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Date:

September 30, 1999

Legend

Taxpayer =

Township =

County =

State =

Year =

City =

Donee =

Watershed =

Plan 1 =

Plan 2 =

Court =

Dear _____ :

This letter is in response to your May 18, 1999 request for a ruling on behalf of Taxpayer. Additional information was submitted on July 9, 1999, August 11, 1999, and September 15, 1999.

RULINGS REQUESTED

You have requested a ruling on whether the proposed contribution by Taxpayer will be a qualified conservation contribution within the meaning of sections 170(f)(3)(B)(iii) and 170(h) of the Internal Revenue Code.

FACTS

Taxpayer and a business partner jointly own multiple parcels of real estate, some of which have been commercially developed and some of which are undeveloped farmlands. In Year, Taxpayer acquired approximately 115 acres of farmland in Township, County, State. Taxpayer and the business partner own the property as tenants in common. Taxpayer intends to partition the 115 acres into two parcels: a 110-acre parcel (the "Property") and a five-acre parcel (the "Residential Parcel"). Currently, Taxpayer leases the Property to a farmer who uses it to produce various crops. The Residential Parcel is improved with a house and a barn and currently is leased to a party who is unrelated to either the farmer or Taxpayer. After the partition, Taxpayer intends to grant a conservation easement on the Property and to sell the Residential Parcel. Taxpayer represents that there are no plans to develop further the Residential Parcel.

The Property consists of farmland, approximately ten acres of woods, and a stream which transverses the Property. The stream is part of Watershed, a system of streams and waterways that feed the two major rivers in County. There is an approximately 100-foot buffer of trees and other vegetation on each side of the stream. Various wild animals thrive in the woods and the stream area. Taxpayer asserts that the Property is unique in County because it a combination of woods, stream and farmland. The soil on the farmland is rated "prime" under County's agricultural use value system. Currently, the Property is zoned for agriculture.

In reaction to the loss of prime agriculture lands and the state's other natural resources, State passed a statute creating a conservation easement and authorizing certain governmental and private organizations to accept such easements. The statute defines a conservation easement as an interest in land held for the public purpose of retaining land in its natural, open or wooded condition. The agricultural use of land is specifically included in the definition of a conservation easement.

County has adopted two land use plans to aid it in planning for future development: Plan 1 and Plan 2. Plan 1 was adopted to preserve green-ways and river corridors, and to protect the natural landscapes of County. Plan 1 sought to advance the goal of linking natural green space areas in the county as opposed to creating vegetation islands. Based on this goal, Plan 1 selected several areas in County as warranting preservation. Because of its woods and stream, the Property falls within one of the areas identified in Plan 1 as warranting preservation as an open space site.

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Plan 2 is a county-wide development plan. Relying on and incorporating Plan 1, Plan 2 divided the county into several classification areas with a stated goal of achieving a high-quality living environment through a wise distribution of compatible land use patterns. Plan 2 sought to implement this goal through a series of objectives and policies. An objective is defined by Plan 2 as a step to reaching the stated goal that is capable of attainment and measurement. A policy is defined as a course of action to reach the objective that provides a link between the intent of the plan and day-to-day land use decisions.

The first objective of Plan 2 is to protect and preserve agriculture lands. The second objective, to preserve stream corridors, significant wooded areas and environmentally sensitive land, is followed by an objective to encourage a rational pattern of development. To reach these objectives, Plan 2 adopted several policies including a statement that County will discourage the conversion of prime agriculture lands to non agriculture uses and a position that land uses that are potentially incompatible shall be buffered from one another through the use of open space or other suitable means.

Under Plan 2, County designated the general area in which the Property is located as an urban residential area, indicating that because this area presently has the necessary infrastructure and location required for further residential development, the costs associated with developing this area will be less than if such development were to occur in other County locations. However, Plan 2 also recognized the Property's farmland as prime and its stream and woods as green/open space and deemed them worthy of protection. It is anticipated that, absent the granting of a conservation easement, the Property and adjacent parcels will be rezoned and developed.

