

## **LIFE OF A CONSERVATION EASEMENT**

### **HYPOTHETICAL**

Jackie and Zane Sturdley own a 800-acre forested parcel worth \$2.5 million.

An appraiser has determined the easement will diminish the value of the property to \$1 million. The easement therefore has a value of \$1.5 million.

A land conservation organization, designated as a 501(c)(3) public charity, has agreed to accept and hold the easement.

The land trust and landowners applied for and were granted funding from a federal source for \$750,000 and a state source for \$250,000.

The landowners have sufficient income to donate the remainder of the easement value (\$500,000) and receive a meaningful tax deduction.

The landowners have reserved the right to conduct ranching activities on a portion of the property, forestry activities on another portion, and they have reserved a two acre building envelope for a farm house and ohana and ancillary structures.

# The Federal Law Re Donations Of Conservation Easements (and other partial interests)

## 26 US Code 170(h)

### (h) Qualified conservation contribution

#### (1) In general

For purposes of subsection (f)(3)(B)(iii), the term “qualified conservation contribution” means a contribution—

- (A) of a qualified real property interest,
- (B) to a qualified organization,
- (C) exclusively for conservation purposes.

#### (2) Qualified real property interest

For purposes of this subsection, the term “qualified real property interest” means any of the following interests in real property:

- (A) the entire interest of the donor other than a qualified mineral interest,
- (B) a remainder interest, and
- (C) a restriction (granted in perpetuity) on the use which may be made of the real property.

#### (3) Qualified organization

For purposes of paragraph (1), the term “qualified organization” means an organization which—

- (A) is described in clause (v) or (vi) of subsection (b)(1)(A), or
- (B) is described in section 501 (c)(3) and—
  - (i) meets the requirements of section 509 (a)(2), or
  - (ii) meets the requirements of section 509 (a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

#### (4) Conservation purpose defined

##### (A) In general

For purposes of this subsection, the term “conservation purpose” means—

- (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
- (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- (iii) the preservation of open space (including farmland and forest land) where such preservation is—
  - (I) for the scenic enjoyment of the general public, or
  - (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,and will yield a significant public benefit, or
- (iv) the preservation of an historically important land area or a certified historic structure.

##### (B) Certified historic structure

For purposes of subparagraph (A)(iv), the term “certified historic structure” means any building, structure, or land area which—

- (i) is listed in the National Register, or

(ii) is located in a registered historic district (as defined in section 47 (c)(3)(B)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

**(5) Exclusively for conservation purposes**

For purposes of this subsection—

**(A) Conservation purpose must be protected**

A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

**(B) No surface mining permitted**

(i) In general Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(ii) Special rule With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.

**(6) Qualified mineral interest**

For purposes of this subsection, the term "qualified mineral interest" means—

(A) subsurface oil, gas, or other minerals, and

(B) the right to access to such minerals.

**(i) Standard mileage rate for use of passenger automobile**

For purposes of computing the deduction under this section for use of a passenger automobile, the standard mileage rate shall be 14 cents per mile.

**(j) Denial of deduction for certain travel expenses**

No deduction shall be allowed under this section for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel.

**(k) Disallowance of deductions in certain cases**

For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) <sup>[2]</sup> of the Internal Security Act of 1950 (50 U.S.C. 790).

**(l) Treatment of certain amounts paid to or for the benefit of institutions of higher education**

**(1) In general**

For purposes of this section, 80 percent of any amount described in paragraph (2) shall be treated as a charitable contribution.

**(2) Amount described**

For purposes of paragraph (1), an amount is described in this paragraph if—

(A) the amount is paid by the taxpayer to or for the benefit of an educational organization—

(i) which is described in subsection (b)(1)(A)(ii), and

(ii) which is an institution of higher education (as defined in section 3304 (f)), and

(B) such amount would be allowable as a deduction under this section but for the fact that the taxpayer receives (directly or indirectly) as a result of paying such amount the right to purchase tickets for seating at an athletic event in an athletic stadium of such institution.

If any portion of a payment is for the purchase of such tickets, such portion and the remaining portion (if any) of such payment shall be treated as separate amounts for purposes of this subsection.

**(m) Other cross references**

(1) For treatment of certain organizations providing child care, see section 501 (k).

