Artwork by Asante Riverwind

Focusing On Our Clients

Red-Tailed Hawk

Crag Law Center
Spring 2009
A View of the Summit
Providing Independent, Client-Focused Service
by Ralph Bloemers, Staff Attorney and Co-Executive Director

The Crag Law Center was founded in 2001 to bring justice to underserved people and grassroots conservation groups. Crag provides services to clients on a wide range of issues affecting the earth’s natural systems and community livability. We represent the Inupiat Eskimos to protect their subsistence hunting grounds from big oil development, farmers who seek to protect community livability and their property interests, and the interest of all people in clean water and healthy forests.

Crag is a non-partisan organization and we do not limit the provision of our services based on political party or hold back on pushing for positive change because one particular party has control of the White House, the State house, the Congress or the State legislature. Plain and simple, our agenda is to ensure that people interested in environmental conservation can hold the government and private sector accountable for their actions. Today, Americans are insisting that we act to address climate change, clean up our waterways, create green jobs and protect our public lands.

We work hard to call situations as we see them and rigorously apply science, reason and logic to advocate for the best possible outcome for the community and for the earth. By addressing structural problems and ensuring equal access to the justice system, we make democracy work for all people.

President George W. Bush was a polarizing force on many issues, particularly on sound science and the environment. Rejecting the idea of manmade global warming, he did not move the nation to take action on climate change. President Bush gave lip service to the idea of restoring healthy forests, and his deputies spent a lot of time rewriting rules related to federal forests. On the legislative and budget fronts, however, very little was accomplished.

While President Bill Clinton’s record of action on climate change was not very different than that of President Bush, he did make an effort to resolve the long-running battle over the fate of the Pacific Northwest’s old growth forests and took a more science-oriented look at the issues. He convened a forest summit in Portland, Oregon which resulted in the Northwest Forest Plan. While the plan was science-based, it was a political compromise. In the twilight of his administration, Clinton protected many federal lands as national monuments and ushered through the Roadless Rule. In all, the history books reveal that Clinton’s environmental record was both good and bad. In Oregon, just 1.9 million acres out of the 5 million acres of forested roadless lands were inventoried in the 1970s. While new surveys were long overdue, Clinton never initiated them. Clinton’s policies were a mixed bag, and did allow the infamous “Salvage Rider” which allowed hundreds of old growth timber sales to move forward without requiring any compliance with environmental law. This was a bitter lesson for the conservation movement, proving that one’s “friends” can be more difficult to counter than one’s “foes.”

Today, the nation is under new leadership with the promise of “change we can believe in.” President Obama’s environmental policies are primarily focused on energy and climate, and rightly so. Our conservation clients in the Pacific Northwest, however, are very interested to see what the President will do to reform the Department of Agriculture and the Department of the Interior, which oversee our federal lands. Time will tell whether President Obama’s new appointees to run the Forest Service and the Department of Interior will bring true change.

On March 30, 2009, President Obama signed a public lands package into law. The package, which designated over 2,000,000 acres of federal land as Wilderness, included provisions for additional Wilderness in the Mt. Hood National Forest, the Oregon Coast’s Copper Salmon River system and the Badlands of Oregon’s high desert. While Obama was able to do the deed, the bill was actually the result of years of effort by Oregon’s Congressional delegation. To meet the demands of the Republican controlled Congress in 2006 and in 2008, Senator Ron Wyden (D-Or) and Congressman Blumenauer (D-Portland) made compromises to meet strict limits on new Wilderness designations set up by former representative Richard Pombo (former R-CA). There was also pressure from the timber industry and from Greg Walden (R-Hood River) and former Senator Gordon Smith (R-Pendleton) to keep stands of intact Wilderness quality old growth and roadless areas, that were perceived to be part of the timber base, out of the deal.

Looking forward, our clients still have a lot of work to do to protect our nation’s communities, waterways, forests, and coastal environments. For instance, the nation is a long way off from meeting the promise of the Clean Water Act to provide fishable, swimmable and drinkable water. We cannot rest on our laurels - our new President is not going to reach down and change local and state politics. Nor will he be able to fix federal forest policy or reform broken agencies on his own. What he needs is for us to collectively organize the grassroots and push an agenda for progressive social change.
While we discuss the cases we are working on through our program areas, our work is our clients’ work. When you support Crag, you support conservation efforts throughout Oregon, Washington and Alaska.

