



Maryland Environmental Trust
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January 2021

Office Use Only
Date Received:

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

Maryland Environmental Trust (MET) works with landowners and land trusts to protect Maryland's most treasured landscapes and natural resources as a legacy for future generations. Landowners protect their land with an agreement called a Deed of Conservation Easement that permanently affects how the land may be used in the future. Landowners donate conservation easements to MET with the goal of ensuring permanent conservation and good stewardship of their land. Some donations involve the full gift of a conservation easement, where no money changes hands. Others may involve a partial gift, whereby you sell the conservation easement at a price below its appraised value, thus receiving cash for part of the easement's value and making a charitable contribution of the balance of the value. Protections of the property that restrict uses of the land are contained in the Deed of Conservation Easement, and, upon recordation, will become permanently binding on you and all subsequent owners of the property. The restrictions described in the Deed of Conservation Easement are not impacted by whether your donation is considered a full or partial gift.

As a conservation easement donor you enjoy the pleasure of knowing your land is protected for future generations and also receive potential financial benefits such as a deduction on federal income taxes and a credit for state income taxes. Voluntarily agreeing to protect your land in the form of a Deed of Conservation Easement may be considered a non-cash charitable gift by the Internal Revenue Service (IRS). Property tax credits and possible federal estate tax exemptions may also be available to donors.

This document provides you with information about local, state and federal tax benefits arising from the gift of a conservation easement to a qualified organization such as MET. This document is not intended to provide legal or tax advice.

Best Practices and Standards

MET will follow procedures and best practices in how it acquires a conservation easement to ensure a sound transaction and to uphold the trust of the public. Governing the process are the policies and procedures adopted by MET's Board of Trustees, state laws and regulations, federal law and regulations of the IRS, and best practices developed by the Land Trust Alliance in its nationally recognized "Land Trust Standards and Practices".

If you plan to seek federal, state and local tax benefits that are available to conservation easement donors, your conservation easement gift must meet certain legal and technical requirements of federal and state tax law. A summary of these benefits and the relevant statutory references are detailed in Exhibit A entitled "Tax Benefits of Conservation Easement Donations". Each tax benefit has its own requirements for eligibility. Since both MET and you must adhere to requirements, it's in both parties' interests to be clear and consistent in how each handles the transaction.

Recommendation for Landowner Counsel

MET encourages you to seek legal counsel competent in tax and real estate matters to advise you. Conservation easements are technical documents and involve a complex area of real property law. If you choose to seek federal, state or local tax benefits, MET further encourages you to seek the advice of competent tax/financial experts and a qualified appraiser. Although MET staff tries to provide helpful information, the information is not intended to be, nor will it be construed to be advice. MET will not and does not give landowners legal, tax, estate planning, real estate, or accounting advice.

To qualify for a federal charitable deduction for your easement gift, you, with your advisors, must ensure that the donee (recipient of the gift) and the content of the conservation easement conform to certain IRS tax laws and the regulations developed for them by the US Treasury Department. In addition, you must follow certain Treasury Department regulations for claiming a deduction. The ultimate responsibility for compliance with all the federal and state tax requirements is yours, with the help of your advisors.

Appraisal

MET does not require an appraisal for the gift of a conservation easement and is not involved in the appraisal process; however, if you intend to take a federal tax deduction or claim a state tax credit for the donation of a

conservation easement, you will need to engage an appraiser to determine the value of the gift. To claim a deduction for donating a conservation easement, a landowner must obtain a **qualified appraisal** and complete Internal Revenue Service Form 8283 for noncash charitable contributions. A “qualified appraisal” is one done by a “qualified appraiser” as those terms are defined in 26 CFR 1.170A-13(c)(3) and (c)(5). The donor is responsible for any determination of the value of the donation. You will need to engage an appraiser who is experienced in valuing conservation easements because such appraisals are unlike other appraisals and are highly technical. The appraiser should be state-licensed and/or certified and follow the Uniform Standards of Professional Appraisal Practice. This appraisal cannot be completed more than sixty (60) days before your conservation easement is recorded, or later than the date upon which you file the return on which you first claim your deduction (including extensions). The appraisal must value the conservation easement as of the date it is recorded in the land records.