(2) For charitable contributions of estates and trusts, see section 642 (c).

(3) For nondeductibility of contributions by common trust funds, see section 584.

(4) For charitable contributions of partners, see section 702.

(5) For charitable contributions of nonresident aliens, see section 873.

(6) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for use of the United States, see section 6973 of title 10, United States Code.

(7) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(8) For treatment of gifts of money accepted by the Attorney General for credit to the "Commissary Funds Federal Prisons" as gifts to or for the use of the United States, see section 4043 of title 18, United States Code.

(9) For charitable contributions to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

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## Private Benefit, Private Inurement

### **Quick Points**

- ◆ “Private benefit” relates to people *outside* your organization.
- ◆ “Private inurement” relates to people *inside* your organization, or closely related to it.



## ***Private Benefit***

**501(c)(3)** -- A charitable organization shall operate “exclusively” for exempt purposes.

**Treasury Rules** -- Not “more than an insubstantial” (not defined by the rules) accrual of benefits, including non-monetary benefits, to individuals or organizations, either directly or indirectly. Reg. § 1.501(c)(3)-1(d)(1)(ii).

**Sanctions** – Include possible revocation of tax exempt status.

## ***Private Inurement***

**501(c)(3)** -- No part of a tax exempt organization's net earnings may "inure" to the benefit of a person who has a personal and private interest in the activities of the organization.

Unlike private benefit, any amount of private inurement constitutes a violation.

**Sanctions** – Include possible revocation of tax exempt status or "intermediate sanctions"

*"The inurement prohibition serves to prevent anyone in a position to do so from siphoning off any of a charity's income or assets for personal use."* (Gen Couns. Mem. 39862).

Often plays out in form of "excessive benefits."

## **Easement Situations Where Private Benefit/Inurement Can Creep In**

***Enforcement***

***Amendments***

***Extinguishment***

# 2010 Accreditation Indicator Practices

The [Land Trust Accreditation Commission](#), an independent program of the Land Trust Alliance, provides independent verification of the 26 indicator practices from *Land Trust Standards and Practices* that show a land trust's ability to operate in an ethical, legal and technically sound manner and ensure the long-term protection of land in the public interest.

## **Standard 1: Mission**

1D. Ethics

## **Standard 2: Compliance with Laws**

2A. Compliance with Laws

2B. Nonprofit Incorporation and Bylaws

2C. Tax Exemption

## **Standard 3: Board Accountability**

3C. Board Governance

3F. Board Approval of Land Transactions

## **Standard 4: Conflicts of Interest**

4A. Dealing with Conflicts of Interest

## **Standard 5: Fundraising**

5A. Legal and Ethical Practices

## **Standard 6: Financial and Asset Management**

6B. Financial Records

6D. Financial Review or Audit

## **Standard 7: Volunteers, Staff and Consultants**

7A. Capacity

## **Standard 8: Evaluating and Selecting Conservation Projects**

8B. Project Selection and Criteria

8D. Public Benefit of Transactions

## **Standard 9: Ensuring Sound Transactions**

9E. Easement Drafting

9G. Recordkeeping

9H. Title Investigation and Subordination

9J. Purchasing Land

## **Standard 10: Tax Benefits**

10B. Appraisals

**Standard 11: Conservation Easement Stewardship**

11A. Funding Easement Stewardship

11B. Baseline Documentation Report

11C. Easement Monitoring

11E. Enforcement of Easements

11I. Amendments

**Standard 12: Fee Land Stewardship**

12A. Funding Land Stewardship

12C. Land Management

12D. Monitoring Land Trust Properties

## CHAPTER 198

### CONSERVATION EASEMENTS

**§198-1 Conservation easement defined.** For the purposes of this chapter, a "conservation easement" is **an interest in real property** created by deed, restrictions, covenants, or conditions, the purpose of which is to:

- (1) Preserve and protect land predominantly in its **natural, scenic, forested, or open-space** condition;
- (2) Preserve and protect the structural integrity and physical appearance of **cultural landscapes, resources**, and sites which perpetuate indigenous native Hawaiian culture;
- (3) Preserve and protect **historic properties** as defined in section 6E-2, and traditional and family cemeteries; or
- (4) Preserve and protect land for **agricultural use**. [L 1985, c 149, pt of §1; am L 1996, c 194, §1; am L 2007, c 145, §2]

**[§198-2] Nature.** (a) A conservation easement is freely transferable in whole or in part for the purposes stated in section 198-1 by any lawful method for the transfer of interests in real property in this State.