While the missions and goals of our clients may be different, the underlying intent is the same. Each seeks to exercise their voice in the public process. In this issue of A View from the Summit we highlight our work with two long-standing clients. Crag has worked with Gifford Pinchot Task Force and Oregon Shores Conservation Coalition since our founding. Through this focused lens, we hope you will gain a greater understanding of how important our work is to local communities.

When Crag was founded in 2001, the Task Force was still trying to convince the Forest Service that the agency had lost its social license to log the last remaining old growth in the forest. On behalf of the Task Force, Crag filed a federal lawsuit to stop two of the most egregious timber sales. Through this legal action, we managed to negotiate a settlement for our clients that halted these two sales and three more, ending an era of old-growth logging in the GPNF.

Since then, management of the GPNF has changed and so has the Task Force. As the Forest Service has moved away from old-growth logging, the Task Force has responded by planning for the restoration of the forest and its watersheds. In recent years they have expanded the scope of their work into Oregon. In all that they do, they have collaboratively engaged local communities to work on a new vision of public land management. As the focus of their work has changed so have their legal needs. Through these transitions, Crag has remained committed to serving the Task Force. Our long-term relationship attests to the power of our model – providing client-focused legal services that empower our clients to achieve their missions.

Executive Director Emily Platt leads a team of dedicated staff and numerous volunteers to carry out the Task Force’s mission. “We have relied on Crag in many ways over the years, and know whatever issue we bring them – from old growth timber sales, land conversion or dam removal – they will represent our interests with great knowledge and effectiveness. We are fortunate to have Crag as a resource as we work to protect and restore forests, rivers, and healthy fish and wolf populations in the Cascades.”

Our Work Together

2002 – Ending Old-Growth Logging on the Gifford Pinchot National Forest

Crag represented the Task Force in a federal lawsuit initially challenging the Lock and Swell old-growth timber sales. The resulting settlement with the Forest Service saved old growth in those two sales and three more – Alpha, Beta and Omega. This case was a key part of the Task Force’s overall strategy to offer a new vision for management of the forest. As a result, the Forest Service has moved away from logging old growth in the GPNF.

2005 – Working for Smart Transportation Planning

While the Forest Service backed away from logging old growth in the GPNF,
threats from other agencies remain. In 2004 the Federal Highway Administration (FHWA) announced plans to log old-growth to straighten the Wind River Highway to provide faster travel times and better access for recreational vehicles (RVs). Crag worked with the Task Force to preserve the existing rural character of the forest, and the FHWA finally cancelled the project.

2007 – Rampant Development of Private Forest Lands

As the Task Force began to look beyond the boundaries of the GPNF, they became concerned about thousands of acres of private forestland that were being converted to build second homes during the housing boom. Near the Swift Reservoir on the Lewis River, irresponsible developers logged on steep slopes near habitat for the threatened bull trout, and those slopes eventually gave way during heavy rainstorms. Crag brought a Clean Water Act case against the developers, and the resulting settlement included improved stormwater practices and funds to decommission roads in the Lewis River watershed. The funds were tripled by a matching grant that will expand the Spencer Butte Roadless Area east of Mount St. Helens.

2009 – Restoring the Rivers of Volcano Country

The Task Force developed a comprehensive restoration plan for the GPNF in 2007, and identified the Wind River Watershed as a high priority for restoration activities. The Forest Service agreed and proposed to remove the Hemlock Dam to improve habitat for the threatened steelhead trout. Skamania County challenged the project under the Clean Water Act, claiming it would harm fish. Crag intervened on behalf of the Task Force and negotiated an agreement to remove the dam this summer.

The story of Crag’s relationship with the Task Force is an excellent representation of why we are successful together. Our clients are innovative in the way they approach environmental problems, and the Task Force is no exception. We respond to the direct needs of our clients and adapt accordingly. In the end, our work empowers our clients to have an even greater impact on the communities and resources of the Pacific Northwest.

