

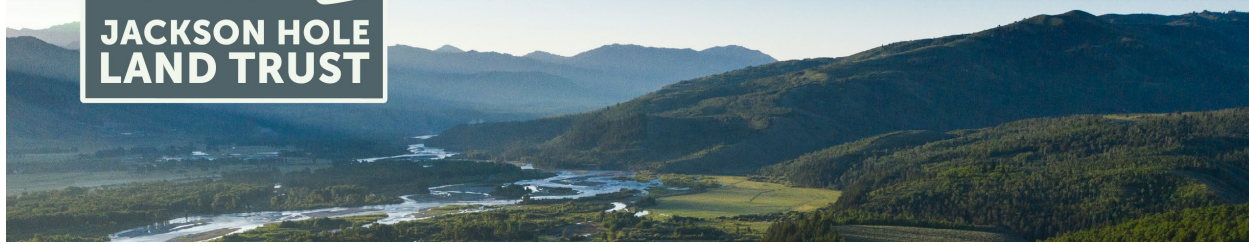


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## RE: IRS "Safe Harbor" Language for Conservation Easement Boundary Line Adjustment and Extinguishment Clauses and Limited Opportunity to Remedy

To Whom It May Concern:

You have received this letter because you conveyed a conservation easement to the Jackson Hole Land Trust (JHLT), the Green River Valley Land Trust, or the Wyoming Land Trust between the years of 2006 and 2023. We are grateful for your conservation vision and commitment evidenced by your conveyance of a conservation easement and are providing this information as a courtesy to potentially affected conservation easement donors who might not otherwise learn about this opportunity. The IRS has issued a new safe harbor provision outlined in IRS Notice 2023-30 (the "Notice") and provided a window within which a donor may optionally amend their conservation easement to bring any uncompliant language into compliance.

The IRS has challenged the validity of the charitable contributions of any conservation easements which contain certain language dealing with (a) extinguishment of conservation easements and the resulting proceed distribution and (b) boundary line adjustments. This Notice applies only if a donor sought a charitable tax deduction for their conservation easement donation and offers an opportunity to amend conservation easement language to comply with the IRS's safe harbor language for a limited time. It is imperative to note that **JHLT can provide neither legal nor tax advice to landowners. Please consult your tax and legal advisors to determine whether you may be impacted by the Notice. The deadline for amendments to be filed in the public record is July 24, 2023.**

The Notice only provides the ability to amend extinguishment proceeds and boundary line adjustment clauses. It does not address any other easement provisions. Any amendment made under the Notice is entirely optional and is the decision of each individual donor/landowner.

**JHLT is providing this information as a courtesy and does not make a recommendation for or against conservation easement amendment pursuant to the Notice. We have not, and will not, analyze individual landowner circumstances as they relate to this Notice. If you donated all or part of the value of your conservation easement and took a federal income tax deduction for that donation, you should contact your attorney and/or tax advisor to evaluate whether you should amend your conservation easement during this limited safe harbor period.**

Additional information is included in this packet and available on our website [jhlandtrust.org](http://jhlandtrust.org) with the Landowner Resources. If you wish to pursue a Safe Harbor amendment, please contact JHLT at [safeharbor@jhlandtrust.org](mailto:safeharbor@jhlandtrust.org) as soon as possible, but no later than **June 26, 2023**.

## IRS NOTICE 2023-30

### 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. NOTHING PROVIDED HEREIN IS TO BE INTERPRETED AS TAX OR LEGAL ADVICE\*\***

