



What's New? Updates to MET's Model Easement and Cooperative Agreement

Land Trust Roundtable

March 9, 2021



Today's Agenda



1. Welcome and Tech



2. Land Trust Toolbox



3. Cooperative Agreement



4. Model Conservation Easement



5. Roundtable Wrap Up



TESTING... TESTING...
Please mute your mic icon.



CHECK YOUR INBOX...
You were emailed multiple documents that will be referenced throughout today's meeting.



QUESTIONS?...
Multiple opportunities during presentation to ask questions. Also, please feel free to use the chatbox.

1. Welcome & Tech

2. Land Trust Toolbox



Tools You Can Use for Everyday Projects

Knowing Where to Go and How to Get There



**Our Products and
Conservation Tools**



News and Events



**State and Local
Resources**



**Forever Maryland
Foundation**



Land Trust Toolbox

Our Products and Conservation Tools

Information on Maryland Environmental Trust's programs and tools to support land trusts, conserve land and steward easements.

CONSERVATION TOOLS AND DOCUMENTS

- Model Deed of Easement
- Disclosure: Claiming Tax Benefits for Your Full or Partial Gift of a Conservation Easement
- Conservation Easement Processing Steps
- Conservation Project Roles
- Cooperative Agreement
- Conservation Easement Program Policy

MONITORING AND VOLUNTEER PROGRAM

- Volunteer Program
- Volunteer Manual
- Volunteer Resources
- Request a monitoring training for your land trust

EASEMENT STEWARDSHIP

- What is stewardship and why is it necessary?
- Keepers or Chuckers: Keys to Good Record Management

KEEP MARYLAND BEAUTIFUL GRANTS PROGRAM

- General Information and Important Dates
- Land Trust Capacity and Stewardship Grants
- Environmental Education, Community Initiatives and Cleanup Grants
- Grant Application Portal

LAND TRUST TOOLBOX



Our Products and Conservation Tools

Maryland Environmental Trust's programs and tools to support land trusts, conserve land and steward easements.



News and Events

Maryland Environmental Trust's latest news, trainings and events.



State and Local Resources and Tools

Helpful information, datasets and land prioritization tools from Maryland state agencies and local counties.



Forever Maryland Foundation

Tools and services from Maryland's Statewide Conservation Association.

Our Products and Conservation Tools



Information on Maryland Environmental Trust's programs and tools to support land trusts, conserve land and steward easements.

- *Including today's documents*

State and Local Resources



Helpful information, datasets and land prioritization tools from Maryland's State agencies and local counties. The tools and resources below include decision support tools are used to help prioritize land conservation.

- **Land Conservation Programs...** Other Conservation Programs; MET Directory of Maryland Land Trusts (who have Coop Agree with MET)
- **Parcel and Deed Information...** Real Property Search; MD LAND REC; etc.
- **Data, Maps and Analysis Tools...** GreenPrint; MERLIN; iMAP; MDP's GIS files and Dashboard; etc.
- **Planning and Protection Resources...** County and Municipal Comprehensive Plans
- **Grant Programs**
- **Volunteer and Corp Programming**
- **Other Resources, Tools and Support**

Questions?



Chatbox



Unmute Yourself

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“Agreement”) is made this _____ day of _____ 20__ by and between the Maryland Environmental Trust (“MET”) and {name of land trust} (“xxx”) (collectively, “the Organizations”).

RECITALS

WHEREAS, MET is established by Subtitle 2 of Title 3 of the Natural Resources Article of the Annotated Code of Maryland to conserve and perpetuate the aesthetic, natural, health and welfare, scenic and cultural qualities of the environment, including, but not limited to, land, water, air, wildlife, scenic qualities and open space in the State, and is charitable in nature and a “qualified organization” within the meaning of Section 170(h)(3) of the United States Internal Revenue Code of 1986 (“IRC”);

WHEREAS, {name of land trust} is charitable in nature, is incorporated in {state of incorporation} to {brief mission statement}, {name of land trust} is a tax exempt charitable organization within the meaning of Section 501(c)(3) of the IRC and is a “qualified organization” within the meaning of Section 170(h)(3) of the IRC;

