

CONSERVATION EASEMENTS

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Konrad speaks frequently on non-profit and resource conservation matters to legal and professional groups. He has been nominated a Quiet Hero of the King County Bar Association for his dedication to preserving the environment. Before law school, he lived in Wisconsin where he administered an ecosystem restoration program for wetland, prairie and savanna ecosystems at the International Crane Foundation, and prepared a land use and vegetational history of the private reserve that includes Aldo Leopold's "shack."

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Note: These materials are provided with the understanding that the author is not engaged in rendering legal or other professional services. These materials are not intended to be and should not be used as a substitute for specific legal advice, since such advice should only be given in response to inquiries regarding specific factual situations. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

TAX INCENTIVES FOR CONSERVING LAND

I. INTRODUCTION

A. Tax Incentives for Open Space Preservation

1. Preserving open space may result in considerable tax saving benefits for the donor landowner, including some or all of the following:
 - a. An income tax deduction;
 - b. Property tax relief; and/or
 - c. Gift/estate tax reduction.
2. Realizing these considerable tax saving benefits, however, requires careful tax planning and a working knowledge of the rules that govern the deductibility of transfers of real property interests for open space preservation purposes.

B. Scope of Outline (Sections II-IV)

1. Provides an overview of basic tax rules relevant to charitable donations of real property interests for open space preservation purposes. (Section II)
2. Briefly describes the tax consequences of charitable donations of real property interests to a governmental entity or nonprofit charitable organization (*e.g.*, land trust). (Section III)
3. Notes other requirements the donor landowner must satisfy to receive tax saving benefits for the donation. (Section IV)

II. BASIC TAX RULES APPLICABLE TO QUALIFYING FOR A CHARITABLE DEDUCTION FOR GIFTS OF REAL PROPERTY¹

A. Donation Must Be a Charitable Gift - I.R.C. § 170(c)²

1. For there to be a charitable gift, donor must "at a minimum demonstrate that he purposely contributed money or property in excess of the value of any benefit he received in return." U.S. v. American Bar Endowment, 477 U.S. 105 (1986).
 - a. Thus, a transfer does not qualify as a charitable contribution for tax purposes if it is in fact a *quid pro quo*, where the transferor receives or expects to receive a bargained-for benefit of equivalent value.
 - i. *E.g.*: there is no deduction for *quid pro quo* gifts of conservation easements, such as where a developer donates to a city a

¹ These materials generally deal with lifetime gifts that are also not in trust.

² Internal Revenue Code ("I.R.C.").

conservation easement to secure the city's approval of his or her application for a new subdivision. See Regs. § 1.170A-14(h)(3)(i).³ Hernandez v. Comr., 109 S. Ct. 2136, 2144 (1989). Under such circumstances, it may be better to link the conservation dedication to the approval process, and treat the basis in the conservation property as part of the overall project cost.

- ii. The value of a gift of a conservation easement that has the effect of increasing the value of any other property owned by the donor (or related person) is reduced by the amount of the increase in value of the other property. Regs. § 1.170A-14(h)(3)(i).
- iii. Charities that receive *quid pro quo* contributions, where the donor makes a payment of over \$75, are required to inform the donor that the deductible amount is limited to the excess of the payment over the estimated value of goods or services received and provide a good-faith estimate of the value of those goods and services. I.R.C. § 6115(a).

b. However, a transfer qualifies as a charitable contribution for tax purposes if the expectation of personal benefit includes only "psychic satisfaction" or "incidental economic or personal benefit." Regs. § 1.170A-7(b)(1); Ackerman Buick, Inc. v. Comr., 32 T.C.M. 1061 (1973).

- i. Psychic satisfaction. Landowner donates wetlands upon the assurance that the property will bear her name.
- ii. Incidental personal benefit. Landowner donates wetlands property but retains the right to use the property to train a hunting dog. Rev. Rul. 75-66, 1975-1 C.B. 85.
- iii. Incidental economic benefit. Landowner donates a highway interchange to a public highway system that would provide easier access to property developed by the donor. Ltr. Rul. 8421018.

- 2. For there to be a charitable gift, possibility of the property reverting back to the donor must be "so remote as to be negligible." Regs. § 1.170A-7(a)(3).
 - a. No charitable gift where donor agrees to donate property to government or land trust upon the condition that he receives a charitable deduction from the IRS.
 - b. No charitable gift if transfer includes a reversionary interest (*e.g.*, no gift if title would revert on the happening of an event that is not so remote as to be negligible).
- 3. For there to be a charitable gift, property must be received by the donee.
 - a. Year-end donation. Delivery occurs upon date of mailing or date of receipt by donee of properly exercised deed, whichever occurs first (proof of mailing by certified mail recommended). Note that an

³ Treasury Regulations ("Regs.").

easement gift is not deductible (because it is not enforceable in perpetuity) until the easement is recorded. See Regs. § 1.170A-145(g); Satullo v. Comr., T.C. Memo 1993-614, aff'd, 67 F.3d 314 (11th Cir. 1995).

- b. Options/rights of first refusal. Charitable gift made when property is conveyed pursuant to donee's exercise of its contractual rights. Rev. Rul. 82-197, 1982-2 C.B. 72; PLR 8825069.
- c. Pledges. Delivery occurs when pledge is fulfilled by donor.

B. Donation Must Be Made To A Permissible Donee - I.R.C. § 170(a)

- 1. Entire interests. Permissible donees for donations of entire interests in real property include the following:
 - a. Governmental entities;
 - b. Publicly supported charities or supporting organizations ("public charities"); and
 - c. Private foundations.
- 2. Partial interests. Qualified donees for donations of partial interests in real property (*e.g.*, conservation easements) include governmental entities and public charities, but do not include private foundations or supporting organizations not "controlled" by a governmental entity or public charity. I.R.C. § 170(f)(3); Regs. § 1.170A-7.
- 3. Value of charitable donation depends upon the classification of the donee. Generally, higher income tax deduction possible for charitable donations to preferred charities, such as a governmental entity or public charity (see section III.A.5 below).