Upon your request, MET staff can provide maps, a draft of the conservation easement, and other information to the appraiser you hire. Appraisers are often busy, it’s a good idea to contact an appraiser early in the process to ensure that the appraisal can be completed on time. The relatively complex process for appraising a conservation easement may help explain the relatively high cost for such an appraisal compared to the cost of an appraisal for just land alone. Expenses you incur in making your conservation easement gift, such as for your appraisal, legal services, etc., are generally not deductible, but there may be other ways in which you can realize tax benefits from them—check with your tax advisor.

See Exhibit B entitled “What is a Qualified Appraisal” for information about IRS requirements.

Liens and Mortgages

If there is a mortgage or deed of trust on the property you are placing under conservation easement, the lien holder must subordinate it to the easement so that the easement will continue to protect the property in the event of a foreclosure. In addition, subordination is necessary for the donation to be a federal tax-deductible contribution. You or your attorney should contact the lien holder as soon as you begin the easement process. Obtaining approval from the mortgage company to subordinate the mortgage can be difficult and can take time. MET will provide you with a Subordination Form for the lien holder to complete. Upon your request, MET staff can provide maps, a draft of the conservation easement, and other information that the lien holder may request. The Subordination Form is recorded in the land records as page in the conservation easement.

Acknowledgement of the Gift

The IRS requires that the donor of any charitable contribution, including a conservation easement, that exceeds the value set forth in the tax code, obtain certain documentation of the gift, including a contemporaneous written acknowledgment from the recipient. Shortly after receiving your conservation easement gift (by recordation of the conservation easement in the land records) MET will mail a letter acknowledging receipt of your gift.

Federal Income Tax Deduction

In order to obtain a federal tax deduction for the donation of a conservation easement, the contribution must be made exclusively for one of the conservation purposes set forth in the Internal Revenue Code. MET regularly evaluates its easement program and model easement document, for among other reasons, to comply with the federal tax code and regulations. MET cannot and will not guarantee that the IRS will grant you a charitable gift tax deduction for your donation. Like any other tax matter, the IRS will make the final determination of deductibility.

The IRS has been focused in recent years on amendment clauses, rights reserved to the donors to build on the land in the future, and the location and scope of building areas on protected land. There are conflicting court opinions relating to those and other issues, some of which have not yet been addressed by the Fourth Circuit Court of Appeals, would impact conservation easements granted in Maryland.

You should confer with your tax advisor or attorney, who can help you understand the Internal Revenue Code, Treasury Regulations, and the case law and to assist you in applying for the federal tax deduction.

Reduction in federal charitable deduction

Treasury Regulations, effective August 28, 2018 (US Treasury Decision 9864), informally known as “SALT”, reduces the amount of federal charitable deductions by any claimed state and local tax credits. Consult with your tax advisor or attorney, who can help you understand if or how this may impact you.

IRS Form 8283, “Noncash Charitable Contributions”

To claim a charitable deduction for your gift of a conservation easement, you must file IRS Form 8283 “Noncash Charitable Contributions” with your federal income tax return for the year of your gift. For claiming a deduction of more than \$5,000, you must get this Form signed by both your appraiser and MET. Part IV of the Form is the “Donee Acknowledgement” to be completed by the recipient of the noncash charitable contribution. In order for MET to complete Part IV of Form 8283 acknowledging receipt of a conservation easement donation, MET requires the following be completed, at a minimum: the name, description of donated property and fair market value of the donation [Page 2, Section B, Part I, Item 5, Columns (a) and (c)]. Your appraiser should also complete and sign Section B, Part III on Page 2. MET will also read your appraisal, please provide a copy of your appraisal to MET staff.

Please also be sure to include the required supplemental statement as described on page 3 of the Form 8283 instructions. The Form 8283 instructions require attachment of what is commonly referred to as the “supplemental statement” that:

- Identifies the conservation purposes furthered by your donation;
- Shows, if before and after valuation is used, the Fair Market Value of the underlying property before and after the gift;
- States whether you made the donation in order to get a permit or other approval from a local or other governing authority and whether the donation was required by a contract; and
- If you or a related person has any interest in other property nearby, describes that interest.