WHEREAS, MET and { name of land trust } have mutual goals with respect to the promotion of land conservation in {location}, Maryland and strengthening Maryland’s land trust community; and

WHEREAS, { name of land trust } enters into this Cooperative Agreement with MET for the dual purposes of: (1) furthering the mutual goals referenced in this Agreement to protect and preserve land in the State and; (2) enabling { name of land trust } to seek benefits under Maryland law in the form of state income tax deductions, state tax credits, property tax credits and estate tax benefits for land subject to conservation easements pursuant to Md. Code Ann., Natural Resources Article § 3-2A-01 (Land Trust Grant Fund), § 5-901 (Program Open Space) or § 5-9A-02 (Rural Legacy Program); Tax-Property Article § 7-304 (State Property Tax exemption for fee owned land), § 7-519 (Exemptions for Community-managed open spaces), § 9-220 (optional property tax credit on conservation land or property owned by a land trust), or § 12-108 (eligibility for exemption from recordation tax); and Real Property Article § 10-705 (duty upon sale of property encumbered by conservation easement).

WHEREAS, MET operates the Land Trust Assistance Program, which administers the Cooperative Agreement and assists land trusts through education, stewardship assistance, and land conservation initiatives;

WHEREAS, MET and { name of land trust } each advances its mission by entering into this Agreement to work cooperatively to support the Organizations’ mutual roles and activities concerned with land conservation;

WHEREAS, MET and { name of land trust } will facilitate communication and cooperation among land conservation organizations in Maryland to foster shared expertise and experience.

3. Cooperative Agreement



History

- The Cooperative Agreement has been periodically revised over the years to better define partnership expectations, strategies, and to align with MET’s current priorities.
- The first Agreement was signed in 1988.
- The previous template was approved in 2010. This current 2020 version of the Agreement is a hybrid of the past templates.
- The updated Agreement more clearly lays out roles and expectations for both MET and the land trust partner.





What is a Cooperative Agreement?

- Clarifies partner roles and establishes a common understanding.
- Required for Maryland land trusts per [Md. Code Ann. Nat. Res. § 3-2A-01](#).
- Required for a land trust to apply for certain Keep Maryland Beautiful Program grants; to be eligible for state property tax exemptions and credits; and to sponsor DNR Rural Legacy areas.
- Requires partner renewal every five years.



5 Basics Parts of a Cooperative Agreement

■ Recitals

- General idea about what this Agreement is about, who the parties are and why they are signing the Agreement

■ Section I. Requirements to enter or renew a Cooperative Agreement with MET

- Organizational standing, policies and supporting documentation required to partner with MET and hold a Cooperative Agreement to access state land trust tax benefits or programs.

■ Section II. Property tax exemptions or tax credit on land owned in fee by a land trust

- Explanation of state benefits for land owned by land trust in fee and how to request a “Written Certificate” in order to apply for tax benefits

■ Section III. Acquiring joint perpetual conservation easements

- Obligations accepted by land trust with regard to conservation easements co-held with MET. Outlines shared activities for joint easements including:
 - ✓ Easement acquisition;
 - ✓ Stewardship, monitoring and enforcement;
 - ✓ Assignments and amendments;
 - ✓ Performance and termination

■ Section IV. Interpretation of this Agreement

- Explanation of the scope of the Agreement.



What's changed from the 2010 template?



General Organization and Flow



Clarification of Roles and Responsibilities



Records Policy



Annual Monitoring Requirement

Questions?



Chatbox



Unmute Yourself

MET Model Deed of Conservation Easement – adopted on 2.1.2021. This instrument will not be recorded without approval of the Maryland Board of Public Works.

This document is exempt from recordation tax and transfer tax pursuant to Maryland Annotated Code, Tax Property Article, Sections 12-108(a) and 13-207(a)(1).