(b) A conservation easement shall be **perpetual in duration**.

(c) A conservation easement shall not be deemed personal in nature and shall constitute an **interest in real property** notwithstanding the fact that it may be negative in character.

(d) The particular characteristics of a conservation easement shall be those granted or specified in the instrument creating or transferring the easement. [L 1985, c 149, pt of §1]

**[§198-3] Holders.** **Any public body** and **any organization** which qualifies for and holds an income tax exemption under section 501(c) of the federal Internal Revenue Code of 1954, as amended, **and whose organizational purposes are designed to facilitate the purposes of this chapter**, may acquire and hold conservation easements by purchase, agreement, donation, devise, or bequest, but not by eminent domain. [L 1985, c 149, pt of §1]

**[§198-4] Recordation.** Instruments creating, assigning, or otherwise transferring conservation easements shall be recorded in the **bureau of conveyances**, or the **land court**, as the case may be, and such instruments shall be subject in all respects to the requirements of chapters 501 and 502. [L 1985, c 149, pt of §1]

**[§198-5] Enforcement of easement.** (a) All conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership, and no conservation easement shall be unenforceable on account of the lack of privity of estate or contract, or on account of such conservation easement not being an appurtenant easement, or because such easement is a general easement.

(b) Actual or threatened injury to or impairment of a conservation easement, or actual or threatened violation of its terms, may be prohibited or restrained, or the interest intended for protection by such easement may be enforced, by injunctive relief granted by any court of competent jurisdiction in a proceeding initiated by the grantor or by the holder of the easement.

(c) In addition to the remedy of injunctive relief, the holder of a conservation easement shall be entitled to recover money damages for any injury to such easement or to the interest being protected thereby or for the violation of the terms of such easement. In assessing such damages there may be taken into account, in addition to the cost of restoration, the loss of scenic, aesthetic, or environmental value to the real property subject to the easement, and other damages.

(d) The court may award to the prevailing party in any action authorized by this section the costs of litigation, including reasonable attorney's fees. [L 1985, c 149, pt of §1]

**[§198-6] Construction.** This chapter shall not be construed to imply that any easement, covenant, condition, or restriction which does not have the benefit of this chapter shall on account of any provisions of this chapter be unenforceable. Nothing in this chapter shall diminish the powers granted by any general or special law to acquire, by purchase, gift, eminent domain, or otherwise, and to use land for public purposes. [L 1985, c 149, pt of §1]

## HRS SECTION 182-1

**§182-1 Definitions.** . . . "Minerals" means any or all of the oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits whether solid, gaseous, or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; but does not include sand, rock, gravel, and other materials suitable for use and used in general construction.

**§182-2 Mineral rights reserved to the State.** (a) All minerals in, on, or under state lands or lands which hereafter become state lands are reserved to the State; provided that the board of land and natural resources may release, cancel, or waive the reservation whenever it deems the land use, other than mining, is of greater benefit to the State as provided for in section 182-4. . . .

(b) Subject to subsection (a), all land patents, leases, grants, or other conveyance of state lands shall be subject to and contain a reservation to the State of all the minerals, . . . .

**§182-4 Mining leases on state lands.** (a) . . . the board, after due notice of public hearing to all parties in interest, within six weeks from the date of the first notice or any further time that may be reasonably necessary, shall determine whether the proposed mining operation or the existing or reasonably foreseeable future use of the land would be of greater benefit to the State. . . .



