

CONTENTS

Preface	xi
----------------------	-----------

About the Authors	xv
--------------------------------	-----------

Introduction	xvii
---------------------------	-------------

Chapter 1

Conservation Purposes	1
------------------------------------	----------

I. Outdoor Recreation or Education of the General Public ...	3
1. Overview	3
2. Case Law	3
3. Practical Tips	4
4. Protection of Natural Habitat or Ecosystem	4
A. Overview	4
B. Case Law	5
C. Practical Tips	8
5. Open Space Preservation	9
A. Overview	9
B. Regulatory Guidance: Clearly Delineated Conservation Policy	9
C. Regulatory Guidance: Scenic Enjoyment of the General Public	11
D. Regulatory Guidance: Significant Public Benefit .	13
E. Regulatory Guidance: No Inconsistent Uses	15
F. Case Law and Other Guidance	16
G. Practical Tips	18

6.	Historically Important Land Area or Structure	19
A.	Overview	19
B.	Regulatory Guidance for Public Access	20
C.	Case Law	21
D.	Practical Tips	22
E.	State Easement Enabling Statutes	23

Chapter 2

Not Exclusively for Conservation Purposes 25

I.	Introduction	25
II.	Limited Development	28
1.	Types of Limited Development	29
2.	Practical Tips	33
III.	Mineral Development	35
IV.	Other Energy Development	39
V.	Other Commercial Uses	40
1.	Working Forests	43
2.	Agricultural Uses	45

Chapter 3

Tax Consequences 47

I.	Private Letter Rulings	49
II.	Threshold Qualification Inquiries	50
1.	Transfer	50
2.	Property	51
3.	Contributions of Partial Interests	52
4.	Remainder Interest in a Personal Residence or Farm	52
5.	Undivided Portion of Donor's Entire Interest in Property	54
6.	Qualified Conservation Contribution	54
7.	Qualified Real Property Interest	56
8.	Qualified Organization	57
9.	Permitted Conservation Purposes	59
10.	Exclusively for Conservation Purposes	59
11.	Perpetuity Requirement	61
12.	Property Subject to a Mortgage	61
13.	Retention of a Qualified Mineral Interest	65
III.	Income Tax Benefits	66

1.	Contribution Base and Percentage Limitations	66
2.	50 Percent Limitation	67
3.	30 Percent Limitation	67
4.	Increased Deductions under the Pension Protection Act	68
5.	Contributions by Individual Taxpayers Using Agriculture or Livestock Production Raised to 100 Percent of Contribution Base	68
6.	Contributions by Corporate Taxpayers Using Agriculture or Livestock Production Raised to 100 Percent of Contribution Base	70
7.	Relief for Subchapter S Stockholders Making Contributions of Long-Term Capital Gain Property	71
8.	Relief for Nonagricultural Taxpayers Making Qualified Conservation Easement Contributions	71
9.	Ordering of Conservation Easement Deductions and Other Deductions	72
IV.	Estate Tax Benefits	72
1.	Section 2031(c) Exclusion of the Value of Land Subject to a Qualified Conservation Easement	73
A.	In General	73
B.	Relationship with Income Tax Provisions	77
C.	Relationship with § 2032A	79

Chapter 4

Valuation and Appraisal 83

I.	Introduction	83
II.	Threshold Requirements and Penalties for Noncompliance	85
1.	Form 8283	86
2.	The Increased Burden on Appraisers	88
3.	Discussion of New Qualification Requirements under the Act	89
4.	Definitions of “Qualified Appraiser” and “Qualified Appraisal”	90
5.	Increased Taxpayer Penalties and Appraiser Accountability and Penalties	92
A.	Penalties on Taxpayers for “Substantial” and “Gross” Valuation Misstatements	92

B. Penalties on Appraisers for Valuation	
Misstatements	93
C. Disciplinary Action against Appraisers	93
D. The Need for Careful Communication between	
Taxpayers and Appraisers	93
III. Valuation Methods and Considerations	94
1. "Enhancement" and Bargain Sales	101
2. Other Considerations	106
A. Donations of Interests Other Than Perpetual	
Conservation Restrictions: Entire Interest Other	
Than a Qualified Mineral Interest	106
B. Remainder Interest	107
C. Timing	108
D. Basis Adjustments	108
E. Charitable Contributions of Property	109
F. Appreciated Property	110
G. Ordinary Income Property and "Dealer" Status	110
H. Tangible Personal Property	113
I. Appreciated Long-Term Capital Gain Property	
to or for the Use of a Private Foundation	114
J. Combinations	115