Learn more about the Gifford Pinchot Task Force at www.gptaskforce.org.

continued from page 5

Oregon Shores Conservation Coalition

by Courtney Johnson, Staff Attorney, and Megan Hooker, Legal Assistant

In the 1960’s, a group of concerned citizens came together to support the passage of Oregon’s Beach Bill, which guarantees public access to the state’s beaches by establishing a state easement between the low water mark and the vegetation line. Oregon Shores Conservation Coalition was born out of this effort and the organization was set up to ensure that the beach truly belongs to the people. For almost 30 years, the organization was run entirely by volunteers. Today, Oregon Shores has staff dedicated to keeping watch over Oregon’s Coast through its Land Use, Ocean and CoastWatch Programs.

The Coastal Law Project

The Coastal Law Project (CLP) is a long-standing partnership between the Crag Law Center and Oregon Shores. Since 2004, we have worked together to provide critical legal support to coastal residents seeking to protect their communities and environmental values. We have answered the call to ensure sustainable development and enabled citizens to become effective advocates for their communities.

Ensuring Sustainable Development through Land Use

The primary focus of the CLP has traditionally been supporting Oregon Shores’ Land Use Program. The South Slough of the Coos Bay Estuary is one of the many gems on the Oregon Coast that the CLP has protected. The South Slough contains upland forests, freshwater wetlands and ponds, salt marshes, mud flats, marsh grass meadows and open water habitats. The shores of the South Slough have been inhabited by humans for thousands of years, as evidenced by shell middens and ancient wooden fish weirs found in the area. Because the South Slough is part of the National Estuarine Research Reserve System, educational activities, research and monitoring, and wetland restoration all occur within this valuable ecosystem. This estuary provides an invaluable opportunity for wildlife observation and ecosystem research. Many imperiled species make their home here, including bald eagles, peregrine falcons, snowy plover, sea-run cutthroat trout, and Southern Oregon/Northern California Coho salmon.

In 2005, Coos County eliminated protection for 184 acres of land at Indian Point, which is located adjacent to the South Slough. The land was rezoned from “Forest” to “Urban Residential,” opening the door for a development proposal of more than 1,000 homes in an area with limited existing infrastructure. Local residents were very concerned that a development of this scale would disrupt the community’s quality of life, pollute the bay, create traffic congestion, and ruin the exquisite and pristine landscape of the South Slough.

Crag worked with Oregon Shores and local citizens to appeal the County’s rezoning decision to the Oregon Land Use...
continued from page 7

Board of Appeals (LUBA) because the rezone violated provisions of both state and local law. LUBA issued a resounding decision against the rezone, telling the County that it cannot ignore state law protections for farm and forest lands simply by rezoning land to accommodate a different use.

After the win at LUBA, developers tried a different approach – applying for a “waiver” order under former Measure 37. Again, Crag worked with Oregon Shores and local citizens to defeat the application. Both of these wins protected this sensitive and beautiful area. Our success on the South Slough is just one example of many client-focused projects that we have undertaken for Oregon Shores Conservation Coalition and local residents on the Oregon coast.

Ocean Program and CoastWatch

Oregon Shores’ other programs put citizen monitors on the ground and keep watch over ocean resources. The organization’s Ocean Program focuses “West of the Beach” and combines a number of goals and strategies to protect the ocean, including working to establish Marine Reserves off of the Coast. The program is encouraging local involvement in addressing climate change as well. On Saturday, June 6, Oregon Shores will host a Coastal Climate Action Conference in an effort to get local communities involved and engaged in planning for the impacts of climate change.

Through the CoastWatch Program, volunteers adopt a mile of the Coast and report to the organization four times a year with their observations. With over 360 miles of coast line and over 1,300 adopters, the beach is covered. Oregon Shores’ staff supports their volunteers as they develop a personal relationship with their mile, and come to understand the issues and become actively engaged in the management of our coast.

A New Chapter in the CLP

While the Coastal Law Project has traditionally focused on land use issues, we are expanding our reach to protect water quality and ocean resource management. For example, gravel mining can have serious impacts on water quality in coastal rivers that are critical habitat for threatened coho salmon and steelhead. Together, Crag, Oregon Shores and concerned residents have already successfully challenged proposals for gravel mining in the Rogue and Chetco Rivers.

Oregon’s ocean waters are impacted by upstream pollution of coastal rivers, navy training exercises, cruise ship pollution, rising sea levels and potential development of wave energy. Going forward, Crag will continue to provide legal support to Oregon Shores and local citizens who are working to protect river ecosystems and Oregon’s territorial sea.