## USDA/NRCS PROJECT MINERALS SUBORDINATION TIMELINE

<u>Date</u>	<u>Action</u>
11/17/	Letter with supporting documentation from landowner's attorneys requesting subordination of State's mineral rights
1/8/	Reply from BLNR indicating it was going to Board
1/23/	BLNR approved request to begin "subordination" process
2/13/	Public Notice Request started
2/19/	DLNR requests \$ from landowner for publication costs
3/30/	Public Notice
4/6/	“ “
4/13/	“ “
4/15/	Public Hearing
5/6/	Letter to landowner announcing BLNR meeting
5/17	BLNR Approval of Subordination
8/3/	Subordination document to AG for approval
8/9/	Approved by AG
8/17/	Subordination signed by Chair
9/7/	Easement Signed by NRCS/landowner
9/14/	Easement and Subordination recorded

Date

Paul Conry, Director  
Division of Forestry and Wildlife  
Department of Land and Natural Resources  
Kalanimoku Building  
1151 Punchbowl St., Rm. 325  
Honolulu, HI 96813

**Re: Mineral Rights Subordination**

Dear Mr. Conry:

Pursuant to the Memorandum of Understanding Between the Natural Resources Conservation Service (NRCS) and The State of Hawaii approved by the Board of Land and Natural Resources (BLNR) on August 22, 2008, I am submitting a project package relating to Sunset Ranch, and request that you evaluate the project and approve it for a mineral subordination and presentation to BLNR. The project package includes:

1. A Geology and Surface Mining Evaluation Report prepared by Dr. Michael Garcia. Dr. Garcia concludes that there is an absence of significant mineral resources on the \_\_\_\_\_ property and a lack of commercial feasibility for surface mining or geothermal energy. Accordingly, the potential for such extraction is so remote as to be negligible. NRCS concurs with Dr. Garcia's conclusions, and assesses the likelihood that the outstanding mineral rights would ever be exercised to be very remote or negligible.
2. Draft easement.
3. Preliminary Title Report.
4. Project description and location.
5. Subordination document.

The NRCS funds for this project must be expended by the end of March 2010. We look forward to working with you and your staff to close the Sunset Ranch project expeditiously, and request your cooperation and assistance in this matter.

Sincerely,

Michael Whitt

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
NATURAL RESOURCES CONSERVATION SERVICE  
AND  
THE STATE OF HAWAII**

**I. PARTIES**

This Memorandum of Understanding (MOU) is entered into between the Natural Resources Conservation Service (NRCS) and the Board of Land and Natural Resources, State of Hawaii (Hawaii or State), collectively referred to as "the Parties", for the purpose set forth below.

**II. PURPOSE**

**A. Background**

NRCS administers an array of conservation easement programs. Several of these programs, including the Farm and Ranch Lands Protection Program (FRPP), 16 U.S.C. §§ 3838h and i, and the Wetlands Reserve Program (WRP), 16 U.S.C. § 3837, are currently implemented in Hawaii. The purpose of FRPP is to protect prime, unique, or important soils from being converted to non-agricultural uses through the purchase by the United States of conservation easements. The purpose of WRP is to restore and protect wetlands function and values through the use of restoration cost share agreements and the purchase of conservation easements by the United States on restored properties. To date, NRCS has obligated approximately \$6,500,000 which will protect 985 acres from development in Hawaii.

As part of the United States' legal requirement under 40 U.S.C. § 3111 to acquire legally sufficient title to the conservation easements it purchases, NRCS must ensure any outstanding rights will not adversely impact the conservation values (e.g., soil, water, wildlife resources) being protected. This includes considering the likelihood outstanding mineral rights will be exercised given the likely adverse impact the exercise of such rights would have on the conservation values the United States is seeking to protect.

The State of Hawaii owns the mineral subsurface rights in all lands in Hawaii and has the authority to exercise those rights. HRS §182-2(a).

The Parties agree that the protection of the conservation values by these federally funded easements is of great benefit to the people of the State of Hawaii as well as to people of the United States generally.

Such protection is consistent with Hawaii's public policy to protect and preserve lands having natural resource values and agricultural lands. This policy can be seen in the

enactment of the State's Legacy Lands Conservation laws which provides for the acquisition and management of lands which have natural, environmental, recreational, scenic, cultural, agricultural production, or historic value. Chap. 173A, Hawaii Revised Statutes (HRS).

#### **B. Purpose**

The Parties have a mutual interest in protecting natural resources and agricultural lands in the State of Hawaii. Consequently, the Parties wish to facilitate the protection of natural resources and agricultural lands by the United States through NRCS' purchase of conservation easements in Hawaii by agreeing to a process by which the State may consider and subordinate its mineral rights to the United States on individual conservation easement projects. Such subordinations will ensure that the subsurface mineral rights will not be accessed from the surface estate subject to the conservation easement, thereby ensuring the protection of the conservation values.