C. Donation Limited to the Portion of the Property Actually Donated

- 1. Use restrictions. Where donor imposes deed restrictions that restrict the government or land trust's uses of the property to certain uses (*e.g.*, open space), donor may only be able to receive a charitable deduction for the restricted value of the property. Rev. Rul. 85-99, 1985-2 C.B. 83. Note: This problem can be avoided by conveying the intended restrictions in the form of a conservation easement to one qualified organization (*e.g.*, a land trust), prior to or contemporaneously with the donation of the possessory interest to another qualified organization (*e.g.*, a government agency).
- 2. Bargain sales. Where donor sells land at less than its fair market value, donor may treat the difference between the sale price and the fair market value as a charitable donation. I.R.C. § 1011.
- 3. Partial interests. Generally, donations of partial interests are not deductible; where donor donates less than his or her entire interest in the property, donor may treat the value of the gift as a charitable donation, provided that the following conditions are met:
 - a. The partial interest is either

- i. A remainder interest in a personal residence or farm (*e.g.*, creation of life estates);
- ii. An undivided interest in the property (creation of tenancy in common); or
- iii. A qualified conservation contribution. I.R.C. § 170(f)(3)(B); Regs. § 1.170A-7(b)(1).

III. BASIC TAX RULES APPLICABLE TO ASSESSING THE TAX CONSEQUENCES OF A CHARITABLE GIFT OF REAL PROPERTY

A. Income Tax Consequences

1. Tax Deduction. Donor of charitable gift may receive an income tax deduction for the donation (the income tax benefit of the charitable gift for the donor may be viewed as the amount of income the gift protects from being taxed). I.R.C. § 170.
2. For gifts of appreciated real property, this figure principally depends on the following:
 - a. The tax rates that apply to the donor;
 - b. The nature of the property; and
 - c. The classification of the donee.
3. Rates. The federal income tax rates for 2011 vary from a low of 10% to a high of 35%. Capital gains are taxed at a top rate of 15% (for long-term assets sold after May 5, 2003). *E.g.*, if the donor is an individual with a taxable income in 2011 of \$150,000 before making the charitable gift, and she makes a charitable gift valued at \$10,000, she will reduce her federal income tax by the applicable marginal rate which would otherwise apply to the \$10,000. Given a rate of 28%, the federal income tax benefit of her charitable gift would be \$2,800. If the donor lives in a state that has a state income tax and allows a charitable deduction, the reduction in her state income tax will increase her overall income tax benefit.
4. Nature of the appreciated property (*i.e.*, property for which its value exceeds its basis in the hands of the donor).
 - a. Long-term capital gain property. Value of the charitable gift is the fair market value (FMV) of the property, unless donated to a nonoperating private foundation.
 - i. Long-term capital gain property is land (a capital asset) held more than 12 months (holding period) for use in a trade or business, for investment, or for personal residential or recreational purposes, then sold or exchanged. I.R.C. § 170(e).
 - ii. Property acquired by gift entitles donee to add the donor's holding period to his own, and property acquired by bequest, devise or inheritance may be sold or exchanged immediately for long-term treatment.

b. Ordinary-income property. Value of the charitable gift is the donor's basis in the property regardless of the charitable donee's identity. Ordinary-income property includes inventory property and property held primarily for sale to customers in the ordinary course of a trade or business (e.g., lots in a real estate subdivision). I.R.C. § 170(e)(1); Regs. § 1.170A-4(b)(1).

i. Dealer property.

- "Dealer property" is real estate held by a person who has a significant history of dealing in such properties. See Rev. Rul. 79-256.
- Showing that land is capital gain property is inherently factual.

c. Conservation easements. Valued at the difference between the FMV of the property before and after conservation easement placed on the property. *E.g.*,

FMV of property (before):	\$ 1,500,000
FMV of property (after):	<u>600,000</u>
Difference	\$ 900,000

i. Basis allocation rule.

- When a landowner donates a conservation easement, the donor must allocate to the conservation easement a portion of the basis of the underlying property. Regs. 1.170A-1414(h)(3)(iii). In the above example, if the landowner's basis in the property was \$100,000 at the time of the easement conveyance, \$60,000 of this amount would be allocated to the conservation easement because the conservation easement represents 60 percent of the value of the property (\$900,000/\$1,500,000).

d. Remainder interests. Valued at the difference between the FMV of the property and the FMV of the life estate (determined under Treasury Department actuarial tables based on interest rates that may now be redetermined monthly) and depreciation or depletion. *E.g.*, a gift of a remainder interest in an improved property, subject to a life estate in a 58 year-old taxpayer could be expected to produce a deduction equal to 15-25% of total present value.

5. Classification of donee (with gifts of long-term capital gains property).

a. Public charities and governmental entities

- i. A taxpayer cannot eliminate all tax due with a large charitable donation; donations only deductible up to 30% of adjusted gross income (AGI) for individuals and 10% of taxable income for corporations. I.R.C. § 170(b)(1)(C)(i); I.R.C. § 170(b)(2); Regs. § 1.170A-11(a).

- ii. Deductions have a 5-year carryforward (subject to same 30% limitation each year); any value after 6 years disappears. I.R.C. § 170(b)(1)(B).
- iii. Contributions are deductible up to 50% of AGI if taxpayer elects to use basis (useful where the land has little or no appreciated value). I.R.C. § 170(b)(1)(C)(iii).

Note: The Pension Protection Act of 2006 (P.L. 109-280) made changes to these limitations for donations of qualified conservation easements in **2006 and 2007, which changes were extended till the end of 2011.** Under these temporary conservation tax incentives, donations of qualified conservation easements are deductible up to 50% of AGI for individuals with a 15-year carryforward (subject to same 50% limitation each year). I.R.C. § 170(b)(1)(E).

E.g., under the previous rules, a landowner earning \$50,000 a year who donated a \$1 million conservation easement could take a \$15,000 deduction for the year of the donation and for an additional 15 years – a total of \$90,000 in tax deductions. The new temporary rules allow that landowner to deduct \$25,000 for the year of the donation and then for an additional 15 years. That’s \$400,000 in deductions.

In addition, under § 170(b)(1)(E) of the new temporary rules, donations of qualified conservation easements by certain individuals and corporations are deductible up to 100% of AGI with a 15-year carryforward. There are two requirements for a landowner to be able to take advantage of this additional incentive:

- The donor, whether an individual or a corporation, must be a “qualified farmer or rancher;” and
- The property must be used in, or available for, agriculture or livestock production and the easement must provide that the property remain available for such production.

A “qualified farmer or rancher” is a taxpayer whose gross income from “the trade or business of farming” (as defined under I.R.C. § 2032A(e)(5)) is greater than 50% of the taxpayer’s gross income for the taxable year in which the conservation easement is donated. Activities under I.R.C. § 2032A(e)(5) that count as “farming” include:

- Cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm;
- Handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and
- The planting, cultivating, caring for, or cutting of trees, or the preparation (other than milling) of trees for market.

- b. Private foundations. Donation only deductible up to 20% of AGI for individuals. 5-year carryforward; any value after 6 years disappears. I.R.C. § 170(b)(1)(D).