Learn more about Oregon Shores and their Ocean Program’s upcoming Coastal Climate Action Conference in June at www.oregonshores.org.

Ocean Program and CoastWatch

With 17 million acres, the Tongass National Forest in Southeastern Alaska is the largest national forest in the United States. President Theodore Roosevelt established it through presidential proclamation in 1902 and today it supports majestic stands of old growth forest. These ecosystems provide essential winter habitat for Sitka black-tailed deer. The deer are the main prey for the Alexander Archipelago wolf and are an important subsistence species for people who depend on the Tongass.

Recently, the Forest Service proposed to log 2,000 acres of old growth in the Petersburg, Craig and Ketchikan Ranger Districts of the Tongass. The Scott Peak, Overlook, Traitor’s Cove and Soda Nick timber sales present serious implications for the population of the Sitka black-tailed deer, which will directly impact the Alexander Archipelago wolf and subsistence and recreational hunting in the region. These projects are also at odds with federal environmental laws governing public lands.

For years, Greenpeace and Cascadia Wildlands Project have been actively involved in an effort to ensure that the Forest Service uses reliable science to evaluate whether the logging projects will have a detrimental impact upon the deer and wolf species. Federal law requires federal agencies to determine the potential impacts of logging and other activities and candidly disclose them to the public. The Forest Service used a complex model to assess whether the logging projects would have a significant impact on deer populations. A careful scientific review revealed that the data underlying this model is outdated and inaccurate. As a result, the ecosystem’s “carrying capacity” for deer was overestimated by as much as 120 percent in some areas. The Forest Service disregarded this and other problems with the model, and concluded that the project would not threaten deer and wolf populations.

This case presents a familiar example of “black box” decision-making. While the Forest Service claims to be using its expertise to manage the forest, the Alaska Department of Fish and Game, the public and other stakeholders have all repeatedly told the Forest Service that its model is unreliable. Further, the Forest Service has been presented with more dependable alternative models. Despite this, the agency has refused to even acknowledge the scientific controversy to the public, let alone explain why it stubbornly refuses to abandon this inaccurate model. As a result, public oversight is necessary to ensure continued viability of the wolf and deer populations.

Bringing Reliable Science to the Tongass

by Anu Sawkar, Volunteer

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After years of engaging the agency without success, Greenpeace and Cascadia Wildlands Project sought Crag’s help to advocate for the Tongass. In April 2009, Crag filed suit in the District Court of Alaska to require the Forest Service to use sound science in their decision-making process. By shining a spotlight on the agency’s failures, Crag’s clients hope to ensure the sustainable management of this precious natural landscape.
Learning Lessons From Oregon’s Experiment with Measure 37

by Courtney Johnson and Ralph Bloemers, Staff Attorneys

Oregonians are still learning hard lessons about the cost of former Measure 37 on communities throughout the state. Initially, farm and forest land was opened up to mining, strip mall developments and large residential subdivisions. These development proposals pitted those with a narrow, individual view of property rights against property owners who may have also had a Measure 37 claim, but were guided instead by a broader, community-oriented perspective of property values. While Measure 37 was sold to the public as a way to protect the property rights of all people, neighboring property owners discovered they had little recourse under the law to ensure that new developments would not threaten their drinking water, undermine the use and enjoyment of their land, and erode the livability of their communities.

In 2007, Oregonians passed Measure 49 to limit the rampant abuse of Measure 37. As a ballot measure, Measure 49 provided voters with a way to curtail large development claims and vote for the best equivalent to what they thought they supported when they voted for Measure 37. Measure 49 prohibits large-scale industrial or commercial development in natural resource areas outright and allows landowners to build either a small number of homes or an amount equal to a proven loss in value.

Measure 49 has presented its own challenges, yet at a far lesser scale than its predecessor. While most landowners who filed Measure 37 claims have elected to build a smaller number of homes, many are bent on trying to continue claims for large, urban-scale subdivisions, gravel mines and commercial strip malls on rural resource land. A number of claimants are taking it a step further by challenging the validity of Measure 49, claiming it violates the constitution. As a result, the need for Crag to step up to help local people protect Oregon’s forest and farmlands continues.

