

# ARKANSAS REGISTER

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## Transmittal Sheet



W.J. "BILL" McCUEN  
SECRETARY OF STATE  
LITTLE ROCK, ARKANSAS

W.J. "Bill" McCuen  
Secretary of State  
State Capitol  
Little Rock, Arkansas 72201-1094

For Office  
Use Only:

Effective Date 6/14/91 Code Number 012.02.91-005

Name of Agency Arkansas Historic Preservation Program

Department Department of Arkansas Heritage

Contact Person Ken Grunewald Telephone 324-9346

Statutory Authority for Promulgating Rules Arkansas Code Annotated  
Sections 13-7-101 through 13-7-10

Intended  
Effective Date

Date

Legal Notice Published

4/1/91 - 4/7/91

Emergency

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Reviewed by Legislative Council

5/15/91

Other

Adopted by State Agency

3/7/91

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance With Act 434 of 1967 As Amended.

Catherine H. Boyd  
SIGNATURE

Director, Arkansas Historic Preservation Program

TITLE

5/22/91

DATE

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Department of  
**ARKANSAS  
HERITAGE**

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Joan M. Baldrige, Director

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W.J. "BILL" McCUEN  
SECRETARY OF STATE  
LITTLE ROCK, ARKANSAS

BY \_\_\_\_\_

May 23, 1991

Mr. Rick Hearn  
Secretary of State's Office  
State Capitol  
Little Rock, AR 72201-1094

Dear Mr. Hearn:

Last month we sent you five proposed revisions to the Arkansas Historic Preservation Program's grant procedures manuals. No changes resulted from the review by Legislative Council or the public hearing, therefore, the copies you have on file are now final versions. The manuals are as follows: AHPP/DAH Conservation Easement Document and Rules, AHPP/DAH Grants Manual, AHPP/DAH Preservation Education and Promotion Grant Manual, AHPP/DAH Model Business Grant Manual, AHPP/DAH Rehabilitation and Restoration Grants Manual.

Enclosed are five complete transmittal sheets to replace the incomplete forms that were sent to you in April.

If you have any questions, please call me.

Sincerely,

Delia Moore  
Administrative Assistant

Enclosures

cc: Ken Grunewald







012.02.91--065

ARKANSAS  
HISTORIC  
PRESERVATION  
PROGRAM

## CONSERVATION EASEMENTS

Conservation easements provide for a significant contribution to Arkansas' past and future and are a means for keeping property in private hands while serving the public interest and insuring the preservation of valuable structures, land areas, and natural resources.

In Arkansas, conservation easements are created pursuant to Act 567 of 1983 (Ark. Stat. Ann, 50-1201 et seq.). The Act defines a conservation easement as:

...a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purpose of which includes retaining or protecting natural, scenic, or open-space values of real property, assuring its availability of agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archeological, or cultural aspects of the property.

The Arkansas Historic Preservation Program (AHPP) is authorized by Act 408 of 1977, as amended by Act 663 of 1983, to accept conservation easements. It is the policy of the AHPP to accept easements only on "certified historic structures," or properties or sites listed in the National Register of Historic Places.

A "certified historic structure" is a structure which is individually listed in the National Register of Historic Places or a structure located within the National Register historic district and certified by the Secretary of the Interior as contributing to that district.

The procedure for granting a conservation easement to the AHPP is as follows:

1. The Grantor determines the National Register status of the structure, property, or site. The Federal Register or AHPP may be consulted to determine if a property or district is listed on the National Register.
  - (a) A structure which is individually listed on the National Register of Historic Places is automatically considered a "certified historic structure" and eligible for donation of a conservation easement to the AHPP. If the State Historic Preservation Officer (SHPO) determines that a structure, property, or site has suffered loss of integrity, its National Register status must be reconsidered.





- (b) A structure which is located within a National Register historic district must be "certified" as contributing to that district to be eligible for the donation of a conservation easement to the AHPP. In this regard, Part 1 of the "Historic Preservation Certification Application" must be completed. The application may be obtained from the AHPP and, once completed, must be submitted to the AHPP for review and submission to the regional office of the National Park Service, Department of the Interior, for an official determination. Once the National Park service has made a determination that the structure contributes to the significance of the district, it is considered a "certified historic structure" and eligible for the donation of a conservation easement to the AHPP. The certification process takes approximately 2 1/2 - 3 months.
  - (c) A structure not located within a National Register historic district and not individually listed in the National Register of Historic Places must obtain a preliminary certification of significance before an easement will be accepted by the AHPP. In this regard, Part 1 of the Historic Preservation Certification Application must be completed to request that the Secretary of the Interior make a determination that the property meets National Register criteria and is likely to be listed in the National Register of Historic Places. Once again, the application must be submitted to the AHPP for review and submission to the regional office of the National Park Service, Department of the Interior, for an official determination. Once the National Park Service has issued a preliminary certification of significance, the property will be considered eligible for donation of a conservation easement. However, to qualify for a charitable contribution deduction under federal tax law, the structure must be a "certified historic structure" (actually listed in the National Register of Historic Places) at the time the easement is granted or at the extended due date of the grantor's tax return.
2. The Grantor determines what will be included in the conservation easement (e.g., interior/exterior easement, height restriction, adjacent land area, etc.).
  3. The Grantor completes the SAMPLE conservation easement form and submits it to the AHPP for review. Appropriate photographs and description must be attached.
  4. The grantor executes the final document and submits it to the AHPP for execution by the Director. Once executed by the Director, the document will be returned to the Grantor for filing. The document should be filed with the Circuit Clerk of the county in which the property is located. The Grantor is responsible for filing and sending a file marked original to the AHPP.





5. The completed easement document must be received by this office no later than December 15 of the year for which the tax deduction is to be taken. [Please note that Part 1 of the "Historic Preservation Certification Application" for a structure located within a National Register historic district must be certified by this date so that it can be included in the easement documents. See number 1 (b) above.]
6. Annual inspection visits will be made to said property to document its state of preservation. The owner will be notified in advance if possible.
7. The owner will be notified within two weeks of the results of the inspection. If the property is found to be out of compliance with the specifications of the easement document, the owner will be instructed to begin necessary repair work within six months of the date of the notice. If after six months, the owner has made no good faith effort to begin repairs, he will receive a second notification in the form of a warning giving him another six months to complete the necessary repairs. If no substantive progress toward compliance is made by the end of the second six months, the owner is subject to possible legal action.

The owner may take a charitable contribution deduction for the donation of a conservation easement of a "certified historic structure." The deduction is valued as the difference between the fair market value of the property before contribution of the easement and the value of the property after the donation of the easement. This type of deduction often results in a significant tax savings for the grantor. However, the acceptance of a conservation easement by the AHPP does not perse guarantee that the necessary requirements are met for qualifications a charitable contribution deduction pursuant to 170 of the Internal Revenue Code of 1954, as amended. Due to the complexity of the tax law and property title consequences of conservation easements, an attorney should be consulted before entering into this type of transaction.

Attached is a sample conservation easement and subordination of mortgage, Part 1 of the Historic Preservation Application, a publication entitled "How To Qualify Historic Properties Under The New Federal Law Affecting Easements," and Treasury regulations pertaining to conservation easements. Please contact Randy Jeffery, AHPP, at 324-9346 to begin the procedure for granting a conservation easement.



(Sample)

## DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_, Grantor, and the Arkansas Historic Preservation Program, a Division of the Department of Arkansas Heritage, Grantee,

### W-I-T-N-E-S-S-E-T-H:

WHEREAS, one of the purposes of the Arkansas Historic Preservation Program as established by Act 480 of 1977 is to engage in a comprehensive program of historic preservation to promote the use and preservation of such property for the public interest and the education, inspiration, pleasure, and enrichment of the citizens of this state, and

WHEREAS, one method to encourage such preservation is to accept conservation easements as authorized by Act 663 of 1983, and Act 567 of 1983; and

WHEREAS, the Grantor is the owner in fee simple of improved real property located in \_\_\_\_\_, Arkansas, which property hereinafter referred to as "premises" is more particularly described below; and

WHEREAS, the Arkansas Historic Preservation Program has deemed that the interest created in this Deed of Conservation Easement will aid greatly in preserving and maintaining the premises consistent with the interests and purposes of the Arkansas Historic Preservation Program; and

TO HAVE TO HOLD unto Arkansas Historic Preservation program, forever. The covenants agreed to and the restrictions imposed, as aforesaid, shall not only be binding upon the Grantor but also upon his agents, personal representatives, heirs and assigns, and all other successors to him in interest and shall continue as a servitude running in perpetuity with the above-described land and shall survive any termination of Grantee's existence. All rights reserved herein to Grantee may be exercised, modified, or released by its successors or assigns or by its designee duly authorized in a deed or appointment executed by the Arkansas Historic Preservation Program.

IN WITNESS WHEREOF, Grantor has executed, sealed, and delivered this Deed of Conservation Easement; and Grantee has caused these presents to be accepted and signed in its corporate name by Cathryn Buford, the Director of the Arkansas Historic Preservation Program and State Historic Preservation Officer

WHEREAS, to this end, Grantor desires to grant to Grantee, and Grantee desires to accept, a Conservation Easement on the Premises.

NOW, THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey unto the Grantee and easement in gross in perpetuity in and to that certain real property and the exterior surfaces of improvements located thereon known as (Historic name) all owned by the Grantor, and more particularly described as (street address and legal description).

The easement herein granted and conveyed to constitute a binding servitude upon said premises of the Grantor, and to that end Grantor covenants on behalf of himself, his agents, personal representative, heirs and assigns, and all other successors to him in interest with Grantee, such covenants being deemed to run as a servitude, in perpetuity, with the land, to do and refrain from doing upon the premises each of the following stipulations which contribute to the public purpose in that they aid significantly in the preservation of the historic site in question:

(1) Without the written permission of the Arkansas Historic Preservation Program, duly signed by its director or his designee, no construction, alterations, or remodeling shall be undertaken or permitted which would materially affect either the lot herein described or the exterior (including the roof) of the building or other improvement located thereon as depicted in the description attached hereto and expressly incorporated by reference herein, and marked as "Exhibit A," and in the photographs attached hereto and expressly incorporated by reference herein as "Exhibits B, C, D, E, and F" except the reconstruction, repainting, or refinishing may not be performed in a manner which would alter the appearance of the building as depicted in said photograph or the appearance

of the lot as of this date.

(2) The Grantor agrees at all times to maintain the subject property in a good state of repair so that no deterioration in its exterior or interior appearance shall take place.

(3) The property shall be used only for \_\_\_\_\_ purposes and shall not be used for \_\_\_\_\_ purposes. (optional)

(4) The property shall not be subdivided, nor shall it ever be devised or conveyed except as a unit; (optional)

(5) No dumping of ashes, sawdust, bark, trash, rubbish or any other unsightly or offensive materials which are visible from public roads or streets shall be permitted on the property.

(6) No topographical changes, including but not limited to extraction and the cutting of trees greater than eight inches in diameter (except when dead or dangerously decayed), shall occur upon the property. (optional)

(7) Grantor hereby agrees that representatives of Grantee, its successors or assigns, shall be permitted at all reasonable times to inspect the property. Inspections will normally take place from the street; however, Grantor agrees that representatives of Grantee, its successors or assigns, shall be permitted to enter and inspect of the improvements on the premises to insure maintenance of structural soundness; inspection of the interior will not, in the absence of evidence of deterioration, take place more often than annually. Inspection of the interior will be made at a time mutually agreed upon by Grantor and Grantee, its successors or assigns, and Grantor covenants not to withhold unreasonable his consent in determining a date and time for such inspection.

(8) In the event a violation of these regulations are found to exist, the Arkansas Historic Preservation Program may, following reasonable notice to the Grantor, institute a suit to enjoin by ex parte, temporary and/or permanent injunction such violations, to require the restoration of the premise to its prior condition.