This MOU sets forth this subordination process, including the roles and responsibilities of the Parties. It is the mutual intent of the Parties that by working collaboratively as set forth below subordinations on conservation easement acquisitions will be facilitated.

### **III. RESPONSIBILITIES**

#### **A. NRCS will:**

1. Utilize the State Technical Committee (STC) in developing ranking criteria and take under advisement all comments from the STC during the ranking process for conservation easement funding.
2. During the ranking process, initiate a meeting with a designated State official to discuss proposed conservation easements and the State's subordination of its subsurface mineral rights for each proposed conservation easement application.
3. As soon as practicable after the Director of the Pacific Islands Area selects projects for potential funding based on ranking criteria, submit proposed project packages to the designated State official for evaluation and approval for mineral subordination and presentation to the Board of Land and Natural Resources. Packages will include NRCS's assessment of the likelihood that the outstanding mineral rights will be exercised, draft easement, title report, project description and location, subordination form, and any other relevant material.
4. For potentially funded conservation easement projects submitted by NRCS to the State in which one of the State's executive agencies is not the intended grantee of the easement or for which the State is not providing any funding, NRCS will assist the State in obtaining administrative fees necessary to cover the State's

costs associated with required public notices and public hearings if such fees are legally applicable at the time of processing.

**B. State will:**

1. Participate in the State Technical Committee process for recommending conservation easement ranking criteria.
2. Meet with NRCS to provide an initial assessment of the likelihood of the State subordinating subsurface rights for each project being considered by NRCS for funding under the conservation easement programs. Obtain any additional information it needs to make such a preliminary assessment at this stage of the process to the greatest extent practicable. Any assessment will be subject to approval by the Board of Land and Natural Resources.
3. For potentially funded conservation easement projects submitted by NRCS to the State in which one of the State's executive agencies is involved in the project either as a grantee of the easement or as a funder of the acquisition, make a determination whether to subordinate mineral rights for specific easement acquisition projects within 60 calendar days of receipt of NRCS' request.
4. For other potentially funded conservation easement projects submitted by NRCS to the State in which the one of the State's executive agencies is not the intended grantee of the easement or for which the State is not providing any funding, the State will evaluate and make a determination on whether to subordinate its mineral rights pursuant to the requirements of §182-4, HRS. The determination whether to subordinate mineral rights for the specific easement acquisition projects under this section should be made within 90 calendar days of receipt of NRCS' request.
5. Upon its determination whether to subordinate, the State shall either subordinate its mineral rights by executing and transmitting the subordination documents to NRCS, or decline to subordinate its mineral rights by notifying NRCS of such decision, in writing, including the reason(s) for the decision. In making its determination, the State will consider the relative value of the mineral rights at issue as compared to the benefit to the State and the public of protecting the land and its related conservation values through a conservation easement. A finding that the particular mineral rights at stake have little value as compared with the benefits of land conservation will weigh in favor of subordination of those mineral rights.

**C. Both Parties will:**

Agree to meet as necessary to review the subordination process and make refinements as needed.

#### **IV. GENERAL PROVISIONS**

- A. This MOU takes effect upon the signature of NRCS and the State and shall remain in effect for five years from the date of execution. This MOU may be amended or extended upon written request of either NRCS or the State and the subsequent written concurrence of the other party. Either NRCS or the State may terminate this MOU with a 30 day written notice to the other party.**
- B. This MOU is not intended to, nor does it create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any party against the Parties, its respective agencies, officers, or any person.**
- C. NRCS and the State and their respective offices will carry out their own activities and utilize their own resources, including the expenditures of their own funds in pursuing the purposes of this MOU. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.**
- D. Nothing in this MOU shall obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property between NRCS and the State will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. Negotiation, execution, and administration of any such agreement must comply with all applicable statutes and regulations.**

#### **V. ADMINISTRATIVE CONTACTS**

**The administrative contact for NRCS for this MOU is:**

**Dennis G. Kimberlin  
Assistant Director for Programs  
Pacific Islands Area  
Natural Resources Conservation Service**

**The administrative contact for the State for this MOU is:**

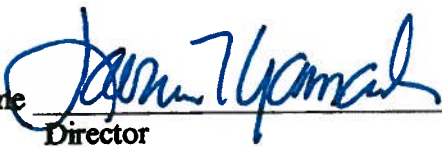
**Paul J. Conry  
Administrator  
Division of Forestry and Wildlife  
Department of Land and Natural Resources**


#### **VI. AUTHORITY**

NRCS enters into this MOU under the authority of its various conservation easement programs, including the Farm and Ranch Lands Protection Program, 16 U.S.C. §§ 3838h and i, and the Wetlands Reserve Program, 16 U.S.C. § 3837.