B. Estate and Gift Tax Consequences

1. Background.

- a. Estate tax. An excise tax levied on the privilege of transferring property at death and usually measured by the size of the estate. I.R.C. § 2001.
- b. Gift tax. A transfer tax imposed on gifts made during life, since such a transfer serves to reduce the estate subject to the estate tax at death. I.R.C. § 2501.
- c. Combined tax. Since 1976, federal estate and gift taxes have been unified in a combined tax scheme. Total lifetime taxable gifts and assets remaining in an estate are combined to determine the ultimate transfer tax burden. See I.R.C. § 2001(b).
- d. Rates/exemptions.
 - i. Rates are generally higher than income tax rates. In 2011, the maximum estate and gift tax rate was 35%. I.R.C. § 2001(b).
 - ii. In 2011, no federal estate and gift tax was due on taxable estates of \$5,000,000, unless a portion of the applicable credit has been used up in lifetime gift transactions. I.R.C. § 2010(a).
 - iii. The lifetime gift tax exemption is fixed at \$5,000,000.

2. Charitable gifts reduce the taxable estate.

- a. Lifetime charitable gifts to public charities receive a gift tax deduction and remove the property from the potentially taxable estate of the donor, thus lowering the value of the estate subject to estate taxes. I.R.C. § 2522. May be possible to receive a gift tax deduction for a gift of a conservation easement even though the conservation easement does not meet the requirements of the conservation purposes test.
- b. Charitable gifts at death receive an estate tax deduction and do not become part of the taxable estate of the donor, thus lowering the value of the estate subject to estate taxes. I.R.C. § 2055(a).
- c. No charitable limits. Unlike the income tax, there are no percentage limits to the amount of your estate which can be given to a charity.
- d. Charitable organizations defined differently. For estate and gift tax purposes, charitable organizations are defined differently, and somewhat more broadly, than for the income tax.

3. Historically, the tax benefits associated with charitable gifts were more dramatic in estate tax settings than income tax settings because of the inversion of top marginal income and estate tax rates and legislation that eases inheritance tax on certain land that is subject to a permanent conservation easement.

- a. Under Section 508 of the Taxpayer Relief Action (P.L. 105-34), landowners can benefit from lower estate taxes when they permanently

protect land by removing some or all of the development potential of the land through a conservation easement.

- b. To be eligible, the conservation land must:
 - i. Meet the requirements of I.R.C. §170(h) (although easements solely to protect historic assets are not eligible); and
 - ii. Be owned by decedent or member of decedent's family at all times during 3-year period ending on the date of the decedent's death.
- c. Even if qualified land is not protected by an easement when a landowner dies, the law provides that heirs or an executor can give an easement qualifying for this special treatment before the estate tax is due.
- d. The law allows an exclusion from a decedent's gross estate of up to 40 percent (the "applicable percentage") of the value of land subject to a qualified conservation easement, reduced by the amount of any charitable deduction under Code Sec. 2055(f) with respect to the land. The maximum amount that can be excluded is the lesser of the applicable percentage or the exclusion limitation. The "exclusion limitation" is \$500,000 in 2002 or thereafter.
- e. Thus, an easement donation, granted without any sacrifice of present uses, may have enormously favorable estate tax implications. In the case of land-rich and cash-poor donors, such a gift may prevent the sale of the property by heirs to pay the estate tax.

4. Valuations.

- a. If read literally, amendments to "estate freeze" provisions would require that a conservation easement be ignored for purposes of valuing real property for estate tax purposes. See I.R.C. § 2703(a) ("the value of any property shall be determined without regard to . . . (2) any restriction on the right to sell or use such property").
- b. The Treasury Department issued a regulation in February 1992 that provides that perpetual restrictions on use of real property that qualify for charitable deduction under I.R.C. § 2522(d) or § 2055(f) are not treated as a restriction (and therefore are used to calculate value of estate). Regs. § 25.2703-1(a)(4).

5. Lifetime Giving Versus Giving at Death. Generally, making a lifetime charitable gift will result in more tax benefits than waiting and making the gift at death. Donor may receive combination of income tax deduction, property tax relief as well as estate tax savings.

C. Property Tax Consequences

1. Property encumbered by conservation easement or other restrictions.
 - a. Encumbering a property's uses may lower the FMV of the property for tax assessment.
 - b. Charitable donees receiving conservation easements usually require donor to continue to pay for any property taxes that apply to the restricted property.
2. Current Use Assessment.
 - a. These programs involve an agreement with local government to keep property in current use; will result in reduction of property tax (up to 90% in some counties).
 - b. Programs vary widely from county to county.

IV. ADDITIONAL REQUIREMENTS FOR OBTAINING TAX SAVING BENEFITS FOR THE CHARITABLE DONATION

A. Valuation Requirements

1. Must have a fair valuation of the property at the time of donation.
 - a. Penalties for over-valuation: between 10 and 30% of the amount of the tax that is underpaid because of a valuation overstatement. I.R.C. § 6662. Thresholds for determining whether a taxpayer has made a “substantial valuation misstatement” or “gross valuation misstatement” lowered as a result of the Pension Protection Act of 2006 Tax Act. I.R.C. § 170(f)(11)(E), as amended by the Pension Protection Act of 2006 (P.L. 109-280). These changes were made permanent by the PPA.

E.g., under the previous law, a taxpayer whose donation was finally determined to be worth \$200,000 would have been guilty of a substantial misstatement if they had claimed a value of \$400,000, and guilty of a gross misstatement if they had claimed a value of \$800,000. Under the new law, they would be guilty of a substantial misstatement for claiming a value of \$300,000, and of a gross misstatement if they claimed a value of \$400,000.

- b. The Pension Protection Act of 2006 also adds a provision imposing penalties on appraisers who knew or who “reasonably should have known” that an appraisal would be used in connection with a tax return if the claimed value of the property results in a substantial or gross valuation misstatement. The amount of the penalty is the lesser of (1) 10 percent of the amount of the underpayment attributable to the misstatement or \$1,000 (whichever is greater), or (2) 125 percent of the gross income received by the appraiser, plus potential disbarment from working on federal tax matters. The section includes a limited exception if the Secretary of the Treasurer determines that the value established in

the appraisal was “more likely than not” the real value. I.R.C. § 6695A. These changes were made permanent by the PPA.

2. Must have a "qualified appraisal" performed by a "qualified appraiser" supporting the claimed value of the donation. Regs. § 1.170A-13(c)(3).
 - a. Required for donations in excess of \$5,000.
 - b. "Qualified appraiser" (under I.R.C. § 170(f)(11)(E), as amended by the Pension Protection Act of 2006) is an appraiser who:
 - i. Has earned an appraisal designation from a recognized professional appraiser organization (or has otherwise met minimum education and experience requirements set forth in the regulations);
 - ii. Regularly performs appraisals for compensation; and
 - iii. Meets such other requirements prescribed in the regulations or other guidance.