Completion of Form 8283 and the supplemental statement takes time. It is important that you initiate the completion of your Form 8283 soon after making your conservation easement gift and securing your IRS qualified appraisal.

See Exhibit C entitled “MET Requirements Before Signing Federal Form 8283.”

Maryland Income Tax Credit Form

The State of Maryland Personal Income Tax Credits for Preservation and Conservation Easements applies to individual and pass-through entity donors of conservation easements. Legislated in 2001 and in 2016, the income tax credit is an additional benefit for the donation of a conservation easement or the bargain sale of a conservation easement. For pass-through entity donors, please refer to “Part X– Preservation and Conservation Easement Tax Credit” on Form 500CR. For individual donors please refer to or “Part F – Credit for Preservation and Conservation Easements” on Form 502CR. These forms and associated instructions are available on the Maryland Comptroller’s website. See: www.marylandtaxes.gov.

Maryland Conservation Property Tax Credit Application

If your conservation easement donation is a full gift, you may submit the Conservation Property Tax Credit Application to the County office of the Maryland State Department of Assessments and Taxation. The Application requires the following, which MET will provide to you: a copy of both the recorded Deed of Conservation Easement, and the Board of Public Works approval letter. The Application is available on the website of the Maryland Department of Assessments and Taxation. See: dat.maryland.gov.

Landowner Acknowledgement

I/We acknowledge that I/we have received this Disclosure, including Exhibits A-C.

Signatures (All owners of the property must sign.)

_____ Date: _____

**PLEASE SIGN AND RETURN TO MET'S CONSERVATION EASEMENT PROGRAM MANAGER AT
100 COMMUNITY PLACE, 3RD FLOOR, CROWNSVILLE, MARYLAND 21032-2023.**

**MET WILL SEND YOU A COPY OF THE COMPLETED DISCLOSURE with the MET Received Date Stamp
AND RETAIN THE ORIGINAL FOR MET RECORDS.**



TAX BENEFITS of CONSERVATION EASEMENT DONATIONS

There are potential financial benefits available to landowners who agree to protect their land with a conservation easement such as a deduction for federal income taxes, a credit for state income taxes, property tax credits, and federal estate tax exemptions. Agreeing to protect your land in the form of a Deed of Conservation Easement may be considered a non-cash charitable gift by the Internal Revenue Service (IRS). A qualified appraiser must establish the value of the easement which is then used to calculate some of the tax benefits.

Federal Income Tax

The donation of an easement, under Federal and State tax law, can serve as the basis for a deduction from income taxes. To use the value of the donation as a deduction, a qualified appraiser must determine the value of the conservation easement gift using criteria established by the IRS. For appreciated property, the maximum Federal deduction permitted is 50% of adjusted gross income for up to 16 years. Donors may deduct up to 100% of their adjusted gross income if the majority of that income came from farming, ranching or forestry and may continue to take deductions for as long as 16 years. For further information, see Internal Revenue Code section 170(b) and 170(h).

State Income Tax Credit (MET, DNR and MALPF easements only)

Maryland law provides a tax credit of up to \$5,000 per year against state income taxes when an easement is donated by individual landowners and pass-through entities to MET. This \$5,000 credit may be taken for each of the following 15 years, for a maximum total of \$80,000 in credit, but the total amount cannot exceed the value of the donation. For a taxable year the total aggregate amount of credits claimed by members of pass-through entities cannot exceed \$200,000. For further information, see Md. Ann. Code Tax-General 10-723. *Note: tax benefits may be impacted by US Treasury Decision 9864 regarding regulations on charitable contributions and state and local tax credits. See a tax advisor for more information.*

State Income Tax Deduction

Maryland law allows, with some limitations, an individual who itemizes deductions on their federal income tax return to itemize deductions on their state income tax return. Generally, an individual cannot claim both a deduction and credit for the deduction a conservation donation of the conservation easement. For further information, see Md. Ann. Code Tax-General 10-218 and 10-219 of the Tax-General Article.

Federal and State Estate Taxes

For estate-tax purposes, land is generally valued at its maximum development potential, often generating very high estate taxes. An easement limits the amount of development that can occur, thus lowering the appraised value of the land. Conservation easements can be effective tools for reducing estate taxes. See Internal Revenue Code Section 2031(c).

Property Tax Credit

Maryland law allows a landowner to pay no property tax on unimproved land that is subject to a donated MET easement for 15 years from the date of donation. For further information, see Md. Ann. Code Tax-Property 9-107. At the end of the 15-year period, the unimproved land under donated easement will be assessed at the highest agricultural rate and will qualify for this assessment rate even if it is not actively farmed. If the land is in agricultural use it will be assessed at the appropriate agricultural level. For further information, see Md. Ann. Code Tax – Property 8-209.1.



WHAT IS A QUALIFIED APPRAISAL?

Tax deductions for charitable contributions must meet federal standards. To claim a deduction for donating a conservation easement, a landowner must obtain a **qualified appraisal** and complete Internal Revenue Service Form 8283 for noncash charitable contributions. The following are excerpts from the Federal Treasury Regulations §1.170A-13(c)(3) and §1.170A-14(h)(3)(i) with emphasis added.

Please consult the complete Federal Treasury Regulation text for more information.

A **qualified appraisal** must contain certain items outlined in and comply with 26 C.F.R. § 1.170A-13 including:

- (A) that is made no earlier than 60 days prior to the date of contribution of the appraised property;
- (B) Is prepared, signed, and dated by a qualified appraiser;
- (C) Does not involve a prohibited appraisal fee; and
- (D) contains all information required by the tax code.

A **qualified appraisal** must include the following information 26 C.F.R. § 1.170A-13(c):

- (A) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed;
- (B) In the case of tangible property, the physical condition of the property;
- (C) The date (or expected date) of contribution to the donee;
- (D) The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor or donee that relates to the use, sale, or other disposition of the property contributed, including, for example, the terms of any agreement or understanding that— (1) Restricts temporarily or permanently a donee's right to use or dispose of the donated property, (2) Reserves to, or confers upon, anyone (other than a donee organization or an organization participating with a donee organization in cooperative fundraising) any right to the income from the contributed property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or (3) Earmarks donated property for a particular use;
- (E) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser; and, if the qualified appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person (whether an individual, corporation, or partnerships), or an independent contractor engaged by a person other than the donor, the name, address, and taxpayer identification number (if a number is otherwise required by section 6109 and the regulations thereunder) of the partnership or the person who employs or engages the qualified appraiser;
- (F) The qualifications of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations;
- (G) A statement that the appraisal was prepared for income tax purposes;
- (H) The date (or dates) on which the property was appraised;
- (I) The appraised fair market value (within the meaning of § 1.170A-1 (c) (2)) of the property on the date (or expected date) of contribution;
- (J) The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, and the replacement-cost-less-depreciation approach; and
- (K) The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

26 C.F.R. § 1.170A-13 (Effective August 11, 2020).



*The IRS requires that the valuation of the conservation easement in the **qualified appraisal** must follow rules outlined in 26 C.F.R. § 1.170A-14 stating:*