(9) The Grantor agrees that these restrictions will be inserted by him in any subsequent deed, or other legal instrument, by which he divests himself of either the fee simple title to or of his possessory interest in the premises.





I, Cathryn H. Buford, Director of the Arkansas Historic Preservation

Program, Grantee, hereby acknowledge that the Arkansas Historic Preservation Program accepts the foregoing conservation easement.

By \_\_\_\_\_  
Cathryn H. Buford, Director  
Arkansas Historic Preservation Program  
State Historic Preservation Officer

STATE OF ARKANSAS  
COUNTY OF PULASKI

On this \_\_\_\_\_ day of \_\_\_\_\_, 199\_, before me a Notary Public, duly commissioned, qualified and acting within and for the said County and State appeared in person, CATHRYN H. BUFORD, to me personally well known, who stated that he had executed the above and foregoing document in his duly authorized capacities as Director of the Arkansas Historic Preservation Program for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 199\_.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
(Notary Public)



# Information

from the National Trust for Historic Preservation

## Factors Affecting Valuation of Historic Property

The normal, practical economics of the marketplace govern the value of historic properties as they govern the value of all other types of property. The function of the real estate appraiser is to value properties using the processes and criteria produced by the marketplace. Market value is an objective value and the appraiser, whose role is that of a fair witness, should view historic--indeed all--property as having a set of characteristics that can be related to the market and thus to value.

Properties with historical associations or distinctive architectural character may have more or less value than properties that are otherwise equal, depending on several variables, including the spirit and attitude of the times. Capitalism and the open market work well together to adapt to changed attitudes once they are recognized.

Real Estate Appraising, one of 10 pamphlets published in 1927 by the National Association of Real Estate Boards, says, "We have already stated that a building is obsolete if it is out of date." The preservation of historically significant properties was probably not influential in the thinking of the writer of the 1927 work who was more impressed with an expanding technology that produced new methods and styles of construction so rapidly that an astonishingly short period of time could render any building "out of date"--and thus eligible for the wrecker's ball.

Today, interest in the preservation of historically significant properties and their protection from deterioration, destruction or encroachment is steadily increasing. Foundations, trusts, and other private organizations, together with local, state and federal agencies, are supporting the conservation of physical evidence of historic events and architecture for the benefit of the nation.

### Appraisal Theory Based on Economic Principles

Basic economic principles govern the appraisal of all real property. Four of the most important principles--all interrelated--are: economic use, contribution, supply and demand and substitution. These economic principles apply to the appraisal of properties with historical significance just as they apply to the valuation of other real property.

Economic use, sometimes known as highest and/or best use, is that use which, as of the appraisal date, is the most profitable likely use of a property. Consistent use is a part of this concept; a property cannot be correctly valued on the basis of one use for land and another for improvements if such treatment is inconsistent with proper use of the total property.

### Appraised Property and its Environment

A property must be appraised as a part of its environment. The environment extends to the entire community of which the appraised property is a part, but the more important influence is the neighborhood in which the property is located. The property may be part of a historically significant neighborhood and its historical significance may be typical of a neighborhood, greater than typical or less than typical, but, in any case, its value is enhanced or reduced by its surroundings.

In some instances, entire urban neighborhoods of historical and architectural significance have been protected by municipal ordinances that provide architectural controls within a specified district. In such areas, a property owner is assured that inharmonious architectural modifications and new construction on nearby property are prevented and the value of his property may be enhanced by such protection. Even though an individual property may have no special historical or architectural significance, it contributes to and benefits from the neighborhood's architectural integrity and charm.

The appraisal of real estate in such a neighborhood is simplified by the number of available direct comparisons with property that has been sold. In many cases comparable sales research need not extend beyond the immediate neighborhood of the appraised property. On the other hand, comparables for a property with historical and architectural significance surpassing that of the neighborhood in general may have to be garnered from a larger geographic area.

The variables of location of the appraised property within a neighborhood also influence its value. Included in the appraisal should be such considerations as whether the property is located in a large urban area, a small town or a rural area and whether the ability of the property to produce income is limited by its location; locations vary within neighborhoods as neighborhoods vary within communities. Street and block orientation must also be considered in the appraisal.

### Variable Characteristics of Property

The comparison process is used in all three of the traditional approaches to value--the sales, income and cost approaches. Recognition of the variable characteristics of the appraised property, however, necessarily precedes the comparison process. Three major categories of variable characteristics are those of the site; the building and other improvements; and historical, architectural or cultural significance.

#### Site

The physical characteristics of the site should be related to its suitability and legality for the property's highest and best use and its actual use. In urban locations, land frequently has a higher economic use than existing historically significant improvements. A historic building situated on a site where an office tower could be built may represent such an underdevelopment that preservation of the existing structure is extremely difficult.

### Cost Approach

This is a summation approach that adds the value of the site appraised as though vacant to the depreciated value of the cost to produce a replica of the improvements as of the date of appraisal.

A major consideration is the land's appropriateness as a site for its structure. Not infrequently, contiguous land in common ownership is more than is required for a satisfactory setting. When the surplus land is not needed to protect the building or is not itself benefitting from association with the building, it should be hypothetically severed and appraised for its separate highest use. Alternatively, if insufficient land is available to provide a satisfactory setting, value enhancement may be compromised.

As traditionally applied, there is a severe limitation to the cost approach in the valuation of properties of historical significance, for historical significance, the very element of focus, cannot be reproduced; the superb craftsmanship of other ages often cannot be duplicated within practical limitations. Depreciation of a historically significant building is not measured by the difference between the contributory value of the actual structure and the cost to erect a replica, but rather by considering the physical integrity, physical wear and the cost of repair and restoration.

An estimate of the costs of restoration and repair is not complete until it includes all costs, direct and indirect, of the project, including financing costs, professional fees, the costs of promotion and marketing, of overhead, of leasing and an appropriate incentive increment to reflect contingency and the risk of undertaking the project.

### Sales Approach

The definitions of market value that have been handed down by courts of law usually include the concept of the willing, informed seller and the willing, informed buyer. The sales approach is a direct comparison approach in which the applicable unit of comparison can be the whole property or some physical sub-unit thereof, such as square foot of land or building. The sales approach requires a thorough understanding of the market. If the properties appeal to the same segment of the market, they are probably reasonably comparable. For some types of historic structures, such as fine residences, comparables abound. Other buildings may be unique, both physically and historically, and it is the relative significance or architectural effect that needs to be compared.

### Income Approach

Because value is the present worth of future benefits, an anticipated stream of income may be capitalized into a current sum by applying the appropriate investment rate in the income approach to value. Preservation of historically or architecturally significant buildings is not always motivated by profit or a fair monetary return on investment. Enormous sums have been spent to restore and maintain properties with little potential for income. Today's preservation market is still made up partially of such buyers; however, the rising costs of construction, of energy and the increased public awareness of, and interest in, all kinds of old structures, for their inherent construction and age alone, have created a market for structures that can be used for an income-generating use. This market is motivated largely by the economics of utility and location. The buyer of an 1880s rowhouse in an urban area usually expects to recapture all of the investment plus a profit at the time of resale, in addition to enjoying superior construction and amenities during occupancy of the house.

should be careful to stipulate the extent to which the appraiser should go in the narrative presentation. The appraiser will consider it unethical to present a written report that does not include at least a clear identification and brief description of the property, identification of the estate appraised, a definition of the type of value sought, the qualifying conditions, the property's highest and best use, the value estimate, the effective date of appraisal and some mention of the nature of the appraisal data employed.

### Selecting an Appraiser

Selection of an appraiser may present a problem if available appraisers are generally intimidated by valuation assignments involving properties with historical associations or if the client lacks knowledge of what qualifies an appraiser to deal with the specific problem at hand.

Impartiality is a major requirement for any market value appraisal assignment. Trusted professional associates of the client may recommend appraisers and so help the client avoid those who are biased, incompetent or dishonest but who nevertheless accept appraisal assignments. Assistance in selecting a qualified appraiser also can be obtained from private organizations or government agencies that deal with historic properties. In addition, reliable recommendations can be obtained from law firms specializing in real estate.

Designations awarded by professional organizations indicate that the appraiser has met certain standards of qualification that include education, training and demonstrated ability. The professional designations that are relevant include:

- MAI: Member, Appraisal Institute (American Institute of Real Estate Appraisers)
- RM: Residential Member, Appraisal Institute
- SRA: Senior Residential Member, Society of Real Estate Appraisers
- SRPA: Senior Real Property Appraiser, Society of Real Estate Appraisers
- ASA: Senior Member, American Society of Appraisers

The Appraisal Institute has an active review and ethics procedure, including censure and expulsion, which forces members (MAI) and residential members (RM) to adhere to a strict code of professional conduct. The requirements for the MAI designation are by far the most stringent of the five listed, and the MAI designation is highly respected in both legal and business communities.

The Society of Real Estate Appraisers and the American Society of Appraisers are also nationally recognized organizations. The former is well known to mortgagees of single-family dwellings; the American Society includes members who appraise furnishings and other personal property.

There are appraisers without any professional designations who are impartial, competent and have the experience to qualify for historic property appraisal assignments. Some appraisers specialize in such assignments. Appraisers can be contacted and asked to submit resumes of their qualifications. Knowledge of the geographic area involved is important in terms of time and fee. The qualified appraiser can go to almost any area and carry out research that will provide sufficient knowledge to make an appraisal; however, retaining someone from outside the area is likely to be more costly than hiring a local appraiser. There are, of course, instances when such additional cost is warranted.

"Governments Explore Alternatives to Market Value for Landmarks." The Appraiser, March 1970, p. 12.

Maisenhelder, Howard, Jr., "Historical Value or Hysterical Value." Valuation, vol. 17, no. 1, 1970.

Reynolds, Anthony and Waldron, William D., "Historical Significance...How Much Is It Worth?" The Appraisal Journal, July 1969.

The Appraisal of Real Estate, 6th ed., American Institute of Real Estate Appraisers, Chicago, 1973.

Thiess, William R. "The Appraisal Docket, 'Historical Significance' as a Factor in Determining Value." The Appraisal Journal, January 1968.

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Prepared for the National Trust for Historic Preservation by Judith Reynolds, MAI, and Anthony Reynolds, MAI, SRA, ASA. The authors are the two principals in the Washington, D.C., appraisal firm of Reynolds & Reynolds, Inc. Their firm is affiliated with the national network of similar firms known as Real Property Analysts, Inc. The opinions expressed in this Information Sheet are not necessarily those of the National Trust.

The National Trust for Historic Preservation is the only private, nonprofit organization chartered by the Congress to encourage public participation in the preservation of sites, buildings and objects significant in United States history and culture. Trust support is provided by membership dues, endowment funds, contributions and grants from federal agencies, including the U.S. Department of the Interior, National Park Service, under provisions of the National Historic Preservation Act of 1966.

they have predicted economic hardship to the industry unless some transitional relief is granted. In many instances, such homes were sold under wholesale marketing plans or arrangements that would not qualify under the new Title I final rule. In such cases, the manufacturers' invoices do not conform to the invoice requirements of the new rule, and the manufacturers cannot execute the required certifications in such invoices or detail the various wholesale (base) prices of the manufactured homes, furniture, options and specialty items, or the charges for sales taxes and freight.

To assist manufacturers and dealers in marketing new homes which have been sold through such wholesale transactions under the currently applicable regulations, the Department has concluded that a reasonable transition period—which takes into account the winter months' impact upon marketing—can be justified. Therefore, provided that such new homes would have been eligible for manufactured home loans under the currently applicable Title I regulations, HUD will allow them to be purchased with the proceeds of Title I loans for an additional six-month period after the effective date of the new Title I final rule. As set forth below, certain current regulatory provisions will continue to apply to the origination of loans to finance the purchase of such homes, and certain provisions of the new Title I rule will not apply to such loans' origination. All other provisions of the new final rule will apply to such loans once they are originated.