An individual shall not be treated as a qualified appraiser with respect to any specific appraisal unless the following conditions are met: (a) the individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal; and (b) the individual has not been prohibited from practicing before the IRS at any time during the 3-year period ending on the date of the appraisal.

- c. "Qualified appraisal" is one which:
 - i. Is treated as a qualified appraisal under regulations or other guidance prescribed by the IRS; and
 - ii. For returns or submissions filed after August 17, 2006, is conducted by a qualified appraiser under generally-accepted appraisal standards and any regulations or other IRS guidance.

A qualified appraisal must include, among other things, a description of the property, the method of valuation used to determine the FMV of the property, certain information about the appraiser, and a description of the fee arrangement between the donor and the appraiser. Reg. § 1.170A-13(c)(3)(ii).

- d. IRS Transitional Guidance (Notice 2006-96) provides transitional guidance to new definitions of “qualified appraiser” and “qualified appraisal” until Treasury regulations are promulgated.
- e. Appraisal must not be made earlier than 60 days before date of contribution. Appraisal must be completed no later than the due date (including extensions) for the federal tax return for the year in which the gift was made. Regs. § 1.170A-13(c)(3)(i)(A).
- f. Thoughts about the appraisal process:

- i. Choose an appraiser with experience in determining the value of the type of land being donated.
 - ii. Never ask or expect the donee to provide evidence of value.
 - iii. Commission a two-stage appraisal, with a separate pre-agreed fee applicable to each stage.
 - Stage 1: Gather all essential data, analyze findings, and present a probable range of value within which the final appraised value is likely to fall.
 - Stage 2: Production of the written appraisal report, intended to stand behind the appraisal summary required to be submitted with the donor's tax return for the year of the donation.
 - g. If a donor is concerned about whether they can obtain a charitable deduction, they may seek a private letter ruling.
 - i. A private letter ruling tells the donor whether or not their contribution will qualify for a tax deduction, not what the charitable deduction will be.
 - ii. Process is quite expensive and time-consuming (may take over a year to hear back).
3. Gifts of Remainder Interests. Value of a gift of a remainder interest (*e.g.*, creation of life estate) calculated using Treasury Tables.

B. Donor Reporting Requirements

- 1. Schedule A of Form 1040 - filed for year in which the contribution is made.
- 2. Form 8283, Noncash Charitable Contributions -required in all cases where the noncash contribution has a FMV in excess of \$500. Form 8283 requires an acknowledgment by the donee.
 - a. A qualified appraisal of the conservation easement must be attached to the tax return on which the deduction of more than \$5,000 is first claimed. If an appraisal is required, it must include the method of valuation (such as the income approach or the market data approach) and the specific basis for the valuation (such as specific comparable sales transactions).
 - b. In addition, for conservation easements, the Form 8283 must be accompanied by a statement that: (i) identifies the conservation purposes furthered by the donation; (ii) shows, if before and after valuation issued, the FMV of the underlying property before and after the gift; (iii) states whether the donor made the donation in order to get a permit or other approval from a local or other governing authority and whether the donation was required by a contract; and (iv) if the donor or a related person has any interest in other property nearby, a description of that interest.

- c. If the donee disposes of the property within three years, the donee must file with the IRS Form 8282, Donee Information Return, and must provide the taxpayer a copy.
3. Contemporaneous written acknowledgment of gift from the donee. I.R.C. § 170(f)(8)(A); Reg. § 1.170a-13(f)(1). *Bruzewicz v. USDA*, U.S.D.C. (NE District of Illinois), No. 07C4074, March 25, 2009, *Daniel Gomez et ux. V. Commissioner*, T.C. Summ. Op. 2008-93 (No. 13167-07S); *Weiner v. Commissioner*, T.C. Memo 2002-153 and *Addis v. Commissioner*, 118 T.C. 32 (2002) (deduction denied for failure to substantiate). In general, the written acknowledgment must state: (a) the amount of cash and a description (but not the value) of any property other than cash contributed; (b) whether the donee provided any goods or services in consideration for the contribution; and (c) a description and good-faith estimate of the value of those goods or services.
4. Failure to meet substantial requirements will result in disallowance of the charitable deduction for donation of a conservation easement. *Ney v. Commissioner*, T.C. Summary Opinion 2006-154 (2006) (charitable contribution disallowed because there was no qualified appraisal at time of donation and neither the appraiser nor the donee signed the Form 8283).
5. Prospective donors should make sure they have clear communication with the putative donee regarding the nature of the contemplated transaction and the expectation that the donee will sign the Form 8283 upon completion of the transaction. In *Headlands Reserve, LLC v. Center for Natural Lands Management*, 2007 U.S. Dist. Lexis 86870 (C.D. Cal. Nov. 16, 2007), the landowner (Headlands) conveyed a conservation easement to a non-profit organization (Natural Lands). The court held that Natural Lands was not obligated to sign the Form 8283. Natural Lands believed that the conveyance did not constitute a charitable gift, as it paid substantial consideration for the easement and the transaction was in conjunction with Headlands obtaining certain development approvals. Headlands maintained that it had completed a bargain sale (i.e., a conveyance that is part charitable gift, part taxable transaction) and that Natural Lands had a contractual obligation to sign the Form 8283. The court found for Natural Lands, in part because the parties' contract contained a provision that neither party was relying on the other for tax advice and that Natural Lands made no warranty or representation to Headlands regarding the tax treatment of the transaction.

THE CONSERVATION EASEMENT/DEED RESTRICTION TOOL FOR CONSERVING LAND

V. INTRODUCTION

A. Basic Questions In Conserving Land

1. Land trusts and local governments must answer many questions in determining how to protect an open space through nonregulatory means:
 - What are the conservation values of the property (habitat, recreation/education, scenic)?
 - What uses, if any, of the property are compatible with its conservation values (farming, residential/commercial development, public access)?
 - How does the community wish to see the property used?
 - What conservation options are available for protecting the property (fee/partial fee)?
 - What options is the landowner willing to consider, given landowner's need for compensation, desire to retain an ownership interest in the property, and preference for or against dealing with a particular conservation agency?
 - What type of responsibilities is the land trust/governmental agency willing to accept (management/enforcement)?
 - What sources of funds are available for protecting the property (donations/grants)?
2. In the end, you must select the best possible conservation tool available -- given the quality of the land being protected and the needs, concerns and constraints of the public, landowner and land trust/governmental agency -- and take care that the chosen method can reasonably be expected to protect the property's conservation values over time.