**VII. APPROVAL**

The undersigned Parties hereby agree to the terms and conditions set forth above.

Name  Date 6/25/08  
Director  
Pacific Islands Area  
Natural Resources Conservation Service

Name  Date 6/30/08  
Chairperson  
Board of Land and Natural Resources  
State of Hawaii

Approved by the Board of Land and Natural Resources  
at its meeting(s) held on Aug. 22, 2008

APPROVED AS TO FORM:

  
Deputy Attorney General





# CONSERVATION EASEMENT

## SPECIAL TERMS TO MEET IRS REQUIREMENTS

### 1.01 Federal Tax Items

**(a) Qualified Conservation Contribution**

The Conservation Easement has been donated in whole or in part by the undersigned Owner or Owners. The donation of the Conservation Easement by this Grant is intended to qualify as a charitable donation of a partial interest in real estate (as defined under §170(f)(3)(B)(iii) of the Code) to a qualified organization (a “Qualified Organization”) as defined in §1.170(A-14(c)(1) of the Regulations. If the Conservation Easement is transferred to any Person, that Person must commit to hold the Conservation Easement exclusively for conservation purposes as defined in the Regulations.

**(b) Public Benefit**

The undersigned Owner or Owners have granted the Conservation Easement to provide a significant public benefit (as defined in §1.170A-14(d)(4) of the Regulations). In addition to the public benefits described in the Conservation Objectives, the Baseline Documentation identifies public policy statements and other factual information supporting the significant public benefit of the Conservation Easement.

**(c) Mineral Interests**

No Person has retained a qualified mineral interest in the Property of a nature that would disqualify the Conservation Easement for purposes of §1.170A-14(g)(4) of the Regulations. From and after the Easement Date, the grant of any such interest is prohibited and Holder has the right to prohibit the exercise of any such right or interest if granted in violation of this provision.

**(d) Notice Required under Regulations**

To the extent required for compliance with §1.170A-14(g)(5)(ii) of the Regulations, and only to the extent such activity is not otherwise subject to Review under this Grant, Owners agree to notify Holder before exercising any reserved right that may have an adverse impact on the conservation interests associated with the Property.

**(e) Property Right**

In accordance with §1.170A-14(g)(6) of the Regulations, the undersigned Owner or Owners agree that the grant of this Conservation Easement gives rise to a property right, immediately vested in the Holder, that entitles the Holder to compensation upon extinguishment of the easement. The fair market value of the property right is to be determined in accordance with the Regulations; i.e., it is at least equal to the proportionate value that the Conservation Easement as of the Easement Date bears to the value of the Property as a whole as of the Easement Date (the “Proportionate Value”). If the Proportionate Value exceeds the compensation otherwise payable to Holder under Article VI, Holder is entitled to payment of the Proportionate Value. Holder must use any funds received on account of the Proportionate Value for conservation purposes (as that phrase is defined in the Regulations).

**(f) Qualification under §2031(c) of the Code**

To the extent required to qualify for exemption from federal estate tax under §2031(c) of the Code, and only to the extent such activity is not otherwise prohibited or limited under this Grant, Owners agree that commercial recreational uses are not permitted within the Property.

**(g) Acknowledgment of Donation**

Except for such monetary consideration (if any) as is set forth in this Article, Holder acknowledges that no goods or services were received in consideration of this Grant.