For all property improvement loans, the effective date of the final rule revising 24 CFR Part 201 and published on October 25, 1985 is January 15, 1986.

For manufactured home loans, the effective date of the final rule is as follows:

A. For new manufactured homes produced on or after January 15, 1986, as evidenced by the data plate affixed in each home by its manufacturer, the effective date of the final rule in its entirety is January 15, 1986.

B. For new manufactured homes produced before January 15, 1986, as similarly evidenced, but sold under a wholesale manufacturer's invoice dated on or after January 15, 1986, the effective date of the final rule in its entirety is January 15, 1986.

C. For a new manufactured home produced with a data plate and sold with a wholesale manufacturer's invoice that are both dated before January 15, 1986, and whose invoice wholly meets the requirements of the new Title I final

rule, the effective date of the final rule in its entirety is January 15, 1986.

D. For a new manufactured home produced with a data plate and sold with a wholesale manufacturer's invoice that are both dated before January 15, 1986, but which has been sold with a manufacturer's invoice prepared under current Title I regulations that is not in compliance with the requirements of the new Title I final rule, the effective date of the final rule is January 15, 1986, except compliance with the following provisions of the new rule will not be required until July 15, 1986: §§ 201.2 (p), (hh), (ii), (kk), and (ll); 201.10 (b)(1) and (d)(1); 201.21(b)(3); the first sentence of § 201.10(b)(4) and the first sentence of § 201.10(d)(4). With respect to the origination of Title I manufactured home loans concerning these homes during the period January 15, 1986 through July 1986, §§ 201.501(i), 201.530(a), 201.1502(i), and 201.1504(a)(2) of the current Title I regulations shall continue in effect. Thereafter, such new homes shall only be eligible for Title I manufactured home loans originated on or after July 15, 1986 if their wholesale manufacturers' invoices wholly meet the requirements of the new Title I final rule.

#### Correction

In addition to establishing the effective date and compliance data discussed above, this document also corrects an error contained in the October 25, 1985 final rule—

Accordingly, in FR Doc. 85-25302, appearing in the October 25 issue of the Federal Register, the following correction is made:

In § 201.21(d)(2), on page 43530, in the left column, the phrase "and (c)(2)" is removed.

Dated: January 10, 1986.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 86-847 Filed 1-13-86; 8:45 am]

BILLING CODE 4210-27-10

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

26 CFR Parts 1, 20, 25, and 602

[T.D. 8069]

### Income Taxes; Qualified Conservation Contributions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations relating to contributions not in trust of partial interests in property for conservation purposes. Changes to the applicable law made by the Temporary Tax Provisions, Extension and the Tax Reform Act of 1984 are reflected in this document. These regulations provide necessary guidance to the public for compliance with the law and affect donors and donees of qualified conservation contributions.

**DATES:** Except as otherwise provided in § 1.170A-14(g)(4)(ii), the regulations apply to contributions made on or after December 18, 1980, and are effective on December 18, 1980.

**FOR FURTHER INFORMATION CONTACT:** Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T), Telephone 202-566-3287 (not a toll free call).

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 23, 1983, the Federal Register (48 FR 22940) published proposed amendments to the Income Tax Regulations (26 CFR Part 1) and Estate and Gift Tax Regulations (26 CFR Parts 20 and 25) under sections 170(h), 2055 and 2522 of the Internal Revenue Code of 1954 (Code). The amendments were proposed to conform the regulations to section 6 of the Temporary Tax Provisions, Extension (Pub. L. 98-547, 96 Stat. 3206). A public hearing was held on September 15, 1983. Subsequent to the hearing, section 170(h)(5) of the Code was amended by section 1035(a) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 1042). On December 10, 1984, the Service issued a news release (IR-84-125) reminding taxpayers claiming deductions for donations of conservation easements that such deductions are limited to the fair market value of the easement at the time of the contribution. The news release further indicated that if the donation of the easement does not decrease the value of the property on which the easement is granted, the fair market value of the easement, and thus, the deduction, is zero.

After consideration of all comments regarding the proposed amendments and of the revision made by the Tax Reform Act of 1984, those amendments are adopted as revised by this Treasury decision.



Revenue Service lacks the expertise to make the subjective determinations of "significant public benefit" and "scenic enjoyment", that responsibility should be delegated to either a private organization or to another governmental agency with acknowledged expertise in this area.

In general, the rules in the proposed regulations relating to open space easements have been retained in the final regulations. However, in response to the comments, some clarifications have been made regarding such easements. First, the fact that a unit of government has identified a particular property as worthy of protection does not by itself show the existence of a clearly delineated governmental policy, and thus, the significant public benefit associated with the donation must be independently demonstrated. Second, when there is a rigorous review of a donation by a unit of government or a duly constituted commission of a unit of government, the acceptance of a donation by such unit or commission of government tends to establish the clearly delineated governmental policy.

An example of a rigorous review process has been included in the final regulations. The more specific the governmental policy with respect to a particular site to be protected, the more likely it is that the governmental decision to accept the donation will tend, by itself, to establish the significant public benefit associated with the donation. A degree of certainty is available to donors in jurisdictions that have clearly articulated preservation policies, but as with any subjective test, there must ultimately be some exercise of judgment and responsibility by both donors and donees. Third, the terms "significant public benefit" and "scenic enjoyment" necessarily require a case-by-case factual determination and hence cannot be defined precisely. The list of factors included at § 1.170A-14(d)(4)(iv) with respect to "significant public benefit" and § 1.170A-14(d)(4)(ii) with respect to "scenic enjoyment" are intended to be illustrative, rather than all-inclusive. In a particular case, other facts and circumstances may be relevant. Fourth, the regulations clarify that farmland, as recognized by the statute, is merely a category of open space that must meet either of the two prescribed tests in order to be a deductible contribution. Finally, acceptance of a donation by a qualified organization is not conclusive evidence of the deductibility of a donation. The Internal Revenue Service has the responsibility for making final determinations as to the deductibility of

donations. That responsibility cannot be delegated to a private organization or to another governmental agency, although the Service accords substantial weight to the determinations of qualified organizations, and governmental agencies in its decision-making process.

#### *Donations of Mortgaged Property*

Section 170(h)(5) provides that the conservation purposes of the donation must be protected in perpetuity. The proposed regulations did not specifically address how this requirement applies to mortgaged property.

In response to comments received, the final regulations clarify that when a contribution of mortgaged property is made to a qualified organization, the mortgagee must subordinate its rights under the mortgage to the right of the qualified organization to enforce the conservation purposes of the gift in perpetuity. However, since certain donees, unaware of this clarification, accepted (or will have accepted) contributions of mortgaged property prior to February 12, 1986, without requiring subordination of the mortgagee's rights in the property, a donor will be allowed a deduction for such a contribution provided that the donor can demonstrate that the conservation purposes of the gift are protected in perpetuity absent subordination.

#### *Valuation*

Section 1.170A-14(h)(3)(i) of the final regulations has been revised to indicate that increases in the value of any property owned by the donor or a related person—not just contiguous property—resulting from the granting of a perpetual conservation restriction must be taken into account in determining the amount of the deduction.

#### *Paperwork Reduction Act*

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

#### *Special Analyses*

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although a notice of proposed rulemaking which solicited public comments was issued, the Internal Revenue Service concluded

when the notice was issued that the regulations are interpretative and that the notice and public comment procedure requirement of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

#### *Drafting Information*

The principal author of these regulations is Ada S. Rousso of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

#### *List of Subjects*

*26 CFR 1.61-1-1.281-4*

Income taxes, Taxable income, Deductions, Exemptions.

*26 CFR Part 20*

Estate taxes.

*26 CFR Part 25*

Gift taxes.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

#### *Adoption of Amendments to the Regulations*

Accordingly, 26 CFR Parts 1, 20, 25, and 602 are amended as follows:

#### **PART 1—[AMENDED]**

**Paragraph 1.** The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. \* \* \*

#### **§ 1.167(a)-5 [Amended]**

**Par. 2.** Section 1.167(a)-5 is amended by adding at the end thereof the following new sentence: "For the adjustment to the basis of a structure in the case of a donation of a qualified conservation contribution under section 170(h), see § 1.170A-14(h)(3)(iii)."

**Par. 3.** Section 1.170A-7 is amended as follows:

a. The first sentence of paragraph (b)(1)(ii) is amended to begin with the phrase "With respect to contributions made on or before December 17, 1980."

b. Paragraph (b)(1)(ii) is amended by adding at the end the following new sentence: "For the deductibility of a qualified conservation contribution, see § 1.170A-14".

meaning of paragraph (d)(3) of this section.

(iii) The preservation of certain open space (including farmland and forest land) within the meaning of paragraph (d)(4) of this section, or

(iv) The preservation of a historically important land area or a certified historic structure, within the meaning of paragraph (d)(5) of this section.

(2) *Recreation or education*—(i) *In general.* The donation of a qualified real property interest to preserve land areas for the outdoor recreation of the general public or for the education of the general public will meet the conservation purposes test of this section. Thus, conservation purposes would include, for example, the preservation of a water area for the use of the public for boating or fishing, or a nature or hiking trail for the use of the public.

(ii) *Access.* The preservation of land areas for recreation or education will not meet the test of this section unless the recreation or education is for the substantial and regular use of the general public.

(3) *Protection of environmental system*—(i) *In general.* The donation of a qualified real property interest to protect a significant relatively natural habitat in which a fish, wildlife, or plant community, or similar ecosystem normally lives will meet the conservation purposes test of this section. The fact that the habitat or environment has been altered to some extent by human activity will not result in a deduction being denied under this section if the fish, wildlife, or plants continue to exist there in a relatively natural state. For example, the preservation of a lake formed by a man-made dam or a salt pond formed by a man-made dike would meet the conservation purposes test if the lake or pond were a nature feeding area for a wildlife community that included rare, endangered, or threatened native species.

(ii) *Significant habitat or ecosystem.* Significant habitats and ecosystems include, but are not limited to, habitats for rare, endangered, or threatened species of animal, fish, or plants; natural areas that represent high quality examples of a terrestrial community or aquatic community, such as islands that are undeveloped or not intensely developed where the coastal ecosystem is relatively intact; and natural areas which are included in, or which contribute to, the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area, or other similar conservation area.

(iii) *Access.* Limitations on public access to property that is the subject of

a donation under this paragraph (d)(3) shall not render the donation nondeductible. For example, a restriction on all public access to the habitat of a threatened native animal species protected by a donation under this paragraph (d)(3) would not cause the donation to be nondeductible.

(4) *Preservation of open space*—(i) *In general.* The donation of a qualified real property interest to preserve open space (including farmland and forest land) will meet the conservation purposes test of this section if such preservation is—

(A) Pursuant to a clearly delineated Federal, state, or local governmental conservation policy and will yield a significant public benefit, or

(B) For the scenic enjoyment of the general public and will yield a significant public benefit.

An open space easement donated on or after December 18, 1980, must meet the requirements of section 170(h) in order to be deductible.

(ii) *Scenic enjoyment*—(A) *Factors.* A contribution made for the preservation of open space may be for the scenic enjoyment of the general public. Preservation of land may be for the scenic enjoyment of the general public if development of the property would impair the scenic character of the local rural or urban landscape or would interfere with a scenic panorama that can be enjoyed from a park, nature preserve, road, waterbody, trail, or historic structure or land area, and such area or transportation way is open to, or utilized by, the public. "Scenic enjoyment" will be evaluated by considering all pertinent facts and circumstances germane to the contribution. Regional variations in topography, geology, biology, and cultural and economic conditions require flexibility in the application of this test, but do not lessen the burden on the taxpayer to demonstrate the scenic characteristics of a donation under this paragraph. The application of a particular objective factor in to help define a view as "scenic" in one setting may in fact be entirely inappropriate in another setting. Among the factors to be considered are:

(1) The compatibility of the land use with other land in the vicinity;

(2) The degree of contrast and variety provided by the visual scene;

(3) The openness of the land (which would be a more significant factor an urban or densely populated setting or in a heavily wooded area);

(4) Relief from urban closeness;

(5) The harmonious variety of shapes and textures;

(6) The degree to which the land use maintains the scale and character of the urban landscape to preserve open space, visual enjoyment, and sunlight for the surrounding area;

(7) The consistency of the proposed scenic view with a methodical state scenic identification program, such as a state landscape inventory; and

(8) The consistency of the proposed scenic view with a regional or local landscape inventory made pursuant to a sufficiently rigorous review process, especially if the donation is endorsed by an appropriate state or local governmental agency.