B. Scope of Outline (Sections VI-IX)

1. Provides an overview of major considerations in selecting a conservation easement/deed restriction (over fee ownership) (Section VI)
2. Provides a detailed discussion of conservation easements and deed restrictions. (Sections VII-IX)

VI. MAJOR CONSIDERATIONS IN SELECTING A CONSERVATION EASEMENT/DEED RESTRICTION (Over Fee Ownership)

A. Conservation Easement Versus Fee Ownership:

1. Special features of a conservation easement
 - a. Easement involves a long-term relationship between the land owner and the land-trust or governmental agency (the holder of the easement and the enforcer of its terms).
 - b. Strict and substantial requirements to obtain tax-deduction
 - Must meet conservation purposes test (ecosystem protection)
 - Must be enforceable in perpetuity
 - Specific nature of restrictions applied and rights granted can be tailored to meet needs of landowners and expectations of land trust/governmental agency
2. Factors favoring a conservation easement:
 - a. Private ownership is compatible with the conservation objectives (*e.g.*, residential development)
 - b. Landowner remains responsible for liability and maintenance
 - c. Land trust/governmental agency has the capability and finances to monitor and enforce the easement
 - d. Restrictions that protect the resources can be negotiated and can be reasonably monitored and enforced
 - e. Acquisition costs may be lower
3. Factors favoring fee ownership:
 - a. Property contains highly sensitive resources (a heron rookery, endangered or threatened species, etc.)
 - b. Extensive public use is a significant conservation objective
 - Conflicts with private ownership
 - Liability issues
 - c. Resources require intensive management (*E.g.*, Wetland restoration)
 - d. Funds are available for acquiring (and maintaining) the fee

B. Conservation Easement Versus Deed Restriction:

1. Special features of a deed restriction
 - a. A deed restriction is a restrictive covenant placed by the landowner on a deed to restrict the activities and uses that may take place on a parcel of land.
 - b. Offers a suitable real property arrangement for protecting the conservation attributes of a parcel of property in perpetuity.

- c. Specifically recognized by state law as a real property partial interest. Alaska Statutes 34.17.010.
 - d. Restrictions pass with the conveyance of the underlying fee and are binding on future owners in perpetuity or until such times as conditions have changed
 - e. Conveys no right to enforce the restrictions to a third party, such as a local government or land trust. Generally, such obligation is provided in a permit condition or side contractual agreement.
2. Factors favoring a deed restriction:
- a. *Quid pro quo* arrangement (E.g., condition of permit approval)
 - b. Where there is no need to convey enforcement right to third party as part of deed
 - c. Offers greater protection than an easement from environmental liability that may be associated with the property
3. Factors favoring a conservation easement:
- a. Desire/need for an income tax deduction. Taxpayer may not claim as a charitable deduction the loss in value resulting from imposition of a deed restriction. Rev. Rul. 85-99, 1985-2 C.B. 83.
 - b. Desire/need for conveyance of right of enforcement as part of the deed.

VII. DONATION OF A CONSERVATION EASEMENT

A. What is a Conservation Easement?

- 1. A legal agreement a property owner makes to restrict the activities and uses that may take place on his or her property.
- 2. Restrictions may include:
 - a. The right to construct buildings.
 - b. The right to subdivide the land.
 - c. The right to harvest timber.
 - d. The right to restrict access (allowing public access, however, is generally not a requirement in a conservation easement).
- 3. Conservation easement agreement conveys the right to enforce these restrictions to a qualified conservation recipient, such as a local government or a land trust.

B. Why Grant a Conservation Easement?

- 1. Permanently protects significant and irreplaceable natural resources.
- 2. Landowner still owns the property.
- 3. Provides flexibility. Each easement is tailored to the particular landowner and the particular piece of property.
- 4. May yield considerable tax savings (income tax deduction, estate/gift tax benefits and property tax relief).

VIII. SATISFYING IRS REQUIREMENTS FOR DONATION OF A CONSERVATION EASEMENT *

A. Must be a "Qualified Real Property Interest" - Regs. § 1.170A-14(b)

1. A conservation easement is a "qualified real property interest" because it is a restriction (granted in perpetuity) on the use of the real property. See Chapter 34.17 Alaska Statutes.
2. Substantiation:
 - a. Invoke statutory authority (Alaska Statutes 34.17.010) for a conservation easement in the conveyance portion of the easement instrument.
 - b. Provide in the conveyance portion of the easement instrument that the conservation easement is granted in perpetuity.

B. Must be Donated to a "Qualified Conservation Organization" - Regs. § 1.170A-14(c)

1. Must be a governmental unit or a tax-exempt 501(c)(3) organization which meets the relevant public support test. See Alaska Statutes 34.17.060(2). Cannot be a private foundation.
2. Organization must have resources to enforce the restriction (not necessarily funds set aside for each parcel). Regs. § 1.170A-14(c)(1).
3. Organization must be organized primarily, if not exclusively, for conservation purposes, or have a clear commitment to protect the conservation purposes of the donation.
4. Substantiation:
 - a. List the qualifications of the grantee in the recitals of the easement instrument.
 - b. Obtain copy of IRS determination letter of organization's tax exempt status, copy of organization's resolution to accept the easement, and copy of the organization's articles of incorporation (indicating conservation purpose).
 - c. Obtain documents from grantee indicating the organization's overall stability and commitment to enforce the terms of the easement (*e.g.*, annual report, financial report indicating availability of funds to defend easement, availability of back-up grantee, list of directors and officers).

C. Must be "Exclusively for Conservation Purposes" - Regs. § 1.170A-14(d)(1)

1. Must meet at least one of the following alternative Conservation Purposes Tests:
 - a. Conserves land areas for outdoor recreation by, or education of, the general public; or

* These materials include a discussion of Washington State law issues relevant to conservation easements.

- b. Protects relatively natural habitat of fish, wildlife, or plants or similar ecosystem; or
- c. Preserves a historically important land area or a certified historic structure; or
- d. Preserves certain open space if it is either:
 - i. Pursuant to a clearly delineated governmental policy and will yield a significant public benefit; or
 - ii. For the scenic enjoyment of the general public and will yield a significant public benefit.

Failure to do so will result in disallowance of the charitable contribution for donation of the conservation easement. Turner v. Commissioner, 126 T.C. 16 (2006) (charitable contribution disallowed because conservation easement “did not protect open space or a historically important land area”).