**DESIGNATING CONSERVATION EASEMENT  
OVER LESS THAN ENTIRE PROPERTY  
FOR  
LAND COURT PROPERTY**

- File petition to designate easement prior to recording the easement.
- Final recordation will be separate and after obtaining order designating easement.
- General Procedure:
  - Obtain county approval of the map designating the easement;
  - File with the Land Court the petition to designate the easement, together with the original county-stamped map and a tracing of the proposed Land Court map from the surveyor;
  - Land Court checks petition, and if OK forwards to State surveyor;
  - State surveyor notifies Land Court of necessary corrections or changes, which may require filing of amended petition;
  - Upon final approval by Land Court, the Registrar will sign the order and submit it to the Office of the Assistant Registrar at the Bureau of Conveyances for recording in the Land Court recording system.
  - At this point the Map will be approved with an official Land Court map number, and the easement will be assigned an official easement number.
  - Thereafter, the Registrar will record the designation and record it with an official Land Court Order number (can take many weeks).

Document title: Land Court may not condone use of “Deed of Easement” language

## Noncash Charitable Contributions

▶ **Attach to your tax return if you claimed a total deduction of over \$500 for all contributed property.**  
 ▶ **See separate instructions.**

OMB No. 1545-0908

Attachment  
 Sequence No. **155**

Name(s) shown on your income tax return

**Identifying number**

**Note.** Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

**Section A. Donated Property of \$5,000 or Less and Certain Publicly Traded Securities**—List in this section **only** items (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also, list certain publicly traded securities even if the deduction is more than \$5,000 (see instructions).

**Part I Information on Donated Property**—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) Description of donated property (For a donated vehicle, enter the year, make, model, condition, and mileage, and attach Form 1098-C if required.)
<b>A</b>		
<b>B</b>		
<b>C</b>		
<b>D</b>		
<b>E</b>		

**Note.** If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (d), (e), and (f).

	(c) Date of the contribution	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) Fair market value (see instructions)	(h) Method used to determine the fair market value
<b>A</b>						
<b>B</b>						
<b>C</b>						
<b>D</b>						
<b>E</b>						

**Part II Partial Interests and Restricted Use Property**—Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

**2a** Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶ \_\_\_\_\_ . If Part II applies to more than one property, attach a separate statement.

**b** Total amount claimed as a deduction for the property listed in Part I: **(1)** For this tax year ▶ \_\_\_\_\_ .  
**(2)** For any prior tax years ▶ \_\_\_\_\_ .

**c** Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):

Name of charitable organization (donee) \_\_\_\_\_

Address (number, street, and room or suite no.) \_\_\_\_\_

City or town, state, and ZIP code \_\_\_\_\_

**d** For tangible property, enter the place where the property is located or kept ▶ \_\_\_\_\_

**e** Name of any person, other than the donee organization, having actual possession of the property ▶ \_\_\_\_\_

**3a** Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property? . . . . .

	Yes	No

**b** Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire? . . . . .

**c** Is there a restriction limiting the donated property for a particular use? . . . . .

Name(s) shown on your income tax return	Identifying number
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**Section B. Donated Property Over \$5,000 (Except Certain Publicly Traded Securities)**—List in this section only items (or groups of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions of certain publicly traded securities reported in Section A). An appraisal is generally required for property listed in Section B (see instructions).

**Part I Information on Donated Property**—To be completed by the taxpayer and/or the appraiser.

- 4** Check the box that describes the type of property donated:
- |  |  |                                     |
|--|--|-------------------------------------|
| <input type="checkbox"/> Art* (contribution of \$20,000 or more)   | <input type="checkbox"/> Qualified Conservation Contribution | <input type="checkbox"/> Equipment  |
| <input type="checkbox"/> Art* (contribution of less than \$20,000) | <input type="checkbox"/> Other Real Estate                   | <input type="checkbox"/> Securities |
| <input type="checkbox"/> Collectibles**                            | <input type="checkbox"/> Intellectual Property               | <input type="checkbox"/> Other      |

\*Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

\*\*Collectibles include coins, stamps, books, gems, jewelry, sports memorabilia, dolls, etc., but not art as defined above.

**Note.** In certain cases, you must attach a qualified appraisal of the property. See instructions.

	(a) Description of donated property (if you need more space, attach a separate statement)	(b) If tangible property was donated, give a brief summary of the overall physical condition of the property at the time of the gift	(c) Appraised fair market value
A			
B			
C			
D			

	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) For bargain sales, enter amount received	See instructions	
					(h) Amount claimed as a deduction	(i) Average trading price of securities
A						
B						
C						
D						

**Part II Taxpayer (Donor) Statement**—List each item included in Part I above that the appraisal identifies as having a value of \$500 or less. See instructions.