NOTICE: THIS DEED OF CONSERVATION EASEMENT CONTAINS COVENANTS THAT RESTRICT USE, SUBDIVISION, AND SALE OF LAND IN PERPETUITY AND REQUIRES SPECIFIC REFERENCE IN A SEPARATE PARAGRAPH OF ANY SUBSEQUENT DEED OR OTHER LEGAL INSTRUMENT BY WHICH ANY INTEREST IN THE ENCUMBERED PROPERTY IS CONVEYED.

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (“Conservation Easement”) made this day of _____, 20____, by and between _____ and _____, having an address at _____ (collectively, “Grantors”) and the MARYLAND ENVIRONMENTAL TRUST, having an address at 100 Community Place, Third Floor, Crownsville, Maryland 21032 (“MET”) and _____, a Maryland nonprofit corporation, having an address at _____ (“_____”) (collectively, “Grantees”).

ARTICLE I. PARTIES AND PROPERTY

A. **Grantors and Property.** Grantors own in fee simple _____ acres, more or less, of certain real property in _____ County, Maryland, and more particularly described in Exhibit A attached hereto, which was conveyed to the Grantors by _____ by Deed dated _____ and recorded among the Land Records of _____ County, Maryland in Liber _____, Folio _____ (the “Property”). The address of the Property is _____. The Property is identified on tax map _____, parcel _____.

The Property consists of _____ acres of [agricultural land, woodlands, open fields, etc...]; a portion of the [stream or river]; shoreline on the [Chesapeake Bay, Deep Creek Lake, etc...]; relatively natural habitat for [significant flora or fauna]; scenic value of significant public benefit [along road, street, highway, or navigable waterway].

B. **Grantee.** The Maryland Environmental Trust was established by law to conserve, improve, stimulate, and perpetuate the aesthetic, natural, health and welfare, scenic and cultural qualities of the environment, including, but not limited to, land, water, air, wildlife, scenic qualities, open spaces, buildings or any interest therein, and other appurtenances pertaining in any way to the State of Maryland. The purpose of the Maryland Environmental Trust is of general benefit to the citizens of the State, and it is charitable in nature and, as such, MET is a “qualified organization” within the meaning of 26 USCA § 170(h)(3) of the United States Internal Revenue Code (“IRC”).

C. **Grantee.** _____ Land Trust, Inc. is a nonprofit tax exempt organization within the meaning of Section 501(c)(3) of the IRC, established for _____, and is a “qualified organization” within the meaning of Section 170(h)(3) of the IRC.

4. MET’s Model Deed of Conservation Easement



Model Deed of Conservation Easement

- **The Model is...**
 - Starting point
 - Simple & Basic
- **Updating the Model**
 - Why we did this
 - What we did
- The result is a clearer, more user friendly document that proactively incorporates recent tax court cases, IRS action, LTA guidance and many years of experience of conservation easement work.

Highlights of the Updates to Maryland Environmental Trust's Model Deed of Conservation Easement



GENERAL ORGANIZATION AND FLOW:

- New Articles
- Definitions in one place
- Including BDR in the Model



MINOR CHANGES:

- Clarifying language
- Adding a provision or definition to address confusion



SUBSTANTIVE CHANGES:

- Use of Building Areas
- Remove distinction between Primary and Accessory Dwelling Units

This document is exempt from recordation tax and transfer tax pursuant to Maryland Annotated Code, Tax Property Article, Sections 12-108(a) and 13-207(a)(1).

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Articles I., II. and III.

- **Article I. Parties and Property... page 1**
 - Organized into a new Article I
- **Article II. Grant of Perpetual Conservation Easement... page 2**
 - Grouped items related to the grant
 - D, E and F – moved into Article II
 - **NEW PROVISION** G. Economic Hardship.
- **Article III. Conservation Purposes and Attributes... page 3**
 - Aligned to the IRC

F. No Grant of Public Access. Although this Conservation Easement will benefit the public, the grant of this Conservation Easement does not convey to the public the right to enter the Property for any purpose whatsoever.

G. Economic Hardship. Grantors are aware and acknowledge that the activities and uses allowed on the Property once encumbered by this Conservation Easement may be less profitable than prohibited activities and uses. This circumstance shall not be grounds for judicial extinguishment of this Conservation Easement.