- 2. No deduction allowed if the terms of the easement, while protecting some conservation interests, permit use of the land that will interfere with other significant conservation interests. Regs. § 1.170A-14(e)(2). *But see Glass v. Commissioner*, U.S. Ct. of Appeals (6th Cir.) (December 21, 2006); 12 T.C. 258 (2005) (upholding Tax Court’s rejection of IRS interpretation that allowance for residential development was inconsistent with provision that easement be exclusively for conservation purposes in the case of protection of significant natural habitat).
- 3. Substantiation:
 - a. Public recreation and/or education (*e.g.*, nature or hiking trail, access to boating or fishing area). Regs. § 1.170A-14(d)(2).
 - i. Provide a provision in the easement instrument allowing access for regular and substantial use of the property by the public; and
 - ii. Provide in the recitals of the easement instrument a qualitative description of the property and the conservation values it provides. This description should list the recreational and educational features of the property that would make the public want to use it (make reference to relevant outdoor recreation plans, local comprehensive land-use plans and zoning ordinances, etc., as appropriate).
 - b. Significant natural habitat (*e.g.*, ecological preserve). Regs. § 1.170A-14(d)(3).
 - i. Provide in the recitals of the easement instrument a qualitative description of the property and the conservation values it provides. This description should list the special ecological features of the property worth preserving (make reference to natural heritage listings and professional reports, as appropriate).
 - ii. Provide in the recitals of the easement instrument reference to baseline documentation on the property. This baseline documentation, which should be incorporated by reference into

the easement instrument and may be attached as an exhibit to the easement instrument, should demonstrate that the property is in a relatively natural state (some prior alteration of habitat may be permissible).

- iii. Provide a provision in the easement instrument limiting or prohibiting access by the general public if necessary to protect the conservation values of the property.

c. Historic preservation.

- i. Provide in the recitals of the easement instrument a qualitative description of the property and the conservation values it provides. This description should indicate whether (and why) the property is a "historically important land area" or a "certified historic structure" (make reference to historic register or other reports, as appropriate).

- ii. A "historically important land area" is:

- Land which was the site of historically significant events or an archaeological site; or
- Land which is within a registered historic district and any buildings thereon which contribute to the significance of the district; or
- Any land area adjacent to a property listed individually in the National Register of Historic Places (but not within a registered historic district) in a case where the physical or environmental features of the land area contribute to the historic or cultural integrity of the structure.

- iii. A "certified historic structure" is:

- Any building listed in the National Register; or
- Any building within a registered historic district and certified by the Secretary of the Interior as contributing to the significance of the district.

- iv. Note: For purposes of the qualified conservation easement estate tax exclusion, the preservation of the "historically important land area" or "certified historic structure" does not qualify as a conservation purpose.

d. Open space pursuant to governmental policy (*e.g.*, farmland and forest land). Regs. § 1.170A-14(d)(4)(i)(A), (d)(4)(iii).

- i. Provide in the recitals of the easement instrument a qualitative description of the property and the open space values and significant public benefits it provides (make reference to open space plans or reports, as appropriate). Description must also demonstrate that protection of the property is "pursuant to a clearly delineated federal, state or local government policy"

(make reference to master, comprehensive, conservation, recreation, agricultural, and open-space plans, and plans for water supply protection, water quality maintenance, flood prevention and flood control, erosion control, and shoreline or riverbank protection, as appropriate).

- General declaration of conservation goals by one representative or legislative body is not sufficient.
 - Donations which further a specific, identified conservation project are most clear, but identification by a government agency of specific parcels of land is not necessary.
- ii. The more clearly delineated the government policy, the easier it is to establish the existence of a significant public benefit.
- e. Scenic enjoyment (*e.g.*, view across Puget Sound towards Mt. Rainier). Regs. § 1.170A-14(d)(4)(i)(B), (d)(4)(ii).
- i. Provide in the recitals of the easement instrument a qualitative description of the property and the scenic values and significant public benefits it provides (make reference to open space plans or reports, as appropriate).
- ii. Factors applied to determine "scenic" include:
- The compatibility of the land use with other land in the vicinity;
 - The degree of contrast and variety provided by the visual scene;
 - The openness of the land (more significant if located in densely settled or heavily wooded area);
 - Relief from urban closeness;
 - The harmonious variety of shapes and textures;
 - The degree to which the land use maintains the scale and character of the urban landscape to preserve open space, visual enjoyment, and sunlight for the surrounding area;
 - The consistency of the proposed scenic view with a methodical state scenic identification program, such as a state landscape inventory; and
 - The consistency of the proposed scenic view with a regional or local landscape inventory made pursuant to a sufficiently rigorous review process.
- iii. Factors considered in determining "significant public benefits" include the following. Regs. § 1.170A-14(d)(4)(iv), (v).
- Uniqueness of the property to the area;
 - Intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development);

- Consistency of the proposed open space use with public programs for conservation in the region, such as flood prevention, and protection of land included in, or related to, a government-approved comprehensive plan or land management area;
- Consistency of the proposed open space use with existing private conservation programs in the area, as evidenced by other land protected by easement or donation in close proximity to the property;
- The likelihood that development of the property would lead to or contribute to degradation of the scenic, natural, or historic character of the area;
- The opportunity for the general public to use the property or to appreciate its scenic values;
- The importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;
- The cost to the holder of the easement of enforcing the terms of the conservation restrictions;
- Population density in the area of the property; and
- Consistency of the proposed open space use with a legislatively mandated program identifying particular parcels of land for future protection.

D. Easement Must be Enforceable in Perpetuity - Regs. § 1.170A-14(g)

1. General substantiation:

- a. Provide in the conservation easement instrument a provision requiring the grantee and any future assignees to promise to carry out the conservation purposes of the easement in perpetuity.
- b. Provide in the conservation easement instrument provisions giving the grantee the right (a) to enter the property at reasonable times for inspection purposes, and (b) to enforce the terms of the easement by legal proceedings, including the right to require restoration of the property.
- c. Provide in the conservation easement instrument a requirement that the conservation easement be recorded. Recordation is the only way to put the world at large on constructive notice of a conservation easement.

