

# *The Santa Fe Conservation Trust*

## **GIFT ACCEPTANCE POLICIES AND GUIDELINES – APPENDIX A**

**Adopted on: July 7, 2015**

**Updated: \_\_\_\_\_**

### *Appendix A: Policies and Procedures for Non-Conservation Real Estate Gifts*

Non-conservation real estate gifts – real estate interests gifted to SFCT with the intention of near-term sale for cash, as opposed to properties donated or acquired to be held in furtherance of the organization's conservation mission – hold great potential to generate substantial capital for SFCT. Because such real estate gifts can be complex, these special policies and procedures have been established to govern SFCT's handling of non-conservation real estate gifts.

These policies and procedures should be considered general guidelines, allowing for the possibilities that exceptions could be authorized by the Board based on particular circumstances.

#### **I. GENERAL POLICIES**

##### **A. Gift approval**

The Board of Directors will give final approval to acceptance of non-conservation real estate gifts, on the recommendation of the Land Review Committee. The Executive Committee of the Board may act on the Board's behalf between regularly scheduled Board meetings. The Land Review Committee and the Gift Acceptance Committee have the authority to reject or recommend gifts to the full Board.

##### **B. Rapid liquidation of properties**

SFCT will generally not benefit from a non-conservation real estate gift until the property is sold (with the possible exception of income-producing properties.) Therefore potential donors will be informed that it is SFCT's policy as a rule to sell the gifted property at the best possible price in light of current market conditions, regardless of the value placed on the property by the donor's appraisal.

Potential donors will be informed that in order to claim a charitable deduction for their property gift they must file IRS Form 8283 to substantiate the value of the deduction. Donors will also be informed that SFCT is required to file IRS Form 8282, on which it reports the sales price when disposing of a gifted property, if the property is disposed of within three years of the gift.

##### **C. Real estate gift minimum**

In determining whether to proceed with property gift discussions SFCT will prepare an estimate of the true value of the potential gift to SFCT, taking into account all costs likely to be incurred by SFCT (e.g. brokerage, legal and closing, due diligence, holding costs, and possible staff time) and, in the case of deferred gifts, taking into account the estimated present value of future proceeds. In the case where payments were made to the donor over

time, the estimated value of those payments would be included in the costs to be netted against likely sales proceeds.

Using this methodology, property gifts to SFCT should yield a projected net present value of at least \$100,000. This policy would allow for the exception that some smaller gifts might be accepted as part of a donor's longer term giving approach.

Example: Say a donor proposes "bargain selling" their \$200,000 home to SFCT for \$50,000. Staff conservatively estimates sale at \$180,000 within a matter of several months, and brokerage/legal/closing/due diligence costs of \$18,000. Assume holding costs of \$5000. And contingency of \$5000. Projected net present value of gift, factoring in purchase price of \$50,000, is therefore about \$102,000. If gift minimum for such gifts is \$100,000, SFCT would consider proceeding with gift discussions with the donor.

#### D. Types of properties accepted

SFCT will consider accepting many types of real property, including single and multiple family residences (such as vacation homes), condominiums, farms and ranches, timber property, interests in mineral rights, apartment buildings and other income-producing property, and possibly other real estate assets. SFCT will generally not consider gifts of time shares or cemetery plots. SFCT will consider accepting undivided interests in real estate, provided marketability of such an interest is assured.

#### E. Location of gift properties

SFCT will consider accepting properties located anywhere in the United States, provided that the added costs of screening and due diligence were considered in the analysis. Gifts of properties outside the United States would be considered on a case-by-case basis.

#### F. Encumbered properties

SFCT prefers to accept gifts of real estate when all mortgages and other encumbrances have been discharged. Exceptions may be made in the unlikely event that a mortgage is assignable and non-recourse, with minimal debt service payments. If such a gift were accepted, it would be treated as bargain sale, possibly resulting in taxable gain to the donor.

#### G. Conservation examination

In the case of gifts involving land, SFCT will determine with the donor whether the property is conservation-worthy. In most such instances it would be preferable for the donor to first convey a conservation easement on the property, and then to gift the encumbered property. It would also be possible for SFCT to impose an appropriate conservation easement before sale, or to partner with another organization interested in holding the conservation easement.

#### H. Donor-friendly approach to screening and due diligence

In working with prospective donors of real estate, SFCT will strive for a balance between rigorous risk protection and working with property owners in a very friendly and respectful manner. As detailed in Section III below, initial conversations about a potential gift will be aimed at problem solving and gathering in a friendly way the essential information

necessary to determine whether the investigation should proceed. Only after an initial determination of viability will more rigorous due diligence investigations and gathering of more detailed information documents take place.