1. **Why am I getting this information?** JHLT has provided information on the Safe Harbor Notice issued by the IRS to everyone who has granted a conservation easement to JHLT (or to the Green River Valley Land Trust or Wyoming Land Trust which previously merged into the JHLT) 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 donation.
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>. Please share this link with your tax and legal advisors.
3. **Who does this affect?** The Notice may impact you if:
  - a. You donated all or a portion of the value of your conservation easement AND claimed or plan to claim a federal income tax deduction for that contribution. If you did not claim or do not plan to claim a federal income tax deduction, the Notice may not apply to you.
  - b. You have not fully utilized the federal income tax deduction associated with your conservation easement contribution. If you fully utilized the full amount of the federal income tax deduction, including all carry-forward, for your conservation easement contribution more than three years ago, the Notice may not apply to you.
4. **What do I do with this information?** Your tax and legal advisors are best qualified to provide guidance on the application of the IRS Safe Harbor Notice to your specific situation. There is no requirement to take any action, including amendment of your conservation easement. Each donor, in consultation with their advisors, should determine the best course of action.
5. **What terms of the conservation easement are targeted by the Notice?** The Safe Harbor Notice specifically addresses two provisions which are commonly found in deeds of conservation easements: (1) the extinguishment or termination proceeds clause, and (2) the boundary line adjustment clause.
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 amendments relating to the extinguishment/termination or proceeds language. If you received NRCS funding for your conservation easement and wish to pursue an amendment, JHLT 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](#).

7. **What do I do if I want to take advantage of the Safe Harbor Amendment opportunity?** Contact your tax and legal counsel to confirm course of action and then reach out to JHLT via [safeharbor@jhlandtrust.org](mailto:safeharbor@jhlandtrust.org) as soon as possible, but no later than **June 29, 2023**. A step-by-step process is included below.
8. **How will the Amendment be drafted?** JHLT 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, JHLT will not allow variation from 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 JHLT, a third-party approval may be required for the amendment. JHLT will work to get the needed approvals, but we cannot guarantee third party approvals.
10. **Who must sign the amendment?** The original grantor and grantee must sign the amendment. If the property is no longer owned by the original donor, the current landowner must also sign the amendment. JHLT cannot guarantee signature by the current landowner if different than the original donor.
11. **Summary of important dates:**
  - a. Provide notice to JHLT (must be in writing via [safeharbor@jhlandtrust.org](mailto:safeharbor@jhlandtrust.org)) of desire to pursue an amendment as soon as possible, but no later than **June 26, 2023**.
  - b. JHLT must provide a request to amend to NRCS by **June 30, 2023** for NRCS-funded conservation easements.
  - c. Proof of title must be received by JHLT as soon as possible, but no later than **July 10, 2023**.
  - d. Original documents for recording must be received by JHLT as soon as possible, but no later than **July 18, 2023**.

**ALL COMMUNICATION WITH JHLT REGARDING THE IRS SAFE HARBOR NOTICE AND DESIRE TO AMEND SHOULD BE DIRECTED TO [safeharbor@jhlandtrust.org](mailto:safeharbor@jhlandtrust.org).**

## STEPS TO COMPLETING A SAFE HARBOR AMENDMENT WITH JHLT

1. Consult your tax and legal advisors to determine the best path forward
2. Alert JHLT if you would like to pursue an amendment as soon as possible and no later than **June 29, 2023**. The request must be submitted in writing to [safeharbor@jhlandtrust.org](mailto:safeharbor@jhlandtrust.org)
3. JHLT will provide a fully drafted amendment.
4. Provide proof of title to JHLT via email to [safeharbor@jhlandtrust.org](mailto:safeharbor@jhlandtrust.org) no later than July 10. Proof of title needs to confirm ownership of the property subject to the conservation easement. Proof of signatory authority is also required for any entities.
  - a. Proof of title confirming ownership should show whether or not there are any deed of trust, mortgages, liens, or other recorded documents impacting the property since the conservation easement was recorded. The following methods for confirming title are acceptable: (i) title commitment (dated June 2023 or later), (ii) owner and encumbrance report (dated June 2023 or later), or (iii) memo from landowner's attorney.
5. Signed and notarized Amendment and associated documents as described below received by JHLT no later than July 18.
  - a. Original copy of the fully executed Amendment
  - b. Original copy of the fully executed subordination (if needed)
  - c. Original copy of the fully executed statement of authority (if needed – for properties held by entities)
  - d. Documents should be sent to:

Jackson Hole Land Trust  
Attn: IRS Safe Harbor  
PO Box 2897  
690 S Hwy 89, Suite 101  
Jackson, WY 83001
6. JHLT will work to obtain approval from funding entities to record the amendment where necessary. Note that we cannot guarantee approval. We will notify you one way or another once we have received a decision from the funder.
7. JHLT will record the amendments provided we have received all required documents as described above by July 18, 2023.