2. Easement must not be subject to a mortgage, "unless the mortgagee subordinates its rights in the property to the right of the qualified organization to enforce the conservation purposes of the gift in perpetuity." Regs. § 1.170A-14(g)(2).

a. Substantiation:

- i. Provide a subordination provision in the conservation easement instrument. Attach as an exhibit, and incorporate by reference, the prior mortgage.
- ii. Record a separate instrument subordinating mortgagee's right in the property to the easement to the extent necessary to permit the

- grantee to enforce the purpose of the easement in perpetuity and to prevent any modification or extinguishment of the easement by the exercise of any rights of the mortgagee.
- iii. Ensure that the separate subordination instrument does not give the mortgagee first priority to condemnation and insurance proceeds. *See Kaufman v. Commissioner*, 134 T.C. No. 9 summary judgment decision (April 26, 2010) (holding that a façade easement contributed by a Boston couple was not perpetual because the lender retained first priority to condemnation and insurance proceeds up to the amount of its mortgage).
 - b. Negotiating a mortgage subordination may take some time. Therefore, determine early on in the process whether a mortgage subordination is needed.
3. No person (life tenants, persons with surface mining rights, grantor, etc.) may have the legal right to use the property in a manner inconsistent with the conservation purposes of the easement. Regs. § 1.170A-14(g).
- a. Surface mining cannot be permitted, or if surface and subsurface have been and remain separated, the possibility is so remote as to be negligible. Regs. § 1.170A-14(g)(4); I.R.C. §170(h)(5)(B)(ii) (amended 1997).
 - b. Substantiation:
 - i. Provide a provision in the conservation easement instrument prohibiting uses that would be inconsistent with the conservation purposes of the easement.
 - ii. Provide a provision in the conservation easement instrument prohibiting surface mining. subordinate existing surface mining rights to the easement or provide geologist report establishing that the possibility of surface mining is so remote as to be negligible.
4. If the grantor reserves any rights which may impair the conservation values protected by the easement, the grantor must provide data to establish the condition of the property as of the date of the donation and notify the grantee prior to commencing the exercise of such potentially incompatible rights. Regs. § 1.170A-14(g)(5).
- a. Substantiation:
 - i. Provide in the recitals of the conservation easement instrument reference to baseline documentation on the property. This baseline documentation, which should be incorporated by reference into the instrument and may be attached as an exhibit to the instrument, consists of reports, maps, photographs, and other documentation that the parties agree, provides an accurate representation of the property at the time of conveyance and

- which is intended to serve as an objective information baseline for monitoring compliance with the terms of the easement.
- ii. Provide in the conservation easement instrument a provision requiring the grantor to notify the grantee before he or she undertakes certain permitted actions.
5. That a conservation easement must be "granted in perpetuity" does not mean that it must last forever. Easement may be judicially extinguished for unexpected, changed circumstances which render the conservation purposes impossible or impractical. But, if easement is extinguished, grantee must be entitled to a portion of the proceeds of any subsequent sale or exchange, proportionate to the value the easement bears to the unrestricted property as of the date of the conveyance. Regs. § 1.170A-14(g)(6).
- a. Substantiation:
 - i. Provide in the conservation easement instrument a provision addressing extinguishment of the conservation easement (including as a result of condemnation). Try to set out the circumstances deemed to meet the impossibility or impracticability standards.
 - ii. Provide in the conservation easement instrument a provision addressing how the proceeds from any subsequent sale or exchange will be apportioned between the grantor and grantee.
 - b. Provision regarding division of sale proceeds may be no more than an opening bid at the time of extinguishment of the easement.
 - c. Consider requiring grantor to maintain casualty loss insurance coverage adequate to restore the property to its preexisting condition in the event of a casualty loss. Casualty losses are losses that are "sudden" in nature (not predictable or avoidable) and the result of actual physical damage. See I.R.C. § 165(c)(3).
6. Grantee may assign its interests in the conservation easement but only to an organization that is a qualified organization at the time of transfer and that agrees to carry out the conservation purposes of the easement. Regs. § 1.170A-14(c).
- a. Substantiation: Provide in the conservation easement instrument a provision allowing the grantee to assign its interest only to a qualified organization that agrees to carry out the conservation purposes of the easement.
 - b. Consider the appropriateness of a back-up grantee. Effect of Rule Against Perpetuities on executory interests created by charitable donations unclear in Washington.

E. Other Requirements For Obtaining a Deduction For Donation of a Conservation Easement

1. Must have a fair valuation of the property at the time of donation of the conservation easement. See Regs. § 1.170A-14(i).

- a. Long-standing rule.
 - i. Value of an easement equals the fair market value (FMV) of the unencumbered land (before the easement) minus the FMV of the encumbered land (after the easement). Regs. §1.170A-14(h)(3). See Rev. Rul. 73-339, 1973-2 C.B. 68, and Thayer v. Commissioner, T.C. Memo 1977-370. Increasing use of the cost-of-subdivision analysis, as opposed to dollar-per-acre comparables.
 - ii. But if a substantial record of comparable marketplace sales exists, value is based on such comparable sales. Regs. § 1.170A-14(h)(3).
 - b. Penalties for over-valuation: between 10 and 30% of the amount of the tax that is underpaid because of a valuation overstatement. I.R.C. § 6662.
2. Must have a "qualified appraisal" performed by a "qualified appraiser" supporting the claimed value of the donation. See Section IV.A above.

IX. CONSERVATION EASEMENT CONSIDERATIONS

A. Due Diligence

- 1. Determine that an easement is appropriate for the property:
 - a. Does the property meet an organization's or agency's criteria for accepting easements?
 - i. Do the resources on the property merit protection?
 - ii. Does the organization or agency have the funds to adequately monitor and, if necessary, enforce the easement?
 - b. Is the owner willing to accept the easement restrictions necessary to protect the significant resources of the property?
- 2. Obtain title insurance to determine that the owner has clear title and that there are no mortgages or other encumbrances on the property that may prevent protection of its resources.
 - a. If there is a mortgage, obtain a mortgage subordination from the lender.
 - b. If there is an underlying mining interest, obtain a mining subordination from the owner of the mining interests or produce a geologist report establishing that the possibility of surface mining is so remote as to be negligible.
- 3. Obtain a survey if the property under the easement is not a separate legal parcel or if building envelopes or other special use areas are allowed. Encroachments cannot be monitored if the exact location of easement boundaries on the ground cannot be identified.

4. Conduct an environmental assessment of the property to determine if hazardous substances have been used on the property, and obtain an environmental warranty and indemnity from the landowner. Acquiring an interest in contaminated property may subject an organization or agency to cleanup liability.
5. Compile a baseline data inventory of the property. Baseline data inventories provide evidence of the conservation resource values of the property, identify what restrictions must be written into the document, and are required by the IRS for tax-deductible easement gifts.
6. Obtain adequate insurance coverage for the property. Although, in most situations, the landowner will indemnify the easement holder for liabilities relating to ownership and management of the property, indemnity clauses are not a substitute for insurance.