## II. ACCEPTABLE STRUCTURES FOR RECEIVING NON-CONSERVATION REAL ESTATE GIFTS

### A. Outright gift

SFCT prefers to receive gifts of property outright. Such gifts provide maximum value to the SFCT, generate the greatest tax benefit to the donor, and are generally less complicated to complete than other forms of real estate gift arrangements. SFCT representatives should not underestimate the potential of donors to make outright gifts of real estate.

### B. Bequest

When SFCT learns of a real estate gift through an estate, it will apply the same tests used in evaluating a lifetime gift, including but not limited to review of environmental hazards, marketability, title, encumbrances, etc. and will disclaim the bequest if doing so would be in the best interests of SFCT.

When SFCT becomes aware that it might be named recipient of a property interest under the terms of a will, SFCT should encourage the donor to either: (1) consider making a lifetime gift of the property (if it's a residential or agricultural property) subject to a retained life estate (see below), which might also meet the donor's objectives and could provide additional benefits such as a charitable income tax deduction, current recognition, and the likely avoidance of probate regarding the property; or (2) encourage the donor to structure the bequest so that the estate liquidates the asset and then remits the sales proceeds to SFCT.

### C. Gift of Property Subject to a Retained Life Estate

SFCT may accept a gift of a personal residence (not limited to one's primary residence) or agricultural property for which the donor retains a life interest – or an interest running a fixed number of years.

1. Gifts of property subject to a retained life estate will generally be considered only when no party retaining a life interest is younger than 65 years of age.
2. Such irrevocable gifts should be considered only when it is clear that the prospective donor has other assets to comfortably support their retirement years, and can thus truly afford the gift of the subject property.
3. Life estate donors will be required to enter into a written agreement with SFCT outlining their ongoing responsibilities for all routine costs and expenses associated with owning and maintaining the property, including property taxes, insurance, assessments, repairs, and maintenance. The agreement will also address the donor's right to lease the property to a third party, the basis for allocating capital improvements between the life tenant(s) and SFCT, the possible incapacity of the life tenant, and the possibility that the life tenant might vacate the property.

4. All involved must understand that a retained life estate arrangement involves a close, long-term relationship between SFCT and the life tenant/tenants. Annual visits and informal property inspections by SFCT representatives should be conducted, with the projected cost of such visits considered in SFCT's initial gift acceptance deliberations.

#### D. Bargain sale

A donor may wish to make a gift of property but also generate immediate cash from the disposition. A bargain sale, in which the donor sells the property to SFCT at less than market value, may be an appropriate gift option in such instances. The donor can claim as a deduction the difference between the property's appraised value and the donor's sales price to SFCT, provided the donor has owned the property for more than one year.

1. A bargain sale transaction is deemed part sale and part gift by the IRS. While the gift transaction may generate a charitable deduction for the donor, the donor should be aware that the gift transaction may generate taxable gain as well.
2. If SFCT chooses to receive a gift of property subject to a mortgage, such a gift would be considered a bargain sale, with the amount of the mortgage assumed by SFCT treated as the consideration "paid" to the donor, thus resulting in potential taxable gain to the donor.
3. In structuring bargain sale arrangements, SFCT may employ measures to minimize its liquidity and market risk, such as use of option agreements and pre-marketing of the property.
4. SFCT's ability to consider a proposed bargain sale will be based in part on the organization's determination that funds required for such a purchase can be made available through gift, loan, or other access to working capital.
5. Installment bargain sale can sometimes be used for the donor who wishes to receive their purchase proceeds (and realize their taxable gain) spread out over several or many years.

#### E. Undivided (fractional) interest gifts

When a donor is preparing to sell a property, SFCT will consider accepting a gift of an undivided (fractional) interest in the real estate prior to its sale, provided the property passes all other requirements of these policies, including due diligence inspections. A legal agreement must exist with the other owners regarding ultimate disposition of the property.

Example: A property owner is preparing to sell their \$1,000,000 home. They are not in position to make an outright gift, but want to help SFCT in some fashion. SFCT suggests they donate a 25% fractional interest, then both parties market and sell the property. SFCT gets 25% of net proceeds at sale. Donor gets 75% of net proceeds at sale. Donor's deduction for fractional interest gift generates a charitable deduction that can largely or wholly offset their pro-rata capital gains exposure.