ARTICLE III. CONSERVATION PURPOSES AND ATTRIBUTES

A. Conservation Purposes. The conservation of the Property will further the following Conservation Purposes, which are more fully described in Exhibit B, which is incorporated herein: (1) the preservation of land areas for outdoor recreation by or the education of the general public; (2) the protection of relatively natural habitat of fish, wildlife or plants, or similar ecosystems; (3) the preservation of open space for the scenic enjoyment of the general public and which yields a significant public benefit, or pursuant to a clearly delineated Federal, State, or local governmental conservation policy and which yields a significant public benefit; and (4) the preservation of historically important land areas or certified historic structures (“Conservation Purposes”) pursuant to and in compliance with the requirements of 26 USCA § 170(h)(4)(A) of the Internal Revenue Code and Section 1.170A-14(d) of the Treasury Regulations. *[Note to Drafter: remove items 1-4 as applicable].*

The intention of the Grantors and the Grantees is for this Conservation Easement to preserve and protect in perpetuity the Conservation Purposes of the Property identified above and further described in Exhibit B, and to prevent the use or further development of the Property in any manner that would conflict with these Conservation Purposes. The Conservation Purposes are not likely to be adversely affected to any substantial extent by the continued use of the Property as authorized herein or by the use, maintenance or construction of those Structures (as defined below) that exist on the Property or are allowed herein.

B. Conservation Attributes. The specific features of the Property that have been deemed worthy of perpetual protection by this Conservation Easement constitute the Conservation Attributes of the Property (“Conservation Attributes”). The Conservation Attributes are listed and described in Exhibit B.

ARTICLE IV. DEFINITIONS

A. “Agriculture” or “Agricultural” means production and/or management of products such as livestock, poultry, crops, trees, shrubs, plants and other vegetation, and aquaculture, but not surface, sub-surface, or spring water. This includes, by way of example and not limitation, the related activities of: tillage, fertilization, application of pesticides, herbicides and other chemicals, harvesting and mowing, irrigation, and the feeding, housing, breeding, raising, boarding, training and maintaining of animals such as horses, ponies, cattle, sheep, goats, hogs, and poultry.

Article IV. Definitions

- Pages 3 - 6
- Organized all the definitions into one Article
- New defined terms:
 - **Buffer...** page 4
 - **Building Area...** page 4
 - **FIDS Guidelines...** page 4
 - **Industrial...** page 5

W. “Passive Recreation” or “Passive Recreational” as the context may require, means low-impact activities conducted outdoors, including, by way of example and not by way of limitation, nature study, orienteering, hunting, fishing, hiking, kayaking, canoeing, sailing, boating, horseback riding, camping, and cross country skiing.

X. “Private” means the intensity of activity that could reasonably be expected in proportion to the number of residents that would typically occupy the allowed Dwelling Unit(s) on the Property.

Y. “Provisions” means the covenants, terms, conditions and restrictions in this Conservation Easement.

Z. “Structure” means anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground.

AA. “Utilities” means non-Commercial utilities to serve allowed uses and Structures on the Property and includes, but is not limited to, satellite dishes, electric power lines and facilities, sanitary and storm sewers, septic systems, cisterns, wells, water storage and delivery systems, telephone and communication systems, and renewable energy systems, including, but not limited to: solar energy devices; geothermal heating and cooling systems; wind energy devices; systems based on the use of Agricultural byproducts and waste products from the Property to the extent not prohibited by governmental regulations; and other renewable energy systems not otherwise prohibited by law.

BB. “Vegetation” means trees, shrubs, grasses or other vegetation.

CC. “Wetlands” means portions of the Property defined by Maryland law or federal law as wetlands at the time of the proposed activity.

ARTICLE V. LAND USE AND STRUCTURES ON THE PROPERTY

A. General. This Article sets forth specific restrictions and prohibitions, as well as allowed activities, uses and Structures on the Property encumbered by this Conservation Easement. In addition to the specifically enumerated Provisions described below, other uses of the Property that are otherwise consistent with the Conservation Purposes of this Conservation Easement are allowed.

