

Forever Maryland's 2022 Maryland Land Conservation Conference

A Beginner's Guide To Project Management And Easement Drafting

Ann Gutierrez Carlson, Maryland Environmental Trust

Jared Parks, Lower Shore Land Trust



Land Trust Alliance Standards and Practices

1. Ethics, Mission, and Community Engagement
2. Compliance with Laws
3. Board Accountability
4. Conflicts of Interest
5. Fundraising
6. Financial Oversight
7. Human Resources
8. Evaluating and Selecting Conservation Projects
9. Ensuring Sound Transactions
10. Tax Benefits and Appraisals
- 11. Conservation Easement Stewardship**
12. Fee Land Stewardship



Types of Land Conservation in Maryland

- Gift land acquisition
- Fee land acquisition
- Regulatory conservation easement
- **Purchased conservation easement**
- **Bargain sale conservation easement**
- **Donated conservation easement**



Standard 8: Evaluating and Selecting Conservation Projects

- Be familiar with your land trust's criteria and policies
- Knowledge of the possible protection mechanisms
- Type of Easement? Funding Source?
- Simply removing development potential is NOT a conservation easement
 - Conservation attributes MUST exist on the property
 - Provisions in the conservation easement MUST protect the conservation attributes



Standard 8: Evaluating and Selecting Conservation Projects

- Does your organization have the capacity to fulfill, **in perpetuity**, all the responsibilities of holding a conservation easement on the property?
- Visit the property: Did the site visit verify that conservation attributes exist?
- Be able to walk away from a project.



Managing the project.

- Role of Grantee
- Role of Funder
- Role of the IRS
- Role of the Grantor

Managing the people.

Key takeaways:

- Communicate - often
- Know the steps in the process (requirements of the funder)
- Pay attention of the details.
- Set an internal timeline and checklist and an external timeline and checklist.



Standard 9: Ensuring Sound Transactions



What you need to consider...

- Which easement template to use
- Requirements of a Funder
- Is this a donation or bargain sale?
- Who is the Grantor?
- Are you talking to the correct person?
- Who is behind the LLC?
- Does the landowner or family own other property nearby?

Standard 9: Ensuring Sound Transactions - Do your homework!

Due Diligence:

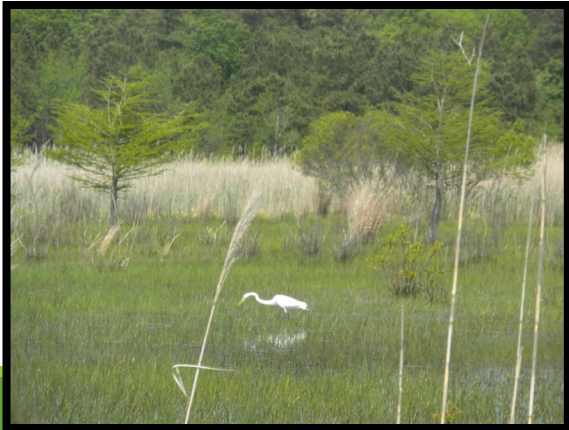
- Run the title early, often, and again before the project closes
- Are there liens on the property?
- Is the property protected already?
- Survey/legal descriptions
- Environmental Phase 1
- Appraisals/Valuation for Purchase Easements
- Conservation Attribute research
- Planning and Zoning

MET's Website has a "Land Trust Toolbox":

- <https://dnr.maryland.gov/met/Pages/toolbox-state-local.aspx>
 - MERLIN
 - LandRec.net
 - Plats.net
 - WebSoil Survey
 - CERCLA –EPA
 - MHT/NHR Listings

Negotiate the Major Terms

- Major Terms
 - Dwelling Units
 - Subdivision
 - FSP Objective
 - Buffers
 - Building Area location(s)
- Use your homework to set your negotiation limits
- Know your organization's policies and procedures
- Know your negotiation limits before you meet with landowner
- After your meeting, follow up **in writing** with a list of the negotiated terms



Standard 9: Ensuring Sound Transactions: **Drafting the Conservation Easement**

Drafting the Conservation Easement:

- Identify the conservation attributes/values
- Are you using the correct template document?
- Always start with the template!
- Tailor specifically to each property and landowner negotiations
- Restrictions protect the attributes and are consistent with conservation purpose
- Allowed uses and rights do not harm the conservation attributes



Standard 9: Ensuring Sound Transactions: Drafting the Conservation Easement

- Do your research **before** you start drafting
- Negotiate terms with the landowner **before** you begin drafting
- Sweat the details- at this stage they are very important
- The Exhibits are not afterthoughts. Draft them with the body of the easement.
- Watch your timing – the document: text, maps and images will need to be refreshed if the project has not moved forward for several months.
- **Terms are legally and practically enforceable**

Standard 9: Ensuring Sound Transactions: **Drafting for Donations**



- For tax-deductible easements: bargain sales and full donations
- Internal Revenue Code §170(h) & Fed Treas. Reg § 1.170A-14
 - **Read these and be familiar with them.**
- Negotiating specific easement language with the landowner and their legal counsel - Get your attorney involved!