The Property is located in an interstate highway corridor approximately twenty miles north of City, a large metropolitan area with a population in excess of 1 million. A subdivision of 180 homes abuts the Property's northern boundary and three new homes have been constructed to the immediate south of the Property. Taxpayer represents that the Property is located in the most populous portion of County in an area that is experiencing significant development pressure.

The Easement

Taxpayer proposes to grant a perpetual conservation easement on Property to Donee. Donee is a governmental unit described in §§ 170(b)(1)(A)(v) and 170(c)(1) of the Internal Revenue Code. Donee has been granted the authority to acquire property for

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the purpose of conserving the natural resources of State by state statute and is a governmental organization specifically authorized to acquire conservation easements. Additionally, Donee has sufficient resources and the statutory authority to adopt rules to protect and preserve the lands under its jurisdiction and to enforce those rules through its own agents.

Donee has agreed to accept and enforce the easement and indicated that it relied on Plan 1, as incorporated by Plan 2, in reaching its decision. Donee also stated that the Property warrants protection because it falls within the State's policy of reducing the loss of good farmland and because of the combination of the physical attributes (*i.e.*, farmland, woods and stream) of the Property .

Before Donee agreed to accept the easement, it conducted a review process that began with the appointment of a committee to review the proposed easement grant. The committee reviewed the proposed easement, physically inspected the property, examined aerial photographs of the property and drafted a letter to Donee providing its reasons for suggesting the acceptance of the easement. The committee's letter also suggested certain changes to the terms of the proposed easement before Donee accepted the easement. The Donee's officials met in a closed executive session to discuss the committee's report and held a public meeting during which members of the community had the opportunity to have their opinions heard on the easement. The proceedings of the public meeting were reported in the local newspaper. At the conclusion of the public meeting the Donee's officials voted unanimously to accept the easement with the committee's proposed changes. These changes have been incorporated into the deed. Before Donee's acceptance of the easement is finalized, Court must review the easement and authorize the Donee's acceptance of it.

The terms of the easement provide that the easement will be recorded and that it will prohibit commercial or industrial uses of the Property, subdivision of the property for any purpose, construction of any buildings unless for permitted agriculture uses, destruction of trees or other vegetation, dumping of trash, and any other uses of the Property that would impair its conservation purposes, unless necessary for the protection of those purposes. Taxpayer has reserved the right to conduct agricultural activities on the Property. The easement prohibits transfers of the easement by Donee, unless, subsequent to the transfer, Donee requires that the conservation purpose continue to be carried out, and the subsequent transferee is a qualified organization under § 170(h) of the Code and is qualified to hold the easement under State statute. Taxpayer and Donee agree that the provisions of the easement will

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bind them and their successors. If Donee ceases to exist or no longer qualifies under the Internal Revenue Code or under State statute to hold the easement, Donee must transfer the easement to an agency or organization that does qualify under both the Internal Revenue Code and under State law.

LAW AND ANALYSIS

Section 170(a)(1) of the Internal Revenue Code permits a deduction for a charitable contribution, as defined in § 170(c). Section 170(c) defines a charitable contribution as a contribution or gift to or for the use of certain qualifying organizations.

Under § 170(f)(3)(A) of the Code, a taxpayer who contributes, not in trust, less than the taxpayer's entire interest in property generally is not allowed a deduction; however, § 170(f)(3)(B)(iii) provides an exception to this rule in the case of a qualified conservation contribution. Section 170(h)(1) of the Code and § 1.170A-14(a) of the Income Tax Regulations define a qualified conservation contribution as a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes.

Qualified Real Property Interest

Section 170(h)(2)(C) of the Code defines the term "qualified real property interest" to include a restriction granted in perpetuity on the use of real property. Section 1.170A-14(b)(2) of the Income Tax Regulations states that a qualified real property interest includes a perpetual conservation restriction, which is a restriction granted in perpetuity on the use that may be made of real property—including an easement.

The proposed contribution is of an easement providing for restrictions to be imposed in perpetuity on the use of real property. Consequently, the contribution is of a qualified real property interest within the meaning of § 170(h)(2)(C) of the Code and § 1.170A-14(b)(2) of the Regulations.