(B) *Access.* To satisfy the requirement of scenic enjoyment by the general public, visual (rather than physical) access to or across the property by the general public is sufficient. Under the terms of an open space easement on scenic property, the entire property need not be visible to the public for a donation to qualify under this section, although the public benefit from the donation may be insufficient to qualify for a deduction if only a small portion of the property is visible to the public.

(iii) *Governmental conservation policy*—(A) *In general.* The requirement that the preservation of open space be pursuant to a clearly delineated Federal, state, or local governmental policy is intended to protect the types of property identified by representatives of the general public as worthy of preservation or conservation. A general declaration of conservation goals by a single official or legislative body is not sufficient. However, a governmental conservation policy need not be a certification program that identifies particular lots or small parcels of individually owned property. This requirement will be met by donations that further a specific, identified conservation project, such as the preservation of land within a state or local landmark district that is locally recognized as being significant to that district; the preservation of a wild or scenic river, the preservation of farmland pursuant to a state program for flood prevention and control; or the protection of the scenic, ecological, or historic character of land that is contiguous to, or an integral part of, the surroundings of existing recreation or conservation sites. For example, the donation of a perpetual conservation restriction to a qualified organization pursuant to a formal resolution or certification by a local governmental agency established under state law specifically identifying the subject properly as worthy of protection for conservation purposes will meet the requirement of this paragraph. A

increasingly specific levels of governmental policy, the significant public benefit of preserving a scenic view must be independently established in all cases.

(C) *Donations may satisfy more than one test.* In some cases, open space easements may be both for scenic enjoyment and pursuant to a clearly delineated governmental policy. For example, the preservation of a particular scenic view identified as part of a scenic landscape inventory by a rigorous governmental review process will meet the tests of both paragraphs (d)(4)(i)(A) and (d)(4)(i)(B) of this section.

(5) *Historic preservation—(i) In general.* The donation of a qualified real property interest to preserve an historically important land area or a certified historic structure will meet the conservation purposes test of this section. When restrictions to preserve a building or land area within a registered historic district permit future development on the site, a deduction will be allowed under this section only if the terms of the restrictions require that such development conform with appropriate local, state, or Federal standards for construction or rehabilitation within the district. See also, § 1.170A-14(h)(3)(ii).

(ii) *Historically important land area.* The term "historically important land area" includes:

(A) An independently significant land area including any related historic resources (for example, an archaeological site or a Civil War battlefield with related monuments, bridges, cannons, or houses) that meets the National Register Criteria for Evaluation in 36 CFR 60.4 (Pub. L. 89-665, 80 Stat. 915);

(B) Any land area within a registered historic district including any buildings on the land area that can reasonably be considered as contributing to the significance of the district; and

(C) Any land area (including related historic resources) adjacent to a property listed individually in the National Register of Historic Places (but not within a registered historic district) in a case where the physical or environmental features of the land area contribute to the historic or cultural integrity of the property.

(iii) *Certified historic structure.* The term "certified historic structure," for purposes of this section, means any building, structure or land area which is—

(A) Listed in the National Register, or

(B) Located in a registered historic district (as defined in section 48(g)(3)(B)) and is certified by the Secretary of the Interior (pursuant to 36 CFR 67.4) to the

Secretary of the Treasury as being of historic significance to the district.

A "structure" for purposes of this section means any structure, whether or not it is depreciable. Accordingly easements on private residences may qualify under this section. In addition, a structure would be considered to be a certified historic structure if it were certified either at the time the transfer was made or at the due date (including extensions) for filing the donor's return for the taxable year in which the contribution was made.

(iv) *Access.* (A) In order for a conservation contribution described in section 170(h)(4)(A)(iv) and this paragraph (d)(5) to be deductible, some visual public access to the donated property is required. In the case of an historically important land area, the entire property need not be visible to the public for a donation to qualify under this section. However, the public benefit from the donation may be insufficient to qualify for a deduction if only a small portion of the property is so visible. Where the historic land area or certified historic structure which is the subject of the donation is not visible from a public way (e.g., the structure is hidden from view by a wall or shrubbery, the structure is too far from the public way, or interior characteristics and features of the structure are the subject of the easement), the terms of the easement must be such that the general public is given the opportunity on a regular basis to view the characteristics and features of the property which are preserved by the easement to the extent consistent with the nature and condition of the property.

(B) Factors to be considered in determining the type and amount of public access required under paragraph (d)(5)(iv)(A) of this section include the historical significance of the donated property, the nature of the features that are the subject of the easement, the remoteness or accessibility of the site of the donated property, the possibility of physical hazards to the public visiting the property (for example, an unoccupied structure in a dilapidated condition), the extent to which public access would be an unreasonable intrusion on any privacy interests of individuals living on the property, the degree to which public access would impair the preservation interests which are the subject of the donation, and the availability of opportunities for the public to view the property by means other than visits to the site.

(C) The amount of access afforded the public by the donation of an easement shall be determined with reference to

the amount of access permitted by the terms of the easement which are established by the donor, rather than the amount of access actually provided by the donee organization. However, if the donor is aware of any facts indicating that the amount of access that the donee organization will provide is significantly less than the amount of access permitted under the terms of the easement, then the amount of access afforded the public shall be determined with reference to this lesser amount.

(v) *Examples.* The provisions of paragraph (d)(5)(iv) of this section may be illustrated by the following examples:

*Example (1).* A and his family live in a house in a certified historic district in the State of X. The entire house, including its interior, has architectural features representing classic Victorian period architecture. A donates an exterior and interior easement on the property to a qualified organization but continues to live in the house with his family. A's house is surrounded by a high stone wall which obscures the public's view of it from the street. Pursuant to the terms of the easement, the house may be opened to the public from 10:00 a.m. to 4:00 p.m. on one Sunday in May and one Sunday in November each year for house and garden tours. These tours are to be under the supervision of the donee and open to members of the general public upon payment of a small fee. In addition, under the terms of the easement, the donee organization is given the right to photograph the interior and exterior of the house and distribute such photographs to magazines, newsletters, or other publicly available publications. The terms of the easement also permit persons affiliated with educational organizations, professional architectural associations, and historical societies to make an appointment through the donee organization to study the property. The donor is not aware of any facts indicating that the public access to be provided by the donee organization will be significantly less than that permitted by the terms of the easement. The 2 opportunities for public visits per year, when combined with the ability of the general public to view the architectural characteristics and features that are the subject of the easement through photographs, the opportunity for scholarly study of the property, and the fact that the house is used as an occupied residence, will enable the donation to satisfy the requirement of public access.

*Example (2).* B owns an unoccupied farmhouse built in the 1840's and located on a property that is adjacent to a Civil War battlefield. During the Civil War the farmhouse was used as quarters for Union troops. The battlefield is visited year round by the general public. The condition of the farmhouse is such that the safety of visitors will not be jeopardized and opening it to the public will not result in significant deterioration. The farmhouse is not visible from the battlefield or any public way. It is accessible only by way of a private road

inconsistent with the conservation purposes of the donation. In the case of a contribution of a remainder interest, the contribution will not qualify if the tenants, whether they are tenants for life or a term of years, can use the property in a manner that diminishes the conservation values which are intended to be protected by the contribution.

(2) *Protection of a conservation purpose in case of donation of property subject to a mortgage.* In the case of conservation contributions made after February 13, 1986, no deduction will be permitted under this section for an interest in property which is subject to a mortgage unless the mortgagee subordinates its rights in the property to the right of the qualified organization to enforce the conservation purposes of the gift in perpetuity. For conservation contributions made prior to February 12, 1986, the requirement of section 170(h)(5)(A) is satisfied in the case of mortgaged property (with respect to which the mortgagee has not subordinated its rights) only if the donor can demonstrate that the conservation purpose is protected in perpetuity without subordination of the mortgagee's rights.

(3) *Remote future event.* A deduction shall not be disallowed under section 170(f)(3)(B)(iii) and this section merely because the interest which passes to, or is vested in, the donee organization may be defeated by the performance of some act or the happening of some event, if on the date of the gift it appears that the possibility that such act or event will occur is so remote as to be negligible. See paragraph (e) of § 1.170A-1. For example, a state's statutory requirement that use restrictions must be rerecorded every 30 years to remain enforceable shall not, by itself, render an easement nonperpetual.

(4) *Retention of qualified mineral interest—(i) In general.* Except as otherwise provided in paragraph (g)(4)(ii) of this section, the requirements of this section are not met and no deduction shall be allowed in the case of a contribution of any interest when there is a retention by any person of a qualified mineral interest (as defined in paragraph (b)(1)(i) of this section) if at any time there may be extractions or removal of minerals by any surface mining method. Moreover, in the case of a qualified mineral interest gift, the requirement that the conservation purposes be protected in perpetuity is not satisfied if any method of mining that is inconsistent with the particular conservation purposes of a contribution is permitted at any time. See also § 1.170A-14(c)(2). However, a deduction

under this section will not be denied in the case of certain methods of mining that may have limited, localized impact on the real property but that are not irretrievably destructive of significant conservation interests. For example, a deduction will not be denied in a case where production facilities are concealed or compatible with existing topography and landscape and when surface alteration is to be restored to its original state.

(ii) *Exception for qualified conservation contributions after July 1984.* (A) A contribution made after July 18, 1984, of a qualified real property interest described in section 170(h)(2)(A) shall not be disqualified under the first sentence of paragraph (g)(4)(i) of this section if the following requirements are satisfied.

(1) The ownership of the surface estate and mineral interest were separated before June 13, 1976, and remain so separated up to and including the time of the contribution.

(2) The present owner of the mineral interest is not a person whose relationship to the owner of the surface estate is described at the time of the contribution in section 267(b) of section 707(b), and

(3) The probability of extraction or removal of minerals by any surface mining method is so remote as to be negligible.

Whether the probability of extraction or removal of minerals by surface mining is so remote as to be negligible is a question of fact and is to be made on a case by case basis. Relevant factors to be considered in determining if the probability of extraction or removal of minerals by surface mining is so remote as to be negligible include: Geological, geophysical or economic data showing the absence of mineral reserves on the property, or the lack of commercial feasibility at the time of the contribution of surface mining the mineral interest.

(B) If the ownership of the surface estate and mineral interest first became separated after June 12, 1976, no deduction is permitted for a contribution under this section unless surface mining on the property is completely prohibited.

(iii) *Examples.* The provisions of paragraph (g)(4)(i) and (ii) of this section may be illustrated by the following examples:

*Example. (1)* K owns 5,000 acres of bottomland hardwood property along a major watershed system in the southern part of the United States. Agencies within the Department of the Interior have determined that southern bottomland hardwoods are a rapidly diminishing resource and a critical ecosystem in the south because of the intense pressure to cut the trees and convert the land

to agricultural use. These agencies have further determined (and have indicated in correspondence with K) that bottomland hardwoods provide a superb habitat for numerous species and play an important role in controlling floods and purifying rivers. K donates to a qualified organization his entire interest in this property other than his interest in the gas and oil deposits that have been identified under K's property. K covenants and can ensure that, although drilling for gas and oil on the property may have some temporary localized impact on the real property, the drilling will not interfere with the overall conservation purpose of the gift, which is to protect the unique bottomland hardwood ecosystem. Accordingly, the donation qualifies for a deduction under this section.