#### F. Charitable gift annuities and charitable remainder trusts

Some donors will want to use their property to generate income for a period of time or for life, in combination with making a charitable gift that would generate a charitable deduction. In such instances either a charitable gift annuity funded with the real estate, or a charitable remainder trust funded with the real estate, might be appropriate.

At this time SFCT is not prepared to enter into such gift arrangements, but on a case-by-case basis would be able to do so in partnership with other organizations.

### III. PROCEDURES FOR HANDLING NON-CONSERVATION REAL ESTATE GIFTS

In its interactions with prospective real estate gift donors, SFCT representatives will strive for an appropriate balance between appreciation and helpfulness toward the donor, on the one hand, and focus on protecting the organization from undue risk, on the other hand.

#### A. Initial Information Gathering and Initial Assessment

1. All real estate-related inquiries should be referred to the Executive Director after initial exploratory conversations. The Executive Director will determine which combination of staff can best handle the situation. The originating staff member or board member will be kept in the loop at all times as gift discussions proceed.
2. A Real Estate Gift Data Sheet (attached as Appendix G) will be used as a guide in obtaining the following information via phone conversation or personal visit:
  - i. the donor's objectives in proposing the gift
  - ii. who has "legal title" to the property (this could be one or more individuals and/or entities including trusts) and how that property is held
  - iii. the type and location of the property
  - iv. the estimated market value of the property and date of valuation
  - v. the existence of any mortgages or other encumbrances on the property
  - vi. any known environmental problems on the property or on any abutting or nearby properties
  - vii. whether the owners have been trying to sell the property and for how long (Staff should be sure to understand whether the donors have an agreement with a broker and whether there are any understandings, formal or informal, relating to the potential sale of the property.)
  - viii. if there is an obvious buyer of the property, e.g. abutting property owner
  - ix. whether the donor wishes to designate the gift proceeds to a particular purpose at SFCT
  - x. the type of gift arrangement--outright, retained life estate, bargain sale, etc.--to be considered. (This may not be clear until later in discussions.)
3. SFCT will discuss with the donor whether it would be appropriate to incorporate a conservation easement into the structure of the gift.
4. SFCT will obtain informal opinions, including but not limited to local brokers and

internet resources (e.g. zillow.com), about market conditions and the marketability of the potential gift property.

5. SFCT will make every possible effort to have a representative visit the property to conduct an initial inspection. If it is impossible to visit the property, SFCT will obtain photos, maps and other supporting documentation to help in determining a course of action.
6. Once this preliminary information has been obtained, SFCT staff will prepare a rough projection of the likely net value of the proposed gift, taking into account projected due diligence costs, projected holding and sales costs, etc., all expressed in present (today's) dollars. The purpose of this exercise is to determine whether the projected net present value of the gift is likely to exceed SFCT's real estate gift minimum of \$100,000.
7. If based on this preliminary analysis the Executive Director believes the gift should be further pursued, he will prepare a memorandum to SFCT's Land Review Committee recommending preliminary gift approval, subject to due diligence investigations. This memo will summarize pertinent information about the donor, the structure of the proposed gift, likely costs to be incurred in exploring and structuring the gift, the projected net value of the gift to SFCT, and recommendations on how to proceed.
8. Staff should allow one to two weeks for this initial assessment process and should manage the prospective donor's expectations accordingly. If the prospective gift is turned down at this point, a SFCT staff or board member, as appropriate, will promptly share this decision with the prospect so they can make other plans for the property.

#### B. Due Diligence Phase

If the Land Review Committee decides that SFCT should proceed with gift discussions, a letter from the Executive Director to the donor will summarize the likely structure and terms of the proposed gift, detail any conditions that might be attached to the gift, and describe the due diligence procedures that will follow.

SFCT will generally work with the donor through these steps of the due diligence process:

1. Real Estate Questionnaire – In order for SFCT to gather the additional information necessary to make a final decision about the potential gift, the donor, with assistance from SFCT staff, should complete and sign a Real Estate Questionnaire (attached as Appendix H.) This form includes an environmental checklist and seeks financial information about the property.

2. Title and Related Information – The donor will be asked to furnish a copy of any title information in her/his possession — deed, title report, title insurance policy, and/or attorney's title opinion — as well as a survey or plot plan of the property. Local counsel or title company retained by SFCT will arrange for an independent title search and, prior to or at closing, obtain title insurance in an amount equal to the appraised value of the property.
3. Mortgages and Encumbrances – The donor should provide copies of any and all mortgages, deeds of trust, liens and other encumbrances on the property, along with corresponding amortization schedules.
4. Property Value, Marketability, Appraisal – In order to claim a charitable deduction for any gift of property over \$5,000, the IRS requires the donor to obtain an independent qualified appraisal of the property to be completed no earlier than 60 days before the gift, and no later than the day before the date on which the tax return claiming the deduction is filed (including extensions). The donor will be asked to provide a copy of any property appraisals to SFCT.

