

CONSIDERING A PRESERVATION OR CONSERVATION EASEMENT? ADVICE FOR THE PROPERTY OWNER

* Do your homework before you approach your legal and financial team -- know what you want and need, and how much control over your property you are willing to surrender. Learn what an easement will and will not do for you, and understand the consequences -- some may be beneficial and some may not be depending on your individual situation and goals. Explore different types of easements -- everyone's circumstances are different, and your property may be best protected with different types of easements on different tracts. Find out what baseline studies you will need.

* Keep abreast of changes in the Federal tax code and other enabling legislation -- this can change very quickly. Know how to structure your easement so that it will be acceptable to the IRS as well as the easement holder. Be prepared to wait out audits and unfavorable decisions.

* As of this date, the governing Federal law is the Internal Revenue Service code sections, 26 U.S.C. Secs. 170A-14(h)(3), as variously amended. in Section 170(h) by the Pension Protection Act of 2006 Pub.L. No. 109-280, 120 Stat.780 (2006), which expires Dec. 31, 2007, and reverts to the pre-existing provisions of the Tax Code. Abuses of the facade-easement program led to major -- and necessary -- corrections and revisions of the tax code beginning in 2006. Corrections and changes continue from year to year. Recent changes affect the way properties are appraised in relation to adjacent or nearby properties owned by the same individual donor or members of the donor's family.

* Remember, there will be two appraisals. The property will be appraised at highest and best use BEFORE the donation, and will be re-appraised AFTER the donation (since the highest and best use will be probably be prohibited by the easement, the property will have lost value). Any tax benefits will be based on the difference between these two appraisals, and the figures must be realistic or the IRS will NOT be happy! So, make sure your financial advisors, including your CPA, are on board. Be sure you understand in advance how these benefits will work in your particular situation, which will depend on the tax law in effect at the time of the donation.

* Know where your proposed easement-holder is positioned relative to the types of threats.

For example, a local 501(c)3 is below a local government on the "food-chain" and might not be able to withstand pressure. A national 501(c)3 may be too far distant from your vicinity or too busy to respond in an emergency. Remember that Boards of Directors are subject to change, and that changes in mission may follow changes in personnel. At present count, 5 Natchez-area historic properties have chosen the Mississippi Department of Archives and History because (1) it is the agency charged with historic preservation and (2) it is a nonpolitical department governed by an independent Board of Trustees.

* Get to know the potential holder(s) personally and make sure they are willing to accept the easement before you go forward -- each holder has different requirements and missions. Hold a meeting with your attorneys and the representatives (as high up as you can go - all the way to the top if possible!) of the easement holder EARLY in the process. We did this two years ago. Make sure everyone understands and honors your goals. Keep in touch with them as you develop the documents, and remember that you will need a written statement that they are willing to accept the donation BEFORE you actually submit the donation.

* Know what the recipient's timing is for acting on your donation, so that your donation can be completed within your tax year.

* Use experienced lawyers. Our local "lead" has many years of experience with wildlife and natural resource conservation easements, and has recently served as National President of Ducks Unlimited. Your attorneys should be able to find the experts to prepare the various baseline studies and supporting documents. They should also be able to tell you how long the process will take.

* If you use an out-of-state law firm, be sure they understand and use boundary descriptions which apply in your state and locale. In southwest Mississippi, for example, many of our properties use metes and bounds based on English 1765-1779 and Spanish 1779-1795 land grants. It is essential to go back to the Maps of Original Entry, which include the original property boundary descriptions from the British and Spanish grant documents, and which form the basis for the United States patents. Ordinary Mississippi title searches go back only 37 years. Many properties change ownership by will rather than by recorded deeds. There may also be some peculiar and perpetual reversions and reservations which may be attached to easements and other conveyances made more than 37 years previously which need to be restated with every transfer, or they will drop out of the public record.

* Assemble as much documentation as possible in support of the various elements of your easement as soon as you decide to go forward. This information will facilitate your baseline studies, some of which require experienced specialists who may have to come from some distance. The baseline studies may take a long time, depending on what will be required. If standing structures are involved, you may need an Architectural Assessment. You will also need a Planning Document which will accompany the Appraisal showing how the property could be developed for its highest and best use. The Planning Document will also show which areas can not be developed and why. If timber is involved, you will need a timber appraisal and a best management practices document. All these studies take time, so this needs to be factored into your own planning.

* You will need a property history, which begins with the chain of title and copies of the deeds or wills, and which may include the U. S. patent documents. Both of us are historians and we were able to pull the courthouse records ourselves, which saved time and the hire of a specialist researcher.

* As soon as you have decided which portion or portions of the tract will be included in which type of easement, you will need a legally-binding boundary survey. None of this is inexpensive.

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