B. Reserved Rights Exercised to Minimize Damage. All rights reserved by Grantors and activities not prohibited by this Conservation Easement shall be exercised so as to prevent or to minimize damage to the Conservation Attributes and Conservation Purposes including: water quality, air quality, land/soil stability and productivity, wildlife habitat, scenic and cultural values, and the natural topographic and open space character of the Property.

C. Agricultural Uses and Activities. Agricultural uses and activities allowed by local, state, and federal law are allowed on the Property on a Commercial and a non-Commercial basis as set forth in Article V.D.

Article V. Land Use and Structures

- Pages 6 - 12
- D. Commercial Uses and Activities... page 7
 - Simplified for clarity and focus on impact on the conservation purposes
- F. Structures, Buildings, Dwelling Units, and Means of Access... page 8
 - (1) Building Areas and Dwelling Units
 - (4) Ag Structures outside of Building Areas
- L. Forest Management... page 10
 - Reorganized former standard language for clarity and inserted into the Model
- P. Signage... page 12
 - Simplified for clarity

Questions?



Chatbox



Unmute Yourself

Soil Conservation and Water Quality Plan shall be updated by Grantors and the local Soil Conservation District upon any change in the Property's land use practices or management, or every ten (10) years. Grantors shall provide a copy of the Soil Conservation and Water Quality Plan and any revisions to the Soil Conservation and Water Quality Plan to Grantees. Grantors hereby authorize the Soil Conservation District to release to Grantees information contained in Grantors' Soil Conservation and Water Quality Plan, or any other information applicable to the Provisions of this Conservation Easement.

ARTICLE VI. DUTIES AND WARRANTIES OF GRANTORS

A. Continuing Duties of Grantors. Grantors agree that they will protect the Conservation Purposes and Conservation Attributes of the Property and that they will notify Grantees in writing before undertaking an activity on the Property not expressly prohibited by this Conservation Easement that may have a significant, adverse effect on the Conservation Purposes or Conservation Attributes.

B. Notice of Change of Ownership as Required by State Law. Grantors shall notify Grantees in writing of the names and addresses of any person to whom the Property, or any part thereof, is sold or conveyed as required by Maryland Code, Annotated, Real Property Article §10-705(f).

C. Reference to Deed of Conservation Easement. Grantors agree to make specific reference to this Deed of Conservation Easement in a separate paragraph of any subsequent deed or other legal instrument by which any interest in the Property is conveyed.

D. Subordination. Grantors warrant to Grantees that the Property, is, as of the effective date of this Conservation Easement, free and clear of Liens, or, if it is not, that Grantors have obtained the legally binding subordination of the Liens affecting the Property as of the effective date of this Conservation Easement. Grantors have provided, or shall provide, a copy of this Conservation Easement to all Lienholders already affecting the Property or which will affect the Property prior to the recording of this Conservation Easement, and shall also provide notice to Grantees of all such Liens. Each of the Lienholders has subordinated, or shall subordinate prior to recordation of this Conservation Easement, its Lien to this Conservation Easement either by signing a subordination instrument contained at the end of this Conservation Easement which shall become a part of this Conservation Easement and recorded with it, or by recording a separate subordination agreement pertaining to any such Lien.

E. Real Property Taxes. Except to the extent provided for by federal, state or local law, nothing in this Conservation Easement shall relieve Grantors of the obligation to pay taxes in connection with the ownership or transfer of the Property.

F. Warranties. The Original Grantors who signed this Conservation Easement on the date set forth above are the sole owner(s) of the Property in fee simple and have the right and ability to convey this Conservation Easement to Grantees. The Original Grantors warrant that the Property is free and clear of all rights, restrictions, and encumbrances other than those subordinated to this Conservation Easement or otherwise specifically agreed to in writing by the

Articles VI. and VII.