The appraisal used to substantiate the donor's deduction must be commissioned by and paid for by the donor. The donor may be able to claim the cost of this appraisal as a tax deduction. SFCT will obtain an independent analysis of the marketability of the property, and may commission its own appraisal.

5. Environmental Audit – When SFCT acquires a fee interest in real property, it also acquires all of the property's associated environmental liabilities resulting from previous uses of the property. Therefore, a Phase I environmental audit will generally be required for all real estate SFCT will acquire, whether by purchase or donation. Exceptions (e.g. in the case of a single family residential property) may be authorized by the Executive Director. Staff will arrange for a Phase I audit and/or inspection by a qualified firm at SFCT's expense. SFCT may elect not to undertake this expense until further in the process — for example until after all other aspects of the gift arrangement seem satisfactory.

If the Phase I audit identifies issues that require more information (e.g. fuel storage, possible environmental contamination, or any requirement for an environmental permit to be in place) a Phase II audit may be requested. The responsibility for costs of a Phase II environmental audit, and for any costs of required remediation, will be determined on a case-by-case basis. (If the potential gift size and other factors are promising, SFCT may determine that it will pay for some or all of these costs.)

6. Other Inspections -- When the potential gift property includes a building of any sort, SFCT staff may decide to commission a building inspection to identify any potential safety, structural, roof or systems problems. If perc tests, water well tests or other investigations are required to better understand the marketability and value of the property, financial responsibility for these investigations will be handled on a case by

case basis.

### C. Gift Approval and Gift Acceptance Letter

When due diligence investigations and further gift structuring conversations have been completed, the Executive Director will prepare a memorandum to the Land Review Committee. The Committee will review all information gathered in the due diligence process and determine a) whether to recommend acceptance or decline the proposed gift of real property; b) whether to suggest an alternative gift structure; and c) whether conditions should be attached to the gift acceptance recommendation.

The Committee's recommendation on gift acceptance will go to the Board of Directors, which makes all final decisions regarding gifts of non-conservation real estate. The Executive Committee may meet to make such decisions between regularly-scheduled Board meetings.

Once a proposed gift is approved by the Board, staff will prepare a gift acceptance letter, including any terms, conditions or special arrangements required prior to acceptance.

1. This letter may include environmental indemnification language the donor will be asked to sign.
2. It may also request the donor to provide cash contributions to cover the costs of holding the property pending sale.
3. It will also detail responsibilities of the various parties in moving the gift arrangement through to closing.
4. It will remind the donor that SFCT is required by law to file Form 8282 with the IRS if the property is sold within three years of the gift date.
5. The donor will be asked to countersign the gift acceptance letter and return a copy to the Executive Director.

If the gift is declined, a memo to the file will summarize the reasons for turning down the gift, and a SFCT staff or board member will promptly communicate the decision to the donor.

### D. Execution of Gift

STCF staff, in coordination with local counsel and title company, will manage events leading up to execution and delivery of an appropriate real estate deed, accompanied by other documents as needed. SFCT will generally obtain title insurance when accepting title to real estate. Transfer and closing costs will be apportioned among the parties according to local practice, or as has otherwise been detailed in the gift acceptance letter.



The date of the gift is the date that a properly executed and notarized deed is delivered to SFCT. It is SFCT's practice to have the deed recorded in local land records immediately after conveyance.

The IRS requires that donors file Form 8283 to substantiate their deduction of a real estate gift. After the donor and her/his appraiser have completed this form, it will be forwarded to SFCT for signature, acknowledging receipt of the gift. (Such an acknowledgment does not constitute agreement with the appraiser's valuation of the property.)

In addition, the Executive Director will acknowledge receipt of the gift with a letter consistent with IRS gift recognition standards.

#### E. Management and Disposition of Gifted Property

SFCT will arrange for transfer of all tax and utility bills and assume responsibility for same. SFCT will take steps to property manage and care for the property during an interim holding period, pending sale. The property will be listed on SFCT's insurance policies.

SFCT will list the property for sale and work aggressively to dispose of the property at the best price obtainable in a reasonable time in current market conditions.

If SFCT disposes of the property within three years of its receipt, IRS Form 8282 will be filed by SFCT, with a copy sent to the donor.