*Example (2).* Assume the same facts as in example (1), except that in 1978, K sells the mineral interest to A, an unrelated person, in an arm's-length transaction, subject to a recorded prohibition on the removal of any minerals by any surface mining method and a recorded prohibition against any mining technique that will harm the bottomland hardwood ecosystem. After the sale to A, K donates a qualified real property interest to a qualified organization to protect the bottomland hardwood ecosystem. Since at the time of the transfer, surface mining and any mining technique that will harm the bottomland hardwood ecosystem are completely prohibited, the donation qualifies for a deduction under this section.

(5) *Protection of conservation purpose where taxpayer reserves certain rights.*

(i) *Documentation.* In the case of a donation made after February 13, 1986, of any qualified real property interest when the donor reserves rights the exercise of which may impair the conservation interests associated with the property, for a deduction to be allowable under this section the donor must make available to the donee, prior to the time the donation is made, documentation sufficient to establish the condition of the property at the time of the gift.

Such documentation is designed to protect the conservation interests associated with the property, which although protected in perpetuity by the easement, could be adversely affected by the exercise of the reserved rights. Such documentation may include:

(A) The appropriate survey maps from the United States Geological Survey, showing the property line and other contiguous or nearby protected areas;

(B) A map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences, or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses

also an objective assessment of how immediate or remote the likelihood is that the property, absent the restriction, would in fact be developed, as well as any effect from zoning, conservation, or historic preservation laws that already restrict the property's potential highest and best use. Further, there may be instances where the grant of a conservation restriction may have no material effect on the value of the property or may in fact serve to enhance, rather than reduce, the value of property. In such instances no deduction would be allowable. In the case of a conservation restriction that allows for any development, however limited, on the property to be protected, the fair market value of the property after contribution of the restriction must take into account the effect of the development. In the case of a conservation easement such as an easement on a certified historic structure, the fair market value of the property after contribution of the restriction must take into account the amount of access permitted by the terms of the easement. Additionally, if before and after valuation is used, an appraisal of the property after contribution of the restriction must take into account the effect of restrictions that will result in a reduction of the potential fair market value represented by highest and best use but will, nevertheless, permit uses of the property that will increase its fair market value above that represented by the property's current use. The value of a perpetual conservation restriction shall not be reduced by reason of the existence of restrictions on transfer designed solely to ensure that the conservation restriction will be dedicated to conservation purposes. See § 1.170A-14 (c)(3).

(iii) *Allocation of basis.* In the case of the donation of a qualified real property interest for conservation purposes, the basis of the property retained by the donor must be adjusted by the elimination of that part of the total basis of the property that is properly allocable to the qualified real property interest granted. The amount of the basis that is allocable to the qualified real property interest shall bear the same ratio to the total basis of the property as the fair market value of the qualified real property interest bears to the fair market value of the property before the granting of the qualified real property interest. When a taxpayer donates to a qualifying conservation organization an easement on a structure with respect to which deductions are taken for depreciation, the reduction required by this paragraph (h)(3)(ii) in the basis of

the property retained by the taxpayer must be allocated between the structure and the underlying land.

(4) *Examples.* The provisions of this section may be illustrated by the following examples. In examples illustrating the value or deductibility of donations, the applicable restrictions and limitations of § 1.170A-4, with respect to reduction in amount of charitable contributions of certain appreciated property, and § 1.170A-8, with respect to limitations on charitable deductions by individuals, must also be taken into account.

*Example (1).* A owns Goldacre, a property adjacent to a state park. A wants to donate Goldacre to the state to be used as part of the park, but A wants to reserve a qualified mineral interest in the property, to exploit currently and to devise at death. The fair market value of the surface rights in Goldacre is \$200,000 and the fair market value of the mineral rights is \$100,000. In order to ensure that the quality of the park will not be degraded, restrictions must be imposed on the right to extract the minerals that reduce the fair market value of the mineral rights to \$80,000. Under this section, the value of the contribution is \$200,000 (the value of the surface rights).

*Example (2).* In 1984 B, who is 62, donates a remainder interest in Greenacre to a qualifying organization for conservation purposes. Greenacre is a tract of 200 acres of undeveloped woodland that is valued at \$200,000 at its highest and best use. Under § 1.170A-12(b), the value of a remainder interest in real property following one life is determined under § 25.2512-5 of the Gift Tax Regulations. (See § 25.2512-9 with respect to the valuation of annuities, life estates, terms for years, remainders, and reversions transferred after December 31, 1970 and before December 1, 1983. With respect to the valuation of annuities, life estates, terms for years, remainders, and reversions transferred before January 1, 1971, see T.D. 6334, 23 FR 8904, November 15, 1958, as amended by T.D. 7077, 35 FR 18404, December 4, 1970). Accordingly, the value of the remainder interest, and thus the amount eligible for an income tax deduction under sections 170(f), is \$55,996 ( $\$200,000 \times .27998$ ).

*Example (3).* Assume the same facts as in example (2), except that Greenacre is B's 200-acre estate with a home built during the colonial period. Some of the acreage around the home is cleared; the balance of Greenacre, except for access roads, is wooded and undeveloped. See section 170(f)(3)(B)(i). However, B would like Greenacre to be maintained in its current state after his death, so he donates a remainder interest in Greenacre to a qualifying organization for conservation purposes pursuant to section 170(f)(3)(B)(iii) and (h)(2)(B). At the time of the gift the land has a value of \$200,000 and the house has a value of \$100,000. The value of the remainder interest, and thus the amount eligible for an income tax deduction under section 170(f), is computed pursuant to § 1.170A-12. See § 1.170A-12(b)(3).

*Example (4).* Assume the same facts as in example (2), except that at age 62 instead of donating a remainder interest B donates an easement in Greenacre to a qualifying organization for conservation purposes. The fair market value of Greenacre after the donation is reduced to \$110,000. Accordingly, the value of the easement, and thus the amount eligible for a deduction under section 170(f), is \$90,000 ( $\$200,000$  less  $\$110,000$ ).

*Example (5).* Assume the same facts as in example (4), and assume that three years later, at age 65, B decides to donate a remainder interest in Greenacre to a qualifying organization for conservation purposes. Increasing real estate values in the area have raised the fair market value of Greenacre (subject to the easement) to \$130,000. Accordingly, the value of the remainder interest, and thus the amount eligible for a deduction under section 170(f), is \$41,639 ( $\$130,000 \times .32030$ ).

*Example (6).* Assume the same facts as in example (2), except that at the time of the donation of a remainder interest in Greenacre, B also donates an easement to a different qualifying organization for conservation purposes. Based on all the facts and circumstances, the value of the easement is determined to be \$100,000. Therefore, the value of the property after the easement is \$100,000 and the value of the remainder interest, and thus the amount eligible for deduction under section 170(f), is \$27,998 ( $\$100,000 \times .27998$ ).

*Example (7).* C owns Greenacre, a 200-acre estate containing a house built during the colonial period. At its highest and best use, for home development, the fair market value of Greenacre is \$300,000. C donates an easement (to maintain the house and Greenacre in their current state) to a qualifying organization for conservation purposes. The fair market value of Greenacre after the donation is reduced to \$125,000. Accordingly, the value of the easement and the amount eligible for a deduction under section 170(f) is \$175,000 ( $\$300,000$  less  $\$125,000$ ).

*Example (8).* Assume the same facts as in example (7) and assume that three years later, C decides to donate a remainder interest in Greenacre to a qualifying organization for conservation purposes. Increasing real estate values in the area have raised the fair market value of Greenacre to \$180,000. Assume that because of the perpetual easement prohibiting any development of the land, the value of the house is \$120,000 and the value of the land is \$60,000. The value of the remainder interest, and thus the amount eligible for an income tax deduction under section 170(f), is computed pursuant to § 1.170A-12. See § 1.170A-12(b)(3).

*Example (9).* D owns property with a basis of \$20,000 and a fair market value of \$80,000. D donates to a qualifying organization an easement for conservation purposes that is determined under this section to have a fair market value of \$60,000. The amount of basis allocable to the easement is \$15,000 ( $\$60,000 / \$80,000 = \$15,000 / \$20,000$ ). Accordingly, the basis of the property is reduced to \$5,000 ( $\$20,000$  minus  $\$15,000$ ).

otherwise enters into agreement with a public minded organization for the development of the above described lands as a public use area, and the lands are so developed, the School for the Deaf shall not be liable, legally or morally for any personal injury suffered by any person visiting or otherwise using or enjoying such public use area or the facilities thereon.

SECTION 3. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 4. It is hereby found and determined by the Seventy-First General Assembly, meeting in Regular Session, that, the Arkansas School for the Deaf owns a parcel of property located on the bank of the Arkansas River within the limits of the City of Little Rock that is suited for development into a public use recreation area and would be beneficial to the people of the State of Arkansas. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval.

APPROVED: March 17, 1977.

ACT 480

AN ACT to Establish the Public Interest and Value to the State in Presenting its Unique Heritage; to Develop a Coordinated Statewide Program of

Historic Preservation Among Existing Agencies; and for Other Purposes.

WHEREAS, the historical and cultural heritage of Arkansas should be preserved as a living part of our community life, economic development, and social well-being in order to give a sense of orientation to all the citizens of Arkansas;

WHEREAS, the spirit and direction of the future of Arkansas are founded upon and reflected in its unique and historic past;

NOW THEREFORE,

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. The General Assembly hereby determines that the historical, archeological, architectural, and cultural heritage of Arkansas is among the most important economic and environmental assets of this State and that rapid development threatens to remove the remaining vestiges of Arkansas' proud and unique heritage. Therefore, it is hereby declared to be public policy and in the best interests of the general economic, social, and educational welfare of all the citizens of Arkansas for this State to engage in a comprehensive program of historic preservation, undertaken at all levels of the government of Arkansas and its political subdivisions, to promote the use and preservation of such property for the public interest and the education, inspiration, pleasure, and enrichment of the citizens of this State.



and procedures as necessary;

(d) Otherwise act in an advisory capacity to the State Historic Preservation Officer.

**SECTION 8.** The Arkansas Historic Preservation Program, a Division of the Department of Arkansas Natural and Cultural Heritage, under the State Historic Preservation Officer shall have the following powers and duties:

(a) Implement the development of a State Historic Preservation Plan as contemplated by Public Law 89-665, but not necessarily restricted thereto, and be responsible for the historical, architectural, and cultural portions of that Plan;

(b) Conduct surveys and otherwise develop the data necessary for the historical, architectural and cultural portions of the State Historic Preservation Plan;

(c) Cooperate with the Arkansas Archaeological Survey which will be responsible for the archaeological portion of the statewide program for historic preservation and the State Historic Preservation Plan as provided for in Section 5;

(d) Coordinate the surveys and other programs of activities of all State and private agencies in connection with projects supported by federal funds provided to the Department of Arkansas Natural and Cultural Heritage to implement Public Law 89-665 and all cash funds or appropriated State funds made available to the Department of Arkansas Natural

and Cultural Heritage for the Arkansas Historic Preservation Program.

(e) Allocate such federal funds as are provided to implement Public Law 89-665 to those State agencies or private or other organizations which are professionally staffed and capable of carrying out the programs provided for by Public Law 89-665;

(f) Employ necessary personnel, consultants, planners, or other employees or professional services within the limits of funds available therefor, as may be required in the performance of services contemplated by this Act; contract with any and all public firms or agencies for the purpose of making State surveys and plans necessary for the implementation of this Act.

(g) Accept and administer funds received from the State and/or Federal government or any other governmental agencies or from any private source in furtherance of the provisions of this Act; provided, that such administration and acceptance does not include cash or appropriated funds made available to the Arkansas Archaeological Survey from whatever source;

(h) Pay such per diem, travel expense, and monetary compensation to members of committees appointed by the Governor as shall be determined by the Department of Arkansas Natural and Cultural Heritage, within the limits of funds available therefor, and at rates not to exceed the allowable limits of applicable State and Federal Laws;

(i) Enlist the cooperation and assistance of

Commission as hereinafter specified. Failure to make recommendations within sixty (60) days after date of receipt shall be taken as approval of the report of the Historic District Commission."

