesn't meet IRC, DEFRA, or Treas. Reg. requirements	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
Appraisal fee based on percentage of value	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)

Qualified Real Property Interest Issues	Code/Regs
Qualified real property interest	170(h)(2); 1.170A-14(a), (b)
Lack of perpetuity	170(h)(2)(C); 170(h)(5)
Lack of perpetuity - Failure to properly subordinate	1.170A-14(g)(2)
Lack of perpetuity - Extinguishment-allocation of proceeds	1.170A-14(g)(6)(ii)
Not a qualified organization or eligible donee	170(h)(3); 1.170A-14(c)(1)
Conservation Purpose Issues	Code/Regs
Conservation purpose	170(h)(4)(A); 1.170A-14(d)(1)
Outdoor recreation or education of public	170(h)(4)(A)(i); 1.170A-14(d)(2)
Outdoor recreation or education of public - Lack of access	1.170A-14(d)(2)(ii)
Protection of environmental system (natural habitat)	170(h)(4)(A)(ii); 1.170A-14(d)(3)
Protection of environmental system - Significant habitat or ecosystem	1.170A-14(d)(3)(ii)
Preservation of open space	170(h)(4)(A)(iii); 1.170A-14(d)(4)
Preservation of open space -Scenic enjoyment	170(h)(4)(A)(iii)(I); 1.170A-14(d)(4)(ii)
Preservation of open space -Scenic enjoyment-Lack of visual access	1.170A-14(d)(4)(ii)(B)
Preservation of open space -Governmental conservation policy	170(h)(4)(A)(iii)(II); 1.170A-14(d)(4)(iii)
Preservation of open space -Governmental conservation policy Physical or visual access required if conservation purpose is frustrated without access	1.170A-14(d)(4)(iii)((C)
Preservation of historic land or certified historic structure	170(h)(4)(A)(iv)
Preservation of historic land or certified historic structure - Historic land	1.170A-14(d)(5)
Preservation of historic land or certified historic structure - Certified historic structure	1.170A-14(d)(5)(ii)

Conservation Purpose Issues	Code/Regs
Preservation of historic land or certified historic structure - Certified historic structure (1) Individually listed or (2) in historic district and NPS certifies	170(h)(4)(C) (donations made after 8/17/06); 1.170A-14((d)(5)(iii)
Preservation of historic land or certified historic structure - Lack of visual access	1.170A-14(d)(5)(iv)(A)
Failure to comply w/ PPA for buildings not individually listed. (façade only)	170(h)(4)(B) (donations after 7/25/06)
Failure to comply w/ PPA for buildings not individually listed - No restriction for entire exterior.	170(h)(4)(B)(i) (donations after 7/25/06)
Failure to comply w/ PPA for buildings not individually listed - Lack of written agreement between donor/donee.	170(h)(4)(B)(ii) (donations after 7/25/06)
Failure to comply w/ PPA for buildings not individually listed - Failure to attach appraisal, with photos and description of restrictions.	170(h)(4)(B)(iii) (tax years beg. after 8/17/06)
Failure to comply w/ PPA for buildings not individually listed - Failure to pay \$500 filing fee (façade only)	170(f)(13) (contributions on or after 2/13/07)
Not exclusively for conservation purpose	170(h)(5); 1.170A-14(e)
Not exclusively for conservation purpose - Inconsistent Use	1.170A-14(e)((2) and (3)
Insufficient or lack of documentation for conservation purpose (baseline study)	1.170A-14(g)(5)(i); 1.170A-13(c)(4)(ii)(M)
Valuation Issues	Code/Regs
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)

Miscellaneous Issues	Code/Regs
Percentage limitations not computed properly	170(b)
Rehabilitation credit-reduction of deduction (façade only)	170(f)(14)
Rehabilitation credit-recapture (façade only)	50(a); Rev. Rul. 89-90
Penalty Issues	Code/Regs
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