B. Clear Drafting

1. Draft the easement instrument to stand the test of time.
 - a. Its terms must be flexible enough to allow unforeseen activities that are consistent with the purposes of the easement, but strong and clear enough to prevent inconsistent activities.
 - b. Its terms must be drafted with the next landowner, who may be hostile to the easement, in mind.
 - c. It is extremely important that individuals drafting conservation easements have training on easement requirements and drafting experience. Regardless of who might initially draft a particular conservation easement, legal counsel as well as land trust or agency staff and the landowner should carefully review each easement.
2. Clearly state the purpose of the easement. Allow only such uses of the property that are consistent with the purpose of the easement.
 - a. By clearly stating the purpose of the easement, you provide a workable standard for evaluating the consistency of future uses of the property with the purpose of the easement. E.g., "The purpose of this easement is to preserve the views of the property as seen from Mount Constitution on Orcas Island, in a wooded manner where no man-made improvements will be visible at any time during the year." Under this standard, if a new house is later constructed that is visible, a judge can tell it is clearly in violation of the original intent of the easement.
3. Clearly identify the exact location of easement boundaries on the ground. Doing so will allow the grantee the ability to monitor encroachments. As noted before, it is best to have a survey of the easement boundary or building envelope to ensure that the boundaries are marked and the corners are pinned with permanent markers, and its metes and bounds should be written in the legal description of the easement.

4. Use measurable standards for determining what land uses or activities are and are not allowed.

E.g., Suppose an easement is intended to protect scenic views across a pond to an undeveloped forested shoreline. Don't say, "No activities are allowed that would disturb the scenic view." Instead, define a linear setback from the shore and state specific activities that are restricted within the setback.

- a. If measurable standards are impractical, refer to accepted standards.

E.g., Suppose an easement allows for agriculture and forestry management. Specify that "forestry and agricultural management activities shall be in accordance with the current scientifically-based practices recommended by the U.S. Cooperative Extension Service, U.S. Natural Resource Conservation Service, or other government or private nonprofit natural resource conservation and management agencies then active" (Society for the Protection of New Hampshire Forests standard easement).

- b. Avoid restrictions that cannot be monitored.

E.g., an easement should avoid restrictions prohibiting use of synthetic chemicals on an organic farm if the grantee cannot measure and monitor chemical use.

5. Require grantee notice and approval for any reserved rights with a high potential for causing easement violations. E.g., an easement that allows for the construction of roads or buildings in certain areas of the property.
6. Require grantee notification of subsequent transfers. Adequate notice of a pending sale provides the opportunity for a representative of the land trust or agency to tour the property with the prospective purchaser and explain with particularity the restrictions the easement places on the property.

EXHIBIT A

REFERENCES

The following publications and journals are useful for landowners, organizations and government agencies (and their advisors) that are working with conservation easements.

The Washington Real Property Deskbook (Fourth Edition)k, Volume 3, Chapter 14, Conservation Easements, by Thomas F. Haensly & Konrad Liegel, 2009 (update), Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, Washington 98101-2539. Written especially for practitioners in Washington State. Provides a conservation easement checklist.

The Conservation Easement Handbook, written by Elizabeth Byers and Karin Marchetti Ponte, 1988, 2005, published by the Trust for Public Land and the Land Trust Alliance, Washington, D.C. Written by the leading experts in the field, this comprehensive guide is an essential resource for any organization that intends to handle easements and for advisors to landowners interested in conservation easements. Includes model easements with explanatory legal commentary.

The Conservation Easement Stewardship Guide: Designing, Monitoring, and Enforcing Conservation Easements, by Brenda Lind, 1991, Land Trust Alliance and the Trust for New Hampshire Lands, Washington, D.C. This comprehensive handbook is a step-by-step guide for organizations that hold conservation and historic easements. It shares the best practices of easement holders across the country and covers all aspects of easement stewardship: from selecting and drafting easements and preparing baseline-documentation to monitoring and dealing with violations.

The Federal Tax Law of Conservation Easements with Supplement, by Stephen J. Small, 1986, with Supplements, Land Trust Alliance. Written by the attorney who prepared to original draft of the IRS conservation easement regulations, this legal volume interprets the IRS final regulations on gifts of conservation easements and discussed related income and estate tax considerations. It also covers historic preservation easements, donations of remainder interests for conservation purposes, and the reservation of a “qualified mineral interest.”

Appraising Conservation and Historic Preservation Easements, 2011, by Richard J. Roddewig, MAI, CRE, FRICS, published by the Appraisal Institute. This manual is an authoritative guidebook for conservation easement appraisers, for conservation easement donors and their attorneys, and for government agencies and nonprofit organizations that acquire easements.

Local, State and Federal Tax Incentives for Conservation Easements (Third Edition), December 2005, South Carolina Department of Revenue. This publication assists private land owners, land trusts, attorneys, appraisers, real estate agents and other conservation professionals in understanding the requirements and implications of the federal tax incentives for conservation easements. The layout of the book is designed to be useful to a wide range of users.

Avoiding Conflicts of Interest and Running an Ethical Land Trust, by Konrad Liegel, Esq., 2006, Land Trust Alliance Standards and Practices Curriculum. Provides “good guidance” to land trusts in the areas of ethics and conflicts of interest.

The Back Forty: The Newsletter of Land Conservation Law, 1990-present, published by the Land Conservation Law Institute, a project of the Land Trust Alliance and Hastings College of the Law,

University of California. Written especially for land conservation practitioners and their legal advisors. The *Back Forty* is published six times a year, and contains articles often addressing conservation easement topics.

Exchange: The Journal of the Land Trust Alliance, 1989-present, Land Trust Alliance, Washington, D.C. The professional journal of the land trust movement, published four times a year.

Statement of Land Trust Standards & Practices, Revised 2004, Land Trust Alliance, Washington, D.C. This booklet outlines the standards and practices that the Land Trust Alliance believes are essential for the responsible operation of a land trust.

Contact the Land Trust Alliance, Suite 1100, 1660 L Street NW, Washington, D.C. 20036; tel. (202)638-4725; e-mail address, www.lta.org, as to the availability of Land Trust Alliance publications and journals.

APPENDIX B

EASEMENT SUBSTANTIATION MATERIALS

- Form 8283 w/instructions
- Supplemental Statement for Conservation Easements (to accompany Form 8283)
- Substantiation Letter from Donee Acknowledging Gift

APPENDIX C

FEDERAL CONSERVATION EASEMENT MATERIALS

- Internal Revenue Code Section 170(h))
- Treasury Regulations 1.170A-14 (Qualified conservation contributions)
- IRS Notice Regarding Improper Deductions for Conservation Easement Donations (IR-2004-86, June 30, 2004)
- IRS Guidance on Appraisals and Appraisers (Notice 2006-96)
- IRS Guidance on New Conservation Easement Tax Incentive (Notice 2007-50)