Chapter 5

Tax Traps117

I. Donative Intent	119
II. Private Benefit and Private Inurement	126
III. State Law Traps	131

Chapter 6

Grantor and Grantee135

I. Grantors	136
1. Individuals	136
2. Decedents and Post-Mortem Donations	136
3. C Corporations	138
4. S Corporations	140
5. Partnerships and LLCs	141
6. Trusts	142

II. Grantee	143
1. Qualifying Organizations	143
2. Governmental Entities	144
3. Tribes	147
4. Public/Private Easement Partnerships	148
5. Charitable Organizations: The Land Trust	149
A. Nonprofit Law Basics	151
B. The Accreditation Process	153
C. Relationship with Landowner	154

Chapter 7

Down the Road157

I. Amendments	158
1. Laws Applicable to Conservation Easements	159
A. State Laws and the Uniform Conservation Easement Act	160
B. Federal Law	163
C. Charitable Trust Doctrine	164
2. Amendment Provisions in Conservation Easements ..	169
3. Future Considerations	170
4. Like-Kind Exchanges of Conservation Easements ..	174
II. Violations and Enforcement	175

Chapter 8

Hidden Dangers179

I. Eminent Domain	180
II. Extinguishment	186
1. Intentional Extinguishment	186
2. Merger	187
3. Foreclosure	189
4. Adverse Possession and Prescriptive Easements ...	190
5. Cessation of Purpose	191
6. Estoppel	192
7. Marketable Record Title Acts	192

- 8. Additional Considerations 193
- 9. Environmental Cleanup Liability 194

Chapter 9

Encouraging Conservation197

- I. Farm Bill Programs 200
 - 1. Conservation Reserve Program (CRP) 200
 - 2. Conservation Reserve Enhancement Program (CREP) 201
 - 3. Grassland Reserve Program (GRP) 202
 - 4. Farm and Ranch Lands Protection Program (FRPP) . 203
 - 5. Wetlands Reserve Program (WRP) 204
 - 6. Wildlife Habitat Incentives Program (WHIP) 205
 - 7. Environmental Quality Incentives Program (EQIP) .. 205
 - 8. Conservation Security Program (CSP, not to be confused with the Conservation Stewardship Program) 206
 - 9. Healthy Forests Reserve Program (HFRP) 206
 - 10. Other Programs 207
- II. Fish and Wildlife Service Programs 208
 - 1. North American Wetlands Conservation Act Grants Program 209
 - 2. Neotropical Migratory Bird Conservation Act 209
 - 3. Partners for Fish and Wildlife 209
 - 4. Cooperative Endangered Species Conservation Fund Grants 209
 - 5. Wildlife and Sport Fish Restoration Acts Program (WSFR) 211
 - 6. State Wildlife Grant Programs 211
 - 7. National Coastal Wetlands Conservation Grants 212
 - 8. Landowner Incentive Grant Program 212
 - 9. Conservation Banking 212
- III. Forest Service Programs 213
 - 1. Forest Stewardship Program 213
 - 2. Forest Legacy Program 214
 - 3. Healthy Forests Reserve Program 214
- IV. Other Conservation Incentive Programs 214
 - 1. National Register of Historic Places 214
 - 2. Land and Water Conservation Fund 215

3.	Environmental Protection Agency: Clean Water Act Wetlands Mitigation Banking	215
4.	DW and CW State Revolving Funds	215
5.	NOAA Funding	215
6.	State and Local Programs and Tax Incentives	216
7.	State Tax Credits and Tax Incentives	217
8.	Marketable Resources	218
	A. Carbon	218
	B. Transferred Development Rights (TDRs)	221
	C. Other Resources	222
V.	Conclusion	224

Appendix **227**

Easement A	241
Appendix to Easement A: Cornwell Ranch Conservation Easement Management Plan	272
Easement B	299
Purchase and Sale Agreement	321
Easement C	343
IRS Notice 2006-96	371
IRC Section 6695A	378
IRS Notice 2004-41	380
IRS Form 8283	384
Index	387