

Handle with Care: Preservation Easements Today

NORTHEAST PRESERVATION NEWS

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More and more preservation non-profits in our region are employing preservation easements as a way to protect significant places without the burden of ownership. While easements are a powerful and flexible tool, easement holders are bound by legal obligations to monitor and enforce their provisions, still a costly proposition that is often meant to last into perpetuity.

The legal, tax, and practical implications of donating and accepting easements have recently become more complex. Today, it is more vital than ever for easement-holding preservation organizations to stay current on new developments, resources, and standards and practices in this area.

The federal tax deduction for specific kinds of charitable donations of easements, including certain qualifying preservation easements, was passed in the 1970s and remains an important incentive used by many donors. Between 2004 and 2006, the exposure of questionable conservation and preservation easement practices led the IRS to heighten scrutiny of related deductions, and led Congress to amend the deduction provisions in several ways. Among other changes, these reforms included special rules for easements on buildings in registered historic districts, new qualification standards for appraisers and appraisals, and serious penalties for donors and appraisers participating in overvaluation of easements.

Donors seeking a deduction will need to take responsibility for finding qualified appraisers. Care should also be taken by organizations in promoting easement programs. Oversimplification of the easement valuation process (such as noting percentage values donors can expect) should be avoided.

Preservation organizations that hold easements are affected by new reporting requirements included in Schedule A of the organizations' Form 990, as well. Now, extensive information is required on all easements held, whether or not deductions were sought. There are indications that this process will be used to help the IRS examine easement-holding organizations' capacity to properly monitor and enforce all the easements in their portfolio.

The 2006 amendments and other state and federal laws on easements should be thoroughly examined and understood by easement-holding organizations and prospective donors, with the guidance of experienced legal and tax counsel.

For organizations and donors that carefully comply with the applicable laws, the future is bright. The preservation movement can look forward to advancing our use of preservation easements to protect entire cultural landscapes, as part of larger partnerships with conservation and other groups. New technologies such as GIS mapping promise to make easement administration and monitoring more efficient. As responsible use of preservation easements continues to spread, more historic resources will benefit from this form of long-term, strong protection.

Visit <http://www.nationaltrust.org/easements> for further information, including details on changes to the IRS rules for easement deductions. This overview is for general reference, and is not meant to constitute legal or tax advice. Preservation organizations seeking to hold easements, and prospective donors, should be guided by consultation with attorneys and tax advisors knowledgeable in this area. The applicable state laws vary, and it is important to weigh the unique tax and other implications in each case.

The National Trust for Historic Preservation's new publication, *Establishing and Operating an Easement Program to Protect Historic Resources*, provides an informative and current overview of best practices, and which pitfalls to avoid. It is available for purchase at <http://www.preservationbooks.org>.

Northeast Field Office
6401 Germantown Ave

Philadelphia PA 19144

T: 215/848-8033

F: 215/848-5997

E: nefo@nthp.org

W: <http://www.nationaltrust.org>