SECTION 12. Act 564 of 1975 and all other laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 13. If any provision of this or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 14. It is hereby found and determined by the General Assembly that it is desirable that the historical and cultural heritage of the State of Arkansas be preserved; that it is essential that an agency be created to coordinate and supervise authority in preserving the historical and cultural heritage of the State; that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 17, 1977.

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dance with the rules and regulations promulgated by the Arkansas Commemorative Commission to assure that such restriction shall be in the public interest and shall be evidenced by a certificate of approval or a certificate of termination duly executed on behalf of the Arkansas Commemorative Commission and duly recorded in the deed records of the county where the structure, site, or open space is located. In determining whether the restriction or its continuance is in the public interest, the Arkansas Commemorative Commission shall take into consideration any national, state, regional, and local comprehensive land use or development plan effecting the structure, site, or open space.

SECTION 4. A preservation restriction may be modified or released, in whole or in part, by the holder with the approval of the Arkansas Commemorative Commission for such consideration, if any, as the holder may determine, in the same manner as the holder may dispose of land or other interests in land, but only after a public hearing upon reasonable public notice under such procedures as shall be established by the Arkansas Commemorative Commission.

SECTION 5. A preservation restriction is an interest in land and may be acquired by any governmental body or such charitable corporation or trust which has power to acquire interests in land and be assigned in the same manner as it may acquire or assign other interest in land with the approval of the Arkansas Commemorative Commission. Such restriction may be enforced by injunction or other proceeding in equity, and shall entitle representatives of the holder to enter the land in a reasonable

able manner and at reasonable times to assure compliance. It shall be the duty and responsibility of the Attorney General of the State of Arkansas to enforce the provisions of this Act.

SECTION 6. This Act shall not be construed to imply that any restriction, easement, covenant or condition which does not come within the purview of this Act shall, on account of any provisions hereof, be unenforceable. Nothing in this Act 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. Nothing in this Act shall be construed to repeal or diminish any of the powers, functions or responsibilities of any governmental agency established under the laws of this State.

APPROVED: April 4, 1975.

ACT 883

AN ACT to Amend Section 6 of Act 432 of 1973 [Ark. Stats. 22-919] and Section 6 of Act 19 of 1965 as Amended [22-946] to Provide for a Cost of One Dollar (\$1.00) for Entering Upon the Records of a Municipal Court Each Criminal Case and Each Moving Traffic Violation and a Cost of Twenty Cents (20¢) for the Issuance of Each Summons in a Civil Action to Provide Funds for Retirement Benefits for Municipal Court Judges and Municipal Court Clerks.

acquisition, in the absence of the appropriation of funds by the General Assembly for that purpose. The interest in any land authorized to be acquired by the Act may be fee simple or any lesser interest as determined by the State Historic Preservation Officer with the advice of the State Review Committee to be reasonably necessary to accomplish the purpose of this Act."

**SECTION 2.** All other laws and parts of laws in conflict with this Act are hereby repealed.

**SECTION 3.** Emergency. It is hereby found and determined by the General Assembly that there is an immediate need to expand the powers and duties of the Arkansas Historic Preservation Program to enter into contracts, to receive and expend funds obtained from any source, and to charge fees; and this Act is immediately necessary to grant such authority. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

**APPROVED: March 22, 1983.**

**ACT 664**

**AN ACT to Amend Section 3 of Act 270 of 1981 [Ark. Stat. 66-2306] to Require the Arkansas Commission on Law Enforcement Standards and Training to Certify to the Insurance Commissioner the Cities and Towns Eligible to Participate in the Distribution of**

Police Officers' Pension and Relief Funds; and for Other Purposes.

*Be It Enacted by the General Assembly of the State of Arkansas:*

**SECTION 1.** Section 3 of Act 270 of 1981, the same being Arkansas Statute 66-2306, is hereby amended to read as follows:

"Section 3. Each city or town having a Police Officers' Pension and Relief Fund which is organized pursuant to any existing statute of this State shall be qualified to participate in the distribution of funds herein described and appropriated. The Arkansas Commission on Law Enforcement Standards and Training created by Section 7 of Act 45 of 1981 (Ark. Stat. 42-701.1) is hereby directed, and it shall be its duty, to identify such cities and towns and certify the same to the Insurance Commissioner on or before the 15th day of December of each calendar year indicating those funds qualified to participate in the distribution of those funds described and appropriated by this Act. Each such qualified city and town shall then be entitled to receive that portion of the tax as herein described and appropriated that is collected during the forthcoming calendar year, arising from such insurance as shall be written upon every motor vehicle principally garaged in that qualified city or town."

**SECTION 2.** All laws and parts of laws in conflict with this Act are hereby repealed.

**APPROVED: March 22, 1983.**

## NATIONAL PARK SERVICE

# HISTORIC PRESERVATION CERTIFICATION APPLICATION

## Instructions

This application is to be filled out in accordance with regulations set forth in Chapter 1, Title 36 of the Code of Federal Regulations, part 67, and the instructions given below. (Pursuant to Section 251 of the Tax Reform Act of 1986, Section 212 of the Economic Recovery Tax Act of 1981, Section 6 of the Tax Treatment Extension Act of 1980, Sections 701(f) and 315 of the Revenue Act of 1978 and Section 2124 of the Tax Reform Act of 1976). The regulations shall take precedence in the event of any inconsistency with the requirements expressed in this application. National Park Service approval of applications and amendments to applications is conveyed *only in writing* by duly authorized officials of the Federal Government. The decision by the National Park Service with respect to certification is made on the basis of the descriptions in this application form. In the event of any discrepancy between the application form and other, supplementary material submitted with it (such as architectural plans, drawings and specifications), the application forms shall take precedence.

**In this package:**

Instructions for the Historic Preservation Certification Application  
List of National Park Service Regional Offices  
Part 1—Evaluation of Significance  
Part 2—Description of Rehabilitation  
Continuation/Amendment Sheet  
Request for Certification of Completed Work

*Read the following instructions carefully before filling out the attached application. Type or print clearly in black ink. In cases where adequate documentation is not provided, review and evaluation cannot be completed, resulting in denial of the requested certification.*

and which is certified by the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

**A certified rehabilitation is:**

- any rehabilitation of a certified historic structure which the Secretary has certified to the Secretary of the Treasury as being consistent with the historic character of such structure and, where applicable, with the district in which such structure is located.

*The Internal Revenue Code limits the tax incentives for rehabilitation to depreciable structures, i.e., buildings used in a trade or business or held for the production of income, such as commercial or rental residential properties. Non-depreciable structures may qualify as certified historic structures only if they are the subject of charitable contributions for conservation purposes.*

Owners of properties listed either individually or within districts in the National Register of Historic Places (a list maintained by the Department of the Interior) are eligible to apply for certifications. Owners of properties located in state or local districts may also apply for certifications if the statutes establishing those districts have been certified by the Secretary of the Interior and the districts have been certified by the Secretary as substantially meeting the National Register Criteria for Evaluation.

To qualify for the tax incentives, property owners must complete the appropriate part or parts of the Historic Preservation Certification Application. In participating states, completed applications are sent first to the appropriate state official appointed by the Governor (normally the State Historic Preservation Officer). The state official will forward applications to the National Park Service (NPS) regional office, generally with a recommendation. In nonparticipating states, applications are sent to the appropriate NPS regional office. Applications may be sent at any time during the year and may be sent separately or together (if the two parts are sent separately, Part 1 must precede part 2). Simultaneous submission of Parts 1 and 2, however, permits a more expeditious review. Part 2 will not be processed until an adequately documented Part 1 is on file and acted upon, unless the property is already individually listed in the National Register.

### HISTORIC PRESERVATION CERTIFICATIONS

Federal historic preservation tax incentives are available for any qualified project that the Secretary of the Interior designates as a certified rehabilitation of a certified historic structure. These incentives were established and modified by the Tax Reform Act of 1976 (P.L. 94-455), the Revenue Act of 1978 (P.L. 95-600), the Tax Treatment Extension Act of 1980 (P.L. 96-541), the Economic Recovery Tax Act of 1981 (P.L. 97-34), and the Tax Reform Act of 1986 (P.L. 99-514). The Tax Treatment Extension Act of 1980 also established permanent provisions affecting income and estate tax deductions for charitable contributions of partial interests in a historic property designated a certified historic structure.

**A certified historic structure** is any structure, subject to depreciation as defined by the Internal Revenue Code, that is:

- listed individually in the National Register of Historic Places; or,
- located in a registered historic district and certified by the Secretary of the Interior as contributing to the historic significance of the district.

For purposes of the charitable contributions provisions only, a certified historic structure need not be a building nor be depreciable to qualify.

**A registered historic district** is any district listed in the National Register or any district which is designated under a state or local statute which has been certified by the Secretary of the Interior as containing criteria which will substantially achieve the purpose of preserving and rehabilitation buildings of significance to the district;

Check with the appropriate state official to determine if more than one copy of this application is required for state files. A current list of authorized state officials in participating states, the regulations referenced above, or additional copies of this application may be obtained by contacting one of the NPS regional offices listed at the end of these instructions. *Applicants are strongly encouraged to submit applications describing proposed work and to receive approval from the NPS prior to the start of construction. Owners who undertake rehabilitation projects without prior approval from the National Park Service do so at their own risk.*

Under the procedures outlined in 36 CFR Part 67, Part 1 of this application will generally be reviewed by states within 30 days, and by the NPS within 30 days. The NPS review will generally be completed within 15 days if the application is forwarded by a state accorded expedited review status. Part 2 of this application will generally be reviewed by states within 30 days, and by the NPS within 30 days. The NPS review will generally be completed within 15 days if the application is forwarded by a state accorded expedited review status. Where a state has chosen not to participate in the review process, review by the NPS will generally be completed within 60 days of receipt of a complete, adequately documented application. Notification as to certification will be made in writing by the NPS. A copy of each notification is provided to the Internal Revenue Service and the state official.

**Continuation/Amendment Sheets.** Use Continuation/Amendment Sheets or blank sheets of paper as needed to provide information concerning special considerations, to continue sections of the application for which additional space is needed, or to amend an application that has already been submitted. On each sheet include property name and address. Indicate "Part 1" or "Part 2" at the top of the sheet. Give the item number continued from the application and provide information in the same format as on the application.

## PART 1—EVALUATION OF SIGNIFICANCE

The Historic Preservation Certification Application—Part 1 is used for the following purposes:

- to request certification that a depreciable building contributes to the significance of a registered historic district and therefore qualifies as a "certified historic structure" for the purpose of rehabilitation;
- to request certification that a depreciable or non-depreciable structure or building, and, where appropriate, the land area on which such a structure or building is located contributes to the significance of the registered historic district in which it is located, for a charitable contribution for conservation purposes;
- to request certification that a building does not contribute to the significance of the registered historic district in which it is located;
- to request a preliminary determination of whether an individual building not yet on the National Register meets the National Register Criteria for Evaluation and will likely be listed in the National Register when nominated according to the procedures set forth in 36 CFR Part 60;
- to request a preliminary determination that a building located within a potential historic district contributes to the significance of the district;
- to request a preliminary determination that a building outside the period or area of significance of a registered historic district contributes to the significance of the district.

Owners of buildings individually listed in the National Register need not complete Part 1. (Verification of National Register listing may be obtained from the appropriate state official or the listing of National Register entries in the *Federal Register*.)