■ Article VI. Duties and Warranties of Grantors... page 13

- Moved from back of the document
- **NEW PROVISION** G. Multiple Owners or Multiple Lots

■ Article VII. Grantee Approval Process... page 14

- Simplified
- Sole discretion/right/determination of the Grantee

shall be in writing and shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity or use in sufficient detail to allow the Grantees to make an informed determination regarding approval or denial of the request. Grantors shall submit such plats, maps, Subdivision plans, drawings, photographs, written specifications, or other materials as Grantees may request. Such materials shall be submitted prior to any start of construction and in advance of, or concurrent with, application for permits from federal, state, or local governments. Grantees will not approve a request for a Subdivision if Grantees have not received written consent of all persons who hold a property interest in the portion of the Property subject to the request.

C. Grantees' Response to Grantors' Request for Approval. Grantees have the sole right to deny any request described in this Article, or any similar request, in their sole discretion upon a determination that the proposed action or land use would negatively impact protected Conservation Purposes and Conservation Attributes of the Property. Grantees shall respond to the request within ninety (90) days after receipt of the request, unless the time for consideration is extended by mutual agreement of the parties. If any Grantee does not respond to the request within ninety days of submission, such non-response shall be deemed a constructive denial by such Grantee. A constructive denial is not a decision by Grantees on the merits of Grantors' request, it is not final or binding on Grantees, and Grantors may resubmit the same or a similar request for approval.

ARTICLE VIII. GRANTEES' RIGHTS AND DUTIES REGARDING STEWARDSHIP AND ENFORCEMENT OF THE CONSERVATION EASEMENT

A. Right of Inspection of Property. Grantees, their employees and agents, have the right to enter the Property for the purpose of inspecting and surveying the Property to assess compliance with this Conservation Easement. Grantors specifically grant permission to the Grantees to photograph and video-record the Property, Structures, and activities being conducted upon the Property. In the course of such inspection, Grantees may inspect the interior of Buildings and Structures allowed by Article V.F(2), (3), and (4) for the purpose of determining compliance with this Conservation Easement. In the event that a dispute arises between Grantees and Grantors as to whether a Building or Structure is a Dwelling Unit which would not otherwise be allowed by this Conservation Easement, such Building or Structure shall be deemed to contain a Dwelling Unit unless proven otherwise by the Grantors at the Grantors' sole expense. Grantees may also monitor the Property at any time and without notice using aerial imagery obtained in compliance with state and federal law.

B. Remedies for Grantees Upon Violation of Conservation Easement. Upon any violation, or upon notice of imminent violation, of this Conservation Easement, and after notice to Grantors and allowance of time to cure, Grantees may seek any legal or equitable remedy, together with all associated costs and fees, including, but not limited to:

1. a lawsuit to seek injunctive relief to specifically enforce the Provisions of this Conservation Easement, to restrain present or future violations, and to compel restoration of natural resources and Conservation Attributes destroyed or altered as a result of the violation;

Articles VIII. and IX.

- **Article VIII. Grantees' Rights and Duties Regarding Stewardship and Enforcement of the Conservation Easement... page 15**
 - A. Right of Inspection of Property
 - Added permission to photograph, video-record, and monitor using aerial imagery
 - **NEW PROVISION** G. Right to Interpret the Conservation Easement
- **Article IX. Baseline Documentation Report... page 16**
 - All Exhibits will be recorded in the land records

Questions?



Chatbox



Unmute Yourself

Exhibits A – G, adequately, accurately, and clearly describes and depicts: (1) the Property; (2) the Conservation Purposes and Conservation Attributes of the Property; and (3) the public benefits gained from the restrictions placed on the Property. This Baseline Documentation Report establishes the conditions of the Property encumbered by this Conservation Easement as of the effective date of this Conservation Easement. Grantors acknowledge the Baseline Documentation Report will be used by Grantees to monitor and enforce the Conservation Easement and to ensure that any changes to the Property or use of the Property are consistent with the Provisions of this Conservation Easement. The use of the Baseline Documentation Report does not preclude Grantees from using other evidence to establish existing conditions of the Property in the event of a dispute. All of the following Exhibits are incorporated into and made a part of this Deed of Conservation Easement:

