



November 27, 2023

Submitted via email: pra.comments@irs.gov

Internal Revenue Service

Attn: Mr. Andres Garcia

Room 6526

1111 Constitution Avenue NW

Washington, DC 20224

Re: OMB Control No. 1545–0047

Dear Mr. Garcia:

Thank you for the opportunity to submit comments on the forms used by tax-exempt organizations as published in Federal Register, Vol. 88, No. 185 on September 26, 2023, OMB Control No. 1545–0047 (Notice).

Founded in 1982, the Land Trust Alliance is a nonprofit corporation and national land conservation organization based in Washington, D.C., that works to save the places people need and love by strengthening land conservation across America. The Alliance represents approximately 950 member land trusts supported by 6.3 million members nationwide. Alongside our members, we harness three fundamental aspects of the American ethos: volunteerism, community spirit and connection to the land.

In response to the Notice, the Land Trust Alliance hereby provides comments on the Form 990 and Form 8283 not only from the perspective of a tax-exempt organization itself but also as an organization that creates ethical and technical guidelines for other tax-exempt organizations, namely for the responsible operation of land trusts. These guidelines are stated in *Land Trust Standards and Practices* (Standards).

With respect to Form 990, the Alliance's affiliated organization, the Land Trust Accreditation Commission (Commission) awards accreditation to eligible land trusts meeting the highest national standards for excellence and conservation permanence. The Standards and accreditation requirements both require a complete and accurate annual information return (Form 990 or equivalent). The Commission finds that most errors are due to misunderstanding the instructions. Most relevant to land trusts are Form 990 Part IV, line 7 and its instructions; Schedule D; and Schedule M. Our suggestions are organized accordingly.

The Alliance's comments also address Form 8283, Noncash Charitable Contributions, and its instructions. The Alliance's member organizations specialize in accepting charitable contributions of land and of conservation easements (partial interests in land), and virtually all those donations require the donor to fill out, and the charity to sign, the Form 8283. Given our role in serving and building the capacity of the land trust community, we are very familiar with Form 8283, and with donor's experience with it.

The Standards and accreditation requirements have a land trust evaluate the Form 8283 and the accompanying appraisal to reduce the reputational risk that could occur if a landowner's tax deduction were to be challenged by the IRS. Further, the land trust has responsibilities to not knowingly participate in transactions that are potentially fraudulent or abusive to protect the reputation of the land trust itself and of the greater land trust community. We respectfully offer numerous suggestions regarding how Form 8283 can be improved and how the IRS can use information provided in the Form.

SPECIFIC SUGGESTIONS

Form 990, Schedule D, Supplemental Financial Statements

Issue: In Part V, Endowment Funds, this section asks organizations to provide the estimated percentage of their year-end balances that were held as a board-designated or quasi-endowment, permanent endowment, or term endowment. These terms are not used regularly by accountants when conducting audits, reviews, or compilations of an organization's financial statements. Therefore, many organizations have difficulty translating information from other financial records to the Schedule, resulting in inconsistencies and errors.

Suggestion: Revise Schedule D to include terms more commonly used in accounting such as unrestricted but board designated net assets, net assets with time/purpose donor restrictions, and net assets with perpetual donor restrictions.

Schedule M Noncash Contributions

Issue: Schedule M must be completed by land trusts that report more than \$25,000 of aggregate noncash contributions or that received gifts of land or conservation easements. Land trusts often misunderstand whether they should include donations of conservation easements where no tax deduction is taken, especially if the land trust's financial records report no value for the easement.