**Evaluation of the Application.** The documentation in Part 1 applications for buildings within districts must be sufficient: 1) to make a judgment about how the building relates to the district as a whole, and 2) to determine what particular features of the building comprise its historic character. In compiling this information it is helpful to consult the National Register nomination for the district on file at the office of the State Historic Preservation Officer or the district documentation at the local historical commission or state office for certified districts. *It should not be necessary in most cases for the applicant to do detailed research to describe the building and to provide a statement of significance.* Owners of buildings which appear to meet National Register criteria but are not yet listed in the National Register, or which are located within potential historic districts, may request preliminary determinations from the NPS as to whether such buildings may qualify as certified historic structures when the buildings or the districts in which they are located are listed in the National Register. Preliminary determinations may also be requested for buildings outside the period or area of significance of a registered historic district. Such requests will be reviewed for conformance with National Register criteria published in 36 CFR part 60 and/or the Secretary's Standards for Evaluating Significance within Registered Historic Districts. These requests will be considered only if the submitted documentation substantially meets the requirements detailed in 36 CFR 60 and NPS instructions on completing National Register nomination forms (available from the State Historic Preservation Officer or the NPS regional offices). Preparing such applications generally requires professional expertise in history, architectural history, or related disciplines. Such determinations are preliminary only and are not binding upon the NPS. Preliminary determinations will ordinarily be made final as of the date of the listing of the individual building or district in the National Register, or for buildings outside the period or area of significance of a registered historic district, when the nomination or district documentation is formally

### The Secretary of the Interior's Standards for Evaluating Significance within Registered Historic Districts

1. A building contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling and association adds to the district's sense of time and place and historical development.
2. A building not contributing to the historic significance of a district is one which does not add to the district's sense of time and place and historical development; or one where the location, design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the property has been irretrievably lost.
3. Ordinarily buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

amended. This requires: 1) the State Historic Preservation Officer to amend the National Register nomination and for the amended nomination to be approved by the NPS; or 2) the state or local jurisdiction for certified historic districts to amend the district documentation and obtain NPS approval. See National Register Bulletin No. 19, "National Park Service Procedures and Policies for Processing National Register Nominations," for further information.

## COMPLETING PART 1

**1. Name of property.** Provide the name of the property. Generally this is its street address. When the building is known by a historic name, such as the Boston Manufacturing Company, or is called by its historic name in the district documentation, include that name also. Provide a complete address, including street, city, county, state and zip code for the property under consideration. If the building is located within a registered historic district, provide the name of the district and check the type of district. Consult the State Historic Preservation Officer for the correct name of the district.

**2. Nature of request.** Check box appropriate for your certification request.

**3. Project contact.** Provide the name, address and daytime telephone number of the person to whom inquiries regarding specifics of the application should be made.

**4. Owner.** Give the owner's name. Sign and date the application. If the owner is a corporation or partnership, give both the name of that entity and the name of the person who signs the form. Give the owner's Social Security or Taxpayer Identification Number. Provide the owner's address and daytime telephone number. If the property has multiple owners, their names, addresses, and Social Security or Taxpayer Identification Numbers must be listed on a continuation sheet. Long-term lessees may apply if a letter from the owner accompanies the application, indicating knowledge of the application and concurrence with its submission.

**5. Description of physical appearance.** Provide information about the major features of the building on *both the exterior and the interior*. Describe the building in its *present* condition (before rehabilitation), not as it was when first built nor as it will be after rehabilitation. Note the architectural style, exterior construction materials (wood, brick, etc.), type of roof (flat, gable, hipped, etc.), number of stories, basic plan (rectangular, irregular, L-shaped, etc.) and distinguishing architectural features (placement and type of windows, chimneys, porches, decorative interior features or spaces). Fully describe any changes that have been made to the building since its original construction—for example, additions, porch enclosures, new storefronts, relocation of doors and windows, and alterations to the interior. Other buildings on the property such as carriage houses, barns, and sheds should also be fully described. (See "Special Considerations: Multiple Buildings" on page 4.) Finally, discuss the way in which the building relates to others in the district or neighborhood in terms of siting, scale, material, construction, and date.

Provide date of construction, if available, or indicate the approximate date. Give the source of the date, which may be a map, the district nomination, a building permit or other official document, or a former owner. State the approximate dates of alterations, and check whether or not the building has been moved.

If the request for certification is for a charitable contribution for conservation purposes and is for a structure or building with surrounding land area, the land area should be described. Boundaries of the land area should be specifically defined.

**EXAMPLE—Building within a registered historic district:** This three-story, flat-roofed, unpainted brick building, rectangular in shape, was constructed in 1850. It features regularly-spaced arched windows on the second and third floors (6 openings on the east elevation have been filled in over the years, exact date unknown), 2-over-2 double-hung sash, and a prominent bracket cornice. The first floor of the facade has been altered: the existing storefront dates from ca. 1950. On the interior, the first floor is divided into two principal spaces—a large commercial space in front and a smaller office behind. The front room was modernized in the 1950's and contains no surviving historic fabric except for a simple wooden staircase running along the party wall. A pressed metal ceiling is the most prominent feature in the rear office; baseboards, panelled doors, and window and door surrounds also survive in this room. The upper floors have two rooms each, identical in configuration to the first floor; these rooms retain their original appearance, although they contain no architectural detailing of any kind (see photographs).

**6. Statement of significance.** Summarize how the building contributes to the significance of the district. This summary should relate to the significance of the district as identified in the National Register nomination or district documentation. This statement of significance should also relate to the Secretary of the Interior's Standards for Evaluating Significance within Registered Historic Districts, given on page 2. Is it similar to other buildings in the district in scale, building materials, style, and period of construction? Note important figures from the past associated with the building, former uses of the property, and the name of the architect or builder, if known.

If the request for certification is for a charitable contribution for conservation purposes and is for a structure or building with surrounding land area, the importance of the land area to the structure or building should be described.

**EXAMPLE—Building within a registered historic district:** The district is an intact grouping of architecturally significant commercial and industrial buildings constructed between 1850 and 1915 that display a variety of styles and types of architectural ornamentation popular during this era. The district is also significant as an early manufacturing and distribution center which led to the city's growth as one of the largest cities in the state. Industrial growth in the late 19th and early 20th centuries required the construction of larger buildings and several still exist within the boundaries of the district (see photographs). This modest three-story building is typical in appearance and history of the majority of the buildings in the district. It was originally built for manufacturing buttons, but was converted into a store with offices above during the 1880's when wholesaling grew as an important new activity in the district. The building is similar to its neighbors in size, scale, materials, and style.

**7. Photographs and maps.** Provide good, clear photographs of the building and its surroundings as they appeared before rehabilitation. Good photographic coverage is a very important part of the application. Photographs supplement, and to some extent may substitute for, some of the descriptive material in number 5. They should show all elevations of the building, views of the building in its setting on the street, and representative interior spaces and features.

Photographs should be numbered, dated and labeled with the property name, the view (e.g., east side, photographer facing west), and a brief description of what is shown. Photographs should be keyed to the application narrative and sketch map, where appropriate.

Provide a map of the historic district, clearly identifying the lot on which the building is located; this is necessary to verify the building's eligibility for the preservation tax provisions. If certification is being sought for one of a group of buildings that are listed together in the National Register, a site plan of the group indicating which of the buildings is under consideration is necessary. For buildings under preliminary consideration for individual listing, a site plan is necessary.

If the request for certification is for a charitable contribution for conservation purposes and is for a structure or building with surrounding land area, include a map specifically defining the boundaries and photographs of the land area.

**Special Considerations.** Applicants should read carefully the following information about certain special considerations that may apply to their particular case. If a building is in one or more of the categories described below, additional information will be necessary. If this information is provided at the outset, the review process should not be delayed.

**Certifications of non-significance.** A certification of non-significance is a judgment that a building does not contribute to the significance of a district. The application must clearly demonstrate, therefore, that the building lacks the characteristics that contributing buildings in the district possess. The applicant must show how the building compares to others in its immediate neighborhood and to the district as a whole. The documentation must address changes that have been made to the building since its construction. Good photographs are essential; historic photographs should also be provided if possible. When certification of non-significance is requested on the grounds that the building is so deteriorated that the overall integrity of the property has been lost, it may be necessary to submit a structural engineer's report and additional information to document physical deterioration or structural damage.

**Moved Buildings.** An applicant must provide additional information to support a certification application for a building that has been moved or is a candidate for moving. Such documentation must discuss: 1) the effect of the move on the building's appearance (any proposed demolition, proposed changes in foundations, etc.); 2) the new setting and general environment of the proposed site; 3) the effect of the move on the distinctive historic and visual character of the district; 4) the method to be used for moving the building. Such documentation must also include photographs showing the previous and proposed environments, including sites, adjacent buildings, and streetscapes.

**Properties less than 50 years old.** Properties less than 50 years old are generally considered not to contribute to the significance of a district and are excluded from individual listing in the National Register. Properties in this category, however, may be certified if they are shown to be integral parts of a historic district and the historical attributes of the district are considered to be less than 50 years old, or if they are exceptionally significant. For this reason, Standard 3 of the Secretary of the Interior's Standards for Evaluating Significance within Registered Historic Districts requires that to contribute, such properties must possess exceptional historic or architectural merit or the district must encompass significant qualities and characteristics that are less than 50 years old. Documentation for

these properties must explain how the property meets the requirements. For information on the individual listing of properties less than 50 years old, refer to National Register Bulletin No. 22, "How to Evaluate and Nominate Potential National Register Properties That Have Achieved Significance within the Last 50 Years" (available from the State Historic Preservation Officer or from the NPS regional offices).

**Multiple Buildings.** The National Register includes some groups of buildings that are not specifically designated historic districts. Generally, a single application form may be used to request certification for these buildings. Documentation, however, must be submitted for every building to be considered for certification. For instance, if a house and carriage house are both to be certified, a single application may be used but a description and a statement of significance and full photographic coverage of each building must be provided. The owner should state explicitly which buildings are candidates for certification of significance or for certification of non-significance. A sketch map or site plan should be provided to show the current relationship of the buildings. A single application may also be made to request certification in cases where a property is composed of buildings that were functionally related historically to serve an overall purpose (such as a mill complex or an industrial plant). In these cases, the complex will be treated as a single certification and proposals for demolition of components will be considered in the review of rehabilitation work. If buildings are under separate ownership, however, a separate Part 1 application must be filled out by each owner.

**Preliminary Determinations.** Applications for preliminary determinations must contain substantially the same level of documentation as National Register nominations, as specified in 36 CFR 60 and NPS instructions on completing National Register nomination forms (available from the State Historic Preservation Officer or the NPS regional offices). Applications for preliminary determinations for individual listing must show how the building individually meets the National Register Criteria for Evaluation. Specific information about the events, persons, architectural styles, or methods of construction that make the property significant in American history, architecture, archeology, engineering, or culture should be provided. The statement of significance should specifically identify the historic function of the property, the historic themes represented by the property, the period of time when the property played a significant role or acquired significance, and the physical qualities that enable the property to convey its historic significance. An application for a building located in a potential historic district must describe the district and document how the district meets the criteria and how the building contributes to the significance of that district. An application for a preliminary determination for a building in a registered historic district which is outside the period or area of significance in the district documentation on file with the NPS must document and justify the expanded significance of the district and how the building contributes to the significance of the district, or document the individual significance of the building. Applicants should consult NPS instructions on completing National Register nomination forms (available from the State Historic Preservation Officer or the NPS regional offices) for guidance in preparing documentation.

## PART 2—DESCRIPTION OF REHABILITATION WORK

The Historic Preservation Certification Application—Part 2 must be completed by all owners of certified historic structures seeking to have rehabilitations certified by the Secretary of the Interior as:

NATIONAL PARK SERVICE

**HISTORIC PRESERVATION CERTIFICATION APPLICATION  
PART 1 — EVALUATION OF SIGNIFICANCE**

NPS Office Use Only

NRIS No:

NPS Office Use Only

Project No:

**Instructions:** Read the instructions carefully before completing application. No certification will be made unless a completed application form has been received. Type or print clearly in black ink. If additional space is needed, use continuation sheets or attach blank sheets.