1. **Exhibit A:** Boundary Description and Property Reference is attached hereto and made a part hereof. Exhibit A consists of ____ () pages.
2. **Exhibit B:** Conservation Purposes and Attributes is attached hereto and made a part hereof. Exhibit B consists of ____ () pages.
3. **Exhibit C:** Inventory of Existing Structures is attached hereto and made a part hereof. Exhibit C consists of ____ () pages.
4. **Exhibit D:** Color Digital Images of the Property are attached hereto and made a part hereof. Exhibit D consists of a list of the image numbers, vantage points, and image descriptions consisting of ____ () pages, a photo point map, and ____ () color digital images.
5. **Exhibit E:** Aerial Photograph and Topographic Map of the Property are attached hereto and made a part hereof. Exhibit E consists of two (2) pages.
6. **Exhibit F:** Tax Map Showing Approximate Location of Property is attached hereto and made a part hereof. This is to be used only by Grantees as an aid for locating the Property. It is not a plat or legal description of the Property. Exhibit F consists of one (1) page.
7. **Exhibit G:** Building Areas is attached hereto and made a part hereof. Exhibit G consists of ____ () pages.

A complete, color scanned copy of this Baseline Documentation Report is kept on file at the principal office of the Maryland and Environmental Trust.

ARTICLE X. JUDICIAL EXTINGUISHMENT, CONDEMNATION, PROCEEDS, AND AMENDMENT OF THE CONSERVATION EASEMENT

A. **Grantees' Right Percentage Interest.** Grantors and Grantees agree that the grant of this Conservation Easement and the restrictions contained herein gives rise to a property right immediately vested in Grantees that has a fair market value at least equal to the

Article X. Judicial Extinguishment, Condemnation, Proceeds and Amendment

- Pages 17 - 19
- Items A. – D. Re-organized and made the text more closely mirror the Regs.
- E. Amendments
 - Moved into this Article
 - Re-organized
 - Incorporated IRS “safe harbor clause”
 - Reviewed with lenses of LTA guidance and MET policy

regulations promulgated pursuant to such section, and complies with all applicable federal, state and local laws; (4) conflict with or be contrary to or inconsistent with the Conservation Purposes of this Conservation Easement; (5) reduce the protection of the Conservation Purposes; or (6) affect the status of a Grantee as a “qualified organization” or “eligible donee.” For purposes of this Section, the terms impermissible private benefit and inurement shall have the same meanings ascribed to them in IRC Section 501(c)(3) and associated Treasury Regulations. Grantees shall not consent to any amendment of this Conservation Easement unless Grantors submit a written request for amendment pursuant to Grantees’ existing amendment policy and such amendment otherwise qualifies under Grantees’ policy then in effect respecting conservation easement amendments. An amendment is subject to and dependent upon approval by the Maryland Board of Public Works and must be executed and recorded in accordance with State law among the Land Records in the jurisdiction where this Conservation Easement is recorded.

ARTICLE XI. MISCELLANEOUS

A. No Representation of Tax Benefits. The Grantors represent, warrant, and covenant to Grantees that Grantors have not relied upon information or analyses furnished by Grantees with respect to either the availability, amount, or effect of a deduction, credit, or other benefit to Grantors under applicable law or the value of the Conservation Easement or the Property. Grantors have relied solely upon their own judgment and/or professional advice furnished by appraisal, legal, financial, and accounting professionals engaged by the Grantors. If a person providing services in connection with this Conservation Easement or the Property was recommended by Grantees, the Grantors acknowledge that Grantees are not responsible in any way for the performance of services by those persons. The grant of this Conservation Easement is not conditioned upon the availability or amount of a deduction, credit, or other benefit under applicable law.

B. Assignment. Each Grantee may assign, upon prior written notice to Grantors, its rights under this Conservation Easement to any “qualified organization” within the meaning of Section 170(h)(3) of the IRC. Any such successor shall be a “qualified organization” within the meaning of Section 170(h)(3) of the IRC. No assignment may be made by any Grantee of its rights under this Conservation Easement unless Grantee, as a condition of such assignment, requires the assignee to carry out the Conservation Purposes.

