



SAFE HARBOR INFORMATION

****PLEASE CONSULT YOUR TAX AND LEGAL ADVISORS AS TO THE APPLICABILITY OF IRS NOTICE 2023-30 TO YOUR SPECIFIC CONSERVATION EASEMENT TRANSACTION.****

1. Why am I getting this information? CCALT has provided information on the Safe Harbor Notice issued by the IRS to everyone who has granted a conservation easement held by CCALT since January 1, 2006. Conservation easements conveyed during this period may still be at risk of an IRS audit depending on when you last utilized the federal charitable deduction associated with your conservation easement.

2. Where can I find a copy of the IRS's Safe Harbor Notice? IRS Notice 2023-30 can be found at <https://www.irs.gov/pub/irs-drop/n-23-30.pdf>. CCALT encourages landowners to share the notice with their tax and legal advisors.

3. What should I do with this information and the IRS Safe Harbor Notice? Please share this information with your tax and legal advisors. They are best qualified to provide guidance on the application of the IRS Safe Harbor Notice. Please understand that there is no requirement to take any action. Donors are not required to make the amendments described in the Notice. Donors, in consultation with their tax and legal advisors, need to determine the appropriate course of action.

4. What does the Notice apply to? The Safe Harbor Notice specifically addresses two provisions which are commonly found in deeds of conservation easements, (1) the proceeds clause; and (2) the boundary line adjustment clause.

- a. Boundary Line Adjustments. Most CCALT conservation easements have a subparagraph addressing "boundary line adjustments", which is included as a subparagraph of the division of the property or subdivision paragraph (typically paragraph 5). It permits a grantor to request approval to convey a portion of the property to another owner in conjunction with the resolution of a boundary line issue or agricultural reconstitution. The subdivided property remains subject to the conservation easement. No adjustments to what land is subject to the conservation easement are allowed.

The boundary line safe harbor language contained in the Notice, references "boundary line adjustments to the real property subject to the restrictions". CCALT does not believe our easements allow changes

to the boundary of what is considered conserved property. However, CCALT is unsure about whether the IRS will recognize the distinction between the CCALT language, which permits additional subdivision of the property while remaining subject to the conservation easement, and the IRS prohibition on the adjustment of which land is subject to the conservation easement.

- b. Extinguishment/Termination/Proceeds Issue. In previous Tax Court cases, the IRS has objected to provisions in the proceeds language that would reduce the proceeds from a condemnation or termination to be paid to the grantee including reductions for: 1) satisfaction of prior claims; 2) by the value of grantor improvements; or, 3) expenses related to receiving the condemnation award. CCALT historically included this language in some conservation easements in an effort to fairly allocate proceeds from a condemnation with landowners. In September 2018, after the IRS challenged these provisions in Tax Court, CCALT eliminated any of those references from our template conservation easement. Some deals with NRCS funding may contain these phrases after September 2018. The objectionable language is in most CCALT conservation easements from 2007 through August of 2018, though landowners should review any easement granted outside this time period as well and in the occasional deal prior to 2007. Language excluding the value of improvements is present in the majority of conservation easements granted to the Yampa Valley Land Trust.

5. What questions should I ask my tax and legal advisors?

- a. Have I used all of my federal charitable deduction associated with the conveyance of my conservation easement?
- b. When did I last claim a portion of my federal charitable deduction associated with the conveyance of my conservation easement? Was it more than 3 years ago?
- c. Are there any additional tax-related matters, including estate tax implications that I should consider?

6. Are there special considerations for NRCS-funded conservation easements? Yes. The NRCS will only permit safe harbor amendments relating to the boundary line adjustment language. NRCS will not approve any amendment relating to the termination or proceeds language. If you received NRCS funding for your conservation easement and wish you pursue an amendment, CCALT must submit a written request to NRCS along with a copy of the original easement and draft of the amendment by **June 30, 2023**. NRCS will require subordination of any deeds of trust or mortgages to ensure the priority of the conservation easement is not affected. A link to the NRCS guidance is available here: <https://ccalt.org/safeharbor/>.

7. What do I do if I want to take advantage of the Safe Harbor? Contact CCALT immediately. Per the Safe Harbor Notice, all Safe Harbor amendments must be recorded by July 24, 2023. There are several steps required to complete a Safe Harbor amendment. As such, CCALT will not be able to accept Safe Harbor amendment requests after June 23, 2023.

8. How will the amendment be drafted? CCALT is preparing a template for the safe harbor amendment. Because the IRS Notice could result in a significant number of amendment requests in a short period of time, CCALT will not allow variation from the amendment template. Please contact CCALT for a copy of the amendment template.

9. Who must approve the amendment? If a conservation easement has an amendment clause that requires approval of any other party besides the grantor and CCALT, a third-party approval may be required for the amendment. CCALT will work to get the needed approvals.

10. Who must sign the amendment? The original grantor and grantee must sign the amendment. For the amendment to be valid, CCALT must also require that a current owner sign the amendment if the original grantor is no longer the owner of the property.

11. What if I have a mortgage or deed of trust? Please let CCALT know if there is a mortgage or deed of trust impacting the property. The Notice is silent on whether a subordination by a current holder of a mortgage or deed of trust is required. Generally, under Colorado real property law, an amendment would not be effective against an existing deed of trust or mortgage with a subordination. The Notice provides that any “amended eligible easement deed” will be treated as effective under the Notice as of the date the eligible easement deed was originally recorded, “regardless of whether the amended eligible easement deed is effective retroactively under relevant state law”. The landowner and their legal and tax advisors will have to determine the effect of this language on the issues of subordination.

12. What are the costs associated with completing the amendment? CCALT is not in a position to be able to provide specific cost estimates. Landowners will be responsible for the costs of confirming ownership, costs to obtain a subordination (if necessary), and any legal and accountant fees. CCALT will cover all of our own staff time and legal costs.

13. What deadlines do I need to be aware of? The CCALT deadlines for doing an amendment are as follows:

- Please tell CCALT if you would like to pursue an amendment as soon as possible and no later than **June 23**

- Receipt of proof of title via email to safeharbor@ccalt.org as soon as possible and no later than **July 10**.
If a county permits e-recording, CCALT will record the amendments provided we have **received** the signed and notarized amendment and any necessary subordinations by **July 19**.

Unfortunately, there is **no ability to extend the July 24, 2023** recording deadline.

**THIS ADDITIONAL SAFE HARBOR INFORMATION IS PROVIDED TO GIVE
CONTEXT AND BACKGROUND TO A LANDOWNER AND THEIR TAX AND LEGAL
ADVISORS, BUT IT IS NOT TAX OR LEGAL ADVICE.**