Do not give legal advice.
Give information.

Standard 9: Ensuring Sound Transactions: Lien Subordinations

- What is a subordination?
- Deductible easements must be made in perpetuity, and subordination helps ensure that perpetuity.
- Unless a lien that exists at the time of the easement has a possibility “so remote as to be negligible” of extinguishing the conservation easement, it needs to be subordinated.
- This is why outstanding mortgages/deeds of trust/liens need to be subordinated to conservation easement.
- Other liens may also need to be subordinated (ex. recorded restrictive covenants with forfeiture clause that can result in sale free and clear of easement).

Standard 9: Ensuring Sound Transactions: Gift Letter

- Easement Grantees, like any other charity, must send a “goods and services” letter a/k/a “gift letter” a/k/a “contemporaneous acknowledgement letter”
- Letter must be contemporaneous with donation, not generated later in response to audit and not “backdated”
- Letter should reflect if land trust gave any services. For example: paid for landowner’s attorney, appraisal, Phase 1
- If a Bargain Sale, the letter must include the amount paid to the Grantor.



Standard 9: Ensuring Sound Transactions

- Legal review
- Record the conservation easement in the land records
- Record keeping



Standard 10: Tax Benefits and Appraisals

- Landowner notifications - in writing!
- **Never give tax advice**
 - The landowner should have a professional tax advisor
- Avoiding fraudulent or abusive transactions



Standard 10: Tax Benefits and Appraisals

Tax Incentives for Conservation Easements in Maryland

- **Federal:** income tax (deduction), estate tax (reduction, exclusion)
 - **State:** income tax (credit or deduction), estate tax (ability to grant post-mortem), State property tax
-
- Federal Law and Regulations have strict and very specific criteria about what does and does not qualify for the Federal Tax Benefits
 - State Law provides strict and very specific criteria about what does and does not qualify for the State Income Tax and Property Tax Benefits

Standard 10: Tax Benefits and Appraisals

- **The appraisal for tax purposes is the responsibility of the donor**
 - **A faulty appraisal can sink an entire deduction**
- IRS Form 8283
- LTA Standards & Practices say land trust should read the appraisal before signing the Grantor's Form 8283
 - Federal Regulations have strict and very specific criteria about conservation easement appraisals. These are not like other real estate appraisals.
 - You and/or the staff of your land trust must be familiar with these criteria.
 - By requesting a copy of the appraisal, the land trust is not assuring the valuation of any deduction or that the easement will qualify for said federal tax benefits.

Standard 10: Tax Benefits and Appraisals: **The Qualified Appraisal**

- **Required if donation over \$5,000**
- **Appraisal must be a “qualified appraisal” – see 26 USC 170(f)(11)(C)**
- **Appraisal must be done by a “qualified appraiser” -- 26 USC 170(f)(11)(E) and Treas. Reg. 1.170A-13(c)**
- **Advice is to have landowners retain appraisers who have been specifically trained in appraising conservation easements**
- **Appraisal must be included with Form 8283 packet if claimed donation exceeds \$500,000**
- **Can’t be finished earlier than 60 days before donation or later than tax return due date (with extensions)**

Standard 10: Tax Benefits and Appraisals: The Qualified Appraisal

Entire Contiguous Property

- If easement covers only 50 acres of 200 acres of contiguous property owned by your donor or his family:
- Value of easement = FMV of “entire contiguous parcel” before easement minus FMV of “entire contiguous parcel” after easement. Treas. Reg. 1.170-14(h)(3)(i).
- “Family” defined in 26 USC 267(c)(4) – whole or half blood siblings, spouse, parents, grandparents, children

Standard 10: Tax Benefits and Appraisals: **The Qualified Appraisal**

“Enhancement”

- If easement effects an increase in value of other property owned by donor or family (whether such property is contiguous or not):
- Amount of deduction is reduced by the amount of the increase in value of the other property
- Treas. Reg. 1.170-14(h)(3)(i)
- Very complex

The appraisal is the responsibility of the donor!

Form 8283

Never give tax advice

The landowner should
have a professional
tax advisor



Form 8283 (Rev. 12-2006) Page 2
 Name(s) shown on your income tax return Identifying number

Section B. Donated Property Over \$5,000 (Except Certain Publicly Traded Securities)—List in this section only items (or groups of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions of certain publicly traded securities reported in Section A). An appraisal is generally required for property listed in Section B (see instructions).

Part I Information on Donated Property—To be completed by the taxpayer and/or the appraiser.

4 Check the box that describes the type of property donated:

<input type="checkbox"/> Art* (contribution of \$20,000 or more)	<input type="checkbox"/> Qualified Conservation Contribution	<input type="checkbox"/> Equipment
<input type="checkbox"/> Art* (contribution of less than \$20,000)	<input type="checkbox"/> Other Real Estate	<input type="checkbox"/> Securities
<input type="checkbox"/> Collectibles**	<input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Other

*Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.
 **Collectibles include coins, stamps, books, gems, jewelry, sports memorabilia, dolls, etc., but not art as defined above.

Note. In certain cases, you must attach a qualified appraisal of the property. See instructions.

5	(a) Description of donated property (if you need more space, attach a separate statement)	(b) If tangible property was donated, give a brief summary of the owner's physical condition of the property at the time of the gift	(c) Appraised fair market value
A			
B			
C			
D			

(d) Date acquired by donor (m, yr)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) For bargain sales, enter amount received	(h) Amount claimed as a deduction	(i) Average trading price of securities	See instructions
A						
B						
C						
D						

Part II Taxpayer (Donor) Statement—List each item included in Part I above that the appraisal identifies as having a value of \$500 or less. See instructions.

I declare that the following item(s) included in Part I above has to the best of my knowledge and belief an appraised value of not more than \$500 (per item). Enter identifying letter from Part I and describe the specific item. See instructions. ▶

Signature of taxpayer (donor) ▶ Date ▶

Part III Declaration of Appraiser

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.

Also, I declare that I hold myself out to the public as an appraiser or perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). In addition, I understand that a substantial or gross valuation misstatement resulting from the appraisal of the value of the property that I know, or reasonably should know, would be used in connection with a return or claim for refund, may subject me to the penalty under section 6658A. I affirm that I have not been barred from presenting evidence or testimony by the Office of Professional Responsibility.

Sign Here Signature ▶ Title ▶ Date ▶

Business address (including room or suite no.) Identifying number

City or town, state, and ZIP code

Part IV Donee Acknowledgment—To be completed by the charitable organization.

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date ▶

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file Form 8282, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use? ▶ Yes No

Name of charitable organization (donee)	Employer identification number
Address (number, street, and room or suite no.)	City or town, state, and ZIP code
Authorized signature	Title Date

Printed on Recycled Paper Form 8283 (Rev. 12-2006)

Final thoughts on Donations...

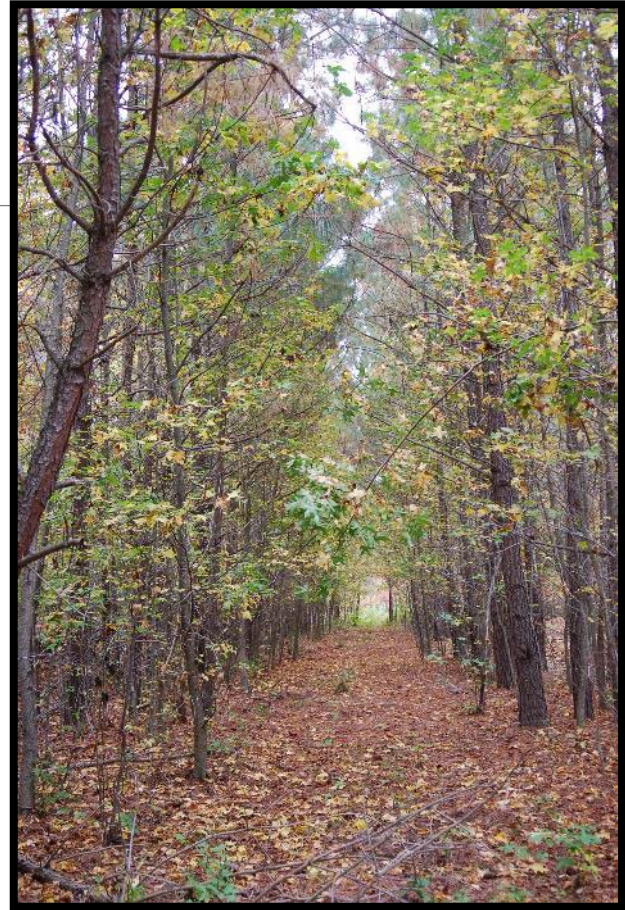
Compliance with the federal and state tax laws and regulations governing conservation easement donations **are the responsibility of the donor.**

Be aware that several things can sink an **entire** deduction, including :

- Faulty appraisal
- Easement terms that do not protect the conservation attributes **in perpetuity**
- Easement language inconsistent with Tres. Regs
- Incomplete or erroneous Form 8283

Wrap up...

- Communicate
- Sweat the details
- Do your homework
- Don't give legal or tax advice
- When in doubt, ask your attorney



Questions



Ann Gutierrez Carlson
Ann.Carlson@Maryland.gov
410-679-9524

Jared Parks
jparks@lowershorelandtrust.org
443-234-5587

Standard 10: Tax Benefits and Appraisals:

Federal Income Tax Deduction

- A donor can deduct up to **50%** of Adjusted Gross Income in the year of the donation.
- A deduction not fully used in the year of the gift may be carried forward for up to **15 years**.
- If taxpayer is “qualified farmer or rancher,” as defined by Internal Revenue Code: maximum deduction increases to up to **100%** of Adjusted Gross Income

Standard 10: Tax Benefits and Appraisals: Federal Income Tax Deduction

- SALT
- Owned the property less than a year?
- Type if owner by a Corporation: LLC, LP, LFP, S-Corp, C-Corp
- To claim: must file IRS Form 8283 with federal tax return
- Must include qualified appraisal if value of gift is over \$500,000
- Detailed requirements but achievable with attention to detail

Standard 10: Tax Benefits and Appraisals:

Federal Estate Tax Benefit

- For estate tax purposes, land is generally valued at its maximum development potential. A conservation easement limits the amount of development that can occur, thus lowering the appraised value of the land and **reducing the taxable estate.**
- (2) There is estate tax **exclusion** (40% of land value up to \$500,000 per owner), for certain land that is subject to a donated conservation easement. This **allows the land to be partially shielded from estate taxes.**

Standard 10: Tax Benefits and Appraisals:

State Income Tax Credit

- Only for easements conveyed to: Maryland Environmental Trust, Maryland Agricultural Land Preservation Foundation, Department of Natural Resources
- Easement must be perpetual and approved by the Maryland Board of Public Works.
- Who may claim: individuals and pass-through entities (LLCs, LPs, LLPs, S corps, business trust, statutory trust)
- Maximum credit per individual or per pass-through entity per year is \$5,000 per year or the amount of State income taxes owed for that year, whichever is less.

Standard 10: Tax Benefits and Appraisals:

State Income Tax Credit

- Unused credit may be carried forward for up to 15 years, at a rate of \$5,000 per year, for a maximum credit of \$80,000 or value of donation, whichever is less.
- If easement was not entirely donated, the amount paid to taxpayer is not eligible for the credit.
- Spouses, even if filing jointly, may take up to a \$10,000 credit per year, but each spouse must calculate their own state tax liability (ex. if one unemployed).
- For a taxable year, the total aggregate of credits claimed by members of all pass-through entities cannot exceed \$200,000.

Standard 10: Tax Benefits and Appraisals:

State Income Tax Credit

- To claim: must file State form 502CR with Maryland tax return
- Need a qualified appraisal
- Statute: Md. Ann. Code Tax-General 10-723

SALT!

Standard 10: Tax Benefits and Appraisals:

State Income Tax Deduction

- Who is eligible: Only individuals who itemize deductions on their federal income tax return
- Can take the Credit OR the Deduction – not both

Standard 10: Tax Benefits and Appraisals:

Tax Credit for State Property Tax

- There is a tax credit for 100% of all State property tax that would otherwise be due on unimproved land not used for commercial purposes that is subject to a conservation easement.
- The credit is for 15 consecutive tax years.
- Easement donors are still responsible for paying property taxes on improved land, i.e. residential structures.

Standard 10: Tax Benefits and Appraisals:

Tax Credit for State Property Tax

- Only for fully donated easements to: Maryland Environmental Trust or Department of Natural Resources.
- Easement must be perpetual and approved by the Maryland Board of Public Works.
- To claim: apply to State Department of Assessments and Taxation by October 1 of the taxable year, using its Form 1-012-200-010
- Statute: Md. Ann. Code Tax-Property 9-107