In recent months, Oregon’s courts have clarified some of the uncertainties in the transition from former Measure 37 to Measure 49. For example, the Oregon Supreme Court affirmed that Measure 49 extinguished all waivers issued under former Measure 37 and provided new options in lieu of those waivers. The only avenue by which a waiver under former Measure 37 can have continuing validity is if the claimant can show they have a “vested right” to continue the development, meaning the claimant must have completed enough work towards establishing the proposed development.

Oregon courts weigh a number of factors to make this call, including whether the work done can be adapted to a use that is in compliance with the law and how much money has been spent in relation to the total project cost. Key questions still remain unanswered regarding how to interpret these factors, and Crag is representing local citizen groups and neighbors to ensure that the law is adhered to and that the values of farm and forest lands are considered in the process.

Some claimants are attempting to block the application of Measure 49 by arguing that Measure 37 set up “fixed goal posts” that could not be changed. Oregon’s “goal post” rule provides that once a land use application is complete, the standards and criteria that apply to that application become “fixed” and changes to land use laws will not alter the standards applied to that application. In April, the Oregon Court of Appeals rejected this argument and found that claimants may not rely on the goal post statute to continue development under Measure 37.

Other claimants are challenging the overall validity of Measure 49, arguing that the relief provided under Measure 37 created a contract between a claimant and the state or county. Crag is currently representing citizens and conservation groups throughout Oregon in a case before the 9th Circuit Court of Appeals that we hope will settle these issues once and for all.

Measure 37’s backers focused narrowly on individual rights and used the promise to protect “property rights” as the hook to reel voters in. Yet Measure 37 did not possess statutory language to guide its fair implementation. Instead it imploded Oregon’s land use system, forcing governments to give away the store without evidence from claimants of an actual loss in property value as a result of land use laws. Because Measure 37 elevated one person’s rights at the expense of all others, the legislature proposed Measure 49 and the citizens of Oregon responded by passing it.

Quite tellingly, a number of neighboring property owners who are now challenging vested rights claims actually voted for Measure 37 in 2004. When Oregonians learned that Measure 37 undermined the use and enjoyment of their property and allowed a select few to ignore community supported land use safeguards, they took action to protect their communities.

Our clients are meeting these challenges because they are concerned about their backyards and their communities. They are not anti-property rights as Measure 37 promoters might say. Rather, they are supporting a broader, community-oriented concept of property rights. As land owners, they recognize that they are fortunate to own property that is part of something larger and plan to pass it on to future generations in a similar condition.
Mount Hood Wilderness Bill Sets Wheels in Motion for Protection of Cooper Spur

by Ralph Bloemers, Staff Attorney

For over a decade, Oregonians have worked to protect more public land as Wilderness and designate more rivers as Wild and Scenic. While conservationists successfully garnered support for a Wilderness Bill from Oregon’s Congressional delegation, getting a bill through Congress proved challenging. After two previous attempts to pass legislation under the failed Bush Administration, Congress finally passed the Omnibus Public Land Management Act through the House and Senate this Spring. President Obama signed the bill into law on March 30, 2009 and it includes over 200,000 acres of new Wilderness and Wild and Scenic Rivers in Oregon. 130,000 of those acres and over 80 miles of Wild and Scenic Rivers in Oregon. 130,000 of those acres and over 80 miles of Wild and Scenic Rivers in Oregon.

Crag helped the Hood River Valley Residents Committee achieve a settlement in their effort to protect Cooper Spur from a proposed destination resort, ski area expansion and timber sales. In 2001, Hood River County traded away the land comprising the County’s Crystal Springs drinking watershed to Mt. Hood Meadows for development. Over strong public opposition, the County Board of Commissioners proceeded with the controversial trade. Mt. Hood Meadows also purchased the Inn at Cooper Spur and the Cooper Spur Ski Area and proposed to build a massive four season destination resort. All told, Meadows sought to develop over 2,000 acres of land on Mt. Hood’s historic North side. Additionally, the Forest Service proposed a logging project on over 1,500 acres.