Qualified Organization—Eligible Donee

Under § 170(h)(3)(A) of the Code and § 1.170A-14(c)(i) of the Regulations, the term "qualified organization" includes a governmental unit described in § 170(b)(1)(A)(v). Donee is a governmental unit described in § 170(b)(1)(A)(v) of the Regulations and, therefore, constitutes a qualified organization.

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To be an eligible donee under § 1.170A-14(c)(1) of the Regulations, a qualified organization also must have a commitment to protect the conservation purposes of the donation, and must have the resources to enforce the restrictions. Under State statute, which created Donee, Donee is authorized to protect and maintain State's natural resources. In addition, Donee is expressly authorized to accept conservation easements and has law enforcement authority and the resources to enforce the restrictions. Donee has indicated that it will enforce the restrictions. Therefore, we determine that Donee is an eligible donee.

Under § 1.170A-14(c)(2) of the Regulations, the donor must prohibit transfers of the easement by the donee, unless, subsequent to the transfer, the donee requires that the conservation purpose continue to be carried out, and the subsequent transferee qualifies as an eligible donee under § 1.170A-14(c)(1) of the Regulations. The deed of easement requires any transferee to assume the responsibilities of Donee under the easement. Additionally, the transferee must be a qualified organization under § 170(h) of the Code and be eligible under State's statute to hold the easement.

However, the deed does not require that a transferee must have a commitment to protect the conservation purposes of the donation nor that it must have the resources to enforce the restrictions in the deed as required by § 1.170A-14(c)(1) of the Regulations to be an eligible donee. Consequently, this ruling is conditioned on Taxpayer adding to the terms of the deed a restriction that Donee may transfer the easement only to a transferee who has a commitment to protect the conservation purposes of the donation and the resources to enforce the restrictions in the deed.

Conservation Purpose

Section 170(h)(1)(C) of the Code provides that a qualified conservation contribution must be exclusively for conservation purposes. A conservation purpose as defined in § 170(h)(4)(A)(iii) includes the preservation of open space (including farmland and forest land) where such preservation is pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and where it will yield a significant public benefit.

Section 1.170A-14(d)(4)(iii)(B) of the Regulations states that acceptance of the easement by a governmental agency tends to establish the requisite clearly delineated governmental policy. The more rigorous the review process by the governmental agency the more the acceptance of the easement tends to establish a clearly

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delineated governmental policy. However, the mere acceptance of an easement by a governmental agency, by itself, is not sufficient to establish a clearly delineated governmental policy.

Given the thorough examination of the proposed easement by the committee appointed by Donee for that purpose, the public and private deliberations by Donee, and the multiple levels of review before Donee accepted the easement, the Donee's review process is sufficiently rigorous that the acceptance of the easement by Donee tends to establish a clearly delineated governmental policy.

Section 1.170A-14(d)(4)(iii)(A) of the Regulations states that the requirement that the preservation of open space be pursuant to a clearly delineated governmental policy is intended to protect the types of property identified by public representatives as worthy of preservation or conservation. This policy must be more than a general declaration of conservation goals by a single official or legislative body. This section states further that the donation of a perpetual conservation restriction to a qualified organization pursuant to a formal resolution or certification by a local governmental agency established under state law specifically identifying the subject property as worthy of protection for conservation purposes will meet the requirement of this paragraph. Id.

The Property was recognized in particular by County in Plan 1 and Plan 2 and recognized in general by State's conservation easement statute as worthy of protection for conservation purposes. In addition, Donee, as a local government established under state law and pursuant to its statutory authority to protect State's natural resources, determined that the Property was worthy of protection in its review process and by its voting to accept the easement. Given that Donee is a qualified organization, that the review process was rigorous, and, that in reaching its decision to accept the donation, Donee relied on the County plans and the State statute in addition to its own inherent powers, the donation of the easement is pursuant to a clearly delineated governmental policy.

The flush language of § 170(h)(4)(A)(iii) of the Code states that preservation of open space also must yield a significant public benefit. Section 1.170A-14(d)(4)(iv) of the Regulations enumerates several factors to consider in determining whether an open space easement will yield a significant public benefit.