(3) Perpetual conservation restriction—(i) In general. The value of the contribution under section 170 in the case of a charitable contribution of a perpetual conservation restriction is the fair market value of the perpetual conservation restriction at the time of the contribution. See § 1.170A-7(c). If there is a substantial record of sales of easements comparable to the donated easement (such as purchases pursuant to a governmental program), the fair market value of the donated easement is based on the sales prices of such comparable easements. If no substantial record of market-place sales is available to use as a meaningful or valid comparison, as a general rule (but not necessarily in all cases) the fair market value of a perpetual conservation restriction is equal to the difference between the fair market value of the property it encumbers before the granting of the restriction and the fair market value of the encumbered property after the granting of the restriction. The amount of the deduction in the case of a charitable contribution of a perpetual conservation restriction covering a portion of the contiguous property owned by a donor and the donor's family (as defined in section 267(c)(4)) is the difference between the fair market value of the entire contiguous parcel of property before and after the granting of the restriction. If the granting of a perpetual conservation restriction after January 14, 1986, has the effect of increasing the value of any other property owned by the donor or a related person, the amount of the deduction for the conservation contribution shall be reduced by the amount of the increase in the value of the other property, whether or not such property is contiguous. If, as a result of the donation of a perpetual conservation restriction, the donor or a related person receives, or can reasonably expect to receive, financial or economic benefits that are greater than those that will inure to the general public from the transfer, no deduction is allowable under this section. However, if the donor or a related person receives, or can reasonably expect to receive, a financial or economic benefit that is substantial, but it is clearly shown that the benefit is less than the amount of the transfer, then a deduction under this section is allowable for the excess of the amount transferred over the amount of the financial or economic benefit received or reasonably expected to be received by the donor or the related person. For purposes of this paragraph (h)(3)(i), related person shall have the same meaning as in either section 267(b) or section 707(b). (See Example 10 of paragraph (h)(4) of this section.)

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



reason of the existence of restrictions on transfer designed solely to ensure that the conservation restriction will be dedicated to conservation purposes. See § 1.170A-14 (c)(3).

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

26 C.F.R. § 1.170A-14

This information is for informational purposes only. Correctly claiming all of the tax benefits you are eligible for can be complicated. Consult a tax advisor or tax attorney for advice on how a conservation easement would affect your taxes and estate. Tax advantages of easement donations will vary with individual financial situations. Tax advantages may differ between individual landowners, institutions, and other legal entities.



MET Requirements Before Signing Federal Form 8283

Federal Form 8283 is the tax form to use to claim the federal income tax deduction for a noncash charitable contribution. Part IV of the form is the "Donee Acknowledgement" to be completed by the recipient of the noncash charitable contribution. In order for MET to complete Part IV of Form 8283 acknowledging receipt of a conservation easement donation MET requires the following:

1. The Landowner (or representative) fills out Form 8283. The information in Section B, Part 1, "Information on Donated Property," Part 3, "Declaration of Appraiser," and Required Statement must be complete. The IRS requires a statement from you, the landowner, ("Required Statement"), that acknowledges the Conservation Purposes of the easement, the Fair Market Value before and after the easement and the value of the easement, whether or not the easement donation was a condition for a permit or contract, and whether you or any relations have an interest in a property located near the donated property as well as the nature of the relation and the interest (see as described on page 3 of the tax form instructions).
2. The Appraiser **MUST** sign Form 8283 before MET reads and signs it.
3. Landowner submits Form 8283, Required Statement and the full and complete appraisal to MET. To ensure sufficient time for MET staff to read, MET requires that the Form 8283, Required Statement and appraisal be submitted **no less than 10 working days** before the tax return is due.
4. MET's reading of the appraisal focuses on determining that the assumptions of the appraisal accurately reflect the restrictions, prohibitions, and other terms of the conservation easement; thus MET may correctly represent that it has "received the donated property as described in Section B, Part 1" of Form 8283. The appraisal report is part of that description. MET may refuse to sign the Form 8283, or may seek revisions in the appraisal, if the appraisal is inaccurate, implicitly or explicitly, in its representation of the conservation easement terms.
5. MET returns Form 8283 to the landowner to be filed with Federal Income Taxes. MET retains a copy of Form 8283 and the appraisal.

If MET believes that no gift has been made or the property has not been accurately described on the Form 8283, it may refuse to sign the form. Staff may refuse to sign a Form 8283 in cases where the easement conveyance is not a gift, e.g. a regulatory requirement, a condition of a contract, a developer easement or other quid pro quo easements. Staff will make every effort to identify any such potential easements early in the process and educate the parties involved that such easements lacking donative intent would not be tax deductible. Other factors that could provide the basis for refusing to sign the Form 8283 include: factual errors, inaccurate representations of easement restrictions, if no appraisal report is provided to MET, or if the enhancement value to a landowner of property adjacent to the easement land is not addressed. If MET has significant reservations about the value of the gift, particularly as it may impact the credibility of the MET, it may seek additional substantiation of value or may disclose its reservations to the donor.