C. Compliance with Other Laws. The Grantors agree and acknowledge that the provisions of this Conservation Easement may impose greater restrictions upon the Property than local, state, or federal law. The Provisions of this Conservation Easement do not do not replace, abrogate or otherwise set aside any local, state or federal laws, requirements or restrictions imposing further limitations on the use of the Property. In the event that any applicable state or federal law imposes affirmative obligations on owners of land which if complied with by Grantors would be a violation of a Provision of this Conservation Easement, Grantors shall: (i) if said law requires a specific act without any discretion on the part of Grantors, comply with said law and give Grantees written notice of Grantors’ compliance as soon as reasonably possible, but in no event more than thirty (30) days from the time Grantors begins to comply; or (ii) if said law leaves to Grantors’ discretion how to comply with said law, use the method most protective of the Conservation Purposes of the Property listed herein and in Exhibit B and give Grantees

Article XI. Miscellaneous and Baseline Documentation Report

■ Article XI. Miscellaneous... page 19

- **NEW PROVISION** A. No Representation of Tax Benefits
- **NEW PROVISION** E. Merger
- I. Notice
 - Include new allowance for notices to be emailed and sent by regular mail
- K. Plural and Singular
 - Moved here

■ Baseline Documentation Report

- Included the outline of the BDR in the Model

NOTE TO DRAFTER: DELETE THIS PAGE PRIOR TO DRAFTING

MET Model Deed of Conservation Easement – Alternative Language

Common Ownership: Article V.I.:

Use when the Property consists of more than one tax or deed parcel. Insert the following as the first sentence of the section and add “Common Ownership and” before Subdivision in the heading.

“The ____ () separate parcels that constitute the Property (*provide list of tax parcels here – tax map __, parcel __, tax map __, parcel __, etc...*; or *provide statement about the presence of __ separate deed parcels*) shall remain in common ownership as if the Property were only one (1) parcel.”

Buffer: Article V.J.:

If no waterbody or shoreline exists on the Property then remove the text and insert “Intentionally Omitted” for Article V.J. This will preserve all the cross references that follow in the document.

Forest Management: Article V.L.:

- Choices for objective for the Forest Stewardship Plan. Choose one of the five and insert into the blank in the first paragraph of Article V.L.:
 1. “timber production”
 2. “management of habitat for fish and wildlife game species
 3. “Trail and Passive Recreation management” (*if this is to be the objective of the Forest Plan, ensure that the definitions of Trail and Passive Recreation are included and consistent between the Conservation Easement document*)
 4. “natural heritage protection, meaning the preservation and enhancement of native species diversity, habitat and water quality, with particular emphasis on the conservation of forest interior dwelling bird species (“FIDS”) habitat” AND/OR “Delmarva Fox Squirrel (“DFS”) habitat” OR “other rare, threatened, or endangered species”
 5. “soil conservation and water protection”
- If MET determines that a Forest Stewardship Plan is **not** required then replace all the existing text of Article V.L. with the following for Article V.L.:

“Forest Management. Management and harvesting of all forests on the Property shall be consistent with the Soil Erosion and Sediment Control Guidelines for Forest Harvest Operations in Maryland, prepared by the Maryland Department of Environment, or comparable provisions of any guidelines or regulations which may replace the Soil Erosion and Sediment Control Guidelines for Forest Harvest Operations in Maryland in the future and as they may be amended from time to time.”

DELETE THIS PAGE PRIOR TO DRAFTING

Alternative Language

- Most typical and basic alternative sections
- Transparency and clarity

Questions?



Chatbox



Unmute Yourself

Co-holding a Conservation Easement with MET: New Project Processing



Guide to Sharing the Project Tasks



Landowner's Decision



Communication



Disclosure: Claiming Tax Benefits for Your Full or Partial Gift of Conservation Easement

- Replaces individual fact sheets
- Replaces an engagement letter
- Effort to provide information and be transparent
- When a landowner signs and returns then MET will begin the process

Questions?



Chatbox



Unmute Yourself

Thanks for joining today's Roundtable

⑩ QUESTIONS?

⑩ CONTACT US

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- For more information on this and other Roundtables visit MET's [EVENTS page](#).