1. Name of property: \_\_\_\_\_

Address of property: Street \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Name of historic district: \_\_\_\_\_

- National Register district     certified state or local district     potential historic district

2. Check nature of request:

- certification that the building contributes to the significance of the above-named historic district for the purpose of rehabilitation.
- certification that the structure or building and, where appropriate, the land area on which such a structure or building is located contributes to the significance of the above-named historic district for a charitable contribution for conservation purposes.
- certification that the building does not contribute to the significance of the above-named district.
- preliminary determination for individual listing in the National Register.
- preliminary determination that a building located within a potential historic district contributes to the significance of the district.
- preliminary determination that a building outside the period or area of significance contributes to the significance of the district.

3. Project contact:

Name \_\_\_\_\_

Street \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_ Daytime Telephone Number \_\_\_\_\_

4. Owner:

I hereby attest that the information I have provided is, to the best of my knowledge, correct, and that I own the property described above. I understand that falsification of factual representations in this application is subject to criminal sanctions of up to \$10,000 in fines or imprisonment for up to five years pursuant to 18 U.S.C. 1001.

Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Organization \_\_\_\_\_

Social Security or Taxpayer Identification Number \_\_\_\_\_

Street \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_ Daytime Telephone Number \_\_\_\_\_

NPS Office Use Only

The National Park Service has reviewed the "Historic Preservation Certification Application — Part 1" for the above-named property and hereby determines that the property:

- contributes to the significance of the above-named district and is a "certified historic structure" for the purpose of rehabilitation.
- contributes to the significance of the above-named district and is a "certified historic structure" for a charitable contribution for conservation purposes in accordance with the Tax Treatment Extension Act of 1980.
- does not contribute to the significance of the above-named district.

Preliminary Determinations:

- appears to meet the National Register Criteria for Evaluation and will likely be listed in the National Register of Historic Places if nominated by the State Historic Preservation Officer according to the procedures set forth in 36 CFR Part 60.
- does not appear to meet the National Register Criteria for Evaluation and will likely not be listed in the National Register.
- appears to contribute to the significance of a potential historic district, which will likely be listed in the National Register of Historic Places if nominated by the State Historic Preservation Officer.
- appears to contribute to the significance of a registered historic district but is outside the period or area of significance as documented in the National Register nomination or district documentation on file with the NPS.
- does not appear to qualify as a certified historic structure.

Date \_\_\_\_\_ National Park Service Authorized Signature \_\_\_\_\_ National Park Service Office/Telephone No: \_\_\_\_\_

See Attachments

# CONTINUATION/AMENDMENT SHEET

## Historic Preservation Certification Application

Property Name \_\_\_\_\_

Property Address \_\_\_\_\_

Instructions. Read the instructions carefully before completing. Type, or print clearly in black ink. Use this sheet to continue sections of the Part 1 and Part 2 application, or to amend an application already submitted. Photocopy additional sheets as needed.

This sheet:  continues Part 1  continues Part 2  amends Part 1  amends Part 2 NPS Project Number: \_\_\_\_\_

Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_  
Street \_\_\_\_\_ City \_\_\_\_\_  
State \_\_\_\_\_ Zip \_\_\_\_\_ Daytime Telephone Number \_\_\_\_\_

### NPS Office Use Only

- The National Park Service has determined that these project amendments meet the Secretary of the Interior's "Standards for Rehabilitation."
- The National Park Service has determined that these project amendments do not meet the Secretary of the Interior's "Standards for Rehabilitation."

Date \_\_\_\_\_ National Park Service Authorized Signature \_\_\_\_\_ National Park Service Office/Telephone No. \_\_\_\_\_

See Attachments



Annual Covenant Monitoring Procedures  
September 1989

1. Inspect and update covenant list annually -- deleting any property whose covenant has expired.
2. Send notification letter to owner of property specifying date of scheduled annual inspection visit.
3. Make visit, use checklist to record condition of structure, photograph structure for file.
4. Send notification letter to owner that property is either in compliance or not. If not in compliance, list repairs that need to be made and give deadline to start work. At end of deadline do check-up monitoring to see if repair work has been started. If no work started, proceed with enforcement.



1. **Roof Structure:**      Conditions: \_\_\_\_\_ Good      \_\_\_\_\_ Deteriorated  
Materials:  
Comments:
2. **Windows**              Conditions: \_\_\_\_\_ Good      \_\_\_\_\_ Deteriorated  
Materials/Style:  
Comments:
3. **Doors**                    Condition: \_\_\_\_\_ Good      \_\_\_\_\_ Deteriorated  
Materials/Style:  
Comments:
4. **Exterior Walls**        Condition: \_\_\_\_\_ Good      \_\_\_\_\_ Deteriorated  
Materials/Style:  
Comments:
5. **Exterior Trim**        Condition: \_\_\_\_\_ Good      \_\_\_\_\_ Deteriorated  
Materials/Style:  
Comments:
6. **Porches**                Conditions: \_\_\_\_\_ Good      \_\_\_\_\_ Deteriorated  
Materials/Style:  
Comments:
7. **Chimneys**              Condition: \_\_\_\_\_ Good      \_\_\_\_\_ Deteriorated  
Materials:  
Comments:



8. Stairways Condition: \_\_\_\_\_ Good \_\_\_\_\_ Deteriorated  
Materials:  
Comments:

9. Foundation Condition: \_\_\_\_\_ Good \_\_\_\_\_ Deteriorated  
Materials:  
Comments:

10. Out Buildings Condition: \_\_\_\_\_ Good \_\_\_\_\_ Deteriorated  
Materials:  
Style:  
Uses:  
Comments:



(date)

(name)  
(address)

RE:

Dear (name):

A monitoring visit of the above referenced property for easement compliance was completed on (date), by the Arkansas Historic Preservation Program (AHPP). At the time of the inspection, deterioration was reported which violates the terms of your easement. The following items require repair:

The AHPP expects you to begin repair work within six (6) months of the date of this notice or face possible sanctions for noncompliance with the easement. If you require assistance regarding technical aspects of the repair work, or if you have questions concerning this letter, please contact Randy Jeffery of my staff at 371-2763.

Sincerely,

Cathy Buford  
State Historic Preservation Officer

CB:dg





(date)

(name)  
(address)

RE:

Dear (name):

On (date) a return monitoring visit was made to the above referenced property to see if progress had been made toward complying with the easement requirements. At the time of the inspection by the staff of the Arkansas Historic Preservation Program (AHPP), it was noted that the repairs required after the previous inspection had not been made, nor was there any evidence that any repairs were anticipated. As stated in our (date) letter to you, the violations must be corrected to avoid possible sanctions for noncompliance with the terms of the easement.

According to the terms of the easement document, the property must be maintained in a good state of repair. The AHPP expects you to begin the following repairs ~~to begin~~ within the next six months:

Failure to execute the necessary repairs could subject the owner to possible legal action.

If you require assistance regarding technical aspects of the repair work, or if you have questions concerning this letter, please contact Randy Jeffery of my staff at 371-2763.

Sincerely,

Cathy Buford  
State Historic Preservation Officer

CB:dg



(date)

(name)  
(address)

RE:

Dear (name):

The lack of effort to comply with the terms of the easement on the above referenced property leaves our office no choice but to notify the appropriate federal authorities and to take whatever legal action is deemed necessary. If you have questions concerning this transmittal contact the Arkansas Historic Preservation Program at (501) 371-2763.

Sincerely,

Cathy Buford  
State Historic Preservation Officer

CB:dg



QUESTIONNAIRE  
ON PROPOSED ADMINISTRATIVE RULES  
WHETHER NEW, AMENDATORY OR REPEALING

012.02: 91-005

FROM:  
AGENCY Department of Arkansas Heritage  
DIVISION Arkansas Historic Preservation Program  
CONTACT PERSON Randy Jeffery  
ADDRESS 225 E. Markahm, Suite 300  
PHONE NUMBER 324-9346

Leave Blank

INSTRUCTIONS .

- A. Make copies of this form for future use.
- B. Answer each question completely using layman's language. Use additional sheets if necessary.
- C. If you have a method of indexing your rules, give the proposed citation after "SHORT TITLE OF THIS RULE" below.
- D. Submit three (3) copies of this questionnaire attached to the front of three (3) copies of your proposed rule to:

ATTENTION: Donna Davis  
Subcommittee on Administrative Rules and Regulations  
Arkansas Legislative Council  
Room 315, State Capitol  
Little Rock, AR 72201

=====

SHORT TITLE OF THIS RULE Conservation Easement Document and Rules

- 1. What is the subject of the proposed rule?  
Requirements and procedures for donating a conservation easement on a historic structure to the Arkansas Historic Preservation Program.
- 2. Will this be a new rule or repeal or amend an existing rule? If it is an amendment, state specifically what is amended.

Ammendments update

- 3. What State or Federal law or regulation grants the authority for this proposed rule? Conservation easements are created pursuant to Act 567 of 1983 (Arkansas Stat. Ann, 50-1201 Et. Seq.) Arkansas Historic Preservation Program is authorized to accept easements by Act 408 of 1977, as ammended by Act 663 of 1983.
- 4. What is the purpose of this proposed rule? Why is it necessary?  
The document states the requirements and procedures for the donation of conservation easements to the Arkansas Historic Preservation Program to help in preserving Arkansas' dwindling stock of historic structures. It is necessary to ensure that donors follow and comply with the state and agency requirements.
- 5. Will this proposed rule be controversial? If yes, explain nature of controversy.

No.

SECRETARY OF STATE  
LITTLE ROCK, ARKANSAS

(OVER)

APR 25 AM 9:35

\*\*\*\*\*  
\* FAILURE TO COMPLETELY ANSWER ALL QUESTIONS COULD RESULT IN PROCESSING DELAYS \*  
\*\*\*\*\*

FILED

6. What is the financial impact of this proposed rule?  
It allows the easement donor to take a charitable deduction on his/her Federal Income Taxes and help in preserving a historic structure.
7. Will a public hearing be held on this proposed rule? If yes, state the date, time and location of such hearing. If no, state the date the public comment period ends.  
Yes. April 29, 1991, 9:00 A.M., Arkansas Historic Preservation Program Conference Room (Third Floor, 225 E. Markham)
8. What is the proposed effective date of this proposed rule? 20 Days after filing with Secretary of State
9. Give the names, addresses and phone numbers of all persons, groups, organizations, etc., interested in or affected by this proposed rule and the position taken by each.

Categorize them according to the following:

- (A) Those you contacted.
- (B) Those who contacted you.
- (C) Those whom you anticipate will participate in the public hearing.

NAMES, ADDRESSES & PHONE NUMBERS	CATEGORY	FOR	AGAINST
<p>Public notice was provided through ads which ran seven consecutive days in both the Arkansas Gazette and Arkansas Democrat. This notice announced the changes and how the public can comment. Since this applies to the general public broad announcements were made.</p>			

SARRQ  
REVISED: 2-17-88

\*\*\*\*\*  
\* FAILURE TO COMPLETELY ANSWER ALL QUESTIONS COULD RESULT IN PROCESSING DELAYS \*  
\*\*\*\*\*

QUESTIONNAIRE  
ON PROPOSED ADMINISTRATIVE RULES  
WHETHER NEW, AMENDATORY OR REPEALING

012, 02.91-005

FROM:  
AGENCY Department of Arkansas Heritage  
DIVISION Arkansas Historic Preservation Program  
CONTACT PERSON Randy Jeffery  
ADDRESS 225 E. Markahm, Suite 300  
PHONE NUMBER 324-9346

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- 5. Will this proposed rule be controversial? If yes, explain nature of controversy.  
  
No.

(OVER)

\*\*\*\*\*  
\* FAILURE TO COMPLETELY ANSWER ALL QUESTIONS COULD RESULT IN PROCESSING DELAYS \*  
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SARRQ  
REVISED: 2-17-88

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