I declare that the following item(s) included in Part I above has to the best of my knowledge and belief an appraised value of not more than \$500 (per item). Enter identifying letter from Part I and describe the specific item. See instructions. ► \_\_\_\_\_

Signature of taxpayer (donor) ► \_\_\_\_\_ Date ► \_\_\_\_\_

**Part III Declaration of Appraiser**

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.

Also, I declare that I hold myself out to the public as an appraiser or perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). In addition, I understand that a substantial or gross valuation misstatement resulting from the appraisal of the value of the property that I know, or reasonably should know, would be used in connection with a return or claim for refund, may subject me to the penalty under section 6695A. I affirm that I have not been barred from presenting evidence or testimony by the Office of Professional Responsibility.

**Sign Here** | Signature ► \_\_\_\_\_ Title ► \_\_\_\_\_ Date ► \_\_\_\_\_

Business address (including room or suite no.)	Identifying number
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City or town, state, and ZIP code

**Part IV Donee Acknowledgment**—To be completed by the charitable organization.

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date ► \_\_\_\_\_

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file Form 8282, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use? . . . . . ►  Yes  No

Name of charitable organization (donee)	Employer identification number	
Address (number, street, and room or suite no.)	City or town, state, and ZIP code	
Authorized signature	Title	Date

# FORM 990

**Part I Summary**

**1** Briefly describe the organization's mission or most significant activities: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

income

	<i>complete Schedule D, Part I . . . . .</i>	<b>6</b>		
<b>7</b>	Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas, or historic structures? If "Yes," complete Schedule D, Part II . . . . .	<b>7</b>		
<b>8</b>	Did the organization maintain collections of works of art, historical treasures, or other similar assets? If "Yes," complete Schedule D, Part III . . . . .	<b>8</b>		
<b>c</b>	An entity of which a current or former officer, director, trustee, or key employee (or a family member thereof) was an officer, director, trustee, or direct or indirect owner? If "Yes," complete Schedule L, Part IV . . . . .	<b>28c</b>		
<b>29</b>	Did the organization receive more than \$25,000 in non-cash contributions? If "Yes," complete Schedule M . . . . .	<b>29</b>		
<b>30</b>	Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? If "Yes," complete Schedule M . . . . .	<b>30</b>		
<b>31</b>	Did the organization liquidate, terminate, or dissolve and cease operations? If "Yes," complete Schedule N . . . . .			

SCHEDULE D (Form 990)

Department of the Treasury Internal Revenue Service Name of the organization

Supplemental Financial Statements

Complete if the organization answered "Yes," to Form 990, Part IV, line 6, 7, 8, 9, 10, 11a, 11b, 11c, 11d, 11e, 11f, 12a, or 12b. Attach to Form 990. See separate instructions.

OMB No. 1545-0047

2011

Open to Public Inspection

Employer identification number

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts. Complete if the organization answered "Yes" to Form 990, Part IV, line 6.

Table with 2 columns: (a) Donor advised funds, (b) Funds and other accounts. Rows include: 1 Total number at end of year, 2 Aggregate contributions to (during year), 3 Aggregate grants from (during year), 4 Aggregate value at end of year, 5 Did the organization inform all donors...?, 6 Did the organization inform all grantees...?

Part II Conservation Easements. Complete if the organization answered "Yes" to Form 990, Part IV, line 7.

Table with 2 columns: Held at the End of the Tax Year. Rows include: 1 Purpose(s) of conservation easements, 2 Complete lines 2a through 2d if the organization held a qualified conservation contribution..., 3 Number of conservation easements modified..., 4 Number of states where property..., 5 Does the organization have a written policy..., 6 Staff and volunteer hours..., 7 Amount of expenses..., 8 Does each conservation easement..., 9 In Part XIV, describe how the organization reports...

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets. Complete if the organization answered "Yes" to Form 990, Part IV, line 8.

Table with 2 columns: Amounts. Rows include: 1a If the organization elected, as permitted under SFAS 116..., 1b If the organization elected, as permitted under SFAS 116..., 2 If the organization received or held works of art..., a Revenues included..., b Assets included...