One of the factors in § 1.170A-14(d)(4)(iv)(A) of the Regulations is the uniqueness of the property to the area. While farmland, woods and streams taken individually are

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not unique to the area, Taxpayer asserts that the combination of all three on one parcel of land is unique in County. In addition, Donee stated that it is accepting the easement, in part, to preserve these three attributes. The proposed easement will permanently protect this combination of farmland, woods and stream.

Another factor described in the regulations is the intensity of land development in the vicinity of the property. This factor looks to both existing developments and foreseeable development trends. The submissions by Taxpayer show a large subdivision to the north of the Property and the existence of homes to the south of the Property. The Property is located in the most densely populated area of the County, an area that is expected to continue to grow at a steady rate. The proposed easement will protect the Property from these present development trends and from other foreseeable development trends.

An additional factor in § 1.170A-14(d)(4)(iv)(A) of the Regulations is to look to the consistency of the proposed open space use with public programs for conservation in the region. Such public programs include government approved master plans that include or are related to the land areas in question. Plan 2 indicates the desirability of preserving the prime farmland that the Property contains. Additionally, Plan 2 incorporates Plan 1's goals of preserving the green-ways and river corridors, and to protect the natural landscapes of County. The woods and stream on the Property were specifically designated as worthy of preservation and protection by Plan 2. Preservation of the farmland and open space of the Property is consistent with the public programs for conservation in the region. Given these factors, the proposed donation of a conservation easement will yield a significant public benefit.

Accordingly, the donation of the easement will be for conservation purposes.

Exclusively for Conservation Purposes

Section 170(h)(1)(C) of the Code provides that the contribution must be exclusively for conservation purposes. Section 170(h)(5)(A) provides that a "contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity." Section 1.170A-14(g)(1) of the Regulations provides that any interest retained by the donor must be subject to legally enforceable restrictions that will prevent use of the donor's retained interest that is inconsistent with the conservation purposes of the donation. See S.Rep. No. 96-1007, 1980-2 C.B. 599, 605. Similarly, § 1.170A-14(d)(4)(v) of the Regulations provides that a deduction for

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an open space easement will not be allowed if the terms of the easement permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land or with the governmental conservation policy that is being furthered by the donation. Section 1.170A-14(g)(5)(ii) of the Regulations also provides that the terms of the donation must provide a right of inspection by the donee to determine if there is compliance with the donation and must provide a right of the donee to enforce the conservation restrictions.

The stated purpose of the easement is to preserve and protect the conservation values of the Property in perpetuity. Only such uses as are consistent with the conservation values will be allowed. Taxpayer reserves the right to use the Property solely for crop farming purposes and for other uses that are not inconsistent with the easement. Taxpayer reserves no right for future development of the property beyond the construction of structures connected with the permitted agriculture uses. The easement grants the right to Donee to enter the property to monitor compliance with the easement and the right to legally enforce the terms of the easement. These restrictions, which will bind Taxpayer and any successors in interest, will be recorded in the land records of County.

Accordingly, Taxpayer has demonstrated that the donation is exclusively for conservation purposes and is enforceable in perpetuity within the meaning of § 170(h)(5)(A) of the Code and the relevant regulations.

CONCLUSION

Based on the facts submitted and the representations made in your ruling request, we conclude that the contribution of the easement is a qualified conservation contribution within the meaning of §§ 170(f)(3)(B)(iii) and 170(h) of the Code. This conclusion is contingent on Taxpayer making the changes to the deed of easement necessary to comply with the transfer requirements of § 1.170A-14(c)(2) of the Regulations.

It is possible that the value of Taxpayer's retained property, the Residential Parcel, could be increased as a result of the easement. The contribution is deductible only to the extent that its value exceeds the value of the benefits received. See § 1.170A-1(h)(2)(i) of the Regulations; Rev. Rul. 67-246, 1967-2 C.B. 104.

This ruling is directed only to the taxpayer requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

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In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings, and it is subject to verification on examination.

Sincerely,

Acting Assistant Chief Counsel
(Income Tax and Accounting)

by: _____
Michael D. Finley
Chief, Branch 3

cc: