

From: [Russ Shay](#)
To: [*TE/GE-EO-F990-Revision; Schultz Ronald J;](#)
CC: [Mary Pope Hutson; Rand Wentworth; Deanna Eastman;](#)
Subject: Comments of Land Trust Alliance on 6-14-2007 Draft Form 990
Date: Friday, September 14, 2007 3:33:17 PM
Attachments: [Alliance 990 comments 9-14-07.doc](#)

<<Alliance 990 comments 9-14-07.doc>>

We wish to submit the following comments on the Draft Form 990. We have included our comments as an attached Word document, as well as below.

Russell Shay

Director of Public Policy

Land Trust Alliance

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Washington, DC 20036

202-638-4725 x 305

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publicpolicy!

September 14, 2007

Form 990 Redesign, ATTN: SE:T:EO

Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

Dear Sir or Madam,

Thank you for the opportunity to comment on the Draft Form 990. The Land Trust Alliance is a national conservation organization that works on three fronts to save the places people love. First, we accelerate the pace of conservation, so more land and natural resources get protected. Second, we work with our members – 1100 nonprofit land conservation organizations – to increase the quality of our collective conservation work, so the most important lands get protected using the best practices in the business. And third, we ensure the permanence of conservation by creating the laws and resources needed to defend protected land over time.

We will restrict our comments to the questions regarding conservation easements, as the Alliance's member organizations are the primary private sector holders of conservation easements. These questions appear in the core form, in Schedule D, and in Schedule M.

We want to thank the Internal Revenue Service (IRS) for its attention to these questions. The draft is greatly improved in the clarity of its questions over the current Form 990. We do have further suggestions of changes that would further clarify the questions asked.

Those suggestions follow, below.

Form 990, Part VII - Statements Regarding General Activities, Line 2

2. 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 Part VIII of Schedule D and Schedule M.

Issue: Land trusts will want to know whether this question is asking about any conservation easements, or only those for which a charitable contribution

deduction was taken.

By way of background, many conservation easements are held by nonprofit organizations, for which no charitable contribution deduction was claimed. The federal, state, or local government sometimes requires conservation easements as part of permitting processes, and some of these easements are held by nonprofits. Other conservation easements are purchased. For example, the US Department of Agriculture ("USDA") allows nonprofits to hold conservation easements purchased partly with USDA funds, and partly with other matching funds. In some cases, easements are donated but no charitable contribution deduction is claimed and no request is made by the donor to acknowledge receipt of the property on Form 8283, Noncash Charitable Contribution.

It is our understanding from discussions with Ronald Schultz that the Service intended the question to be interpreted to be inquiring about receipt or holding of conservation easements, whether or not a tax deduction was taken for their donation. If so, that should be made clear.

We would also recommend adding the word "permanent" or "perpetual" to the question (or instructions), as conservation organizations may hold term easements, the legal status of which is very different from that of permanent or perpetual easements. These are easements which terminate by their own terms. They are not tax-deductible, but they are valid property interests. Including these term easements in what is reported here will lead to confusing and misleading answers to the question in Schedule D, Part VIII, line 3, regarding termination or modification of easements that may defeat the IRS's intention in asking that question.

Recommendation:

- 1. That the instructions (or the question) for the Form 990 clarifies that the question applies to all conservation easements, whether donated, purchased, or otherwise acquired.*
- 2. That the instructions (or the question) for the Form 990 indicates whether the question applies only to perpetual or permanent easements. **We suggest the following addition to the instructions for this purpose:***

Line 2. Conservation easements

An organization should answer “Yes” if it received or holds one or more perpetual conservation easements, whether those easements were donated, purchased, or otherwise acquired.

Draft Form 990, Schedule D, Part VIII Question 2

2. Complete this table if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year.

*Issue: This question uses the term “qualified conservation contribution”, which refers specifically to a donation qualifying for a tax deduction under Section 170 (h) of the Code. Given that the Service specifically indicated to us that it wanted to collect information on the stewardship of all perpetual conservation easements, whether or not a tax deduction had been taken for them, **the Service may want to eliminate this reference.***

If the Service wishes to inquire only about conservation easements that are “qualified conservation contributions”, we would recommend that the Service ask only about conservation easements “for which the organization has signed a Form 8283”. In signing the Form 8283, the land trust is acknowledging that the donation is, in fact, a “qualified conservation contribution.”

Without having signed an 8283, the land trust would not have considered, or be able to answer, the question of whether a conservation easement donation met the specific legal standards for a “qualified conservation contribution”.

2(f). Number of easements on land within or adjacent to a residential development

Issue: We still do not understand what the purpose of this question is, to the Service, the organization, or the public. If the Service could clarify why it asked this question, we might be able to help to develop a more precise question to capture necessary information without shouldering conservation charities with a

potentially overwhelming administrative burden.

As it is now, the lack of definition in this question makes it extremely difficult for the filer to know how to respond. “Within or adjacent to a residential development” is not a clear or well-defined criterion. Even if it were, most easement holding organizations do not keep records in a manner that would allow the organization answer this question, as their records are focused on the property within the conservation easement, NOT the property outside of the easement.

*As currently written, could force organizations to have to extensively survey and report the land use **outside of** each of their conservation easements. This would be an enormous burden, for uncertain results.*

If the IRS wishes to address information about direct relationships between residential development and the easement donation, for purposes of identifying potential quid pro quo issues relating either to the permitting of a residential development, those questions should be addressed to the donor of the easement, through one or more questions on the Form 8283. This line of inquiry involves the donor, not the donee.

Question 4. Number of states in which the organization held an easement.

*Issue and Recommendation: We would recommend that this be changed to read “Number of states in which the organization held a **conservation** easement.”*

Many land trusts hold easements for public access and for their own access to property that are not conservation easements or qualified conservation contributions. Mixing such easements with conservation easements in these answers will only confuse the data.

Question 5. Staff hours devoted to monitoring and enforcing easements during the year.

Issue: Monitoring of easements can and is often done by volunteers, contractors, and cooperating agencies, as well as by staff. A more valuable question would be to ask for "total hours" which would also embrace non-staff volunteers (including

pro bono work on enforcement by volunteer attorneys).

Where there is a violation of an easement, enforcing it (typically, through a court proceeding) can be an extremely time-intensive enterprise.

Recommendation: We recommend that this be changed to read “Total hours spent monitoring and enforcing conservation easements during the year.”

Thank you again for the opportunity to provide comments on the draft Form 990.

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From: [Jeanie McIntyre](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: comments re proposed changes to 990
Date: Friday, September 14, 2007 12:25:28 PM
Attachments:

Thank you for the opportunity to comment on proposed revisions to IRS Form 990. The Upper Valley Land Trust (UVLT) is a regional membership-based land conservancy serving the people of the Connecticut River Valley of New Hampshire and Vermont. UVLT has interests in more than 350 conservation easements encompassing 33,000 acres. We acquire approximately 20-30 new conservation easements annually either through donation (about 65%) or purchase or bargain sale (about 35%).

We applaud efforts to improve the accuracy and usefulness of 990 Forms, but we have concerns about the changes proposed. Overall, we feel the new form will require additional time and resources to complete and will be more expensive for us. Our 990 Form is usually prepared by the outside firm that conducts our audit. But there are mission and programs questions on the new 990 that our auditor may not be qualified to address. We have been told that our tax preparation fees will increase if these changes are implemented.

The goal of transparency is laudable, but the impact of some of the changes will be misinformation and likely misuse. We are concerned that the financial ratios and compensation data will not be presented in context. Much of the new information sought in the 990 is available from the websites and newsletters of non profits. That which is not can generally be acquired through inquiry and dialogue with managers and trustees. Interested parties will obtain a much more complete, accurate and useful picture of an organization's health through these means.

With specific regard to conservation easements, we have questions about the term "qualified conservation contribution" as used in Schedule M Part 1 Types of Property, Line 15 and Schedule D, Part VIII. Many land trusts hold conservation easements that are not donated pursuant to Section 170(h). These may include easements which were purchased, conveyed as part of a regulatory mitigation agreement, or otherwise did not qualify. It is unclear whether these should be reported on the 990 Form. We would point out that for some land trusts, purchases and mitigation agreements represent a significant portion of reported financial activity.

Schedule M, Part 1, column (b), Line 15. At present there is no requirement that easement donors share appraised value information with the donee. (See 8283 instructions). Further, as noted above, some donors make gifts that are not appraised.

Schedule M, Part 1, column (d), Line 15. Like many land trusts, UVLT does not record conservation easements as an asset. The value of the development potential that is extinguished through the execution of a conservation easement does not accrue to the land trust. The land trust acquires an enforcement responsibility, not a marketable asset.

Schedule D, Part VIII Conservation Easements. Compiling information on land use changes adjacent to conservation easements will be extremely time-consuming and won't be helpful to the IRS. Is it harmful that homeowners want to live adjacent to a park or trail corridor established several years previous? Is the land trust expected to monitor activities on not only the land conserved but all land adjoining it, even if owned by parties who had nothing to do with the conservation project? And report on such changes continuously? This is unreasonable. In addition, in the region where we work it is common for landowners to conserve some but not all of a property – setting aside land for a child or parent, or to be sold in the case of illness or unforeseen hardship. These reserved rights are documented at the time the gift is valued. Is the IRS suggesting that residential sites MUST be excluded from the easement?

Schedule D, Item 3 includes a variety of actions which should probably be separated. Be aware that as easements age, it is customary for these to be amended or re-recorded to clarify ambiguous terms or improve easement drafting based on current legal knowledge. Modifications can be positive and add public value. We are concerned that a reader might conclude a land trust that reports a larger number of modifications is being irresponsible, when in fact the opposite is true.

Schedule D, Item 5 assumes that “staff hours” is a reasonable measurable of a land trust’s commitment to the easements it holds. But many land trusts use trained volunteers to do this work, or blend volunteers and professional staff. A better measure would be whether the land trust monitors its properties in compliance with the guidelines established by the Land Trust Alliance.

Jeanie McIntyre, President
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Learn more about UVLT and our programs at www.uvlt.org

From: [Ryan Owens](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments on Draft Redesigned Form 990
Date: Friday, September 14, 2007 3:45:05 PM
Attachments:

Dear sirs,

The Monadnock Conservancy is grateful for this opportunity to submit comments to the IRS in response to the draft redesigned form 990 released on June 14th, 2007. The new form is a clear indication of the IRS' commitment to strong, transparent, and ethical non-profit governance. We truly appreciate and share this commitment, which is reflected in the fact that we are one of 38 land trusts nationwide now seeking land trust accreditation from the newly formed Land Trust Accreditation Commission. The Commission, still in its pilot phase of developing the accreditation process, was created as a direct response to concerns from the IRS and Congress of legal and ethical abuses by land trusts. We are proud to be joining our colleagues in New Hampshire and nationwide in helping the IRS strengthen form 990 and the greater community of non-profit organizations.

Form 990, Part III, Statements Regarding Governance

Item 3b asks how many transactions were reviewed under a conflict of interest policy. However, a truthful answer to this question might fail to indicate projects that were not reviewed under the policy. Is the question aimed at determining how many transactions had potential conflicts that were addressed, ignoring those for which there was no risk of conflict? If so, it should specify this. If not, it might make more sense to ask how many transactions were not reviewed in regard to the policy.

Schedule D, Part VIII:

Item 2 - We assume that the term "Qualified conservation contribution" means a qualified conservation easement contribution under section 170(h). If so, does this mean that the organization should report ONLY those conservation easements that were donated pursuant to 170(h) and for which the donor did claim or intends to claim a deduction? Or does this mean ALL conservation easements received by the organization, including easement donations for which

no deduction was sought, easements purchased at fair market value, and easements that would not have met the conservation purposes of 170(h) yet were nonetheless conveyed to the organization? We hold some conservation easements for which no deduction was sought yet which nonetheless would have qualified under 170(h). Other land trusts also hold some easements that may not have qualified under the 170(h) conservation purposes test, yet which were nonetheless found to have justifiable public benefit. Do you want all conservation easements of all kinds, or just those for which a deduction was sought?

Items 2(e) and 2(f) - As you know, a conservation easement has no control over changes on abutting lands. For example, we may accept an easement in 2007, and a golf course or residential development could be built beside it in 2009. Though we see where you're going with this line of questioning, you may be inundated with useless information year after year as uses of abutting lands change over time. Instead, it might make more sense to ask how many easements were "acquired" in the tax year within or adjacent to these circumstances, or, better yet, ask how many easements were acquired **as a component of** a greater residential or golf course development. The definition of "residential development" is also unclear. Many conservation easement grantors build homes on unrestricted land adjacent to their easement land, sometimes several homes. How many homes constitute a full development?

Item 3 lumps together some very different items. This makes the information gathered less useful or even confusing. For example, an easement amendment or transfer may very well result in a net positive change in public benefit, whereas a termination can constitute a major failure by the land trust. It would make more sense to separate these items.

Item 5 - Many land trusts, including ours, rely on trained volunteers for the majority of our easement monitoring. Therefore, a truthful answer to this question as written would suggest a woeful lack of monitoring effort. The question should also address volunteer hours.

Schedule M, Part I, Types of Property

Line 15 - The same comments and questions above for Schedule D, Part VIII, Item 2 apply here.

Line 15, Column (b) - Assuming you are asking for all easement donations, regardless of deductions taken, this value is impossible to know without an appraisal (which is otherwise not conducted if no deduction is sought).

Line 15, Column (d) - This appears to be the value of easements from the balance sheet. If so, this number will be \$0 for any organization that doesn't ascribe a value to easements. While an easement donor may receive a tax deduction based on the reduction in the value of his/her land as the result of a conservation easement, that value does not accrue to the land trust. Accountants consider conservation easements to have no net financial value to the land trust, and in a practical sense would more logically consider them to be liabilities. Will zeros in this column be an unexpected result as far as the IRS is concerned?

Thank you once again for your efforts.

Sincerely,
Ryan Owens

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Ryan Owens
Conservation Project Manager
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From: [Paul Edmondson](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments of the National Trust for Historic Preservation on 6-14-2007 Draft Form 990
Date: Friday, September 14, 2007 11:05:07 PM
Attachments: [NTHP.990.Comments.pdf](#)

Attached please find the comments of the National Trust for Historic Preservation on the proposed revision of Form 990. For purposes of this submission, our comments are limited to those portions of the proposed revision relating to conservation easements.

A comment letter is enclosed in adobe pdf format, the text of which is reproduced in this email below.

Thank you for your consideration of these comments.

Paul W. Edmondson | Vice President & General Counsel
National Trust for Historic Preservation | 1785 Massachusetts Avenue NW | Washington, DC 20036
Phone: 202-588-6035 | Fax: 202-588-6272
email:paul_edmondson@nthp.org | [web:www._____](http://web:www.nationaltrust.org/law)

September 14, 2007

Form 990 Redesign, ATTN: SE:T:EO
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

Re: Form 990 Redesign, Public Comments



September 14, 2007

Form 990 Redesign, ATTN: SE:T:EO
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

Re: Form 990 Redesign, Public Comments

Dear Sir or Madam,

Thank you for providing an opportunity for public comment on the proposed revisions to Form 990. The comments provided in this letter are intended to relate specifically to those provisions of the proposed revised 990 and its attachments that affect exempt organizations that hold conservation easements on historic properties.

The National Trust for Historic Preservation (National Trust) is the only nonprofit organization chartered by Congress to promote public participation in the preservation of America's heritage. For more than 30 years, the National Trust has actively encouraged the use of conservation and preservation easements to preserve historic places. Pursuant to our mission and our 1949 Congressional Charter, the National Trust has published reference materials on easements, and has provided advice and assistance to hundreds of other preservation and conservation organizations—mostly at the state and local level—that acquire and hold easements to protect historic sites. Over that same period, the National Trust has itself acquired approximately 100 easements, protecting a variety of historic sites in 21 states and the District of Columbia.

As a preliminary matter, the National Trust wishes to endorse the comments provided to the Service by the Land Trust Alliance, which is the leading organization dedicated to the effectiveness and sustainability of the nation's land trusts and their use of conservation easements. Given its experience and its national role in promoting best practices for organizations holding conservation easements, the National Trust believes that the Land Trust Alliance's comments regarding the provisions of the proposed 990 revision relating to conservation easements should be given appropriate consideration by the Service.

The following comments are provided by the National Trust considering the specific circumstances of exempt organizations that hold conservation easements that protect historic structures, buildings, and historically important land areas (herein described as "preservation easements"):

Form 990, Part VII - Statements Regarding General Activities

Line 2: 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 Part VIII of Schedule D and Schedule M.

Comment: The National Trust agrees with the Land Trust Alliance that this language should be clarified (or at a minimum that the Instructions be clarified) as to whether this reporting requirement applies only to easements for which a tax deduction was sought by the donor. Unless clarified, some preservation organizations may assume that this reporting requirement only applies to conservation easements for which deductions are sought as a qualified conservation contribution under IRC 170(h), while others may assume that the requirement applies to *any* conservation easement, even those purchased by the organization, or imposed by the organization as a condition of sale of a historic property. This will lead to an inconsistency in reporting.

The National Trust also agrees with the Land Trust Alliance that the reporting requirement should only apply to *perpetual* conservation easements. A number of historic preservation organizations have accepted or otherwise hold *term* easements, which do not qualify for treatment under IRC 170(h), and which impose different obligations for the easement-holding organization. (As an example, many recipients of grants from the National Park Service or state agencies for rehabilitation or restoration of historic structures may be required to give term conservation easements or similar restrictions on the property in question to the National Park Service or to other qualified preservation organizations, with the term of the easement reflecting the size of the grant amount.)

Draft Form 990, Schedule D, Part VIII

Question 2: Complete this table if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year.

Comment: As noted by the Land Trust Alliance, this language is inconsistent with the language of Part VII, Line 2, since the former uses the generic term “conservation easement” and not conservation easements qualifying as a qualified conservation contribution. The Service needs to decide which type of easement is to be the basis of the report, and use consistent language throughout.

Draft Form 990, Schedule D, Part VIII

Question 2: Table, Line (b): Total acreage subject to easements.

Comment: While this question may be relevant for conservation easements on open space, farmland, and other land areas (i.e. easement that further the purposes stated under IRC 170(h)(4)(A)(i)-(iii)), it is not necessarily relevant with respect to easements that focus primarily on historic structures, where the public value is based on the historic or architectural significance—and *not* the acreage—of the real property protected by the easement. We seriously question the value of requiring exempt organizations holding conservation easements protecting historic structures to tally annually the acreage of such easements, and we recommend that the Service consider excepting from this reporting requirement easements for which the primary purpose is to protect historic structures.

Draft Form 990, Schedule D, Part VIII

Question 2: Table, Line (f): Number of easements on land within or adjacent to a residential development.

Comment: We strongly concur with the Land Trust Alliance that this reporting obligation is confusing, ill-defined, and imposes an unreasonable burden on easement-holding organizations to identify residential developments that may be adjacent to an easement-protected property but for which the easement-holding organization has no responsibility or control. If the purpose of the question is to identify questionable easement donations such as the situation in *Turner v. Commissioner*, 126 T.C. No. 16; No. 5165-04 (16 May 2006), we believe that there are more appropriate ways to identify such circumstances, including additional questions on Form 8283, as suggested by the Land Trust Alliance.

This question is particularly inappropriate for conservation easements on historic structures, many of which actually protect residential properties in towns and cities—properties which are, by definition, “within or adjacent to a residential development.” In addition, many preservation and conservation organizations—including our own—have accepted conservation easements in rural areas in order to protect a particular property against encroaching development, and the fact that development stops at the borders of the easement-encumbered property actually reflects the public value of the easement.

Draft Form 990, Schedule D, Part VIII

Question 5: Staff hours devoted to monitoring or enforcing easements during the year.

Comment: As is the case with land trusts, many historic preservation organizations operate their programs and activities in reliance on volunteer support, and question 5 may actually result in an under-reporting of the time, attention, and value of services provided by exempt organizations responsible for in monitoring, administering, and enforcing conservation easements. We suggest that reporting exempt organizations should be able to indicate that substantial services in monitoring and enforcing easements have been provided by volunteers.

Draft Form 990, Schedule M, Part I

Line 14: Qualified conservation contribution (historic structures).

Line 15: Qualified conservation contribution (other)

Comment: We think it important to note that many conservation easements held by historic preservation organizations protect both historic structures (i.e. certified historic structures, as defined in the Line 14 Instructions), *and* other types of land areas (both natural, recreational, agricultural, and historically important) as defined in the Line 15 Instructions. We suggest that the instructions for Schedule M acknowledge this, and state that easements should be categorized on the basis of the *primary* value to be protected by the easement. We also note that for purposes of Form 990, Part IV, Line g, and Part VI, conservation easements are generally not treated as assets to a donee organization, since any value as a non-cash contribution can not recouped by sale (and in fact may be offset by the public obligations the organization incurs by promising to monitor and enforce the easement in perpetuity). An easement contribution, consequently, is a very different type of contribution than other types of non-cash contributions that may have a true cash value to the recipient exempt organization, particularly if such non-cash contributions include property that can be sold to provide actual revenues for the organization.

Thank you for your consideration of the foregoing comments.

Sincerely,



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