Suggestion: The instructions provide a list of what to report and what not to report. Adding the following could minimize confusion: **“Report conservation easements donations even if no tax deduction is claimed and even if the organization does not report the value of the easements in its books, records, and financial statements.”**

Form 8283 Noncash Charitable Contributions and Instructions

1. *Issue: The last version of Form 8283 predated the enactment of the Charitable Conservation Easement Program Integrity Act (Act)(Section 605 of the Consolidated Appropriations Act, 2023, signed into law on December 29, 2022.). The U.S. Congress passed the Charitable Conservation Easement Program Integrity Act as part of the year-end “omnibus” spending bill, and it was signed into law on December 29, 2022. This legislation effectively shuts down abusive syndicated conservation easements transactions -- a tax avoidance scheme that took advantage of the federal conservation easement tax incentive. Modifications are required to reflect the changes in federal law reflected in the Act’s requirements.*

Suggestion: Revise Form 8283 accordingly to emphasize the Act’s requirements and enhance reporting. Insert checkboxes that reflect the Act’s elements which effectively disqualify easement donations where:

- a) The contribution is made by a partnership.
 - b) The contribution fails to meet a three-year holding period test.
 - c) The contributing partnership is not substantially owned by members of a family.
 - d) The amount of the contribution exceeds 2.5 times the sum of each partner’s relevant basis in such partnership.
2. *Issue: Insert references to the Charitable Conservation Easement Program Integrity Act and IRS Notices prohibiting abusive syndicated transactions to put the donor and donee on notice of the reporting and disclosure requirements and prohibitions.*

Suggestion: Add a reference to the Act and the regulatory notice that supplants IRS Notice 2017-10 in the Instructions.

On December 23, 2016, the IRS issued Notice 2017-10, which identifies and classifies certain highly overvalued conservation easement transactions as “listed transactions.” This listing also applies to all “substantially similar” transactions, which would include similarly overvalued donations of land “in fee” – that is, land not subject to a conservation easement. On December 6, 2022, the IRS and Treasury issued proposed Treasury regulations (REG-106134-22) in response to adverse court decisions questioning and rejecting the validity of Notice 2017-10. Form 8283 should refer to the Treasury regulations that address listed transactions once these regulations are finalized.

3. *Issue: Donors sometimes mistakenly check the “Qualified Conservation Contribution” box though the donation is one of fee land.*

Suggestion: Clarify the execution of the Form for fee land donations by instructing donors to check the “Other Real Estate” check box and highlighting that the Supplemental Statement is only a requirement for conservation easement donations. The Instructions should make clear that Part I column (e) includes donations of fee land.

4. *Issue: Clarify the necessity of and details for the Supplemental Statement.*

Suggestion: Emphasize the requirement that a Supplemental Statement is required for each Qualified Conservation Contribution and provide a standardized template for those statements. On page 3, the Instructions direct donors of Qualified Conservation Contributions (most commonly, conservation easements) to “attach a statement” to their return. We suggest strengthening the language to make the requirement clear, referencing that requirement on the Form itself, and providing a template for that attached statement. Having a uniform format will help taxpayers provide the information most helpful to the IRS and assist the IRS in using the information.

We suggest the following changes at the bottom of the first column of page 3 of the instructions: “**If you donate a Qualified Conservation Contribution, you must** attach a statement **to the Form 8283** that:”

Adding this requirement directly on the Form will help taxpayers understand their obligations. We have attached a proposed template for the attachment, including all the information requested by the Instructions (See Attachment 1).

We suggest the IRS modify the checkbox on Section B, Part I of the Form: “☐ Qualified Conservation Contribution** and include below the following: “*****Qualified Conservation Contributions must attach a Supplemental Statement; see instructions**”.

5. *Issue: The Instructions for Section B, Part 1, Line 3, Column (a) call for a description of the terms of the easement deed in a space on the Form that simply would not allow any meaningful description.*

Suggestion: It would be far more useful for screening a return, or for an agent first reviewing it, to ask for a single, discrete, yet important quantity not otherwise requested – the acreage of the easement or land donated – and direct that a more detailed description be completed in an attachment. Knowing the acreage allows quick computation of the dollars per acre being

claimed as the value of the easement or land, and that provides an easy reference point for review.

We recommend changing paragraph 2 of the Instructions for Section B, Part 1, Line 3, Column (a) to read: **“For a donation of land or of a Qualified Conservation Contribution, write the acreage of the gift in the space provided and attach a more detailed description of the land and, if a qualified conservation contribution, describe the conservation values of the property and the conservation purposes of the conservation easement in detail.”**

6. *Issue: The current instructions allow a donor, in answering Section B, Part I, Line 3, Columns (d), (e), and (f) about the date, means of acquisition, and cost or basis of the gift, to do so either for the Qualified Conservation Contribution (usually, a conservation easement) itself, or for the land underlying the easement. As a result, the IRS reviewer has no idea of what they are looking at without looking at additional information (whether the information was about the underlying property or about the easement) requested in the instructions --although the instructions do not indicate where or how this information is to be provided.*

In addition, no instructions are provided as to how one is to calculate the basis of an easement – a computation that could be very complicated. Eliminating complex and unspecified computations would make this information much more useful to the IRS and simpler for the taxpayer.

Suggestion: Simplify and clarify the instructions for Section B, Part I, Line 3, Columns (d), (e), and (f). As for date of acquisition (column (d)) and "how acquired by donor" (column (e)), those are only relevant for the underlying land, since the easement did not exist until it was donated, and the easement was given away, not necessarily acquired.

We propose that the instructions be changed to remove any option and ask that donors of Qualified Conservation Contributions report the date acquired, how acquired, and the basis or cost, of the real estate underlying the easement. In the Instructions, insert under the heading **"Columns (d)-(f)": "For a Qualified Conservation Contribution, please provide this information for the underlying property only."**

7. *Issue: Section B, Part I, Line 3, Column (c) has the heading “Appraised Fair Market Value” which creates confusion.*

Suggestion: Section B, Part I, Line 3, Column (c) now has the heading “Appraised Fair Market Value” (formerly "Fair Market Value"). We suggest changing that to **"Fair Market Value of Gift."**

In our experience, it is not uncommon for a conservation easement donor to report the value of the underlying fee property here rather than the value of the conservation easement gift. This has been compounded by the current instructions for columns (d), (e) and (f), addressed in our suggestion above. Section B, Part I of the Form, subparts 5(c), (d), (e), (f) ask for the “[a]ppraised fair market value,” “[d]ate acquired by donor,” “[h]ow acquired by donor,” and “[d]onor’s cost or adjusted basis,” respectively. Most donors understand that the appraised fair market value should be that of the easement, but it is not clear if the “date acquired,” “how acquired,” and “basis” questions relate to the easement or the subject property (see explanation of No.6 above).

8. *Issue: The Form and instructions do not address how to report values determined using the contiguous parcel or enhancement rules.*

Suggestion: It also should be clear from the face of the Form and the Instructions how the donor should report values determined using the contiguous parcel or enhancement rules. We recommend that a check box be inserted on the Form if either rule applies. The Instructions should state that information about the facts and circumstances and valuation method for both rules should be included in the Supplemental Statement.

9. *Issue: Create consistency between the Instructions on Section B, Part II and the Form.*

Suggestion: On page 6 of the Instructions, to the title "Part II, Partial Interests and Restricted Use Property" add "(Other Than Qualified Conservation Contributions)," to reflect the actual language on the Form. Qualified Conservation Contributions are "Partial Interests," but there is no explicit direction in the instructions that Part II does not apply to them -- although it is clearly not meant to.

10. *Issue: Part V of the Form is the Donee Acknowledgement, in which the donee attests that they have received the donor's gift. But IRC 170(f)(8) directs that to properly substantiate the gift, such an acknowledgment must include, in addition to a description of the property (already provided in Form 8283), a statement of whether the donee provided any goods or services to the donor in consideration of the gift, and if so, a good faith estimate of the value of those goods and services.*

Suggestion: This could easily be provided by adding the following question to the Form in Part IV: **“Did the organization provide any goods or services to the donor in consideration of this gift?”** The Instructions would then need to tell donee organizations answering “yes” that they must attach a separate statement, including a good faith estimate of the value of those goods or services.