Our clients came together to oppose the controversial land trade and successfully advanced an alternative vision for real forest stewardship. Litigation prevented Meadows from developing the area and through mediation the parties worked out a historic solution – Meadows will offer up all of its holdings on the North side of Mt. Hood (780 acres of private land, 1,400 acre ski permit area, the Inn at Cooper Spur, the Cooper Spur Ski Area) in exchange for up to 120 acres of land in Government Camp.

Through community organizing, strategic litigation and public education, Crag helped the Hood River Valley Residents Committee achieve a settlement that will result in permanent protection for the North side at Cooper Spur. Once the land trade is complete, the Wilderness Bill specifies that the Tilly Jane Roadless area will be designated Wilderness. Additionally, the Crystal Springs Watershed will be protected in a similar manner to the Bull Run Watershed, which is Portland’s water supply.

The effort to secure additional Wilderness designation on Mt. Hood has been long and arduous. Throughout the process, Crag has played a key role in helping our clients shepherd the agreement through the political process in Washington D.C. In 2006, Staff Attorney Christopher Winter traveled to Washington D.C. to testify before the House Natural Resources Committee about the value of protecting these lands for clean water and the family farmers of the Hood River Valley. Two years later, Staff Attorney Ralph Bloemers also visited Washington D.C. to testify to the House of Representatives about the importance of the Wilderness Bill.

The passage of the bill is a huge victory, however Cooper Spur does not yet enjoy the permanent protections gained through Wilderness designation and our work is not over. The Forest Service has 16 months to implement the land trade with Mt. Hood Meadows and we are currently negotiating the details of how this will occur. Crag is working with the Forest Service to help them get their job done in the time that Congress has provided them to do it. The Forest Service must act promptly, professionally and transparently to move this important piece of the Mt. Hood Wilderness bill along. Stay tuned to our website for updates. If all goes well, by the end of 2010 the Tilly Jane Roadless area will be congressionally designated as Wilderness, and permanently protected for this and future generations!
June 4 – Lords Of Nature film

On Thursday, June 4, Crag and the Gifford Pinchot Task Force will co-host the Portland premiere of Lords of Nature – a documentary featuring scientists, activists and ranchers exploring the role top predators play in restoring and maintaining ecosystem biodiversity. After the film, there will be a panel discussion featuring OSU hydrologist Bob Beschta. Doors open at 6:30 p.m. at the Hollywood Theater (4122 NE Sandy Blvd in Portland). The event is free!

July 25 – Filbert Farm Benefit Party

Mark your calendars for Saturday, July 25, for Crag’s fourth annual Filbert Farm Benefit Party. Aaron Matusick and Sandy Riedman will once again host an afternoon and evening of good food, drink, music, people and a great cause!

August 26 – Wild and Scenic Film Festival

On Wednesday, August 26, Crag will once again partner with Hood River Valley Residents’ Committee to host Patagonia’s Wild and Scenic Film Festival – On Tour in Hood River, Oregon. We’ll enjoy the films outside at Springhouse Cellars near the train station. Tickets will be $10 and are available in advance.

November 7 – Wildshots Benefit Auction

On Saturday, November 7, we will hold our second Wildshots Art and Photography Benefit Auction in Portland. We hope to have work from many of the wonderful artists who donated to our auction in 2007, including Alberto Rey, Darryl Lloyd, Michael Halle, Ron Cronin, Kate McCarthy, Gary Braasch, Ben Moon, and many more…

For more information, visit our website www.crag.org. If you’d like to volunteer your time for any of these events, or know artists who might want to donate their work for Wildshots, please contact Ralph Bloemers at 503-525-2727 or ralph@crag.org.

Crag is truly blessed with great volunteers and supporters. So many people have helped keep us going! We would like to specifically thank:

Artists & Photographers
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Anuradha Sawkar – Outreach
Krislin Winter – Outreach
Christian Beck – River Guide
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Jeff Alzner – Film Festivals

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We also would like to thank everyone who has contributed to our special events. Thank you so much for keeping us going strong!

Help Protect the Natural Legacy of the Pacific Northwest with Your Wedding!

Are you planning a marriage or domestic partnership? You can celebrate your commitment and support the Crag Law Center when you register with the I Do Foundation. The I Do Foundation allows couples and their guests to make wedding-related purchases that generate donations for charity. These services are available free of charge at www.IDoFoundation.org. Check it out if you are considering making charitable giving part of your wedding!