This could be one of the more effective changes made to Form 8283 in terms of reducing paperwork and streamlining compliance. Generating, transmitting, and archiving separate 170(f)(8) statements costs charities millions of dollars per year. That is a huge expense to provide the IRS what in the vast majority of cases is a one-word answer (No) that could easily be provided on the Form 8283, which already obtains the other information required by 170(f)(8). This change would aid taxpayers in complying with the law and aid charities in carrying out their charitable purposes.

11. Issue: Some donees use the date of the last signature on a conservation easement as the date "that it received the donated property" when completing Part V. Regulation 26 CFR 1.170A-14(g) makes it clear that a conservation easement gift does not qualify as a tax deduction until it is legally enforceable, which generally means the date it is recorded in county land records.

Suggestion: Specify that for Qualified Conservation Contributions, the date of the gift is the date of documented delivery of the conservation easement deed to the recording office. The date is important, since the date the easement is effective is the date of donation, which determines the tax year the deduction affects.

There is, however, an important additional detail. The courts have agreed that an easement is enforceable when there is a documented delivery of the easement to the recorder, even if the recorder's office does not immediately perform the recordation because of workload, weekends, holidays or other reasons. Therefore, a correct interpretation of the law would be that the date of donation is the date of documented delivery of the easement to the recorder, rather than the date of recordation.

Specifying this in the Instructions would ensure that the IRS gets the specific information that is relevant to the tax treatment of the gift. This could be accomplished by adding the following after the second paragraph of the Instructions for Part V: **"Where the donation is a Qualified Conservation Contribution, the date the donor received the donation is the date of documented delivery of the document to the recorder."**

12. Issue: Increase efficiencies and organization.

Suggestion: Include a new question asking donors to disclose what attachments have been provided with the Form (e.g., the Supplemental Statement and the qualified appraisal). This will help both donors and the IRS know quickly whether appropriate materials have been included with the Form.

13. *Issue: The requirement for donors to attach a Form 8283 to their return for all future-year carryover deductions, not just the year of the donation, has caused confusion. Some donees and advisors have worried that the requirement requires more than simply attaching a copy of the original Form 8283 – confusion caused, at least partly, by referring to the need to file a "completed Form 8283" and referring to "the completed Form 8283 for the current year."*

Suggestion: Simplify the language to clarify the documentation requirement for carryover deductions. We suggest replacing the paragraph on page 8 of the Instruction entitled "Noncash Contributions Carried Over to a Later Year" with the following:

"Noncash Contributions Carried Over to Later Year. If your noncash contribution was subject to one or more limits based on your adjusted gross income, and your unused charitable deduction from a previous year will be claimed in the present year, you must attach a copy of the completed Form 8283 from the year of donation to your return. If an appraisal was required to be attached to the previous return, you must also attach a copy of that appraisal. Separate Forms 8283 need to be submitted for each contribution that is carried over from the previous year to the present year."

14. *Issue: Confusion over Form completion by donors in joint ownership.*

Suggestion: Clarification would be very helpful for joint owners of land who donate a conservation easement. For example, if four joint owners of land donate a conservation easement, and each owns an undivided 25 percent interest in the donated land, how should they answer (c), (f) and (g) in Section B, Part I, question 3?

It would seem that answering those questions for their share of the property makes sense. But many donors now, being asked for the "(c) Appraised fair market value," "(f) Donor's cost or adjusted basis," and "(g) For bargain sales, enter amount received..." will enter those values for the entire property, rather than for their share. They may also wonder if they should also fill out Section B, Part II (Partial Interests and Restricted Use Property) -- even though the title excludes donations of Qualified Conservation Contributions.

We recommend clarifying the Instructions for joint ownership so the landowners understand how to fill out the Form correctly.

15. *Issue: Donations of land or interest in land can be donated to more than one qualified organization (in which multiple organizations co-hold the property interest). The Instructions are not clear about how donors should address this situation, such as with multiple Forms 8283 signed by each donee.*

Suggestion: Since this situation applies almost solely to partial interests of land (most commonly, conservation easements), add clarification on how to handle this situation to the

Instructions for donors of Qualified Conservation Contributions or add a requirement to disclose multiple donees as part of the Supplemental Statement.

16. Issue: Form 8283 has all the data necessary to identify abusive syndicated conservation transactions. Those transactions are all characterized by an anomalous increase in claimed value over the taxpayer's basis in little or no time.

Suggestion: We urge the IRS to prioritize making at least key portions of Form 8283 “machine-readable,” to use what is now an old-fashioned term. Enabling Form 8283 to be scanned for value of donation, basis of donation, date of acquisition and acreage for land or easement donations would provide the IRS with simple screens that can quickly identify anomalous valuations. Three of these four items are not available from Form 1040, nor are they included in the Schedule K-1 for donations made by partnerships. But they are on Form 8283.

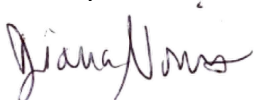
17. Issue: Many taxpayers misinterpret the Form and erroneously input information in Section B, Part I, Line 3, Columns (h) and (i). The Instructions are clear that these columns are only required if the taxpayer is not required to get an appraisal.

Suggestion: Rather than “See instructions,” it would be more helpful if the header clarified “If appraisal not required (see instructions).”

Conclusion

Thank you for the opportunity to comment and your attention to these suggestions. The Alliance is readily available to discuss or answer any questions about these comments.

Sincerely,



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(Attachment 1 follows on next page)

ATTACHMENT 1

Qualified Conservation Contribution: Supplemental Statement Proposed Template

Name(s) shown on your income tax return:

Identifying number:

Identify the conservation purposes furthered by the Qualified Conservation Contribution (see 26 USC 170(h)(4)).

Description of the Qualified Conservation Contribution: Describe the property (and/or attach the conservation easement) and its conservation values, what uses are prohibited, how the prohibition protects its conservation values, and what development or commercial activity rights are reserved for the landowner.

Summary of Valuation

Fair market value of fee property before gift: \$ _____

Fair market value of fee property after gift: \$ _____

Fair market value of Qualified Conservation Contribution: \$ _____

(Note: This should match the value reported in Section B, Part I, Line 3, Column (c))

Fair market value per-acre or per-square-foot of Qualified Conservation Contribution: \$ _____

Method of valuation (such as the income approach or the market data approach):

Did the appraiser assume a before-easement highest and best use for the subject property that differs from its current use? ☐ yes ☐ no

Did the appraiser assume rezoning in estimating the before-value of the subject property? ☐ yes ☐ no

Extraordinary assumptions listed in the appraisal:

Supporting Information

- 1) Was the conservation easement recorded in the appropriate recordation office where the property is located? ☐ yes ☐ no
- 2) Was the conservation easement part of a bargain sale? ☐ yes ☐ no
- 3) Does the appraisal include all contiguous property you own? ☐ yes ☐ no
- 4) Was the conservation easement donated to more than one qualified organization (in which multiple organizations co-hold the property interest)? ☐ yes ☐ no
- 5) Do you or a related person have any interest in other property nearby? ☐ yes ☐ no
 - If yes, describe that interest:
 - If yes, does the appraisal address enhancement? ☐ yes ☐ no
- 6) Did you make the donation in order to get a permit or other approval from a local or other governing authority or other form of quid pro quo? ☐ yes ☐ no
- 7) Is the property subject to existing restrictions or limitations on its development and use? ☐ yes ☐ no
- 8) Was the donation required by a contract? ☐ yes ☐ no
- 9) Does the donation involve a “Listed Transaction” as defined by [insert IRS Notice]? ☐ yes ☐ no
- 10) Is the property subject to a mortgage? ☐ yes ☐ no
 - If yes, was a mortgage subordination recorded with the Qualified Conservation Contribution?
☐ yes ☐ no
- 11) Was there documentation (such as written descriptions, maps, and photographs) at the time of the gift to establish the condition of the property to enable the grantee to monitor and enforce the conservation easement (or other conservation restriction)? ☐ yes ☐ no
- 12) Did you receive a contemporaneous written acknowledgment from the donee organization for the donation of the conservation easement? ☐ yes ☐ no